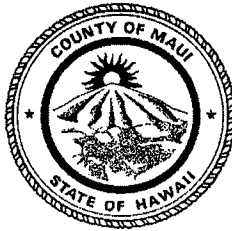


ALAN M. ARAKAWA  
Mayor



PRL - 1(47)

PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

October 2, 2018

MEMO TO: Donald Guzman, Chair  
Parks, Recreation; Energy, and Legal Affairs Committee

FROM: Caleb P. Rowe, Deputy Corporation Counsel

SUBJECT: LITIGATION MATTERS - (PRL-1)  
County of Maui vs. KUALAPU'U RANCH 4, LLC, et al.  
Civil No.: 18-1-0321 (3)

Pursuant to Section 3.16.020B of the Maui County Code, our department respectfully requests authorization to discuss settlement of the aforementioned claim. It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. There is no immediate deadline to this matter.

Copies of the Complaint for Declaratory and Injunctive Relief and proposed resolution are enclosed. We request that a representative from the Department of Water Supply be in attendance during discussion of this matter. If you have any questions, or concerns, please do not hesitate to contact me.

Thank you for your attention to this matter.

cc: Gladys Baisa, Director, Department of Water Supply

RECEIVED  
2018 OCT -2 PM 3:10  
OFFICE OF THE  
COUNTY COUNCIL

# Resolution

No. \_\_\_\_\_

AUTHORIZING SETTLEMENT OF  
COUNTY OF MAUI VS. KUALAPU’U RANCH 4, LLC, ET AL.,  
CIVIL NO. 18-1-0321(3)

WHEREAS, Plaintiff County of Maui filed a lawsuit in the Circuit Court of the Second Circuit in the State of Hawaii on August 1, 2018, Civil No. 18-1-0321(3), against Kualapu’u Ranch 4, LLC and Molokai Properties Limited, claiming declaratory and injunctive relief; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

**Resolution No. \_\_\_\_\_**

BE IT RESOLVED by the Council:

1. That it hereby authorizes the Department of the Corporation Counsel to negotiate settlement in this case, under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, and the Corporation Counsel.

APPROVED AS TO FORM  
AND LEGALITY:

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', is written over a horizontal line.

CALEB P. ROWE  
Deputy Corporation Counsel  
County of Maui  
Lit 5876

**FILED**

DEPARTMENT OF THE  
CORPORATION COUNSEL 205

2018 AUG -1 PM 4:08

PATRICK K. WONG 5878

Corporation Counsel

CALEB P. ROWE 9520

MOANA M. LUTEY 6385

Deputies Corporation Counsel

County of Maui

200 South High Street

Wailuku, Hawaii 96793

Telephone No.: (808)270-7740

Facsimile No.: (808)270-7152

Email: caleb.rowe@co.maui.hi.us

Email: kristin.tarnstrom@co.maui.hi.us

D. PELLAZAR, CLERK  
SECOND CIRCUIT COURT  
STATE OF HAWAII

Attorneys for Plaintiff  
COUNTY OF MAUI

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI  
PROPERTIES LIMITED; JOHN DOES 1-10;  
JANE DOES 1-10; DOE COMPANIES 1-10;  
DOE PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 18-1-0321 (3)  
(Environmental Court)

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF; DECLARATION OF  
CALEB P. ROWE; EXHIBITS "A" - "B";  
DEMAND FOR JURY TRIAL; SUMMONS

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff COUNTY OF MAUI, by and through its attorneys, PATRICK K.  
WONG, Corporation Counsel, and CALEB P. ROWE and KRISTIN K. TARNSTROM, Deputies  
Corporation Counsel, and brings this Complaint for Declaratory and Injunctive Relief against  
Defendants, for claims alleged as follows:

## **I. PARTIES**

1. Plaintiff COUNTY OF MAUI (“County”) is a municipal corporation and a political subdivision of the State of Hawaii.

2. Defendant KUALAPU’U RANCH 4, LLC (“KR4”) at all times relevant hereto is a business registered to do business in the State of Hawaii.

3. Defendant KR4 is the long term lessee of TMK (2)5-2-012-029.

4. Defendant MOLOKAI PROPERTIES LIMITED (“Molokai Properties”) at all times relevant hereto is a business registered to do business in the State of Hawaii.

5. Defendant Molokai Properties was previously named Molokai Ranch, Limited, and changed its name to Molokai Properties in, approximately, 2002.

