

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 9, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

MAUI

Holdover of Revocable Permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

Pursuant to Section 92-5(a) (4), Hawaii Revised Statutes, the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

LEGAL AUTHORITY:

Section 171-58, Hawaii Revised Statutes (HRS), as amended.

BACKGROUND:

At its meeting on December 11, 2015, Item D-14, as amended, the Board of Land and Natural Resources directed Land Division staff to submit revocable permit renewals by county over four meetings, with an explanation of why a revocable permit is the appropriate disposition and how the rent was set. At its meeting on June 24, 2016, Item D-7, the Board further approved the recommendations of the Department of Land and Natural Resources Revocable Permit Task Force, as amended, requesting all divisions notate any non-compliance issues and pending litigation in the renewal request. In compliance with these directives, staff has presented the revocable permits for land uses by county over four separate meetings in 2016. However, staff omitted revocable permits for water use from the renewal requests because of the complex issues they present. Staff now brings the existing water permits on the island of Maui to the Board for a one-year holdover pursuant to Section 171-58, HRS, as recently amended by Act 126 Session Laws of Hawaii 2016 (Act 126).

REMARKS:

On July 1, 2016, Act 126 became law, amending Section 171-58, HRS. The amended

section provides in part:

Where an application has been made for a lease under this section to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner; provided that the total period of the holdover for any applicant shall not exceed three years; provided further that the holdover is consistent with the public trust doctrine

A copy of the full text of Act 126 is attached as Exhibit 1. In the present matter, applicants Alexander & Baldwin, Inc. (A&B) and East Maui Irrigation Company, Limited (EMI) come before the Board to request that the Board consent to the pre-existing holdover status of the revocable permits issued to them, to be explained in the following section.

Procedural History

On May 26, 2000, The Board approved the issuance of revocable permits to A&B and EMI to take water from four license areas on Maui. The diverted water is transported to central and upcountry Maui for agricultural and domestic purposes. Four revocable permits were issued for four license areas; respectively, S-7263 (Honomanu), S-7264 (Huelo), and S-7265 (Keanae) to A&B, and S-7266 (Nahiku) to EMI. See maps attached as Exhibit 2.

On May 14, 2001, A&B and EMI filed an Application for Long Term Water License with the Board. The application sought a continuation of the existing diversions for the same agricultural and domestic uses through a 30 year lease of water emanating from state lands. At its meeting on May 25, 2001, the Board heard the request, which included the continued issuance of interim revocable permits on an annual basis pending the issuance of a long-term disposition. During the meeting, there was a request for a contested case hearing to challenge the legality of the long term license by Nā Moku Aupuni O Ko'olau Hui (Na Moku), which was granted by the Board. Pending the outcome of the contested case, the Board deferred action on the request and granted holdover revocable permits to A&B and EMI. In addition to the contested case hearing on the long term water license, Na Moku also filed petitions with the Commission on Water Research Management (CWRM) to amend the Interim Instream Flow Standards (IIFS) for certain East Maui streams. The IIFS petitions resulted in litigation and resulted in a contested case hearing which is still ongoing.

The Board affirmed the holdover status of the water permits at its meeting on May 24, 2002 and its intention to preserve the status quo until the resolution of the contested case. The water license contested case also led to litigation and ultimately resulted in the Board issuing a Findings of Fact, Conclusions of Law and Decision and Order on March 23, 2007. The intent was to provide interim relief until the IIFS petitions were resolved,

requiring A&B and EMI to decrease diversions on Waiokamilo Stream to allow for more water to flow downstream to the local taro growers.¹ The March 23, 2007 decision acknowledged that the environmental review and IIFS would likely take years to resolve, and that the holdover was essential to the Board's proper discharge of its public trust responsibilities.

In 2015, Na Moku filed a separate action with the First Circuit Court challenging that the annual renewal of the revocable permits did not undergo the appropriate environmental review under Chapter 343, HRS. The court decided that the continuance of the revocable permits was not an action subject to Chapter 343, HRS. However, the court, independently of any claims (or lack thereof) made by Na Moku, determined that the Board exceeded its authority under Sections 171-10 and 171-55 in placing the revocable permits into holdover status for 13 years, and declared the revocable permits invalid. The decision is currently on appeal in the Intermediate Court of Appeals (ICA) by the County of Maui, A&B, EMI and the State. The Board reaffirmed that the permits were in holdover status at its meeting on December 11, 2015. Na Moku filed another action with the State's Environmental Court challenging the December 11, 2015 reaffirmation.

