



ALEXANDER & BALDWIN
PARTNERS FOR HAWAII

September 16, 2019

VIA E-MAIL and U.S. MAIL

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

RE: Holdover 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 Water Use on the Island of Maui

Dear Chair Case:

The purpose of this letter is to provide a status report on A&B/EMI's compliance with permit conditions imposed by the Board of Land and Natural Resources ("**BLNR**") as part of its November 9, 2018 approval of the holdover of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to Alexander & Baldwin, Inc. ("**A&B**") and Revocable Permit No. S-7266 issued to East Maui Irrigation Company, Limited ("**EMI**") for the calendar year 2019. We are providing this status report at this time in response to the request of the Land Division, who has expressed the intent to place the renewal of existing water revocable permits (including the subject permits) before the BLNR for consideration at its October 11, 2019 meeting.

The attached document lists each of the permit conditions and corresponding compliance actions undertaken as of the date of this letter. We have also attached a copy of the staff recommendation and relevant portion of the minutes of the BLNR's November 9, 2018 meeting relating to the subject permits. These two documents are the source of the permit conditions listed on the attached.

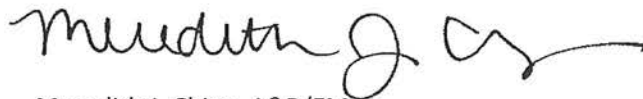
We would also like to note that In December 2018, A&B sold the majority of its former sugar cane lands on Maui to Mahi Pono, LLC and its related entities (collectively referred to as "**Mahi Pono**"), including the Central Maui agricultural lands which have been irrigated for over 100 years by the EMI Aqueduct System. Mahi Pono's objective is the same as that articulated by A&B at the BLNR's November 9, 2018 meeting—to transition as much of the former sugarcane land as possible to diversified agriculture. In February 2019, Mahi Pono became a co-owner of EMI.

During 2019, water collection enabled by these East Maui revocable permits continued to serve the needs of the public water systems that serves Upcountry Maui and Nahiku, both owned and operated by the County of Maui Department of Water Supply, as well as the County's Kula Ag Park and increasing diversified agricultural activities in Central Maui undertaken by Mahi Pono. Maintaining these Central Maui lands in agriculture is consistent with the state's constitutional mandate to protect important agricultural lands, as well as the Hawaii State Plan, Maui Countywide Policy Plan, Maui Island Plan, and Maui community plans. These uses of East Maui stream water are further recognized and confirmed by the June 20, 2018 Interim Instream Flow Standard ("*IIFS*") decision issued by the Commission on Water Resource Management ("*CWRM*") for East Maui streams, 24 of which are within the area covered by the East Maui RP's. The diversion and use of East Maui stream water this year has been in compliance with the CWRM's June 2018 IIFS decision, as noted in the attached permit compliance status report.

Lastly, we would like to note the achievement of a significant milestone toward the issuance of a long-term State water lease for East Maui, in lieu of these revocable permits ("*Proposed Water Lease*"). The Draft Environmental Impact Statement ("*DEIS*") for the Proposed Water Lease has been submitted to the Office of Environmental Quality Control, and our understanding is that the Notice of Availability will be published in the OEQC's September 23, 2019 bulletin, *The Environmental Notice*, making the document available to the public for review and initiating the 45-day public comment period. Assuming no unexpected delays, we estimate that a Final EIS can be published in June 2020 and accepted later that summer.

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

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Meredith J. Ching', with a long horizontal flourish extending to the right.

Meredith J. Ching, A&B/EMI

cc: Ian Hirokawa, Land Division (via email)

**HOLDOVER OF EAST MAUI WATER PERMITS
2018 BLNR CONDITIONS: STATUS OF COMPLIANCE
AS OF SEPTEMBER 16, 2019**

CONDITIONS PER 11/9/18 STAFF SUBMITTAL (pp. 7, 8)

- 3. Require the holdover of the revocable permits to incorporate the June 20, 2018 order of the Commission on Water Resource Management (CWRM). There shall be no diversion from the streams listed in the CWRM order, and the timing for stopping the diversions shall be in accordance with the aforesaid CWRM order.**

The Commission on Water Resource Management (CWRM) issued its East Maui Interim Instream Flow Standard ("IIFS") decision on June 20, 2018. No appeals were filed at the end of the 30-day appeal period, rendering the decision final.