6. Defendant Molokai Properties is the fee owner of the property identified by Tax Map Key (“TMK”) (2)5-2-012-029.

7. JOHN DOES 1-10; JANE DOES 1-10; DOE COMPANIES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; AND/OR OTHER DOE ENTITIES 1-10, are unidentified persons or entities who have an involvement in these proceedings or who may claim an interest in the subject matter of this action (as described below), and whose true names, identities, and interests are presently unknown to Plaintiff County’s attorney. Plaintiff County has performed a diligent investigation to ascertain the identities of said DOE Defendants but has thus far failed to find any other defendants.

## **II. JURISDICTION**

8. Plaintiff County brings this action for declaratory and injunctive relief pursuant to Hawaii Revised Statutes (HRS) §§ 174C-87, 603-1, 603-21.5, 603-21.9, 603-23, 603-36(5), 604A-2 and 632-1 and Hawaii Administrative Rules (“HAR”) § 13-168-16.

9. Jurisdiction is properly before the Environmental Court pursuant to HRS § 604A-2 by virtue of allegations related to HRS Title 12 in general and HRS § 174C-87 in particular.

10. Venue is appropriate in the Second Circuit pursuant to HRS §§ 603-1(2) and 603-36(5) as the property giving rise to the claims for relief, and the actions creating the claims herein, occurred on the Island of Molokai in the State of Hawaii.

### **III. FACTS GIVING RISE TO THE CAUSES OF ACTION**

#### **A. THE COUNTY OF MAUI WATER SYSTEM ON TMK (2)5-2-012-029**

11. Plaintiff County operates State Well No. 0801-03 (also known as Kualapuu Mauka Well), a water tank, a pumping station, water transmission lines, and other infrastructure related to municipal water distribution on a portion of TMK (2)5-2-012-029 (hereinafter known collectively as “Kualapuu Mauka Well Site”).

12. The specific locations of State Well No. 0801-03 and the rest of the Kualapuu Mauka Well Site are located within Easements 151, 152 and 153 as set forth on Map 36, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 and adopted by Land Court Order No. 132987. See Exhibit “A.”

13. Easements 151, 152 and 153 are also identified on Map 39, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 and adopted by Land Court Order No. 157892 (“easements 151, 152 and 153”). See Exhibit “B.”

#### **B. THE ORIGINAL RIGHT OF ENTRY**

14. On or about November 21, 1986, Plaintiff County entered into a Right of Entry Agreement for the Development of Subsurface Water and Agreement for Acquisition of Well Site, recorded with the Bureau of Conveyances of the State of Hawaii as Document Number 86-164780

(“ROE 1”) with Defendant Molokai Properties, then known as Molokai Ranch, Limited, the fee owner of TMK (2)5-2-012-029.

15. Under the terms of ROE 1, Plaintiff County was given “the right, power and privilege, for a period of two (2) years from the date hereof, to enter upon, occupy, and use for the purpose of drilling an exploratory well, installing a well casing, a pump and other equipment necessary or desirable for the testing and development of the exploratory well, conveying away of water therefrom, and the storage of all machinery, materials, and equipment incidental thereto, and permit access to, that portion of a parcel of land owned by the Owner.”

16. The property subject to ROE 1, was described as “an area approximately 100 feet times 300 feet (30,000 square feet more or less) being a portion of Parcel 24 of Tax Map Key 5-2-12, situate at Kualapuu Molokai including the access easement thereto.”

17. ROE 1 contained a further provision providing Plaintiff County “an option to acquire the premises at a fixed mutually agreed upon price” within the two year right of entry.

### **C. THE SECOND RIGHT OF ENTRY**

18. Another Right of Entry Agreement entered between Plaintiff County, and Defendant Molokai Properties, then operating as Molokai Ranch, Limited, was recorded with the Bureau of Conveyances as Document Number 87-182428 (“ROE 2”) on December 4, 1987.

19. ROE 2 expanded the usable area allowed by ROE 1 to include “the parcel of land situate at Kahanui, Molokai, identified by Tax Map Key 5-2-12: Parcel 22, 24, and 29.” A map of the area applicable to the right of entry was attached to ROE 2.

20. The purpose of ROE 2 was for “surveying and obtaining engineering information, construction of pumping assembly, controls, buildings, pipelines, and the maintenance and operation of the water system.”

21. ROE 2 was to terminate after a period of two years from the date of execution.

22. ROE 2 contained no provisions relative to purchase of the property.

**D. THE INCOMPLETE THIRD RIGHT OF ENTRY**

23. Plaintiff County sent an Amendment to Right of Entry Agreement to Defendant Molokai Properties, then operating as Molokai Ranch, Limited, for execution on November 15, 1989 ("Amendment"), with the intent of expanding the term of the right of entry.