The Department considers the revocable permits to be in continued holdover status, until the resolution of the pending contested case before the Board on the water license.² Although the permits were invalidated by the Circuit Court, the ruling was stayed pending the appeal. Therefore, the permits remain in holdover status until that time. However, in an abundance of caution and in the event the decision is upheld on appeal, staff recommends that the Board approve the written request submitted by A&B and EMI (attached as Exhibit 3) to authorize the holdover of the revocable permits in compliance with Act 126. Staff takes the position that, despite the revocable permits already being in holdover status, the Board authorizing the continued holdover would comply with Act 126. As noted previously, Act 126 allows the Board to authorize annual holdovers where an application for a lease has been made to continue a previously authorized disposition of water rights. The Board did previously authorize the initial revocable permits in 2001, which have been in valid holdover since. Furthermore, A&B and EMI submitted their lease applications in 2001, and are currently proceeding with their environmental impact statement. The applications are attached as Exhibit 4.

Public Trust Doctrine

In their request to approve the holdover, A&B and EMI contend the holdover is consistent with the public trust. Specifically, the continued diversion of water through

¹ A&B eventually ceased all diversions of Waiokamilo Stream in 2007.

² As noted above, the Board approved the revocable permits to be in holdover in 2001, then reaffirmed the holdover status in 2002 and again in 2015. The holdover status was also validated by the hearings officer in the 2007 contested case decision. Only the 2015 decision was challenged by Na Moku. The inclusion of the revocable permits in the annual renewal for all revocable permits brought to the Board was simply to address the annual rent, not to reconsider the holdover status of the permits.

the ditch system is necessary to preserve the operational integrity of the ditch system, which will in turn keep A&B's former sugar cane lands in central Maui viable for future agricultural uses, including diversified agriculture.³ Additionally, a portion of water diverted through the ditch system is utilized by the County of Maui to service the Nahiku and Upcountry Maui communities.

In previous approvals for holdovers, the Department has noted that title to water resources is held in trust by the State for the benefit of its people, and with respect to the agricultural use of water, the Hawaii Constitution provides:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Hawaii Constitution, Article XI, Section 3.

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Hawaii Constitution, Article XI, Section 10.

Considering the foregoing constitutional provisions and in the absence of compelling evidence to the contrary, the Department finds that the justification provided by A&B and EMI is sufficient to recommend that the requested holdover is consistent with the public trust doctrine. Given the short term, one-year holdover period, Staff acknowledges the need to ensure the continued operation of the ditch system to provide water for the County of Maui to deliver to its residents, at a minimum. However, staff emphasizes that such finding is based solely within the context of Act 126, and further inquiry and analysis are required to determine whether a long term lease would be consistent with the public trust doctrine.

Charging for Water

The rent or fee to charge for water use is another issue. Standard appraisal methodologies may not work well in establishing a charge for water. There are few comparables that an appraiser could look at, and other types of appraisal methodology are ill-suited for determining a cost to charge for consuming a resource. It is even more difficult to appraise the non-consumptive use of water involved in hydroelectric uses.

In recent months, Land Division staff has met with the Department of Hawaiian Home Lands (DHHL), the Office of Hawaiian Affairs (OHA) and the Office of Environmental Quality Control (OEQC) regarding the processing of water lease applications. All

³ A large portion of A&B's lands in central Maui have been designated as Important Agricultural Lands (IAL).

agencies are interested in devising a method of charging for the use of water in a way that will help to sustain the resource. On September 15, 2016, the agencies met with three economics professors from the University of Hawaii to discuss possible methodologies for valuing the water and assessing charges for its use. The current rents for the revocable permits are as follows:

RP S-7263: \$1698.32 per month
RP S-7264: \$6588.40 per month
RP S-7265: \$3476.72 per month
RP S-7266: \$1426.88 per month

As an interim measure, staff recommends keeping the current rents for these revocable permits in place for 2017. A review of the files shows the permittees are compliant with the permit terms. Staff believes that a one-year holdover of these revocable permits is appropriate under Section 171-58, HRS and Act 126. As DHHL and OHA are extensively involved in this process, additional agency comments were not solicited for this action since the revocable permits are limited term holdovers, and as all permit holders subject to this approval have applied for water leases there will be numerous opportunities for government agencies and general public to provide input.

RECOMMENDATION: That the Board:

1. Find that the holdover of the subject revocable permits is consistent with the public trust doctrine; and
2. Approve the holdover of the subject revocable permits on a month-to-month basis for another one-year period through December 31, 2017, provided however, that the Land Board reserves and delegates to the Chairperson the right at any time to review and reestablish new rental charges for any of the subject revocable permits, to reflect an appropriate rate for the rights and privileges granted by such revocable permits and to best serve the interests of the State.

