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Attorneys for COUNTY OF MAUI,
DEPARTMENT OF WATER SUPPLY

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM
INSTREAM FLOW STANDARDS FOR
HONOPOU, HUELO (PUOLUA),
HANEHOI, WAIKAMOI, ALO,
WAHINEPEE, PUOHOKAMOA,
HAIPUAENA, PUNALAU/KOLEA,
HONOMANU, NUAAILUA, PIINAAU,
PALAUHULU, OHIA (WAIANU),
WAIKAMILO, KUALANI, WAILUANUI,
WEST WAILUAIKI, EAST WAILUAIKI,
KOPILIULA, PUAKAA, WAIQHUE,
PAAKEA, WAIATAKA, KAPAULA,
HANAWI, and MAKAPIPI STREAMS

CASE NO. CCH-MA13-01

COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY'S REBUTTAL
REOPENING EXHIBIT LIST;
REOPENING EXHIBITs "B-075" – "B-
076"; CERTIFICATE OF SERVICE

**COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY'S
REBUTTAL REOPENING EXHIBIT LIST**

Exhibit No.	Description	References	Admitted in Evidence
B-075	Printout of "County Working to Buy Ditch System, Watershed Lands for \$9.5 Million." <i>The Maui News</i> , December 2016 printed on January 20, 2017.	Second Supplement Declaration of David Taylor on Reopening, ¶¶ 2 – 5; MDWS Rebuttal Reopening Brief, pp. 4-5.	
B-076	Proposed Bill Amending The Fiscal Year 2017 Budget: Department of Water Supply (Wailuku Water Acquisition)	Second Supplement Declaration of David Taylor on Reopening, ¶ 3; MDWS Rebuttal Reopening Brief, p. 4.	

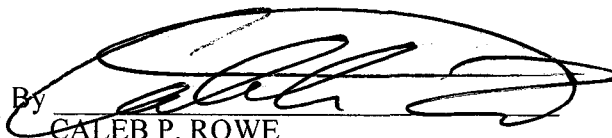
In addition to the above-listed exhibits, the County reserves the right to introduce other documents at the remand hearing for purposes of impeachment or rebuttal.

The County also requests that the Hearing Officer take Judicial Notice of all exhibits introduced in the original proceeding and the complete contents of the Commission on Water Resource Management's ("CWRM's") files relative to this matter, all correspondence, and all other official filings.

DATED: Wailuku, Maui, Hawaii, January 20, 2017.

PATRICK K. WONG
Corporation Counsel
Attorneys for COUNTY OF MAUI,
DEPARTMENT OF WATER SUPPLY

By



CALEB P. ROWE
KRISTIN K. TARNSTROM
Deputies Corporation Counsel

The Maui News

County working to buy ditch system, watershed lands for \$9.5 million



Mayor Alan Arakawa (center) talks with former Earthjustice attorney Kapua Sproat (right) and Hui o Na Wai Eha Vice President Hokua Pellegrino following a news conference Wednesday in Wailuku. The mayor announced a tentative agreement for the county to purchase Wailuku Water Co.'s ditch system and 8,764 acres of its West Maui Mountain watershed lands. County of Maui / LOIS WHITNEY photo

WAILUKU — A tentative agreement has been reached for Maui County to pay \$9.5 million for Wailuku Water Co.'s ditch system and 8,764 acres of its West Maui Mountains watershed lands.

EXHIBIT B-075

Announced during a news conference Wednesday afternoon, the deal would return diverted surface water to Na Wai Eha streams, remove private ownership and improve the efficiency and capacity of the county's public water system, according to a fact sheet.

The announcement comes with the imminent closure of Hawaiian Commercial & Sugar Co., which irrigated its 36,000 acres of sugar cane in Central Maui with water from East Maui streams and Na Wai Eha, the four great streams of Central Maui — the Wailuku, Waihee, Waikapu and Waiehu streams. The plantation is continuing a transition to diversified agriculture, including cattle grazing.

Wailuku Water Co. President Avery Chumbley emphasized that the agreement is a *“working document”* that would need to be finalized before being submitted to the Maui County Council.

“It’s not a signed agreement,” he said.



Mayor Alan Arakawa discusses a proposal for Maui County to purchase 8,764 acres of West Maui Mountain watershed lands and Wailuku Water Co.'s ditch water delivery system for \$9.5 million during a news conference Wednesday. County of Maui / LOIS WHITNEY photo

When asked how the \$9.5 million for the watershed and ditch infrastructure was arrived at, Chumbley said it was *“mutually agreed on.”*

The price was based on *“what we believe to be the comparable value of land on a per-acre basis,”* he said, with the added value of infrastructure for the water conveyance system and easements.

“I am excited about the opportunity for it to finally be held in public hands,” he said.

There could be greater public access, opportunities for expanded parks, areas for hiking and for nature activities, Chumbley said.

And, *“the watershed is absolutely critical to the underlying aquifers”* in Central Maui, he said.

The agreement would ensure public access to groundwater and provide a supply of potable water to the county Department of Water Supply, he said.

As a political subdivision, Maui County is not subject to water utility regulation by the Hawaii Public Utilities Commission, as is a private company, such as Wailuku Water, he said.

The county does not need to seek a certificate of necessity from the PUC or file a docket for a water rate case, he said. To charge for water use, the county would need to pass an ordinance for the delivery of water for a fee, Chumbley said.

Mayor Alan Arakawa, who revived interest in the county watershed acquisition proposal first floated 11 years ago, said his administration transmitted a budget amendment to council members, seeking their approval for funding to appraise property and infrastructure owned by Wailuku Water.

“If this purchase goes through, I believe it will not just be a win for native water rights but also make our Maui County water system the best in the state,” Arakawa said.

Former Earthjustice attorney Kapua Sproat said the agreement has the potential to return West Maui Mountains streams to a traditional Native Hawaiian resource management with mauka-to-makai stream flows.

“I think we’re at a historical juncture for Maui’s water future, and this has the potential and promise of transitioning us from the plantation system of private ownership to a 21st century ahupuaa-based resource management,” she said.

“For more than 100 years, Wailuku Water Co., HC&S and other companies have been treating Na Wai Eha and other water systems throughout Maui as their private property,” she said, adding that putting stream water resources under county control provides the opportunity to manage them as a traditional mountain-to-ocean ahupuaa land division.

“We must still be mindful that this is a first step,” Sproat said. *“This is an offer from Wailuku Water Co. We have a long way to go. We’re going to have to work with the council and many other folks to make this dream a reality.”*

The *“devil’s in the details,”* said Hokuao Pellegrino, vice president of Hui o Na Wai Eha, a Native Hawaiian group working to restore water to West Maui Mountains streams. But he called the agreement a *“step forward, a couple of steps forward.”*

The task ahead is to work with the mayor and the County Council to work out the details, he said.

The hui remains a participant in a contested case proceeding before the state Commission on Water Resource Management to determine stream-flow standards in the wake of the HC&S closure. Parties have until Feb. 3 to file their proposed findings of fact, conclusions of law and decision and order to hearings officer Lawrence Miike.

The commission also is reviewing permit applications from people claiming rights to water from Na Wai Eha streams.

There was no immediate comment Wednesday from council Chairman Mike White, but Council Member Mike Victorino, former chairman and current vice chairman of the council's Water Resources Committee, said the community has been divided over water issues a long time.

"But this proposal is something we can hopefully all finally agree upon," he said.

Council Member-elect Alika Atay, who will succeed Victorino in the council's Wailuku-Waihee-Waikapu residency seat, said he was *"ecstatic"* about the water agreement.

"I'm very hopeful," he said. *"We are truly serving the public by doing this by returning this public resource to the community. I look forward to reviewing the details with the rest of the council."*

Among those details is a part of the tentative agreement that refers to a sale of 1,100 acres called *"Iao South"* to an unnamed *"another party."*

Arakawa and Chumbley would not identify the unnamed party for the record Wednesday.

But discussion overheard during Wednesday's news conference indicated that the buyers are developer Mike Atherton, owner of the Maui Tropical Plantation, and Duane Ting, president of the Flyin Hawaiian Zipline, who won a small businessperson of the year award in 2010.

Atherton referred to a confidentiality agreement in refusing to confirm or deny that he was a party to the purchase of 1,100 acres from Wailuku Water. He is developing the 1,600-acre Waikapu Country Town project, and he said Wednesday that a 1,100-acre agricultural project is a key part of the development.

He said he supports the mayor's proposal for the county to purchase Wailuku Water's watershed lands and its ditch system.

"I think it's the right thing to do," he said, adding that his project needs surface water for its agricultural component.

The country town project's environmental impact statement is complete, Atherton said, and the proposed development will go before the Maui Planning Commission and County Council next year.

Chumbley said he was "*not at liberty to say*" if Atherton was one of the "*Iao South*" buyers.

That land deal was "*not a closed transaction,*" he said. It was a private land sale agreement currently in escrow.

