

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
OF THE COUNTY OF MAUI TO ENTER INTO
AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII,
DEPARTMENT OF LAND AND NATURAL RESOURCES,
BOARD OF LAND AND NATURAL RESOURCES
FOR A RIGHT-OF-ENTRY PERMIT FOR THE
WEST MAUI WELL DEVELOPMENT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The County of Maui, Department of Water Supply (“DWS”) desires to construct new wells in Honokowai, Lahaina, Maui to increase source supply for the DWS West Maui Water System. The well site, including the storage and transmission appurtenances, will be located on State of Hawaii lands, to wit, Tax Map Key Nos. (2) 4-4-002:014 (por.), (2) 4-4-004:009 (por.), (2) 4-4-004:011 (por.), and (2) 4-4-004:019 (por.). DWS requires a right-of-entry from the State of Hawaii to construct, use, maintain, and repair the wells, well site and appurtenances.

The Board of Land and Natural Resources, at its meeting on December 13, 2019, granted DWS such right-of-entry and a copy of the terms of the agreement is attached hereto and incorporated herein as Exhibit “1”. Such agreement has the potential to place a financial obligation on the County.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Authorization. The Council of the County of Maui hereby authorizes the Mayor or his authorized representative to execute the Right-of-

Entry Permit agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui
BLNR ROE for West Maui Well Dev (2020-02-10F)

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

February 11, 2020

RIGHT-OF-ENTRY PERMIT

PSF: 18MD-027

County of Maui
Department of Water Supply
200 S. High Street, 5th Floor
Wailuku, HI 96793
Attn: Jeffrey T. Pearson, Director

Dear Mr. Pearson:

Subj: Immediate Right-of-Entry to the County of Maui, Department of Water Supply, Honokowai, Lahaina, Maui, TMKs: (2) 4-4-002: portion of 014, and (2) 4-4-004: portions of 009, 011, and 019.

We are in receipt of your request for an immediate Right-of-Entry permit to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes, and to develop a well site, and construct potable water storage and transmission at the subject government lands, TMK (2) 4-4-002: portion of 014 and TMKs (2) 4-4-004: portions of 009, 011, and 019, which are located in Honokowai, Lahaina, Maui. The location is shown in the maps attached as Exhibit A.

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of December 13, 2019, Item D-9, the County of Maui, Department of Water Supply ("DWS") is hereby granted a Right-of-Entry permit to enter government lands situate at Honokowai, Lahaina, Maui, TMK (2) 4-4-002: portion of 014 and TMKs (2) 4-4-004: portions of 009, 011, and 019.

1. This right-of-entry shall commence upon our receipt of a) a copy of this right-of-entry permit countersigned by a duly authorized representative of the DWS; and b) certificate of insurance as indicated in paragraph four (4) below, and shall terminate upon the execution of the easement documents and Executive Order, or by January 1, 2021, whichever is sooner.

EXHIBIT " 1 "

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2. The **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall obtain the appropriate permits for work performed on State lands.

3. **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall procure, at their own cost and expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-VIII" or other comparable and equivalent industry rating, a policy or policies of general liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board of Land and Natural Resources (Board). The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources (Department). The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of **DWS**, its consultants, contractors and/or persons acting for or on its behalf. **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require **DWS**, its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify **DWS**, its consultants, contractors and/or persons acting for or on its behalf in writing of changes in the insurance requirements and **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice. The **DWS** shall ensure that the procuring of the required policy(s) of insurance shall not be construed to limit **DWS's** consultants, contractors and/or persons acting for or on its behalf, liability under this right-of-entry nor to release or relieve **DWS's** consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, **DWS** shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by **DWS's** consultants, contractors and/or persons acting for or on its behalf for negligence or neglect connected with this right-of-entry.

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4. At all times herein, **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
5. **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.
6. **DWS** shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of **DWS's** consultants, contractors and/or persons acting for or on its behalf relating to the use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises by **DWS's** consultants, contractors and/or persons acting for or on its behalf; (2) any failure on the part of **DWS's** consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in the use and control of **DWS's** consultants, contractors and/or persons acting for or on its behalf, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of **DWS's** consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by **DWS's** consultants, contractors and/or persons acting for or on its behalf, of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
7. **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of business of the **DWS**, its consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the Department of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by **DWS's** consultants, contractors and/or persons acting for or on its behalf, then the **DWS's** consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits,

representations and the like from time to time at the Department's request concerning the best knowledge and belief of DWS, its consultants, contractors and/or persons acting for or on its behalf, regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by DWS, its consultants, contractors and/or persons acting for or on its behalf.

