

CADES SCHUTTE
A Limited Liability Law Partnership

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Attorney for Petitioner
Pomaika'i Partners, LLC

LAND USE COMMISSION
STATE OF HAWAII

2019 NOV 14 A 11:09

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
POMAIKA'I PARTNERS, LLC

For Declaratory Order to Designate
Important Agricultural Lands for ap-
proximately 689.69 acres at O'ahu,
Hawai'i identified by TMK Nos. (1) 6-4-
001-001 (por.), 6-4-001-005 and 6-4-001-
012

DOCKET NO. DR19-66

**ERRATA TO PETITIONER'S
AMENDED PETITION FOR
DECLARATORY ORDER TO
DESIGNATE IMPORTANT
AGRICULTURAL LANDS, RECEIVED
NOVEMBER 13, 2019**

EXHIBIT E

CERTIFICATE OF SERVICE

**ERRATA TO PETITIONER'S AMENDED PETITION FOR DECLARATORY
ORDER TO DESIGNATE IMPORTANT AGRICULTURAL LANDS**

On November 13, 2019 Petitioner Pomaika'i Partners, LLC ("**Pomaika'i**") filed its Amended Petition for Declaratory Order to Designate Important Agricultural Lands ("**Petition**") with the Land Use Commission of the State of Hawai'i. It was brought to our attention that Exhibit E, the July 2, 2018 Approval of Ground Water Use Permit (GWUP No. 961 to 00972) for Well No. 3404-001, was inadvertently omitted from the Petition. Pomaika'i hereby submits Exhibit E for inclusion in the Petition.

DATED: Honolulu, Hawai'i, November 14, 2019.

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A handwritten signature in cursive script, appearing to read "Calvert G. Chipchase for". The signature is written in black ink and is positioned above a horizontal line.

CALVERT G. CHIPCHASE
Attorney for Petitioner
POMAIKA'I PARTNERS, LLC

EXHIBIT E
APPROVAL OF GROUND WATER USE PERMIT
(GWUP NO. 961 TO 00972)
WELL NO. 3404-001

July 2, 2018

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON

BRUCE S. ANDERSON, PH.D.
WILLIAM D. BALFOUR, JR.
KAMANA BEAMER, PH.D.
MICHAEL G. BUCK
NEIL J. HANNAHS
PAUL J. MEYER

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

July 2, 2018

00972 gwup.docx

Mr. Daniel X. Nellis
Dole Food Company, Inc. - Hawaii
1116 Whitmore Ave.
Wahiawa, HI 96786

Dear Mr. Nellis:

Approval of Ground Water Use Permit (GWUP No. 961 to GWUP No. 00972)
For Well No. 3404-001
Waialua Ground Water Management Area, Oahu

The Commission on Water Resource Management (Commission) approved your Ground Water Use Permit on June 19, 2018. Your approved permit is for 3.500 million gallons per day (mgd) of water on a 12-month moving average basis from the Pump 17 Well (Well No. 3404-001). The following special conditions were added as part of the Commission's approval and are part of your permit under Standard Permit Condition 19:

Special Conditions

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
2. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

Your ground water use permit is enclosed with this letter of approval. Please be sure to read the conditions of this permit.

We draw your attention to two key conditions of your permit that require your response. First, in accordance with Hawaii Administrative Rule §13-168-7, you are required to keep a record of your monthly total pumpage, water level, salinity, and water temperature. This information must be submitted to the Commission on a regular monthly basis using the form that can be found on our website at <http://hawaii.gov/dlnr/cwrm/forms/GWUR-MON.pdf>

Mr. Daniel X. Nellis
Page 2
July 2, 2018

Second, in a water shortage situation, the Commission may require temporary reductions in pumpage from all sources. To plan for such a contingency, you are required to submit a water shortage plan to the Commission within thirty (30) days of the issuance date of this permit. Your individual water shortage plan should identify what you are willing to do should the Commission declare a water shortage situation in the Waialua Ground Water Management Area. The plan may be brief, but must be clear. The Commission is required by law to formulate a plan to implement such area-wide reductions. The Commission will seek to accommodate your plan in any overall reductions. By submitting your water shortage plan, you help the Commission formulate an overall Water Shortage Plan.