Wailuku Water Co. owns about 13,200 acres of West Maui Mountains forest reserve watershed lands.

If both land deals are finalized, the company would be dissolved, Chumbley said. Wailuku Water is the descendant of Wailuku Sugar and Wailuku Agribusiness Co., which produced sugar, macadamia nuts and pineapple over a span of almost 140 years.

Currently, the county pays Wailuku Water \$250,000 a year for 3 million gallons of water daily.

* Brian Perry can be reached at bperry@mauinews.com.

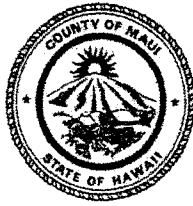
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ALAN M. ARAKAWA
MAYOR



KEITH A. REGAN
MANAGING DIRECTOR

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI - Kalana O Maui

REFERENCE NO. BD-BA 17-60

December 14, 2016

Honorable Alan Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Michael White, Chair
and Members of Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL



Mayor Date 12/14/16

Dear Chair White and Members:

SUBJECT: AMENDING THE FISCAL YEAR 2017 BUDGET: DEPARTMENT OF WATER SUPPLY (WAILUKU WATER COMPANY ACQUISITION)

On behalf of the Department of Water Supply, I am transmitting the attached proposed bills for the purpose of appropriating funding for an appraisal of property and infrastructure owned by the Wailuku Water Company, LLC at a cost of \$150,000. This appropriation will be funded by increasing Carryover/Savings Water Fund and Estimated Revenues in the amount of \$150,000. A Certification of Additional Revenues for Fiscal Year 2017 is attached for your information.

The County is interested in purchasing approximately 8,764 acres along with the surface water conveyance system as detailed in the attached proposal. A supplemental budget amendment will be requested for the acquisition costs upon completion of the appraisal.

The Department of Water Supply requests that this budget amendment be considered as soon as possible. Therefore, I respectfully request that this matter be referred to the appropriate Council committee for expeditious review, discussion and appropriate action.

Thank you for your attention in this matter. Should you have any questions, please feel free to contact me at Ext. 7212.

Sincerely,


LYNN ARAKI-REGAN
Budget Director

Attachments (4)

cc: Keith Regan, Managing Director
Danny Agsalog, Director of Finance
Dave Taylor, Director of Water Supply

EXHIBIT B-076

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AMENDING
THE FISCAL YEAR 2017 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO ESTIMATED REVENUES;
DEPARTMENT OF WATER SUPPLY,
WAILUKU-KAHULUI COMMUNITY PLAN AREA, WATER SUPPLY,
WAILUKU WATER COMPANY ACQUISITION;
TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND
TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Ordinance No. 4334, Bill No. 62 (2016), Draft 1, as amended, "Fiscal Year 2017 Budget", is hereby amended as it pertains to Section 2, Estimated Revenues, by increasing Carryover/Savings Water Fund in the amount of \$150,000; and by increasing Total Estimated Revenues in the amount of \$150,000, to read as follows:

"ESTIMATED REVENUES

FROM TAXES, FEES AND ASSESSMENTS:

Real Property Taxes	273,887,388
Circuit Breaker Adjustment	(398,235)
Charges for Current Services	136,035,737
Transient Accommodations Tax	23,484,000
Public Service Company Tax	9,100,000
Licenses/Permits/Others	35,170,154
Fuel and Franchise Taxes	23,606,500
Special Assessments	5,975,000
Other Intergovernmental	35,275,000

FROM OTHER SOURCES:

Interfund Transfers	45,967,103
Bond/Lapsed Bond	36,179,000
Carryover/Savings:	
General Fund	17,978,419
Sewer Fund	3,800,945
Highway Fund	4,886,279
Solid Waste Management Fund	022,086
Golf Fund	458,756
Liquor Fund	797,883
Bikeway Fund	311,997
Water Fund	7,901,766
	[7,751,766]

TOTAL ESTIMATED REVENUES

[660,289,778] 660,439,778"

SECTION 2. Fiscal Year 2017 Budget is hereby amended as it pertains to Section 4.K.3.a., Department of Water Supply, Wailuku-Kahului Community Plan Area, Water Supply, by adding an appropriation for a capital project entitled, "Wailuku Water Company Acquisition", under Water Fund – Unrestricted, in the amount of \$150,000, to read as follows:

"K. Department of Water Supply		
1. Countywide		
a. Water Supply		
(1)	State Revolving Loan Fund	
(i)	Countywide Upgrades and Replacements	
	(a) Omaopio Tank Booster Pump Replacement	2,000,000
(2)	Water Fund - Restricted	
(i)	Countywide Upgrades and Replacements	1,950,000
(3)	Water Fund – Unrestricted	
(i)	Countywide Conservation Program	1,000,000
(ii)	Countywide Facility Improvements	2,150,000
(iii)	Countywide Upgrades and Replacements	550,000
2. Makawao-Pukalani-Kula Community Plan Area		
a. Water Supply		
(1)	State Revolving Loan Fund	
(i)	Upcountry Reliable Capacity	
	(a) Pookela Well #2 Exploratory	2,500,000
(2)	Water Fund – Restricted	
(i)	Upcountry Reliable Capacity	2,200,000
3. Wailuku-Kahului Community Plan Area		
a. Water Supply		
(1)	Water Fund - Restricted	
(i)	Central Maui Reliable Capacity	425,000
(2)	<u>Water Fund – Unrestricted</u>	
(i)	<u>Wailuku Water Company Acquisition</u>	<u>150,000</u>
4. West Maui Community Plan Area		
a. Water Supply		
(1)	State Revolving Loan Fund	
(i)	West Maui Reliable Capacity	
	(a) Mahinahina Well #1 Development	10,000,000"

SECTION 3. Fiscal Year 2017 Budget is hereby amended as it pertains to the Total Capital Improvement Project Appropriations to reflect an increase of \$150,000, to read as follows:

"TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS	[114,419,914]	<u>114,569,914"</u>
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SECTION 4. Fiscal Year 2017 Budget is hereby amended as it pertains to the Total Appropriations (Operating and Capital Improvement Projects) to reflect an increase of \$150,000, to read as follows:

"TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)	[660,289,778]	<u>660,439,778"</u>
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SECTION 5. Material to be repealed is bracketed. New material is underscored.

SECTION 6. This Ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AMENDING
THE FISCAL YEAR 2017 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO APPENDIX C - CAPITAL IMPROVEMENT PROJECTS,
DEPARTMENT OF WATER SUPPLY,
CENTRAL MAUI COMMUNITY PLAN AREA,
WAILUKU WATER COMPANY ACQUISITION

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Ordinance No. 4334, Bill No. 62 (2016), Draft 1, as amended, "Fiscal Year 2017 Budget", Appendix C – Capital Improvement Projects, is hereby amended as it pertains to the Department of Water Supply, Central Maui Community Plan Area, by adding a project entitled, "Wailuku Water Company Acquisition", in the amount of \$150,000, to read as follows:

"APPENDIX C - Capital Improvement Projects"		
CBS NO.	PROJECT TITLE/DESCRIPTION	APPROPRIATION
	Department of Water Supply	
	1. Countywide	
CBS-2299	a. Countywide Upgrades and Replacements	100,000 A 1,100,000 D 3,300,000 C
	1) Replace an existing booster pump and related electrical components as part of the Omaopio Tank replacement project; 2) Construct a water tank to replace the existing 50,000 gallon Keanae Water Tank to address corrosion and deficiencies identified by the Department of Health; 3) Construct a chlorine scrubber and enclose the chlorine storage room at Kamaole Water Treatment Plant to protect against chlorine gas leaks; 4) Design a water line to upsize existing 6-inch and 8-inch water lines along Baldwin Avenue in Paia to be at least a 12-inch line to address substandard water pressure for fire protection; 5) Design a water line to upsize an existing 4 inch water line along Hobron Avenue in Kahului to address leakage and insufficient flow for fire protection; 6) Design improvements to the spillways at the six raw water reservoirs serving the Mahinahina, Olinda, and Piiholo Water Treatment Plants to address compliance with Department of Land and Natural Resources dam safety regulations; 7) Design improvements to the water system served by the Opaepilau Water Tank in Haiku to address low pressures and inadequate storage capacity for fire protection; 8) Acquire easements on property adjacent to the Maluhia Tank site in Makawao for booster pump station upgrades; 8) Upsize existing 6-inch water line to an 8-inch water line on Mokuhau Road in Happy Valley by December 31, 2016.	

