

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

November 9, 2017

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 to notate any non-compliance issues and pending litigation in the renewal request. In compliance with these directives, staff 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. At its meeting on December 9, 2016 under agenda item D-11, the Board approved, as amended, a one year holdover of the existing water permits on the island of Maui pursuant to Section 171-58, HRS, as recently amended by Act 126 Session Laws of Hawaii 2016 (Act 126). The Board imposed additional conditions in granting its approval:

- 1) To require the holdover of the revocable permits to incorporate the July 18, 2016 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;
- 2) There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use;
  - 3) Honomanu Stream shall also be designated as a stream from which no water diversion shall be permitted;
  - 4) A maximum of 80 million gallons per day (mgd) on average shall be permitted for diversions to central Maui. The permittees can apply for the diversion of additional water if necessary during the term of the permits;
  - 5) The permittees shall remove (from the no-diversion streams) the dry areas of streams that are created by erosion caused by a diversion, as mentioned on pages 10-11 of the DAR report, as part of the restoration of streams; and
  - 6) The permittees and taro farmers shall each designate a point-of-contact for their respective groups who will exchange phone numbers and communicate concerns from their group to the point-of contact for the other group.

Staff now brings the existing water permits on the island of Maui to the Board for approval of an additional one-year holdover. The status as to the Board's additional conditions is addressed in the Remarks section.

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, as 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 CWRM to amend the Interim Instream Flow Standards (IIFS) for certain East Maui streams. The IIFS petitions resulted in litigation and 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.<sup>1</sup> 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

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<sup>1</sup> A&B eventually ceased all diversions of Waiokamilo Stream in 2007.



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.<sup>2</sup> 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 continued 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 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.<sup>3</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> A large portion of A&B’s lands in central Maui has been designated as Important Agricultural Lands (IAL).



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.

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 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 2018. 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.

Since the Board's prior approval of the holdover, A&B and EMI have proceeded with conducting their Environmental Impact Statement. An Environmental Impact Statement Preparation Notice (EISPN) was published in the Office of Environmental Quality Control Environmental Notice on February 8, 2017. A number of comments were received, with many expressing concerns about the proposed water lease. A&B and EMI will address the comments as part of the EIS. Additionally, A&B and EMI have taken action to address the additional conditions imposed by the Board pursuant to the prior holdover approval. A summary of the actions taken is attached as Exhibit 5.

In regards to the IIFS contested case, as of this writing, the Hearings Officer has delivered an Amended Proposed Findings of Fact, Conclusions of Law & Decision and Order for CWRM's review and approval. However, no final decision has been made by CWRM. The various documents relating to this matter are available through the following link: <http://dlnr.hawaii.gov/cwrn/newsevents/cch/cch-ma13-01/>.

RECOMMENDATION: That the Board:

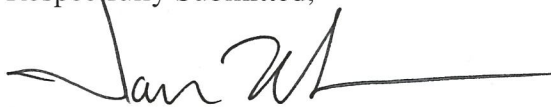
1. Find that the holdover of the subject revocable permits is consistent with the public trust doctrine;
2. Approve the holdover of the subject revocable permits on a month-to-month basis for another one-year period through December 31, 2018, provided however, that the Land Board reserves and delegates 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, subject to the following conditions:
3. To require the holdover of the revocable permits to incorporate the July 18, 2016 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;
4. There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use;
5. Honomanu Stream shall also be designated as a stream from which no water diversion shall be permitted;
6. A maximum of 80 million gallons per day (mgd) on average shall be permitted for diversions to central Maui. The permittees can apply for the diversion of



additional water if necessary during the term of the permits;

7. The permittees shall remove (from the no-diversion streams) the dry areas of streams that are created by erosion caused by a diversion, as mentioned on pages 10-11 of the DAR report, as part of the restoration of streams; and
8. The permittees and taro farmers shall each designate a point-of-contact for their respective groups who will exchange phone numbers and communicate concerns from their group to the point-of contact for the other group.

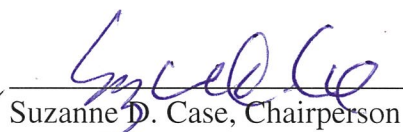
Respectfully Submitted,



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Ian C. Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

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# 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