If you have any questions, please call Charley Ice of the Commission staff at 587-0218.

Sincerely,



Jeffrey T. Pearson, P.E., Deputy Director for
Suzanne D. Case, Chairperson

Attachments: GWUP No. 00972



STATE OF HAWAII
 DEPARTMENT OF LAND AND NATURAL RESOURCES
 COMMISSION ON WATER RESOURCE MANAGEMENT
 P.O. BOX 621
 HONOLULU, HAWAII 96809

GROUND WATER USE PERMIT

GWUP NO. 00972.

PERMITTEE

Permittee/Water User Address <u>Dole Food Company, Inc. - Hawaii</u> <u>1116 Whitmore Ave.</u> <u>Wahiawa, HI 96786</u>	Landowner of Source Address <u>Dole Food Company, Inc. - Hawaii</u> <u>1116 Whitmore Ave.</u> <u>Wahiawa, HI 96786</u>
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PERMITTED SOURCE INFORMATION

Island	<u>Oahu</u>
Water Management Area	
Aquifer Sector	<u>North</u>
Aquifer System	<u>Waialua</u>
System Sustainable Yield	<u>25 mgd</u>

State Well No.	Well Name
3-3404-001	Waialua Pump 17

PERMITTED USE INFORMATION

Withdrawal (12 month moving ave.) 3.500 mgd

Reasonable Beneficial Use	TMK	State Land Use Classification	County Zoning Classification
maize	(1) 6-4-001:001	AG	AG-1
banana	(1) 6-4-001:001	AG	AG-1
soybean	(1) 6-4-001:001	AG	AG-1
citrus	(1) 6-4-001:001	AG	AG-1
cabbage	(1) 6-4-001:001	AG	AG-1
sunflower	(1) 6-4-001:001	AG	AG-1
sugar cane	(1) 6-4-001:001	AG	AG-1
sweet melon	(1) 6-4-001:001	AG	AG-1
small vegetables	(1) 6-4-001:001	AG	AG-1
mango	(1) 6-4-001:001	AG	AG-1

Pursuant to Hawaii's State Constitution, Article XI, Section 7, Hawaii Revised Statutes, Chapter 174C; Hawaii Administrative Rules, Chapters 13-167 through 13-171; and Hawaii decisional law and custom, the permittee is hereby authorized to use ground water from the sources and in the amount and from and upon the locations described above; subject however, to the requirements of law including but not limited to the following conditions:


Dole Food Company, Inc.- Hawaii, Well No. 3404-001, WUP No. 00972

1. The water described in this water use permit may only be taken from the location described and used for the reasonable beneficial use described at the location described above. Reasonable beneficial uses means "the use of water in such a quantity as is necessary for economic and efficient utilization which is both reasonable and consistent with State and County land use plans and the public interest." (HRS § 174C-3)
2. The right to use ground water is a shared use right.
3. The water use must at all times meet the requirements set forth in HRS § 174C-49(a), which means that it:
 - a. Can be accommodated with the available water source;
 - b. Is a reasonable-beneficial use as defined in HRS § 174C-3;
 - c. Will not interfere with any existing legal use of water;
 - d. Is consistent with the public interest;
 - e. Is consistent with State and County general plans and land use designations;
 - f. Is consistent with County land use plans and policies; and
 - g. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act and HRS § 174C-101(a).
4. The ground water use here must not interfere with surface or other ground water rights or reservations.
5. The ground water use here must not interfere with interim or permanent instream flow standards. If it does, then:
 - a. A separate water use permit for surface water must be obtained in the case an area is also designated as a surface water management area;
 - b. The interim or permanent instream flow standard, as applicable, must be amended.
6. The ground water use authorized here is subject to the requirements of the Hawaiian Homes Commission Act, as amended, if applicable.
7. The ground water use permit application and submittal, as amended, approved by the Commission at its June 19, 2018 meeting are incorporated into this permit by reference.
8. Any modification of the permit terms, conditions, or uses may only be made with the express written consent of the Commission.
9. This permit may be modified by the Commission and the amount of water initially granted to the permittee may be reduced if the Commission determines it is necessary to:
 - a. protect the water sources (quantity or quality);
 - b. meet other legal obligations including other correlative rights;
 - c. insure adequate conservation measures;
 - d. require efficiency of water uses;
 - e. reserve water for future uses, provided that all legal existing uses of water as of June, 1987 shall be protected;
 - f. meet legal obligations to the Department of Hawaiian Home Lands, if applicable; or
 - g. carry out such other necessary and proper exercise of the State's and the Commission's police powers under law as may be required.