24. This Amendment was never executed by Molokai Ranch, Limited and never filed with the Bureau of Conveyances.

**E. SUBDIVISION AND LAND COURT FILINGS**

25. The property bearing TMK (2)5-2-012-029 has undergone significant subdivision over the course of the last 50 years.

26. One such subdivision was approved and entered on approximately September 24, 1998 pursuant to Land Court Order No. 132987. This subdivision was set forth on Map 36, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861.

27. This subdivision subdivided what was then "Lot 33" into Lots 262 to 271, inclusive of several easements. The lot newly designated as "Lot 262" contained three easements which were referred to as easements 151, 152, and 153. These easements correspond directly with the location of State Well No. 0801-03 and the rest of the Kualapuu Mauka Well Site.

28. Further subdivision was approved and entered on approximately September 1, 2004 pursuant to Land Court Order No. 157892. This subdivision was set forth on Map 39, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861.



29. This subdivision consolidated what were then lots 263-A, 262, and 24-B, and resubdivided them into lots 272, 273, and 274. The newly designated "Lot 274" contained the three easements that had previously encumbered Lot 262, namely easements 151, 152, and 153. As on Map 36, the easements shown on Map 39 correspond directly with the location of State Well No. 0801-03 and the rest of the Kualapuu Mauka Well Site.

**F. OTHER RELEVANT EVENTS**

30. On approximately November 1, 2002, Molokai Ranch, Limited changed its name to Molokai Properties Limited, one of the Defendant in this action.

31. On approximately October 22, 2009, Defendant Molokai Properties entered into a 99 year lease of the property bearing TMK No. (2)5-2-012-029 with Defendant KR4. This property was described in attachment "A" to the Lease as "Lot 274, area 91.536 acres, more or less, as shown on Map 39, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 of Molokai Ranch, Limited." Attachment "A" to the lease further described the lease as subject to a series of easements, inclusive of easements 151, 152 and 153.

32. Defendant KR4 was contacted by Plaintiff County regarding the possibility of building a backup well on the Kualapuu Mauka Well Site on approximately November 17, 2014. Plaintiff County is unaware of any communication between Plaintiff County and Defendant KR4 prior to this date regarding the Kualapuu Mauka Well Site.

33. Defendant KR4 did not object or contest Plaintiff County's continued use of the Kualapuu Mauka Well Site until approximately January 20, 2016. On that date, Defendant KR4 demanded a meeting with officials employed by Plaintiff County to discuss its proposal to sell power to the Plaintiff County in exchange for Plaintiff County's continued use of the Kualapuu

Mauka Well Site.

34. Since 2016, Defendant KR4 has repeatedly insisted on entering into an agreement whereby Plaintiff County would purchase electricity directly from Defendant KR4's proposed solar electricity system in exchange for Plaintiff County being allowed access to the Kualapuu Mauka Well Site. Defendant KR4 has continually insisted on this arrangement despite Plaintiff County's repeated Statements that the Kualapuu Mauka Well Site needed a consistent and reliable source of power.

35. In fact, Defendant KR4 had indicated that it would present Plaintiff County with a more detailed proposal as to how to mitigate reliability issues with usage of solar power for well operation, but to date Defendant KR4 has never presented Plaintiff County with a detailed proposal that could be properly analyzed.

36. Defendant KR4's threats in attempting to force Plaintiff County into an untested, unproven, and unspecified power agreement or lose access to the Kualapuu Mauka Well Site escalated over time, culminating with Defendant KR4's July 19, 2018 letter demanding that "DWS cease operation of the well and vacate KR4's property" no later than August 10, 2018.

37. On July 25, 2018, Plaintiff County responded to Defendant KR4 informing them of the potential detrimental and injurious effect of their demand on the residents of Molokai, and asking Defendant KR4 to reconsider the August 10, 2018 cessation demand.

38. As of the date of this filing, Defendant KR4 has not rescinded its demand, thus prompting initiation of this lawsuit.

#### **IV. CLAIMS FOR RELIEF**

##### **COUNT I: DECLARATORY RELIEF REGARDING IMPLIED DEDICATION**

39. Plaintiff County hereby realleges and incorporates by reference the allegations

contained in paragraphs 1-38 of this Complaint.

40. Plaintiff County holds an easement over the Kualapuu Mauka Well Site through easements 151, 152 and 153 by operation of the common law doctrine of implied dedication.

41. Defendant Molokai Properties continued to allow Plaintiff County to operate its wells, as indicated on various Land Court Documents recording easements 151, 152 and 153. These easements correspond with the location of the Kualapuu Mauka Well Site. This uninterrupted allowance is of such a nature so as to imply an offer of dedication.

