

**From:** Melissa Akoni  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:28:55 AM

---

Aloha,

As a citizen of Hawai'i and a Native Hawaiian I would like to submit a request to the Board to exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7430. In the event that the RP is renewed, some conditions I would like to request be implemented in KIUC's permit moving forward are:

Deadlines be instituted for KIUC:

- to install water gauges on all streams feeding the ditch system, repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- to develop and implement a plan to mitigate system losses
- to assess and report back on alteration to existing water diversion structures
- to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters.
- And finally, a deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

I request these things humbly as a concerned citizen and native of the land.

Mahalo,  
Melissa Akoni

**From:** Mary Alexander  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 6:18:18 PM

---

To: The Hawai'i BLNR  
From: Mary Alexander  
RE: Opposition to Revocable Permit 7340  
Date: 12/9/20

To whom it may concern in the Hawai'i BLNR:

I am writing to oppose KIUC's request to renew its Revocable Permit 7340 for the following reasons:

As stated by KIUC in their petition for renewal, KIUC did not divert water from Wai`ale`ale or Waikoko in 2020 due to ditch system damage. The island power system was not interrupted, proving that KIUC does not need nor should they continue diverting water from these State land streams in a protected conservation district.

KIUC reported in their Fall 2020 edition of *Currents* that the Waiahi hydro power plants, together, accounted for only 8/10ths of 1% of all the power KIUC sold in 2019. This small amount of power is NOT worth the damage the diversions are doing--and will continue to do for 65 more years--if this renewal is approved. Per KIUC's admission, these ditches divert an average of 14 million gallons daily from Wai`ale`ale and Waikoko, and that does not even include the many other stream diversions along the five-mile Ili`ili`ula ditch system between Wai`ale`ale and the upper Waiahi hydro that add the necessary twenty plus million gallons to operate the upper Waiahi hydro power plant.

These diversions devastate our natural stream flow and its inhabitant biota such as gobies, and severely disrupt traditional and cultural practices. In addition, the deteriorating dam diversions with exposed rebar also pose a threat to human health and safety. Dam maintenance is a requirement of the conditions of RP 7340 and KIUC has failed to comply.

It's clear that KIUC does not need this diversion. By their own application for renewal, they admit there has been no hydropower production for over eighteen months since the siphon broke. Is it possible that this renewal is important to KIUC because it is part of a larger plan to construct two major new dams in the forest reserve, in sacred pools, with plans to divert the waters from the rainforest for a lifetime--sixty-five years--until 2085?

Mary Alexander  
5905 Ahakea Street  
Kapa'a, HI 96746  
808-635-0178

**From:** Alani Bagcal  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 4:37:35 PM  
**Attachments:** [image001.png](#)

---

Aloha,

I strongly oppose RP 7340.

By continuing to divert an unsustainable amount of water from the sacred Wai'ale'ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340's conditions. KIUC's hydropower plant already produces less than 1% of Kaua'i's power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production.

Thank you for the opportunity to submit testimony.

**Alani Bagcal (she/her)**

Hawai'i Field Organizer

[Planned Parenthood Votes Northwest and Hawai'i](#)

C 808.628.0681 | O 808.954.4746 | [ppvnh.org](#)



**From:** Barbara Barry  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 9:14:59 PM

---

Aloha Board Members,

I respectfully request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions. Should the RP be renewed please request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

This continued diversion is unsustainable and harms the sacred Wai'ale'ale and Waikiki watershed as well as disrupting Native Hawaiian cultural practices. KIUC have failed to maintain the dam which is a requirement of at least 10 of the RP 7340 conditions.

This power plant is essentially unnecessary for Kauai's energy production. Please oppose RP 7340.

Mahalo,  
Ms. Barbara Barry

1051 Pu' u' ōpae Road, Kapa'a, HI 96746  
(808) 639-4524 [franklynbrownlow@gmail.com](mailto:franklynbrownlow@gmail.com)

To: BLNR - [blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

Re: **Oppose RP 7340**

Date: December 9, 2020

Aloha:

I would like to express my opposition to renewal of Revocable Permit 7340.

I have lived in Wailua Homesteads for almost 40 years, and travel on Kuamo'o Road past Ōpaeka'a Falls daily. In the past I have always loved to see the water pouring over the falls, and would always stop after a flash flood to watch the HUGE torrent of water coming over, spectacular and amazing. Sadly I have now seen the Falls reduced to a bare trickle over dry rock. Heartbreaking. We need to return to 100% and bring this amazing area, with all manner of endemic flora and fauna dependent upon these waters, back to its full life. Wai'ale'ale and Waikoko Streams are sacred resources for the community, island, and the Hawaiian people and lāhui.

While RP's were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold-over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

1. As stated by KIUC in their petition for renewal, KIUC did not divert water from Wai'ale'ale or Waikoko in 2020 due to ditch system damage. The island power system was not interrupted, proving that KIUC does not need nor should they continue diverting water from these State land streams in a protected conservation district,
2. KIUC reported in their Fall 2020 edition of *Currents* that the Waiahi hydro power plants, together, accounted for only 8/10ths of 1% of all the power KIUC sold in 2019.
3. We have known for some time that the 2 Waiahi hydro power plants produce only 1% or less of the island's power. Now that we know they generate 8/10ths of 1% of the total revenue for KIUC, there is substantial support for BLNR to non-renew KIUC's RP 7340 which, when the ditches are repaired, diverts an average of 14 million gallons daily from Wai'ale'ale and Waikoko not to mention the many other stream diversions along the 5 mile Ili'ili'ula ditch system between Wai'ale'ale and the upper Waiahi hydro that add the necessary 20 plus million gallons to operate the upper Waiahi hydro power plant.
4. In addition, two other ditch systems, South Intake ditch and North Intake ditch, collect from the upper Waiahi hydro and additional streams to provide the 40 million gallons

daily required to operate the lower Waiahi Hydro... all this water pulled from Wai`ale`ale and the other Wailua streams to increase KIUC's revenue by 8/10ths of 1% of their total power revenue.

I object to this continued devastation of our natural stream flow, biota, traditional and cultural practices and the preservation of the ascetics that are grossly impacted by deteriorating dam diversions with exposed rebar not to mention the threat to human health and safety. Dam maintenance is a requirement of at least 10 of the conditions of RP 7340 and KIUC has failed to comply with any of them. This stream diversion permit needs to be denied.

KIUC has been diverting 100% of the baseflow of Wai`ale`ale Stream for over 15 years without needing to quantify it's water use needs, or appropriately assess the environmental and cultural impacts of 100% base flow diversion. Allowing KIUC to continue to divert more than half of this stream system to generate such a small amount of its overall energy does not fulfill the constitutional obligation to the public trust. KIUC's trajectory toward 100% clean energy is the strongest in the state, but this small amount of power from Waiahi is not worth the diversions of millions of gallons per day from Wai`ale`ale and Waikoko streams. The co-op must adopt more environmentally sustainable and culturally responsible ways to meet its clean energy goals. Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production.

I respectfully request that the Board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340.

Mahalo for your consideration and for the opportunity to provide comment on this important issue.

Mahalo nui loa,

Carol Beardmore  
1051 Pu`u`ōpae Road  
Kapa`a, HI 96746

**From:** Carl Berg  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose Rp7340  
**Date:** Tuesday, December 8, 2020 4:18:39 PM

---

Aloha Board ,

I strongly oppose the renewal of KIUC's request to renew its Revocable Permit (RP) 7340 for the continued diversion of water from Wai‘ale‘ale and Waikoko Streams.

By continuing to divert an unsustainable amount of water from the sacred Wai‘ale‘ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices.

KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340's conditions.

KIUC's hydropower plant already produces less than 1% of Kaua'i's power and they have admitted to not using it in 2020 due to damage.

Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production.

Respectfully submitted,

Carl J, Berg, Ph.D. (ecology)  
2637 Apapane St.  
Lihue, Hawaii 96766

**From:** Cheryl B  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 5:41:22 PM

---

Aloha,

It is important to listen to the people of the area, in this case Kauai.

Please oppose RP 7340 because by continuing to divert an unsustainable amount of water from the sacred Wai'ale'ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340's conditions. KIUC's hydropower plant already produces less than 1% of Kaua'i's power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production.

C. Burghardt

D. Green

Kou, O`ahu

**From:** Awapuhi  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 3:22:49 AM

---

Aloha BLNR,

We are in opposition of KIUC's request to renew its Revocable Permit #7340. My family and I operate Hanahanapuni Farm which is fed by the Northfork Wailua River and the ditch running thru Queen's Land. Both waterways are fed by the waters of Waialeale which have a direct impact from KIUC's use.

Please do not renew RP 7340; KIUC's diversions continue to damage the natural ecosystem and heavily decrease the streamflow.

We are counting on you to oversee this public trust matter properly by upholding your statutory responsibility. For the benefit of the Native Hawaiian People and all residents and not for corporate greed.

We would like to see the following implemented or upheld by KIUC:

- 1) Deadline for KIUC to install water gages on all streams feeding the ditch system
- 2) Deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- 3) Deadline for KIUC to develop and implement a plan to mitigate system losses
- 4) Deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- 5) Deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- 6) Deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

We humbly ask for consideration and understanding,

Ginger PD Bray  
Hanahanapuni Farm- Wailua, Kauai, HI

**From:** Emily Broderick  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Re: [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:57:42 AM

---

Thank you so much!

I noticed too late after I sent it that I omitted the word NOT in my first sentence by accident. it should read:

I strongly think it is time that our Kauai community start prioritizing our natural resources and biodiversity over profits of companies and individuals who do NOT make concerted efforts towards sustainability and conservation practices.

In fact, KIUC has failed to prove their commitment to conservation and have not been forthright. As such it's time to part ways with them for the continued benefits of our natural stream flow, biota, traditional and cultural practices and the preservation of the ascetics. Hopefully it is not too late to restore what has been grossly impacted by deteriorating dam diversions with exposed rebar not to mention the threat to human health and safety.

Dam maintenance is a requirement of at least 10 of the conditions of RP 7340 and KIUC has failed to comply with any of them. This stream diversion permit needs to be denied. They obviously don't need it. By their own application for renewal, they admit it has not been in use all year... and their power for Kauai has not been interrupted.

Thank you very much for your consideration!

Emily Broderick  
Marine Biologist and KCC Instructor

On Tue, Dec 8, 2020 at 3:16 PM DLNR.BLNR.Testimony <[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)> wrote:

*Aloha,*

*Your testimony will be forwarded to the Board members for their consideration.*

*Mahalo!*

**From:** Emily Broderick <[emilybro@hawaii.edu](mailto:emilybro@hawaii.edu)>  
**Sent:** Tuesday, December 8, 2020 1:44 PM  
**To:** DLNR.BLNR.Testimony <[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)>  
**Subject:** [EXTERNAL] Oppose RP 7340

Aloha and to whom it may concern,

I strongly think it is time that our Kauai community start prioritizing our natural resources and biodiversity over profits of companies and individuals who do make concerted efforts towards sustainability and conservation practices.

In fact, KIUC has failed to prove their commitment to conservation and have not been forthright. As such it's time to part ways with them for the continued benefits of our natural stream flow, biota, traditional and cultural practices and the preservation of the ascetics. Hopefully it is not too late to restore what has been grossly impacted by deteriorating dam diversions with exposed rebar not to mention the threat to human health and safety.

Dam maintenance is a requirement of at least 10 of the conditions of RP 7340 and KIUC has failed to comply with any of them. This stream diversion permit needs to be denied. They obviously don't need it. By their own application for renewal, they admit it has not been in use all year... and their power for Kauai has not been interrupted.

Thank you very much for your consideration!

Emily Broderick

Marine Biologist and KCC Instructor

--

Let the beauty of what you love be what you do - Rumi

Emily M. Broderick

Biology/Marine Science Instructor  
Kauai Community College

SSCI Bld 112

Email: [emilybro@hawaii.edu](mailto:emilybro@hawaii.edu)

Phone: 808-245-8389

--

Let the beauty of what you love be what you do - Rumi

Emily M. Broderick  
Biology/Marine Science Instructor  
Kauai Community College  
SSCI Bld 112  
Email: [emilybro@hawaii.edu](mailto:emilybro@hawaii.edu)  
Phone: 808-245-8389

**From:** Chariya Terlep-Cabatbat  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 9:39:21 AM

---

As a Citizen of Hawai'i and a Native Hawaiian, I would like to submit a request to the Board to exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7430. In the event that the RP is renewed, some conditions I would like to request be implemented in KIUC's permit moving forward are:

Deadlines be instituted for KIUC:

- to install water gauges on all streams feeding the ditch system, repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- to develop and implement a plan to mitigate system losses
- to assess and report back on alteration to existing water diversion structures
- to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters.
- And finally, a deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

I request these things humbly as a concerned citizen and native of the land.

Mahalo,

Chariya Terlep-Cabatbat

**From:** Andrew Cabebe  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP7340  
**Date:** Wednesday, December 9, 2020 10:49:39 PM

---

To whom it may concern. I strongly oppose RP7340. KIUC should not be able to divert water from our sacred waialeale and waiole water source. BLNR and corporations like KIUC have been stealing water and mismanaging our inherent water rights for too long. Similar to what was and is happening on Maui, the east side of Oahu and all of Hawai'i nei. Our Ahapua'a must be respected. You have not followed your own protocol let alone the indigenous people of Kaua'i. I was born in Hanalei valley 45 years ago. My lineage pre dates western contact. Our respect and knowledge of our Aina has not been properly recognized or considered. I am a kanaka maoli and my Ohana use this Wahi pana (sacred aina) extensively for many purposes. I am available for consultation as I represent many on Kaua'i and my Ohana. As well as non profit Hawaiian organizations.

Ua mau ke ea O ka aina I ka Pono I ke Akua.

The meaning of this olelo is not known, practiced or from the occupying state you represent. It is a hypocritical and demeaning to the knowledgeable and skilled indigenous people of Hawaii nei.

Sincerely

Koa Cabebe  
8086351542

Sent from my iPhone

**From:** Ramsey Calimlim  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony in OPPOSITION for item D11 for the Dec 11th BLNR board Meeting.  
**Date:** Wednesday, December 9, 2020 10:48:20 PM

---

Aloha BLNR Board Members,

Below is my testimony for the December 11, 2020 BLNR meeting for item D11. Please confirm receipt of this testimony.

I strongly oppose Na Pua Makani's mortgage request from Key Bank National Association and strongly request that BLNR do NOT consent to this mortgage application.

It would not be prudent for the BLNR to consent to this mortgage before all of the unresolved legal battles are resolved, as it would likely result in more cost to the taxpayers in having to address the NPM loan issues after consent had been granted. This poorly planned NPM wind project is reflected in several ongoing legal battles that have yet to be resolved. The approval of the HCP is being questioned and currently is awaiting a court date with the Supreme Court. In addition, the approval to grant NPM exemptions to build turbines against the setback requirement is also being challenged in First Circuit Court. If the court rules against NPM, this will severely impact the operation of NPM. Disruption of its operation could cause NPM to file for bankruptcy. The BLNR must withhold consent until it is sure of the result of each of the remaining legal issues to protect the best interest of the public and avoid any irreversible, or unforeseen, consequences and/or costs to taxpayers.

We feel that the risk is too great given the numerous problems that arose from this project. In addition to the legal issues already mentioned, this project has also been questioned at the PUC in regards to their excessive delays in operation this year. This poor track record indicates greater risk.

Furthermore, the use of public lands as collateral for the interests of private corporations and their profits feels wrong. This mortgage application allows a large private corporation to financially benefit from public lands which should be used for public interests. Being that the habitat conservation plan is still in question, it feels as if the public lands are being exploited and used for leverage for the corporate interest and profit, while failing to meet its fiduciary duties in relation to the lease agreement and the environmental laws of the state.

Lastly, we would like to urge the BLNR put the public's interest at heart in this case. The host community not only opposed this project for over 10 years, their opposition continues. This project has been the most controversial project in 2019 causing over two hundred arrests of community members to protect Kahuku from the development of this project. We are concerned that this mortgage term could possibly extend the lease while the community strongly opposes any extension anymore than what has been allowed. We ask that the BLNR honor this public input and deny NPM's request to consent to their mortgage application.

Mahalo,  
Ramsey Calimlim  
Kahuku Resident

**From:** buffalocampbell@gmail.com  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Thursday, December 10, 2020 8:56:08 AM

---

Aloha,

I am writing in concern that Kaua'i Island Utility Cooperative (KIUC) has filed a request to renew it's revocable permit (RP) 7340 for the continued diversion of water from Wai'ale'ale and Waikoko Streams. I strongly oppose this renewal. KIUC diverts an unsustainable amount of water from these sacred streams, disrupting ecosystems and Native Hawaiiin cultural practices that enhance and protect the environment. KIUC has also failed to maintain the dam which is a requirement. They are only producing less than 1% of energy on Kaua'i and admit to not using it at all in 2020 due to damage. I urge you to do what is in the best interest of the land and in support of sustainability and Hawaiian cultural practices.

Mahalo,

Brian Campbell

**From:** Lindsey Carlisle  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 9:16:00 PM

---

Aloha,

I respectfully request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions. Should the RP be renewed I request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Mahalo for your consideration and attention to this matter,

Lindsey L. Carlisle, RN, BSN

**From:** William H Carney  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 1:18:29 PM

---

1. Agenda Item D-5 - Exhibit A, KIUC did not divert water from Wai`ale`ale or Waikoko in 2020 due to ditch system damage. The island power system was not interrupted, proving that KIUC does not need nor should they continue diverting water from these State land streams in a protected conservation district,
2. KIUC reported in their Fall 2020 edition of *Currents* that the Waiahi hydro power plants, together, accounted for only 8/10ths of 1% of all the power KIUC sold in 2019.

I am opposed to RP 7340.

William H Carney  
Homeowner

BLNR

Testimony Re: KIUC RP 7340

Malia K. Chun

POB 680 Kekaha, Hi 96752

December 10, 2020

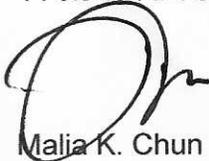
Aloha mai Board of Land and Natural Resources,

I find it sadly ironic that for the last 4 years I have been writing the same letter in OPPOSITION of granting KIUC a Revocable Permit 7340 for the continued diversion of wai from Wai'ale'ale and Waikoko streams.

It is almost 2021 and I wish I could write a different letter, but sadly in the last 4 years nothing has changed...KIUC continues to divert an unsustainable amount of water from our most sacred water source, Wai'ale'ale. In addition, they have failed to maintain the dam and they have failed to meet at least 10 of the RP 7340's conditions. What is the justification for this sad excuse of water theft? Producing less than 1% of Kaua'i's power.

I could go on and on about the cultural significance of Wai'ale'ale and all of the estuaries it feeds, how farmers depend on the adequate flow of these waters to grow food that our community so desperately needs, especially during these desolate times. I could share with you the devastating impact that such diversions have had on our natural environment and our ability as kanaka to practice our traditional and customary gathering rights...but you've already heard it all. The bottom line is that no single entity (whether a Co-op or not) should be granted complete power over a public trust that is essential to life on this honua. Mahalo for your time.

'A'ole to RP7340,



Malia K. Chun

**From:** Abby Conroy  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 9:33:54 AM

---

I respectfully request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions. Should the RP be renewed I request that BLNR attach the following conditions to KIUC's permit moving forward:

A deadline for KIUC to install water gages on all streams feeding the ditch system

A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)

A deadline for KIUC to develop and implement a plan to mitigate system losses

A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows

A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters

A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Mahalo in advance for doing what's right for the aina.

Sincerely, Abby

From: Roslyn Cummings  
To: [DLNR BLNR Testimony](#)  
Subject: [EXTERNAL] RP 7340 Testimony Submittal  
Date: Thursday, December 10, 2020 7:36:08 AM  
Attachments: [Click platform pages](#)

---

## Imprint , Identity, Impact

Waiwai is a collective.

In Ko Hawaii Pae 'Aina, it was everyone's kuleana "respect" and "responsibility" to malama i ka wai or "to take care of the water," because it affected the livelihood of the entire village. It is our blood of which should flow.

Waialeale is one of our two aquifer the second being Alakai. It's significance to the life of the land.

*Ua Mau ke Ea o ka 'Aina i ka Pono* is a well-known Hawaiian phrase which was adopted in 1959 as the motto of the state of Hawaii. Translated as **The life of the land is perpetuated in righteousness.**

This phrase was first spoken by Kamehameha III, the King of Hawaii, on July 31, 1843, on [Thomas Square](#), O'ahu, when the sovereignty of the [Kingdom of Hawaii](#) was returned by the [British](#).

Without rain there can be no rainbows. How will our kupuna come and visit us if foreign entities continue to rape our resources?  
When we touch the Wai, we pickup on their imprint. Their essence; Ha. Mana life force.

What about the rebate? Did they get removed. Access, there is no cultural monitor on site. The EIS that I reviewed gave me no clear picture of how you guys are bringing more water other than updating the system. All this is IMPACT. Noticing, the Last storms we had flooding Koloa, Wailua, Waimea, Kealia, Wainiha, and Hanalei. Due to increase in water diversions. Lack of water management.

I am Manawaiakea, I know the history of my ancestors through them. Kaikioewa my 5th x great grandfather whom named Lihu'e after his home on Oahu. He established a town here. He is significant because of his position at the time as Kauai 1st governor appointed by Kamehameha. There is record of him on a deed that he traveled throughout Kauai marking the boundaries of every ahupuaa for the "Great Mahele". The boundaries are the water ways.

Whenever you make changes to the top of our ahupuaa it trickles down to the bottom. The ahupuaa system functions in whole.

No more changes to our waters, no more polluting our oceans, and no more depleting our springs.

If the water is lepo everything becomes lepo. Kalapaki, Ahukini, Nukolii, and Nawilili I have seen during the COVID shutdown how less usage means less impact. Return of sea life (Reefs, Limu, Honu, and so forth) they all need spring breakish water. Waialeale is sacred. She is the base of our Mauna Kawaikini. There is ample amount of spiritual significance to this place. As living breathing Ko Hawaii Pae 'Aina we are the kingdom. The Hawaiian kingdom which means our ways, our practices and our laws are still in place.

7 generations  
Manawaiakea  
|  
Darlene  
|  
Kawaikini  
|  
Kamakaeaha  
|  
Kualu  
|  
Waikaka  
|  
Kaikioewa

Please consider the continued dispossession of our people, of our lands, of our waters!

Know that this breaks so many ethical laws.

Aloha,  
Manawaiakea

### **Ua Mau ke Ea o ka 'Aina i ka Pono**

*The life of the land is perpetuated in righteousness*

per-pet-u-ate

make (something, typically an undesirable situation or an unfounded belief) continue indefinitely.

preserve (something valued) from oblivion or extinction.

to make perpetual or cause to last indefinitely perpetuate the species.

right-eous-ness

the quality of being morally right or justifiable.

**I'm gonna stick to my convictions**

**I PLEA INNOCENT**

Reminder that-

Defacto State of Hawaii, the Hawaii court systems are operating illegally and have no jurisdiction in the matter that I am a sovereign being of Ko Hawaii Pae Aina and not a ward of the state.

The Congressional Record shows there was No Treaty of Session, it failed in 1893 and 1897. Kingdom of Hawai'i was never at war with the United States. The U.S. invaded the Neutral Kingdom of Hawaii on January 17, 1893, under the U.S.S. Boston, committing an Act of War against the World recognized Neutral the Hawaiian Kingdom. This is still Piracy & Treason under the 9th Article of Confederation of 1777 and Article 1 section 8 of the 1791 U.S. Constitution, a 123 year old WAR CRIME. The United States has not been SANCTIONED or CHARGED.

Take Judicial Notice: A Joint Resolution is a United States Domestic Law, confined only to the boundaries within the United States, not outside the United States like the Islands of Hawaii (Hawaiian Archipelago. This is a Congressional Fact.



By Steven I. Newcomb

John Goemans' Feb. 27 op-ed essay about the Supreme Court decision in the Rice case rests on his belief that what "was annexed to the United States in 1898 was the Republic of Hawaii."

Despite its wide acceptance, this idea is premised upon an erroneous article of faith rather than historical legal fact.

In 1988, the U.S. Justice Department issued an advisory to the Department of State in which the unconstitutional and illegal nature of the 1898 Newlands Resolution is quite clearly spelled out. The memo explains that the Senate rejected an annexation treaty that had been negotiated by President McKinley with the "Republic of Hawaii."

In an effort to by-pass the treaty process, Sen. Newlands of Nevada sponsored a joint resolution of annexation. A Senate Foreign Relations Committee report, issued at the time, explained that the resolution relied on the annexation of Texas as a precedent. The Justice Department memo, however, points out a major difference between the Texas and Hawaii annexations.

Because Texas was acquired as a new state, the joint resolution annexing Texas relied on the constitutional power of Congress to admit new states, and was not a proper precedent for annexing a land that would be retained

U.S. joint resolution to annex Hawaii could not legally extend that far. The 1988 memo fails to identify any provision in the U.S. Constitution or any principle in international law which could have provided a legal basis for the United States to acquire Hawaii by joint resolution.

In fact, the memo says that during the annexation debates Congressman Ball characterized the effort to annex Hawaii by joint resolution as "a deliberate attempt to do unlawfully that which can not be lawfully done."

The Justice Department memo enables us to arrive at a number of conclusions. No annexation of the Hawaiian Islands ever legally occurred in 1898.

The "Territory of Hawaii" was not established in 1900, despite congressional legislation purporting the contrary. The statehood vote was an attempt to hide an illegal act that began in 1893, with U.S. complicity.

And indigenous Hawaiians, nearly all of whom opposed U.S. annexation, and most of whom did not become citizens of the so-called Republic of Hawaii, have never been rightfully subject to the U.S. Constitution. This means kanaka maoli still have an inherent right to self-determination.

By virtue of that right they may freely determine their own political status, including the option of

DAVID Y. IGE  
GOVERNOR OF HAWAII



FILE COPY

OCT - 9 - 2019

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

September 26, 2019

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

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF 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

Mr. Scott Glenn, Director  
Office of Environmental Quality Control  
Department of Health, State of Hawaii  
235 S. Beretania Street, Room 702  
Honolulu, Hawaii 96813

Dear Mr. Glenn,

With this letter, the Department of Land and Natural Resources, Land Division, on behalf of applicant Kauai Island Utility Cooperative, hereby transmits the draft environmental assessment and anticipated finding of no significant impact (DEA-AFONSI) for the Waiahi Hydropower Long-Term Water Lease situated at TMKs (4) 3-9-001:001 and 3-8-001:001, 002, and 003 in the Puna District on the island of Kauai for publication in the next available edition of *The Environmental Notice*.

Enclosed is a completed OEQC Publication Form, one (1) copy of the DEA-AFONSI, three (3) Adobe Acrobat PDF files of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

If there are any questions, please contact Ian Hirokawa at (808) 587-0420.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne D. Case".

Suzanne D. Case  
Chairperson

Enclosures

C: Dawn Huff, Joule Group

20-089

**Submittal Form for HRS Chapter 343 Publications in  
the Periodic Bulletin : Entry # 612**

99 Aupuni Street  
Suite 202  
Hilo, HI 96720  
United States  
[Map It](#)

**Action summary**

KIUC has requested a 65-year long-term water lease from the Board of Land and Natural Resources for the diversion of water from the North Fork Wailua River and Waikoko Stream for the Upper and Lower Waiahi Hydropower Plants to replace the existing revocable permit authorizing the diversion of water from the North Fork Wailua River and Waikoko Stream Diversions. KIUC is requesting to divert at the North Fork Wailua River all water available in the stream above and beyond 3.5 mgd at the diversion and at the Waikoko Stream all the water available in the stream above and beyond 0.8 mgd at the diversion, up to the ditch capacity, which is estimated to be 30 mgd below the Waikoko Stream Diversion. Upon receipt of the long-term water lease, KIUC would make permanent modifications to the diversion structures to ensure the IFS established by CWRM remains in the stream channel at all times.

**Reasons supporting determination**

Please see Section 5.1 of the Draft EA

**Attached documents (signed agency letter & EA/EIS)**

- [DLNR\\_Letter.pdf](#)
- [190925-Waiahi-Draft-EA.pdf](#)

**Action location map**

- [Waiahi-Hydropower-Project-Location.zip](#)

**Authorized individual**

Jennifer Scheffel

**Authorization**

- The above named authorized individual hereby certifies that he/she has the authority to make this submission.

**Submittal Form for HRS Chapter 343 Publications in the Periodic Bulletin : Entry # 612**

1151 Punchbowl Street, Room 220  
Honolulu, HI 96813  
United States  
[Map It](#)

**Applicant**

Kauai Island Utility Cooperative

**Applicant contact name**

Dawn Huff

**Applicant contact email**

[dhuff@joulegroup.com](mailto:dhuff@joulegroup.com)

**Applicant contact phone**

(360) 483-6488

**Applicant address**

5362 Kumole Street  
Kapaa, HI 96746  
United States  
[Map It](#)

**Was this submittal prepared by a consultant?**

Yes

**Consultant**

SSFM International, Inc.

**Consultant contact name**

Jennifer Scheffel

**Consultant contact email**

[jscheffel@ssfm.com](mailto:jscheffel@ssfm.com)

**Consultant contact phone**

(808) 375-6038

**Consultant address**

**Submittal Form for HRS Chapter 343 Publications in the Periodic Bulletin : Entry # 612****Action Name**

Waiahi Hydropower Long-Term Water Lease

**Type of Document/Determination**

Draft environmental assessment and anticipated finding of no significant impact (DEA-AFNSI)

**HRS §343-5(a) Trigger(s)**

- (1) Propose the use of state or county lands or the use of state or county funds
- (2) Propose any use within any land classified as a conservation district

**Judicial district**

L'hu'e, Kaula'i

**Tax Map Key(s) (TMK(s))**

(4) 3-9-001:001, 3-8-001:001, 3-8-001:002, 3-8-001:003

**Action type**

Applicant

**Other required permits and approvals**

Numerous

**Discretionary consent required**

Long-term lease of water rights

**Approving agency**

DLNR-Land Division

**Agency contact name**

Ian Hirokawa

**Agency contact email (for info about the action)**[ian.c.hirokawa@hawaii.gov](mailto:ian.c.hirokawa@hawaii.gov)**Email address or URL for receiving comments**[jscheffel@ssfm.com](mailto:jscheffel@ssfm.com)**Agency contact phone**

(808) 587-0420

**Agency address**

**From:** dreined@gmail.com  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOSE RP 7340  
**Date:** Thursday, December 10, 2020 8:17:43 AM

---

If you do decide to renew KIUC's permit to continue to illegally divert sacred waters, PLEASE at the very least require the following:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Mahalo again,

Drea Dooley

**From:** Marie DeFrancis  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 1:51:05 PM

---

I STRONGLY OPPOSE CONTINUING THIS PERMIT FOR KIUC.

By continuing to divert an unsustainable amount of water from the sacred Wai'ale'ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340's conditions. KIUC's hydropower plant already produces less than 1% of Kaua'i's power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production.

Please do the right thing, what your position requires of you, and do not allow this to continue.

Marie DeFrancis  
4777 I'iwi Rd.  
Kapa'a, HI 96746

Sent from my iPhone

**From:** MDENTE@hawaii.rr.com  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOPSE RP 7340  
**Date:** Tuesday, December 8, 2020 12:14:13 PM

---

To whom it may concern at BLNR

As a member of the KIUC Utilities COOP, I am opposed to your allowing any renewal of their revocable permit 7340 to divert water from Wai'ale'ale River on Kauai and quite annoyed that I have to keep writing letters on this matter, with the many delays caused by the KIUC management.

1) A required EIS was never done, with arrogant replies from KIUC management that they are going to supply only an EAS which is legally not acceptable.

2) Only 1 % or less power for KIUC, generated by the Waiahi hydro power plant, is an irresponsible business decision by KIUC management to continue with this permit and all expenses to run the turbine and management of the facility.

3) With the uncertainty of trade winds being diminished in the relatively near future due to climate change, thus a considerable reduction in rainfall, any "taking" of the water now or in the future is totally unacceptable and disrespectful of downstream farmers and residents and an insult to our host culture.

As an over 30 year property owner/resident of Kauai, I request that you deny RP 7340.

Thank you for your consideration.

Marj Dente, 6335 Waipouli Rd, Unit B, Kapaa, HI 96746 823-8162

**From:** Sierra Dew  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Thursday, December 10, 2020 8:43:35 AM

---

Aloha,

I am writing in concern that Kaua'i Island Utility Cooperative (KIUC) has filed a request to renew it's revocable permit (RP) 7340 for the continued diversion of water from Wai'ale'ale and Waikoko Streams. I strongly oppose this renewal. KIUC diverts an unsustainable amount of water from these sacred streams, disrupting ecosystems and Native Hawaiiin cultural practices that enhance and protect the environment. KIUC has also failed to maintain the dam which is a requirement. They are only producing less than 1% of energy on Kaua'i and admit to not using it at all in 2020 due to damage. I urge you to do what is in the best interest of the land and in support of sustainability and Hawaiian cultural practices.

Thank you,  
Sierra Dew

--

**Sierra Dew**  
[www.wisdomcircles.org](http://www.wisdomcircles.org)

Aloha to the Board of Land and Natural Resources,

I am a resident of Kaua`i and I strongly oppose RP 7340.

Please deny the renewal of Kaua`i Island Utility Cooperative's Revocable Permit 7340.

The diversion of a substantial amount of water from the Wai`ale`ale and Waikoko Streams is unsustainable for the environment and the health of our island ecosystem. The diversion of streams and natural waterways has historically caused the loss of critical habitat and the loss of plant, animal and aquatic species.

Kaua`i Island Utility Cooperative (KIUC) should not receive a 65-year lease. This should not even be considered given the change of climate throughout our Planet. So many locations are experiencing catastrophes such as drought, fire, floods and every strengthening storms.

All of the world generationally knows how precious water is. Here, especially, where we are surrounded by the Pacific Ocean, we know the necessity for drinkable water. It is vital.

Stream flow feeds not only what we see above ground, but also our water table. Springs, wetlands and brackish environments are essential to the health of the whole system of lifeforms.

If the goal is energy production, we are already well ahead on Kaua`i with alternatives to fossil fuel use by our exceptionally high investment in solar. Installations of solar systems, both public and private, well established and continue to grow. Water diversion for this purpose is unnecessary and a danger.

We can not sacrifice our water and threaten our already sensitive ecosystem by tinkering with our natural flow. Previous diversions of water have brought extinctions and change everything downstream. There is not "extra" water, as our diverse and unique ecosystems make use of what we have.

I ask that the Board to please exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340. I respectfully ask for you to protect Hawai'i's wai. There is no place on Earth like Wai`ale`ale, and the unique design of our abundant rainfall may provide a model for research and knowledge in the near future, that will help others create and sustain other Rainforest environments.

Always as stewards of the environment, and especially at this precarious point in time, respect our natural world. What we have on Kaua`i today that sustains us is because of Hawaiian wisdom, respect and oneness with the environment. Let us think of the generations to come, and promise to cherish and protect our legacy to future generations.

Sincerely,

Jeri Di Pietro  
PO Box 338  
Koloa, HI 96756  
(808) 651-1332  
ofstone@aol.com

**From:** Diane de Vries  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOSE 7340  
**Date:** Wednesday, December 9, 2020 5:37:48 PM

---

Dear BLNR

Please accept this request to deny the renewal of KIUC's revocable permit to divert water from the Wai'aleale and Waikoko streams.

Reportedly KIUC does not need the use of this water (a Public Trust Item) to maintain our power supply. KIUC states that the Waihi power plants, which they say generate little revenue and were actually shut down during a good part of this year, had no impact on our power supply.

Also, regarding maintenance of the diversions and ditches, KIUC has not been in compliance with their maintenance agreement in their expired permit. And for all of the impact on our eco-systems, the Waioli Power plants only generate 8/10ths of 1 % of our power.

As a result of these diversions, millions of gallons of water are kept from flowing naturally to the streams, their surrounding areas, and eventually to the sea. This makes a huge impact on the aquatic life and the cultural practices along these streams.

Please consider the above reasons and deny KIUC's petition for renewal of their permit.  
RP 7304.

Thank You.  
Diane de Vries

Sent from my iPad

**From:** David Dinner  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:59:34 PM

---

Please oppose this action. It's time we stood against those companies doing damage to our streams.

At the very least, the following conditions must be implemented to protect the Akina:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources

Mahalo

Aloha  
David Dinner  
Kilauea, HI

David Dinner  
Rotary Club of Hanalei Bay, President 2020-2021  
Craniosacral work and Biodynamic craniosacral work, certified.  
Sent from my iPad with Aloha

**From:** Allison Domenden  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 11:11:45 PM

---

Aloha,

My name is Allison Napuananiokawailele Domenden, and I do not agree with the renewal of KIUC's permit. I am a Wahine Maoli, and I am voicing my stance on behalf of my children, children's children, and the next 7 generations plus more. Water is life— "Ka Wai Ola" this is my Great Grandfathers name, and it is true to its meaning. One of the most oldest elements since the beginning of time, and it should be nourished as it nourishes us and gives us life.

Water is our source in life, and it must be kept sacred and pure. In our history on the island of Kaua'i, during the plantation era, much of the water in its natural flow was destroyed or diverted by force. The water has been tapped into way too much, and our people will slowly suffer. The more people tap into our natural water system, it will cause our waters to flow incorrectly and no longer flourish as it currently does today. We have enough development that has caused our natural water ways to stop or decrease in flow, so it will be wise for us to "Malama" or take care of it now.

Mahalo,

Allison Napuananiokawailele Adomenden

Lihue, Kauai

**From:** dreined@gmail.com  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOSE RP 7340  
**Date:** Thursday, December 10, 2020 8:15:01 AM

---

Aloha,

I am writing to request that you PLEASE do not all these illegal diversions to continue. The natural flow of those waters is pertinent to the health of this island, its creatures, and ultimately its people. Please do no allow KIUC to continue to deplete this resource for their own financial gain.

Please hold KIUC responsible, for the health of the Alina, for the health of her people.

Mahalo &thank you for reading,

Drea Dooley

**From:** sharon douglas  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 8:07:47 PM

---

Aloha from Kalaheo

I ask that you deny the renewal of RP 7340 until KIUC shows that they are able to unequivocally prove that this benefits Kauai's 70 000 residents and is in compliance with protecting our precious watershed. Since this generates less than 1% of our energy, and has not been in operation for 2020 please prevent future access to this water, and prevent future harm to our community.

Kind regards  
Sharon Douglas  
(808)652-1896

"You must see with eyes unclouded by hate. See the good in that which is evil, and the evil in that which is good. Pledge yourself to neither side, but vow instead to preserve the balance that exists between the two."

[Hayao Miyazaki](#)



December 10, 2020

Board of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawai'i 96813  
[Blnr.testimony@hawaii.gov](mailto:Blnr.testimony@hawaii.gov)

Re: December 11, 2020, Agenda Item D-5: Holdover/Continuation of Revocable Permits For Water Use on the Islands of Hawai'i and Kaua'i; **RP S-7340** to Kaua'i Island Utility Cooperative

Dear Chair Case and Members of the Board:

Earthjustice submits this testimony **in opposition** to the continuation of Revocable Permit S-7340 ("RP 7340") for diversion of water by Kaua'i Island Utility Cooperative ("KIUC"). As discussed further below, this Board has not properly exercised its powers as trustee of public waters to assess whether KIUC's diversions are consistent with Hawai'i's constitutional public trust mandate, or to collect the information necessary to make this assessment. Unless and until KIUC provides the information necessary for the Board to satisfy its public trust duties, the Board should not continue RP 7340.

However, if the Board is inclined to continue RP 7340, Earthjustice respectfully asks the Board to impose the following permit conditions that will enable it to better meet its public trust duties going forward. In short, the Board should hold the diverter accountable to the public trust with meaningful obligations and deadlines, rather than simply rubber-stamping the diversions repeatedly and indefinitely.

- A deadline for KIUC to install water gages for all diversions on the 'Ili'ili'ula-North Wailua ditch system that supply water to the Waiahi hydropower plants;
- A deadline for KIUC to develop and implement a plan to mitigate water loss from the ditch system in order to prevent waste of diverted stream water;
- A deadline for KIUC to develop a means to remotely shut down diversions following damage to the ditch (or hydropower plants) in order to prevent waste of diverted stream water;
- A deadline for KIUC to assess and report back to the Board on alterations to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows;
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydropower plants (separately) as two separate end-uses of the diverted stream water;
- A timeline for KIUC to repair exposed rebar at the Wai'ale'ale diversion which inhibits public use of Wai'ale'ale Stream, or any other public health hazards that

may emerge (both streams are located in the Līhu‘e-Kōloa Forest Reserve, and are accessible to stream users from Loop Road).

### **1. The Related Proceeding Before the Commission on Water Resource Management Cannot Replace or Defer This Board’s Exercise of Its Public Trust Duties**

Earthjustice represents Hui Ho‘opulapula Nā Wai o Puna (the “Hui”) in the contested case proceeding before the Commission on Water Resource Management (“Commission”) to amend the interim instream flow standards (“IIFSs”) for Wai‘ale‘ale and Waikoko Streams, the two streams covered by RP 7340. Per a permit condition imposed by this Board in 2017, KIUC has since altered its diversion structures to leave enough water flowing in the streams to meet the amended IIFS levels proposed by Commission staff in August 2018. However, the staff proposed IIFS levels were not approved by the Commission, and do not properly fulfill the state’s public trust duties.

As background, during public hearing on August 21, 2018, Earthjustice, the Hui, and many other organizations and individuals testified that the staff proposed IIFSs were too low, leaving less than one-third of median ( $Q_{50}$ ) flow in the streams (3.5 of an estimated 11.5 million gallons per day (mgd) for Wai‘ale‘ale, and 0.8 of an estimated 2.5 mgd in Waikoko).<sup>1</sup> Among other aesthetic and environmental interests, the community highlighted the significant cultural value of the streams flowing in their natural states. Following public testimony, the Commissioners were considering a proposal to amend the staff proposed IIFSs upwards, when KIUC requested a contested case hearing to prevent further restoration of water to the streams. While the IIFSs for Wai‘ale‘ale and Waikoko have yet to be determined, the contested case will result in more water flowing in the streams than the staff proposed IIFS levels, if any one of several more protective flow-setting methodologies identified by the Commission in the past are ultimately adopted.<sup>2</sup>

More importantly, IIFSs set a floor, and there can be no presumption under the public trust doctrine that flow levels above the IIFSs are available to off-stream users. On the contrary, as described below, stream diverters must always demonstrate and prove actual water needs and

---

<sup>1</sup> See Staff Submittal for the Meeting of the Commission on Water Resource Management, August 21, 2018, Līhu‘e, Kaua‘i, Amended Interim Instream Flow Standards for the Surface Water Hydrologic Unit of Wailua (2040): Waikoko and North Fork Wailua Stream, at 11 (Table 5) (“2018 Commission Staff Submittal”). Available online at: <https://files.hawaii.gov/dlnr/Commission/submittal/2018/sb20180821B2.pdf>.

<sup>2</sup> As discussed in the 2018 Commission Staff Submittal, there are several methodologies for selecting a stream flow level based on habitat restoration values: (i) the  $Q_{70}$  value; (ii) 80% of the  $Q_{50}$  value; and (iii) 64% of the  $BFQ_{50}$ . *Id.* at 12. For Wai‘ale‘ale Stream, the three values, respectively, are: (i) 10.5 mgd, (ii) 9.2 mgd, and (iii) 3.6 mgd. Commission staff did not explain their reasoning for selecting the methodology which provides the *least* benefit to stream life. Further, other methodologies used by the Commission to protect other values, including cultural values, provide for even higher restoration levels, including 100% restoration.

reasonable-beneficial use of diverted water, before the Board authorizes the taking of public waters. The Board is not entitled to rely on the Commission and the IIFS proceeding to execute its separate and independent duties as trustee to ensure that KIUC's proposed use of stream waters complies with the public trust. Because the Board must exercise its independent public trust duties, Earthjustice respectfully requests that the Board either deny the request to continue RP 7340, or defer decision-making until the necessary information described below is made available by KIUC.

## **2. KIUC Must Provide Additional Information for This Board to Exercise Its Public Trust Duties**

The public trust doctrine places the burden on off-stream water users to demonstrate their "actual needs and . . . the propriety of draining water from public streams to satisfy those needs." *In re Waiāhole Ditch Combined Contested Case Proceeding*, 94 Hawai'i 97, 162, 9 P.3d 409, 474 (2000) ("*Waiāhole*"). Before approving private diversions, including the subject permit, this Board must "consider the cumulative impact of existing and proposed diversions on trust purposes and [] implement reasonable measures to mitigate this impact, including the use of alternative sources." *Id.* at 143, 9 P.3d at 455. "[A] lack of information from the applicant is exactly the reason an agency is empowered to deny a proposed use of a public trust resource." *Kauai Springs, Inc. v. Planning Comm'n of County of Kauai*, 133 Hawai'i 141, 174, 324 P.3d 951, 984 (2014).

As in previous years, the staff submittal recommends that the Board approve diversion of water from Wai'ale'ale and Waikoko, ***even though KIUC has not provided the Board with any information concerning its actual water use or electricity generation needs***, let alone information about feasible mitigation measures and alternative water sources. Without this information, this Board cannot exercise its public trust duties. *See Waiāhole*, 94 Hawai'i at 143, 9 P.3d at 455; *Kauai Springs*, 133 Hawai'i at 174, 343 P.3d at 984.<sup>3</sup> At minimum, the Board should defer approving RP 7340 until it is able to fully assess: (1) KIUC's actual need to use the Waiahi hydro plants for energy production; (2) KIUC's access to alternative water sources that can meet actual energy production needs; (3) KIUC's ability to implement mitigation measures that reduce water losses in the ditch system; and (4) the feasibility of any other mitigation measures that can reduce the impact of diversion on protected public trust uses, including the exercise of traditional and customary practices in the diversion area.

The lack of transparency surrounding KIUC's actual hydropower generation needs is of particular concern under the public trust framework. Hydropower generation is the asserted

---

<sup>3</sup> *See also* Hawai'i Revised Statutes § 174C-3 (defining "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") (emphasis added).

reasonable-beneficial use justifying KIUC's diversion of stream water in the first instance.<sup>4</sup> However, KIUC has continually obfuscated the extent to which the hydropower plants are needed to meet Kaua'i's electricity needs, if at all. While historically the Waiahi hydro plants have contributed between 0.8 and 1.4% of annual power generation, the hydropower plants have been offline for extended periods of time, during which the power grid has operated without this power source (including, it appears, during the past year and a half). Even assuming the Waiahi hydro plants are necessary energy sources for the power grid, even doubling stream flow restoration levels (from 3.5 to 7 mgd for Wai'ale'ale and 0.8 to 1.6 mgd for Waikoko) would allow the plants to continue operating the majority of the time, given other water sources located on private lands.<sup>5</sup>

In short, KIUC has not met its burden under the public trust doctrine to demonstrate that the operation of the Waiahi hydro plants is a reasonable-beneficial use of stream water. KIUC has not demonstrated the Waiahi hydro plants are a necessary component of its power supply portfolio. Additionally, KIUC has not demonstrated the absence of alternative water sources to the Waiahi hydropower plants. Because KIUC has not met its burden, the Board must deny KIUC's application for renewal.<sup>6</sup> If the Board is included to approve RP 7340 despite KIUC's failure to meet its legal obligations, attaching the conditions laid out at the beginning of testimony, at minimum, should assist with assembling this information for use in future permit renewal proceedings.<sup>7</sup>

### **Protection of Instream Uses**

“The purpose of the state water resource public trust is to protect certain uses.” *Kauai Springs*, 133 Hawai'i at 172, 324 P.3d at 982. The legally protected trust uses are: (1) the maintenance of waters in their natural state; (2) domestic water use; (3) the exercise of Native Hawaiian traditional and customary rights; and (4) the Department of Hawaiian Homeland's

---

<sup>4</sup> The Waiahi hydropower plants, which use water diverted from North Fork Wailua and South Fork Wailua tributaries, and receive water through the 'Ili'ili'ula-North Wailua Ditch, are not instream water uses.

<sup>5</sup> The “turbine operating limit” is 7.5 and 14.5 mgd for the upper and lower hydro plant respectively. See SSFM International, Inc. *Waiahi Hydropower Long-Term Water Lease, Draft Environmental Assessment, Island of Kaua'i, Hawaii*, at 35. Current restoration levels for Wai'ale'ale and Waikoko (3.5 mgd and 0.8 mgd) reduce operational flow levels for the turbines to 21.3 mgd, while doubling restoration levels would reduce operational flow levels to 17 mgd. *Id.* at 34.

<sup>6</sup> See *Kaua'i Springs*, 133 Hawai'i at 173, 324 P.3d at 983 (The applicant's proposed use must be denied if the applicant does not show that there is no practicable alternative water source.”).

<sup>7</sup> Unfortunately, KIUC's long-awaited environmental review document does not cure this information problem. Earthjustice's comments on KIUC's draft environmental assessment are attached as a point of reference.

constitutionally protected reservations of water. *Id.* (citations omitted). “If there is a reasonable allegation of harm to one of the uses protected by the public trust, then the applicant must demonstrate that there is no harm in fact or that any potential harm does not preclude a finding that the requested use is nevertheless reasonable and beneficial.” *Id.* at 173, 324 P.3d at 983 (citation omitted). Ultimately, the duty lies with this Board to protect public trust uses including Native Hawaiian rights. *See, e.g., Ka Pa‘akai O Ka ‘Aina v. Land Use Comm’n, State of Hawai‘i*, 94 Hawai‘i 31, 50–51, 7 P.3d 1068, 1087–88 (2000), *as amended* (Jan. 18, 2001) (collecting cases prohibiting delegation of public duties).

Even assuming that KIUC satisfied its burden to demonstrate that it needs stream water from Wai‘ale‘ale and Waikoko to meet some small portion of energy supply, and that no alternatives are available (which it has not), KIUC still has not shown that power production is a reasonable-beneficial use *despite* the negative effects on public trust uses. More importantly, this Board has not meaningfully deliberated concerning how to protect the community’s expressed public trust interests in Wai‘ale‘ale and Waikoko Streams. Earthjustice respectfully asks that this Board consider its duty to protect public trust uses, including the exercise of traditional and customary Native Hawaiian practices, when considering continuation of RP 7340.

Thank you for this opportunity to submit testimony.



Leina‘ala L. Ley  
Isaac H. Moriwake  
Mahesh Cleveland  
EARTHJUSTICE

Enclosure



January 7, 2020

Via Email

Ian C. Hirokawa  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 220  
Honolulu, HI 96813  
[ian.c.hirokawa@hawaii.gov](mailto:ian.c.hirokawa@hawaii.gov)

Re: Waiahi Hydropower Long-Term Water Lease, Draft Environment Assessment, Island of Kaua'i, Hawaii (Oct. 2019)

Dear Mr. Hirokawa:

Earthjustice submits these comments on behalf of Hui Ho'opulapula Nā Wai o Puna (the "Hui") in response to the Department of Land and Natural Resource's ("Department's") December 8th request for public comment on the Waiahi Hydropower Long-Term Water Lease, Draft Environment [sic] Assessment, Island of Kauai, Hawaii (Oct. 2019) ("DEA"). As discussed in detail below, withdrawing more than two thirds of natural stream flow from Wai'ale'ale and Waikoko Streams for a 65 year term will have significant effects on the environment and cultural practices in the diversion area. Therefore, the proposed finding of no significant impacts ("FONSI") made in the DEA is erroneous. Further, the DEA is invalid as a matter of law because it incorrectly defines the subject action, and because it proceeds from an erroneous exemption determination from the Attorney General, thereby predetermining the FONSI outcome.

Because the proposed 65 year water lease authorizing diversion of water from multiple streams in the Līhu'e-Kōloa Forest Reserve will have significant effects under the law, Kaua'i Island Utility Cooperative ("KIUC") must prepare an environmental impact statement ("EIS"), evaluating a reasonable range of alternatives, rather than the abbreviated and deficient environmental assessment currently under consideration. Without an EIS exploring a reasonable range of alternatives, **including complete decommissioning of the existing diversions and 100% restoration of water to Wai'ale'ale and Waikoko Streams**, the significant, long-term effects of the proposed 65 year water lease cannot be fully assessed, evaluated, mitigated, and addressed, as required by Hawai'i Revised Statutes ("HRS") Chapter 343, the Hawai'i Environmental Policy Act ("HEPA"), and other applicable law.

I. THE PROPOSED FONSI IS ERRONEOUS BECAUSE THE ACTION WILL HAVE SIGNIFICANT ADVERSE EFFECTS UNDER HAR § 11-200.1-13

HEPA's fundamental purpose is to ensure that State and County agencies fully and publicly examine the environmental impacts of their actions before those actions proceed. See HRS § 343-1. "An environmental assessment under HEPA is required if three conditions are satisfied: (1) the proposed activity is an 'action' under HRS § 343-2 (2010); (2) the action proposes one or more of the nine categories of land uses or administrative acts enumerated in HRS § 343-5(a) (2010); and (3) the action is not declared exempt pursuant to HRS § 343-6(a)(2) (2010)." *Umberger v. Dep't of Land & Nat. Res.*, 140 Hawai'i 500, 512, 403 P.3d 277, 289 (2017). An approving agency must take a "'hard look' at environmental factors" before exercising its discretionary authority to approve an action that is subject to HEPA, such as the proposed 65 year lease authorizing KIUC to take all stream water above low flow levels for hydropower generation. *Sierra Club v. Dep't of Transp.*, 115 Hawai'i 299, 342 167 P.3d 292, 335 (2007) (citation omitted).

Unfortunately, applicant KIUC and its consultant SSFM International, Inc. ("SSFM") chose to elevate form over substance in completing this DEA. The information provided in the DEA is at various times confusing, misleading, legally irrelevant, and incomplete, in contravention of the administrative rules. See Hawai'i Administrative Rules ("HAR") § 11-200.1-1(c)(1)-(3). For example, the DEA repeatedly raises the needs of downstream water users, including agricultural water users, as a factor supporting KIUC's long-term lease application. See DEA at 52, 72, 76, 99, 101, 102. However, the DEA provides absolutely no analysis as to whether the amounts of water taken from Wai'ale'ale and Waikoko Streams, two small tributaries with total median flow under 14 million gallons per day ("mgd"), are in fact necessary to augment the flow of Waiahi stream in order to meet legitimate, actual needs of downstream users.<sup>1</sup> Similarly, the DEA suggests that full restoration of Wai'ale'ale and Waikoko Streams could necessitate shutting down the Waihi hydropower plants altogether, with no supporting analysis. See DEA at 37. These conclusions lack factual support and do not foster fair and transparent public disclosure, inquiry, and analysis.

As just one example of the misleading nature of the information presented in the DEA, the no action alternative states in conclusory fashion: "While it may be possible for the two hydropower plants to operate with water from the 'Ili'ili'ula Stream Diversion only, this would result in . . . **an approximate doubling of energy cost per kWh.**" DEA at 37 (emphasis added). Of course, the Waiahi hydropower plants account for approximately 1% of energy generation

---

<sup>1</sup> Comm'n on Water Res. Mgm't, State Dep't of Land & Nat. Res., Instream Flow Standard Assessment Report, Island of Kauai, Hydrologic Unit 2040, Wailua, at 31 (Table 3-6) (Aug. 2018) ("IFSAR").

for the island, *see* IFSAR at 93, and the purported “doubling of energy cost” would apply to this same small portion of KIUC’s energy portfolio. KIUC has publicly acknowledged elsewhere that this would amount to no more than a “single-digit dollar[]” increase per ratepayer each month. *See* Minutes for the Meeting of the Comm’n on Water Res. Mgm’t (Aug. 21, 2018) available at <http://files.hawaii.gov/dlnr/cwrm/minute/2018/mn20180821.pdf>. However, this information is not disclosed anywhere in the DEA, leaving the reader with the impression that closing the Waiahi hydro plant will double electricity bills for KIUC’s ratepayers. The DEA is riddled with this type of misleading statement about the project.

Further, while the DEA goes through various environmental factors that could be affected by the proposed action—including air quality and climate, noise, geology and soils, natural hazards, water resources (downstream users and groundwater), biological resources, cultural resources, socioeconomic characteristics, and recreation and visual resources—the DEA spends a mere two pages analyzing the impacts on cultural practices and potential mitigation measures. *See* DEA at 90-92.<sup>2</sup> This choice is baffling because: the Office of Hawaiian Affairs (“OHA”) challenged the last lease application for failure to adequately analyze cultural impacts; cultural practices are the heart of the ongoing contested case hearing before the Commission on Water Resource Management (“CWRM”) that involves both KIUC and the Hui; and the Board of Land and Natural Resources (“Board”) required KIUC to engage in community discussions concerning cultural and environmental concerns as a condition of issuing KIUC a revocable permit for 2019. If anything, the impact of the proposed lease on cultural resources should be the heart of this DEA, but KIUC and SSFM have ignored this opportunity for “good faith,” “two-way communication” on the environmental impact of most significance to the Kauai community. *See* HAR § 11-200.1-1(c)(3).

Ultimately, the proposed finding of no significant impact (“FONSI”) made in the DEA is erroneous and fails to fully account for the significant cultural and environmental effects that may occur as a result of ongoing removal of water from Wai’ale’ale and Waikoko Streams. Under HRS § 343-5(c)(4) an EIS “shall be required if the agency finds that the proposed action **may** have a significant effect on the environment.” HRS § 343-5(c)(4) (emphasis added). As

---

<sup>2</sup> The Cultural Impact Assessment (CIA) attached as Appendix E does not remedy this shortcoming. Like the DEA, the CIA limits its discussion of impacts and proposed mitigation to a mere two and a half pages, without any discussion of the feasibility of implementing mitigation measures. *See* Appendix E at 144-46.

discussed further below, the proposed long-term lease of water certainly meets this standard, and therefore KIUC must prepare an EIS.<sup>3</sup>

A. The Proposed Action Irrevocably Commits a Natural, Cultural, or Historic Resource (HAR § 11-200.1-13(b)(1))

The DEA incorrectly concludes that the proposed action will not irrevocably commit a natural, cultural, or historic resource. DEA at 119. Every Hawai'i case to consider this question has recognized that diverting millions of gallons of water each day (whether surface water or ground water) is an action that is likely to irrevocably commit a natural resource, thereby triggering the requirement for a project applicant to prepare an EIS. See *Kepo'o*, 106 Hawai'i at 290, 103 P.3d at 959 (holding that "the withdrawal of millions of gallons of groundwater on a daily basis will 'likely' cause such irrevocable commitment" of natural resources defined as significant under HRS § 343-2); *Moloka'i Homesteaders Co-op. Ass'n v. Cobb*, 63 Haw. 453, 467, 629 P.2d 1134, 1143, 1144 (1981) (recognizing that a proposal for "withdrawal of water from one area for transport to another" is an action with a probable "significant effect" triggering the requirement to prepare an EIS). Like the long-term commitments at issue in *Kepo'o* and *Moloka'i Homesteaders*, the subject lease, authorizing withdrawal of water from Wai'ale'ale and Waikoko Streams for the next 65 years, irrevocably commits a natural resource to a specific use, thereby triggering the requirement to prepare an EIS.

As discussed further below, *infra* Part II, the FONSI is premised on the mistaken assumption that the environmental baseline is complete dewatering of the streams as historically occurred during the sugar plantation era. After properly identifying the proposed action as a new long term lease of state water to a private entity, however, it becomes clear that this is exactly the type of irrevocable commitment that triggers an EIS because of the significant environmental effects that may occur. See *Kepo'o*, 106 Hawai'i at 290, 103 P.3d at 959; *Moloka'i Homesteaders*, 63 Haw. at 467, 629 P.2d at 1144. This significance factor alone requires completion of an EIS to fully assess a reasonable range of alternatives before such an irrevocable commitment of public trust resources is made.

Among the issues that must be explored in an EIS is the option to enter a lease that has a more reasonable term, but no longer than ten to fifteen years. In light of rapidly evolving renewable energy technology, and declining rainfall levels that could reduce streamflow levels, there is no good reason for KIUC to insist on locking in outdated hydropower practices that use valuable stream water for another 65 years. More importantly, there is no good reason for the

---

<sup>3</sup> KIUC must timely coordinate preparation of an EIS with appropriate federal agencies, including consulting with U.S. Fish and Wildlife Services on the Newcomb Snail, and consulting with the Army Corps of Engineers on a section 404 permit. See HAR § 11-200.1-31.

Department to enter into a lease irrevocably committing public resources for this amount of time. The last lease for this portion of the Wailua ditch system, signed before the State Water Code was adopted to implement modern water management practices, was for a thirty year term. DEA at 1. A new lease for an even longer term is a step backwards in time: it fails to incorporate modern water management practices, fails to address public trust concerns with water hoarding, and fails to reflect the ever changing renewable energy landscape. At minimum, the DEA must disclose why it believes a 65 year term is necessary and appropriate in light of the asserted need for the action (power generation), so that the public and the Department can assess and comment on KIUC's position on this issue.

B. The Proposed Action Curtails the Range of Beneficial Uses of the Environment (HAR § 11-200.1-13(b)(2))

The DEA incorrectly concludes that the proposed action will not curtail the range of beneficial uses of the environment. *DEA* at 119. On the contrary, as discussed in the Stream Habitat Assessment attached as Appendix D, taking water from Wai'ale'ale and Waikoko Streams, two small tributaries of the North and South Fork branches of Wailua River, and using the water to generate electricity by passing it through turbines, does in fact reduce stream habitat and affect stream life. In particular, the Stream Habitat Assessment notes that "larval 'ōpae kala'ole would have issues with entrainment due to the large amount of water being diverted and a small portion flowing downstream" under existing diversion conditions. Appendix D at 54. Additionally, while a substantial improvement in habitat is expected with implementation of amended interim instream flow standards ("IIFSs"), there is still a significant reduction in available stream habitat, of anywhere from 30.9% to 45.2% of habitat units.<sup>4</sup> *Id.* at 151-52. These habitat units are important for 'o'opu as well as 'ōpae.<sup>5</sup>

The DEA completely ignores these facts, focusing instead on expected improvement from baseline diversion conditions (total low flow diversion) if IIFSs are implemented at anticipated levels: 3.5 mgd for Wai'ale'ale and 0.8 mgd for Waikoko. However, looking at the

---

<sup>4</sup> Full diversion eliminates 73.7% of total habitat units whereas restoration under the anticipated IIFSs levels would constitute "[a] substantial improvement from 28.5% to 42.8%." Appendix D at 151-52. It is assumed here that "improvement" means that habitat will increase upwards in the amounts cited from the 26.3% of habitat units remaining after full diversion.

<sup>5</sup> The failure of the DEA to draw a rational connection between the facts found in Appendix D and its legal conclusion that the action may not have significant effects is arbitrary and capricious, and therefore highlighted here. However, the Hui does **not** agree with a variety of conclusions in Appendix D, including that 'o'opu are not likely to inhabit areas upstream of Wailua and Kaholalele falls. Community observations indicate that 'o'opu do in fact occur above the falls in both stream segments.

appropriate environmental baseline as full flow levels, it is clear that ongoing diversion may curtail beneficial uses of the stream as habitat for indigenous stream life, even with proposed modifications to implement the expected IIFSs. Further, and of even greater concern, KIUC's proposed modifications to the Blue Hole diversion<sup>6</sup> appear to lock in the **minimum** expected IIFS value for Wai'ale'ale Stream, which is not necessarily the value that will be selected by CWRM at the conclusion of the IIFS contested case hearing.<sup>7</sup> See DEA at 40 ("The IFS/aquatic species passage V-notch weir and ramp is included in the design to pass **up to** 6 cfs [3.8 mgd] of flow in the stream.") (emphasis added). This arbitrary cap on future restoration values is in itself a significant adverse effect of the proposed modifications that is not clearly disclosed in the DEA, yet alone analyzed for potential mitigation as required by law. See HAR § 11-200.1-18(d)(7), (8).

Additionally, the proposed action may curtail the beneficial use of both Wai'ale'ale and Waikoko Streams as recreational and aesthetic resources for the community. Unlike many of the tributary streams feeding the Wailua River, Wai'ale'ale and Waikoko Streams are accessible to the general public because they are located on state lands within the Līhu'e-Kōloa Forest Reserve. The area is regularly accessed by members of the public, including members of the Hui, for swimming, gathering, praying, chanting, dancing, peaceful contemplation, and ceremonial practices. The recreational and aesthetic value of the streams for swimming, relaxing, and enjoying an otherwise unblemished wilderness area, is negatively affected by the Blue Hole diversion. As discussed further below, *infra* I.C., cultural practices such as ceremony, hula, and gathering, are also negatively affected by diversions. These potential negative effects on beneficial uses of the stream trigger the requirement that KIUC prepare an EIS more fully assessing the effects of its proposed long-term lease, and how to mitigate these adverse effects.

---

<sup>6</sup> The term "Blue Hole diversion" is used to refer collectively to the diversion structures located on Wai'ale'ale and Waikoko Streams, but not to the streams themselves. Further, Wai'ale'ale is the name used for the tributary stream referred to as "North Fork Wailua" in the DEA.

<sup>7</sup> Earthjustice raised concerns with the stream life methodology used to select the proposed IIFSs in the enclosed testimony dated August 21, 2019. As explained therein, CWRM discussed several different methodologies for selecting a stream flow to support habitat restoration in the IFSAR: (i) the Q<sub>70</sub> value; (ii) 80% of the Q<sub>50</sub> value; and (iii) 64% of the BFQ<sub>50</sub>. For Wai'ale'ale Stream, the three values, respectively, are: (i) 10.5 mgd, (ii) 9.2 mgd, and (iii) 3.6 mgd. CWRM did not explain its reasoning for selecting the lowest value methodology which provides the **least** benefit to stream life, and is one of the issues raised by the Hui in the ongoing IIFS proceeding.

Of particular concern with the existing DEA is that it reserves a discussion of “aesthetic values” related to proposed modifications of the Blue Hole diversion until after the lease is secured. DEA at 38. In fact, the aesthetic impact of the diversion structures is one of the significant effects that the DEA must identify and assess, including proposed mitigation measures, before the Department enters into any new lease. HAR § 11-200.1-18(d)(7), (8). Community members have repeatedly raised concerns about the aesthetics of the diversion structures in revocable permit proceedings and the interviews conducted for this DEA. Relatedly, community members have repeatedly raised concerns about exposed rebar and the safety of the diversion structures, which also impede recreational use of the area. Adding additional concrete into the forest reserve without any consideration of how to remediate the site by removing the existing legacy sugar plantation structures, or using more place-based construction methods to accommodate aesthetic values, represents a complete failure to abide by the letter and spirit of HEPA.<sup>8</sup>

In summary, the DEA insufficiently considers the adverse effects of the proposed action on stream life, recreational use of the streams, the aesthetic value of the streams, and the safety of the public. The lack of any transparent consideration of these issues indicates that the DEA is skewed to avoid acknowledging potential adverse effects of the proposed action that would trigger the requirement to complete an EIS.

C. The Proposed Action Has Substantial Adverse Effect on the Cultural Practices Of the Community (HAR § 11-200.1-13(b)(4))

The DEA incorrectly concludes that the proposed action will not have substantial adverse effects on the cultural practices of the community. DEA at 119. As a threshold matter, the DEA incorrectly delineates between what it considers to be “traditional cultural practices” and “[c]oncerns expressed by the community. See DEA at 90-91. Among the “community concerns” noted in the DEA are the fact that Wai’ale’ale is sacred, and the stream water is used for ceremonial purposes. *Id.* However, the DEA does not adequately identify the scope of related traditional and cultural practices, the impact of the proposed long-term lease on those practices, or how to mitigate the negative effects arising from the proposed action. HAR § 11-200.1-18(d)(7), (8). At best, the DEA and Cultural Impact Assessment (CIA) included as Appendix E can be seen as a simple restatement of information obtained through a cursory review of print materials, archaeological surveys, and limited interactions with the Kaua’i community. At worst, the documents can be seen as an attempt to delegitimize traditional and customary cultural practices exercised in the diversion area that trigger the duty to prepare an EIS analyzing a range of alternatives that can minimize negative impacts to these practices.

---

<sup>8</sup> CIA informants who raised aesthetic concerns include Hope Kallai, Dr. Mehana Vaughn, and Nicole Hoku Cody. See Appendix E.

First, both the DEA and the CIA ignore the fundamental importance of Wai'ale'ale and its waters as the piko of Kaua'i, with spiritual significance across the entire archipelago. The term piko has a dual meaning that refers to a blood relation or the reproductive organs, and also a summit or the center of a mountain. Waikoko translates to "blood water" and metaphorically references this stream's vital role in "bringing life to the land."<sup>9</sup> "Just as a pregnant mother provides a life line of nourishment and energy through the piko or umbilical cord to her unborn child in the womb, Wai'ale'ale and its crater of waterfalls and streams sustain the island and its communities with life-giving waters." Kekua & Alapa'i at 58. These names and associations underscore the sacred significance of Wai'ale'ale, and, conversely, the grave hewa (wrong) caused by the historical dewatering of the streams.

In the hula tradition, the classic 'oli komo or admission chant of Kūnihi ka Mauna, which recounts a part of the Pele and Hi'iaka saga, names the Wai'ale'ale area and numerous other celebrated places from mauka to makai along the Wailua River. Like other chants and songs composed for this area, the imagery of these places describes fresh water's foundational role as a physical and ethereal life force in this area and throughout Hawai'i nei. Kunihi ka Mauna is often the first 'oli komo learned by hula students across Hawai'i nei, not just on the island of Kaua'i, indicating widespread reverence for Wai'ale'ale itself as a sacred space.

Second, cultural resources in Hawai'i cannot be defined merely by the written record, or archaeological evidence. This is evident in traditional Hawaiian resource management concepts and paradigms. According to Wailua-area cultural practitioners, Wai'ale'ale, Kawaikini, and Kaipuha'a were traditionally considered Wao Akua, or "realm of the gods." Wao Akua is defined as "the sacred, montane cloud forest, core watershed, native plant community that is non-augmented and an area that was traditionally kapu (human access usually forbidden and prohibited)."<sup>10</sup> In other words, a sparse archaeological record cannot be interpreted to mean that an area held less cultural or religious significance. Rather, it may indicate that the area was restricted for ceremonial purposes, or for other practices that required careful resource management, including feather gathering, plant gathering, and canoe tree gathering. Not once in the DEA or CIA is Wai'ale'ale's status as Wao Akua considered as a method of

---

<sup>9</sup> K. Kekua and A. Alapa'i, *A Cultural Study: Native Hawaiian Traditions, Customary Practices and Perspectives of the Natural and Cultural Resources of Puna, Kaua'i Island* 58 (Apr. 2010) ("Kekua & Alapa'i").

<sup>10</sup> Aha Moku Advisory Comm., Dep't of Land & Nat. Res., *Final Rules of Practice and Procedure*, (effective October 20, 2016) ("AMAC Rules") § 1-3.

supplementing the archaeological record to better understand traditional upland uses of the Wailua ahupua'a that continue today.<sup>11</sup>

Further, while acknowledging that Wailua was historically the spiritual center of the island, as indicated by its extensive complex of heiau, the CIA does not discuss that the ali'i nui (high chief) of Kaua'i traveled on annual pilgrimages with members of the court to the Ka'awakō heiau located at Wai'ale'ale's summit. The royal court also periodically traveled from the lands near the ocean to Kawaikini, to pay homage to the cyclical movements of the atmosphere, the earth, and the network of waterways that bring forth ka wai ola a Kāne ("the sacred, life-giving waters of Kāne"). Kekua & Alapa'i at 56. The water that flows from the Wai'ale'ale area is the lifeblood of this mauka-makai cultural landscape and is "critical to the master plan of the ancients who established Wailuanuiaho'āno (historic name of the Wailua watershed) as a major religious center for Kaua'i and Hawai'i [nei]." *Id.* at 10. The entire ahupua'a is thus part of a single cultural landscape that must be recognized as having significance in the Kanaka Maoli worldview.

At a minimum, the DEA and CIA must acknowledge that taking water from Wai'ale'ale and Waikoko Streams in and of itself constitutes an injury for many cultural practitioners. This significant effect is both substantial and adverse. HAR § 11-200.1-13(b)(4). This specific cultural impact (spiritual injury) is distinct from the other cultural impacts such as the effects of diversion on stream life and vegetation that Hui members gather or wish to gather in the diversion area. Currently, all of these distinct harms are characterized as a single impact in the CIA. Appendix E at 144.<sup>12</sup> For many cultural practitioners, the spiritual injury can only be remedied by restoring at least 50% (and many times 100%) of natural stream flows because of the sacredness of these waters, and the use for ceremonial purposes including h'iuwai (full body immersion).<sup>13</sup>

---

<sup>11</sup> Members of the Hui regularly travel to Wai'ale'ale and Waikoko streams, including the area of the diversions, to engage in ceremonial practices in and around the stream, to sing, chant and pray within this sacred area, to bathe and swim in the stream waters, to use the water for subsistence purposes including drinking, to gather plants that grow near the stream, and to enjoy and commune with nature, including listening to the sound of running water. Members of the Hui have also looked for native stream life like 'o'opu and 'ōpae for gathering but have observed a decline in such species over the years.

<sup>12</sup> Impact 1 is described as follows: "Participants expressed their concern for low to no flow and the negative effects on water ecosystems *mauka to makai*; surrounding vegetation gathered for cultural practices; traditional subsistence gathering; and ceremonial purposes." Appendix E at 144.

<sup>13</sup> The term "natural stream flows" is used herein to refer to the Q<sub>50</sub> value.

As far as potential mitigation measures for this specific cultural harm, the DEA must assess the feasibility of running the Waiahi hydropower plants without use of the Blue Hole diversion as well as other water use regimes that could minimize spiritual injury, such as capturing only high flows as a back-up power generation resource. While the CIA acknowledges that “restoring at least half (50%) of the water to North Fork” could mitigate cultural harms, Appendix E at 144, there is no discussion of this option in the DEA other than passing reference to a possible shut down of the hydro plants if full stream restoration were to be implemented. DEA at 37.

This conclusory statement is not a substitute for an appropriate feasibility study of KIUC’s power generation that includes more complete information regarding: (1) contribution of the Waiahi hydro plants to KIUC’s energy generation needs, (2) alternative water sources available to power the hydro plants, and (3) alternative energy sources to completely replace the Waiahi hydro plants in KIUC’s renewable energy portfolio. As repeatedly stated in comments to the Board of Land and Natural Resources on the revocable permits, the Board has an independent duty under the public trust doctrine to protect public trust water uses before issuing the subject lease. This duty cannot be met unless and until KIUC demonstrates its “actual needs and, within the constraints of available knowledge, the propriety of draining water from public streams to satisfy those needs.” *In re Waiāhole Ditch Combined Contested Case Hrg.*, 94 Hawai’i 97, 162, 9 P.3d 409, 474 (2000) (“*Waiāhole*”). This DEA is the most logical and opportune moment during the entire lease process for KIUC to disclose its actual need for hydropower to supplement its renewable energy portfolio, but the DEA fails to meet this most basic disclosure requirement under the public trust.

In summary, the DEA completely fails to adequately identify the adverse cultural impacts arising from the proposed long-term lease authorizing KIUC to divert all water above low flow levels of 3.5 mgd for Wai’ale’ale and 0.8 mgd for Waikoko, or appropriate alternatives and mitigation measures as required by law. HAR § 11-200.1-18(d)(7), (8).

## II. THE DEA IS LEGALLY DEFICIENT BECAUSE IT ASSUMES THAT DIVERSION IS THE ENVIRONMENTAL BASELINE

In addition to the erroneous FONSI conclusion, the DEA is legally deficient because it fails to properly identify the scope of the subject action at issue in the DEA. *See Sierra Club v. Dep’t of Transp.*, 115 Hawai’i at 315, 167 P.3d at 308 (“[W]hether or not an agency has followed proper procedures or considered the appropriate factors in making its determination is a question of law.”). The DEA erroneously asserts that the subject action includes modification of the Blue Hole diversion to accommodate the forthcoming IIFs currently under consideration by CWRM. DEA at 37. However, KIUC is under a legal duty to implement the IIFs set by CWRM as long as it operates the Blue Hole diversion under its existing month-to-month

revocable permit, regardless of whether or not it receives a long-term water lease. In fact, the subject action is the proposed long-term lease of public waters to KIUC to power its Waiahi hydropower plants for the next 65 years (until 2084).

The failure to properly identify the scope of the proposed action prohibits a transparent, rational, and meaningful analysis of the adverse impacts of a 65 year water lease, and available alternatives to mitigate those impacts, as required by law. *See* HAR § 11-200.1-18(d)(7), (8). For example, the only two alternatives considered in the DEA are: (1) ongoing diversion of stream water using the legacy plantation diversions designed to take one hundred percent of low flow from Wai'ale'ale; and (2) ongoing diversion of water through modified diversion structures designed to take what the DEA assumes will be the final IIFs (KIUC's preferred alternative). DEA at 37-51. The majority of the DEA is then spent explaining why KIUC's preferred alternative is better for the environment than continuing to divert water using the existing plantation era structures, but also how implementing the IIFs will have negative effects on hydropower generation when compared to historic diversion levels.

Completely absent from the DEA is any analysis of a true "no action" alternative that considers how to power the Waiahi hydro plants without using any water from Wai'ale'ale and Waikoko Streams, or using only high flows, in order to mitigate the negative impacts of diversions on the full range of beneficial environmental uses and cultural practices identified above. Further, the information in the DEA is insufficient to allow the public to independently analyze whether decommissioning the existing Blue Hole diversion structures is feasible to maintain whatever firm power contribution is currently made by the Waiahi hydro plants, and necessary for the reliable operation of the power grid.<sup>14</sup>

Information that is needed to make this assessment, and must be included in any future environmental review document, includes the following:

- Disclosure of daily time series for ditch flow using all six gages currently (or historically) located on the 'Ili'ili'ula-North Wailua portion of the ditch system,<sup>15</sup> preferably using software comparable to HED-DSSVue.<sup>16</sup>

---

<sup>14</sup> The multiple power outages shown in the DEA indicate that the Waiahi hydro plants are not in fact "firm" power sources, and have no inherent value beyond the 1% contribution they make to KIUC's power generating capacity. *See* DEA at 20 (Figure 11), 21 (Figure 12).

<sup>15</sup> The DEA indicates that there are currently six gages installed on the ditch system, but only discloses data for the two immediately below the Wai'ale'ale and Waikoko diversions. *See* DEA at 14 & Figure 5.

<sup>16</sup> Available at <https://www.hec.usace.army.mil/software/hecdssvue/>.

- Using the time series, an analysis over the period of record that shows the amount of water available at the Waiahi hydro plants under historical conditions, compared with what would have been available for diversion with the new IIFs. Representative dry, middle-range, and wet periods must be selected in order to accurately focus the analysis on how water availability affects energy generation during each of these time periods.
- A document that clearly translates the hydrologic analyses into comparisons of generation at each of the power plants over the period of record (and in the focused representative periods) accounting for periods of non-generation due to insufficient flow, head loss, turbine efficiency, and other clearly identified factors.

### III. THE DEA IS LEGALLY DEFICIENT BECAUSE IT RECEIVED AN IMPROPER EXEMPTION FROM THE ATTORNEY GENERAL THEREBY PREDETERMINING THE OUTCOME OF ENVIRONMENTAL REVIEW

The DEA is also legally deficient because it received an improper exemption from the attorney general, predetermining the outcome of this review. As stated in *Umberger*, an action is exempt from HEPA only if all four parts of the following test are met:

(1) it is within an exempt class promulgated by the Environmental Council in HAR § 11-200-8(a) or within an exemption category created by the agency itself pursuant to its authority under HAR § 11-200-8(d); (2) the relevant exemption category can be applied because the activity does not have a significant cumulative impact and it does not have a significant impact on a particularly sensitive environment, *see* HAR § 11-200-8(b); (3) the agency obtained the advice of other agencies or individuals having jurisdiction or expertise as to the propriety of the exemption, HAR § 11-200-8(a); and (4) the action will probably have minimal or no significant effects on the environment, HRS § 343-6(a)(2); *see also* HAR 11-200-8(b); *Sierra Club*, 115 Hawai'i at 315-16, 167 P.3d at 309-09.

140 Hawai'i at 524, 403 P.3d at 30. Because this four-part test cannot be met here, the exemption granted by the Attorney General was improper.<sup>17</sup>

First, none of the exemption categories apply to this lease. Although the DEA fails to specify the grounds for exemption, the Department's past policy and practice during annual renewal of the revocable permit is to exempt permits from HEPA pursuant to Exemption Class

---

<sup>17</sup> Separate from the duties imposed by HEPA, the plain language of HRS § 171-58(c)(3) requires an environmental impact statement for water leases as a matter of law.

1, Item 51, promulgated by the Environmental Council on June 5, 2015.<sup>18</sup> See, e.g., State of Hawai'i, Department of Land and Natural Resources, Land Division, Holdover of Revocable Permits for Water Use on the Islands of Hawai'i and Kauai, Exemption Notification (Dec. 14, 2018). However, this exemption category is inapplicable because a water lease does not involve the operation, repair or maintenance of existing structure, but rather the taking of water. Moreover, whether or not an existing diversion began before HRS chapter 343 was enacted, a new lease is a new action that must fully comply with HEPA. Indeed, none of the existing water diversions subject to the water lease requirements, including those maintained by KIUC, have ever undergone environmental review in any form. Therefore, the cited exemption does not apply here. *Umberger*, 140 Hawai'i at 524, 403 P.3d at 301; *Sierra Club*, 115 Hawai'i at 316, 167 P.3d at 309.

Second, assuming an exemption category applies, it could not be applied to this lease because of the significant cumulative effects of water diversion in the particularly sensitive environment of small, tributary streambeds. The long-term cumulative impacts of dewatering streams, such as has occurred at the Blue Hole diversion, have been universally established in numerous contested case proceedings before CWRM and the Board, and include loss of stream life, destruction of traditional and customary practices, and impairment of other public trust uses and values.

Third, as discussed above, this 65 year lease will have significant effects, including irrevocable commitment of a natural and cultural resource, and therefore fails under the fourth prong of the *Umberger* test.

The fact that an EA was prepared does not cure the improper exemption issued by the Attorney General. Because of the exemption, KIUC and its consultant SSFM had no incentive to fully and completely abide by the intent of HEPA, and the outcome of the EA was predetermined. This can be most clearly seen in the fact that the DEA serves primarily to justify KIUC's preferred alternative. As stated in the administrative rules: "Exemption notices, EAs, and EISs are meaningless without the conscientious application of the environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action." HAR § 11-200.1-1(c). Because this DEA serves no other purpose than to justify selection of KIUC's preferred alternative, it fails to satisfy HEPA.

---

<sup>18</sup> Class 1 reads: "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing." Item 51 reads: "Permits, license, registrations, and rights-of entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

Ian C. Hirokawa  
Department of Land and Natural Resources  
January 7, 2020  
Page 14

Thank you for your consideration of these comments.

Sincerely,



Leinā'ala L. Ley  
Attorney

Enclosure

cc: SSFM International, Inc., [jscheffel@ssfm.com](mailto:jscheffel@ssfm.com)  
Kauai Island Utility Cooperative, [dhuff@joulegroup.com](mailto:dhuff@joulegroup.com)

**From:** Hank Hawaiian  
**To:** [DLNR.BLNR.Testimony; Hank Hawaiian](#)  
**Subject:** [EXTERNAL] opposition to RP 7340  
**Date:** Tuesday, December 8, 2020 5:40:55 PM

---

Aloha,

I am writing in opposition to RP 7340. I speak also for Na Kupuna Moku O Keawe. Hawaii island and Kauai are connected through our waters. It is absolutely wrong to divert waters of our sacred Waialeale.

Your consideration are appreciated. Aloha,

HanaleiFergstrom  
Spokesperson for  
Na Kupuna Moku O Keawe  
P.O. Box 951  
Kurtistown, Hawaii 96760

**From:** David Gardener  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 7:31:03 PM

---

By continuing to divert an unsustainable amount of water from the sacred Wai'ale'ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340's conditions. KIUC's hydropower plant already produces less than 1% of Kaua'i's power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production.

Please respectfully request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions. Should the RP be renewed please request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

David Gardener  
Princeville, Kauai

**From:** Alberto Genova  
**To:** [DLNR, BLNR Testimony: Ferreira, Darlene S](#)  
**Subject:** [EXTERNAL] Oppose KIUC RP7340 Renewal  
**Date:** Wednesday, December 9, 2020 6:54:11 PM  
**Attachments:** [cid:DB1E7D8-D7F4-4C9E-B6B9-C88D5F2D7A9.pdf](#)  
[Dustin Moises - prelim DEA comments.pdf](#)  
[Water Booklet Pages 1-4.pdf](#)  
[Original RP 7340 highlighted non-compliance.pdf](#)  
[2019 Feb 12 FOIA KDOW Puanani Rogers.pdf](#)  
[KDOW FOIA Response.pdf](#)  
[REPORT ON THE FACILITATED DISCUSSION March 15th.docx](#)

---

Director Case and Members of the Board of Land and Natural Resources,

The following testimony is offered in opposition to any renewal of KIUC Revocable Permit 7340.

KIUC, per their 2020 RP7340 renewal application, confirms that **no water** has been diverted from Wai`ale`ale and Waikoko, State land streams, this year. "No diversion of water in 2020 due to damage to the ditch system." Agenda Item D-5, Exhibit A. They offer no evidence of any detrimental consequence from the loss of this water. This confirms what we have always maintained every year we have objected to the renewal of RP7340, that the 40 MGD diverted daily from State land and other Wailua streams is not necessary to meet the power needs of Kauai. For this reason alone RP730 should not be renewed.

KIUC does not offer anything to suggest that the damage and no water taken were in anyway detrimental to KIUC's production and delivery of power in 2020. In their most recent [Currents issue](#), KIUC reports that both of the Waiahi hydro power plants generated a mere 8/10ths of of 1% of the total power revenue for the island of Kauai in all of 2019: page 19. There are no figures available for power, if any, generated by the Waiahi hydros in 2020.

RP7340, if renewed and assuming the required ditch repair, would allow KIUC to resume diverting up to 25 MGD to operate the upper Waiahi hydro and 40 MGD to operate the lower hydro:

"KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro." See Report On Facilitated Discussion by Robbie Alm, copy attached where he reports on the required water need of each hydro which he learned from KIUC, a fact that had previously eluded the public.

When the Board deliberates on whether or not to renew KIUC's RP7340, we request that the Board, in keeping with their Public Trust duties, consider the significant volume of water required to operate the two Waiahi hydros which is diverted 5 miles from the point of origin to the Waiahi hydro. Please see Wailua schematic map prepared by CWRM hydrologist, Ayron Strauch, copy attached. Not only are the waters of Wai`ale`ale and Waikoko (at least 14 MGD) diverted 5 miles without any EIS for these 2 State land streams in a Conservation district, but none of these diverted water are returned to their streams of origin, clear violations of HRS §171-58c. The Wai`ale`ale stream dam diversion is within a protected habitat for at least 1 endangered species. Attached is an email between KDOW water engineer and then Kauai Planning, wherein the engineer also documents the fact that an EIS is required for these diversions but has never been done. See attached prelim DEA comments from KDOW engineer Dustin Moises. In his email, Dustin is focused on the failure to complete the required environmental review as it pertains to the operation of Grove Farm's Waiahi surface water treatment plant. The connection to RP7340 is the fact that water from KIUC's hydros is release to Grove Farm from locations indicated on the attache Wailua schematic for use and sale to KDOW from their Waiahi water treatment plant. One of the conditions of RP7340 is that ratepayers are not supposed to be charged for any of the water used by the hydros. Ratepayers are paying for water in their bill to KDOW as Grove Farm openly admits to selling KDOW water for more than 15,000 accounts or 20% of the potable water consumed on Kauai. Please see link to Grove Farms Newsletter Sept. 2020.

<https://www.grovetfarm.com/news/grove-farm-newsletter-september-2020-edition>

As Mr. Moises points out, the arrangements for taking the water transferred from Wailua to Lihue watershed is all done without any EIS as required by HRS §171-58.

In the last legislative session DLNR offered a bill to amend HRS §171-58 that would have changed the requirement for an EIS to compliance with HRS §343, changing the required standard to EA or EIS, confirming that DLNR and the Land Board know that an EIS is required before water can be diverted from the streams covered by RP7340. That bill did not pass and the current law applicable to this RP renewal application has not been satisfied. KIUC's application for renewal of RP7340 must be denied.

The attached CWRM Wailua schematic map and the Report on the Facilitated Discussion by Robbie Alm confirm that the ditch systems involved pull at least 40 MGD from Wailua streams, reducing aquifer and well recharge. Kauai should not be subjected to the massive shift of water between neighboring watersheds for so minimal benefit. Grove Farm, even though advised to do so, has never come before the Board or joined in KIUC's permit despite testimony given by their project manager, Arryl Kaneshiro, that they rely on and use the water after it passes through KIUC's hydros. Testimony of Mr. Kaneshiro, BLNR meeting April 26, 2019 on Agenda Item D-9.

Compounding the above is the recent climate prognosis that Kauai will experience as much as a 50% drop in rainfall in the near future due to drought. This information was part of the recently released Kauai Low-Flow study, requiring agencies to, at a minimum, not support water permits, where the diversions are operated in violation of State law. Attached are photos of the Wai`ale`ale and Waikoko diversions taken in 2000 which show the dam diversions in good repair. See attached Water Booklet. In the attached there are also several recent photos that demonstrate the lack of maintenance and repair and depict exposed rebar which is a hazard that has not been taken care of since we brought it to this Board's attention every year since 2017. Attached is a copy of RP7340 with conditions and each condition requiring the maintenance that has not been done are highlighted.

[USGS Low-Flow Characteristics of Streams from Wailua to Hanapepe, Kaua'i, Hawai'i](#)  
<https://pubs.usgs.gov/sir/2020/5128/sir20205128.pdf>

KDOW's manager advised the Kauai Water Board in 2019 that he could not recommend KDOW exercise its option to purchase Grove's Waiahi SWTP as Grove did not have a permit for the water they were diverting into Kapaia Reservoir before its treatment and sale to KDOW.

[Link to KDOW Manager's report 1/25/2019 see page 68](#)  
<https://drive.google.com/file/d/10zQPcb2Frvk0zDLWGqulUZnJdHNNV-tx/view?usp=sharing>

[Link to Grove Farm KDOW agreement](#)  
<https://drive.google.com/file/d/1H69xZ-JhuJta4s-TbwGPeATnSuCbJUWp/view?usp=sharing>

On behalf of Ahupuaa Puna O Kaua`i, we hereby Request a Contested Case Hearing on this matter if RP7340 is renewed.

Mahalo

Ahupuaa Puna o Kaua`i

Alberto Genovaia

---



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)





RECEIVED

09 MAY 25 P 2: 42

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

DIV. OF WATER &  
 LAND DEVELOPMENT

**REGISTRATION OF STREAM DIVERSION WORKS  
 AND  
 DECLARATION OF WATER USE**

**INSTRUCTIONS:** Please type or print. If information is not available or not applicable, indicate as N/A. Fill out as completely as possible, sign, and mail form to the Division of Water Resource Management, P.O. Box 373, Honolulu, Hawaii 96809. Phone 548-3948 or 548-7543 for assistance.

**MULTI-SOURCE SYSTEMS:** For a system of two or more diversion structures, submit a single package to describe the complete system. Include a single location map (or a set of maps if required) showing all diversion structures and measurement points, and a separate copy of this form for each structure and measurement point. On forms describing diversion structures, complete parts A, B, D, and E. On forms describing measurement points, complete parts A, B, and F.

STREAM NAME: N/A ISLAND: See attached Exhibit "A"  
 DIVERSION STRUCTURE NAME: N/A  
 DIVERSION SYSTEM NAME: N/A

**A. DIVERSION WORKS OPERATOR**

Firm name: N/A  
 Contact person: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

**B. OWNER OF DIVERSION WORKS SITE**

Firm name: Lihue Plantation Company, Limited  
 Contact person: Bert Hatton  
 Address: 700 Bishop Street, 20th Floor  
Honolulu, Hawaii  
 Zip: 96813 Phone: 945-8135

**C. STREAM DIVERSION LOCATION** See attached Exhibit "A"

Tax Map Key: \_\_\_\_\_ Town, Place, District: \_\_\_\_\_  
 Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the diversion location. N/A

**D. STREAM DATA**

Streamflow at diversion site is:  Perennial (Water is always flowing)  Intermittent (Channel is sometimes dry) N/A  
 Is streamflow gaged?  Yes  No  
 If yes, provide gage name, and show location on map. Name: \_\_\_\_\_  
 Average flow before diversion: N/A  mgd  gpm  cfs

**E. DIVERSION STRUCTURE DATA**

Year constructed: N/A Elevation (Above mean sea level): N/A  
 Diversion structure is:  Concrete  Wood  Pipe  Other (Describe): N/A  
 Diverted flow is:  Controlled  Uncontrolled N/A  
 Divertable capacity is: N/A  mgd  gpm  cfs

Submit an "as-built" drawing and dated photograph of the diversion works, if available.

... (continued over)

**For Official Use Only:**

Date received: \_\_\_\_\_ Date accepted: \_\_\_\_\_  
 Field checked by: \_\_\_\_\_ Date: \_\_\_\_\_ Latitude: \_\_\_\_\_ Hydrologic Unit: \_\_\_\_\_  
 Comments: \_\_\_\_\_ Longitude: \_\_\_\_\_ State Diversion No.: \_\_\_\_\_

References: Hawaii Revised Statutes, Chapter 174C.  
 Hawaii Administrative Rules, Chapters 13-167 to 13-171.

F. DECLARATION OF WATER USE

**NOTE:** The purpose of the Declaration of Water Use is to obtain information necessary for the management of the State's water resources. The Declaration does not confer a legal right to water or its use.

Location and name of measurement point (Show on location map): N/A  
 Water use data are recorded:  Continuously  Daily  Other: N/A  
 Method of measurement (Check box and describe below):  Weir  Rating flume  Other  
 Description: N/A

Quantity of Use (Report gaged or estimated monthly water use from the diversion described on the reverse side of this form, for the calendar years 1983 through 1987):  
N/A  
 WATER USE, IN \_\_\_\_\_ (unit of measurement)

	1983	1984	1985	1986	1987
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					
ANNUAL					

Typical times of usage: N/A

Type of Use (Check all category boxes that apply and provide additional information as indicated.):

Category	Additional Information
<input type="checkbox"/> Municipal (including resorts, hotels, businesses)	_____
<input type="checkbox"/> Domestic (systems serving 25 people or less)	Number of service connections: _____
<input type="checkbox"/> Irrigation	Acres irrigated: _____ Crop(s): <input type="checkbox"/> Sugar <input type="checkbox"/> Pineapple <input type="checkbox"/> Other (specify): _____ Non-Crop: <input type="checkbox"/> Landscape <input type="checkbox"/> Golf Course <input type="checkbox"/> Other (specify): _____ Method: <input type="checkbox"/> Drip <input type="checkbox"/> Furrow <input type="checkbox"/> Sprinkler
<input type="checkbox"/> Industrial	<input type="checkbox"/> Cooling <input type="checkbox"/> Manufacturing <input type="checkbox"/> Mill <input type="checkbox"/> Other (specify): _____
<input type="checkbox"/> Military	_____
<input checked="" type="checkbox"/> Other	Specify (livestock, hydroelectric, aquaculture, etc.): <u>See attached Exhibit "B"</u>

Location of Use (Describe the location of water use, relative to the diversion, and indicate on location map. If water is used by others, submit a list of their names and addresses.):  
N/A

I declare that the contents of the above Declaration of Water Use are, to the best of my knowledge and belief, true, correct, and complete.

Water User's Signature: Bert Hatton Date: 5/24/89  
 Printed Name: Bert Hatton, Lihue Plantation Company, Limited  
 Firm or Title (Diversion Operator, etc.): Vice President

EXHIBIT "A"ISLAND: KAUAIOWNER OF DIVERSION WORKS / POTENTIAL DIVERSION WORKS ("Owner")

Firm Name: LIHUE PLANTATION COMPANY, LIMITED  
 Contact Person: BERT HATTON  
 Address: 700 Bishop Street, 20th Floor  
 Honolulu, Hawaii  
 Zip: 96813 Phone: 945-8135

STREAM DIVERSION LOCATION / POTENTIAL STREAM DIVERSION LOCATION

A.	<u>Tax Map Key</u>	<u>Tax Map Key</u>
	4-2-1-003-004	4-3-9-002-025
	4-1-4-002-048	4-3-9-002-026
	4-3-2-004-020	4-3-9-002-027
	4-3-2-004-021	4-3-9-002-028
	4-3-2-004-041	4-3-9-005-002
	4-3-2-004-053	4-3-9-006-009
	4-3-2-004-063	4-3-9-006-012
	4-3-3-001-001	4-4-1-004-020
	4-3-3-002-001	4-4-2-001-003
	4-3-3-002-012	4-4-2-001-006
	4-3-3-002-020	4-4-3-004-008
	4-3-3-002-021	4-4-5-013-028
	4-3-3-003-001	4-4-5-015-035
	4-3-4-001-002	4-4-6-014-099
	4-3-4-001-004	4-4-7-001-003
	4-3-4-005-003	4-4-7-001-004
	4-3-4-005-006	4-4-7-002-004
	4-3-4-005-009	4-4-7-004-002
	4-3-4-006-002	4-4-7-004-003
	4-3-4-006-004	4-4-7-004-004
	4-3-4-006-005	4-4-7-004-005
	4-3-4-006-006	4-4-7-004-007
	4-3-4-006-008	4-4-8-001-002
	4-3-4-006-009	4-4-8-002-001
	4-3-4-006-011	4-4-8-003-001
	4-3-4-006-012	4-4-8-003-002
	4-3-5-001-005	4-4-8-003-003
	4-3-5-001-009	4-4-8-003-004
	4-3-5-001-109	4-4-8-003-006
	4-3-5-001-013	4-4-8-003-011
	4-3-7-001-001	4-4-8-003-018
	4-3-7-002-001	4-4-8-003-019
	4-3-7-003-001	4-4-8-003-020
	4-3-8-002-003	4-4-8-003-021
	4-3-8-005-012	4-4-8-003-029
	4-3-9-001-002	
	4-3-9-002-001	
	4-3-9-002-012	
	4-3-9-002-020	
	4-3-9-002-024	

B. Any other property now or hereafter owned or controlled by the Owner and any and all water sources now or hereafter owned or controlled by the Owner.

ISLAND: KAUAI

OWNER OF DIVERSION WORKS / POTENTIAL DIVERSION WORKS ("Owner")

Firm Name: LIHUE PLANTATION COMPANY, LIMITED  
 Contact Person: BERT HATTON  
 Address: 700 Bishop Street, 20th Floor  
 Honolulu, Hawaii  
 Zip: 96813 Phone: 945-8135

STREAM DIVERSION LOCATION / POTENTIAL STREAM DIVERSION LOCATION

A.	<u>Tax Map Key</u>	<u>Tax Map Key</u>
	4-3-2-005-007	4-3-8-005-009
	4-3-2-005-009	4-3-8-005-016
	4-3-5-001-006	4-3-8-009-100
	4-3-5-001-010	4-3-8-010-035
	4-3-5-001-082	4-3-8-010-036
	4-3-5-001-085	4-3-9-002-002
	4-3-5-001-103	4-3-9-005-005
	4-3-5-001-118	4-3-9-005-006
	4-3-6-002-001	4-3-9-005-014
	4-3-6-002-017	4-4-3-002-006
	4-3-6-004-001	4-4-3-003-001
	4-3-6-005-007	4-4-3-003-002
	4-3-6-005-019	
	4-3-6-010-104	4-4-3-003-004
	4-3-7-001-001	4-4-3-003-005
	4-3-7-001-003	4-4-3-003-007
	4-3-7-001-005	4-4-3-003-008
	4-3-7-001-007	4-4-3-003-009
	4-3-7-001-030	4-4-3-003-011
	4-3-7-002-001	4-4-3-003-014
	4-3-7-002-003	4-4-3-003-015
	4-3-7-002-005	4-4-3-004-011
	4-3-7-002-012	4-4-3-005-001
	4-3-7-003-001	4-4-3-005-003
	4-3-7-003-020	4-4-3-005-004
	4-3-7-003-021	4-4-3-005-005
	4-3-7-003-023	4-4-3-005-006
	4-3-7-007-012	4-4-3-005-021
	4-3-8-001-001	4-4-3-008-010
	4-3-8-002-001	4-4-5-013-003
	4-3-8-002-002	4-4-5-013-014
	4-3-8-002-003	4-4-6-008-037
	4-3-8-002-004	4-4-7-001-001
	4-3-8-002-005	4-4-7-002-001
	4-3-8-002-009	4-4-7-002-003
	4-3-8-003-001	4-4-7-002-005
	4-3-8-004-001	4-4-7-003-001
	4-3-8-004-006	4-4-7-003-002
	4-3-8-004-007	4-4-7-003-005
	4-3-8-005-003	4-4-7-003-006
	4-3-8-005-008	4-4-7-004-001
		4-4-7-004-006

B. Any other property now or hereafter owned or controlled by the Owner and any and all water sources now or hereafter owned or controlled by the Owner.

EXHIBIT "A"ISLAND: KAUAIOWNER OF DIVERSION WORKS / POTENTIAL DIVERSION WORKS ("Owner")

Firm Name: LIHUE PLANTATION COMPANY, LIMITED  
 Contact Person: BERT HATTON  
 Address: 700 Bishop Street, 20th Floor  
 Honolulu, Hawaii  
 Zip: 96813 Phone: 945-8135

STREAM DIVERSION LOCATION / POTENTIAL STREAM DIVERSION LOCATION

A.	<u>Tax Map Key</u>	<u>Tax Map Key</u>
	4-4-7-005-016	4-4-9-009-022
	4-4-7-005-028	4-4-9-009-023
	4-4-7-006-020	4-4-9-009-024
	4-4-9-003-004	4-4-9-009-025
	4-4-9-003-005	4-4-9-009-026
	4-4-9-005-004	4-4-9-009-027
	4-4-9-005-006	4-4-9-009-028
	4-4-9-008-016	4-4-9-009-029
	4-4-9-008-017	4-4-9-009-035
	4-4-9-009-001	4-4-9-009-036
	4-4-9-009-007	4-4-9-009-037
	4-4-9-009-009	4-4-9-009-038
	4-4-9-009-010	4-4-9-012-002
	4-4-9-009-011	4-5-3-001-010
	4-4-9-009-012	
	4-4-9-009-013	
	4-4-9-009-014	
	4-4-9-009-015	
	4-4-9-009-016	
	4-4-9-009-017	
	4-4-9-009-018	
	4-4-9-009-019	
	4-4-9-009-020	
	4-4-9-009-021	

B. Any other property now or hereafter owned or controlled by the Owner and any and all water sources now or hereafter owned or controlled by the Owner.

EXHIBIT "B"

Owner, as identified on Exhibit "A," owns or controls vested water rights belonging or appertaining to, used on, or in some manner associated with the property identified in the attached Declaration of Water Use. Owner has reserved for itself, used, sold, leased or transferred such water rights in the maximum amount permitted by law. To the extent Owner has not so reserved, used, sold, leased or transferred such water rights, Owner hereby reserves such water rights for itself. Owner intends to continue to reserve for itself, use, sell, lease or transfer such water rights in the maximum amount permitted by law.

# REQUEST TO ACCESS A GOVERNMENT RECORD

**DATE:** 12 Feb. 2019 \_\_\_\_\_  
**TO:** Kauai Dept of Water \_\_\_\_\_  
**FROM:** Puanani Rogers \_\_\_\_\_  
Name or Alias  
rangierizulu@yahoo.com \_\_\_\_\_  
Contact Information \_\_\_\_\_

Although you are not required to provide any personal information, you should provide enough information to allow the agency to contact you about this request. The processing of this request may be stopped if the agency is unable to contact you. Therefore, please provide any information that will allow the agency to contact you (name or alias, telephone or fax number, mailing address, e-mail address, etc.).

## I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

According to KDOW Mgr. Bryan Weinand, information, from the Public Record recently delivered by Grove Farm to the KDOW about "ownership of source water" as referred to in Jan. 25, 2019 agenda item H7 New Business: Section 2.b. Control of Surface Water System of the Agreement is as follows: MANAGER'S REPORT 19-42 January 25, 2019. I would like to see ownership information about this "source water" for the Waiahi Surface Water Treatment Plant.

## I WOULD LIKE: (please check one or more of the options below)

- To inspect the government record.**
- A copy of the government record:** (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.
- Pick up at agency (**date and time**): \_\_\_\_\_
- Mail
- Fax (toll free and only if available)
- Other, if available (please specify): Email
- If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.
- Electronic  Audio  Other (please specify): Email
- Check this box if you are attaching a request for waiver of fees in the public interest (see waiver information on back).

I understand and agree to the following understandings and conditions:

Due to security concerns, the water system facilities information for the subject project is for the applicants use only. The water system information provided by the Department will not be viewed or distributed to others and will not be used for purposes other than for the site assessment.

Print Name: Puanani Rogers Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

## **FEES FOR PROCESSING RECORD REQUESTS**

You may be charged fees for the services that the agency must perform when processing your record request, including fees for making photocopies and other lawful fees. **The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you.** Fees are as follows:

Search for a Record	\$2.50 for 15 minutes
Review and Segregation of a Record	\$5.00 for 15 minutes

## **WAIVER OF FEES IN THE PUBLIC INTEREST**

Up to \$60 of fees for searching for, segregating and reviewing records may be waived when the waiver would serve the public interest as described in section 2-71-32, Hawaii Administrative Rules. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are:

- (1) The requested record pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

## **AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS**

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in ***extenuating circumstances*** the agency must respond within 20 business days from the date of your request. If you have questions about the response time, you may contact the agency's UIPA contact person. If you are not satisfied with the agency's response, you may call the Office of Information Practices at 808-586-1400.

## **REQUESTER'S RESPONSIBILITIES**

You have certain responsibilities under §2-71-16, Hawaii Administrative Rules. You may obtain a copy of these rules from the Lieutenant Governor's Office or from the Office of Information Practices. These responsibilities include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees, if assessed.