Respectfully Submitted,



Ian C. Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

A BILL FOR AN ACT

RELATING TO WATER RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-58, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:
3 "(c) Disposition of water rights may be made by lease at
4 public auction as provided in this chapter or by permit for
5 temporary use on a month-to-month basis under those conditions
6 which will best serve the interests of the State and subject to
7 a maximum term of one year and other restrictions under the law;
8 provided that [~~any~~]:

9 (1) Where an application has been made for a lease under
10 this section to continue a previously authorized
11 disposition of water rights, a holdover may be
12 authorized annually until the pending application for
13 the disposition of water rights is finally resolved or
14 for a total of three consecutive one-year holdovers,
15 whichever occurs sooner; provided that the total
16 period of the holdover for any applicant shall not
17 exceed three years; provided further that the holdover
18 is consistent with the public trust doctrine;



1 (2) Any disposition by lease shall be subject to
2 disapproval by the legislature by two-thirds vote of
3 either the senate or the house of representatives or
4 by majority vote of both in any regular or special
5 session next following the date of disposition;
6 [~~provided further that after~~] and

7 (3) After a certain land or water use has been authorized
8 by the board subsequent to public hearings and
9 conservation district use application and
10 environmental impact statement approvals, water used
11 in nonpolluting ways, for nonconsumptive purposes
12 because it is returned to the same stream or other
13 body of water from which it was drawn, and essentially
14 not affecting the volume and quality of water or biota
15 in the stream or other body of water, may also be
16 leased by the board with the prior approval of the
17 governor and the prior authorization of the
18 legislature by concurrent resolution."

19 SECTION 2. The department of land and natural resources
20 shall prepare and submit annual reports to the legislature no
21 later than twenty days before the convening of each of the



1 regular sessions of 2017, 2018, 2019, and 2020. The reports
2 shall include:

- 3 (1) The status of applications to continue previously-
4 authorized dispositions of water rights;
- 5 (2) Actions taken on the applications during the fiscal
6 period of July 1, 2016, to November 30, 2016, fiscal
7 year 2016-2017, fiscal year 2017-2018, and fiscal year
8 2018-2019, respectively; and
- 9 (3) Any relevant recommendations for legislative action or
10 appropriation.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval,
14 and shall apply to applications for a lease to continue a
15 previously authorized disposition of water rights that are
16 pending before the board of land and natural resources on the
17 effective date of this Act or filed with the board of land and
18 natural resources on or after the effective date of this Act,
19 but prior to June 30, 2019; provided that:

- 20 (1) This Act shall be repealed on June 30, 2019, and
21 section 171-58(c), Hawaii Revised Statutes, shall be



1 reenacted in the form in which it read on the day
2 prior to the effective date of this Act; and
3 (2) Any holdovers first applied for under this Act prior
4 to June 30, 2019, may be reauthorized, as provided in
5 section 1 of this Act, beyond June 30, 2019.



