

Wai`ale`ale and Waikoko Diversions - RP S-7340, 8/11/2003



Above: Waikoko dam and diversion, Nov. 27, 2022

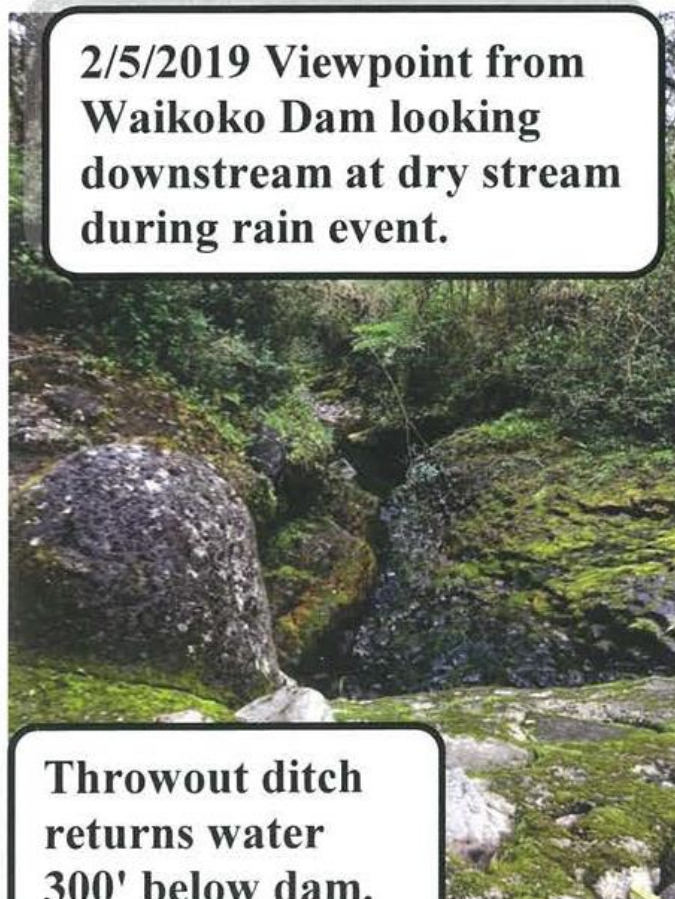


Above: Aerial Photo of Waikoko dam and diversion, July 03, 2022



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.**

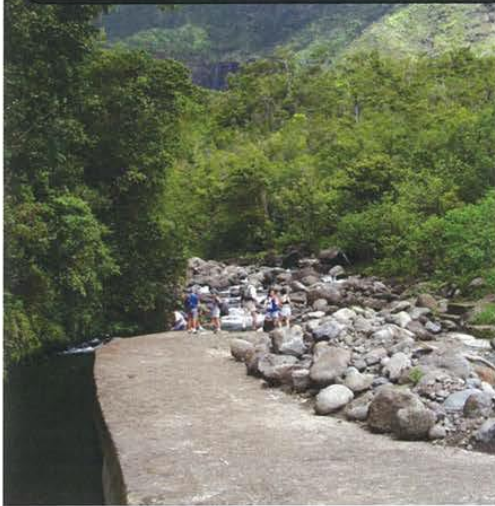


Above: Ili`ili`ula Ditch 7/3/2022

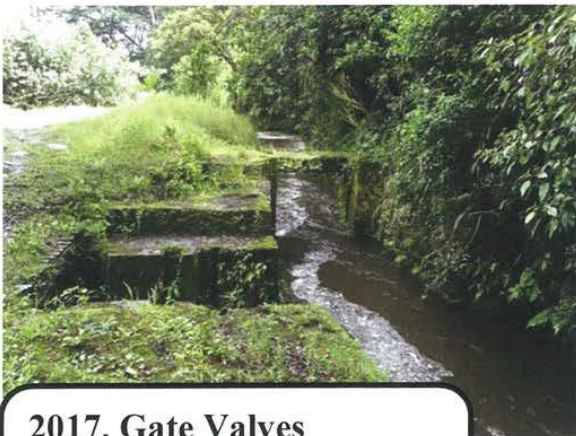
“At one site along the ditch, I observed a spillway at a location where there was no natural stream channel upslope of the ditch, but there was a deep gully eroded immediately downslope of the ditch (see inset photo at left). I estimate this gully to be 10 feet deep, and it was clearly formed by water flowing through the spillway notch in the concrete ditch wall. The notch has slots for a wooden “pani board’ or flashboard, but without the board in place, this location serves as an overflow spillway during high rainfall events. It is not known how much of the gully erosion observed at this site is due to recent storm events, but judging by the vegetation on the gully walls, the erosion in this area appears to be active.” North Shore Hydrology report by Matt Rosener 8/1/2022

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).

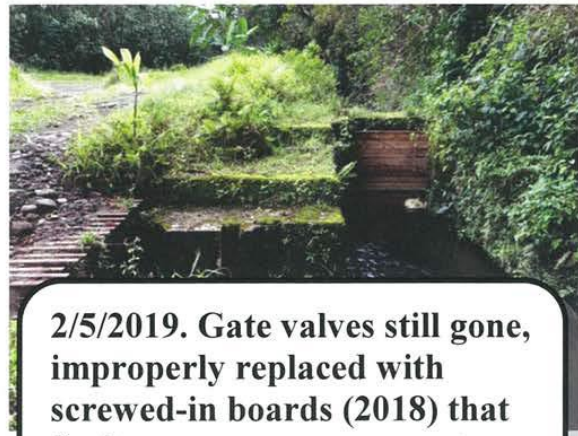
2000. Wai`ale`ale Dam conditions when KIUC assumed control from Kauai Electric.



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.

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 11th 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.

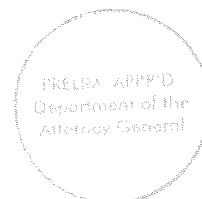


The interest rate on any unpaid or delinquent rentals shall be at one percent (1%) per month.