# DEPARTMENT OF WATER

County of Kaua'i

*"Water has no Substitute – Conserve It!"*

## STANDARD LETTER OR LEGAL SIZE REPORTS

10 Pages or Less.....	50 ¢ per page
More than 10 Pages.....	50 ¢ per page for the first 10 pages and 25 ¢ per page thereafter
More than 50 Pages.....	10 ¢ per page if done by self-service The operator must be trained & authorized to run the machine, otherwise charge shall be 25 ¢ per page

Any department of agency shall impose and collect the following charges for a reproduced copy of any of the public records in its custody as described below, the reproduction of which is requested by any person for private use:

- 1) Copyflex Paper..... 50 ¢ per square foot
- 2) Area Maps - Ranges from \$2.00 - \$2.75
  - a) 18" X 30" & 18" X 32".....\$2.00
  - b) 18" X 36"..... \$2.25
  - c) 18" X 39"..... \$2.45
  - d) 18" X 43"..... \$2.65
  - e) 18" X 45"..... \$2.70
  - f) 22" X 36" ..... \$2.75
- 3) Subdivision, Zoning & Tax Maps (Maximum size 8 1/2" X 14")  
.....\$1.00 per sheet
- 4) Supia Paper ..... \$5.00 per square foot
- 5) Mylar Film ..... \$10.00 per square foot
- 6) Aerial Contour Maps on Copyflex Paper ..... \$30.00 per sheet
- 7) Aerial Contour Maps on Sepia Paper ..... \$550.00 per sheet
- 8) Aerial Contour Maps on Mylar Film .....\$600.00 per sheet

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

REVOCABLE PERMIT NO. S-7340

KNOW ALL MEN BY THESE PRESENTS:

This Agreement is executed this 11<sup>th</sup> day of August 2003, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and KAUAI ISLAND UTILITY COOPERATIVE, a Hawaii non-profit cooperative electric company, hereinafter called the "Permittee," whose mailing address is 4463 Pahee Street, Lihue, Hawaii 96766. The parties agree that commencing on the 1st day of January, 2003, ("commencement date"), Permittee is permitted to enter and use, on a month-to-month basis only, pursuant to section 171-58, Hawaii Revised Statutes, water emanating from, and the water transmission system situate at, Lihue-Koloa Forest Reserve, Wailua, Lihue, Kauai, tax map key no. (4) 3-9-1, as indicated on the map attached hereto, if any, and made a part hereof, also known as the "Blue Hole" diversion which is hereinafter referred to as the "Water Resources."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Use the Water Resources for the following specified purposes only:  
To divert, take, draw off, conduct away and dispose of government-owned water emanating from the Blue Hole diversion (which consists of both of the stream diversions located at Blue Hole on the North Fork of the Wailua River and the diversion at the Waikoko Stream above USGS Gage 612 all of which are collectively referred to as the "Blue Hole" diversion) and use, operate, repair and maintain a portion of an existing government-owned water transmission infrastructure system including the Blue Hole diversion all for the purpose of generating hydroelectric power with the Permittee's two hydroelectric plants.
2. Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawai'i 96809, monthly rent in the sum of THREE THOUSAND ONE HUNDRED TEN DOLLARS AND NO/CENTS (\$3,110.00) payable in advance by the first of each and every month.



The interest rate on any unpaid or delinquent rentals shall be at one percent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board an amount equal to two times the monthly rental stated above in paragraph 2, as security for the faithful performance of all of these terms and conditions. The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.
4. At the Permittee's own cost and expense, keep the government-owned improvements that are part of the Water Resources insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) calendar days notice, in writing, before ceasing use of the Water Resources.
6. Pay all applicable real property taxes assessed, if any, from the commencement date of this Permit.
7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at



any future time during the term of this Permit applicable to the Water Resources including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.

8. Repair and maintain all buildings or other improvements now or hereafter part of the Water Resources.

9. Obtain the prior written consent of the Board before making any major improvements.

10. Keep the Water Resources and improvements in a clean, sanitary, and orderly condition.

11. Pay all charges, assessments, or payments relating to the Water Resources including utilities.

12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Water Resources.

13. At all times with respect to the Water Resources, use due care for public health and safety.

14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, commercial general liability insurance, in an amount acceptable to the Chairperson with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the Water Resources, including all grounds and all roadways on or adjacent to the Water Resources in the use or control of the Permittee.

Prior to use of the Water Resources or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after sixty (60) days written notice has been given to the State.



The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks that exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
16. Pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Water Resources, or in the collection of delinquent rental, taxes, and any and all other charges.
17. Use of the water taken from the Water Resources shall be limited to the areas presently or formerly served. Expansion is not permitted.
18. The Permittee shall record and report monthly water use from the surface water diversions in accordance with Section 13-168-7, Hawaii Administrative Rules.
19. This permit shall cease and be void if the Board issues a lease pursuant to Section 171-58, Hawaii Revised Statutes for the Water Resources or portion thereof.



20. The State reserves the right to withdraw water from this revocable permit to meet the following requirements as the State in its sole discretion may determine:

Constitutionally protected water rights, in-stream flow standards, reservations needed to meet the Department of Hawaiian Home Lands rights under Section 221 of the Hawaiian Homes Commission Act, as well as other statutorily or judicially recognized interests relating to the right to withdraw water for the purposes of and in accordance with the provisions of Section 171-58(d), Hawaii Revised Statutes.

21. Prior to any expansion or modification of any diversion works applicable to this project, Permittee shall document all proposed modifications to the hydropower plant and diversion works, and submit such documentation to the Commission on Water Resource Management ("CWRM"), and obtain, if necessary, approvals from CWRM.

22. It is in the State's best interests to have its water returned to State land for irrigation purposes after its initial diversion for hydroelectric purposes, as previously existed when the prior lessee managed the system. To that end:

- a. The amount of water diverted into the ditch system at Blue Hole on an annual basis shall not exceed the average annual amount diverted as measured for the period from years 1992 to 2002.
- b. Any applicable service charge to the cooperative members, by Grove Farm, shall be for the upkeep of the delivery system, not for the water.

23. Within six (6) months form the date of Board approval, Permittee shall submit to the Board a report concerning the following matters:

a. Permittee shall provide data concerning the amount of water diverted into the ditch system at Blue Hole: on an annual basis on average for the period from years 1992 to 2002, and for all prior months operated by the Permittee.

b. Permittee shall provide data and recommendations concerning the allocation of water during low volume periods (e.g. drought) between the Blue Hole diversion, the Stable Storm diversion, the Wailua Reservoir diversion, and Aahoaka diversion.



c. The water allocation proposal based upon Permittee's study and as agreed to by the Board is to be incorporated as a condition of this Permit upon Board approval.

B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Water Resources or continues to use the Water Resources.

2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.

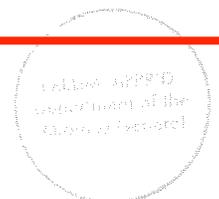
3. If the Permittee fails to cease the use of the Water Resources upon revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.

4. If the Permittee fails to cease the use of the Water Resources upon revocation or termination of the Permit, the Board, by its agents, or representatives, may, without notice, seize, remove and dispose of all vehicles, equipment, materials, or any personal property associated with the Water Resources, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.

5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.



6. Any major improvements erected on or in the Water Resources by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Water Resources; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
7. The Board reserves the right for its agents or representatives to enter and inspect the Water Resources and use of the Water Resources at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Water Resources and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Water Resources shall not be in support of any policy that discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials onto or into the Water Resources except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto or released into the Water Resources any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials

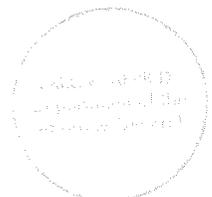


and upon the Board's consent which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on or in the Water Resources placed or released by Permittee.

Permittee agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the permit.

For the purpose of this permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Permittee shall indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.
15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Water Resources, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.



16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.
17. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally. \_\_\_\_\_



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By [Signature]  
Chairperson of the Board of Land and Natural Resources

SW

Approved by the Board of Land and Natural Resources at its meeting held on December 13, 2002.

PERMITTEE

KAUAI ISLAND UTILITY COOPERATIVE,  
a Hawaii non-profit cooperative electric company

By [Signature]  
Alton H. Miyamoto  
Its President - CEO

And By \_\_\_\_\_  
Its \_\_\_\_\_

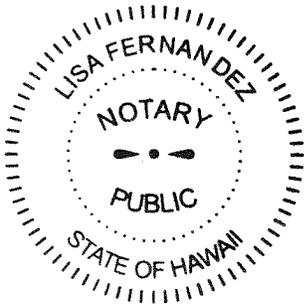
APPROVED AS TO FORM:

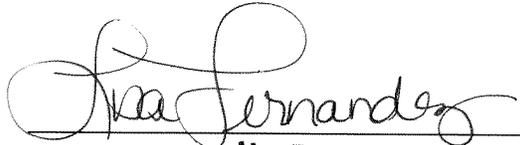
[Signature]  
Deputy Attorney General  
Dated 3/7/03



STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

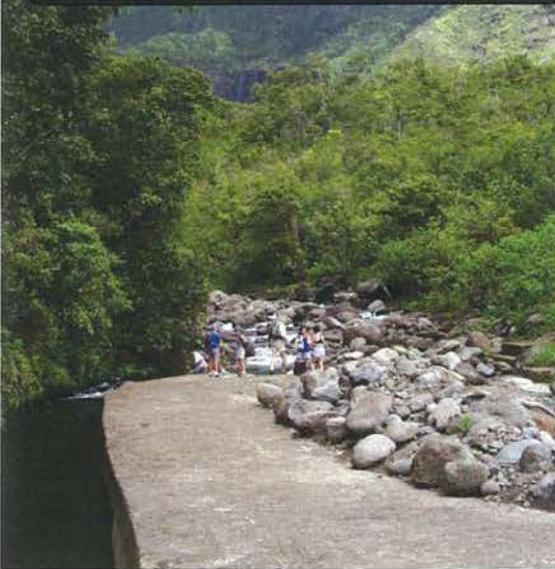
On this 28<sup>th</sup> day of March, 2003, before me appeared ALTON H. MIYAMOTO, to me personally known, who, being by me duly sworn and affirmed, did say that he is the President & CEO of KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association formed pursuant to the provisions of Chapter 421C of the Hawaii Revised Statutes, and that said instrument was signed on behalf of said association by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said association.



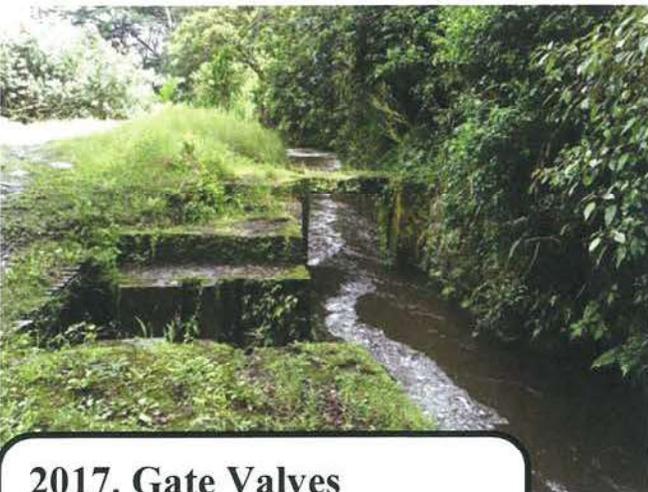
  
Name: Lisa Fernandez  
Notary Public, State of Hawaii  
My commission expires: 8-11-06

**Wai`ale`ale Stream: ditch safety and operational features, gate valves, removed, recently replaced with boards, contrary to Land Board directive and maintenance requirements of RP 7340 (A) and (B).**

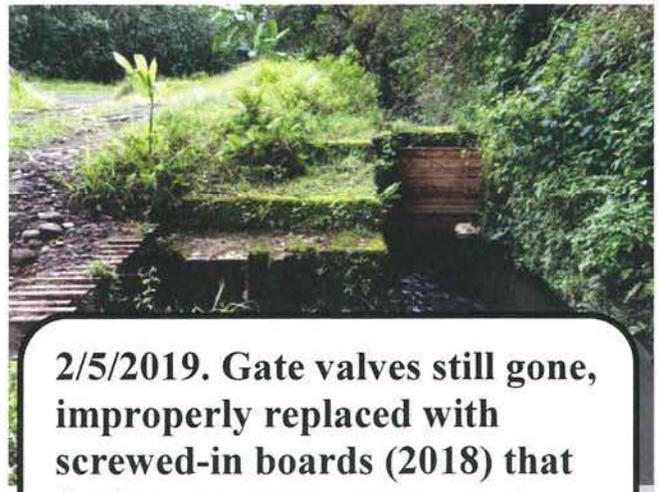
**2000. Wai`ale`ale Dam conditions when KIUC assumed control from Kauai Electric.**



**4/30/2000. Wai`ale`ale, intake ditch and throwout with operational control valves, condition when KIUC assumed diversion operations.**



**2017. Gate Valves Removed. No way to regulate flow or prevent damage from storm events.**



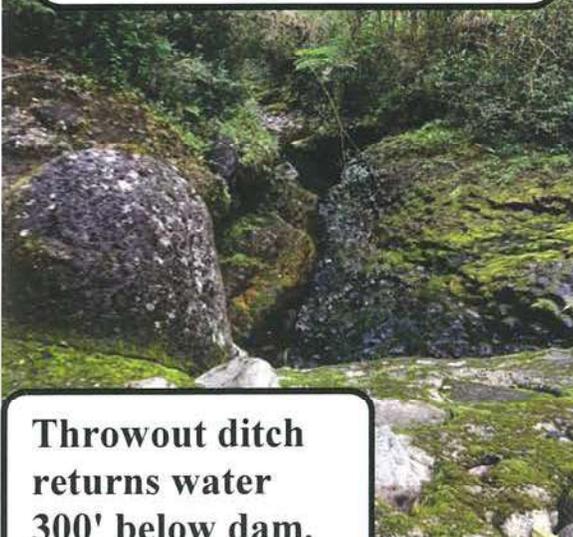
**2/5/2019. Gate valves still gone, improperly replaced with screwed-in boards (2018) that limit emergency response to storm events, and continue baseflow diversion from Wai`ale`ale.**

**12/14/2018. BLNR directs KIUC to restore Mauka-to-Makai Wai`ale`ale and Waikoko streamflow with a minimum of 4 MGD to remain in Wai`ale`ale and 1.6 MGD to remain in Waikoko. KIUC has yet to comply with BLNR's directive.**



**2/5/2019. Waikoko Dam. Streamflow not restored.**

**2/5/2019 Viewpoint from Waikoko Dam looking downstream at dry stream during rain event.**

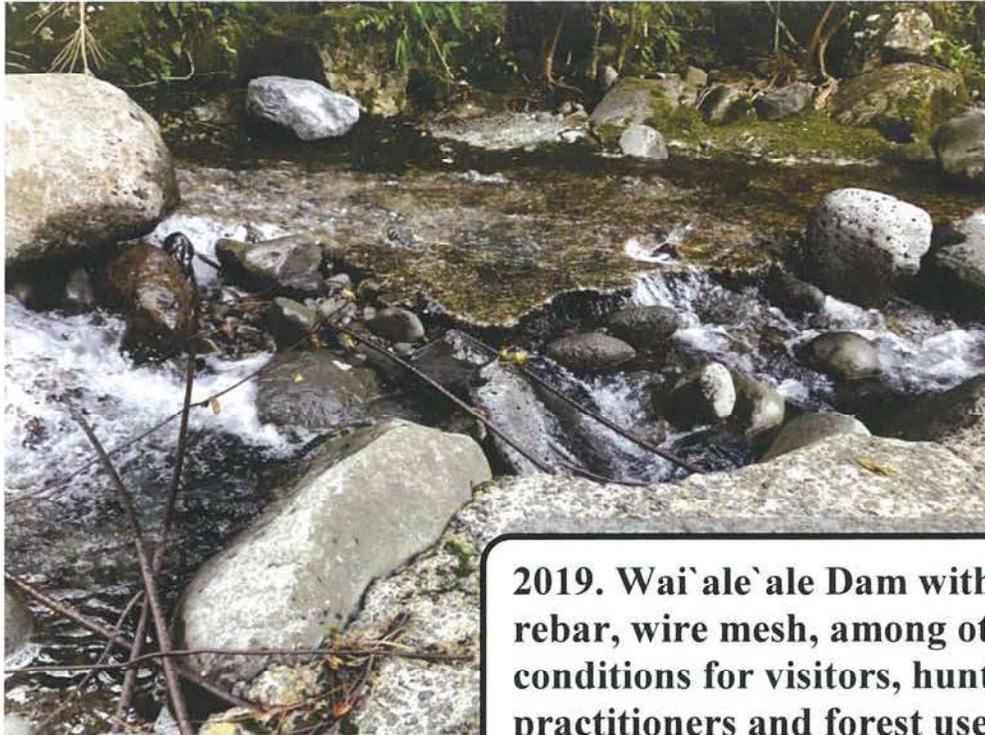


**Throwout ditch returns water 300' below dam.**

**2/5/2019. Boards recently added to throwout ditch, blocking return of baseflow to stream. Boards leak and boulders have been added inside throwout ditch to further restrict return of baseflow to Waikoko Stream.**



**15 years of RP Renewals, exposed rebar, obvious dam deterioration, failure to comply with RP maintenance requirements or public safety mandates.**



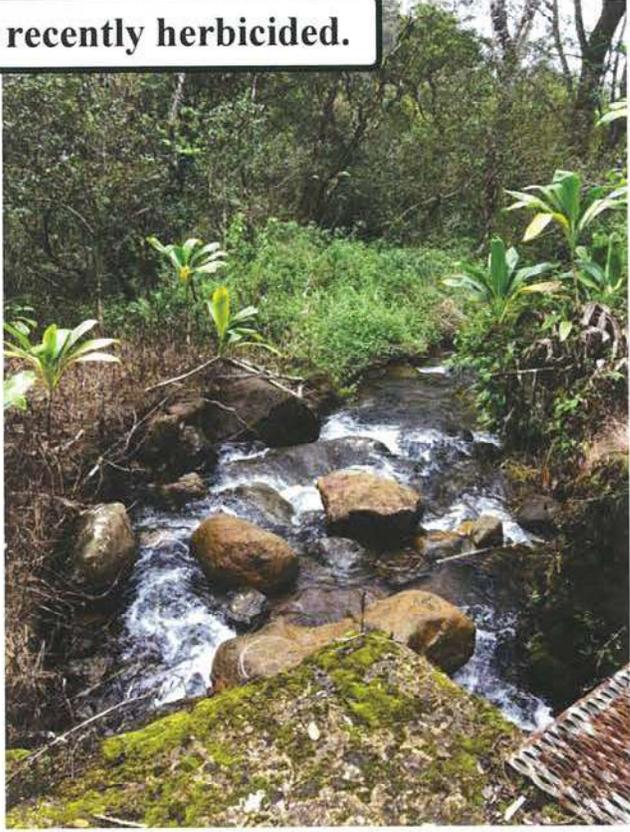
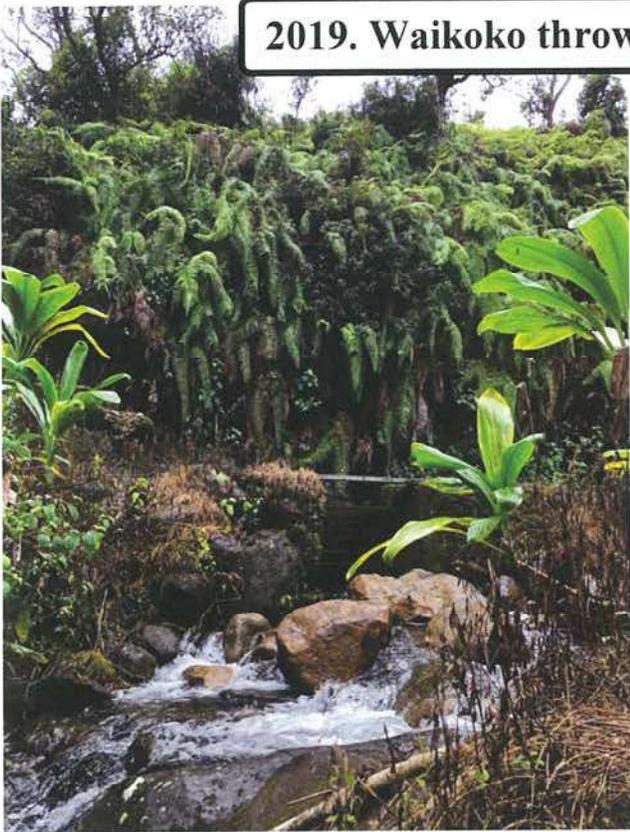
**2019. Wai`ale`ale Dam with exposed rebar, wire mesh, among other unsafe conditions for visitors, hunters, cultural practitioners and forest users.**



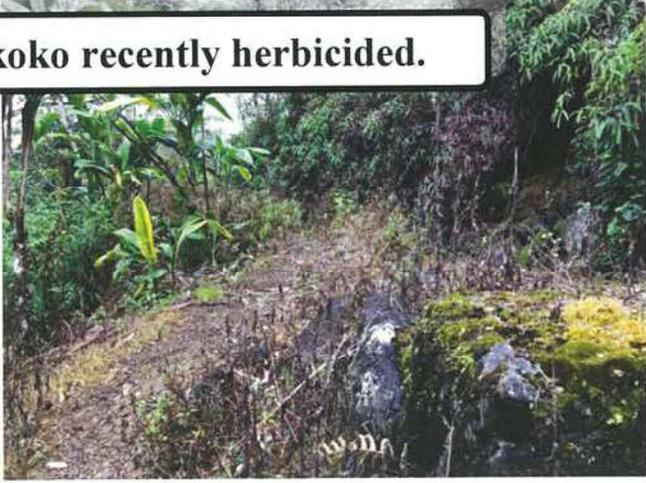
**2/23/2017. Wai`ale`ale Stream de-watered below dam, for almost 1 mile, despite 10/2016 effort by vandals to restore flow.**

**2/5/2019. Waikoko dam and ditch area, recently sprayed with herbicide. Diverted water is delivered to hydro. Water leaves hydro, a portion is diverted to Grove Farm's Surface Water Treatment Plant. Tested and treated for herbicides?**

**2019. Waikoko throwout recently herbicided.**



**2019 `Ili`ili`ula Ditch at Waikoko recently herbicided.**



**From:** [Moises, Dustin](#)  
**To:** "Mahealani Krafft"  
**Subject:** RE: DHHL Comments & preliminary DEA draft comments  
**Date:** Wednesday, April 10, 2019 11:13:00 AM

---

## Dustin Moises, P.E.

Civil Engineer - Chief of Construction Management  
Construction Management Team Leader  
Phone: 808-245-5459  
Fax: 808-245-5813

---

Managers do things right, Leaders do the right thing. – Warren Bennis



CONFIDENTIAL COMMUNICATION: This message (and any attachments) is intended only for the use of the designated recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone and delete this message and any attachments. Thank you.

---

**From:** Mahealani Krafft [mailto:[mkrafft@kauai.gov](mailto:mkrafft@kauai.gov)]  
**Sent:** Wednesday, April 10, 2019 10:58 AM  
**To:** Moises, Dustin <[dmoises@kauaiwater.org](mailto:dmoises@kauaiwater.org)>  
**Subject:** FW: DHHL Comments & preliminary DEA draft comments

---

**From:** Moises, Dustin <[dmoises@kauaiwater.org](mailto:dmoises@kauaiwater.org)>  
**Sent:** Monday, July 31, 2017 4:09 PM  
**To:** Michael Dahilig <[mdahilig@kauai.gov](mailto:mdahilig@kauai.gov)>  
**Cc:** [bill@kodani.com](mailto:bill@kodani.com); Kirk Saiki <[ksaiki@kauaiwater.org](mailto:ksaiki@kauaiwater.org)>; Aoki, Keith <[KAoki@kauaiwater.org](mailto:KAoki@kauaiwater.org)>;  
Krafft, Mahealani <[mkrafft@kauaiwater.org](mailto:mkrafft@kauaiwater.org)>; Mahealani Krafft <[mkrafft@kauai.gov](mailto:mkrafft@kauai.gov)>  
**Subject:** RE: DHHL Comments & preliminary DEA draft comments

Howzit Mike,

I'm not typically involved with EA reviews anymore since I only oversee construction but I have done EA's in past so here's my comments per your request to help you evaluate the situation. I wanted to get you my comments today so you can prep for Wednesday accordingly.

First, the DHHL letter dated June 30, 2017 is by procedure, in response to the preconsultation letter

sent in May 2017 by KAE. The general scope and map of the preconsultation letter doesn't detail much about the project so a response like this would likely come from someone with history to the project or they are referencing the old DEA that got cancelled. Also, the draft EA I received last week doesn't include a response to this letter because KAE said the letter actually came last week after DEA was submitted to DOW although the date of DHHL letter is June 30, 2017. Regarding the DEA, this letter should be addressed before the DEA is published. That being said, here's my comments related to DHHL letter.

**Comment #1** – There are administrative criteria for significance. Of the 13, this comment could be related to "Conflicts with the State's long-term environmental policies or goals and guidelines as expressed in HRS 344" & "substantially affects the economic or social welfare of the community or State". The DEA should be addressing DHHL's concern related to their projects in the State Water Projects Plan as it relates to CWRM approvals. The original SWTP was rated for 3 MGD + train expansion. The May 6, 2003 Final Engineering Report states plan can go from 3.0 MGD to 4.0MGD with plant capacity firm rates of 3.35 mgd to 4.46 mgd. The new pipeline will allow transmission of more water from the Waiahi Treatment Plant expansion from where it is now. Being that it is known this pipeline will allow expansion (increased withdrawal from Kapaia Reservoir) of SWTP, the argument could be made to that point. The DEA should provide a narrative related to this to ensure the pipeline project will not have a significant impact regarding CWRM source since having the water available is much different than DHHL being able to provide the infrastructure to get the water to their development. Again, this goes back to the flow that was approved with initial plant build in 2005 and capacity by DOH.

**Comment #2** – Their comment is right out of the OEQC guide to implementation of HEPA. Similar to item 1, the new pipeline will allow more water transmission from the Reservoir if/when SWTP expanded. I did not do the engineering calcs but if the 18" main can transmit more (increase capacity for water delivery) than the original SWTP MGD approval, then this would be a valid comment since it would be increased withdrawal of Wailua fork water that goes to Waiahi reservoir. That being said, is it necessary to examine the tributaries above the SWTP reservoir? I would say that if the surface water feeding the reservoir will not be changed with expansion (reservoir will have lower level at equilibrium), then maybe not but the safer route would be to study the situation and verify with the DEA. KDOW has no control over diversions but if the 18" allows for more transmission than the current SWTP capacity, I would say the significance should be studied and a conclusion derived in the DEA regarding any impact to tributaries feeding the existing reservoir. Finally, I think their statement "No environmental assessment or statement was prepared for Grove Farm SWTP operations and the DEA should include this assessment within its scope." is the biggest one of this comment. The original treatment plant did not have an EA done and since the very first trigger for HEPA is use of "county funds", one could question validity of the existing SWTP development since KDOW paid 2/3 of the cost with GF and will own it. It would have been helpful to have that done then to fall on now but without one that I am aware of, I would say that should be revisited now with pipeline DEA. From there, the 13 administrative criteria for significance should be evaluated which basically overrides everything I said earlier had you separated STWP from transmission line. This poses a big issue for KDOW a decade later. This is something that should be considered to protect the Board's current and future interests/liabilities at Waiahi.

**Comment #3** – Similar to comment #1 as it relates to DHHL planned developments. The DEA can address detailed description of the proposed uses for the increased water delivery (Water Resource & Planning) could help with determining what the 18" main will allow (DHHL and non DHHL planned developments) and work with KAE if they haven't already. I think the comment related to public trust is very broad and something I wouldn't feel needed to be addressed if an EA was conducted a decade ago. With no EA, I question whether or not it should be dealt with now.....see response to next comment.

**Comment #4** – I think this is more of a CWRM item and anything related to water use/permits, etc. is CWRM. First, on the engineering side of things, if the 18" waterline capacity is calculated to allow more than the original SWTP design intent, then "proposed increase water withdrawals" should be evaluated with DEA. However, CWRM is the body that deals with the original 3MGD usage. Assuming (with emphasis), the 3 MGD was approved by CWRM a decade ago, I don't see any issues with the 3 MGD or anything approved by CWRM back then if in line with the PER done in early 2000's.....but then I keep coming back to my comment in #2 above. Since no EA was ever done for original SWTP construction, do we address it now? Outside of that, KDOW has no control of diversions. I would say we stay out of that as related to the 18" main.....but goes back to what I said in comment #2. If you increase transmission capacity, which will increase reservoir withdrawals, you need to assess that you can do it without increasing flow into reservoir which should be addressed by confirming yes or no in DEA.

**Comment #5** – the cultural impact should be assessed but whether it should be "extensive" or what is deemed "extensive" is in question. Regarding the 18" main construction itself, I would say the area should be evaluated during DEA via guidance for assessing cultural impacts by OEQC. At a glance, I would agree that the project is located in a relatively developed area and one would assume that the waterline construction itself will likely not affect cultural resources but the only way to assure that is to conduct a cultural assessment with a qualified cultural expert. That being said, you it goes back to what I've been saying all along. If the 18" waterline increases capacity which relates to increased SWTP flow, then you would have to do a more "extensive" study upstream of the new waterline is my take.

I have not read the DEA in detail yet but based on DHHL letter and a skim of the DEA provided to me on Friday, I would recommend the approach below.

1. Define the project clearly. What is the pipeline for? What development will it serve (Hanamaulu Triangle, Grove Farm developments, ADU, ARU, etc.)? Is it a pipeline that will increase the capacity (backed up by engineering calcs) above the original SWTP flows that were approved in 2003? If yes, I think you have to evaluate upstream of the pipeline and possibly upstream of the SWTP. If no, then you stay within the pipeline area and it is easy.

[This is the most important task. Verbage can be used to say both but in the end, use the engineering calcs. Private water system or not, if you increase the size of the pipeline and it allows more transmission capacity, you allow the increase of transmission of water for development. From there, if you know the SWTP will be expanded and will not be able to without the 18" main here (Maalo Road deemed insufficient), I think you have to connect

the dots and draw correlation as I stated above to disclose everything.] If SWTP expansion within original approved limit, I wouldn't worry about the 18" main upstream but it should be confirmed and disclosed.

The draft DEA page 3 states "The capacity of the Waiahi SWTP will not increase due to the installation of the 18-inch water transmission main.". Is this a true statement? If the 18" main were to not occur, could Waiahi SWTP be expanded beyond current flows to anticipated flows with current infrastructure? There is a paragraph right after the statement about Waiahi SWTP being modified in the future. There are modifications that are known at this time such as expansion (going above 3 MGD under existing foot print per Final engineering report 5/6/2003) and potentially outside of existing footprint which should be disclosed now in the DEA. If you are not doing with this EA, does that mean expansion under existing footprint and/or future expansion will be done with a separate EA even if KDOW does not expend funds? I think this should be clearly narrated so it is not a play on words. "Any future expansion of the SWTP is not a necessary action for the proposed 18-inch water transmission main as the proposed project provides the needed transmission capacity for the existing KDOW with or without future SWTP expansion." Okay, but what about reverse? Can future SWTP that is known to be happening occur without the 18" main? If so, this is fine and KDOW is protected in the long term. If not, I think it should be disclosed clearly regarding at minimum the upcoming train expansion being designed by ATA via recent PER.

The natural/cultural impacts should be evaluated by someone deemed knowledgeable. I don't see who did it in section 7.1 & 7.8

Section 7.3, 7.4 , & 7.6 should be addressed to deal with DHHL letter

Section 7.9. – Will the 18" main not involve a commitment (allowance) to larger actions development wise? The project itself will not but do you correlate to bigger developments as a domino? Just be clear on this one.

7.10 – I had to do a Nene study for DOW building. Being this is near Waiahi, how did you determine this? (Bill check numbering)

2. How do you address the EA not being done a decade ago as related to DHHL comment #2 when DOW funds were used the same way the EA was triggered for this pipeline? SWTP is a private system so we have to separate ourselves from that and diversions but we can't separate from the 2/3 DOW \$. I think this is the biggest issue related to the EA comments. We don't have anything to stand on from a decade ago to help us now.
3. KAE in drafting it with KDOW should be transparent to the community and disclose anything that could be an issue related to EA whether involves GF, County or KDOW. In doing so, evaluate the 13 administrative criteria for significance and determine CWRM vs KDOW vs others responsibilities during the process. Utilize the OEQC guide for HEPA implementation.

I know this might have made things more confusing but item 1 is really what sets the framework moving forward. Then how you deal with item 2.....then just do by item 3. Let me know if any questions.

**Dustin Moises, P.E., CISEC, DSO III**

Civil Engineer  
Chief of Construction Management  
Construction Management Division Head  
Phone: 808-245-5459  
Fax: 808-245-5813

*"You're never wrong to do the right thing", Mark Twain*



CONFIDENTIAL COMMUNICATION: This message (and any attachments) is intended only for the use of the designated recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone and delete this message and any attachments. Thank you.

-----Original Message-----

From: Michael Dahilig [<mailto:mdahilig@kauai.gov>]  
Sent: Friday, July 28, 2017 11:53 AM  
To: Krafft, Mahealani <[mkrafft@kauaiwater.org](mailto:mkrafft@kauaiwater.org)>; Mahealani M. Krafft <[mkrafft@kauai.gov](mailto:mkrafft@kauai.gov)>  
Cc: [bill@kodani.com](mailto:bill@kodani.com); Saiki, Kirk <[ksaiki@kauaiwater.org](mailto:ksaiki@kauaiwater.org)>; Moises, Dustin <[dmoises@kauaiwater.org](mailto:dmoises@kauaiwater.org)>; Aoki, Keith <[KAoki@kauaiwater.org](mailto:KAoki@kauaiwater.org)>  
Subject: DHHH Comments

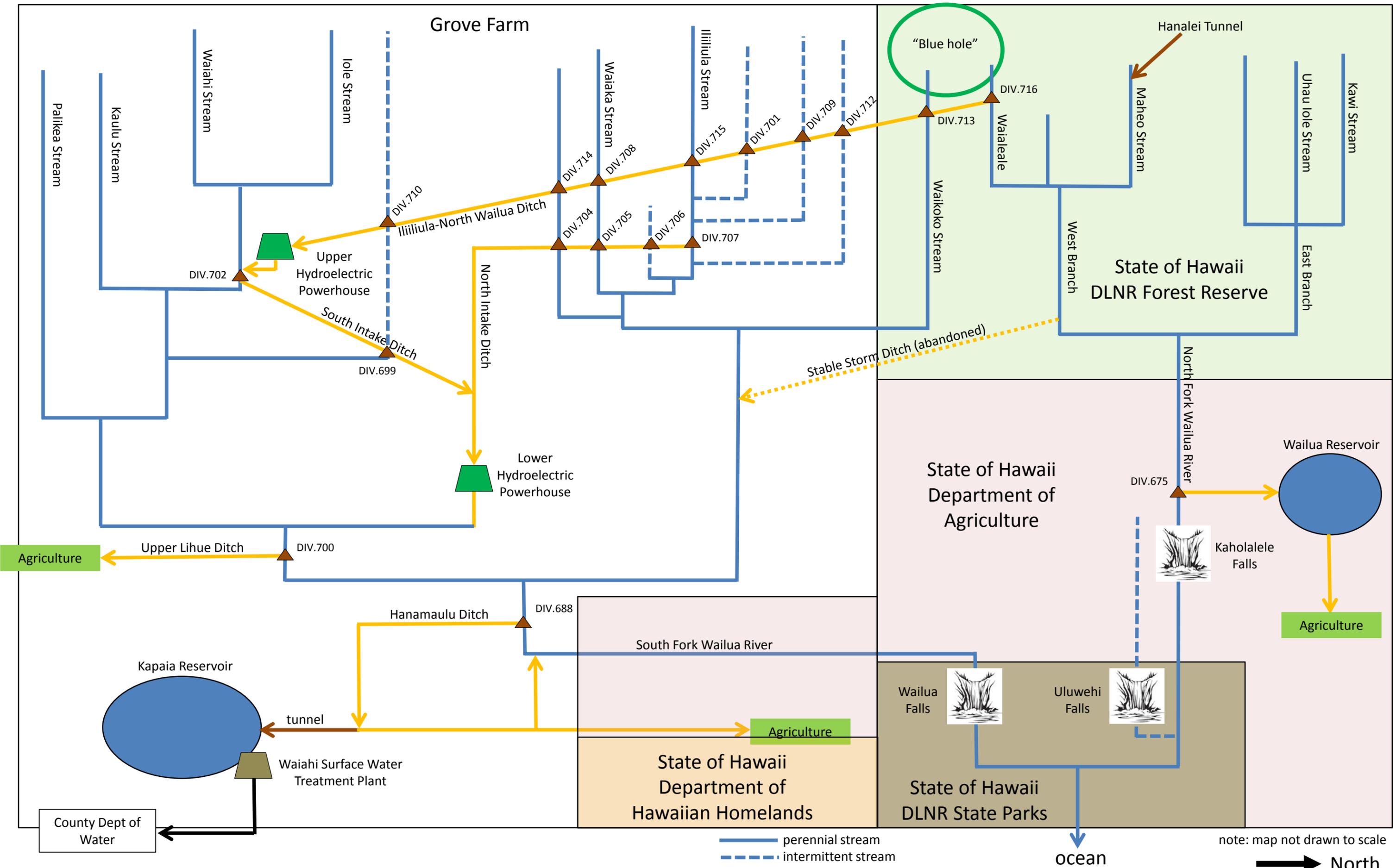
Howzit Mahea,

[Redacted]

[Redacted]

[Redacted]

Thanks,  
Mike



**REPORT ON THE FACILITATED DISCUSSION  
KAUAI ISLAND UTILITY COOPERATIVE (KIUC) REVOCABLE PERMIT S-7340**

At its December 14, 2018 meeting, the Board of Land and Natural Resources approved a revocable permit for KIUC with the following in its minutes:

Holdover of Revocable Permits for Water Use on the Islands of Hawaii and Kauai. See Exhibit 3 for list of Revocable Permits. APPROVED AS AMENDED. The Board considered the holdover requests for the Hawaii and Kauai water revocable permits in three phases. First, the Board approved the holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative (“KIUC”) as amended. The Board included a condition that KIUC is to invite Earthjustice, Kia’I Wai O Wai’ale’ale, Sierra Club, Grove Farm and the Department of Hawaiian Home Lands (together “The Working Group”), to participate in a facilitated discussion regarding their respective positions on KIUC’s request to use State water for its hydroelectric plants in the permit area as well as any other matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

KIUC approached the Collaborative Leaders Network (CLN) about facilitating these discussions. CLN agreed to undertake this work with the understanding that for the initial meetings CLN would cover any of its own costs in the spirit of encouraging collaborative problems solving.

**The Discussions**

Three meetings were held on Kauai between January and March,

The first meeting was held with all the parties named above and every party expressed their basic sense of the issues involved, how they would like to have this work proceed from a process standpoint, and who else should be part of the process. The Kia’I Wai O Wai’ale’ale, Sierra Club, Earthjustice, HAPA, and Department of Hawaiian Homelands specifically asked if they could meet separately from the others to discuss their concerns (The others were interested in continuing to meet together but deferred to this request).

The second meetings were, as requested, held separately. Joining the morning session was the Office of Hawaiian Affairs. In that session, there were concerns raised on the environmental review process being undertaken by KIUC, KIUC’s adherence to the stream flow numbers set by the Board, the relationship between this process and the larger questions of water use in the region, the value of the two hydro plants involved to Kauai, the larger economic interests involved, how the water lease and IIFS processes will work together, as well as a discussion of the sacredness of the water in the two streams specifically at issue here and how (or if) that can be reconciled with the other uses of the streams. The group also asked that a set of specific questions that they wanted KIUC to answer.

In the afternoon session, Kauai County Managing Director Michael Dahilig, the Kauai County Planning Department, the Kauai Department of Water Supply, and Kauai Backcountry Adventures also joined the conversation. In that session there were concerns raised about making sure that all interests including agricultural and other community public purposes and recreational were included in the decision-making, that all of these water systems are interconnected and therefore making changes to one portion affects many others (cumulative impacts), that this area (Lihue) is the major area for the housing needs on Kauai in the 21<sup>st</sup> century and water decisions need to be made with that in mind, and that Grove Farm has accumulated a lot of knowledge about this system as well as maintained it for the benefit of the island. The group also believes that the interests of all of the parties are not mutually exclusive and would like to work together to come to an understanding.

In addition to these meetings, there were a number of conversations and emails, as well as numerous pages of prior correspondence, documents, photographs, and diagrams provided on the issues involved.

The third set of meetings looked at the messages that the parties wanted to convey to the Board about the handling of the issues in this case.

### **The Questions to KIUC**

1. It is the view of the morning parties that the BLNR had ordered KIUC to release 1.6 MGD in the stream at Waikoko and 4.0 at Wai'ale'ale Stream. Are these amounts of water actually being released?

KIUC believes that it is in compliance with the BLNR order.

KIUC believes the amount required to be release at Waikoko is 0.8 MGD.

(Both sides believe they have it right. There are a couple of ways to move forward on this one. One is to take this dispute to the Board and it will likely be sent to staff who will then report back to the Board on compliance. The other way is to have each side designate one person who will together review the situation including going up to the sites to make sure that they at least understand each other's views of this situation and hopefully agree on a shared understanding of what is going on or at a minimum narrow the dispute as much as possible.)

2. What specific environmental review process is KIUC undertaking in connection with this application.

KIUC has been conducting an Environmental Assessment (EA) with the DLNR as the accepting agency. KIUC expects to complete it and submit it this month or as soon thereafter as possible.

3. How much water does KIUC need to operate the hydro plants at an efficient level?

KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro.

Additionally, there was a desire to know from where the waters for these amounts came from.

For the Upper Hydro, KIUC uses water from these two streams (Wai'ale'ale and Waikoko), the Ililiula diversion (located on Grove Farm land but operated by KIUC as part of the Ililiula North Wailua Ditch System) and some small seasonal contributions during high rains. For the Lower Hydro, KIUC uses water diverted from Waiahi Stream (downstream of the tailrace discharge of the Upper Hydro), Ililiula Stream and some small seasonal streams that contribute during high rains. The amount of water discharged into Waiahi Stream from the Upper Hydro tailrace directly impacts how much water is available for the Lower Hydro.

The original Revocable Permit for Blue Hole and Waikoko diversions combined allowed up to an annual average of 14.2 MGD though through KIUC's diversion history they have been taking more like 13 and under current orders are taking a combined about of 9.6 MGD unless stream flow is above median flows. Overall 50% to 65% of the water used come from the diversion of these two streams.

### **The Wisdom of the Groups**

While there are clearly very divergent views on a significant number of issues, there were commonly held views that are worth setting forth.

First, all the waters in the Lihue region are interconnected and the combinations of streams and diversions/ditches has and continues to have a very significant impact on the environment of the area, the Native Hawaiian culture and its practices in the area, and the economy and quality of life in the area.

Second, there are very strong and divergent views about what the right answers are in terms of (1) the amount of water that needs to be left in the streams, (2) the continuation of total or substantial diversions of water anywhere in the system, and (3) the impact that any significant changes to the current water system will have on the overall social, economic and environmental health of the region.

Third, all parties agree that the Waikoko and Wai'ale'ale issues are just the start of a much broader and more complex conversation and processes about the Lihue region. There are likely to be many more disputes coming with greater and greater consequence to the people of Kauai.

Fourth, the way in which the BLNR's revocable permit/lease processes and the Water Commission's IIFS process will (or won't) work together in a coordinated matter is not at all clear to these parties. Any discussion has a tendency to get to both issues very quickly and in an overlapping manner.

Fifth, all parties agree that some form of formal dispute resolution would be better for Kauai as a community and would want to engage in such a process.

Sixth, all parties are concerned that the tone of the discussions sometimes assumes a level of animosity that is not good for Kauai overall and a process more conducive to community building is very much in Kauai's interest.

### **Specific Recommendation Based on the Discussions**

There needs to be a formal process in which the parties can participate. That process can be a contested case process, a contested case process with a mediation effort at the outset or during it, or some other process, (The parties do believe that any exchange of information and views is useful, but at this stage a formal setting for those discussions and exchanges is critical.)

The most available starting point is the IIFS process at the Water Commission involving the Wai'ale'ale and Waikoko Streams in which a contested case has already been requested.

In the longer term, the issues in the region significantly overlap and intersect, and that as challenging as it may be, consideration needs to be given to having a process examine all of the streams and waters in the Lihue area if that can be done.

Finally as the State moves more and more into the IIFS and water lease processes, it would be helpful if there is as much transparency as possible in how the two processes will coordinate with each other.

**From:** Alberto Genova  
**To:** [DLNR, BLNR Testimony: Ferreira, Darlene S](#)  
**Subject:** [EXTERNAL] Oppose KIUC RP7340 Renewal  
**Date:** Wednesday, December 9, 2020 6:54:11 PM  
**Attachments:** [cid:0B1E7D8-D7F4-4C9E-B6B9-C88D5F2D7A9.pdf](#)  
[Dustin Moises - prelim DEA comments.pdf](#)  
[Water Booklet Pages 1-4.pdf](#)  
[Original RP 7340 highlighted non-compliance.pdf](#)  
[2019 Feb 12 FOIA KDOW Puanani Rogers.pdf](#)  
[KDOW FOIA Response.pdf](#)  
[REPORT ON THE FACILITATED DISCUSSION March 15th.docx](#)

---

Director Case and Members of the Board of Land and Natural Resources,

The following testimony is offered in opposition to any renewal of KIUC Revocable Permit 7340.

KIUC, per their 2020 RP7340 renewal application, confirms that **no water** has been diverted from Wai`ale`ale and Waikoko, State land streams, this year. "No diversion of water in 2020 due to damage to the ditch system." Agenda Item D-5, Exhibit A. They offer no evidence of any detrimental consequence from the loss of this water. This confirms what we have always maintained every year we have objected to the renewal of RP7340, that the 40 MGD diverted daily from State land and other Wailua streams is not necessary to meet the power needs of Kauai. For this reason alone RP730 should not be renewed.

KIUC does not offer anything to suggest that the damage and no water taken were in anyway detrimental to KIUC's production and delivery of power in 2020. In their most recent [Currents issue](#), KIUC reports that both of the Waiahi hydro power plants generated a mere 8/10ths of of 1% of the total power revenue for the island of Kauai in all of 2019: page 19. There are no figures available for power, if any, generated by the Waiahi hydros in 2020.

RP7340, if renewed and assuming the required ditch repair, would allow KIUC to resume diverting up to 25 MGD to operate the upper Waiahi hydro and 40 MGD to operate the lower hydro:

"KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro." See Report On Facilitated Discussion by Robbie Alm, copy attached where he reports on the required water need of each hydro which he learned from KIUC, a fact that had previously eluded the public.

When the Board deliberates on whether or not to renew KIUC's RP7340, we request that the Board, in keeping with their Public Trust duties, consider the significant volume of water required to operate the two Waiahi hydros which is diverted 5 miles from the point of origin to the Waiahi hydro. Please see Wailua schematic map prepared by CWRM hydrologist, Ayron Strauch, copy attached. Not only are the waters of Wai`ale`ale and Waikoko (at least 14 MGD) diverted 5 miles without any EIS for these 2 State land streams in a Conservation district, but none of these diverted water are returned to their streams of origin, clear violations of HRS §171-58c. The Wai`ale`ale stream dam diversion is within a protected habitat for at least 1 endangered species. Attached is an email between KDOW water engineer and then Kauai Planning, wherein the engineer also documents the fact that an EIS is required for these diversions but has never been done. See attached prelim DEA comments from KDOW engineer Dustin Moises. In his email, Dustin is focused on the failure to complete the required environmental review as it pertains to the operation of Grove Farm's Waiahi surface water treatment plant. The connection to RP7340 is the fact that water from KIUC's hydros is release to Grove Farm from locations indicated on the attache Wailua schematic for use and sale to KDOW from their Waiahi water treatment plant. One of the conditions of RP7340 is that ratepayers are not supposed to be charged for any of the water used by the hydros. Ratepayers are paying for water in their bill to KDOW as Grove Farm openly admits to selling KDOW water for more than 15,000 accounts or 20% of the potable water consumed on Kauai. Please see link to Grove Farms Newsletter Sept. 2020.

<https://www.grovetfarm.com/news/grove-farm-newsletter-september-2020-edition>

As Mr. Moises points out, the arrangements for taking the water transferred from Wailua to Lihue watershed is all done without any EIS as required by HRS §171-58.

In the last legislative session DLNR offered a bill to amend HRS §171-58 that would have changed the requirement for an EIS to compliance with HRS §343, changing the required standard to EA or EIS, confirming that DLNR and the Land Board know that an EIS is required before water can be diverted from the streams covered by RP7340. That bill did not pass and the current law applicable to this RP renewal application has not been satisfied. KIUC's application for renewal of RP7340 must be denied.

The attached CWRM Wailua schematic map and the Report on the Facilitated Discussion by Robbie Alm confirm that the ditch systems involved pull at least 40 MGD from Wailua streams, reducing aquifer and well recharge. Kauai should not be subjected to the massive shift of water between neighboring watersheds for so minimal benefit. Grove Farm, even though advised to do so, has never come before the Board or joined in KIUC's permit despite testimony given by their project manager, Arryl Kaneshiro, that they rely on and use the water after it passes through KIUC's hydros. Testimony of Mr. Kaneshiro, BLNR meeting April 26, 2019 on Agenda Item D-9.

Compounding the above is the recent climate prognosis that Kauai will experience as much as a 50% drop in rainfall in the near future due to drought. This information was part of the recently released Kauai Low-Flow study, requiring agencies to, at a minimum, not support water permits, where the diversions are operated in violation of State law. Attached are photos of the Wai`ale`ale and Waikoko diversions taken in 2000 which show the dam diversions in good repair. See attached Water Booklet. In the attached there are also several recent photos that demonstrate the lack of maintenance and repair and depict exposed rebar which is a hazard that has not been taken care of since we brought it to this Board's attention every year since 2017. Attached is a copy of RP7340 with conditions and each condition requiring the maintenance that has not been done are highlighted.

[USGS Low-Flow Characteristics of Streams from Wailua to Hanapepe, Kaua'i, Hawai'i](#)  
<https://pubs.usgs.gov/sir/2020/5128/sir20205128.pdf>

KDOW's manager advised the Kauai Water Board in 2019 that he could not recommend KDOW exercise its option to purchase Grove's Waiahi SWTP as Grove did not have a permit for the water they were diverting into Kapaia Reservoir before its treatment and sale to KDOW.

[Link to KDOW Manager's report 1/25/2019 see page 68](#)  
<https://drive.google.com/file/d/10zQPcb2Frvk0zDLWGqulUZnJdHNNV-tx/view?usp=sharing>

[Link to Grove Farm KDOW agreement](#)  
<https://drive.google.com/file/d/1H69xZ-JhuJta4s-TbwGPeATnSuCbJUWp/view?usp=sharing>

On behalf of Ahupuaa Puna O Kaua`i, we hereby Request a Contested Case Hearing on this matter if RP7340 is renewed.

Mahalo

Ahupuaa Puna o Kaua`i

Alberto Genovaia

---



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)



**From:** Minda Goodman  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] "Oppose RP 7340"  
**Date:** Wednesday, December 9, 2020 6:07:23 AM

---

I oppose RP 7340.  
Sincerely,  
Minda Goodman



Suzanne Case, Chairperson  
Bureau of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

December 9, 2020

Re: Oppose R.P. 7340

Aloha Chairperson Case and Board Members,

Kaua`i Group of Hawai`i Chapter of Sierra Club is oposed to the renewal of revokable permit #7340. For the 17th year, BLNR considers to renew Permit #7340 allowing Kaua`i Island Utility Cooperative (KIUC) to divert water from State land streams in a protected conservation district. Revokable permits are a courtesy to water users giving them a year to prepare a lease application. A lease is required of any user of public water per Revised Statute 171-58. BLNR has allowed this privilege to be flagrantly abused by KIUC for 17 years.

KIUC's water diversions are not needed for reliable electric service.

KIUC's petition for renewal says they diverted no water, and produced no electricity from the two Waiahi hydro plants, in 2020. There has been no disruption to electric service.

In their fall Currents publication KIUC reported the two Waiahi hydroelectric plants the diversions serve produced 8/10ths of 1% of all the electricity KIUC sold in 2019. That's 14 million gallons diverted daily, and years of cumulative damage to the watershed environment, for less than 1% of power produced.

The West Kauai` Energy project, contracted by KIUC, will employ pumped storage hydro technology. It is expected to produce up to 15% of Kauai's energy needs. That's more than 15 times more electricity for nighttime use than the two Waiahi plants produce. That is reason enough to decommission the two plants now.

KIUC's water diversions are harmful to the Wailua watershed.

The Wailua watershed has been water starved for a century. The baseline for studying the effects we observe today should be from that time before those diversions and ditch systems were built for the sugar cane industry. The historical record shows 1000 acres in the watershed were cultivated in taro at various times. Fish farming, hunting and gathering provided food and medicine. The "Waters of Kane" were of paramount cultural significance. BLNR is responsible for preserving remembered places our indigenous culture needs to survive and flourish.

BLNR should designate the Lihue- Koloa Forest Reserve an Emergency Water Management Area, due to the severe, ongoing negative impacts to public trust resources; protected species, diminishing water resources and their negative cultural impacts. Adequate data is needed to understand our revised sustainable yield after decades of out-of-the-ahupua`a export of surface water.

Because they produce minimal energy and there are new resources such as West Kauai Energy, there is no reason to continue to incur environmental damage associated with Waiahi diversions.

If KIUC feels that the Waiahi diversions should continue, it should go through the normal permitting process specified in HRS 171-58, including a complete assessment of the environmental and cultural impacts of the diversions. In the meantime, KIUC's abuse of the permitting process can't be allowed to continue, as KIUC's own data has demonstrated that KIUC doesn't need Waiahi generation, or the water to produce it, while the normal permitting process is undertaken. We urge BLNR to reject the renewal application.

Regards,

Kip Goodwin

for Kaua'i Group, Hawai'i Chapter of Sierra Club

**From:** laurag  
**To:** [DLNR.BLR.Testimony](#)  
**Subject:** [EXTERNAL] oppose RP 7340  
**Date:** Tuesday, December 8, 2020 4:32:24 PM

---

I do not approve of channeling water for environmental, cultural and economic reasons. In Hawaii we should protect our water that belongs to the public and not private for profit corporations or others. The water is for all of us to protect and enjoy. Please do the job and act in the public interest. Mahalo, Laura Gray

**From:** Ashley Gutierrez  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 8:43:53 PM

---

Dear BLNR,

My Family name is Alapai from Hanalei Valley and I request that you reject the renewal of **RP 7340**.

The ways of hydropower are unsustainable, outdated, unnecessary, and causing damages to Kaua'i's ecosystems. Not to mention blocking Hawaiian Nationals from performing their cultural practices in certain areas.

There is an ongoing investigation of hundreds of chopped up oopu showing up in Waimea river because of the hydro plant. You should not be allowed to continue with this permitting process until the investigation is founded.

KIUC stealing water will cause detriment to the Kalo fields in Hanalei Valley. Detriment to the Hawaiian people. Farmers already struggle for water in the summer months, they do not need you stealing. The word Genocide comes to mind.

You should actually start an investigation on KIUC as several hunters and hikers keep hearing loud booming noises coming from the mountains. Like they started blowing up and drilling tunnels with out proper permits.

Should the RP be renewed please request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Ashley Gutierrez  
(808) 634-1547

**From:** Bridget Hammerquist  
**To:** [DLNR.BLNR.Testimony; Ferreira, Darlene S](#)  
**Subject:** [EXTERNAL] Oppose KIUC RP7340 Renewal  
**Date:** Wednesday, December 9, 2020 6:24:45 PM  
**Attachments:** [Wailua Schematic Map.pdf](#)  
[Dustin Moises - prelim DEA comments.pdf](#)  
[Water Booklet Pages 1-4.pdf](#)  
[Original RP 7340 highlighted non-compliance.pdf](#)  
[2019 Feb 12 FOIA KDOW Puanani Rogers.pdf](#)  
[KDOW FOIA Response.pdf](#)  
[Puanani Rogers Response to KDOW FOIA.pdf](#)  
[REPORT ON THE FACILITATED DISCUSSION March 15th.docx](#)

---

Aloha Director Case and Members of the Board of Land and Natural Resources,

The following testimony is offered in opposition to any renewal of KIUC Revocable Permit 7340.

KIUC, per their 2020 RP7340 renewal application, confirms that **no water** has been diverted from Wai`ale`ale and Waikoko, State land streams, this year. "No diversion of water in 2020 due to damage to the ditch system." Agenda Item D-5, Exhibit A. They offer no evidence of any detrimental consequence from the loss of this water. This confirms what we have always maintained every year we have objected to the renewal of RP7340, that the 40 MG diverted daily from State land and other Wailua streams is not necessary to meet the power needs of Kauai. For this reason alone RP730 should not be renewed.

KIUC does not offer anything to suggest that the damage and no water taken were in anyway detrimental to KIUC's production and delivery of power in 2020. In their most recent [Currents issue](#), KIUC reports that both of the Waiahi hydro power plants generated a mere 8/10ths of of 1% of the total power revenue for the island of Kauai in all of 2019: page 19. There are no figures available for power, if any, generated by the Waiahi hydros in 2020.

RP7340, if renewed and assuming the required ditch repair, would allow KIUC to resume diverting up to 25 MGD to operate the upper Waiahi hydro and 40 MGD to operate the lower hydro:

"KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro." See Report On Facilitated Discussion by Robbie Alm, copy attached where he reports on the required water need of each hydro which he learned from KIUC, a fact that had previously eluded the public.

When the Board deliberates on whether or not to renew KIUC's RP7340, we request that the Board, in keeping with their Public Trust duties, consider the significant volume of water required to operate the two Waiahi hydros which is diverted 5 miles from the point of origin to the Waiahi hydro. Please see Wailua schematic

map prepared by CWRM hydrologist, Ayron Strauch, copy attached. Not only are the waters of Wai`ale`ale and Waikoko (at least 14 MGD) diverted 5 miles without any EIS for these 2 State land streams in a Conservation district, but none of these diverted water are returned to their streams of origin, clear violations of HRS §171-58c. The Wai`ale`ale stream dam diversion is within a protected habitat for at least 1 endangered species. Attached is an email between KDOW water engineer and then Kauai Planning, wherein the engineer also documents the fact that an EIS is required for these diversions but has never been done. See attached prelim DEA comments from KDOW engineer Dustin Moises. In his email, Dustin is focused on the failure to complete the required environmental review as it pertains to the operation of Grove Farm's Waiahi surface water treatment plant. The connection to RP7340 is the fact that water from KIUC's hydros is release to Grove Farm from locations indicated on the attache Wailua schematic for use and sale to KDOW from their Waiahi water treatment plant. One of the conditions of RP7340 is that ratepayers are not supposed to be charged for any of the water used by the hydros. Ratepayers are paying for water in their bill to KDOW as Grove Farm openly admits to selling KDOW water for more than 15,000 accounts or 20% of the potable water consumed on Kauai. Please see link to Grove Farms Newsletter Sept. 2020.

<https://www.grovefarm.com/news/grove-farm-newsletter-september-2020-edition>

As Mr. Moises points out, the arrangements for taking the water transferred from Wailua to Lihue watershed is all done without any EIS as required by HRS §171-58.

In the last legislative session DLNR offered a bill to amend HRS §171-58 that would have changed the requirement for an EIS to compliance with HRS §343, changing the required standard to EA or EIS, confirming that DLNR and the Land Board know that an EIS is required before water can be diverted from the streams covered by RP7340. That bill did not pass and the current law applicable to this RP renewal application has not been satisfied. KIUC's application for renewal of RP7340 must be denied.

The attached CWRM Wailua schematic map and the Report on the Facilitated Discussion by Robbie Alm confirm that the ditch systems involved pull at least 40 MGD from Wailua streams, reducing aquifer and well recharge. Kauai should not be subjected to the massive shift of water between neighboring watersheds for so minimal benefit. Grove Farm, even though advised to do so, has never come before the Board or joined in KIUC's permit despite testimony given by their project manager, Arryl Kaneshiro, that they rely on and use the water after it passes through KIUC's hydros. Testimony of Mr. Kaneshiro, BLNR meeting April 26, 2019 on Agenda Item D-9.

Compounding the above is the recent climate prognosis that Kauai will experience as much as a 50% drop in rainfall in the near future due to drought. This information was part of the recently released Kauai Low-Flow study, requiring agencies to, at a minimum, not support water permits, where the diversions are operated in violation of State law. Attached are photos of the Wai`ale`ale and Waikoko diversions taken in 2000 which show the dam diversions in good repair. See attached Water Booklet. In the attached there are also several recent photos that demonstrate the lack of maintenance and repair and depict exposed rebar which is a hazard that has not been taken care of since we brought it to this Board's attention every year since 2017. Attached is a copy of RP7340 with conditions and each condition requiring the maintenance that has not been done are highlighted.

[USGS Low-Flow Characteristics of Streams from Wailua to Hanapepe, Kaua'i, Hawai'i](https://pubs.usgs.gov/sir/2020/5128/sir20205128.pdf)

<https://pubs.usgs.gov/sir/2020/5128/sir20205128.pdf>

KDOW's manager advised the Kauai Water Board in 2019 that he could not recommend KDOW exercise its option to purchase Grove's Waiahi SWTP as Grove did not have a permit for the water they were diverting into Kapaia Reservoir before its treatment and sale to KDOW.

[Link to KDOW Manager's report 1/25/2019 see page 68](https://drive.google.com/file/d/10zQPcb2Ftvk0zDLWGqulUZnJdHNNV-tx/view?usp=sharing)

<https://drive.google.com/file/d/10zQPcb2Ftvk0zDLWGqulUZnJdHNNV-tx/view?usp=sharing>

[Link to Grove Farm KDOW agreement](https://drive.google.com/file/d/1H69xZ-JhuJta4s-TbwGPeATnSuCbJUWp/view?usp=sharing)

<https://drive.google.com/file/d/1H69xZ-JhuJta4s-TbwGPeATnSuCbJUWp/view?usp=sharing>

On behalf of Kia`i Wai o Wai`ale`ale and Friends of Maha`ulepu, we hereby Request a Contested Case Hearing on this matter if RP7340 is renewed.

Mahalo nui loa,

Bridget Hammerquist, President  
Friends of Maha`ulepu, a 501(c)(3)  
Kia`i Wai o Wai`ale`ale, Co-founder  
friendsofmahaulepu.org  
[kiaiwaiialeale@gmail.com](mailto:kiaiwaiialeale@gmail.com)  
(808)742-1037



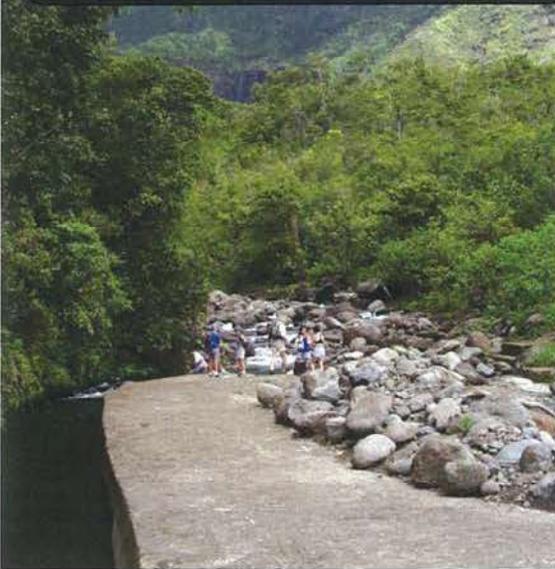
This email has been checked for viruses by Avast antivirus software.

[www.avast.com](http://www.avast.com)

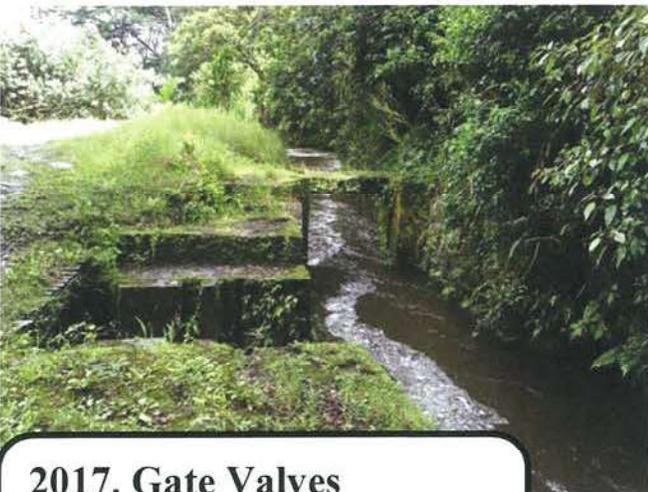


**Wai`ale`ale Stream: ditch safety and operational features, gate valves, removed, recently replaced with boards, contrary to Land Board directive and maintenance requirements of RP 7340 (A) and (B).**

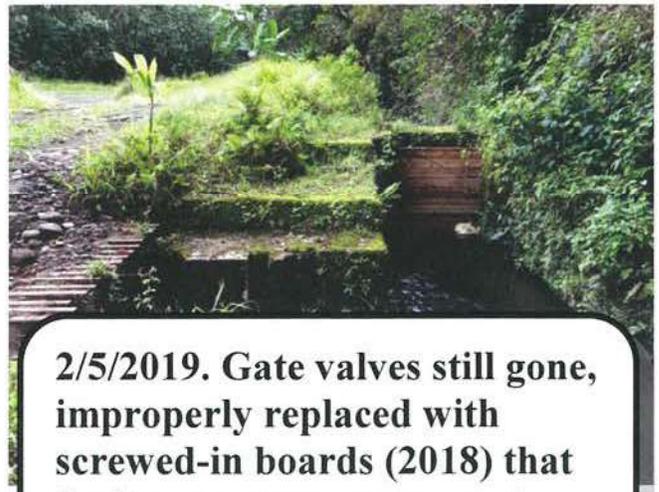
**2000. Wai`ale`ale Dam conditions when KIUC assumed control from Kauai Electric.**



**4/30/2000. Wai`ale`ale, intake ditch and throwout with operational control valves, condition when KIUC assumed diversion operations.**



**2017. Gate Valves Removed. No way to regulate flow or prevent damage from storm events.**



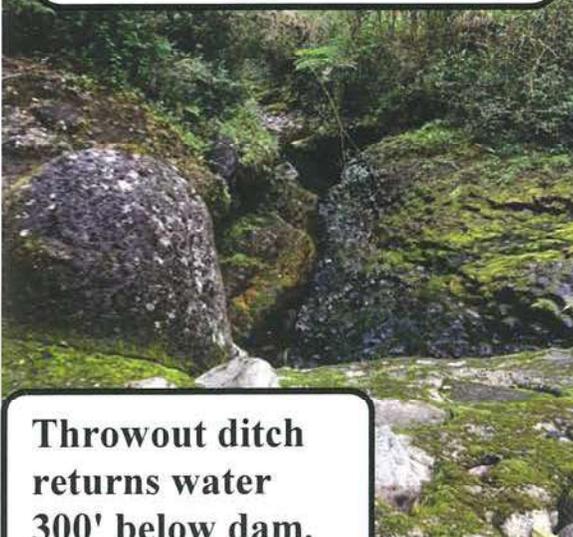
**2/5/2019. Gate valves still gone, improperly replaced with screwed-in boards (2018) that limit emergency response to storm events, and continue baseflow diversion from Wai`ale`ale.**

**12/14/2018. BLNR directs KIUC to restore Mauka-to-Makai Wai`ale`ale and Waikoko streamflow with a minimum of 4 MGD to remain in Wai`ale`ale and 1.6 MGD to remain in Waikoko. KIUC has yet to comply with BLNR's directive.**



**2/5/2019. Waikoko Dam. Streamflow not restored.**

**2/5/2019 Viewpoint from Waikoko Dam looking downstream at dry stream during rain event.**

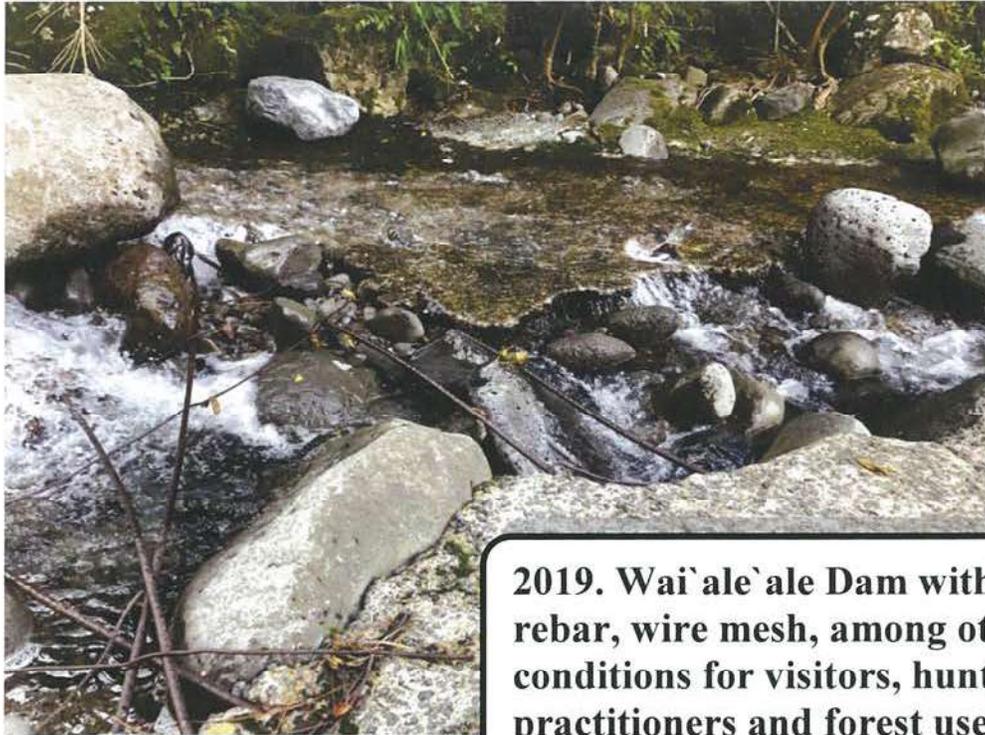


**Throwout ditch returns water 300' below dam.**

**2/5/2019. Boards recently added to throwout ditch, blocking return of baseflow to stream. Boards leak and boulders have been added inside throwout ditch to further restrict return of baseflow to Waikoko Stream.**



**15 years of RP Renewals, exposed rebar, obvious dam deterioration, failure to comply with RP maintenance requirements or public safety mandates.**



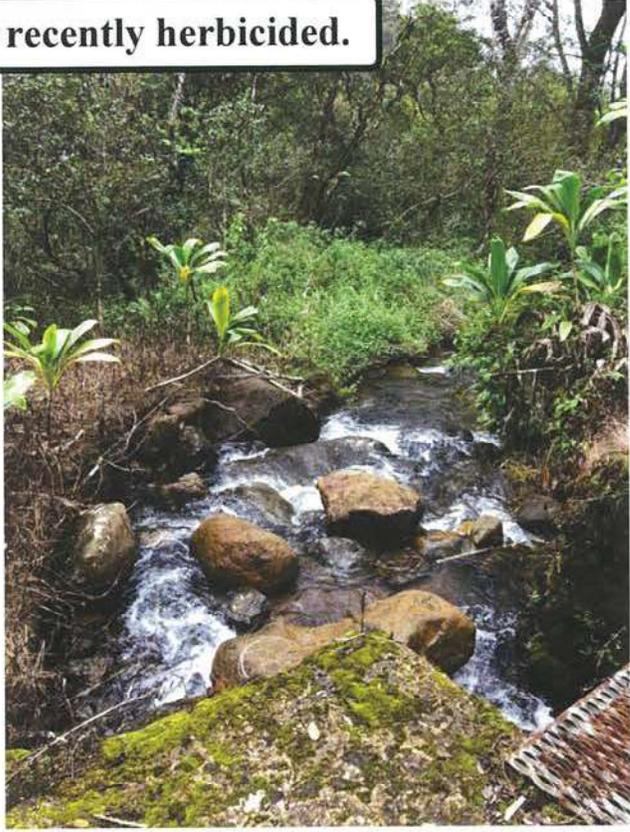
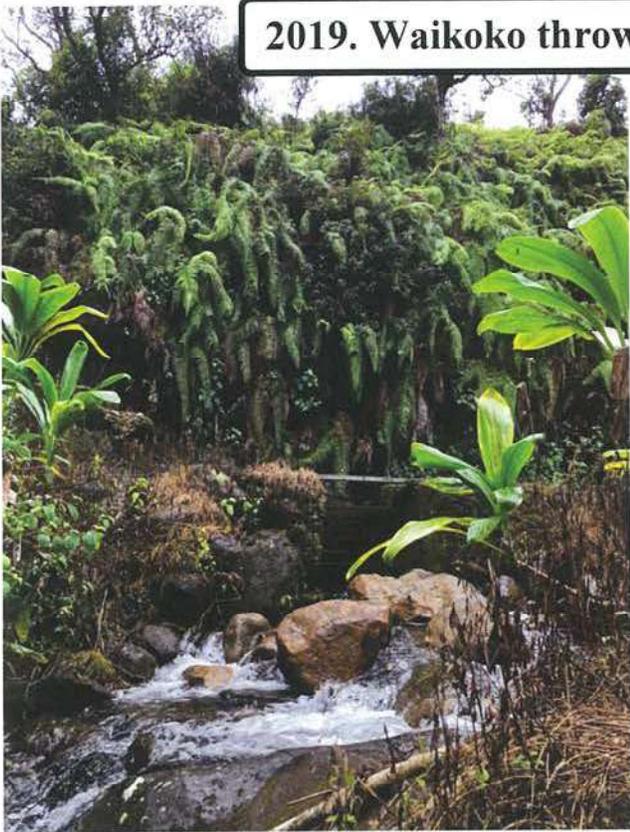
**2019. Wai`ale`ale Dam with exposed rebar, wire mesh, among other unsafe conditions for visitors, hunters, cultural practitioners and forest users.**



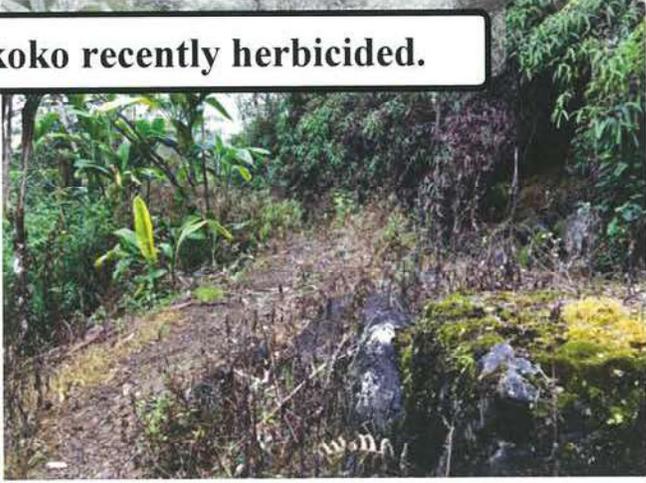
**2/23/2017. Wai`ale`ale Stream de-watered below dam, for almost 1 mile, despite 10/2016 effort by vandals to restore flow.**

**2/5/2019. Waikoko dam and ditch area, recently sprayed with herbicide. Diverted water is delivered to hydro. Water leaves hydro, a portion is diverted to Grove Farm's Surface Water Treatment Plant. Tested and treated for herbicides?**

**2019. Waikoko throwout recently herbicided.**



**2019 `Ili`ili`ula Ditch at Waikoko recently herbicided.**



**REPORT ON THE FACILITATED DISCUSSION  
KAUAI ISLAND UTILITY COOPERATIVE (KIUC) REVOCABLE PERMIT S-7340**

At its December 14, 2018 meeting, the Board of Land and Natural Resources approved a revocable permit for KIUC with the following in its minutes:

Holdover of Revocable Permits for Water Use on the Islands of Hawaii and Kauai. See Exhibit 3 for list of Revocable Permits. APPROVED AS AMENDED. The Board considered the holdover requests for the Hawaii and Kauai water revocable permits in three phases. First, the Board approved the holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative (“KIUC”) as amended. The Board included a condition that KIUC is to invite Earthjustice, Kia’i Wai O Wai’ale’ale, Sierra Club, Grove Farm and the Department of Hawaiian Home Lands (together “The Working Group”), to participate in a facilitated discussion regarding their respective positions on KIUC’s request to use State water for its hydroelectric plants in the permit area as well as any other matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

KIUC approached the Collaborative Leaders Network (CLN) about facilitating these discussions. CLN agreed to undertake this work with the understanding that for the initial meetings CLN would cover any of its own costs in the spirit of encouraging collaborative problems solving.

**The Discussions**

Three meetings were held on Kauai between January and March,

The first meeting was held with all the parties named above and every party expressed their basic sense of the issues involved, how they would like to have this work proceed from a process standpoint, and who else should be part of the process. The Kia’i Wai O Wai’ale’ale, Sierra Club, Earthjustice, HAPA, and Department of Hawaiian Homelands specifically asked if they could meet separately from the others to discuss their concerns (The others were interested in continuing to meet together but deferred to this request).

The second meetings were, as requested, held separately. Joining the morning session was the Office of Hawaiian Affairs. In that session, there were concerns raised on the environmental review process being undertaken by KIUC, KIUC’s adherence to the stream flow numbers set by the Board, the relationship between this process and the larger questions of water use in the region, the value of the two hydro plants involved to Kauai, the larger economic interests involved, how the water lease and IIFS processes will work together, as well as a discussion of the sacredness of the water in the two streams specifically at issue here and how (or if) that can be reconciled with the other uses of the streams. The group also asked that a set of specific questions that they wanted KIUC to answer.

In the afternoon session, Kauai County Managing Director Michael Dahilig, the Kauai County Planning Department, the Kauai Department of Water Supply, and Kauai Backcountry Adventures also joined the conversation. In that session there were concerns raised about making sure that all interests including agricultural and other community public purposes and recreational were included in the decision-making, that all of these water systems are interconnected and therefore making changes to one portion affects many others (cumulative impacts), that this area (Lihue) is the major area for the housing needs on Kauai in the 21<sup>st</sup> century and water decisions need to be made with that in mind, and that Grove Farm has accumulated a lot of knowledge about this system as well as maintained it for the benefit of the island. The group also believes that the interests of all of the parties are not mutually exclusive and would like to work together to come to an understanding.

In addition to these meetings, there were a number of conversations and emails, as well as numerous pages of prior correspondence, documents, photographs, and diagrams provided on the issues involved.

The third set of meetings looked at the messages that the parties wanted to convey to the Board about the handling of the issues in this case.

### **The Questions to KIUC**

1. It is the view of the morning parties that the BLNR had ordered KIUC to release 1.6 MGD in the stream at Waikoko and 4.0 at Wai'ale'ale Stream. Are these amounts of water actually being released?

KIUC believes that it is in compliance with the BLNR order.

KIUC believes the amount required to be release at Waikoko is 0.8 MGD.

(Both sides believe they have it right. There are a couple of ways to move forward on this one. One is to take this dispute to the Board and it will likely be sent to staff who will then report back to the Board on compliance. The other way is to have each side designate one person who will together review the situation including going up to the sites to make sure that they at least understand each other's views of this situation and hopefully agree on a shared understanding of what is going on or at a minimum narrow the dispute as much as possible.)

2. What specific environmental review process is KIUC undertaking in connection with this application.

KIUC has been conducting an Environmental Assessment (EA) with the DLNR as the accepting agency. KIUC expects to complete it and submit it this month or as soon thereafter as possible.

3. How much water does KIUC need to operate the hydro plants at an efficient level?

KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro.

Additionally, there was a desire to know from where the waters for these amounts came from.

For the Upper Hydro, KIUC uses water from these two streams (Wai'ale'ale and Waikoko), the Ililiula diversion (located on Grove Farm land but operated by KIUC as part of the Ililiula North Wailua Ditch System) and some small seasonal contributions during high rains. For the Lower Hydro, KIUC uses water diverted from Waiahi Stream (downstream of the tailrace discharge of the Upper Hydro), Ililiula Stream and some small seasonal streams that contribute during high rains. The amount of water discharged into Waiahi Stream from the Upper Hydro tailrace directly impacts how much water is available for the Lower Hydro.

The original Revocable Permit for Blue Hole and Waikoko diversions combined allowed up to an annual average of 14.2 MGD though through KIUC's diversion history they have been taking more like 13 and under current orders are taking a combined about of 9.6 MGD unless stream flow is above median flows. Overall 50% to 65% of the water used come from the diversion of these two streams.

### **The Wisdom of the Groups**

While there are clearly very divergent views on a significant number of issues, there were commonly held views that are worth setting forth.

First, all the waters in the Lihue region are interconnected and the combinations of streams and diversions/ditches has and continues to have a very significant impact on the environment of the area, the Native Hawaiian culture and its practices in the area, and the economy and quality of life in the area.

Second, there are very strong and divergent views about what the right answers are in terms of (1) the amount of water that needs to be left in the streams, (2) the continuation of total or substantial diversions of water anywhere in the system, and (3) the impact that any significant changes to the current water system will have on the overall social, economic and environmental health of the region.

Third, all parties agree that the Waikoko and Wai'ale'ale issues are just the start of a much broader and more complex conversation and processes about the Lihue region. There are likely to be many more disputes coming with greater and greater consequence to the people of Kauai.

Fourth, the way in which the BLNR's revocable permit/lease processes and the Water Commission's IIFS process will (or won't) work together in a coordinated matter is not at all clear to these parties. Any discussion has a tendency to get to both issues very quickly and in an overlapping manner.

Fifth, all parties agree that some form of formal dispute resolution would be better for Kauai as a community and would want to engage in such a process.

Sixth, all parties are concerned that the tone of the discussions sometimes assumes a level of animosity that is not good for Kauai overall and a process more conducive to community building is very much in Kauai's interest.

### **Specific Recommendation Based on the Discussions**

There needs to be a formal process in which the parties can participate. That process can be a contested case process, a contested case process with a mediation effort at the outset or during it, or some other process, (The parties do believe that any exchange of information and views is useful, but at this stage a formal setting for those discussions and exchanges is critical.)

The most available starting point is the IIFS process at the Water Commission involving the Wai'ale'ale and Waikoko Streams in which a contested case has already been requested.

In the longer term, the issues in the region significantly overlap and intersect, and that as challenging as it may be, consideration needs to be given to having a process examine all of the streams and waters in the Lihue area if that can be done.

Finally as the State moves more and more into the IIFS and water lease processes, it would be helpful if there is as much transparency as possible in how the two processes will coordinate with each other.

Feb. 17, 2019

Bryan Wienand, Manager and Chief Engineer  
Kaua'i County Department of Water  
4398 Pua Loke Street,  
Līhu'e, Kaua'i, Hawai'i 96766  
[bwienand@kauaiwater.org](mailto:bwienand@kauaiwater.org)

RE: Purchase of Waiahi Surface Water Treatment Plant

Aloha e Mr. Wienand:

Mahalo for the quick response to my request for documentation on the "Ownership of Source Water" delivered to the Waiahi Surface Water Treatment Plant, but I do not find any proof in those documents that Grove Farm has the right to sell Public Trust water or the ownership rights to those waters.

The 1989 "Registration of Stream Diversion Works and Declaration of Water Use" shows:

1. Exhibit A: TMK's for 190 properties owned by Lihue Plantation
2. Exhibit "B: Any other property now or hereafter owned or controlled by the Owner and any and all water sources now or hereafter owned or controlled by the Owner."

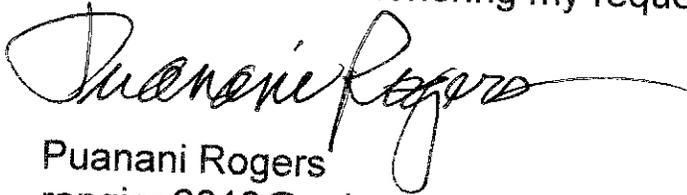
and does not show any proof of ownership of Public Trust water or the right to control or sell those waters of the state. If you have any other documents that show the amount of source water being taken, the amount consumed or being diverted, or that grant any right to sell those waters or rights, I would appreciate a copy.

In this "1989 Registration of Stream Diversions," there are no streams named, no numbers of stream diversions listed, no quantities of water diverted from any of these streams, and no use for any of the water diverted. I strongly object to the Department relying on these documents to determine ownership of water or water rights.

As a Kauai resident, a Kanaka Maoli and a traditional, cultural practitioner, I strongly object to any further efforts on the part of our county water department to purchase a Surface Water Treatment Plant that steals water from the people of Hawaii without permits or environmental impact studies, or any consideration of cultural impacts. The waters of Wai`ale`ale and Waikoko , delivered to Waiahi Surface Water Treatment Plant, are of great cultural and spiritual significance and should not be purchased by the Kauai Department of Water.

Grove Farm does not have a Revocable Permit or water lease to sell public trust water to the Kauai Dept. of Water. These documents do not prove that Grove Farm has the right to sell Public Trust water or the right of ownership of that water. The Kauai Department of Water should not be buying water that Grove Farm does not have the right to sell.

Do not buy this Surface Water Treatment Plant to process stolen water. Mahalo for honoring my request.

A handwritten signature in black ink, appearing to read "Puanani Rogers", with a long horizontal flourish extending to the right.

Puanani Rogers  
[rangien2010@yahoo.com](mailto:rangien2010@yahoo.com)



RECEIVED

09 MAY 25 P 2: 42

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

DIV. OF WATER &  
 LAND DEVELOPMENT

**REGISTRATION OF STREAM DIVERSION WORKS  
 AND  
 DECLARATION OF WATER USE**

**INSTRUCTIONS:** Please type or print. If information is not available or not applicable, indicate as N/A. Fill out as completely as possible, sign, and mail form to the Division of Water Resource Management, P.O. Box 373, Honolulu, Hawaii 96809. Phone 548-3948 or 548-7543 for assistance.

**MULTI-SOURCE SYSTEMS:** For a system of two or more diversion structures, submit a single package to describe the complete system. Include a single location map (or a set of maps if required) showing all diversion structures and measurement points, and a separate copy of this form for each structure and measurement point. On forms describing diversion structures, complete parts A, B, D, and E. On forms describing measurement points, complete parts A, B, and F.

STREAM NAME: N/A ISLAND: See attached Exhibit "A"  
 DIVERSION STRUCTURE NAME: N/A  
 DIVERSION SYSTEM NAME: N/A

**A. DIVERSION WORKS OPERATOR**

Firm name: N/A  
 Contact person: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

**B. OWNER OF DIVERSION WORKS SITE**

Firm name: Lihue Plantation Company, Limited  
 Contact person: Bert Hatton  
 Address: 700 Bishop Street, 20th Floor  
Honolulu, Hawaii  
 Zip: 96813 Phone: 945-8135

**C. STREAM DIVERSION LOCATION** See attached Exhibit "A"

Tax Map Key: \_\_\_\_\_ Town, Place, District: \_\_\_\_\_  
 Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the diversion location. N/A

**D. STREAM DATA**

Streamflow at diversion site is:  Perennial (Water is always flowing)  Intermittent (Channel is sometimes dry) N/A  
 Is streamflow gaged?  Yes  No  
 If yes, provide gage name, and show location on map. Name: \_\_\_\_\_  
 Average flow before diversion: N/A  mgd  gpm  cfs

**E. DIVERSION STRUCTURE DATA**

Year constructed: N/A Elevation (Above mean sea level): N/A  
 Diversion structure is:  Concrete  Wood  Pipe  Other (Describe): N/A  
 Diverted flow is:  Controlled  Uncontrolled N/A  
 Divertable capacity is: N/A  mgd  gpm  cfs

Submit an "as-built" drawing and dated photograph of the diversion works, if available.

... (continued over)

**For Official Use Only:**

Date received: \_\_\_\_\_ Date accepted: \_\_\_\_\_  
 Field checked by: \_\_\_\_\_ Date: \_\_\_\_\_ Latitude: \_\_\_\_\_ Hydrologic Unit: \_\_\_\_\_  
 Comments: \_\_\_\_\_ Longitude: \_\_\_\_\_ State Diversion No.: \_\_\_\_\_

References: Hawaii Revised Statutes, Chapter 174C.  
 Hawaii Administrative Rules, Chapters 13-167 to 13-171.

F. DECLARATION OF WATER USE

**NOTE:** The purpose of the Declaration of Water Use is to obtain information necessary for the management of the State's water resources. The Declaration does not confer a legal right to water or its use.

Location and name of measurement point (Show on location map): N/A  
 Water use data are recorded:  Continuously  Daily  Other: N/A  
 Method of measurement (Check box and describe below):  Weir  Rating flume  Other  
 Description: N/A

Quantity of Use (Report gaged or estimated monthly water use from the diversion described on the reverse side of this form, for the calendar years 1983 through 1987):  
N/A  
 WATER USE, IN \_\_\_\_\_ (unit of measurement)

	1983	1984	1985	1986	1987
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					
ANNUAL					

Typical times of usage: N/A

Type of Use (Check all category boxes that apply and provide additional information as indicated.):

Category	Additional Information
<input type="checkbox"/> Municipal (including resorts, hotels, businesses)	_____
<input type="checkbox"/> Domestic (systems serving 25 people or less)	Number of service connections: _____
<input type="checkbox"/> Irrigation	Acres Irrigated: _____ Crop(s): <input type="checkbox"/> Sugar <input type="checkbox"/> Pineapple <input type="checkbox"/> Other (specify): _____ Non-Crop: <input type="checkbox"/> Landscape <input type="checkbox"/> Golf Course <input type="checkbox"/> Other (specify): _____ Method: <input type="checkbox"/> Drip <input type="checkbox"/> Furrow <input type="checkbox"/> Sprinkler
<input type="checkbox"/> Industrial	<input type="checkbox"/> Cooling <input type="checkbox"/> Manufacturing <input type="checkbox"/> Mill <input type="checkbox"/> Other (specify): _____
<input type="checkbox"/> Military	_____
<input checked="" type="checkbox"/> Other	Specify (livestock, hydroelectric, aquaculture, etc.): <u>See attached Exhibit "B"</u>

Location of Use (Describe the location of water use, relative to the diversion, and indicate on location map. If water is used by others, submit a list of their names and addresses.):  
N/A

I declare that the contents of the above Declaration of Water Use are, to the best of my knowledge and belief, true, correct, and complete.

Water User's Signature: Bert Hatton Date: 5/24/89  
 Printed Name: Bert Hatton, Lihue Plantation Company, Limited  
 Firm or Title (Diversion Operator, etc.): Vice President

EXHIBIT "A"ISLAND: KAUAIOWNER OF DIVERSION WORKS / POTENTIAL DIVERSION WORKS ("Owner")

Firm Name: LIHUE PLANTATION COMPANY, LIMITED  
 Contact Person: BERT HATTON  
 Address: 700 Bishop Street, 20th Floor  
 Honolulu, Hawaii  
 Zip: 96813 Phone: 945-8135

STREAM DIVERSION LOCATION / POTENTIAL STREAM DIVERSION LOCATION

A.	<u>Tax Map Key</u>	<u>Tax Map Key</u>
	4-2-1-003-004	4-3-9-002-025
	4-1-4-002-048	4-3-9-002-026
	4-3-2-004-020	4-3-9-002-027
	4-3-2-004-021	4-3-9-002-028
	4-3-2-004-041	4-3-9-005-002
	4-3-2-004-053	4-3-9-006-009
	4-3-2-004-063	4-3-9-006-012
	4-3-3-001-001	4-4-1-004-020
	4-3-3-002-001	4-4-2-001-003
	4-3-3-002-012	4-4-2-001-006
	4-3-3-002-020	4-4-3-004-008
	4-3-3-002-021	4-4-5-013-028
	4-3-3-003-001	4-4-5-015-035
	4-3-4-001-002	4-4-6-014-099
	4-3-4-001-004	4-4-7-001-003
	4-3-4-005-003	4-4-7-001-004
	4-3-4-005-006	4-4-7-002-004
	4-3-4-005-009	4-4-7-004-002
	4-3-4-006-002	4-4-7-004-003
	4-3-4-006-004	4-4-7-004-004
	4-3-4-006-005	4-4-7-004-005
	4-3-4-006-006	4-4-7-004-007
	4-3-4-006-008	4-4-8-001-002
	4-3-4-006-009	4-4-8-002-001
	4-3-4-006-011	4-4-8-003-001
	4-3-4-006-012	4-4-8-003-002
	4-3-5-001-005	4-4-8-003-003
	4-3-5-001-009	4-4-8-003-004
	4-3-5-001-109	4-4-8-003-006
	4-3-5-001-013	4-4-8-003-011
	4-3-7-001-001	4-4-8-003-018
	4-3-7-002-001	4-4-8-003-019
	4-3-7-003-001	4-4-8-003-020
	4-3-8-002-003	4-4-8-003-021
	4-3-8-005-012	4-4-8-003-029
	4-3-9-001-002	
	4-3-9-002-001	
	4-3-9-002-012	
	4-3-9-002-020	
	4-3-9-002-024	

B. Any other property now or hereafter owned or controlled by the Owner and any and all water sources now or hereafter owned or controlled by the Owner.

ISLAND: KAUAI

OWNER OF DIVERSION WORKS / POTENTIAL DIVERSION WORKS ("Owner")

Firm Name: LIHUE PLANTATION COMPANY, LIMITED  
 Contact Person: BERT HATTON  
 Address: 700 Bishop Street, 20th Floor  
 Honolulu, Hawaii  
 Zip: 96813 Phone: 945-8135

STREAM DIVERSION LOCATION / POTENTIAL STREAM DIVERSION LOCATION

A.	<u>Tax Map Key</u>	<u>Tax Map Key</u>
	4-3-2-005-007	4-3-8-005-009
	4-3-2-005-009	4-3-8-005-016
	4-3-5-001-006	4-3-8-009-100
	4-3-5-001-010	4-3-8-010-035
	4-3-5-001-082	4-3-8-010-036
	4-3-5-001-085	4-3-9-002-002
	4-3-5-001-103	4-3-9-005-005
	4-3-5-001-118	4-3-9-005-006
	4-3-6-002-001	4-3-9-005-014
	4-3-6-002-017	4-4-3-002-006
	4-3-6-004-001	4-4-3-003-001
	4-3-6-005-007	4-4-3-003-002
	4-3-6-005-019	
	4-3-6-010-104	4-4-3-003-004
	4-3-7-001-001	4-4-3-003-005
	4-3-7-001-003	4-4-3-003-007
	4-3-7-001-005	4-4-3-003-008
	4-3-7-001-007	4-4-3-003-009
	4-3-7-001-030	4-4-3-003-011
	4-3-7-002-001	4-4-3-003-014
	4-3-7-002-003	4-4-3-003-015
	4-3-7-002-005	4-4-3-004-011
	4-3-7-002-012	4-4-3-005-001
	4-3-7-003-001	4-4-3-005-003
	4-3-7-003-020	4-4-3-005-004
	4-3-7-003-021	4-4-3-005-005
	4-3-7-003-023	4-4-3-005-006
	4-3-7-007-012	4-4-3-005-021
	4-3-8-001-001	4-4-3-008-010
	4-3-8-002-001	4-4-5-013-003
	4-3-8-002-002	4-4-5-013-014
	4-3-8-002-003	4-4-6-008-037
	4-3-8-002-004	4-4-7-001-001
	4-3-8-002-005	4-4-7-002-001
	4-3-8-002-009	4-4-7-002-003
	4-3-8-003-001	4-4-7-002-005
	4-3-8-004-001	4-4-7-003-001
	4-3-8-004-006	4-4-7-003-002
	4-3-8-004-007	4-4-7-003-005
	4-3-8-005-003	4-4-7-003-006
	4-3-8-005-008	4-4-7-004-001
		4-4-7-004-006

B. Any other property now or hereafter owned or controlled by the Owner and any and all water sources now or hereafter owned or controlled by the Owner.

EXHIBIT "A"ISLAND: KAUAIOWNER OF DIVERSION WORKS / POTENTIAL DIVERSION WORKS ("Owner")

Firm Name: LIHUE PLANTATION COMPANY, LIMITED  
 Contact Person: BERT HATTON  
 Address: 700 Bishop Street, 20th Floor  
 Honolulu, Hawaii  
 Zip: 96813 Phone: 945-8135

STREAM DIVERSION LOCATION / POTENTIAL STREAM DIVERSION LOCATION

A.	<u>Tax Map Key</u>	<u>Tax Map Key</u>
	4-4-7-005-016	4-4-9-009-022
	4-4-7-005-028	4-4-9-009-023
	4-4-7-006-020	4-4-9-009-024
	4-4-9-003-004	4-4-9-009-025
	4-4-9-003-005	4-4-9-009-026
	4-4-9-005-004	4-4-9-009-027
	4-4-9-005-006	4-4-9-009-028
	4-4-9-008-016	4-4-9-009-029
	4-4-9-008-017	4-4-9-009-035
	4-4-9-009-001	4-4-9-009-036
	4-4-9-009-007	4-4-9-009-037
	4-4-9-009-009	4-4-9-009-038
	4-4-9-009-010	4-4-9-012-002
	4-4-9-009-011	4-5-3-001-010
	4-4-9-009-012	
	4-4-9-009-013	
	4-4-9-009-014	
	4-4-9-009-015	
	4-4-9-009-016	
	4-4-9-009-017	
	4-4-9-009-018	
	4-4-9-009-019	
	4-4-9-009-020	
	4-4-9-009-021	

B. Any other property now or hereafter owned or controlled by the Owner and any and all water sources now or hereafter owned or controlled by the Owner.

EXHIBIT "B"

Owner, as identified on Exhibit "A," owns or controls vested water rights belonging or appertaining to, used on, or in some manner associated with the property identified in the attached Declaration of Water Use. Owner has reserved for itself, used, sold, leased or transferred such water rights in the maximum amount permitted by law. To the extent Owner has not so reserved, used, sold, leased or transferred such water rights, Owner hereby reserves such water rights for itself. Owner intends to continue to reserve for itself, use, sell, lease or transfer such water rights in the maximum amount permitted by law.

# REQUEST TO ACCESS A GOVERNMENT RECORD

**DATE:** 12 Feb. 2019  
**TO:** Kauai Dept of Water  
**FROM:** Puanani Rogers  
Name or Alias: rangierizulu@yahoo.com  
Contact Information:

Although you are not required to provide any personal information, you should provide enough information to allow the agency to contact you about this request. The processing of this request may be stopped if the agency is unable to contact you. Therefore, please provide any information that will allow the agency to contact you (name or alias, telephone or fax number, mailing address, e-mail address, etc.).

## I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

According to KDOW Mgr. Bryan Weinand, information, from the Public Record recently delivered by Grove Farm to the KDOW about "ownership of source water" as referred to in Jan. 25, 2019 agenda item H7 New Business: Section 2.b. Control of Surface Water System of the Agreement is as follows: MANAGER'S REPORT 19-42 January 25, 2019. I would like to see ownership information about this "source water" for the Waiahi Surface Water Treatment Plant.

## I WOULD LIKE: (please check one or more of the options below)

- To inspect the government record.
- A copy of the government record:** (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.
  - Pick up at agency (**date and time**): \_\_\_\_\_
  - Mail
  - Fax (toll free and only if available)
  - Other, if available (please specify): Email
- If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.
  - Electronic
  - Audio
  - Other (please specify): Email
- Check this box if you are attaching a request for waiver of fees in the public interest (see waiver information on back).

I understand and agree to the following understandings and conditions:

Due to security concerns, the water system facilities information for the subject project is for the applicants use only. The water system information provided by the Department will not be viewed or distributed to others and will not be used for purposes other than for the site assessment.

Print Name: Puanani Rogers Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

## **FEES FOR PROCESSING RECORD REQUESTS**

You may be charged fees for the services that the agency must perform when processing your record request, including fees for making photocopies and other lawful fees. **The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you.** Fees are as follows:

Search for a Record	\$2.50 for 15 minutes
Review and Segregation of a Record	\$5.00 for 15 minutes

## **WAIVER OF FEES IN THE PUBLIC INTEREST**

Up to \$60 of fees for searching for, segregating and reviewing records may be waived when the waiver would serve the public interest as described in section 2-71-32, Hawaii Administrative Rules. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are:

- (1) The requested record pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

## **AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS**

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in **extenuating circumstances** the agency must respond within 20 business days from the date of your request. If you have questions about the response time, you may contact the agency's UIPA contact person. If you are not satisfied with the agency's response, you may call the Office of Information Practices at 808-586-1400.

## **REQUESTER'S RESPONSIBILITIES**

You have certain responsibilities under §2-71-16, Hawaii Administrative Rules. You may obtain a copy of these rules from the Lieutenant Governor's Office or from the Office of Information Practices. These responsibilities include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees, if assessed.

# DEPARTMENT OF WATER

County of Kaua'i

*"Water has no Substitute – Conserve It!"*

## STANDARD LETTER OR LEGAL SIZE REPORTS

10 Pages or Less.....	50 ¢ per page
More than 10 Pages.....	50 ¢ per page for the first 10 pages and 25 ¢ per page thereafter
More than 50 Pages.....	10 ¢ per page if done by self-service The operator must be trained & authorized to run the machine, otherwise charge shall be 25 ¢ per page

Any department of agency shall impose and collect the following charges for a reproduced copy of any of the public records in its custody as described below, the reproduction of which is requested by any person for private use:

- 1) Copyflex Paper..... 50 ¢ per square foot
- 2) Area Maps - Ranges from \$2.00 - \$2.75
  - a) 18" X 30" & 18" X 32".....\$2.00
  - b) 18" X 36"..... \$2.25
  - c) 18" X 39"..... \$2.45
  - d) 18" X 43"..... \$2.65
  - e) 18" X 45"..... \$2.70
  - f) 22" X 36" ..... \$2.75
- 3) Subdivision, Zoning & Tax Maps (Maximum size 8 1/2" X 14")  
.....\$1.00 per sheet
- 4) Supia Paper ..... \$5.00 per square foot
- 5) Mylar Film ..... \$10.00 per square foot
- 6) Aerial Contour Maps on Copyflex Paper ..... \$30.00 per sheet
- 7) Aerial Contour Maps on Sepia Paper ..... \$550.00 per sheet
- 8) Aerial Contour Maps on Mylar Film .....\$600.00 per sheet

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

REVOCABLE PERMIT NO. S-7340

KNOW ALL MEN BY THESE PRESENTS:

This Agreement is executed this 11<sup>th</sup> day of August 2003, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and KAUAI ISLAND UTILITY COOPERATIVE, a Hawaii non-profit cooperative electric company, hereinafter called the "Permittee," whose mailing address is 4463 Pahee Street, Lihue, Hawaii 96766. The parties agree that commencing on the 1st day of January, 2003, ("commencement date"), Permittee is permitted to enter and use, on a month-to-month basis only, pursuant to section 171-58, Hawaii Revised Statutes, water emanating from, and the water transmission system situate at, Lihue-Koloa Forest Reserve, Wailua, Lihue, Kauai, tax map key no. (4) 3-9-1, as indicated on the map attached hereto, if any, and made a part hereof, also known as the "Blue Hole" diversion which is hereinafter referred to as the "Water Resources."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Use the Water Resources for the following specified purposes only:  
To divert, take, draw off, conduct away and dispose of government-owned water emanating from the Blue Hole diversion (which consists of both of the stream diversions located at Blue Hole on the North Fork of the Wailua River and the diversion at the Waikoko Stream above USGS Gage 612 all of which are collectively referred to as the "Blue Hole" diversion) and use, operate, repair and maintain a portion of an existing government-owned water transmission infrastructure system including the Blue Hole diversion all for the purpose of generating hydroelectric power with the Permittee's two hydroelectric plants.
2. Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawai'i 96809, monthly rent in the sum of THREE THOUSAND ONE HUNDRED TEN DOLLARS AND NO/CENTS (\$3,110.00) payable in advance by the first of each and every month.



The interest rate on any unpaid or delinquent rentals shall be at one percent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board an amount equal to two times the monthly rental stated above in paragraph 2, as security for the faithful performance of all of these terms and conditions. The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.
4. At the Permittee's own cost and expense, keep the government-owned improvements that are part of the Water Resources insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) calendar days notice, in writing, before ceasing use of the Water Resources.
6. Pay all applicable real property taxes assessed, if any, from the commencement date of this Permit.
7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at



any future time during the term of this Permit applicable to the Water Resources including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.

8. Repair and maintain all buildings or other improvements now or hereafter part of the Water Resources.

9. Obtain the prior written consent of the Board before making any major improvements.

10. Keep the Water Resources and improvements in a clean, sanitary, and orderly condition.

11. Pay all charges, assessments, or payments relating to the Water Resources including utilities.

12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Water Resources.

13. At all times with respect to the Water Resources, use due care for public health and safety.

14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, commercial general liability insurance, in an amount acceptable to the Chairperson with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the Water Resources, including all grounds and all roadways on or adjacent to the Water Resources in the use or control of the Permittee.

Prior to use of the Water Resources or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after sixty (60) days written notice has been given to the State.



The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks that exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
16. Pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Water Resources, or in the collection of delinquent rental, taxes, and any and all other charges.
17. Use of the water taken from the Water Resources shall be limited to the areas presently or formerly served. Expansion is not permitted.
18. The Permittee shall record and report monthly water use from the surface water diversions in accordance with Section 13-168-7, Hawaii Administrative Rules.
19. This permit shall cease and be void if the Board issues a lease pursuant to Section 171-58, Hawaii Revised Statutes for the Water Resources or portion thereof.



20. The State reserves the right to withdraw water from this revocable permit to meet the following requirements as the State in its sole discretion may determine:

Constitutionally protected water rights, in-stream flow standards, reservations needed to meet the Department of Hawaiian Home Lands rights under Section 221 of the Hawaiian Homes Commission Act, as well as other statutorily or judicially recognized interests relating to the right to withdraw water for the purposes of and in accordance with the provisions of Section 171-58(d), Hawaii Revised Statutes.

21. Prior to any expansion or modification of any diversion works applicable to this project, Permittee shall document all proposed modifications to the hydropower plant and diversion works, and submit such documentation to the Commission on Water Resource Management ("CWRM"), and obtain, if necessary, approvals from CWRM.

