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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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 the Preparation of
2-9-014:001, 005, 011, 012 & 017; (2) 1-1-) the Hearing Transcript; Certificate of Service
002:002 (por.) and (2) 1-2-004:005 & 007 for)
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 the Preparation of the Hearing Transcript

The Sierra Club requests that the Board of Land and Natural Resources order the preparation of a transcript of the hearing (and the prehearing conference) as required by HAR § 13-1-41.

Inexplicably, Chair Case and the deputy attorneys general decided that no transcript would be prepared prior to the parties' submission of their proposed findings of fact and conclusions of law. While the law is vague as to whether a transcript was needed at that stage of the contested case hearing (*see e.g.*, HRS 91-9(g))¹, BLNR's rules require the transcript be prepared for BLNR review now.

Subchapter 6 of your rules of practice and procedure outline the post-hearing procedures after a hearing officer has completed receiving the evidence. HAR § 13-1-41(b) defines the

¹ 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).

record.

(b) **The record shall include** the petition, notice of hearing motions, rulings, orders, **transcript of the hearing**, stipulations, documentary evidence, proposed findings, or other documents submitted by the parties, objections to the conduct of the hearing, the report of the hearing officer, and all other matters placed in evidence.

HRS § 92-11 provides:

Whenever in a contested case the officials of the agency who are to render the final decision **have not heard and examined all of the evidence**, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, **who shall personally consider** the whole record or **such portions thereof as may be cited by the parties**.

In exercising its rights pursuant to HRS § 92-11, the Sierra Club intends to cite much of the testimony of witnesses in its exception and in oral argument. HAR § 13-1-41(b) specifically identifies the “transcript of the hearing” as part of the record.

Not only do BLNR’s own rules require preparation of the transcript, but so does practicality. You will have difficulty finding and placing your cursor on the correct minute and second of referenced testimony. You will not know who is speaking. Your job will be made much more difficult without a transcript. It will take you ten times as long to familiarize yourself with the relevant parts of the record than if you had a written transcript available.

If it will take more than a week for the transcript to be prepared, the Sierra Club will request a postponement of the date that its exceptions are due.

Dated: Honolulu, Hawai‘i, April 28, 2022

/s/ David Kimo Frankel
Attorney for the Sierra Club

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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.s 1 & 5, a copy of the foregoing is being served via email
today to:

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Dated: Honolulu, Hawai'i, April 28, 2022

/s/ David Kimo Frankel
Attorney for the Sierra Club