42. The nature of Plaintiff County's use in operating Kualapuu Mauka Well Site has been and continues to be for the public trust purposes of providing drinking water and water for domestic uses to approximately 1,183<sup>1</sup> customers<sup>2</sup> in the communities of Kaunakakai, Kamiloloa and Kawela on the Island of Molokai.

43. Further, Plaintiff County's continued public use of the Kualapuu Mauka Well Site has been uninterrupted, undisputed, unceasing and notorious since approximately 1986 for the well, and since 1987 for other system components, a period of nearly thirty years.

44. The nature of the public use as described in ¶¶ 38 and 39 *supra* imply acceptance of the dedication for public use.

45. An actual controversy exists by way of disagreements between Plaintiff County and Defendant KR4 that Plaintiff County is entitled to continued access to the Kualapuu Mauka Well Site through easements 151, 152, and 153.

46. Plaintiff County is entitled to declaratory relief in the form of a judgment declaring

---

<sup>1</sup> This number reflects the number of water service customers. The number of residents using the system would be significantly higher considering multiple persons within a household or business would be using the same water connection.

<sup>2</sup> While the public is charged for water delivery service by Plaintiff County, those costs are directly related to the operations of the Department of Water Supply. Plaintiff County does not retain any profit from the delivery of water to customers.

that Plaintiff County has an easement to the Kualapuu Mauka Well Site through easements 151, 152 and 153 by implied dedication and that Defendants KR4 and Molokai Properties are estopped from denying continued public use because the property owners have allowed and permitted continued uninterrupted and unimpeded public use for over thirty years.

COUNT II: DECLARATORY RELIEF REGARDING PRESCRIPTIVE EASEMENT

47. Plaintiff County hereby realleges and incorporates by reference the allegations contained in paragraphs 1-46 of this Complaint.

48. In the alternative, Plaintiff County holds a prescriptive easement of the Kualapuu Mauka Well Site.

49. Plaintiff County's use of the Kualapuu Mauka Well Site through easements 151, 152, and 153 has been uninterrupted, undisputed, and unceasing since approximately 1986 for the well, and since 1987 for other system components.

50. Plaintiff County's use of the Kualapuu Mauka Well site through easements 151, 152 and 153 has been adverse to the interests of Defendant Molokai Ranch, as Plaintiff County's right of entry expired on or around October 21, 1989 and no subsequent right of entry or easement specifically dedicated to Plaintiff County was ever recorded.

51. Both the uninterrupted use and the adverse use of the Kualapuu Mauka Well sites through easements 151, 152 and 153 have continued for more than the twenty year prescriptive period under law.

52. Plaintiff County's use of the Kualapuu Mauka Well sites through easements 151, 152 and 153 was exclusive. Defendant Molokai Properties or Defendant KR4, and members of the public at large did not occupy the property or appurtenances while Plaintiff County was occupying the premises.

53. Defendant Molokai Properties had knowledge of Plaintiff County's continued use

of the Kualapuu Mauka Well Site for the entire prescriptive period under law, acquiesced to Plaintiff County's continued use of the property, and never sought to enjoin or otherwise interrupt Plaintiff County's continued use of the property.

54. Plaintiff County's use of the Kualapuu Mauka Well Site was notorious, in that water derived therefrom continued to be received by residents of Molokai. Furthermore, reference to the source of that water from the Kualapuu Mauka Well Site was mentioned in several government records and documents, including but not limited to the Maui County Budget, the Maui County Water Use and Development Plan, the County of Maui Department of Water Supply Drinking Water Quality Report, etc.

55. An actual controversy exists by way of disagreements between Plaintiff County and Defendant KR4 that Plaintiff County is entitled to continued access to the Kualapuu Mauka Well Site through easements 151, 152, and 153.

56. Plaintiff County is entitled to declaratory relief in the form of a judgment declaring that Plaintiff County has a prescriptive easement to the Kualapuu Mauka Well Site through easements 151, 152 and 153, and that Defendants KR4 and Molokai Properties are estopped from denying continued use by Plaintiff County.

### COUNT III: DECLARATORY RELIEF REGARDING WELL ABANDONMENT

57. Plaintiff County hereby realleges and incorporates by reference the allegations contained in paragraphs 1-56.

58. Pursuant to HRS § 174C-87:

When a well is abandoned, the owner shall fill and seal the well in a manner approved by the commission. Before abandonment, the owner shall file with the commission a report showing the owner's name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a

description of the work to be performed to effect the abandonment;  
and such other information as the commission may require.

