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Attorney for the Sierra Club

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 to Reopen the Contested
2-9-014:001, 005, 011, 012 & 017; (2) 1-1-) Case Hearing to Receive Two Quarterly
002:002 (por.) and (2) 1-2-004:005 & 007 for) Reports; Exhibit A; Certificate of Service
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 to Reopen the Contested Case Hearing to Receive Two Quarterly Reports

The Sierra Club requests that the board reopen the contested case, pursuant to HAR §§ 13-1-11(d) and 13-1-45(b)(3), and simply receive into the record the quarterly reports that A&B (collectively Alexander & Baldwin, Inc., and East Maui Irrigation, Ltd.) submitted to DLNR for the fourth quarter of 2021 and the first quarter of 2022. These quarterly reports directly relate to the application. HAR § 13-1-32.4; *see also* HAR § 13-1-16; HRS § 91-14(d) and (e). The Sierra Club is not asking for any more testimony from any witness. Rather, the Sierra Club believes that given the long delay in the drafting of the hearing officer's recommendation, BLNR would be best served with more data – and more contemporary data. More complete data leads to better decisionmaking, in fulfillment of the board's public trust duties. The record would be expanded by two documents, both produced by A&B. Because A&B produced these documents, no party would suffer any prejudice. If this motion is resolved expeditiously, it should cause no delay at


all.

There is another reason why the board must grant this motion. On April 20, 2022, Mahi Pono Vice President of Operations Grant Nakama (a witness in this case) emailed hearing officer Suzann Case directly. Exhibit A. His email contained the quarterly report for the first quarter of 2022. His communication was an *ex parte* communication directly related to this proceeding. This document should be made available to all members of BLNR, not just the hearing officer (and chair). The Sierra Club must be given an opportunity to address the contents of the report that was emailed directly to Chair Case. The Sierra Club cannot address the contents unless the report is made part of the record in this contested case hearing.

Dated: Honolulu, Hawai'i, May 3, 2022

/s/ David Kimo Frankel
Attorney for the Sierra Club

EXHIBIT A

From: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov> 
Subject: FW: EMI/A&B Revocable Permits - Q1 2022 Status Report
Date: April 20, 2022 at 11:18 AM
To: David Kimo Frankel <davidkimofrankel@gmail.com>



Mr. Frankel

Most recent report is attached.

Thank you

From: Grant Nakama <grant.nakama@mahipono.com>
Sent: Wednesday, April 20, 2022 11:07 AM
To: Case, Suzanne D <suzanne.case@hawaii.gov>
Cc: Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>; Meredith Ching <mching@abhi.com>; Mark.vaught@mahipono.com
Subject: [EXTERNAL] EMI/A&B Revocable Permits - Q1 2022 Status Report

Aloha Chair Case,

Attached is the Q1 2022 status report on A&B and EMI's compliance with the terms and conditions imposed by the Board of Land & Natural Resources as part of its November 13, 2020 approval of Revocable Permits S-7263, S-7264, S-7265, and S-7266. Although we recognize that the BLNR's approval of 2022 RPs is still pending, we are providing this status report for informational purposes under the assumption that the existing permit conditions continue to apply.

Please do not hesitate to contact us should you have any questions on the attached permit compliance status report.

Thank you,

Grant Nakama

VP of Operations | Mahi Pono, LLC
phone: (808) 250-7705 | **email:** grant.nakama@mahipono.com
website: www.mahipono.com
mailing: PO Box 1104, Puunene, HI 96784



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EMI RP
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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:

Linda.L.Chow@hawaii.gov

melissa.d.goldman@hawaii.gov

dlnr.land@hawaii.gov

ian.c.hirokawa@hawaii.gov

blue.kaanehe@hawaii.gov

suzanne.case@hawaii.gov

Caleb.Rowe@co.maui.hi.us

dschulmeister@cades.com takagi@cades.com Mmomose@cades.com

Dated: Honolulu, Hawai'i, May 3, 2022

/s/ David Kimo Frankel
Attorney for the Sierra Club