H.B. NO. 2501
H.D. 2
S.D. 2
C.D. 1

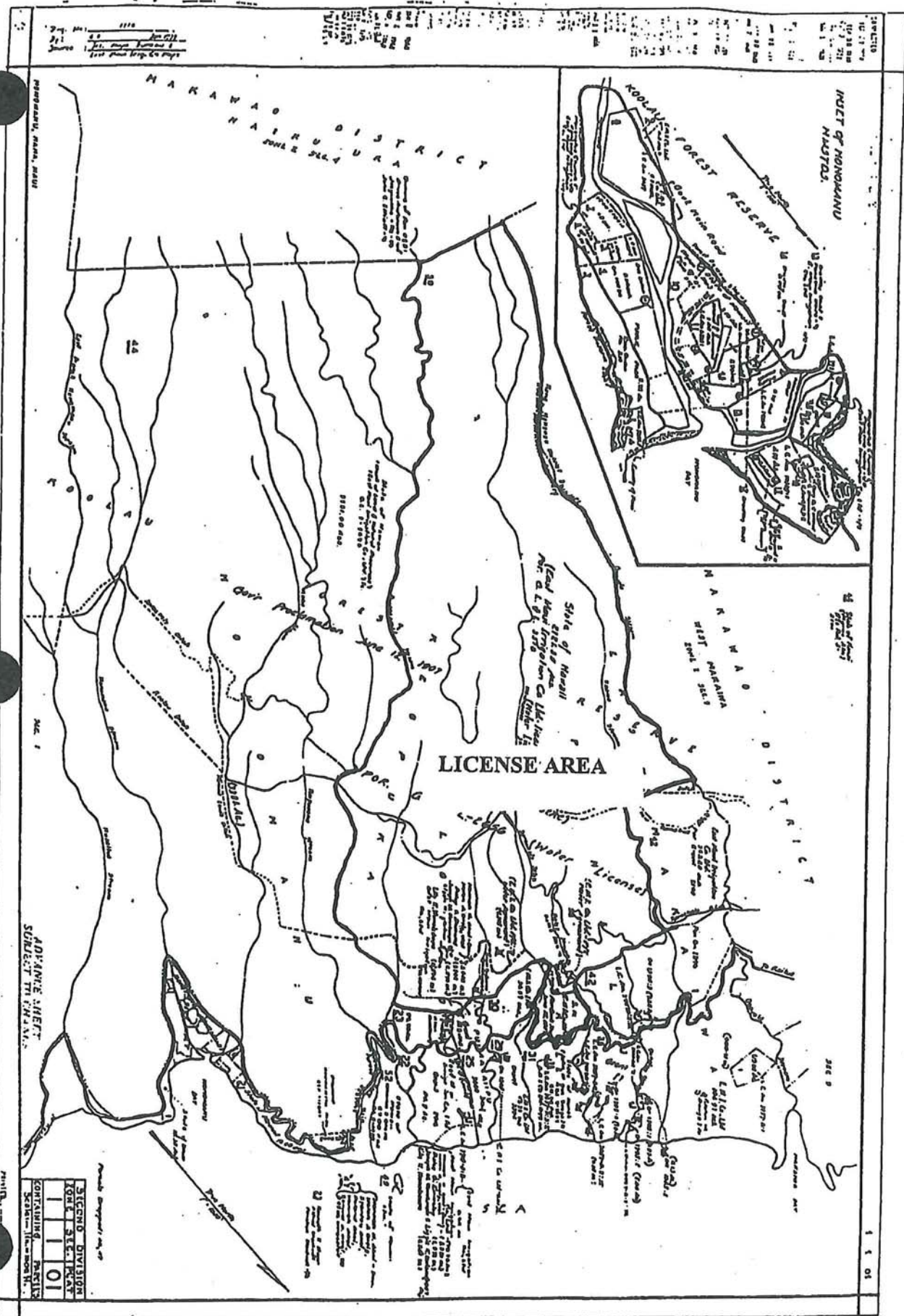
Report Title:
Water Rights; Holdover

Description:
Requires that where an application has been made for a lease to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner. (HB2501 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