*HRS § 174C-87.*

59. Pursuant to HAR § 13-168-16, “the owner or operator of such abandoned well **shall not commence the required remedial work until an application has been made and a well construction permit has been obtained**” from the Commission of Water Resources Management.” *HAR § 13-168-16* (emphasis added).

60. Plaintiff County has not filed “a report showing the owner's name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a description of the work to be performed to effect the abandonment; and such other information as the commission may require” with the Commission on Water Resources Management.

61. Plaintiff County has not filed an application for nor received a well construction permit from the Commission on Water Resources Management relative to State Well No. 0801-03.

62. Accordingly, compliance with KR4’s demand to remove all property by August 10, 2018, would require Plaintiff County to act in a manner contrary to law.

63. An actual controversy exists between Plaintiff County and Defendants concerning compliance with the State Water Code in the Hawaii Revised statutes and with the Administrative Rules of the Commission on Water Resources Management.

64. Plaintiff County is entitled to Declaratory Relief that any potential removal of State Well No. 0801-03 must comply with HRS § 174C-87 and HAR § 13-168-16 and accordingly, any arbitrary deadlines for removal such as those contained in Defendant KR4’s July 19, 2018 letter that do not first allow for compliance therewith are improper.

#### COUNT IV: INJUNCTIVE RELIEF REGARDING EASEMENTS

65. Plaintiff County hereby realleges and incorporates by reference the allegations contained in paragraphs 1-64 of this Complaint.

66. Plaintiff County has a prescriptive easement and/or an easement by implied dedication of State Well No. No. 0801-03 and the Kualapuu Mauka Well Site through easements 151, 152, and 153.

67. Defendant KR4's threats of legal action, and the potential that Defendant KR4 may take extra-judicial remedies against Plaintiff County's right to access State Well No. 0801-03 and the Kualapuu Mauka Well Site, are a direct threat not only to Plaintiff County's ability to manage its water system, but also to the health, safety and welfare of the people of Kaunakakai, Kamiloloa and Kawela.

68. Plaintiff County is without adequate remedy at law if Defendants KR4 and Molokai Properties preclude Plaintiff County's continued use of State Well No. 0801-03 and the rest of the Kualapuu Mauka Well Site to the detriment of the health, safety and welfare of the people of Kaunakakai, Kamiloloa and Kawela.

69. Plaintiff County is entitled to injunctive relief prohibiting Defendants and their respective agents, servants, employees, attorneys, representatives, and all other persons acting in concert or participation with any of them, from denying or otherwise blocking Plaintiff County's access to the Kualapuu Mauka Well Site through easements 151, 152 and 153 unless and until Plaintiff County takes fee ownership of said property.

#### COUNT IV: INJUNCTIVE RELIEF REGARDING WELL ABANDONMENT

70. Plaintiff County hereby realleges and incorporates by reference the allegations contained in paragraphs 1-69 of this Complaint.

71. Defendant KR4's threats of legal action, and the potential that Defendant KR4 may

take extra-judicial remedies against Plaintiff County's right to access the Kualapuu Mauka Well Site could force the effective abandonment of State Well No. 0801-03.

72. Plaintiff County is without adequate remedy at law if Defendants KR4 and Molokai Properties force Plaintiff County to act in direct contradiction of the State Water Code and the Administrative Rules of the Commission on Water Resources Management.

73. Plaintiff County is entitled to Injunctive Relief to prevent Defendant KR4 from placing arbitrary deadlines on well abandonment, and from interfering with Plaintiff County's ability to comply with the Hawaii Revised Statutes and Hawaii Administrative Rules as they relate to any potential well removal.

WHEREFORE, Plaintiff prays:

A. The Court enter declaratory judgment that Plaintiff County has an easement to access, occupy and use the Kualapuu Mauka Well Site through easements 151, 152, and 153 by virtue of the doctrine of implied dedication.

B. The Court enter declaratory judgment that Plaintiff County has a prescriptive easement to access, occupy and use the Kualapuu Mauka Well Site through easements 151, 152, and 153.

C. The Court enter declaratory judgment that the demands of Defendant KR4 that Plaintiff County remove State Well No. 0801-03 by August 10, 2018 are contrary to law as they would require Plaintiff County to act in a manner contrary to the State Water Code and the Administrative Rules of the Commission on Water Resources Management.

D. The Court enter an injunction enjoining Defendants KR4 and Molokai Properties from interfering with Plaintiff County's lawful use and quiet enjoyment of the Kualapuu Mauka Well Site.



