



DEPARTMENT OF WATER COUNTY OF KAUAI

"Water has no Substitute – Conserve It!"

(SEPTEMBER 2023)

WAIVER AND RELEASE AGREEMENT Instruction Sheet

TO: ALL BUILDING PERMIT APPLICANTS

RE: WAIVER AND RELEASE AGREEMENT – RECORDATION INSTRUCTIONS

GENERAL INSTRUCTIONS:

1. If the Department of Water requires a Waiver and Release Agreement, all building permit applicants will be required to complete the agreement unless either of the conditions (i.e. Condition 1 or 2) listed below are met. Additionally, it shall be the applicant's responsibility to provide a copy of any document to prove either of the following conditions are met or any document required by the Department to verify the applicant has met one of the conditions. If either condition is met, the applicant may not be required to complete this Agreement.

- Condition 1: The specified location (i.e. TMK No.) and the type of project listed in the building permit application already has a recorded Waiver and Release Agreement.

Note: The project description on both the building permit application and the recorded Waiver and Release Agreement must match exactly (i.e. a recorded Waiver and Release Agreement for the specific location with a project description, "sheds", will not be acceptable for a building permit application for a dwelling unit).

Note: The Department of Water accepts "all projects" for Waiver and Release Agreements, to cover all future projects.

- Condition 2: A copy of the current deed for the lot clearly states that "domestic water service to the lot is not available from the Department of Water, County of Kaua'i", "non-availability of domestic water services from the Department of Water, County of Kaua'i", or similar wording, as determined by the Department.

Note: If there are any discrepancies in acceptable wording, a Waiver and Release Agreement (current form) will be required to be completed by the current owners of the lot. If the deed only specifies that the applicant must complete a Waiver and Release Agreement with the Department of Water, then the applicant will be required to complete the Agreement. If the deed refers to a recorded Waiver and Release document, the recorded document's wording must be verified by the Department of Water to include the project being applied for by the applicant.

2. If a Waiver and Release Agreement is required, **LINE-BY-LINE INSTRUCTIONS** to complete the Agreement are provided below. If you need assistance in completing this form, please call the Department at (808) 245-5400, or email at wrp@kauaiwater.org.
3. This Agreement is subject to the Department's approval. Following these instructions will greatly reduce the amount of time necessary to have your form approved by the Department.

4. This Agreement must be typed using black ink. Do **NOT** complete Steps 7, 8, and 9 until your form has been approved by the Department.
5. All blanked must be filled. If a blank is “Not Applicable”, please enter “Not Applicable”.
6. Be consistent. [e.g. if you list Owner as “Jane A. Doe”, please sign as “Jane A. Doe” and not “Jane Ann Doe.”]
7. Do not use abbreviations [e.g. use Street, not St.; Department of Water, not DOW].
8. When approved, the Department will return the Agreement to you to record with the Bureau of Conveyances. Use the [Bureau of Conveyances guide](#) to help ensure recordation of the Agreement.

LINE-BY-LINE INSTRUCTIONS:

Line 1 Fill in the TMK No. using the following as a guide. Example: TMK: (4) 3-8-005:002:0001

- 3: Zone Number (max. 1 digit)
- 8: Section Number (max. 1 digit)
- 005: Plat Number (max. 3 digits)
- 002: Parcel Number (max. 3 digits)
- 0001: CPR number (max. 4 digits; if no CPR number, use 0000)

Line 2 Enter the Owner’s name using the following format according to your situation:

<i>Individual:</i>	I, John Doe, unmarried
<i>Husband/Wife/Partner:</i>	We, John Doe and Jane Doe husband and wife
<i>Trust:</i>	I, John Doe, Trustee of the John Doe Revocable Living Trust dated January 1, 2000 We, John Doe, Trustee of the John Doe Revocable Living Trust dated January 1, 2000 and Jane Doe, Trustee of the Jane Doe Revocable Living Trust dated January 1, 2000
<i>Corporation (Company, Association, Partnership, Power of Attorney):</i>	ABC LLC, a Delaware limited liability company

Line 3 Enter the mailing address for each corresponding owner listed in Line 2. Enter the mailing address for each owner even if the owners have the same mailing address.