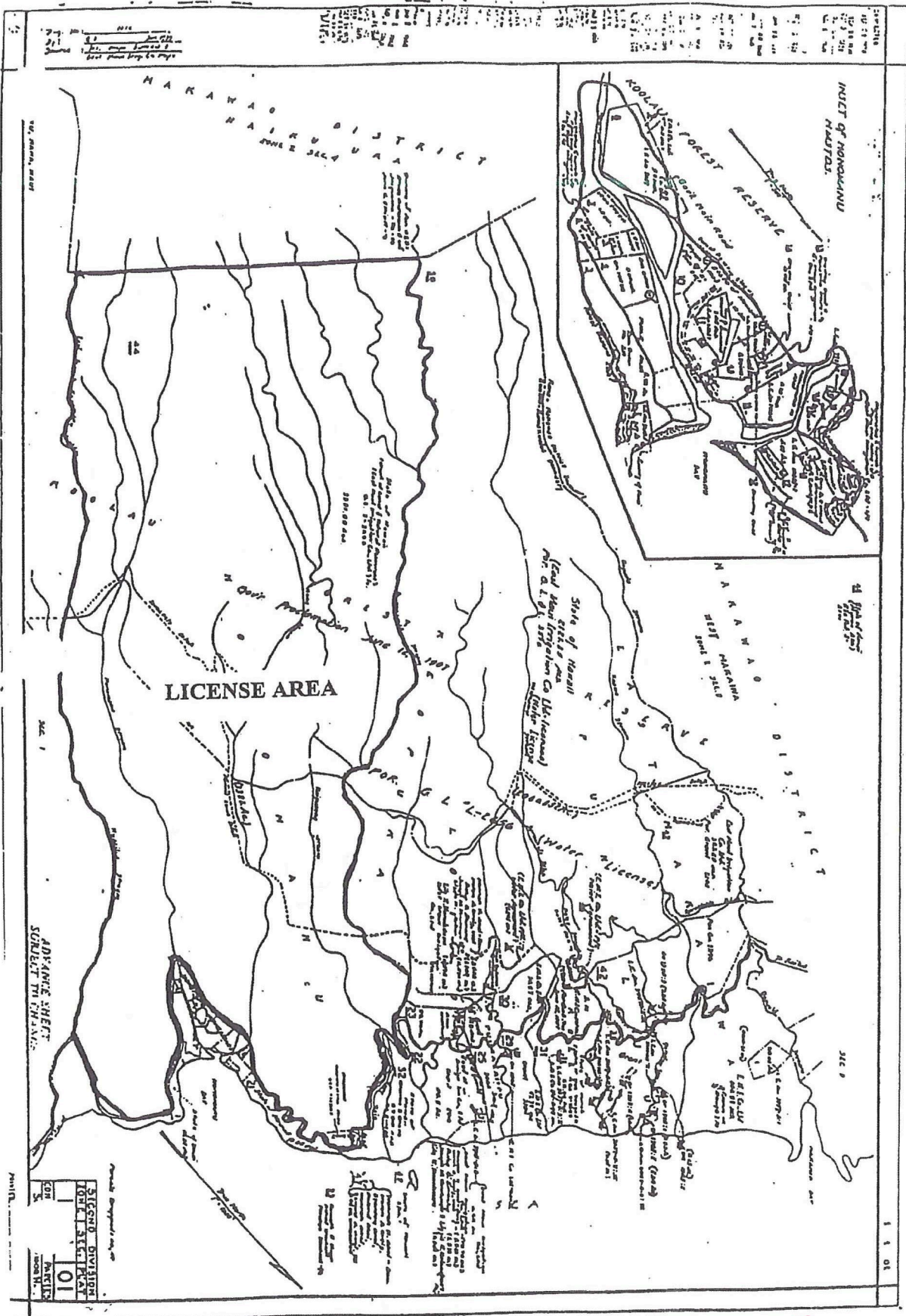


EXHIBIT A

EXHIBIT "2"