CBS-1076	b. Countywide Conservation Program		
	Locating and replacing of leaking waterlines (transmission, distribution, and service laterals) identified by Leak Detection, repair of leaking tanks, design of projects to provide supply side conservation, including a water audit.	1,000,000	C
CBS-1075	c. Countywide Facility Improvements		
	1) Well and booster pump replacements, including granular activated carbon filters at Napili and Hamakuapoko; and booster pumps at North Waihee, Wakiu Well B, Kula Agricultural Park Station B and Napili Well B. 2) Replace the roof of the NASKA Baseyard mechanic shop; 3) Replace the roof of the clearwell at the Olinda Water Treatment Plant; 4) Reinforce the embankment of the sludge dewatering reservoir at the Olinda Water Treatment Plant; 5) Repair and recoat the interior and exterior of the clearwell at the Lahainaluna and Mahinahina Water Treatment Plants; and 5) Repair and recoat the interior and exterior of the Maunaolu Tank in Haliimaile.	2,150,000	C
	2. Makawao-Pukalani-Kula Community Plan Area		
CBS-1106	a. Upcountry Reliable Capacity	200,000 4,500,000	D C
	1) Construction of an exploratory well for the Pookela Well 2; 2) Design of the Pookela Well 2 facility, contingent upon the results of the exploratory well; 3) Construction of a chloramine addition system at the Upper Kimo Booster Pump Station to streamline the disinfection process for supplementing the Upper Kula System with water from the Lower Kula System.		
	3. Central Maui Community Plan Area		
CBS-1102	a. Central Maui Reliable Capacity	200,000 225,000	A D
	Land acquisition and design for a new water tank near the existing Makai Heights water tank in North Kihei.		
	b. Wailuku Water Company Acquisition	150,000	G
	<u>Appraisal for the land and surface water conveyance system, and improvements. TMK: (2) 3-2-14:01 (approximately 3,306 acres), TMK: (2) 3-3-3:03 (approximately 2,909 acres), and a portion of TMK: (2) 3-5-03:01 (approximately 2,549 acres).</u>		
	4. West Maui Community Plan Area		
CBS-1092	a. West Maui Reliable Capacity	10,000,000	C"
	Construction of the Mahinahina Well 1 facility and related transmission improvements.		

SECTION 2. New material is underscored.

SECTION 3. This Ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel

CERTIFICATION OF ADDITIONAL REVENUES FOR FISCAL YEAR 2017

I, ALAN M. ARAKAWA, Mayor of the County of Maui, State of Hawaii, pursuant to Section 9-9.1 of the Revised Charter of the County of Maui (1983), as amended, do hereby certify that there is available for appropriation revenue received from anticipated sources but in excess of the budget estimates for Fiscal Year 2017. The amount available for appropriation is:

From Carryover/Savings:

Water Fund \$150,000.00

Alan Arakawa

ALAN M. ARAKAWA
Mayor, County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 14th day of December, 2016, before me appeared Alan M. Arakawa, to me personally known, who being by me duly sworn did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

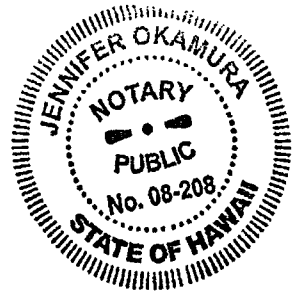
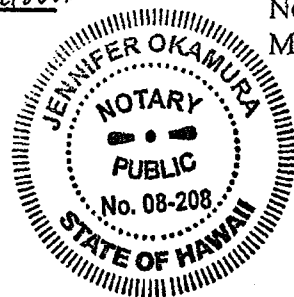
Doc. Date: 12/14/2016 ^{Updated as} Amended ^{Notary #} 1 Pages: 1
Jennifer Okamura Second Circuit
Doc. Description Certification of
Additional Revenues for
Fiscal Year 2017.

Jennifer Okamura 12/14/2016
Notary Signature Date

NOTARY CERTIFICATION

Jennifer Okamura

Jennifer Okamura
Notary Public, State of Hawaii
My commission expires: June 29, 2020



ACQUISITION AGREEMENT
BY AND BETWEEN
WAILUKU WATER COMPANY LLC
AND
COUNTY OF MAUI

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ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT (this "Agreement") is made as of the date set forth in the section (the "Basic Provisions") immediately below (the "Effective Date"), by and between Wailuku Water Company LLC, ("Seller") c/o Avery Chumbley, P.O. Box 2790, Wailuku, Hawaii, 96793 and County of Maui ("Buyer"), c/o Keith Regan, Managing Director, 200 South High Street, Wailuku, Hawaii, 96793.

BASIC PROVISIONS

1. Effective Date: The Effective Date shall be the date that this Agreement is executed by Buyer and Seller.

2. Buyer: County of Maui, a Municipal Corporation
c/o Keith Regan, Managing Director
200 South High Street
Wailuku, Hawaii 96793

Seller: Wailuku Water Company LLC
P.O. Box 2790
Wailuku, Hawaii 96793

3. Purchase of Assets: At Closing, subject to the terms and conditions set forth in this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller, free and clear of any and all liens, claims and liabilities, except as provided herein, the following assets of the Seller, as defined herein.

(a) The Land of the Seller, comprising approximately 8,764 acres, the exact acreage to be confirmed at Closing through survey; and,

(b) Seller's Surface Water Conveyance System, Improvements and associated rights and liabilities.

4. (a) Brief Description of Land: The Land to be transferred from Seller to Buyer under this Agreement involves approximately 8,764 acres and includes parcels of TMK: (2) 3-2-14:01 (approximately 3,306 acres) and TMK: (2) 3-3-3:03 (approximately 2,909 acres) and a portion of TMK: (2) 3-5-03:01 (approximately 2,549 acres). The exact acreage will be defined by survey prior to closing. See Exhibit "A".

(b) Surface Water Conveyance System. In addition to the Land, the Seller shall also transfer and assign to Buyer all of Seller's Surface Water Conveyance System, including water system improvements, easements, entitlements, acreage and infrastructures, and associated rights and obligations, including water delivery contracts. See Exhibit "B", Surface Water Conveyance System.

Collectively, the Land and Surface Water Conveyance System shall be referred to as Buyer's "Property").

5. Acquisition Price: Buyer shall pay at Closing Nine Million Five Hundred Thousand Dollars (\$9,500,000), as adjusted at Closing, for Buyer's Property with an allocation of Six Million Five Hundred Thousand Dollars (\$6,500,000) at Seven Hundred Fifty Dollars (\$750) per acre for the Land to be transferred to Buyer at Closing, and Three Million Dollars (\$3,000,000) for transfer of the Surface Water Conveyance System.

6. TMK: (2) 3-5-03:01 (Iao South). TMK: (2) 3-5-03:01 comprises approximately 3,649 acres. A portion of this parcel, approximately 1,100 acres, is subject to sale to another party which may close prior to the Closing of this transaction or may close after the Closing of this transaction.

At closing of this transaction, the Buyer will obtain an undivided interest in TMK: (2) 3-5-03:01 which interest will provide the Buyer exclusive possession and control of the referenced portion of the parcel. At closing the Seller shall be obligated to institute proceedings to subdivide the parcel upon an agreed upon subdivision instructions and an agreed upon timetable with the Buyer. Buyer will cooperate and assist in the Seller's efforts to subdivide the parcel.

Upon final subdivision approval of the parcel, the Buyer shall obtain fee simple title to the referenced portion of the parcel. Prior to final subdivision of the referenced portion of the parcel, Buyer will be a co-tenant under a tenancy in common agreement with an undivided interest in the entire parcel with the reserved rights of exclusive possession and control of the referenced portion of the parcel. Upon final subdivision, the tenancy in common agreement will terminate and Buyer will obtain fee simple title to the referenced portion of the parcel.

7. Name and Address of Escrow Agent:

Title Guaranty Escrow Services, Inc.
80 Puunene Avenue
Kahului, Hawaii 96732
Attention: Mark Renschen

8. Earnest Money: Buyer and Seller will establish Escrow at Title Guaranty Escrow Services, Inc. located at 80 Puunene Avenue, Kahului, Hawaii, 96732, Attention: Mark Renschen. A deposit in the amount of \$100,000 will be placed in Escrow within seven (7) calendar days after approval by the Council of the County of Maui and certification of funds available to close the transaction from the Director of Finance of the County of Maui. The deposit shall be deposited in an interest bearing account by the Escrow Agent, as directed by Seller, and the deposit and interest thereon shall be applied to purchase price in the event of closing.

If the Buyer fails to make the deposit to the Escrow Agent, this Agreement shall

automatically be cancelled and neither party shall have any further obligations to the other with respect to the transaction.

9. Inspection Period: The Buyer shall have an inspection period commencing on the date of the agreement to perform all investigations and studies that the Buyer deems prudent, necessary and appropriate in the purchase of the Property. At the commencement of the inspection period Seller shall transmit to Buyer all documentation concerning Seller's Surface Water Conveyance System including contracts, permits, easements, an identification of title to real and personal property interests and all documents requested by Buyer. All costs and expenses to be performed by the Buyer's investigation shall be borne by the Buyer. The Buyer's Inspection Period shall terminate on April 1, 2017. During the Buyer's due diligence period, Buyer shall achieve the following:

(a) Appraisal of Property. Buyer and Seller agree that to obtain Council approval of the transaction the Buyer must engage an appraiser and obtain an appraisal of the Property for the Council's consideration. The Buyer agrees to engage an appraiser for the appraisal of the Property and have the appraisal completed no later than March 15, 2017. Once the appraisal is completed the Buyer and Seller shall meet and confer on the appraisal valuation. If the appraised value of the Property is less than the Acquisition Price, Buyer and Seller will need to determine whether they wish to amend the price or terminate the agreement. Buyer and Seller shall meet to make such decisions no later than five (5) calendar days after the appraisal is completed.

