

David Kimo Frankel 5791
1638-A Mikahala Way
Honolulu, HI 96816
(808) 345-5451
davidkimofrankel@gmail.com
Attorney for the Sierra Club

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of a Contested Case Regarding) DLNR File No. CCH-LD-21-01
the Continuation of Revocable Permits (RPs))
for Tax Map Keys (2) 1-1-001:044 & 050; (2)) Sierra Club's Motion for a Court Reporter's
2-9-014:001, 005, 011, 012 & 017; (2) 1-1-) Participation at the October 29, 2021
002:002 (por.) and (2) 1-2-004:005 & 007 for) Prehearing Conference; Certificate of Service
Water Use on the Island of Maui to Alexander)
& Baldwin, Inc. and East Maui Irrigation)
Company, LLC for the remainder of the 2021)
RPs, if applicable, and for their continuation)
through the end of 2022)

Sierra Club's Motion for a Court Reporter's Participation at the October 29, 2021 Prehearing
Conference

Pursuant to HRS § 91-9(f), the Sierra Club requests that a court reporter attend and transcribe the prehearing conference for the purposes of court review.

Minute Order No. 4 is explicit. The purpose of the prehearing is **not** limited to setting prehearing deadlines. It is not merely an exercise of attorneys opening up their calendars and conferring on dates. It also includes a discussion as to "the scope of the contested case." Such a discussion needs to be on the record. It needs to be held on the record to ensure that the parties are provided "a high level of procedural fairness and protections." *Mauna Kea Anaina Hou v. Bd. of Land & Natural Res.*, 136 Hawai'i 376, 380, 363 P.3d 224, 228 (2015). Any discussion regarding the scope of this hearing – which Minute Order No. 4 suggests is being conducted under protest, despite BLNR's unanimous vote in support of conducting this hearing – goes to heart of the merits.

[T]he manner in which the justice system operates must be fair and must also appear to be fair. . . . In an adjudicatory proceeding before an administrative agency, due process of law generally prohibits decisionmakers from being biased, and more specifically, prohibits decisionmakers from prejudging matters and the appearance of having prejudged matters.

Id. at 389, 363 P.3d at 237. In a different context, the supreme court has emphasized the importance of transcripts of proceedings. *O‘ahu Publications Inc. v. Ahn*, 133 Hawai‘i 482, 331 P.3d 460 (2014).

Any discussion regarding the scope of the hearing must be on the record to ensure that the issues in this contested case hearing are not being, and have not been, prejudged. “The essence of justice is largely procedural.” *Mortensen v. Board of Trustees of Employees’ Retirement System*, 52 Haw. 212, 220, 473 P.2d 866, 871 (1970)(cleaned up).

Dated: Honolulu, Hawai‘i October 14, 2021

/s/ David Kimo Frankel
Attorney for the Sierra Club

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of a Contested Case Challenging) DLNR File No. CCH-LD-21-01
the Continuation of the Revocable Permits)
Alexander & Baldwin, Inc. (A&B) and East) Certificate of Service
Maui Irrigation Company, LLC's (collectively)
A&B) for Tax Map Keys (2) 1-1-001:044 &)
050; (2) 2-9-014:001, 005, 011, 012 & 017;)
(2) 1-1-002:002 (por.) and (2) 1-2-004:005 &)
007 for Water Use on the Island of Maui)
_____)

Certificate of Service

Pursuant to Minute Order No. 1, a copy of the foregoing is being served via email today

to:

Linda.L.Chow@hawaii.gov

julie.h.china@hawaii.gov

lauren.k.chun@hawaii.gov

melissa.d.goldman@hawaii.gov

dlnr.land@hawaii.gov

ian.c.hirokawa@hawaii.gov

blue.kaanehe@hawaii.gov

Suzanne.D.Case@hawaii.gov

dschulmeister@cades.com takagi@cades.com Mmomose@cades.com

Dated: Honolulu, Hawai'i October 14, 2021

/s/ David Kimo Frankel
Attorney for the Sierra Club