22. It is in the State's best interests to have its water returned to State land for irrigation purposes after its initial diversion for hydroelectric purposes, as previously existed when the prior lessee managed the system. To that end:

a. The amount of water diverted into the ditch system at Blue Hole on an annual basis shall not exceed the average annual amount diverted as measured for the period from years 1992 to 2002.

b. Any applicable service charge to the cooperative members, by Grove Farm, shall be for the upkeep of the delivery system, not for the water.

23. Within six (6) months form the date of Board approval, Permittee shall submit to the Board a report concerning the following matters:

a. Permittee shall provide data concerning the amount of water diverted into the ditch system at Blue Hole: on an annual basis on average for the period from years 1992 to 2002, and for all prior months operated by the Permittee.

b. Permittee shall provide data and recommendations concerning the allocation of water during low volume periods (e.g. drought) between the Blue Hole diversion, the Stable Storm diversion, the Wailua Reservoir diversion, and Aahoaka diversion.



c. The water allocation proposal based upon Permittee's study and as agreed to by the Board is to be incorporated as a condition of this Permit upon Board approval.

B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Water Resources or continues to use the Water Resources.

2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.

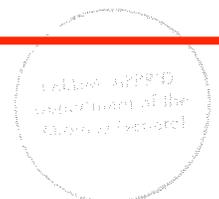
3. If the Permittee fails to cease the use of the Water Resources upon revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.

4. If the Permittee fails to cease the use of the Water Resources upon revocation or termination of the Permit, the Board, by its agents, or representatives, may, without notice, seize, remove and dispose of all vehicles, equipment, materials, or any personal property associated with the Water Resources, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.

5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.



6. Any major improvements erected on or in the Water Resources by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Water Resources; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
7. The Board reserves the right for its agents or representatives to enter and inspect the Water Resources and use of the Water Resources at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Water Resources and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Water Resources shall not be in support of any policy that discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials onto or into the Water Resources except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto or released into the Water Resources any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials

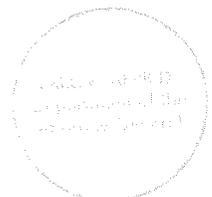


and upon the Board's consent which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on or in the Water Resources placed or released by Permittee.

Permittee agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the permit.

For the purpose of this permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Permittee shall indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.
15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Water Resources, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.



16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.
17. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally. \_\_\_\_\_



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By [Signature]  
Chairperson of the Board of Land and Natural Resources

SW

Approved by the Board of Land and Natural Resources at its meeting held on December 13, 2002.

PERMITTEE

KAUAI ISLAND UTILITY COOPERATIVE,  
a Hawaii non-profit cooperative electric company

By [Signature]  
Alton H. Miyamoto  
Its President - CEO

And By \_\_\_\_\_  
Its \_\_\_\_\_

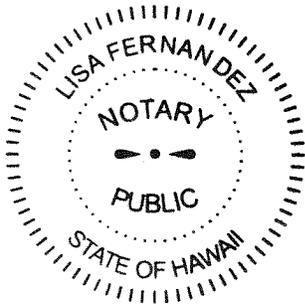
APPROVED AS TO FORM:

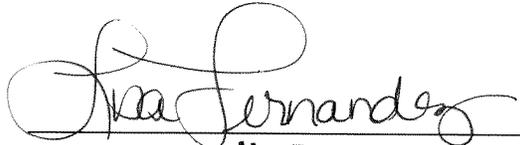
[Signature]  
Deputy Attorney General  
Dated 3/7/03



STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

On this 28<sup>th</sup> day of March, 2003, before me appeared ALTON H. MIYAMOTO, to me personally known, who, being by me duly sworn and affirmed, did say that he is the President & CEO of KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association formed pursuant to the provisions of Chapter 421C of the Hawaii Revised Statutes, and that said instrument was signed on behalf of said association by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said association.



  
Name: Lisa Fernandez  
Notary Public, State of Hawaii  
My commission expires: 8-11-06

**From:** [Moises, Dustin](#)  
**To:** "Mahealani Krafft"  
**Subject:** RE: DHHL Comments & preliminary DEA draft comments  
**Date:** Wednesday, April 10, 2019 11:13:00 AM

---

## Dustin Moises, P.E.

Civil Engineer - Chief of Construction Management  
Construction Management Team Leader  
Phone: 808-245-5459  
Fax: 808-245-5813

---

Managers do things right, Leaders do the right thing. – Warren Bennis



CONFIDENTIAL COMMUNICATION: This message (and any attachments) is intended only for the use of the designated recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone and delete this message and any attachments. Thank you.

---

**From:** Mahealani Krafft [mailto:[mkrafft@kauai.gov](mailto:mkrafft@kauai.gov)]  
**Sent:** Wednesday, April 10, 2019 10:58 AM  
**To:** Moises, Dustin <[dmoises@kauaiwater.org](mailto:dmoises@kauaiwater.org)>  
**Subject:** FW: DHHL Comments & preliminary DEA draft comments

---

**From:** Moises, Dustin <[dmoises@kauaiwater.org](mailto:dmoises@kauaiwater.org)>  
**Sent:** Monday, July 31, 2017 4:09 PM  
**To:** Michael Dahilig <[mdahilig@kauai.gov](mailto:mdahilig@kauai.gov)>  
**Cc:** [bill@kodani.com](mailto:bill@kodani.com); Kirk Saiki <[ksaiki@kauaiwater.org](mailto:ksaiki@kauaiwater.org)>; Aoki, Keith <[KAoki@kauaiwater.org](mailto:KAoki@kauaiwater.org)>;  
Krafft, Mahealani <[mkrafft@kauaiwater.org](mailto:mkrafft@kauaiwater.org)>; Mahealani Krafft <[mkrafft@kauai.gov](mailto:mkrafft@kauai.gov)>  
**Subject:** RE: DHHL Comments & preliminary DEA draft comments

Howzit Mike,

I'm not typically involved with EA reviews anymore since I only oversee construction but I have done EA's in past so here's my comments per your request to help you evaluate the situation. I wanted to get you my comments today so you can prep for Wednesday accordingly.

First, the DHHL letter dated June 30, 2017 is by procedure, in response to the preconsultation letter

sent in May 2017 by KAE. The general scope and map of the preconsultation letter doesn't detail much about the project so a response like this would likely come from someone with history to the project or they are referencing the old DEA that got cancelled. Also, the draft EA I received last week doesn't include a response to this letter because KAE said the letter actually came last week after DEA was submitted to DOW although the date of DHHL letter is June 30, 2017. Regarding the DEA, this letter should be addressed before the DEA is published. That being said, here's my comments related to DHHL letter.

**Comment #1** – There are administrative criteria for significance. Of the 13, this comment could be related to “Conflicts with the State’s long-term environmental policies or goals and guidelines as expressed in HRS 344” & “substantially affects the economic or social welfare of the community or State”. The DEA should be addressing DHHL’s concern related to their projects in the State Water Projects Plan as it relates to CWRM approvals. The original SWTP was rated for 3 MGD + train expansion. The May 6, 2003 Final Engineering Report states plan can go from 3.0 MGD to 4.0MGD with plant capacity firm rates of 3.35 mgd to 4.46 mgd. The new pipeline will allow transmission of more water from the Waiahi Treatment Plant expansion from where it is now. Being that it is known this pipeline will allow expansion (increased withdrawal from Kapaia Reservoir) of SWTP, the argument could be made to that point. The DEA should provide a narrative related to this to ensure the pipeline project will not have a significant impact regarding CWRM source since having the water available is much different than DHHL being able to provide the infrastructure to get the water to their development. Again, this goes back to the flow that was approved with initial plant build in 2005 and capacity by DOH.

**Comment #2** – Their comment is right out of the OEQC guide to implementation of HEPA. Similar to item 1, the new pipeline will allow more water transmission from the Reservoir if/when SWTP expanded. I did not do the engineering calcs but if the 18” main can transmit more (increase capacity for water delivery) than the original SWTP MGD approval, then this would be a valid comment since it would be increased withdrawal of Wailua fork water that goes to Waiahi reservoir. That being said, is it necessary to examine the tributaries above the SWTP reservoir? I would say that if the surface water feeding the reservoir will not be changed with expansion (reservoir will have lower level at equilibrium), then maybe not but the safer route would be to study the situation and verify with the DEA. KDOW has no control over diversions but if the 18” allows for more transmission than the current SWTP capacity, I would say the significance should be studied and a conclusion derived in the DEA regarding any impact to tributaries feeding the existing reservoir. Finally, I think their statement “No environmental assessment or statement was prepared for Grove Farm SWTP operations and the DEA should include this assessment within its scope.” is the biggest one of this comment. The original treatment plant did not have an EA done and since the very first trigger for HEPA is use of “county funds”, one could question validity of the existing SWTP development since KDOW paid 2/3 of the cost with GF and will own it. It would have been helpful to have that done then to fall on now but without one that I am aware of, I would say that should be revisited now with pipeline DEA. From there, the 13 administrative criteria for significance should be evaluated which basically overrides everything I said earlier had you separated STWP from transmission line. This poses a big issue for KDOW a decade later. This is something that should be considered to protect the Board’s current and future interests/liabilities at Waiahi.

**Comment #3** – Similar to comment #1 as it relates to DHHL planned developments. The DEA can address detailed description of the proposed uses for the increased water delivery (Water Resource & Planning) could help with determining what the 18" main will allow (DHHL and non DHHL planned developments) and work with KAE if they haven't already. I think the comment related to public trust is very broad and something I wouldn't feel needed to be addressed if an EA was conducted a decade ago. With no EA, I question whether or not it should be dealt with now.....see response to next comment.

**Comment #4** – I think this is more of a CWRM item and anything related to water use/permits, etc. is CWRM. First, on the engineering side of things, if the 18" waterline capacity is calculated to allow more than the original SWTP design intent, then "proposed increase water withdrawals" should be evaluated with DEA. However, CWRM is the body that deals with the original 3MGD usage. Assuming (with emphasis), the 3 MGD was approved by CWRM a decade ago, I don't see any issues with the 3 MGD or anything approved by CWRM back then if in line with the PER done in early 2000's.....but then I keep coming back to my comment in #2 above. Since no EA was ever done for original SWTP construction, do we address it now? Outside of that, KDOW has no control of diversions. I would say we stay out of that as related to the 18" main.....but goes back to what I said in comment #2. If you increase transmission capacity, which will increase reservoir withdrawals, you need to assess that you can do it without increasing flow into reservoir which should be addressed by confirming yes or no in DEA.

**Comment #5** – the cultural impact should be assessed but whether it should be "extensive" or what is deemed "extensive" is in question. Regarding the 18" main construction itself, I would say the area should be evaluated during DEA via guidance for assessing cultural impacts by OEQC. At a glance, I would agree that the project is located in a relatively developed area and one would assume that the waterline construction itself will likely not affect cultural resources but the only way to assure that is to conduct a cultural assessment with a qualified cultural expert. That being said, you it goes back to what I've been saying all along. If the 18" waterline increases capacity which relates to increased SWTP flow, then you would have to do a more "extensive" study upstream of the new waterline is my take.

I have not read the DEA in detail yet but based on DHHL letter and a skim of the DEA provided to me on Friday, I would recommend the approach below.

1. Define the project clearly. What is the pipeline for? What development will it serve (Hanamaulu Triangle, Grove Farm developments, ADU, ARU, etc.)? Is it a pipeline that will increase the capacity (backed up by engineering calcs) above the original SWTP flows that were approved in 2003? If yes, I think you have to evaluate upstream of the pipeline and possibly upstream of the SWTP. If no, then you stay within the pipeline area and it is easy.

[This is the most important task. Verbage can be used to say both but in the end, use the engineering calcs. Private water system or not, if you increase the size of the pipeline and it allows more transmission capacity, you allow the increase of transmission of water for development. From there, if you know the SWTP will be expanded and will not be able to without the 18" main here (Maalo Road deemed insufficient), I think you have to connect

the dots and draw correlation as I stated above to disclose everything.] If SWTP expansion within original approved limit, I wouldn't worry about the 18" main upstream but it should be confirmed and disclosed.

The draft DEA page 3 states "The capacity of the Waiahi SWTP will not increase due to the installation of the 18-inch water transmission main.". Is this a true statement? If the 18" main were to not occur, could Waiahi SWTP be expanded beyond current flows to anticipated flows with current infrastructure? There is a paragraph right after the statement about Waiahi SWTP being modified in the future. There are modifications that are known at this time such as expansion (going above 3 MGD under existing foot print per Final engineering report 5/6/2003) and potentially outside of existing footprint which should be disclosed now in the DEA. If you are not doing with this EA, does that mean expansion under existing footprint and/or future expansion will be done with a separate EA even if KDOW does not expend funds? I think this should be clearly narrated so it is not a play on words. "Any future expansion of the SWTP is not a necessary action for the proposed 18-inch water transmission main as the proposed project provides the needed transmission capacity for the existing KDOW with or without future SWTP expansion." Okay, but what about reverse? Can future SWTP that is known to be happening occur without the 18" main? If so, this is fine and KDOW is protected in the long term. If not, I think it should be disclosed clearly regarding at minimum the upcoming train expansion being designed by ATA via recent PER.

The natural/cultural impacts should be evaluated by someone deemed knowledgeable. I don't see who did it in section 7.1 & 7.8

Section 7.3, 7.4 , & 7.6 should be addressed to deal with DHHL letter

Section 7.9. – Will the 18" main not involve a commitment (allowance) to larger actions development wise? The project itself will not but do you correlate to bigger developments as a domino? Just be clear on this one.

7.10 – I had to do a Nene study for DOW building. Being this is near Waiahi, how did you determine this? (Bill check numbering)

2. How do you address the EA not being done a decade ago as related to DHHL comment #2 when DOW funds were used the same way the EA was triggered for this pipeline? SWTP is a private system so we have to separate ourselves from that and diversions but we can't separate from the 2/3 DOW \$. I think this is the biggest issue related to the EA comments. We don't have anything to stand on from a decade ago to help us now.
3. KAE in drafting it with KDOW should be transparent to the community and disclose anything that could be an issue related to EA whether involves GF, County or KDOW. In doing so, evaluate the 13 administrative criteria for significance and determine CWRM vs KDOW vs others responsibilities during the process. Utilize the OEQC guide for HEPA implementation.

I know this might have made things more confusing but item 1 is really what sets the framework moving forward. Then how you deal with item 2.....then just do by item 3. Let me know if any questions.

**Dustin Moises, P.E., CISEC, DSO III**

Civil Engineer  
Chief of Construction Management  
Construction Management Division Head  
Phone: 808-245-5459  
Fax: 808-245-5813

*"You're never wrong to do the right thing", Mark Twain*



CONFIDENTIAL COMMUNICATION: This message (and any attachments) is intended only for the use of the designated recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone and delete this message and any attachments. Thank you.

-----Original Message-----

From: Michael Dahilig [<mailto:mdahilig@kauai.gov>]  
Sent: Friday, July 28, 2017 11:53 AM  
To: Krafft, Mahealani <[mkrafft@kauaiwater.org](mailto:mkrafft@kauaiwater.org)>; Mahealani M. Krafft <[mkrafft@kauai.gov](mailto:mkrafft@kauai.gov)>  
Cc: [bill@kodani.com](mailto:bill@kodani.com); Saiki, Kirk <[ksaiki@kauaiwater.org](mailto:ksaiki@kauaiwater.org)>; Moises, Dustin <[dmoises@kauaiwater.org](mailto:dmoises@kauaiwater.org)>; Aoki, Keith <[KAoki@kauaiwater.org](mailto:KAoki@kauaiwater.org)>  
Subject: DHHH Comments

Howzit Mahea,

[Redacted]

[Redacted]

[Redacted]

Thanks,  
Mike

**REPORT ON THE FACILITATED DISCUSSION  
KAUAI ISLAND UTILITY COOPERATIVE (KIUC) REVOCABLE PERMIT S-7340**

At its December 14, 2018 meeting, the Board of Land and Natural Resources approved a revocable permit for KIUC with the following in its minutes:

Holdover of Revocable Permits for Water Use on the Islands of Hawaii and Kauai. See Exhibit 3 for list of Revocable Permits. APPROVED AS AMENDED. The Board considered the holdover requests for the Hawaii and Kauai water revocable permits in three phases. First, the Board approved the holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative (“KIUC”) as amended. The Board included a condition that KIUC is to invite Earthjustice, Kia’i Wai O Wai’ale’ale, Sierra Club, Grove Farm and the Department of Hawaiian Home Lands (together “The Working Group”), to participate in a facilitated discussion regarding their respective positions on KIUC’s request to use State water for its hydroelectric plants in the permit area as well as any other matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

KIUC approached the Collaborative Leaders Network (CLN) about facilitating these discussions. CLN agreed to undertake this work with the understanding that for the initial meetings CLN would cover any of its own costs in the spirit of encouraging collaborative problems solving.

**The Discussions**

Three meetings were held on Kauai between January and March,

The first meeting was held with all the parties named above and every party expressed their basic sense of the issues involved, how they would like to have this work proceed from a process standpoint, and who else should be part of the process. The Kia’i Wai O Wai’ale’ale, Sierra Club, Earthjustice, HAPA, and Department of Hawaiian Homelands specifically asked if they could meet separately from the others to discuss their concerns (The others were interested in continuing to meet together but deferred to this request).

The second meetings were, as requested, held separately. Joining the morning session was the Office of Hawaiian Affairs. In that session, there were concerns raised on the environmental review process being undertaken by KIUC, KIUC’s adherence to the stream flow numbers set by the Board, the relationship between this process and the larger questions of water use in the region, the value of the two hydro plants involved to Kauai, the larger economic interests involved, how the water lease and IIFS processes will work together, as well as a discussion of the sacredness of the water in the two streams specifically at issue here and how (or if) that can be reconciled with the other uses of the streams. The group also asked that a set of specific questions that they wanted KIUC to answer.

In the afternoon session, Kauai County Managing Director Michael Dahilig, the Kauai County Planning Department, the Kauai Department of Water Supply, and Kauai Backcountry Adventures also joined the conversation. In that session there were concerns raised about making sure that all interests including agricultural and other community public purposes and recreational were included in the decision-making, that all of these water systems are interconnected and therefore making changes to one portion affects many others (cumulative impacts), that this area (Lihue) is the major area for the housing needs on Kauai in the 21<sup>st</sup> century and water decisions need to be made with that in mind, and that Grove Farm has accumulated a lot of knowledge about this system as well as maintained it for the benefit of the island. The group also believes that the interests of all of the parties are not mutually exclusive and would like to work together to come to an understanding.

In addition to these meetings, there were a number of conversations and emails, as well as numerous pages of prior correspondence, documents, photographs, and diagrams provided on the issues involved.

The third set of meetings looked at the messages that the parties wanted to convey to the Board about the handling of the issues in this case.

### **The Questions to KIUC**

1. It is the view of the morning parties that the BLNR had ordered KIUC to release 1.6 MGD in the stream at Waikoko and 4.0 at Wai'ale'ale Stream. Are these amounts of water actually being released?

KIUC believes that it is in compliance with the BLNR order.

KIUC believes the amount required to be release at Waikoko is 0.8 MGD.

(Both sides believe they have it right. There are a couple of ways to move forward on this one. One is to take this dispute to the Board and it will likely be sent to staff who will then report back to the Board on compliance. The other way is to have each side designate one person who will together review the situation including going up to the sites to make sure that they at least understand each other's views of this situation and hopefully agree on a shared understanding of what is going on or at a minimum narrow the dispute as much as possible.)

2. What specific environmental review process is KIUC undertaking in connection with this application.

KIUC has been conducting an Environmental Assessment (EA) with the DLNR as the accepting agency. KIUC expects to complete it and submit it this month or as soon thereafter as possible.

3. How much water does KIUC need to operate the hydro plants at an efficient level?

KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro.

Additionally, there was a desire to know from where the waters for these amounts came from.

For the Upper Hydro, KIUC uses water from these two streams (Wai'ale'ale and Waikoko), the Ililiula diversion (located on Grove Farm land but operated by KIUC as part of the Ililiula North Wailua Ditch System) and some small seasonal contributions during high rains. For the Lower Hydro, KIUC uses water diverted from Waiahi Stream (downstream of the tailrace discharge of the Upper Hydro), Ililiula Stream and some small seasonal streams that contribute during high rains. The amount of water discharged into Waiahi Stream from the Upper Hydro tailrace directly impacts how much water is available for the Lower Hydro.

The original Revocable Permit for Blue Hole and Waikoko diversions combined allowed up to an annual average of 14.2 MGD though through KIUC's diversion history they have been taking more like 13 and under current orders are taking a combined about of 9.6 MGD unless stream flow is above median flows. Overall 50% to 65% of the water used come from the diversion of these two streams.

### **The Wisdom of the Groups**

While there are clearly very divergent views on a significant number of issues, there were commonly held views that are worth setting forth.

First, all the waters in the Lihue region are interconnected and the combinations of streams and diversions/ditches has and continues to have a very significant impact on the environment of the area, the Native Hawaiian culture and its practices in the area, and the economy and quality of life in the area.

Second, there are very strong and divergent views about what the right answers are in terms of (1) the amount of water that needs to be left in the streams, (2) the continuation of total or substantial diversions of water anywhere in the system, and (3) the impact that any significant changes to the current water system will have on the overall social, economic and environmental health of the region.

Third, all parties agree that the Waikoko and Wai'ale'ale issues are just the start of a much broader and more complex conversation and processes about the Lihue region. There are likely to be many more disputes coming with greater and greater consequence to the people of Kauai.

Fourth, the way in which the BLNR's revocable permit/lease processes and the Water Commission's IIFS process will (or won't) work together in a coordinated matter is not at all clear to these parties. Any discussion has a tendency to get to both issues very quickly and in an overlapping manner.

Fifth, all parties agree that some form of formal dispute resolution would be better for Kauai as a community and would want to engage in such a process.

Sixth, all parties are concerned that the tone of the discussions sometimes assumes a level of animosity that is not good for Kauai overall and a process more conducive to community building is very much in Kauai's interest.

### **Specific Recommendation Based on the Discussions**

There needs to be a formal process in which the parties can participate. That process can be a contested case process, a contested case process with a mediation effort at the outset or during it, or some other process, (The parties do believe that any exchange of information and views is useful, but at this stage a formal setting for those discussions and exchanges is critical.)

The most available starting point is the IIFS process at the Water Commission involving the Wai'ale'ale and Waikoko Streams in which a contested case has already been requested.

In the longer term, the issues in the region significantly overlap and intersect, and that as challenging as it may be, consideration needs to be given to having a process examine all of the streams and waters in the Lihue area if that can be done.

Finally as the State moves more and more into the IIFS and water lease processes, it would be helpful if there is as much transparency as possible in how the two processes will coordinate with each other.





Board of Directors: December 9, 2020

Gary L. Hooser  
*President*  
State of Hawaii  
Board of Land and Natural Resources  
Post Office Box 621  
Honolulu, HI 96809

Andrea N. Brower  
Ikaika M. Hussey  
*Co-Vice Presidents*  
RE: Agenda Item D-5

Kim Coco Iwamoto  
*Treasurer*  
Aloha Director Case and Members of the Board of Land and Natural Resources,

Bart E. Dame  
*Secretary*  
The following testimony is offered in opposition to any renewal of KIUC Revocable Permit 7340.

Paul Achitoff  
Kaleikoa Ka'eo  
Michael Miranda  
Walter Ritte Jr.  
Pua Rossi-Fukino  
Karen Shishido  
By continuing to divert the majority of the water from the sacred Wai'ale'ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the stream flow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340's conditions. KIUC's hydropower plant already produces less than 1% of Kaua'i's power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production.

Karen Shishido  
Leslie Malulani Shizue Miki  
We respectfully request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions.

Should the RP be renewed we request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system.
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition).
- A deadline for KIUC to develop and implement a plan to mitigate system losses.

- A deadline for KIUC to assess and report back on alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows.
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters.

Warm Regards,

A handwritten signature in black ink, appearing to read "Anne Frederick", written over a light gray rectangular background.

Anne Frederick  
Executive Director



Board of Directors: December 9, 2020

Gary L. Hooser  
*President*  
State of Hawaii  
Board of Land and Natural Resources  
Post Office Box 621  
Honolulu, HI 96809

Andrea N. Brower  
Ikaika M. Hussey  
*Co-Vice Presidents*  
RE: Agenda Item D-5

Kim Coco Iwamoto  
*Treasurer*  
Aloha Director Case and Members of the Board of Land and Natural Resources,

Bart E. Dame  
*Secretary*  
The following testimony is offered in opposition to any renewal of KIUC Revocable Permit 7340.

Paul Achitoff  
Kaleikoa Ka'eo  
Michael Miranda  
Walter Ritte Jr.  
Pua Rossi-Fukino  
Karen Shishido  
Leslie Malulani Shizue Miki  
By continuing to divert the majority of the water from the sacred Wai'ale'ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the stream flow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340's conditions. KIUC's hydropower plant already produces less than 1% of Kaua'i's power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production.

We respectfully request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions.

Should the RP be renewed we request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system.
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition).
- A deadline for KIUC to develop and implement a plan to mitigate system losses.

- A deadline for KIUC to assess and report back on alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows.
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters.

Warm Regards,

A handwritten signature in black ink, appearing to read 'Anne Frederick', written over a light gray rectangular background.

Anne Frederick  
Executive Director

**From:** roger harris  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Revoke RP 7340  
**Date:** Wednesday, December 9, 2020 9:06:04 AM

---

Pineapple



Aloha,

I may be a bit late but I wanted to register my consternation that RP7340 is being left basically "unpoliced." Our household is dependent on KIUC electricity but not at all costs.

Roger Harris  
Wailua



*Yahoo Mail Stationery*

**From:** judie@aloha.net  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 7:17:03 PM

---

Aloha,

I am writing in protest to RP7340. It is not prudent that KIUC divert the water.

I sincerely hope that you will give strong consideration to the wishes of the people.

Sincerely,

Judie Hoepfner

Lihue

**From:** fern@hapahi.org  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Please Oppose Renewal of RP 7340  
**Date:** Thursday, December 10, 2020 8:42:58 AM

---

Aloha BLNR Board Members,

I was born and raised on the east side of Kaua'i and grew up utilizing and appreciating the watersheds of Wailua and the moku of Puna. I have witnessed first hand throughout my life the impacts of these diversions. As an ecologist and environmental scientist it further pains me to see the perpetuation of this ecologically destructive diversion.

I respectfully request that the board exercise its statutory responsibility to protect the public trust and deny the renewal of RP 7340, for the complete diversion of Wai'ale'ale and Waikoko streams which are within a designated conservation area.

At minimum the RP should be revoked until KIUC can meet previous board requirements.

Should the board decide instead that this RP be renewed, please at very minimum attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system;
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition);
- A deadline for KIUC to develop and implement a plan to mitigate system losses;
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows;
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters;
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

As you are already no doubt aware, this continued diversion is unsustainable and harms the sacred Wai'ale'ale and Waikoko watershed as well as disrupting Native Hawaiian cultural practices. Furthermore, KIUC has failed to maintain the dam which is a requirement of at least 10 of RP 7340 conditions. In addition, the hydro power plant, previously producing 8/10ths of a single percent of our energy consumption, has been un-operational and is essentially unnecessary for Kauai's energy production.

Please oppose the renewal of RP 7340 and restore flow to the Wai'ale'ale and Waikoko Systems.

Mahalo,

Fern

--

Fern Anuenue Holland BSc  
Hawai'i Alliance for Progressive Action  
**Community Organizer**  
she/hers

**From:** Samantha Hughes  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 11:00:16 PM

---

“By continuing to divert an unsustainable amount of water from the sacred Wai‘ale‘ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340’s conditions. KIUC’s hydropower plant already produces less than 1% of Kaua‘i’s power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC’s water diversion operations are essentially unnecessary for Kaua‘i’s energy production.”

Mahalo!  
Samantha Hughes

JOSEPH RYAN, JR.,  
Attorney At Law, LLLC.  
41-430 Waikupanaha Street  
Post Office Box 562  
Waimanalo, Hawaii 96795  
Phone/fax (808) 259 6870

December 9, 2020

Dear Chair Case and Members:

Re: LESSEES OBJECTION TO ITEM D-10 OF THE DECEMBER 11, 2020 AGENDA FOR THE MEETING OF THE BOARD OF LAND AND NATURAL RESOURCES, TO WIT: “Rescind Prior Action of December 12, 2014, D-32; Consent to Reinstatement and Extension of Lease Term, and Setting of Rent for Extension of Lease Term, General Lease No. S-4298, Walter and Ann Liew, Lessee; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:003 and Settlement of Lawsuit, Liew v. State of Hawaii, Civ. No. 07-1-0644-04 (JHC).”

Since 2005, the Land Division has omitted material and relevant information from its board submissions. Board members, especially the attorneys among you, have a need to understand the complete and true facts and be given the opportunity to correct the record before going further.

### **THE LEASE IS NOT VIOLATED BY HAVING MORE THAN TWO (2) HOUSES?**

Today’s staff submittal tacitly admits that the Rosehill lease of 1970 (**Exhibit “10”**) is the controlling document in this case. It appears the December 12, 2014, Agenda Item D-32, fails in the interpretation of this fundamental document as it relates to the demand of “removal of the 2<sup>nd</sup> house from the property” and “combin[ing] the 3<sup>rd</sup> and 4<sup>th</sup> houses” and has resulted in depriving the Liewes of at least \$140,000 in personal property value and subjected them to additional expense all based on the mistake of fact.

The lease, at paragraph 29, refers to “DWELLING” and permits one primary “dwelling” and an employee(s) “dwelling”. *BLACK’S LAW DICTIONARY, 11<sup>th</sup> ed.*, primarily defines “dwelling-house” as “The house or other structure **in which one or more people live; a residence or abode.**”

**Nowhere in the mass of documents I have reviewed has anyone alleged that the structures identified as “2<sup>nd</sup> house” or “3<sup>rd</sup> house” was used as a “abode” or “residence”, hence the houses did not offend the lease.**

Liewes purchased the lease and the buildings, including the “2<sup>nd</sup> house” and “3<sup>rd</sup> house” from the USDA. Both the purchase documents and the lease (Paragraph 10, “Repairs to Improvements” **Exhibit “10”**) required Liew to keep the houses in “good order, condition and repair”. The lease also liens the value of the houses. Neither the “2<sup>nd</sup> house” nor the 3<sup>rd</sup> house has been occupied during Liewes possession of the leasehold. Factually, there was no issue or

allegation of residential use of either structure during the inspection by Land Agents Patti Miyashiro and Al Jodar in 2001. (See **Exhibit “5”**).

The Liew’s were well within the lease and their contractual rights to use the “2<sup>nd</sup> house” as an office, showroom, perhaps even “roadside” sales, or merely used it to store fertilizer and bonsai potting soil. The department over-reacted to the issue. However, if the Liewes failed to agree to the illegitimate order to remove the house, their lease would be extinguished.

The Liewes consent has never been uncoerced or freely given. Ever since the department issued its own Notice of Default in 2005, the Liewes have always been under the looming threat of losing their lease and all of their prior investment. This issue is further discussed below.

**THE BOTTOM LINE:**

**ALL THE STRUCTURES REQUIRING PERMITS ARE PERMITTED.**

**THE NOV’S ARE CURED.**

**THE STATE DID NOT PAY A SINGLE PENNY.**

**STATEMENT OF FACTS THAT CANNOT BE REASONABLY CONTROVERTED**

1. July 12, 1995: DLNR Land Agent Cecil Santos did a “joint visit” with the USDA to GL S-4298 and “[t]he purpose of the visit was to identify lease violation and corrective action that would be acceptable to the State.” (**Exhibit “1”**). The lease violations “identified” included “buildings on the property [were] constructed without building permits” and were identified as “the warehouse, two greenhouses and one house”. Other violations related to wooden pallets, existing dirt piles and “old vans” and debris.

The letter also implies the Rural Economic and Community Development (RECD), a division of the USDA, will take responsibility for the violations and “assume[s] the . . . RECD] will convey the leasehold interest to another party without leasehold violations when the corrective actions [for the listed violations] are completed. (**Exhibit “1”**).

2. July 20, 1995: Land Agent Cecil Santos required the USDA to cure the lack of building permits “within sixty (60) days.” (**Exhibit “2”**).

3. July 25, 1995: Responding to DLNR Land Agent Santos, the USDA stated “We may have difficulty obtaining “after the fact” building permits within the sixty (60) day time frame to cure the [lack of building permits] fourth violation” while assigning responsibility to correct certain violations to Mr. Steven S. Saiki (the lessee in default) and Mr. Richard Lee. (**Exhibit “3”**).

4. April 21, 1997: DLNR Chairman Michael D. Wilson wrote to the USDA regarding an extension of time for a *new* Notice of Default regarding a “violation of the Assignment Provision of General Lease No. S-4298.” *The violating lessee, Steven S. Saiki, was still in possession of the property and the building permit violations were ignored. (Exhibit “4”).*

5. 1998 and 1999: Walter and Ann Liew purchased the lease from the USDA and the BLNR approved the assignment of lease on May 20, 1999. No notice of lease violations or lack of building permits was given to Liew. Liew’s subsequent USDA loan documents required Liew’s to keep the buildings in good condition as *the unpermitted buildings were the collateral for the loan.*

6. February 8, 2001: DLNR Land Agents Patti E. Miyashiro and Al Jodar conducted a physical inspection of the property and wrote: “We have noted that the lease area is being maintained in a satisfactory condition.” (Exhibit”5”). There was no mention of the documented lack of building permits or of the residential use of the 2<sup>nd</sup> and/or 3<sup>rd</sup> structures: aka “houses”.

7. April 9, 2003, the Liews took out a \$200,000 mortgage on their Waiialae Iki house to fund additional cleanup and improvements on the subject lease. That money was additional to a \$35,000 note with USDA in February of 2002.

1998 to April 18, 2004: Walter Liew paid out the following:

a.	Two (2) rental excavators with operators	\$14,000.00
b.	forty-three (43) semitruck loads of “garbage, trash, debris, and scrap metal at about \$700 per load. Including 16 wrecked and abandoned automobiles 4 large trucks, and 3 “Tropical Trolleys”	\$ 30,100.00
c.	Building replacement (house #3)	\$140,000.00
d.	Floor replacement (house #1)	\$25,000.00
	Total	\$209,100.00

8. April 19, 2004: The City and County of Honolulu issued a Notice of Violation (NOV) to **the Department of Land and Natural Resources** and to Walter and Ann Liew. (See Exhibit “7”). The NOV states “There are greenhouses, workshops, an office building, three dwelling units, a bonsai studio, and a six feet (sic) chainlink fence on the property that were constructed without building permits.” A second NOV stopped Liew from conducting his bonsai business and prohibited him from filing for a Conditional Use Permit until all the NOV violations were cleared.

9. April 27, 2005: DLNR issued a Notice of Default holding Liew solely responsible for the unpermitted buildings and other violations of lease.



**The Liewis are committed to following the law, rules, and the lease covenants.**

The department concealed or aided in the concealment of material facts in 1998 and 1999 (See also Exhibit “5”) and intentionally and knowingly denied responsibility in 2005, 2007, 2012, and 2014, and stills denies any responsibility for knowingly allowing unpermitted and illegal buildings to be sold to the Liewis.

**THERE HAS NEVER BEEN A FAIR MEETING OF THE MINDS**

There has never been a fair settlement negotiation of the Liewis complaint. Every negotiation relied on the Liewis fear of losing their prior investment in the property and was always conducted under fear of eviction. It is unconscionable that the DLNR can escape all liability for LUO violations that were present before Liewis’ purchased the lease and the DLNR is unjustly enriched by the correction of the violations without compensating the Liewis even one dollar for their costs.

The 2014 negotiations also failed because of the unrecorded DOA irrigation pipeline easement which prevented the combining of buildings #3 and #4. New plans had to be drawn and filed with additional “double fee penalty” imposed by the city resulting in additional delay.

The Liewis faced an unconscionable dilemma on December 12, 2014. They were under extreme duress in that their lease was already cancelled and if they did not agree to pay for the appraisal costs (that set reasonable rent at \$10,200 pursuant to HRS § 171-17(d)), abandon the rent arbitration, and pay rent at \$22,800 per year, in addition to correcting any remaining city LUO violations at their cost, they would forfeit tens of thousands of dollars in financial investment and incalculable hours of their labor.

**NEW PROPOSED SETTLEMENT**

It is my opinion that the members have only this opportunity to resolve the issues surrounding the Liewis without extended litigation.

The Liewis propose:

1. The DLNR sign off on the CUP application electronically submitted to Land Agent Cheung on October 27, 2020. The department shall also approve a Windward Soil and Water Conservation District Plan scheduled to be prepared by the NRCS in January of 2021 (if that plan is ready for approval before this lease is transferred to the DOA). Approve the septic installation for which prior board approval (2012) has been effectively revoked by land division in May of 2020.

2. Accept the 2013 arbitrated appraisal pursuant to HRS 171-17(d) and set the rent accordingly giving Liews credit for overpayment as promised by Land Division Administrator Russell Y. Tsuji by letter dated February 8, 2013<sup>1</sup>. (**Exhibit “8”**).

3. Declare all remaining issues as being in “substantial compliance” and use the department’s best efforts to correct the portrayal of the Liews as bad tenants and thereby cause or assist the transfer of the lease to the Department of Agriculture where a new “clean” lease shall be executed.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY in this matter. I am available to answer your questions.

Sincerely,

---

Joseph Ryan, Jr.  
Attorney for Lessees

---

<sup>1</sup> With Board approval a “Second Extension of General Lease No. S-4398” was executed on April 1<sup>st</sup>, 2013 extending the time for arbitration of lease rent “up to and including September 13, 2013”. Arbitration Panel Chair, George Hao concluded and submitted his final and binding appraisal by letter dated July 15, 2013. Land Division Administrator Russell Tsuji “accepted and approved” the arbitrated appraisal value of \$10,200 on October 1, 2013. No explanation of the delay between July 15 and October 1 has ever been offered or discovered to explain why the arbitration acceptance exceeded the September 13 time extension.

# EXHIBIT 1

July 13, 1995

Mr. Cecil B. Santos, Oahu District Land Agent  
State of Hawaii, Department of Land and Natural Resource  
Division of Land Management  
1151 Punchbowl Street, Rm. 220  
Honolulu HI 96813

Dear Mr. Santos:

Re: General Lease No. S-4298, 41-909 Mahailua Street, Waimanalo

We are confirming our observations and agreement from our joint visit to the subject property on July 12, 1995. The purpose of this visit was to identify lease violations and corrective actions which would be acceptable to the State. The lease violations and corrective actions noted below were the only ones brought to our attention. We assume the Rural Economic and Community Development (RECD) will convey the leasehold interest to another party without leasehold violations when the corrective actions below are completed.

The four violations identified were:

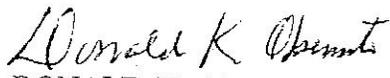
1. There are buildings on the property constructed without building permits.  
We agreed to look into obtaining building permits for all major structures on the property that were constructed without permits. We will make application if we are allowed to do so. All of these structures were in place before the lease was assigned to the U. S. Government. The three structures identified were the warehouse, two greenhouses and one house.
2. Wooden pallets stacked below the large greenhouse must be removed.
3. Move existing dirt piles located in the cut area against the cut to minimize the angle of the cut.
4. Two old vans and debris around vans must be removed.

Mr. Cecil B. Santos, Oahu District Land Agent  
General Lease No. S-4298, 41-909 Mahailua Street, Waimanalo  
July 13, 1995  
Page 2

We were made aware of an easement located on the upper road for a drainage line and irrigation water line. The exact location and description of the easement has not been incorporated in any map or the lease at this time.

You may call me at 541-2588 if there are any comments or questions.

Sincerely,

  
DONALD K. OKIMOTO  
Loan Resolution Specialist

cc: Acting State Director, RECD, Attn: Acting Farmer Program Chief, Hilo, HI  
Lawrence Hom, Office of General Counsel (OGC), San Francisco, CA

## EXHIBIT 2

Ref: LM:CEC

Mr. Donald K. Okimoto  
Loan Resolution Task Force  
United States Department of  
Agriculture  
P.O. Box 50224  
Honolulu, Hawaii 96850

JUL 20 1995

Dear Mr. Okimoto:

SUBJECT: Outstanding Lease Requirements, General Lease No.  
S-4298, S & S Plants Inc., Waimanalo, Oahu, TMK:  
4-1-10:03

---

Pursuant to our inspection of the leasehold on July 12, 1995 along with yourself, we came across four (4) violations of the lease terms.

The first violation was the piling up of old unusable skiffs that was accumulated over a period. These skiffs are now waste debris and need to be removed from the leasehold.

The second violation was the junking of old trucks and equipment at the site that I pointed out to you. This is not the storing of equipment but the storage of derelict vehicles, junk and debris. Please remove all of these derelict equipment and debris from the leasehold.

The third deficiency was a violation of Item No. 6 of General Lease No. S-4298, waste and unlawful, improper or offensive use of the premises. This is the hauling away of dirt from the leasehold. Please stop this operation and move the excavated dirt pile back up against the ground level where the dirt was being excavated from.

The fourth deficiency was that the warehouse and the shade house were built without government building permits. Please acquire after-the-fact building permits within sixty (60) days.

Mr. Donald K. Okimoto  
Page 2

Please have the first, second, and third items done within thirty (30) days of the date of this letter. Should you have any questions, please call us at 587-0433.

Yours truly,

*Cecil Santos*

CECIL SANTOS

Oahu District Land Agent

cc: Mr. C. Matsumoto  
Mr. M. Nekoba

## EXHIBIT 3

United States  
Department of  
Agriculture

Loan  
Resolution  
Task Force

RECEIVED  
DIVISION OF  
LAND MANAGEMENT  
Jul 26 3 28 PM '95

(S+S Plants)  
P.O. Box 50224  
Honolulu, HI 96850  
(808) 541-2588 (Fax) 541-3694

July 25, 1995

*Case 11/95*

Mr. Cecil B. Santos, Oahu District Land Agent  
State of Hawaii, Department of Land and Natural Resources  
Division of Land Management  
1151 Punchbowl Street, Rm. 220  
Honolulu HI 96813

Dear Mr. Santos:

Re: General Lease No S-4298

We are in receipt of your letter dated July 20, 1995, regarding subject lease. Mr. Steven S. Saiki has been instructed to remove the items mentioned in the first and second lease violations. Mr. Richard Lee will work with your department to cure the third violation. We may have difficulty obtaining "after the fact" building permits within the sixty (60) day time frame allowed to cure the fourth violation. According to Mr. Harry Hayase of the City and County of Honolulu, Building Department, detailed drawings and specifications are required to be included with the application for building permits. Also, the drawings must be approved by a structural engineer and meet today's building codes. Therefore, we are requesting additional time to determine the cost of completing these requirements.

Please check your files for copies of construction plans for all structures on the property. It will greatly assist us in determining building codes and the materials used in the construction of these buildings.

You may call me at 541-2588 should you have any questions.

Sincerely,

*Donald K. Okimoto*  
DONALD K. OKIMOTO  
Loan Resolution Specialist

cc: State Director, RECD, Hilo, HI  
Lawrence Hom, Office of General Counsel (OGC), San Francisco, CA

## EXHIBIT 4

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



MICHAEL D. WILSON  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621  
HONOLULU, HAWAII 96809

APR 21 1997

DEPUTY  
GILBERT S. COLOMA-AGARAN

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref:LD:CBS

Mr. Donald K. Okimoto  
Agriculture Credit Specialist  
Farm Service Agency, USDA  
P. O. Box 50065  
Honolulu, Hawaii 96850

Dear Mr. Okimoto:

**Subject:** Third Extension, Notice of Default, General  
Lease No. S-4298, Waimanalo, Oahu, TMK: 4-1-10:03

Per your request made over the telephone on April 15, 1997, you have requested another extension to the Notice of Default served on the Farm Service Agency, USDA on October 15, 1996. The cure period was sixty days. The Default was for the violation of the Assignment Provision of General Lease No. S-4298.

Mr. Steve Saiki who was the former lessee still occupied the leasehold and during this occupation two illegal cockfights were held on this site. At the second event within the leasehold on April 27, 1996 four adults were arrested on First Degree Gambling charges and over \$100,000.00 were recovered from the arrest.

On November 25, 1996, you served Mr. Steven S. Saiki with a "Demand to Vacate Property" with a thirty (30) days period to vacate the leasehold. On November 22, 1996 you requested an extension of our Notice of Default for sixty (60) days which we provided until February 12, 1997. On February 7, 1997 you requested another extension which we provided up until April 14, 1997.

Per telephone conversation with Cecil Santos of the Oahu Land District on April 15, 1997, you informed him that you now have turned over the paperwork and request for eviction to the Federal Attorney General's Office here in Honolulu on about April 13, 1997 and now request another extension.

Please understand that we will provide another extension for sixty (60) days but after that we will go to the Land Board to request cancellation if the former Lessee is still on the leasehold.

Mr. Donald K. Okimoto  
Farm Service Agency, USDA  
Page 2

We are extending the cure period on our Notice of Default dated October 11, 1996, ~~an~~ another sixty (60) days from April 14, 1997 until June 14, 1997.

Should you have any questions, you may call Cecil Santos of the Oahu Land District at 587-0433.

HAWAII:Earth's Best!

Aloha,

  
MICHAEL D. WILSON

c: Mr. C. Matsumoto  
Mr. M. Nekoba *CS*

# EXHIBIT 5



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

TO: Central  
FROM: OCLD  
No.: 4298

AQUACULTURE DEVELOPMENT PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

February 12, 2001

Mr. & Mrs. Walter Liew  
41-909 Mahaiula Street  
Waimanalo, Hawaii 96795

Dear Mr. & Mrs. Liew:

Subject: General Lease No. S-4298, Lot 20, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, Tax Map Key: 4-1-10:3

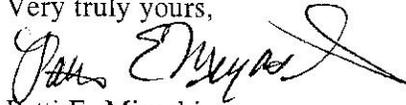
Thank you for meeting with Al Jodar and myself on Thursday, February 8, 2001 at the subject site for our annual site inspection. We have noted that the lease area is being maintained in satisfactory condition.

However, while on our walk around the property, we noticed a fallen structure, which you explained was due to termites. For your safety and since your lease states that the lessee shall keep the demised premises and improvements in a strictly clean, sanitary, and order condition, please remove the fallen structure within 45 days from the date of this letter. Please contact this office when the structure has been completely removed, so that we may conduct a follow-up visit.

Also during our visit you asked how the rent was determined for your lease, specifically how much you are paying for the land beyond the stream which you are unable to access at this time. As we explained, you are welcomed and encouraged to review you lease file in our office. If after reviewing the file you still have questions regarding the rental determination, you may make an appointment to discuss this matter with one of our staff appraisers.

Should you have any questions, please feel free to call me at 587-0410 or Al Jodar at 587-0424.

Very truly yours,

  
Patti E. Miyashiro  
Land Agent

c: Land Board Member  
Central Files  
District Files

4

# EXHIBIT 6

**SCHEDULE F  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)

**Profit or Loss From Farming**

▶ Attach to Form 1040, Form 1041, Form 1065, or Form 1065-B.  
▶ See instructions for Schedule F (Form 1040).

OMB No. 1545-0074

**2004**

Attachment  
Sequence No. **14**

Name of proprietor

**DRAGON GARDEN**

Social security number (SSN)

**576-94-6754**

**A** Principal product. Describe in one or two words your principal crop or activity for the current tax year.

**BONSAI PLANTS**

**B** Enter code from Part IV

**111400**

**D** Employer ID number (EIN), if any

**C** Accounting method: (1)  Cash (2)  Accrual

**E** Did you "materially participate" in the operation of this business during 2004? If "No," see page F-2 for limit on passive losses.

Yes  No

**Part I Farm Income - Cash Method. Complete Parts I and II (Accrual method taxpayers complete Parts II and III, and line 11 of Part I.)**

Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797.

1	Sales of livestock and other items you bought for resale	1		
2	Cost or other basis of livestock and other items reported on line 1	2		
3	Subtract line 2 from line 1	3		
4	Sales of livestock, produce, grains, and other products you raised	4		<b>149300.</b>
5a	Total cooperative distributions (Form(s) 1099-PATR)	5a		5b Taxable amount
6a	Agricultural program payments (see page F-2)	6a		6b Taxable amount
7	Commodity Credit Corporation (CCC) loans (see page F-3):			
a	CCC loans reported under election	7a		
b	CCC loans forfeited	7b		7c Taxable amount
8	Crop insurance proceeds and certain disaster payments (see page F-3):			
a	Amount received in 2004	8a		8b Taxable amount
c	If election to defer to 2005 is attached, check here <input type="checkbox"/>	8d	8d Amount deferred from 2003	
9	Custom hire (machine work) income	9		
10	Other income, including Federal and state gasoline or fuel tax credit or refund (see page F-3)	10		
11	Gross income. Add amounts in the right column for lines 3 through 10. If accrual method taxpayer, enter the amount from page 2, line 51	11		<b>149300.</b>

**Part II Farm Expenses - Cash and Accrual Method. Do not include personal or living expenses such as taxes, insurance, repairs, etc., on your home.**

12	Car and truck expenses (see page F-4 - also attach Form 4562)	12	<b>1769.</b>	25	Pension and profit-sharing plans	25	
13	Chemicals	13		26	Rent or lease (see page F-5):		
14	Conservation expenses (see page F-4)	14		a	Vehicles, machinery, and equipment	26a	
15	Custom hire (machine work)	15		b	Other (land, animals, etc.)	26b	<b>13200.</b>
16	Depreciation and section 179 expense deduction not claimed elsewhere (see page F-4)	16		27	Repairs and maintenance	27	
17	Employee benefit programs other than on line 25	17		28	Seeds and plants purchased	28	
18	Feed purchased	18		29	Storage and warehousing	29	
19	Fertilizers and lime	19		30	Supplies purchased	30	
20	Freight and trucking	20		31	Taxes	31	
21	Gasoline, fuel, and oil	21		32	Utilities	32	
22	Insurance (other than health)	22	<b>3520.</b>	33	Veterinary, breeding, and medicine	33	
23	Interest:			34	Other expenses (specify):		
a	Mortgage (paid to banks, etc.)	23a	<b>31590.</b>	a	<b>SEE STATEMENT 2</b>	34a	<b>74094.</b>
b	Other	23b		b		34b	
24	Labor hired (less employment credits)	24		c		34c	
				d		34d	
				e		34e	
				f		34f	
35	Total expenses. Add lines 12 through 34f	35					<b>124173.</b>
36	Net farm profit or (loss). Subtract line 35 from line 11. If a profit, enter on Form 1040, line 18, and also on Schedule SE, line 1. If a loss, you must go on to line 37 (estates, trusts, and partnerships, see page F-6)	36					<b>25127.</b>

**37** If you have a loss, you must check the box that describes your investment in this activity (see page F-6).  
 • If you checked 37a, enter the loss on Form 1040, line 18, and also on Schedule SE, line 1.  
 • If you checked 37b, you must attach Form 6198.

**37a**  All investment is at risk.  
**37b**  Some investment is not at risk.

LHA For Paperwork Reduction Act Notice, see Form 1040 instructions.

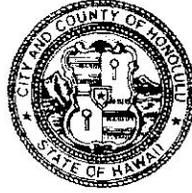
Schedule F (Form 1040) 2004

# EXHIBIT 7

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



KATHY K. SOKUGAWA  
ACTING DIRECTOR

TIMOTHY F. T. HIU  
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

(CI)

October 1, 2020

Joseph Ryan, Jr., Esq.  
Attorney at Law, LLLC  
41-430 Waikupanaha Street  
Post Office Box 562  
Waimanalo, Hawaii 96795

Dear Mr. Ryan:

Thank you for your letter dated September 11, 2020, requesting investigation and relief for Mr. Walter Liew of 41-909 Mahailua Street in Waimanalo.

On April 19, 2004, the Department of Planning and Permitting (DPP) issued Notice of Violation (NOV) Nos. 2004/NOV-04-141 and 2004/NOV-04-143 to the fee owner, the State Department of Land and Natural Resources (DLNR), and to the lessees, Walter and Ann Liew.

NOV No. 2004/NOV-04-141 was issued for greenhouses, workshops, an office building, three dwelling units, a bonsai studio, and a six-foot chain link fence on the property that were constructed without building permits. On August 8, 2018, the NOV was corrected when an inspection revealed the workshops, office building and one dwelling was demolished; Building Permit Nos. 718954, 768318, and 754105 were obtained for the bonsai studio, farm dwelling, and the fence; and Act 203 was amended by the State Legislature to exempt agricultural buildings from County permit requirements, thus the greenhouses did not require permits.

NOV No. 2004/NOV-04-143 was issued for agribusiness activities being conducted on this AG-1 Agricultural zoned property without a Conditional Use Permit. The activities included the growing of bonsai, water lilies, and orchids for sale to stores and private buyers, as well as charging for a viewing area of the plants. Also, instructional classes about the cultivation and care of bonsai were being conducted by the Liewes and the University of Hawaii's Horticulture Department.

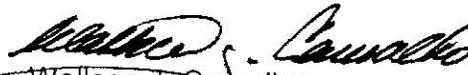
Joseph Ryan, Jr., Esq.  
October 1, 2020  
Page 2

On March 17, 2005, an inspection revealed the activities ceased and the NOV was corrected.

The DPP considers these matters closed. Any dispute between the Liews, the DLNR, and the United States Department of Agriculture is a civil matter between these parties.

Should you have any questions, please contact Catherine Weinhardt, Chief of our Residential Code Enforcement Branch, at 768-8161.

Very truly yours,



Wallace J. Carvalho  
Program Administrator  
Customer Service Division

# EXHIBIT 8

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.  
INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

February 8, 2013

Mr. & Mrs. Walter Liew  
41-909 Mahailua Street  
Waimanalo, Hawaii 96795

Ref. No.: 12od-021

Dear Mr. & Mrs. Liew:

Subject: Arbitration of Extension of Lease Term Offer Letter, General Lease No. S-4298,  
Waimanalo, Koolau-poko, Oahu; TMK (1) 4-1-010:003

We are in receipt of your response to our Extension of Lease Term Offer Letter dated July 16, 2012. In your response letter you indicated that you were rejecting our new rent of \$21,800 per annum for the period commencing February 10, 2012 to February 11, 2022 and have selected Andrew Rothstein, MAI, for arbitration purposes. According to §171-17(d) of Hawaii Revised Statutes, the arbitration process involves the following:

"...should the lessee fail to agree upon the fair market rental, the lessee may appoint the lessee's own appraiser who together with the board's appraiser shall appoint a third appraiser and the fair market rental shall be determined by arbitration as provided in Chapter 658A. The lessee shall pay for the lessee's own appraiser, the board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six-month notice required, shall apply to leases with original lease rental reopening dates effective before and after July 1, 1996."

Furthermore, according to §171-17(e), "Whenever more than one appraiser is appointed each shall prepare and submit an independent appraisal." All appraisal reports shall be available for study by the public.

Please have Mr. Rothstein contact Craig Leong, MAI, of Appraisal Hawaii Inc. to proceed with the arbitration process according to the Ground Lease, as amended. Please understand that you will be paying for the cost of your own appraiser and half the cost of a third appraiser. Mr. Rothstein must complete his appraisal report and provide it to Mr. Leong within 45 days of Mr. Rothstein's appointment of November 28, 2012.

Additionally, under the terms of the Lease, as amended, you are required to pay the new appraised rent pending the outcome of the rent arbitration process. Our records show you paid rent for the period of February 12, 2012 through February 11, 2013 at the old rate of \$15,000 per year. We will

EXHIBIT  
J-1

Mr. & Mrs. Walter Liew  
February 8, 2013  
Page Two

 instruct our fiscal office to change your annual rent to \$21,800 effective February 10, 2012 until which time the arbitration process is completed and the new rent is determined and, if necessary, any adjustment to the annual rent will be made at that time. Accordingly, there is outstanding a balance of approximately \$6,800 in annual rent for 2012 thru 2013 and another \$6,800 for 2013 thru 2014 for an aggregate of approximately \$13,600 to remain in good standing on your account. 

If you have any questions regarding these requirements, please contact our Appraisal Section at (808) 587-0417.

Very truly yours,



RUSSELL Y. TSUI  
Land Division Administrator

cc: Mr. Andrew H. Rothstein, MAI  
Oahu District Branch  
Central Files

J-2

# EXHIBIT 9



# ALU SERVICES LLC

P.O. Box 545 • Kailua, HI 96734

Ph: (808) 261-1174

Fax: (808) 664-0034

## COPY

**Invoice #8251**

**Date: April 29, 2019**

Client: Eastside Masonry

Attention: Kauai

Job Location: Bonsai Farms, Waimanalo, HI

**I HEREBY AUTHORIZE THE FOLLOWING SERVICES:**

- 4/25/19 - (1) Load concrete hauled to PVT = \$800.00

Note: This load was dumped at PVT under Eastside Masonry

Total = \$800.00

Tax = \$37.69

Total Due = \$837.69

*copy of to  
Health Department  
copy to  
DLNA  
may 5/19*

This work is fully covered by property damage, public liability and compensation insurance for the complete protection of our clients and release. ALU Services will not be held liable for damage to property not visible where not specifically mentioned herein, especially underground installations.

Authorized signature \_\_\_\_\_

Client signature \_\_\_\_\_

Billing Information: Make checks payable to **ALU Services LLC**

# PAID

**EXHIBIT 10**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-4298

THIS INDENTURE OF LEASE, made this 12th day of March, 1970, by and between the STATE OF HAWAII, hereinafter referred to as the "LESSOR", by its Board of Land and Natural Resources, called the "BOARD", and AMBROSE J. ROSEHILL and FREDERICK J. TITCOMB, whose ~~residence~~ <sup>business</sup> and post office address is 806 City Bank Building, Honolulu, Hawaii 96813, hereinafter referred to as the "LESSEE";

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor the premises known as Lot 20, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, Hawaii, more particularly described in Exhibit "A" and shown on the map marked Exhibit "B", hereto attached and made parts hereof.

TO HAVE AND TO HOLD the demised premises unto the Lessee for the term of twenty (20) years, commencing on the 12th day of March, 1970, up to and including the 11th day of March, 1990, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow,

STATE OF HAWAII  
CONVEYANCE TAX  
\$ 22.50  
P. H. JARVIS  
1967

EXHIBIT 4

payable in advance, but not more than one year in advance, without notice or demand, in annual installments on the 12th day of March of each and every year during said term as follows:

A. For the ~~first~~ <sup>term of</sup> twenty (20) years, the sum of THREE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$ 3,600.00 ) per annum.

~~B. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the \_\_\_\_\_ year(s) of said term. The rental for any ensuing rental period shall be the rental for the immediately preceding rental period or the fair market rental at the time of reopening, whichever is higher. The fair market rental shall be determined by an appraiser whose services shall have been contracted for by the Lessor; provided that should the Lessee fail to agree to such fair market rental, Lessee may appoint its own appraiser who, together with the Lessor's appraiser, shall promptly appoint a third appraiser and the fair market rental shall be determined by arbitration as provided by Section 658-1, Hawaii Revised Statutes. The Lessee shall pay for the services of its own appraiser and the cost for the services of the third appraiser shall be borne equally by the Lessor and Lessee.~~

RESERVING UNTO THE LESSOR THE FOLLOWING:

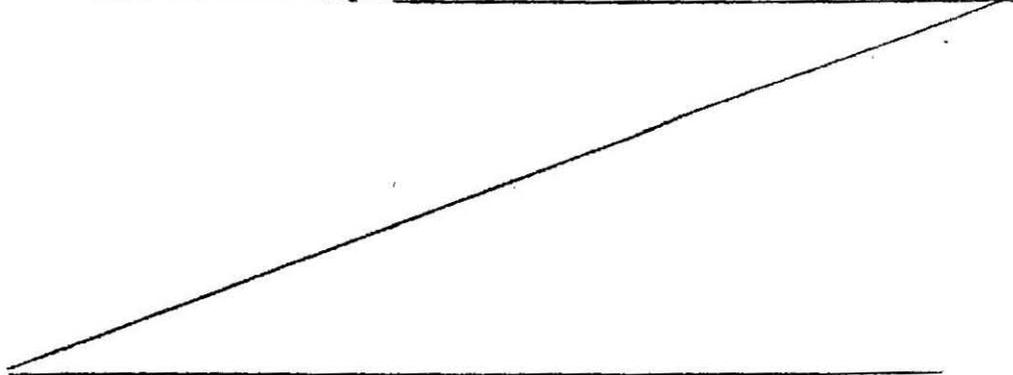
1. Minerals and waters. (a) All minerals as herein-after defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining.

---

"Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found on said demised premises.

2. Withdrawal. The right to withdraw the demised land, or any portion thereof, at any time during the term of this lease upon the giving of reasonable notice by the Board and without compensation, except as provided herein, for public uses or purposes, including residential, commercial, industrial or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the demised premises; provided, that upon such withdrawal, or upon such taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of such withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided, further, that no such withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Board pays to the Lessee the value of such crops.



The Lessor hereby covenants and agrees with the Lessee that upon payment of the said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through and under it.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid and at the place specified above, or at such other place as the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

3. Utility services. That the Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges,

as to which said demised premises, or any part thereof, or any improvements thereon or the Lessor or Lessee in respect thereof may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. That the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin.

5. Sanitation, etc. That the Lessee shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on said premises.

7. Compliance with laws. That the Lessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes, pertaining to the said premises, now in force or which may hereinafter be in force.

8. Inspection of premises. That the Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.

9. Improvements. That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the

Board and upon such conditions as the Board may impose, including any adjustment of rent, unless otherwise provided herein.

10. Repairs to improvements. That the Lessee shall, at its own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. That the Lessee will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

12. Character of use. That the Lessee shall use or allow to be used the premises hereby demised solely for \_\_\_\_\_ agriculture, general \_\_\_\_\_ purpose(s).

13. Assignments, etc. That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made if (1) it contains the personal residence of the Lessee; (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is

demonstrated to the satisfaction of the Lessor or (5) it is to the corporate successor of the Lessee.

14. Subletting. That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward.

15. Mortgage. That, except as provided herein, the Lessee shall not mortgage, hypothecate or pledge the said premises or any portion thereof or this lease or any interest therein without the prior written approval of the Board and any such mortgage, hypothecation or pledge without such approval shall be null and void.

16. Indemnity. That the Lessee will indemnify, defend and hold the Lessor harmless (1) from and against any claim or demand by third persons for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the premises, or by any fire thereon or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition and will reimburse the Lessor for all costs and expenses in connection with the defense of such claims; (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

17. Costs of litigation. That in case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor, furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

18. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, with an insurance company or companies acceptable to the Lessor, a policy or policies of comprehensive public liability insurance, if and when the same shall be required by the Board, in an amount acceptable to the Board, insuring against all claims for personal injury, death and property damage; that said policy or policies shall cover the entire premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as set forth herein or limit the amount of its liability under this lease.

19. Bond, performance. That the Lessee shall, at its own cost and expense, within thirty ( 30 )

days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said Lessee of all of the terms, conditions and covenants of this lease, in an amount equal to two times the annual rental then payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

20. Lessor's lien. That the Lessor shall have a lien on all the buildings and improvements placed on the said premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings situated on said premises for all such costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee and for the payment of all money as provided in this lease to be paid by the Lessee, and such lien shall continue until the amounts due are paid.

21. Full utilization of the land. That the Lessee shall, at its own cost and expense, within the first (1st) (=) year(=) of the lease term, clear the demised premises of noxious weeds, tend the premises in such a manner as to reduce to a reasonable minimum the danger of erosion or other waste and utilize the land and the whole of it for the purposes for which this lease is sold, all in accordance with a plan of development and conservation which shall be submitted to the Chairman within three (3) months after the date of receipt of this document and approved by him.

22. Good husbandry and conservation practices. That the Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use herein permitted and shall carry out such practices of conservation and prevention of waste as are recommended by the appropriate Soil and Water Conservation District, with which district the Lessee shall apply for and attain cooperative status. The plan required in the foregoing paragraph shall be with respect to grading and clearing of land, and drainage and irrigation, and shall be developed in cooperation with said Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairman, the Chairman will so notify the Lessee and the Lessee shall be required, within sixty (60) days of such notice, to cure such fault and submit proof thereof satisfactory to the Chairman.

23. Fences. That the Lessee shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the demised premises if such fencing shall be required by the Lessor, or should be so required by any law now

in force or that may hereafter be enacted, and shall and will maintain in good order and condition throughout the period of this lease the fences so constructed and those now remaining on the demised premises.

24. Exclusion of animals from forest lands. That the Lessee shall at all times during the term hereof keep its cattle, horses and other grazing animals out of any forest reserve, if any, adjacent to the demised premises and shall take all reasonable precautions to prevent forest fires thereon, and in the event such fires shall occur, it shall use all reasonable means at its command or under its control to have such fires speedily extinguished.

~~25. Dwelling restriction. That the Lessee shall not place or construct any dwelling unit in excess of one family dwelling unit on said demised premises and that such dwelling unit shall not be placed or constructed thereon except in accordance with plans and specifications approved by the Chairman of the Board of Land and Natural Resources.~~

26. Surrender. That the Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the demised premises, together with all boundary fences, paddock fences, sewers, drains, roads, bridges and trees on the same; it being understood that if the Lessee shall have faithfully observed and performed all of the terms, covenants and conditions herein, it shall have the right to remove from the demised land all other improvements thereon erected or placed by or belonging to it, including buildings, sheds, water tanks, feed pens, surface pipelines and mechanical equipment, and the Lessee shall, at its own expense, prior to the end of said term or other sooner termination thereof, or within such additional period after the expiration

of said term or other sooner termination thereof as the Lessor may allow, remove the same, together with all the debris therefrom and restore said premises to good order and condition satisfactory to the Lessor. Such improvements remaining on the demised premises after the expiration of the term hereof or other sooner termination thereof or after the elapse of such additional time as the Lessor may allow for their removal, shall become the property of the Lessor; provided, however, that the Lessor, at its option, may require the Lessee to remove such improvements and restore the premises as provided herein.

27. Insurance. That the Lessee will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the land hereby demised in the joint names of Lessor, Lessee and Mortgagee, if any, as their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, in a company or companies approved by the Lessor, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the Lessor, Lessee and Mortgagee, if any, as their interests may appear, and shall be deposited with the Mortgagee; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the Lessor to retain the balance of said proceeds.

28. Plans and specifications, approval of. That the Lessee shall submit all construction plans to the Chairman of the Board of Land and Natural Resources for approval before proceeding with construction.

All construction shall be of masonry or of new materials or of used materials properly treated for termite control as provided herein. In lieu of construction, with the approval of the Chairman, second-hand buildings may be moved onto the premises provided such buildings are of a type, form and condition acceptable to the Chairman and are repaired and/or remodelled in such a manner that their appearance will not constitute a blight on the area. Prior to the moving onto the premises of any second-hand house or other structure or the building of such house or structure with second-hand materials, the Lessee shall obtain and present to the Lessor a certificate from a bona fide termite extermination company certifying that the second-hand structure and/or materials have been properly treated and are free from termites.

All such construction and/or moving on and posting of buildings on the demised premises shall be done in accordance with the Public Health Regulations of the Department of Health and with the Building Code of the City and County of Honolulu and with any and all other applicable laws, ordinances, rules and regulations of the federal government and of the State of Hawaii and its agencies and political subdivisions.

29. Residence use. That the Lessee may, but shall not be required to, maintain his residence (or that of his agent but not of both of them except as provided herein) on the demised premises; provided, however, that not more than

---

one single-family dwelling shall be permitted on the demised premises except that the Lessor may, in its discretion, permit one additional dwelling for employee housing if the need for such housing is clearly demonstrated, and construction of such additional dwelling shall require the prior written consent of the Lessor. Such additional dwelling shall be for employee housing only and shall in no case and at no time during the term of this lease be used for rental purposes.

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN  
THE PARTIES AS FOLLOWS:

1. Mortgage. That upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the public land hereby demised. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Lessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

2. Breach. That time is of the essence of this agreement and if the Lessee shall fail to yield or pay such rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the said premises, or if this lease and said premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of

the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of such breach or default by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the demised premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter such premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor.

3. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the interest created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any monies at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be

entitled to the conveyance of said interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate subject to the lien of such mortgage, without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and thereupon use its best efforts to dispose of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any disposition effected hereunder shall be applied, first, to reimburse the Lessor for costs and expenses in connection with such disposition, second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with such interest or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of such interest or estate.

4. Condemnation. That, if at any time, during the term of this lease, any portion of the demised premises should be condemned for public purposes by the State or any county or city and county or any other governmental agency or subdivision thereof, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value

of growing crops, if any, which he is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of such condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of said leasehold interest by reason of such condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the uses or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by the Lessor.

5. Right to enter. The Lessor shall have the right to itself and to the agents and representatives of the county in which said demised premises are situated, to enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

6. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of said lands preparatory to such proposed

disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no such authorization shall be given more than one year before the expiration of the term of this lease.

7. Acceptance of rent not a waiver. That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

8. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Board may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

9. Justification of sureties. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or

sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

10. Waiver, modification, reimposition of bond provision. Upon substantial compliance by the Lessee of the terms, covenants, and conditions herein contained on its part to be observed or performed, the Lessor at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the Lessor reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Board of Land and Natural Resources of the State of Hawaii or his successor;

(b) "Lessee" shall mean and include the Lessee herein, its heirs, executors, administrators, successors or permitted assigns, according to the context hereof;

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(d) "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon;

(e) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural;

(f) The marginal headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

(g) "Waste" shall be deemed to include, but shall not be considered restricted to, (1) suffering the premises or any portion thereof to become unduly eroded and/or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) suffering any material increase in noxious weeds in uncultivated portions thereof and (3) failure to employ all of the usable portions of the demised premises.

(h) "Noxious weed" shall mean any plant species which is injurious, harmful or deleterious or which may be likely to become so to the agricultural, horticultural and livestock industries of the State, as determined and so designated by the Department of Agriculture of the State of Hawaii from time to time, by rules and regulations.

(i) "Agriculture, General" shall mean the cultivation of truck, orchard, flower or nursery crops and/or the pasturing keeping, breeding, training and care of horses and cattle but not of swine, sheep and goats.

IN WITNESS WHEREOF, the STATE OF HAWAII, the Lessor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this

15<sup>th</sup> day of April, 19~~70~~<sup>71</sup>, and \_\_\_\_\_

AMBROSE J. ROSEHILL and FREDERICK J. TITCOMB,

the Lessee herein, has caused these presents to be executed this

14<sup>th</sup> day of April, 19~~70~~<sup>71</sup>, both effective on

the day and year hereinabove set forth.

STATE OF HAWAII

By: *[Signature]*  
Chairman and Member  
Board of Land and  
Natural Resources

And By: *[Signature]*  
Member  
Board of Land and  
Natural Resources

LESSOR  
*[Signature]*  
AMBROSE J. ROSEHILL

*[Signature]*  
FREDERICK J. TITCOMB

LESSEE

APPROVED AS TO FORM:

*[Signature]*  
Deputy Attorney General  
Dated: 6-19-70

STATE OF HAWAII )  
 : ss  
CITY & COUNTY OF HONOLULU )

On this 7<sup>th</sup> day of April, 1970, *WJP*

before me personally appeared AMBROSE J. ROSEHILL and  
FREDERICK J. TITCOMB, to me known to be the  
person(s) described in and who executed the foregoing instru-  
ment and acknowledged that they executed the same as their  
free act and deed.

*Shelva K. Paulina*  
Notary Public, 1st Judicial  
Circuit, State of Hawaii.

My Commission expires: 11-15-71

STATE OF HAWAII )  
 : ss  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me appeared \_\_\_\_\_ and  
\_\_\_\_\_, to me personally known,  
who, being by me duly sworn, did say that they are the  
\_\_\_\_\_ and \_\_\_\_\_,  
respectively, of \_\_\_\_\_,  
and that the seal affixed to the foregoing instrument is the  
corporate seal of said corporation, and that said instrument  
was signed and sealed on behalf of said corporation by au-  
thority of its Board of Directors, and the said \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_ acknowledged  
that they executed said instrument as the free act and deed of  
said corporation.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ Judicial  
Circuit, State of Hawaii.

My Commission expires: \_\_\_\_\_

mm  
Proofed by: *LV*

ADDENDUM

IT IS FURTHER AGREED AS FOLLOWS:

Improvement assessment:

The Lessee shall pay the sum of THREE THOUSAND SEVEN HUNDRED FIFTY-FIVE DOLLARS (\$ 3,755.00 ), representing partial recovering of development costs. Said sum shall be paid as follows:

- (a) Ten percent (10%) of the above at the fall of the hammer;
- (b) Fifteen percent (15%) of the above sum within thirty (30) days from the date of sale;
- (c) Balance within one (1) year from the date of sale or when any mortgage is executed by the Lessee, whichever is sooner; and
- (d) No interest on the above sum shall be charged.



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

April 19, 1963

C.S.F. No. OAHU FILE  
CARTON 58

WAIMANALO AGRICULTURAL SUBDIVISION

LOT 20

Waimanalo, Koolaupoko, Oahu, Hawaii

- Being a portion of the Government (Crown) Land of Waimanalo and R.P. 6346 L.C.Aw. 234-K Apana 2 to Piimoku conveyed to the Territory of Hawaii by Alexander Mah Kong Young and Betty Omizo Young by Exchange Deed dated January 19, 1959 and recorded in Book 3568 Page 57. (Land Office Deed 15646).

Beginning at the northeast corner of this lot, the south corner of Lot 19 of Waimanalo Agricultural Subdivision and on the west side of Mahailua Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIMANALO RIDGE" being 7455.79 feet South and 827.84 feet West, as shown on Government Survey Registered Map 4114, thence running by azimuths measured clockwise from True South:-

1. Along the west side of Mahailua Street, on a curve to the left with a radius of 1022.00 feet, the chord azimuth and distance being:  $19^{\circ} 57' 53''$  185.18 feet;
2.  $14^{\circ} 46'$  264.26 feet along the west side of Mahailua Street;
3. Thence along the north or makai side of the Easement for Maunawili Ditch, parallel to and 15.00 feet from the centerline of Maunawili Ditch, the direct azimuth and distance being:  $113^{\circ} 02' 30''$  1377.62 feet;
4.  $215^{\circ} 25' 30''$  463.20 feet along Slaughter House Lot;
5.  $314^{\circ} 00'$  50.80 feet along R.P. 939, L.C.Aw. 234-M to Pulu;
6.  $279^{\circ} 00'$  92.40 feet along R.P. 939, L.C.Aw. 234-M to Pulu;
7.  $177^{\circ} 40'$  69.30 feet along R.P. 939, L.C.Aw. 234-M to Pulu;

EXHIBIT "A"

WAIMANALO AGRICULTURAL SUBDIVISION  
LOT 20

CAHU FILE  
CARTON 58

April 19, 1963

- 2 -

8. 191° 00' 60.70 feet along R.P. 939, L.C.Aw. 234-M to Pulu;
9. 220° 00' 50.00 feet along R.P. 939, L.C.Aw. 234-M to Pulu;
10. 302° 10' 1135.40 feet along Lot 19 of Waimanalo Agricultural Subdivision to the point of beginning and containing an Area of: 15.587 Acres.

Reserving to the State of Hawaii, its successors and assigns, in perpetuity, the waters and all riparian and other rights in and to that portions of the streams within the above-described Lot 20, as shown on plan attached hereto and made a part hereof.

Subject also to building set-back lines as shown on plan attached hereto and made a part hereof.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Akira Tega  
Akira Tega  
Land Surveyor

gjd/ac

Compiled from Gov't  
Survey Reg. Map 4114



CERTIFICATION

I hereby certify that the foregoing document is a true and correct copy of the document on file in the State Department of Land and Natural Resources, Land Division at the Kalanimoku Building, 1151 Punchbowl St., Rm. #220, Honolulu, Hawaii.

5.19.14   
Date  Land Division Administrator



# **EXHIBIT 5**





NOW, THEREFORE, in consideration of the rents, covenants and conditions contained herein and in General Lease No. S-4298, the Lessor hereby extends the term of the lease for an additional twenty-three (23) years, up to and including March 11, 2013, upon the following terms and conditions:

1. The provisions, terms, conditions, and covenants contained in General Lease No. S-4298 are continued in full force and effect until the termination date of this Extension of General Lease Agreement; provided, however, that where any of the provisions of this Extension of General Lease Agreement conflict with the provisions of the General Lease, this Extension shall control and govern.

2. The Lessee shall pay the annual rent of SIX THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$6,400.00) on February 12th of each and every year during the term as follows:

A. For the first ten (10) years, the sum of SIX THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$6,400.00) per annum.

B. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the 10th and 20th years of the term.

C. Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within 30 days after receipt thereof that Lessee

disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. The Lessee shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the

foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat such failure as a breach of this lease and terminate the lease.

D. The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month.

3. No assignment of the lease shall be permitted for a period of five (5) years from the effective date of any mortgage resulting from the extension granted herein.

4. The Lessee shall furnish the Lessor with an annual statement showing the profit or loss realized from farming activities conducted on the premises.

5. All plans and specifications covering improvements proposed for the subject area shall be submitted to the Chairman for approval prior to construction.

6. The proceeds of the loan shall be used as indicated in the application for extension which is on file with the Department of Land and Natural Resources.

7. All proposed improvements, grubbing, grading, etc., shall be completed within two (2) years from the effective date of the Western Farm Credit Bank mortgage loan resulting from the extension granted. The Lessee shall submit to the Department for review and approval two (2) sets of grading plans, building plans,

and appropriate permits and approvals from applicable State and County agencies prior to commencement of any work activity.

IN ADDITION TO THE ABOVE PROVISIONS, LESSEE AGREES TO THE FOLLOWING TERMS AND CONDITIONS:

8. Prohibition against discrimination. The Lessee covenants that the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin or a physical handicap.

9. Reservations by the State. In addition to these reservations contained in the general lease, Lessor also reserves all geothermal resources and all prehistoric and historic remains found in, on or under the demised premises.

10. Improvements. That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the Board and upon such conditions as the Board may impose, including any adjustment of rent, unless otherwise provided herein. The ownership thereof shall be in the Lessee until the expiration or termination pursuant to a breach of the lease, at which time the ownership thereof shall vest in the Lessor.

11. Assignments, etc. That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made if (1) it contains the personal residence of the Lessee; (2) in the

case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is demonstrated to the satisfaction of the Lessor; or (5) it is to be corporate successor of the Lessee; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and, if necessary, revise the rent of the demised premises based upon the consideration paid by the Assignee; and, provided, further, that the rent shall not be revised downward.

12. Indemnity. That the Lessee will indemnify, defend and hold the Lessor 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 accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the premises, or by any fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

13. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, a policy or policies of comprehensive public liability insurance, in an amount of at least \$300,000.00, insuring the Lessor and Lessee against all claims for personal injury and/or death, and in an amount of at least \$100,000.00 for property

damage; that the policy or policies shall cover the entire premises; including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel the policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as set forth herein or limit the amount of its liability under this lease. The notice to cancel shall be sent to the Lessor sixty (60) days prior to the date of cancellation.

mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

15. Breach. That time is of the essence of this agreement and if the Lessee shall fail to pay such rent or any part thereof at the times and in the manner aforesaid within thirty (30) days after delivery by the Lessor of a written notice of such breach or default, or if the Lessee shall become bankrupt, or shall abandon the said premises, or if this lease and said premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of such breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security

interest in the demised premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter such premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor; furthermore, Lessor shall retain all rent paid in advance as damages.

16. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such privilege, interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of said privilege, interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said privilege, interest, or estate

subsequent to such foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of the right or to deprive it of a remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any redispense effected hereunder shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispense which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

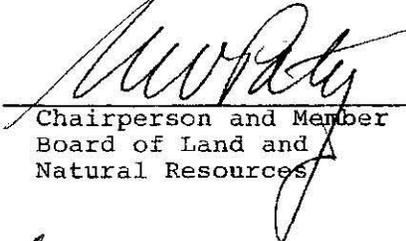
17. Surrender. That the Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise. Furthermore, upon the expiration, termination and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, the Board of Land and Natural Resources may remove any and all such personal property from the premises and place said property in storage at the cost and expense of Lessee, and the

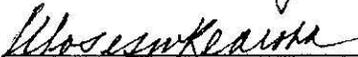
Lessee does hereby agree to pay all costs and expenses for removal and storage of such personal property.

Should there be any conflict between the terms of this Extension Agreement and the terms of the General Lease, this Extension Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first above written.

STATE OF HAWAII

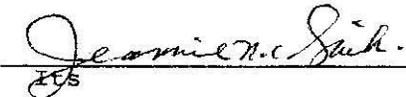
By   
Chairperson and Member  
Board of Land and  
Natural Resources

And By   
Member, Board of Land  
and Natural Resources

LESSOR

S & S PLANTS, INC., a Hawaii  
corporation

By   
Its

By   
Its

LESSEE

APPROVED AS TO FORM:

  
Deputy Attorney General  
Dated: September 14, 1988

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

On this 26<sup>th</sup> day of SEPTEMBER, 1988,  
before me appeared STEVEN S. SAIKI and JEANNIE N.C. SAIKI, to me  
personally known, who, being by me duly sworn, did say that they  
are the PRESIDENT and SECRETARY,  
respectively of S + S PLANTS 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 STEVEN S. SAIKI and  
JEANNIE N.C. SAIKI acknowledged said instrument to be the free  
act and deed of said corporation.

Betty G. Jonah  
Notary Public, State of Hawaii  
My commission expires: July 15, 1990

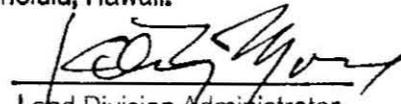
< . 5,

CERTIFICATION

I hereby certify that the foregoing document is a true and correct copy of the document on file in the State Department of Land and Natural Resources, Land Division at the Kalanimoku Building, 1151 Punchbowl St., Rm. #220, Honolulu, Hawaii.

5.19.14

Date

  
Land Division Administrator

**From:** Koa Young  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Thursday, December 10, 2020 6:32:05 AM

---

By diverting an unsustainable amount of water from the sacred Wai‘ale‘ale and Waikoko Streams KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340’s conditions. KIUC’s hydropower plant already produces less than 1% of Kaua‘i’s power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC’s water diversion operations are essentially unnecessary for Kaua‘i’s energy production.

Please I respectfully request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board’s conditions. Should the RP be renewed please I request that BLNR attach the following conditions to KIUC’s permit moving forward:

- 1) A deadline for KIUC to install water gages on all streams feeding the ditch system
- 2) A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)  
A deadline for KIUC to develop and implement a plan to mitigate system losses
- 3) A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- 4) A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- 5) A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

**From:** Kamalani Kaluhiokalani  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:35:54 AM

---

Aloha, my name is Kamalani Kaluhiokalani and I respectfully ask that the BLNR consider not renewing KIUC's RP 7340. If the permit is renewed, please attach the following stipulations:

- 1) A deadline for KIUC to install water gages on all streams feeding the ditch system
- 2) A deadline for KIUC to repair exposed rebar as a health and safety hazard
- 3) A deadline for KIUC to develop and implement a plan to mitigate system losses
- 4) A deadline for KIUC to assess and report back on alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- 5) A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters
- 6) A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources

The fact that some of these conditions are not already required is an egregious oversight. The water from Wai'ale'ale and Waikoko have been important to my wife's 'ohana for generations, and it is all of our kuleana to ensure that they will still be thriving for the benefit of future generations. Water is our most precious resource and must be treated as such. I ask that KIUC be held accountable for their actions (or lack thereof) before their permit can be renewed. Thank you.

**From:** Isaiah Kaauiwai  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 12:06:42 AM

---

Aloha e BLNR Members

I, respectfully, request that the board exercise its statutory responsibility to protect the public trust and deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions.

However, if the RP is renewed, I request that the BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Mahalo for your consideration.

Isaiah Ka`auwai  
Lifelong Kaaui Resident

2020 Dec 8

Hope Hamilton Kallai  
Kia`i Wai o Wai`ale`ale  
POB 655  
Kilauea, HI 96754  
[lokahipath2@live.com](mailto:lokahipath2@live.com)

Suzanne Case, Chair  
Board of Land and Natural Resources  
Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, HI 96813  
[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

Re: **OPPOSITION to Renewal of RP 7340 KIUC**

D. 5 Holdover/Continuation of Revocable Permits for Water Use  
on the Islands of Hawaii and Kauai. KIUC

Aloha e Chair Case and Honorable Board Members:

KIUC is coming before you to request the temporary month-to-month annual permit 7340 for the waters of Wai`ale`ale and Waikoko be renewed for the 18th year, as part of their 65 year water lease application process, which they began in 2003.

1. This permit should not be renewed as KIUC has allowed portions of this state-owned ditch system to remain in disrepair being a threat to public safety, contrary to the conditions of RP 7340, which state:

8. Repair and maintain all buildings or other improvements now or hereafter part of the Water Resources
10. Keep the Water Resources and improvements in a clean, sanitary, and orderly condition
13. At all times with respect to the Water Resources, use due care for public health and safety.

For years, this Board has been shown pictures of rebar sticking out of the KIUC dam face in one of the most popular recreational spots in the Lihue-Koloa Forest Reserve. This is unacceptable as someone is going to get hurt badly.

These pictures were taken in June, 2019. Some of the same rebar photos, different day, different year, have been previously submitted, but the unsafe, dangerous conditions have not been fixed. The repairs have never been made. Why is this state-



owned dam neglected and allowed to deteriorate? Do we have to wait until someone gets killed before the State pays attention?



In June, 2019, while hiking along the `Ili`ili`ula/North Wailua ditch trail with my grandson, I noticed a large water leak from a new 4' black siphon pipe that had been damaged by slope failure and a large albizia tree that fell on the siphon.

I wrote KIUC and sent pictures and maps (attached), who were aware of the leak already. I don't know how long water had been pouring down a previously dry gulch from this huge break, but many overstory albizia trees had fallen 3 or 4 months previous in a large windstorm.





Eighteen months after I saw it, this siphon is not fixed yet, possibly never can be, due to massive slope instability and large invasive trees. There has been more slope failure in the large precipitation events since. This area is a disaster, with potential for greater damage downstream.

This siphon would have transported Wai`ale`ale and Waikoko water to the Upper Waiahi Powerhouse, which has been off line since this break. The 0.7 megawatts of power produced by the combined waters of Wai`ale`ale, Waikoko and `Ili`ili`ula ( and other unknown name tributaries)

These unsafe conditions cannot be allowed to continue. RP 7340 cannot be renewed, again, for this broken system. It is not safe and probably cannot be fixed.

Kauai and this Board have been repeatedly told how important Upper Waiahi Hydropowerplant is to the renewable portfolio on Kauai and that the overnight power produced there is critical. That probably was true in 2003 when KIUC first applied for their 65 year water lease. It is not true now. The AES Solar/Storage facility stores 20 megawatts of overnight power.

The 0.7 megawatts of power produced at Upper Waiahi is half fueled by the waters of `Ili`ilu`ula, Wai`ale`ale and Waikoko, the permit waters under consideration, only feed the Upper Waiahi Hydro (not Lower) - about 0.35 megawatts of power daily from the permit waters of Wai`ale`ale and Waikoko. Not the 1.5 megawatts KIUC claims, adding power produced by 14 other diversions.

These permit waters generate 0.175 megawatts of overnight power, **tiny** in comparison to the AES 20 megawatts stored overnight, without any water diversion. KIUC's success in renewables has made this diversion and the Upper Waiahi Hydropower superfluous. There is no reason to perpetuate these unsafe conditions, draining our rainforest of precious resources for power that can be safely produced elsewhere.

Kauai and this Board were also told that KIUC only needed as much water as necessary to fuel their hydro turbines, about 15-20 mgd. Last year that was switched without explanation - now they want their 65 year lease to be ditch full capacity, 30 million gallons per day, all the time. More than taken during plantation era.

KIUC has not honored their commitment to maintain the ditch infrastructure and has created unsafe conditions in our popular recreational area in the Lihue Koloa Forest Reserve.



Cultural practice of hi`uwai would cease with the lease. The new dam would stop that.

Continuation of this month-to-month permit allows them to continue with their plans for construction of even larger dams in the forest. If they have shown KIUC cannot maintain the existing infrastructure, why should they be allowed to construct new metal dams in our sacred pools of Wai`ale`ale and Waikoko?

This is the proposed new dam to be built on Wai`ale`ale Stream, in a sacred Hi`uwai pool. It is the beginning of a popular trail that goes to the headwaters of Wai`ale`ale Stream, yet has no provision for public access or walkway. This is unacceptable

**Figure 21. Rendering of Overhead View of Modified North Fork Wailua River Diversion**



How would you get your kids across?



This is the proposed dam to be built on Waikoko Stream, again in a sacred Hi`uwai pool. This pool also has great recreational interest to people who tube ditches. It also has no provision for public access or walkway. There is now no hydrologic continuity to Waikoko Stream - it is 100% diverted by the `Ili`ili`ula ditch, with some water returned to dry stream channel from throwout hundreds of feet below. This is unacceptable for the next 65 years. Renewal of this permit allows consideration for these dams to continue and the herbiciding of the ditches that carry our drinking water.

**Figure 24. Rendering of View from Footpath of Modified Waikoko Stream Diversion**



In June 2015, the Commission on Water Resource Management entered into a Joint Funding Agreement with the U.S. Geological Survey to assess and quantify the amount of water available under natural, low-flow conditions for streams within 11 surface water hydrologic units in Southeast Kauai, including the North Fork Wailua (Wai`ale`ale Stream) and Waikoko Streams. After 5 years, this report has just been released, Low-Flow Characteristics of Streams from Wailua to Hanapēpē, Kaua`i, Hawai`i<sup>1</sup> Scientific Investigations Report 2020-5128, prepared in cooperation with

<sup>1</sup> <https://pubs.er.usgs.gov/publication/sir20205128>.

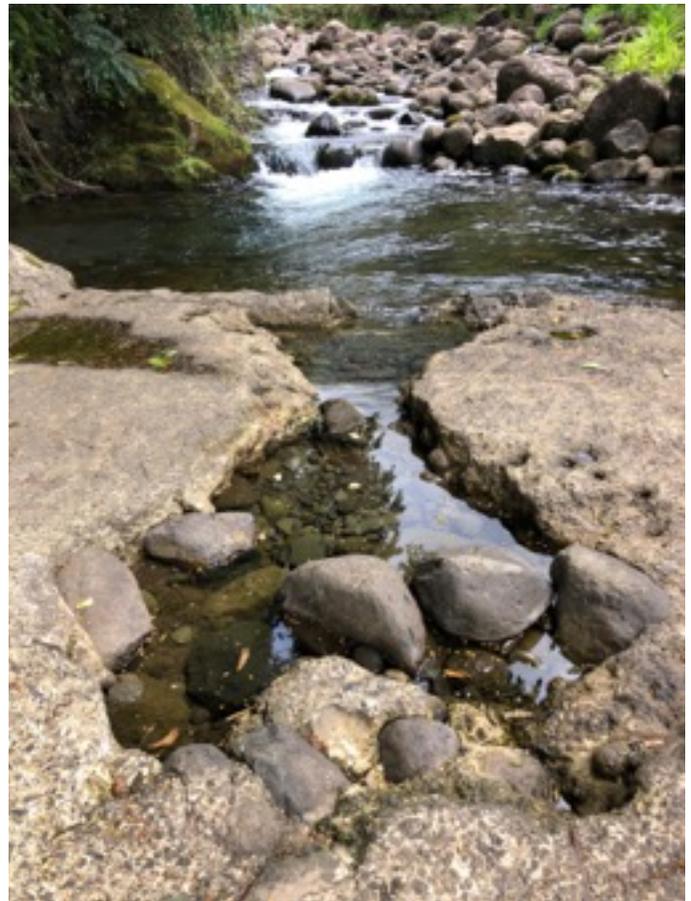
and funding from the State of Hawai'i Commission on Water Resource Management by Chui Ling Cheng. This report has different base flow values than the Wailua Instream Flow Standard Assessment Report, Island of Kauai Hydrologic Unit 2040 Wailua, released August 2018 as DRAFT PR-2018-06<sup>2</sup>. The base flows Q50 and Q95 rates need to be adjusted higher to reflect USGS findings before any 65 year decision can be made. CWRM paid for the science, now it must be incorporated into the permit water availabilities.

Permit waters from this ditch used to grow a lot of food during plantation era. Now they are used to produce a small amount of power that can be produced elsewhere.

We do not have another Wai`ale`ale to go to. Wai`ale`ale cannot be replaced.



Please do not continue this annual permit, again, for the 18th year. The diversion of Wai`ale`ale and Waikoko waters must cease.

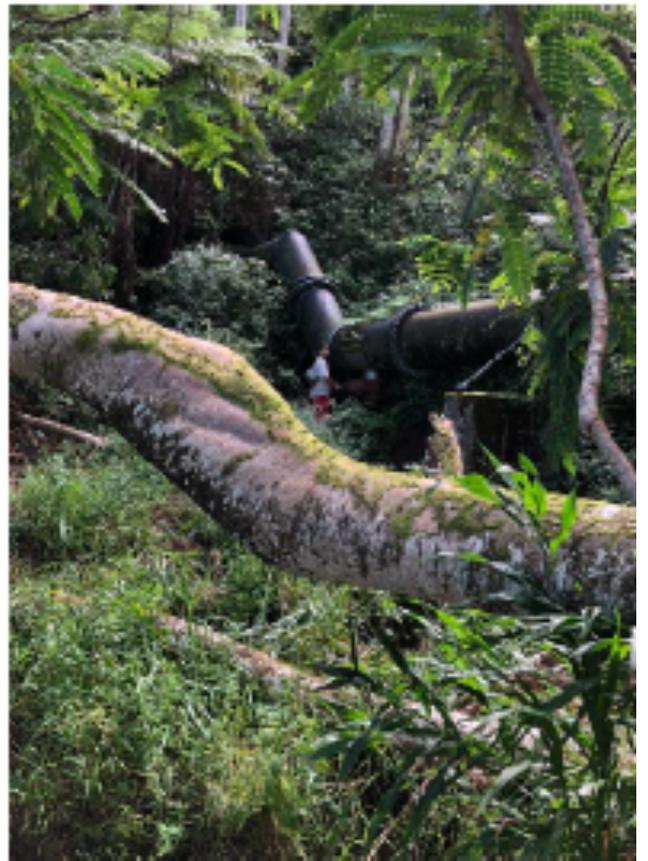


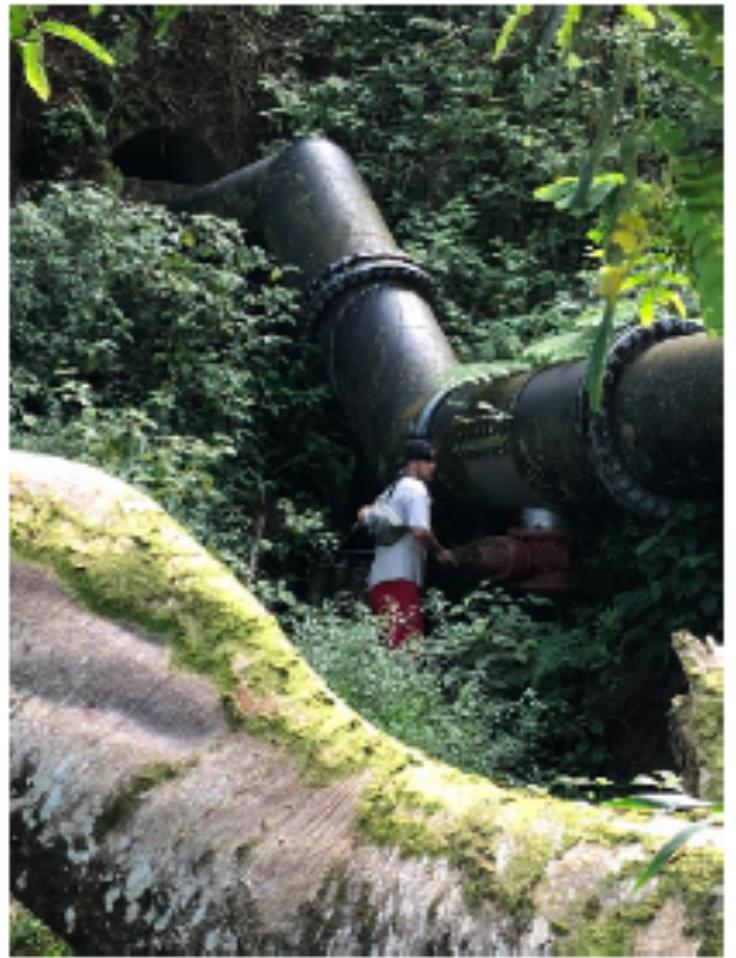
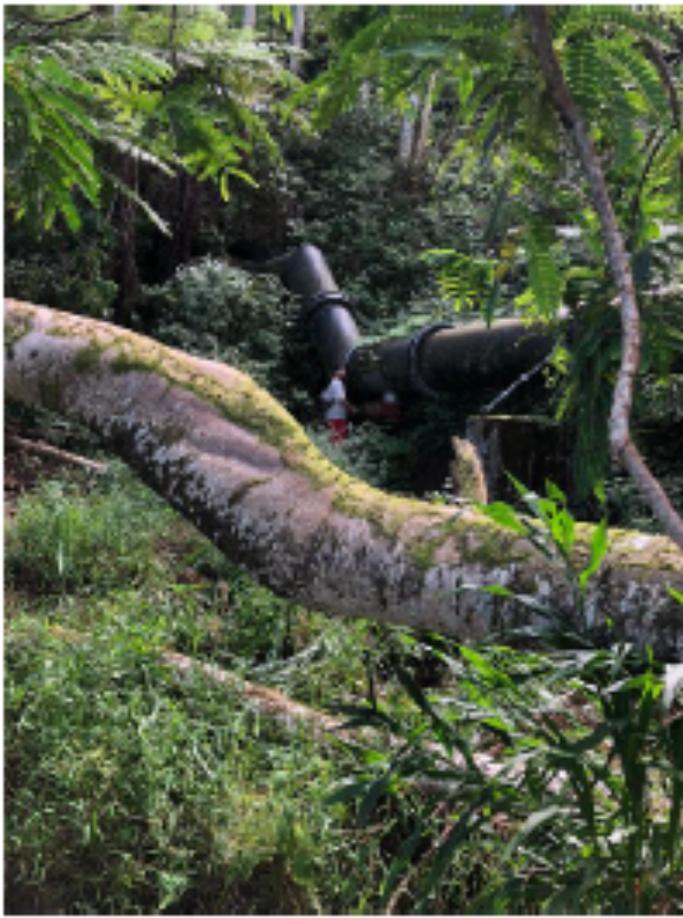
Mahalo for your consideration.

Hope Hamilton Kallai

---

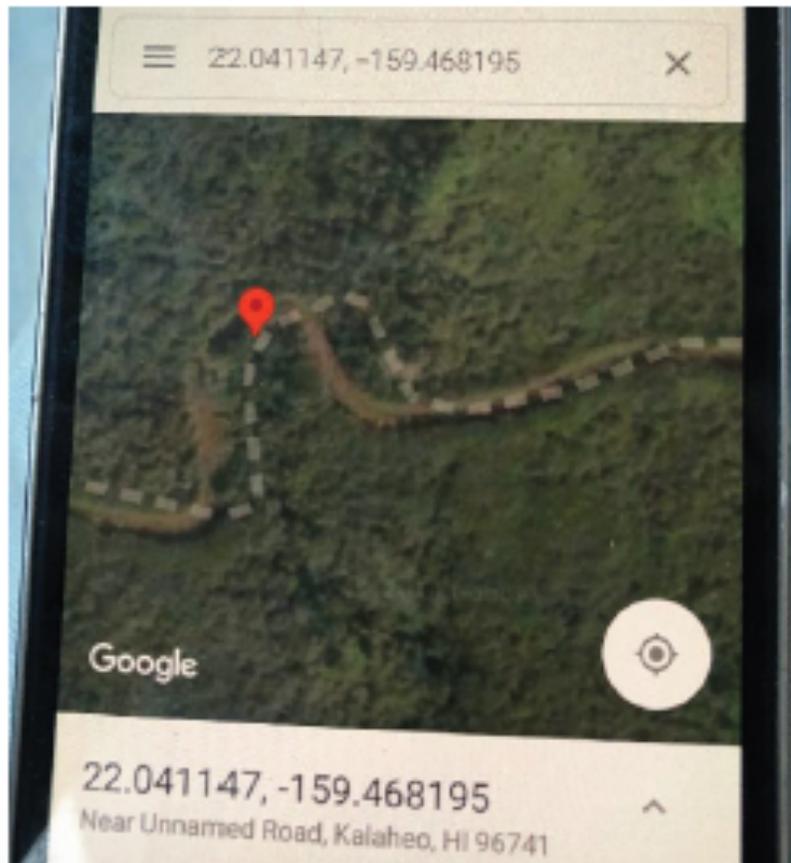
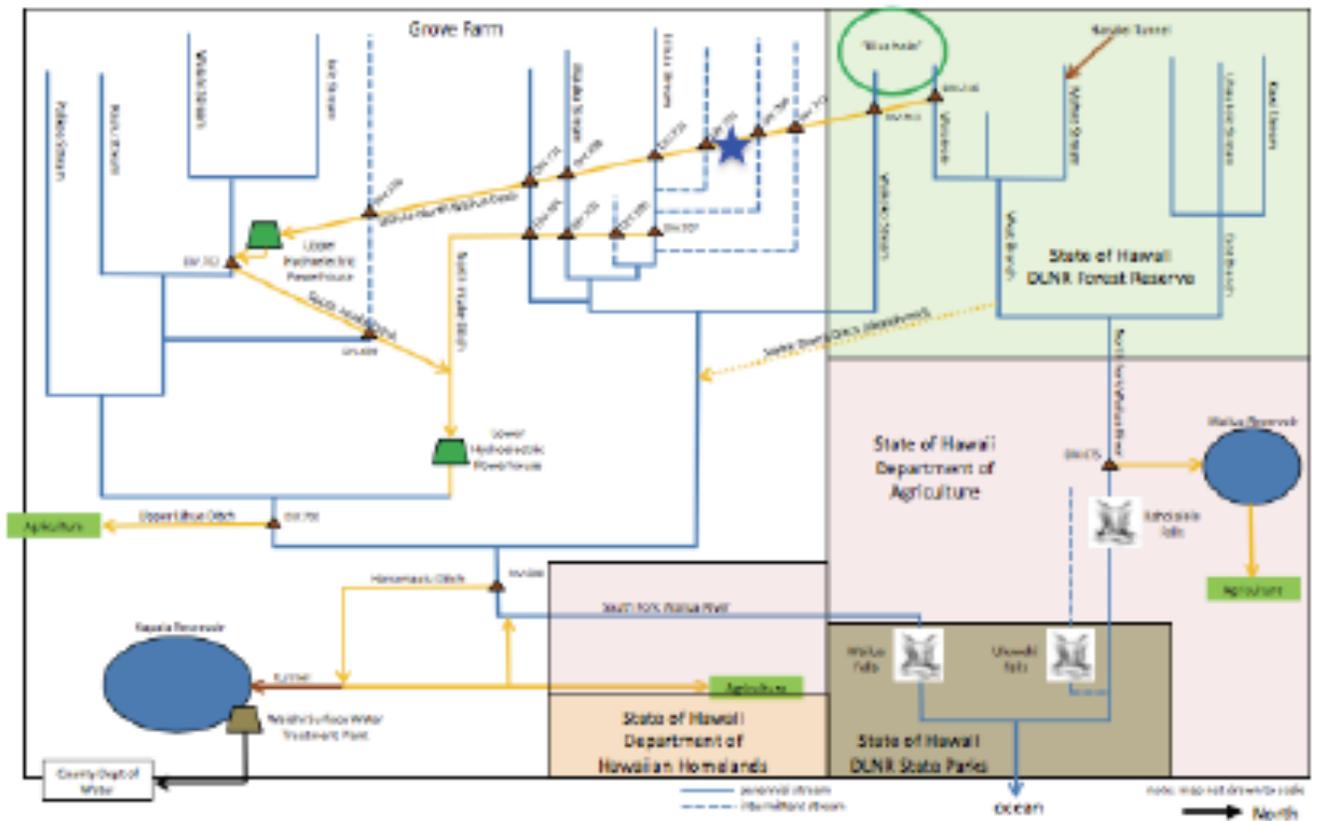
<sup>2</sup> <https://files.hawaii.gov/dlnr/cwrm/ifsar/PR201806-2040-WailuaDraft.pdf>





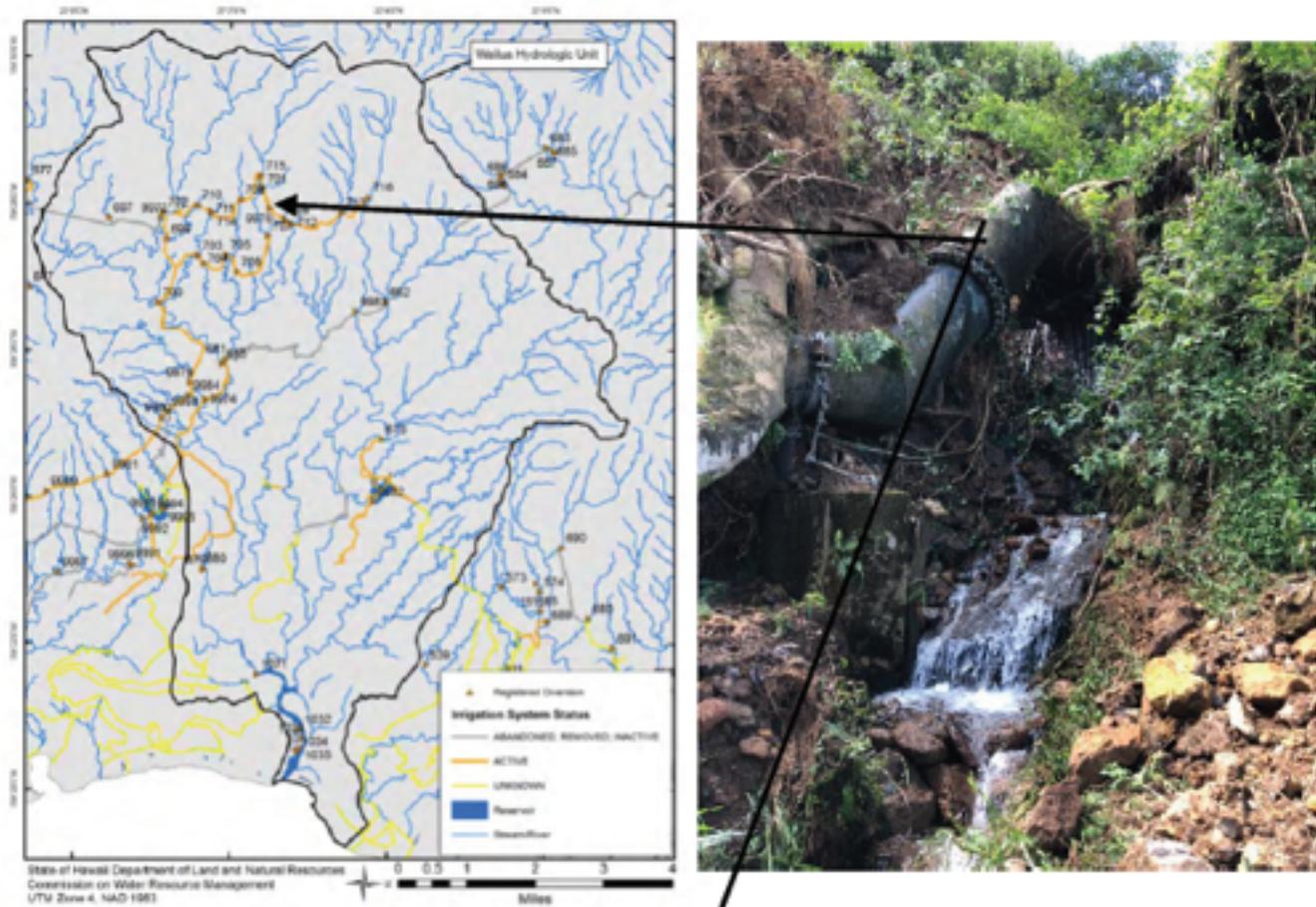


# Location of June, 2019 Water Leak



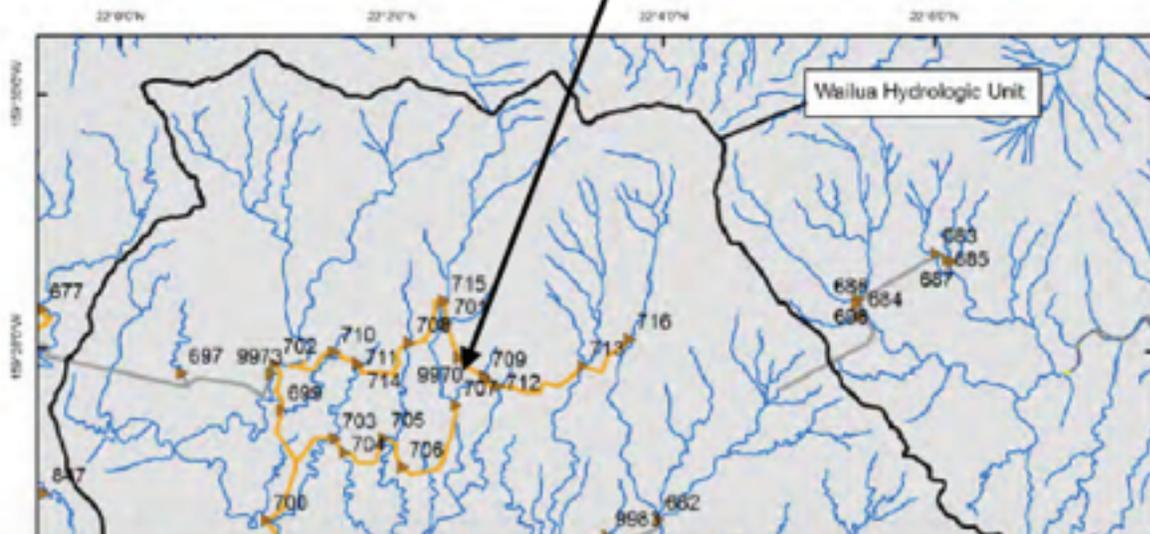
June 2019 Leaking pipe on ~ilī'ula-North Wailua Ditch

Figure 13-1. Location of registered diversions and irrigation systems in the Wailua hydrologic unit, Kauai.