The current need for water from the East Maui streams averages approximately 27 million gallons per day (MGD), and only that amount of water is being diverted from the East Maui watershed. This amount is well within the bounds of the 2018 IIFS decision with respect to total quantity as well as the use of specific streams. This water is being used to supply the County of Maui for its Nahiku and Upcountry Maui water systems, the Kula Ag Park, as well as fire suppression needs, and for agricultural uses in Central Maui, on lands now owned and managed by Mahi Pono. So far, these agricultural uses include over 500 acres of sweet potato, 60 acres of red and white potato, 40 acres of citrus, over 500 acres of sorghum grass for cattle feed, and 6,500 acres of irrigated pasture to support rotational grazing for 1,300 head of cattle.

Mahi Pono plans the continued expansion of its agricultural operations, which will result in a corresponding increase in the need for water from the East Maui. That said, the Permittees – and by extension, Mahi Pono – are committed to the efficient use of East Maui stream water. Mahi Pono's total amount of water usage together with that of the County of Maui will not exceed the limits of the IIFS decision at any point during its expansion.

The Permittees have also made significant progress on the diversion modifications in compliance with the 2018 IIFS decision. Priority is being given to the modifications needed to effect the permanent abandonment of the diversions on the seven 'taro' streams. While 90-95% of the stream flow has been returned/redirected back into these taro streams, return of the remaining 5-10% requires work on the diversions that can trigger government agency review and sometimes permitting requirements on the Federal, State and County level. Given the magnitude and the varying complexity of the diversion modification work that is needed to comply with the entirety of the 2018 IIFS decision, the Permittees have worked closely with the CWRM staff. At staff's suggestion, for permitting purposes, the taro stream modification work was divided into four categories, based on the complexity of the needed work. To-date, the fifteen (15) Category 1 diversions have received all of the necessary approvals, and work on eleven (11) of the diversions has been completed. The work on the remaining four (4) Category 1 diversions will be completed before

the end of September 2019. The Permittees also sought and received the initial permitting approvals from the CWRM (Stream Diversion Works Permits, "SDWP's") for fifteen (15) additional Category 2 diversions and eleven (11) Category 3 diversions in February and August 2019 respectively, and are now pursuing the remaining reviews/approvals from the other government agencies needed before work can commence. Category 4 diversions (29) are expected to be before the CWRM for SDWP approval before the end of the year.

The Permittees have also initiated discussions with CWRM staff on IIFS compliance for the 'non-taro streams.' A draft work plan has been submitted to CWRM for 41 diversions on 17 additional streams that are implicated by the 2018 IIFS decision. Once the work plan is approved by CWRM, the Permittees will begin the broader agency review and permitting process. In the meantime, the Permittees are in compliance with the IIFS decision with respect to flow requirements (i.e. by individual streams and total quantity of flow). Connectivity requirements of the IIFS decision are being met to the extent possible without the physical modifications that require governmental reviews and approvals. The draft work plan transmitted by the Permittees to the CWRM does address means of achieving full connectivity compliance for these additional streams.

In summary, the Permittees' diversion of water under the subject 2019 RP's has been in compliance with the CWRM's June 20, 2018 IIFS order with respect to flow volumes, by individual streams, and compliance with connectivity requirements has been met to the extent legally possible without further governmental review and approvals. In addition, significant progress has been made on pursuing the modifications and abandonment of diversions on the seven 'taro streams', an established priority both for the permittees and the State.

4. There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use

Status: See uses outlined in response to #3 above. All are beneficial uses related agriculture and municipal/public needs.

5. Any amount of water diverted under the revocable permits shall be for reasonable and beneficial use and always in compliance with the amended IIFS

Status: See responses to #3 and #4 above.

6. The holdover shall comply with all conditions required by the CWRM's Amended IIFS Decision

Status: As mentioned above, total water diverted for use in Upcountry and Central Maui has approximated 27 MGD this past year, which is well within the bounds of the CWRM's 2018 IIFS decision with respect to diversion of specific streams and total amount of water diverted. Significant progress was achieved by the Permittees in 2019 relative to pursuing the ditch system/diversion modifications that are necessary to ensure IIFS compliance even at higher levels of diversion, which will occur over time as Mahi Pono's agricultural activity is expanded.