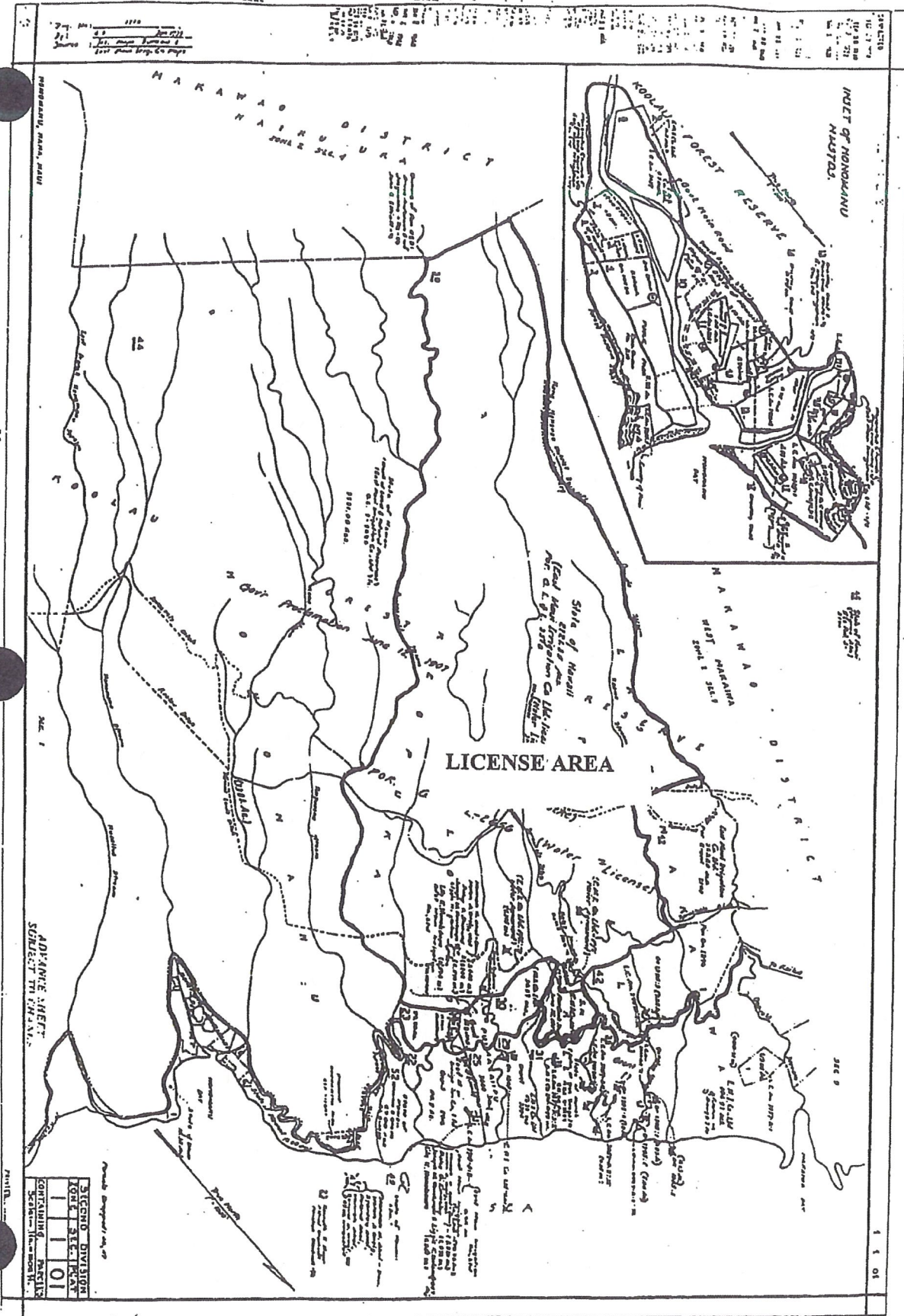
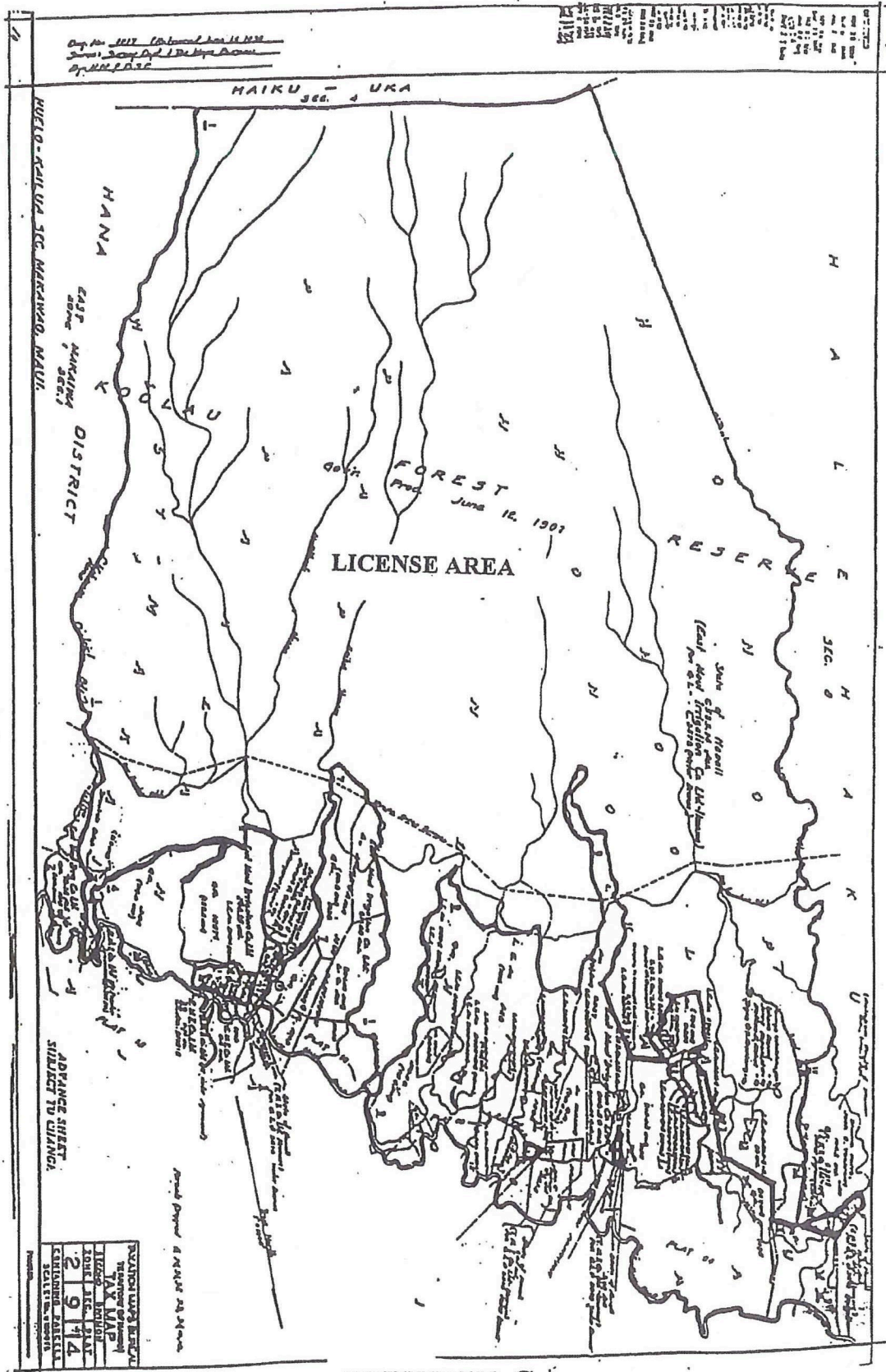