HB2501 CD1 HMS 2016-3425





Scale: 1 inch = 1 mile
 1:25,000
 U.S. GEOLOGICAL SURVEY
 TERRACE MAPS
 No. 1000

ADVANCE SHEET
 SUBJECT TO CHANGE

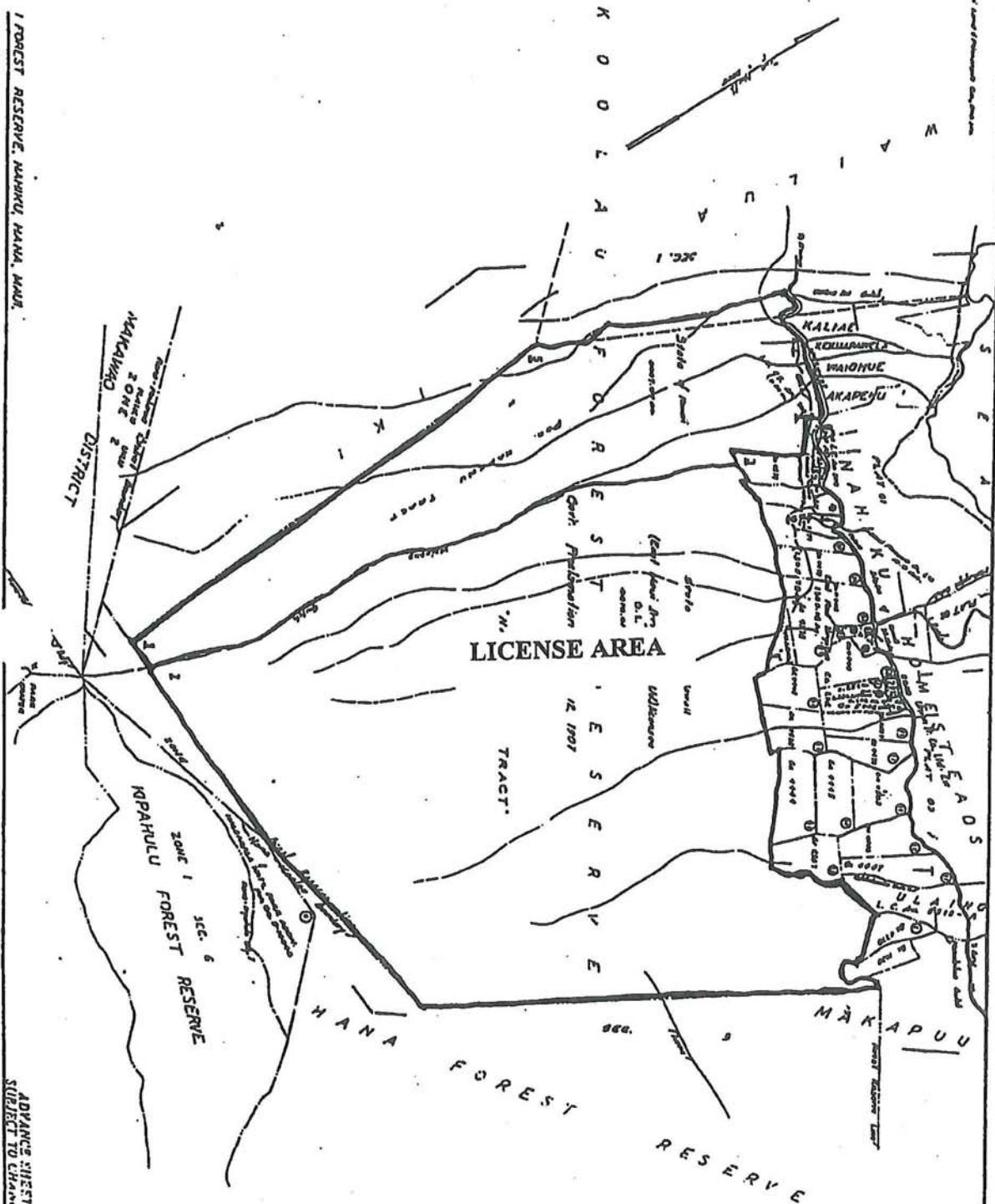
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|--------------------|----|
| SECOND DIVISION | 1 |
| ZONE 7 SEC. 1 PLAT | 1 |
| CONTAINING PARCELS | 01 |
| SUBJECT TO CHANGE | |

EXHIBIT B

Day No: 2067
 Date: 10/10/1941
 Name: [unclear]
 Survey Department

1:25,000
 1:50,000
 1:100,000
 1:200,000
 1:500,000
 1:1,000,000
 1:2,000,000
 1:5,000,000
 1:10,000,000
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FOREST RESERVE, MAHUKU HANA, MAUI.



ADVANCE SHEET
SUBJECT TO CHANGE.

| | | |
|---------|---------|---------|
| SECTION | SECTION | SECTION |
| 1 | 04 | 04 |
| DATE | DATE | DATE |
| 1941 | 1941 | 1941 |

EXHIBIT E



Rick W. Volner Jr.
Plantation General Manager

November 23, 2016

VIA E-MAIL and U.S. MAIL

Ms. Suzanne D. Case
Chairperson
State of Hawaii
Department of Land and Natural Resources
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Authorization of Holdover Status of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to Alexander & Baldwin, Inc. and Revocable Permit No. S-7266 issued to East Maui Irrigation Company, Limited for purposes of Compliance with Act 126

Dear Ms. Case:

The purpose of this letter is to request the Board of Land and Natural Resources, pursuant to Haw. Rev. Stat. § 171-58, to review and authorize the holdover status of Revocable Permits Nos. S-7263, S-7264, and S-7265, issued to Alexander & Baldwin, Inc. and Revocable Permit No. S-7266, issued to East Maui Irrigation Company, Limited, for purposes of compliance with Act 126.

Background

On July 1, 2000, the Board of Land and Natural Resources (“BLNR”) issued Revocable Permits Nos. S-7263, S-7264, and S-7265 to Alexander & Baldwin, Inc. (“A&B”), and Revocable Permit No. S-7266 to East Maui Irrigation Company, Limited (“EMI”). These four Revocable Permits (hereafter, the “East Maui RP’s”) authorized the Permittees to occupy and use the State lands designated therein (the “License Areas”) for the development, diversion and use of water from the License Areas.

On May 14, 2001, Alexander & Baldwin, Inc. and its subsidiary, East Maui Irrigation Company, Limited (collectively hereafter, “EMI”) requested the BLNR to 1) authorize the sale of a lease (water license) at public auction covering the License Areas and 2) authorize

temporary continuation of the East Maui RP's pending issuance of the lease. These requests were placed on the agenda of the BLNR meeting held on May 25, 2001 as agenda Item D-5.