- 85 -

Figure 13-1. Location of registered diversions and irrigation systems in the Wailua hydrologic unit, Kauai.



**From:** nani kaluhiokalani  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:33:03 AM

---

Aloha, my name is Nani Brun Kaluhiokalani and I respectfully ask that the BLNR consider not renewing KIUC's RP 7340. If the permit is renewed, please attach the following stipulations:

- 1) A deadline for KIUC to install water gages on all streams feeding the ditch system
- 2) A deadline for KIUC to repair exposed rebar as a health and safety hazard
- 3) A deadline for KIUC to develop and implement a plan to mitigate system losses
- 4) A deadline for KIUC to assess and report back on alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- 5) A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters
- 6) A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources

The fact that some of these conditions are not already required is an egregious oversight. The water from Wai'ale'ale and Waikoko have been important to my 'ohana for generations, and it is all of our kuleana to ensure that they will still be thriving for the benefit of future generations. Water is our most precious resource and must be treated as such. I ask that KIUC be held accountable for their actions (or lack thereof) before their permit can be renewed. Thank you.

**From:** Tom Kanahela  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOSING renewal of RP 7340 to KIUC  
**Date:** Thursday, December 10, 2020 8:58:10 AM

---

Dec 10, 2020

To DLNR/CWRM/Chairman Case,

I am a resident of Hanapepe, Kauai, and I am kanaka oiwi. I adamantly oppose the renewal of RP 7340 to KIUC.

The damming, diverting, energy-extraction, and selling of these waters is violence and genocide against my people. These processes have (and continue to) damage our watersheds and diminish our populations of endemic plants and animals. The various "studies" that attempt to show "low or no impact" to the environment are perhaps obtained by paying puppeted surveyors. My people know the truth because we walk the forests and streams daily and KNOW them. Endangered fish and shrimp are chopped up by the hydro operation. Entire stream beds of flora and fauna have been decimated by extensive stream-drying diversions. And for WHAT? For KIUC and Grove Farms (and their "down-stream" corporate friends like A&B, McBryde, Robinson Family Partners) to be able to plan a "rich" future for the non-indigenous sugar-empire-descendants on Kauai: a grand future of more hotels, more foreign "infrastructure," more tourist capacity, more imports, more imported plastic for the over-filled landfills.

The waters of Wai'ale'ale are sacred to ALL kanaka oiwi, not just to those on Kauai. The evidence of this is found in hundreds of our oli, our mele, our hula, and our mo'olelo. These waters should NEVER have been diverted, polluted, and enslaved the way that they were. The fact that this taking of sacred waters continues is damning proof that the "50th state" is still supporting and encouraging colonial values of exploitation and genocide. It is shameful behavior.

Do not renew RP 7340. 'A'ole.

Kealii Kanahela  
Hanapepe Kauai

**From:** MaryLu Kelley  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 9:06:52 PM

---

Aloha BLNR,

I respectfully request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions. Should the RP be renewed please request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Thank you,  
Mary Lu Kelley  
3644 Lawaiuka Road  
Lawai, HI 9676

**From:** Olivia Kimokeo  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOSE RP7340  
**Date:** Wednesday, December 9, 2020 8:53:42 AM

---

Aloha,

As a citizen of Hawaii, and a native Hawaiian, I am submitting a request to the Board to exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7430. In the event that the RP is renewed, some conditions I would like to request be implemented in KIUC's permit moving forward are:

Deadlines be instituted for KIUC:

- to install water gauges on all streams feeding the ditch system, repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- to develop and implement a plan to mitigate system losses
- to assess and report back on alteration to existing water diversion structures
- to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters.
- And finally, a deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

I request these things humbly as a concerned citizen and native of the land.

Mahalo,

Olivia Hi'ileialoha Taylor

**From:** Dave Kisor  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 5:21:57 PM

---

Aloha BLNR

From what I can glean, the KIUC oddly termed power generation facility appears to be more of water wasting boondoggle. It wasn't used in 2020 because of disrepair and it looks like it won't be for a long time. By all rights it should be retired and eliminated. There are other ways to generate electrical power that would provide much more than a pathetic 1% of total power on island. Mongoose on a treadmill would do better than that. If the facility is in that bad of shape, it seems upgrades won't make it any more efficient. If it didn't run in 2020, did they do anything to try and repair it, or were they just waiting to renew the permit to waste more water and time, so they could sit on their hands, do nothing and get paid? If I offended someone's delicate sensibilities, as they say in the Marines, "suck it up, buttercup!"

Dave Kisor,  
Veteran Aviation Electrician USN/USNR; Geographer BA/MA; retired USFS wildland  
fire research technician  
Pahoa, HI 96778

**From:** mak221@aol.com  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL]  
**Date:** Wednesday, December 9, 2020 8:43:50 AM

---

Re:

Kaua'i Island Utility Cooperative (KIUC) has again filed a request to renew its Revocable Permit (RP) 7340 for the continued diversion of water from Wai'ale'ale and Waikoko Streams.

Aloha BLNR Members,

I am completely against the unsustainable taking of water. Why was this ever allowed, and why should it continue?

It should not.

Mahalo

Mark Koppel  
Hawaii

**From:** Makoto Lane  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:08:49 AM

---

I oppose RP 7340. No more stealing water for future housing developments. It is illegal and the county never had the authority to approve it without an EIS in the first place.

Makoto Lane  
(808)631-1866  
2650 Ho'onani Rd. Koloa, HI 96756

**From:** Gordon LaBedz  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] KIUC Permit application  
**Date:** Thursday, December 10, 2020 8:36:06 AM

---

Kaua'i Island Utility Cooperative (KIUC) has filed a request to renew its Revocable Permit (RP) 7340 for the continued diversion of water from Wai'ale'ale and Waikoko Streams. This Stream diversion is minor benefit to KIUC and a major gift to Grove Farm with very little benefit to Kauai residents and extremely harmful to the island's water ecosystem. It should be denied.

Gordon LaBedz   
808 634 8535

**Facebook.com/[Kohola Leo - Whale Voice](#)**

**From:** Debbie Lee-Jackson  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony In Opposition to RP 7340  
**Date:** Wednesday, December 9, 2020 6:50:35 PM

---

Do not renew Revocable Permit 7340. The State has an obligation to it's beneficiaries. By continuing to allow the taking of Waialeale waters, you violate my rights as a beneficiary. You violate your fiduciary responsibility by not protecting natural resources . . . severing the ability of my and others' ohana to perform our traditional and cultural practices. You violate the Public Trust. Make CWRM and DLNR follow their own laws and not give in to corporate pressure. I DEEPLY OPPOSE THE RENEWAL OF REVOCABLE PERMIT 7340.

Debra Lee-Jackson

**From:** Mikiala Leslie  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Waialeale and Waikoko testimony  
**Date:** Wednesday, December 9, 2020 8:58:58 AM

---

Aloha,

**As a citizen of Hawai'i and a Native Hawaiian** I would like to submit a request to the Board to exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7430. In the event that the RP is renewed, some conditions I would like to request be implemented in KIUC's permit moving forward are:

Deadlines be instituted for KIUC:

- to install water gauges on all streams feeding the ditch system, repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- to develop and implement a plan to mitigate system losses
- to assess and report back on alteration to existing water diversion structures
- to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters.
- And finally, a deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

I request these things humbly as a concerned citizen and native of the land.

Mahalo,  
Miki'ala Leslie

Sent from my iPhone

**From:** Alison Lewis  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOSE D5: renewal of RP 7340  
**Date:** Thursday, December 10, 2020 8:11:15 AM

---

Dec 10, 2020

To DLNR/CWRM/Chairman Case,

I am a resident of Hanapepe, Kauai. I adamantly oppose the renewal of RP 7340 to KIUC.

The damming, diverting, selling of these waters directly violates the deep cultural beliefs of the indigenous peoples of Kauai, damages the health of a fragile forest ecosystem, AND directly violates state water protection laws. This permit is a long-term skirt-around of the laws (using exclusions to the law that were intended for short term "bridging" needs alone). State water protection laws were put in place by the VOTING CITIZENSHIP, through valid, lengthy legislative process, and DLNR is the agency responsible for UPHOLDING the law, rather than this helping of corporations (or deceptively-named "cooperatives") to EVADE the law.

Renewing revocable permit 7340 will financially benefit the corporations of Grove Farms and KIUC. The Chairman of DLNR is a close family relative of the leaders of these corporate entities and it is well within the realm of logic to predict that she also would benefit from their windfall gain in this endeavor.

The citizens of Kauai do NOT want KIUC hydropower. It satisfies an insignificant amount of the island's needs and it comes at the expense of endangering the environment and violating the indigenous people's rights.

Renewing this permit is WASTEFUL, FRAUDULENT, IRRESPONSIBLE, DISRESPECTFUL, colonialist behavior. If revocable permit 7340 is approved, I will ask the FBI to begin a Title 18 Investigation against DLNR for Racketeering; the violation of citizen civil rights in order to profit corporations and persons in positions of government power.

Do not renew RP 7340. NO.

Alison Lewis  
Hanapepe Kauai

**From:** Irons, Tim  
**To:** [DLNR.BLNR.Testimony](#)  
**Cc:** [Mosher, Dick](#); [Vega, Courtney A.](#)  
**Subject:** [EXTERNAL] BLNR December 11, 2020 Meeting: Item D-5, RP S-7088 (Lindner)  
**Date:** Thursday, December 10, 2020 8:10:43 AM  
**Attachments:** [BLNR Submission Dec 11 meeting\(116104435\\_2\).pdf](#)  
[Exhs 1-14.pdf](#)

---

Dear Chairperson Case and Board Members:

As counsel for Jeffrey Lindner, I request the opportunity to present testimony at the December 11, 2020 Board meeting concerning Item D-5, RP S-7088 (Lindner). I can be reached at (310) 402-4082, [tim.irons@dentons.com](mailto:tim.irons@dentons.com). My computer/device name is HNLL128WNN2.

In addition, please find attached written testimony submitted on the same item for consideration by the Board.

Sincerely,  
Tim Irons



Tim Irons

Visit the [New Dynamic Hub](#), available to our clients and communities as part of the commitment that Dentons, the world's largest law firm, is making across 75+ countries, to address accelerating change resulting from the pandemic.

D +1 808 441 6147 | US Internal 86147  
[tim.irons@dentons.com](mailto:tim.irons@dentons.com)  
[Website](#)

AHFI is now Dentons and continuing its services throughout Hawai'i

Dentons US LLP

[Durham Jones & Pinegar](#) > [LEAD Advogados](#) > [Rattagan Macchiavello Arcena](#) > [Jiménez de Aréchaga, Viana & Brause](#) > [Lee International](#) > [Kensington Swan](#) > [Bingham Greenebaum](#) > [Cohen & Grigsby](#) > [Sayarh & Menjra](#) > [Larraín Rencoret](#) > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this copy from your system. Please see [dentons.com](https://www.dentons.com) for Legal Notices.

December 10, 2020

VIA E-Mail

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI 96813  
E-mail: blnr.testimony@hawaii.gov**Re: December 11, 2020 BLNR Meeting, Item D-5, RP S-7088 (Lindner)**

Dear Chairperson Case and Board Members:

We write on behalf of Jeffrey Lindner and Moloaa Water Company<sup>1</sup> (collectively, "Lindner") with regard to the holdover/continuation of revocable permit no. RP S-7088 (Lindner) (the "Permit"), Item D-5 for the Board's December 11, 2020 meeting. Staff recommends continuation of the Permit subject to the unusual condition that:

"The Board requires Mr. Lindner to reach agreement with the [Moloaa Irrigation Cooperative "MIC"] no later than March 31, 2021 to complete the water meter relocation. Furthermore, staff recommends that the Board also require Mr. Lindner provide a written update on the status of the agreement no later than April 7, 2021...In the event the parties fail to reach an agreement by the deadline, staff may bring the matter back to the Board to consider whether the revocable permit should be continued." Item D-5, p. 4.

This condition appears to have arisen from a November 16, 2020 complaint filed by MIC with the Commission on Water Resource Management ("CWRM") regarding the relocation of a water meter that serves Moloaa Hui agricultural lands, in Moloaa, Kauai. The staff submittal provides little context as to what the underlying dispute is and why the Board should interject itself into its resolution. This letter is an effort to provide background information necessary for the Board to make an informed decision.

The underlying dispute is decades old and involves litigation in multiple forums. The dispute concerns private ownership of easements and water facilities, land development rights and violations of CC&Rs running with the land. Forcing Lindner to negotiate with MIC by a date certain under threat of losing the Permit would unreasonably interfere with Lindner's private property rights and economic relations and is not in the best interests of the State.

---

<sup>1</sup> Lindner (through MWC) owns the water facilities serving three separate water tanks: (1) the Kauai Department of Water ("DOW") water tank, (2) the Moloaa Farms LLC water tank and (3) the Moloaa Hui farmers water tank that is managed (but not owned) by MIC. The water meter serving the Moloaa Hui tank is currently located on Moloaa Farms LLC's property, an entity owned and controlled by Lindner.

MIC's attempt to leverage the continuation of the Permit to gain an unfair and unwarranted negotiating advantage should be rejected outright. **if the Board seeks to impose a condition that interferes with Lindner's prospective economic relations, Lindner requests that a contested case hearing be held to determine whether the State's (and not a private third party's) interests are being served.**<sup>2</sup>

## I. BACKGROUND

### A. The Sale Of The Lihue Plantation Lands

On February 10, 1997, Lindner loaned \$500,000 to developer Moloaa Hui Lands, Inc. ("MHL")<sup>3</sup> to fund the purchase of the Lihue Plantation property on Kauai identified by Tax Map Key Nos. (4) 4-9-09:1, 9-25, 27-29, 35-38 (the "Property"), with an option to acquire a portion of the Property (the "Option"). (**Ex. 1**) This purchase paved the way for farmers who were leasing lots from AMFAC to purchase ownership interests in the land. Under the Option, developer MHL agreed to use best, good faith, efforts to subdivide or condominiumize the Property and permit residential farm dwelling density of 15 units on Lindner's portion and Lindner agreed to provide irrigation water to MHL for the development of the Project, including Lindner's portion. (*Id.* at pp. 2, 9 and 12) Paul Huber, President of MIC, signed off on the Option as an individual and officer of MHL.

On March 13, 1997, MHL proceeded to purchase, consolidate and re-subdivide the Property through a Variance Permit—creating Lot 1 (approximately 590 acres where Moloaa Hui I and II Condominium Property Regimes ("CPRs") are located) and Lot 2 (approximately 134 acres now owned by Lindner's entity, Moloaa Farms LLC and others). MHL placed CCRs on all of the Property (the "1997 Declaration"). (**Ex. 2**) The County of Kauai conditioned tentative subdivision approval on, *inter alia*, the provision of potable water to the Property. (**Ex. 3**) Lindner exercised the Option to Lot 2 on August 27, 1998 and took title subject to the 1997 Declaration. (**Ex. 4**) From the beginning, both Lots 1 and 2 were to be served by the same water system and MHL entered into a water supply agreement with Lindner to access the irrigation water from State Well No. 1, for which Lindner holds the Permit.

### B. The 1997 Declaration of CCRs For All The Moloaa Lands, Including Lot 2

The 1997 Declaration states that the existing system and water tank on the Property are to be used for the Project (defined as including all lands, including Lots 1 and 2). The Declaration provides, in part, at page 12:

"The existing water system for the Project will continue to be used as long as it is available.... Declarant continues in negotiations for water usage as of the execution of

---

<sup>2</sup> HRS §171-55, provides in part:

Notwithstanding any other law to the contrary, the board of land and natural resources may issue permits for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which **will serve the best interests of the State**, subject, however, to those restrictions as may from time to time be expressly imposed by the board. (Emphasis added.)

<sup>3</sup> MHL was owned and controlled by Michael Strong (now deceased), Candace Strong and Paul Huber. Paul Huber is also a founder and current President of MIC.

this document. Ownership of the existing water tank on the Project is unclear, but to the extent Declarant owns it, it will be reasonably used for the Project.” (*Id.*)<sup>4</sup>

A condition of ownership is *bona fide* agricultural use, which must occur on a continuous basis as demonstrated to the declarant (MHL) or to the Farm Review Committee set up by the 1997 Declaration. The Declaration also confirms that residential use is subject to a Farm Review Committee and subject to agricultural residential use restrictions including an anti-speculation provision. (Ex. 2)

An amendment to the 1997 Declaration was recorded on March 16, 2000 eliminating, among other things, the anti-speculation provision allowing the developer and its principals to profit from unit sales. (Ex. 5) The amendment also substituted the condition of “bona fide agricultural use of the Property” with a condition that all lots comply with the County Agricultural Dedication Rules under Section 5A-9.1 of the Kauai County Code, as amended. (*Id.*) The Ag Dedication Rules provide that the land must be used for one of 9 agricultural uses, for profit, on a continuous and regular basis. (Ex. 6) Factors considered to determine whether the owner intends to obtain a monetary profit is evidenced by the fact that the land enjoys County agricultural water rates. (*Id.*)

As noted above, Lindner agreed to provide irrigation water to MHL, which enabled the farmers to continue to operate in conformity with the subdivision conditions of approval, state land use laws and the CC&Rs.

#### C. The Formation Of CPRs On Lot 1 And Denial Of Water To Lot 2

Lot 1 was condominiumized into Moloaa Hui I and II CPRs. Moloaa Hui I was divided into 43 separate units. (Ex. 7) Moloaa Hui II was divided in 18 units. In February 2000, the Planning Commission approved an increase of farm dwellings on Lot 1 from 9 to 13. (Ex. 8) The Moloaa Hui III condominium that was also created by MHL was abandoned and subdivided into individual Roadway Lots. Lot 1’s 13 farm dwellings were approved without MHL providing potable water or meeting other requirements of the Kauai County subdivision ordinance or the County Ag Dedication rules. In addition, in 2010, the County adopted a new farm worker housing ordinance that paved the way for a massive increase in farm dwellings on Lot 1. Over time, the Moloaa Hui water tank went into disrepair due to lack of maintenance by MHL, MH I and MH II.

From the outset, Lot 2 (Lindner’s lot) was denied access to the water system and prevented from developing its promised 15 farm dwellings. At an annual meeting for Moloaa Hui I, II and III in June of 2000, Alberto Cartiga asked Michael Strong (a principal and officer of MHL) “if J. Lindner will use our water tank for his house sites.” Mr. Strong answered “no, definitely not.” (Ex. 8A at 3) In 2010, when Paul Huber was exploring the formation of MIC, Lot 2 was depicted as private land not serviced by the water system. (Ex. 8B at 14) In 2013, MHL still sought to control the water tank—a facility that is to be used for the all the Moloaa Hui Lands, including Lot 2. (Ex. 8C at 3) The denial of access to the water system has undermined Lindner’s ability to serve Lot 2, as originally contemplated under the Option and 1997 Declaration.

---

<sup>4</sup> In subsequent CPR filings, Declarant MHL confirmed ownership of the water tank and listed the water system as a common element.

#### D. The Water Supply Agreement

As contemplated under the Option for the purchase of the Lihue Plantation Property, MHL entered into a Water Supply Agreement (“WSA”) with Lindner for the subdivision’s water supply. Under the WSA, MHL could not assign its rights without Lindner’s prior written consent. **(Ex. 9)** When MHL was involuntarily dissolved by the State in 2008, no new agreement was put in place. Therefore, neither the owners of Lot 1 nor the Roadway Lots have a water supply agreement with Lindner to provide State well water.

#### E. MIC’s Formation, Miss-Management And Lack Of Maintenance Of The Subdivision’s Water System

MIC was formed by owners of Lot 1 in October 2010 to manage and administer water resources and facilities for agricultural purposes. In July 2011, MIC entered into a water management agreement (“WMA”) with the owners of Lot 1 and the owners of the Roadway Lots **to manage** the subdivision’s water system, including the Moloaa Hui water tank. **(Ex. 10)** The WMA transferred “water management responsibilities” to MIC but **no ownership rights**. (*Id.*) The responsibilities include water delivery, billing, maintenance of the water lines and the water tank and the collection and management of a prudent maintenance and operations cash reserve. (*Id.*) The WMA is subject to termination after 10 years (without cause) or immediate termination in the event of a default by either MIC or the Lot 1 owners. (*Id.*) MIC was directed to negotiate a supply contract with the water supplier (Lindner) but failed to do so. (*Id.*)

In 2015, MIC was declared a Public Water System (“PWS”) due to the massive increase in farm dwellings built on Lot 1’s prime agricultural land. MIC was declared a PWS despite not owning any water facilities, having no contractual rights to a water supply, and being only a manager/middleman conveying water at cost.<sup>5</sup> In 2016, MIC was awarded State funding to help address water deficiencies in the system caused by the lack of basic maintenance. MIC was awarded State funding despite having no ownership rights to the private water system. MIC has not focused on repairing the existing system but has spent money on a new water tank proposal and drilling a new supply well- while claiming it lacked money to move its water meter onto Lot 1.

In a nutshell, the developers (including Paul Huber as principal) used the CPR process to create and sell, **for profit**, dozens of land units without putting in place basic infrastructure necessary to accommodate the development. Huber then formed MIC and sought State funding for capital improvements that should have been the responsibility of the developer. MIC’s formation, therefore, was an elaborate effort to shift

---

<sup>5</sup> Hawaii Administrative Rules, Title 11, Chapter 20, “Rules Relating to Public Water Systems,” section 11-20-2, state that a public water system is “a system which provides water for human consumption, through pipes or other constructed conveyances if the system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year.”

Section 11-20-1 states that Chapter 20 “applies to each public water system, **unless the public water system meets all of the following conditions:**

- 1) it consists only of a distribution and storage facilities (and does not have any collection and treatment facilities);
- 2) it obtains all its water from, but is not owned or operated by a public water system to which such rules apply;
- 3) it does not sell water to any person; and
- 4) it is not a carrier which conveys passengers in interstate commerce.

private costs to the State. Despite all of the State funds received, MIC has done nothing to repair the Moloaa Hui water tank that has been deficient since at least 2013. (Ex. 8C)

#### 1. MIC Allegedly Acquires The Water Tank Unit

While MIC has done little to fix deficiencies in the existing water system, MIC has, apparently, spent State funds on acquiring and developing new facilities. In April 2018, MIC purchased condominium Unit 33 (by quitclaim deed) underlying the Moloaa Hui water tank. MIC purchased Unit 33 from a newly incorporated Moloaa Hui Lands, Inc., listing Eric Michael Strong as President/Chief Executive Officer. The deed was recorded on April 25, 2018 as Document No. 66890441. (Ex. 11) According to Department of Commerce and Consumer Affairs, the original MHL entity, which owned Unit 33 and whose members included Paul C. Huber, Michael R. Strong and Candace L. Strong, was involuntarily dissolved on June 10, 2008. (Ex. 12) In June of 2014 a new entity was “re-incorporated” by Eric Strong but dissolved December 1, 2017. (*Id.*) On the date of dissolution, yet another Moloaa Hui Lands, Inc. was registered in Hawai‘i. (*Id.*) The newly formed Moloaa Hui Lands, Inc., therefore, did not hold title to convey Unit 33 to MIC. Tax assessment records show that there were no transactions between 1999 and the April 2018 transaction. And apparently, back taxes were never paid to the State.

In other words, the entity that originally acquired Unit 33 dissolved and a new entity (with the same name but none of the same officers/owners) was created that acted as grantor under the deed. This was a sham transaction and leaves open the question of ownership of the unit under the water tank. And, this further calls into question whether MIC has/had any ownership/control over the water system necessary to secure State funding.<sup>6</sup>

#### 2. MIC Fails To Properly Maintain The System, Violates Clean Water Act Requirements And Is Declared A Public Water System

MIC has done little to maintain and upgrade the aging water system; all the while imposing reserve and service charges on its customers. The roof of the water tank is in extremely poor condition due to severe corrosion and is essentially failing. To date, MIC has not repaired the water tank roof, which allows for contaminants to enter into the system. Due to the fact that the water tank has no back flow preventer, when well pumping ceases, water from the tank flows back up the main line into Lindner’s system. As a result of the deficient water tank, an enforcement order was issued by the Department of Health. Despite the enforcement action, MIC did not repair the water tank but spent its State acquired funds on a proposal to build a brand new water tank.

---

<sup>6</sup> In May of 2018, MIC applied for a State Drinking Water SRF loan in the amount of \$995,325. All projects under the program require various assurances, including that the applicant has the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of the drinking water treatment works. It is a mystery how MIC could apply for and accept long-term financing based on an operating agreement that can be terminated in 2021 or sooner under an early termination provision. Based on its lack of ownership of the system or a reliable long-term source of water, MIC does not and did not appear to have the requisite authority to obtain SRF funding. Ex. 13.

MIC was also required to maintain an accounting system in accordance with generally accepted accounting principles. *Id.* According to State records, MIC has applied for SRF funding of up to \$3,875,000 for a new water tank, upgrades to pipelines and related improvements. Ex. 14. To date, it is unclear what money MIC has actually received and how it has been spent.

At the time the State became aware of deficiencies in the water tank, it discovered that Lot 1 owners had constructed dozens of farm dwellings—all served by the water tank. The State declared the “MIC system” a Public Water System, despite the fact (noted above) that MIC did not qualify as a PWS. As a result, Lindner’s system (designed to provide only irrigation water for agricultural purposes as expressly reflected in the DLNR Permit) was also designated a PWS and forced to test and treat water at the State well source due to the increase in potable demand. In addition, Lindner’s farm was also required to test and treat its water. While Lindner ever only agreed to provide raw irrigation water, the PWS designation requires potable water. Lindner has born significant costs as a result of the PWS designation directly caused by the expansion of farm dwellings on Lot 1.

### 3. MIC Imposes A \$700,000 Reserve Charge For Lot 2 To Access The Common Water System

In the spring of 2019, Lindner approached MH I and MH II through their Presidents, Paul Huber and Ned Whitlock, to connect to the water system for the benefit of Lot 2, as contemplated by the subdivision approval and 1997 Declaration. Rather than address the issue on behalf of the owners of the system, Huber and Whitlock insisted that any agreement would need to be with the managing agent, MIC. However, MIC was never authorized by Lot 2 ownership to manage the water system on their behalf.

Despite the fact that Lot 2 has a legal right to connect to and use the water system, Huber and Whitlock demanded that Lot 2 pay a reserve charge in excess of \$700,000 and water rates 10% above all other subdivision owners. Huber and Whitlock, therefore, used MIC as a shield to block Lot 2’s fair access to the system and forced Lindner to demand arbitration. **The arbitration and litigation that arose are ongoing.**

## II. ISSUES RAISED BY THE RELOCATION OF THE MAIN WATER METER TO THE MOLOAA HUI WATER TANK

Given the proper context of the dispute, the staff proposed condition presents a number of problems. First and foremost, MIC is not authorized to bind the owners of the Moloaa Hui water system to a settlement with Lindner. MIC is a managing agent of the owners of Lot 1 and the Roadway Lots. Lot 2 holds equal rights and interests in the common water system. Any negotiation regarding the relocation of the water meter must include representatives of Lot 2, MH I, MH II and the Roadway Lots ownership. MIC may only negotiate on behalf of those owners/interests that have specifically authorized MIC to act on their behalf. MIC has not and cannot provide such authorization. If the State were to impose a Permit condition to resolve this particular dispute (which is not recommended), **all interested parties must be represented and required to negotiate in good faith.**

Second, relocation of the meter involves significant property interests. For many years, Lindner has requested that the main water meter for the Moloaa Hui water tank be relocated from his property to Lot 1. The current location of the meter creates a number of problems. Water from the Moloaa Hui water tank flows back up the hill into Lindner’s pipes due to the absence of a back flow preventer at the tank site. This means that the defects in the water tank (such as the leaking roof) can cause water contamination that enters into Lindner’s system. Further, the location of the water meter prevents Lindner from using a large portion of his water main to provide new service makai of Kooloau Road. By relocating the water meter onto Lot 1, Lindner can run a lateral pipeline down Kooloau Road to the DOW tank and/or

to a tank on Lot 2. If the meter is not moved to Lot 1, Lindner would be forced to expend millions of dollars installing a new pipeline under Kuhio Highway to expand service to DOW and/or Lot 2 customers. MIC's proposed relocation of the water meter, therefore, would deprive Lindner the full use of his system and allow the back flow from the water tank to continue up to the placement of the meter. In short, **MIC is attempting to use the Permit condition as leverage for a *de facto* take-over of a significant portion of the main water line, over which ownership is hotly contested.**

On December 9, 2020, we were provided a copy of the underlying MIC complaint filed with CWRM. MIC claims that Lindner is responsible for waste that is actually due to MIC's lack of system maintenance and failure to make capital improvements. MIC alleges that relocating the water meter to a location just mauka of Kooloau Road will somehow reduce waste. If this were true, then moving the meter all the way to the tank site would reduce waste even more. But the MIC complaint is really not about reducing waste. MIC seeks to relocate the meter to a location that will best serve **MIC's interests** and is using waste as an excuse to take over part of Lindner's system and to prevent the expansion of his service area.

Lindner has been a steward of the State well water for over twenty years and is protective of the resource. He has supplied water to Kauai DOW and Moloaa Farms LLC reliably and without incident. He has tested and treated the water after being unfairly designated a PWS based on the increase in farm dwellings on Lot 1. Lindner has not been made whole for the increased operating costs. MIC's waste of State funds, lack of capital improvements and failure to provide basic maintenance of the existing system (including the deficient water tank) accounts for MIC's alleged waste of State water resources. The few overflow events at the Moloaa Hui water tank referenced in the complaint resulted from MIC's failure to install a simple shut-off valve within the Moloaa Hui water system. Rather than update the Moloaa Hui water system to fix the problem, MIC sought to install a radio controlled system to take control of Lindner's well pump—a pump that serves not only the Moloaa Hui water tank but the tanks of DOW and Moloaa Farms LLC. Lindner is under no obligation to give up control of the well pump to MIC, an entity with which Lindner has no contractual relationship.<sup>7</sup> Lindner agrees the water meter should be relocated off of his property and onto Lot 1 near the water tank. The location of the meter, however, has nothing to do with eliminating water waste and should not in any way impact the Board's decision on the Permit.

### III. CONCLUSION

The relocation of the main water meter concerns the existing water system and existing private property rights and interests. No State interests would be served by the Board interjecting itself into this dispute or providing one private entity an advantage over another. Accordingly, Lindner requests that the Permit be approved without any conditions concerning the relocation of the water meter.

Sincerely,

/s/ Timothy H. Irons  
Counsel

Attachment (Exs. 1-14)

---

<sup>7</sup> Given MIC's role in denying Lot 2 fair access to the water system, MIC is not a trustworthy partner.

**BARGAIN SALE OPTION AGREEMENT**

This Bargain Sale Option Agreement ("Agreement"), dated February 10, 1997, is entered into by and between MOLOAA HUI LANDS, INC., a Hawaii corporation, ("Seller"), and JEFFREY S. LINDNER, unmarried, ("Buyer").

**RECITALS:**

A. The addresses and telephone numbers of the parties are:

**SELLER:**

Moloaa Hui Lands, Inc.  
P. O. Box 30  
Kilauea, Kauai, Hawaii 96754  
Telephone: (808) 828-1292

Copies of any notice to Seller should also be sent to:

Steven R. Lee, Esq.  
4473 Pahe'e Street, Suite L  
Lihue, Kauai, Hawaii 96766  
Telephone: (808) 246-1101  
Facsimile: (808) 246-9481

**BUYER:**

Jeffrey S. Lindner  
P. O. Box 518  
Anahola, Kauai, Hawaii 96703  
Telephone: (808) 822-0518

Copies of any notice to Buyer should also be sent to:

Max W. J. Graham, Jr., Esq.  
Belles Graham Proudfoot & Wilson  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766  
Telephone: (808) 245-4705  
Facsimile: (808) 245-3277

B. The Seller is a Hawaii corporation whose officers, directors and stockholders are MICHAEL R. STRONG and CANDACE L. STRONG, husband and wife ("Strong's"), and PAUL C. HUBER, unmarried ("Huber"). (The Strong's and Huber being jointly referred to as "Principals").

C. Seller intends to acquire certain real property on the Island and County of Kauai, Hawaii, comprising what is now identified by Kauai Tax Map Key Nos. (4) 4-9-09:1, 9-25, 27-29, 35-38 ("Original Parcel") from the present owner, Lihue Plantation Company, Limited ("LPCO"). The Original Parcel was subdivided into a number of separate agricultural lots ("Ag Lots"), including a lot now identified by Kauai Tax Map Key No. (4) 4-9-09:01 ("Parcel 1"), pursuant to the Agricultural Park Subdivision Ordinance contained in Chapter 9A of the Kauai County Code, 1987 ("Ag Park Ordinance"). The Ag Park Ordinance prohibits the construction of single-family residences on lots created thereunder, and, therefore, in order to provide for any residential use of the Original Parcel, the Ag Lots must be consolidated as permitted by the Ag Park Ordinance. Thereafter, the parties intend that the reconstituted property either be resubdivided pursuant to the terms of the Subdivision Ordinance contained in Kauai County Code, Chapter 9 ("Subdivision Ordinance") or condominiumized as set forth below.

LIHUE\15660\12\17209.1\MMWG

**EXHIBIT "1"**

D. The Seller and Principals intend to use the Loan Proceeds (as described herein) to finance the intended purchase of the Original Parcel from LPCO.

E. The Seller and Principals intend to consolidate the Ag Lots pursuant to the Ag Park Ordinance, and to subdivide the Original Parcel pursuant to the Subdivision Ordinance so as to create a separate lot designated herein as New Parcel 1, together with such other separate lots as the Seller may ultimately determine. This process will be referred to herein as the "Subdivision". If the Property cannot be subdivided on terms reasonably acceptable to Seller, then Seller intends to establish a Condominium Property Regime ("CPR") on the Original Parcel in which the New Parcel 1 shall be one separate phase of the CPR ("CPR Phase").

F. The Seller intends that New Parcel 1 shall be in the general configuration shown on Exhibit "A", being the general location of Parcel 1. The Seller intends to use its best efforts with the County of Kauai in order to subdivide or CPR the Original Parcel so that New Parcel 1 is a separate lot or CPR Phase with a residential (farm dwelling) density of fifteen (15) units, containing approximately 120 acres of land. Seller has commenced efforts to enhance potential homesites and improve potential roadway access for Parcel 1, by consolidating and/or rezoning certain areas of existing agriculture-zoned portions of other TMK parcels within the Original Parcel to add such areas to New Parcel 1. It is anticipated that certain portions of existing Parcel 1 will then be transferred to other existing TMK numbers to compensate for the transfer(s) into New Parcel 1. No guarantee of success is made, and shifting of areas from existing agricultural operations to New Parcel 1 may involve delays in processing, which are for the benefit of New Parcel 1, as set forth more fully below.

G. The real property shown on Exhibit "A", as modified in size and shape pursuant to the terms of this Agreement, together with all right, title and interest of Seller in and to all improvements, fixtures, timber, water, oil, gas and minerals located in and on it, and all rights appurtenant to it (including but not limited to, timber rights, water rights, grazing rights, access rights, and oil, gas and mineral rights excluding such mineral rights as are owned by the State of Hawaii), will be referred to in this Agreement as "New Parcel 1". Buyer wishes to purchase New Parcel 1.

H. Upon creation of New Parcel 1 as a subdivided lot or CPR Phase, Seller intends to convey all of its interest in New Parcel 1 to Buyer as provided herein.

#### THE PARTIES AGREE AS FOLLOWS:

##### 1. Option.

1.1 Consideration. In consideration of the loan ("Loan") by Buyer to Strongs and Huber of the sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) pursuant to the terms of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller grants to Buyer an exclusive and irrevocable option to purchase New Parcel 1 on the terms stated in this Agreement (the "Option"). The Loan will be credited toward the purchase price of New Parcel 1 if Buyer exercises the Option.

1.2 Effective Date and Term. This Agreement will be effective as of the date this Agreement is fully signed by the parties (the "Effective Date"). The Option will terminate at 5:00 p.m., Hawaii Time, on the date which is one (1) year after the Effective Date.

1.3 Exercise. If Buyer chooses to exercise the Option, Buyer will do so by notifying Seller in writing within the term stated in Section 1.2. The date upon which the Buyer exercises the Option shall be known as the "Option Exercise Date".

1.4 Loan Terms. The Loan shall be in the amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), or such other amount as Buyer and Seller shall agree, and shall be evidenced by a promissory note ("Note") in the form attached hereto as Exhibit "B". The Note shall bear interest at the rate of nine percent (9%) per annum, simple interest. Except as otherwise provided herein, interest shall accrue from the date of the Note. Except as otherwise provided herein, the Note shall mature one (1) year after the earlier to occur of the following: upon receipt by Seller of a written notice from Buyer informing Seller of Buyer's intention not to exercise the Option; or upon expiration of the Option Term. No interest or principal payments shall be due until the maturity date of the Note, at which time all amounts of principal and interest under the Note shall be due. Until such time as New Parcel 1 is a separate lot of record or legal CPR Phase, the Note will be secured by a Second Mortgage on the property described herein as the "Original Parcel", in the form attached as Exhibit "C". Once New Parcel 1 becomes a legal lot of record or legal CPR Phase, the Note shall be secured by a Second Mortgage on New Parcel 1 in the form attached hereto as Exhibit "C". The Second Mortgage shall be junior only to a first mortgage on the Original Parcel or New Parcel 1 in favor of LPCO (as part of the transaction between Sellers and Principals and LPCO). The Strongs and Huber shall be personally and severally liable for the repayment of the Loan and all amounts due under the Note. The Seller shall guarantee the Note.

## 2. Purchase Terms.

2.1 Price. If Buyer exercises the Option, Seller will sell New Parcel 1 to Buyer for a purchase price of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) (the "Purchase Price"). The Purchase Price will be payable in cash on close of escrow after crediting to Buyer all amounts of principal due under the Note to the Purchase Price. In the event Buyer exercises the Option and purchases New Parcel 1 as provided herein, no amounts of interest shall be due under the Note.

## 3. Title.

3.1 Deed. At closing, Seller will convey to Buyer or Buyer's nominee or assignee, by limited warranty deed, good and recordable, merchantable fee simple title to New Parcel 1, subject only those title exceptions permitted under Section 3.2 below.

### 3.2 Title Exceptions.

a. Buyer is in receipt of a Preliminary Report, issued by Title Guaranty of Hawaii, Incorporated ("Title Insurer"), dated November 15, 1996 ("Title Report"). Within two (2) weeks after the Option Exercise Date, Seller will provide Buyer with a commitment for title insurance from Title

Insurer for a standard coverage owner's policy of title insurance, naming Buyer as the proposed insured, subject only to title exceptions set forth in the Title Report, which commitment shall extend through the escrow period to the close of escrow ("Title Commitment"). Seller shall also cause the Title Insurer to provide Buyer with copies of the vesting documents and all of the documents and surveys, maps or plans referred to in the Title Report as exceptions or referred to in the legal description of New Parcel 1 within one (1) month of the Effective Date. Title to New Parcel 1 will be conveyed free and clear of all liens and encumbrances except the following "Permitted Exceptions":

- i. Lien for non-delinquent real property taxes;
- ii. Exception Nos. 4, 5, 26 and 28, listed on Schedule B of the Title Report;
- iii. The proposed Declaration Of Covenants, Conditions And Restrictions applicable to New Parcel 1;
- iv. The Declaration, By-Laws, and other related documents necessary for the creation of the CPR or matters imposed by the County of Kauai as a condition of approval of the Subdivision; and
- v. Any other matters approved by Buyer in writing.

b. Seller shall be responsible for using reasonable efforts to remove all unpermitted exceptions ("Unpermitted Exceptions") but shall not be obligated to undertake litigation or expend sums deemed unreasonable by Seller but otherwise required to remove exceptions to title arising after issuance of the Title Report. Seller shall not be responsible to remove Unpermitted Exceptions affecting the property as a result of the consolidation and resubdivision process, so long as all terms of such process have been previously disclosed to Buyer prior to Seller agreeing to same, and Buyer has been given a reasonable opportunity to comment and provide input into the approval process. If, after using reasonable and diligent efforts, Seller is unable to remove any Unpermitted Exceptions by close of escrow, Buyer may, as its sole remedy, elect to do any one of the following:

- i. Terminate this Agreement by providing written notice to Seller, in which case the Note will be paid pursuant to Section 11.3 and the Agreement shall be null and void;
- ii. Unless Seller has confirmed in writing that no further efforts will be taken to remove such Unpermitted Exceptions, defer the closing date until any Unpermitted Exceptions are removed, not to exceed ninety (90) days and, if at that time Seller is unable to remove Unpermitted Exceptions Buyer may, as its sole remedy, elect to exercise the remedies contained in either Subsections 3.2i., 3.2iii. or 3.2iv.;
- iii. Proceed with the purchase of New Parcel 1 and accept such title as Seller is able to convey, and accept a policy of title insurance containing the Unpermitted Exceptions, without any reduction in Purchase Price; or

iv. Enforce, where applicable, any of the provisions contained in Section 7 of this Agreement.

3.3 Possession. Seller will deliver possession of New Parcel 1 to Buyer, free and clear of anyone in possession, at the close of escrow or as soon thereafter as the consolidation, subdivision and/or condominiumization process has been completed.

3.4 Evidence of Title and Title Insurance. Seller will provide Buyer with the Title Commitment required under Section 3.2, evidencing that title is vested in Seller and is subject only to the Permitted Exceptions, except as specifically limited herein. The Title Commitment must be adequate to support the issuance to Buyer of a standard coverage owner's policy of title insurance in the amount of the Purchase Price, insuring that title to New Parcel 1 is vested in Buyer upon close of escrow subject only to the Permitted Exceptions or such other exceptions provided herein.

3.5 Condemnation. In the event of the taking of all or any part of the Property by eminent domain proceedings, or the commencement of such proceedings prior to closing, Buyer may terminate this Agreement by providing written notice to Seller, in which case the Note will be paid pursuant to Section 11.3. Should Buyer so terminate the Agreement, the parties hereto shall be released from their respective obligations and liabilities hereunder. If Buyer does not terminate the Agreement, then Buyer shall either: (a) proceed to close with the Purchase Price reduced by the total of any awards or other proceeds received or to be received by Seller as a result of such proceedings, or (b) proceed to close with an assignment by Seller of all Seller's right, title and interest in and to all such awards and proceeds. Seller will promptly notify Buyer in writing of any eminent domain proceedings affecting the Property.

3.6 Staking. Seller shall order and pay for the cost of staking New Parcel 1 by a licensed surveyor, which survey shall be completed within sixty (60) days prior to closing. Buyer's reasonable disapproval of staking shall give rise to the remedies set forth in Paragraphs 3.2(b)i. or iii., only.

3.7 Maintenance of Title. During the period of Seller's ownership only, Seller promises that during the term of this Option, and thereafter until closing (should Buyer exercise this Option), without Buyer's prior written consent, Seller shall not: (a) allow any lien or mortgage to be imposed on New Parcel 1 except for the mortgage in favor of LPCO, the profit participation agreement between LPCO and Seller and the matters set forth in Section 3.2.a.; (b) enter into any leases or rental agreements which extend beyond the closing date; or (c) enter into any other contracts or agreements which might result in any liens, encumbrances or claims attaching to New Parcel 1. The foregoing notwithstanding, in the event Buyer has elected to proceed to complete the purchase and Seller has not then completed the consolidation and Subdivision and/or condominiumization, unresolved final boundary lines to be established in the consolidation and Subdivision process may leave small portions of current farming operations ongoing in the areas of intended enhanced homesites, roadways or similar benefits for New Parcel 1. Seller shall be responsible to remove such activity and persons associated therewith prior to or upon completion of final County of Kauai approvals.

4. Escrow and Closing.

4.1 Escrow Holder. Upon exercise of the Option or at any earlier time as may be convenient, the parties will open an escrow with Title Guaranty Escrow Services, Inc. ("Escrow") for the purpose of closing the purchase and sale of New Parcel 1. Escrow will close within forty-five (45) days of the last to occur of the following: the date on which Buyer exercises the Option ("Closing"); the date on which New Parcel 1 becomes a legal lot of record or a legal CPR Phase; or the date Seller acquires title to New Parcel 1.

4.2 Closing Costs and Prorations.

a. Seller will pay the following Closing costs:

i. Prorated real property taxes and other assessments as of the close of escrow based upon the latest bills;

ii. Half the escrow fee;

iii. The conveyance tax;

iv. Sixty percent (60%) of the premium for standard coverage title insurance ;

v. The costs of removing any Unpermitted Exceptions to title to extent not paid outside of Closing;

vi. Any additional assessments, taxes, penalties and interest outstanding at the close of Escrow and/or due and payable as a result of the conveyance to Buyer; and

vii. Cost of drafting conveyance documents.

b. Buyer will pay the following Closing costs:

i. Prorated real property taxes as of the close of escrow based upon the latest tax bills;

ii. Half the escrow fee;

iii. Recording fees for the deed; and

iv. Forty percent (40%) of the premium for standard coverage title insurance and any additional costs relating to the issuance of an extended coverage policy.

5. Condition of Property.

5.1 Time of Taking Effect. The representations of this Section 5 shall take effect from the date upon which Seller acquires title to New Parcel 1.

5.2 Seller's Promise to Maintain Property. During the term of this Agreement, Seller promises not to: (a) remove or permit the removal of any vegetation, soil or minerals from New Parcel 1 or disturb or permit the disturbance of other natural or historic features of New Parcel 1, or (b) cause or permit any dumping or depositing of any materials on New Parcel 1, including, without limitation, garbage, hazardous substances, construction debris or solid or liquid wastes of any kind. Seller agrees to deliver New Parcel 1 at the close of escrow in the same order and condition as exists on the Effective Date of this Agreement, except as otherwise provided in this Agreement. As specifically provided herein elsewhere, to accommodate Buyer's desired homesites, some existing farm land may be incorporated into New Parcel 1 for the first time in the Subdivision or CPR process. Limitations in this paragraph will not apply to removal of crops or returning land to a fallow condition.

5.3 Seller's Promise to Remove Personal Property. Prior to close of escrow, Seller promises to remove from New Parcel 1 at Seller's expense all personal property and/or trash, provided that Seller's financial obligation hereunder shall not exceed ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00). Satisfaction of this promise will be subject to Buyer's inspection and approval of the physical condition of New Parcel 1. The foregoing notwithstanding, should Seller reasonably determine that such removal cannot be accomplished for the stated sum, Seller shall have the option to elect to pay Buyer the sum of \$1,000 and satisfy the terms of this paragraph. Seller shall thereafter have no further responsibility under this paragraph.

5.4 Right to Inspect Property. During the term of this Agreement, Buyer, through its employees and agents may enter upon New Parcel 1 to conduct such inspections, tests, and investigations as Buyer thinks appropriate, including, without limitation, making an environmental assessment of the soils, waters and improvements on New Parcel 1 at Buyer's cost and expense. Except for any liability or loss arising from Seller's gross negligence or intentional action or omission, Buyer agrees to indemnify Seller against any liability or loss arising out of any injury to any person or damage to any property occurring in or about New Parcel 1, resulting from any such entry upon New Parcel 1 or from any work performed or caused to be performed on New Parcel 1 by Buyer, between the Effective Date and the close of escrow, and against any claim for compensation or otherwise by any person, firm, or corporation that performs any such work, and shall promptly discharge, at its expense, any mechanics liens filed by any such person, firm or corporation. Buyer may disclose to any governmental agency or prospective purchaser of New Parcel 1 any information, including environmental assessment reports, Buyer obtains through its investigations and inspections of New Parcel 1. Should Buyer determine, based on its investigation of New Parcel 1, that the environmental conditions on New Parcel 1 are unacceptable, Buyer may terminate this Agreement by providing written notice to Seller, in which case the Note will be paid pursuant to Section 11.3. If Buyer desires to undertake such activities prior to Seller acquiring title to New Parcel 1, access and other rights shall be limited to those accorded to Seller under the terms of its agreement with LPCO, and indemnities shall extend to LPCO and any other parties accorded or afforded such protections under the terms of said agreement, a copy of which has been provided to Buyer.

5.5 Risk of Loss. All risk of loss will remain with Seller until Closing. If New Parcel 1 is destroyed or damaged prior to close of escrow, or in the event of fire, earthquake, flood, hurricane or other casualty which renders a substantial portion of New Parcel 1 unfit for its intended use within a reasonable period of time or has a material negative impact on the fair market value of New Parcel 1, Buyer may terminate this Agreement by providing written notice to Seller, in which case the Note will be paid pursuant to Section 11.3. If Buyer does not so terminate, then this Agreement shall remain in full force and effect, and Seller shall turn over, assign or credit to Buyer all insurance proceeds by reason of such casualty at Closing.

6. Seller's Representations. Seller warrants and represents the following:

6.1 Seller has full power and authority to enter into this Agreement and upon Seller's acquisition of title to New Parcel 1 and creation of New Parcel 1 as a legal lot or CPR Phase, will have full power and authority to sell, transfer and convey all right, title and interest in and to New Parcel 1 in accordance with this Agreement.

6.2 Upon creation of New Parcel 1 as a legal lot or CPR Phase, the conveyance of New Parcel 1 under this Agreement will not violate any provision of state or local subdivision laws.

6.3 New Parcel 1 abuts, and has physical or legal access to, Koolau Road.

6.4 There is no legal, administrative or other proceeding or inquiry pending or, to the best of Seller's knowledge, threatened against New Parcel 1, or pending or, to the best of Seller's knowledge, threatened against Seller which could affect Seller's title to New Parcel 1 (once acquired), the value of New Parcel 1, or subject an owner of New Parcel 1 to liability.

6.5 Seller is not insolvent and has no intention of filing for protection under the bankruptcy laws of the United States.

6.6 Upon conveyance of New Parcel 1 to Buyer, except as to the effects of unresolved final boundary lines to be established in a then-pending consolidation and Subdivision process, which boundaries impact current farming operations for the purpose of creating enhanced homesites, roadways or similar benefits for New Parcel 1 or to satisfy requirements of the County of Kauai, there will be no lease, license, option or other agreement, written or oral, which will affect New Parcel 1, and there will be no tenant or other occupant in possession of any part of New Parcel 1. As applicable, upon completion of the consolidation and Subdivision process, no unpermitted third party rights as to New Parcel 1 shall exist. There will be no encumbrances or liens against New Parcel 1, including but not limited to, mortgages or deeds of trust except as set forth herein or in the Title Report.

6.7 Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which New Parcel 1 is subject.

6.8 To the best of Seller's knowledge, there are no encroachments by third parties on New Parcel 1 and no improvements on New Parcel 1 which encroach upon the property of any third party.

6.9 To the best of Seller's knowledge, other than customary agricultural activities which occurred in the general area, known equally to Buyer and Seller, there is no and has been no: (a) use, storage, transportation or disposal of any Hazardous Substance on New Parcel 1 (including storage in underground tanks); (b) releases or spills of any Hazardous Substance into, on or over New Parcel 1 or ground or surface water at New Parcel 1 or within the immediate vicinity of New Parcel 1; (c) asbestos-containing materials in any buildings or improvements that may be part of New Parcel 1; or (d) electrical transformers, or other items containing PCB's on New Parcel 1. The term "Hazardous Substance(s)" means any pollutant, contaminant or other hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive or carcinogenic substance, and including asbestors, PCB's, pesticides and petroleum products, (subject to the acknowledgment of pre-existing agricultural activities on or in the vicinity of New Parcel 1 in which products and processes believed to have been then legally conducted on the property may have included the use of petroleum products and pesticides), whose production, use, storage, transportation or disposal is regulated under federal, state and/or local law. Seller has not undertaken and shall not be obliged to undertake any study, inquiry (other than as set forth in its agreements with LPCO) or action to determine any matter related to the terms of this paragraph, and has relied exclusively on the representations and warranties of LPCO in this regard. To the extent permitted by law, Seller will assign the benefits of such warranties and representations to Buyer. Seller does disclose, however, that there is an underground drainage tunnel running from the area of existing farming operations under existing Parcel 1, which empties ultimately into the sea. Seller is unaware of any limitation on Parcel 1 occasioned by the existence of such tunnel, as to which there is no written record available to Seller at the time of the execution hereof.

6.10 Since the Seller will not have lived on New Parcel 1 for at least one hundred eighty (180) days prior to the Effective Date, the Parties agree that Seller need not give Buyer a disclosure statement as provided by Hawaii Revised Statutes Chapter 508D.

6.11 Without incurring the obligation to engage in litigation or expend sums in excess of those customarily incurred in processing a consolidation and resubdivision application, and specifically without the obligation to install, provide or construct any significant infrastructure expense, the Seller warrants and represents that it will use its best, good faith, efforts: to work with the County of Kauai in order to effect the Subdivision of the Original Parcel so as to create New Parcel 1 as a separate lot of record as described herein, or, failing that; to create a CPR in which New Parcel 1 is a legal CPR Phase, separate and apart from any other CPR Phases and Units located elsewhere on the Original Parcel. Seller will further use reasonable efforts to expand the open-zoned areas of currently-designated Parcel 1 or include agricultural portions of other TMK parcels to enhance potential homesites in and provide roadway access to New Parcel 1, but only where Seller reasonably determines that such shifting of acreage does not impair the balance of the project.

## 7. Reliance.

a. All Seller's representations, warranties and promises made in this Agreement ("Representations", "Warranties" and "Promises") are material and are relied upon by Buyer. All Representations, Warranties and Promises will be considered to have been made or affirmed as of the close of escrow and will survive the close of escrow for a period of two (2) years (excepting those limited warranties respecting title contained or implied in the limited warranty deed by which Seller

conveys title to Buyer, which limited warranties shall have no time limitation), provided that Buyer must file any action with respect to same within one (1) year after discovery of the matter giving rise to the claim. If, before the close of escrow, Seller discovers any information or facts that would materially change the accuracy of the Representations and/or Warranties and/or performance of the Promises, Seller will immediately give written notice to Buyer of those facts and information.

b. Pre-closing Breach of Agreement. Except as may be limited elsewhere herein, prior to closing of the purchase by Buyer: if Seller has breached any Premise, has breached any Promise, Seller will promptly remedy the problem, at Seller's sole cost and expense, upon receipt of notice by Buyer. If any Representations or Warranties cease to be true during the term of this Agreement, due to a grossly negligent or wilful act or omission of Seller, Seller will promptly remedy the problem, at Seller's sole cost and expense, upon receipt of notice by Buyer. Buyer will have the right, but no obligation, to remedy or cause to be remedied any such misrepresentation or breach at Seller's sole cost and expense if Seller has failed to promptly or completely remedy the problem. The reasonable costs of the remedy by Buyer may, at Buyer's election, be credited against the Purchase Price. If the problem is not remedied before close of escrow, Buyer may choose to either: (i) terminate this Agreement by providing written notice to Seller, in which case the Note will be paid pursuant to Section 11.3 and the Agreement shall be null and void; (ii) defer the closing date not to exceed ninety (90) days; or (iii) if applicable, enforce the provisions of Paragraph 3.2b.i., ii., or iii. of this Agreement. Buyer's choice in this regard will not constitute a waiver of Buyer's rights with respect to any loss or liability suffered as a result of a Representation not being true or a Promise having been breached, nor will it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

c. Pre-closing Failure of Representation or Warranty. If any Representation and/or Warranty, which was true when initially made, ceases to be true, through no act or omission of Seller, Buyer may: (i) terminate this Agreement by providing written notice to Seller, in which case the Note will be paid pursuant to Section 11.3 and the Agreement shall be null and void; (ii) remedy the problem at Buyer's own cost and expense, with Seller's cooperation, if needed; or (iii) if applicable, enforce the provisions of Paragraph 3.2b.i., ii. or iii. of this Agreement. If Buyer elects to terminate the Agreement under this subsection, there shall be no further liability on the part of Seller except as to the repayment of the Loan.

d. Any provision of this Agreement to the contrary notwithstanding, if any matter arises after Closing which causes any Representation and/or Warranty, which was true when initially made to be untrue, (which is not the result of the gross neglect or fraud of Seller or the requirements of the County of Kauai or State of Hawaii in the consolidation and Subdivision or condominiumization process), and such matter materially affects the value to Buyer of New Parcel 1, the obligations of Seller to remedy, correct or otherwise ameliorate the problem shall not extend to the expenditure of time or money other than review of documents and provision of testimony or documents in Buyer's efforts to change, counter or otherwise remove the undesired conditions or effects. All other risks of ownership are assumed by Buyer. Buyer and Seller are on equal footing in the review and evaluation of the risks entailed in this purchase.

e. Except for remedies based on the gross neglect, willful breach or fraud of Seller, no right or remedy provided in this Agreement shall be deemed to require Seller to undertake actions or expend money in nature or amounts which would render the original decision to sell New Parcel 1 to Buyer a commercially unreasonable decision. In such circumstances, Buyer's only pre-closing remedy shall be to cancel the purchase and be paid the amount of the Loan plus interest, as otherwise provided herein. The risks to Buyer of post-closing matters not the result of the gross neglect, willful breach or fraud of Seller are dealt with elsewhere herein.

8. **Remedies Upon Default.** Except where remedies are specifically limited hereby, if Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer will, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Seller. Except where remedies are specifically limited hereby, if Buyer defaults in the performance of any of its obligations under this Agreement, Seller will have the right to recover damages for breach of contract or any other remedy provided in this Agreement or by law or equity.

9. **Indemnification.** Except as set forth in Section 7, Seller will indemnify and hold Buyer harmless from all expense, loss, liability, damages and claims, including Buyer's attorney fees, if necessary, arising out of Seller's breach of Representations, Warranties or Promises. The provisions of this Section 9 will survive the close of escrow for the period of time during which claims filed within the time period set forth in Section 7.a. may be fully litigated to conclusion, including any applicable appeals, excepting claims regarding warranties of title, for which the indemnity shall be unlimited in time.

10. **Seller's Exchange.** Seller may consummate the sale of New Parcel 1 as part of a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code on the conditions set forth below, and provided that the exchange is accomplished through a "qualified intermediary", as such term is defined by the IRS Regulations pertaining to such like-kind exchanges. If Seller requests, Buyer will cooperate with Seller and the qualified intermediary by executing additional documents as reasonably required to consummate the exchange. The exchange may occur simultaneously with conveyance of New Parcel 1, or Seller may request Buyer's cooperation for a "delayed exchange" whereby purchase money due Seller under this agreement will be held by a third party in a manner specifically designated by Seller, for later use to purchase Seller's designated exchange property. Buyer's obligations under this Section are conditioned on the following:

- i. Seller shall notify Buyer of its request to pursue a Section 1031 exchange within one (1) week of Buyer's exercise of the Option;
- ii. There will be no delay in closing escrow pursuant to this Agreement;
- iii. If the exchange fails for any reason, Seller will remain obligated to sell New Parcel 1 to Buyer pursuant to this Agreement.
- iv. Seller will reimburse Buyer for reasonable additional attorneys' fees and costs incurred by Buyer as a result of the exchange or any attempted exchange beyond the fees and costs of a reasonable review and modification of the exchange documentation, which additional fees

and costs might arise from, among other things, the inadequacy of the documentation provided, the lack of experience of the qualified intermediary or the actions of the other parties to the exchange;

v. Buyer need not assume any additional liabilities or obligations as a result of the exchange or attempted exchange;

vi. Seller will indemnify, defend with counsel of Buyer's choice, and hold Buyer harmless from all expense, loss, damage and claims, including Buyer's reasonable attorneys' fees, arising from the exchange or any attempted exchange beyond the fees and costs of a reasonable review and modification of the exchange documentation;

vii. If Seller shall convey title to Buyer by other than direct deed, then all of the Seller's warranties of title shall be assigned to Buyer; and

viii. Seller's qualified intermediary shall be a Hawaii-based, commercial exchange entity with extensive local exchange experience.

Buyer agrees to use good faith efforts to minimize the amount of time its attorneys expend on the exchange or any attempted exchange, subject to its attorneys' obligation to protect Buyer's reasonable interests.

#### 11. Special Conditions.

11.1 Buyer's obligations to perform any of the provisions of this Agreement, with the exception of the making of the Loan, are contingent upon the Seller's ability to create New Parcel 1 as a separate lot or CPR Phase with a residential (farm dwelling) density of fifteen (15) units in the general configuration shown on Exhibit "A".

11.2 If Seller fulfills the contingency contained in Section 11.1, and Buyer exercises the Option but fails to close the transaction as provided herein, then Seller shall have the option of choosing, as its exclusive remedy, to give Buyer written notice of the Seller's termination of this Agreement. Upon receipt of such notice, Buyer agrees to provide necessary documentation to escrow and others, that the transaction is terminated, in form and content sufficient to cause escrow to close its file. In such case, all amounts of principal and interest due under the Note shall be paid within one (1) year of the date of the termination. In such case, interest on the Note shall accrue from the date of the Note.

11.3 If Buyer terminates this Agreement pursuant to Sections 3.2b.i., ii. or iv., 3.5, 5.3, 5.4, 7.b., 7.c., or 11.2, then the Note, together with all amounts of principal and interest due thereunder, shall be due and owing within one (1) year of the termination date.

11.4 Seller shall be solely responsible for all costs and expenses necessary to accomplish the Subdivision of, or to create a CPR on, the Original Parcel and to create New Parcel 1 as a separate lot of record or CPR Phase with a 15-unit density as described herein.

11.5 If Buyer exercises the Option and purchases New Parcel 1 as provided herein, then no amount of interest shall be due under the Note, and the \$500,000.00 principal shall be applied to reduce the Purchase Price, as described herein.

11.6 To the extent of Buyer's ability, Buyer agrees to provide water from the wells located on the State of Hawaii property and/or on the Marion R. Keat Revocable Living Trust property on a pro-rata basis (taking into account the Buyer's needs and the needs of other water users in the area, including the County of Kauai, Meadow Gold Dairies, Inc., and the Marion R. Keat Revocable Living Trust) for agricultural purposes associated with uses on the Original Parcel. Buyer agrees to charge water rates based on Buyer's costs and expenses (without profit) or pursuant to rates approved by the Public Utilities Commission.

11.7 If Seller is unable to create a Subdivision or CPR on New Parcel 1 prior to the expiration date of the Option, the Buyer may nevertheless exercise the Option on the terms contained herein. Closing will abide the completion of Subdivision or CPR processing, however, which may extend closing for a period not to exceed 180 days, or such further period as Buyer and Seller shall agree. So long as Seller has exercised good faith and diligence in processing the Subdivision or CPR process, interest shall not accrue on the Loan after the maturity of the Option and expiration of allotted time to close after exercise. At all times relevant hereto, Seller shall continue to make its best, good faith efforts to create New Parcel 1 as a legal lot or CPR Phase as provided herein. All amounts of interest and principal due under the Note shall be paid one (1) year after the conclusion of the final additional renewal term. Any extension of the Option, however, shall require the written consent of all parties hereto.

## 12. Miscellaneous Terms.

12.1 Notices. All notices required or permitted under this Agreement will be in writing and delivered to the parties personally by hand, by courier service or Express Mail, or by first class mail, postage prepaid, at the addresses stated in Recital A. All notices will be considered given: if sent by mail, the fifth (5th) business day following deposit in the mail, first class postage prepaid, addressed to the party to be notified, or if delivered by hand, courier service or Express Mail, when delivered. The parties may, by notice as provided above, designate a different address to which notice will be given.

12.2 Legal Costs. If any legal action is brought by either Seller or Buyer to enforce any provision of this Agreement, or matter arising out of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and all expenses of litigation, whether or not authorized by statute as costs.

12.3 Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. If any person asserts a claim for a Broker's commission or finder's fee against one of the parties, the party on account of whose actions the claim is asserted will indemnify and hold the other party harmless from and against the claim. The indemnification obligation will survive the close of escrow or earlier termination of this Agreement.

12.4 Time of the Essence: Dates. Time is of the essence of this Agreement. If any date specified in this Agreement falls on Saturday, Sunday or a public holiday, that date will be considered to be the succeeding day on which public agencies and major banks are open for business.

12.5 Memorandum of Option. When signing this Agreement, Seller will also sign a Memorandum of Option in the form of Exhibit "D" attached to this Agreement. Buyer will record the Memorandum of Option. If Buyer does not exercise the Option within the term of this Agreement, Buyer will, if requested to do so by Seller, deliver upon demand a quitclaim deed or cancellation of option in a form suitable for recording covering New Parcel 1 so as to eliminate any cloud on Seller's title to New Parcel 1. If Buyer fails to release its record interest in New Parcel 1, Seller may institute a "Quiet Title" action and recover expenses, including reasonable attorneys' fees, from Buyer.

12.6 Additional Documents. Seller and Buyer agree to sign such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

12.7 Non-Foreign Certificate. Prior to Closing, Seller will sign a Non-Foreign Certificate. Seller acknowledges that if Seller is unable to certify that it is not a "foreign person", Buyer may be required to withhold a portion of the Purchase Price at closing for U.S. income tax purposes.

12.8 Non-Residents of Hawaii. Section 235-68, Hawaii Revised Statutes ("HRS"), provides that a transferee (Buyer) of Hawaii real property must withhold tax if the transferor (seller) is a non-resident person. To inform Buyer that withholding of tax is not required upon the disposition of Hawaii real property by Seller, Seller will sign a "Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property" prior to Closing.

12.9 Entire Agreement. This Agreement is the entire agreement between the parties about New Parcel 1 and supersedes all prior and contemporaneous agreements, representations and understandings.

12.10 Interpretation. This Agreement will be interpreted without regard to any presumption or other rule of interpretation based on who drafted the Agreement.

12.11 Amendment. No amendment of this Agreement will be binding unless in writing and signed by the parties.

12.12 Waiver. No waiver of any term of this Agreement will be considered a waiver of any other term, whether or not similar, nor will any waiver be considered a continuing waiver. No waiver will be binding unless in writing and signed by the party making the waiver.

12.13 Assignment of Buyer's Interest. Buyer may assign its interest in this Agreement provided (i) Seller is notified of any such assignment at least ten (10) days prior to Closing and, except with respect to any assignment to a corporation, partnership, limited liability company, or limited liability partnership whose membership includes Buyer and his immediate family members in which Buyer has at least a twenty-five percent (25%) ownership interest, (ii) Seller, in Seller's reasonable discretion consents to such assignment.

12.14 Severability. Each term of this Agreement is severable from any and all other terms of this Agreement. Should any term of this Agreement be for any reason unenforceable, the balance will still be of full force and effect.

12.15 No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance of title to New Parcel 1, placing any deeds of trust on New Parcel 1 and delivery of money and documents in the escrow), will not merge with transfer of title but will remain in effect until fulfilled.

12.16 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Hawaii.

12.17 Rights and Obligations. The rights and obligations set forth herein shall be binding upon, and shall inure to the benefit of, the Seller and Buyer and their respective heirs, estates, personal representatives, successors, successors in trust and assigns.

12.18 Exhibits. All Exhibits attached to this Agreement are incorporated into this Agreement by this reference.

12.19 Counterparts. This Agreement and any documents required to be signed by this Agreement may be signed in counterparts, each of which will be considered an original and which together will constitute one and the same agreement or document.

12.20 Arbitration. Any dispute arising hereunder shall be resolved by arbitration and not by litigation. The commercial rules of the American Arbitration Association ("AAA") shall apply, and a single disinterested arbitrator shall resolve the matter pursuant to Hawaii law and the terms of this Agreement. Arbitration may be invoked by either party on 7 days' prior notice; failure of the parties to agree in writing as to resolution, extension for a period of discussion or agreement as to the identity of an arbitrator or forum for arbitration shall give either party the right to refer the matter to the AAA. The party initiating arbitration shall pay the initial administrative fee, and the parties shall thereafter pay fees according to the prevailing practice of the arbitrator. Such fees, as well as any other fees and costs, including attorneys' fees, may be awarded by the arbitrator if a sufficient basis therefor is found by the arbitrator.

SEE ADDENDUM "A" ATTACHED AND INCORPORATED BY THIS REFERENCE

IN WITNESS of the foregoing provisions, the parties have signed the Agreement below:

SELLER:

BUYER:

MOLOAA HUI LANDS, INC.

By Michael R. Strong  
MICHAEL R. STRONG  
Its President

Jeffrey S. Lindner  
JEFFREY S. LINDNER

Dated: 1/31/97

Dated: 2/10/97

By Paul C. Huber  
PAUL C. HUBER  
Its Vice-President

Dated: 1/31/97

By Candace L. Strong  
CANDACE L. STRONG  
Its Secretary

Dated: 1/31/97

PRINCIPALS:

Michael R. Strong  
MICHAEL R. STRONG, individually

Dated: 1/31/97

Paul C. Huber  
PAUL C. HUBER, individually

Dated: 1/31/97

Candace L. Strong  
CANDACE L. STRONG, individually

Dated: 1/31/97

R-77

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

MAR 13. 1997 08:01 AM

Doc No(s) 97-032789

/s/ CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

AFTER RECORDATION, RETURN BY MAIL TO:  
STEVEN R. LEE, ESQ.  
4473 Pahe'e Street, Suite L  
Lihue, Hawaii 96755

FILE NO 377134 - 5  
96-101-1714  
ANN OGINO

RS  
7

TITLE OF DOCUMENT: DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
THIS DOCUMENT CONTAINS 22 PAGES

PARTIES TO DOCUMENT:

Owners: MOLOAA HUI LANDS, INC., a Hawaii corporation,  
T.G. EXCHANGE, INC., a Hawaii corporation, and  
T.G. SUPER EXCHANGE CORP., a Hawaii corporation

PROPERTY DESCRIPTION:

Lots 1-17 & remnant parcels,  
(pqr. Lots 24-A & M-1) Moloaa  
Hui Lands & Kaapuna Hui Lands,  
Moloaa, Kauai, Hawaii

TAX MAP KEY NO.:

(4) 4-9-2:15 & 17, 4-9-9:1  
(4) 4-9-9:9-29 & 35-38

LIBER/PAGE:

DOCUMENT NO.:

CERTIFICATE  
OF TITLE NO.:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, MOLOAA HUI LANDS, INC., a Hawaii corporation, whose address is P. O. Box 30, Kilauea, Hawaii, 96754 (hereinafter "MHL"), T.G. EXCHANGE, INC., a Hawaii corporation, whose address is 235 Queen Street, Honolulu, Hawaii, 96813 (hereinafter "TG Exchange"), and T.G. SUPER EXCHANGE CORP., a Hawaii corporation, whose address is 235 Queen Street, Honolulu, Hawaii, 96813 (herein "TG Super Exchange"), (herein collectively called the "Declarant"), own in fee simple certain real property situate at Moloaa, Island and County of Kauai, State of Hawaii, containing an area of approximately 757 acres, identified on the tax maps of the County of Kauai as Tax Map Key Numbers (4) 4-9-008:016, 4-9-008:017 and 4-9-009:001, 009-029 and 035-038, and more

EXHIBIT "2"

particularly described in that certain Limited Warranty Deed of Lihue Plantation Company, Limited, a Hawaii corporation, in favor of Declarant, which said deed is being recorded concurrently herewith (hereinafter the "Property");

WHEREAS, Declarant intends to develop said Property into an agricultural park to be known as "MOLOAA HUI LANDS" (hereinafter the "Project");

WHEREAS, Declarant desires to impose certain conditions and covenants on some or all of the Project, designed to enhance the commercial utility, value, desirability and attractiveness of the Project, preserve and protect the Property and permit the continued enjoyment of the Property by its owners;

NOW, THEREFORE, Declarant hereby declares that the Project shall be subject to, and shall be owned, held, used and occupied pursuant to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained, from the date of the recording hereof until removed as provided herein. The covenants, conditions and restrictions set forth in this Declaration shall run with the land and shall be binding upon all persons acquiring any right, title or interest in and to said Project, and shall inure to the benefit of the Declarant, any Association of Condominium Owners established pursuant to the provisions of Chapter 514-A, Hawaii Revised Statutes, and each future owner thereof.

#### SECTION I THE PROJECT

##### 1. Development.

(a) MOLOAA HUI LANDS is a commercial agricultural Project. So long as the zoning and State of Hawaii Land Use Designation of the subdivided lots ("lots") or condominium property regime projects and units ("units") to be created in the Project remain agriculture and/or open, this Project shall be first and foremost for commercial farming; such use shall take priority over other uses in the event of conflict. Even if land use or zoning designations change, these covenants shall remain in effect unless modified or revoked as provided below.

(b) Declarant may elect to create one or multiple condominium property regime ("CPR") projects or similar development vehicles and separate the Project into two or more sub-projects. In such case, improvements such as main roadways and water distribution systems will remain common obligations and expenses to the extent they benefit all lands. Areas for the exclusive benefit of less than all projects shall be paid for by the benefited project(s).

(c) Declarant may create a CPR on a subdivided parcel that includes remote homesites, fruit stands, packing, disinfestation, farm worker housing and similar facilities and any other uses which are legal under then-current laws, ordinances and restrictions (except as prohibited herein), and enact more restrictive covenants reflecting the peculiar problems of multiple uses (agricultural plus permitted commercial and residential uses), consistent with the specific provisions of this document.

## 2. Excluded Lands.

(a) There is a portion of the acreage in the Project which is not dedicated to agricultural use, it does and/or will include open-zoned and some agriculture-zoned land. In this document, the excluded portions of the property are called the "Excluded Lands". The Excluded Lands may be used for residential, recreational, commercial and other uses as permitted by applicable ordinances and laws. The restrictions on use herein will not apply to the Excluded Lands, except that all prohibited plants, crops, etc., and prohibited pesticides, herbicides and pesticide/herbicide application methods will also be prohibited on the Excluded Lands. The Excluded Lands may or may not be subject to some or all of the remainder of these covenants. However, the Excluded Lands will be subject, in recorded covenants, to the continued rights of this Project to use the Project subject to these covenants, as they may be amended from time to time. Agricultural uses permitted on the Project herein will continue, although such uses may be inconvenient to the adjoining residential and other uses on the Excluded Lands. It is anticipated that the Excluded Lands will contain between seventy-five (75) and one hundred fifty (150) acres, depending on the desires of Declarant and the deliberations of the County of Kauai.

(b) The Declarant intends to create a separate subdivided parcel for the Excluded Lands or a separate CPR project or other form of ownership, to divide the ownership, function and control of the Excluded Lands from the land covered specifically by these covenants. To the extent the Excluded Lands utilize any of the common elements of the Project, appropriate payment will be required therefor.

3. Improvements Generally. No improvement shall be made or done except upon strict compliance with the restrictions of this Declaration.

4. Uses Generally. Except on the Excluded Lands, uses are limited to those allowed in the Agricultural district pursuant to State of Hawaii and County of Kauai regulations thereof. It is intended that only such portion of the agricultural uses identified in Chapter 205, Act 199, Session Laws of Hawaii 1976,

(regarding the use of lots within the agricultural district), as are consistent with the uses set forth herein shall be permitted in the Project. Many uses generally permitted in the agricultural zone are not permitted by the covenants for this Project. Specific limitations in addition to legal restrictions follow.

5. Anti-Speculation. The covenants affecting this Project are designed to limit speculation and profits. For the first ten years of ownership after the date of closing of the initial purchase of each interest, Project interests are sold with a ten-year Declarant buy-back provision which will allow repurchase by the Declarant for the lower of: (a) the original price plus the mutually-agreed value of any improvements; or (b) the original cost of the land plus the appraised value improvements placed on the property. In the event of disagreement as to value of improvements, appraisal shall be by a single mutually-selected disinterested appraiser, or by an appraiser selected by the American Arbitration Association under applicable current rules for resolution of disputes on valuation. Costs will be shared equally by the parties unless arbitration occurs and the arbitrator/appraiser finds that one side acted unreasonably, in which case costs and fees can be awarded to the prevailing party. The complete buy-back provisions will be contained in the deed to each interest.

If the Declarant does not elect to repurchase property under the buy-back, the immediately adjacent owner(s) may choose to do so. A random drawing will be held if more than one adjacent owner wishes to purchase. If resale is allowed, profits on resale will be limited to five percent (5%) per year, and any proceeds over that amount will be used to fund worthy non-profit or civic or agricultural industry entities or programs that support agriculture, which are selected by the Declarant.

6. Amendment and Duration.

(a) These covenants shall not be amended without a ninety percent (90%) vote of the undivided or common interests in the Project for a period of twenty (20) years from the recording date hereof. These covenants will be automatically extended for successive ten (10) year periods after the first twenty (20) years, unless amended or terminated by the vote of the Declarant and/or required ownership vote of all owners.

(b) For the initial twenty (20) years from the date of recording, except as reserved to Declarant consistent with Declarant's rights hereunder, no owner of any unit or lot within the Project shall apply for or seek, directly or indirectly, any land use reclassification, zoning, amendment, subdivision, variance or other governmental approval which would permit or result in a greater farm dwelling density than currently applies

on any unit or lot without first obtaining the written approval of the Declarant and no less than seventy-five percent (75%) of the undivided or common interest held by the then-current owners of units or lots in the Project.

(c) Should voting occur, each subdivided lot or condominium unit shall have a ratable vote equal to the acreage owned prior to condominiumization) or, in a condominium, the common interest of the unit, in the event of need for decisions regarding the Project which are not resolved by the Farm Review Committee (as defined below).

## SECTION II FARMING ACTIVITIES

1. Husbandry. Husbandry shall be defined as "the care and maintenance of land, water and plants as long-term agricultural resources." Owners shall use reasonable measures to control noxious weeds, soil erosion, harmful insects and diseases, to the end that soil fertility and utility of land for agriculture purposes is preserved. Husbandry shall be deemed to include the requirement of weed control, as set forth below.

### 2. Bona Fide Agricultural Use.

(a) As a condition of continued use and ownership, bona fide agricultural use of the Property must occur on a continuous basis, and each owner shall be required to demonstrate to Declarant or to the Farm Review Committee either annual expenditures for their land in an amount of at least FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) per acre or income in the amount of at least ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per acre, to demonstrate good faith commercial agriculture development. This obligation shall be a calendar year obligation, beginning in calendar 1997; provided, however, costs and income can be averaged over a reasonable number of years where early expenditures will benefit the property or farming operations in future years. Owners shall submit either Schedule "F" of the Internal Revenue Service Federal Income Tax Forms (for farmers) or similar accounting information (both of which may be the subject to independent verification) to Declarant or the Farm Review Committee as initial evidence of expenditure or income. Failure to submit required information will be a default. Failure to make proper expenditures, receive proper income or prove that legitimate labors with an equal value contribution to farming operations have been put into the property shall also be a default. Notice of default shall be effective as of the later of the date of the request or the date materials were have to be provided to the Farm Review Committee. If a default continues for more than one (1) year, the owner shall have the obligation to either cure the default, agree to sell to the Declarant or other qualified owner, enter into a crop license or other legally

permitted agreement with someone who will comply with the Project's recorded restrictions or sell the property as otherwise permitted. These alternative actions must be undertaken and completed within one (1) additional year after the end of the first year of default.

(b) Uncured default will result in the right of the Declarant, or if the Declarant declines, other members of the owners, to give notice of intent to purchase the interests of defaulting owners as set forth herein or in subsequently-enacted CPR documents. This right to purchase will arise if the relevant period to cure the default shall pass without appropriate action by the owner in question. Disagreements as to good faith may be resolved by arbitration as provided below, which arbitration will delay exercise of purchase rights. If the Declarant or association of owners ultimately prevails, transfer of title may be effected retroactively if requested, and the arbitrator shall make appropriate allowances for expenses, lost profits, etc., as justice may indicate.

(c) In all cases of sale after default or under the buy-back provision above, the services of an escrow company shall be required and the escrow and closing fees shall be paid according to the usual practices of the escrow company.

### 3. Crops.

(a) Crops grown will include but not limited to fruits, vegetables, ornamentals, herbs, spices, medicinal plants, etc. Aquiculture, stock raising and crops that negatively affect neighboring properties are disallowed. Organic farming is allowed with the understanding that surrounding farms may be non-organic. Odors from pesticide and herbicide are normal occurrences in commercial farming and are allowed. Physical drift of pesticide and herbicide use is illegal and not allowed.

(b) Crops infested with insects or disease that constitute a danger or nuisance to surrounding plantings shall be destroyed or sprayed sufficiently to contain infestation. Fallow land shall have no woody plants growing, fields shall have plants no higher than three (3) feet, cover crops shall be plowed under before seeding to prevent the spread of seeds to neighboring fields. The Farm Review Committee shall have authority to require further mitigative action.

4. Minimizing Dust, Nuisance and Noise. All activities will be carried out in such a manner as to minimize traffic, liability, dusts and enhance the security of the Project.

5. Pesticide Use. All pesticide use shall be in accordance with Hawaii and federal statutes and conducted by or under the supervision of a licensed applicator. No aerial spraying will be

allowed. Pesticides shall be stored in locked storage areas with appropriate signage. Container disposal shall be offsite from the Project. All containers shall be triple rinsed with holes punched in them to prevent reuse. No used pesticide containers will be discarded on site. When using pesticides, all consideration should be given to wind speed and direction and odor containment.

6. Weed Control. Weed control shall be actively pursued according to accepted farming standards. All noxious weeds listed by the U.S.D.A. and/or the State of Hawaii shall be eliminated by appropriate abatement programs, undertaken in a planned program for weed abatement. Borders with neighboring parcels must be kept clean so weeds do not infest adjacent property.

7. Waste and Debris.

(a) Except for agricultural waste as otherwise provided herein, no garbage or trash shall be permitted on any unit or lot except either in closed receptacles or when fully screened from the view from any adjoining street and neighboring property. Agricultural burning will be permitted only as follows: all piles of material will be located over 100 feet from the boundaries of the individual parcels of the owners. Only dry materials may be burned (excessive smoke being the primary indicator of excess moisture), burning will occur for no more than four hours in any day, burning will occur only in daylight hours. Generation of large amounts of smoke will be evidence of violation of this paragraph. All relevant laws, rules and ordinances will be strictly obeyed. Composting operations shall be controlled so as not to allow odors or dust to enter units other than that where composting occurs. Allowance will be made for truly unusual weather conditions, but the composting unit or lot will be responsible for damages. Dust and odor mitigation measures will be required for all composting operations. Stockpiling of waste plant material will not be permitted on any unit or lot, except as part of an established compost pile or commercial composting operation maintained in such a manner as not to generate foul odors or runoff that flow onto neighboring property, or when such is a necessary part of the agricultural activities conducted on such unit or lot. Burial of trash and debris shall not be permitted on the Project.

(b) Except for permitted composting, either for proprietary or commercial use, each owner shall dispose of waste in an ecologically sound manner. Owners shall also control the following: (a) any effluent from the practice of agriculture or other processes; (b) flies, insects, worms and other pests; (c) weeds and other noxious grasses; and (d) noise and noxious odors to levels which are customary under practices of good husbandry and which are compatible with neighboring agricultural use.

Storage of plant stock, fertilizer, pesticides and herbicides and other supplies and materials shall be accomplished in such manner as to prevent leaching, scattering or dispersal of such materials by the wind and water runoff.

(c) Old plantings and all remnants of crops after harvesting must be destroyed, using either a mower, disc or similar process of removal or reintegration into the soil within 30 days of the last commercial harvest. Commercial harvest shall mean that there is sufficient crop remaining to justify the use of equipment and paid labor to harvest crops for sale. This provision is designed to limit the spread of disease, insects and unwanted distribution of seeds into areas where there is no intended planting. Additional requirements may be imposed by the Farm Review Committee in its reasonable to accomplish the stated purposes of this paragraph and avoid danger of damage to the Project.

(d) There shall be no dump sites in the Project. All trash and rubbish shall be disposed of off-site in a sanitary fashion. No burning of trash on-site will be permitted unless an agricultural burning permit is obtained from the State of Hawaii.

#### 8. Avoidance of Erosion.

(a) Except where required for land preparation, planting, care and harvesting of plant materials, bare areas sensitive to flooding and drainage problems which result from farming, excavation or fill shall be revegetated or drainage mitigation measures taken immediately to avoid erosion. In the event of disagreement as to erosion issues, advice of the U. S. Soil Conservation Service shall be prima facie evidence of a suitable resolution to erosion/drainage issues. Disagreements as to their advice shall be arbitrated as provided below. Pending resolution, the Farm Review Committee shall determine interim solutions.

(b) All Project improvements and agricultural uses shall be subject to the building and usage setback lines established from time to time for the Project and reasonably established by the Farm Review Committee, for the purposes of preserving any needed drainageways for surface water runoff. With respect to drainage setbacks, if any, the following restrictions and conditions shall apply:

(i) The respective unit or lot owners shall preserve and maintain the existing drainage pattern, and are prohibited from grading or constructing any improvements within their properties which would be a barrier that may alter the existing or reasonably-established future drainage pattern.

(ii) Periodic flooding within the setback areas during times of heavy storm and rain conditions may be possible, during which time due care and precaution shall be exercised;

(iii) The respective lots owners accept existing storm runoff patterns and, unless altered by the Farm Review Committee or other action by the owners of interests, shall preserve and maintain the drainage pattern through the Project.

(iv) The County of Kauai shall not be responsible for storm flowages, damages, or for other matters in relation to existing drainage on the Project.

9. Cooperation in Construction of Drainage Facilities, Fences and Planting of Windbreaks. All contemplated drainage facilities, fences, windbreaks and the like improvements shall be planned and discussed by all owners who are or may be affected, and between adjoining owners when they are to be placed on or near parcel common boundaries. Care and cooperation shall be used to minimize potential problems of plant propagation, drainage and similar agricultural concerns among the owners in the Project.

10. Most Animals Prohibited. No animals raised for commercial purposes of any kind may be kept on the Project. Domestic animals may be kept only as specifically set forth below. No commercial propagation of animals of any kind is permitted. No more than two dogs, cats and other typical household pets may be kept on any unit or lot without the consent of the Farm Review Committee. Two pigs, one cow and up to two female goats will be permitted (no billy goats permitted). If permitted animals reproduce, their young will be removed from the Project within 30 days of their physical weaning (following acknowledged husbandry and veterinary practices). Offspring may be substituted for parent animals, if the parent animals are removed. Additionally, keeping and maintaining of more than one rooster and twenty (20) hens or poultry or birds is allowed, but in no case shall peafowl be permitted. No fighting chickens or fighting roosters or other fighting birds of any kind are permitted in any case. Permitted animals shall be kept so as not to become a nuisance to the neighboring unit or lot owners. No hunting dogs will be allowed in any case.

11. Noise. The other provisions regarding farm operations notwithstanding, all occupants shall exercise care about making noise, including the use of electronic equipment, musical instruments, radios, televisions, and amplifiers that may disturb the neighboring occupants. No farming activities will occur between the hours of 10:00 P. M. and 6:00 A. M. without the permission of the Farm Review Committee and immediately adjoining owners except in the case of emergency.

12. Hunting/Recreational Access. Hunting is not permitted on the Project, whether to owners or invitees. Any party who allows access for other recreational purposes may do so only on common roads and their own parcel/unit/lot, at their sole liability for damages to person, roads, property, etc. Other access will be trespassing. If public access is ever allowed, it will be under strictly identified rules and regulations.

13. Permitted Additional Businesses. Legally permitted cottage industries and businesses which can be conducted within the confines of structures on any unit or lot which do not result in increased noise, fumes, odors and waste generation, which do not require the presence of customers and employees on site with resulting additional traffic, and which do not pose a nuisance to the neighboring areas in the Project, may be permitted if also allowed by the governmental authorities having jurisdiction thereof. Individual owners will be responsible for all damage caused by their employees, guests, purchasers or vendors. They will also be responsible for any additional costs incurred by the Project on account of businesses operated on the Project.

### SECTION III RESIDENTIAL AND OTHER CONSTRUCTION

1. Agricultural Use has Priority over Residential Use. In keeping with the State Land Use Law (Chapter 205, Hawaii Revised Statutes, as may be amended). Agricultural activity must be established before farm dwellings are permitted to be constructed by the County of Kauai, as further limited by these covenants.

State of Hawaii and County of Kauai regulations regarding wastewater treatment and disposal will be the responsibility of all builders of improvements on the Project.

2. Farm Dwellings. In the limited circumstances in which farm dwellings are permitted by these covenants and by applicable law, such improvements shall be constructed, whether on a lot or a CPR unit, strictly in compliance with the terms of these covenants. Two types of farm dwelling are permitted, one on the CPR unit or cotenancy area being farmed, and the other in a separate location, called a "remote homesite" located at the northern end of the Project off of Koolau Road.

3. Farm Dwellings Defined. For the purposes of this Declaration, farm dwelling units shall mean a detached dwelling unit designed for the use and occupancy of a single family (as opposed to a multi-family unit), and does not include an "ohana" or "additional dwelling unit", as defined by County of Kauai ordinances. Any and all "guest house" rights are retained by the Declarant only, and are subject to transfer to third parties in a written agreement.

4. Restrictions. The following restrictions shall apply:

(a) Each farm dwelling on the unit or lot shall contain not more than 3,500 square feet of livable floor area, exclusive of lanais, patios, garage, storage space and/or legitimate farm structures, such as barns and workshops.

(b) No residential use shall be allowed in any structure other than a farm dwelling or farm worker housing as defined below. All structures must not exceed two stories.

(c) Without the approval of the Farm Review Committee, no building (residential or otherwise) shall be located closer than one hundred (100) feet from any lot line, CPR boundary, or other common boundary with any other unit or lot in the Project, or any access easement or the frontage along the Kuhio Highway or Koolau Road rights-of-way. The approval of the Farm Review Committee may be withheld in its reasonable discretion. This restriction shall not apply to the parcel presently identified by Tax Map Key No. (4) 4-9-009:025, which shall be governed instead by the provisions of the CPR documents.

(e) The homesite for all farm dwellings located on the area owned by the respective farmers (as opposed to the remote homesites) shall not exceed one (1) acre, and shall be separated from the balance of the property so as to allow easy confirmation that the homesite does not exceed one (1) acre. Such separation can be provided by a fence or appropriate vegetation.

(f) Each farm dwelling shall be occupied and used only as a farm dwelling by the respective owners thereof, their farm worker tenants, family, employees and guests (but no long-term, short-term or transient vacation renters shall be permitted), and for no other purpose that is not in accordance with these covenants, applicable CPR documentation, if any, County of Kauai codes or zoning ordinances and applicable State of Hawaii statutes and regulations.

(g) Each agricultural building, farm dwelling and any and all improvements from time to time located on any lot or unit or other interest shall be maintained by the owner thereof in good and clean condition and repair and in such manner as not to create any fire, safety or health hazard to the Project or any part thereof, all at such owner's sole cost and expense.

(h) Any owner proposing to perform any work which under the provisions hereof which requires prior approval of the Farm Review Committee shall apply to the Farm Review Committee for approval thereof as provided below.

SECTION IV  
WATER SYSTEM

The existing water system for the Project will continue to be used as long as it is available. Declarant will use its best efforts to obtain continued water service by contract with the owner/lessee/permittee of the existing or successor source of water. Should any costs be incurred, Declarant will act in a fiduciary capacity and ratably share the costs of enhancing the water system or obtaining commitments for longer-term availability of water for the Project. All owners shall participate in a private water company, should the source of water be conveyed to a private water company. No warranties regarding water are made by Declarant. Declarant continues in negotiations for water usage as of the execution of this document. Ownership of the existing water tank on the Project is unclear, but to the extent Declarant owns it, it will be reasonably used for the Project.

SECTION V  
FARM REVIEW COMMITTEE

1. Organization, Appointment and Removal of Members.

(a) This Project shall have a Farm Review Committee consisting initially of three (3) members. After at least two (2) sales, the committee will consist of five (5) members. The purpose of the Farm Review Committee is to review construction plans regarding setbacks, maximum size of dwellings and to prevent use of barns and other structures for residential uses and to resolve other Project use and operation issues. Notwithstanding creation of CPR projects, the Farm Review Committee shall remain in effect as to its stated purposes and functions may be delegated to an Association of Condominium Owners upon creation of a CPR, as Declarant determines.

(b) No owner in the Project shall be required to meet any qualifications for membership on the Farm Review Committee. A third-party licensed design professional who is not an owner may be placed on the committee if the Declarant determines it is necessary, in which case reasonable compensation may be paid to the design professional. The number of committee members may be increased by decision of the Declarant or ninety percent (90%) of the ownership interests in the Project.

(c) The following persons are hereby designated as the initial members of the Farm Review Committee: (i) MICHAEL R. STRONG; (ii) CANDACE L. STRONG; and (iii) PAUL C. HUBER. The two other members of the committee shall be elected by the owners in the Project. Election shall occur within 90 days of the closing of at least two interests or units in the Project. Voting shall be as otherwise provided herein. Each of the said persons shall

hold office until such time as he or she has resigned or has been removed or a successor has been appointed, as herein set forth. So long as they own an interest in any CPR unit or lot in the Project, the individual Declarants shall be members of the Farm Review Committee.

(d) So long as any member of Declarant owns, jointly or severally, a unit or interest in any part of the Project, the right to appoint and remove a numerical majority of the members of the Farm Review Committee is reserved to the Declarant, unless the Declarant agrees to the contrary in writing.

(e) Except as to the reserved rights of Declarant above, the majority of the undivided or common interests in the Project shall have the right to appoint and remove all other members of the Farm Review Committee. Provided, however, that if the Declarant declines or fails for more than twelve (12) months to exercise its rights under paragraph (c) above, or records a declaration waiving such rights, the then majority of the ownership interests as set forth above shall thereupon and thereafter have the right to appoint and remove all members of the Farm Review Committee.

(f) Any member of the Farm Review Committee may at any time resign from the Farm Review Committee upon written notice delivered to the Declarant, or to the unit or lot owners, whichever then has the right to appoint and remove members.

(g) It shall be the duty of the Farm Review Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions hereof.

(h) The Farm Review Committee shall meet from time to time as necessary properly to perform its duties hereunder. Until such time as there are more than three (3) members, the vote or written consent of any two (2) members shall constitute the act of the Farm Review Committee, unless the unanimous action of its members is otherwise required by this Declaration, or any amendment hereto or any future CPR documents. Otherwise, a numerical majority of the committee may rule on any matter. The Farm Review Committee shall keep and maintain a record of all actions from time to time taken by the Farm Review Committee at such meetings or otherwise. Except as is provided for non-owner design professionals, the members of the Farm Review Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Farm Review Committee function.

(i) The approval by the Farm Review Committee of any plans for any work done or proposed or in connection with any other matter requiring the approval of the Farm Review Committee

shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whatever subsequently or additionally submitted for approval.

(j) Neither the Farm Review Committee nor any member thereof shall be liable to any owner or to any person for any damage, loss or prejudice suffered or claimed on account of: (i) the approval of any plans, drawings and specifications, whether or not defective; (ii) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications; or (iii) the development or manner of development of any property within the Project. This shall be conditioned, however, on the circumstance that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Farm Review Committee, or any member thereof may, but is not required to, consult with or hear any owner or his architect with respect to any plans, drawings or specifications or any other proposals submitted to the Farm Review Committee.

## 2. Procedure for Approval.

(a) Each owner shall submit to the Farm Review Committee for approval prior to commencing such work preliminary plans for the proposed work, prepared by an architect, unless otherwise permitted by the Farm Review Committee, and showing in detail with dimensions the nature of the improvements. The Farm Review Committee shall review any such preliminary plans within thirty (30) days after the submission of them to it and shall return such plans to the owner either with approval or with disapproval, in which latter case the general nature of the objections shall be indicated. Failure to make such return within said period shall be deemed to mean that the plans are approved.

(b) Thereafter, and still prior to commencement of such work, the owner shall submit one set of the final plans and specifications of the proposed work to the Farm Review Committee, including where appropriate, a plot plan showing easements and setback lines, the location of all existing and/or proposed improvements, the proposed drainage plan, if any, and proposed sanitary disposal facilities, if any. The owner shall also indicate a proposed construction schedule.

(c) The Farm Review Committee shall review the final plans and specifications submitted to it pursuant to this paragraph and shall either approve the same or disapprove the same in writing within fifteen (15) days. Any disapproval shall set forth in writing the reasons for disapproval. Failure to so approve or disapprove within said period shall be deemed approval. On request of an owner, at any time, the chairman or

any member of the Farm Review Committee shall give to the owner a certificate in writing evidencing the approval of any plans which have been approved.

(d) Nothing herein shall be deemed to require an owner to obtain approval from the Farm Review Committee as to any improvements which simply reconstruct or refinish in accordance with previous improvements approved by the Farm Review Committee.

(e) Approval as hereinbefore provided shall be effective for a period of one (1) year and shall be deemed revoked if the owner shall not have commenced such work within said one (1) year period and shall not thereafter complete the same within one year after the commencement of such construction. If the owner shall not so commence within said one (1) year period, the owner shall be required to resubmit said final plans and specifications for approval, and the Farm Review Committee shall not be bound by any previous decision in reviewing again such plans and specifications, but shall either approve or disapprove the same in writing within the periods set forth above after such resubmission.

(f) Upon the completion of any work for which approved plans are required pursuant to this Section, the owner shall give written notice thereof to the Farm Review Committee which may within thirty (30) days inspect such work to determine whether it was completed in substantial compliance with the approved plans and specifications. If the Farm Review Committee finds that such work was not done in substantial compliance with such approved plans and specifications, it shall notify the owner of such noncompliance and require the owner to remedy such noncompliance. If the owner shall have failed to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required, provided that the owner has in good faith commenced action to remedy within said sixty (60) day period, the Farm Review Committee may either remove the improvement or remedy the noncompliance, and the owner shall reimburse the Farm Review Committee for all expenses incurred in connection therewith. If for any reason the Farm Review Committee shall fail to notify the owner of any such noncompliance within thirty (30) days after receipt of such notice of completion thereof from the owner, the improvement shall be deemed to have been completed in accordance with said approved plans.

(g) Except as specifically reserved to it, the Farm Review Committee shall have no power either deliberately or through inadvertence to vary any of the standards and restrictions set forth in this Declaration, except as may be specifically permitted therein, and in the event of violation of any of such standards and restrictions by an owner, whether or not the Farm Review Committee shall have approved the plans and

specifications, any other owner shall have the right to commence and pursue any remedy provided in this Declaration for the violation by an owner of any such restrictions.

(h) Failure of an owner to submit plans and/or to abide by the decisions of the Farm Review Committee shall make the offending party liable for all costs, including attorney fees, incurred by the Farm Review Committee and any unit or lot owner in enforcing these rules.

## SECTION VI SIGNS

A Project directory will be installed as a common expense at both main entrances to the Project. Signs regarding limited access, private property, no hunting, no trespassing and other signs intended to promote personal safety, security and related concerns will also be installed by the Declarant. Size, shape, color, etc., will be as determined by Declarant. No individual owner may do the same without the consent of Declarant or the Farm Review Committee. Each owner shall have an identically-designed listing or sign within the directory. Additionally, except as specifically provided below, a single identification sign no larger than four feet by two feet (4'x2') may be utilized at the main physical entrance into the owner's parcel, lot or Unit, only. Political signs no larger than two feet by two feet (2'x 2') may be placed within individual lots or limited common element land areas. No more than seven (7) total such signs may be erected, and they shall be removed within forty-eight (48) hours of the closing of the polls for the general election. No political signs shall be placed within fifty (50) feet of Kuhio Highway or Koolau Road. No other signs, visible from neighboring property, shall be erected or maintained upon any unit or lot except: (a) such signs as may be required by legal proceedings; (b) residential address identification signs of combined total face area of three (3) square feet or less for each dwelling; (c) during the time of construction of any farm dwelling or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by lenders, contractors, subcontractors and tradesmen; and (e) not more than one "For Sale" or "For Rent" sign having a maximum face area of four (4) square feet, such sign to refer only to the premises on which it is situated.

## SECTION VII UNSIGHTLY AND/OR DANGEROUS CONDITIONS

No derelict, inoperable or junk vehicles and machinery shall be permitted on the Project. Vehicles subject to good faith repairs in process shall be placed on the owner's land, out of sight of other parcels. At no time shall vehicles or machinery from non-owners be allowed on the Project for purposes of repair. However, the provisions of this Section shall not apply to functional construction equipment maintained for a period not to exceed one (1) year during construction and used exclusively in connection with the construction of any work or improvement permitted on the unit or lot of the owners.

SECTION VIII  
EASEMENTS

1. Utility Easements. Whenever a utility easement is granted, an area of five (5) feet on each side of the edge of the easement shall be maintained free of any permanent surface improvements unless the Farm Review Committee gives approval to the contrary, in writing. A property-line fence shall not be deemed violative of this Paragraph.

2. Reserved Right of Declarant. The Declarant reserves, and shall have the right to grant further and easements as may be deemed necessary by the appropriate public utility or utilities or governmental agency or agencies for the purposes of providing access or utility services to and from the lots or units or other interests in the Project.

3. Improvement of Existing or Enhanced Roadway Easements.

(a) Existing roadways and/or access easements and future common elements may be enlarged at the election of Declarant up to closing or creation of the planned CPR(s), whichever is sooner. After creation of a CPR project or similar entity, such decisions will be made by the governing body of the new form of ownership. Initially, Declarant will improve the roadways, with subsequent maintenance by an Association of Condominium Owners or similar owners' association. Sixty (60) foot wide main roadway easements or common elements are intended. Minor access easements will be twenty-four (24) feet in width. Improvement of roadways shall be a common expense of all owners. Although some owners will have a lesser benefit than others, the original price paid by the initial owners is sufficiently low to justify all owners sharing the burden of roadway construction and maintenance. However, if more than one CPR project is created, such costs will be segregated and limited to the CPR projects which actually use the roadways. Within CPR projects, all owners will be treated according to their common or voting interests.

Existing roadways on the Property abut Koolau Road and Kuhio Highway; some access areas present a traffic danger. Declarant reserves the right, in the context of creation of CPR projects or otherwise, to restrict access to areas of greater safety, mostly for the eastern half of the Project. Exceptions may be made for movement of large equipment and similar occasional problems, but not for normal ingress to and egress from the Project.

(b) In the event of enlargement of the existing size of easements or common element roadways prior to conveyance of title to any owner, the price paid will be adjusted to reflect smaller acreage. If enlargement occurs after conveyance, a partial rebate of price (at per-acre cost to owner) shall be made, and installations required to be removed or relocated shall be at the expense of Declarant or its successor.

SECTION IX  
MISCELLANEOUS

1. Compliance with Law. No owner shall violate or permit the violation on his unit or lot of any applicable law or ordinance pertaining to zoning, building, signs or other matter relating to the use and development of his land or farm dwelling.