Another condition of the 2018 IIFS decision was a requirement that EMI, HC&S, County of Maui and Native Hawaiian Legal Corporation each provide a one-year status report on specific items. EMI and Mahi Pono (as successor to HC&S) submitted reports on June 20, 2019. Copies of those letters are attached

7. Permittee shall provide a specific report on the progress regarding the removal of diversions and fixing of the pipe issues before the end of the holdover period

Status: This permit condition is the same as the year prior which we believe related to a pipe at Pualoa (aka Puolua) Stream at the Lowrie Ditch. In last year's status report, we reported that the pipe had been extended to provide wetted pathways for the movement of stream biota on Pualoa Stream. At the 2018 BLNR hearing on the subject RP's (for 2019), statements were made that the pipe needs to be extended further to go under the road and that there were two 4" rusted pipes that needed to be removed from the area (see attached minutes of the November 9, 2018 BLNR meeting, page 6 of 25, sixth paragraph). Accordingly, the two 4" pipes have since been removed from the watershed and a new design intended to improve fish migration has been incorporated in the diversion modification plan for compliance with the IIFS, and recently approved by the CWRM in its approval of the Category 3 SWUP's.

8. Permittee shall cleanup trash from revocable permit areas starting with areas that are accessible and close to streams

Status: The Permittees have established a number of standard operating procedures to address the cleanup of trash and debris in the license areas. EMI employees are instructed to look for any material that is not serving a function in and around the ditch system or intakes during the course of their daily assignments. They are asked to report any sightings to their supervisors who then coordinate the prompt removal of the debris. To date, EMI has recovered several hundred feet of old pipe, several old wooden gates and remnant pieces of steel and concrete. EMI has also removed two large tractors that were abandoned in the field many decades ago.

EMI also has in place a practice of removing any equipment and excess materials it brings into the license area to perform work on the ditch system as soon as the job(s) is completed.

Given the size of the EMI crew and the size of the watershed, it is not possible to be aware of all debris at all times. Accordingly, EMI has reached out to watershed partners, such as Ms. Lucienne de Naie of the Sierra Club, to set up a process to inform EMI of any sightings of debris made by her or Sierra Club members so that EMI personnel can conduct prompt field visits and arrange for the removal of the items as appropriate.

BLNR ADDITIONAL CONDITIONS (11/9/18 BLNR Meeting Minutes, p.11):

- 1. The Board established an interim committee to discuss water usage issues in the license area. The committee shall consist of five members, representing Alexander & Baldwin, Farm Bureau, OHA, Native Hawaiian Legal Corporation and the County of Maui. The interim committee shall meet once a month for the first quarter, then at least quarterly thereafter, more often as useful**

Status: On January 10, 2019, EMI transmitted a proposed plan for the interim committee ("Committee") to BLNR Chair Suzanne Case for approval of its scope. This was done in an effort to initiate the establishment of the Committee as soon as possible, but in the absence of minutes of the December BLNR meeting which would have provided specific guidance. On that same date, EMI sent letters to the Maui County Farm Bureau, OHA, Native Hawaiian Legal Corporation and the County of Maui advising them of the formation of the interim committee and inviting each to designate a participating member.

On February 27, 2019, Chair Case transmitted a letter to EMI, acknowledging that the proposed committee and scope was consistent with the Board's intent and agreeing to it proceeding accordingly. On March 4, 2019, invitations were sent to the parties for a March 12, 2019 meeting. At that initial meeting, the parties agreed that quarterly meetings were appropriate. The second quarter meeting was held on July 31, 2019 and a third quarter meeting has been scheduled for September 30, 2019. Topics discussed include the status of IIFS compliance, Mahi Pono farm plans, and status of the EIS, amongst others. Meeting minutes are prepared and provided to the parties regardless of meeting attendance.

Copies of all of the above-referenced correspondence are attached. A fourth quarter meeting of the interim committee will be scheduled later in the year.

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

Defendant A&B/EMI's Exhibit AB-28

FOR IDENTIFICATION _____

RECEIVED IN EVIDENCE _____

CLERK _____