Line 4 Enter the residential or business address for each corresponding owner listed in **Line 2**; if the address is the same as **Line 3**, enter again here. Enter the address for each owner even if the owners have the same address.

Line 5 Enter the TMK and district in the fields provided. Enter the TMK exactly as entered on **Line 1**.

Line 6 In the field provided, describe the project in detail.

Line 7 The Applicant’s Notary to complete this section.

Line 8 On the “By” line, enter the Owner’s name exactly as entered in **Line 2**. For example, if the Owner is John Doe, enter as John Doe and not Joe A. Doe. On the “Its” line, enter the Owner’s position as entered in **Line 2**. For example, if the Owner is a trustee, enter “Trustee of the John Doe Revocable Living Trust dated January 1, 2000”. **DO NOT SIGN UNTIL THE DEPARTMENT HAS REVIEWED AND APPROVED YOUR FORM.** Once approved, use BLACK ink to sign.

Line 9 Please attach a notary form to your document that will fit your situation. For example, if you are a resident of California, use the notary form provided to you by that state's notary. **DO NOT NOTARIZE UNTIL THE DEPARTMENT HAS REVIEWED AND APPROVED YOUR FORM.**

BUREAU OF CONVEYANCES GUIDE

After you have received approval from the Department of Water, you will need to record the Agreement with the Bureau of Conveyances. The Department of Water does not have authority over the Bureau of Conveyances. It is a separate state agency with its own rules and regulations. To assist you in the recordation process, the Department provides the following guidance. Any issues will be resolved as instructed by the Bureau of Conveyance.

1. After you have received approval from the Department of Water, you must sign the Agreement in BLACK ink.
2. To expedite the return of your Agreement from the Bureau of Conveyances, please mail the original and one (1) copy of the Agreement along with a check for the correct fee payable to the Bureau of Conveyances, State of Hawai'i. Include two (2) self-addressed stamped envelopes with the signed originals. The signed Agreements, fee, and self-addressed stamped envelopes must be sent to:

Bureau of Conveyances
P.O. Box 2867
Honolulu, HI 96803

Click [here](#) for additional payment options.

Click [here](#) for current Bureau fees. EFFECTIVE MONDAY 2/27/2017 the recording fee for documents up to and including 50 pages is \$41.00 per document.

3. The Bureau of Conveyances will keep the original Agreement for processing which may take a few months. However, the Bureau of Conveyances will return the copy of the recorded Agreement within approximately ten (10) business days to the Department of Water. Upon receipt the Department will process your application. The original will be returned to you for your records.

If you have additional questions, click [here](#) for frequently asked questions or [contact the Bureau](#).

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return By: **MAIL [XX]** Pickup []

TO:

**DEPARTMENT OF WATER
4398 PUA LOKE STREET
LĪHU‘E, KAUA‘I, HAWAI‘I 96766**

Document contains _____ pages

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WAIVER AND RELEASE AGREEMENT

for

TMK: (4) ____ - ____ - _____ : _____ : _____

KNOW ALL PERSONS BY THESE PRESENTS:

In compliance with the Rules and Regulations of the Department of Water, County of Kaua‘i, State of Hawai‘i,

Owner Name

Owner Mailing Address

Owner Residential or

Business Address

2

Click here to enter text.

3

Click here to enter text.

4

Click here to enter text.

5

herein the “Owner,” being fully aware that Owner’s property identified as Tax Map Key No. TMK: (4) __ - __ - _____ : _____ : _____ ; District: Choose an item., Kaua‘i, Hawai‘i, hereinafter “Property,” is presently without water or water service from said department, does hereby covenant and agree to the provisions of this Waiver and Release Agreement, herein the “Agreement.”