EXHIBIT B



Copy to THE NATIONAL BUREAU OF SURVEYING  
 U.S. GEOLOGICAL SURVEY  
 WASHINGTON, D.C.

Scale 1:50,000  
 Contour Interval 100 feet  
 Projection UTM  
 Datum WGS 84  
 Zone 18N  
 Easting 650,000  
 Northing 1,500,000  
 UTM Zone 18N  
 UTM Easting 650,000  
 UTM Northing 1,500,000

HAIKU - UKA  
 SEC. 4

HAWAIIAN DISTRICT  
 EAST HAWAIIAN DISTRICT

LICENSE AREA

FOREST RESERVE  
 June 16, 1907

RESERVE

State of Hawaii  
 (Land Acquired Pursuant to Act No. 151, 1907)

ADVANCE SHEET  
 SUBJECT TO CHANGE

SCALE	1:50,000
PROJECTION	UTM
DATUM	WGS 84
ZONE	18N
EASTING	650,000
NORTHING	1,500,000
CONTour INTERVAL	100 FEET
DATE	1974
BY	U.S. GEOLOGICAL SURVEY
REVISION	2

EXHIBIT C

320



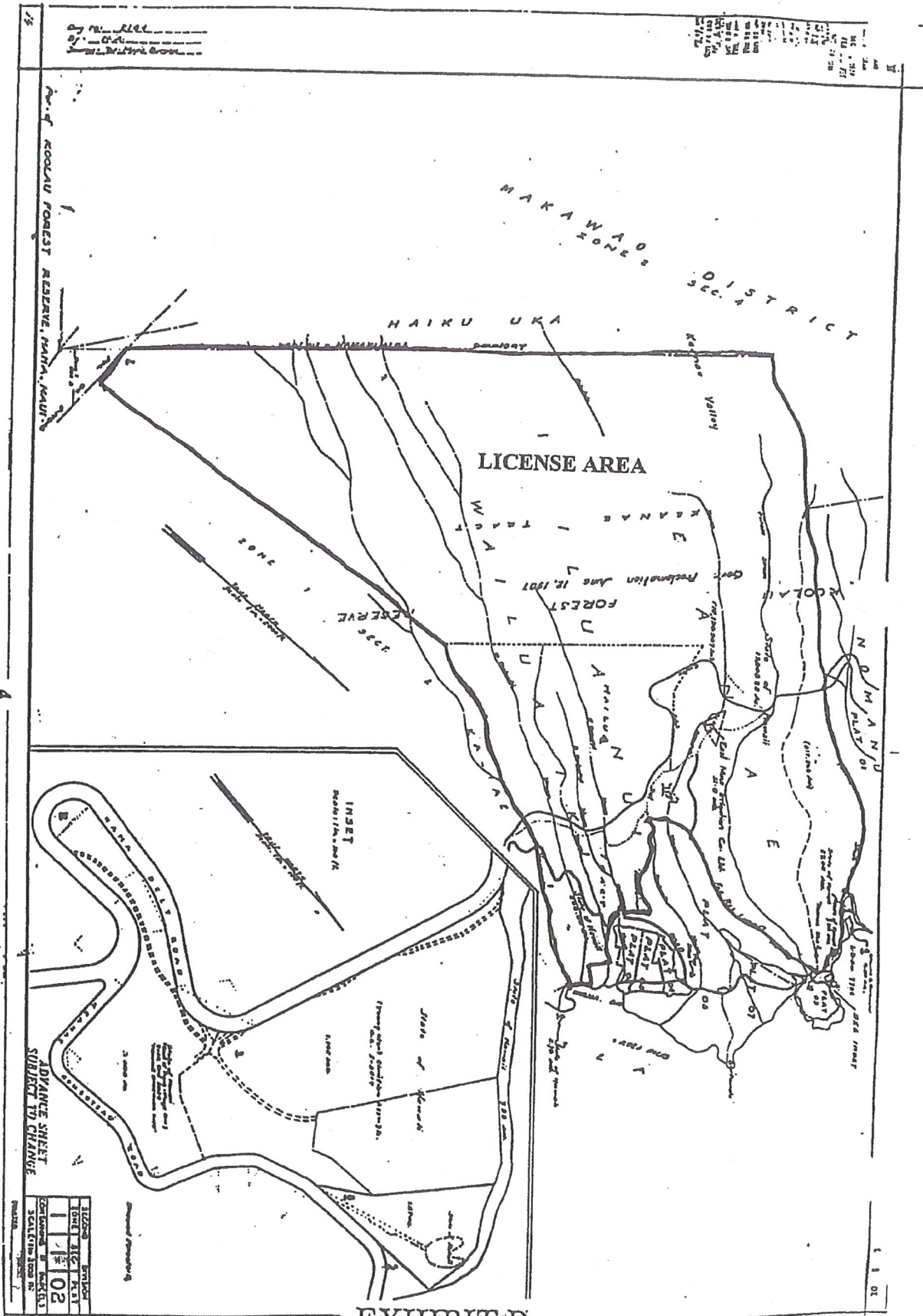


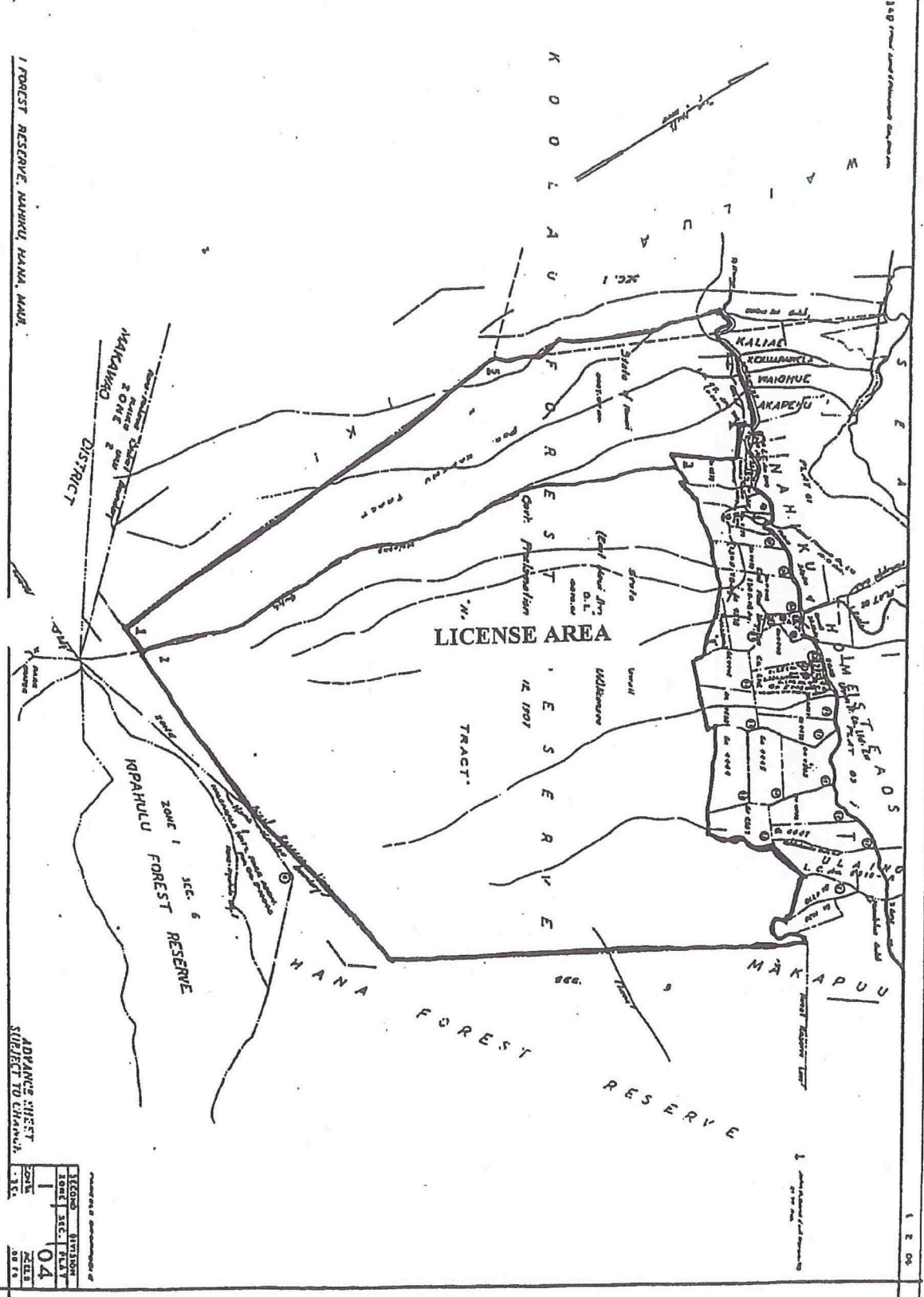
EXHIBIT D



Date: 2007  
 Name: \_\_\_\_\_  
 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  
 1:20,000,000  
 1:50,000,000  
 1:100,000,000  
 1:200,000,000  
 1:500,000,000  
 1:1,000,000,000

FOREST RESERVE, MAHUKU HANA, MAUI.



ADVANCE SHEET  
SUBJECT TO CHANGE.

SECTION		DIVISION		SHEET	
NO.	NAME	NO.	NAME	NO.	NAME
1	SECTION 1	04	DIVISION 04	04	SHEET 04

**EXHIBIT E**



ALEXANDER & BALDWIN, INC.

822 Bishop Street  
Honolulu, Hawaii 96813  
P.O. Box 3440  
Honolulu, HI 96801-3440  
www.alexanderbaldwin.com  
Tel (808) 525-6611  
Fax (808) 525-6652

October 24, 2017

