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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of the Contested Case Hearing  
Regarding Water Licenses at Honomanu,  
Keanae, Nahiku and Huelo, Maui

DLNR FILE No. 01-05-MA

ALEXANDER & BALDWIN, INC.'S AND  
EAST MAUI IRRIGATION COMPANY,  
LIMITED'S SUBMISSION OF  
ENVIRONMENTAL IMPACT  
STATEMENT SCOPE OF WORK;  
EXHIBIT "A"; CERTIFICATE OF  
SERVICE

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STATE OF HAWAII

**ALEXANDER & BALDWIN, INC.'S AND EAST MAUI IRRIGATION  
COMPANY, LIMITED'S SUBMISSION OF ENVIRONMENTAL IMPACT  
STATEMENT SCOPE OF WORK**

Pursuant to the Order For A&B to Commence the Environmental Review Process and Deferring Decision on Petitioners' Motion to Establish Scope of Reconvened Contested Case Proceedings issued on April 14, 2016, Alexander & Baldwin, Inc. and East Maui Irrigation Company, Limited hereby submit the Scope of Services For Preparation of a Chapter 343, Hawai'i Revised Statutes Environmental Impact Statement For Proposed Lease For the Nahiku, Ke'anae, Honomanū, and Huelo License Areas, attached hereto as Exhibit "A."

DATED: Honolulu, Hawai'i, June 9, 2016.

CADES SCHUTTE LLP

  
\_\_\_\_\_  
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and EAST MAUI IRRIGATION COMPANY,  
LIMITED

**Scope of Services for  
Preparation of a Chapter 343,  
Hawai‘i Revised Statutes  
Environmental Impact  
Statement  
for**

**PROPOSED LEASE FOR THE  
NĀHIKU, KE‘ANAE, HONOMANŪ,  
AND HUELO LICENSE AREAS**

Prepared for:

**Alexander & Baldwin, Inc. and  
East Maui Irrigation Company, Ltd.**

June 2016

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|--------------------|--|

# **I. INTRODUCTION**

# I. INTRODUCTION

## A. BACKGROUND

In May 2001, Alexander & Baldwin, Inc. and East Maui Irrigation Company, Ltd. (EMI) (also collectively referred to as A&B) filed an Application for the Sale of Lease at Public Auction (“A&B Lease Application”) with the Board of Land and Natural Resources (BLNR) seeking a long-term 30-year lease for the “*right, privilege, and authority to enter and go upon*” the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas “*for the purpose of developing, diverting, transporting, and using government-owned waters*”. Compliance with the requirements of Chapter 343, Hawaii Revised Statutes (HRS) is necessary prior to the BLNR’s consideration of the long-term lease request. By order dated April 14, 2016, the BLNR directed A&B, to provide to the Board, a scope of work for the preparation and processing of an environmental review document pursuant to Chapter 343, HRS. See **Appendix “A”**. In preparing the scope of work, A&B has assumed that an Environmental Impact Statement (EIS) process instead of an Environmental Assessment process would be the appropriate means of addressing the requirements of Chapter 343, HRS, for the proposed lease request. The trigger for compliance with Chapter 343, HRS environmental review is the use of state lands. It is assumed that the BLNR will be the Accepting Authority for the EIS.

It is noted that the BLNR’s order required specific content requirements to be incorporated in the scope of work, as follows:

1. The scope of work should distinguish those portions of the EIS that can be undertaken prior to the Commission on Water Resource Management’s (CWRM) decision on the petition to amend the Interim Instream Flow Standards (IIFS) from those that require a decision from the CWRM prior to completion.
2. The scope of work should demonstrate compliance with requirements contained in Hawai‘i Administrative Rules, Section 11-200-17.
3. The scope of work should include a tentative schedule for commencement and completion of various portions of the scope of work.

With respect to the EIS schedule noted in Item No. 3, above, the order states that to the degree that A&B’s decision to transition away from sugar cane cultivation affects the ability of, or timing for A&B to complete portions of the environmental review document, that should be noted in the scope of work.

This report sets forth the scope of work for the preparation and processing of an EIS, as required by the BLNR.

## **B. HISTORY OF WATER LEASES**

The A&B Lease Application seeks to continue the operation by A&B subsidiary, EMI, of the East Maui aqueduct system which is an integrated system of diversions, ditches, intakes, and tunnels that collects water from streams located on the rainy windward slopes of East Maui and transports it to A&B's sugar cane fields in Central Maui, as well as to the Maui County Department of Water Supply for the domestic water needs of Upcountry Maui and the irrigation needs of small farms throughout Upcountry as well as in the Kula Ag Park. The watersheds from which it collects water total approximately 50,000 acres, of which EMI owns approximately 17,000 acres. Approximately 33,000 acres in the Huelo, Honomanū, Ke'anae, and Nāhiku watersheds are owned by the State of Hawai'i and have historically been leased to EMI for the purposes of developing, diverting, transporting and using the government-owned waters.

The aqueduct system was constructed in phases beginning in 1876 in accordance with agreements between EMI's predecessor entities and the Kingdom of Hawai'i and later the Territory of Hawai'i. Major milestone completion dates of the current system include the original 17-mile ditch in 1878, Koolau Ditch in 1904, the Haiku Ditch in 1914, the Kauhikoa Ditch in 1915, and the Wailoa Ditch in 1923. Since 1938, the relationship between the government of Hawai'i and EMI with regard to the coordinated operation of the Ditch System on government and EMI owned lands has been based on an agreement (the "1938 Agreement") dated March 18, 1938 between the Territory of Hawai'i and EMI. The 1938 Agreement provided a framework for a transition from a patchwork of previously issued water leases with differing lease and rental terms, to the subsequent issuance by the Territory, following public auction, of long-term water lease for each of the four (4) watersheds that comprise the current license areas.

The four (4) license areas and their respective most recent long-term lease terms are listed in **Table 1**. After the expiration of the terms of the long-term lease, revocable permits were issued. The revocable permits are issued by the BLNR and administered by the Department of Land and Natural Resources' (DLNR) Land Division.



**Table 1.** License Areas and Final Lease Before Conversion to Revocable Permits

| License Area | General Lease Number | Term      |
|--------------|----------------------|-----------|
| Nāhiku       | GL 3505              | 1955-1976 |
| Ke‘anae      | GL 3349              | 1950-1971 |
| Honomanū     | GL 3695              | 1962-1986 |
| Huelo        | GL 3578              | 1960-1981 |

The location of the four (4) license areas are illustrated in **Figure 1** and described in **Table 2** below.

