

**The Senate**  
**Office of Kaiuli'i Kahele**

May 2, 2019

Michael P. Victorino, Mayor  
County of Maui  
200 South High Street, 9th Floor  
Wailuku, Maui, Hawai'i 96793

Re: State Lands Water Lease Application

Aloha e Mayor Victorino,

With the adjournment of the 30th Legislature, 2019 Session, and the legislature's inability to reach agreement on the most sensible way to address revocable water permits reviewed and issued by the Department of Land and Natural Resources (DLNR), I would like to use the interim to help facilitate long-term water dispositions on the island of Maui.

As I have said many times through the course of the session, I strongly support the County of Maui and its Department of Water Supply's (DWS) ability to continue to depend on surface water diverted from state lands in East Maui via the East Maui Irrigation Company, LLC (EMI) aqueduct to provide for constitutionally-protected public trust purposes, including domestic water supplies for Upcountry Maui residents. EMI conveys water through the Wailoa Ditch for processing by the Kamole Weir Water Treatment Plant (WTP), as well as through the Hamakua Ditch to supply water to the County's Kula Agricultural Park. Importantly, Kamole Weir WTP is both a primary and backup water source during drier periods for DWS's Upcountry Maui system, and is a crucial supplier of reliable and sustainable domestic drinking water and fire protection for Upcountry Maui residents.

Since April 30, 2000, when the "1973 Agreement" expired, DWS has operated under an informal, unwritten "Memorandum of Understanding" with EMI. DWS entered into a formalized "Water Delivery Agreement" with EMI just last year, on September 14, 2018. Three months after that agreement, Alexander & Baldwin sold 50% of its ownership interest in EMI to Mahi Pono, LLC (Mahi Pono), with the remaining 50% ownership interest to be sold to Mahi Pono when "certain events in the future" occur.

In light of these developments, I would highly recommend that the County of Maui and DWS immediately submit a water lease application to the DLNR. A copy of the Request for State Lands Application Form is attached for your convenience. Doing so now will provide the Board of Land and Natural Resources ample time to review and issue a revocable permit to the

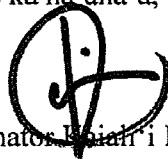
County of Maui and DWS by the end of this year so that Maui County secures its own, independent authority to continue to provide its residents with access to diverted surface water imported from state lands in East Maui via the EMI aqueduct system. Domestic water use is a protected "public trust purpose" and I am confident that as the necessary application requirements are satisfied, the County of Maui and DWS will secure a long-term water lease from the State of Hawai'i.

I truly believe it is in the best interest of the County of Maui to secure its own long-term water lease with the State of Hawai'i and to free itself from its dependency on private, commercial, third-party operators who are not duty bound, as we are, to uphold the state's public trust obligation to conserve and protect Hawai'i's natural resources for the benefit of present and future generations.

I am committed to working with you, your administration, and DWS to navigate this process. Indeed, our working together to be better stewards of the East Maui watershed and to provide for constitutionally-protected public trust purposes serves the public's best interest.

If you have any questions or would like to discuss this further, I can make myself available. Please do not hesitate to contact me.

Me ka ha'aha'a,



Senator Michael I. Kahele  
Chair, Senate Committee on Water and Land

Enclosure

cc: Governor David Y. Ige, State of Hawai'i  
Senate President Ronald D. Kouchi  
Senator J. Kalani English  
Senator Gilbert S.C. Keith-Agaran  
Senator Rosalyn H. Baker  
Clare Connors, Esq., Attorney General, Department of the Attorney General  
Chair Suzanne D. Case, Department of Land and Natural Resources  
Ceil Howe III, Principal, Mahi Pono, LLC  
Shan Tsutsui, Senior Vice President of Operations, Mahi Pono, LLC  
Jeff Pearson, Director, Department of Water Supply, County of Maui

**State of Hawaii**  
**Department of Land and Natural Resources**  
**Land Division**

**REQUEST FOR STATE LANDS (Direct Negotiation) – APPLICATION FORM**

This Application Form is for persons requesting State lands for the following categories:

- Right to temporarily enter onto State lands for a specific purposes
- Access, utility or other easements to private property
- Month-to-month revocable permit where an auction is prohibited
- Direct lease to eleemosynary organizations, public utilities, etc.
- Purchase of remnant
- Land patent in confirmation of Land Commission Award
- Land license
- Water lease pursuant to HRS Section 171-58

Please note the following important points:

- 1) Statutorily, directly negotiated leases and permits can only be issued in certain situations. In most cases, you must compete for the use of State lands through the public auction process. If you are interested in bidding on State leases through the auction process, please contact the District Branch staff in your county to obtain further information.
- 2) Persons who have had, during the five years preceding a previous sale, lease, license, permit or easement cancelled for failure to satisfy the terms and conditions are not eligible to purchase or lease public lands.
- 3) The use of State lands triggers the environmental assessment requirements of Chapter 343, HRS. Please contact the Office of Environmental Quality Control for their opinion of whether an environmental assessment is required and the process to be followed. Phone number: (808) 586-4185. Website: <http://hawaii.gov/health/environmental/oeqc/index.html>
- 4) You are responsible for contacting the appropriate agencies to verify that your proposed project has complied with all applicable zoning and permitting laws and regulations (e.g., State Land Use classification, Special Management Area, County General Plan, etc.).
- 5) You will be responsible for paying processing fees. If you are granted a disposition, you will be required to obtain insurance, among other requirements.

All applications must be complete to be considered for processing. Please submit two copies of the completed application form to the District Branch office in your county:

Oahu District Branch  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813  
Phone: (808) 587-0433; Fax: (808) 312-6357

Maui District Branch  
54 High Street, Room 101  
Wailuku, Hawaii 96793  
Phone: (808) 984-8103; Fax: (808) 984-8111

Hawaii District Branch  
75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
Phone: (808) 961-9590; Fax: (808) 961-9599

Kauai District Branch  
3060 Eiwa Street, Room 205A  
Lihue, Hawaii 96766  
Phone: (808) 274-3491; Fax: (808) 241-3535

**STATE OF HAWAII  
DEPARTMENT OF LAND & NATURAL RESOURCES**

**REQUEST FOR STATE LANDS  
APPLICATION FORM**

For DLNR use only:

Date of request: \_\_\_\_\_  
 Date request recvd: \_\_\_\_\_  
 Date request no. issued \_\_\_\_\_  
 Request number \_\_\_\_\_  
 Land Code: \_\_\_\_\_  
 Unit Code: \_\_\_\_\_  
 Status: \_\_\_\_\_ Future \_\_\_\_\_  
 Type of Request: \_\_\_\_\_  
 Assigned Land Agent: \_\_\_\_\_

**I. APPLICANT**

Should a land disposition result from your application, the following information will be used in the preparation of the legal documents. Therefore, please include all applicable, full legal names and addresses, one for each person/entity (attach additional sheets as necessary). If title is held by a trust, please include the trustee(s) name(s) and full description of the trust (e.g., George D. Smith, Trustee of the George D. Smith Revocable Living Trust dated June 1, 2001).

Applicant name(s): \_\_\_\_\_  
 Last name First Name

Mailing address: \_\_\_\_\_  
 No. and Street

City State Zip Code

Phone numbers: (\_\_\_\_) (\_\_\_\_) (\_\_\_\_)  
 Work Home Cellular

(\_\_\_\_) (\_\_\_\_)  
 Pager Fax E-mail address

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant intends to hold title as:

- ( ) Individual                      ( ) Corporation                      ( ) Partnership
- ( ) Husband and Wife              ( ) Limited Liability Corporation      ( ) Limited Partnership
- ( ) Trust                              ( ) Non-Profit Corporation          ( ) Association
- ( ) Joint Venture                      ( ) Limited Liability Partnership
- ( ) Other (specify): \_\_\_\_\_

For individual or husband and wife, type of tenancy:

- ( ) Tenant in Severalty      ( ) Tenants in Common      ( ) Joint Tenants      ( ) Tenants by the Entirety

For individual, marital status:

Single     Widow/widower     Married – spouse of: \_\_\_\_\_

For partnership or corporation, state of incorporation: \_\_\_\_\_

II. AGENT

If you have an attorney, consultant or other person processing this request for you, please include the following information.