E. That the Court enter an injunction enjoining Defendant KR4 from attempting to remove, ordering Plaintiff County to remove, or otherwise interfering with the Plaintiff County's compliance with the State Water Code and the Administrative Rules of the Commission on Water Resources Management as they relate to any potential abandonment of State Well No. 0801-03.

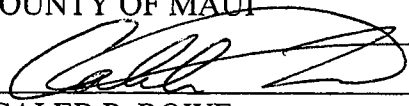
F. That Plaintiff County be awarded all its court costs and reasonable attorneys' fees, and any costs that may be incurred by Plaintiff County in enforcing its right to access State Well No. 0801-03 and the Kualapuu Mauka Well Site.

G. That Plaintiff County be awarded such other relief the Court deems appropriate, including injunctive relief, prior to the final judgment.

DATED: Wailuku, Maui, Hawaii, AUG 01 2018.

PATRICK K. WONG  
Corporation Counsel  
Attorneys for Plaintiff  
COUNTY OF MAUI

By

  
CALEB P. ROWE  
MOANA M. LUTEY  
Deputies Corporation Counsel

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI  
PROPERTIES LIMITED; JOHN DOES 1-10;  
JANE DOES 1-10; DOE COMPANIES 1-10;  
DOE PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. \_\_\_\_\_

(Environmental Court)

DECLARATION OF CALEB P. ROWE

**DECLARATION OF CALEB P. ROWE**

CALEB P. ROWE does hereby declare:

1. I am an attorney with the Department of the Corporation Counsel, am licensed to practice law in the State of Hawaii, and am admitted to practice law before this court. I am one of the attorneys representing Plaintiff County of Maui ("County") in the above-captioned case.

2. I make this declaration upon personal knowledge and am competent to testify to the matters stated herein.

3. Attached to the Plaintiff County's Complaint for Declaratory and Injunctive Relief as Exhibit "A" is a true and correct copy of Map 36 as filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 and adopted by Land Court Order No. 132987. This map was accessed at the Department of Accounting and General Services Land Survey Map Search at the following website on August 1, 2018: <http://ags.hawaii.gov/survey/map-search/>.

4. Attached to Plaintiff County's Complaint for Declaratory and Injunctive Relief as

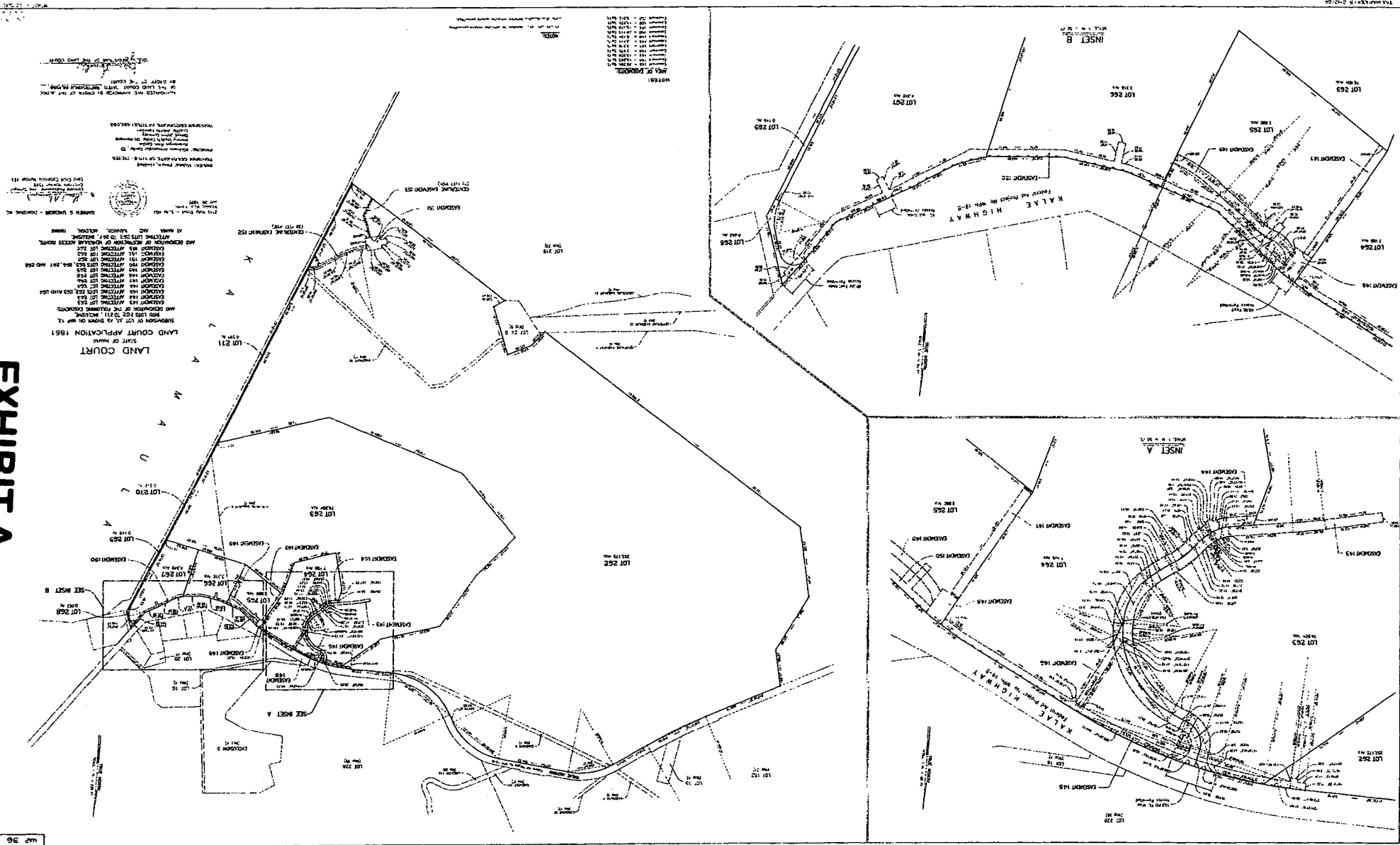
Exhibit "B" is a true and correct copy of Map 39, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 and adopted by Land Court Order No. 157892. This map was accessed at the Department of Accounting and General Services Land Survey Map Search at the following website on August 1, 2018:  
<http://ags.hawaii.gov/survey/map-search/>.