**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 formally request the Board of Land and Natural Resources (“**BLNR**”), 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. (“**A&B**”), and Revocable Permit No. S-7266, issued to East Maui Irrigation Company, Limited (“**EMI**”), for purposes of compliance with Act 126.

**Background**

This is EMI’s second Act 126 request to BLNR for review and authorization of the continued holdover status of these four Revocable Permits (hereafter, the “**East Maui RP’s**”). EMI’s first request was made by letter dated November 23, 2016, a copy of which is enclosed. EMI’s first request was considered by BLNR at its December 9, 2016 meeting and approved subject to certain conditions (“the **RP Additional Conditions**”) enumerated on page 12 of the minutes of the meeting, which were approved on March 10, 2017, a copy of which minutes is also enclosed. The background relating to the East Maui RP’s has been previously summarized in EMI’s November 23, 2016 letter.

**EXHIBIT "3"**

**Holdover of EMI's permits continues to be consistent with the Public Trust Doctrine**

As recognized by BLNR when it granted EMI's first request to authorize the continued holdover status of the East Maui RP's, the holdover of EMI's permits is consistent with the Public Trust Doctrine. This has been reinforced over the last year by additional diversified agricultural activities supported by the East Maui RP's and continued reliance on this water by the County of Maui Department of Water Supply and the Upcountry community, as noted in the comprehensive findings and analysis set forth