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1. Building Permit Approval; No Guarantee of Water Supply or Service. Owner is presently seeking a building permit from the Building Division of the Department of Public Works, County of Kaua‘i for [Click here to enter text.](#), herein, the “Project,” on the Property and desires to commence construction of the Project knowing that no Department supplied water service of any kind exists and acknowledging and accepting the fact that no Department supplied water service may ever exist at the Property. The issuance to Owner of a building permit by the County of Kaua‘i for the Project on the Property shall not infer, warrant, or guarantee that water or water service by the Department will be provided to the Property at any time in the future.
2. Waiver and Release; Indemnification. In consideration of the Department’s approval of Owner’s building permit, Owner hereby waives, releases, and discharges the Department and shall indemnify, hold harmless, and defend the Department from and against all claims, actions, suits, costs, losses, demands, liabilities, injuries or death to persons, or damages to property, of every nature and kind, in equity or in tort, arising from or related to no Department supplied water or water service, or both, to the Property, and for Owner’s failure to comply with any provision of this Agreement.
3. Binding Effect. The servitudes created by this Agreement shall run with the land and shall bind Owner. The Department shall have the right to enforce this Agreement by appropriate action at law or suit in equity against Owner and all costs and fees including reasonable attorney’s fees associated with the enforcement of this Agreement shall be at Owner’s sole expense.
4. Recordation; Effect of Failure to Record. Owner agrees that this Agreement must be recorded, and that Owner will bear the burden of any costs associated with the recordation. Owner’s failure to record this Agreement shall render the Department’s approval of Owner’s building permit void.
5. Cancellation. The Department may at any time, unilaterally, and in the Department’s sole and absolute discretion, execute a cancellation of this instrument and record the same in the Bureau of Conveyances of the State of Hawai‘i when this instrument is no longer necessary.
6. Definitions. As used in this Agreement:

“Department” means and includes the Board of Water Supply and the Department of Water, and their respective officers and employees, and the County of Kaua‘i and its respective officers and employees.

“Owner” means the singular and plural, masculine and feminine, and natural persons, trustees, corporations, partnerships, limited partnerships, sole proprietorships, and other forms of business entities, and also means the Owner’s estates, heirs, personal representatives, successors, successors-in-trust, assigns, lienors, mortgagees, and any other natural persons or business entities to whom an interest in the Property may be conveyed or who may claim an interest in the Property.

“Project” means and includes, but is not limited to: residences, sheds, barns, garages, gazebos, pools, green houses, shade houses, ponds, guest houses, cottages, equipment maintenance buildings, office, workshops, studios, animal shelters/houses, storage shelters, retaining walls, wall fences, wind mills/generators, towers, storage tanks, wells, towers, restaurants, stores, waste water treatment facilities, factory/processing buildings, hospitals, school buildings, clinics, airport facilities, car washes, retail buildings, and temples/churches.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single instrument as though the signatures of all the parties are upon the same document.
8. Form and Legality. This Agreement has been approved as to form and legality by the County Attorney as required by the Charter of the County of Kaua‘i. No modification of any term herein, other than the completion of the fillable fields, is permitted without the express written approval of the County Attorney or a Deputy County Attorney. Any such modification made without the express written approval of the County Attorney or Deputy County Attorney will result in the revocation of the approval as to form and legality.

[SIGNATURES ON FOLLOWING PAGES]

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IN WITNESS WHEREOF, the Owner hereby makes and duly executes this Agreement to be effective this [Click here to enter text.](#) day of [Choose an item., Click here to enter text.](#)

OWNER(S):

8

By: [Click or tap here to enter text.](#)

Its: [Click or tap here to enter text.](#)

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Owner: Please attach applicable notary section to your document (needs to be letter size paper, 8 1/2" x 11"). Your notary section should match the situation under which you are signing this document. (You may check our website for a list of example notary sections)