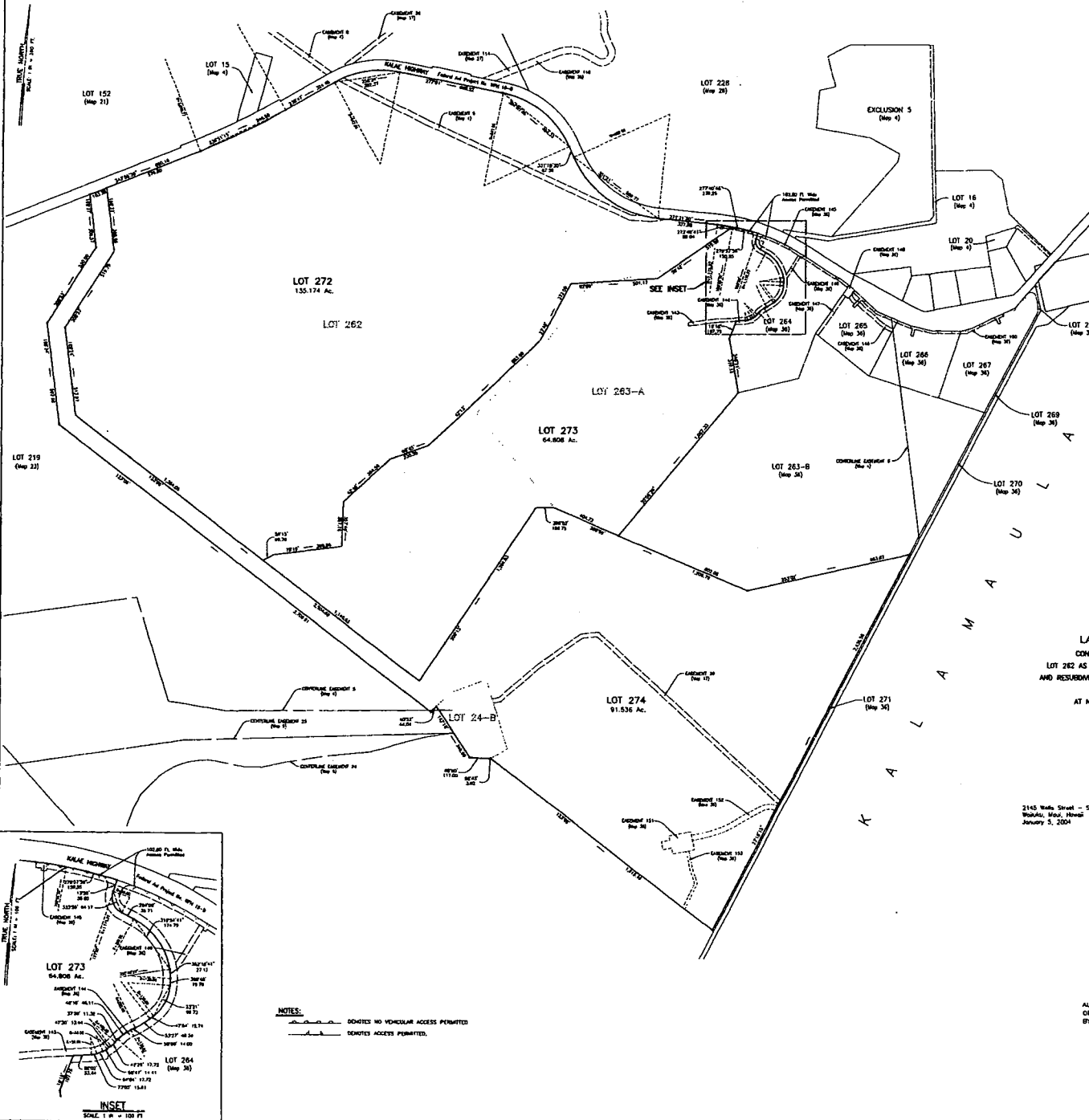
DATED: Wailuku, Maui, Hawaii,

AUG 01 2018

  
\_\_\_\_\_  
CALEB P. ROWE

36 cm





# LAND COURT

STATE OF HAWAII

LAND COURT APPLICATION 1861

CONSOLIDATION OF LOT 263-A AS SHOWN ON MAP 38

LOT 262 AS SHOWN ON MAP 36 AND LOT 24-B AS SHOWN ON MAP 8  
AND RESUBDIVISION OF SAID CONSOLIDATION INTO LOTS 272, 273 AND 274

AT HAWAII AND KAHANUI, MOLOKAI, HAWAII

2145 Waiola Street - Suite 403  
Honolulu, Hawaii  
January 5, 2004



WARREN S. UNEMORE - ENGINEERING, INC.

By: *Warren S. Unemore*  
Licensed Professional Land Surveyor  
Certificate Number 1563  
Land Court Certificate Number 164

Owner: Molokai Properties, Limited  
Transfer Certificate of Title: 523,669 (Lot 262)

Owner: Richard Alexander Cooke III and Bronwyn Ann Cooke  
Transfer Certificate of Title: 604,306 (Lot 263-A)

Owner: Kahuakui Water, LLC  
Transfer Certificate of Title: 586,691 (Lot 24-B)

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED AUGUST 17, 2006  
BY ORDER OF THE COURT.

*Patricia A. Schmitt*  
REGISTRAR OF THE LAND COURT

NOTES:  
--- DENOTES NO VEHICULAR ACCESS PERMITTED  
--- DENOTES ACCESS PERMITTED.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI  
PROPERTIES LIMITED; JOHN DOES 1-10;  
JANE DOES 1-10; DOE COMPANIES 1-10;  
DOE PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. \_\_\_\_\_  
(Environmental Court)

DEMAND FOR JURY TRIAL