(b) Notice of Council's Action. No later than April 1, 2017 the Buyer shall notify the Seller in writing that the Buyer has approved the Property and that the Council has either approved or not approved the transaction and if approved, that the County Finance Director has provided a certification of funds for Closing. If such notice is not received by the Buyer by April 1, 2017, the Buyer shall notify Seller and Escrow with a written notification of termination of the agreement.

(c) Notice of Council's Approval. If prior to April 1, 2017 the Council of the Buyer has approved the transaction and the Director of Finance of the County of Maui has certified funds to close the transaction, then the Buyer shall notify Seller and Escrow of the same in writing and the Buyer shall make the deposit to the Escrow Agent of \$100,000.

10. Date of Closing: Closing will take place on July 1, 2017 or at another time agreed to in writing between Buyer and Seller.

11. Seller's Condition of Closing. The obligations of Buyer to close are subject to the approval of the transaction by members of the Buyer and the withdrawal of the Public Utilities Commission (P.U.C.) application, currently pending, and the consent of the P.U.C. for such withdrawal.

12. Seller's Designated Agent: Avery B. Chumbley.

Buyer's Designated Agent: Keith Regan

13. Broker: Not applicable.

14. Notice Address of County:

County of Maui
c/o Keith Regan, Managing Director
200 South High Street
Wailuku, Hawaii 96793

With a copy to: Patrick Wong, Corporation Counsel
Department of the Corporation Counsel
200 South High Street, 3rd Floor
Wailuku, Hawaii 96793

Notice Address of Seller:

Avery B. Chumbley
P.O. Box 2790
Wailuku, Hawaii 96793

With a copy to: Paul R. Mancini, Esq.
Mancini Welch & Geiger
305 E. Wakea Avenue, Suite 200
Kahului, Hawaii 96732

ARTICLE 1

DISPOSITION

1.1 Disposition. Subject to the terms and conditions hereinafter set forth, Seller agrees to convey and Buyer agrees to acquire the following:

(a) The Land more particularly described on Exhibit "A" attached hereto and made a part hereof, together with all rights and appurtenances pertaining to such Land, including the property to be subdivided by the Buyer under Section 6 of the Basic Provisions, (TMK: (2) 3-5-03:01); and the Surface Water Conveyance System and all rights, obligations and appurtenances pertaining to the same as described in Exhibit "B", attached hereto and made a part hereof.

(b) All existing studies, plans, records, permits and entitlements pertaining to the Property and not otherwise excluded from delivery to the Buyer herein.

1.2 Property Defined. The Land and Surface Water Conveyance System are hereinafter sometimes referred to collectively as the "Property").

1.3 Permitted Exceptions. The Property shall be conveyed subject to the matters which are, or are deemed to be, Permitted Exceptions pursuant to Article 2 hereof (herein referred to collectively as the "Permitted Exceptions").

1.4 Acquisition Price. Seller is to convey and the Buyer is to acquire the Property for the amount set forth in the Basic Provisions (the "Acquisition Price"). Seller and the Buyer agree that the Acquisition Price is the agreed market value of the Property and that the Acquisition Price shall be allocated as referenced in Section 5 of the Basic Provisions.

1.5 Payment of Acquisition Price. The Acquisition Price, as increased or decreased by prorations and adjustments as herein provided, shall be payable in full at Closing in cash by wire transfer or certified check of immediately available federal funds to Escrow.

1.6 Earnest Money. At the date identified in Section 8 of the Basic Provisions, Buyer shall deposit with the escrow agent set forth in the Basic Provisions (the "Escrow Agent"), having its office at the address set forth in the Basic Provisions, the sum set forth in the Basic Provisions (the "Earnest Money") in good funds, either by cashier's check or wire transfer of immediately available federal funds. The Escrow Agent shall hold the Earnest Money in an interest-bearing account. All interest accruing on such sum shall become a part of the Earnest Money and shall be distributed as Earnest Money in accordance with the terms of this Agreement.

ARTICLE 2

TITLE AND SURVEY

2.1 Title Examination; Commitment for Title Insurance. Buyer shall have until the expiration of the Inspection Period (defined in Section 9 hereof) to examine title to the Property.

2.2 Title Objections; Cure of Title Objections. Buyer shall have until the expiration of the Inspection Period to notify Seller, in writing, of such objections as the Buyer may have to anything contained in the Title Commitment. In the event the Buyer shall timely notify Seller of objections to any item contained in the Title Commitment, Seller shall have the right, but not the obligation, to cure such objections. If Seller elects not to cure any objections specified in the Buyer's notice, or if such are not satisfied prior to the end of the Inspection Period, Buyer shall have the following options: (i) to accept a conveyance of the Property subject to the Permitted Exceptions, specifically including any matter objected to by Buyer which Seller is unwilling or unable to cure, and without reduction of the Acquisition Price; or (ii) to terminate this Agreement by sending written notice thereof to Seller no later than the end of the Inspection Period, and upon delivery of such notice of termination, this Agreement shall terminate and the Earnest Money shall be returned to Buyer and thereafter neither party hereto shall have any

further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If Buyer fails to timely deliver notice of termination under clause (ii) above, Buyer will be deemed to have elected to proceed to closing under clause (i) above.

2.3 Conveyance of Title. At Closing, Seller shall convey and transfer to Buyer such title to the Property as will enable the Title Company to issue to Buyer an Owner's Policy of Title Insurance (the "Title Policy") with coverages covering the Property, in the full amount of the Acquisition Price. Seller shall be required at Closing to remove or cause the Title Company to insure over any monetary liens other than real property taxes and governmental assessments not then due and payable. Notwithstanding anything contained herein to the contrary, the Property shall be conveyed subject to the following matters, which shall be deemed to be Permitted Exceptions:

(a) the lien of all ad valorem real property taxes and assessments not yet due and payable as of the date of Closing, subject to adjustment as herein provided;

(b) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, nor or hereafter in effect relating to the Property; and

(c) items appearing of record and, in either case, not objected to by Buyer or waived or deemed waived by Buyer in accordance with Sections 2.2 and 2.3 hereof.

ARTICLE 3

INSPECTION PERIOD

3.1 Right of Inspection. During the Inspection Period, Buyer shall have the right to review all non-physical aspects of the Property, including but not limited to title, zoning, entitlements, subdivision conditions and all other issues which do not require physical investigation of the Property; provided, however, such review may involve examination at the offices of Seller or elsewhere as the same may be located, any operating file maintained by Seller or its property manager in connection with the maintenance and/or management of the Property, but excluding materials not directly related to the maintenance and/or management of the Property such as Seller's internal memoranda, financial projections, budgets, appraisals, accounting and tax records and similar proprietary or confidential information. Seller shall promptly provide to Buyer, to the extent in Seller's possession or control and without any warranty or representation as to accuracy or completeness other than as set forth in Section 5.1 below, copies of Seller's existing documentation pertaining to (a) all plans and governmental approvals; (b) applications and submittals for pending subdivision; (c) information concerning public access rights; (d) information concerning existing water meter assignments; (e) copies of any leases; (f) the environmental condition of the Property, including any presently existing violations of law within Seller's knowledge; and (g) existing technical studies, reports, and work product in Seller's possession or control relating to topography, soils, surface water, ground

water exploration and development, and drainage. On-site inspections may including, without limitation, soils tests, engineering studies and such feasibility and other studies regarding the condition of the Property, as Buyer considers prudent. Buyer agrees to indemnify against and hold Seller harmless from any claim for liabilities, costs, expenses (including reasonable attorneys' fees actually incurred) damages or injuries arising out of or resulting from the inspection of the Property by Buyer or its agents, and notwithstanding anything to the contrary in this Agreement, such obligation to indemnify and hold harmless Seller shall survive Closing or any termination of this Agreement. All inspections shall occur at reasonable times agreed upon by Seller and Buyer and shall be conducted so as not to interfere unreasonably with use of the Property by Seller.

3.2 Inspection Period Right of Termination. Seller agrees that in the event Buyer determines (such determination to be made in Buyer's sole and absolute discretion) that the Property is not suitable for its purposes, Buyer shall have the right, in Buyer's sole and absolute discretion, to terminate this Agreement by giving written notice thereof to Seller, prior to the end of the Inspection Period. If Buyer gives such notice of termination within the Inspection Period, this Agreement shall terminate and the Earnest Money shall be returned to Buyer. Time is of the essence with respect to the provisions of this Section 3.2. If Buyer fails to give Seller notice of termination prior to the expiration of the Inspection Period, Buyer shall no longer have any right to terminate this Agreement under this Section 3.2 and shall be bound to proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement.