2. Jurisdiction over Immediate Disputes. Except as reserved below, jurisdiction may be taken in equity or at law upon action of the Declarant, the Farm Review Committee or their successors and assigns, or of any other owner of any of the said units or lots in the Project, to restrict or prevent by injunction, mandatory or restraining, any immediate or threatened violation of any of said covenants upon the part of the unit or lot owners to be observed and performed, without prejudice to the right of the Declarant or its successors and assigns, or of any other owner of any of the said lots or units or other interests in the Project, to adopt or pursue any other remedy simultaneously or thereafter for the same breach or failure, or for any subsequent breach or failure, or to take any action to recover damages for any such breach or failure.

3. Interpretation of Covenants. These covenants shall be interpreted as literally as possible to sustain and enforce the intent of these covenants and to harmonize any apparently conflicting provisions, which intent is to give careful protection to the expectations of the Declarant as well as those of the owners who purchase property interests in the Project in reliance on these covenants.

4. Severability. Invalidation of any of these covenants by arbitration award, judgment or court order shall not affect the validity of any of the other provisions, which shall remain in full force and effect. It is the intent of the Declarant that the spirit as well as the intent of these covenants shall be given effect, even if one or more provisions are determined to be void, invalid or unenforceable.

5. Arbitration of Disputes. Except as reserved above to remedy immediate violations or threatened violations, any disputes over the meaning, intent, enforcement or interpretation of these covenants shall be resolved by binding arbitration. Unless the parties otherwise agree in writing, the Commercial Rules of the American Arbitration Association then in effect shall govern the course of the arbitration. The arbitration shall be before a single disinterested arbitrator, who shall be jointly selected or, if the parties cannot agree, an arbitrator selected by the American Arbitration Association. The fees charged by the arbitrator or American Arbitration Association shall be paid initially by the party making the demand for arbitration. However, the ultimate responsibility for such costs and the attorneys' fees incurred by the parties, if any, shall be

determined by the arbitrator. Any award in arbitration shall have the force of law, and shall be enforceable as a judgment before any court of competent jurisdiction, as provided by Hawaii Revised Statutes.

6. Fine and Enforcement System.

(a) An enforcement and fine system for violation of these covenants shall be established by Declarant or an Association of Condominium Owners or similar successor entity which is created for management of the Project and enforcement of these covenants. Unpaid fines will become liens on the land interest of owners, subject to foreclosure as allowed by law, either in a legal action or in arbitration, as the complaining party may elect.

(b) Notice shall be given of a violation to owner and the owner shall have thirty (30) days to comply. If action is not timely taken, a second notice will levy an initial fine and give the owner fourteen (14) days to comply. If owner has not complied then the Declarant or successor entity may go onto the Property, correct the violation and charge the owner actual costs plus interest at twelve percent (12%) per annum or two percent (2%) above the cost of borrowing, whichever is greater. If owner does not pay for service, a lien will be put on the property.

(c) Any member that has not paid any applicable association or similar fees or fines imposed by the Farm Review Committee or its successor, will lose their status as a "member in good standing" in the relevant association of owners. Members who have lost this status will not be eligible to vote regarding Project management, policy changes and other day-to-day Project affairs until they have corrected their problems and/or paid their fines. This shall not limit their ability to vote in any proposed amendment to the Declaration of Condominium Property Regime or Bylaws of any CPR project of which they may be members.

7. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

8. Dedicated Agriculture Tax Status. Some or all of the Project is or may be dedicated to agricultural use, with tax benefits and liabilities. Each owner should determine tax status.

IN WITNESS WHEREOF, the Declarant has executed these presents  
this \_\_\_\_ day of MAR 13 1997, 19\_\_.

The parties show their agreement by signing this instrument on  
the dates specified below.

MOLOAA HUI LANDS, INC.

By *Michael R. Strong*  
MICHAEL R. STRONG  
Its President

Date: FEB 28 1997

T.G. EXCHANGE, INC.

By *Elaine Ishikawa*  
ELAINE ISHIKAWA  
ASSISTANT TREASURER  
Name: *Philip Anri*  
Its: ASSISTANT TREASURER

Date: MAR 10 1997

T.G. SUPER EXCHANGE CORP.

By *Mae Nakagawa*  
MAE NAKAGAWA  
ASSISTANT VICE PRESIDENT  
By *Danette Tamayoshi*  
Name: DANETTE TAMAYOSHI  
Its: ASST. SECRETARY

Date: MAR 10 1997

STATE OF HAWAII        )  
                              )    SS.  
COUNTY OF KAUAI     )

On this ~~20~~ day of January, 1997, before me appeared MICHAEL R. STRONG, to me personally known, who, being by me duly sworn did say that he is the President of MOLOAA HUI LANDS, INC., and that the instrument was signed in behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

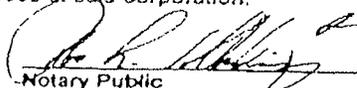
(William P. Chandler)  
NOTARY PUBLIC, State of Hawaii

My commission expires: MARCH 8, 1998

LS

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

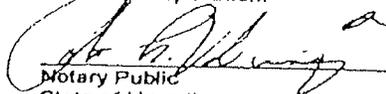
On this 10th day of March, 1997, before me personally appeared ELAINE ISHIKAWA and JULIE ANN TAKUSHI to me personally known, who, being by me duly sworn, did say they are the Assistant Treasurer and Assistant Treasurer respectively, of T.G. EXCHANGE, INC., a Hawaii corporation, and that the seal affixed to the forgoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said ELAINE ISHIKAWA and JULIE ANN TAKUSHI acknowledged the instrument to be the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public  
State of Hawaii

My commission expires: 10/31/2000

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

On this 10th day of March, 1997, before me personally appeared MAE NAKAGAWA and DANETTE TAMAYOSHI to me personally known, who, being by me duly sworn, did say they are the Assistant Vice President and Assistant Secretary respectively, of T.G. SUPER EXCHANGE, CORP., a Hawaii corporation, and that the seal affixed to the forgoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said MAE NAKAGAWA and DANETTE TAMAYOSHI acknowledged the instrument to be the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public  
State of Hawaii

My commission expires: 10/31/2000

COUNTY OF KAUAI PLANNING DEPARTMENT

SUBDIVISION REPORT

S - 97 - 23

Applicant MICHAEL STRONG/PAUL HUBER Date Accepted 1/22/97
Surveyor/Authorized Agent Dennis M. Esaki Prelim. Approval 4/22/97

Map Title Consolidation of Lots 1, 2, 3, 4-A, 5-A, 6, 7, 8, 9, 10-A, 10-B, 11-A, 11-B, 12, 13, 14, 15, 15-A & 16, Being Portion of Moloa'a Hui Lands & Subdivision of Said Consolidation into Lots 1 & 2 at Moloa'a & Papa'a, Kawaihau, Kaua'i, Hawai'i

\*35-38

TMX: 4-9-09:01, 9-25, 27-29,\* Property Size 724 acres No. of Lots 2
General Plan Ag/O Zoning Ag/O SLUD Cons/Ag Land Class. B,C,E
Permits Required None Max. Density Utilized: [ ]Yes [x]No [ ]N/A

TENTATIVE APPROVAL
Agency Comments (Dates):
[x] Public Works 1/30/97 [x] Water 3/19/97 [x] Health 3/10/97
[x] State Hwy. 2/24/97 [x] Hist. 2/4/97 [ ] Other
Right of Way(s):
Name Existing Width Required Paved: Reserve: Dedication:
Ko'olau Road 50 ft. 56 ft. [x]Yes [ ]No [x] 3 ft. [ ]
Moloa'a Road varies 56 ft. [x]Yes [ ]No [x] varies [ ]
Kūhiō Highway varies 80 ft. [x]Yes [ ]No [ ] varies [ ]
CZO Requirements Met: [x]Yes [ ]No If NO, explain: A portion of the proposed subdivision is located within the Special Management Area (SMA) however, an SMA Permit is not required since the proposal involves two (2) lots.
Fees:
[x]EIA \$250.00 [x]Park Dedication \$300.00 [ ] To Be Determined By Aprsl
EVALUATION: The proposal consolidates all existing parcels and resubdivides into two (2) lots.
Recommendation:
[ ] Denial
[x] Tentative Approval Subject to Conditions (Over)
Staff: [Signature] Date: 03 Apr 97
[ ] Denial [ ] Approved as Recommended Comments:
[Signature] Date: 04/04/97
Planning Director

FINAL APPROVAL
Acceptance Date: [ ] All Conditions Complied With
COMMENTS:
Recommendation: [ ] Final Approval [ ] Conditional Approval [ ] Denial
Staff: Date:
[ ] Denial [ ] Approved as Recommended Comments:
Planning Director Date

CONDITIONS OF TENTATIVE APPROVAL: S-97-23

1. As recommended by the Planning Department:
  - a. A preliminary title report shall be submitted to the Planning Department for review.
  - b. The following fees shall be paid to the County of Kaua'i:
    - i) Park Dedication fee: \$ 300.00
    - ii) Environmental Impact Assessment fee: \$ 250.00
  - c. A three (3) feet wide future road widening reserve shall be established along the frontage of Ko'olau Road, and a future road widening reserve, subject to the specifications of the Public Works Department for a major street, shall be established along the Moloa'a Road. There shall be no new structures permitted within the reserves, and any new structures should be setback from the reserves. The reserves, along with the restrictions, shall be incorporated into the deed descriptions of the affected lots, of which draft copies shall be submitted to the Planning Department for review and approval.
  - d. The applicant shall resolve with the State Highways Division - DOT the establishment of a future roadwidening reserve along the frontage of Kūhiō Highway. Should a reserve be required, it shall be subject to the specifications of the State Highways Division. There shall be no new structures permitted within the reserve, and any new structures should be setback from the reserve. The reserve along with its restrictions shall be incorporated into the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
  - e. There shall be no direct access permitted onto Kūhiō Highway from Lot 1 and no direct access permitted onto Moloa'a Road from Lot 2. This provision shall be incorporated as a restrictive covenant for the subject lots, draft copies of which shall be submitted to the Planning Department for review and approval.

Semi-circles denoting no direct access permitted shall be shown on the final subdivision map.
  - f. All existing and proposed easements shall be identified in the deed description(s) of the affected lot(s) and shown on the final subdivision map. Draft copies of the deed descriptions shall be submitted to the Planning Department for review and approval.
  - g. The subdivider shall delineate the Class "B" classified lands on the final subdivision map.
  - h. The uses on the newly-created lots shall be limited to those listed as permissible uses within the "A" Agricultural Districts in the State Land Use Commission Rules and Regulations. Dwellings on the lot shall mean a single-family dwelling located on and used in connection with a farm where agriculture activity provides income to the family occupying the dwelling. These restrictions shall be included in the covenants for the proposed lots, draft copies of which shall be submitted to the Planning Department for review and approval.
  - i. Pursuant to Act 199, Session Laws of Hawaii, 1976, the applicant shall enter into an agreement with the County

CONDITIONS OF TENTATIVE APPROVAL: S-97-23

to incorporate agricultural restrictions into the instruments of conveyance for those lots which contain the Class A and/or B soils.

- j. A State Land Use District boundary interpretation identifying the boundaries of the Agricultural and Conservation Districts shall be obtained from the State Land Use Commission.
- k. There shall be no encroachment of subdivision into the Conservation District unless a Conservation District Use Application (CDUA) is obtained.
- l. Relative to condition #1.k., residential development shall be prohibited within the Conservation District. This condition shall be incorporated as a restrictive covenant of the affect lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- m. The applicant shall obtain a Shoreline Certification within six (6) months prior to date of final subdivision approval.
- n. The subdivider shall resolve with the Planning Department the provision of beach access and parking for shoreline users. The applicant shall propose a beach access site along with parking for the review and approval of the Planning Department. Additionally, due to the farming activities, the subdivider shall work with the Planning Department on establishing a public access control system.

Proper documents shall be prepared and executed prior to final subdivision approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

- o. Relative to condition #1.n., the subdivider shall identify (stake out) the pedestrian access along the shoreline to determine the extent and width of the access easements.
- p. The subdivider shall work with the Planning Department to establish building sites and design criteria for the construction of buildings on each property to mitigate visual impacts. Prior to final subdivision approval, design covenants, including but not limited to setback lines, structures, and landscaping, shall be established to ensure this. Building setback lines shall be shown on the final subdivision map and design covenants shall be incorporated into the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.
- q. Relative to condition #1.p., the applicant shall strive to preserve the mature trees on the property and the resultant lot. The removal of vegetation including but limited to the mature trees along the Moloa'a side and coastline of the subject property shall be prohibited unless done to accommodate agricultural purposes. Prior to final subdivision approval, the applicant shall submit a tree disposition plan for all building sites for review and approval by the Planning Department. All trees to be

CONDITIONS OF TENTATIVE APPROVAL: S-97-23

- preserved shall be identified for review and approval of the Planning Department.
- r. Prior to final subdivision approval, the applicant shall submit to the Planning Department a density breakdown for each lot which will be subject to review and approval by the Department. These restrictions shall be included in the covenants and deed descriptions of the proposed lots, draft copies of which shall be submitted to the Planning Department for review and approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.
  - s. The final subdivision map shall identify the existing water tank facility on proposed Lot 1.
  - t. The subdivider is informed that portions of the subject property is located within the Special Management Area (SMA). Additional lots within the SMA may require an SMA Permit and if so, the applicant is subject to all applicable requirements/conditions of the SMA Permit.
2. As recommended by the Department of Water:
- a. The subdivider is made aware that the Department of Water, County of Kaua'i, does not have a domestic water system serving this area.
  - b. The subdivider clearly letters the following on the construction drawings and on the final subdivision map and deeds:  
  
*"Water service to these lots are not available from the Department of Water, County of Kaua'i."*  
  
The subdivider shall record this deed restriction with the Bureau of Conveyances within 90 calendar days of final subdivision approval granted by the Planning Department.
3. As recommended by the State Department of Health:
- a. As stated by the Wastewater Branch, "The document proposes the consolidation of Lots 1, 2, 3, 4-A, 5-A, 6, 7, 8, 9, 10-A, 10-B, 11-A, 11-B, 12, 13, 14, 15, 15-A & 16, being portions Allotment of 24-A, Mola'a Hui Lands and Allotment M-1, Pa'apuna Hui Lands and subdivision of said consolidation into Lots 1 & 2.  
  
Lots 16, 4-B, 5-B and portions of Lots 2, 3, 6, and Portion Parcel 1 of the said consolidation are located in the critical wastewater disposal area (CWDA) as determined by the Kaua'i County Wastewater Advisory Committee (KWAC). The rest of the areas are in the non-CWDA. No new cesspools will be allowed in the CWDA, however, cesspools are allowed in the non-CWDA.  
  
Wastewater treatment and disposal have not been adequately addressed in the subject document. As the property is vacant and as infrastructure improvements will not be constructed in the near future and there is not public sewer service system in the area, the Department of Health (DOH) concurs with the subdivision request and will allow the use of on-site wastewater systems.

CONDITIONS OF TENTATIVE APPROVAL: 8-97-23

All wastewater plans must conform to applicable provisions of Chapter 11-62, "Wastewater Systems", Hawai'i Administrative Rules (HAR) at the time of building permit application."

- b. The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Title 11, Chapter 11-26, "Vector Control", HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
  - c. In accordance with Title 11, Chapter 11-60.1, "Air Pollution Control", HAR, the property owner/developer shall be responsible for ensuring that affective control measures are provided to minimize or prevent any fugitive dust emission caused by the construction work from impacting the surrounding areas including the off-site roadways used to enter/exit the project. These measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
  - d. In accordance with Title 11, Chapter 11-58.1, "Solid Waste Management Control", HAR, the property owner/developer shall be responsible for ensuring that grub material, demolition waste and construction waste generated by the project are disposed of in a manner or at a site approved by the State Department of Health. Disposal of any of these wastes by burning is prohibited.
  - e. In accordance with Title 11, Chapter 11-55, "Water Pollution Control" and Chapter 11-54, "Water Quality Standards", HAR, the property owner/developer shall be responsible for ensuring that the best management practices (BMP) to minimize or prevent the discharge of sediments, debris and other water pollutant into State waters.
  - f. The property owner/developer shall be responsible for obtaining all applicable permits from the Department of Health including but not limited to National Pollution Discharge Elimination System (NPDES) permits for storm water, hydrostatic test and dewatering prior to commencing construction.
  - g. The proposed development shall be provided with potable water from an approved source.
4. As recommended by the State Highways Division:
- a. The applicant shall submit a detailed TRAFFIC IMPACT ASSESSMENT REPORT (TIAR) for the project.
  - b. No access to Lot 1 will be permitted from Kuhio Highway. "No Access Permitted" symbol shall be shown on the subdivision map.\*  
  
\* The applicant shall conform to the Planning Department's "No Direct Access" procedures.
  - c. No runoff from Lot 1 shall be permitted onto the Kuhio Highway Right-of-Way.
5. As recommended by the State Historic Preservation Division of the Department of Land and Natural Resources, an archaeological inventory survey with sub-surface testing shall be conducted by a qualified archeologist to determine if

CONDITIONS OF TENTATIVE APPROVAL: S-97-23

significant historic sites are present. Findings shall be submitted to the State Historic Preservation Division for review and approval in a report format which shall include:

- a) Maps showing testing locations;
- b) Stratigraphic profiles of the test excavations;
- c) Photographs;
- d) Documentation of the nature and age of the deposits; and
- e) A statement of significance.

If significant historic sites prove to be present, then the applicant shall develop an acceptable mitigation plan to be approved by the State Historic Preservation Division and Planning Department, and shall execute this plan prior to construction.

Alternately, if the land surface has been extensively disturbed in the past, the applicant should submit information (documentation of the history of the land, aerials and photographs) to State Historic Preservation Division, for review and approval.

6. The applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

Order No.  
6707004645

Ref No.  
AINA ALOHA CONDOMINIUM

Guarantee No.  
A50025-CTGH-175892

**CONDITION OF TITLE GUARANTEE**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,



OLD REPUBLIC NATIONAL  
TITLE INSURANCE COMPANY

**GUARANTEES**

the Assured named in Schedule A of this Guarantee against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A:

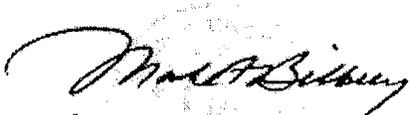
Dated: April 25th, 2018 at 8:00:00 AM

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

A Corporation  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

Countersigned:

By   
Validating Officer

By  President  
Attest  Secretary

**Schedule A**

<b>Order No.</b>	6707004645
<b>Ref. No.</b>	AINA ALOHA CONDOMINIUM
<b>Guarantee No.</b>	A50025-CTGH-175892
<b>Liability</b>	\$ 1,000.00
<b>Date of Guarantee</b>	April 25th, 2018 at 8:00:00 AM
<b>Fee</b>	\$ 400.00

1. Name of Assured:

ALSTON HUNT FLOYD & ING

2. The estate or interest in the Land which is covered by this Guarantee is:

Fee Simple

3. The Land referred to in this Guarantee is situated in the County of Honolulu, City of , State of Hawaii, and is described as follows:

All of that certain parcel of land (being portion of the land(s) described in and covered by Lot 2, being also a portion of Allotment 24-A, Moloaa Hui Lands and a portion of Allotment M-1, Kaapuna Hui Lands) situate, lying and being at Moloaa and Papaa, Kawaihau, Island and County of Kauai, State of Hawaii, being Lot 2-A and thus bounded and described:

Beginning at the Southwest corner of this parcel of land, on the East side of Koolau Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 1,488.53 feet South and 5,878.63 feet West, thence running by azimuths measured clockwise from true South:

1. 116° 30' 62.58 feet along the East side of Kuhio Highway;  
 Thence along the East side of Kuhio Highway, on curve to the left with a radius of 190.00 feet, the chord azimuth and distance being:
2. 72° 02' 30" 266.148 feet;
3. 139° 05' 414.85 feet along Allotment O, Kaapuna Hui Lands;
4. 127° 08' 147.11 feet along Allotment O, Kaapuna Hui Lands;
5. 217° 08' 200.00 feet along the remainder of Lot 2 (Lot 32 -A);
6. 127° 08' 337.55 feet along the remainder of Lot 2 (Lot 32 -A);

Thence along the South side of Moloaa Road, on a curve to the left with a radius of 275.00 feet, the chord azimuth and distance being:

- 7. 249° 04' 04.5" 86.84 feet;
- 8. 239° 59' 107.89 feet along the South side of Moloaa Road;

Thence along the South side of Moloaa Road, on a curve to the right with a radius of 75.00 feet, the chord azimuth and distance being:

- 9. 253° 04' 33.955 feet;
- 10. 266° 09' 42.78 feet along the South side of Moloaa Raod; thence along the sough side of Moloaa Road, on a curve to the left with a radius of 125.00 feet, the chord azimuth and distance being:
- 11. 243° 14' 30" 97.314 feet;
- 12. 220° 20' 55.30 feet along the South side of Moloaa Road;

Thence along the South side of Moloaa Road, on a curve to the left with a radius of 155.00 feet, the chord azimuth and distance being:

- 13. 216° 17' 21.894 feet;
- 14. 212° 14' 42.40 feet along the South side of Moloaa Road;

Thence along the South side of Moloaa Road, on a curve to the right with a radius of 375.00 feet, the chord azimuth and distance being:

- 15. 226° 22' 97.672 feet;
- 16. 240° 30' 167.75 feet along the South side of Moloaa Road;

Thence along the South side of Moloaa Road, on a curve to the right with a radius of 375.00 feet, the chord azimuth and distance being:

- 17. 246° 07' 73.404 feet;
- 18. 251° 44' 311.86 feet along the South side of Moloaa Road;

Thence along the South side of Moloaa Road, on a curve to the right with a radius of 675.00 feet, the chord azimuth and distance being:

- 19. 253° 31' 42.012 feet;

ORT 5314

20. 138° 50' 30" 11.10 feet along the South side of Moloaa Road;  
Thence along the South side of Moloaa Road, on a curve to the right with a radius of 685.00 feet the chord azimuth and distance being:
21. 261° 43' 44" 163.11 feet;  
22. 268° 34' 44.20 feet along the South side of Moloaa Raod;  
23. 255° 40' 73.67 feet along the South side of Moloaa Road;  
24. 242° 46' 153.40 feet along the South side of Moloaa road;  
25. 234° 45' 59.97 feet along the South side of Moloaa Hui Road;  
26. 226° 44' 299.84 feet along the South side of Moloaa Road;  
27. 316° 44' 58.00 feet along Lot 2-C;  
28. 249° 55' 109.60 feet along Lot 20-C;  
29. 222° 01' 30" 267.80 feet along Lot 20-C;  
30. 206° 30' 166.50 feet along Lot 20-C;  
31. 287° 20' 190.60 feet along Grant 1725 to C. Fortin;  
32. 308° 50' 394.70 feet along Lot 10-A;  
33. 239° 10' 349.55 feet along Lot 10-A;  
34. 212° 35' 55.00 feet along Lot 10-A;  
35. 196° 34' 592.10 feet along Lot 10A;  
36. 274° 05' 248.25 feet along Lot 10-A;  
37. 293° 00' 164.60 feet along Lot 10-A;  
38. 232° 12' 379.20 feet along Lot 10-A;  
39. 257° 16' 407.50 feet along Lot 10-A;  
40. 193° 53' 660.50 feet along Lot 10-A;  
41. 301° 10' 660.00 feet along Government land;  
42. 329° 26' 1,122.00 feet along Government land;  
43. 263° 26' 153.12 feet along Government land;

Page 4 of 17 Pages

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

- 44. 314° 26' 528.00 feet along Government land;
- 45. 273° 28' 693.00 feet along Government land;
- 46. 308° 30' 528.00 feet along Government land;
- 47. 304° 58' 1,584.00 feet along Government land;
- 48. 332° 13' 1,386.00 feet along Government land;
- 49. 343° 15' 990.00 feet along Government land;
- 50. 80° 04' 1,631.50 feet along Lot 1-B and Lot 1;
- 51. 134° 40' 139.05 feet along Lot 1;
- 52. 248° 42' 939.34 feet along Lot 1;

Thence along Lot 1, on a curve to the left with a radius of 600.00 feet, the chord azimuth and distance being:

- 53. 224° 01' 501.123 feet;
- 54. 199° 20' 140.00 feet along Lot 1;

Thence along Lot 1, on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:

- 55. 171° 46' 30" 416.386 feet;
- 56. 144° 13' 499.52 feet along Lot 1;

Thence along Lot 1, on a curve to the right with a radius of 700.00 feet, the chord azimuth and distance being:

- 57. 152° 06' 30" 192.221 feet;
- 58. 160° 00' 125.89 feet;

Thence along Lot 1, on a curve to the left with a radius of 500.00 feet, the chord azimuth and distance being:

- 59. 144° 30' 267.238 feet;
- 60. 129° 00' 297.60 feet along Lot 1;

Thence along Lot 1, on a curve to the left with a radius of 500.00 feet, the chord azimuth and distance being:

- 61. 118° 30' 182.236 feet;

ORT 5314

62. 108° 00' 343.35 feet along Lot 1;

63. 117° 50' 25" 239.263 feet along Lot 1;

Thence along the remainder of Allotment 24-A, Moloaa Hui Lands (Lot 1), on a curve to the left with a radius of 200.00 feet, the chord azimuth and distance being:

64. 127° 40' 50" 1,118.34 feet along Lot 1;

Thence along the remainder of Allotment 24-A, Moloaa Hui Lands (Lot 1), on a curve to the left with a radius of 200.00 feet, the chord azimuth and distance being:

65. 111° 20' 25" 112.537 feet;

66. 95° 00' 246.83 feet along Lot 1;

Thence along Lot 1, on a curve to the right with a radius of 1,000.00 feet, the chord azimuth and distance being:

67. 100° 30' 191.692 feet;

68. 106° 00' 561.42 feet along Lot 1;

69. 125° 00' 130.227 feet;

70. 144° 00' 40.57 feet along Lot 1;

Thence along Lot 1, on a curve to the left with a radius of 200.00 feet, the chord azimuth and distance being:

71. 120° 30' 159.50 feet;

72. 97° 00' 39.44 feet along Lot 1;

Thence along Lot 1, on a curve to the right with a radius of 200.00 feet, the chord azimuth and distance being:

73. 112° 30' 106.895 feet;

74. 128° 00' 475.49 feet along Lot 1;

Thence along Lot 1, on a curve to the left with a radius of 400.00 feet, the chord azimuth and distance being:

75. 109° 45' 250.531 feet;

76. 91° 30' 607.84 feet along Lot 1;

Thence along Lot 1, on a curve to the left with a radius of 700.00 feet, the chord azimuth and distance being:

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

ORT 5314

- 77. 75° 15' 391.761 feet;
- 78. 59° 00' 135.25 feet along Lot 1;
- 79. 49° 00' 243.107 feet;
- 80. 39° 00' 796.94 feet along Lot 1;

Thence along Lot 1, on a curve to the right with a radius of 700.00 feet, the chord azimuth and distance being:

- 81. 42° 00' 73.27 feet;
- 82. 45° 00' 723.00 feet along Lot 1;

Thence along Lot 1, on a curve to the right with a radius of 700.00 feet, the chord azimuth and distance being:

- 83. 61° 30' 397.622 feet;
- 84. 78° 00' 123.00 feet along Lot 1;

Thence along Lot 1, on a curve to the left with a radius of 700.00 feet, the chord azimuth and distance being:

- 85. 66° 15' 285.10 feet;
- 86. 54° 30' 263.00 feet along Lot 1;

Thence along Lot 1, on a curve to the left with a radius of 700.00 feet, the chord azimuth and distance being:

- 87. 45° 30' 219.008 feet;
- 88. 36° 30' 98.00 feet along Lot 1 to the point of beginning and containing a gross area of 133.427 acres, less 0.057 acre for "MOLOAA" Government Survey Triangulation Station Reserve, leaving a net area of 133.370 acres, more or less.

TOGETHER WITH the following:

1. The easements and rights in favor of Lot 2 as set forth in the Declaration of Covenants, Conditions and Restrictions dated March 13, 1997, recorded in the Bureau as Document No. 97-032789, as amended by Amendment to Declaration of Covenants, Conditions and Restrictions dated February 15, 16, 17, 18 and 28, 2000, recorded in the Bureau as Document No. 2000-034932 ("Moloaa Hui Lands Declaration").

2. The easements and rights in favor of Lot 2 as set forth in the Declaration of Covenants, Conditions and Restrictions for the Moloaa Makai Estates dated June 19, 1998, recorded in said Bureau as Document No. 98-126781 ("Moloaa Makai Declaration").

Being the premises acquired by:

**A. WARRANTY DEED (LOT 2)**

Recorded : August 27, 1998 in the Bureau of Conveyances, State of Hawaii, as Document No. 98-126780

Grantor : MOLOAA HUI LANDS. INC., a Hawaii corporation

Grantee : JEFFREY S. LINDNER, single, as Tenant in Severalty, DAVID C. LINDNER, married, as Tenant in Severalty, A. BRADFORD LINDNER, married, as Tenant in Severalty and EL PASO INVESTMENTS LIMITED LIABILITY COMPANY, an Ohio limited liability company

**CORRECTION TO WARRANTY DEED (LOT 2)**

Recorded : January 18, 2002 in the Bureau of Conveyances, State of Hawaii, as Document No. 2002-009897

Grantor : MOLOAA HUI LANDS, INC., a Hawaii corporation

Grantee : JEFFREY S. LINDNER, single, DAVID C. LINDNER, married, A. BRADFORD LINDNER, married and EL PASO INVESTMENTS LIMITED LIABILITY COMPANY, an Ohio limited liability company

**B. WARRANTY DEED**

Recorded : December 2, 2010 in the Bureau of Conveyances, State of Hawaii, as Document No. 2010-186548

Grantor : JEFFREY S. LINDNER, unmarried

Grantee : MOLOAA FARMS LLC, a Hawaii limited liability company

**C. QUITCLAIM DEED**

Recorded : December 27, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-47441092

Grantor : BRADFORD LINDNER, married

Grantee : ROBERT B. LINDNER, JR., Trustee of the ABL FAMILY LEGACY TRUST U/A/D December 20, 2012

**D. QUITCLAIM DEED**

Recorded : December 27, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-47441098

Grantor : DAVID C. LINDNER, married

Grantee : BOCA HOLDINGS, LLC, a Delaware limited liability company

4. Assurances:

According to the Public Records as of the Date of Guarantee,

a. Title to the estate or interest in the Land is vested in:

EL PASO INVESTMENTS LIMITED LIABILITY COMPANY, an Ohio limited liability company, as to an undivided 25% interest, MOLOAA FARMS LLC, a Hawaii limited liability company, as to an undivided 25% interest, ROBERT D. LINDNER, JR., Trustee of the ABL FAMILY LEGACY TRUST U/A/D December 20, 2012, as to an undivided 25% interest, and BOCA HOLDINGS, LLC, a Delaware limited liability company, as to an undivided 25% interest

**Schedule B**

<b>Order No.</b>	6707004645
<b>Ref. No.</b>	AINA ALOHA CONDOMINIUM
<b>Guarantee No.</b>	A50025-CTGH-175892
<b>Liability</b>	\$ 1,000.00
<b>Date of Guarantee</b>	April 25th, 2018 at 8:00:00 AM
<b>Fee</b>	\$ 400.00

b. Title to the estate or interest is subject to defects, liens or encumbrances shown in Schedule B which are not necessarily shown in the order of their priority.

1. Taxes and assessments, general and special, for the fiscal year 2017 - 2018, as follows:

Tax Map Key	:	4-4-9-009-001	
1st Installment	:	\$14,935.73	Marked Paid
2nd Installment	:	\$14,935.72	Marked Paid
Total Value	:	\$4,425,400.00	
Land Value	:	\$4,425,400.00	

2. Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes due to possible loss of exemption status.

3. Mineral and water rights of any nature in favor of the State of Hawaii.

4. Matters relating to the exercise of Native Hawaiian customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural or religious purposes, and access, water gathering rights, as reserved, existing or established under the Constitution, law and usage of the State of Hawaii.

To obtain information on such matters, please contact: your legal counsel on Native Hawaiian rights.

5. Covenants, Conditions and Restrictions, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled	:	AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
Recorded	:	March 12, 2000 in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-034932

6. Covenants, Conditions and Restrictions, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE MOLOAA MAKAI ESTATES  
Recorded : August 27, 1998 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 98-126781

7. Water services to Lot 2 are not available from the Department of Water, County of Kauai.
8. Uses within the State Land Use Commission ("SLUC") Agricultural District shall be primarily in pursuit of agricultural activities as set forth in Hawaii Revised Statutes ("HRS") Chapter 205, as amended from time to time. In addition, lands within the SLUC Agricultural District which also have soils classified by the Land Study Bureau's Detailed Land Classification Overall (Master) Productivity Rating Class A or B shall be restricted to the uses 7 contained in HRS Section 205-4.5, as amended from time to time.
9. Any dwelling permitted to be constructed on any lands classified within the SLUC Agricultural District shall be a "farm dwelling" as defined by HRS Chapter 205, and the State Land Use District Regulations. Such dwellings shall only be occupied by a "family" as defined by the State Land Use District Regulations who derive income from the agricultural activity on the parcel.
10. Lot 2 shall be subject to a three (3) feet wide road Widening reserve along Koolau Road and a thirteen (13) feet wide road widening reserve along Moloaa Road (jointly, the "Reserves") as shown on the Subdivision Map prepared by Dennis M. Esaki, Licensed Professional Land Surveyor, dated June 4, 1998 ("Subdivision Map"). No new structures shall be permitted within the Reserves, and any new structures shall be set back from the Reserves.
11. Easement A-3 for pedestrian access to the shoreline as described in that certain Grant of Pedestrian Access Easement (Lot 2) dated June 19, 1998.
12. No residential development shall be allowed within any lands classified within the SLUC Conservation District.
13. No direct access shall be permitted onto Moloaa Road from Lot 2, as shown on the Subdivision Map.

14. The terms, conditions, restrictions and covenants contained in the following unrecorded permits ("Permits") approved by the Planning Commission of the County of Kauai: final approval of Subdivision No. S-97-23; Variance Permit V-97-6; Class IV Zoning Permit Z-IV-97-29; Class III Zoning Permit Z-III-97-6. Among other things, the Permits provide that Lot 2 shall be limited to a residential housing density of fifteen (15) single-family dwelling units ("farm dwellings") and one (1) Guest House. ||
  
15. The requirement that all buildings located along the Western Cliffside of Lot 2 (facing Moloaa Valley), shall be setback a minimum of forty (40) feet from the top of the bluff, behind (to the south of) the forty (40) feet Building Setback Line shown on the Subdivision Map.

16. Triangulation Survey Station ("Station") "MOLOAA" located within the land described herein, as shown on the Subdivision Map and on the Tax Map prepared by the Taxation Maps Bureau, Department of Finance, Kauai. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or removal of survey monuments. As shown on the Subdivision Map, a reserve is established around the Station ("Station Reserve") in favor of the State of Hawaii in order to preserve lines-of-sight to and from the Station. No new structures or buildings may be constructed above ground level within the Station Reserve, and no trees, bushes or other vegetation ("Vegetation") may be planted or maintained within the Station Reserve. The State of Hawaii shall have the right to enter upon Lot 2 for the purpose of removing Vegetation from the Station Reserve and for the purpose of using, maintaining, repairing, or reconstructing the Station and/or the Station Reserve. The Station Reserve is described as follows:

MOLOAA GOVERNMENT SURVEY TRIANGULATION STATION RESERVE LAND SITUATED AT  
MOLOAA, KAWAIHAU, KAUAI, HAWAII  
Being a Portion of Allotment 24-A, Moloaa Hui Lands

Beginning at the East corner of this parcel of land, the direct azimuth and distance from Moloaa Government Survey Triangulation Station being 276° 50' for 35.36 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 4.21 feet South and 35.11 feet East, thence running by azimuths measured clockwise from true South:

- |    |          |       |   |
|----|----------|-------|---|
| 1. | 51° 50'  | 50.00 | feet along the remainder of Allotment 24-A, Moloaa Hui Lands;   |
| 2. | 141° 50' | 50.00 | feet along the remainder of Allotment 24-A, Moloaa Hui Lands;   |
| 3. | 231° 50' | 50.00 | feet along the remainder of Allotment 24-A, Moloaa Hui Lands;   |
| 4. | 321° 50' | 50.00 | feet along the remainder of Allotment 24-A, Moloaa Hui Lands to the point of beginning and containing an area of 2,500 square feet. |

17. Grant to GTE Hawaiian Telephone Company Incorporated dated October 5, 1967, and recorded in said Bureau in Book 5852 at Page 234, granting an easement for utility purposes over, across, along and through the following described "easement area":

All of that certain parcel of land (portion of the Moloaa Hui Lands) situate, lying and being at Moloaa, Island and County of Kauai, State of Hawaii, being EASEMENT "2", the centerline of a 20 feet wide strip of land being more particularly described as follows:

Beginning at a point at the Southerly end of this strip of land, and along the North side of the Old Government Road (50 feet wide), the coordinates of this said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 1,449.88 feet South and 6,067.68 feet West, the centerline of this strip of land running in the Northerly direction as follows:

1. 152° 30' 768.00 feet across Kaapuna Hui Land;
2. 204° 14' 30" 244.00 feet across Kaapuna Hui Land to the South side of Moloaa Road, and containing an area of 0.4555 acre, more or less.

18. Terms and provisions as contained in an instrument,

Entitled : LIMITED WARRANTY DEED  
Executed By : THE LIHUE PLANTATION COMPANY, LIMITED, a Hawaii corporation and MOLOAA HUI LANDS, INC., a Hawaii corporation, et al  
Dated : March 13, 1997  
Recorded : March 13, 1997 in the Bureau of Conveyances, State of Hawaii, as Document No. 97-032783

19. The Conditions imposed by the Planning Commission of the County of Kauai in Subdivision No. S-2000-4, including but not limited to, the following:

- A. A three (3) foot wide future road widening reserve shall be established along the frontage of Moloaa Road, and a three (3) foot wide road widening reserve shall be established along the Koolau Road. There shall be no new structures permitted within the reserves, and any new Structures should be setback from the reserves. The reserves, along with the restrictions, shall be incorporated into the deed descriptions of the affected lots, of which draft copies shall be submitted to the Planning Department for review and approval.

B. Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kauai.

C. Terms and provisions as contained in an instrument,

Entitled : WAIVER AND RELEASE  
Executed By : JEFFREY S. LINDNER and  
Dated : April 6, 1999  
Recorded : July 12, 1999 in the Bureau of Conveyances, State of Hawaii,  
as Document No. 99-110726

20. Any claim of lien for services, labor or material arising from an improvement or work under construction or completed at the date hereof.

21. Terms and provisions as contained in an instrument,

Entitled : NOTICE OF DEDICATION TO AGRICULTURE  
Executed By : MOLOAA FARMS LLC  
Dated : December 23, 2016  
Recorded : December 28, 2016 in the Bureau of Conveyances, State of Hawaii,  
as Document No. A-62060494

22. Terms and provisions as contained in an instrument,

Entitled : AMENDED NOTICE OF DEDICATION TO AGRICULTURE  
Executed By : MOLOAA FARMS LLC, EL PASO INVESTMENTS, LLC, ABL FAMILY  
LEGACY TRUST and BOCA HOLDINGS LLC  
Dated : June 16, 2017  
Recorded : July 10, 2017 in the Bureau of Conveyances, State of Hawaii, as  
Document No. A-64000855

23. Prior to the issuance of any policy of title insurance, the Company will require the following with respect to: EL PASO INVESTMENTS

1. Satisfactory evidence be furnished of its due formation and continued existence as a limited liability company under the laws of Hawaii.
2. A copy of any management or operating agreements and any amendments thereto, together with a current list of all members of said LLC.
3. A current certified copy of its Certificate of Authority (Form FLLC-1) from the office of the director of the State of Hawaii Department of Commerce and Consumer Affairs (DCCA director).

The Company reserves the right to make additional exceptions and/or requirements upon review of the above.

24. Prior to the issuance of any policy of title insurance, the Company requires the following with respect to MOLOAA FARMS LLC, a Hawaii Limited Liability Company:

1. A current certified copy of its Articles of Organization (Form LLC-1) from the office of the director of the State of Hawaii Department of Commerce and Consumer Affairs (DCCA director).
2. A copy of any operating agreement and any amendments thereto, together with a current list of all members of said LLC.

The Company reserves the right to make additional exceptions and/or requirements upon review of the above.

25. Prior to the issuance of any policy of title insurance, the Company will require the following with respect to: BOCA HOLDINGS LLC

1. Satisfactory evidence be furnished of its due formation and continued existence as a limited liability company under the laws of Hawaii.
2. A copy of any management or operating agreements and any amendments thereto, together with a current list of all members of said LLC.
3. A current certified copy of its Certificate of Authority (Form FLLC-1) from the office of the director of the State of Hawaii Department of Commerce and Consumer Affairs (DCCA director).

The Company reserves the right to make additional exceptions and/or requirements upon review of the above.

26. Terms and provisions contained in the ABL FAMILY LEGACY TRUST U/A/D December 20, 2012, as disclosed by QUITCLAIM DEED recorded December 27, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-47441092.

## EXCLUSIONS FROM COVERAGE (Revised 06-05-14)

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land.
- (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records
  - (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or
  - (2) that result in no loss to the Assured.
- (c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
- (d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
- (e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
- (f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or,
  - (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
- (g) (1) Unpatented mining claims;
  - (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof;
  - (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

## GUARANTEE CONDITIONS

### 1. DEFINITION OF TERMS

The following terms when used in the Guarantee mean:

- (a) "the Assured": the party or parties named as the Assured in this Schedule A, or on a supplemental writing executed by the Company.
- (b) "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "Public Records": those records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "Date of Guarantee": the Date of Guarantee set forth in Schedule A.
- (f) "Amount of Liability": the Amount as stated in Schedule A.

### 2. NOTICE OF CLAIM TO BE GIVEN BY ASSURED

An Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 3. NO DUTY TO DEFEND OR PROSECUTE

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

### 4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF ASSURED TO COOPERATE

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4(b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

## GUARANTEE CONDITIONS (Continuation)

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

### 5. PROOF OF LOSS OR DAMAGE

(a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

(b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company

up to the time of payment or tender of payment and that the Company is obligated to pay.

(b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.

### 7. LIMITATION OF LIABILITY

(a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.

(b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.

(d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

### 8. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.

### 9. PAYMENT OF LOSS

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

## GUARANTEE CONDITIONS (Continuation)

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

### 10. SUBROGATION UPON PAYMENT OR SETTLEMENT

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

### 11. ARBITRATION

Provided that this does not supersede Hawaii's Uniform Arbitration Act, Hawaii Revised Statutes, Chapter 658A, either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Subject to the provisions of Hawaii Revised Statutes, Chapter 658A, arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

### 12. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

### 13. SEVERABILITY

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

### 14. CHOICE OF LAW; FORUM

(a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guaranties of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

### 15. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at the office which issued this Guarantee or to its Home Office at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499, (612) 371-1111.

R-136

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

MAR 16, 2000 08:01 AM

Doc No(s) 2000-034932

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( ) To:

REINWALD O'CONNOR & PLAYDON  
733 Bishop Street, Suite 2400  
Honolulu, Hawaii 96813  
Phone: 524-8350 (Attention: CAE)

P398244  
9749116870026.0  
AMY SILVA

R/S  
2

TMK:

Total Pages: 27

- (4) 4-9-009-001 (por.), 9 (por.), 14 (por.), 16 (por.), 21 (por.), 25 (por.). [Lot 2]
- (4) 4-9-009-012: CPR Units 1 through 19, [MOLOAA HUI I]
- (4) 4-9-009-009: CPR Units 1 through 18, [MOLOAA HUI II]
- (4) 4-9-009-026: CPR Units 1 through 9, [MOLOAA HUI III]

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS

WHEREAS, by that certain Limited Warranty Deed dated March 13, 1997, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-032783 Lihue Plantation Company, Limited, a Hawaii corporation, conveyed approximately 757 acres of land situate at Moloa`a, Island and County of Kauai,

State of Hawaii, more particularly described therein (the "Property"), to Moloa`a Hui Lands, Inc., T. G. Exchange, Inc., and T. G. Super Exchange, Inc., hereinafter collectively called "Declarant"; and

WHEREEAS, the Declarant subjected the Property to that certain Declaration of Covenants, Conditions and Restrictions dated March 13, 1997 and recorded in said Bureau as Document No. 97-032789 (the "Declaration"); and

WHEREAS, the Declarant subdivided the Property into three condominium projects known as Moloa`a Hui I, established by Declaration of Condominium Property Regime dated April 30, 1997, recorded in said Bureau as Document No. 97-057758, as amended, and as shown on Condominium Map 2542, and any amendments thereto, Moloa`a Hui II, as established by Declaration of Condominium Property Regime dated April 30, 1997, recorded in said Bureau as Document No. 97-057760, as amended, and as shown on Condominium Map No. 2543, and any amendments thereto, and Moloa`a Hui III, as established by Declaration of Condominium Property Regime dated April 30, 1997, recorded in said Bureau as Document No. 97-057762, as amended, and as shown on Condominium Map No. 2544, and any amendments thereto, as well as Lot 2, containing 134.837 acres, more or less (the "Lindner Lot"); and

WHEREAS, the undersigned, hereinafter collectively called "Amenders" are the holders of 90% or more of the undivided or common interests in Moloa`a Hui I, Moloa`a Hui II, Moloa`a Hui III and the Lindner Lot, all as more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Amenders believe it is in the best interests of all owners of lots and/or units in Moloa`a Hui I, Moloa`a Hui II, Moloa`a Hui III and the Lindner Lot, to amend the Declaration; and

WHEREAS, the Amenders believe that an amendment to the Declaration will increase the value of all condominium units in Moloa`a Hui I, Moloa`a Hui II, Moloa`a Hui III and the Lindner Lot;

NOW, THEREFORE, the Amenders hereby amend the Declaration as follows:

1. Section I, Paragraph 5, (Anti-Speculation) is deleted in its entirety.

2. Section I, Paragraph 2, (Excluded Lands) is modified by adding a new subparagraph (c) as follows:

Excluded Lands and their applicable uses as residential, recreational, commercial and other uses as permitted by applicable ordinance or law will be identified by Moloaa Hui Lands, Inc. in an instrument or instruments to be recorded subsequent to the recordation of this Declaration.

3. Section II, Paragraph 2, (Bona Fide Agricultural Use)

is deleted in its entirety and the following is substituted:

2. Bona Fide Agricultural Use.

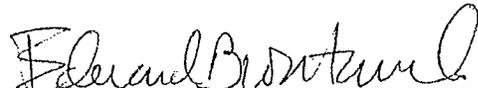
All lots or units will be used in compliance with the "Department of Finance, County of Kauai, Real Property Tax Division, Agricultural Dedication Program Rules Relating to Dedication of Lands to Agricultural Use under Section 5A-9.1 of the Kauai County Code 1987" as adopted on December 21, 1999 and as the same may be amended from time to time (the "Rules"). The Owner(s) of any lot(s) or unit(s) not so used will suffer the consequences contained in the Rules. In case of any conflict between the Declaration and the Rules, the Declaration shall control.

4. If any document affecting property in Moloaa Hui I, Moloaa Hui II, Moloaa Hui III or the Lindner lot which is not expressly amended herein shall contain any provision with the same or similar effect to those provision amended or deleted by this instrument, all such provision (despite not being expressly addressed herein) are hereby deemed to be amended or deleted so as to be consistent with this instrument. It is the intent of this instrument that all provision in all documents affecting Moloaa Hui I, II, III and the Lindner lot with the effect of, or with similar effect to, those provisions amended or deleted by this instrument be and are amended or deleted. This paragraph is

self-executing but the undersigned agree to sign, acknowledge and deliver such other and further instruments as may be necessary or convenient to further evidence or effectuate the intent of the provisions in this document.

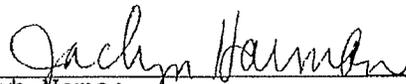
5. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages, or parts of pages, of the counterparts may be discarded or struck through and the remaining pages, or parts of pages, assembled as one document.

DATED: FEBRUARY 17, 2000.

  
EDWARD VON TURKOVICH

STATE OF HAWAII )  
 ) SS.  
~~ISLAND AND COUNTY OF KAUAI~~ )

On this 17<sup>th</sup> day of FEBRUARY, 2000, before me personally appeared EDWARD VON TURKOVICH, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

  
Print Name: \_\_\_\_\_  
Notary Public, State of ~~Hawaii~~ VERMONT

My commission expires: \_\_\_\_\_

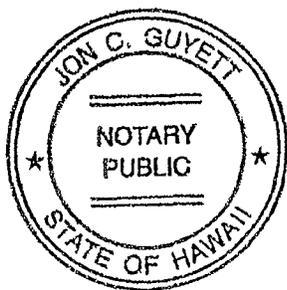
JACLYN E. HARMAN, Notary Public  
My Commission Expires February 10, 2003

DATED: 2/15/00

Henry D. Riley III  
HENRY D. RILEY III

STATE OF HAWAII )  
 ) SS.  
~~ISLAND~~ AND COUNTY OF KAUAI )

On this 15<sup>th</sup> day of FEBRUARY, 2000, before me personally appeared HENRY D. RILEY III, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jon C. Guyett  
Print Name: JON C. GUYETT  
Notary Public, State of Hawaii

My commission expires: 12/30/2000



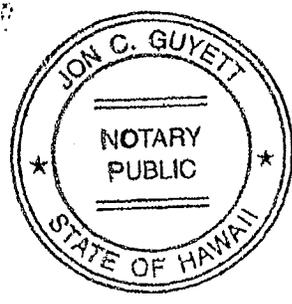
DATED: February 15, 2000

Neal Haruhisa Kakimoto  
NEAL HARUHISA KAKIMOTO

Celeste Kakimoto  
CELESTE KAKIMOTO

STATE OF HAWAII )  
 ) SS.  
ISLAND AND COUNTY OF KAUAI )

On this 15th day of February, 2000, before me personally appeared NEAL HARUHISA KAKIMOTO and CELESTE KAKIMOTO, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jon C. Guyett  
Print Name: Jon C. Guyett  
Notary Public, State of Hawaii

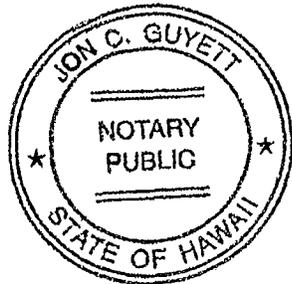
My commission expires: 12/30/2000

DATED: FEBRUARY 15, 2000.

Paul Huber  
PAUL HUBER

STATE OF HAWAII )  
 ) SS.  
~~ISLAND AND~~ COUNTY OF KAUAI )

On this 15<sup>th</sup> day of FEBRUARY, 2000, before me personally appeared PAUL HUBER, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



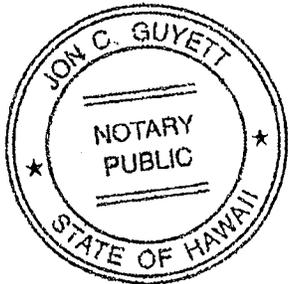
Jon C. Guyett  
Print Name: JON C. GUYETT  
Notary Public, State of Hawaii  
My commission expires: 12/30/2000

DATED: February 15, 2000.

Michael Strong  
MICHAEL STRONG  
Candace Strong  
CANDACE STRONG

STATE OF HAWAII )  
ISLAND AND COUNTY OF KAUAI ) SS.

On this 15<sup>th</sup> day of February, 2000, before me personally appeared MICHAEL STRONG and CANDACE STRONG, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jon C. Guyett  
Print Name: Jon C. Guyett  
Notary Public, State of Hawaii

My commission expires: 12/30/2000



DATED: February 15, 2000.

Nancy Marie Mauger  
NANCY MARIE MAUGER

STATE OF HAWAII )  
 ) SS.  
~~ISLAND AND~~ COUNTY OF KAUAI )

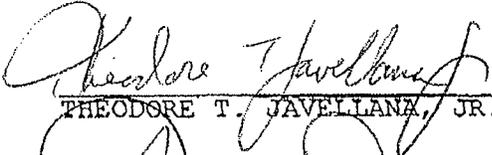
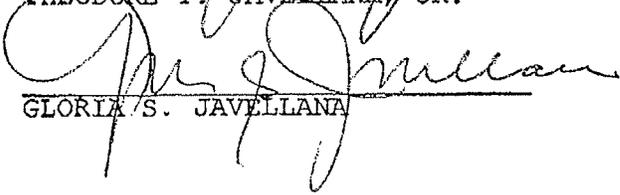
On this 15<sup>th</sup> day of February, 2000, before me personally appeared NANCY MARIE MAUGER, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jon C. Guyett  
Print Name: JON C. GUYETT  
Notary Public, State of Hawaii

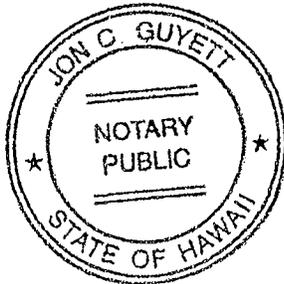
My commission expires: 12/30/2000

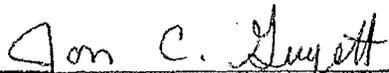
DATED: February 15, 2000.

  
THEODORE T. JAVELLANA, JR.  
  
GLORIA S. JAVELLANA

STATE OF HAWAII )  
ISLAND AND COUNTY OF KAUAI ) SS.

On this 15<sup>th</sup> day of February, 2000, before me personally appeared THEODORE T. JAVELLANA, JR. and GLORIA S. JAVELLANA, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



  
Print Name: Jon C. Guyett  
Notary Public, State of Hawaii

My commission expires: 12/30/2000

DATED: February 15, 2000

Buena Ventura Ednilao Jr.  
BUENAVENTURA EDNILAO, JR.

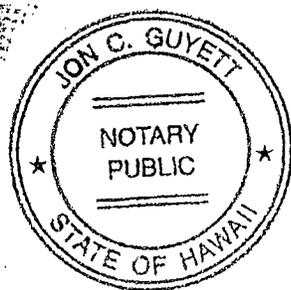
Leonida Ednilao  
LEONIDA EDNILAO

STATE OF HAWAII

~~ISLAND AND COUNTY OF KAUAI~~

)  
) SS.  
)

On this 15<sup>th</sup> day of February, 2000, before me personally appeared BUENAVENTURA EDNILAO, JR. and LEONIDA EDNILAO, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jon C. Guyett  
Print Name: JON C. GUYETT  
Notary Public, State of Hawaii

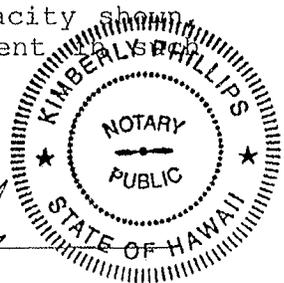
My commission expires: 12/30/2000

DATED: February 15, 2000.

*Jeffrey S. Lindner*  
\_\_\_\_\_  
JEFFREY S. LINDNER

STATE OF HAWAII )  
 ) SS.  
ISLAND AND COUNTY OF KAUAI )

On this 23<sup>rd</sup> day of February, 2000, before me personally appeared JEFFREY S. LINDNER, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



*Kimberly Phillips*  
\_\_\_\_\_  
Print Name:  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_  
KIMBERLY PHILLIPS  
Notary Public  
State of Hawaii  
Commission expires: Jan. 6, 2003







DATED: 02/16/00

*u/gmt*  
\_\_\_\_\_  
JOHN HUNTER McCLURE  
*Daphne Hirokane McClure*  
\_\_\_\_\_  
DAPHNE HIROKANE McCLURE

*u/gmt* STATE OF HAWAII )  
ISLAND AND COUNTY OF KAUAI ) SS.

On this 16<sup>th</sup> day of February, 2000, before me personally appeared ~~JOHN HUNTER McCLURE~~ and DAPHNE HIROKANE McCLURE, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity. *u/gmt*

*ju*  
*Colleen A. Morita*  
\_\_\_\_\_  
Print Name: Colleen A. Morita  
Notary Public, State of Hawaii

My commission expires: 09-01-2000



DATED: February 15, 2000.

*Rodney B. Yadao*  
RODNEY B. YADAO

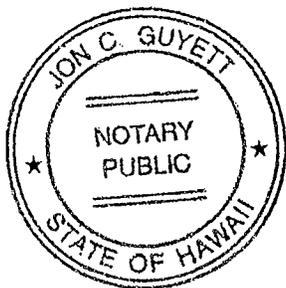
*Dorothy L. Reynolds-Yadao*  
DOROTHY L. REYNOLDS-YADAO

STATE OF HAWAII

)  
) SS.  
)

ISLAND AND COUNTY OF KAUAI

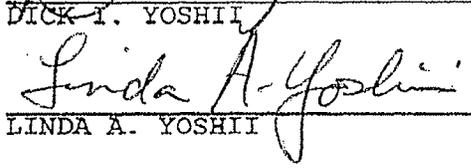
On this 15<sup>th</sup> day of February, 2000, before me personally appeared RODNEY B. YADAO and DOROTHY L. REYNOLDS-YADAO, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



*Jon C. Guyett*  
Print Name: JON C. GUYETT  
Notary Public, State of Hawaii

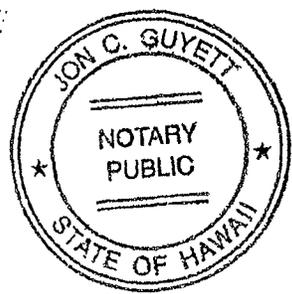
My commission expires: 12/30/2000

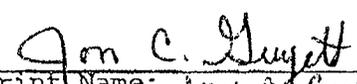
DATED: February 15, 2000.

  
\_\_\_\_\_  
DICK I. YOSHII  
  
\_\_\_\_\_  
LINDA A. YOSHII

STATE OF HAWAII )  
 ) SS.  
ISLAND AND COUNTY OF KAUAI )

On this 15<sup>th</sup> day of February, 2000, before me personally appeared DICK I. YOSHII and LINDA A. YOSHII, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



  
\_\_\_\_\_  
Print Name: Jon C Guyett  
Notary Public, State of Hawaii  
My commission expires: 12/30/2000

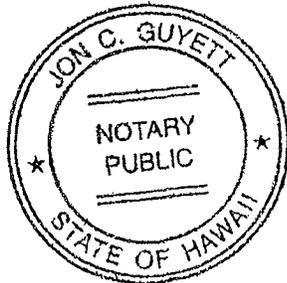
DATED: February 15, 2000.

MOLOAA HUI LANDS, INC.

By Michael Strong  
Print Name: Michael Strong  
Its President

STATE OF HAWAII )  
 ) SS.  
~~ISLAND AND~~ COUNTY OF KAUAI )

On this 15<sup>th</sup> day of February, 2000, before me personally appeared Michael Strong, who is the President of MOLOAA HUI LANDS, INC., a Hawaii corporation, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jon C. Guyett  
Print Name: Jon C. Guyett  
Notary Public, State of Hawaii  
My commission expires: 12/30/2000

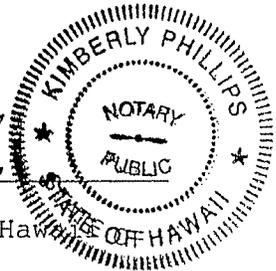
DATED: \_\_\_\_\_

Jeffrey S. Lindner  
JEFFREY S. LINDNER

STATE OF HAWAII )  
 ) SS.  
~~ISLAND AND~~ COUNTY OF KAUAI )

On this 23<sup>rd</sup> day of February, 2000, before me personally appeared JEFFREY S. LINDNER, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Kimberly Phillips  
Print Name:  
Notary Public, State of Hawaii



My commission expires: \_\_\_\_\_

KIMBERLY PHILLIPS  
Notary Public  
State of Hawaii  
Commission expires: Jan. 6, 2003

EXHIBIT A

MOLOA`A HUI I:

OWNER	UNIT(S)	PERCENTAGE INTEREST
Michael and Candace Strong	7	2.00
Michael and Candace Strong	8	3.00
Michael and Candace Strong	9	4.00
Michael and Candace Strong	10	4.00
Michael and Candace Strong	11	4.00
Michael and Candace Strong	16	13.00
Michael and Candace Strong	17	13.00
Michael and Candace Strong	18	6.00
Paul Huber	1	8.00
Paul Huber	12	3.00
Paul Huber	15	14.00
Moloka`a Hui Lands, Inc.	2	1.00
Moloka`a Hui Lands, Inc.	4	1.00
Moloka`a Hui Lands, Inc.	5	1.00
Jody Lee Lyon	3	1.00
Clayton Masashi Kakimoto	14	8.00
Neal Haruisa Kakimoto and Celste Kakimoto	13	6.00
Henry D. Riley III and Edward Von Turkovich	6	4.00
Henry D. Riley III and Edward Von Turkovich	19	<u>4.00</u>
		100.00%

MOLOA`A HUI II:

OWNER	UNIT(S)	PERCENTAGE INTEREST
Paul Huber	21	9.00
Moloka`a Hui Lands, Inc.	20	8.00
Moloka`a Hui Lands, Inc.	23	3.00
Moloka`a Hui Lands, Inc.	26	6.00
Moloka`a Hui Lands, Inc.	28	5.00
Moloka`a Hui Lands, Inc.	29	11.00
Moloka`a Hui Lands, Inc.	31	6.00
Moloka`a Hui Lands, Inc.	33	2.00
Moloka`a Hui Lands, Inc.	34	6.00
Henry D. Riley III	22	3.00
John Hunter McClure and Daphne Hirokane McClure	37	6.00
Dick I. Yoshii and Linda A. Yoshii	35	6.00
Dick I. Yoshii and Linda A. Yoshii	36	6.00

Rodney B. Yadao and Dorothy L. Reynolds-Yadao	32	2.00
Theodore T. Javellana, Jr. and Gloria S. Javellana	30	6.00
Benaventura Ednilao, Jr. and Leonida Ednilao	24	6.00
Allan and Sally Batesile	27	3.00
Nancy Marie Mauger	25	<u>6.00</u>
		100.00%

MOLOA`A HUI III:

OWNER	UNIT(S)	PERCENTAGE INTEREST
Moloa'a Hui Lands, Inc.	38	13.00
Michael and Candace Strong	39	13.00
Moloa'a Hui Lands, Inc.	40	13.00
Moloa'a Hui Lands, Inc.	41	16.00
Moloa'a Hui Lands, Inc.	42	13.00
Jeffrey S. Lindner as custodian for Leela A. Lindner and Sita K. Lindner under HUTMA	45	13.00
Jeffrey S. Lindner as custodian for Leela A. Lindner and Sita K. Lindner under HUTMA	46	13.00
John Hunter McClure and Daphne Hirokane McClure	44	3.00
Benaventura Ednilao, Jr. and Leonida Ednilao	43	<u>3.00</u>
		100.00%

LOT 2

OWNER	UNIT(S)	PERCENTAGE INTEREST
Jeffrey S. Lindner, David C. Lindner, A. Bradford Lindner and El Paso Investments Limited Liability Company	N/A	100.00%

Kaua'i County Code							
<a href="#">Up</a>	<a href="#">Previous</a>	<a href="#">Next</a>	<a href="#">Main</a>		<a href="#">Search</a>	<a href="#">Print</a>	<a href="#">No Frames</a>
<a href="#">Title III TAXATION AND FINANCIAL ADMINISTRATION</a> <a href="#">Chapter 5A REAL PROPERTY TAX</a> <a href="#">Article 9. Valuation of Dedicated Lands</a>							

**Sec. 5A-9.1 Dedication of Lands.**

(a) Definitions. As used in this Section:

“Agricultural use” means the use of land on a continuous and regular basis that demonstrates that the owner intends to obtain a monetary profit from cash income received by:

- (1) Raising, harvesting, and selling crops;
- (2) Feeding, breeding, managing, and selling of livestock, poultry, or honey bees, or any products thereof;
- (3) Ranching of livestock;
- (4) Dairying or selling of dairy products;
- (5) Animal husbandry, provided that the exclusive husbandry of horses for recreational or hobby purposes shall not be considered an agricultural use under this Section;
- (6) Aquaculture;
- (7) Horticulture;
- (8) Participating in a government-funded crop reduction or set-aside program; or
- (9) Cultivating of trees on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising such trees.

Factors that shall be considered to determine whether an owner intends to obtain a monetary profit from the listed activities include, but are not be limited to, evidence that the land enjoys County Department of Water agricultural water rates, filed copies from the immediate preceding year of U.S. Internal Revenue Service Schedule F forms showing profit or loss from farming, filed copies of federal fuel tax exemption claims made pursuant to Sec. 6427(c) of the U.S. Internal Revenue Code, sales receipts generated from the listed activities, a valid, current, State general excise tax license, and covenants, conditions and restrictions encumbering or affecting the property which prohibit or limit agricultural activities.

Physical evidence such as grazing livestock, fences, artificial or natural windbreaks, water facilities, irrigation systems, or crops that are actually in cultivation, or indicia that farm management efforts such as weed control, pruning, plowing, fertilizing, fencing, or pest, insect, or disease control are occurring on the land, shall also be used as factors to determine whether the land is being used for any of the listed activities.

Agricultural dedication applications involving petitioned areas that are less than one hundred (100) acres in size must have the petitioned area entirely in cultivation and/or production at the time of filing of the petition to dedicate. For agricultural dedication applications that involve petitioned areas of one hundred (100) acres or more, the larger of one hundred (100) acres or fifty percent (50%) of the petitioned area must be in cultivation and/or production at the time of the filing of the application to dedicate. Any approved petitioned areas that exceed the one hundred (100) acre or fifty percent (50%) requirement (aforementioned), but not yet in cultivation and/or production at the time of filing, shall be planted at a rate of ten percent (10%) per year, each year thereafter.

**EXHIBIT "6"**

For parcels involved in the ranching of livestock, the entire dedicated area shall have established fences and livestock present at the time of filing a petition to dedicate.

Land areas which are part of a tree farm management plan that was prepared, submitted and is in compliance with K.C.C. Section 5A-11.26 shall be deemed to be in "agricultural use," notwithstanding the fact that said areas are not in cultivation and are yet to be planted. Any area that is not in cultivation or production at the time of the filing of a petition to dedicate shall be planted at a rate of ten percent (10%) per year, each year thereafter, as detailed in a farm management plan to be submitted with the application for agricultural dedication; provided that if the existing tree farm management plan specifies a rate of planting other than ten percent (10%) per year, the rate of planting specified in the tree farm management plan shall prevail and control.

The term "agricultural use" shall not mean uses primarily as yard space, landscaped open areas, botanical gardens, or the raising of livestock or fruit trees primarily for home use.

"Homesite" means any portion of land, on a dedicated parcel intended for existing or future residential use that is not in a dedicated or unusable area, including garages, sheds, yard space, landscaped open areas, and driveways, and not including non-agricultural use areas such as areas left fallow and/or overgrown with weeds, or portions of driveways used for agricultural use.

Any undedicated or unusable land area on a dedicated parcel will be valued at its proportional share of the fair market value of the total land area of the said parcel. The homesite area for each residential building that is twenty percent (20%) or more complete as of the October 1st assessment date, shall be valued on a building by building basis, at its highest and best use, based on comparable values or similar size lands used as residential use as reflected in the market and shall not include the value of any additional density allowed by the County of Kaua'i's Comprehensive Zoning Ordinance.

"Owner" means possessors of fee simple estates and lessees and licensees holding leases or licenses whose terms extend for at least ten (10) or twenty (20) years, as the case may be, from the year in which the petition to dedicate is filed.

"Parcel" means a subdivided lot or an "apartment" created by the submission of land to a condominium property regime pursuant to the provisions of Haw. Rev. Stat. Chapter 514A or 514B.

"Petitioned area" means lands within a parcel which are intended to be dedicated to an approved "agricultural use" as described in Sec. 5A-9.1(a).

"Unusable" means land which is physically incapable of being put to any agricultural use such as gulches, mountains, or pali, eroded bedrock, or rocky, hilly, or barren land.

(b) A special agricultural dedication area is established to enable the owner of any parcel of land within an agricultural district, a rural district, a conservation district, or an urban district to dedicate the land for a specific ranching or other agricultural use and to have his or her land assessed at its value in such use; provided that if the land is located within an urban district, or within an agricultural district, a rural district or a conservation district with an area of less than five (5) acres in size:

- (1) The land dedicated must be used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like, or used for ranching of livestock;
- (2) The land dedicated must have been substantially and continuously used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like, or the ranching of livestock for the five (5) year period immediately preceding the dedication application; and
- (3) The dedication shall be recorded either with the Assistant Registrar of the Land Court or with the Bureau of Conveyances, as the case may be; and provided further that land situated within an agricultural district, which may be further subdivided, may be dedicated for a period of twenty (20)

years and shall be taxed at fifty percent (50%) of its assessed value in such use, provided that such dedication is recorded with the Assistant Registrar of the Land Court or the Bureau of Conveyances, as the case may be.

Notwithstanding that a lease or license may be for a term of less than ten (10) or twenty (20) years, a lessee or licensee may dedicate his or her land for any period of time remaining under his or her original lease or license if the Director determines that the lessee or licensee has satisfied the following conditions:

- (1) The lessee or licensee must file a petition to dedicate the leased or licensed land by December 31, 1999;
- (2) The term of the lease or license must extend through at least January 1, 2000;
- (3) The lease or license must have been executed and in existence by the lessee and lessor or licensee and licensor as of August 12, 1999;
- (4) The land must be dedicated only for a time period within the remaining term of the original lease or license; the dedication period shall not encompass any periods which represent renewals or enlargements of, or extensions or additions to, the original term or length of the lease or license; and
- (5) The petition must satisfy all requirements of this Section otherwise relating to petitions to dedicate land to agricultural use including, but not limited to, the requirement that all lessors or licensors have consented to the lease or license, and the requirements relating to the two (2) findings of fact described in Subsection (e) of this Section.

Lands which have been dedicated for any period of time remaining under the original term of a lease or license shall both (A) be given the same agricultural use values as lands dedicated to agricultural use for ten (10) years, and (B) be subject to all provisions of this Section relating to ten (10) and twenty (20) year dedications.

(c) If any owner desires to use his or her land for a specific ranching or other agricultural use and to have his or her land taxed at its assessed value in this use or fifty percent (50%) of its assessed value, as the case may be, he or she shall so petition the Director and declare in his or her petition that his or her land can best be used for the purpose for which he or she requests permission to dedicate his or her land, and if his or her petition is approved, he or she will use his or her land for this purpose; provided that, where the owner is a lessee or licensee, the petition shall include: (1) a legible copy of the executed lease or license for the land being dedicated indicating the consideration being paid by the lessee or licensee; and (2) notarized signatures of all lessors or licensors, as the case may be, evidencing that they have consented to the application to dedicate under the terms and conditions of this Section.

(d) If the owner desires to change from one specific ranching or other agricultural use to another ranching or other agricultural use, the owner shall so petition the Director of Finance and declare in the petition that:

- (1) The owner's land can best be used for a ranching or other agricultural purpose other than that for which the owner originally requested permission; and
- (2) The owner will use the land for that new purpose if the owner's petition is approved.

(e) Upon receipt of a petition as provided above in Subsections (c) and (d) of this Section, the Director shall make a finding of fact as to whether the land in the petitioned area is reasonably well suited for the intended use. The finding shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of the operating unit, the present use of surrounding similar lands, and other criteria as the Director may deem appropriate.

The Director shall also make a finding of fact as to whether the intended use is in conflict with the development plan of the district in which the land is situated or the overall development plan of the State. If both findings are favorable to the owner, the Director shall approve the petition and declare that the owner's land is dedicated land; provided, that for lands in urban districts, the Director shall make further findings respecting the economic feasibility of the intended use of the land. If all three (3) findings are favorable, the Director shall approve the petition and declare the land to be dedicated. In order to place prospective buyers on notice of the roll back liability, the petitioner shall within thirty (30) days of notice of approval record the dedication in accordance with the procedures of the Bureau of Conveyances or the Assistant Registrar of the Land Court of the State of Hawai'i, as the case may be. After December 31, 2003, only properties with dedications recorded in accordance with the procedures of the said Bureau of Conveyances or Land Court, as the case may be, shall receive assessments based on their dedicated uses as follows:

(f) The approval by the Director of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of his or her land to a use other than agricultural use for a minimum period of ten (10) years or twenty (20) years, as the case may be, subject to cancellation as follows:

- (1) At the end of its initial ten (10) or twenty (20) year period, each dedication shall terminate. After the ninth (9th) or the nineteenth (19th) years of a ten (10) year or a twenty (20) year dedication, as the case may be, the owner may apply to dedicate his or her lands under the ordinance, rules and regulations that are in force at the time the application for dedication is received by the Director. The application for dedication shall be treated as a new dedication.
- (2) Upon any conveyance or change in ownership during the period of dedication subject to State conveyance tax pursuant to Haw. Rev. Stat. Chapter 247, the dedication shall be cancelled, unless the new owner shall, in writing, assume the dedication for the remainder of the dedication period.
- (3) In the case of a change in major land use classification not as a result of a petition by any property owner or lessee such that the owner's land is placed within an urban district, the owner may cancel the dedication within sixty (60) days of the change.
- (4) In the case where the owner intends to convey or lease dedicated land for nominal consideration to a non-profit entity to be used for non-profit purposes, the owner may petition the Director for a thirty-six (36) month transition period to the non-profit use on or before September 30th. If at the end of the thirty-six (36) month transition period the land meets all the requirements for exemption under Sec. 5A-11.10, the dedication on that land shall be canceled. Upon request, the Director may extend the thirty-six (36) month transition period due to delays beyond the control of the owner or non-profit entity.
- (5) In the case where subdivision of the land or submission of the land to a condominium property regime results in one (1) or more subdivided parcels of land or "apartments," as defined in Haw. Rev. Stat. Chapter 514A or 514B, of less than five (5) acres.

No later than May 1st of the last year of any ten (10) and twenty (20) year dedication, the Director shall mail to the owner, at the owner's last known address, written notice that the property under dedication shall cease to be dedicated after September 30th of the last year of that ten (10) or twenty (20) year dedication unless the owner petitions to re-dedicate the property to agricultural use and the petition is approved by the Director.

(g) The Director may, at any time while the land is dedicated to agricultural use, require owners to submit evidence that the land enjoys County Department of Water agricultural water rates, filed copies from the immediate preceding year of Schedule F forms submitted to the U.S. Internal Revenue Service, filed copies of claims for exemption from federal income taxation made under Sec. 6427(c) of the U.S.

Internal Revenue Code, sales receipts generated from the activities listed under the definition of the term "agricultural use," and a valid, current, State general excise tax license, in order to verify that the land is in agricultural use. Also at any time during the dedication period, the Director may require owners to submit such other additional information and documents as the Director may deem necessary to verify that the dedicated land is in agricultural use. Any such requirements shall be established by administrative rule adopted pursuant to Chapter 91, Haw. Rev. Stat.

(h) Failure of the owner to keep his or her land in agricultural use shall cancel the dedication and special tax assessment privilege retroactive to the date of the dedication, but in any event, shall not exceed the term of the original dedication, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten percent (10%) a year penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, shall be a paramount lien upon the property pursuant to Sec. 5A-5.1.

(1) Failure to keep his or her land in agricultural use means either:

(A) Failure to keep the land in agricultural use for a period of twelve (12) consecutive months; or

(B) The subdivision of the land or submission of the land to a condominium property regime resulting in one (1) or more subdivided parcels of land or "apartments" as defined in Haw. Rev. Stat. Chapter 514A or 514B of less than five (5) acres; or

(C) The overt act, for any period of time, of changing the agricultural use to either an unapproved agricultural use or a non-agricultural use; provided that the following events shall not constitute either a failure by the owner to keep his or her land in agricultural use or an overt act of changing the agricultural use:

(i) A change in land use classification upon petition by the owner of such dedicated lands; or

(ii) The petition by the owner for a change in use as provided in Subsection (d) of this Section and the owner's subsequent change in use of such dedicated lands; or

(iii) The declaration by the owner of an intent to change the use of the land to a non-profit use according to Subsection (f)(4) of this Section and the owner's subsequent change in use of such dedicated lands.

(2) If an owner is permitted to change his or her use as provided in Subsections (d) and (e) of this Section, he or she shall be allowed up to twelve (12) months for parcels up to and including fifty (50) acres in size and twenty-four (24) months for parcels over fifty (50) acres in size, from the date of the approval of his or her petition to convert to the new ranching or agricultural use. If the owner fails to make the conversion within the specified time limit he or she will be subject to the taxes and penalties provided above. For purposes of assessment of taxes and penalties, the conversion period shall be considered in addition to the specified dedication period; except, however, in the case of leased lands whose term expires prior to or in conjunction with the end of the dedication period, the conversion period shall be considered as a part of the dedication period. The petitioner shall submit progress reports of his or her efforts in converting from one (1) agricultural use to another agricultural use to the Director of Finance by the anniversary date of the petition approval and yearly, thereafter, as long as such conversion period remains.

(3) If an owner has declared an intention to convey or lease the dedicated land to a non-profit entity to be used for non-profit purposes as provided in Subsection (f)(4) of this Section, there shall be allowed thirty-six (36) months from the effective date of the declaration to complete the change to a non-profit use. If the land does not meet the requirements for exemption under Sec. 5A-11.10

after the thirty-six (36) month transition period, the owner shall be subject to the taxes and penalties provided above. Upon request, the Director may extend the thirty-six (36) month transition period due to delays beyond the control of the owner or non-profit entity.

Any other provisions to the contrary notwithstanding, when a portion of the dedicated land is subsequently applied to a use other than the use set forth in the original petition, only such portion as is withdrawn from agricultural use and applied to a use other than ranching or another agricultural use shall be taxed as provided by this Subsection.

(i) Cancellation Without Rollback Taxes and Penalties. Notwithstanding any provision in this Section to the contrary, the occurrence of any of the following events shall cause the dedication to be canceled without the imposition of any roll back taxes or penalties whatsoever:

- (1) The death of the owner; or
- (2) Events beyond the owner's control make it unfeasible to continue the agricultural use of the dedicated parcel including, but not limited to:
  - (A) A serious or debilitating long-term illness or injury suffered by the owner,
  - (B) A natural disaster such as a windstorm, flood, disease, or infestation which destroys the crop or livestock on the dedicated parcel, or
  - (C) The taking of the dedicated parcel or any portion thereof by a governmental entity, provided that where only a portion of the parcel is taken, the cancellation shall be effective only as to the portion taken; or
- (3) The dedicated land, or portion thereof, has been designated and approved for commercial alternative energy facilities and future land assessments will be valued according to the land's industrial market value.

(j) The Director shall prescribe the form of the petition. In all cases, a separate petition shall be required for each individual parcel or apartment of a condominium property regime. The petition shall be filed with the Director by July 1st of any calendar year and shall be approved or disapproved by September 15th. If approved, the assessment, based upon the use requested in the dedication, shall be effective on October 1st.

(k) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(l) A special land reserve is established to enable the owner of any parcel of land within an urban district to dedicate his or her land for a specific livestock use such as feed lots, calf-raising and like operations in dairy, beef, swine, poultry and aquaculture, but excluding grazing or pasturing, and to have his or her land assessed at its value in such use; provided that:

- (1) The land dedicated must be used for livestock uses such as feed lots, calf-raising, and like operations in dairy, beef, swine, poultry and aquaculture but excluding grazing or pasturing;
- (2) The land dedicated must have been substantially and continuously used in the livestock uses enumerated in Paragraph (1) of this Subsection; and
- (3) Such livestock use must be compatible with the surrounding uses.

(m) Rules of Construction. The following rules of construction shall apply to this Section.

- (1) Number and Gender. Words in the masculine gender shall signify both the masculine and feminine gender, and also refer to corporations, partnerships, firms, and other business entities. Words in the singular or plural number shall signify both the singular and plural number.
- (2) "Month," "Year," "Day." Unless otherwise specified, the word "month" means a calendar month, the word "year" means a calendar year, and the word "day" means a calendar day.

(3) **Words to Have Their Usual Meaning.** Except as defined in this Section, the words of this Section are generally to be understood in their most known and usual significance, without attending so much to their literal and strictly grammatical construction, as to their general or popular use or meaning.

(4) **Construction of Ambiguous Context.** Where words in this Section are ambiguous:

(A) The meaning of the ambiguous words may be sought by examining the context with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning;

(B) The reason and spirit of the law, and the cause which induced the Council to enact it, may be considered to discover their true meaning; and

(C) Every interpretation which leads to an absurdity shall be rejected. (Ord. No. 394, July 1, 1981; Ord. No. 547, April 25, 1984; Ord. No. 464, August 6, 1984; Ord. No. 520, December 9, 1987; Ord. No. 679, March 28, 1995; Ord. No. 741, September 24, 1999; Ord. No. 781, December 10, 2001; Ord. No. 822, December 30, 2004; Ord. No. 915, November 16, 2011; Ord. No. 916, December 1, 2011; Ord. No. 920, December 14, 2011; Ord. No. 932, September 5, 2012)

---

View the [mobile version](#).

26  
18E



R-393 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JUL 18, 2005 08:01 AM  
Doc No(s) 2005-141334



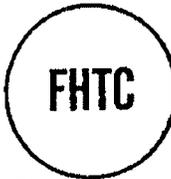
/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

38 1/17 Z3

1/20

Return by Mail ( ) Pickup (X) To:

Michael H. Sakai, Esq.  
201 Merchant Street, Suite 902  
Honolulu, Hawaii 96813



Title order # A05-176

ACCOMMODATION RECORDING document contains 38 pages  
NO TITLE INSURANCE

TMK: (4) 4-9-009:12 (Portion of Lot 1)

**SECOND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF MOLOAA HUI I AND CONDOMINIUM MAP NO. 2542  
(43 Units)**

WHEREAS, **MICHAEL R. STRONG and CANDACE L. STRONG**, husband and wife, whose address is P.O. Box 30, Kilauea, Hawaii, 96754, and **MOLOAA HUI LANDS, INC.**, a Hawaii corporation, whose address is P.O. Box 30, Kilauea, Hawaii 96754 (hereinafter "Developer") and the owners of the various units in the project set forth in Exhibit "B" attached hereto and incorporated herein by this reference, being collectively referred to as the "Fee Owners", are owners in fee simple of 100% of the common interests of that certain condominium project known as "MOLOAA HUI I" (hereinafter "Project"), situated at Moloaa and Papaa, Kawaihau, Island and County of Kauai, State of Hawaii, and established pursuant to Declaration of Condominium Property Regime dated April 30, 1997, recorded in the Bureau of Conveyances of the State of Hawaii (hereinafter "Bureau") as Document No. 97-057758, as amended by instruments recorded in said Bureau as Documents No. 97-108706, 97-168022, 98 -103270, 98-126776, 98 -128052, 99-038158, 99-038159, 99-0377401, 2000-026760, 2000-026761 and 2000-034931 and shown on Condominium Map No. 2542, as amended, filed at said Bureau;

WHEREAS, said Declaration and Condominium Map were amended and completely restated by an Amended and Restated Declaration recorded as Document

No. 2000-184090, as further amended by instruments recorded in said Bureau as Document No. 2001-006655 (hereinafter collectively referred to as "Declaration" and "Condominium Map", respectively); and

WHEREAS, said Declaration provides for the amendment thereof by the recording at said Bureau of a written instrument executed by the owners of at least seventy-five percent (75%) of the common interest in the Project; and

WHEREAS, the undersigned, together with the joinders of the Fee Owners, represent all of the apartment units in the Project and 100% of the common interests in the Project and desire to amend and completely restate said Declaration as provided for in Article XX of said Declaration; and

WHEREAS, the undersigned desires to amend the Declaration and the Condominium Map to reflect the elimination of units 1, 11, 12, 15, 16, 17, 51, and 52, and the creation of units 13, 13-A, 13-B, 53, 54, 55, 56, 57, 58, 59, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90; and

WHEREAS, the total number of units in the Project will increase from 20 to a total of 43 units; and

WHEREAS, a further purpose of this Second Restated Declaration is to delineate certain easements and also to remove or delete certain improvements and equipment structures that were previously a part of certain units and to change the limited common element land areas appurtenant to certain units. These newly created units shall also have restrictions on the type of buildings or improvements that may be added such as residences which may only be built in the open zoned portion of units 47, 48, 49, 50, 79 and 89 and only on eight (8) of the units (units 13 and 53 can be located in the agricultural parties of the unit). These residences that will be constructed in the open zoned portions shall not be subject to the setback area defined in this Second Restated Declaration and the Declaration of Covenants, Conditions and Restrictions dated March 13, 1997, recorded in the Bureau of Conveyances as Document No. 97-032789, as the same may be amended (the "CC&Rs"). These units shall use the standard County setback requirements. These units are also subject to view easements as defined in this document and a restriction by the County of Kauai that no residential structures shall be built within 200 feet of the highway to create a "Buffer" zone; and

WHEREAS, a further purpose of this Second Restated Declaration is to amend the common interest of certain specific units and to designate which units are allowed Farm Dwelling Units; and

WHEREAS, a further purpose of this Second Restated Declaration is to delete in their

entirety the Declaration and the property description set forth in Exhibit "A" thereof, and all amendments thereto and to substitute in the place thereof this Second Restated Declaration including the land description attached hereto as Exhibit "A" and to further replace and substitute the plot plan of Condominium Map No. 2542 as well as the additions, amendments and corrections expressed herein.

NOW, THEREFORE, the Developer and Fee Owners, hereby amends and restates that Declaration of Condominium Property Regime and Condominium Map No. 2542, and in furtherance thereof makes the following declarations as to divisions, limitations, and restrictions upon which units in the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved, subject to this Second Restated Declaration, which shall constitute covenants running with the land and shall be binding on and for the benefit of the owners and lessees of any part of the Project and their respective successors, heirs, executors, administrators and assigns. Joinders to this Second Restated Declaration by the Fee Owners are recorded simultaneously herewith or nearly so herewith.

Should the description and divisions set forth in this Second Restated Declaration (hereinafter "Declaration") conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map is intended to show only the layout, location, number and dimensions of the apartments and is not intended and shall not be deemed to contain or make any other representation or warranty. The words "unit" and "apartment" are used interchangeably throughout this Second Restated Declaration, the Bylaws and the Condominium Map.

## I LAND

The land upon which the building and improvements of the Project are located is described in Exhibit "A" attached hereto. That land area of approximately 281.5 acres is a portion of Lot 1 containing an area of approximately 589.891 acres. The area or property described in Exhibit "A" is NOT A LEGALLY SUBDIVIDED LOT. The Exhibit "A" attached hereto replaces the Exhibit "A" previously recorded for this Project. The current description of the Project deletes the Units and limited common element land areas appurtenant to the Units identified as Units 1, 11, 12, 15, 16, 17, 51 and 52, changes the size of the limited common element land area appurtenant to Units 13 and 14 and adds the newly created Units 13-A, 13-B, 53, 54, 55, 56, 57, 58, 59, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90 and reallocates the common interests from some of the deleted units to the newly created units. The land upon which the project is located is described in Exhibit "A", the exact dimensions of the project being also depicted in the amended Condominium Map, created December 8, 2000 as amended by this Declaration.

II  
DIVISION OF PROPERTY

Forty-three (43) freehold estates are hereby created and designated, and hereinafter referred to as "common elements" (also referred to herein as "unit" or "units"). Specifically the 43 estates so created and designated are referred to hereafter as Units 2, 3, 4, 5, 6, 13, 13-A, 13-B, 14, 19, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90. Said units consist of the undivided interest in the common elements of the project, the limited common element(s) appurtenant to the unit, as shown on the Amended Condominium Map for the project and the apartment, constructed on the limited common element land area. The apartments are designated on plans incorporated herein by reference and being filed separately with the Bureau of Conveyances of the State of Hawaii simultaneously herewith as Condominium Map No. 2542. The units are described as follows:

(A) Unit 2 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The structure is located in the southeastern portion of a 3.392 acre limited common element.

(B) Unit 3 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 3.392 acre limited common element.

(C) Unit 4 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northeastern portion of a 3.392 acre limited common element.

(D) Unit 5 is a single-story shade structure, Constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northern portion of a 3.392 acre limited common element.

(E) Unit 6 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 10.643 acre limited common element.

(F) Unit 13 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 11.817 acre limited common element. This unit shall have the right to construct one farm dwelling unit.

(G) Unit 13-A is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southeastern portion of a 2.718 acre limited common element.

(H) Unit 13-B is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the western portion of a 1.597 acre limited common element.

(I) Unit 14 consists of two structures. The first is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. This structure is located in the southwestern portion of a 20.064 acre limited common element. The second structure is a single-story farm equipment shed built in 1978, constructed of wood, which has a roof but no sides and contains an area of approximately 490 square feet. The second structure is located in the central area of the limited common element.

(J) Unit 19 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southeastern portion of a 10.643 acre limited common element.

(K) Unit 47 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northern portion of a 7.258 acre limited common element. This unit shall have the right to construct one farm dwelling unit in the open zoned area.

(L) Unit 48 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the eastern portion of a 4.738 acre limited common element. This unit shall have the right to construct one farm dwelling unit in the open zoned area.

(M) Unit 49 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the eastern portion of a 3.190 acre limited common element. This unit shall have the right to construct one farm dwelling unit in the open zoned area.

(N) Unit 50 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the eastern portion of a 2.487 acre limited common element. This unit shall have the right to construct one farm dwelling unit in the open zoned area.

(O) Unit 53 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure

is located in the southwestern portion of a 5.000 acre limited common element. This unit shall have the right to construct one farm dwelling unit.

(P) Unit 54 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southeastern portion of a 5.876 acre limited common element.

(Q) Unit 55 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southeastern portion of a 5.000 acre limited common element.

(R) Unit 56 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 5.000 acre limited common element.

(S) Unit 57 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 5.350 acre limited common element.

(T) Unit 58 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southeastern portion of a 6.158 acre limited common element.

(U) Unit 59 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 5.000 acre limited common element.

(V) Unit 69 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the eastern portion of a 5.226 acre limited common element.

(W) Unit 70 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southeastern portion of a 5.225 acre limited common element.

(X) Unit 71 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southeastern portion of a 5.225 acre limited common element.

(Y) Unit 72 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southeastern portion of a 5.225 acre limited common element.

(Z) Unit 73 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the eastern portion of a 5.225 acre limited common element.

(AA) Unit 74 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northwestern portion of a 5.463 acre limited common element. The second structure is a single-story farm building constructed of wood containing an area of approximately 1934 square feet.

(BB) Unit 75 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the western portion of a 5.423 acre limited common element.

(CC) Unit 76 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 4.677 acre limited common element.

(DD) Unit 77 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northern portion of a 4.112 acre limited common element.

(EE) Unit 78 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the eastern portion of a 23.597 acre limited common element.

(FF) Unit 79 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 4.000 acre limited common element.

(GG) Unit 80 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northwestern portion of a 5.941 acre limited common element.

(HH) Unit 81 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northwestern portion of a 4.648 acre limited common element.

(II) Unit 82 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the western portion of a 6.267 acre limited common element.

(JJ) Unit 83 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the western portion of a 6.268 acre limited common element.

(KK) Unit 84 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 5.484 acre limited common element.

(LL) Unit 85 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the southwestern portion of a 4.933 acre limited common element.

(MM) Unit 86 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northwestern portion of a 5.000 acre limited common element.

(NN) Unit 87 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the western portion of a 5.000 acre limited common element.

(OO) Unit 88 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the western portion of a 8.591 acre limited common element.

(PP) Unit 89 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the northwestern portion of a 10.630 acre limited common element. This unit has an additional limited common element land area of 1.018 acre. This unit shall have the right to construct one farm dwelling unit in the open zoned area. This unit shall have the right to construct one farm dwelling unit in the open zoned area. The owner of this unit has the right to separate and/or divide the two land areas into two (2) separate units. Upon such division, one unit will consist of the shade structure with a limited common element land area of 10.630 acres and the other unit, which can be another shade structure or other improvement, with a limited common element land area of 1.018 acre.

(QQ) Unit 90 is a single-story shade structure, constructed of PVC pipe and shade cloth, which has a roof but no sides and contains an area of 16 square feet. The Structure is located in the western portion of a 2.564 acre limited common element.

There are no basements in this Project.

The condominium limited common elements and apartments are located in the

manner shown on the said Condominium Map, as amended. Each unit has direct access to the common access element or easement or to public right (s) -of-way. Unless specifically provided to the contrary herein, the respective units shall not be deemed to include any present or future pipes, wires or conduits or other utility lines running over, under or through any limited common element or apartment which are utilized for or serve all units, the same being deemed common elements as hereinafter provided.

### III LIMITS OF APARTMENTS

Each apartment shall be deemed to include the building comprising the apartment, including specifically, but not limited to:

(a) all perimeter walls, floors, foundations, and roof of such building, all fences, outbuildings, structure and improvements of any kind located wholly within the limited common element(s) of the individual units; and

(b) all pipes, wires, conduits or other utility and service lines in or on such unit building, if the same are not utilized by more than one apartment; and

(c) each addition, replacement and other improvement of the apartment as permitted by law. The costs and expenses incurred for such additions, replacements and improvements to the apartment as permitted under the laws of the State of Hawaii or the County of Kauai shall be charged to the owner(s) of the unit, which is altered, changed or improved.

### IV COMMON ELEMENTS

One freehold estate is hereby designated of all the remaining portions of the Project, herein referred to as "common elements", including specifically, but not limited to:

(a) the land in fee simple;

(b) the 10.806 acre roadway common element shown on the condominium map for this project, which includes the parking area of Easement A-1, which easement includes shoreline access and a parking area over a part of the common element roadway for the project . This roadway shall not have access to Kuhio\_Highway from this Project;

- (c) the 8.098 acre and 1.607 acre roadway common elements shown on the condominium map for the project known as Moloaa Hui II, which are shared in common with Moloaa Hui II;
- (d) the 1.380 acre drainage ditch common element shown on the condominium map for this Project and the 0.243 acre drainage ditch common element shown on the condominium map for Moloaa Hui II, and which are shared in common with Moloaa Hui II;
- (e) the common water distribution system, including pipes, wires, pumps, etc.;
- (f) all commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; and
- (g) any and all other future elements and facilities in common use or necessary to the Project.

The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided in the Condominium Property Act. Any such partition or division shall be subject to the prior consent thereto by the holder(s) of all mortgage(s) of any condominium unit(s), which are filed of record.

All or portions of the multi-project Roadway common elements and the drainage ditch common element may be utilized by the other Moloaa Hui condominium projects pursuant to written agreement(s) relating to construction, maintenance and repair of these common elements on a fair and equitable basis.

The water distribution system is a common element to the extent it is not located within any unit other than Unit 33 of Moloaa Hui II. The water tank is the property of the Developer, but will be maintained, repaired and replaced by the Association of the Condominium Owners and may be transferred to the Association by Developer.

**V**  
**LIMITED COMMON ELEMENTS**

Certain parts of the common elements, herein referred to as the "limited common elements", are hereby designated and set aside for the exclusive use of one or more units, and such unit(s) shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside, reserved and deemed a limited common element appurtenant to and for the exclusive use of each respective unit is that certain land area upon and around which each of the units are located, all as shown and designated on the Condominium Map and the table below, are deemed a limited common element appurtenant to and for the exclusive use of each respective unit.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
2	3.392 Acres
3	3.392 Acres
4	3.392 Acres
5	3.392 Acres
6	10.643 Acres
13	11.817 Acres
13-A	2.718 Acres
13-B	1.597 Acres
14	20.064 Acres
19	10.643 Acres
47	7.258 Acres
48	4.738 Acres
49	3.190 Acres
50	2.487 Acres
53	5.000 Acres
54	5.876 Acres
55	5.000 Acres
56	5.000 Acres
57	5.350 Acres
58	6.158 Acres
59	5.000 Acres
69	5.226 Acres
70	5.225 Acres
71	5.225 Acres
72	5.225 Acres
73	5.225 Acres
74	5.463 Acres
75	5.423 Acres

76	4.677 Acres
77	4.112 Acres
78	23.597 Acres
79	4.000 Acres
80	5.941 Acres
81	4.648 Acres
82	6.267 Acres
83	6.268 Acres
84	5.484 Acres
85	4.933 Acres
86	5.000 Acres
87	5.000 Acres
88	8.591 Acres
89	10.630 Acres / 1.018 Acres**
90	2.564 Acres

Total: 265.849 Acres\*

(a) Roadway 1, 0.633 acres, is a limited common element exclusive to units 2, 3, 4 and 5.

(b) Roadway 2, 1.578 acres, is a limited common element exclusive to units 47, 48, 49, 50, 86 and 87.

(c) Roadway 3, 1.040 acres, is a limited common element exclusive to units 78, 79, 80, 82, 83, 84, 85, 88 and 89.

\*This area together with the limited common element roadways, and the common element roadways and drainage ditch areas amounts to approximately 281.5 acres, with some rounding of figures.

\*\*These two limited common element land areas may be divided into two (2) separate units.

All costs of every kind pertaining to the aforesaid limited common elements, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne solely by the owner of the unit to which said limited common elements are appurtenant. As to the roadway limited common element exclusive to the units identified above, construction and maintenance in the ordinary course of use shall be borne equally by the owners of the units to which the Roadway services.

**VI  
COMMON INTEREST**

Each units and its owner(s) shall have appurtenant thereto a percentage of interest (which is referred to as the "common interest") in the common elements of the Project, for all purposes including voting, according to the following amount table below:

<u>Unit</u>	<u>Common Interest</u>
2	1.0%
3	1.0%
4	1.0%
5	1.0%
6	4.0%
13	3.5%
13A	1.5%
13B	1.0%
14	8.0%
19	4.0%
47	3.0%
48	2.0%
49	1.0%
50	1.0%
53	2.0%
54	2.0%
55	2.0%
56	2.0%
57	2.0%
58	2.0%
59	2.0%
69	2.0%
70	2.0%
71	2.0%
72	2.0%
73	2.0%
74	2.0%
75	2.0%
76	1.5%
77	1.5%
78	8.0%
79	1.5%
80	2.0%
81	1.5%
82	3.5%
83	3.5%
84	3.5%

85	2.5%
86	1.5%
87	1.5%
88	2.0%
89	4.0%*
90	1.0%
Total:	100.0%

\*In the event unit 89 is divided into two separate units, the unit with an appurtenant limited common element land area of 10.630 acres shall have a common interest of 3.5% and the unit with an appurtenant limited common element land area of 1.018 acres shall have a common interest of 0.5%.

### **EASEMENT VII EASEMENTS**

Easement V-1 is a view plane maintenance easement located on the limited common element area of unit 48 and is in favor of unit 47 as shown on the condominium Map. No Structures shall be constructed within this easement area and the vegetation height shall be limited to 200.25 feet above sea level.

Easement V-2 is a view plane maintenance easement located on the limited common element area of unit 49 and is in favor of units 47 and 48 as shown on the Condominium Map. The vegetation height shall be limited to 200.25 feet above sea level.

Unit 50 is subject to a view easement in favor of units 47, 48, 49, 86, 87, 88 and 89. This easement is not shown on the Condominium Map and is located in the open zoned area only. The vegetation height shall be limited to 12 feet above grade in the open zone.

Unit 47 is subject to a 200-foot residential building setback from the highway to create a "buffer" zone as delineated on the Condominium Map.

This Project to subject to the restriction of rights of vehicle access into and from Kuhio Highway imposed by the State of Hawaii, as shown as Easement "1" and Easement "2" on the Condominium Map.

There is a vehicular and pedestrian easement and parking area in favor of members of the public, on portions of the Project, as described in Exhibit A and depicted on the Condominium Map as easements A-1 and A-2. A-1 is for vehicular access and parking. The vehicular access road to be utilized by the public need not be constructed pursuant to

County standards, and may instead be constructed and maintained as a private driveway. The private driveway is defined as a graveled surface, a minimum width of twenty-four (24) feet, and to be maintained by the Association of Condominium Owners. A-2 is a pedestrian easement. The exact terms and conditions of use of these easements by the general public has as yet not been negotiated with the County of Kauai. The Developer reserves the right to negotiate the terms of the conditions with the County of Kauai.

In addition to any exclusive easements established in the common elements and the limited common element easement(s) shown on the Condominium Map for this Project, each unit shall have appurtenant thereto non-exclusive reasonable easements and/or right(s)-of-entry in the common elements designed for such purposes as unpaved ingress to, egress from, utility services for, and support, maintenance and repair of such unit, and in the other common elements of the Project for use according to their respective purposes. When applicable, each unit shall also have appurtenant thereto easements in the other unit(s) for the purposes of utility services for, and the maintenance and repair of said utility services including, but not limited to, electricity, gas, water, sewage, telephone and television cable, if any. Such easement(s) shall be the minimum size, extent and duration required for the stated purpose and the benefiting unit (s) shall bear all costs and damages incurred in the use thereof. Except as otherwise specifically stated herein, there shall also be an encroachment easement in favor of any otherwise legally constructed improvement on the Project at the date of recording hereof, for any setback or unit boundary violation otherwise existing on the Project at recordation. Individual unit owners may grant easements on or over their limited common elements only so long as this does not present a danger to other units and does not materially change the level of activity on the Project as a whole.

Any unit owner using a common element for utility installations shall do so with due regard of use by the owners of other units and shall further restore the common element to its condition prior to use. At least fifteen (15) days advance notice to the Farm Review Committee shall be given prior to excavation, trenching and similar improvements shall be given to allow other unit owners the opportunity to protect crops, join in the work where relevant, limit future disturbance of the common elements, such as paving of access, shall not be done as a common expense without prior decision by a numerical majority of the common interests of the Project. The completed improvements shall become additional common elements of the Project, subject to repair and maintenance by the Association of Condominium Owners, unless otherwise provided herein or in another written agreement to which the Association of Condominium Owners is a party. Developer or third-party holders of easements or rights-of-ways may be granted the right to improve common elements at their own expense or on such terms as are granted by the Developer or the Association of Condominium Owners.

**VIII  
ALTERATION AND TRANSFER OF INTERESTS**

Except as otherwise provided in this Declaration, the common interest and easements appurtenant to each condominium unit shall have a permanent character and shall not be altered without the approval of all of the unit owner (s) affected, expressed in a duly recorded amendment to this Declaration, which amendment shall contain the consent thereto by the holders of all mortgages of any affected unit which are filed of record. The common interest and easements shall not be separated from the unit to which they appertain and shall be deemed to be conveyed, leased, or encumbered with such unit even though such interest or easement may not be mentioned or described expressly in the instrument of transfer.

**IX  
PURPOSES OF BUILDINGS AND RESTRICTIONS AS TO USE**

(a) Permitted Uses. The units of the Project shall be occupied and used only for agricultural and open uses and, where permitted, as private residential dwellings by the respective owners thereof, their families, employees, business invitees, personal guests and tenants, and for no other purposes. Unit owners shall obtain the review and approval of the Planning Department should any use other than those permitted within the Agriculture District and/or Open District be proposed.

The County of Kauai has granted a variance for the subject property which increases the permissible density from nine (9) Farm Dwelling Units to a maximum of thirteen (13) Farm Dwelling Units for the entire property (Lot 1). This Project which is a portion of Lot 1 containing approximately 281.500 acres is permitted eight (8) Farm Dwelling Units. No unit owner shall construct a Farm Dwelling Unit within his limited common element unless the same is specifically allowed by this Declaration. Farm Dwelling Units shall be occupied only by farmers and their families and/or employees, and shall be prohibited from general rental income purposes. Should any archaeological or historic resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical resources shall immediately cease and the unit owner shall contact the Planning Department, County of Kauai and the Department of Land and Natural Resources Preservation Division, State of Hawaii. In the event of discovery of any burials at any phase of development, the unit owner shall contact the State Historic Preservation and is advised that the requirements of Chapter 6E of the Hawaii Revised Statutes shall apply.

Only Units 13, 47, 48, 49, 50, 53, 79, and 89 shall be permitted to apply for permits to construct a single-family residential farm dwelling. Units 47, 48, 49, 50, 79 and 89 shall be required to construct their residences in the "open" zone of their respective

limited common element. No other residences may be constructed unless approved by the Farm Review Committee (created pursuant to the terms of the restrictive covenants affecting the Project) and the Developer, as allowed by the County of Kauai. The right to construct a farm dwelling may be transferred to another unit if approved by the Farm Review Committee in its reasonable discretion. Residential improvements may not be constructed on any other units so long as current zoning and Project documents remain unamended. Residential uses currently require execution of a Farm Dwelling Agreement with the County of Kauai, as contemplated by Hawaii law regarding use of agricultural lands for residential purposes. Hawaii law requires that the family occupying a residence on agricultural land derive income from farming activities conducted on the Project.

Each unit herein, whether now or subsequently entitled to construct a farm dwelling may be required to engage in agricultural activity as a condition of obtaining a building permit. The actual level of agricultural activity on the Project needed to qualify to construct farm dwellings is a matter determined by the County of Kauai. The requirements change from time to time, and each owner's actions on their units may have an impact on the ability of other owners to build farm dwellings. Independent of every unit owner's obligation to engage in bona fide farming activities, each owner with a farm dwelling shall have the affirmative duty to engage in agricultural activities, including a requirement of after-the-fact increases in the level of actual agricultural activity on his or her unit, if such is required as a pre-condition to allowing other owners to obtain building permits. In that regard, each unit with a residence, or then desiring to construct a residence, shall have an equal burden of activity in proportion to the amount of land reasonably available for agricultural use on the respective units. These provisions shall apply until all units with residential construction rights have constructed residences, and thereafter so long as agricultural use must be maintained as a condition of keeping residential improvements on the Project.

(b) Change in Use. Should the requirements of the Farm Dwelling Agreement and/or the underlying zoning code or state statutes mandating agricultural use be changed to eliminate such requirements, the agricultural requirements of this Project may be abandoned by a vote of no less than seventy-five percent (75%) of the common interests of this Project, or such greater percentage as may be provided in the CC&Rs for this Project. Nothing, however, shall be construed to prohibit agricultural activities on the Project unless a ninety percent (90%) vote of the common interests of the Project so decides.

(c) Limitation on Use. No hotel or timeshare use shall be allowed. The unit owners shall have the right to rent or lease their units subject to the limitations, restrictions, covenants, and conditions contained in Hawaii State law, County of Kauai ordinance, applicable governmental regulations, recorded restrictions on the lot or the subdivision in which the Project is located, the CC&Rs, this Declaration or in the Bylaws of the Association. Such legal precedents are subject to amendment and varying interpretation.