in the Hearings Officer's Amended Proposed Findings of Fact, Conclusions of Law, & Decision and Order (the "**Recommended Order**") filed on August 2, 2017 in the currently pending proceeding before the Commission on Water Resource Management ("**CWRM**") in which Interim Instream Flow Standards ("**IIFS**") will be set for 24 of the streams that are within the area covered by the East Maui RP's. A copy of the Recommended Order is also enclosed. CWRM heard oral argument on the Recommended Order on Maui on October 9, 2017, and the matter is currently under consideration.

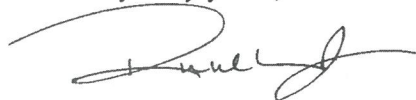
Any extension by BLNR of the holdover status of the East Maui RP's will be subject to the IIFS determinations of CWRM which will address the protection of the rights of downstream users and the public in accordance with the public trust doctrine.

With regard to the RP Additional Conditions, EMI recently provided a status report to the Department of Land and Natural Resources, Land Division, a copy of which is also enclosed.

Finally, the EISPN for the Environmental Impact Statement ("**EIS**") that BLNR ordered to be prepared in its July 8, 2016 Order Re Alexander & Baldwin, Inc.'s and East Maui Irrigation Company, Limited's Submission of Environmental Impact Statement Scope of Work filed June 9, 2016 was published on February 8, 2017. Public outreach meetings were subsequently held and EMI and its consultants have been diligently working on the preparation of the EIS.