8. **DWS shall ensure that, its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while DWS's consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by DWS's consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.**

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

9. **DWS, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry, shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.**
10. **DWS, its consultants, contractors and/or persons acting for or on its behalf shall not store any personal belongings in the right-of-entry area or premises during the effective period of this right-of-entry.**
11. **DWS shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from DWS's consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the Department's satisfaction the areas affected by such pollution or contamination, all at DWS's consultants, contractors and/or persons acting for or on its behalf own cost and expense.**
12. **Best management practices shall be employed to avoid having silt or dirt enter the ocean.**

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13. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered the **DWS**, its consultants, contractors and/or persons acting for or on its behalf shall stop work and contact the State Historic Preservations Division in Kapolei at (808) 692-8015 immediately.
14. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the **DWS** and the **DWS's** agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.
15. The parties acknowledge that reference made to persons acting for or on **DWS's** behalf in paragraphs 3 (insurance requirement), 6 (indemnification), 7 and 8 (indemnification, hazardous materials), and 11 (pollution and contamination) of this document, does not include public officers and employees.
16. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
17. This right-of-entry is revocable and terminable at any time for any reason in the sole and absolute discretion of the Chairperson.
18. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
19. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am authorized to waive rent for rights-of-entry for any government-related project. As your project meets this requirement, I hereby waive the rent.

Should you have no objections to the above-mentioned items, kindly sign in the space provided below and submit a copy of the signed concurrence to the DLNR Maui District Land Office.

Should you have any questions, please contact Land Agent, Seiko Machida, at (808) 984-8103.

Sincerely,

Suzanne D. Case
Chairperson

WE CONCUR:

County of Maui, Department of Water Supply

Print name:

Its:

_____, 2020

cc: District / Central Files

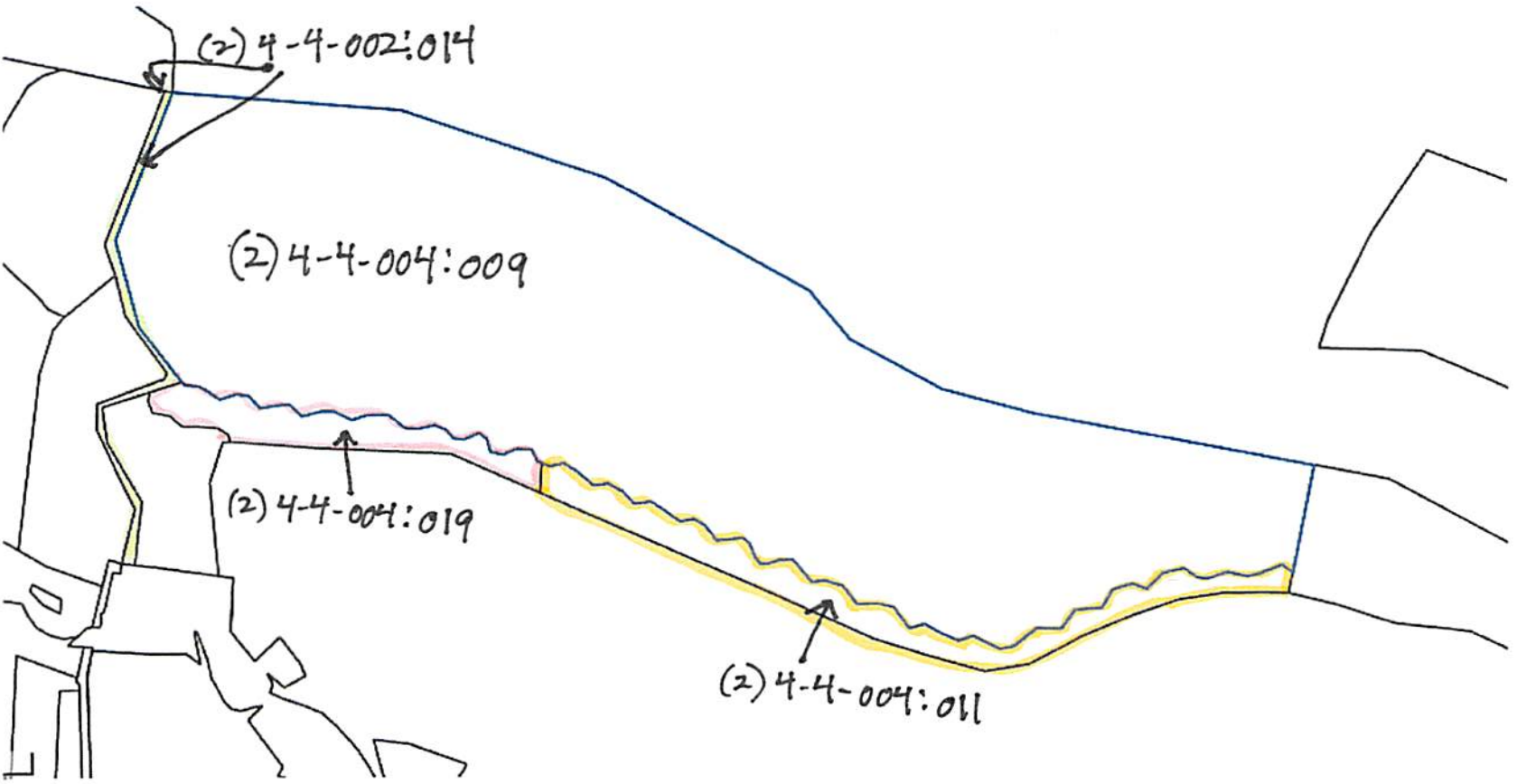


EXHIBIT A