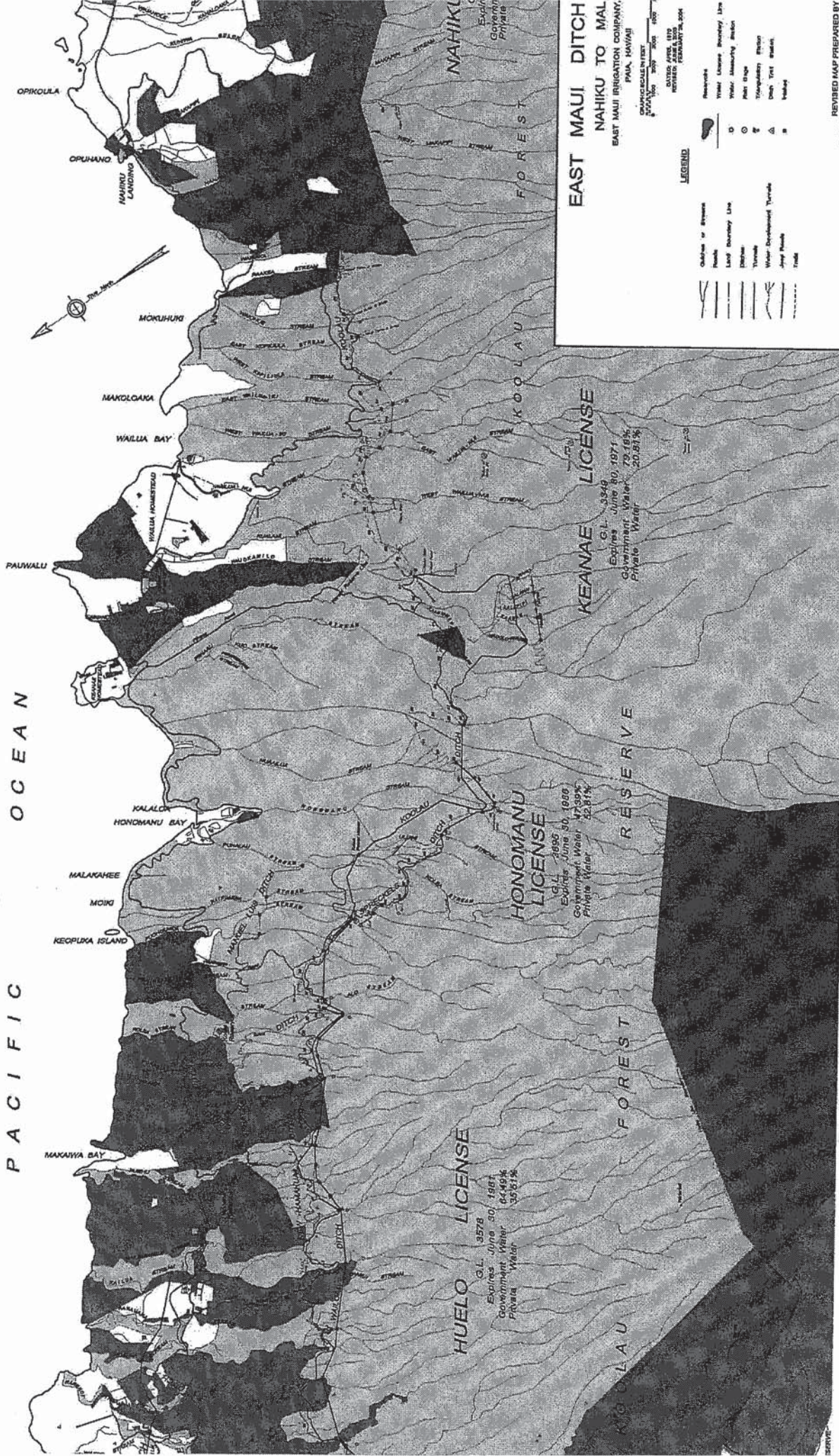
**Table 2.** License Areas

| License Area | Tax Map Key  | Area                           | Revocable Permit No. |
|--------------|--|--------------------------------|----------------------|
| Nāhiku       | (2)1-2-04:05, 07                                   | 10,111.220 acres, more or less | S-7266               |
| Ke‘anae      | (2)1-1-02:02 (por.)                                | 10,768.000 acres, more or less | S-7265               |
| Honomanū     | (2)1-1-001:44                                      | 3,381.000 acres, more or less  | S-7263               |
| Huelo        | (2)1-1-001:05<br>(2)2-9-014: 01, 05, 11, 12,<br>17 | 8,752.690 acres, more or less  | S-7264               |

As noted previously, the A&B Lease Application was filed with the BLNR in May 2001, seeking a long-term, 30-year lease rather than continuing with year-to-year revocable permits. Shortly thereafter, Na Moku Aupuni O Koolau Hui, Inc. (“Na Moku”) and Maui Tomorrow requested a contested case hearing, with Native Hawaiian Legal Corporation (NHLC) filing on behalf of petitioners Na Moku, Elizabeth Lapenia, Beatrice Kekahuna, and Marjorie Wallett. (In May 2007, Elizabeth Lapenia withdrew from the case and is no longer represented in it.) Concurrently, the Petitioners filed with the Commission on Water Resources Management (CWRM) a Petition to Amend the Interim Instream Flow Standard (IIFS) for 27 Streams in East Maui.

CWRM has not issued a final decision on the IIFS for the 27 streams, which is the subject of a contested case proceeding. The BLNR has not reconvened the contested case hearing for the A&B Lease Application pending the outcome of the IIFS proceedings.

PACIFIC OCEAN



**EAST MAUI DITCH**  
**NAHIKU TO MAL**  
**EAST MAUI IRRIGATION COMPANY,**  
 PAA, HAWAII

CONTRACT NO. 1000-1000-1000  
 DATED APRIL 1970  
 NUMBER: 1000-1000-1000

**LEGEND**

|  |                             |
|--|-----------------------------|
|  | Ditch or Stream             |
|  | Reservoir                   |
|  | Water License Boundary Line |
|  | Land Boundary Line          |
|  | Water Hammer Section        |
|  | Pass Gate                   |
|  | Tunnel                      |
|  | Irrigability Section        |
|  | Water Development Turnout   |
|  | Pipe Bank                   |
|  | Field                       |

REVISED MAP PREPARED BY  
 RONALD W. FURBER ENGINEERING

Proposed Lease for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas

### C. STREAMS WITHIN LICENSE AREAS

There are 40 streams within the four (4) license areas. Of these 40 streams, A&B currently diverts water from 36 of these streams, but is in the process of permanently abandoning all of its diversions on and restoring water to five (5) of these 36 streams. In light of this restoration action, A&B requests to continue to divert water from 31 streams. See Table 3. The EIS shall assess the impacts of the “right, privilege, and authority to enter and go upon” the license areas “for the purpose of developing, diverting, transporting, and using government-owned waters” for the 31 streams.