ARTICLE 4

CLOSING

4.1 Time and Place. The consummation of the transaction contemplated hereby ("Closing") shall occur upon recordation of the Deed, at 8:00 a.m. (local time at the Property) on the date set forth in the Basic Provisions. At Closing, Seller and Buyer shall perform the obligations set forth in, respectively, Section 4.2 and Section 4.3, the performance of which obligations shall be concurrent conditions.

4.2 Seller's Obligations at Closing. At Closing, Seller shall:

(a) deliver to Buyer a duly executed limited warranty deed in the form reasonably acceptable to the Buyer, as well as all other documents of conveyance to close the transaction including, but not limited to the required easements, bill of sale for personal property to be transferred, permits/entitlements, pending applications, assumption of contracts, and other documentation to transfer the Surface Water Conveyance System;

(b) deliver to Buyer such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller; and

(c) deliver to Buyer an affidavit duly executed by Seller stating that Seller is

not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations thereunder and an affidavit that Seller is a resident under the Hawaii Real Property Tax Act.

(d) certifications on compliance with Section 11 of the Basic Provisions that Seller's members have approved the transaction and that the P.U.C. has approved the withdrawal of Seller's application before the P.U.C.

4.3 Buyer's Obligations at Closing: At Closing, Buyer shall:

(a) pay to Seller the full amount of the Acquisition Price, as increased or decreased by prorations and adjustments as herein provided, all funds required of the Buyer to close the transaction under Section 4.5 herein, all in immediately available wire transferred funds or cashier's check pursuant to Section 1.5 above, it being agreed that at Closing, the Earnest Money Deposit(s) shall be delivered to Seller and applied towards payment of the Acquisition Price;

(b) join Seller in execution of the instruments described in Section 4.2(a);

(c) deliver to Seller such evidence as Seller's counsel and/or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Buyer; and

(d) deliver such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

4.4 Credits and Prorations.

(a) The following shall be apportioned between Seller and Buyer with respect to the Property as of 12:01 a.m. on the day following the day of Closing, as if Buyer were vested with title to the Property during the entire day following the day upon which Closing occurs:

(i) real property taxes and governmental assessments levied against the Property;

(ii) utility charges for which Seller is liable, if any, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing;

(iii) any other operating expenses or other items pertaining to the Property which are customarily prorated in the area in which the Property is located.

(b) Notwithstanding anything contained in the foregoing provisions, any taxes paid at or prior to Closing shall be prorated based upon the amount actually paid. If taxes and assessments for the current year have not been paid at or prior to Closing, Seller shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the

period before Closing. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at Closing, the parties shall make all necessary by appropriate payments between themselves following Closing.

(c) The provisions of this Section 4.4(b) shall survive Closing.

4.5 Closing Costs. Seller shall pay (a) the fees of any counsel representing Seller in connection with this transaction; (b) one-half of the fee for the issuance of a Hawaii Standard Owner's Policy of title insurance in the amount of the Acquisition Price, without endorsement; (c) one-half of any escrow fees charged by the Escrow Agent; (d) recording fees for the Deed; and (e) parties agree that the Hawaii conveyance tax shall be exempt from the transaction pursuant to HRS, Section 247-3(9) and the provisions therein are applicable to the transaction. Buyer shall pay (a) the fees of any counsel representing Buyer in connection with this transaction; (b) the remainder of the premium for the Owner's Policy of Title Insurance (including all endorsements thereto and all costs of any upgrade to such policy) to be issued to Buyer by the Title Company at Closing; (c) one-half of any escrow fees charged by the Escrow Agent; and (d) the cost of engineering and surveying services to obtain subdivision approval, which shall be reimbursed by the Buyer to Seller at Closing.

4.6 Conditions Precedent to Obligation of Buyer. The obligation of Buyer to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Buyer in its sole discretion:

(a) Seller shall have delivered to Buyer (or the Title Company in escrow) all of the items required to be delivered to Buyer pursuant to the terms of this Agreement, including but not limited to, those provided in Section 4.2.

(b) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date of Closing (with appropriate modifications permitted under this Agreement or not materially adverse to Buyer).

(c) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the date of Closing.

(d) The Title Company shall issue the Title Policy in the form the Title Company committed to issue prior to the expiration of the Non-Physical Inspection Period.

(e) Certifications on compliance with Section 11 of the Basic provisions that Seller's members have approved the transaction and that the P.U.C. has approved the withdrawal of Seller's application before the P.U.C.

4.7 Conditions Precedent to Obligation of Seller. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

(a) Seller (or the Title Company, in escrow) shall have received the Acquisition Price as adjusted pursuant to and payable in the manner provided for in this Agreement.

(b) Buyer shall have delivered to Seller (or the Title Company, in escrow) all of the items required to be delivered to Seller pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.3.

(c) All of the requirements and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date of Closing.

(d) Buyer shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Buyer as of the date of Closing.

ARTICLE 5

REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer as of the Effective Date:

(a) Seller has been duly organized and is validly existing as a limited liability company under the laws of Hawaii. Seller has the full right and authority to enter into this Agreement and, to transfer all of the Property to be conveyed by Seller pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein to be made by Seller. The persons signing this Agreement on behalf of Seller are authorized to do so.

(b) Except as disclosed to the Buyer, to Seller's knowledge, there is no action, suit or proceeding pending or threatened against Seller or the Property, relating to any alleged violation of law or any environmental rules or Seller's legal duty to third parties or governmental agencies in connection with Seller's ownership, operation or use of the Property.

(c) Other than disclosed to Seller to Buyer, to Seller's knowledge, Seller has delivered or made available to Buyer all documentation Seller is required to provide Buyer pursuant to this Agreement.

5.2 Survival of Seller's Representations and Warranties. The representations and warranties of Seller set forth in Section 5.1 are true on the Effective Date and shall be true as of the Date of Closing.

5.3 Covenants of Seller. Seller hereby covenants with Buyer as follows:

(a) From the Effective Date hereof until the Closing or earlier termination of this Agreement, Seller shall use reasonable efforts to operate and maintain the Property in a manner generally consistent with the manner in which Seller has operated and maintained the Property prior to the date hereof.

5.4 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller:

(a) Buyer has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Buyer's obligations hereunder, and all requisite action necessary to authorize Buyer to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been, taken. The person signing this Agreement on behalf of Buyer is authorized to do so.

(b) There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Buyer which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement.

5.5 Covenants of Buyer. If Buyer, in connection with its investigation of the Property during the Inspection Period, elects to inspect the Property for the presence of Hazardous Substances (as hereinafter defined), Buyer shall furnish to Seller copies of any reports received by Buyer in connection with any such inspection. Buyer hereby assumes full responsibility for such inspections and irrevocably waives any claim against Seller arising from the presence of Hazardous Substances in, on, under or contiguous to the Property. Buyer shall pay all costs and expenses of any such investigation and testing and shall indemnify and hold Seller and the Property harmless from and against all injury and damages suffered or incurred by Seller caused by Buyer in Buyer's investigations, but if Buyer does not acquire the Property, such indemnification shall exclude any clean-up costs for any existing environmental condition discovered by Buyer in said investigation. Buyer shall further repair and restore any damage to the Property caused by or occurring during Buyer's testing, and shall return the Property to substantially the same condition as existed prior to such injury. As used herein, the term "Hazardous Substances" means any toxic, noxious, or hazardous wastes or substances of any kind or form including, without limitation of the generality of the foregoing, asbestos, PCB's, and all substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 et seq., Hazardous Materials Transportation Act, 49 U.S.C. §1802, The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. and in the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. §2601 et seq., or in any other applicable environmental law and all substances regulated as "pollutants" or "contaminants" in any applicable environmental law.

ARTICLE 6

DEFAULT

6.1 Default by Buyer. The Buyer and Seller agree that in the event the Buyer defaults in the Buyer's obligations hereunder to close its purchase of the land, which default remains uncured five (5) days following written notice from Seller specifying the nature of said default, then the Buyer shall be deemed to be in breach of this Agreement, and Seller shall thereafter be entitled to terminate this Agreement and the Escrow upon written notice to the Buyer and the Escrow Agent, who shall terminate the Escrow and immediately release to Seller the Earnest Money, inclusive of any amount of interest thereon. The Buyer shall pay to Escrow Agent any charges incurred by the Escrow Agent in the course of administering the Escrow which, in accordance with this Agreement, were payable by the Buyer or Seller. This foregoing remedy of Seller for the Buyer's breach of this Agreement is as Liquidated Damages, and not as a penalty, the parties agreeing that Seller's actual damages, if any, which may occur in the event the Buyer breaches this Agreement, would be difficult or impractical to ascertain, but a reasonable estimate of which is stipulated to be equal to the amount of the Earnest Money, inclusive of any interest thereon. Seller's remedy described in this paragraph shall be Seller's sole remedy in the event of the Buyer's breach of this Agreement, and Seller hereby waives the remedy of specific performance.

