



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390
2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
5. All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Sierra Club of Hawai'i	2. Contact Person Marti Townsend	
3. Address P.O. Box 2577	4. City Honolulu	5. State and ZIP HI, 96803
6. Email hawaii.chapter@sierraclub.org	7. Phone 808-538-6616	8. Fax

B. ATTORNEY (if represented)

9. Attorney Name David Kimo Frankel	10. Firm Name N/A	
11. Address 1638-A Mikahala Way	12. City Honolulu	13. State and ZIP HI, 96816
14. Email davidkimofrankel@hawaiiantel.com	15. Phone 808-345-5451	16. Fax

C. SUBJECT MATTER	
17. Board Action Being Contested CONTINUATION OF REVOCABLE PERMITS S-7263 (TAX MAP KEY (2) 1-1-001:044), S-7264 (TAX MAP KEYS (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) AND S-7265 (TAX MAP KEY (2) L-L-002:POR.002) TO ALEXANDER AND BALDWIN, INC., AND S-7266 (TAX MAP KEYS (2) 1-2-004:005 & 007) TO EAST MAUI IRRIGATION COMPANY, LIMITED, FOR WATER USE ON THE ISLAND OF MAUI	
18. Board Action Date October 11, 2019	19. Item No. D-1

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

The Sierra Club is a membership organization advocating for the protection of Hawai'i's unique natural environment. Formed in 1968, the Hawai'i Chapter of the Sierra Club has over 5,000 members throughout the Hawaiian Islands. Our members in East Maui are directly affected by the actions of this Board on item D-1, which seeks to continue temporary licenses, also known as the holdover of revocable permits, to Alexander and Baldwin (A&B) for the diversion of public trust water resources from streams in East Maui. Our members live along and draw water from the streams in the license area for residential and farming purposes. Our members enjoy the streams in the license area for their recreational and spiritual importance. This includes, but is not limited to, hiking, fishing, swimming, and other recreational uses in and around the streams of the proposed license area. Our members reside near, and use the stream water from the following streams: Hanehoi, Waipio, Ho'olawa, Hanawana, Mokupapa, Kailua, Makapipi, and Honokolā.

The rights of our members relevant to these streams are protected by the Hawai'i State Constitution and state law. Sierra Club's members have rights to a clean and healthful environment under article XI, section 9 of the Constitution, which mandates a contested case hearing whenever the State makes binding decisions under "laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources." *In re Application of Maui Elec. Co., Ltd.* ("MECO"), 141 Hawai'i 249, 264, 408 P.3d 1, 16 (2017) (quoting Haw. Const. art. XI, § 9); see also, *Flores v. Bd. of Land & Natural Res.*, 143 Hawai'i 114, 424 P.3d 469 (2018). To be clear, this right is created and protected by the Hawai'i State Constitution and protected by state statute as well.

BLNR actions related to "conservation, protection, and enhancement of natural resources" are governed by Hawai'i Revised Statutes Chapter 171, 205A, and 343. The public trust doctrine is enshrined in Article XI, section 1 of the state constitution. This constitutional provisions states in full:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

Haw. Const. art. XI, §1. BLNR may not continue revocable permits without first ensuring that the minimum expectations of the public trust doctrine are satisfied. Hawai'i Revised Statutes

21. Any Disagreement Petitioner May Have with an Application before the Board

The Sierra Club opposes the renewal of these permits because:

- (a) Alexander and Baldwin has failed to provide sufficient information to the BLNR as to how much water it is taking from each stream;
- (b) BLNR does not know how much water is being taken from each stream and if any water is being “wasted” by being taken from one stream and “dumped” into other streams where it overwhelms the stream channels, undercuts the banks and sends debris down stream to impact homesteads, farms and ocean water quality;
- (c) Alexander and Baldwin has failed to comply with conditions that BLNR has previously imposed;
- (d) the Environmental Impact Statement is not complete. The EIS has been unnecessarily delayed and as a result the Land Board does not have the information it needs to assess the impact of diversions prior to its decisionmaking, as Chapter 343 requires;
- (e) the proposal violates HRS chapters 171, 205A and 343;
- (f) granting the request violates the BLNR’s public trust responsibilities;
- (g) A&B has failed restore all the streams it promised to restore more than two years ago and BLNR has failed to impose any deadlines or require consultation with wildlife agencies and local residents and cultural practitioners for needed alterations of diversion structures and more complete restoration of streams that allow native species to thrive.

The basic issue raised in this proceeding is fulfilling BLNR’s duty under the constitutional public trust and state law to protect public trust resources. At issue in the action before the Land Board includes, but is not limited to:

- the impacts of diversions on the stream and surrounding ecosystem as well as water quality, and feasible action to mitigate or eliminate these impacts;
- the impacts of diversions on other uses of each stream including recreational and aesthetic enjoyment, and feasible action to mitigate or eliminate these impacts;
- the actual water needs of Alexander and Baldwin’s central Maui lands,
- practicable timelines for the restoration of stream connectivity, historical diversions no longer needed, and other restoration and mitigation activities,
- the amount of water actually needed to maintain land uses in central Maui, continued domestic County water use, and agricultural County water uses.

21. Continued from previous question:

- the amount of water generated from lands in East Maui privately owned by Alexander and Baldwin,
- proposals and timelines for the removal of historic diversions,
- consultation with downstream residents and farmers to minimize harm to them,
- culturally and environmentally appropriate amounts of stream flow diversion, if any.

Alexander and Baldwin seeks yet another continuation of holdovers on four revocable permits to access the public lands in East Maui for the purpose of diverting water from streams. The Sierra Club opposes the continuation of these revocable permits for the reasons outlined in or testimony as well as those argued in Civ. No. 19-1-0019-01 JPC.

BLNR has the duty to protect public trust resources in all the streams within the area encompassed by the revocable permits, not just those addressed by CWRM last year.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

The Sierra Club requests that the permits be denied. The applicant has not demonstrated sufficient need to justify the continued diversion of water from east Maui.

23. How Petitioner’s Participation in the Proceeding Would Serve the Public Interest

We provided eye-witness accounts and photographic evidence confirming that conditions imposed on prior permits have not been satisfied. In a contested case hearing, we will provide the Board with additional direct testimony from residents directly affected by the outcome of agenda item D-7. Our evidence will demonstrate which streams remain diverted, the location of debris, where connectivity is needed but is lacking, and where stream water is being wasted. We will also show that the applicant has made changes to stream flows without consideration to the affect on downstream residents and farmers. Our participation in a contested case hearing will help to ensure this Board has all the information it needs to make a decision that fully protects the public’s interests and satisfies the Board’s public trust obligations per the Hawai‘i State Constitution.

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Relevant statutes and constitutional provisions covered in this request are: HRS 171-6, 171-7, and 171-58; Hawai‘i Constitution Article XI, section 1, 2, 7, and 9.

√ Check this box if Petitioner is submitting supporting documents with this form.

√ Check this box if Petitioner will submit additional supporting documents after filing this form.

Marti Townsend



October 17, 2019

Petitioner or Representative (Print
Name)

Signature

Date