**Table 3. License Area Streams**

| License Area                                   | No. | Stream Name             | Subject to Petition to Amend IIFS? | Notes on Diversion                               |
|--|-----|-------------------------|------------------------------------|--|
| Nahiku License Revocable Permit No. S-7266     | 1   | Makapipi                | Yes                                |  |
|  | 2   | Hanawi                  | Yes                                |  |
|  | 3   | Kapaula                 | Yes                                |  |
| Keanae License Revocable Permit No. S-7265     | 4   | Waiaaka                 | Yes                                |  |
|  | 5   | Paakea                  | Yes                                |  |
|  | 6   | Puakea                  | No                                 |  |
|  | 7   | Waiohue                 | Yes                                |  |
|  | 8   | Puakaa                  | Yes                                |  |
|  | 9   | Kopiliula               | Yes                                |  |
|  | 10  | East Wailua-iki         | Yes                                |  |
|  | 11  | West Wailua-iki         | Yes                                |  |
|  | 12  | East and West Wailuanui | Yes                                | Planned for full and permanent restoration       |
|  | 13  | Waikani*                | Yes                                | Not diverted                                     |
|  | 14  | Kualani                 | Yes                                | Not diverted (stream is tributary of Waiokamilo) |
|  | 15  | Waiokamilo              | Yes                                | Fully restored in 2007                           |
|  | 16  | Palauhulu               | Yes                                | Planned for full and permanent restoration       |
|  | 17  | Waianu/Ohia             | Yes                                | Not diverted                                     |
| Honomanū License - Revocable Permit No. S-7263 | 18  | Piinaau                 | Yes                                | Planned for full and permanent restoration       |
|  | 19  | Nuaailua                | Yes                                |  |
|  | 20  | Honomanū                | Yes                                |  |
|  | 21  | Kolea/Punalau           | Yes                                |  |
|  | 22  | Haipuaena               | Yes                                |  |
| Huelo License                                  | 23  | Puohokamoa              | Yes                                |  |

| License Area                   | No.     | Stream Name              | Subject to Petition to Amend IIFS?         | Notes on Diversion                         |
|--------------------------------|---------|--------------------------|--|--|
| Revocable Permit<br>No. S-7264 | 24      | Wahinepee                | Yes  |  |
|                                | 25      | Alo                      | Yes  |  |
|                                | 26      | Waikamoi                 | Yes  |  |
|                                | 27      | Kolea                    | No   |  |
|                                | 28      | Punaluu                  | No   |  |
|                                | 29      | Kaaiea                   | No   |  |
|                                | 30      | Oopuola                  | No   |  |
|                                | 31      | Puehu                    | No   |  |
|                                | 32      | Naililihaele             | No   |  |
|                                | 33      | Kailua/Ohanui            | No   |  |
|                                | 34      | Hanauana                 | No   |  |
|                                | 35      | Hoalua                   | No   |  |
|                                | 36      | Puolua/Hanehoi           | Yes  | Planned for full and permanent restoration |
|                                | 37      | Waipio                   | No   |  |
|                                | 38      | Mokupapa                 | No   |  |
|                                | 39      | Hoolawa-Lili/Hoolawa-Nui | No   |  |
| 40                             | Honopou | Yes                      | Planned for full and permanent restoration |  |

\* Waikani is listed on this table because a Petition to amend the IIFS for Waikani has been filed. Waikani, however, is a waterfall on the Wailuanui Stream.

#### D. FORMAT FOR DOCUMENTING THE EIS SCOPE OF WORK

The EIS scope of work described in this report reflects the process-oriented nature of Chapter 343, HRS environmental review documents. Therefore, while the scope of work presented herein seeks to be as comprehensive as possible in terms of defining actions to be managed and implemented by the EIS preparer, input received from agencies, organizations, and the public during various phases of document preparation and review may be recognized and incorporated into the EIS by the EIS preparer and Accepting Authority.

The EIS scope of work presented in this report addresses topic areas consistent with the BLNR's order and is organized by section headings, as summarized in **Table 4**.

**Table 4. Summary of Report Organization**

| <b>Report Chapter</b> | <b>Subject Matter</b>   |
|-----------------------|---|
| Chapter II            | Scope of Work for the EIS Preparation Notice (EISPN) and Attendant Consultation/Scoping Process |
| Chapter III           | Scope of Work for the Preparation of the Draft EIS  |
| Chapter IV            | Scope of Work for the Preparation of the Final EIS  |
| Chapter V             | Preliminary Time Schedule for the EIS Process   |

**II. SCOPE OF WORK FOR THE  
ENVIRONMENTAL IMPACT  
STATEMENT PREPARATION  
NOTICE (EISPN) AND  
ATTENDANT  
CONSULTATION/SCOPING  
PROCESS**

## II. SCOPE OF WORK FOR THE ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE (EISPN) AND ATTENDANT CONSULATION/SCOPING PROCESS

### A. ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE DEFINING THE PROPOSED ACTION

The preparation of the Draft and Final EIS documents is guided by the provisions of Hawaii Administrative Rules (HAR), Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules. The initial document preparation phase of the EIS process is the preparation of the EIS Preparation Notice (EISPN). The EISPN addresses the content requirements of an Environmental Assessment and serves as a mechanism for soliciting early input from agencies, citizen groups and individuals. In this instance, comments received on the EISPN would serve to identify key issues which would be addressed in the Draft EIS and Final EIS.

The EISPN will identify the proposed action to be assessed during the EIS process. In this case, the proposed action is a long-term 30-year lease for the *“right, privilege, and authority to enter and go upon”* the license areas *“for the purpose of developing, diverting, transporting, and using government-owned waters”* from the 31 streams in the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas. The lease will not allow more water to be diverted than allowed by the IIFS decisions, currently pending before the CWRM, and as may be further modified in the future.

As noted previously, the petition to amend the IIFS for 27 streams is pending with the CWRM. Pursuant to a court ruling made in response to the appeal of a 2003 BLNR decision in the contested case hearing for the A&B Lease Application, the BLNR may wait for the CWRM to act on the IIFS petitions and rely on CWRM’s determination as to the minimum instream flows necessary to protect traditional and customary practices of native Hawaiians, rather than conducting its own independent investigation of these issues as part of the lease process. Any disposition of water by the BLNR in connection with the lease application would be subject to the amended IIFS established by CWRM. Accordingly, the environmental review process under Chapter 343, HRS cannot be properly completed until the CWRM issues a final decision on the petitions to amend the IIFS.

The timing of a final decision from the CWRM on the petitions to amend the IIFS is unknown. A preliminary time schedule for the EIS process as it relates to CWRM's decision on the petitions to amend the IIFS is discussed in Chapter V. As noted in Chapter V, there are some portions of the EIS process that may be undertaken prior to the CWRM decision on the amended IIFS while other tasks will require a decision from CWRM prior to EIS completion.

In the event the EISPN is published prior to the CWRM decision on the amended IIFS, the proposed action described in the EISPN shall state that the amount of water to be diverted will be dependent on the pending petitions to amend the IIFS and that the Draft EIS and supporting technical studies will assess the impacts of the water lease, taking into account the water availability set forth by the CWRM decision on amending the IIFS for the 27 streams. The EISPN should identify the parameters, such as the CWRM decision, that will define the proposed action that will be assessed in the Draft EIS.

## **B. IDENTIFICATION OF ISSUES TO BE ADDRESSED IN THE ENVIRONMENTAL IMPACT STATEMENT**

Issues identification may not be limited to the EISPN review process, but may also include a public scoping process which may consist of meetings with interested and affected stakeholders. Issues identification may also be defined through review of testimony and filings with the CWRM. Other means of soliciting input for purposes of identifying issues to be addressed in the EIS document include review of testimony and documents associated with related water use matters affecting East Maui Streams. Irrespective of the method of identifying issues and concerns, the EIS preparer shall utilize best efforts to thoroughly identify issues which should be addressed in the EIS document.