6.2 Default by Seller. In the event that Seller fails to consummate this Agreement for any reason other than Buyer's default or the permitted termination of this Agreement by Seller or Buyer as herein expressly provided, Buyer shall be entitled, as its sole remedy, either (a) to receive the return of the Earnest Money, which return shall operate to terminate this Agreement and release Seller from any and all liability hereunder, or (b) to enforce specific performance of Seller's obligation to execute the documents required to convey the Property to Buyer, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of Seller hereunder. Buyer expressly waives its rights to seek damages in the event of Seller's default hereunder. Buyer shall be deemed to have elected to terminate this Agreement and receive back the Earnest Money if Buyer fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located, on or before one hundred twenty (120) days following the date upon which Closing was to have occurred.

ARTICLE 7

RISK OF LOSS

7.1 Damage. In the event of material loss or damage to the Property or any portion thereof occurring prior to Closing and after the expiration of Buyer's contract termination right under Section 3.2 above, Buyer shall have the right to terminate this Agreement and receive a full refund of Buyer's deposit. Upon Closing, full risk of loss with respect to the Property shall pass to Buyer.

ARTICLE 8

MISCELLANEOUS

8.1 Arbitration. Any dispute between the Parties arising out of or relating to the terms and conditions or subject matter of this Agreement, at the option of either party, shall be submitted to mediation. If the dispute cannot be resolved within ten (10) days after the commencement of the mediation process, or neither party desires to submit the matter to the mediation process, the dispute, at the option of either party, shall be submitted to binding arbitration. The Parties shall attempt to select a single arbitrator by mutual agreement. If the Parties cannot reach an agreement on the selection of an arbitrator, a single arbitrator shall be selected in accordance with Chapter 658A of the Hawaii Revised Statutes. The Parties agree that the decision of the arbitrator shall be binding, final, enforceable and not appealable to any court except as provided in Chapter 658A of the Hawaii Revised Statutes. All proceedings shall be held in Honolulu, Hawaii. The arbitrator shall determine which and to what extent each Party shall be responsible for costs and expenses, including reasonable attorneys' fees. The Parties shall use the services of Dispute Prevention and Resolution, Inc. to conduct the arbitration, but if such organization is not able to so serve, the Parties shall jointly select a similar alternative dispute resolution organization with offices in Honolulu, Hawaii to provide such services.

8.2 Public Disclosure. Prior to Closing, any release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement will be made only after informing Seller of the same.

8.3 Discharge of Obligations. The acceptance of the Deed by Buyer shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

8.4 Assignment. Buyer may not assign its rights under this Agreement to anyone other than a Permitted Assignee without first obtaining Seller's written approval which may be given or withheld in Seller's sole discretion.

8.5 Notices. Any notices pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in clauses (a), (b) or (c) above. Unless changed in accordance with the preceding sentence, the addressees for notices

given pursuant to this Agreement shall be as follows:

If to Seller:

Wailuku Water Company LLC
c/o Avery B. Chumbley
P.O. Box 2790
Wailuku, Hawaii 96793

with a copy to:

Paul R. Mancini, Esq.
Mancini, Welch & Geiger
305 E. Wakea Avenue, Suite 200
Kahului, Hawaii 96732

If to Buyer:

County of Maui
c/o Keith Regan, Managing Director
200 South High Street
Wailuku, Hawaii 96793

with a copy to:

Patrick Wong, Corporation Counsel
Department of the Corporation Counsel
200 South High Street, 3rd Floor
Wailuku, Hawaii 96793

8.6 Binding Effect. This Agreement shall not be binding in any way upon Seller and/or the Buyer until the Council of the County of Maui has approved the Agreement and has provided authorization and funding to proceed with the Acquisition of the Property.

8.7 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

8.8 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., local time.

8.9 Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.

8.10 Entire Agreement. This Agreement, including the Exhibits, contains the

entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

8.11 Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Buyer shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Buyer with respect to the Property. The provisions of this Section 8.10 shall survive Closing.

8.12 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

8.13 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

8.14 Applicable Law. This Agreement is performable in the state in which the Property is located and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of such state. Seller and Buyer hereby irrevocably submit to the jurisdiction of any state or federal court sitting in the state in which the Property is located in any action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the state in which the Property is located. Buyer and Seller agree that the provisions of this Section 8.13 shall survive the Closing of the transaction contemplated by this Agreement.

8.15 No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Buyer only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

8.16 Exhibits. The following exhibits attached hereto shall be deemed to be an integral part of this Agreement:

- (a) Exhibit A Description of Land
- (b) Exhibit B Map of Land and Surface Water Conveyance System

8.17 Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or

define the text of any section or any subsection hereof.

8.18 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

8.19 Termination of Agreement. It is understood and agreed that if either Buyer or Seller terminates this Agreement pursuant to a right of termination granted hereunder (for any reason other than the other party's breach of contract), such termination shall operate to relieve Seller and Buyer from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

8.20 No Recordation. Neither this Agreement nor any memorandum of the terms hereof shall be recorded or otherwise placed of public record and any breach of this covenant shall entitle the party not placing same of record to pursue its rights and remedies under Article 6.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the Effective Date.

WAILUKU WATER COMPANY LLC

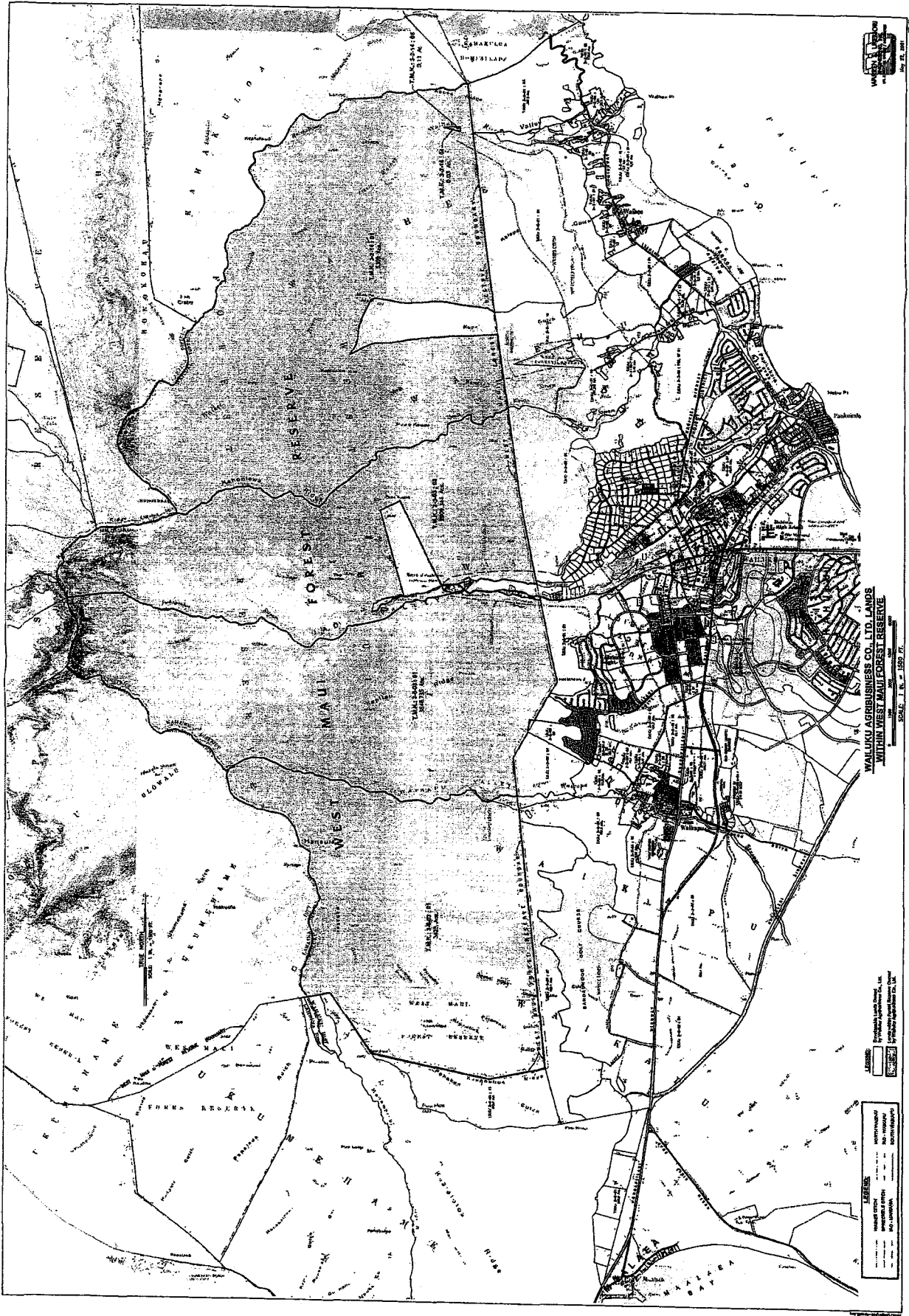
By: Avery B. Chumbley
Its: Manager

COUNTY OF MAUI

By: _____
Its: _____

EXHIBIT "A"

DESCRIPTION OF LAND



WAILUKU AGRIBUSINESS CO., LTD. LANDS
WITHIN WEST MAUI FOREST RESERVE

LEGEND

—	Proprietary Land
—	Public Land
—	Unimproved Land
—	Improved Land

SCALE: 1" = 1000 FT.