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.

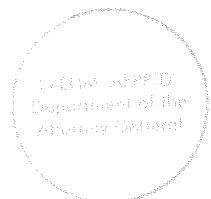
Prior to use of the Water Resources or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like 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:

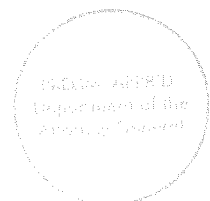
a. The amount of water diverted into the ditch system at Blue Hole on an annual basis shall not exceed the average annual amount diverted as measured for the period from years 1992 to 2002.

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:

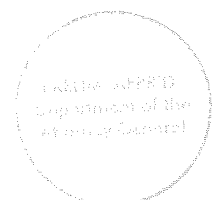
1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year 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.

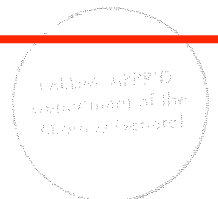
3. If the Permittee fails to cease the use of the Water Resources upon revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.

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

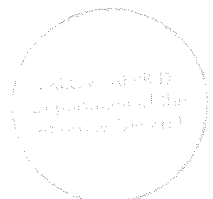


and upon the Board's consent which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for 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

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

SW

PERMITTEE

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

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

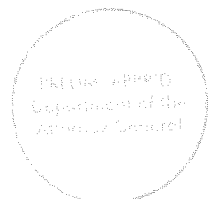
APPROVED AS TO FORM:

And By _____

Its _____

[Signature]
Deputy Attorney General

Dated 3/7/03



STATE OF HAWAII

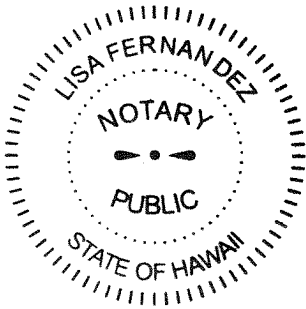
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) SS.

COUNTY OF KAUAI

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On this 28th 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