Prior to any reduction, the Commission shall give notice of its proposed action to the permittee and provide the permittee an opportunity to be heard.
10. An approved flowmeter(s) must be installed to measure monthly withdrawals and monthly records of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on the form located at <http://hawaii.gov/dlnr/cwrm/forms/GWUR-MON.pdf>

11. This permit shall be subject to the Commission's periodic review of the Waialua Aquifer System Area's sustainable yield. The amount of water authorized by this permit may be reduced by the Commission if the sustainable yield of the Waialua Aquifer System Area, or relevant modified aquifer(s), is reduced.
12. A permit may be transferred, in whole or in part, from the permittee to another, if:
 - a. The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and
 - b. The Commission is informed of the transfer within ninety days.

Failure to inform the department of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer, which involves a change in any condition of the permit, including a change in use covered in HRS § 174C-57, is also invalid and constitutes a ground for revocation.
13. The use(s) authorized by law and by this permit do not constitute ownership rights.
14. The permittee shall request modification of the permit as necessary to comply with all applicable laws, rules, and ordinances that will affect the permittee's water use.
15. The permittee understands that under HRS § 174C-58(4), that partial or total nonuse, for reasons other than conservation, of the water allowed by this permit for a period of four (4) continuous years or more may result in a permanent revocation as to the amount of water not in use. The Commission and the permittee may enter into a written agreement that, for reasons satisfactory to the Commission, any period of nonuse may not apply towards the four-year period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section HRS § 174C-62 shall not apply towards the four-year period of forfeiture.
16. The permittee shall prepare and submit a water shortage plan within 30 days of the issuance of this permit as required by HAR § 13-171-42(c). The permittee's water shortage plan shall identify what the permittee is willing to do should the Commission declare a water shortage in the Waialua Ground Water Management Area.
17. The water use permit shall be subject to the Commission's establishment of instream standards and policies relating to the Stream Protection and Management (SPAM) program, as well as legislative mandates to protect stream resources.
18. The permittee understands that any willful violation of any of the above conditions or any provisions of HRS § 174C or HAR § 13-171 may result in the suspension or revocation of this permit.
19. Special conditions in the attached cover transmittal letter are incorporated herein by reference.



Jeffrey T. Pearson, P.E., Deputy Director for
Suzanne D. Case, Chairperson
Commission on Water Resource Management

Attachment

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
POMAIKA'I PARTNERS, LLC

DOCKET NO. DR19-66

CERTIFICATE OF SERVICE

For Declaratory Order to Designate
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proximately 689.69 acres at O'ahu,
Hawaii identified by TMK Nos. (1) 6-4-
001-001 (por.), 6-4-001-005 and 6-4-001-
012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, a true and correct copy of the foregoing document was served on the following parties at their last known addresses listed below, by U.S. mail, postage prepaid:

CITY & COUNTY OF HONOLULU
DEPARTMENT OF PLANNING & PERMITTING
650 South King Street
Honolulu, HI 96813
Attention: Director Kathy Sokugawa

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, HI 96814
Attention: Phyllis Shimabukuro-Geiser

STATE OF HAWAII
OFFICE OF PLANNING
P.O. Box 2359
Honolulu, HI 96804-2359
Attention: Mary Alice Evans

DATED: Honolulu, Hawai'i, November 14, 2019.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
Attorney for Petitioner
POMAIKA'I PARTNERS, LLC