(d) Windbreaks. This being an agricultural Project with substantial on-going agricultural activity, windbreaks are critical to on-going daily farming operations. Existing windbreaks will, unless good farming practices otherwise require and/or the Farm Review Committee so finds, be maintained except where required to construct driveways, roadways, etc., which are constructed consistent with the terms of all Project documents. Except as depicted in plans previously approved by the Farm Review Committee, windbreaks shall not be removed without the approval of the Farm Review Committee. Windbreaks shall also be maintained in such fashion as to substantially continue and perpetuate their effectiveness. Notwithstanding a windbreak may be located entirely within a unit, the benefit may extend beyond unit boundaries, and removal may only occur as set forth herein, or in further enactments of the Association and/or the Farm Review Committee. Windbreaks shall be trimmed or otherwise husbanded consistent with good farming practices. This shall include topping where there is a danger of their creating damage to adjoining unit(s). Disputes between owners regarding farming practices shall be resolved by the Farm Review Committee. Appeal from decisions of the Farm Review Committee may be taken by way of arbitration as set forth elsewhere herein. Windbreaks destroyed by flood, fire, tsunami, hurricane or other natural or man made disaster shall be replaced unless the Farm Review Committee determines to the contrary. Replacement need not be by identical plantings, but shall be of a type designed to restore full effectiveness within a reasonable number of years. The individual unit owner(s) constructing and/or replacing the windbreaks shall do so consistent with the terms of the Project documents. The nature and composition of the windbreaks shall be as reasonably as determined by the unit owner(s) constructing and/or planting same, subject to Farm Review Committee approval.

Notwithstanding the above, there shall be no restrictions regarding the trimming, cutting or removal of windbreaks-in 'the "open" zoned land. Windbreaks in view plane easements shall be limited to twelve (12) feet in height, and no taller. The approximate boundary of the "open" zoned land is delineated on the Condominium Map.

In the event an owner fails to abide by the standards set forth herein with regards to view easements, the association is hereby granted a right-of-entry to trim the offending vegetation and shall be held harmless from such acts necessary to effectuate these purposes. The offending owner shall be responsible for all costs associated with curing such overgrown vegetation. Likewise the association may seek remedy at law or equity for any violation of the view plain easements for the project and the offending owner shall be responsible for all costs of suit, attorney fees and the cost of compliance.

(e) Liability for Damages Caused by Violation of CC&Rs and Project Documents. Unit owner(s) (directly as to themselves, and for their licensees, invitees, contractors and guests) acting in a manner inconsistent with the provisions of the Project documents shall be liable for damages occasioned by violation of this and or other provisions of the

CC&Rs, this Declaration and the Bylaws of the Project. Damages include, but are not limited to, litigation and/or arbitration costs and attorney's fees incurred.

**X  
SERVICE OF PROCESS**

MICHAEL R. STRONG, whose street address is 4139 Kilauea Road, Kilauea, Kauai, Hawaii, is hereby designated as the person to receive service of process until such time as a President of the Association of Condominium Owners is appointed. It is intended that the Project will be self-managed.

**XI  
ASSOCIATION OF CONDOMINIUM OWNERS**

Administration of the Project shall be vested in its Association of Condominium Owners, herein called the "Association", consisting of all unit owners of the Project in accordance with the Bylaws of the Association being recorded concurrently herewith, as such may be amended from time to time. The owner of any condominium unit, upon acquiring title thereto, shall automatically become a member of the Association, and shall remain a member thereof until such time as ownership of such unit ceases for any reason, at which time membership in the Association shall automatically cease; provided, however, that to the extent provided by lease on any unit, a copy of which lease is filed with the Board of Directors of the Association, the lessee of such unit may exercise voting rights otherwise reserved to be the owner thereof.

The Developer, and after creation of the Association, the President of the Association, is hereby granted a power-of-attorney to execute all building permits, permit applications, governmental applications or similar matters sought by the Association or any unit owner. Said President shall promptly execute all such documents which do not violate law or any Project documents and have been approved by the Farm Review Committee. As to building permits, the President may authorize any individual unit owner to make such Planning Department, Kauai County Building and zoning Ordinance applications, but only by an instrument in writing.

### XIII ADMINISTRATION OF THE PROJECT

Administration and operation of the Project, including the maintenance, repair, replacement and restoration of the common elements, if any, and any additions and alterations thereto, shall be in accordance with the provisions of the Condominium Property Act, this Declaration and the Bylaws. Construction and certain farming activities are governed by the CC&Rs, implementation of which shall in some cases be reserved to the Farm Review Committee, as defined in the CC&Rs. The owner of each condominium unit shall be solely responsible for the maintenance, repair, replacement and restoration of his individual unit and its appurtenant limited common elements, except as otherwise provided herein. The Association of Condominium Owners shall be responsible for all common elements of the Project and, specifically but without limitation, shall:

(a) Repair, maintain, amend and keep all common elements of the Project, including without limitation the common buildings thereof, if any, in good order and condition except as otherwise provided herein, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice may be given by any owner or his agent, within thirty (30) days after the giving of such notice;

(b) Observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof;

(c) Except as specifically provided or reserved in the CC&Rs or herein, not erect or place on any common elements of the Project any building or structure, including fences and walls, nor make additions or structural alterations to or exterior changes of any common elements of the project, nor place or maintain thereon any signs or bills visible outside of the Project, except those first approved by the Farm Review Committee;

(d) Maintain in a reasonably neat and attractive condition all entry improvements, common signs, common trees, shrubs, grass and groundcover, and replant the same as may be necessary on all parts of the common elements which are not limited to a particular apartment's use;

(e) Have the right, to be exercised by its Board of Directors or Managing Agent, to enter any unit and limited common element, if any, during reasonable hours as may be necessary for making emergency repairs therein required to prevent damage to any unit or common elements not limited to a particular unit's use, or for the installation, repair or replacement of any common elements not limited to a particular unit's use; and

(f) Not make or suffer any strip or waste, or unlawful, improper or offensive use of the Project or any portion thereof.

### XIII COMMON EXPENSES

(a) Expenses of Common Elements. The owner of each unit shall be liable for and shall pay a share of the common expenses of the Project, if any, in proportion to the common interest appurtenant to the owner's respective unit. Where applicable, said common expenses shall include all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration and operation of the Project including, but not limited to, the following: (1) maintenance, repair, replacement and restoration of the common elements not limited to a particular unit's use; (2) premiums for hazard and liability insurance as required by this Declaration or by law; (3) all available utility services and easements, including electricity, water, common telephone expense, etc., unless separately metered or charged; (4) management fees, if any; (5) this Project's ratable share of the cost of maintenance of common elements shared with other Moloaa Hui condominium projects or other third parties, including but not limited to road maintenance, insurance and water system expenses; and (6) all other expenses necessary for the upkeep, maintenance, management and operation (including real property tax on Unit 33 of Moloaa Hui II with the water tank and water system improvements and taxes on other common elements, if any) actually incurred on or for the common elements. All unit owners shall be severally liable for said common expenses in proportion to their respective common interests. The foregoing notwithstanding, real property taxes and special assessments referred to in Section 514A-6, Hawaii Revised Statutes, as amended, shall not be common expenses of the Condominium Property Regime hereby created, and no payments thereof shall be considered payments of common expenses.

(b) Expenses of Limited Common Elements. All charges, costs and expenses incurred by the Association for or in connection with the administration and upkeep of the limited common elements including, but not limited to, real property taxes, costs of maintenance, repair and replacement thereof, and additions, alterations and improvements thereto, shall be assessed against and borne entirely by the respective unit(s) to which any such limited common elements are appurtenant.

(c) Assessments for Common Expenses. The Board of Directors of the Association shall assess the common expenses against all units in their respective proportionate shares as provided for in Section XIV below. Any unpaid amount of such assessments against any unit shall constitute a lien against such unit which may be foreclosed by the Board of Directors or Managing Agent as provided for in said Condominium Property Act. Such liens

shall bear interest at the rate of 12% annum from the date the amounts came due to the Association. In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association for common expenses of the Project, the Board of Directors may determine, in its sole discretion, that such excess shall be: (1) refunded to the unit owners in whole or in part; (2) applied in whole or in part to reduce the assessments for the immediately subsequent year; (3) designated in whole or in part as a capital contribution to the Association to be used for future capital improvements and replacements; (4) segregated and held in-whole or in part as a "Custodial Fund" to be expended solely for specifically designated capital improvements and replacements; or (5) segregated and added in whole or in part to the Maintenance Reserve Fund established hereunder. No unit owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

#### **XIV MAINTENANCE RESERVE FUND**

(a) General Provisions. The Board of Directors, pursuant hereto, and with specific regard to Hawaii Revised Statutes Section 514A-83.6, with respect to the timing of establishing and creating reserves, shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all the unit owners, in equal monthly installments, of their respective proportionate shares of such reasonable annual amounts as the Board may estimate as adequate to cover each unit owner's obligations to provide for utilities, insurance, repair, maintenance and repair of the common elements, and other common expenses of administration of the Project, which shall be deemed conclusively to be a common expense of the Project. Such expenses may include ratable portions of expenses shared with other condominium projects and third parties. The Board may include reserves for contingencies in the assessment, and the assessment may from time to time be increased or reduced at the discretion of the Board. The proportionate interest of each apartment owner in said Maintenance Reserve Fund, or in the capital contributions or Custodial Fund provided for in Section XIII above, cannot be withdrawn or separately assigned, mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated or waived, said Maintenance Reserve Fund, capital contributions or Custodial Fund remaining, after full payment of all common expenses of the Association, shall be distributed to all unit owners in their respective proportionate shares.

(b) Waiver of Fund. Subject to the requirements of Section 514A-83.6, in the event that the Project has no common expenses that require regular monthly assessment and payment, the Board of Directors may elect not to establish and maintain a Maintenance Reserve Fund and to instead levy special assessments only when common expenses arise

from time to time. Whenever such special assessments are levied, the Board shall assess the owners according to their respective proportionate common interests.

## XV INSURANCE

(a) Casualty and Liability Insurance. The Association shall at all times keep all common improvements of the Project insured against loss or damage by fire, in an amount sufficient to provide for repair or replacement thereof in the event of such loss or damage, and to the full extent required by law, whether under Chapter 514A-86 or any successor or additional provision of law. Flood insurance shall also be provided under the Federal Flood Disaster Protection Act if the property is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development. To the extent required by law or the vote of a majority of the Board, in addition to the foregoing casualty coverage, the Association shall purchase and at all times maintain general commercial liability insurance and, if so elected by the Board, directors' and officers' liability insurance. All insurance shall be in such amounts as shall be determined by the Board of Directors, and in full compliance with the law. All insurance premiums incurred pursuant to this subsection shall be common expenses.

(b) General Insurance Provisions. All insurance required under this section shall be written on the property in the name of the Association of Condominium Owners and shall be purchased from an insurance company authorized to do business in the State of Hawaii. All provisions for insurance contained herein are without prejudice to the right of each unit owner to insure his own unit for his own benefit.

## XVI DAMAGE OR DESTRUCTION OF IMPROVEMENTS

(a) Individual Units. If any part of the improvements of an individual unit, including any limited common element appurtenant exclusively to said unit, shall be damaged or destroyed by an insured or uninsured casualty, the determination of whether or not to reconstruct or repair the same shall be made by the owner of said unit. Specifically, unless the owner of the damaged or destroyed unit, with the approval of the holder(s) of any mortgagees affecting said unit, decide against such reconstruction and/or repair, or unless this Declaration is terminated by vote of all the unit owners pursuant to the provisions of Section 514A-21 of the Condominium Property Act, said owner shall proceed promptly and diligently with reconstruction and/or repair of the unit; provided, however, that said owner shall be provided a reasonable time period for the adjusting of any insurance loss, preparation of building plans, hiring of contractors, architects, and other professionals, and

arranging of financing. All such reconstruction and/or repair shall be made in accordance with plans conforming to this Declaration and to all laws and ordinances then in effect. If the owner of a damaged or destroyed unit elects not to repair or reconstruct the unit pursuant hereto, said owner shall be responsible at his own cost and expense to remove all remains of the unit so damaged or destroyed and to restore the site thereof to good orderly condition and grade. Any insurance proceeds payable with respect to the unit in connection with a casualty loss shall be paid to the unit owner and his mortgagee(s), as their interests may appear.

(b) Damage to Common Elements. In the event of loss or damage which extends to any part of the common elements of the Project, or to any limited common elements benefitting the Association, the Association shall promptly reconstruct and/or repair such improvements unless the Declaration is terminated pursuant to the provisions of Section 514A-21 of the Condominium Property Act, with the consent of all mortgagee(s) of any unit(s). Restoration of the common elements shall be completed diligently by the Association as its common expense, according to the original plans and elevations thereof, or such modified plans conforming to laws and ordinances then in effect. Unless restoration is undertaken within a reasonable time after such casualty, the Association, at its common expense, shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and grade.

## XVII ALTERATION OF INDIVIDUAL CONDOMINIUM UNITS

(a) Generally. Except as to the limitation or preclusion of residential construction set forth above and in the CC&Rs, individual unit owners may remodel, expand or otherwise alter their unit, provided same is permitted by and done in complete accordance with all applicable ordinances, codes, rules, regulations or other requirements in force at the time of said construction. Such construction shall be further subject to the requirement that it not violate this Declaration, the Bylaws and the CC&Rs of record for the Project or otherwise enacted by the Association. Except as provided to the contrary elsewhere herein, said alterations shall not require the consent or permission of other unit owners or the Association. Newly constructed 4' x 4' shade structures designed to satisfy State of Hawaii condominium law and practices may be constructed anywhere allowed by law; provided, however, that any other newly-constructed improvements shall maintain a minimum setback of the greater of the distance required by subdivision or Project CC&Rs, or fifty (50) feet from all property lines (including all individual limited common element land area perimeter boundaries) provided that within the "open" zoned areas of units 47, 48, 49, 50, 78, 79, 88 and 89, setbacks shall be as established by the County of Kauai, including as to boundaries of limited common elements; and provided, further, that

said newly constructed improvements shall not unreasonably interfere with any other unit owner's enjoyment of their unit.

Pre-existing legal or rehabilitated structures shall be permitted to remain on the Project. All alterations shall be made at the expense of the unit owner making said alterations, and shall be expeditiously made and in a manner that will not unreasonably interfere with the other unit owners' use of their limited common element land areas. Any alterations of a unit subject to a mortgage or agreement of sale may require the consent of the lender and/or fee owner, as their interests may appear.

(b) Owner to Amend Declaration. The owner of any altered unit shall have the right and duty, and shall be required to amend this Declaration and the Condominium Map to reflect any such alterations. If required by the Condominium Property Act, promptly (currently 30 days) after completion of such alterations, the owner of the altered unit shall record an amendment to this Declaration in the Bureau of Conveyances, State of Hawaii, together with a complete set of floor plans and elevations of the portions of the Project altered, certified as-built by a registered architect or professional engineer. As long as all legal requirements are met as required herein, all other unit owners, by acquiring an interest in any other unit, shall be deemed to have been granted a power-of-attorney from all other unit owners to execute an amendment to this Declaration and Condominium Map solely for the purpose of describing the alterations to his respective unit. This power-of-attorney shall be deemed coupled with each owner's interest in his unit and shall be irrevocable. The foregoing right to amend the Declaration and Condominium Map applies to the Owner of Unit 89 in the event that unit is separated and/or divided into two units.

## XVIII COMPLIANCE WITH DECLARATION, BYLAWS AND DECISIONS

All unit owners, their tenants, families, servants, contractors and guests and any other persons who may in any manner use the Project, or any part thereof, shall be bound by and shall comply strictly with the provisions of the Condominium Property Act, Chapter 514A of the Hawaii Revised Statutes, this Declaration, the Bylaws of the Association of Condominium Owners, the CC&Rs and all agreements, decisions, and determinations of the Association, as lawfully made or amended from time to time. The failure to comply with any of the same shall be grounds for an action, with costs and fees chargeable to the losing party, to recover sums due, for damages or injunctive relief, or both, maintainable by the managing Agent or the Board on behalf of the Association, or in a proper case, by an aggrieved unit owner. The aforesaid Bylaws of the Association, are incorporated herein by reference, as are the amended CC&Rs for the Project.

**XIX**  
**RIGHTS OF MORTGAGE HOLDERS, INSURERS OR GUARANTORS**

(a) Notice Required. The Association, where it has previously received written request therefore, shall provide the holder(s), insurer(s), or guarantor(s) of the mortgagee(s) on any unit in the Project with written notice of any of the following: (1) any condemnation or casualty loss that affects either a material portion of the common elements of the Project or the unit securing its mortgage; (2) any ninety-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage; (3) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (4) any proposed action that requires the consent of a specific percentage of eligible mortgage holders.

(b) Priority of Mortgage Holders. Notwithstanding anything in this Declaration or the Bylaws of the Association of Condominium Owners to the contrary, no unit owner or any other party shall have priority over any rights of the mortgagees of units pursuant to their mortgages in the case of a distribution to unit owners of insurance proceeds or condemnation awards.

(c) Amendment of Declaration or Bylaws. No material amendment of this Declaration or of the Bylaws of the Association of the Condominium Owners affecting the security of a lender shall affect the prior rights of any mortgagee of any unit in the Project whose mortgage is recorded prior to the recordation of such amendment and which does not consent to said amendment. Further, and not in limitation of the foregoing, any amendments of a material nature to either the Declaration or Bylaws shall require the consent of mortgage holders representing at least seventy-five percent (75%) of the votes of units that are subject to mortgages held by such holders.

**XX**  
**AMENDMENT TO DECLARATION**

Except as otherwise provided herein, in the CC&Rs or in the Condominium Property Act, this Declaration may be amended upon the vote or written consent of seventy-five percent (75%) of the undivided interests of all unit owners, or such greater percentage as the owners may require by amendment hereof, such amendment shall be effective only upon the recording of an instrument setting forth the amendment duly executed by said owners or by the proper officers of the Association of Condominium Owners.

**XXI  
ARBITRATION**

At the request of any party, any dispute concerning or involving one or more unit owners and the Association of Condominium Owners, the "Master Association", its Board of Directors, Managing Agent or one or more other unit owners relating to the interpretation, application or enforcement of the Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended), this Declaration, the Bylaws, or any House Rules adopted in accordance with said Bylaws, shall be submitted to arbitration. Any arbitration shall be conducted, unless otherwise agreed by the parties, before a single arbitrator in accordance with the provisions of Chapter 514A, Part VII (Sections 514A-121, et seq.), of the Hawaii Revised Statutes. The recorded Project documents and Hawaii law shall govern resolution of all disputes.

**XXII  
ACTIONS OF DEVELOPER**

With the exception of provisions regarding initial sales, restrictions on resales, unit prices and specific additional rights granted herein, as long as the Developer owns one or more of the units of the Project, said Developer shall be subject to the remaining provisions of this Declaration and the Bylaws of the Association of Condominium Owners. Prior to the first meeting of the Association, which meeting shall be held as provided by the Bylaws, said Developer shall: (a) represent all of the owners of the units and all of the members of the Association; (b) appoint the officers and directors of the Association and Board; and (c) act on behalf of the Association and all future unit owners of the Project.

**XXIII  
STATUS OF PROJECT**

The project is a conversion of certain fully constructed and existing buildings, to condominium status, as well as submission of certain shade structures constructed or to be constructed to condominium status. Said buildings are or will be, on completion, in compliance with all ordinances, codes, rules, regulations or other requirements in force at the time of their construction. No variance has been granted from any ordinance, code, rule, regulation or other requirement in force at the time of their construction or from any other ordinance, code, rule, regulation or other requirement.

**XXIV  
CONDEMNATION**

In the event of condemnation, as between members of the Association only, each unit shall be deemed a separate fee simple property. Any arbitration award or court judgment shall be apportioned accordingly. No consensual sale under threat of condemnation shall occur without the consent of each unit owner whose unit has lost or will lose usable limited common element land area as a result of the taking.

**XXV  
MASTER ASSOCIATION / FARM REVIEW COMMITTEE**

This Project is one of three projects (hereinafter "the Three Projects") currently in place and next to each other. The Three Projects are known as Moloaa Hui I, Moloaa Hui II and Moloaa Hui III. Each project will have its own Association and Board of Directors. A further "Master Association" may be created at the election of the Developer or a majority of the Associations. The Master Association will be created to deal with matters of joint concern, including the repair, maintenance and upgrading of shared roadway, drainage, water, electric and other utilities. A Farm Review Committee has been created pursuant to the terms of the CC&Rs affecting the Three Projects. The Farm Review Committee shall have the powers and authority set forth in the CC&Rs. Wherever possible, full effect shall be given to all project documents, independent of each other. Where there is a specific right granted to the Farm Review Committee and/or the Developer, said right shall be maintained, notwithstanding provisions of the Declaration and Bylaws to the contrary. The CC&Rs shall control over all Project documents, as they are designed to insure the long-term success of the Three Projects.

**XXVI  
DOMESTIC / POTABLE WATER SUPPLY**

This Project is currently served only by agricultural water service which has been supplied for over 20 years by either private wells or from wells operated under a State of Hawaii license, which wells are located in the vicinity of the Project. No potable water is currently available to the Project, and none is promised. Any party desiring to provide domestic or potable water to a unit or project shall do so by on-site treatment, delivery from third-party sources, catchment or similar off-site source, including the unilateral obtaining of water meter(s) from the County of Kauai after payment of each, every and all applicable fees for service extensions, meters, etc., by the party or parties desiring County of Kauai water service. No wells are permitted on the Project without the prior written approval, in writing, of the Farm Review Committee and the appropriate action of the State

of Hawaii, County of Kauai and/or similar agency with jurisdiction thereof. No such approval is anticipated to be given as of the date hereof.

**XXIX  
AGRICULTURAL PARK, CONSOLIDATION AND RESUBDIVISION DEVELOPER'S  
RESERVED RIGHTS**

All future subdivisions on the property shall be based on an overall agricultural master plan. The implementation of said plan shall be accomplished wherever possible through either Chapter 9, "Subdivision Ordinance", or Chapter 9A, "Agricultural Park Subdivision", of the Kauai County Code (1987). Also, in the event of future subdivision, the lot densities shall be based on the overall size of 724 acres.

Developer reserves the future right to subdivide all or part of Moloaa Hui I, II and III on the following conditions: Developer shall pay all costs of the subdivision process; any subdivided parcels) that utilize common or limited common elements of the remaining Project (s) will continue to pay ratably for repair, maintenance and other expenses associated with such use; except as may be voted by the appropriate percentages of Moloaa Hui I, II or III Associations, Developer will pay all infrastructure costs associated with the subdivision; costs associated with upgrading of water system, electrical, telephone, cable television or similar utility installations may be charged back ratably only to such Unit (s) or Project (s) as may access, make connection to or otherwise use any upgraded infrastructure placed in, on or serving any Unit (s) of Moloaa Hui I, II and/or III. Additionally and separately, the Association of Condominium Owners may elect to subdivide by a 75% vote of the common interests, costs of which will be common expense.

**XXX  
COUNTERPARTS**

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

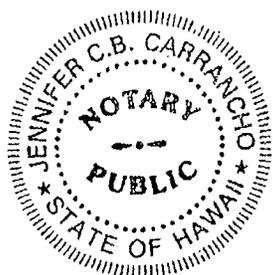
**XXXI**  
**JOINDERS AND FEE OWNERS**

Attached hereto as Exhibit "B" is a Schedule of all the current Fee Owners in the Project. These are the Fee Owners (with exception of the Developer who have joined in by virtue of executing this instrument) who have or will have joined in on the terms of this Declaration by a separate instrument in order to have more than 75% of all owners approving the terms hereof. Developer hereby confirms and accepts that the units that it owns (respectively), being Unit 1 shall be converted into Units 69, 70, 71, 72, and 73; Unit 11 shall be converted into units 74 and 75; Unit 16 shall be converted into Units 82, 83, 84 and 85; and Unit 17 shall be converted into Units 86, 87, 88 and 89. Developer hereby quitclaims and conveys, each of the foregoing units unto itself, respectively.



STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU )

On this 18<sup>th</sup> day of April, 2005, before me personally appeared **CANDACE L. STRONG**, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed it as her free act and deed.



*Jennifer C.B. Carrancho*  
Name: JENNIFER C.B. CARRANCHO  
Notary Public, State of Hawaii  
My commission expires: 07/28/2006

EXHIBIT "A"  
**MOLOA'A HUI I**

LAND SITUATED AT PAPAA, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot I  
Being also a Portion of Allotment 24-A, Moloa'a Hui Lands

Beginning at the west corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 659.08 feet South and 396.79 feet East, thence running by azimuths measured clockwise from true South:

- |    |              |        |  |
|----|--------------|--------|--|
| 1. | 307° 40' 50" | 267.70 | feet along Lot 2;<br>thence along Lot 2, on a curve to the left with a radius of 700.00 feet, the direct azimuth and distance being:   |
| 2. | 297° 50' 25" | 239.26 | feet;  |
| 3. | 288° 00'     | 343.35 | feet along Lot 2;<br>thence along Lot 2, on a curve to the right with a radius of 500.00 feet, the direct azimuth and distance being:  |
| 4. | 298° 30'     | 182.24 | feet;  |
| 5. | 309° 00'     | 297.60 | feet along Lot 2;<br>thence along the remainder of Allotment M-1, Ka'apuna Hui Lands, on a curve to the right with a radius of 500.00 feet, the direct azimuth and distance being: |
| 6. | 324° 30'     | 267.24 | feet;  |
| 7. | 340° 00'     | 125.89 | feet along Lot 2;<br>thence along Lot 2, on a curve to the left with a radius of 700.00 feet, the direct azimuth and distance being:   |
| 8. | 332° 06' 30" | 192.22 | feet;  |
| 9. | 324° 13'     | 499.52 | feet along Lot 2;  |

					thence along Lot 2, on a curve to the right with a radius of 450.00 feet, the direct azimuth and distance being:
10.	351°	46'	30"	416.39	feet;
11.	19°	20'		140.00	feet along Lot 2;
					thence along Lot 2, on a curve to the right with a radius of 600.00 feet, the direct azimuth and distance being:
12.	44°	01'		501.12	feet;
13.	68°	42'		939.34	feet along Lot 2;
14.	314°	40'		139.05	feet along Lot 2;
15.	260°	04'		37.10	feet along Lot 2;
16.	17°	12'		589.80	feet along Lot 1-B;
17.	27°	19'		200.10	feet along Lot 1-B;
18.	60°	28'		1,044.90	feet along Lot 1-B;
19.	48°	23'		209.15	feet along Lot 1-B;
20.	96°	56'		98.85	feet along Lot 1-B;
21.	136°	20'		144.75	feet along Lot 1-B;
22.	120°	00'		72.90	feet along Lot 1-B;
23.	95°	18'		114.95	feet along Lot 1-B;
24.	54°	14'		400.40	feet along Lot 1-B;
25.	48°	15'		250.00	feet along Lot 1-B;
					thence along Lot 1-B on a curve to the left with a radius of 553.69 feet, the direct azimuth and distance being:
26.	27°	52'	30"	385.55	feet;

27.	277°	30'	10.00	feet along Lot 1-B;  thence along Lot 1-B on a curve to the left with a radius of 543.69 feet, the direct azimuth and distance being:
28.	0°	00'	141.93	feet;
29.	82°	30'	10.00	feet along Lot 1-B;  thence along Lot 1-B on a curve to the left with a radius of 553.69 feet, the direct azimuth and distance being:
30.	349°	00'	67.60	feet;
31.	345°	30'	277.50	feet along Lot 1-B;
32.	255°	30'	20.00	feet along Lot 1-B;
33.	345°	30'	236.00	feet along Lot 1-B;
34.	750°	30'	80.00	feet along the north side of Hui Road D;
35.	165°	30'	236.00	feet along Lot 1-C;
36.	255°	30'	20.00	feet along Lot 1-C;
37.	165°	30'	277.50	feet along Lot 1-C;  thence along Lot 1-C on a curve to the right with a radius of 593.69 feet, the direct azimuth and distance being:
38.	169°	00'	72.49	feet;
39.	82°	30'	10.00	feet along Lot 1-C;  thence along Lot 1-C on a curve to the right with a radius of 603.69 feet, the direct azimuth and distance being:
40.	180°	00'	157.60	feet;

41.	277°	30'		10.00	feet along Lot 1-C;
					thence along Lot 1-C on a curve to the right with a radius of 593.69 feet, the direct azimuth and distance being:
42.	190°	40'	10"	65.65	feet;
43.	115°	16'		250.51	feet along Lot 1-C;
44.	104°	16'		69.10	feet along Lot 1-C;
45.	82°	53'		57.55	feet along Lot 1-C;
46.	63°	14'		40.60	feet along Lot 1-C;
47.	39°	37'		165.65	feet along Lot 1-C;
48.	94°	31'		25.67	feet along Lot 1-C;
					thence along the east side of Kuhio Highway on a curve to the right with a radius of 1,930.00 feet, the direct azimuth and distance being:
49.	182°	11'	32"	411.22	feet;
50.	98°	18'	28"	10.00	feet along the east side of Kuhio Highway;
					thence along the east side of Kuhio Highway on a curve to the right with a radius of 1,940.00 feet, the direct azimuth and distance being:
51.	189°	56'	44"	110.89	feet;
52.	101°	35'		20.00	feet along the east side of Kuhio Highway;
53.	191°	35'		282.17	feet along the east side of Kuhio Highway;
					thence along the east side of Kuhio Highway on a curve to the left with a radius of 1,040.00 feet, the direct azimuth and distance being:

54.	180°	01'	26"	416.80	feet;
55.	258°	27'	52"	10.00	feet along the east side of Kuhio Highway;
					thence along the east side of Kuhio Highway on a curve to the left with a radius of 1,050.00 feet, the direct azimuth and distance being:
56.	164°	10'	02"	157.35	feet;
57.	124°	17'		17.35	feet along the east side of Kuhio Highway;
					thence along the east side of Kuhio Highway on a curve to the left with a radius of 1,040.00 feet, the direct azimuth and distance being:
58.	136°	33'	47"	796.98	feet;
59.	114°	02'		350.64	feet along the east side of Kuhio Highway;
60.	229°	05'	30"	4,169.55	feet along the remainder of Lot 1 to the point of beginning and containing an area of 281.500 acres.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Easement A-1 for shoreline access and parking purposes;
2. Easement A-2 for shoreline pedestrian access purposes;
3. Easements I and 2 for access purposes;
4. Easement E-1 for electrical purposes;
5. Vehicular access restrictions along Kuhio Highway.

TOGETHER WITH THE FOLLOWING:

1. Easement A-3 for shoreline pedestrian access purposes.

EXHIBIT "B"

<b>NAME</b>	<b>Prev. Unit No.</b>	<b>New Unit No.</b>
Moloaa Hui Lands, Inc.	1	69, 70, 71, 72, 73
Ronald H. Nakazawa, Sr. & Jennifer K. Nakazawa	2	2
William M. & Beverly S. Carpenter	3	3
Paul Atkinson & Miesha Meadows Rathbone	4	4
Paul Atkinson & Miesha Meadows Rathbone	5	5
Richard B. Shepard & Griffin Shepard	6	6
Michael R. & Candace L. Strong	11	74, 75
Allen Ladd Elmore	12	76, 77
John W. & L. Nandanie Wooten	13	13, 13A, 13B
Clayton Masashi Kakimoto	14	14
Paul C. Huber	15	78, 79, 80, 81, 90
Michael R. & Candace L. Strong	16	82, 83, 84, 85
Michael R. & Candace L. Strong	17	86, 87, 88, 89*
Richard B. Shepard & Griffin R. Shepard	19	19
Gary C. & Donna L. Hendrickson	47	47
Ronald P. & Laura A. Burley	48	48
Gerard R. & Shanda S. Bosma	49	49
Gerard R. & Shanda S. Bosma	50	50
Richard B. Shepard, Trustee	51	53, 54, 55
Michael R. & Candace L. Strong; Naomi S. Young;	52	56, 57, 58, 59
James K. Garrison & Patricia G. Howard		
<b>TOTAL</b>	<b>20 units</b>	<b>43 units</b>

NOTE: For all units that had no change to its unit number, the size and location of its appurtenant limited common element land area and the unit's common interest did not change. In other words, the land areas and common interest for the following units were not affected by this Second Restated Declaration: 2, 3, 4, 5, 6, 14, 19, 47, 48, 49 and 50.

\* Unit 89 may be further divided into two separate units consistent with its two appurtenant limited common element land areas.

MARYANNE W. KUSAKA  
MAYOR



DEE M. CROWELL  
PLANNING DIRECTOR  
SHEILAH N. MIYAKE  
DEPUTY PLANNING DIRECTOR  
TELEPHONE (808) 241-6677  
FAX (808) 241-6699

PLANNING DEPARTMENT

February 10, 2000

Mr. Michael R. Strong  
Moloa'a Hui Lands, Inc.  
P.O. Box 30  
Kilauea, Hawai'i 96754

**SUBJECT: VARIANCE PERMIT V-97-6  
CLASS IV ZONING PERMIT Z-IV-97-29  
Moloa'a and Papa'a, Kaua'i, Hawai'i  
Tax Map Key: (4) 4-9-09:09**

The Planning Commission at its meeting held on February 10, 2000, approved your request to amend the subject permits to increase the amount of farm dwelling units on the subject property from nine (9) to thirteen (13) units. Approval is subject to the following additional conditions:

9. As represented by the applicant, the maximum density for Lot 1 shall be thirteen (13) Farm Dwelling Units and this restriction shall be included in the covenants and deed description for Lot 1.
10. In accordance with Condition 1.e. of Subdivision Application S-97-23, there shall be no direct access permitted onto Kūhiō Highway from Lot 1.
11. The applicant shall provide to the Planning Department, a Landscape Plan along the Kūhiō Highway frontage to minimize visual impacts.
12. The applicant shall establish a 200 feet "Buffer Zone" along the highway frontage. Residential structures shall be prohibited from being built within this area.

A handwritten signature in cursive script, appearing to read "Dee M. Crowell".

DEE M. CROWELL  
Planning Director

xc: Public Works Dept., Water Dept., State Health Dept., State Historic Preservation Div.-DLNR  
Fire Dept., Real Property Div.

D:\dcua...\ZoningFiles\Letters\Moloa'aHui\_Amend.let Page 4 of 4

**Annual Meeting  
Moloa'a Hui I, II & III  
June 29, 2000**

The annual meeting of the Association of Condominium Owners of Moloa'a Hui I, II and III was held on June 29, 2000. The meeting was called to order at 9:14 A.M. Roll call was taken. Owners present were: Ted Javellana, Paul and Meisha Rathbone, Steve Riley, John McClure, Ronald Nakazawa, Rodney Yadao, Marie Mauger, Linda Yoshii, Mike and Candace Strong, and Scott Pomeroy (as proxy for Mark Wheeler). Also present was visitor, Alberto Cartiga and secretary Jude Chamberlin. Owners not present were Paul Huber, Jody Lyon, Neal Kakimoto, Clayton Kakimoto, Ben Ednilau, Lucy Adams, Alan and Sally Batesole, Michael Diamond and Jeff Lindner.

President Mike Strong reminded the owners that Moloa'a Hui actually consists of 3 separate projects because projects of less than 20 units are not required to have professional management.

Proof of notice of meeting was presented (certified mail receipts w/ return receipts).

The owners were asked if they wanted the minutes of the preceding meeting read. Steve Riley made a motion to accept the minutes unread. The motion was seconded by T. Javellana. All present voted yes to forgo the reading of minutes and accept as is.

**President's report:**

The developers of Moloa'a Hui spent approximately \$30,000. to remove a large quantity of abandoned cars and buses and trash, mostly from unit #34.

The C.C.&R.s were amended to remove the anti-speculation clause. The reason for this was the fact that the banks objected and financing was not available. Land values will increase as a result. The mandatory farming clause was amended to match the County of Kauai's standard for land dedicated to agriculture in order to reduce property tax rates. All owners signed these amendments to the C.C. & R.s.

M. Strong reminded owners that all units in the projects are already dedicated to ag and that persons who have the right to a house site need to remove the house and yard portion from the County's Ag dedication program. If this is not done and a house is built, later on taxes could be rolled back.

Scott Pomroy asked if the above applied to M. Wheeler since he has the right to a guest house. M. Strong answered yes and that the house size is also restricted since it is a guest house.

M. Strong reported that since the last annual meeting the following units have been sold: in MHL I units 2, 4 & 5 have sold; in MHL II units 22, 26, 28, 29 & 34 have sold and units #20, 23 & 31 are in escrow; in MHL III units 45 & 46 have sold and unit #40 is in escrow.

M. Strong asked were there any question. S. Pomroy asked who bought a certain unit. M. Strong answered that that information could be found on a list of all owners that was passed out at the beginning of today's meeting. J. McClure asked if he could get a list of all owners with their addresses for the purpose of getting owners to sign off for building permits. M. Strong answered that a list would be sent out with the next water bill.

M. Strong reported on future projects. He said that the roads would all be graded and the road adjusted near the culvert on unit #29. The access to the water tank will be moved off unit #31 and onto the makai side of unit#32. The gate at the Kapaa end of the project is not a legal access and will be welded shut. The new access will be near the junction of units #20 and #30. The Hanalei end gate will be graded drained and graveled. These things will be done at the developers expense and should be finished by the end of the year 2000. S. Riley asked about a security gate that operates with a card. J. McClure said that he has a catalog with solar powered gates and that the prices were reasonable (~\$1000.). The water tank will also be painted and holes in top repaired. This will also be done at the developers expense. T. Javellana asked about the possibility of chemical contamination of our well from plantation days. M. Strong replied that the County Water Dept. has tested our water and found in uncontaminated. This testing would be very reliable as it is regulated by the E.P.A.

M. Strong reported that the County Water Dept. met w/ him and expressed interest in our well because they need more water for the houses in Moloa'a Valley. Nothing is certain and he thinks Water Dept. involvement is far in the future. J. McClure said that J. Lindner is worried that the Water Dept will take over and maybe cut us off. M. Strong said that can't happen because years ago the State of Hi. made a survey of all water users. Moloa'a farmers are on record as oldest users of water from that well and we are protected. M. Strong also reported that J. Lindner changed the pump on the well so the standby electrical charge went down. T. Javelin reported that water pressure sometimes drops quite low. M. Strong replied that Mr. Gober of Papaa Bay uses a lot of water and he will ask Mr. Gober to stagger his use.

Shoreline access will be provided via a foot path between units #8 & #9 and across Lindner's property. The main road will extend along the east side of unit #19 to a parking area at unit #11 where the foot path begins.

Scott Pomroy asked where is Lindner's access for his project. M. Strong answered that Mr. Lindner bought unit #34 and that his access will be there. J. McClure asked if Lindner will fence along his border and if he will have a gate. M. Strong said he doesn't know about the fence but he thinks he will have a gate. However, he was not totally sure about any of that and that it would be better if he asked Lindner directly.

M. Strong reported that sometime within the next 6 months we would start putting up the screen houses to satisfy the CPR requirements. They will be made of 4 concrete blocks, PVC pipes and screen. After they are up and the inspector comes they can be taken down easily. Before the inspectors come, all existing building will have to be brought up to code.

The developers, Moloa'a Hui Lands, Inc. have been paying for liability insurance for the condominium association which covers the common elements. Eventually, this cost will have to be shared by all of the owners. Owners need to arrange their own liability insurance for their own units.

### **Old Business**

Eventually all owners will be required to install back flow preventers. They cost between \$400. and \$1000. each and cause a drop of 5-10 psi pressure. T. Javelin agreed that it needs to be done. M. Strong suggested that we could all buy together and get a better price.

Alberto Cartiga asked if J. Lindner will use our water tank for his house sites. M. Strong answered no, definitely not. However, he commented that home use is very small compared to farm use and that our contract w/ Lindner for water guarantees us 1 million gallons per day and that should be plenty for us.

Alberto asked about Lindner's plans for sewage treatment. M. Strong answered that he has no idea but that he only has 15 house sites.

T. Javelin asked if the entrance on the western side of the project will receive gravel. M. Strong said yes.

Scott Pomroy asked where the north boundary of the Wheeler property is. M. Strong said to ask Paul Huber and gave him Paul's phone #.

J. Mc Clure asked about the plants that obscure the view of the highway near the fruit stand. M. Strong answered that it may be part of J. Lindner's property and that he will ask Lindner about it.

Alberto asked about Lindner's access in relation to the windbreak trees that are on his property. M. Strong said that Lindner is required to keep the windbreak trees and that they must be functional as windbreaks and that our farming use takes precedence over their use. This is spelled out in both our and his condo documents. Those documents are public record and can be gotten from Title Guarantee.

### **New Business**

M. Strong reported that in the future the projects will need to collect fees for maintenance of the water system and roads, liability insurance and for management. Management of the project would involve collection of fees, arranging for repairs and maintenance and running association meetings. Chaney-Brooks estimated that they would charge approximately \$18. to \$25. per unit per month for management only. This subject will be discussed and voted on at a future meeting. Up until now, Moloa'a Hui Lands has been doing this job free of cost to the other owners.

S. Riley asked if the maintenance fees spelled out in the condo documents are still valid.

M. Strong answered that that is a good question and that probably costs have gone up.

T. Javelin asked about the fixed water charge. M. Strong answered that it is a charge of \$3.50 per acre separate of the actual gallons of water used. In other words, everyone pays the fixed water charge every month even if you used no water at all.

J. Mc Clure asked who is responsible for water pipes upstream of the meter. M. Strong answered that Moloa'a Hui Lands, Inc. is responsible but that will change when we hire a management company and then they will be responsible.

M. Strong asked all owners to please not believe or spread rumors. If you have an issue or question please bring it to us. Please don't let problems fester. Issues with J. Lindner should be brought to him, not us.

**Election of Directors**

Votes were cast according to each owner's percentage ownership of each project. For example, if your ownership in Moloa'a Hui II is 6%, you would cast 6 votes for each of up to 3 directors.

Moloa'a Hui I - M. Strong 91 votes, P. Huber 91 votes. Strong and Huber elected

Moloa'a Hui II - M. Strong 44 votes, P. Huber 56 votes, T. Javallana 25 votes, L. Yoshii 6 votes. Strong and Huber elected.

Moloa'a Hui III - M. Strong 55 votes, P. Huber 55 votes. Strong & Huber elected.

Meisha Rathbone made a motion to adjourn the meeting. It was seconded by Paul Rathbone. All voted yes to close the meeting. The meeting was adjourned at 11:00 a.m.

Respectfully Submitted,

Jude Chamberlin, Secretary

**Moloa`a Irrigation Co-op**

**Business Plan Concept**  
**Aug. 2010**



**Authored**

**NW Cooperative Development Center**

Eric Bowman

Teresa Young

Diane Gasaway

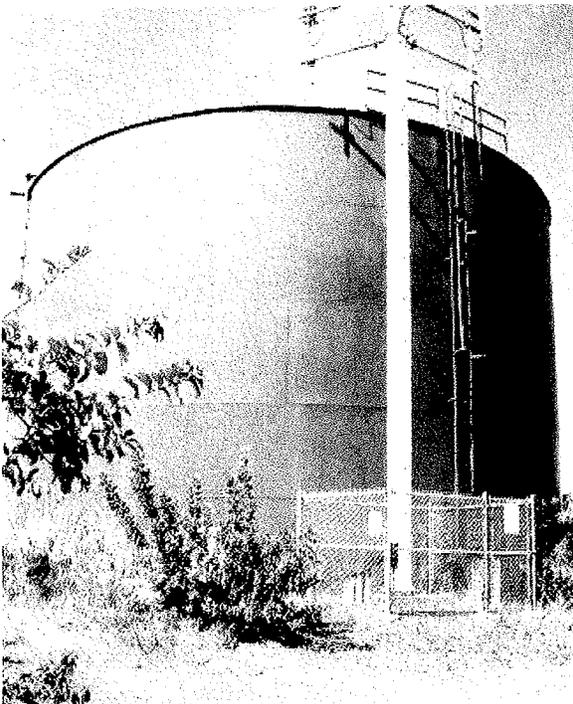
J.C. Armbruster

**Co-op Steering Committee**

Paul Huber, Hui I

Sue Liddle, Hui II

Ray Maki, Highway Lots



**Funded**

**USDA – Rural Development**

Rural Cooperative Development Grant

## Table of Contents

1. Executive Summary.....	3
2. Description of the Business.....	5
Chart 1: The Co-op Water Supply Chain .....	6
Chart 2: Stakeholder Analysis .....	7
3. Description of the Market/Opportunity .....	12
Chart 3: Description of Huis .....	12
Moloa`a Hui Lands Master Map.....	14
4. “Competitor” Analysis and Competitive Advantage.....	15
Chart 4: Current Parties to Water Supply Agreement.....	16
6. Operations .....	18
Chart 5: Maintenance Plan .....	19
7. Preliminary Water Systems Plan.....	21
8. Management and Personnel.....	22
Chart 6: Organizational Chart .....	24
9. Development Schedule .....	25
10. Financial Data.....	26
11. Risk Analysis .....	28
12. Appendices.....	30
Appendix I - Moloa`a Hui Lands Irrigation System Business Options .....	31
Appendix II – Benefits & Tradeoffs of a user-owned water system .....	32
Appendix III – Pictures of System Components.....	33

## **1. Executive Summary**

A group of landowners comprising Moloa`a Hui Lands is forming a water consumer Co-op to better manage their water resources and distribution system while maintaining their rural way of life. A key aspect of this project is that these consumers do not seek to engage in the business of selling water; rather, they wish to share the costs of, and provide equal access to, the available water.

The following is a summary of the entire plan, including business overview, potential members and method.

### **Introduction**

This document for the first time assembles all the different elements of the project development process. This document is “living” and will undergo several drafts throughout 2010 and needs to be revisited after launch.

The purpose of this document is to examine the components, as a whole, with the aim of defining the viability of the project. This process will permit the Moloa`a Irrigation Co-op Steering Committee and potential members currently farming in the community to make informed decisions about the strategic issues of the project.

The primary audience is the Co-op Board and potential members. The information outlined below is intended to serve as a resource and a planning tool for any planner and participants working on the development process of the business. Additionally, this document could be shared with individuals considering investing their time and money in the venture; this may range from potential advisors (such as, pro bono attorneys) interested in supporting the Co-op to funders and/or financiers (such as, Federal or State grants) examining the viability of the proposal.

### **Business Overview**

There are approximately 49 landowners which farm on 596 acres on the Northeastern corner of Kauai, in the community of Moloa`a Hui Lands. The transition in Hawaii from plantation agriculture to small diversified farms has made it difficult to maintain the sugar-era water supply systems. Like much of the Mainland West, a farm without water is worth far less than a farm with water.

The Moloa`a irrigation system includes a well on State of Hawaii land, a community tank and a host of pipes of varying age and functionality. The landowners of the proposed Co-op currently receive their irrigation water from only one well with one water lease to a single lessor. This is currently their only option for water and is of the utmost importance for their livelihood. They are in the process of merging the responsibilities and rights of the water into a consumer co-op; this will be reassigned from the existing Associations of Apartment Owners (AOAOs). The water is non-potable irrigation water and the primary land use is agricultural.

## **8.10.10 - Draft**

### **Authors**

The Northwest Cooperative Development Center (NWCDC) is a 501(c)3 which provides consulting services to new and existing Co-ops throughout the tri-state Northwest and Hawaiian Islands. During 2009-10, NWCDC worked for the Steering Committee of the proposed Moloa`a Irrigation Co-op to assist with feasibility research and business planning for the project of purchasing and converting the existing water system into a consumer-owned water users Co-op. Their work on this project was funded thru the USDA's Rural Cooperative Development Grant for \$21,000 and a cash match of \$2,500 from the AOA's.

### **Method**

The information in this report represents onsite visits and eight months of information gathering and communications between the Steering Committee and NWCDC. Additionally, NWCDC retained Dave Olsen of Water System Services to provide industry oversight and David Proudfoot of Belles, Graham, Proudfoot, Wilson, & Chun, LLP, for legal inquiries.

### **Disclaimer**

This report was prepared with financial support from a grant by the USDA. While this document is believed to contain correct information, neither the USDA, nor any of the individual authors make any warranty, express or implied as to the accuracy or usefulness of any information contained herein. No statement in this report may be relied upon as legal advice by any person using this report. Any person needing legal advice concerning matters addressed in this report should retain their own counsel.

The authors have used their combined experience, industry contacts and knowledge with research to prepare this study. They have reached their conclusions in an objective and unbiased manner. There is no assurance given, nor should any be inferred by the reader, that any projections or forecasts made or implied will in fact be realized.

## 2. Description of the Business

Following describes the irrigation system's history, products and services, members, legal scope, ownership models, mission, stakeholder analysis and water supply chain chart.

### History

In 1996, an approximately 600-acre parcel was divided into smaller parcels to allow for ownership of small farms on the island of Kaua'i. The land was previously leased for use by a papaya producers' Co-op. The papaya Co-op, which began in 1976, modified the existing 30's era plantation irrigation system to supply water to individual leased parcels with the addition of a 500,000-gallon water tank and line extensions. This system, with modifications, is still in use.

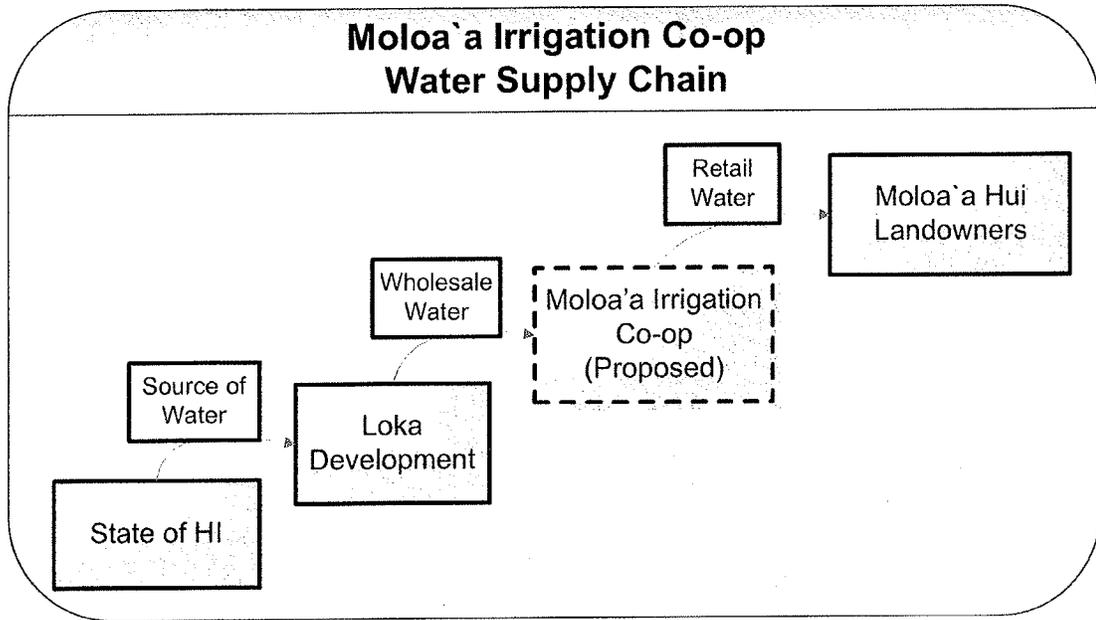
The original developer, Moloa'a Hui Lands Inc. (or MHL Inc.), has administered the water system since 1996. MHL Inc. no longer desires to administer the system and prefers the unit owners, i.e. users of the system, to assume the administration and management. After examining the available business ownership options, the Steering Committee believes the Co-op business model will best serve the landowner needs. The Steering Committee has a desire to create a mutually-owned entity that exists solely to serve the owners with a limited scope and not a full-scale private utility.

### Products/Services

The proposed Moloa'a Irrigation Co-op's business concept is straightforward and simple: *landowners cooperatively purchase water in bulk and distribute it to members*. The business will provide one entity that deals only with the delivery, maintenance, future planning and billing for the water system. As a Co-op, the business will balance the member's desire for low cost or at cost water with the needs to plan for future maintenance (i.e. provide for sufficient prudent reserves for capital improvements).

The Co-op envisions its supply chain as follows.

**Chart 1: The Co-op Water Supply Chain**



\*Note: Here the term "retail" is defined as wholesale water plus maintenance and admin costs.

**Members/Customers**

The existing customers will become the membership base. There are three groups currently served by the system: two are Associations of Apartment Owners (or AAOs) for Hui I and Hui II, and there is an owners group, the former Hui III, now Highway Lots subdivision. For the foreseeable future, these are expected to remain the only members/customers.

The current landowners have extremely limited alternatives for access to irrigation water, other than drilling a new well. The only additional pools of relevant potential membership are neighboring lands with small farms. There is no plan or intention in place at this time for future expansion.

**8.10.10 - Draft**

**Stakeholder Analysis**

Below is an outline of the key stakeholders involved, their interests, and the potential impacts of the project on them.

**Chart 2: Stakeholder Analysis**

<b>Stakeholder</b>	<b>Interest</b>	<b>Potential Impact</b>	<b>Strategies for Obtaining Support</b>
Water Users; landowners of Moloa`a Hui Lands	Access to water and customer base	Owner, governor and beneficiary of proposed business. May not join the co- op.	Stress member benefits and transparency. Maintain open lines of communication and involvement.
Loka Development	Water leaseholder and seller of wholesale water	Holds primary lease on water with the state. Dictates price of wholesale water.	Seeking single entity to negotiate price.
Jeffery Lindner	Owner of Loka Development, Fruit Stand, the rim lots and parcel in Hui II	Water supplier, water consumer and Co-op member.	Maintain positive working rapport and sensitivity to his needs.
Moloa`a Hui Lands, Inc. (MHL, Inc.); i.e. Mike Strong and Paul Huber	Current operator of system; including ownership of community tank.	Gatekeeper and assigner of current system, water supply and tank lease agreement.	Seeks to transition out of administration of system. (Negotiations for a tank lease are currently underway)
State of Hawaii	Development of local Infrastructure	Primary water lessor and potential supporter, funder, and/or regulator	Promotion of small farms and development of infrastructure.
Public Utilities Commission (PUC)	Potential regulator	Prohibitive costs of regulatory oversight	Ensure PUC understands the Co- op only serves members in this one location.
Association of Apartment Owners (AOAOs)	Representative of MHL farmers and residents.	Transition of water fees from AOAOs to Co-op.	A representative of each is on the Steering Committee and they are driving this process.

**Legal Scope**

The business will be legally incorporated as a cooperative corporation. It's seeking guidance on the most relevant Hawaii Revised Statute (HRS) to incorporate under. The Steering Committee considers HRS

### 8.10.10 - Draft

Chapter 421c: Consumer Cooperative Association<sup>1</sup> the most relevant incorporation structure at this juncture.

For a more extensive review of the Steering Committee's thinking and considerations of potential business models, please refer to:

- Appendix I - Moloa'a Hui Lands Irrigation System Business Options
- Appendix II - Benefits and Tradeoffs of a user-owned water system

In these two sections of the plan, the different business options are analyzed. This analysis represents the decision-making process which led to the Steering Committee's conclusion that a 421c Consumer Co-op Association was the most relevant entity to accomplish its objectives.

Additionally, at the Federal level the Co-op will most likely seek 501(c)12 nonprofit status from the IRS.<sup>2</sup> The IRC 501(c)(12) exempts "mutual ditch or irrigation companies" from federal income tax. This decision is being evaluated with an attorney and a CPA familiar with cooperative corporate law and finance.

#### **Ownership**

As a Co-op, the business will be owned and governed by those it serves: *the members*. This document will outline the Co-op's startup capital costs and membership fees. A membership drive will need to be conducted immediately after the business has been incorporated. Additionally, community support and consensus will need to be built and organized before incorporation. The Co-op Steering Committee is working with potential members to share individual needs, determine where those needs overlap or conflict, and build consensus of mutually agreeable goals. Those agreements will be the foundation of the Co-op's governing documents—its articles of incorporation and its by-laws. Drafts of both documents were sent before the community-wide meeting.

An extremely high percentage of consumers joining the Co-op is critical to any co-op, but the tax and regulatory environments of private, non-profit water utilities make this increasingly important. In order for the IRS to view the Co-op as a 501(c)12 nonprofit irrigation cooperative, 85% of the business' income must come from owners. Additionally, having 100% consumer-members with no nonmember business will almost ensure the Public Utility Commission (PUC) will not regulate the rates the Co-op charges. PUC regulation will result in higher administrative costs; see section, "Potential Cost of PUC Regulation" below.

#### **Liability**

Co-op members are not liable for the debts of the cooperative beyond their initial investment or membership fee. Hawaii's Consumer cooperative statute, per HRS §421C-(b) borrows from Hawaii's Corporation Statutes anything that is missing from the Cooperative Statute, the for profit corporation

---

<sup>1</sup> [www.capitol.hawaii.gov/hrs2006/Vol08\\_Ch0401-0429/HRS0421C/HRS\\_0421C-HTML](http://www.capitol.hawaii.gov/hrs2006/Vol08_Ch0401-0429/HRS0421C/HRS_0421C-HTML)

<sup>2</sup> IRS. Section 12. Organizations Exempt Under IRC 501(c)12. Retrieved Dec. 2009: [www.irs.gov/irm/part7/irm\\_07-025-012.html](http://www.irs.gov/irm/part7/irm_07-025-012.html)

### **8.10.10 - Draft**

statutes for stock cooperatives, and the non-profit corporation statute for non-stock cooperatives. HRS §414D-85 (part of Hawaii's Non-Profit Corporation Chapter) governs this for a non-stock cooperative.

#### **Why Co-op? Business models considered**

There is a strong consensus among the AOA Boards and the unit owners they represent that the risks of doing nothing far outweigh the risks of transitioning to a new entity. For a host of reasons, the status quo has become undesirable and unsustainable for all parties involved. This section seeks to explain the thought processes the Steering Committee utilized to come to their decision to form a co-op.

MHL, Inc. has expressed interest in not retaining administrative responsibilities. The AOAOs were presented with the dilemma with how to maintain and operate the system and they share the view that now is the time for a transition. MHL, Inc.'s current role was a solution to a problem and situation from the mid-90's when MHL, Inc. developed the land into its current arrangement. That is to say, MHL, Inc. administered the water because nobody else would, and they needed to ensure access to water for the farms in the transition from plantation-based agriculture.

During the development process and exploration of the preferred type of entity, a host of priorities for the unit owners surfaced. They were to:

- Ensure the farmers have adequate and reliable water supply at all times
- Form an entity with the strength and clarity to reliably supply water to all farmers
- Provide the unit owners control over the operation and expense of the water
- Maintain and upgrade the system
- Encourage farmers to increase crop size and/or variety

Implicit in these priorities is the desire to form a new entity that contains a transparent, accountable and robust governance structure that empowers farmers with a greater voice and self-determination in the Moloa'a Hui Lands water system.

The options are limited for the operation, upkeep, management and administration of the existing system. The potential structures to create and empower which the AOAOs explored were to:

1. Solicit a for-profit firm via the AOAOs' Water Committee to work on contract
2. Form a joint venture (JV) or LLC of AOAOs
3. Form a nonprofit corporation, e.g. association of AOAOs
4. Form a for-profit corporation
5. Form a co-op

The AOAO's Water Committee has been explicitly tasked with forming an entity to take over the upkeep and maintenance of the water system. It's unlikely there is an appetite among the owners' Associations to empower a Committee with managing the system. The vast majority of the 49 owners are ready for a "fresh start" and it made best sense to form an entity with its own voice and focus to manage the system in perpetuity. It's a generally held belief that not to do this development work would be a failure to face this challenge squarely. From the outset, it was determined that a separate corporate entity was needed to provide this service. This could be a joint venture (JV), LLC, nonprofit or Co-op.

### 8.10.10 - Draft

When examining a JV or LLC of the AOAOs, it was quickly decided that the entity needed to run at-cost with the lowest possible overhead. There was neither interest in nor need for intricate legal agreements or complex contracts. Finally, to avoid any risk of triggering undue regulatory oversight, the AOAOs have no desire to create a full-scale private utility but rather an entity with a limited scope that exists solely to serve the owners thru cost sharing of distribution and billing of bulk irrigation water.

A nonprofit or an “association of associations” was reviewed. The attractive aspect here is that it’s simple and potentially more eligible for infrastructure grants in the future. The downside is that the form may not be as conducive to democratic governance and transparency as a Co-op. One of the initial attempts to resolve this issue was the three AOAOs created a “Master Board” of all three Huis. The unit owners felt a lack of accountability and frustration with that process.

It was determined the aspects of a Co-op would best suit the needs and desires of the group. In mid-2008, a Steering Committee was formed comprised of Paul Huber from Hui I, Sue Liddle from Hui II, and Ray Maki from Highway Lots. They began working with USDA Rural Development in Hilo to form a co-op. Then in late 2009, it retained NWCDC via a USDA grant for more comprehensive business development services.

It’s strongly encouraged, that if the reader has concerns about the outcomes of the above thinking, to refer to the Steering Committee’s thinking and considerations of potential business models in:

- Appendix I – Moloa`a Hui Lands Irrigation System Business Options
- Appendix II - Benefits and Tradeoffs of a user-owned water system

#### **Mission Statement:**

The following is from the Co-op’s initial planning documents:

*This cooperative organization is set up to receive and distribute water for the owner/members of Hui I, II, and the former Hui III herein after to be referred to as the Highway Lots, repair and maintain water infrastructure on all above mentioned lands, be responsible for meter reading and billing and pursue funding for future upgrades.*

*We plan to operate as a 501(c)12 Nonprofit (Mutual Ditch and Water Company) with the intent of operating an “at cost” water system.*

*The Cooperative delivers non-potable (irrigation) water suitable for irrigation of agricultural or nursery crops. The Cooperative makes no specific recommendations and assumes no liability for damage to crops caused by the water or failure to deliver water for any reason.<sup>3</sup>*

#### **Similar Ventures around the Islands**

The challenges faced by the unit owners of Moloa`a Hui Lands are not isolated.

Just south of MHL’s community is the East Kauai Water Users’ Co-op, which is a system of reservoirs and ditches serving an area of approximately 6,000 acres above Kapaa. This system was previously operated

---

<sup>3</sup> Mission statement amended and approved at a July Steering Committee meeting.

### 8.10.10 - Draft

by the East Kauai Water Company, which closed when Amfac ceased farming sugar on its plantation. It has been:

*forming the water cooperative, securing state permits for the system and pursuing temporary subsidiary funding from the government for operations and maintenance as well as long-term funding for capital improvement projects.*<sup>4</sup>

Of these ventures, only the East Kauai Water Users' Co-op has extensive information about it publicly available on the web.

Near Kaunakakai on Molokai, Kawela Plantation Homeowner's Assn. has been revamping its water utility. For more, read, "Pupukahi i holomua—unite to move forward" here:

[www.rcac.org/story.aspx?35](http://www.rcac.org/story.aspx?35)

On the Big Island in Pahala, there is a Ka`u Agricultural Water Cooperative District which is preparing to spend \$6,700,000 to bring some 30 water source tunnels back into service.<sup>5</sup>

Aging, plantation built, decentralized water systems are a statewide issue being addressed in a variety of ways, and the above projects are all predicated on locally organized, landowner activism.

---

<sup>4</sup> For more info, see: [www.eastkauaiwater.org](http://www.eastkauaiwater.org)

<sup>5</sup> Not much is available on the web about this project, this information was taken from Mazie Hirono's Appropriations Request for this project. Accessed May, 2010:  
[www.hirono.house.gov/fy2011appropriations/ag25.htm](http://www.hirono.house.gov/fy2011appropriations/ag25.htm)

### 3. Description of the Market/Opportunity

The Steering Committee has determined they are better served as one entity to receive and distribute monies related to their water system.

#### Customers and Market Size

The current and foreseeable customers for the water will be limited to unit owners in the three Moloa`a Hui Owners Associations. The only target market for the irrigation water are Hui I, II and III (i.e. Highway Lots Subdivision). Below is a chart outlining the three AOA's characteristics.

**Chart 3: Description of Huis**

As of June, 2010	Units	Individual Owners	Acres	AOAO @ \$5 per ac*	AOAO @ \$3 per ac
Hui I	44	19	265.9	\$1,329	\$798
Hui II	18	17	298.4	\$1,492	\$895
Hui III – Hwy Lots	13	13	32.5	\$162	\$98
<b>Total</b>	<b>75</b>	<b>49</b>	<b>596.8</b>	<b>\$2,984</b>	<b>\$1,791</b>

AOAO's currently collect dues for infrastructure; of this \$5, approximately \$3 is dedicated to water. After the proposed co-op assumes billing, these funds will be offset by the billing of the co-op. It will be up to the AOAOs to determine the appropriate reduction of fees. These are just equivalent amounts and the irrigation co-op will no longer be charging on a per acre basis.

Several distinctions can be drawn from these numbers:

1. Hui III represents a very small amount of land and each unit equals an owner
2. Hui II and Hui I represent very similar amounts of acreage and owners
3. Hui I has significantly more units than owners and likewise has a number of land lessees; it's worth noting these are frequently other Hui farmers

#### Pricing Structure

It's initially assumed the monthly bills will contain three key cost components:

1. Water Usage Charge
2. Service Charge
3. Maintenance/Reserve Charge

#### Water Usage Charge

The current charge is \$1.30 per 1,000 gallons billed by Loka, metered by a master meter. This cost will directly pass thru to members plus an additional margin of \$0.24 for maintenance and will compliment the Maintenance Charge.

#### Service Charge

### **8.10.10 - Draft**

The service charge is a fixed per unit fee which is a pass-thru of costs associated with meter reading, billing, banking, insurance, bookkeeping. Currently estimated at \$38.50. This fee may change each year based on the fixed expenses incurred by the Co-op. The Board will vote to accept an annual budget which details anticipated expenses each year at a member meeting.

#### **Maintenance/Reserve Charge**

The maintenance charge is a fee based on an estimate of the monies needed to maintain the upkeep of the system spread out over the life of the system. Currently estimated at \$14.13. This fee is intended to be used to pay for facility-related upkeep, repairs, fixing lines, painting the tank and generally accumulating a prudent reserve. This may replace a portion of the monthly fee based on acreage currently being paid in the AOA dues designated for water in the AOA's annual budget.

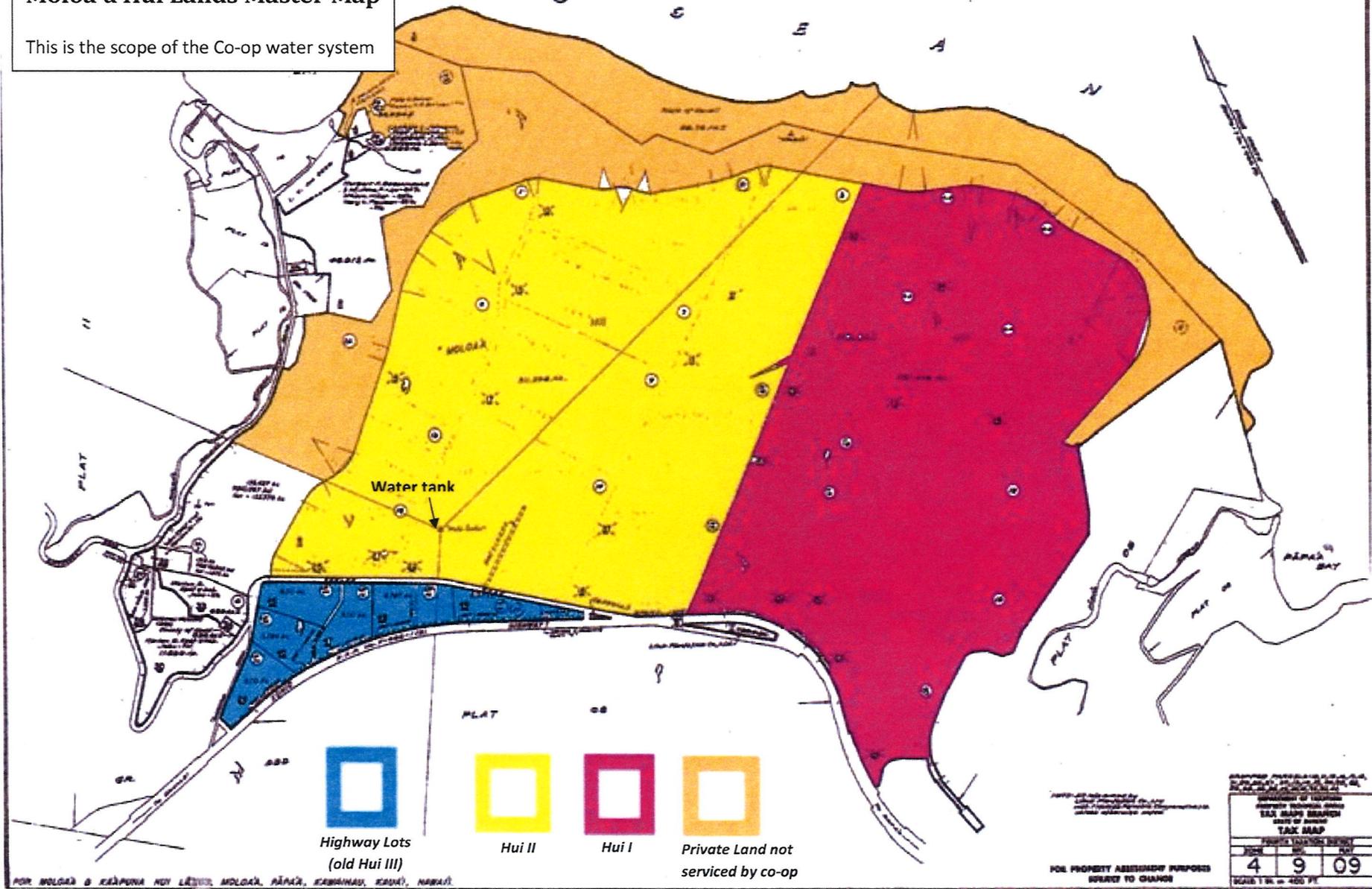
#### **Additional Potential Pricing Mechanisms**

##### **Special Assessments**

In the event the prudent reserve set aside is inadequate, a special assessment may be required. Emergency Assessments will be for Capital Improvements and would only be required in the event that the reserves are not adequate. The goal of the project is to create a prudent reserve to avoid charging a special assessment.

# Moloa'a Hui Lands Master Map

This is the scope of the Co-op water system



## 4. “Competitor” Analysis and Competitive Advantage

The existing system operates without easy access to substitution or alternative supplies of water or members. In this context, the authors view competition as either members opting out or threats to the existing supply.

### Demand Risks

As a private water system there is little direct competition threat but most risks of attrition stem from nonparticipation; they are:

- Individual landowner wells; not allowed by Covenants, Conditions and Restrictions
- Landowners could relocate to other lands on Island(s)
- Landowners could refuse to join the proposed Co-op en masse

It’s worth reiterating, the currently utilized system is the only system available for access to water. The water lines initially run from State land through the property of Jeffery Lindner’s, a neighboring landowner. The water lease is held by Lindner, who is also the current wholesaler.

The viability of individuals drilling wells is questionable because of the cost, permitting and water rights issues. However, once a co-op entity, the Co-op can decide to drill a well to service the entire system. Lastly and unlikely, individual consumers could refuse to join but thus far the AOA members indicate strong support for the concept.

### Supply Risks

One of the largest external threats is the loss of the State lease by others.

There are four legal entities who are party to the Water Supply Agreement between Jeffery Lindner and MHL Inc.; these parties are:

- Lindner Water Reserve
- Meadow Gold Dairies
- County of Kaua`i
- MHL Inc.

According to the agreement, the State Well is believed to have a capacity approximately 1,076.75 million gallons per year (or MGPY).

### Water Supply Agreement

The following chart is a breakdown of the parties listed in the current agreement with the State. This agreement will need to be either assigned to the proposed Co-op or renegotiated; the attorney is currently reviewing these options. There are some legal uncertainties and ambiguities in the existing contract language which could require a due diligence review, e.g. specification of “proportionate basis” (see agreement quotation following chart).

**Chart 4: Current Parties to Water Supply Agreement**

Party	Commitment Quantity max (in MGPY)	Commitment Quantity max (in MGPD)	Commitment	Notes
Lindner Water Reserve	730	2	First Right	
Meadow Gold Dairies	14.6	.04	Obligation	
County of Kauai	1.825	.005	Obligation	
MHL Inc.	365	1	Willing	Proportionate to other obligations
<b>Total</b>	<b>1,111.425</b>	<b>3.045</b>		

Note, the State Well capacity and permit capacity leave a gap of 34.675 MGPY if all parties draw down 100% of their commitment. The current water agreement specifically reads:

*Lindner may revise these delivery limits upward or downward at the beginning of any month based on water availability and draw down measurements on the well aquifers. Lindner shall only be required to provide water to Moloaa Hui to meet the Moloaa Hui Water Commitment in excess of such water necessary to meet the Lindner Water Reservation. If there is insufficient water to meet the Moloaa Hui Water Commitment and Meadow Gold Water Commitment, then water will be distributed on a proportionate basis to these three users.*

Some conclusions to be drawn here are that in the event of a water shortage, Moloaa Hui Lands are last in line and Lindner could potentially change the water availability with almost no warning. These points are going to need to be addressed in a long term plan with mitigation and/or contingency scenarios in place.

It will be a priority to renegotiate the agreement between the Co-op and Loka/Lindner.

**Advantages**

The Co-op will enable members to explore and execute other options not available to landowners as individual. The co-op will allow long-term strategic vision to create ideas for changing the way it receives water, i.e. drilling its own well and using innovative system changes to ultimately lower costs.

The current customers are serviced by a system that was set up on an ad hoc basis to ensure all properties have access to water. The proposed transition to co-op ownership is supported by most parties.

A key objective of the Co-op is to provide transparency and accuracy in an updated system of accounting for all owners of the Co-op. By keeping better track of incoming water and individual usage, it will

### **8.10.10 - Draft**

enable users a better way to control costs. These combined factors should make it easy to receive support from the current unit owners.

## 6. Operations

The Co-op will assume the existing agreements with current vendors which will be overseen and managed by the Board. Moving forward, the Board will review vendor relationships on an ongoing or annual basis by bid and selection. Currently, there is a single vendor which reads the meters, invoices the customers and pays all bills, e.g. to Loka.

The Co-op will operate the existing water system by implementing a more transparent billing system. A bookkeeper will be utilized for keeping track of incoming and outgoing money and keeping track of billing of water usage. He/she will also be in charge of the Co-op bookkeeping in QuickBooks.

The Board will require a plan for the maintenance of the Co-op's assets, i.e. pipes, etc. The plan will need to outline:

- which assets or parts thereof will require repair or replacement
- when the infrastructure elements will need prioritized replacement
- at what cost

Outlining these aspects will assist in determining a forecast of future capital projects. When managing the contributions or assessments of the Co-op's members, it's essential to provide an accurate forecast.

Below is an initial overview. As soon as possible during startup, the Co-op will retain a water systems professional to provide a detailed water system assessment, and based on that assessment, an ongoing maintenance plan. This information can be utilized to determine a reserve budget.

Any major construction projects will be a bid and contract for system upgrades.

Below is a quick list of projects completed within the last 10 year and a brief plan of anticipated projects and estimated costs.

**Chart 5: Maintenance Plan**

	Recently completed	Annual Maintenance	Short term Projects	Forecasted Projects	Long Term projects
<b>Pipes</b>	Repair leaks in above ground steel, replace valves, replace pipes with plastic - \$23K	Patch misc. leaks - \$1.5K	Leak at valve station - \$3-5K	Replace 1,000 feet of steel with plastic - \$25K	Line replacements on an ongoing basis
<b>Tank</b>	Restore and paint tank - \$35K	Maintain tank - \$3K	Patch roof and touch up paint - \$10K	Paint tank - \$30-40K	Replace roof with aluminum dome - \$369k
<b>System</b>				Audit of system - \$3K	

**Potential Costs of Regulations**

The PUC Certificate of Public Convenience and Necessity application process could potentially cost between \$10-20,000 in time and paperwork. It would require a public hearing, engineers to map the system, business professionals to run financial projections and this is if it's not contested by an intervening party. A potential consumer can stall the process and possibly make it go to a full hearing before the PUC if they didn't like the direction. Then, after the system is operational in order to increase rates, the co-op could expect a cost of \$5,000 to \$10,000 per rate increase request. One benchmark is KIUC, which is spending around \$2 million for its current rate case or about \$100 per member.<sup>6</sup>

For this reason, the Steering Committee seeks 100% enrollment by current unit owners.

**Capital Reserves**

Maintaining reserves will ensure the co-op is prepared to invest in required upgrades or cope with any unforeseen breakdowns. A resident in Hui I, Jim Garrison, is the owner/operator of a small water company on the Mainland.<sup>7</sup> The following was an excerpt from an email communication with him:

*The water Co-op ideally would have a capital reserve account of \$100,000. After that is achieved, the Co-op should raise \$20,000 to \$30,000 annually for capital expenditures. That money should be spent first on problem areas such as known leaks, tank repairs and undersize mains.*

*When those problems are solved, then the Co-op should start replacing infrastructure based on age or known soon-to-fail components. It is important to get ahead of the depreciation game.*

*Ideally you never spend your capital reserve and you never do more work than you bring into the capital account from the previous year.*

***Remember, no matter how well you plan, you will have unexpected emergencies.***

<sup>6</sup> Based on phone conversation and email exchange with David Proudfoot, May 2010.

<sup>7</sup> Burton Water Company is located in Vashon, WA: [www.burtonwater.com](http://www.burtonwater.com)

### **8.10.10 - Draft**

This initial estimate is a starting place and will need to be substantiated with a professional water system assessment and reserve study.

#### **Sales and Pricing**

The Steering Committee has consistently expressed the following values be employed in any consideration of water rates and cost allocation. They seek to as much as possible be:

- Low cost
- Realistic with expenses
- Transparent
- Equitable
- Clear and simple

When a situation has arisen, these have been the guiding principles in decision making and ought to be a preamble to any pricing structure.

#### **Differences in Water Accounting Between Wholesale and Retail Usage**

There is a monthly discrepancy between Loka's water meter usage invoiced to customers and the sum total of the water users' meters. The final charge to the end consumer doesn't represent the total gallons they used but rather their portion used out of the total gallons consumed by the entire system. This discrepancy ranges from 0.4 to 2.8 million gallons per month or an average of 1.6 million gallons per month. Annualized, this equates to 19.2 million gallons difference worth \$24,960 at \$1.3 per 1,000 gallons. Lately, this number has been trending closer to 3 million gallons.

Each consumer pays for that amount. This means that either a few customers are subsidized by the whole system or this is recoverable thru efficiency. Even if 15% of this resource can be reclaimed, these funds are a resource that would be better deployed in upgrading the system. Note, 15% of \$25,000 are \$3,750.

The reasons for this difference are theorized as a combination of the following:

- Known and unknown leaks
- Old and inaccurate meters
- Theft

The newly formed co-op entity will be focused on identifying and solving this issue through the following means:

1. Installation of a master meter to monitor the water coming into the system; this will ensure the co-op isn't being charged for water that has leaked outside of its responsibility
2. Retain a water system specialist to review the system for existing leaks
3. Explore calibration or replacement of members' meters; or the setting of a standard for consumer meters

## 7. Preliminary Water Systems Plan

Below are outlines of the key aspects of the water system, they are the source, storage, treatment, distribution, and the service connections.

**Source:** The system's water originates on the Dept. of Land and Natural Resources of the State of Hawaii Well No 1020-20/Moloaa Well No 1. The permit to this well is held by Loka, who supplies the residents of Moloaa Hui.

**Storage:** There is a 500,000 gallon steel tank located in Hui II. The tank and the small piece of property its located on is owned by MHL Inc, i.e. Mike Strong. A long-term lease agreement is currently being negotiated between him and the proposed Co-op's Steering Committee. The initial price for this lease agreement is projected to be \$500 per month. See Appendix III for a picture of the tank.

**Treatment:** The water is non-potable irrigation water, treatment is not currently necessary for agricultural use. Individual members seeking to drink the water are responsible for their own treatment system.

**Distribution:** From the community tank, the water is dispersed via pipes to the individual residents.

**Service Connections:** Each unit has one or multiple meters.

Currently there is no lease agreement or no charge for the lease of the tank. To ensure everybody is on the same page, the Co-op needs to identify and negotiate the costs associated with and terms of the lease with MHL, Inc. The Hui documents place responsibility for maintenance on the Co-op. The members could explore the possibility of purchasing the tank.

## 8. Management and Personnel

Below is a summary of key personnel and their duties, and any advisors, their experience and their contributions to the management of the company.

### Current Operations

Currently the MHL Inc. retains Tom Hitch to manage the billing and meter reading. Previously, he serviced the system, fixed any leaks, and provided general maintenance. Hitch bills MHL Inc. and his invoice is added proportionally into the overall water bills. One of his key assets is his familiarity with many of the water systems on the Island, the Moloa`a system and the community as a whole.

Tom employs two certified and licensed water managers, who come off-hours to read the meters and master meter. The readers provide the data to Tom, who inputs into a spreadsheet, compiles it and records it. He then sends the billing data to a bookkeeper in Honolulu who creates and mails out the individual bills. Checks return to her via a Post Office box, she records them in a book and deposits the checks. Hitch pays Loka for the wholesale water and himself for meter reading and billing \$20 per meter or \$1,200 per month.

Additionally, bids for meter reading have been sought as part of an ongoing process of vendor due diligence. The final decisions will be made the newly elected Board; which will need to conduct their own process.

### Descriptions

Here are some starting job descriptions for manager, bookkeeper, meter reader and billing. Currently the meter reading, the generation of the monthly bill, the depositing of payments and the subsequent payment to the water supplier are separate from the category listed as bookkeeping.

The Co-op will have three key sets of duties which require management resources. These could be sourced in one of several ways:

1. Retain water system management firm specializing in private water systems
2. Hire a part-time manager to conduct all three duties; i.e. Manager/bookkeeper/meter reader
3. Hire a manager to supervise and ensure that all duties are completed
4. Combination of last two options; i.e. Manager/meter reader which contracts with a bookkeeper

Note, bids for contracted vendors, i.e. bookkeeping and meter reading, ought to be sought out as part of an ongoing process of vendor due diligence.

### Manager

At the direction of the Board, a General Manager will be hired. This will be the on-the-ground individual who will:

- Oversee the entire system
- Ensure all reading/billing and bookkeeping occurs
- Provide an on-call contact for members with an issue, e.g. leak

### 8.10.10 - Draft

- Establish a maintenance schedule and infrastructure repair and replacement schedule in conjunction with the Board

#### **Bookkeeper**

The bookkeeper is responsible for maintaining the general ledger for the operation of the Co-op. The bookkeeper may also be in charge of receiving information from the meter readers, billing, banking, and paying water usage bills. Currently the meter reading and billing are one entity and are involved in billing, banking and paying wholesale supplier, (i.e. Loka). The Steering Committee recommends a separation of these duties but the final decision will be made by the Board.

#### **Meter reading and monthly billing**

The meter reader will:

- Read meters monthly, in a timely manner and at the same time as the master meter.
- Furnish meter reading information to the Bookkeeper.

#### **Advisors**

For any consultant working for the Co-op, especially legal and accounting, it is recommended to select professionals who are familiar working with a co-op business.

**Legal:** The Steering Committee of the proposed Co-op has retained David Proudfoot, Esq. of Belles, Graham, Proudfoot, Wilson & Chun, LLP, in Lihue, Kaua'i, Hawaii. This firm was selected for the following reasons. First, his clients include the only electric co-op in Hawaii. Second, the firm's emphasis on "Condominium documentation and Association representation" and "Business advice and formations" are directly relevant and applicable to the challenges a Co-op may face.<sup>8</sup>

**Business Consultant:** The Co-op has retained Northwest Co-op Development Center to provide business planning and Board training to the newly formed entity. NWDC provides business development services to new and existing Co-ops throughout Hawaii and the tri-state Northwest.

**Insurance:** It's anticipated the Co-op will require two insurance policies. One will be for general liability insurance, which is expected to be approximately \$1,000 per year. The other will be Directors and Officers (or D&O) Insurance, expected to be approximately \$800 per year. The Steering Committee has requested a quote from Business Insurance Services.

**Accountant:** Janet Hara, CPA in Hilo, Hawaii with Taketa, Iwata, Hara & Associates, LLC has submitted a bid to set up the charter of accounts and to provide initial follow-up. Hara has provided services to multiple co-ops around the Islands. She recommends a three-step process:

1. Set up for \$500
2. Webinar to discuss internal controls for \$500
3. First Quarter review to ensure bookkeeping is on track for \$300

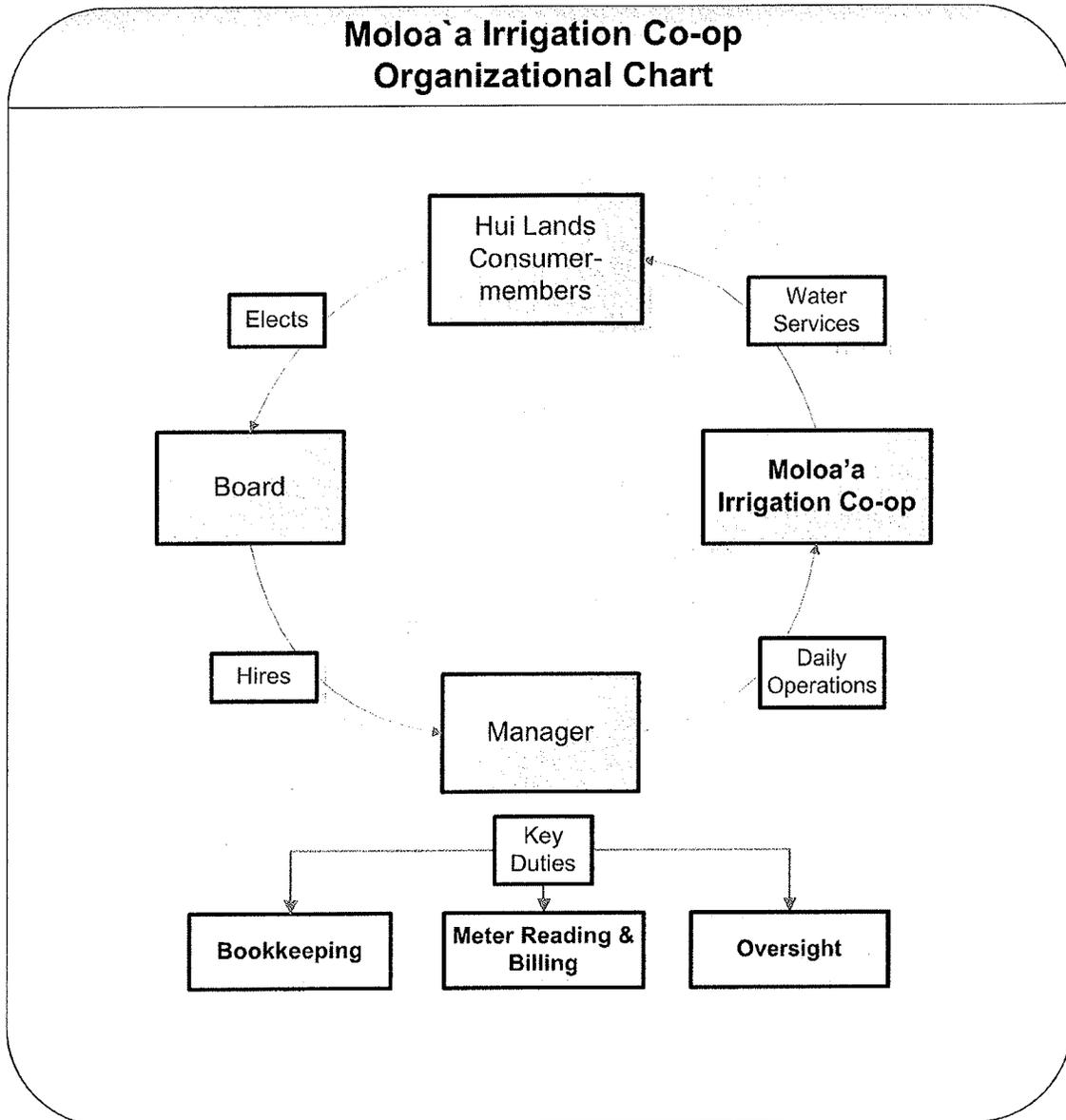
Then, on an as-needed basis, e.g. filing a return at <\$1,000.

---

<sup>8</sup> For more info, see: [www.kauailaw.net](http://www.kauailaw.net)

From here, the manager or bookkeeper could maintain the books into the future.

**Chart 6: Organizational Chart**



## 9. Development Schedule

The following is the sequence of events to proceed

July

- Resolve any legal question, such as:
  - Transfer of assets and responsibilities from AOAO
  - Review Articles of Incorporation
- Meet with Steering Committee to review draft plan face-to-face
- Complete draft business plan and financial projections

Aug.

- Complete draft business plan and summary for potential members
- Community-wide meeting on the 22<sup>nd</sup> to present plan and brief prospectus; hold go, no-go decision
- Legal issues:
  - Negotiate tank lease agreement
  - Finalize Articles of Incorporation
  - Review of bylaws
- Incorporate Business and convene Founding Board

Sept

- Get a bank account and PO Box
- Draft water supply agreements
- Conduct membership drive
- Begin work on legal issues related to contracts:
  - Renegotiation or assignment of water supply agreement
  - Negotiate tank lease agreement

Oct.

- Seek bids from all vendors and potential vendors
- Continue membership drive

Nov

- Retain CPA to set up chart of accounts

Dec

- Ensure systems are in place for launch

## 10. Financial Data

Below are outlined the assumptions, the start up costs, ongoing annual costs and a year of cash flow and profit and loss projections.

### Assumptions/Notes

In the creation of the financial projections, the following assumptions were made:

- A capital contribution of \$39,630 will be provided by the AOA's
- Billing data from eight months of water usage from 2009-10 were used to estimate a year of water usage.
- Initial estimates are that an additional \$25,000 per year will need to be placed into a reserve account in order to pay for needed maintenance and prepare for expected future upkeep.

Additionally, to-date there isn't a single reserve account setting aside a savings to update and improve the system's hardware. Therefore, this number must be substantiated by an engineer's study to assess the water system; cost estimated at \$5,000.

### Start up costs

It's anticipated the direct start up costs will be less than \$10,000. These will include:

- \$1,500 for a CPA to set up the chart of accounts and oversee the bookkeepers set up of internal controls.
- \$125 for a bookkeeper to set up the billing system.
- \$7,500 in legal fees resulting from research, incorporation, negotiating lease and water agreements; note, these costs have been offset by \$2,500 in USDA grant funds so the co-op's share is expected to be \$5,000.

### Ongoing Annual Operating Costs

It is projected annual operating costs will be \$26,500.

- |   |          |
|---|----------|
| • Read Meters/Banking (\$20 per meter): | \$14,400 |
| • Tank lease:                           | \$6,000  |
| • Manager's stipend:                    | \$2,400  |
| • Bookkeeping/CPA:                      | \$1,200  |
| • Liability Insurance:                  | \$1,000  |
| • Directors & Officers Insurance:       | \$800    |
| • Office supplies:                      | \$500    |
| • Banking Fees/Checking Account:        | \$60     |

Total estimate annual operating costs: **\$26,360**

By month: \$2,196 (or \$26,360/12)

By member per mo: \$37

Note this figure doesn't include the development of a reserve account.

### Balance sheet

A balance sheet is yet to be completed at this time but it must demonstrate both the ongoing growth of the reserve account and nominal member equity.

**8.10.10 - Draft**

**First Year by Month**

	<i>Pre-Start</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Total</i>
<b>Beginning Cash Balance</b>	\$35,505	\$34,777	\$35,227	\$34,150	\$34,926	\$35,819	\$37,723	\$39,392	\$40,828	\$41,474	\$41,329	\$40,837		
<b>Income:</b>														
Wholesale Water	\$10,396	\$8,658	\$7,424	\$10,419	\$11,055	\$16,527	\$15,261	\$13,993	\$9,714	\$5,433	\$3,550	\$7,314		<b>\$119,745</b>
Maintenance Charge	\$1,919	\$1,598	\$1,371	\$1,924	\$2,041	\$3,051	\$2,817	\$2,583	\$1,793	\$1,003	\$655	\$1,350		<b>\$22,107</b>
Service Charges	\$2,310	\$2,310	\$2,310	\$2,310	\$2,310	\$2,310	\$2,310	\$2,310	\$2,310	\$2,310	\$2,310	\$2,310		<b>\$27,720</b>
Maintenance Fee	\$848	\$848	\$848	\$848	\$848	\$848	\$848	\$848	\$848	\$848	\$848	\$848		<b>\$10,174</b>
Other:	\$39,630													<b>\$39,630</b>
<b>Total Income</b>	<b>\$39,630</b>	<b>\$15,473</b>	<b>\$13,414</b>	<b>\$11,953</b>	<b>\$15,501</b>	<b>\$16,254</b>	<b>\$22,736</b>	<b>\$21,236</b>	<b>\$19,734</b>	<b>\$14,665</b>	<b>\$9,593</b>	<b>\$7,364</b>	<b>\$11,822</b>	<b>\$219,375</b>
<b>Available Cash Balance</b>	<b>\$39,630</b>	<b>\$50,978</b>	<b>\$48,191</b>	<b>\$47,180</b>	<b>\$49,651</b>	<b>\$51,180</b>	<b>\$58,556</b>	<b>\$58,959</b>	<b>\$59,127</b>	<b>\$55,493</b>	<b>\$51,067</b>	<b>\$48,693</b>	<b>\$52,659</b>	
<b>Expenses:</b>														
Wholesale Water cost	\$10,396	\$8,658	\$7,424	\$10,419	\$11,055	\$16,527	\$15,261	\$13,993	\$9,714	\$5,433	\$3,550	\$7,314		<b>\$119,745</b>
Read Meter Charge	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200		<b>\$14,400</b>
Liability Insurance	\$83	\$83	\$83	\$83	\$83	\$83	\$83	\$83	\$83	\$83	\$83	\$83		<b>\$1,000</b>
Insurance/D&O	\$67	\$67	\$67	\$67	\$67	\$67	\$67	\$67	\$67	\$67	\$67	\$67		<b>\$800</b>
Fidelity Bond	\$27	\$27	\$27	\$27	\$27	\$27	\$27	\$27	\$27	\$27	\$27	\$27		<b>\$326</b>
Legal Fees	\$3,500	\$1,000	\$0	\$1,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		<b>\$5,500</b>
CPA	\$500	\$500	\$0	\$300	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		<b>\$1,300</b>
Book keeping	\$125	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100		<b>\$1,325</b>
Manager	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200		<b>\$2,400</b>
Banking	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5		<b>\$60</b>
Taxes & Licenses														<b>\$0</b>
Office Supplies	\$40	\$40	\$40	\$40	\$40	\$40	\$40	\$40	\$40	\$40	\$40	\$40		<b>\$480</b>
Tank Lease	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500		<b>\$6,000</b>
Reserve Account	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083		<b>\$25,000</b>
Other:														<b>\$0</b>
<b>Subtotal</b>	<b>\$4,125</b>	<b>\$16,201</b>	<b>\$12,963</b>	<b>\$13,030</b>	<b>\$14,725</b>	<b>\$15,361</b>	<b>\$20,833</b>	<b>\$19,566</b>	<b>\$18,299</b>	<b>\$14,019</b>	<b>\$9,738</b>	<b>\$7,856</b>	<b>\$11,620</b>	<b>\$178,336</b>
<b>Other Cash Out Flows:</b>														
Capital Purchases														<b>\$0</b>
Other:														<b>\$0</b>
<b>Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Total Expense</b>	<b>\$4,125</b>	<b>\$16,201</b>	<b>\$12,963</b>	<b>\$13,030</b>	<b>\$14,725</b>	<b>\$15,361</b>	<b>\$20,833</b>	<b>\$19,566</b>	<b>\$18,299</b>	<b>\$14,019</b>	<b>\$9,738</b>	<b>\$7,856</b>	<b>\$11,620</b>	<b>\$178,336</b>
<b>Ending Cash Balance</b>	<b>\$35,505</b>	<b>\$34,777</b>	<b>\$35,227</b>	<b>\$34,150</b>	<b>\$34,926</b>	<b>\$35,819</b>	<b>\$37,723</b>	<b>\$39,392</b>	<b>\$40,828</b>	<b>\$41,474</b>	<b>\$41,329</b>	<b>\$40,837</b>	<b>\$41,039</b>	

## 11. Risk Analysis

Any new business venture will have risks. It will be the Board's role to identify, assess, plan and implement risk management strategies; it will undertake this process with or without an intentional formalized plan. All businesses consciously avoid, reduce, retain or transfer risk through contracts, insurance policies, smart practices, etc. It is important to note that funders/financiers may require a risk management strategy.

The Co-op ought to consider what incidents in the past were "near misses". Then, explore the possible causes and effects, potentially down to the fifth level ("5 whys").<sup>9</sup> Finally, explore what possible solutions could be proposed. Note, this is an ongoing task which could be part of the annual strategic planning process or delegated to the individual assigned with management. Eventually a comprehensive disaster preparedness plan ought to be created to respond to foreseeable but unlikely events.

**Potential Problem:** Infrastructure: large break in water main line and lack of sufficient reserves to fix the problem.

**Possible Causes:** Aging infrastructure combined with thin margins.

**Effect:** Requires either an assessment to owners or a loan to debt finance repair. This event has the potential to be an unexpected negative impact to all owners.

**Proposed Solutions:** Keep an adequate reserve of money for such a problem. Research and plan for ongoing capital expenditures.

**Potential Problem:** Loss of access to water source/supply.

**Possible Causes:** Lindner no longer has a lease on spring or gives back the permit to the State.

**Effect:** Breach of service and erosion of trust in the confidence of the Co-op.

**Proposed Solutions:** Have long-term plans in place for alternatives, e.g. digging a separate well along with pumps to deliver water, and actively manage relationships with Lindner and the State. Explore a long-term goal of acquiring lease on water supply.

**Potential Problem:** Reduction in availability of overall water supply.

**Possible Causes:** Lindner or other obligations draw increase demand on limited supply; Lindner currently hold the master waters supply agreement from the State. Co-op has limited control over the source. No well capacity tests have been preformed and there is limited data available on total water availability and consumption.

**Effect:** Less water available for Co-op members.

**Proposed Solutions:** Co-op could pro-actively participate in the management of the water source, e.g. installation of sensor on master pump. Co-op could have contingency conservation plans in place. The co-op could closely monitor the supply and consumption data; including the impact of efficiency upgrades.

---

<sup>9</sup> The goal of applying the 5 Whys method is to determine a root cause of a defect or problem. For more, please see: [http://en.wikipedia.org/wiki/5\\_Whys](http://en.wikipedia.org/wiki/5_Whys)

**8.10.10 - Draft**

**Potential Problem:** Conflict between larger landowners and smaller landowners

**Possible Causes:** Different interests in pricing structure

**Effect:** Inability of Co-op to make timely decisions and lack of overall buy-in of membership

**Proposed Solutions:** Transparent and agreed-upon pricing

## 12. Appendices

- **Appendix I** - Moloa'a Hui Lands Irrigation System Business Options
- **Appendix II** - Benefits and Tradeoffs of a user-owned water system
- **Appendix III** – Pictures of System Components

Other items potentially needed:

- Any Other Materials Needed to Support Assumptions in the Business Plan
- Resumes
- Relevant Legal Documents
- Market Rate Surveys
- Industry Studies
- Copies of Licenses, Leases and Contracts
- List of Assets Available
- Blueprints and Plans
- Letters of Support From Future Customers

### Appendix I - Moloa'a Hui Lands Irrigation System Business Options

Type	Legal Options	Governance	Pros	Cons	Examples
As-is	N/A	AOAOs negotiate with MHL Inc.	<ul style="list-style-type: none"> <li>• Low initial cost</li> <li>• Political comfort for parties involved</li> <li>• Would not bring system or arrangements to PUC's attention</li> <li>• Playing a passive role is easier than being pro-active</li> </ul>	<ul style="list-style-type: none"> <li>• Issues with current arrangement among users, such as:</li> <li>• Possible lack of transparency and accountability</li> <li>• Not positioned for the long-term</li> <li>• MHL, Inc. stated a desire to leave relationship</li> <li>• Varying degrees of functionality among current parties</li> <li>• No direct input with current vendors (e.g. Hitch)</li> </ul>	N/A
<b>Consumer Co-op</b>	<ul style="list-style-type: none"> <li>• Consumer Co-op Assn. (HRS 421c)</li> </ul>	Consumers elect Board; one member, one vote basis	<ul style="list-style-type: none"> <li>• Contributes to sense of collective equity of water system</li> <li>• Creates a new third party to operate and manage system</li> <li>• Previous planning brought AOAOs to conclude this was the best choice and tentatively approved the concept</li> <li>• Built in transparency and democratic operation</li> <li>• Existing models with other utility co-ops</li> <li>• Independent business with its own rights</li> </ul>	<ul style="list-style-type: none"> <li>• 100% buy-in uncertain; this may complicate PUC exemption</li> <li>• Potentially increase time investment for decisions</li> <li>• Several MHL farmers had negative experience with papaya growers co-op</li> <li>• Co-ops struggle without sense of collective equity which is not easy to build</li> </ul>	<ul style="list-style-type: none"> <li>• Kauai Island Utility Co-op (KIUC)</li> <li>• East Kauai Water Users Co-op (except for billing differences)</li> </ul>
<b>Assn. of AOAOs</b>	<ul style="list-style-type: none"> <li>• Consumer Coop Assn. (HRS 421c)</li> <li>• Nonprofit</li> <li>• AOAO owned water co-op (3 members, all AOAOs)</li> </ul>	AOAOs represent consumers; Board appointed or elected via AOAO votes	<ul style="list-style-type: none"> <li>• 100% consumer buy-in guaranteed; ease of PUC exemption</li> <li>• Less organizational development change required than co-op; uses AOAO's documents regarding common elements ownership</li> <li>• Adequate to meet most needs of water users</li> <li>• Less bureaucratic maintenance than co-op</li> </ul>	<ul style="list-style-type: none"> <li>• HWY lots subdivision participation unclear; most likely would need to form a Board of Directors</li> <li>• Less direct involvement from consumers; not as democratic, as individuals lose choice to belong or not</li> <li>• Less independence; governance through AOAO Assocs.</li> <li>• Not the democracy originally envisioned</li> </ul>	
<b>Private Water Company</b>	<ul style="list-style-type: none"> <li>• Comprised of AOAOs on a cost plus basis</li> </ul>	Dictated by operating agreements	<ul style="list-style-type: none"> <li>• Adequate to meet most needs of water users</li> <li>• Could simplify or complicate collection of money</li> </ul>	<ul style="list-style-type: none"> <li>• Might run like business without direct or formal input by consumers</li> <li>• Might require PUC scrutiny</li> <li>• Might not be able to obtain 501(c)12 status</li> </ul>	<ul style="list-style-type: none"> <li>• Burton Water Company</li> </ul>

## **Appendix II – Benefits & Tradeoffs of a user-owned water system**

### **Benefits of user-owned water system**

1. Members create the System Rules
2. Decisions regarding governance and strategy are made or influenced by the group
3. The system is better maintained
4. Sense of Ownership
5. Energy In = Benefits Out
6. On behalf of members, Board controls the monthly charges
7. Members control their own destiny
8. All members share equally in the benefits
9. Democratic decision making; one person, one vote basis
10. Water stays affordable and as close to at-cost as possible
11. Sense of comradeship and accomplishment
12. Not paying into a for-profit water company
13. Increased transparency

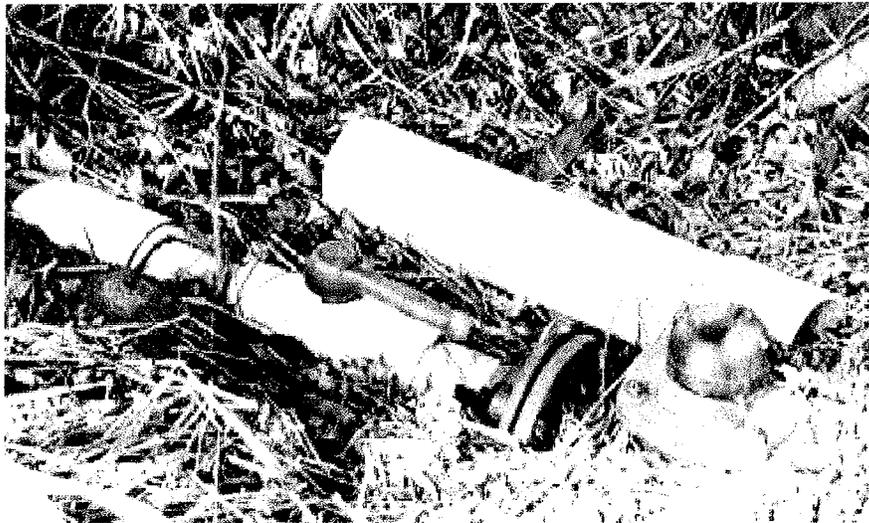
### **Tradeoffs of a user-owned water system**

1. Because they own it, the water users' expectations will increase
2. More scrutiny by other water users
3. All members gain, whether they contribute or not
4. Volunteer management can be challenging
5. Leaders risk becoming overly involved and may risk burn out
6. More hassle and work; board is ultimately responsible to delegate
7. Required meetings and time load for members
8. Directors may think they're the manager
9. Frustration
10. Uncertainty because it is new
11. Ups and downs from increased responsibility

### Appendix III – Pictures of System Components



*Line off meter to distribute water*

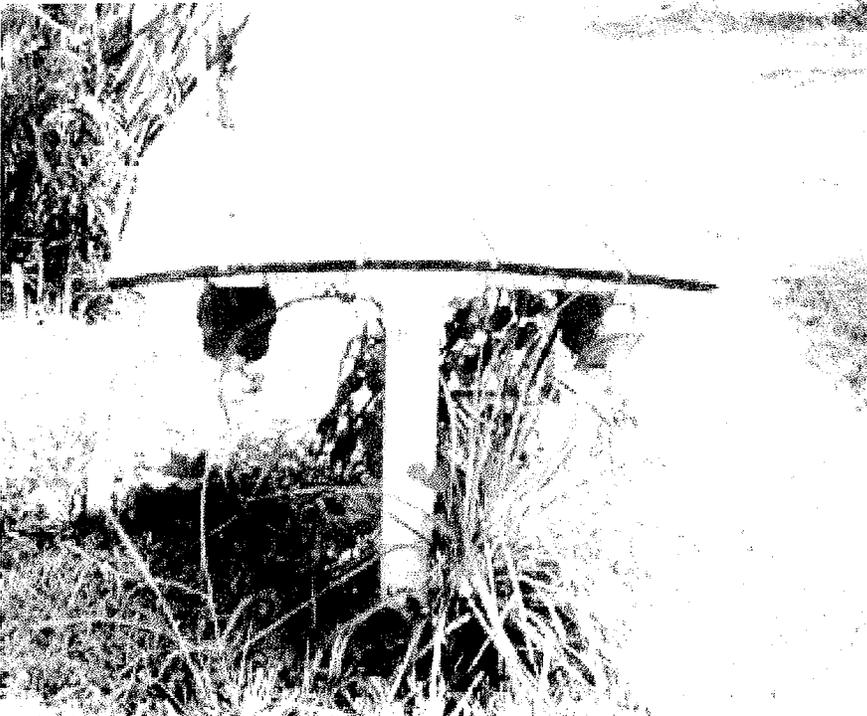


*Meter in ground*

8.10.10 - Draft



*Line repaired, there is now an on and off valve; feeds into a couple of other owners*



*Old repair of leak, couldn't shut off old valve.*

8.10.10 - Draft

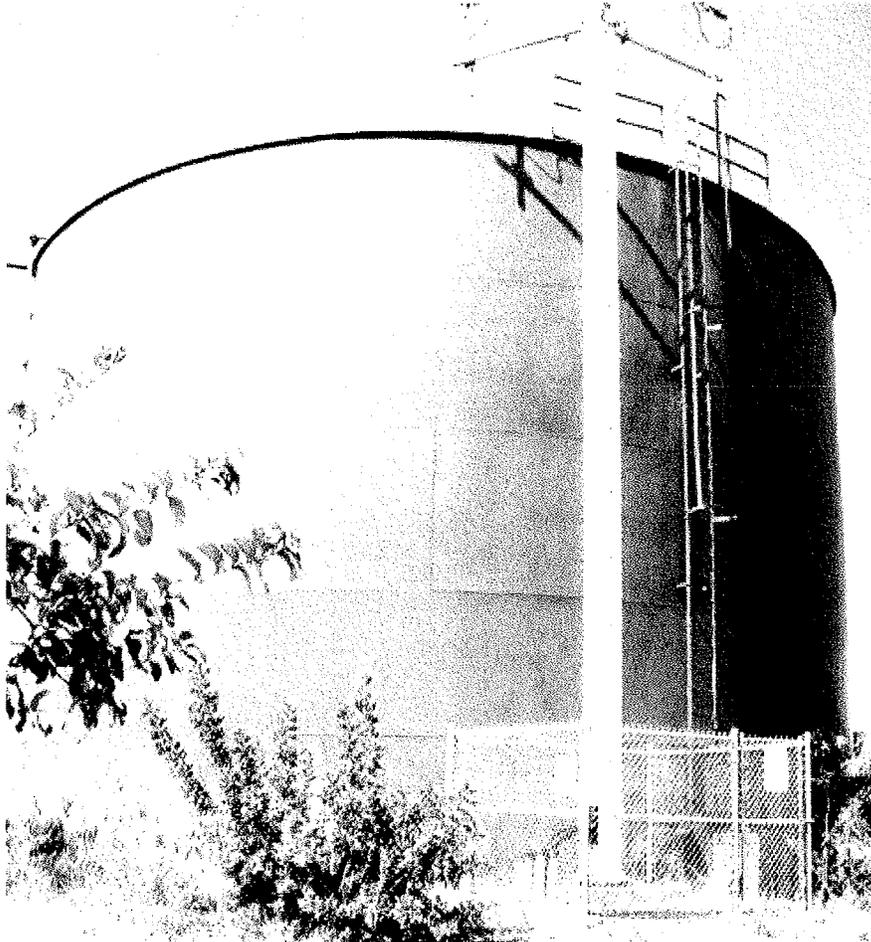


*Required backflow device; a potential upgrade, but not all water users currently have*



*Individual's unit*

8.10.10 - Draft



*Gravity-fed community tank with relay towers*



*Gravity fed, main water lines coming off the tank, no meter on main tank*

8.10.10 - Draft



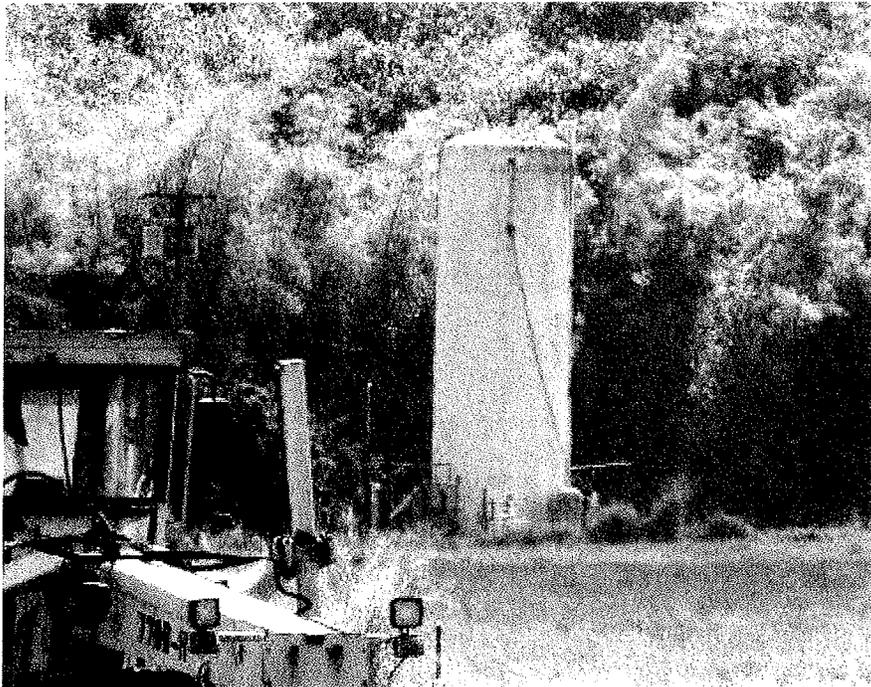
*This is what existed before the tank—a hole in the ground where water came directly from the source (Hui III)*



*Piping before the tank*



*County water tank, Loka provides water to this tank for the County*



*Lindner's land; old dairy, uncertain whether this is water tank related to the overall system*

**Minutes of Moloa'a Hui II  
Annual Meeting  
March 24, 2013**

**Call to order:**

The Annual Meeting of Moloa'a Hui II was held at Unit 37 (McClure's barn), Moloa'a Hui Lands, Anahola, on March 24, 2013. The meeting convened at 2:15 pm with President Rodney Yadao presiding; Marie Mauger, Secretary.