In light of the above, EMI respectfully asks the BLNR to re-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.  
General Manager, Diversified Agriculture

Enclosures

cc: Linda L.W. Chow, Esq.  
Summer L.H. Sylva, Esq.  
Camille K. Kalama, Esq.



Ms. Suzanne D. Case  
October 24, 2017  
Page 3

Issac Hall, Esq.  
Patrick K. Wong, Esq.  
Caleb P. Rowe, Esq.  
Kristin K. Tarnstrom, Esq.  
Robert H. Thomas, Esq.  
Russell Tsuji  
Kevin Moore  
Ian Hirokawa



822 Bishop Street  
Honolulu, Hawaii 96813  
P.O. Box 3440  
Honolulu, HI 96801-3440  
www.alexanderbaldwin.com  
Tel (808) 525-6611  
Fax (808) 525-6652

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  
Honamanu encumbered under Revocable Permit No. S-7264

**EXHIBIT S-2**

**EXHIBIT "4"**

Board of Land and Natural Resources  
State of Hawaii  
May 14, 2001  
Page 2

- 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 (10<sup>th</sup>) and twentieth (20<sup>th</sup>) 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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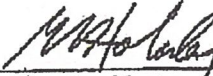
Summary: We request the Board to take the following action:

- 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.

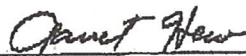
Thank you for your consideration of this request.

Very truly yours,

Alexander & Baldwin, Inc.

By:   
Its Vice President

East Maui Irrigation Company, Limited

By:   
Its Vice President

## STATUS REPORT ON RP ADDITIONAL CONDITIONS

In authorizing the continuation of the holdover water RPs for another year, the Board added 6 conditions (numbered 3-8). Status of compliance with those conditions is discussed below. Each condition is restated in bold italics, followed by a discussion on the status.

***(3) To require the holdover of the revocable permits to incorporate the July 18, 2016 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 July 18, 2016 Order of the Commission on Water Resource Management (“Commission”) included several requirements of Alexander & Baldwin and East Maui Irrigation Company (collectively, “A&B”). Below is a discussion of each of the requirements:

(i) The Commission “order[ed] that the streams that are no longer being diverted shall remain undiverted unless and until further ordered by the Commission. These streams are: Waiokamilo, East and West Wailuanui, Makapipi, Hanawi, Waiohue, East Wailuaiki, West Wailuaiki, Kopiliula, and Puakaa.” This is in reference to the following chart, which was included in the Order.

<b>STREAM</b>	<b>STATUS</b>
Waiokamilo	All diversions closed and sealed in 2007.
Wailuanui (East and West)	Sluice gates removed on Koolau Ditch. Stream intake gates closed.
Makapipi	Sluice gate fully opened on Koolau Ditch.
Hanawi	Sluice gate fully opened on Koolau Ditch.
Waiohue	Sluice gate removed on Koolau Ditch. Stream intake gate closed.
East Wailuaiki	Sluice gate fully opened on Koolau Ditch. Stream intake gate closed.
West Wailuaiki	Sluice gate fully opened on Koolau Ditch. Stream intake gate closed.
Waikamoi	Sluice gate fully opened on Center Ditch
Kopiliula	Sluice gate fully opened on Koolau Ditch. Ditch control gate closed on Koolau Ditch.
Puakaa	Sluice gate fully opened on Koolau Ditch.

The status noted in the above chart for each stream has been maintained, as required.

(ii) Further, the Order required that “A&B coordinate its efforts to permanently abandon or remove all diversion structures on the above identified streams with the Commission staff to ensure that all diversions are appropriately identified and

addressed in A&B's plans to abandon or remove the diversion structures. Whenever possible and practical, A&B shall attempt to remove all diversions. Within thirty (30) days A&B shall provide a more detailed plan for restoration of stream flow for the above identified streams and with a more exact projected time frame for completion of permit processing and completion of construction."

A&B submitted applications to the Commission for stream diversion works permits in accordance with the Order. Commission staff requested additional information, which A&B provided, including the attached spreadsheet, which describes the work to be done at each of the diversions. In addition to permits from the Commission, some of the work may require authorizations from the US Army Corps of Engineers and/or conservation district use permits from the Board and special management area use permits from the County. All of the authorization/permit requests have been submitted to the relevant agencies. A&B is awaiting issuance of such authorizations/permits before proceeding with the work described.

(iii) Finally, the Commission noted in the Order that any stream diversion works abandonment permits requested of the Commission "shall require modification that would result in full connectivity in the streams except where connectivity is affected by natural conditions."