On May 23, 2001, Native Hawaiian Legal Corporation ("*NHLC*") submitted a written request for a contested case hearing regarding both of EMI's requests. On May 24, 2001, NHLC separately filed 27 petitions with the Commission on Water Resource Management ("*CWRM*") to amend the Interim Instream Flow Standards ("*IIFS*") for streams located in whole or in part in the License Areas. At the May 25, 2001 meeting, the BLNR deferred agenda item D-5 and granted a holdover permit on a month to month basis, pending the results of the contested case hearing.

On May 24, 2002, the status of the East Maui RP's was again considered by the BLNR as Agenda Item D-19, and the BLNR again decided to defer and grant a holdover of the existing revocable permits on a month to month basis pending the results of the contested case hearing.

For reasons not entirely clear to EMI, in December of 2005, the BLNR began to include and approve the "renewal" of the East Maui RP's along with multiple other revocable permits in a single agenda item, a practice that continued annually through December of 2014.

Meanwhile, on March 23, 2007, the BLNR issued Findings of Fact, Conclusions of Law, and Decision and Order (the "*March 23, 2007 Decision*") in the contested case hearing relating to EMI's requests for the sale of a lease and temporary continuation of the East Maui RP's that, among other things, 1) acknowledged the BLNR's public trust duties with regard to the disposition and use of the water resource in question, 2) noted that it would be necessary for the IIFS amendments and an environmental assessment to be completed before issuing a lease (stating that "this process is likely to take years"), 3) quoted the Hearings Officer's ruling that "the Holdover Decision was procedurally essential to the Board's proper discharge of its public trust responsibilities," and 4) determined that the immediate cessation of EMI's diversions would be contrary to the public interest.

On April 10, 2015, NHLC filed an action in circuit court on behalf of Healoha Carmichael, among others, against EMI and BLNR (the "*Carmichael Action*") challenging the December, 2014 "renewal" of the East Maui RP's as invalid for failure to have first performed an Environmental Assessment pursuant to Haw. Rev. Stat. Chapter 343. When the East Maui RP's were again included in the bulk agenda item for BLNR's December 11, 2015 meeting (Item D-14), NHLC testified against the BLNR "renewing" them without more analysis, and requested a contested case hearing. EMI testified that the East Maui RP's were already in holdover status and the BLNR previously validated this in its March 23, 2007 decision, which had never been appealed. BLNR deferred taking any action on Agenda Item D-14, but affirmed the holdover status of the East Maui RP's, stating that, "The Board's intent is to maintain the status quo while the litigation continues ..."

On January 8, 2016, Circuit Court Judge Rhonda Nishimura issued an order in the Carmichael case stating that the holdover status of the East Maui RP's was not authorized by Haw. Rev. Stat. Chapter 171, and therefore that the East Maui RP's are invalid. That decision

has been appealed by BLNR, EMI, and the County of Maui and is currently pending before the Intermediate Court of Appeals (“ICA”).

Effective June 27, 2016, Act 126 was enacted by the Hawaii Legislature to amend Haw. Rev. Stat. § 171-58 to expressly allow the State to grant holdover status to an applicant for a lease to continue a previously authorized disposition of water rights. The pertinent language is as follows:

Where an application has been made for a lease under this section to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner; provided that the total period of the holdover for any applicant shall not exceed three years; provided further that the holdover is consistent with the public trust doctrine;

Section 4 of Act 126 provides that it “shall apply to applications for a lease to continue a previously authorized disposition of water rights that are pending before the board of land and natural resources on the effective date of this Act ...”

EMI’s Request that BLNR Review and Authorize the Current Holdover Status

EMI’s position is that the holdover status of the East Maui RP’s initially granted by the BLNR in 2001 and reconfirmed by the BLNR after a full evidentiary hearing in its March 23, 2007 Decision, was a legally valid exercise by BLNR of its inherent power as a public trustee. EMI believes this to be true notwithstanding the absence of any explicit enabling statutory provision, prior to June 27, 2016, and notwithstanding Judge Nishimura’s contrary ruling that is under review by the ICA. However, since the Legislature has now provided specific legislation authorizing the granting of holdover status to applicants in EMI’s position, EMI respectfully requests that BLNR, in an abundance of caution, supplement its reliance upon the findings and conclusions made in its March 23, 2007 Decision by following the Act 126 protocol for extending the holdover status for the East Maui RP’s.

Holdover of EMI’s permits is consistent with the Public Trust Doctrine

The findings and conclusions made by BLNR in its March 23, 2007 Decision regarding the importance of protecting the continued delivery of water by EMI to the County of Maui to service the Nahiku and Upcounty Maui communities are as applicable today as they were in 2007. Extending the current holdover status of the East Maui RP’s so as to enable the continuation of this service is clearly consistent with the public trust doctrine and is manifestly in the public interest.