It is noted that issues identification is a work element which is not limited to a specific phase of the EIS process (i.e., issues identification extends beyond the EISPN phase of work). For example, as technical studies are prepared and their respective findings are disclosed in the Draft EIS, comments on the studies may lead to new questions and comments which should be addressed in the Final EIS.

With respect to this EIS Scope of Work, an initial list of issue topics which are deemed appropriate for consideration in the EIS are summarized in **Table 5**. The issue categories and topics listed in **Table 5** follow, in part, the analytical framework for defining instream flow standards. It is expected that this list will be expanded once the EISPN and Draft EIS processes are initiated.



**Table 5. Preliminary List of Issues to be Addressed in the EIS**

| Issue Category                             | Topics to be Addressed in EIS   |
|--|---|
| Existing Conditions                        | <ul style="list-style-type: none"> <li>• Existing and Surrounding Land Use</li> <li>• Topography and Soil Characteristics</li> <li>• Climate</li> <li>• Hazardous Materials/Substances</li> </ul>   |
| Hydrogeology                               | <ul style="list-style-type: none"> <li>• Groundwater Interaction</li> <li>• Surface-Water Flows</li> </ul>  |
| Fish/Wildlife Habitat                      | <ul style="list-style-type: none"> <li>• Native Vertebrates</li> <li>• Invertebrates</li> <li>• Invasive Species</li> <li>• Abundance</li> <li>• Diversity</li> <li>• Distribution</li> <li>• Species Sustainability</li> </ul>               |
| Ecosystem Maintenance                      | <ul style="list-style-type: none"> <li>• Estuaries</li> <li>• Wetlands</li> <li>• Riparian areas</li> <li>• Nearshore Waters</li> </ul>   |
| Water Quality                              | <ul style="list-style-type: none"> <li>• Water Quality Standards</li> <li>• Total Maximum Daily Load</li> </ul>   |
| Natural Hazards                            | <ul style="list-style-type: none"> <li>• Flooding</li> <li>• Tsunami Exposure</li> </ul>  |
| Historic Resources                         | <ul style="list-style-type: none"> <li>• Archaeology</li> <li>• Cultural Resources</li> </ul>   |
| Hawaiian Rights                            | <ul style="list-style-type: none"> <li>• Traditional and Customary Rights and Practices</li> <li>• Taro Cultivation</li> <li>• Appurtenant Rights</li> </ul>  |
| Non-Instream or End Uses of Diverted Water | <ul style="list-style-type: none"> <li>• Water Delivery Systems</li> <li>• Domestic/Municipal Use</li> <li>• Agricultural Uses</li> <li>• Agricultural Productivity</li> <li>• Present vs. Future Uses</li> <li>• Economic Impacts</li> </ul> |
| Aesthetics                                 | <ul style="list-style-type: none"> <li>• Scenic Views</li> </ul>  |
| Recreation                                 | <ul style="list-style-type: none"> <li>• Swimming</li> <li>• Nature Study</li> <li>• Fishing</li> <li>• Hiking</li> </ul>   |
| Public Services                            | <ul style="list-style-type: none"> <li>• Police</li> <li>• Fire</li> <li>• Medical Services</li> </ul>  |
| Economy                                    | <ul style="list-style-type: none"> <li>• Employment and Personal Income</li> <li>• Fiscal Impacts</li> </ul>  |
| Infrastructure                             | <ul style="list-style-type: none"> <li>• Roadways</li> <li>• Wastewater Systems (Private and Municipal)</li> <li>• Water Systems (Private and Municipal)</li> </ul>   |

| Issue Category | Topics to be Addressed in EIS  |
|----------------|--|
|                | <ul style="list-style-type: none"> <li>• Drainage System</li> <li>• Diversion Infrastructure</li> <li>• Other Utilities (Electrical, Communication)</li> </ul> |

**C. PREPARATION OF THE EISPN DOCUMENT**

The EIS preparer shall develop the EISPN in accordance with HAR, Title 11, Chapter 200, Sections 11-200-10 and 11-200-15. In this regard, the EISPN shall meet the requirements for content compliance, as summarized in **Table 6**.

**Table 6.** Summary of Content Requirements of the EISPN

| HAR, Title II, Section 200 Reference | Content Requirement  |
|--------------------------------------|--|
| 11-200-10 (1)                        | Identification of applicant or proposing agency  |
| 11-200-10 (2)                        | Identification of approving agency, if applicable  |
| 11-200-10 (3)                        | Identification of agencies, citizen groups, and individuals consulted in making the assessment   |
| 11-200-10 (4)                        | General description of the action's technical, economic, social, and environmental characteristics   |
| 11-200-10 (5)                        | Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps |
| 11-200-10 (6)                        | Identification and summary of impacts and alternatives considered  |
| 11-200-10 (7)                        | Proposed mitigation measures   |
| 11-200-10 (8)                        | Agency determination or, for draft environmental assessments only, an anticipated determination  |
| 11-200-10 (9)                        | Findings and reasons supporting the agency determination or anticipated determination  |
| 11-200-10 (10)                       | Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared  |
| 11-200-10 (11)                       | List of all permits and approvals (State, federal, county) required  |

Inasmuch as the EISPN serves as notice that an EIS will be prepared and will be used as a scoping document, the content requirements set forth in **Table 6** will not be fully addressed. The EISPN document shall indicate, preliminarily, studies to be completed and issues to be analyzed in further detail in the Draft EIS.

**D. CONSULTED PARTIES**

The EIS preparer shall identify agencies, stakeholders, and community groups that will be consulted during the preparation of the EIS. The Office of Environmental Quality Control provides guidance on agencies and organizations that should receive copies of the Draft EIS and Final EIS. It is noted that A&B will be consulting with the Department

of Hawaiian Home Lands (DHHL) early in the process with respect to water reservations pursuant to Section 171-58(g), HRS, which states:

*The department of land and natural resources shall notify the department of Hawaiian home lands of its intent to execute any new lease, or to renew any existing lease of water rights. After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian home lands as provided by section 221 of the Hawaiian Homes Commission Act.*

**III. SCOPE OF WORK FOR  
THE PREPARATION OF THE  
DRAFT ENVIRONMENTAL  
IMPACT STATEMENT**

### III. SCOPE OF WORK FOR THE PREPARATION OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

**A. DRAFT ENVIRONMENTAL IMPACT STATEMENT (EIS) CONTENT REQUIREMENTS**

The EIS preparer shall prepare the Draft EIS in accordance with requirements set forth in Hawaii Administrative Rules (HAR), Title 11, Chapter 200, Section 11-200-16 and Section 11-200-17. Importantly, the Draft EIS “*shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action.*”

Content requirements of the Draft EIS document are summarized in **Table 7**.