EXHIBIT "B"

MAP OF LAND AND SURFACE WATER CONVEYANCE SYSTEM

Wailuku Agribusiness Co., Inc. Water System GPS Points

○ Stream Diversions

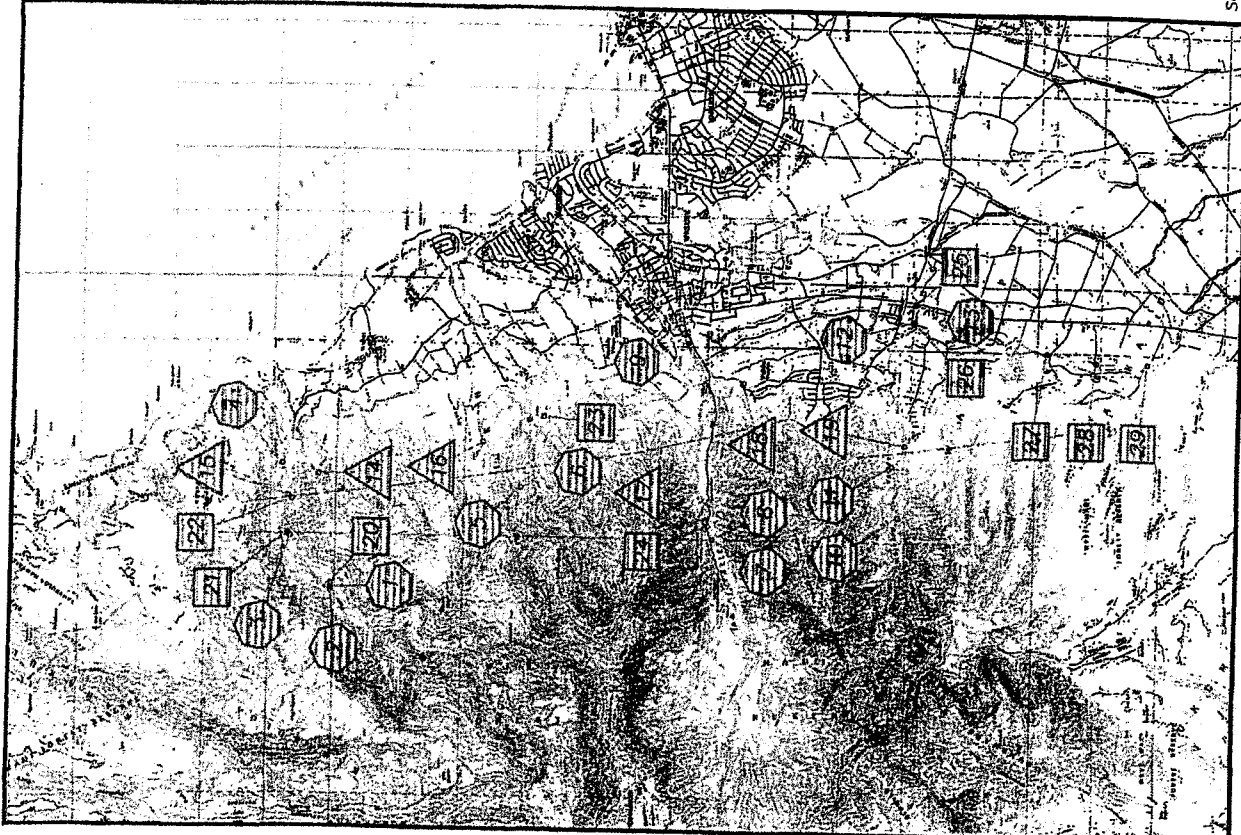
- 1 Waihee Ditch @ Waihee Stream
- 2 Spreckels Ditch @ Waihee Stream
- 3 Field #1 Intake Ditch @ Waihee Stream
- 4 North Waihehu Ditch @ Waihehu Stream
- 5 Waihee Ditch @ Waihehu Stream
- 6 Iao-Maniania Ditch @ Iao Stream
- 7 Iao-Waikapu Ditch @ Iao Stream
- 8 Kama Ditch @ Iao Stream
- 9 South Waikapu Ditch @ Waikapu Stream
- 10 Everett Ditch @ Waikapu Stream
- 11 Waihee Ditch @ Waikapu Stream
- 12 Reservoir #6 Intake @ Waikapu Stream

△ Gauging Stations

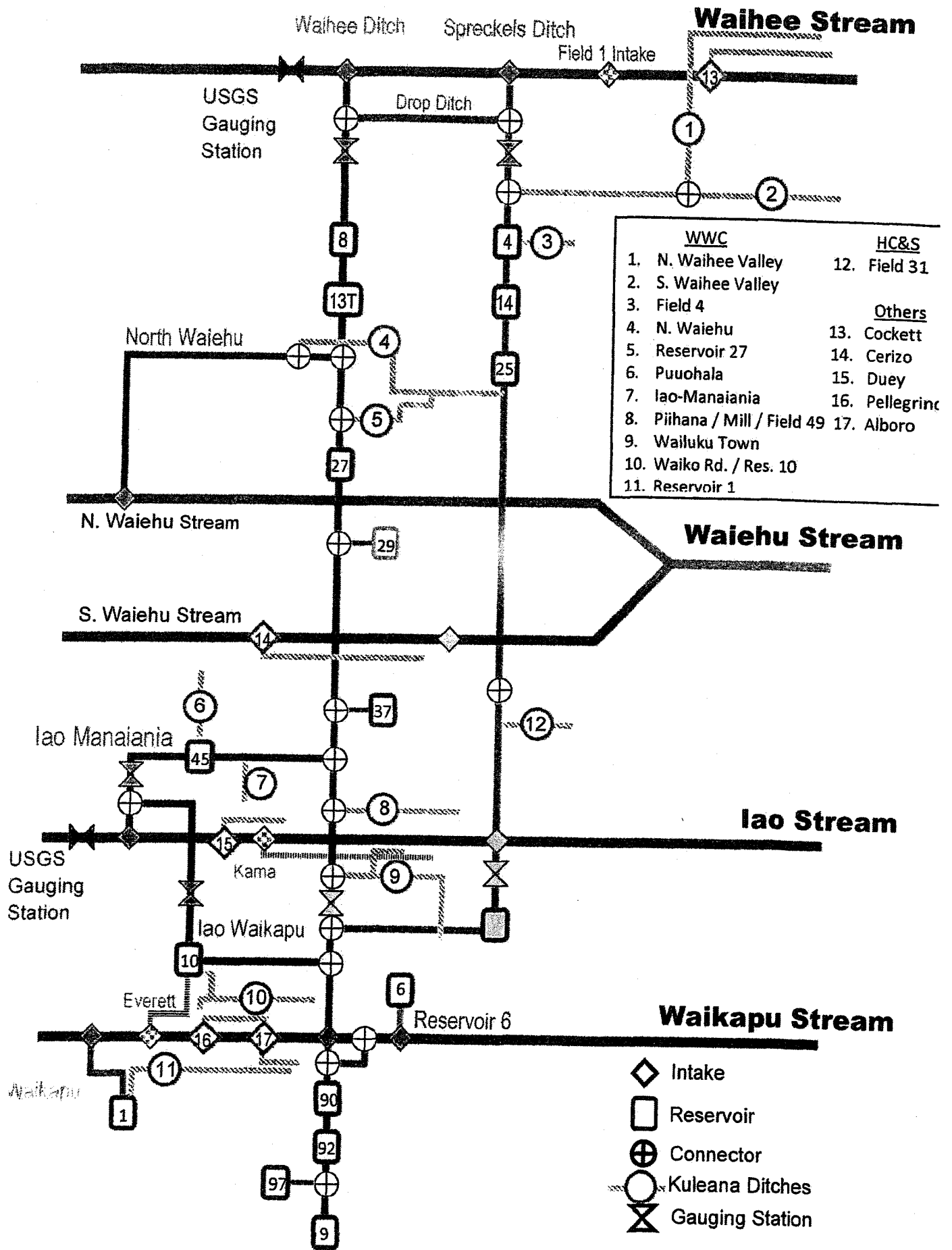
- 13 Waihee Ditch @ Waihee Stream
- 14 Spreckels Ditch @ Waihee Stream
- 15 North Waihehu Ditch @ Waihehu Stream
- 16 Iao-Maniania Ditch @ Iao Stream
- 17 Iao-Waikapu Ditch @ Iao Stream
- 18 South Waikapu Ditch @ Waikapu Stream