With the recent cessation of the cultivation of sugarcane by HC&S on the 30,000 acres of Central Maui previously irrigated with water delivered by EMI, it is also critically important that the EMI Ditch System be preserved in order to preserve the potential of continued agricultural

use of these lands. This is the mandate of the community input based Maui General plan as well as the Regional Community Plans, all of which call for the preservation of agriculture on the Central Maui isthmus. A&B's goal is to establish new, viable, diversified agricultural uses on its former sugar lands, as substantiated by the fact that A&B has designated 27,104.5 acres as Important Agricultural Lands ("IAL") and remains committed to this IAL Designation. A&B has been investing in diversified agriculture, conducting field trials, and working with interested farmers and other agricultural users. The first question from interested users invariably has to do with the availability of water. These lands are naturally arid. Their future agricultural use depends on the continuation of the EMI Ditch System as a reliable, lower cost source of irrigation water.

The following excerpts from the Supreme Court of Hawaii's opinion in In re Water Use Permit Applications, 94 Hawai'i 97, 9 P.3d 409, (2000), clearly establish the consistency of the public trust doctrine with the goal of preserving the integrity of the EMI Ditch System and the future agricultural use of A&B's former sugar lands in Central Maui:

[T]he state water resources trust acknowledges that private use for 'economic development' may produce important public benefits and . . . such benefits must figure into any balancing or competing interests in water . . ." 94 Hawai'i 97, 138.

The state water resources trust thus embodies a dual mandate of 1) protection and 2) maximum reasonable and beneficial use." Id. at 139.

In this jurisdiction, the water resources trust also encompasses a duty to promote the reasonable and beneficial use of water resources in order to maximize their social and economic benefits to the people of this state." Id.

The public has a definite interest in the development and use of water resources for various reasonable and beneficial public and private offstream purposes, including agriculture. Id. at 141.

Reason and necessity dictate that the public trust may have to accommodate offstream diversions inconsistent with the mandate of protection, to the unavoidable impairment of public instream uses and values. Id.

[A]rticle XI, section 1 [of the Hawaii Constitution] does not preclude offstream use, but merely requires that all uses, offstream or instream, public or private, promote the best economic and social interests of the people of this state." Id.

'[T]he result . . . is a controlled development of resources rather than no development.' Id.

We have indicated a preference for accommodating both instream and offstream uses where feasible. Id. at 142.

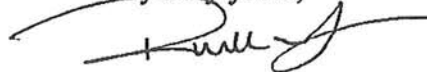
In order to preserve the operational integrity of the EMI Ditch System, an extensive and irreplaceable infrastructure that extends across a mix of State and private lands, EMI needs to have continued access to waters collected from the License Areas as well as the License Areas themselves. This will ensure the delivery of water to the County of Maui as well as the maintenance of the roads, ditches and other features of the system that would quickly erode, become overgrown, or otherwise deteriorate if not maintained. This ditch system is vital infrastructure for the island of Maui, making possible continued agriculture in Central Maui. Without the EMI system, available options for land use in Central Maui will be unduly compromised.

In its March 23, 2007 Decision, BLNR appropriately considered the rights and needs of downstream users and ordered the release of water from Waiokamilo Stream to insure adequate flow to taro farmers. Since then, significant progress has been made in amending the IIFS to provide for partial restoration of the streams that were the subject of NHLC's 27 IIFS Petitions. Further, after the January 6, 2016 announcement by A&B of the planned cessation of sugar cultivation by HC&S, on April 20, 2016, A&B announced that it was fully and permanently restoring the following priority taro streams in East Maui: Honopou, Hanehoi (Puolua), Waiokamilo, Kualani, Pi'ina'au, Palauhulu, and Wailuanui. Implementation of the restoration of these streams is ongoing and is subject, in some cases, to the receipt of diversion modification or abandonment permits from CWRM.

Any extension by BLNR of the holdover status of the East Maui RP's will, however, as it always has been, be subordinate to the IIFS determinations of CWRM which will assure that the rights of downstream users and the public are protected in accordance with the public trust doctrine.

In light of the above, EMI respectfully asks the BLNR to authorize the holdover of Revocable Permits Nos. S-7263, S-7264, S-7265 and No. S-7266 and to declare the holdover to be consistent with the public trust.