**Table 7.** Summary of Content Requirements of the Draft EIS

| HAR, Title 11, Section 200 Reference | Content Requirement Summary   |
|--------------------------------------|---|
| 11-200-17(b)                         | Draft EIS Summary Sheet   |
| 11-200-17(c)                         | Table of Contents   |
| 11-200-17(d)                         | Statement of Purpose and Need   |
| 11-200-17(e)                         | Project Description   |
| 11-200-17(f)                         | Alternatives to the Proposed Action   |
| 11-200-17(g)                         | Description of the Environmental Setting  |
| 11-200-17(h)                         | Relationship of the Proposed Action to Land Use Plans, Policies and Controls  |
| 11-200-17(i)                         | Discussion of Probable Impacts  |
| 11-200-17(j)                         | Relationship between Local Short-Term Uses of the Environment and Maintenance/Enhancement of Long-Term Productivity |
| 11-200-17(k)                         | Description of Irreversible and Irretrievable Commitments of Resources  |
| 11-200-17(l)                         | Discussion of Probable Adverse Environmental Effects  |
| 11-200-17(m)                         | Discussion of Mitigation Measures to Address Adverse Impacts  |
| 11-200-17(n)                         | Summary of Unresolved Issues  |
| 11-200-17(o)                         | Listing of Governmental Agencies, Organizations and Individuals Consulted in Preparing the Draft EIS                |
| 11-200-17(p)                         | Comments Received and Responses Made During the Consultation Process  |

With respect to the Draft EIS's section on "Alternatives to the Proposed Action" (Section 11-200-17(f)), the EIS preparer shall consider the outcome of the CWRM's decision on the IIFS. While the decision of the CWRM on the IIFS will dictate the framework for conducting the analysis of alternatives in the EIS, the EIS preparer shall nonetheless, examine, at a minimum, the "No Diversion Alternative", among others.

With respect to the Draft EIS's section on "Relationship of the Proposed Action to Land Use Plans, Policies, and Controls" (Section 11-200-17(h)), the EIS preparer shall, at a minimum, consider the following:

- Hawaii State Plan
- Hawaii State Functional Plans
- Hawaii State Land Use Designations
- Maui Countywide Policy Plan
- Maui Island Plan
- Applicable Maui Community Plans
- Maui Water Use and Development Plan
- County of Maui Zoning
- Hawaii Coastal Zone Management Program

**B. ELEMENTS OF THE DRAFT EIS REQUIRING CWRM DECISION ON INTERIM INSTREAM FLOW STANDARDS**

In preparing the Draft EIS, the EIS preparer shall consider those environmental, socio-economic, public services and infrastructure parameters for which the CWRM's decision to amend the IIFS is needed. For those elements requiring a CWRM decision, the completion of the Draft EIS will be deferred until such decision is rendered. **Table 8** summarizes, preliminarily, parameters to be analyzed in the Draft EIS, and identifies those elements for which a CWRM decision on the IIFS is required.

**Table 8. Preliminary List of Draft EIS Issues and Dependency on CWRM Decision on IIFS**

| <b>Issue Category</b>                      | <b>Topics to be Addressed in EIS</b>           | <b>CWRM Decision Required to Complete EIS Analysis?</b> |
|--|--|---|
| Existing Conditions                        | Existing and Surrounding Land Use              | No  |
|  | Topography and Soil Characteristics            | No  |
|  | Climate  | No  |
|  | Hazardous Materials/Substances                 | No  |
| Hydrogeology                               | Groundwater Interaction                        | Yes   |
|  | Surface-Water Flows                            | Yes   |
| Fish/Wildlife Habitat                      | Native Vertebrates                             | Yes   |
|  | Invertebrates                                  | Yes   |
|  | Invasive Species                               | Yes   |
|  | Abundance                                      | Yes   |
|  | Diversity                                      | Yes   |
|  | Distribution                                   | Yes   |
|  | Species Sustainability                         | Yes   |
| Ecosystem Maintenance                      | Estuaries                                      | Yes   |
|  | Wetlands                                       | Yes   |
|  | Riparian areas                                 | Yes   |
|  | Nearshore Waters                               | Yes   |
| Water Quality                              | Water Quality Standards                        | Yes   |
|  | Total Maximum Daily Load                       | Yes   |
| Natural Hazards                            | Flooding                                       | Yes   |
|  | Tsunami Exposure                               | No  |
| Historic Resources                         | Archaeology                                    | No  |
|  | Cultural Resources                             | Yes   |
| Hawaiian Rights                            | Traditional and Customary Rights and Practices | Yes   |
|  | Taro Cultivation                               | Yes   |
|  | Appurtenant Rights                             | Yes   |
| Non-Instream or End Uses of Diverted Water | Water Delivery Systems                         | Yes   |
|  | Domestic/Municipal Use                         | Yes   |
|  | Agricultural Uses                              | Yes   |
|  | Agricultural Productivity                      | Yes   |
|  | Present vs. Future Uses                        | Yes   |
|  | Economic Impacts                               | Yes   |
| Aesthetics                                 | Scenic Views                                   | Yes   |
| Recreation                                 | Swimming                                       | Yes   |
|  | Nature Study                                   | Yes   |
|  | Fishing  | Yes   |
|  | Hiking   | No  |

| Issue Category  | Topics to be Addressed in EIS               | CWRM Decision Required to Complete EIS Analysis? |
|-----------------|---|--|
| Public Services | Police                                      | No   |
|                 | Fire  | No   |
|                 | Medical Services                            | No   |
| Economy         | Employment and Personal Income              | Yes  |
|                 | Fiscal Impacts                              | Yes  |
| Infrastructure  | Roadways                                    | No   |
|                 | Wastewater Systems (Private and Municipal)  | No   |
|                 | Water Systems (Private and Municipal)       | Yes  |
|                 | Drainage System                             | No   |
|                 | Diversion Infrastructure                    | Yes  |
|                 | Other Utilities (Electrical, Communication) | No   |

In addition to the assessment parameters listed in **Table 8**, the EIS preparer shall undertake an analysis of cumulative and secondary impacts. Cumulative impact is defined as:

*The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

A secondary impact is defined as:

*Effects which are caused by the action and are later in time or farther removed in distance, but are still reasonable foreseeable. Indirect effects may include growth inducing effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems. Including ecosystems.*

In the context of the water lease request, secondary impacts of the noninstream uses of the diverted water should also be assessed. For example, future County domestic and agricultural water demands needed to implement anticipated growth pursuant to the Maui Island Plan may be viewed as an impact “later in time” or “further removed in distance”, but still reasonably foreseeable.



## C. TECHNICAL STUDIES TO BE INCORPORATED IN THE EIS

Specific topics to be addressed in the EIS may require specialized studies to ensure that current conditions, impact analysis and proposed mitigation measures are appropriately considered by qualified specialists in their respective fields of study. Such specialists, for example, may include biologists, hydrologists, archaeologists, engineers, cultural specialists, and economists. The foregoing list of specialists are not exhaustive. For this reason, the EIS preparer shall assess the issues identified, as described previously, to determine whether specific technical studies are needed to address current conditions, analysis of impacts and potential mitigation measures.

With respect to the EIS for the lease application submitted by A&B, relevant studies which have been previously completed, are summarized in **Table 9**.