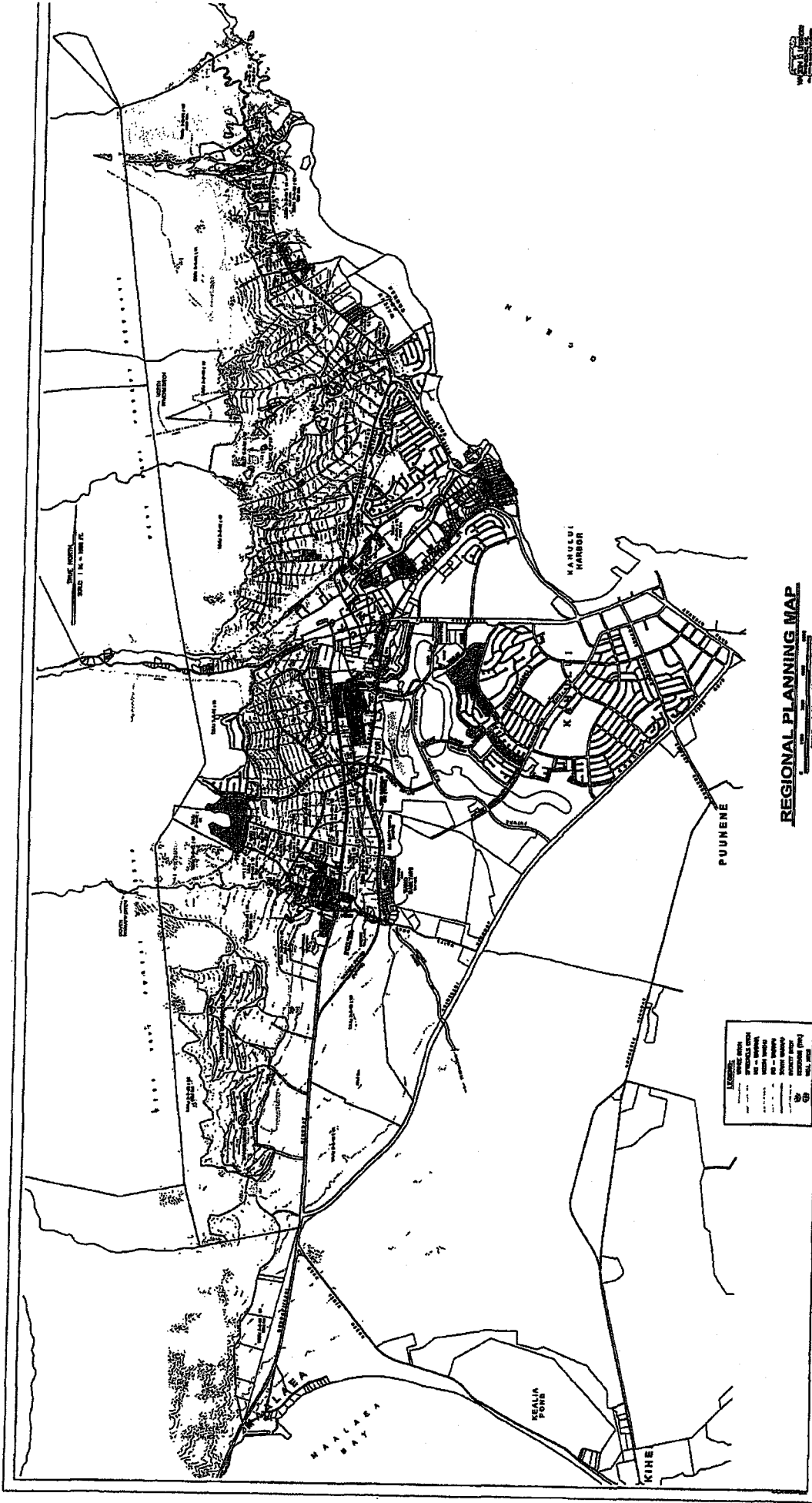
□ Control Points and Sluice Gates or Valves

- 19 Waihee Ditch Control Gate @ Waihee Valley
- 20 Spreckels Ditch Control Gate @ Waihee Valley
- 21 Waihee Ditch Sluice Gate @ South Waihehu Stream
- 22 Iao Ditch Control Gate @ Iao Stream
- 23 Reservoir #6 Sluice Gate @ South Waikapu Stream
- 24 Waihee Ditch Sluice Gate @ South Waikapu Stream
- 25 Waihee Ditch Sluice Gate @ Field 96
- 26 Waihee Ditch Sluice Gate @ Field 97
- 27 Waihee Ditch Sluice Gate @ Maalaea-Reservoir 9



Scale: 1" = 5000'





REGIONAL PLANNING MAP

SCALE 1 IN. = 1000 FT.

Proposed street	(Symbol)
Proposed road	(Symbol)
Proposed highway	(Symbol)
Proposed canal	(Symbol)
Proposed waterway	(Symbol)
Proposed utility line	(Symbol)
Proposed boundary	(Symbol)
Proposed area	(Symbol)
Proposed site	(Symbol)
Proposed structure	(Symbol)
Proposed facility	(Symbol)
Proposed equipment	(Symbol)
Proposed material	(Symbol)
Proposed labor	(Symbol)
Proposed cost	(Symbol)
Proposed benefit	(Symbol)
Proposed impact	(Symbol)
Proposed risk	(Symbol)
Proposed opportunity	(Symbol)
Proposed challenge	(Symbol)
Proposed solution	(Symbol)
Proposed action	(Symbol)
Proposed result	(Symbol)
Proposed outcome	(Symbol)
Proposed effect	(Symbol)
Proposed consequence	(Symbol)
Proposed implication	(Symbol)
Proposed significance	(Symbol)
Proposed importance	(Symbol)
Proposed relevance	(Symbol)
Proposed applicability	(Symbol)
Proposed feasibility	(Symbol)
Proposed viability	(Symbol)
Proposed sustainability	(Symbol)
Proposed resilience	(Symbol)
Proposed adaptability	(Symbol)
Proposed inclusivity	(Symbol)
Proposed equity	(Symbol)
Proposed justice	(Symbol)
Proposed transparency	(Symbol)
Proposed accountability	(Symbol)
Proposed responsibility	(Symbol)
Proposed leadership	(Symbol)
Proposed innovation	(Symbol)
Proposed collaboration	(Symbol)
Proposed partnership	(Symbol)
Proposed coalition	(Symbol)
Proposed alliance	(Symbol)
Proposed consortium	(Symbol)
Proposed network	(Symbol)
Proposed system	(Symbol)
Proposed framework	(Symbol)
Proposed structure	(Symbol)
Proposed organization	(Symbol)
Proposed institution	(Symbol)

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM
INSTREAM FLOW STANDARDS
FOR HONOPOU, HUELO (PUOLUA),
HANEHOI, WAIKAMOI, ALO,
WAHINEPEE, PUOHOKAMOA,
HAIPUAENA, PUNALAU/KOLEA,
HONOMANU, NUAAILUA, PIINAAU,
PALAUHULU, OHIA (WAIANU),
WAIKAMILO, KUALANI, WAILUANUI,
WEST WAILUAIKI, EAST WAILUAIKI,
KOPILIULA, PUAKEA, WAIQHUE,
PAAKEA, WAIQAKA, KAPAULA,
HANAWI, and MAKAPIPI

CASE NO. CCH-MA13-01

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served, via email to the following, with hard copies to follow via U.S. mail, pursuant to the Minute Order, upon the following individuals as follows:

COMMISSION ON WATER RESOURCE
MANAGEMENT
P.O. Box 621
Honolulu, HI 96809

(via U.S. Mail and
email to: kathy.s.yoda@hawaii.gov)

LAWRENCE MIKE
c/o the Commission on Water
Resource Management
P.O. Box 621
Honolulu, HI 96809
Hearings Officer

(via email to: lhmiike@hawaii.rr.com)

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CAMILLE K. KALAMA, ESQ.
ASHLEY K. OBREY, ESQ.
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Native Hawaiian Legal Corporation
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(via email to: camille.kalama@nhlchi.org)
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403 West 49th Street, #2
New York, NY 10019

(via email to: jeffreypaisner@mac.com)

DATED: Wailuku, Maui, Hawaii, January 20, 2017.

PATRICK K. WONG
Corporation Counsel
Attorneys for COUNTY OF MAUI,
DEPARTMENT OF WATER SUPPLY

By


CALEB P. ROWE
KRISTIN K. TARNSTROM
Deputies Corporation Counsel