**Members in Attendance:** Quorum was established with 57% of owners by acreage represented. Attendance sheet is available upon request.

**Call for proxies:** Three proxies present.

**Minutes of last Annual Meeting approved April 2012.**

Rodney requested introductions as several new faces were present.

**Officer's Reports:**

**Treasurer:**

Total Money assets are \$30,770.40

The operating account has \$16,771.09

The reserve account has \$13,063.87

**Budget Review for 2013**

\$200- is needed for the new upgrade for Quick Books.

**Motion made to approve \$200 Quick Books upgrade.**

**Motion carried.**

Discussion: We went over budget last year mainly because of road work. There was enough from past monies to make up for the short fall. More money will be needed for road work. Further budget discussion deferred until road committee report.

**Road Committee Report**

**Completed Road Work**

The completed roadwork cost more than anticipated.

**The Frontage Road**

Ned met with Roger Tanaguchi for an estimate on 800 feet of frontage road along Unit 20 to break up road and use enzyme treatment.(\$10,000) It is not clear whether Roger knew of heavy truck usage when he suggested use of enzymes.

It is questionable whether Hui I will participate financially even though they are the primary users of the road. It might be best to meet with Hui I again on road issue.

The pros and cons of transferring road rights to Hui I with a "Quit Claim" were considered. The only common element is the cul-de-sac at Heart and Soul's operation. A Quit Claim would entail attorney fees rather than putting the money into a fix.

Concerns regarding the road are dust issue fines from the Health Department and possibility of an accident from dust, mud, or flying gravel resulting in injury and liability for contributory negligence.

Our board of directors needs to make the solution to this situation a priority and to be clear that our intent is to resolve the issue soon. The first step is to have a plan.

The 2013 budget allots \$8,500 to roads. We have \$13,063 already in reserve for roadwork and \$16,771 in our regular fund. There was a general sentiment that it is better to deal with this potentially dangerous situation and be out some money rather than take a chance on someone being injured.

Concrete is considered one of the better, long-lasting solutions. The cost of concrete for an 800 feet long, 10 foot wide, 4 inch thick section is \$25,000 at \$250/cubic yard. With rebar it will be \$50 to \$60,000. The suggestion was made to concrete the road in increments and use gravel or large rock for the non-concrete section.

A suggestion was made to deal with the care of Hui II road by the gate before spending money on the frontage road.

**Kauai Bus Request to use Cul-de-sac**

The Kauai Bus is requesting the right of entry to the cul-de-sac as a u-turn to pick up and discharge passengers at the concrete apron at the fruit stand drive when the gate to the parking lot is closed after 6 pm. The agreement needs to be approved, signed, and notarized by the board.

The long range plan is for a turn-off lane on the highway at the fruit stand. The state of Hawaii is willing to do this within 2 years.

**Mark Freeman's Proposal to Cleanup Edge of Cul-de-sac by Road**

Mark will take out ironwood trees which block vision thus making it more open visually, safer for vehicles and less appealing for thievery and drug dealing. He also proposes to improve the drainage. The total cost will be \$1,475. Mark will donate \$1,000 and is requesting \$475 from the hui.

**Motion made to fund \$475 of Mark's improvements.**

**Motion carried.**

**Budget discussion continued:**

**Motion made to raise AOA dues to \$5/acre for a year and then automatically go back to \$3/acre.**

Discussion: This increase would help solve road issues. Sue could put a note of explanation in with bill for AOA. \$5/acre will bring in \$17,906.70.

A suggestion was made to post a 15 mph speed limit sign on frontage road as higher speeds raise dust.

**Motion carried.**

**Motion made to approve proposed budget for 2013.**

Discussion: This budget should reflect in a better road. 80% of the budget will go to roads; 20% to other expenses. Last year 47% went to roads. All the increase in dues will go to roads.

**Motion carried.**

**Motion made to waive audit to budget.**

**Motion carried.**

### **Gates at Entrances**

Gates at entrance and between Hui I and Hui II could curb thievery. Sue offered to donate a gate. The gate at the front entrance still works. It was suggested that marijuana growing creates problems.

### **Request from Diamonds**

Sue read an email that Tamra Diamond requested be shared with hui members. Phil Young's lease with the Diamonds ends today. In February Phil Young posted a sign on their property (Posted: Section 106—Consultation with Native Hawaiian Organizations in the Section 106) as an attempt to stay on the property. He has been served eviction papers. The Diamonds are selling their property. Anyone else living on the property is considered a trespasser. All vehicles need to be removed.

### **Easement between Yarberry and Pomeroy**

Mel Kowardy has requested that Pomeroy and Yarberry access their units from the main road. A letter was sent out informing Mona Yarberry, Scott Pomeroy, and Dillon Strong of this request. The deed is an exclusive easement for Units 25 and 26 and specifically says that the easement is not for Unit 28.

### **Road between McClure and Pomeroy**

The new map with correct placement of house sites will be sent to hui members by Paul Huber. It was approved by the Planning Commission and the Planning Department. The map shows that the road which goes between McClure's and Pomeroy is a common element. We cannot put a chain across the road. It is thought best not to mow the road. The road in Hui I by Travis is used for beach access.

It was pointed out that a state of Hawaii law says if you own 5 acres or more and are ag dedicated, you can build ag buildings up to 1,000 square feet and up to 5 of these buildings per tax map key. You need a zoning permit and can have electric and plumbing.

### **Nominations for Board of Directors:**

**Motion made to elect Ned Whitlock, Sue Liddle, Marie Mauger, Rodney Yadao.**

**Motion carried.**

Ned Whitlock, president; Rodney Yadao, vice president; Sue Liddle, treasurer, Marie Mauger, secretary.

### **Moloa'a Irrigation Cooperative Report**

Mike Strong still wants the water tank under his control.

The water was tested and is not potable as the presence of coliform bacteria was detected. The problem is thought to come from the compromised roof of the tank. MIC is taking bids for the repair.

Priorities in order are roof of tank, check valves, and then master meter. The replacement of meters is going very slowly.

**Board of Directors Road Meeting was set for April 7, 2013 at McClure's barn.**

**Meeting adjourned at 5:30 pm.**

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail (X) Pickup ( )  
Belles Graham Proudfoot & Wilson  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766  
(MWG/15660-9)

This Document Contains \_\_\_\_ Pages

TYPE OF DOCUMENT:

WATER SUPPLY AGREEMENT  
(Moloaa Hui Lands, Inc.)

PARTIES TO DOCUMENT:

LINDNER: JEFFREY S. LINDNER  
P. O. Box 518  
Anahola, Kauai, Hawaii 96703

MOLOAA HUI: MOLOAA HUI LANDS, INC.,  
a Hawaii corporation  
P. O. Box 30  
Kilauea, Kauai, Hawaii 96754

ORIGINAL

TAX MAP KEY FOR PROPERTY:

(4) 4-9-09:9-29 and 35-38

WATER SUPPLY AGREEMENT  
(Moloaa Hui Lands, Inc.)

THIS WATER SUPPLY AGREEMENT ("Agreement") is made by and between JEFFREY S. LINDNER, whose post office address is P. O. Box 518, Anahola, Kauai, Hawaii 96703 ("Lindner"), and MOLOAA HUI LANDS, INC., a Hawaii corporation, whose principal place of business is at Kilauea, Kauai, Hawaii, and whose post office address is P. O. Box 30, Kilauea, Kauai, Hawaii 96754 ("Moloaa Hui").

WITNESSETH:

WHEREAS, Moloaa Hui is the owner of the following lands located in Moloaa and Papaa, Kauai, Hawaii: a portion of the lands identified by Kauai Tax Map Key Nos. (4) 4-9-09:9-25, 27-29 and 35-38, being more specifically identified as the proposed Lot 1 of Planning Commission Subdivision S-97-23; a portion of the parcel of land identified by Kauai Tax Map Key No. (4) 4-9-09:01, being more specifically identified as proposed Lot 2 of Planning Commission Subdivision S-97-23; that parcel of land identified by Kauai Tax Map Key No. (4) 4-9-08:17; that parcel of land identified by Kauai Tax Map Key No. (4) 4-9-08:16; and that parcel of land identified by Kauai Tax Map Key No. (4) 4-9-09:26 ("Moloaa Hui Property"); and

WHEREAS, Lindner is the owner of certain property located in Moloaa, Kauai, Hawaii, identified by Kauai Tax Map Key Nos. (4) 4-9-03:2, (4) 4-9-08:1 and 3, and (4) 4-9-09:07, and has been granted an option by Moloaa Hui to purchase Lot 2 of Planning Commission Subdivision S-97-23, being a portion of the parcel of land identified by Kauai Tax

Map Key No. (4) 4-9-09:01 (all of which property is referred to herein as "Lindner Property");  
and

WHEREAS, Lindner is the permittee under Revocable Permit No. S-7088 (attached hereto as Exhibit "A") issued by the Department of Land and Natural Resources of the State of Hawaii ("DLNR") concerning certain State lands and the pump, waterlines, and related water facilities presently being utilized to pump and distribute water from that certain well identified as State of Hawaii Well No. 1020-02/Molooa Well No. 1 ("State Well") as shown on the map attached hereto as Exhibit "B"; and

WHEREAS, the State Well is believed to have a capacity of approximately 2.95 million gallons per day ("GPD") or 1,076.75 million gallons per year ("GPY"); and

WHEREAS, Lindner is obligated to provide water from the State Well to Meadow Gold Dairies, Inc. ("Meadow Gold") for its dairy operations on land located on Molooa, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 4-9-08:1 (portion) pursuant to that certain Lease dated October 1, 1988 ("Meadow Gold Lease") in the amount of 40,000 GPD or 14.6 million GPY, said amount of water being referred to herein as the "Meadow Gold Water Commitment"; and

WHEREAS, Lindner is obligated to provide the Department of Water of the County of Kauai ("County") with water for the County's customers located in Molooa, Kauai, Hawaii, pursuant to that certain Agreement dated July 15, 1985 ("County Agreement"), in the amount of 5,000 GPD or 1.825 million GPY (hereinafter referred to as "County Water Commitment"); and

WHEREAS, Lindner was formerly obligated to provide the Moloaa Farmers Cooperative with water for what is now the Moloaa Hui Property pursuant to that certain Irrigation Water Supply Agreement Between Amfac Communities-Hawaii And Moloaa Farmers Cooperative dated March 26, 1975 ("Coop Water Agreement"); and

WHEREAS, the Moloaa Farmers Cooperative has assigned its rights under the Coop Water Agreement to Moloaa Hui; and

WHEREAS, Lindner intends to develop the Lindner Property for farm dwelling and agricultural uses, and will need to reserve water in the amount of up to 2 million GPD or 730 million GPY for the Lindner Property and other properties (hereinafter referred to as "Lindner Water Reservation"); and

WHEREAS, Lindner is willing to provide the Moloaa Hui with such water as may be available from the State Well for the Moloaa Hui Property in an amount not to exceed 1 million GPD or 365 million GPY ("Moloaa Hui Water Commitment") on a proportionate basis with the Meadow Gold Water Commitment and the County Water Commitment, provided that Lindner shall retain the first right to reserve the water necessary for the Lindner Water Reservation;

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties agree as follows:

1. Conditions of Water Supply. Lindner agrees to supply water to Moloaa Hui from the State Well subject to the terms and conditions of this Agreement, and the following provisions:

a. This Agreement, and Lindner's obligations hereunder, shall be subject to any limitations or conditions imposed by the State on Lindner's use of the State Well, including the conditions and provisions contained in Revocable Permit No. S-7088 or any other State Permit or lease, or licenses to the State Well, as they may be amended from time to time, all of which are incorporated herein by reference.

b. This Agreement, and Lindner's obligations hereunder, shall be subject to: Lindner's prior right to reserve all water necessary to meet the Lindner Water Reservation; and Lindner's right to provide water on a proportionate basis to fulfill the County Water Commitment, the Meadow Gold Water Commitment and the Moloaa Hui Commitment. Lindner agrees that he will release for use by the County, Meadow Gold and Moloaa Hui, in such amounts Lindner shall in his sole and absolute discretion decide, such excess amounts of water which are subject to the Lindner Water Reservation but for which he has no current use.

c. The water to be supplied by Lindner to Moloaa Hui pursuant to the terms of this Agreement shall be used by Moloaa Hui only for its Moloaa Hui Property, and may not be transferred, assigned, sold or distributed by Moloaa Hui: for the use or benefit of lands other than the Moloaa Hui Property; or to any other persons for any uses other than domestic uses and/or agriculturally related uses occurring on the Moloaa Hui Property.

d. This Agreement shall supersede the Coop Water Agreement.

e. This Agreement shall be rendered null and void and unenforceable upon: Lindner's loss of his rights to Revocable Permit No. S-7088 or any other State permit, lease or license to the State Well; or upon Lindner's transfer of all of his right, title and interest in and

to the State Well, Revocable Permit No. S-7088, or any other State permit, lease or license to the State Well, either to the County of Kauai or to the State.

f. This Agreement shall be subject to and superseded by any and all conditions imposed by any governmental agency, including the Department of Health of the State of Hawaii and the Public Utilities Commission of the State of Hawaii ("PUC"). Lindner reserves the right to subject the State Well and related water system to the jurisdiction and regulation of the PUC.

g. This Agreement shall not extend to any other wells which Lindner may develop on the Lindner Property, or which Lindner may lease from any other persons or entities.

2. Moloaa Hui Water Commitment. Lindner will provide Moloaa Hui with available water from the State Well up to a maximum of 365 million GPY or an average of 1 million GPD ("Moloaa Hui Water Commitment"). Lindner may revise these delivery limits upward or downward at the beginning of any month, based on water availability and drawdown measurements on the well aquifers. Lindner shall only be required to provide water to Moloaa Hui to meet the Moloaa Hui Water Commitment in excess of such water necessary to meet the Lindner Water Reservation. If there is insufficient water to meet the Moloaa Hui Water Commitment, the County Water Commitment and the Meadow Gold Water Commitment, then water will be distributed on a proportionate basis to these three users.

3. Well Operation Procedures. The State Well and related water system shall be operated in accordance with the Pump Operation Procedures attached hereto and incorporated

herein as Exhibit "C". Lindner shall have the right to modify the Pump Operation Procedures as he deems appropriate provided that such modifications do not unreasonably interfere with Moloaa Hui's rights under this Agreement.

4. Water Delivery Charges. Lindner shall submit monthly billings for water delivery charges to Moloaa Hui. These charges may be adjusted on a monthly basis and will be based on the fixed and variable costs defined herein and as set forth in Exhibit "D" attached hereto and incorporated herein. Fixed Costs are one-time or periodic expenditures that can be amortized over time, including but not limited to: Lindner's capital investments in the system, including the costs of labor and material necessary to install new or replacement system equipment or components (e.g., pumps, controls, pipelines, valves, etc.); routine maintenance costs or contracts; routine administrative costs or contracts; and other such items. Capital Investment Costs shall be that portion of Fixed Costs relating to the costs of new or replacement materials, and related labor requirements, necessary for the ongoing operation of the system. Variable Costs include costs which vary over a periodic basis, including electric charges, well permit fees, and other such items.

The Fixed Costs (including Capital Investment Costs) and Variable Costs, plus State of Hawaii General Excise Tax, shall be passed on by Lindner to all water users on a proportionate basis. The proportionate share of any user will be computed as the ratio of the number of gallons of water consumed by that user compared to the total number of gallons consumed by all users.

The Capital Investment Costs shall be amortized over the usable life of the capital item. Lindner shall be entitled to collect a ten percent (10%) rate of return on Capital Investments as part of the Capital Investment Costs.

A single bill covering fixed and variable costs will be provided to Moloaa Hui on a monthly basis. Non-payment after the first thirty (30) days following the billing date will be cause for Lindner to disconnect the water supply. Interest at the rate of 1½ % per month shall accrue on the unpaid balance of all amounts owed. Lindner will not be required to reconnect the water supply unless and until Moloaa Hui pays all amounts due, interest thereon, a reasonable disconnect/reconnect charge, and a reasonable deposit to insure future payment (not to exceed two months estimated charges). If Moloaa Hui fails to pay the required amounts such that the water is disconnected for a continuous period of six months, then Lindner may terminate this Agreement.

5. Miscellaneous.

a. Counterpart. This Agreement may be executed in more than one counterpart, each of which shall be considered to be an original, but all of which shall constitute a single counterpart.

b. Modification of Agreement. This Agreement represents the entire agreement between the Parties hereto and may not be modified or terminated, in whole or in part, except by another agreement in writing, duly executed by all of the Parties.

c. Time of Essence. Time is of the essence of this Agreement. No provisions relating to the timeliness may be waived, extended or modified except by the written agreement or all of the Parties.

d. Controlling Law. The performance and interpretation of this Agreement shall be controlled by the laws of the State of Hawaii.

e. Attorneys' Fees. In the event of any controversy, claim or dispute among the Parties arising out of or relating to this Agreement or the breach hereof, the prevailing Party or Parties shall be entitled to recover from the losing Party or Parties reasonable expenses and costs, including, without limitation, reasonable attorneys' fees and court costs.

f. Invalidity - Severability. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, provided that the essential provisions of this Agreement and the position of the Parties hereto are not materially changed thereby.

g. Entire Agreement. This Agreement contains the complete understanding and agreement of the Parties hereto with respect to all matters referred to herein and shall supersede any and all other prior agreements between the Parties hereto with respect to the Property. No Parties hereto shall be liable or bound to any other Party in any manner by any agreement, warranty, representation or guarantee, except as specifically set forth herein.

h. Rights and Obligations. The rights and obligations set forth herein shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, estates, personal representatives, successors, successors in trust and assigns.

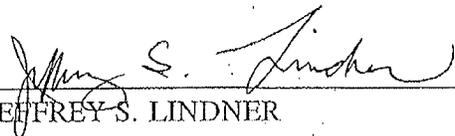
i. Effective Date. This Agreement shall not become effective and binding unless and until signed by all of the Parties hereto. The effective date of this Agreement shall be as of the date signed by the last Party to sign.

j. Consents, Approvals. Where consents or approvals are required by any of the Parties, unless specifically provided to the contrary, the Parties shall not arbitrarily withhold such consent or approval or require the payment of any monies therefor.

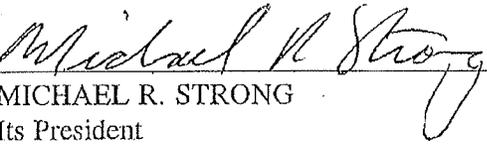
k. Definitions. The terms "Lindner" and "Moloaa Hui" when used in this Agreement, or any pronouns used in their place, mean and include males or females, and one or more (or a combination of) real people, companies, corporations or other entities, and their and each of their respective heirs, devisees, personal representatives, successors, successors in trust and assigns, according to the context.

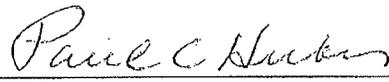
l. Assignment. Moloaa Hui shall have no right to assign this Agreement, or its rights hereunder, without Lindner's prior written consent, except as to successors in interest in the Moloaa Hui Property. There shall be no limitation on Lindner's right to assign this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 21<sup>ST</sup> day of NOVEMBER, 1997.

  
\_\_\_\_\_  
JEFFREY S. LINDNER

MOLOAA HUI LANDS, INC.,  
a Hawaii corporation

By   
MICHAEL R. STRONG  
Its President

By   
PAUL C. HUBER  
Its Vice-President

By   
CANDACE L. STRONG  
Its Secretary

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

REVOCABLE PERMIT NO. S-7095

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective the 1st day of October 1996, by and between the STATE OF HAWAII, hereinafter referred to as the "STATE", by its Board of Land and Natural Resources, called the "BOARD", and JEFFREY S. LINDNER hereinafter called the "PERMITTEE", whose business and mailing address is P. O. BOX 518, Anahola, HI 96703 is permitted to enter and occupy, on a month-to-month basis only, pursuant to Section 171-55, Hawaii Revised Statutes, that certain parcel of Government land (and any improvements located thereupon) situate at Portion of government land of Moloaa, being a portion of Moloaa Forest Reserve, Papaa, Moloaa, Kawaihau, Kauai TMK: 4-9-01:por. 1 as indicated on the map attached hereto, if any, and made a part hereof, containing an approximate area of 124+ Acres which parcel is hereinafter referred to as the "Premises".

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use the Premises for the following specified purposes only:

FOR OPERATION AND MAINTENANCE OF MOLOAA WELL SITE AND TRANSMISSION FACILITIES UNTIL SUCH TIME THE COUNTY OF KAUAI'S DEPARTMENT OF WATER CAN CONDUCT AN APPROXIMATE SIX (6) MONTH FEASIBILITY STUDY TO DETERMINE THE APPROPRIATENESS OF CREATING A NEW WATER SYSTEM.

2. Pay, at the Office of the Department of Land and Natural Resources, Honolulu, Oahu or at the Office of its Land Agent on the Island where the Premises are located, the sum of TWO HUNDRED ONE AND 17/100 DOLLARS----- (\$201.17) on the first of each and every month commencing October 1, 1996

The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

LTFORM 4016 Rev. 6/97

EXHIBIT "A"

3. Upon execution of this Permit, deposit with the Board of Land and Natural Resources, hereinafter called the "Board", the sum of \$402.34 as security for the faithful performance of all of these terms and conditions. The whole or portion of the deposit will be returned to the Permittee upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed to the satisfaction of the representatives of the Department of Land and Natural Resources.

JE  
AW  
4. ~~In the Permittee's own cost and expense, keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.~~

5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.

6. If a holdover Permittee or licensee, pay all real property taxes, which shall be assessed against the Premises from the date of this Permit. In addition, a Permittee, not a holdover Permittee or licensee, who has occupied the Premises for commercial purposes for a continued period of one year or more, shall pay the real property taxes assessed against the Premises after the first year of the Permit as provided in Section 246-36(1)(D), Hawaii Revised Statutes.

7. Observe and comply with all laws, ordinances, rules, and regulations of the Federal, State, Municipal, or County governments affecting the Premises or improvements.

8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.

9. Obtain the prior written consent of the Board before making any major improvements.

10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.

11. Pay, when due, all payments for water and other utilities, and whatever charges for the collection of garbage that may be levied.

12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety and agrees to indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all claims or demands for damage, including claims for property damage, personal injury or death, arising on or about the Premises, or by any fire or explosion thereon, or growing out of, or caused by any failure on the part of the Permittee to maintain the Premises in accordance with the terms and conditions of this Permit.
14. Procure, at its own cost and expense, and maintain during the entire period of this Permit, a policy or policies of commercial general liability insurance, in an amount acceptable to the Chairperson, insuring the State of Hawaii and the Permittee against all claims for personal injury, death and property damage. The policy or policies shall cover the entire Premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of the Permittee. The Permittee shall furnish the State with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve the Permittee of its responsibility under this Permit as set forth herein or limit the amount of its liability under this Permit.
15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State; furthermore, the Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of the Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

B. Additional conditions:

1. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is

delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) business days prior to the revocation.

2. If the Permittee does not vacate the Premises upon the revocation of the Permit by the Board, the Permittee shall pay to the State Liquidated Damages at the daily rate of \$40.23 for each day, or portion thereof, the Permittee remains on the Premises over the date of revocation. The payment is in addition to any other rights or remedies the Board may be entitled to pursue for breach of contract, or for illegal occupancy, including the right to evict the Permittee without court action, and the cost thereof to be paid by the Permittee.
3. If the Permittee fails to vacate the Premises upon the revocation of the Permit, the Board, its agents and/or representatives may enter upon the Premises and remove and dispose of at Permittee's cost and expense, all vehicles, equipment, materials, and/or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal and disposition.
4. The Board may at any time increase or decrease the monthly rental by written notice at least 30 business days prior to the date of change of rent.
5. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements within 30 calendar days, after written notice to remove has been sent, the Board may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
6. The Board reserves the right for itself, its agents, and/or representatives to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
8. It is understood that the Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.

9. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.
10. The term of this month-to-month permit beyond one year from date of issuance is subject to the prior approval of the Board.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.
12. Any and all disputes and/or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. Permittee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the reasonable costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning Permittee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Permittee.

Permittee agrees to indemnify, defend, and hold the Board harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration or earlier termination of the permit.

For the purpose of this permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other Federal, State, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Prior to the termination of the subject permit, Permittee shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. The termination will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed.
15. Permittee shall assume the obligations of Amfac to provide water to the County of Kauai's Department of Water, Meadow Gold Dairies, Inc. And the Moloaa Farmers Cooperative.

Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

DATED: \_\_\_\_\_, 19\_\_.

STATE OF HAWAII

By \_\_\_\_\_  
Chairperson and Member  
Board of Land and Natural Resources

Approved by the Board of Land  
and Natural Resources at its meeting  
held on August 8, 1997 (D-11)

PERMITTEE:

  
\_\_\_\_\_  
JEFFREY S. LINDNER

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
Dated: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
COUNTY OF Kauai )

On this 11<sup>th</sup> day of November, 1997, before me personally appeared  
Jeffrey S. Lindner  
to me known to be the person(s) described in and who executed the foregoing  
instrument and acknowledged to me that he executed the same as his free act and  
deed.

L.S.

W. Maile S. Saniguchi  
Notary Public, State of Hawaii

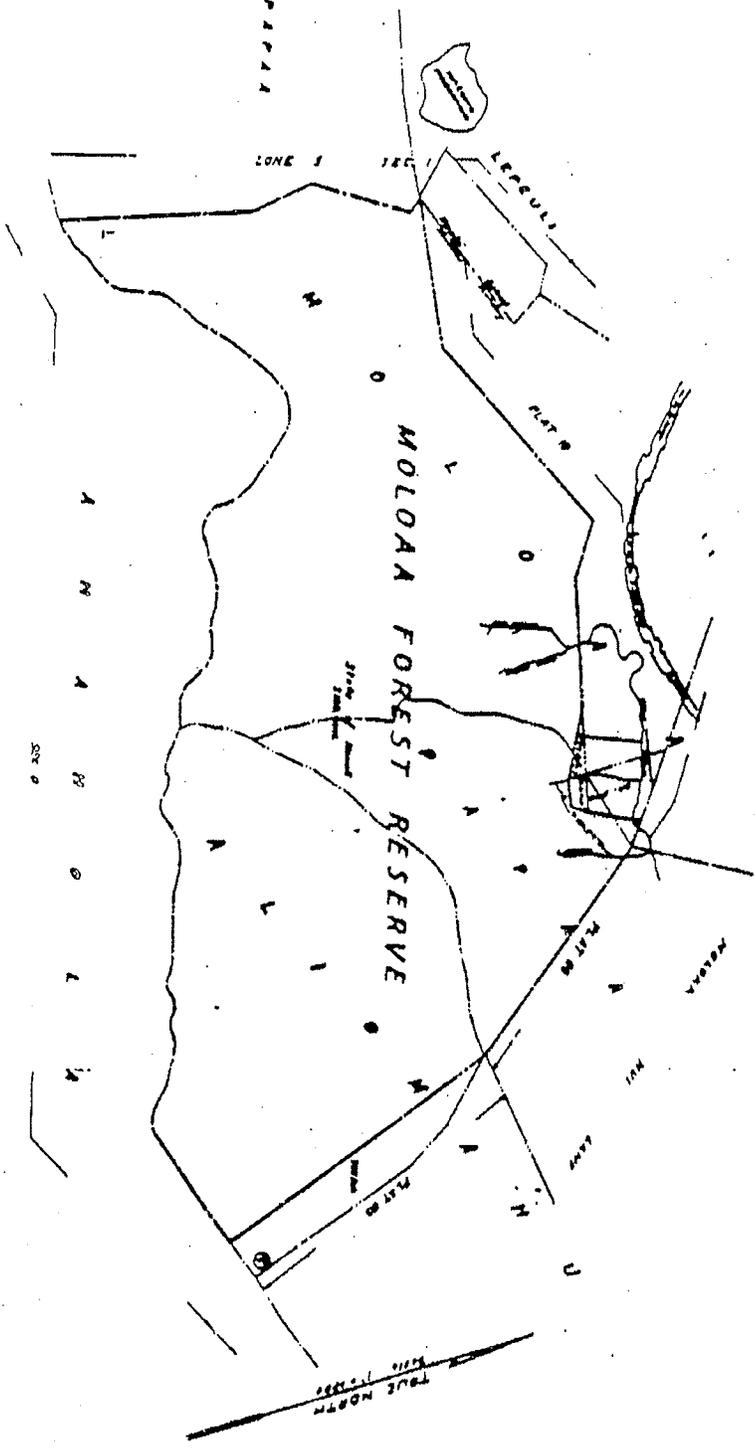
My Commission expires: 2/18/2000

STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared \_\_\_\_\_ and  
\_\_\_\_\_, to me personally known, who being  
by me duly sworn, did say that they are the \_\_\_\_\_  
and \_\_\_\_\_, respectively of \_\_\_\_\_  
\_\_\_\_\_, 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 on behalf of said corporation by authority of  
its Board of Directors, and the said \_\_\_\_\_ and  
\_\_\_\_\_ acknowledged said instrument to be the free act  
and deed of said corporation.

\_\_\_\_\_  
Notary Public, State of Hawaii

My Commission expires: \_\_\_\_\_



SUBJECT TO CHANGE

4 421	
PLANTING DISTRICT	
MOLUA FOREST RESERVE	
SECTION 9	
PAGE 11	

LAND BY EXHIBIT A

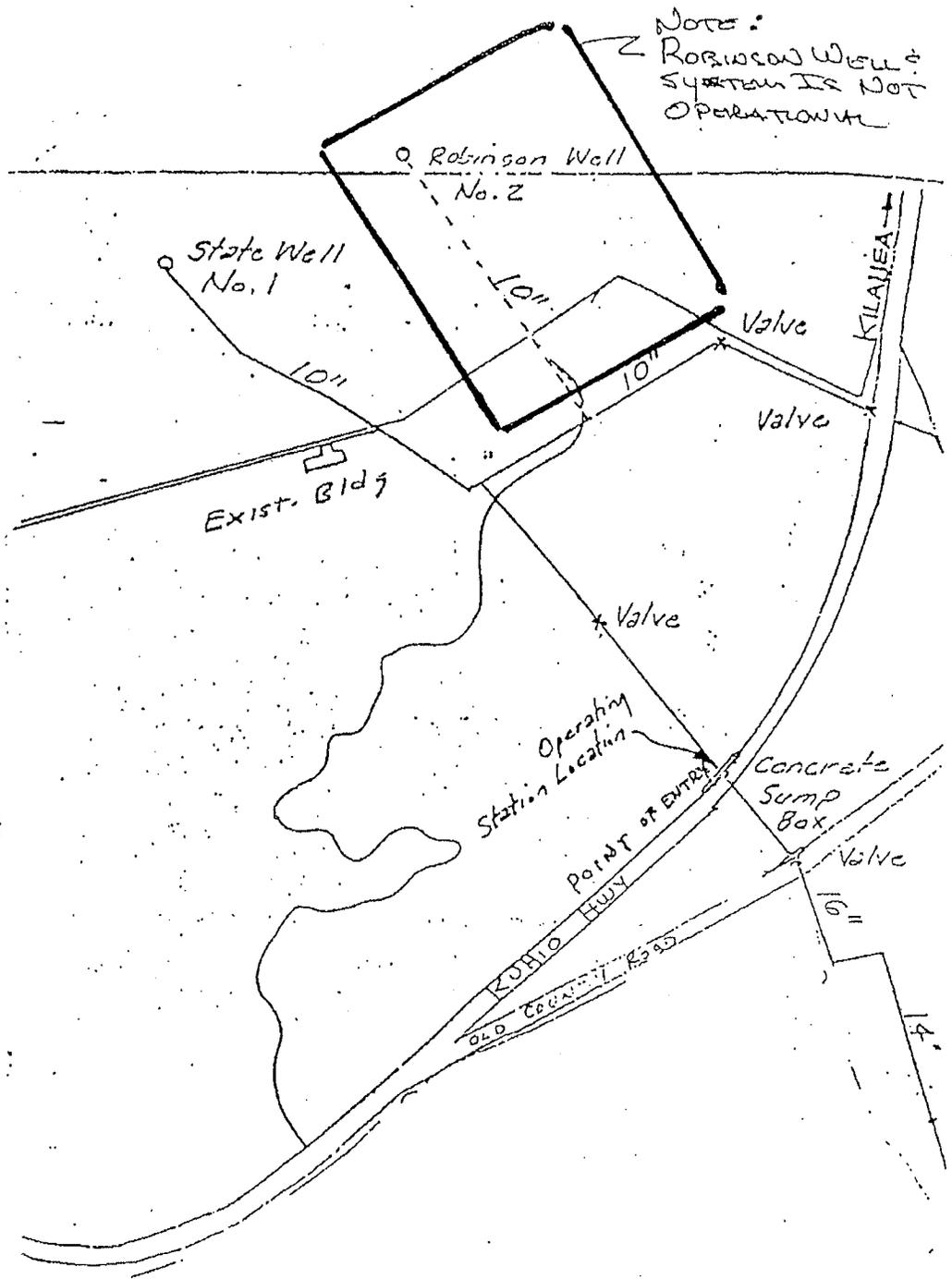


EXHIBIT "B"

WELL OPERATING PROCEDURES  
MOLOAA WELL NO. 1

Pursuant to the Water Supply Agreement entered into between JEFFREY S. LINDNER ("Lindner") and MOLOAA HUI LANDS, INC., a Hawaii corporation ("Moloaa Hui"), the State Well (Moloaa Well No. 1) and related water facilities shall be operated and maintained pursuant to the following terms, conditions and procedures:

1. Supply Scheduling and Conditions for State Well. The State Well pump will be under a two-stage control system which consists of an automatic timer and a selective manual control for selective weekly operations. The preset times for daily operations will be Mondays through Saturdays (6 days) 6:30 a.m. to 5:30 p.m.

Flow rates below rates of 80% pump capacity will automatically lock out the pumps. Manual reset will have to be accomplished to restart the pumps. The demand on the water system shall not exceed the available capacity (estimated to be 2.95 million GPD for the State Well). Supply will be made by direct existing source pump operation without throttling. Moloaa Hui shall be required to install a disc type check valve at or near the Moloaa Hui delivery point to prevent back flow of water from their system. The pump discharge water is to enter the Moloaa Hui tank at its bottom with no restrictions, valves, or other devices that could impede the flow of water. Moloaa Hui shall install at its own expense a tank float control switch and necessary control lines between the Moloaa Hui tank and the Operating Station located on the Lindner Property (shown on the map attached to the Water Supply Agreement as Exhibit "A") for stopping the pumps when the tank is full. Lindner shall have no obligation to provide purification of the water or to provide potable water for human consumption meeting any applicable standards imposed by any governmental agencies. Lindner shall not be liable for partial or complete supply interruptions due to power outage, equipment breakdown, water shortages, strikes, or any other reason beyond Lindner's control. Lindner reserves the right to regulate the rate at which the delivery limit is consumed.

2. Delivery Location and Metering. Lindner will deliver water to the Operating Station. Lindner will only be responsible for maintaining the supply pumps, the pump controls, the Operating Station, and the existing main supply pipeline to the point of exit from the Operating Station. All facilities from the exit of the Operating Station to and on the Moloaa Hui Property shall be installed, operated and maintained at Moloaa Hui's expense. Lindner shall provide Moloaa Hui with a right of entry onto the Lindner Property in order to install, operate and maintain such facilities. Lindner will not be responsible for any existing pressure and/or flow conditions beyond the Operating Station exit.

3. Moloaa Hui Control Rights and Responsibilities. Moloaa Hui shall provide Lindner with the names and telephone numbers of its operators, and will minimize personnel changes to the extent reasonably possible. A selective "on", "off", and "automatic" switch will

EXHIBIT "C"

be supplied by Lindner. "Automatic" operation will be under supervision of timers as programmed for a one week period. "On" operation will be optional as follows:

- a. Manual starting and stopping of pumps by Moloaa Hui operation.
- b. Initial starting of pumps with setting of duration timer for running time by the Moloaa Hui operator, within the time limits given above.

Moloaa Hui shall report any malfunctions or problems with the operation of pumps to Lindner between 8:00 a.m. and 4:30 p.m., Mondays through Fridays, holidays excepted, at the following: Telephone: 822-0518; Facsimile: 822-7329. Corrections to malfunctions will be made only during those hours. Lindner will use his best efforts to remedy malfunctions promptly, but will not be held liable for damage claims due to malfunctions or the time required to remedy malfunctions. Entry by Moloaa Hui into the Lindner Property above the Operating Station will be made only with Lindner's consent and/or with one of Lindner's representatives. Provided, however, that if despite reasonable efforts Moloaa Hui is unable to contact Lindner or his representatives, Moloaa Hui may enter the Lindner Property in case of emergency: in order to make emergency repairs or take emergency action to protect the State Well, the pump, the Operating Station, and the related water system and facilities; or in order to stop large scale leakage or discharge of water. Dual readings of meters will be permitted. The final mode of Moloaa Hui's operation and any subsequent changes thereto shall be submitted to Lindner for approval before commencement.

EXHIBIT "D"

WATER DELIVERY CHARGES

The following procedures shall be used on a temporary basis until such time as the parties shall mutually agree on a long range method of distributing water delivery charges.

Users of the State Well will be required to pay their proportionate share of Fixed Costs and Variable Costs relating to administering, constructing, reconstructing, repairing, replacing, maintaining and operating the State Well and associated water system and facilities ("Water System"). The proportionate share of any user will be computed as the ratio of the number of gallons of water consumed by that user compared to the total number of gallons of water consumed by all users.

In general, the following amortization schedules will be used for the amortization of Capital Investment Costs: water pumps - 8 years; waterpipes - 15 years; electronic controls - 3 to 5 years; and water tanks - 25 years.

In addition, a Rate of Return on Capital Investment in the amount of ten percent (10%) per annum on the outstanding balance shall be allowed. Following is an example of how Capital Investment Costs shall be reimbursed.

Item: Water Pump

Cost of Equipment plus installation: \$100,000.00

Amortization Schedule: 8 years

Annual Amortized Cost:  $\frac{\$100,000.00}{8} = \$12,500.00$

1st Year Rate of Return:  $\$100,000.00 - \$12,500.00 = \$87,500.00 \times .10 = \$8,750.00$

Total 1st Year Capital Investment  
Cost:  $\$12,500.00 + \$8,750.00 = \$21,250.00$

**MANAGEMENT AND OPERATING AGREEMENT**

**Between**

**Moloaa Irrigation Cooperative**

**And**

**The Association of Apartment Owners of Moloaa Hui I Condominium Project,  
The Association of Apartment Owners of Moloaa Hui II Condominium Project, and  
The Lot Owners of the Former Moloaa Hui III Condominium Project  
(Collectively the "Associations")**

**For the Purpose of Transferring Management and Operation  
of the Moloaa Hui Lands Water Facilities to Moloaa Irrigation Cooperative**

*Date: July 2011*

**EXHIBIT "10"**

**TABLE OF CONTENTS**

	<u>Page</u>
SECTION 1 – DEFINITIONS .....	2
SECTION 2 – SCOPE OF AGREEMENT .....	5
2.1 Basic Concept .....	5
2.2 Scope of Services .....	5
SECTION 3 – BILLING AND PAYMENT .....	6
3.1 Monthly Invoice .....	6
3.2 Payment .....	6
3.3 Defaulting User .....	6
3.4 Termination of Water Delivery .....	6
SECTION 4 – INDEPENDENT CONTRACTOR STATUS .....	7
SECTION 5 – TERM .....	7
5.1 Initial Term .....	7
5.2 Post Initial Term .....	7
SECTION 6 – DEFAULT .....	7
6.1 Events of Default .....	7
A. Default by MIC .....	7
B. Default by the Associations .....	8
6.2 Right to Cure Default .....	8
A. Cure Period .....	8
B. Effect of Cure on Event of Default .....	9
6.3 Notice of Default .....	9
6.4 Liability for Breach .....	9
SECTION 7 – TERMINATION .....	9
7.1 Ability of MIC to Terminate .....	9
7.2 Ability of Associations to Terminate .....	9
7.3 Ability of Either Party to Terminate .....	10
SECTION 8 – STANDARD OF CARE .....	10

SECTION 9 – LIMITATION OF LIABILITY AND INDEMNIFICATION.....	10
9.1 Limitation of Liability.....	10
9.2 Indemnification of MIC.....	10
9.3 Indemnification of the Associations.....	12
SECTION 10 – INSURANCE.....	13
10.1 General Insurance Requirements.....	13
10.2 Insurance Required.....	13
10.3 Additional Insureds.....	14
10.4 Failure to Pay Premiums.....	14
10.5 Waiver of Rights.....	15
10.6 Subcontractors.....	15
SECTION 11 – DISPUTE RESOLUTION.....	15
11.1 Good Faith Negotiations.....	15
11.2 Mediation.....	15
11.3 Arbitration.....	15
SECTION 12 – FORCE MAJEURE AND DELAYS.....	16
12.1 Force Majeure.....	16
12.2 Delays.....	16
SECTION 13 – ASSIGNMENT.....	17
13.1 Assignment by MIC.....	17
13.2 Assignment by Associations.....	17
13.3 Binding on Assigns.....	17
SECTION 14 – MISCELLANEOUS.....	17
14.1 Effective Date.....	17
14.2 Modification.....	17
14.3 Entire Agreement.....	17
14.4 Cooperation.....	17
14.5 Contact.....	18
14.6 Governing Laws.....	18
14.7 Waiver.....	18
14.8 Headings.....	18
14.9 Severability.....	18
14.10 Counterpart Signatures.....	19

**MANAGEMENT AND OPERATING AGREEMENT**

**between**

**Moloaa Irrigation Cooperative**

**and**

**The Association of Apartment Owners of Moloaa Hui I Condominium Project,  
The Association of Apartment Owners of Moloaa Hui II Condominium Project, and  
The Lot Owners of the Former Moloaa Hui III Condominium Project**

THIS MAINTENANCE AND OPERATING AGREEMENT ("Agreement") is entered into effective as of July \_\_\_, 2011 ("Execution Date") by and between Moloaa Irrigation Cooperative, a Hawaii Consumer Cooperative Association formed pursuant to Chapter 421C of the Hawaii Revised Statutes, whose principal place of business is at 6020 Koolau Road, Moloaa, Hawaii 96703, with a mailing address of P. O. Box 506, Anahola, Hawaii 96703, hereinafter referred to as "MIC" or the "Cooperative", and the Association of Apartment Owners of Moloaa Hui I, a Hawaii Condominium Project, formed pursuant to Chapter 514A of the Hawaii Revised Statutes, whose principal place of business is at 6020 Koolau Road Moloaa, with a mailing address of P. O. Box 686, Kilauea, Hawaii 96754 said Project hereinafter referred to as "Hui I"; the Association of Apartment Owners of Moloaa Hui II, a Hawaii Condominium Project, formed pursuant to Chapter 514A of the Hawaii Revised Statutes, whose principal place of business is at 6180 Koolau Road, Moloaa, Hawaii 969703, with a mailing address of P. O. Box 30855, Anahola, Hawaii 96703, said Project hereinafter referred to as "Hui II"; and the owners of the apartments in the former Moloaa Hui III, a Hawaii Condominium Project, formed pursuant to Chapter 514A of the Hawaii Revised Statutes, said Project hereinafter referred to as "Hui III", and which owners are the successors in interest to said Project, said owners hereinafter collectively being referred to as the "Highway Lot Owners", the Hawaii Tax Map Key Numbers, the mailing addresses of, and the names of the owners of their respective lots are: TMK # 4-9-009-026-0010 owned by Jeremy Hillstrom with an address of 6221 Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-026-0011 owned by Kauai Kuleana with an address of 6161 Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-045 owned by Ray and Silvia Maki with an address of 6227 Koolau Road, Moloaa Hawaii 96703, TMK # 4-9-009-046-0001 owned by David Jones with an address of 6253 Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-046-0002, owned by Hanalei North Shore Properties with an address of 6253 Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-047 owned by Robin Savage and Ward Thompson with an address of 6211B Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-047-0002 owned by Buenaventura and Leonida Ednilao with an address of 6211A Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-048-0001 owned by Moisis and Precilla Perez with an address of 6171 C Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-048-0002 owned by Jason and Felicitas Dugay with an address of 6171A Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-048-0003 owned by David Estrella with an address of 6161 Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-048-0004 owned by Terin Ricehill and M. Ross with an address of 6171B Koolau Road., Moloaa, Hawaii 96703; TMK # 4-9-009-048-0005 owned by Terin Ricehill and M. Ross with an address of 6171 Koolau Road, Moloaa, Hawaii 96703; TMK # 4-9-009-049 owned by Moloaa Farms Lindner with an address of Post Office Box 518 Anahola, Hawaii 96703; and TMK # 4-9-009-033 owned by Lindner Sita Trust with an address of One East 4<sup>th</sup> Street, #1400, Cincinnati, Ohio 45202; and TMK # 4-9-003-013 owned by Dennis and Colleen

Raymond with an address of 4-6346 Kuhio Highway, Moloaa, Hawaii 96703 (MIC, Hui I, Hui II and the Highway Lot Owners are hereinafter sometimes referred to singularly as a "Party" or collectively as the "Parties"; Hui I, Hui II and the Highway Lot Owners are hereinafter sometimes referred to collectively as the "Associations").

### **WITNESSETH**

WHEREAS, Hui I, Hui II and the Highway Lot Owners desire to enter into a binding Agreement to engage MIC to manage the Water Facilities, as hereinafter defined, for the mutual benefit on the members of the Associations and MIC; and

WHEREAS, MIC is willing to enter into such a binding Agreement; and

WHEREAS, the Parties intend that this Agreement shall constitute the binding Agreement whereby MIC shall manage the Water Facilities.

NOW, THEREFORE, in consideration of the Recitals set forth above, the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

### **SECTION 1 - DEFINITIONS**

The following terms, which are generally used throughout this Agreement, shall have the meanings specified in this Section. Certain defined terms may be set forth and defined elsewhere in this Agreement. Other terms used in this Agreement but not defined shall have meanings as commonly used in the English language and, where applicable, in Good Engineering and Operating Practices (as hereinafter defined). Reference to a certain Section shall mean such Section of this Agreement.

"AOAOs" shall mean the Association of Apartment Owners created by the organic documents of the Associations as hereinafter defined.

"Articles" mean the Articles of Incorporation of the Cooperative.

"Associations" shall mean collectively Hui I, Hui II and the Highway Lot Owners.

"Associations' Water System" shall mean and be the existing water lines and tank and any future water lines and tanks, wells, etc. which will make up the infrastructure which delivers water to Associations or any other users of a MIC Service.

"Board" means the Board of Directors of the Cooperative.

"Bylaws" mean the Bylaws of the Cooperative.

"CC&Rs" means any and all covenants, conditions and restrictions to which the Properties are now or shall in the future be subject to.

"Cooperative Documents" means the Articles, Bylaws, Membership Agreement, Water Use Agreement, Rules and Regulations of the Cooperative, and any lease agreements and or water use permits granted to the Cooperative through the State of Hawaii, Department of Land and Natural Resources or the Agribusiness Development Cooperative, or any other entity.

"Cooperative Rules" means any rules adopted by the Board to implement the Cooperative Documents.

"Common Element" means any real property, easements or other interests in real property, or personal property of any nature, owned, leased, rented, or possessed by the Associations.

"Cooperative" means the Moloaa Irrigation Cooperative, a Hawaii consumer cooperative organized pursuant to Chapter 421C of the Hawaii Revised Statutes.

"County" means the County of Kauai.

"Defaulting User" means Non-payment of water bills, which include assessments for maintenance, operation and construction, by any User (as hereinafter defined) for a period of 60 days or 2 water billing periods whichever is greater.

"Deposit" means monies received as security for failure to pay water payment obligations.

"Entity" shall mean a corporation, a limited liability company, a partnership, a limited liability partnership, or other legal entity.

"Force Majeure" shall mean an unforeseeable circumstance whereby a Party shall be wholly or partially prevented from performing any of its obligations under this Agreement by reasons of or through acts reasonably beyond its control and not attributable to its neglect, including strikes, lightning, rain, earthquake, wind, riots, fire, flood, invasion, insurrection, lava flow or volcanic activity, tidal wave, civil commotion, accident, action or inaction of any court, judge, administrative, regulatory or civil authority of the Federal, State, or local governments, war, any act of God or the public enemy, or any other similar or dissimilar cause reasonably beyond its control and not attributable to its neglect.

"Good Standing" shall mean that a Member (as hereinafter defined) is current in the payment of all dues, fees, rates, and charges for which the Member has been assessed pursuant to the Bylaws, and meets such other conditions as required by the Board. If a Member is delinquent in the payment of any dues, fees, rates and charges which the Member has been assessed, the Member's right to vote in the affairs of the Association shall be suspended until such time as the Member's account has been paid current, including any interest and late fees that may have been charged to the Member as a result of the delinquency.

"Highway Lots" means the subdivision lots resulting from the subdivision of the former Moloaa Hui III condominium project. The lots are located between Kuhio Highway and Koolau Road on the island of Kauai, and designated TMKs 4-9-009-026; 4-9-009-033; 4-9-009-045; 4-9-009-046; 4-9-009-047; 4-9-009-048; 4-9-009-049.

"Hui I" means the Moloaa Hui I condominium project located on TMK 4-9-009-012.

"Hui II" means the Moloaa Hui II condominium project located on TMK 4-9-009-009.

"Irrigator" means the landowner or tenant of a parcel of land who has the primary responsibility for irrigating a parcel. The term includes the irrigator's officers, employees and agents.

"Landowner" means holder of title or evidence of title to land.

"Manager" means the General Manager of the Cooperative, and any and all employees under the general supervision of the General Manager.

"Member" means any individual or entity, which is a member of the Cooperative.

"MIC Service" means the provision of Water or other service by Cooperative to a User.

"Property" means real property that a User lawfully owns, controls, or occupies to which Cooperative provides MIC Service.

"Properties" means all or the real properties owned by Associations collectively.

"Rules and Regulations" mean the General Rules, Regulations and Operating Policies of the Cooperative, and any other action taken by the Board having general application to all Users and any and all amendments duly adopted thereto.

"Service Location" means Property at which a User or User's agent or representative applies to use MIC Service.

"User" shall mean any individual or entity, which is a user of MIC Service.

"User Fee" shall mean initial administrative fee established by the Board of Directors pursuant to Article II Section 2 of the Rules and Regulations.

"State" means the State of Hawaii.

"Tank" means the water storage tank located on TMK #4-9-09-009-014 currently used to supply Water to the Users and provide pressure for the Water System.

"Vehicle" means any motor vehicle, self-propelled vehicle, motorcycle, motorized bicycle, or all-terrain vehicle.

"Water" means non-potable agricultural irrigation water.

"Water Facilities" mean any real property, easements or other interests in real property, or personal property of any nature, owned, leased, rented, used or possessed by the Associations in providing Water prior to the existence of this Agreement.

"Water System" shall mean and be the existing water lines and tank and any future water lines and tanks, wells, etc. which will make up the infrastructure which delivers Water to the Users of the Cooperative.

"Water System common element maintenance fee" means a monthly fee paid by a User for the purpose of maintaining the Water Facilities or the Water System. Also known as Water Maintenance Assessments.

"Water User" shall mean any agricultural producer using or proposing to use any water derived from the Association's Water System.

"Water Use Agreement" means the agreement each User must enter into with MIC to be entitled to receive MIC Service.

## SECTION 2 - SCOPE OF AGREEMENT

### 2.1 Basic Concept

The basic concept of this Agreement is to engage MIC to manage the Associations' Water Facilities for the mutual benefit of the members of the Associations and MIC; and for the Associations to retain ownership of the Associations' Water System, the Water Facilities, and the Water System, but transfer management responsibilities therfor to MIC. These responsibilities include but are not limited to, water delivery, billing, maintenance of lines and tank, collection and management of a prudent maintenance and operations cash reserve.

### 2.2 Scope of Services

The following shall be the scope of the services to be provided under this agreement, and the Parties agree that the AOAOs and CC&Rs shall remain in effect as only their water management responsibilities will be assigned to MIC.

A. Provide Hire a Water System manager (who may also be employed as the Manager); read meters monthly.

B. Provide billing services to Water Users; and pay water suppliers (which services may be accomplished by the hiring of or contracting for a Bookkeeper).

C. Maintain the Water System, including the collection and management of a prudent cash reserve for future maintenance expense for the Water System.

D. Identify and fix leaks and inefficiencies in the Water System.

D. Interface with the water supplier and negotiate a supply contract between MIC and the water supplier.

E. Interface with Tank owner and negotiate a contract of appropriate term between MIC and the Tank owner for the use of the Tank.

F. Take Possession of AOA Funds already collected for water maintenance for the purpose of continued maintenance and development of water system. Money to be transferred on a pro rata basis of \$50.00 per acre which the parties agree is an appropriate estimate of the funds available.

G. Such other responsibilities or duties as the Parties may agree to have the Cooperative perform in the future.

### **SECTION 3 - BILLING AND PAYMENT**

#### **3.1 Monthly Invoice**

By the 10th Business Day of each Calendar Month, MIC shall provide each User with an invoice for the User's water usage for the prior month. Users will be charged for the quantity of Water used as measured by that User's meter plus a pro rata share of the difference between the total amount of Water used by all Users as measured by the aggregate sum of all Users' meters and the overall Water used in the Water System as measured by the main water meter of the Cooperative measuring the total amount of Water received from the Water supplier for the same period (hereinafter (the "Monthly Invoice")).

The Monthly Invoice shall also reflect all charges and assessments for maintenance and operation of the Water System (hereinafter a "Water Allocation Assessment").

Unless and until MIC receives a change in address from a User the Monthly Invoice shall be delivered to the address on file for individual User with the AOAOs.

#### **3.2 Payment**

Payment is due and payable upon receipt of Monthly Invoice. The Cooperative may refuse to furnish irrigation Water to any parcel if outstanding charges for Water or services already furnished (including accrued interest and penalties) have not been paid in full by the Cooperative's prescribed payment date.

#### **3.3 Defaulting User**

Non-payment of Water bills, which include assessments for maintenance, operation and construction, for a period of 60 days or 2 Water billing periods whichever is greater shall

constitute reason for termination of Water to User. At such time a letter of warning will be issued to the User (referred to hereinafter as the "Defaulting User") Water disputes can be negotiated at this time with the Board of Directors. Alternative methods of payments may be arranged.

### **3.4 Termination of Water Delivery**

A User is considered in "Default" when he or she has not paid his/her Water bill and Water Allocation Assessments after 60 days. If User has not paid his Water bill in full at 90 days, or negotiation for alternative methods of payments made, Water will be turned off and owner will be charged a reconnection fee. Water will be turned back on after payment in full of the bill, plus interest and reconnection fee. Original deposit is forfeited. A new deposit is due at reconnection.

Failure or refusal of any User to comply with any of these rules shall be sufficient grounds for terminating delivery of Cooperative Water to his/her lands. Water will not be furnished until full compliance with all rules and regulations have been met.

## **SECTION 4 -INDEPENDENT CONTRACTOR STATUS**

MIC and the Associations acknowledge that the Parties are independent contractors and shall not be entitled to any benefits offered by the others to their employee, if any. Each shall be solely responsible and shall indemnify each other for all payroll, employment, and other taxes associated with its employees, including, without limitation, wages, worker's compensation benefits, employment and social security taxes and fringe benefits, to which each's employees may claim to be entitled. Each shall fully comply with all applicable laws, rules and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects.

## **SECTION 5 -TERM**

### **5.1 Initial Term**

The term of this Agreement ("Term") shall commence on the Execution Date and shall conclude ten (10) years from the Execution Date, unless extended as provided in Subsection 5.2 and may be terminated only pursuant provisions of Section 7 below.

### **5.2 Post Initial Term**

This Agreement shall be automatically extended for additional one year periods following the expiration of the initial Term as set out above, and on each anniversary date thereafter, except upon the occurrence of one or more of the following events: (1) the giving of written notice of termination at least six (6) months in advance of the then current expiration of the Agreement's Term; or (2) by the consent of the parties. Please note this provides for a required notice period of at least six (6) months; this means that a decision on the part of the either Party not to renew the Agreement must be made no later than six (6) months in advance of the Term then ending or the Agreement will be extended for an additional one (1) year term.

## SECTION 6 -DEFAULT

### 6.1 Events of Default

#### A. Default by MIC

The occurrence of any of the following events shall constitute an "Event of Default" by MIC:

(1) MIC shall: (a) be dissolved, be adjudicated as bankrupt, or become subject to an order for relief under any federal bankruptcy law; (b) fail to pay, or admit in writing its inability to pay, its debts generally as they become due; (c) make a general assignment of substantially all its assets for the benefit of creditors; (d) apply for, seek, consent to, or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator, or similar official for itself or any substantial part of its property; (e) institute any proceedings seeking an order for relief or to adjudicate it as bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment, or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors; or (f) take any action to authorize or effect any of the foregoing actions.

(2) MIC shall fail to cure any material breach by MIC of this Agreement within the applicable cure period.

#### B. Default by the Associations

The occurrence of any of the following events shall constitute an "Event of Default" by the Associations:

(1) Any or all of the individuals on entities constituting the Associations shall: (a) be dissolved, be adjudicated as bankrupt, or become subject to an order for relief under any federal bankruptcy law; (b) fail to pay, or admit in writing its inability to pay, its debts generally as they become due; (c) make a general assignment of substantially all its assets for the benefit of creditors; (d) apply for, seek, consent to, or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator, or similar official for itself or any substantial part of its property; (e) institute any proceedings seeking an order for relief or to adjudicate it as bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment, or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors; or (f) take any action to authorize or effect any of the foregoing actions.

(2) Any or all of the individuals or entities constituting the Associations shall fail to cure any material breach by themselves of this Agreement within the applicable cure period.

## **6.2 Right to Cure Default**

### **A. Cure Period**

An Event of Default shall not be declared or deemed to exist if the defaulting Party cures such Event of Default within forty-five (45) Calendar Days of receipt of notice from the non-defaulting Party or, if a cure may not be effected within such forty-five (45) Calendar Day period, the defaulting Party commences its reasonable best efforts to cure such Event of Default during such period and diligently pursues such efforts to completion.

### **B. Effect of Cure on Event of Default**

If an Event of Default occurs (or if conditions exist which would permit MIC or MIC to declare an Event of Default) and if such Event of Default (or the conditions which would permit MIC or MIC to declare an Event of Default) is cured prior to any invocation of remedies therefore, remedies (other than the payment of damages associated with the Event of Default) for such Event of Default shall not thereafter be invoked.

## **6.3 Notice of Default**

Upon the occurrence of an Event of Default specified in Subsection 6.1 above, the non-defaulting Party shall deliver to the defaulting Party a written notice ("Notice of Default") which: (i) declares that an Event of Default has occurred; and (ii) identifies the specific provision or provisions of this Agreement under which such Event of Default shall have occurred.

## **6.4 Liability for Breach**

In the event of any material breach of this Agreement by either Party, such defaulting Party shall remain liable to the non-defaulting Party for damages resulting from such material breach, notwithstanding any termination of this Agreement.

## **SECTION 7 -TERMINATION**

### **7.1 Ability of MIC to Terminate**

MIC may terminate this Agreement in the case of an Event of Default by the Associations that remains uncured after delivery of a Notice of Default as provided in Subsection 6.1 and after expiration of the cure period provided in Subsection 6.2 then MIC shall have the right to terminate this Agreement upon thirty (30) Calendar Days written notice to the Associations. MIC's written notice of its exercise of the foregoing right to terminate in an Event of Default shall not be provided prior to the expiration of the cure period, and any notice delivered while the Associations are exercising reasonable best efforts to cure any Event of Default, shall be null and void.

### **7.2 Ability of Associations to Terminate**

The Associations may terminate this Agreement in the case of an Event of Default by MIC that remains uncured after delivery of a Notice of Default as provided in Subsection 6.1 and after expiration the cure period provided in Subsection 6.2, then the Associations shall have the right to terminate this Agreement upon thirty (30) Calendar Days written notice to MIC. MIC's written notice of its exercise of the foregoing right to terminate in an Event of Default shall not be provided prior to the expiration of the cure period, and any notice delivered while MIC is exercising reasonable best efforts to cure any Event of Default shall be null and void.

### **7.3 Ability of Either Party to Terminate**

If MIC is unsuccessful in negotiating a water supply contract between MIC and the water supplier as provided for in Subsection 2.2, and a contract of appropriate term between MIC and the Tank owner for the lease of the Tank as also as provided for in Subsection 2.2 within a period of one year following the Effective date, either Party may, but is not required to, terminate this Agreement on at least 180 days advance notice given to the other Party or Parties

## **SECTION 8 -STANDARD OF CARE**

The Services to be performed by MIC in accordance with shall be done in a professional and workmanlike manner consistent with Good Engineering and Operating Practices and the degree of care, skill, prudence, judgment and diligence, under the circumstances then prevailing, that an operator of an Agricultural Water distribution system would exercise in the performance of development activities of a like character with similar objectives. Except as specified in this Agreement, all representations and warranties, whether statutory, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, or arising from a course of dealing, are hereby excluded and disclaimed to the fullest extent allowed by applicable law.

## **SECTION 9 -LIMITATION OF LIABILITY AND INDEMNIFICATION**

### **9.1 Limitation of Liability**

Absent gross negligence or willful misconduct MIC shall not be liable to the Associations or any of the Associations' Users, whether based on contract, tort (including negligence and strict liability), or otherwise relating to the provision of a MIC Service, use of the Water Facilities or Water System, or this Agreement for any consequential, indirect, special or incidental loss or damage, or any loss of business opportunities.

Absent gross negligence or willful misconduct the Associations shall not be liable to MIC, whether based on contract, tort (including negligence and strict liability), or otherwise relating to the provision of a MIC Service, use of the Water Facilities or Water System, or this Agreement for any consequential, indirect, special or incidental loss or damage, or any loss of business opportunities.

All of the provisions of this Agreement providing for limitation of or protection against liability of MIC or the Associations shall also protect the respective members, directors, officers and employees, and affiliated entities of MIC and associations respectively, and their directors, officers, employees, and affiliates. The provisions of this Section shall apply notwithstanding any other provision of this Agreement.

## 9.2 Indemnification of MIC

A. The Associations shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless MIC, its successors, permitted assigns, Affiliates, controlling persons, directors, officers, employees, servants, and agents, including, but not limited to, Consultants and their employees (collectively referred to as an "Indemnified MIC Party"), from and against any and all third party claims, demands, obligations, liabilities (including, without limitation, liabilities arising out of the doctrine of strict liability), losses, damages, penalties, fines, actions, suits, judgments, costs, expenses, and disbursements (including, without limitation, reasonable attorneys' fees and expenses) and proceedings of any nature whatsoever for personal injury or death or damage to property, whether or not well-founded, meritorious, or unmeritorious, demanded, asserted, or claimed against, imposed on, or incurred by an Indemnified MIC Party in any way relating to or arising out of the performance by MIC or its agents or subcontractors (but specifically not including an Indemnified MIC Party) of this Agreement, except to the extent that any of the foregoing is attributable to the gross negligence or willful misconduct of an Indemnified MIC Party.

B. Except to the extent caused by the gross negligence or willful misconduct of an Indemnified MIC Party, any fines or other penalties incurred by an Indemnified MIC Party for noncompliance by MIC or an Indemnified MIC Party with Laws undertaken because of the failure of MIC to comply with any Laws shall not be reimbursed by the Associations but shall be the sole responsibility of MIC. Except to the extent caused by the gross negligence or willful misconduct of an Indemnified MIC Party, the Associations shall indemnify, defend, and hold harmless each Indemnified MIC Party from and against any and all liabilities, damages, losses, penalties, claims, demands, suits, costs, expenses, disbursements (including attorneys' fees) and proceedings of any nature whatsoever suffered or incurred because of the failure of MIC to comply with any of the Laws.

C. If MIC shall obtain knowledge of any claim indemnified against under this Subsection 9.2 or otherwise under this Agreement, MIC shall give prompt notice thereunder to Associations, and if Associations shall obtain any such knowledge the Associations shall give prompt notice thereof to MIC.

D. In case any action, suit, or proceeding shall be brought against an Indemnified MIC Party, MIC shall notify the Associations of the commencement thereof and, provided that it has acknowledged in writing to MIC its obligation to an Indemnified MIC Party under this Subsection 9.2, the Associations shall be entitled, at their own expense, acting through counsel acceptable to MIC, to participate in and, to the extent that MIC desires, to assume and control the defense thereof; provided, however, that the Associations shall not be entitled to assume and control the defense of any such action, suit, or proceeding if and to the extent that, in the

reasonable opinion of MIC, such action, suit, or proceeding involves the potential imposition of criminal liability on an Indemnified MIC Party or a conflict of interest between an Indemnified MIC Party and the Associations. MIC shall be entitled, at its own expense, acting through counsel acceptable to MIC, to participate in any action, suit, or proceeding, the defense of which has been assumed by the Associations. The Associations shall supply MIC with such information and documents requested by MIC as are necessary or advisable for MIC to proceed in connection with its participation in any action, suit, or proceeding to the extent permitted by this Subsection 9.2. An Indemnified MIC Party shall not enter into any settlement or other compromise with respect to any claim without the prior written consent of the Associations, which consent shall not be unreasonably withheld or delayed.

E. Upon payment of any claim by the Associations pursuant to this Subsection 9.2 or other similar indemnity provisions contained herein to or on behalf of an Indemnified MIC Party, the Associations, without any further action, shall be subrogated to any and all claims that such Indemnified MIC Party may have relating thereto, and MIC shall cooperate with the Associations and give such further assurances as are necessary or advisable to enable the Associations to vigorously pursue such claims, provided that the Associations shall reimburse MIC for its reasonable time and expenses incurred in connection with such cooperation.

### **9.3 Indemnification of the Associations**

A. MIC shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless the Associations, their successors, permitted assigns, Affiliates, controlling persons, directors, officers, employees, servants, and agents, including, but not limited to Consultants and their employees (collectively referred to as an "Indemnified Association Party"), from and against any and all third party claims, demands, obligations, liabilities (including, without limitation, liabilities arising out of the doctrine of strict liability), losses, damages, penalties, fines, actions, suits, judgments, costs, expenses, and disbursements (including, without limitation, reasonable attorneys' fees and expenses) and proceedings of any nature whatsoever for personal injury or death or damage to property, whether or not well-founded, meritorious, or unmeritorious, demanded, asserted, or claimed against, imposed on, or incurred by an Indemnified Association Party in any way relating to or arising out of the performance by the Associations' or its agents or subcontractors (but specifically not including an Indemnified Association Party) of this Agreement, except to the extent that any of the foregoing is attributable to the gross negligence or willful misconduct of an Indemnified Association Party.

B. Except to the extent caused by the gross negligence or willful misconduct of an Indemnified Association Party, any fines or other penalties incurred by an Indemnified Association Party for noncompliance by the Associations or an Indemnified Association Party with Laws undertaken because of the failure of the Associations to comply with any Laws shall not be reimbursed by MIC but shall be the sole responsibility of the Associations. Except to the extent caused by the gross negligence or willful misconduct of an Indemnified Association Party, MIC shall indemnify, defend, and hold harmless each Indemnified Association Party from and against any and all liabilities, damages, losses, penalties, claims, demands, suits, costs, expenses, disbursements (including attorneys' fees) and proceedings of any nature whatsoever suffered or incurred because of the failure of the Associations to comply with any of the Laws.

C. If the Associations shall obtain knowledge of any claim indemnified against under this Subsection 9.2 or otherwise under this Agreement, the Associations shall give prompt notice thereunder to MIC, and if MIC shall obtain any such knowledge MIC shall give prompt notice thereof to the Associations.

D. In case any action, suit, or proceeding shall be brought against an Indemnified Association Party, the Associations shall notify MIC of the commencement thereof and, provided that it has acknowledged in writing to the Associations its obligation to an Indemnified Association Party under this Subsection 9.2, MIC shall be entitled, at their own expense, acting through counsel acceptable to the Associations, to participate in and, to the extent that the Associations desires, to assume and control the defense thereof; provided, however, that the MIC shall not be entitled to assume and control the defense of any such action, suit, or proceeding if and to the extent that, in the reasonable opinion of the Associations, such action, suit, or proceeding involves the potential imposition of criminal liability on an Indemnified Association Party or a conflict of interest between an Indemnified Association Party and MIC. The Associations shall be entitled, at their own expense, acting through counsel acceptable to MIC, to participate in any action, suit, or proceeding, the defense of which has been assumed by the MIC. The Associations shall supply MIC with such information and documents requested by MIC as are necessary or advisable for MIC to proceed in connection with its participation in any action, suit, or proceeding to the extent permitted by this Subsection 9.2. An Indemnified Association Party shall not enter into any settlement or other compromise with respect to any claim without the prior written consent of MIC, which consent shall not be unreasonably withheld or delayed.

E. Upon payment of any claim by MIC pursuant to this Subsection 9.2 or other similar indemnity provisions contained herein to or on behalf of an Indemnified Association Party, MIC, without any further action, shall be subrogated to any and all claims that such Indemnified Association Party may have relating thereto, and the Associations shall cooperate with MIC and give such further assurances as are necessary or advisable to enable the MIC to vigorously pursue such claims, provided that the MIC shall reimburse the Associations for their reasonable time and expenses incurred in connection with such cooperation.

## SECTION 10 -INSURANCE

### 10.1 General Insurance Requirements

MIC shall procure and maintain in effect during the term of this Agreement, and for a period of three years thereafter, the insurance coverages set out in Subsection 10.2 below, which insurance shall be placed with insurance companies authorized to do business in the State of Hawaii. Prior to the commencement of any Work MIC or its Subcontractors shall furnish certified copies of all insurance policies intended to meet the requirements of this Subsection 10.1. Properly executed Certificates of Insurance, including the required amendatory riders and endorsements, may be substituted for certified copies of insurance policies provided that such certificates contain a positive statement of compliance with the terms of this Agreement. An authorized representative of the insurance company shall execute the foregoing. MIC shall not make any changes in or allow the required insurance coverages to lapse without MIC's prior

written approval. All insurance policies shall be endorsed to contain a provision giving 30 thirty days prior written notice by registered mail of any cancellation or non-renewal of that policy or material changes in coverage. At the time of signing this Agreement the Associations may require MIC to provide evidence acceptable to MIC, which demonstrates that MIC will be able to secure the insurance required by this Agreement.

## **10.2 Insurance Required**

A. Worker's Compensation: statutory benefits and limits. Insurance shall contain benefits and limits in full compliance with all state and federal requirements. It shall also include Other States Coverage and Voluntary Compensation Endorsements and Employer's Liability Insurance with limits of not less than \$500,000 per accident, \$500,000 per disease and a \$500,000 policy limit on disease.

B. Business Auto Coverage with a \$100,000 each accident limit shall be in MIC's name and shall include owned, non-owned, leased and hired vehicle coverage unless personal autos are used in which case the insurance policy on the vehicles must have equivalent coverage.

C. Commercial General Liability (CGL): \$1,000,000 bodily injury and property damage combined single limit per occurrence; \$1,000,000 personal injury/advertising injury; \$2,000,000 products/completed operations aggregate; and \$2,000,000 general aggregate per project. The CGL policy shall have a per project endorsement to require these limits to apply only to each individual Project. Insurance shall be on an occurrence basis, in MIC's name, and shall include: Bodily Injury; it shall not be endorsed with Exclusion—Explosion, Collapse and Underground Property Damage Endorsement; products/completed operations which shall be maintained for three years after final payment for the Project; blanket contractual coverage including MIC's indemnity obligations; it shall not contain any cross-liability exclusion and Broad Form Property Damage coverage with bodily injury and property damage of combined single limits of not less than those stated above per occurrence.

## **10.3 Additional Insureds**

Except for Worker's Compensation and Employer's Liability Insurance, MIC agrees, with respect to all insurance provided or required in connection with this Agreement as specified below, to endorse or require each policy to: (i) stipulate that such insurance is primary and is not additional to, or contributing with, any other insurance carried by, or for the benefit of MIC (also referred to in this Agreement as "Additional Insured"); (ii) waive any and all rights of subrogation against Additional Insured; (iii) this insurance shall not be prejudiced as to the Additional Insured by any act or negligence, error, or omission of the Named Insured as respects payment of premium, reporting of claims, or any other duties required of the Named Insured by the policy.

## **10.4 Failure to Pay Premiums**

If MIC's insurance is canceled because MIC failed to pay its premiums or any part thereof, or if MIC fails to provide and maintain certificates as set forth herein, MIC shall have

the right, but shall not be obligated, to pay such premium to the insurance company or to obtain such coverage from other companies and to deduct such payment from any sums that may be due or become due to MIC, or to seek reimbursement for said payments from MIC, which sums shall be due and payable immediately upon receipt by MIC of notice from MIC.

#### **10.5 Waiver of Rights**

MIC waives all rights against the Associations and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the automobile liability, commercial general liability insurance obtained by MIC.

#### **10.6 Subcontractors**

In the event that MIC elects to perform a portion of the Work through the use of Subcontractors, MIC shall require Subcontractors to comply with the insurance requirements of this Article MIC shall contractually obligate its Subcontractors to promptly advise MIC of any lapse of the requisite insurance coverages, and MIC shall promptly advise Associations of same. MIC assumes all liability for its Subcontractors' failure to comply with the insurance provisions of this Agreement.

### **SECTION 11 -DISPUTE RESOLUTION**

#### **11.1 Good Faith Negotiations**

Before any dispute under this Agreement is subjected to the provisions of Section 11 or any litigation, the members of the Management Committee shall personally meet in Hawai'i and attempt in good faith to resolve the dispute.

#### **11.2 Mediation**

If the Parties are unable to resolve any dispute under this Agreement under the provisions of Subsection 11.1, the Parties shall endeavor to resolve their dispute by mediation which, unless the Parties mutually agree otherwise, shall be in accordance with the Rules, Procedures, and Protocols for Mediation of Dispute Prevention & Resolution, Inc. ("DPRI"), then in effect or the rules of such other dispute resolution agency as the Parties to the dispute may mutually select. Request for mediation shall be filed in writing with the other Party to this Agreement. The Parties shall each pay fifty percent (50%) of the cost of the mediator and the fees of the mediation. Unless the Parties otherwise agree, the venue of the mediation will be Lihue, Kaua'i, Hawai'i.

#### **11.3 Arbitration**

In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting the dispute will be submitted to binding arbitration with a single arbitrator governed by the applicable Dispute Resolution Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If A A is no longer in business or otherwise available, either party may

apply to a judge of the Fifth Circuit Court, State of Hawaii, for appointment of an alternative mediation and arbitration service.

## SECTION 12 -FORCE MAJEURE AND DELAYS

### 12.1 Force Majeure

Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence, or event is substantially caused by conditions or events of Force Majeure, provided that:

A. the nonperforming Party gives the other Party within two (2) Business Days after the Force Majeure cause or event begins, or as promptly thereafter as reasonably possible under the circumstances, written notice describing the particulars of the Force Majeure cause or event;

B. the nonperforming Party gives the other Party, within fourteen (14) Calendar Days after the Force Majeure cause or event begins, a written explanation of the Force Majeure cause or event and its effect on the nonperforming Party's performance, which explanation shall include evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in Section 1 of this Agreement;

C. the suspension of performance is of no greater scope and of no longer duration than is required by the condition or event of Force Majeure;

D. the nonperforming Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

E. when the event or condition of Force Majeure ends and the nonperforming Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

### 12.2 Delays

No Party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause (i) which is beyond the reasonable control of the affected Party, (ii) which was not anticipated as of the date such obligations were agreed to, and (iii) which the affected Party is not able to overcome or avoid by the exercise of commercially reasonable diligence.

## SECTION 13 -ASSIGNMENT

### 13.1 Assignment by MIC

This Agreement shall not be assignable by MIC without the prior written consent of the Associations (which consent shall not be unreasonably withheld, delayed, or conditioned); provided that MIC may, without the consent of the Associations, assign this Agreement to an Affiliate or a wholly-owned subsidiary of MIC to the extent that a change of control of MIC has not occurred through merger or acquisition; provided, however, that MIC shall remain liable for the performance of any and all provisions under this Agreement subsequent to a permitted assignment to an Affiliate or a wholly-owned subsidiary of MIC.

### 13.2 Assignment by Associations

This Agreement shall not be assignable Associations.

### 13.3 Binding on Assigns

This Agreement and all of its covenants, terms, and provisions shall be binding upon and shall insure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns.

## SECTION 14 -MISCELLANEOUS

### 14.1 Effective Date.

The terms of this agreement will become effective as of the Effective date as set out in the Preamble to this Agreement.

### 14.2. Modification

No terms, provision or condition of this Agreement may be altered, amended or added except by written agreement signed by MIC and the Associations.

### 14.3. Entire Agreement.

This Agreement shall constitute the entire agreement between the Parties pertaining to the subject matter contained herein, superseding any and all previous agreements, oral or written.

### 14.4. Cooperation

MIC and Associations agree to cooperate with each other in the performance and fulfillment of their obligations under this Agreement. Each of the Parties shall do all acts and things reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the Parties.

#### **14.5. Contact**

The MIC point of contact for written communications (except emails) under this Agreement is P.O. BOX 506 ANAHOLA, HI 96703; for oral communications is telephone 808-823-9004 and for email is [ismoloairrigation@gmail.com](mailto:ismoloairrigation@gmail.com). The Associations' point of contact for written communications (except emails) under this Agreement is: HUI I: P.O. BOX 686, KILAUEA, HI 96756, HUI II P.O. BOX 30855, ANAHOLA, HI 96703, and HUI III P.O. BOX 498, KILAUEA, HI 96756; for oral communications is HUI I telephone 808-639-2768, for HUI II is telephone 808-823-9004 and for HUI III is telephone 808-634-5412 and for email is: HUI I [thedocs@aloha.net](mailto:thedocs@aloha.net), HUI II [hollow@hawaiiink.net](mailto:hollow@hawaiiink.net) and HUI III [permaculturekauai@yahoo.com](mailto:permaculturekauai@yahoo.com).

#### **14.6 Governing Laws.**

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Hawaii.

#### **14.7. Waiver.**

Any waiver of the terms, conditions, or provisions of the Agreement or a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a Party to enforce the terms, conditions, or provisions of this Agreement or such Party's rights or remedies at any time, will not be construed as a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take any subsequent action. No exercise or enforcement by any Party of that party's rights or remedies under this Agreement will preclude the enforcement by such Party of any of its other rights or remedies that are available under this Agreement or by law.

#### **14.8. Headings.**

The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

#### **14.9. Severability.**

If any provision of this Agreement shall be adjudged by a court of competent jurisdiction to be void, invalid, illegal, or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement, as a whole, and to the extent necessary, this Agreement shall be construed as if such void, invalid, illegal, or unenforceable provision has never been contained herein.

**14.10. Counterpart signatures.**

The delivery of a signed copy of this Agreement by facsimile or by email shall be as effective as the delivery of a signed original. This Agreement may be signed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all off the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**MOLOAA IRRIGATION COOPERATIVE**

RAYMOND E. MAKI  
Print Name

VICE PRESIDENT  
Title

[Signature] 7/20/2011  
Signed Date

**HUI I**

PAUL C HUBER  
Print Name

PRESIDENT  
Title

[Signature] 7/20/2011  
Signed Date

**HUI II**

RODNEY YA OAO  
Print Name

PRESIDENT HUI II  
Title

[Signature] July 21, 2011  
Signed Date

**HIGHWAY LOT OWNERS**

JEREMY HILLSTROM  
TMK# 4-9-009-026-0010

SIGNED \_\_\_\_\_  
DATE \_\_\_\_\_

KAUAI KULEANA  
TMK# 4-9-009-026-0011

SIGNED \_\_\_\_\_  
DATE \_\_\_\_\_

RAYMOND MAKI  
TMK# 4-9-009-045

SIGNED

DATE

DAVID JONES  
TMK#4-9-009-046-0001

SIGNED

DATE

HANAIEI NORTH SHORE PROP.  
TMK# 4-9-009-046-0002

SIGNED

DATE

ROBIN SAVAGE  
WARD THOMPSON  
TMK# 4-0-009-047-0001

SIGNED

DATE

BUENAVENTURA EDNILAO  
TMK# 4-9-009-047-0002

SIGNED

DATE

MOISIS PEREZ  
TMK# 4-9-009-048-0001

SIGNED

DATE

JASON DUBAY  
FELICITAS DUGAY  
TMK# 4-9-009-048-0002

SIGNED

DATE

DAVID ESTRELLA  
TMK# 4-9-009-048-0003

SIGNED

DATE

TERIN RICEHILL  
MELISSA ROSS  
TMK# 4-9-009-048-0004

SIGNED

DATE

TERIN RICEHILL  
MELISSA ROSS  
TMK# 4-9-009-048-0005

SIGNED

DATE

JEFF LINDNER  
TMK# 4-9-009-049

SIGNED

DATE

*Jeff Lindner*

7/20/11

JEFF LINDNER  
TMK#4-9-009-033

SIGNED

DATE

*Jeff Lindner*

7/20/11

DENNIS & COLLEEN RAYMOND  
TMK#4-9-003-013

SIGNED

DATE

4117



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

April 25, 2018 8:01 AM

Doc No(s) A-66890441



1 1/2 CGG  
B-33155294

/s/ LESLIE T. KOBATA  
REGISTRAR

Conveyance Tax: \$600.00

LAND COURT

REGULAR SYSTEM

Return By Mail  Pick-Up  To

MOLOAA IRRIGATION COOPERATIVE  
P. O. Box 506  
Anahola, HI 96703

TITLE NO.: 011704820-KE  
ESCROW NO.: 011704820-MM  
MANDY MARUMOTO

011704820

FNTIC

TOTAL NUMBER OF PAGES: 23

①

RLS

TITLE OF DOCUMENT:

APARTMENT DEED

PARTIES TO DOCUMENT:

GRANTOR: MOLOAA HUI LANDS, INC., a Hawaii corporation, whose mailing address is P. O. Box 1344, Yucaipa, CA 92399

GRANTEE: MOLOAA IRRIGATION COOPERATIVE, a Hawaii consumer cooperative association pursuant to Haw. Rev. Stat. Chapter 421C, whose mailing address is P. O. Box 506, Anahola, HI 96703

TAX MAP KEY (4) 4-9-009-009  
"MOLOAA HUI II"  
UNIF. NO. 33, C.P.R. NO. 0014

4819-5679-2922/K31349/4-5-18

EXHIBIT "11"

APARTMENT DEED

KNOW ALL MEN BY THESE PRESENTS:

That **MOLOAA HUI LANDS, INC.**, a Hawaii corporation, whose mailing address is **P. O. Box 1344, Yucaipa, CA 92399**, hereinafter called the "Grantor", for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration to the Grantor paid by **MOLOAA IRRIGATION COOPERATIVE**, a Hawaii consumer cooperative association pursuant to **Haw. Rev. Stat. Chapter 421C**, whose mailing address is **P. O. Box 506, Anahola, HI 96703**, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee all of that certain premises comprising a portion of the Condominium Project known as "MOLOAA HUI II", as established by Declaration of Condominium Property Regime dated April 30, 1997, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-057760, as amended, and as shown on Condominium Map No. 2543, being Unit No. 33, and situate on real property designated on the tax maps of the Fourth Taxation Division, State of Hawaii, as Tax Map Key **4-9-009-009**, C.P.R. No. **0014**, more particularly described in Exhibit A attached hereto and made a part hereof, subject to the encumbrances noted therein.

TOGETHER WITH all the rights, easements, privileges and appurtenances thereunto belonging or appertaining.

TO HAVE AND TO HOLD the same unto the Grantee, as tenant in severalty, its successors and assigns, in fee simple, forever.

AND the said Grantor does hereby covenant with the Grantee that the Grantor is lawfully seised in fee simple of said granted premises and that the said premises are free and clear of all encumbrances except as aforesaid, and except for assessments for real property taxes. And the said Grantor further covenants and agrees that the Grantor has good right to sell and convey the said premises in the manner aforesaid; that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, firms, corporations, and associations, except as aforesaid.

AND THE GRANTOR, in consideration of the premises, does hereby grant, sell, transfer and deliver unto the Grantee the items of furniture and furnishings situate on the premises.

TO HAVE AND TO HOLD the same unto the Grantee, to the Grantee's use and benefit forever.

AND the Grantor, in consideration of the premises, does hereby covenant and agree to and with the Grantee, that the Grantor is the lawful owner of the said furniture and furnishings and the same are free and clear of all encumbrances; that the Grantor has good right to sell the same; that the Grantor will WARRANT AND DEFEND the title thereto against all lawful claims and demands of all persons, firms, corporations, and associations, except as aforesaid.

And the Grantee does hereby covenant and agree to and with Grantor that the Grantee's interest under this Apartment Deed shall be subject to, and the Grantee will observe, perform, comply with and abide by, the Declaration of Condominium Property Regime of the condominium project described in said Exhibit A and the By-Laws of said condominium project, as either of the same may have been or may hereafter be amended.

The parties to this instrument understand that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed to be an alteration of this instrument by means of the insertion of the new content.

This instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by

two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents on this 13 day of April, 2018.

**MOLOAA HUI LANDS, INC., a Hawaii corporation**



By: ERIC MICHAEL STRONG  
Its: President/Chief Executive Officer

"GRANTOR"

**MOLOAA IRRIGATION COOPERATIVE, a Hawaii consumer cooperative association pursuant to Haw. Rev. Stat. Chapter 421C**

By: PAUL HUBER  
Its: President

By: RAY MAKI  
Its: Vice President

By: BRANDON MIRANDA  
Its: Secretary

"GRANTEE"

APPROVED AS TO FORM  
CARLSMITH BALL LLP

BY Robert D. Triantos  
4-12-18

two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents on this 17th day of APRIL, 2018.

MOLOAA HUI LANDS, INC., a Hawaii corporation

By: ERIC MICHAEL STRONG  
Its: President/Chief Executive Officer

"GRANTOR"

MOLOAA IRRIGATION COOPERATIVE,  
a Hawaii consumer cooperative association  
pursuant to Haw. Rev. Stat. Chapter 421C

Paul Huber  
By: PAUL HUBER  
Its: President

Ray Maki  
By: RAY MAKI  
Its: Vice President

Brandon Miranda  
By: BRANDON MIRANDA  
Its: Secretary

"GRANTEE"

APPROVED AS TO FORM  
CARLSMITH BALL LLP

BY Robert D. Triantos  
4-12-18

5

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

STATE OF CALIFORNIA )  
COUNTY OF San Bernardino )

On 4.13.16, before me, Andrea Marie Bonafede, Notary Public

personally appeared ERIC MICHAEL STRONG, the President/Chief Executive Officer of Moloaa Hui Lands, Inc., a Hawaii corporation



who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person or the entity upon behalf of which the person acted, executed the instrument.

I certify that under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Andrea Marie Bonafede  
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Individual
- Attorney In Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Individual
- Attorney In Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

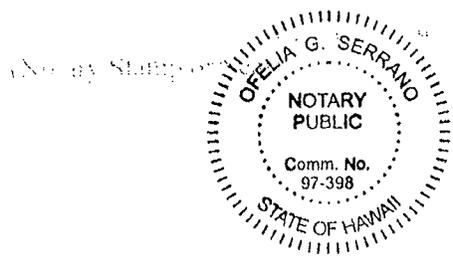
Signer is representing: \_\_\_\_\_

Signer is representing: \_\_\_\_\_

6

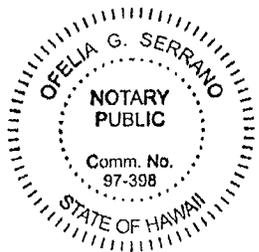
STATE OF HAWAII )  
COUNTY OF HAWAII <sup>GR</sup> *Kauai* ) ss.  
 )

On this 17 day of April, 2018, before me personally appeared PAUL HUBER, to me known (or proved to me on the basis of satisfactory evidence) that he is the President of MOLOAA IRRIGATION COOPERATIVE, a Hawaii consumer cooperative association pursuant to Haw. Rev. Stat. Chapter 421C, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



*Ofelia G. Serrano*  
Name: OFELIA G. SERRANO  
Notary Public  
State of Hawaii  
My commission expires: AUG 07 2021

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>Apartment Deed</u>
Document Date:	<u>4/17/2018</u>
No. of Pages:	<u>23</u>
Jurisdiction (in which notarial act is performed):	<u>Fourth Circuit</u>
Signature of Notary	<u><i>Ofelia G. Serrano</i></u>
Printed Name of Notary	<u>OFELIA G. SERRANO</u>
Date of Notarization and Certification Statement	<u>4/17/2018</u>

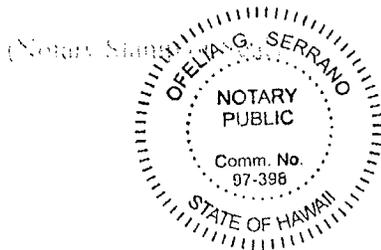


(Notary Stamp or Seal)

7

STATE OF HAWAII )  
COUNTY OF ~~HAWAII~~ <sup>Kauai</sup> ) ss.  
)

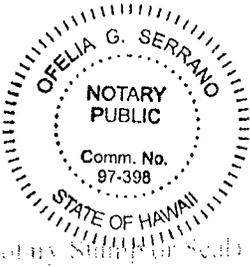
On this 17 day of April, 2018, before me personally appeared RAY MAKI, to me known (or proved to me on the basis of satisfactory evidence) that he is the Vice President of MOLOAA IRRIGATION COOPERATIVE, a Hawaii consumer cooperative association pursuant to Haw. Rev. Stat. Chapter 421C, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



*Ofelia G. Serrano*  
Name: OFELIA G. SERRANO  
Notary Public  
State of Hawaii

My commission expires: AUG 07 2021

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>Apartment Deed</u>
Document Date:	<u>4/17/2018</u>
No. of Pages:	<u>23</u>
Jurisdiction (in which notarial act is performed):	<u>Fourth Circuit</u>
Signature of Notary	<u><i>Ofelia G. Serrano</i></u>
Printed Name of Notary	<u>OFELIA G. SERRANO</u>
Date of Notarization and Certification Statement	<u>4/17/2018</u>

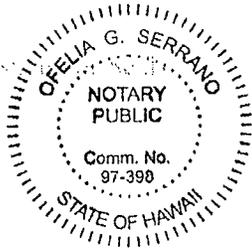


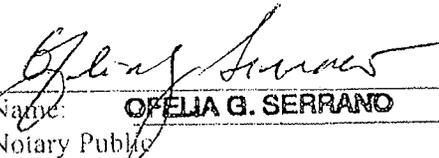
(Notary Stamp/Seal)

8

STATE OF HAWAII )  
 ) ss.  
COUNTY OF ~~HAWAII~~ <sup>Oahu</sup> Kauai )

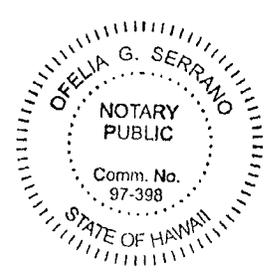
On this 17 day of April, 2018, before me personally appeared **BRANDON MIRANDA**, to me known (or proved to me on the basis of satisfactory evidence) that he is the **Secretary** of **MOLOAA IRRIGATION COOPERATIVE**, a **Hawaii consumer cooperative association pursuant to Haw. Rev. Stat. Chapter 421C**, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



  
Name: OFELIA G. SERRANO  
Notary Public  
State of Hawai'i

My commission expires: AUG 07 2021

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>Apartment Deed</u>
Document Date:	<u>4/17/2018</u>
No. of Pages:	<u>25 (23) 005 Fifth or</u>
Jurisdiction (in which notarial act is performed):	<u>Fourth Circuit</u>
Signature of Notary	<u>4/17/2018</u>
<u>OFELIA G. SERRANO</u>	Date of Notarization and Certification Statement
Printed Name of Notary	



(Notary Stamp or Seal)

9

EXHIBIT "A"

-FIRST:-

CONDOMINIUM UNIT No. 33, together with its appurtenant limited common element land area, of that certain condominium project known as "MOLOAA HUI II", as established by Declaration of Condominium Property Regime dated April 30, 1997, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-057760, as amended, and as shown on Condominium Map No. 2543.

TOGETHER WITH exclusive use of the limited common element appurtenant thereto, and appurtenant easements as described in said Declaration and nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of said Unit which are shown on the Condominium Map for the Project or otherwise of record; in the other common elements for use according to their respective purposes, and in all other Units of said Project.

-SECOND:-

An undivided 2% interest in all common elements of the Project, including the land described in said Declaration as established for said Unit by the Declaration, or such other percentage hereafter established for said unit by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof, subject to all exclusive and non-exclusive easements appurtenant to the other units respectively of the Project and reserving and subject to all easements required for drainage, sewers and any utilities serving the Project.

Being a portion of the property conveyed by the following:

Limited Warranty Apartment Deed

Grantor: Moloaa Hui Lands, Inc., a Hawaii Corporation, T.G Exchange, Inc., a Hawaii Corporation, and T. G. Super Exchange Corp, a Hawaii Corporation  
Grantee: Moloaa Hui Lands, Inc., a Hawaii Corporation  
Dated: September 2, 1997  
Recording Date: September 5, 1997  
Recording No: 97-119688

The land upon which said Condominium Project "MOLOAA HUI II" is located is described as follows:

10

-PORTION OF PARCEL FIRST:- (TMK 4-9-009-001 (4))

All of that certain parcel of land (being portions of the Moloaa Hui Lands and the Kaapuna Hui Lands, being portion of the land described in and covered by Royal Patent No. 535 to James W. Smith) situate, lying and being at Moloaa and Papaa, Kawaihau, Island and County of Kauai, State of Hawaii, being portions of Lots 24-A and M-1, bearing tax key designation 4-9-009-001 (4), and containing an area of 122.812 acres, more or less.

-PORTION OF PARCEL SECOND:- (LOT 1, TMK 4-9-009-009 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being approximately 2,500 feet north of the Kuhio Highway and Koolau Road intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 1, same being a portion of Lot 24-A, and thus bounded and described:

Beginning at a point at the south corner of this parcel of land, also being the east corner of Lot 8 and the west boundary of the Roadway (56 feet wide), the coordinates of which referred to Government Survey Triangulation Station "MOLOAA", being 130.14 feet south and 3,007.52 feet west and running by azimuths measured clockwise from true South:

1. 141° 17' 1,111.94 feet along the north boundary of Lot 8:

Thence following along the meandering boundary for the next four courses, the direct azimuths and distances between said points being:

2. 201° 30' 220.00 feet:

3. 265° 30' 565.00 feet:

4. 253° 30' 558.48 feet:

5. 322° 30' 636.94 feet:

6. 50° 24' 418.68 feet along the west boundary of Lot 2;

7. 50° 26' 652.17 feet along the west boundary of the Roadway (56 feet wide);

8. 27° 51' 99.09 feet along same, to the point of beginning and containing an area of 24.609 acres, more or less.

-PARCEL THIRD:- (LOT 2, TMK 4-9-009-010 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being approximately 6,000 feet northeast of the Kuhio Highway and Anuenue Road

11

intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 2, same being a portion, of Lot 24-A, and thus bounded and described:

Beginning at a point at the west corner of this parcel of land, also being the east boundary of Lot 1, the coordinates of which referred to Government Survey Triangulation Station "MOLOAA", being 372.89 feet north and 2,458.49 feet west and running by azimuths measured clockwise from true South:

1. 230° 24' 418.68 feet along the east boundary of Lot 1;

Thence following along the meandering boundary, the direct azimuth and distance between said points being:

2. 292° 44' 2,016.03 feet;
3. 52° 35' 30" 1,358.30 feet along the west boundary of Lot 3;
4. 140° 29' 1,733.58 feet along the north boundary of the Roadway (56 feet wide), to the point of beginning and containing an area of 30.522 acres, more or less.

PARCEL FOURTH:- (LOT 3, TMK 4-9-009-011 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being approximately 3,000 feet northeast of the Kuhio Highway and Koolau Road intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 3, same being a portion of Lot 24-A, and thus bounded and described:

Beginning at a point at the southwest corner of this parcel of land, also being the north corner of Lot 10, the coordinates of which referred to Government Survey Triangulation Station "MOLOAA", being 1,405.39 feet south and 1,931.94 feet west and running by azimuths measured clockwise from true South:

1. 232° 35' 30" 1,414.34 feet along the east boundaries of Lot 2, Lot 7 and Roadway (56 feet wide);

Thence following along the meandering boundary, the direct azimuth and distance between said points being:

2. 307° 40' 50" 850.65 feet;
3. 49° 05' 30" 1,668.00 feet along the west boundary of Lot 4;
4. 89° 08' 449.41 feet along the north boundary of the Drainage Ditch;

EXHIBIT "A"

Page 3 of 14

12

5. 119° 42' 15" 712.34 feet along the north boundary of Lot 10, to the point of beginning and containing an area of 39.759 acres, more or less.

-PARCEL FIFTH:- (LOT 7, TMK 4-9-009-015 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being approximately 5,000 feet northeast of the Kuhio Highway and Anuenue Road intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 7, same being a portion of Lot 24-A, and thus bounded, and described:

Beginning at a point on the southeast corner of this parcel of land, also being the southwest corner of Lot 3, the coordinates of which referred to Government Survey Triangulation Station "MOLOAA", being 1,405.39 feet south and 1,931.94 feet west, and running by azimuths measured clockwise from true South:

1. 119° 42' 15" 27.58 feet along the north boundary of Lot 9;
2. 140° 13' 1,582.22 feet along the north boundary of Lot 9;
3. 207° 51' 110.01 feet along the east boundary of the Roadway (56 feet wide);
4. 230° 26' 584.94 feet along the east boundary of the Roadway (56 feet wide);
5. 320° 29' 1,675.47 feet along the south boundary of the Roadway (56 feet wide);
6. 52° 35' 30" 669.78 feet along the west boundary of Lot 3, to the point of beginning and containing an area of 26.010 acres, more or less.

PORTION OF PARCEL SIXTH:- (Lot 8, TMK 4-9-009-016 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being approximately 2,500 feet north of the Kuhio Highway and Koolau Road intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 8, same being a portion of Lot 24-A, and thus bounded and described:

Beginning at a point at the south corner of this parcel of land, also being the east corner of Lot 13, the coordinates of which referred to Government Survey Triangulation Station "MOLOAA", being 996.31 feet south and 3,903.16 feet west and running by azimuths measured clockwise from true South:

13

1. 145° 37' 807.13 feet along the north boundary of Lot 13;  
Thence following along the meandering boundary, the direct azimuth and distance between said points being:
2. 211° 34' 1,253.06 feet;
3. 321° 17' 1,111.94 feet along the south boundary of Lot 1;
4. 27° 51' 279.97 feet along the west boundary of the Roadway (56 feet wide);
5. 51° 02' 983.71 feet along the west boundary of the Roadway, to the point of beginning and containing an area of 26.743 acres, more or less.

-PARCEL SEVENTH:- (LOT 9, TMK 4-9-009-017 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being on the east side of Kuhio Highway, approximately 2,000 feet northeast of the Kuhio Highway and Koolau Road intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 9, same being a portion of Lot 24-A, and thus bounded and described:

Beginning at a point at the most east corner of this parcel of land, also being the southwest corner of Lot 3, the coordinates of which referred to Government Survey Triangulation Station "MOLOAA", being 1,405.39 feet south and 1,931.94 feet west and running by azimuths measured clockwise from true South:

1. 52° 35' 30" 1,044.96 feet along the west boundary of Lot 10;
2. 141° 33' 1,473.35 feet along the north boundary of Lot 14;
3. 231° 02' 751.10 feet along the east boundary of the Roadway (56 feet wide);
4. 207° 51' 269.36 feet along the same;
5. 320° 13' 1,582.22 feet along the south boundary of Lot 7;
6. 299° 42' 15" 27.58 feet along the same, to the point of beginning and containing an area of 35.050 acres, more or less.