**Table 9.** Technical Studies Previously Completed Which Hold Relevance to the EIS Scope of Work

| <b>A. U.S. Geological Survey Studies</b>        |   |
|---|---|
| 1.  | Stephen B. Gingerich, <i>Ground-Water Occurrence and Contribution to Streamflow, Northeast Maui, Hawaii</i> , Water-Resources Investigations Report 99-4090 (1999)  |
| 2.  | Patricia J. Shade, <i>Water Budget of East Maui, Hawaii</i> , Water-Resources Investigations Report 98-4159 (1999)  |
| 3.  | Stephen B. Gingerich, <i>Ground Water and Surface Water in the Haiku Area, East Maui, Hawaii</i> , Water-Resources Investigations Report 98-4142 (2000)   |
| 4.  | Martha A. Scholl, Stephen B. Gingerich and Gordon W. Tribble, <i>The influence of microclimates and fog on stable isotope signatures used in interpretation of regional hydrology: East Maui, Hawaii</i> , 264 <i>Journal of Hydrology</i> 170 (2002)   |
| 5.  | Stephen B. Gingerich, <i>Median and Low-Flow Characteristics for Streams under Natural and Diverted Conditions, Northeast Maui, Hawaii</i> , Scientific Investigations Report 2004-5262 (2005)  |
| 6.  | John A. Engott and Thomas T. Vana, <i>Effects of Agricultural Land-Use Changes and Rainfall on Ground-Water Recharge in Central and West Maui, Hawai'i, 1926-2004</i> , Scientific Investigations Report 2007-5103 (2007)   |
| 7.  | Chui Ling Cheng, <i>Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawai'i</i> , Open-File Report 2012-1115 (2012)  |
| 8.  | Letter to Lenore Ohye (Acting Deputy Director of CWRM) from Stephen S. Anthony (Director of Pacific Islands Water Science Center) re Discharge Measurements, Makapipi Stream, Maui, Hawai'i, September 13-17, 2010, Nov. 5, 2010  |
| <b>B. Division of Aquatic Resources Studies</b> |   |
| 1.  | Glenn R. Higashi, et al., <i>Stream Survey Reports</i> prepared for CWRM, DAR and Bishop Museum, June 2008. Stream Survey Reports were prepared for: Honopou, Hanehoi, Waikamoi, Puohokamoa, Haipuaena, Punalau, Honomanu, Nuaailua, Piihaau, Ohia, Waiokamilo, Wailuanui, West Wailuaiki, East Wailuaiki, Kopiliula, Waiohue, Paakea, Kapaula, Hanawi, and Makapipi streams. |
| 2.  | Letter from Robert Nishimoto (DAR) to Ken Kawahara (CWRM) dated Apr. 1, 2010  |
| 3.  | Memo from Robert Nishimoto (DAR) to Ken Kawahara (CWRM) dated May 17, 2010  |
| 4.  | Letter from Dan A. Polhemus (DAR) to CWRM dated Dec. 15, 2009   |
| 5.  | James E. Parham, et al., <i>The Use of Hawaiian Stream Habitat Evaluation Procedure to Provide Biological Resource Assessment in Support of Instream Flow Standards for East Maui Streams</i> , Bishop Museum and DAR, Nov. 20, 2009  |

|  |  |
|--|--|
| 6.   | Glenn R. Higashi, et al. <i>Monitoring Changes in Habitat, Biota, and Connectivity Resulting From Water Returns in the East Maui Streams of East Wailua Iki, and Waiohue</i> , DAR and Bishop Museum, Jan. 6, 2015   |
| <b>C. Commission on Water Resources Management Studies</b> |  |
| 1.   | CWRM, <i>Instream Flow Standard Assessment Report</i> , September 2008 and December 2009. Instream Flow Standard Assessment Reports prepared for: Honopou, Hanehoi, Piinaau, Waiokamilo, Waialuanui, Waikamoi, Puohokamoa, Haipuaena, Punalau, Honomanu, Nuaailua, Ohia, West Wailuaiki, East Wailuaiki, Kopiliua, Waiohue, Paakea, Waiaaka, Kapaula, Hanawi, and Makapipi streams |
| <b>D. SWCA Environmental Consultants Studies</b>           |  |
| 1.   | John I. Ford, Steven W. Carothers, Robert A. Kinzie III, <i>Status of Native Hawaiian Macrofauna in East Maui Streams and Biological Considerations For the Amendment of Interim Instream Flow Standards in Selected Streams (IIFS)</i> , SWCA White Paper, June 2009  |
| <b>E. Cultural Studies</b>                                 |  |
| 1.   | County of Maui Planning Department, <i>Kalo Kanu O Ka 'āina: A Cultural Landscape Study of Ke'anae and Wailuanui, Island of Maui</i> , July 1995   |
| 2.   | Kepā Maly and Onaona Maly, <i>Wai O Ke Ola: He Wahi Mo'olelo No Maui Hikina</i> , 2002   |

The EIS preparer shall review the technical studies listed in Table 9, as well as other studies which may hold relevance to the EIS process. The EIS preparer shall determine whether the studies are current and whether they appropriately address the issues identified. Additionally, the EIS preparer shall determine whether other technical studies should be undertaken to ensure that proper analysis of issues are completed.

Preliminarily, Table 10 provides a listing of additional technical studies which may be deemed warranted for the EIS.

**Table 10.** Additional Technical Studies to Support the EIS

| Study  | Consultant/Expert                | CWRM Decision Required to Complete Technical Study? <sup>a</sup> |
|--|----------------------------------|--|
| Biological Resources Survey  | Biologist                        | Yes  |
| Water Quality Study  | Environmental Consultant         | Yes  |
| Surface and Groundwater Hydrology Assessment   | Hydrologist                      | Yes  |
| Agricultural Impact Assessment   | Agricultural Economist           | Yes  |
| Archaeological Inventory Survey or Assessment  | Archaeologist                    | No   |
| Cultural Impact Assessment   | Cultural Resources Expert        | Yes  |
| Diversion Infrastructure Assessment  | Civil and/or Structural Engineer | Yes  |
| Economic Impact Analysis   | Economist                        | Yes  |
| <sup>a</sup> Where appropriate, preliminary work may be initiated for the foregoing studies, but completion of the studies would require CWRM's IIFS decision. |                                  |  |

Again, the full range of technical studies required for the EIS will be determined upon completion of the EISPN. The scope of analysis for each of the preliminarily identified studies listed in **Table 10** will need to be developed to address issues and concerns documented through the EISPN and related scoping efforts. For example, to the extent that the cultural reports previously prepared may have not addressed specific issues raised by comments to the EISPN, additional cultural impact analysis would be warranted. If the EIS preparer and cultural specialist determine that a newly prepared Cultural Impact Assessment is needed based on issues raised, then such new report would be prepared and incorporated in the Draft EIS.

**IV. SCOPE OF WORK FOR  
THE PREPARATION OF THE  
FINAL ENVIRONMENTAL  
IMPACT STATEMENT**

## **IV. SCOPE OF WORK FOR THE PREPARATION OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT**

The Final EIS shall be prepared in accordance with Hawaii Administrative Rules (HAR), Title 11, Chapter 200, Section 11-200-18. In summary, the EIS preparer will incorporate in the Final EIS, the following:

- The Draft EIS will be revised to incorporate substantive comments received during the consultation and review process.
- Reproduction of all letters received containing substantive questions, comments or recommendations.
- A list of persons, organizations, and public agencies commenting on the Draft EIS.
- The responses of the applicant or proposing agency to each substantive question, comment, or recommendation received in the review and consultation process.