Agent name:

\_\_\_\_\_

Last name

First Name

Agent address:

\_\_\_\_\_

No. and Street

\_\_\_\_\_

City

State

Zip Code

Phone numbers:

( ) \_\_\_\_\_

Work

( ) \_\_\_\_\_

Home

( ) \_\_\_\_\_

Cellular

( ) \_\_\_\_\_

Pager

( ) \_\_\_\_\_

Fax

E-mail address

III. TYPE OF REQUEST

- Right-of-entry (right to temporarily enter onto State lands for a specific purpose)
- Grant of easement (access, utility, seawall, etc.)
- Month-to-month revocable permit
- Direct lease (eleemosynary organizations, public utilities, government, renewable energy producers, etc.)
- Purchase of remnant
- Land patent in confirmation of a Land Commission Award
- Land license
- Water lease pursuant to HRS Section 171-58

Is this request being made to resolve an encroachment or other violation?     Yes     No

If yes, explain: \_\_\_\_\_

\_\_\_\_\_

IV. LOCATION AND AREA

If your request pertains to a specific parcel, please specify below.

Island:

Oahu

Kauai

Molokai

Hawaii

Maui

Town: \_\_\_\_\_ Tax Map Key: \_\_\_\_\_

Area: \_\_\_\_\_ acres/sq.ft. (circle one)

County Zoning: \_\_\_\_\_

State Land Use:     Agricultural                       Rural  
                                  Conservation                       Urban

Is property located in a Special Management Area?  
 Yes                                       No

V. USE

Identify the specific uses intended.

- Agriculture                                       Easement - Access
- Business/Commercial                       Easement - Utility
- Industrial                                       Easement - Seawall
- Pasture
- Other (specify): \_\_\_\_\_

A. Fully describe your proposed use of the public lands and/or water: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Attach a location map showing a preliminary sketch or plot plan of your proposed project in relation to the tax maps.

C. Describe any improvements you intend to place on the land and their approximate value: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. If constructing improvements, attach a Plan of Development showing improvements to be constructed and their location on the public lands including a timeframe for construction.

E. Is it your opinion that an environmental assessment is required? ( ) Yes ( ) No

If no, identify exemption: \_\_\_\_\_

If yes, describe completion of EA: \_\_\_\_\_

\_\_\_\_\_

F. Describe what other permits or approvals are required for this use and whether you have obtained such permits or approvals:

\_\_\_\_\_

\_\_\_\_\_

## VI. OTHER

A. If you are applying for a revocable permit for any type of use, you are required to provide the following information:

- 1) Describe your qualifications and experience in running this type of operation; and
- 2) Describe your long-term intentions for this operation. (Note: Revocable permits are temporary and may be revoked at any time.)

**B. If you are applying for a revocable permit for pasture or agricultural use, you are required to complete Attachment A.**

C. If you are applying for a water lease, you are required to provide the following information relating to the statutory criteria for issuance of a water lease:

1) Will your use of water cause any pollution? \_\_\_\_\_. Explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2) Will your use of water be consumptive or non-consumptive? \_\_\_\_\_

Explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



- 3) If your use of water will be non-consumptive, will the water you use be returned to the same stream or other body of water from which it was drawn? \_\_\_\_\_  
 Explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 4) If your use of water will be non-consumptive, will your use of the water affect the volume and quality of water or biota in the stream or other body of water? \_\_\_\_\_  
 Explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 5) Will any part of the requested water lease involve lands in the conservation district? \_\_\_\_\_. If yes, provide the status of any conservation district use application you have applied for: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

VII. CERTIFICATION

I/We hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected or my/our lease/permit/agreement may be cancelled.

\_\_\_\_\_  
 Printed Name

X \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

X \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

**For DLNR Use Only:**

**TO CLOSE FUTURE TENANT:**

Reason for closing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved by DLA: \_\_\_\_\_

Date request closed: \_\_\_\_\_