-PARCEL EIGHTH:- (LOT 10-A, TMK 4-9-009-018 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being on the northeast side of Kuhio Highway at Moloaa, Kawai au, Island and County of

(14)

Kauai, State of Hawaii, being LOT 10-A, same being a portion of Lot 24-A, and thus bounded and described as per survey of Masao Fujishige, Land Surveyor, dated November 21, 1980:

Beginning at a pipe at the east corner of this lot, and at the south corner of Lot 10-B, the coordinates of this said point of beginning referred to Government Survey Triangulation Station "MOLOAA", being 2,732.07 feet south and 2,053.15 feet west, and running by azimuths measured clockwise from true South:

1. 49° 05' 30" 927.90 feet along Lot 11-A to a pipe;
2. 114° 02' 429.96 feet along Kuhio Highway to a pipe;
3. 125° 57' 30" 366.66 feet along Koolau Road to a pipe;
4. 127° 11' 30" 329.40 feet along Koolau Road to a pipe;
5. 232° 35' 30" 665.81 feet along Lot 10-B to a pipe;
6. 319° 14' 654.39 feet along Lot 10-B to a pipe;
7. 226° 58' 30" 578.38 feet along the Lot 10-B to a pipe;
8. 316° 09' 395.73 feet along same to the point of beginning and containing an area of 17.350 acres, more or less.

-PORTION OF PARCEL NINTH:- (LOT 13, TMK 4-9-009-021 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being approximately 2,000 feet northwest of the Kuhio Highway and Koolau Road intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 13, same being a portion of Lot 24-A, and thus bounded and described:

Beginning at a point at the east corner of this parcel of land, also being the south corner of Lot 8 and the west boundary of the Roadway (56 feet wide), the coordinates of which referred to Government Survey Triangulation Station "MOLOAA", being 996.31 feet south and 3,903.16 feet west and running by azimuths measured clockwise from true South:

1. 51° 02' 736.02 feet along the west boundary of the Roadway (56 feet wide);
2. 140° 56' 735.70 feet along the north boundary of Lot 16;

Thence following along the meandering boundary, the direct azimuth and distance between said points being:

3. 226° 07' 30" 804.75 feet;

15

4. 325° 37' 807.13 feet along the south boundary of Lot 8, to the point of beginning and containing an area of 15.130 acres, more or less.

-PARCEL TENTH:- (LOT 14, TMK 4-9-009-022 (4))

All of that certain parcel of land (being portions of the Moloaa Hui lands and the Kaapuna Hui Lands, being portion of the land described in and covered by Royal Patent Number 535 to James W. Smith) situate, lying and being on the north side of Koolau Road, approximately 1,000 feet north of the Kuhio Highway and Koolau Road intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 14, same being portions of Lot 24-A and Lot M-1, and thus bounded and described:

Beginning at a point at the south corner of this parcel of land, also being the southwest corner of Lot 10 and the north boundary of Koolau Road, the coordinates of which referred to Government Survey Triangulation Station "MOLLOAA", being 2,781.37 feet south and 3,731.09 feet west and running by azimuths measured clockwise from true South:

1. 127° 11' 30" 977.28 feet along the north boundary of Koolau Road;
2. 123° 40' 113.33 feet along the same;
3. 118° 05' 113.78 feet along the same;
4. 116° 30' 305.89 feet along the same;
5. 231° 02' 1,671.89 feet along the east boundary of the Roadway (56 feet wide);
6. 321° 33' 1,473.35 feet along the south boundary of Lot 9;
7. 52° 35' 30" 1,220.05 feet along the west boundary of Lot 10, to the point of beginning and containing an area of 47.274 acres, more or less.

-PORTION of PARCEL ELEVEN:- (LOT 16, TMK 4-9-009-025 (4))

All of that certain parcel of land (being portions of the Moloaa Hui Lands and the Kaapuna Hui Lands, being portion of the land described in and covered by Royal Patent Number 535 to James Smith) situate, lying and being on the north side of Koolau Road, approximately 1,000 feet northeast of the Koolau Road and Anucnue Road intersection at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being LOT 16, same being portions of Lot 24-A and Lot M-1, and thus bounded and described:

Beginning at a point at the south corner of this parcel of land, also being the west boundary of the Roadway (56 feet wide) and the north boundary of Koolau Road, the coordinates of which referred Government Survey Triangulation Station "MOLOAA", being 1,910.27 feet south and 5,033.16 feet west and running by azimuths measured clockwise from true South:

1. 116° 30' 1,007.36 feet along the north boundary of Koolau Road;  
Thence following along the north boundary of Koolau Road, on a curve to the left with a radius of 190.00 feet, the chord azimuth and distance being:
2. 110° 27' 30" 40.00 feet;
3. 235° 40' 8.88 feet along the remainder of Lot M-1 (a portion of Kaapuna Hui Lands);  
Thence following along the meandering boundary, the direct azimuth and distance between said points being:
4. 241° 38' 1,165.72 feet;
5. 320° 56' 735.70 feet along the south boundary of Lot 13;
6. 51° 02' 717.34 feet along the west boundary of the Roadway (56 feet wide), to the point of beginning and containing an area of 20.827 acres, more or less.

-PARCEL TWELFTH:- (ROADWAY LOT, TMK 4-9-009-027 (4))

All of that certain parcel of land (being portions of the Moloaa Hui Lands and Kaapuna Hui Lands, being portion of the land described in and covered by Royal Patent Number 535 to James W. Smith) situate, lying and being at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being a 56-foot roadway, same being portions of Lots 24-A and M-1, bearing tax key designation 4-9-009-027, and containing an area of 6.592 acres, more or less.

-PORTION OF PARCEL THIRTEENTH:- (DRAINAGE DITCH, THE 4-9-009-029 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, being a DRAINAGE DITCH, same being portion of Lot 24-A, bearing tax key designation 4-9-009-029 (4), and containing an area of 1.740 acres, more or less.

-PARCEL FOURTEENTH:- (LOT 10-B, TMK 4-9-009-037 (4))

All of that certain parcel of land (being portion of the Moloaa Hui Lands) situate, lying and being on the northeast side of Kuhio Highway at Moloaa, Kawaihau, Island and County of

EXHIBIT "A"

Page 8 of 14

17

Kauai, State of Hawaii, being LOT 10-B, same being a portion of Lot 24-A, and thus bounded and described as per survey of Masao Fujishige, Land Surveyor, dated November 21, 1980:

Beginning at a pipe at the south corner of this parcel of land and at the east corner of Lot 10-A, the coordinates of this said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 2,782.07 feet south and 2,053.15 feet west, and running by azimuths measured clockwise from true South:

1. 136° 09' 395.73 feet along Lot 10-A to a pipe;
2. 46° 58' 30" 578.38 feet along Lot 10-A to a pipe;
3. 139° 14' 654.39 feet along Lot 10-A to a pipe;
4. 52° 35' 30" 665.81 feet along Lot 10-A to a Pipe;
5. 127° 11' 30" 31.12 feet along Koolau Road to a pipe;
6. 232° 35' 30" 2,255.01 feet along Lots 14 and 9 to a Pipe;
7. 299° 42' 15" 712.34 feet along the Lot 3 to a pipe;
8. 275° 58' 15" 396.09 feet along Drainage Ditch to a pipe;
9. 49° 05' 30" 1,500.33 feet along Lots 11-B and 11-A to the point of beginning and containing an area of 36.434 acres, more or less.

**SUBJECT, HOWEVER TO:**

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. As To TMK 4-9-009-001 (4) only:
  - a. Triangulation Survey Station "MOLOAA" located within said land, as shown on the Tax Map prepared by the Taxation Maps Bureau, Department of Finance, County of Kauai.
  - b. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of: GTE Hawaiian Telephone Company, a Hawaii corporation  
(nka Verizon Hawaii Inc.)  
Purpose: For Utility Purposes  
Recording Date: November 2, 1967

18

Recording No: Liber 5852 Page 234  
Affects: and herein described

3. As To Lot 10-A, TMK 4-9-009-018 (4) Only:
- a. Easement "1" (area 0.221 acre), as shown on the tax map.
  - b. Restriction of rights of vehicle access into and from Kuhio Highway, Federal Aid Secondary Project No. S 0560 (s), formerly Federal Aid Secondary Project No. F 056 1 (3), which restriction was imposed by the State of Hawaii, by Deed dated December 16, 1962, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 5073, Page 151.
4. AS TO Lot 13, TMK 4-9-009-021 (4) Only:
- Lease
- Lessor: Moloaa Farmers Cooperative, a Hawaii Agricultural Cooperative Association organized under Hawaii Revised Statutes Chapter 421.  
Lessee: Rizal Balgos Husband of Cristina A. Balgos  
Dated: September 12, 1984  
Recording Date: September 12, 1984  
Recording No.: Book 18681 Page 331  
Term: June 1, 1984, to and including March 31, 1999
5. AS TO LOT 14, TMK 4-9-009-022 (4) ONLY:
- (A) Triangulation Survey Station "PUU AUAU" located on said land, as shown on the Tax Map prepared by the Taxation Maps Bureau, Department of Finance, County of Kauai.
  - (B) WAIVER AND RELEASE dated July 22, 1994, recorded as Document No. 94-124995, by ELDON FRANKLIN, County Engineer.
  - (C) That certain unrecorded AGREEMENT dated July 1, 1979, in favor of the STATE OF HAWAII (Hawaii Public Broadcasting Authority) allowing use of 100 square feet of that portion of the property identified as Tax Map Key 4-9-9:22 for television transmitting and receiving purposes.
  - (D) That certain unrecorded LICENSE AGREEMENT dated February 12, 1993, in favor of CYBERTEL CORPORATION, licensing the use of a 100 square foot portion of the property identified as Tax Map Key 4-9-9:22 for communications repeater purposes,
  - (E) That certain unrecorded LICENSE AGREEMENT dated October 11, 1994, in favor of the COUNTY OF KAUAI, licensing use of a 100 square foot portion of

the property identified as Tax Map Key 4-9-9:22 for a microwave repeater purposes.

6. AS TO ROADWAY LOT, TMK 4-9-009-027 (4)) ONLY:- Easement for access in favor of others entitled thereto.
7. Claims arising out of rights customarily, and traditionally exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
8. An agreement, upon and subject to all of the provisions contained therein.

By and Between: Moloaa Hui Lands, Inc., a Hawaii Corporation, and Jeffrey S. Lindner, Unmarried  
Dated: February 10, 1997  
Recording Date: March 15, 1997  
Recording No.: 97-038723

9. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Limited Warranty Deed

Dated: March 13, 1997  
Recording Date: March 13, 1997  
Recording No.: 97-032783

10. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Declaration of Covenants, Conditions and Restrictions

Dated: March 13, 1997  
Recording Date: March 13, 1997  
Recording No.: 97-032789

Modification(s) of said covenants, conditions and restrictions

Recording Date: March 16, 2000  
Recording No: 2000-034932

20

11. An agreement, upon and subject to all of the provisions contained therein.

By and Between: Moloaa Hui Lands, Inc., a Hawaii corporation, T.G. Exchange, Inc., a Hawaii corporation, and T.G. Super Exchange Corp., a Hawaii corporation  
Dated: March 25, 1997  
Recording Date: March 11, 1997  
Recording No.: 97-040088

12. Condominium Map No. 2543, recorded in the Bureau of Conveyances of the State of Hawaii.

13. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Declaration of Condominium Property Regime of Moloaa Hui II

Dated: April 22, 1997  
Recording Date: May 5, 1997  
Recording No.: 97-057760

Modification(s) of said covenants, conditions and restrictions

Recording Date: December 11, 1997  
Recording No.: 97-173230

Recording Date: August 27, 1998  
Recording No.: 98-126775

Recording Date: August 28, 1998  
Recording No.: 98-128053

Recording Date: October 5, 1998  
Recording No.: 98-149272

Recording Date: March 5, 1999  
Recording No.: 99-033559

Recording Date: March 16, 2000  
Recording No.: 2000-034931

14. By Laws of the Association of Apartment Owners of "MOLOAA HUI II

Date: April 30, 1997  
Recording Date: May 5, 1997  
Recording No.: 97-057761

EXHIBIT "A"  
Page 12 of 14

21

15. An agreement, upon and subject to all of the provisions contained therein.
- By and Between: Michael Roy Strong and Candace Louise Strong and T-Mobile West Corporation, a Delaware corporation  
Dated: May 2, 2006  
Recording Date: February 21, 2007  
Recording No: 2007-032185
16. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:
- Limited Warranty Apartment Deed
- Dated: September 2, 1997  
Recording Date: September 5, 1997  
Recording No.: 97-119688
17. Grant of Easement and Assignment of Lease
- In favor of: Global Signal Acquisitions IV LLC, a Delaware limited liability company  
Purpose: as described therein  
Recording Date: July 11, 2014  
Recording No: A-53050101A thru A-53050101B  
Affects: as described therein
18. Terms, provisions and conditions as contained in the Original Apartment Deed and the effect of any failure to comply with such terms, provisions and conditions.
19. Any and all easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, as said Declaration may be amended from time to time in accordance with the laws and/or in the Original Apartment Deed and/or as delineated on said Condominium Map.
20. UNRECORDED LICENSE AGREEMENT dated October 11, 1994 between the Lihue Plantation Company, Ltd, and the County of Kauai, including any amendments and assignments relating thereto.
21. GRANT OF EASEMENT AND ASSIGNMENT OF LEASE dated June 20, 2014, recorded as Document No. A-53050101A thru A-53050101B, by and between MOLOAA HUI LANDS, INC., a Hawaii corporation, "Grantor", and GLOBAL SIGNAL ACQUISITIONS IV LCC, a Delaware limited liability company, "GSA IV or Grantee".
22. UNRECORDED (LICENSE) AGREEMENTS between Grantor and The Kekahu Foundation, a Hawaii not-for-profit corporation, concerning the Kekahu Foundation's use of the Property for purposes of radio transmission; and

22

23. UNRECORDED (LICENSE) AGREEMENTS between Grantor and T-Mobile USA, Inc. or any entity related to T-Mobile USA, Inc. engaged in wireless communications (collectively "T-Mobile"), concerning T-Mobile's use of the Property for wireless communications.

You are here: BREG Online Services

Begins with

Search

Cart

- [Home - BREG](#)
- [BREG Online Services](#)
- [Annual Business Filing](#)
- [Search for a Business Entity](#)
- [Purchase Documents Online](#)
- [Purchase Certificate of Good Standing](#)
- [Authenticate a Certificate of Good Standing](#)
- [Register a Business](#)
- [MyBusiness Notifications](#)
- [My Trade Name/TM/SM Notifications \*\*NEW\*\*](#)
- [Entity List Builder](#)
- [Contact BREG](#)
- [Technical Support](#)
- [Feedback](#)
- [Create an Account](#)

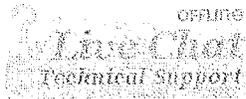
**MOLOAA HUI LANDS, INC.**  
DOMESTIC PROFIT CORPORATION

[GENERAL INFO](#) [ANNUAL FILINGS](#) [OFFICERS](#) [STOCKS](#) [OTHER FILINGS](#) [BUY AVAILABLE DOCS](#)

### Other Filings

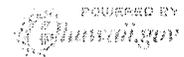
DATE	DESCRIPTION	REMARKS
Jun 8, 2009	Certificate of Administrative Dissolution	Certificate of Administrative Dissolution
Jun 10, 2008	Involuntary Dissolution	Involuntary Dissolution
Oct 23, 1996	Articles of Incorporation	ARTICLES OF INCORPORATION

Note: Transactions may be available for purchase. Please see the **Buy Available Docs** tab for additional information.



[Subscription Services](#) [Terms of Use](#) [Privacy Policy](#) [ADA Compliance](#) [State Portal](#) [Comments](#) [Contact Us](#)  
Copyright © 2018 Hawaii Information Consortium, LLC. All rights reserved.

View in: [Mobile](#) | [Classic](#)



## EXHIBIT "12"

# DCCA State of Hawaii

Downloaded on July 16, 2018.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

## Business Information

MASTER NAME	MOLOAA HUI LANDS, INC.
BUSINESS TYPE	Domestic Profit Corporation
FILE NUMBER	106319 D1
STATUS	Inv. Dissolved
PURPOSE	LAND SALES
PLACE INCORPORATED	Hawaii UNITED STATES
INCORPORATION DATE	Oct 23, 1996
MAILING ADDRESS	2309 FERDINAND AVE HONOLULU, Hawaii 96822 UNITED STATES
TERM	PER
AGENT NAME	MICHAEL R. STRONG
AGENT ADDRESS	2309 FERDINAND AVE HONOLULU, Hawaii 96822 UNITED STATES

## Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2007		Delinquent
2006		Delinquent
2005		Delinquent
2004	Jun 8, 2005	Processed
2003	Jun 8, 2005	Processed
2002		Not Required
2001	Apr 25, 2002	Processed
2000		Processed
1999		Processed

## Officers

NAME	OFFICE	DATE
STRONG, MICHAEL R	P/D	Dec 31, 2001
HUBER, PAUL CONVERSE	V/D	Oct 23, 1996
STRONG, CANDACE LOUISE	S/T/D	Oct 23, 1996

## Stocks

DATE	CLASS	SHARES	PAID SHARES	PAR VALUE	STOCK AMOUNT
Oct 23, 1996	COMMON	1,000	1,000	NPV	

You are here: BREG Online Services

Begins with

Search

Cart

- [Home - BREG](#)
- [BREG Online Services](#)
- [Annual Business Filing](#)
- [Search for a Business Entity](#)
- [Purchase Documents Online](#)
- [Purchase Certificate of Good Standing](#)
- [Authenticate a Certificate of Good Standing](#)
- [Register a Business](#)
- [MyBusiness Notifications](#)
- [My Trade Name/TM/SM Notifications \*\*NEW\*\*](#)
- [Entity List Builder](#)
- [Contact BREG](#)
- [Technical Support](#)
- [Feedback](#)
- [Create an Account](#)

## MOLOA'A HUI LANDS, INC.

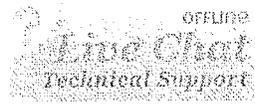
DOMESTIC PROFIT CORPORATION

[GENERAL INFO](#) [ANNUAL FILINGS](#) [OFFICERS](#) [STOCKS](#) [OTHER FILINGS](#) [BUY AVAILABLE DOCS](#)

### Other Filings

DATE	DESCRIPTION	REMARKS
Dec 1, 2017	Articles of Dissolution	Articles of Dissolution
Jun 4, 2014	Articles of Incorporation	Articles of Incorporation

Note: Transactions may be available for purchase. Please see the **Buy Available Docs** tab for additional information.



[Subscription Services](#) [Terms of Use](#) [Privacy Policy](#) [ADA Compliance](#) [State Portal](#) [Comments](#) [Contact Us](#)

Copyright © 2018 Hawaii Information Consortium, LLC. All rights reserved.

View in: [Mobile](#) | [Classic](#)



# DCCA State of Hawaii

Downloaded on July 16, 2018.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

## Business Information

MASTER NAME	MOLOA'A HUI LANDS, INC.
BUSINESS TYPE	Domestic Profit Corporation
FILE NUMBER	243416 D1
STATUS	Dissolved
PURPOSE	REAL ESTATE
PLACE INCORPORATED	Hawaii UNITED STATES
INCORPORATION DATE	Jun 4, 2014
MAILING ADDRESS	34756 DATE ST YUCAIPA, California 92399 UNITED STATES
TERM	PER
AGENT NAME	CANDACE STRONG
AGENT ADDRESS	4133 SIERRA DR HONOLULU, Hawaii 96816 UNITED STATES

## Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2017	Apr 27, 2017	Processed
2016	Jun 6, 2016	Processed
2015	May 1, 2017	Processed

## Officers

NAME	OFFICE	DATE
STRONG, ERIC M	P/D	Apr 1, 2016

## Stocks

DATE	CLASS	SHARES	PAID SHARES	PAR VALUE	STOCK AMOUNT
Apr 1, 2016	COMMON	100	100		

# DCCA State of Hawaii

Downloaded on July 16, 2018.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

## Business Information

MASTER NAME	MOLOA'A HUI LANDS, INC.
BUSINESS TYPE	Domestic Profit Corporation
FILE NUMBER	243416 D1
STATUS	Dissolved
PURPOSE	REAL ESTATE
PLACE INCORPORATED	Hawaii UNITED STATES
INCORPORATION DATE	Jun 4, 2014
MAILING ADDRESS	34756 DATE ST YUCAIPA, California 92399 UNITED STATES
TERM	PER
AGENT NAME	CANDACE STRONG
AGENT ADDRESS	4133 SIERRA DR HONOLULU, Hawaii 96816 UNITED STATES

## Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2017	Apr 27, 2017	Processed
2016	Jun 6, 2016	Processed
2015	May 1, 2017	Processed

## Officers

NAME	OFFICE	DATE
STRONG,ERIC M	P/D	Apr 1, 2016

## Stocks

DATE	CLASS	SHARES	PAID SHARES	PAR VALUE	STOCK AMOUNT
Apr 1, 2016	COMMON	100	100		

# DCCA State of Hawaii

Downloaded on July 16, 2018.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

## Business Information

MASTER NAME	MOLOAA HUI LANDS, INC.
BUSINESS TYPE	Domestic Profit Corporation
FILE NUMBER	285812 D1
STATUS	Active
PLACE INCORPORATED	Hawaii UNITED STATES
INCORPORATION DATE	Dec 1, 2017
MAILING ADDRESS	P O BOX 1344 YUCALPA, California 92399 UNITED STATES
TERM	PER
AGENT NAME	CANDACE STRONG
AGENT ADDRESS	4133 SIERRA DR HONOLULU, Hawaii 96813 UNITED STATES

## Stocks

DATE	CLASS	SHARES	PAID SHARES	PAR VALUE	STOCK AMOUNT
Dec 1, 2017	COMMON	1,000			

# APPLICATION FOR STATE REVOLVING FUND LOAN

## for the Construction of Drinking Water Facilities

### NOTICE TO APPLICANTS

After this application is filled and signed, the first page may be submitted either:

1. **Electronically to Michael Miyahira at [Michael.Miyahira@doh.hawaii.gov](mailto:Michael.Miyahira@doh.hawaii.gov) and Joanna Seto at [Joanna.Seto@doh.hawaii.gov](mailto:Joanna.Seto@doh.hawaii.gov)**; or
2. A hardcopy submitted to the Safe Drinking Water Branch (SDWB).

A **COMPLETE** application package includes, but not necessarily limited to, all the applicable information and forms requested in this document. Only when an application package is **COMPLETE** and approved, will a Final Loan Agreement be executed.

Please refer to the Applicant Guidance for more information or contact SDWB.

### APPLICANT INFORMATION

Organization Name: **Moloa'a Irrigation Cooperative**

Address: **P.O. Box 506**

City: **Anahola**

County: **Kaua'i**

ZIP Code: **96703**

Contact Person: **Louisa Wooton**

Phone: **808-828-0095**

### PROJECT INFORMATION

Project Name: **System Improvements to Construct New 476,000 gallon Reservoir and Disinfection Building and Fencing**

Water System Name: **Moloa'a Irrigation Cooperative (MIC)**

Water System Number: **437**

Description: **MIC proposes to construct a new stainless steel 476,000 gallon tank with appurtenant piping connections to the existing distribution system, new building to house pump controls and disinfection equipment, and new fencing with drive-through gate to the tank site.**

Need:

MIC became a public water system in 2015 and has had two sanitary surveys performed by the DOH SDWB which have resulted in non-compliance issues with the existing storage tank and lack of security at the site.

Related Project(s) - List all related projects which must be constructed in order to fully utilize this project. Also, list the anticipated dates these projects will be constructed:

MIC is also in the planning stage to construct a new water source and install a new distribution line from the well to the new tank. Anticipated dates for construction are December 2018.

### ESTIMATED PROJECT COSTS

### ESTIMATED PROJECT TIMELINE

Construction	\$ 795,000.00	Date FLA is Needed	September 2018
Contingency	\$ 129,825.00	Bid Advertisement	July 31, 2018
Planning and Design	\$ 20,500.00	Bid Opening	August 21, 2018
Construction Management	\$ 30,000.00	Award Contract(s)	August 31, 2018
Other Costs (Specify): Permitting Use/Zoning Applications	\$ 20,000.00	Issue Notice to Proceed	August 31, 2018
<b>Total Project Costs</b>	<b>\$ 995,325.00</b>	Complete Construction	<b>December 2018</b>
Funding Sources other than Drinking Water SRF (specify source and amount)			
•	\$	<b>DO YOU REQUIRE A COMMITMENT LETTER TO BE ISSUED BASED ON ESTIMATED PROJECT COSTS?</b>	
•	\$		
<b>TOTAL SRF LOAN AMOUNT REQUESTING</b>	<b>\$ 995,325.00</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

### SIGNATURES

The undersigned representative certifies the information submitted in this application is true and correct to the best of his or her knowledge and that he or she is authorized to sign and submit this application. The applicant agrees, if a loan is awarded on the basis of this application, to comply with all applicable rules and regulations of the Safe Drinking Water Branch and the terms and conditions of the loan agreement.

Name and Title of Authorized Representative: **M. Louisa Wooton, General Manager**

Signature of Authorized Representative:

*M. Louisa Wooton*

Date: **May 11, 2018**

## REQUIRED DOCUMENTS AND FORMS

It is preferred that all documents be submitted electronically to SDWB Engineering Section Supervisor, Michael Miyahira at [Michael.Miyahira@doh.hawaii.gov](mailto:Michael.Miyahira@doh.hawaii.gov) and SDWB Chief, Joanna Seto at [Joanna.Seto@doh.hawaii.gov](mailto:Joanna.Seto@doh.hawaii.gov).

### REQUIRED FOR ALL PROJECTS

- Loan Application (just the first page with pertinent information and certifying signature is required)
- Resolution or Ordinance – A written approval which authorizes the SRF loan application and identifies the dedicated source(s) of revenue (i.e., general obligation with full credit) which will fund the project and repayment of the loan with interest.
- Plans
- Specifications
- Bonded Construction Contract(s)
- Notice to Proceed (NTP)

### OTHER DOCUMENTS, AS NECESSARY

Please contact SDWB for more information as to what documents are required for this particular project

- Construction Management Contract(s)
- Environmental Documents – Including but not limited to one or a combination of the following:
  1. Environmental Assessment (EA)
  2. Exempt Project Certification
  3. EA Checklist
- MBE/WBE Utilization Under Federal Grants and Cooperative Agreements (EPA Form 5700-52A)
- Any other inter-governmental or County-private agreements relative to this project

<sup>1</sup> In certain cases, an EA may be used to fulfill the Engineering Report requirement. Please verify with SDWB if this case applies.

## ASSURANCES

### REQUIRED FOR ALL PROJECTS

1. The applicant has the legal, institutional, managerial and financial capability to ensure adequate construction, and operation and maintenance (including replacement) of the drinking water treatment works, and has analyzed the local share of the costs of the proposed drinking water treatment facilities, including the financial impact on each community and the residents of the service areas.
2. The applicant will operate and maintain the treatment works in accordance with the minimum standards as required by the cognizant Federal, State and local agencies for the operation and maintenance of such facilities.
3. The applicant will initiate procurement action for A/E and/or construction services for building all significant elements of the project in accordance with the project schedule indicated in this application and approved by DOH upon issuance of the loan agreement.
4. The applicant will diligently pursue project completion in accordance with the project schedule submitted herewith.
5. The applicant will give the State of Hawaii or its assignees, through any authorized representative, access and the right to examine all records, books, papers, or documents related to the loan; and will retain all construction records for three years following the project initiation of operation.
6. The applicant will maintain a financial accounting system in accordance with the generally accepted accounting principles set forth by the Governmental Accounting Standards Board.
7. The applicant will not dispose of, or modify the use of or change the real property title terms or other interest in the site and facilities without permission and instructions from DOH.
8. The applicant will establish safeguards to prohibit employees from using their positions for purposes that constitute or give the appearance of personal or organizational conflict of interest.
9. The applicant has not and will not violate any Federal, State, or local law pertaining to fraud, bribery, graft or collusion; and,
10. The applicant will provide and maintain competent and adequate engineering supervision and inspection at the construction sites to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information as DOH may require.
11. The applicant will comply with all applicable federal and state requirements, including all other laws, regulations, policies, applicable requirements and conditions relating to assistance for this project.
12. The applicant will comply with Davis Bacon Act and American Iron and Steel (AIS) requirements and all provisions thereof.
13. The applicant must certify that it will comply with the following federal "super cross-cutting" authorities
  - a. Age Discrimination Act of 1975 (42 USC 6102)
  - b. Civil Rights Act of 1964, Title VI (42 USC 2000d)
  - c. Equal Employment Opportunity (EO 11246, as amended)

### OTHER ASSURANCES, AS NECESSARY

Please contact SDWB to verify what documents are required for this particular project

The applicant must certify that it will comply with the following federal "cross-cutting" authorities, including the Single Audit of 1984 (PL 98-502).

1. Environmental Authorities
  - a. Archeological and Historic Preservation Act of 1974 (16 USC 469a-1)
  - b. Clean Air Act (42 USC 7401)
  - c. Coastal Barriers Resources Act (16 USC 3501)
  - d. Coastal Zone Management Act (16 USC 1451)
  - e. Endangered Species Act (16 USC 1531)
  - f. Environmental Justice (EO 12898)
  - g. Farmland Protection Policy Act (7 USC 4201)
  - h. Fish and Wildlife Coordination Act (16 USC 661)
  - i. Floodplain Management (EO 11988 (1977), as amended by EO 12148 (1979))
  - j. National Historic Preservation Act (16 USC 470)
  - k. Protection of Wetlands (EO 11990 (1977), as amended by EO 12608 (1997))
  - l. Safe Drinking Water Act (42 USC 300f)
  - m. Wild and Scenic Rivers Act (16 USC 1271)
  - n. Essential Fish Habitat Consultation Process under the Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801)
2. Economic Policy Authorities
  - a. Administration of the Clean Air Act and the Water Pollution Control Act with Respect to Federal Contracts or Loans (EO 11738)
  - b. Demonstration Cities and Metropolitan Development Act of 1966 (PL 89-754, as amended 42 USC 3331)
  - c. Procurement Prohibitions (EO 11738, Section 306 of the Clean Air Act)
  - d. Procurement Prohibitions (Section 508 of the Clean Water Act)
3. Social Policy Authorities
  - a. Minority Business Enterprise Development (EO 12432)
  - b. National Program for Minority Business Enterprise (EO 11625)
  - c. National Women's Business Enterprise Policy and National Program for Women's Business Enterprise (EO 12138)
  - d. Rehabilitation Act of 1973 (29 USC 794)
  - e. Small Business Administration Reauthorization and Amendment Act of 1998 (PL 100-590, Section 129)
  - f. Department of Veterans Affairs and Housing and Urban Development, and Agencies Appropriations Act, 1993 (PL 102-389)
  - g. Disadvantaged Business Enterprise Rule, 2008 (40 CFR Part 33)
4. Miscellaneous Authorities
  - a. Debarment and Suspension (EO 12549)
  - b. Uniform Relocation and Real Property Acquisition Policies Act (PL 91-646 (1971), as amended 42 USC 4601-4655)
  - c. Preservation of Open Competition and Government Neutrality Towards Contractor's Labor Relations on Federal and Federally Funded Construction Projects (EO 13202 (2001), as amended by EO 13208 (2001))

Owner / Entity: Moloka'a Irrigation Cooperative (MIC)  
 Submitted by: Louisa Wooton  
 Contact Phone No.: (808)828-0095

Fill the table below, as shown in the example on the first line.  
 Once complete, please email to [joan.corrigan@doh.hawaii.gov](mailto:joan.corrigan@doh.hawaii.gov)

PWS No.	PWS Name	Project Address/ Location	Project Title	Project Description	Estimated Total Cost*	Estimated Start Date for Contractor Invoicing	Estimated Disbursement Amount in SFY 2019	PRIORITY SCORING CRITERIA										PROJECT STATUS						OTHER PROJECT FACTORS										
								Refer to the criteria below corresponding to each number and indicate YES or NO										Indicate YES, NO, or N/A						Indicate YES or NO										
								1	2a	2b	2c	2d	3	4	5a	5b	5c	6	7	8a	8b	8c	8d	9	10	Planning and Design Complete	SHPD 106/6E Process Complete	NPDES Permit Complete	Land Acquisition Complete	Easement or ROW Obtained	Project was Bid with SRF Boilerplate	Additional Permits/Approvals are required and have not yet been obtained (ie. HECO, DLNR Stream Channel Alteration, DOH-CWB 401, USACOE 404, neighborhood board, etc.)	Project was Bid WITHOUT SRF Boilerplate	
437	MIC	Anahola, Kaua'i	.5 MG Welded Stainless Steel "Cobra" Tank with Tank Site Improvements, e.g. fencing, site work, etc.	Construct a new .5 mg reservoir to provide SDWB compliant water storage as a replacement to the 1970's era welded steel tank.	1,250,000.00	8/1/2018	\$ 1,200,000	N	Y	N	N	N	N	N	N	N	N	Y	N	Y	Y	Y	Y	Y	N	N	N	N	N/A	Y	N/A	N	Y	N
437	MIC	Anahola, Kaua'i	Distribution System Improvement	Upgrade distribution piping	\$ 2,500,000	1/1/2019	\$1,500,000	N	Y	N	N	N	N	N	Y	Y	N	N	Y	Y	Y	Y	Y	N	N	N	N	N/A	Y	N/A	N	Y	N	
437	MIC	Anahola, Kaua'i	SCADA and Solar Power for Controls	Mission Control Well to Tank with PV and Emergency Generator	\$ 125,000	8/1/2018	\$ 95,000	N	Y	N	N	N	Y	N	N	N	N	Y	Y	Y	Y	Y	Y	N	N	N	N/A	Y	N/A	N	Y	N		

\* Costs may include planning and design, construction, contingency, and construction management.

**PRIORITY SCORING CRITERIA**

- Does the project:
- 1 Address a documented waterborne disease outbreak associated with the system within the last 24 months
  - 2 Correct or prevent violations of MCLs (primary standards)
    - a. Nitrate/Nitrite/TCR
    - b. Microorganisms (Giardia lamblia, Cryptosporidium, Legionella)
    - c. Disinfection byproducts (TTHMS, HAAS)
    - d. Other regulated contaminants (e.g. LCR)
  - 3 Correct or prevent inadequate treatment techniques that are unable to satisfy the requirements for surface water, GWUDI, or groundwater
  - 4 Correct exceedances of secondary drinking water standards (e.g. chlorides, taste and odor)
  - 5 Correct or prevent:
    - a. Inadequate distribution due to system deterioration (e.g., experiencing multiple line breakages) or loss of supply
    - b. Inadequate distribution due to chronic low pressure
    - c. Inadequate storage
  - 6 Address an enforcement action by DOH and the facility is currently in violation of SDWA limitations
  - 7 Address a facility's voluntary efforts to resolve a possible violation and will mitigate the issuance of an enforcement action
  - 8 Promote sustainable utilities and/or communities through a utility management plan that:
    - a. Addresses an asset management plan (looks at in-the-ground assets, human assets, and asset gap and replacement projections)
    - b. Secures a replacement fund or provides sufficient revenues for the rehabilitation and replacement of aging and deteriorating infrastructure to meet O&M and capital needs
    - c. Demonstrates that the facility has maintained licensed/certified operators, adequate staffing to properly operate and maintain the facility and will continue to do so
    - d. Incorporates a fix-it-first planning methodology
  - 9 Address climate resiliency by incorporating one or more of the following:
    - Installation of physical barriers
    - Equipment hardening/waterproofing
    - Prevention of salt water damage
    - Water efficiency, conservation and/or reuse
    - Drought mitigation measures
    - Energy Efficiency/Neutrality
    - Emergency Response and Recovery Planning
    - Is related to energy or water loss audit
  - 10 Incorporate wet weather management by implementing green infrastructure systems at utility structures and surrounding footprint

**From:** Hula Sk8r  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:01:24 AM

---

Dear Members of the BLNR:

I oppose the renewal of Revocable Permit 7340.

We have known for sometime that the 2 Waiahi hydro power plants produce only 1% or less of the island's power. Now that we know they generate 8/10ths of 1% of the total revenue for KIUC, there is substantial support for BLNR to non renew KIUC's RP 7340 which, when the ditches are repaired, diverts an average of 14 million gallons daily from Wai`ale`ale and Waikoko not to mention the many other stream diversions along the 5 mile Ili`ili`ula ditch system between Wai`ale`ale and the upper Waiahi hydro that add the necessary 20 plus million gallons to operate the upper Waiahi hydro power plant.

In addition, two other ditch systems, South Intake ditch and North Intake ditch, collect from the upper Waiahi hydro and additional streams to provide the 40 million gallons daily required to operate the lower Waiahi Hydro... all this water pulled from Wai`ale`ale and the other Wailua streams to increase KIUC's revenue by 8/10ths of 1% of their total power revenue. Please see a report filed with BLNR by mediator, Robbie Alm, confirming the amount of water KIUC said they need to take for their minimal power production at the Waiahi power plant.

We have previously raised objection to this continued devastation of our natural stream flow, biota, traditional and cultural practices and the preservation of the ascetics that are grossly impacted by deteriorating dam diversions with exposed rebar not to mention the threat to human health and safety. Dam maintenance is a requirement of at least 10 of the conditions of RP 7340 and KIUC has failed to comply with any of them. This stream diversion permit needs to be denied. They obviously don't need it. By their own application for renewal, they admit it has not been in use all year... and their power for Kauai has not been interrupted.

Mahalo for considering my testimony,  
MeleLani Llanes  
Kapolei O'ahu

**From:** Edward MacDowell  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Support RP 7340  
**Date:** Wednesday, December 9, 2020 10:17:47 AM

---

Aloha Board Members

Thank you for your dedication and service.

I support KIUC efforts to continue as a world leader in innovation.

I am part of the vast majority that humbly request that you approve KIUC plan.

Please support **RP 7340**.

**Thank you**

**Aloha nui**

**Ed MacDowell**

**Kapaa, Kauai Hawaii 96746**

**[Edmacdowell@gmail.com](mailto:Edmacdowell@gmail.com)**

**From:** Liko Martin  
**To:** [DLNR.BLNR.Testimony](#)  
**Cc:** [Laulani Teale](#); [bridgethammerquist@hawaiiintel.net](mailto:bridgethammerquist@hawaiiintel.net)  
**Subject:** [EXTERNAL] Oppose Revocable Permit 7340 and Request for Contested Case Hearing  
**Date:** Tuesday, December 8, 2020 3:30:14 PM

---

Aloha,

I am writing in opposition of revocable permit 7340 and I would like to request a contested case hearing on this matter. I would also like to present oral testimony on this subject at the meeting.

Mahalo,

Liko Martin

**From:** Haley Molnar  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 10:28:12 PM

---

To whom it may concern,

The sacred and vital resources of our ahupuaa need to be protected and conserved for the wellbeing and livelihood of our island. Hydropower is not worth the cost of destroying other parts of our island and the systems within for only producing such a small percentage of energy to the grid.

BLNR has the important responsibility of protecting the public trust and it is with all due respect that I plead for the board to deny the renewal of RP 73040 until KIUC can complete the board's conditions.

If in whatever case the RP is renewed please attach the following additional conditions to KIUC's permit from hereon in:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant of current permit conditions)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on alternation to existing diversion structures that would allow it shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Mahalo nui,

--

**Haley Molnar**

[molnarhaley@gmail.com](mailto:molnarhaley@gmail.com)



*Moloa'a Irrigation Cooperative ~ P.O. Box 506 ~ Anahola, HI 96703*

December 10, 2020

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Aloha kakou Chair Case and Commissioners,

We appreciate the opportunity to give testimony regarding the continuation of the Revocable Permit RPS-7088 for the operation of Moloa'a Well No. 1 on the island of Kaua'i.

Moloa'a Irrigation Cooperative (MIC) and our seventy members are the largest users of water from the State Well. Farmers in Moloa'a have relied on this well since it was constructed in 1962. Several of our present members have been relying on this source since the 1970's when they were producing papayas in the Moloa'a Farmers Cooperative. Moloa'a Well No. 1 is a very rich and robust water source that our members respect and cherish.

When we filed our CDR with the CWRM on November 16, 2020, we were not aware that your Board would be meeting to review the continuation of the Revocable Permit RPS-7088. Our concern was the interference by our water supplier with our ability to replace and relocate our production meter to a more suitable location in order to pinpoint water loss and allow for efficient operation. Even after the complaint was filed, further action has been taken to interfere with our plans to perform the work which is being funded by the Cares Act as an agriculture infrastructure improvement for the County of Kaua'i. Sometime after November 16<sup>th</sup>, the ability to shut-off the water line to carry on the work has been disrupted by disabling the shut-off valves by cutting the valve stems. Please see the attached photographs.

MIC does not oppose the continuation of the RPS-7088 at this time. However, we humbly request that the continuation be awarded with the recommendations of the Staff. All that we ask is a workable agreement and collaboration going forward. MIC would also ask that the Board consider adding one other stipulation that MIC could upgrade (at the expense of MIC) the tank to well relays and replace the very old, archaic, malfunctioning telemetry system with a cellular relay. By installing the upgrade, the reliable operation of the well would benefit not only the MIC. It would benefit our water supplier and the Kaua'i Department of Water which also relies on this well to service several of its customers. MIC purchased the equipment for this upgrade at a cost of over \$11,000.00 several years ago, but our water supplier has twice refused to allow the installation.

We appreciate your consideration and assistance in helping us control unnecessary waste of water. The inefficient and waste is causing undue economic hardship to our members.

Mahalo,

Moloa'a Irrigation Cooperative  
Board of Directors



Photograph of the valve and meter station prior to three shut-off valves being disabled.



Valve stem cut-off downstream of backflow preventer



Shut-off valve disabled by cutting valve stem after existing production meter.



Close up of valve stem that has been cut off after the Backflow Preventer

**From:** me  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] oppose rp 7340  
**Date:** Wednesday, December 9, 2020 6:21:24 AM

---

Aloha,

This is so inappropriate of KIUC to even want to do this.....I oppose this RP 7340 and hope you figure out a different way rather than being a part of this water stealing.

Sincerely,

Meredith Murphy

I don't text, but mail works ...Mahalo

**From:** M. L.  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Opposed RP 7340  
**Date:** Wednesday, December 9, 2020 1:21:58 PM

---

Aloha I Am Submitting Testimony On Behalf Of The Native Hawaiian Rights We Inherently Have On Our Side. And The Responsibility That It Carries. The Neglect And Conditions That KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. We request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC shows that they are able to meet the board's conditions. Please Don't Renew The Lease To KIUC!!!! Mahalo For Your Time And Thank You For Your Help And Support For The Future Of Hawai'i's Keiki..

**From:** Lorraine Newman  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 5:04:43 PM

---

Aloha kakou,

Please vote to oppose this permit.

Note: So far, KIUC has failed to maintain the dam, a requirement of prior permits, and also note that this hydropower plant produces less than 1% of Kauai's power anyway.

Meanwhile, the diversion of the natural flow of this water harms the ecosystem (many dams worldwide are being destroyed because we have come to realize the long range implications of their use). I don't need to explain this here as you are well informed of this concern.

If this water diversion made a huge difference in Kauai's power supply it might be worth considering, with serious conditions, but this seems like just a placeholder permit request. KIUC can always return at some future date to request a permit if need be.

That said, should this permit somehow be granted (please don't), please attach the following conditions and please enforce them!

Conditions:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Mahalo nui loa,  
Lorraine Newman  
Kilauea

**From:** Grace Tsubaki-Noguchi  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP7340  
**Date:** Wednesday, December 9, 2020 8:02:58 AM

---

To whom it may concern,

I am writing to you in request that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until Kaua'i Island Utility Cooperative can meet board conditions. The temporary permit allows KIUC to continuously avoid environmental review while they continue to divert an unsustainable amount of water from the Wai'ale'ale and Waikoloa streams. By taking this water away, natural ecosystems are destroyed, little stream flow is left, and cultural practices are disrupted. Additionally, KIUC's failure to properly maintain this area has led to dam deterioration. Thank you for your time and consideration on this matter.

Sincerely,  
Grace Tsubaki-Noguchi

# North Shore Hydrological Services

---

Matt Rosener, MS, PE, Principal

December 10, 2020

Aloha Director Case and Members of the Board of Land and Natural Resources,

The following testimony is offered in opposition to renewal of KIUC Revocable Permit 7340. Earlier this year, on January 7, I submitted ten pages of my comments, questions, and concerns to the DLNR Land Division regarding KIUC's Draft Environmental Assessment, and to date, I have not received any response so I consider these questions and concerns outstanding.

As you know, there was a blowout in the Ili'ili'ili'ula – North Wailua Ditch during 2019 caused by a large Albizia tree falling on an inverted siphon near Ili'ili'ula. Because of the damage, at this point, KIUC does not currently have the ability to convey flow from the North Fork Wailua River and Waikoko Stream intakes to their Upper Waiahi Hydro Plant facility without losing a significant volume of water to the unnamed gulch near the siphon break. KIUC has suspended diversion at these two source streams for more than a year at this point in time, yet the power supply for the island of Kaua'i has not been significantly disrupted which suggests that power produced at the Upper Hydro plant is not absolutely required for KIUC's operations. I understand that it is desirable to maintain this power source from their perspective, but we should be clear that it is not necessary.

I am concerned that the annual extensions of Revocable Permit (# 7340) and it's expected use by KIUC will continue to degrade in-stream habitat conditions downstream of the diversion dams on the North Fork and Waikoko Stream, two waterways on public Forest Reserve lands that hold significant opportunity for restoration potential. I say this as a water resource professional based on my extensive experience working in the field of stream restoration.

I am equally concerned that RP 7340 in effect serves as a blanket permit for several other downstream water users and uses. While it is true that diverted waters from the North Fork and Waikoko are returned to the same river basin via discharge to Waiahi Stream, a tributary of the South Fork Wailua River, in reality much of this water is passed through from the Ili'ili'ula Ditch to several other ditch networks that extract water from the Wailua River basin and send it south into other watersheds. For example, just below the point in Waiahi Stream where North Fork and Waikoko waters are discharged into the stream near the Upper Hydro plant, water is captured into the Waiahi – Kuia Aqueduct. Information included in the recently-released USGS study report of SE Kaua'i low flows shows that 8.04 cfs (5.20 MGD) was measured in this ditch during a seepage run performed on January 21, 2020. Topographic maps show the Waiahi – Kuia Aqueduct extending southward all the way to the Koloa Ditch which feeds the Waita Reservoir. Is it possible that some water diverted from the North Fork Wailua River near Wai'ale'ale is being used to water yards in Koloa and Poipu? That would not seem appropriate.

Other ditch systems including Hanamaulu Ditch also capture some of the comingled waters from the South Fork Wailua River and its tributaries. Hanamaulu Ditch contributes inflow to Kapaia Reservoir which is used as a major drinking water source for a sizeable portion of the population on Kaua'i. This water is sold by Grove Farm to the County of Kaua'i, but Grove Farm does not have a permit to use water from the public land streams that it could be using. Are they covered by KIUC's RP umbrella? Is the Kaua'i Department of Water also included in this coverage for their use of waters from the Wailua River basin?

P.O. Box 1189, Hanalei, HI 96714  
(808) 639 2640

# North Shore Hydrological Services

---

Matt Rosener, MS, PE, Principal

There are too many questions and not enough information available to the public about where and how the diverted water is actually being used. Since KIUC cannot currently divert from the North Fork or Waikoko stream sources because of the ditch damage, I encourage you to consider suspending RP 7340 until the Water Commission establishes new Interim Instream Flow Standards for these streams and KIUC resolves it's long term lease application

Respectfully,

A handwritten signature in black ink that reads "Matt Rosener". The signature is written in a cursive style and is placed on a light gray rectangular background.

Hydrologist/Water Resource Engineer

**From:** Toi Pua La`a  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] opposition on D-5, the renewal of Revocable Permit 7340 to KIUC  
**Date:** Wednesday, December 9, 2020 6:19:06 PM

---

Aloha,

I apologize for the brief testimony.

I wish to oppose, with all me heart and with full conviction D-5 REVOCABLE PERMIT #7340; KIUC water rights to Wai`ale`ale and Waikoko.

This ongoing water theft must stop, immediately.

WATER IS SACRED.

WATER IS LIFE.

Mahalo,  
Ms. T. Pua La`a Norwood  
P.O. Box 1469  
Hanalei, 96714  
8086529642

*Aloha ke kahi ke kahi.  
Malama pono, malama kino.  
E Ola!  
(Love each other, one another.  
Care for/Respect Righteousness, care/respect your body.  
Live life in Health!)*

*Pua La`a*

Alo La`a ~ Danse Arts Yoga Studio  
in Ching Young Village, Hanalei  
5-5190 Kuhio Hwy., D-10  
Hanalei, Hawaii 96714  
Mobile: [808 652 9642](tel:8086529642) (YOGA)  
[alolaa108@gmail.com](mailto:alolaa108@gmail.com)  
[www.alolaa.yoga](http://www.alolaa.yoga)

**From:** John M. Rickel  
**To:** [DLNR.BLNR.Testimony](#)  
**Cc:** [Joseph Bork \(joseph.gsp@gmail.com\)](#); [Lynn Kubousek](#); [Lanny Dyer](#); ["Scott V. Chritton Sr."](#); [Griffith Frost](#); [Peter Savio](#); [Kimi Ide-Foster](#)  
**Subject:** [EXTERNAL] WRITTEN TESTIMONY FOR BLNR, FRIDAY, DEC. 11, 2020 9:00AM HAWAII TIME. 121 BANYAN DRIVE, HILO SPECIAL PERMIT, PAGE 54 OF 54  
**Date:** Wednesday, December 9, 2020 10:37:48 AM

---

TO BLNR:

Oceanfront 121, Inc. believes it is in the best interest of the State of Hawaii and City of Hilo to continue the kama'aina moderately priced Pagoda Hilo Bay Hotel room availability, as the Covid crisis hopefully passes, and tourism begins to regain volume in Hilo.

If you have any questions about renewing the Special Permit for Oceanfront 121, Inc., please contact John Rickel, attorney for Oceanfront 121, Inc. at 121 Banyan Drive, Hilo – cell 586.415.8700 anytime. We also have Zoom available anytime.

We look forward to continuing to work with you/BLNR, and believe (given the circumstances) that we have made really good progress with a viable moderately priced hotel room offering on Banyan Drive this year. Aloha, 121 OceanFront 121, Inc., by: John Rickel

JOHN M. RICKEL  
ATTORNEY AT LAW  
THE RICKEL LAW FIRM, P.C.  
A FULL SERVICE CENTENNIAL LAW FIRM, SINCE 1899  
LICENSED TO PRACTICE IN HAWAII, ILLINOIS, MICHIGAN, MISSOURI AND VIRGINIA  
-STRONGER TOGETHER. USING THE PROPRIETARY DESKTOP AND MOBILE ONYX SOFTWARE CASE MANAGEMENT SYSTEM. THE TRACKING TOOL! OFFERING INTEGRATION (PRESENTLY CALIBER SOFTWARE, VILLAGE MANAGEMENT SOFTWARE (VMS), GO-GLOBAL AND CINC SYSTEMS) WITH YOUR SOFTWARE, TO SAVE YOU PAYROLL TIME-- COMMUNITY ASSOCIATIONS INSTITUTE ("CAI") - ONYX CASE MANAGEMENT SYSTEM - SOLE ASSET RECOVERY LITIGATION CAI NATIONAL CORPORATE MEMBER. SHARED COMMUNITY BENEFITS, REQUIRE SHARED FINANCIAL RESPONSIBILITY.  
THE NATIONAL BEST PRACTICE. INNOVATION, EVERY DAY. IMAGINE BETTER. WHAT WE DO WELL, IS MOVE IDEAL INTO PRACTICE.  
PO Box 36200  
GROSSE POINTE FARMS, MI 48236-0200  
P: (313) 586-0000  
F: (888) 415-0000  
C: (888) 415-8700; 808.427.9757 WATERFRONT PLAZA, 500 ALA MOANA BLVD., STE. 7400, HONOLULU, HI 96813  
TOLL FREE (855) 752-7156  
[WWW.THERICKELLAWFIRM.COM](http://WWW.THERICKELLAWFIRM.COM)



**CAUTION EXTERNAL EMAIL:** DO NOT open attachments or click links from unknown or unexpected emails.

AICPA, and the State Bar of Missouri, request we notify you that email is NOT a secure method of communication. 3<sup>rd</sup> Party hacking and / or dissemination of your email may occur.

To comply with U.S. Treasury regulations, we advise you that any discussion of Federal tax issues in this communication cannot be used, by any person (i) for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service, or (ii) to promote, market or recommend to another party any matter addressed herein.

This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please

do not forward or use this information in any way and contact me immediately. This E-mail and any attachments have been sent as a confidential communication by The Rickel Law Firm, P.C., Attorneys At Law, in furtherance of and for the purposes of facilitating the rendition of professional legal services to a client who has retained and/or consulted this law firm in obtaining professional legal services. If you are not the addressee or the intended recipient, do not read this E-mail or any attachments. This E-mail and any attachments are protected by the attorney-client privilege and the work product doctrine. This E-mail and any attachments are not intended for release to opposing parties, opposing counsel or any other third person or entity. Copies of this E-mail and any attachments should not be kept in your regular files. If you print a copy of this E-mail or any attachments, place them in a separate file labeled "Attorney-Client Privilege." DO NOT PRODUCE A COPY OF THIS EMAIL IN DISCOVERY.

This firm is a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

**From:** Liz Raya  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 10:10:55 AM

---

Aloha my name is Elizabeth Okinaka, a Koloa resident. I strongly Oppose the renewal of RP 7340 for KIUC. Both stream being diverted flow directly into our sacred Wai'ale'ale. KIUC needs to be more culturally responsible and restore our waters. For almost 100 years the rivers have been diverted for outdated plantation era systems. The diversions of our rivers have helped contribute to the genocide of Native Hawaiians. Contributing to the loss of land and food resources for native Hawaiians. For generations Ohana have been forced off of 'Aina due to loss of our natural stream flow and no longer being able to farmland. O'opu are known to live in both of the streams being diverted and have obviously declined over the years due to lack of water in the streams. The amount of power generated from the outdated plantation era Hydro plants is very minimal(<1%). The effects caused by the diversion of the streams for the Hydro plants greatly outweighs the amount of power it generates. Desecration of sacred resources for money Is not pono! Stop the diversions of our waters restore our streams! It's time to look for alternative energy resources and stop the use of the outdated plantation era mentality.

I am requesting that BLNR attached the following conditions to KIUC's permit if they choose to move forward

- A deadline for KIUC to install water gauges on all streams feeding the ditch systems
- A deadline for KIUC to repair exposed rebar as a health and safety hazard

Sent from my iPad

- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on alteration to existing diversion structures
- A deadline for KIUC to develop a means to shut down the versions completely when a break in the system leads to a total waste of stream waters
- A deadline for KIUC to report back to the board on power generation for the upper and lower Hydro plant separately

Aloha  
Elizabeth Okinaka  
PO Box 54 Koloa HI 96756  
(808)635-7520

**From:** Wehi Oliver  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:11:44 PM

---

DONT DO THIS! We've already disturbed Mother Nature too much, diverting water from Wai'ale'ale and Waikoko will result is SERIOUS consequences for both land and man.

Sent from my iPhone

**From:** Jo Amsterdam  
**To:** [DLNR.BLNR.Testimony](#)  
**Cc:** [Bridget Hammerquist](#); [Debbie Lee-Jackson](#); [Puanani Rogers](#)  
**Subject:** [EXTERNAL] In Opposition to Revocable Permit 7340  
**Date:** Tuesday, December 8, 2020 11:02:34 AM

---

Aloha All Concerned,

I'm opposed to the water diversions which leave the downstream dry or unable to support the wildlife it has in the past. We have known for a long time that the 2 Waiahi hydro plants produce 8 tenths of one percent of our power needs. This is not enough to justify what is being done. The water is a public trust and should be available to the public not just the power company and a mega land owner. We need to move forward in a different way. Let's not renew this permit, let's revoke it this time. Mahalo for your consideration. Sincerely Jo Amsterdam Kalaheo

**From:** Emily Broderick  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 1:44:12 PM

---

Aloha and to whom it may concern,

I strongly think it is time that our Kauai community start prioritizing our natural resources and biodiversity over profits of companies and individuals who do make concerted efforts towards sustainability and conservation practices.

In fact, KIUC has failed to prove their commitment to conservation and have not been forthright. As such it's time to part ways with them for the continued benefits of our natural stream flow, biota, traditional and cultural practices and the preservation of the ascetics. Hopefully it is not too late to restore what has been grossly impacted by deteriorating dam diversions with exposed rebar not to mention the threat to human health and safety.

Dam maintenance is a requirement of at least 10 of the conditions of RP 7340 and KIUC has failed to comply with any of them. This stream diversion permit needs to be denied. They obviously don't need it. By their own application for renewal, they admit it has not been in use all year... and their power for Kauai has not been interrupted.

Thank you very much for your consideration!

Emily Broderick  
Marine Biologist and KCC Instructor

--

*Let the beauty of what you love be what you do - Rumi*

Emily M. Broderick  
Biology/Marine Science Instructor  
Kauai Community College  
SSCI Bld 112  
Email: [emilybro@hawaii.edu](mailto:emilybro@hawaii.edu)  
Phone: 808-245-8389

**From:** MDENTE@hawaii.rr.com  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOPSE RP 7340  
**Date:** Tuesday, December 8, 2020 12:14:13 PM

---

To whom it may concern at BLNR

As a member of the KIUC Utilities COOP, I am opposed to your allowing any renewal of their revocable permit 7340 to divert water from Wai'ale'ale River on Kauai and quite annoyed that I have to keep writing letters on this matter, with the many delays caused by the KIUC management.

- 1) A required EIS was never done, with arrogant replies from KIUC management that they are going to supply only an EAS which is legally not acceptable.
- 2) Only 1 % or less power for KIUC, generated by the Waiahi hydro power plant, is an irresponsible business decision by KIUC management to continue with this permit and all expenses to run the turbine and management of the facility.
- 3) With the uncertainty of trade winds being diminished in the relatively near future due to climate change, thus a considerable reduction in rainfall, any "taking" of the water now or in the future is totally unacceptable and disrespectful of downstream farmers and residents and an insult to our host culture.

As an over 30 year property owner/resident of Kauai, I request that you deny RP 7340.

Thank you for your consideration.

Marj Dente, 6335 Waipouli Rd, Unit B, Kapaa, HI 96746 823-8162

**From:** Jim Hunt  
**To:** [DLNR.BLR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP7340  
**Date:** Monday, December 7, 2020 6:43:21 PM

---

Please do what your heart says is the right thing and oppose. Kauai is such a paradise and should not be cheapened!!!!!!!

Mahalo,

Jim & Cher Hunt

Sent from my iPhone

**From:** Deborah Cole  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP7340 - Protect Wai'ale'ale  
**Date:** Monday, December 7, 2020 6:09:55 PM

---

As stated by KIUC in their petition for renewal, attached Agenda Item D-5 - Exhibit A, KIUC did not divert water from Wai`ale`ale or Waikoko in 2020 due to ditch system damage. The island power system was not interrupted, proving that KIUC does not need nor should they continue diverting water from these State land streams in a protected conservation district.

It is also a heinous disruption of the most sacred waters of the heart of Kaua'i and should never have been permitted in the first place. I have seen them leave the riverbed dry with stagnant pools of red rot when they took all the water 10 years ago. There is no need for this; it is Wrong and unsupportable.

Mahalo,  
Debi

**From:** Rhoda Libre  
**To:** [DLNR.BLNR.Testimony](#)  
**Cc:** [rhoda libre](#); [Rhoda Libre](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Tuesday, December 8, 2020 7:02:29 AM

---

Aloha,

This request violates hawaiian constitution, environmental and cultural quality and protocol, perpetuates endangerment to native and endangered endemic species, impedes on food supplies, quality of life for regional habitat and its inhabitants, and encourages further theft of waters and genocide of native species and practices.

We are strongly against this request and we submit that this entities and all contributing agencies be charged with violations, damages, and theft. This is indeed a serious matter for all parties.

Regards,  
Rhoda libre  
8086451210  
1970 hanalima street d201  
Lihue, Kauai hi 96767  
[Rlibre2020@gmail.com](mailto:Rlibre2020@gmail.com)  
[Kauaiwestsidewatershedcouncil@gmail.com](mailto:Kauaiwestsidewatershedcouncil@gmail.com)

**From:** David Monasevitch  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Monday, December 7, 2020 8:40:36 PM

---

This is an email opposing RP 7340. It is way past time to restore stream flow to all impacted waters. Diverting water is a form of theft. And there are economic impacts beyond the money. Let us demonstrate true environmental stewardship.

Sincerely,

David Monasevitch

**From:** Eden Marie Peart  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP7340  
**Date:** Tuesday, December 8, 2020 5:09:35 PM

---

Dear Board members,

My late kumu and friend-a lifelong taro farmer in Waipio Valley on Hawaii island used to say “the water is watching.”

Let’s be worthy of the water’s approval.

Here on Kauai, vigilant citizens and scientists alike have provided you with the knowledge to make a pono decision.  
Oppose RP 7340!

Mahalo,  
Eden M Peart  
Po box 764  
Kapaa 96746

**From:** Andriana Simone  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:45:52 PM

---

Hi to all that this may concern,

We request that the board exercise its statutory responsibility to protect the public trust and deny the renewal of RP-7340 until KIUC can meet board conditions.

If it should be renewed, please attach the following conditions to KUIC's permit moving forward:

- a deadline for KUIC to install water gages on all streams feeding the ditch system
- a deadline for KUIC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- a deadline for KUIC to develop and implement a plan to mitigate system losses
- a deadline for KUIC to assess and report back on alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for yearend mauka to makai flows
- a deadline for KUIC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants ) leads to total waste of stream waters
- a deadline for KUIC to report back to the board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Thank you.  
Andriana Simone

**From:** Eliel Starbright  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Monday, December 7, 2020 11:01:17 PM

---

As stated by KIUC in their petition for renewal, attached Agenda Item D-5 - Exhibit A, KIUC did not divert water from Wai`ale`ale or Waikoko in 2020 due to ditch system damage. The island power system was not interrupted, proving that KIUC does not need nor should they continue diverting water from these State land streams in a protected conservation district.

We have known for sometime that the 2 Waiahi hydro power plants produce only 1% or less of the island's power. Now that we know they generate 8/10ths of 1% of the total revenue for KIUC, there is substantial support for BLNR to non renew KIUC's RP 7340 which, when the ditches are repaired, diverts an average of 14 million gallons daily from Wai`ale`ale and Waikoko not to mention the many other stream diversions along the 5 mile Ili`ili`ula ditch system between Wai`ale`ale and the upper Waiahi hydro that add the necessary 20 plus million gallons to operate the upper Waiahi hydro power plant.

**From:** Anne Thurston  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Monday, December 7, 2020 9:33:32 PM

---

Although KIUC did not divert water from Wai`ale`ale or Waikoko in 2020 due to ditch system damage, the island power system was not interrupted, demonstrating that KIUC does not need nor should they continue diverting water from these State land streams in a protected conservation district. Nevertheless, KIUC diverts up to 14 million gallons daily from Wai`ale`ale and Waikoko. Something is very wrong. RP 7340 should not go forward in the circumstances.

Thank you,

Anne Thurston

**From:** Kealohipaa Kauai  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] DENY RP 7340  
**Date:** Wednesday, December 9, 2020 7:39:41 PM

---

Aloha I Nakai‘elua Villatora is in opposition to the renewal of KIUC Revocable Permit 7340. As a cultural and traditional practitioner on the island of Kaua‘i district of Puna, I strongly disagree with the continuation of diverting our natural waterways and destruction of natural environments for all living beings (animals, plants, people, etc.). Wai‘ale‘ale is incredibly sacred to our people. Kawaikini the highest peak on Wai‘ale‘ale is our direct connection to ‘IO (GOD). All waters that flow from Wai‘ale‘ale is the spiritual and physical representation of our life source. KIUC lacks to provide an appropriate watershed management plan and environmental impact study which is only the beginning of their negligence. Our natural resources should be managed by those who have the intent of securing and mending disturbed ecosystems for the next 7-21 generations. Mahalo for accepting my testimony.

**From:** L Osterer  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOSE RP 7340  
**Date:** Wednesday, December 9, 2020 5:56:02 PM  
**Attachments:** [Wailua Schematic Map.pdf](#)  
[Robbie Alm"s REPORT.docx](#)

---

Dam maintenance is a requirement of at least 10 of the conditions of RP 7340 and KIUC has failed to comply with any of them. Five miles of Ili`ili`ula ditch system between Wai`ale`ale and the upper Waiahi hydro and two other ditch systems, South Intake ditch and North Intake ditch, collect from the upper Waiahi hydro and additional streams to provide the 40 million gallons daily required to operate the lower Waiahi Hydro all for .8% of the KIUC total power revenue. KIUC did not divert water from Wai`ale`ale or Waikoko in 2020 due to ditch system damage, proving that KIUC does not need to divert water from these State land streams in a protected conservation district. By continuing to divert an unsustainable amount of water from the sacred Wai`ale`ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. An environmental impact statement is required. (Hi Statue 171-58)

Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kauai's energy production. Further, the hydro system maintenance is a burden to KIUC customers, compared with more efficient solar power.

**Please protect the public trust and therefore deny the current request for renewal of RP 7340.**

If you continue to extend permits in spite of these findings, they should be delayed until the board's previous conditions are met.

The following should be prerequisites to stream diversion and resuming hydro operations:

1. Repair dam and ditches to decrease system losses.
2. Install water gauges on all streams feeding the ditch system.
3. Alter diversion structures to capture high flow and reduce low flow capture.
4. Build a return flow mechanism to avoid diversion during repairs or as necessary.
5. Separate power generation and water flow needs for upper and lower hydro plants.

Thank you for your consideration,  
L. Osterer, Kauai long term resident KIUC customer

**REPORT ON THE FACILITATED DISCUSSION  
KAUAI ISLAND UTILITY COOPERATIVE (KIUC) REVOCABLE PERMIT S-7340**

At its December 14, 2018 meeting, the Board of Land and Natural Resources approved a revocable permit for KIUC with the following in its minutes:

Holdover of Revocable Permits for Water Use on the Islands of Hawaii and Kauai. See Exhibit 3 for list of Revocable Permits. APPROVED AS AMENDED. The Board considered the holdover requests for the Hawaii and Kauai water revocable permits in three phases. First, the Board approved the holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative (“KIUC”) as amended. The Board included a condition that KIUC is to invite Earthjustice, Kia’I Wai O Wai’ale’ale, Sierra Club, Grove Farm and the Department of Hawaiian Home Lands (together “The Working Group”), to participate in a facilitated discussion regarding their respective positions on KIUC’s request to use State water for its hydroelectric plants in the permit area as well as any other matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

KIUC approached the Collaborative Leaders Network (CLN) about facilitating these discussions. CLN agreed to undertake this work with the understanding that for the initial meetings CLN would cover any of its own costs in the spirit of encouraging collaborative problems solving.

**The Discussions**

Three meetings were held on Kauai between January and March,

The first meeting was held with all the parties named above and every party expressed their basic sense of the issues involved, how they would like to have this work proceed from a process standpoint, and who else should be part of the process. The Kia’I Wai O Wai’ale’ale, Sierra Club, Earthjustice, HAPA, and Department of Hawaiian Homelands specifically asked if they could meet separately from the others to discuss their concerns (The others were interested in continuing to meet together but deferred to this request).

The second meetings were, as requested, held separately. Joining the morning session was the Office of Hawaiian Affairs. In that session, there were concerns raised on the environmental review process being undertaken by KIUC, KIUC’s adherence to the stream flow numbers set by the Board, the relationship between this process and the larger questions of water use in the region, the value of the two hydro plants involved to Kauai, the larger economic interests involved, how the water lease and IIFS processes will work together, as well as a discussion of the sacredness of the water in the two streams specifically at issue here and how (or if) that can be reconciled with the other uses of the streams. The group also asked that a set of specific questions that they wanted KIUC to answer.

In the afternoon session, Kauai County Managing Director Michael Dahilig, the Kauai County Planning Department, the Kauai Department of Water Supply, and Kauai Backcountry Adventures also joined the conversation. In that session there were concerns raised about making sure that all interests including agricultural and other community public purposes and recreational were included in the decision-making, that all of these water systems are interconnected and therefore making changes to one portion affects many others (cumulative impacts), that this area (Lihue) is the major area for the housing needs on Kauai in the 21<sup>st</sup> century and water decisions need to be made with that in mind, and that Grove Farm has accumulated a lot of knowledge about this system as well as maintained it for the benefit of the island. The group also believes that the interests of all of the parties are not mutually exclusive and would like to work together to come to an understanding.

In addition to these meetings, there were a number of conversations and emails, as well as numerous pages of prior correspondence, documents, photographs, and diagrams provided on the issues involved.

The third set of meetings looked at the messages that the parties wanted to convey to the Board about the handling of the issues in this case.

### **The Questions to KIUC**

1. It is the view of the morning parties that the BLNR had ordered KIUC to release 1.6 MGD in the stream at Waikoko and 4.0 at Wai'ale'ale Stream. Are these amounts of water actually being released?

KIUC believes that it is in compliance with the BLNR order.

KIUC believes the amount required to be release at Waikoko is 0.8 MGD.

(Both sides believe they have it right. There are a couple of ways to move forward on this one. One is to take this dispute to the Board and it will likely be sent to staff who will then report back to the Board on compliance. The other way is to have each side designate one person who will together review the situation including going up to the sites to make sure that they at least understand each other's views of this situation and hopefully agree on a shared understanding of what is going on or at a minimum narrow the dispute as much as possible.)

2. What specific environmental review process is KIUC undertaking in connection with this application.

KIUC has been conducting an Environmental Assessment (EA) with the DLNR as the accepting agency. KIUC expects to complete it and submit it this month or as soon thereafter as possible.

3. How much water does KIUC need to operate the hydro plants at an efficient level?

KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro.

Additionally, there was a desire to know from where the waters for these amounts came from.

For the Upper Hydro, KIUC uses water from these two streams (Wai'ale'ale and Waikoko), the Ililiula diversion (located on Grove Farm land but operated by KIUC as part of the Ililiula North Wailua Ditch System) and some small seasonal contributions during high rains. For the Lower Hydro, KIUC uses water diverted from Waiahi Stream (downstream of the tailrace discharge of the Upper Hydro), Ililiula Stream and some small seasonal streams that contribute during high rains. The amount of water discharged into Waiahi Stream from the Upper Hydro tailrace directly impacts how much water is available for the Lower Hydro.

The original Revocable Permit for Blue Hole and Waikoko diversions combined allowed up to an annual average of 14.2 MGD though through KIUC's diversion history they have been taking more like 13 and under current orders are taking a combined about of 9.6 MGD unless stream flow is above median flows. Overall 50% to 65% of the water used come from the diversion of these two streams.

### **The Wisdom of the Groups**

While there are clearly very divergent views on a significant number of issues, there were commonly held views that are worth setting forth.

First, all the waters in the Lihue region are interconnected and the combinations of streams and diversions/ditches has and continues to have a very significant impact on the environment of the area, the Native Hawaiian culture and its practices in the area, and the economy and quality of life in the area.

Second, there are very strong and divergent views about what the right answers are in terms of (1) the amount of water that needs to be left in the streams, (2) the continuation of total or substantial diversions of water anywhere in the system, and (3) the impact that any significant changes to the current water system will have on the overall social, economic and environmental health of the region.

Third, all parties agree that the Waikoko and Wai'ale'ale issues are just the start of a much broader and more complex conversation and processes about the Lihue region. There are likely to be many more disputes coming with greater and greater consequence to the people of Kauai.

Fourth, the way in which the BLNR's revocable permit/lease processes and the Water Commission's IIFS process will (or won't) work together in a coordinated matter is not at all clear to these parties. Any discussion has a tendency to get to both issues very quickly and in an overlapping manner.

Fifth, all parties agree that some form of formal dispute resolution would be better for Kauai as a community and would want to engage in such a process.

Sixth, all parties are concerned that the tone of the discussions sometimes assumes a level of animosity that is not good for Kauai overall and a process more conducive to community building is very much in Kauai's interest.

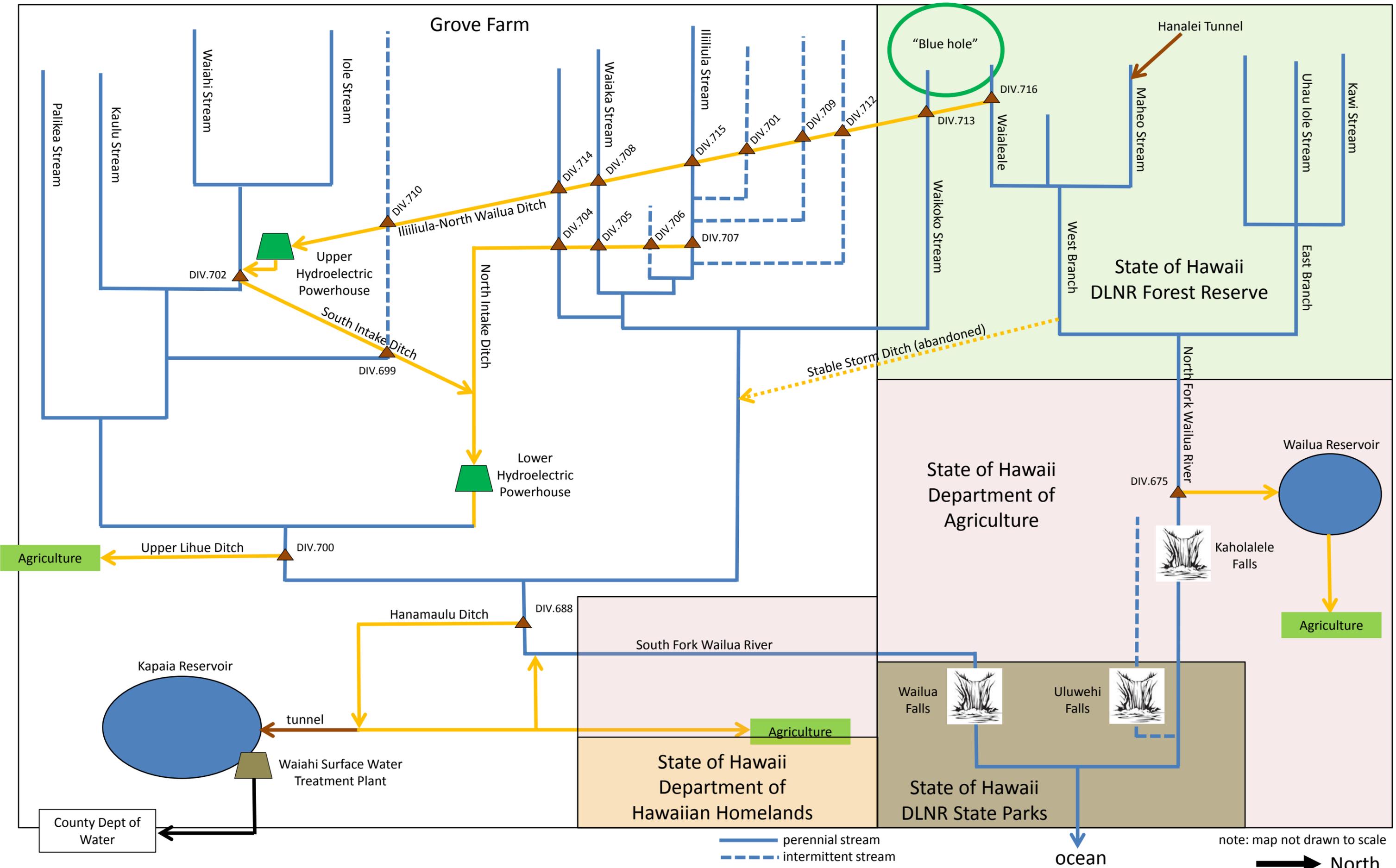
### **Specific Recommendation Based on the Discussions**

There needs to be a formal process in which the parties can participate. That process can be a contested case process, a contested case process with a mediation effort at the outset or during it, or some other process, (The parties do believe that any exchange of information and views is useful, but at this stage a formal setting for those discussions and exchanges is critical.)

The most available starting point is the IIFS process at the Water Commission involving the Wai'ale'ale and Waikoko Streams in which a contested case has already been requested.

In the longer term, the issues in the region significantly overlap and intersect, and that as challenging as it may be, consideration needs to be given to having a process examine all of the streams and waters in the Lihue area if that can be done.

Finally as the State moves more and more into the IIFS and water lease processes, it would be helpful if there is as much transparency as possible in how the two processes will coordinate with each other.



Agriculture

Agriculture

Agriculture

Wailua Reservoir

Kapaia Reservoir

Grove Farm

State of Hawaii  
DLNR Forest Reserve

State of Hawaii  
Department of  
Agriculture

State of Hawaii  
Department of  
Hawaiian Homelands

State of Hawaii  
DLNR State Parks

ocean

note: map not drawn to scale

North

perennial stream  
intermittent stream

Waiahi Surface Water  
Treatment Plant

County Dept of  
Water

tunnel



Kaholalele  
Falls



Wailua  
Falls



Uluwehi  
Falls

Waikoko Stream

West Branch

East Branch

North Fork Wailua River

South Intake Ditch

North Intake Ditch

DIV.702

DIV.699

DIV.700

DIV.688

DIV.714

DIV.708

DIV.715

DIV.701

DIV.709

DIV.712

DIV.704

DIV.705

DIV.706

DIV.707

DIV.713

DIV.716

DIV.675

Hanalei Tunnel

"Blue hole"

Palikea Stream

Kaulu Stream

Waiahi Stream

Iole Stream

Waiaka Stream

Iiiliula Stream

Waialeale

Maheo Stream

Uhau Iole Stream

Kawi Stream

Waiahi Surface Water Treatment Plant

Upper Lihue Ditch

Hanamaulu Ditch

South Fork Wailua River

State of Hawaii Department of Hawaiian Homelands

State of Hawaii DLNR State Parks

ocean

note: map not drawn to scale

North

perennial stream  
intermittent stream

Waiahi Surface Water Treatment Plant

County Dept of Water

tunnel



Kaholalele Falls



Wailua Falls



Uluwehi Falls

Waikoko Stream

West Branch

East Branch

North Fork Wailua River

South Intake Ditch

North Intake Ditch

DIV.702

DIV.699

DIV.700

DIV.688

DIV.714

DIV.708

DIV.715

DIV.701

DIV.709

DIV.712

DIV.704

DIV.705

DIV.706

DIV.707

DIV.713

DIV.716

DIV.675

Hanalei Tunnel

"Blue hole"

Palikea Stream

Kaulu Stream

Waiahi Stream

Iole Stream

Waiaka Stream

Iiiliula Stream

Waialeale

Maheo Stream

Uhau Iole Stream

Kawi Stream

Waiahi Surface Water Treatment Plant

Upper Lihue Ditch

Hanamaulu Ditch

South Fork Wailua River

State of Hawaii Department of Hawaiian Homelands

State of Hawaii DLNR State Parks

ocean

note: map not drawn to scale

North

perennial stream  
intermittent stream

**From:** Katrina Raphael  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 11:27:40 AM

---

Aloha,

I am a Kauai resident for more than 30 years and I live in Wailua Homesteads with a visible view of Waialeale. It feels like a rape of this precious crater that there are no longer waterfalls that run the length of the crater to the stream. Please do not allow this to continue and instead let the sacred water run its natural course. Water should not be for sale.

Sincerely,  
Katrina Raphael

Sent from my iPad

**From:** Sim Raphaell  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] "Oppose RP 7340"  
**Date:** Wednesday, December 9, 2020 8:16:24 PM

---

Dear BLNR,

My name is Simran Raphaell. I am from Wailua. All my life, I have been blessed to live in this area. Some time ago, I noticed that the waterfalls on Wai'ale'ale were absent, even when Makaleha was gushing after intense rains. As time went on, I noticed that the river had stopped pushing out the sand at the river mouth. Only after deep investigation did it become clear what was happening. These "diversions" of this most sacred water have become more than apparent as the ocean encroaches up to the main hwy, and in fact: under the bridge, to the piers which are now cracked from the trees which were cut by the county upstream and left to wash down and be stuck in the sand from Wailua beach which has migrated upstream ever since the water had been diverted.

1% of Kauai's energy does in no way justify this project. I say this as a witness to what has happened along the shoreline for more than 30 years, as a lifelong waterman and surfer, as a father, as an expert in ecological and regenerative design and indeed: as a resident of Kauai. Please consider that your decision will effect not only the future of my sons feet upon Wailua beach, but the future of Wailua river and Wailua beach itself. If you think I may not know what I'm talking about, trust that I have talked to experts on the subject and it's is more than obvious to anyone in there right mind: the river has to push the sand back out to the sea and then back to the shores, otherwise the ocean just fills the gap by pushing the sand and water~> upstream : in other words-Sediment from the Wailua river contributes to the sand on the beach. We need adequate flows of the river to push sand out into the system.

This is part of the what's known As the "littoral cell" which makes the beach a beach. Please, look into this. Do not allow KIUC to push the last domino which will inherently destroy the bridge, road and the beach... this is about the heritage of future generations as much as it is about vehicles from Haena to Wailua needing access to the harbors food and resource supply. I couldn't be more adamant that serous work must be done to restore the bridge, as well as returning the waters to there rightful and most sacred place. The life of the land is perpetuated in righteousness. Let this be true to THE Birthplace of all Hawaiians.

Sincerely,

Simran Raphaell  
Kapaa high  
Class of 2000  
Wailua boy for life.

**From:** Melissa Renteria  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Thursday, December 10, 2020 8:12:43 AM

---

To whom it may concern,

I am a Kauai resident and have a 5 month old son born at KVMH. I'm writing to oppose the continued diversion of water from Wai'ale'ale and Waikoko streams. This diversion not only effects us, but our future generations and the island as a whole. This is an unsustainable practice that is leading to irreversible damage. Please deny the renewal of RP 7340.

Sincerely,  
Melissa Renteria

Sent from my iPhone

**REPORT ON THE FACILITATED DISCUSSION  
KAUAI ISLAND UTILITY COOPERATIVE (KIUC) REVOCABLE PERMIT S-7340**

At its December 14, 2018 meeting, the Board of Land and Natural Resources approved a revocable permit for KIUC with the following in its minutes:

Holdover of Revocable Permits for Water Use on the Islands of Hawaii and Kauai. See Exhibit 3 for list of Revocable Permits. APPROVED AS AMENDED. The Board considered the holdover requests for the Hawaii and Kauai water revocable permits in three phases. First, the Board approved the holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative (“KIUC”) as amended. The Board included a condition that KIUC is to invite Earthjustice, Kia’I Wai O Wai’ale’ale, Sierra Club, Grove Farm and the Department of Hawaiian Home Lands (together “The Working Group”), to participate in a facilitated discussion regarding their respective positions on KIUC’s request to use State water for its hydroelectric plants in the permit area as well as any other matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

KIUC approached the Collaborative Leaders Network (CLN) about facilitating these discussions. CLN agreed to undertake this work with the understanding that for the initial meetings CLN would cover any of its own costs in the spirit of encouraging collaborative problems solving.

**The Discussions**

Three meetings were held on Kauai between January and March,

The first meeting was held with all the parties named above and every party expressed their basic sense of the issues involved, how they would like to have this work proceed from a process standpoint, and who else should be part of the process. The Kia’I Wai O Wai’ale’ale, Sierra Club, Earthjustice, HAPA, and Department of Hawaiian Homelands specifically asked if they could meet separately from the others to discuss their concerns (The others were interested in continuing to meet together but deferred to this request).

The second meetings were, as requested, held separately. Joining the morning session was the Office of Hawaiian Affairs. In that session, there were concerns raised on the environmental review process being undertaken by KIUC, KIUC’s adherence to the stream flow numbers set by the Board, the relationship between this process and the larger questions of water use in the region, the value of the two hydro plants involved to Kauai, the larger economic interests involved, how the water lease and IIFS processes will work together, as well as a discussion of the sacredness of the water in the two streams specifically at issue here and how (or if) that can be reconciled with the other uses of the streams. The group also asked that a set of specific questions that they wanted KIUC to answer.

In the afternoon session, Kauai County Managing Director Michael Dahilig, the Kauai County Planning Department, the Kauai Department of Water Supply, and Kauai Backcountry Adventures also joined the conversation. In that session there were concerns raised about making sure that all interests including agricultural and other community public purposes and recreational were included in the decision-making, that all of these water systems are interconnected and therefore making changes to one portion affects many others (cumulative impacts), that this area (Lihue) is the major area for the housing needs on Kauai in the 21<sup>st</sup> century and water decisions need to be made with that in mind, and that Grove Farm has accumulated a lot of knowledge about this system as well as maintained it for the benefit of the island. The group also believes that the interests of all of the parties are not mutually exclusive and would like to work together to come to an understanding.

In addition to these meetings, there were a number of conversations and emails, as well as numerous pages of prior correspondence, documents, photographs, and diagrams provided on the issues involved.

The third set of meetings looked at the messages that the parties wanted to convey to the Board about the handling of the issues in this case.

### **The Questions to KIUC**

1. It is the view of the morning parties that the BLNR had ordered KIUC to release 1.6 MGD in the stream at Waikoko and 4.0 at Wai'ale'ale Stream. Are these amounts of water actually being released?

KIUC believes that it is in compliance with the BLNR order.

KIUC believes the amount required to be release at Waikoko is 0.8 MGD.

(Both sides believe they have it right. There are a couple of ways to move forward on this one. One is to take this dispute to the Board and it will likely be sent to staff who will then report back to the Board on compliance. The other way is to have each side designate one person who will together review the situation including going up to the sites to make sure that they at least understand each other's views of this situation and hopefully agree on a shared understanding of what is going on or at a minimum narrow the dispute as much as possible.)

2. What specific environmental review process is KIUC undertaking in connection with this application.

KIUC has been conducting an Environmental Assessment (EA) with the DLNR as the accepting agency. KIUC expects to complete it and submit it this month or as soon thereafter as possible.

3. How much water does KIUC need to operate the hydro plants at an efficient level?

KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro.

Additionally, there was a desire to know from where the waters for these amounts came from.

For the Upper Hydro, KIUC uses water from these two streams (Wai'ale'ale and Waikoko), the Ililiula diversion (located on Grove Farm land but operated by KIUC as part of the Ililiula North Wailua Ditch System) and some small seasonal contributions during high rains. For the Lower Hydro, KIUC uses water diverted from Waiahi Stream (downstream of the tailrace discharge of the Upper Hydro), Ililiula Stream and some small seasonal streams that contribute during high rains. The amount of water discharged into Waiahi Stream from the Upper Hydro tailrace directly impacts how much water is available for the Lower Hydro.

The original Revocable Permit for Blue Hole and Waikoko diversions combined allowed up to an annual average of 14.2 MGD though through KIUC's diversion history they have been taking more like 13 and under current orders are taking a combined about of 9.6 MGD unless stream flow is above median flows. Overall 50% to 65% of the water used come from the diversion of these two streams.

### **The Wisdom of the Groups**

While there are clearly very divergent views on a significant number of issues, there were commonly held views that are worth setting forth.

First, all the waters in the Lihue region are interconnected and the combinations of streams and diversions/ditches has and continues to have a very significant impact on the environment of the area, the Native Hawaiian culture and its practices in the area, and the economy and quality of life in the area.

Second, there are very strong and divergent views about what the right answers are in terms of (1) the amount of water that needs to be left in the streams, (2) the continuation of total or substantial diversions of water anywhere in the system, and (3) the impact that any significant changes to the current water system will have on the overall social, economic and environmental health of the region.

Third, all parties agree that the Waikoko and Wai'ale'ale issues are just the start of a much broader and more complex conversation and processes about the Lihue region. There are likely to be many more disputes coming with greater and greater consequence to the people of Kauai.

Fourth, the way in which the BLNR's revocable permit/lease processes and the Water Commission's IIFS process will (or won't) work together in a coordinated matter is not at all clear to these parties. Any discussion has a tendency to get to both issues very quickly and in an overlapping manner.

Fifth, all parties agree that some form of formal dispute resolution would be better for Kauai as a community and would want to engage in such a process.

Sixth, all parties are concerned that the tone of the discussions sometimes assumes a level of animosity that is not good for Kauai overall and a process more conducive to community building is very much in Kauai's interest.

### **Specific Recommendation Based on the Discussions**

There needs to be a formal process in which the parties can participate. That process can be a contested case process, a contested case process with a mediation effort at the outset or during it, or some other process, (The parties do believe that any exchange of information and views is useful, but at this stage a formal setting for those discussions and exchanges is critical.)

The most available starting point is the IIFS process at the Water Commission involving the Wai'ale'ale and Waikoko Streams in which a contested case has already been requested.

In the longer term, the issues in the region significantly overlap and intersect, and that as challenging as it may be, consideration needs to be given to having a process examine all of the streams and waters in the Lihue area if that can be done.

Finally as the State moves more and more into the IIFS and water lease processes, it would be helpful if there is as much transparency as possible in how the two processes will coordinate with each other.

**From:** Puanani Rogers  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony in strong opposition of the renewal of RP 7340  
**Date:** Tuesday, December 8, 2020 7:49:47 PM

---

Aloha,

My name is Puanani Rogers, I reside in the ahupua`a o Kealia o Kauai. I am an 81 year old Kupuna wahine and I as well as numerous others of our Kauai community are enraged because of the criminal actions of KIUC's to continue their diversions of our streams, and using their hydropower plant as an excuse. The plant is a folly, it produces less than 1% of Kauai's power and should be dismantled. The water diversions must be stopped immediately and all streams returned to their natural flow.

Shame! Shame! Shame!

By continuing to divert an unsustainable amount of water from Wai`ale`ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near nothing, and violating Kanaka Maoli cultural practices. Its environmental and cultural genocide.

I respectfully request that this Board exercise its responsibility to protect the public trust and therefore DENY the renewal of RP 7340 until KIUC shows that they are able to meet the Board's conditions and show some honesty and integrity and admit their wrongs...our people deserve that!

For the protection of our precious island resource; water is life, I place my signature to this testimony!

Puanani Rogers  
Kealia, Kauai

**From:** Casey Romo  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Wailua River issue  
**Date:** Wednesday, December 9, 2020 7:54:17 PM

---

Aloha my name is Casey Romo, I have been a resident of Kauai for 40 years now. I have never seen Wailua River and it's beach ever in this state of turmoil.

I can only imagine that it has something to do with the diversion of water that is occurring in the Mauka. Before long I predict that the dam will fail. It's going to be a bad day. Let's let the wai loose. Let it flow and let's resolve this issue with KIUC about the situation.

Thanks

Sent from my iPhone

**From:** Michael salomone  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 8:52:37 AM

---

I am respectfully requesting that the board exercises its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC can meet board conditions. Should the RP be renewed, I request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on alteration of existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters
- A deadline for KIUC to report back to the Board of power generation from the upper and lower hydro plant (separately) as two separate energy sources.

Mahalo for your time and consideration.

Suzanne Case, Chairperson  
Bureau of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawai'i, 96813

December 9, 2020

Re: Opposition to Renewal of Revocable Permit 7340

Aloha Chairperson Case and Board Members,

The Kaua'i Group of the Hawai'i Chapter of the Sierra Club is opposed to the renewal of Revocable Permit #7340. For the 17th year, the BLNR is being asked to consider renewing Permit #7340 which allows Kaua'i Island Utility Cooperative (KIUC) to divert water from State land and streams in a protected conservation district. Revocable permits are intended to be granted to water users giving them a year to prepare a lease application. A lease is required of any public water user per Revised Statute 171-58. BLNR has allowed this privilege to be flagrantly abused by KIUC for 17 years.

KIUC's water diversions are harmful to the Wailua watershed.

The Wailua watershed has been water starved for a century. The baseline for studying the effects we observe today should be from that time before those diversions and ditch systems were built and water diversions began for the sugar cane industry. The historical record shows 1000 acres in the watershed were cultivated in taro at various times. Fish farming, hunting and gathering provided food and medicine. The "Waters of Kane" were of paramount cultural significance. BLNR is responsible for preserving remembered places our indigenous culture needs to survive and flourish. BLNR should designate the Lihue-Koloa Forest Reserve an Emergency Water Management Area, due to the severe, ongoing negative impacts to public trust resources, protected species, diminishing water resources and their negative cultural impacts. Adequate data is needed to understand our revised sustainable yield after decades of out-of-the-ahupua'a export of surface water.

KIUC's water diversions are not needed for reliable electric service.

KIUC's petition for renewal says that KIUC diverted no water, and produced no electricity from the two Waiahi hydroelectric plants, in 2020. There has been no disruption to electric service. In their fall Currents publication, KIUC reported that in 2019 the two Waiahi plants that are served by the diversions produced 8/10ths of 1% of all the electricity KIUC sold in 2019. That's 14 million gallons diverted daily from the conservation district, and years of additional cumulative damage to the watershed environment, for less than 1% of the power produced by KIUC. Further, the new West Kaua'i Energy pumped storage project, contracted by KIUC, will employ pumped storage hydro technology. It is expected to produce up to 15% of Kaua'i energy needs. That's more than 15 times more electricity for nighttime use than the two Waiahi plants produce.

Because the Waiahi plants are not needed to meet resource needs, because they don't produce much energy and there are new resources such as West Kaua'i Energy, there is no reason to continue to incur environmental damage associated with Waiahi diversions.

If KIUC feels that the Waiahi diversions should continue, it should go through the normal permitting process specified in HRS 171-58, including a complete assessment of the environmental and cultural impacts of the diversions. In the meantime, KIUC's abuse of the temporary permitting process can't be allowed to continue. KIUC's own data has demonstrated that KIUC doesn't need Waiahi generation, or the water to produce it, while the normal permitting process is undertaken. We urge BLNR to reject the renewal application.

Regards,

Kip Goodwin

for Kaua'i Group, Hawai'i Chapter of Sierra Club

Suzanne Case, Chairperson  
Bureau of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawai'i, 96813

December 9, 2020

Re: Opposition to Renewal of Revocable Permit 7340

Aloha Chairperson Case and Board Members,

The Kaua'i Group of the Hawai'i Chapter of the Sierra Club is opposed to the renewal of Revocable Permit #7340. For the 17th year, the BLNR is being asked to consider renewing Permit #7340 which allows Kaua'i Island Utility Cooperative (KIUC) to divert water from State land and streams in a protected conservation district. Revocable permits are intended to be granted to water users giving them a year to prepare a lease application. A lease is required of any public water user per Revised Statute 171-58. BLNR has allowed this privilege to be flagrantly abused by KIUC for 17 years.

KIUC's water diversions are harmful to the Wailua watershed.

The Wailua watershed has been water starved for a century. The baseline for studying the effects we observe today should be from that time before those diversions and ditch systems were built and water diversions began for the sugar cane industry. The historical record shows 1000 acres in the watershed were cultivated in taro at various times. Fish farming, hunting and gathering provided food and medicine. The "Waters of Kane" were of paramount cultural significance. BLNR is responsible for preserving remembered places our indigenous culture needs to survive and flourish. BLNR should designate the Lihue-Koloa Forest Reserve an Emergency Water Management Area, due to the severe, ongoing negative impacts to public trust resources, protected species, diminishing water resources and their negative cultural impacts. Adequate data is needed to understand our revised sustainable yield after decades of out-of-the-ahupua'a export of surface water.

KIUC's water diversions are not needed for reliable electric service.

KIUC's petition for renewal says that KIUC diverted no water, and produced no electricity from the two Waiahi hydroelectric plants, in 2020. There has been no disruption to electric service. In their fall Currents publication, KIUC reported that in 2019 the two Waiahi plants that are served by the diversions produced 8/10ths of 1% of all the electricity KIUC sold in 2019. That's 14 million gallons diverted daily from the conservation district, and years of additional cumulative damage to the watershed environment, for less than 1% of the power produced by KIUC. Further, the new West Kaua'i Energy pumped storage project, contracted by KIUC, will employ pumped storage hydro technology. It is expected to produce up to 15% of Kaua'i energy needs. That's more than 15 times more electricity for nighttime use than the two Waiahi plants produce.

Because the Waiahi plants are not needed to meet resource needs, because they don't produce much energy and there are new resources such as West Kaua'i Energy, there is no reason to continue to incur environmental damage associated with Waiahi diversions.

If KIUC feels that the Waiahi diversions should continue, it should go through the normal permitting process specified in HRS 171-58, including a complete assessment of the environmental and cultural impacts of the diversions. In the meantime, KIUC's abuse of the temporary permitting process can't be allowed to continue. KIUC's own data has demonstrated that KIUC doesn't need Waiahi generation, or the water to produce it, while the normal permitting process is undertaken. We urge BLNR to reject the renewal application.

Regards,

Kip Goodwin

for Kaua'i Group, Hawai'i Chapter of Sierra Club

**From:** Tina Taniguchi  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Thursday, December 10, 2020 6:30:38 AM

---

Aloha I oppose RP 7340. By continuing to divert an unsustainable amount of water from the sacred Wai'ale'ale and Waikoko Streams, KIUC is actively harming natural ecosystems, decreasing the streamflow to near trickles, and disrupting Native Hawaiian cultural practices. KIUC has also failed to maintain the dam, which is a requirement of at least 10 of the RP 7340's conditions. KIUC's hydropower plant already produces less than 1% of Kaua'i's power and they have admitted to not using it in 2020 due to damage. Overall, this permit renewal and KIUC's water diversion operations are essentially unnecessary for Kaua'i's energy production. Should the RP be renewed I request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on the alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to a total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

**From:** Laulani Teale  
**To:** [DLNR, BLNR Testimony](#)  
**Cc:** [Liko; Bridget Hammerquist](#)  
**Subject:** [EXTERNAL] Opposition to RP 7340 (D-5)  
**Date:** Tuesday, December 8, 2020 11:46:53 PM

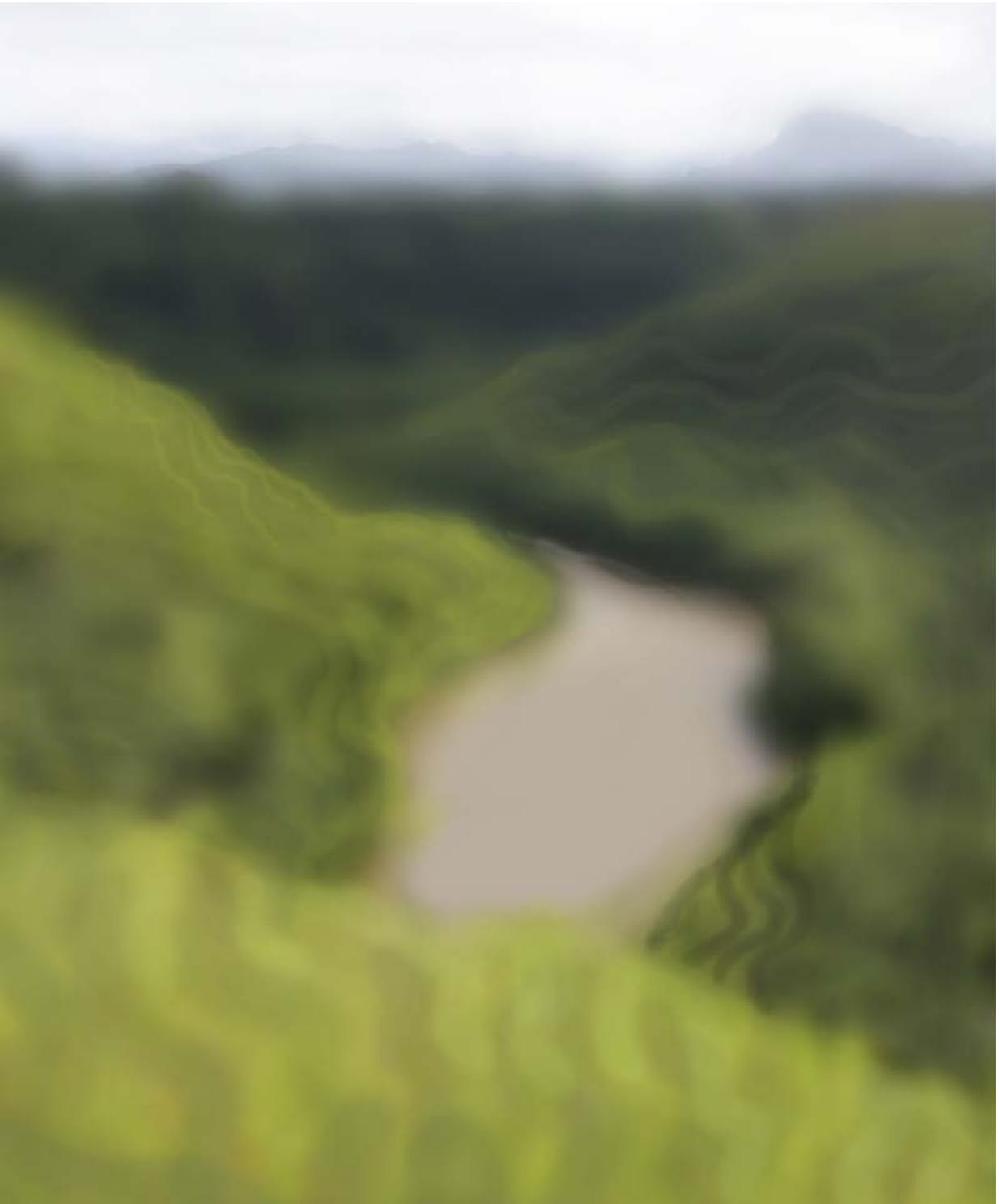
---

Aloha

I respectfully beseech this Board to please revoke RP 7340 to KIUC (Item D-5). The energy produced by the KIUC plant is negligible, whereas the harm of the diversion to native animals, cultural practices, and long-term community health and well-being is great. Both the natural and cultural ecosystems of Kaua'i depend upon the full, pono flow of water from Wai'ale'ale.

Mahalo nui loa,

Laulani Teale, MPH



**From:** James Trujillo  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 7:43:13 AM

---

Aloha mai kakou,

Thank you for the opportunity to provide testimony in opposition of KIUC's request to renew RP 7340.

As a member of KIUC, resident of Kaua'i and a citizen concerned about water issues on the Garden Isle, I ask that you deny the coop's request to renew RP7340 due to the various issues related to water diversion and environmental protection. The value of the electrical output of the hydro-power facilities is negligible compared to the prolonged and long term environmental degradation that is incurred through its continued operation. Added to that is the harm of water diversion schemes that discharge waters from one stream to flow into another and the ledger account results in a deficit for the immediate streams affected and the larger downstream environmental habitat. By not renewing RP7340 you will help to restore the natural flow of the Wailua watershed and protect the habitat and streamside ecosystem of our beautiful Garden Island.

Mahalo for considering this testimony in OPPOSITION TO RP7340. I thank you for allowing me to share my concerns and comments about this item.

With respect and aloha,

James G Trujillo  
PO BOX 33  
Kapa'a, HI  
96746

**From:** Maria Walker  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Oppose RP 7340  
**Date:** Wednesday, December 9, 2020 7:07:57 AM

---

Aloha Board Members,

I am writing today to request that you deny the permit application from KIUC until they are able to show that they have met all conditions set out in the past by the BLNR for this stream diversion.

I respectfully remind all of you that you are responsible to uphold the public trust, which includes the protection of waterways for both environmental health and native Hawaiian cultural practices. Both of these considerations are currently being harmfully affected by the greatly reduced stream flows on Wai'ale'ale and Waikoko streams. Many of the requirements in the permit have not been met or proven by KIUC, and need to be addressed before any future consideration of stream usage by the utility occurs. Usage of these streams for power generation on Kaua'i is so minimal (less than 1% in the past, 0% in 2020) that the negative impact on the streams is not justified by the diversions for our island's energy needs.

In the future, if the utility petitions the BLNR again to divert these streams, please make sure that these stipulations, **with deadlines**, are included in the permit in addition to all other conditions the Board deems necessary:

- Gauges to monitor stream flows on all waterways feeding the ditch system
- Developing and implementing a plan to mitigate system losses
- Assessing and reporting to the BLNR on plans to alter existing diversion structures so that high rather than low flows can be captured, which would allow year-round stream flows from the sources to the sea
- A plan for infrastructure to shut down stream diversions completely when a break in the ditch system (or hydro plants) leads to the waste of stream water
- Required reports to the Board on power generation from the upper and lower hydro plants as two separate energy sources.
- Repair all existing exposed rebar, which poses a health and safety hazard

Thank you for your serious consideration of this important issue; the residents of Kaua'i appreciate your vital role in upholding the public trust and protecting our most precious resources: the land and waters of Hawai'i.

Mahalo for hearing my testimony,  
Maria Walker  
1728 Hulu Rd.  
Kapa'a, Hi 96746  
(808) 821- 0732

**From:** Keep It Flowing  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] OPPOSE RP 7340  
**Date:** Thursday, December 10, 2020 7:47:11 AM  
**Attachments:** [Screen Shot 2020-12-10 at 7.46.04 AM.png](#)

---

Aloha e,

Our household does not support this bill, nor do we support the diversion & continued privatization of the Waialeale & Waikoko waters.

We ask that the board exercise its statutory responsibility to protect the public trust and therefore deny the renewal of RP 7340 until KIUC meets board conditions. Should the RP be renewed, please request that BLNR attach the following conditions to KIUC's permit moving forward:

- A deadline for KIUC to install water gages on all streams feeding the ditch system
- A deadline for KIUC to repair exposed rebar as a health and safety hazard (pursuant to current permit condition)
- A deadline for KIUC to develop and implement a plan to mitigate system losses
- A deadline for KIUC to assess and report back on alteration to existing diversion structures that would allow it to shift to capturing high rather than low flows, thereby allowing for year-round mauka to makai flows
- A deadline for KIUC to develop a means to shut down diversions completely when a break in the ditch system (or hydro plants) leads to total waste of stream waters
- A deadline for KIUC to report back to the Board on power generation from the upper and lower hydro plant (separately) as two separate energy sources.

With Aloha,

Laycie Williams & Jason Ladera,  
Kaua'i Residents

**From:** Robert Zelkovsky  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] STREAM DIVERSION permit 7430  
**Date:** Wednesday, December 9, 2020 10:07:06 AM

---

aloha - please do not renew KIUC's Permit 7430. Yes, we all love and need renewables, and KIUC has done a great job with solar, but the conditions downstream from the diversion have seriously deteriorated. Some places dried to a trickle, pollutants more concentrated and wildlife impacted.

PLEASE DO NOT RENEW PERMIT 7430.

Thank you,  
Dr Robert Zelkovsky  
Wailua Homesteads  
45 year Kaua'i resident