Additionally, the EIS preparer shall prepare the Final EIS in a format which allows the reader to easily distinguish changes made to the text of the Draft EIS.

**V. PRELIMINARY TIME  
SCHEDULE FOR THE  
ENVIRONMENTAL IMPACT  
STATEMENT PROCESS**

# V. PRELIMINARY TIME SCHEDULE FOR THE ENVIRONMENTAL IMPACT STATEMENT PROCESS

## A. OVERALL TIMEFRAME FOR THE PREPARATION AND PROCESSING OF THE ENVIRONMENTAL IMPACT STATEMENT

The overall timeframe for the preparation and processing of the EIS will, in part, depend on when the CWRM issues its decision with respect to the Petitions to Amend the IIFS. In this regard, two (2) timeline scenarios for the EIS preparation and processing have been developed. The scenarios presented herein are not intended to obligate the EIS preparer to complete the process within the timeframes noted. They are however, intended to provide project stakeholders a general understanding of tasks and milestones which govern the overall process timeline.

Two (2) timelines scenarios presented are as follows:

- **Scenario 1:** Timeline Assuming the CWRM Completes IIFS Decision-Making before the EIS Process is Initiated
- **Scenario 2:** Timeline Assuming the CWRM Completes IIFS Decision-Making after the EIS Process is Initiated

The formulation of the two (2) timeline scenarios assumes that there would be no appeal filed on the CWRM's decision. If an appeal is filed on the IIFS decision, the timeline scenarios would be based on the final IIFS decision once the appeal process has been completed.

### 1. Scenario 1 Timeline: Assumes CWRM Completes IIFS Decision-Making Before EIS Process is Initiated

The Scenario 1 Timeline is presented in **Figure 2**. The "Task" column in **Figure 2** reflects the major action items and milestones in the EIS preparation process. The "Months from Start" row at the top of the timeline indicates the estimated number of months associated with each of the tasks. The number of months assigned to each task is a best estimate only, but is considered reasonable in the context of the Chapter 343, HRS process. It is noted that the timeline presented is

| Dependent     | CWRM Decis | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 1 |
|---------------|------------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|---|
|               | N          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | N          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
| d             | N          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
| pport of DEIS |            |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | N          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | N          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | N          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | Y          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | Y          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | Y          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | Y          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
| d             | Y          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | Y          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
|               | Y          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |
| d             | Y          |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |   |

CWRM DECISION ON IFS - PRIOR TO INITIATION OF EIS PROCESS



intended to be illustrative of the general process and would be further defined through the EIS process. For example, the specific technical studies and time required to prepare each would be defined by the EIS preparer and qualified technical consultant.

As noted above, Scenario 1 assumes that the CWRM completes its IIFS decision-making before the EIS process is started. Therefore, all of the technical studies which would be undertaken in support of the EIS can be initiated at the outset of the EIS preparation process. Under this scenario, the total duration to commence and complete the EIS is approximately 22 months.

2. **Scenario 2 Timeline: Assumes CWRM Completes IIFS Decision-Making After the EIS Process is Initiated**

The Scenario 2 Timeline is presented in **Figure 3**. The timeline's format is similar to Scenario 1, with the exception that the schedule is bifurcated as follows:

- Actions/milestones of the EIS which can be completed prior to the CWRM's decision-making on the IIFS
- Actions/milestones of the EIS which would be completed after the CWRM's decision-making on the IIFS.

The red vertical bar in the schedule reflects the undetermined time wherein the CWRM's decision on the IIFS is pending. Once the CWRM's action on the IIFS is completed, the EIS process can resume. Under this scenario, about eight (8) months of EIS work can be initiated before work would stop, pending the CWRM's decision. Once the CWRM completes its decision-making on the IIFS, an additional 19 months of work is estimated. If the CWRM decision occurs during the initial eight (8) months of EIS processing, the technical studies dependent on the CWRM decision can be initiated sooner.

As noted previously, the timeline is intended to be illustrative of the overall process and details with respect to the time required to prepare the technical studies and which studies (or portions thereof) would be initiated prior to the CWRM decision would be made by the EIS preparer and technical consultants.

| Dependent on<br>CWRM Decision | Months from Start |        |        |        |        |        |        |        | Months after CWRM Decision |        |        |        |        |        |        |        |        |        |        |        |        |        |
|-------------------------------|-------------------|--------|--------|--------|--------|--------|--------|--------|----------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
|                               | 1                 | 2      | 3      | 4      | 5      | 6      | 7      | 8      | +1                         | +2     | +3     | +4     | +5     | +6     | +7     | +8     | +9     | +10    | +11    | +12    | +13    |        |
| N                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| N                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| N                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| of DEIS                       | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| N                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| N                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| N                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| Y                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| Y                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| Y                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| Y                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| Y                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| Y                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |
| Y                             | Shaded            | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded                     | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded | Shaded |

CWRM DECISION ON LIFS - DATE TBD

It is noted that depending on the timeframe in which the CWRM IIFS decision is issued, there may be circumstances where some of the EIS work and technical studies undertaken prior to the IIFS decision may need to be reexamined or updated (i.e., if the IIFS decision takes longer than anticipated/assumed which impacts the applicability of the findings of the studies).

The variance in time between Scenario 1 and Scenario 2 is attributed to the unknown timeframe in which the IIFS decision will be made and the assumption that there will be EIS technical studies which cannot be initiated or completed until after the CWRM's IIFS decision process is completed.

### **3. Timeline Qualifications**

The timelines presented for Scenario 1 and Scenario 2 represent a best estimate based on general parameters for EIS processing. The illustrative timelines assume that the EIS preparer and the DLNR will coordinate and resolve issues that may arise during the preparation and processing of the EIS in a timely manner. However, it is noted that there are several factors that can influence the timeline. Such factors may include:

- Significant comments from agencies, stakeholders, or members of the public during the review of the EISPN or Draft EIS that require additional coordination or the need for additional technical studies
- Findings from technical studies that lead to new questions or comments which should be addressed in the Final EIS
- The decision of HC&S to transition away from sugar cane cultivation may affect the overall timeline for the EIS. The repurposing of lands currently used for sugar cane production to alternative agricultural uses should be considered as part of the EIS's analysis of "non-instream or end uses of diverted water" section. Accordingly, the overall EIS timeline may be affected pending A&B's determination of alternative agricultural end use plans.

### **4. Pre-EIS Time Requirements**

While **Figure 2** and **Figure 3** provide general guidance with regard to timeline parameters for the EIS, additional time which should be considered in the overall process is the time required for the procurement of the EIS consultant and qualified subconsultants required to prepare the various technical studies. The

procurement process and timeline has not yet been determined. However, a reasonable estimate of time to complete this pre-EIS phase of the process is 3 to 4 months.