**DEMAND FOR JURY TRIAL**

Plaintiff COUNTY OF MAUI, by and through its attorneys, Patrick K. Wong, Corporation Counsel, Caleb P. Rowe and Kristin K. Tarnstrom, Deputies Corporation Counsel, hereby demands trial by jury on all issues triable herein.

DATED: Wailuku, Maui, Hawaii, AUG 01 2018.

PATRICK K. WONG  
Corporation Counsel  
Attorneys for Plaintiff  
COUNTY OF MAUI

By 

CALEB P. ROWE  
MOANA M. LUTEY  
Deputies Corporation Counsel

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI  
PROPERTIES LIMITED; JOHN DOES 1-10;  
JANE DOES 1-10; DOE COMPANIES 1-10;  
DOE PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. \_\_\_\_\_  
(Other Civil Action)

SUMMONS

**SUMMONS**

TO: DEFENDANTS

You are hereby summoned and required to file with the court and serve upon PATRICK K. WONG, Corporation Counsel, and CALEB P. ROWE, Deputy Corporation Counsel, attorneys for Plaintiff COUNTY OF MAUI, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, an answer to the Complaint for Declaratory and Injunctive Relief which is attached. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in the Complaint for Declaratory and Injunctive Relief.

If you fail to obey this summons, this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this summons shall not be

delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.

DATED: Wailuku, Maui, Hawai'i, \_\_\_\_\_.

/sgd/ D. FELLAZAR (seal)

\_\_\_\_\_  
CLERK OF THE ABOVE-ENTITLED COURT

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*County of Maui v KUALAPU'U RANCH 4, LLC, et al.*; Civil No. TBA; SUMMONS