Very truly yours,



Rick W. Volner Jr.
Plantation General Manager

Ms. Suzanne D. Case
November 23, 2016
Page 6

cc:

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Summer L.H. Sylva, Esq.
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May 14, 2001

BY HAND DELIVERY

Board of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Re: Sale of Lease (Water License) at Public Auction, Koolau Forest Reserve and Hanawi Natural Area Reserve, Hana and Makawao, Maui

Ladies and Gentlemen:

Alexander & Baldwin, Inc. and its subsidiary, East Maui Irrigation Company, Limited, request sale of a lease at public auction of the Koolau Forest Reserve and Hanawi Natural Area Reserve, Hana and Makawao, Maui, in accordance with the following:

Statute: Chapter 171, HRS generally; Section 171-58(c), HRS.

Location: Portion of the government land within the Koolau Forest Reserve and the Hanawi Natural Area Reserve generally identified as the Nahiku, Keanae, Huelo and Honomanu License areas.

Tax Map Keys 1-1-01, 1-1-02, 1-2-04, 2-9-14

| | | |
|--------------|------------------|-------------------------------|
| <u>Area:</u> | Nahiku | 10,111.22 acres, more or less |
| | Keanae | 10,768.00 acres, more or less |
| | Huelo | 8,752.69 acres, more or less |
| | Honomanu | 3,381.00 acres, more or less |
| | Total Lease Area | 33,012.91 acres, more or less |

(The total area shall be subject to review and confirmation by the Department of Accounting and General Services, Survey Division)

Status: Nahiku encumbered under Revocable Permit No. S-7266
Keanae encumbered under Revocable Permit No. S-7265
Huelo encumbered under Revocable Permit No. S-7263
Honomanu encumbered under Revocable Permit No. S-7264

EXHIBIT S-2

EXHIBIT "4"

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- Land Title:** Subsection 5(b) of the Admissions Act
- Zoning:** State Land Use Commission: Conservation
- Purpose:** Right, privilege and authority to enter and go upon the above-described areas for the purpose of developing, diverting, transporting and using government-owned waters.
- Term:** Thirty (30) years, commencing sixty (60) days from public auction.
- Rental:** Minimum Rental to be determined by appraisal, subject to review and acceptance by Chairperson. Minimum Rental shall be subject to reopening and redetermination at the end of the tenth (10th) and twentieth (20th) years of the term; such redetermination to be made by appraisal.
- Bond:** A performance bond shall be posted to the extent required by statute.
- EIS:** All bidders shall prepare and file with the Office of Environmental Quality Commission an Environmental Impact Statement with respect to the proposed use. Disposition of the cost of the EIS shall be determined at a future date.
- Other:**
1. The lease shall be subject to that certain Indenture dated March 18, 1938, by and between the Territory of Hawaii and East Maui Irrigation Company, Limited, as amended by Correction Agreement dated March 24, 1938.
 2. Lessee shall maintain roads, trails and the water system.
 3. The State shall have limited rights, to be specified in the lease, to withdraw water for domestic purposes and for emergency purposes.
 4. Public hunting will be allowed, subject to reasonable restrictions to be contained in the lease and consistent with June 5, 1995 Vehicular Access Agreement.
 5. The lease shall be issued subject to Instream Flow Standards as subsequently determined by the Commission on Water Resource Management.
 6. Lessee shall continue to supply of water for domestic purposes to the Maui County Board of Water Supply pursuant to the April 13, 2000 Memorandum of Understanding between BWS and A&B.
 7. Other relevant terms as reflected in the existing revocable permits and expired license agreements shall be included.

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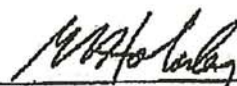
Summary: We request the Board to take the following action:

- A. Authorize the sale of a lease (water license) at public auction covering the area in question under the above-listed terms and conditions which are by reference incorporated herein and, in addition, under the following conditions:
 - i. Provision for proper maintenance of the water system.
 - ii. Compliance with all applicable laws, rules and regulations.
 - iii. Disapproval by the State legislature following date of sale.
 - iv. Filing of an Environmental Impact Statement by all bidders.
 - v. Other terms and conditions as Chairperson may prescribe.
- B. Authorize temporary continuation of the year-to-year revocable permit for existing permittees (the Nahiku revocable permit to Alexander & Baldwin, Inc. and the Honomanu, Huelo and Keanae revocable permits to East Maui Irrigation Company, Limited for fiscal year 2001/2002) pending issuance of the lease.

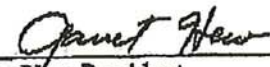
Thank you for your consideration of this request.

Very truly yours,

Alexander & Baldwin, Inc.

By: 
Its Vice President

East Maui Irrigation Company, Limited

By: 
Its Vice President

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

Defendant A&B/EMI's Exhibit AB-23

FOR IDENTIFICATION _____

RECEIVED IN EVIDENCE _____

CLERK _____