# **APPENDIX**

## **APPENDIX A.**

# **Order for A&B to Commence the Environmental Review Process and Deferring Decision on Petitioners' Motion to Establish Scope of Reconvened Contested Case Proceeding**

BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII

In the Matter of Contested Case Regarding ) DLNR File No.: 01-05-MA  
Water Licenses at Honomanu, Keanae, )  
Nahiku, and Huelo, Maui )  
\_\_\_\_\_ )

**ORDER FOR A&B TO COMMENCE THE ENVIRONMENTAL REVIEW  
PROCESS AND DEFERRING DECISION ON PETITIONERS' MOTION TO  
ESTABLISH SCOPE OF RECONVENED CONTESTED CASE PROCEEDINGS**

On January 9, 2015, Petitioner Nā Moku Aupuni O Ko'olau Hui (Nā Moku) filed a Motion to Establish Scope of Reconvened Contested Case Proceedings (Petitioner's Motion). Alexander & Baldwin, Inc. and East Maui Irrigation Company, Ltd. (collectively A&B) filed a Memorandum in Opposition to Petitioner's Motion to Establish Scope of Reconvened Contested Case Proceedings on March 27, 2015. Petitioners filed a Supplemental Memorandum in Support of Motion to Establish Scope of Reconvened Contested Case Proceedings on March 27, 2015. A&B filed a Response to Petitioners' Supplemental Memorandum in Support of Motion to Establish Scope of Reconvened Contested Case Proceedings on April 10, 2015. Nā Moku filed a Reply in Support of Petitioner's Motion to Establish Scope of Reconvened Contested Case Proceedings on April 10, 2015.

The Board of Land and Natural Resources (Board) held oral arguments on Petitioner's Motion on May 8, 2015. During the oral argument, Nā Moku agreed to withdraw its objection to A&B doing an environmental assessment, which objection had originally been asserted at the May 25, 2001 meeting of the Board. The parties also agreed that the Board would defer decision making on the motion until further notice and to facilitate discussion between the parties regarding the lawsuit pending in circuit court<sup>1</sup> (2015 lawsuit) and an environmental assessment.

<sup>1</sup> *Carmichael, et al., v. Board of Land and Natural Resources, et al.*, Civ. No. 15-1-0650-04 RAN.

On June 15, 2015, the parties submitted a status report to the Board regarding the initiation of discussions between the parties. Nā Moku re-confirmed the withdrawal of its objection to A&B preparing the environmental review documents in connection with its application for a lease. The parties also agreed on a framework for initiating work on the environmental review process. The parties were still in discussion regarding the disposition of the 2015 lawsuit. Nā Moku was to request the BLNR to defer action on Petitioner's Motion while the parties continue discussions on beginning the environmental review process prior to the Commission on Water Resource Management's (CWRM) final decision on the petitions to amend interim instream flow standards (IIFS) in east Maui. No further filings were received from the parties.

Petitioner's Motion argued that the contested case should be reconvened for the Board to require the timely preparation of an environmental assessment to disclose the impacts of the diversion of water from the four license areas (Honomanu, Keanae, Huelo and Nahiku) pursuant to revocable permits S-7263 (Honomanu), S-7264 (Huelo), S-7265 (Keanae) and S-7266 (Nahiku). Petitioner's Motion also urged to Board to reconvene the contested case in order for the Board to address its obligations pursuant to Hawaii Revised Statutes chapter 171.

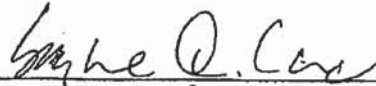
During oral argument it became apparent that the key issue was the commencement of the environmental review process. Based on the records in this case and the argument presented to the Board, the Board orders A&B to commence the environmental review process in support of A&B's application for a lease of water from the license areas of Honomanu, Keanae, Huelo and Nahiku. The Board will defer decision making on Petitioner's Motion at this time.

Within sixty (60) days of this order A&B must provide to the Board a scope of work for the preparation of an environmental assessment or an environmental impact statement. The scope of work should distinguish those portions that can be undertaken prior to CWRM's final



decision on the petitions to amend IIFS in east Maui from those that require a decision from the CWRM prior to completion.<sup>2</sup> The scope of work should address, at a minimum, the content requirements contained in Hawaii Administrative Rules § 11-200-10 for an environmental assessments or § 11-200-17 for an environmental impact statement. Accompanying the scope of work should be a tentative schedule for commencement and completion of the various portions of the scope of work.

SO ORDERED this 14<sup>th</sup> day of April, 2016.



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SUZANNE D. CASE<sup>3</sup>  
Presiding Officer  
Board of Land and Natural Resources

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<sup>2</sup> The Board notes that on January 5, 2016 A&B announced that it would be transitioning out of farming sugar and would instead pursue a diversified agricultural model for its HC&S plantation on Maui. To the degree that the decision to transition away from sugar cane cultivation affects the ability of or timing for A&B to complete portions of the environmental review documents that should be noted in the scope of work.

<sup>3</sup> The Board members have delegated authority to Suzanne Case to sign this Order on behalf of the Board.

BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII

In the Matter of Contested Case Regarding ) DLNR File No.: 01-05-MA  
Water Licenses at Honomanu, Keanae, )  
Nahiku, and Huelo, Maui )  
)  
)  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the following document:

1. ORDER FOR A & B TO COMMENCE THE ENVIRONMENTAL REVIEW PROCESS AND DEFERRING DECISION ON PETITIONERS' MOTION TO ESTABLISH SCOPE OF RECONVENED CONTESTED CASE PROCEEDINGS

was duly served upon the following parties as indicated, by means of State Messenger or U.S. Mail, postage prepaid on April 14, 2016, addressed as follows:

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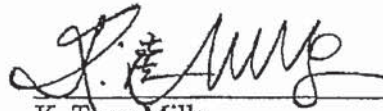
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Department of the Attorney General  
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Honolulu, Hawai'i 96813

Dated: Honolulu, Hawai'i,

April 14, 2016



K. Tiger Mills  
Department of Land & Natural Resources  
State of Hawai'i

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of the Contested Case Hearing  
Regarding Water Licenses at Honomanu,  
Keanae, Nahiku and Huelo, Maui

DLNR FILE No. 01-05-MA  
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by hand delivery or U.S. mail, postage prepaid, on the following parties at their last known address:

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*VIA U.S. MAIL*

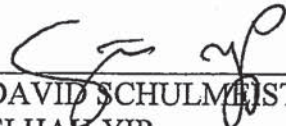
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DEPARTMENT OF WATER SUPPLY*

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*VIA HAND DELIVERY*

DATED: Honolulu, Hawai'i, June 9, 2016.

CADES SCHUTTE LLP

  
\_\_\_\_\_  
DAVID SCHULMEISTER  
ELIJAH YIP

Attorneys for ALEXANDER & BALDWIN, INC.  
and EAST MAUI IRRIGATION COMPANY,  
LIMITED

Civil No. 19-1-0019-01 (JPC)

**Defendant A&B/EMI's Exhibit AB-21**

FOR IDENTIFICATION \_\_\_\_\_

RECEIVED IN EVIDENCE \_\_\_\_\_

CLERK \_\_\_\_\_