Completion of the tasks set forth in the attached spreadsheet is aimed at restoring the streams to as near natural conditions as practicable, thus restoring connectivity except where there are dry stretches of stream under natural conditions. See also response to Condition (7) below.

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

The majority of the water being diverted through the EMI system is currently being delivered to the County of Maui for treatment and delivery to the Upcountry Maui community, and to the Kula Agricultural Park. The remainder is going to agricultural lands in central Maui that were formerly a part of A&B's sugar operation for irrigation for newly started diversified agriculture ventures, as well as for system losses inherent in (and consistent with) any open ditch water conveyance system.

***(5) Honomanu Stream shall also be designated as a stream from which no water diversion shall be permitted.***

All of the sluice gates on Honomanu Stream have been opened and no water is being diverted from this stream.

***(6) A maximum of 80 million gallons per day (mgd) on average shall be permitted for diversions to central Maui. The permittee can apply for the diversion of additional water if necessary during the term of the permits.***



On a monthly basis, A&B reports to the Commission daily water deliveries at Honopou Stream and Maliko Gulch. These reports show that on average 20 million gallons per day are being diverted to Central Maui.

**(7) The permittees shall remove (from the no-diversion streams) the dry areas of streams that are created by erosion caused by a diversion, as mentioned on pages 10-11 of the DAR report, as part of the restoration of streams.**

A&B assumes that the DAR report referred to is *The Use of Hawaiian Stream Habitat Evaluation Procedure to Provide Biological Resource Assessment in Support of Instream Flow Standards for East Maui Streams* by Parham, et al, dated November 20, 2009. Pages 10-11 of the report states that an overhanging drop off is a problem for migrating animals, and notes that the “situation typically occurs where a structure has been undercut by erosion on the downstream side or where a pipe is used to convey water downstream and the downstream pipe outlet is higher than the surface of the water below and extends out beyond the surface that supports it.” Hanehoi Stream is cited as a stream where the pipe situation creates a problem and Honopou Stream with an overhanging diversion. (Iao Stream, (nka Wailuku River), which is not in East Maui, is cited as an example of a vertical drop.)

As noted above, A&B provided to the Commission a spreadsheet listing all of the tasks for restoring full stream flow for the “taro streams,” which includes both Hanehoi and Honopou. Through the permitting processes for these stream diversion modifications or abandonment, A&B will proactively work with DAR and Commission staff to ensure that the overhanging drop offs are eliminated. (Note that currently there is a wetted pathway on Honopou Stream at the Haiku Ditch.)

**(8) The permittees and taro farmers shall each designate a point-of-contact for their respective groups who will exchange phone numbers and communicate concerns from their group to the point-of-contact for the other group.**

Although the parties have not formally designated points-of-contact or exchanged telephone numbers, A&B has made several efforts to reach out to members of the East Maui community. One such effort made by A&B’s CEO Chris Benjamin resulted in a change in procedure which gives community members increased and unfettered access to Akeke Springs. Rick Volner and Garret Hew (before he retired) have often been contacted by East Maui community members even without any formal exchange of contact information.

**EMI Taro Stream Diversions**

	Possible Regulatory Approvals Required			DIVERSIONS BY DITCH	EMI Map #	Parcel	Owner	Approximate Location and Elevation of Diversion			Diversion Structure Type	General Description of Work
	Army Corps	DLNR-OCCL	SMA					Latitude (N)	Longitude (W)	Elevation (feet)		
<b>Honopou</b>	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P Subzone	None	Honopou	W-22	2-8-008:007 2-9-014:001	EMI State of HI	20° 53' 08.50"	156° 15' 08.90"	1,217	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P Subzone	None	Lupi Long intake	W-22a	2-9-014:001	State of HI	20° 53' 07.60"	156° 14' 57.79"	1,274	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P/R Subzone	None	Wailole	W-22b	2-8-008:007	EMI	20° 53' 09.03"	156° 15' 24.54"	1,239	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
<b>Hanehoi (Puolua)</b>	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P Subzone	None	Hanehoi (Huelo intake)	W-18	2-9-014:001	State of HI	20° 53' 00.90"	156° 13' 54.40"	1,242	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
<b>Pi'ina'au</b>	confirm exempt under CWA 404(f)(1)(c); possible rock fill	Site Plan - R Subzone	None	Piinaau	K-31	1-1-002:002	State of HI	20° 49' 42.53"	156° 10' 27.82"	1,316	Concrete masonry	Seal intake opening with rocks and concrete.
	likely exempt but may require 404 permit, 401 WQC	Site Plan - R Subzone	None	Hauolo Wahine small intake runoff by gate	K-30d	1-1-002:002	State of HI	20° 49' 41.60"	156° 10' 15.60"	1,213	Concrete masonry	Construct overpass over ditch.
	None	Site Plan - P/R subzone (very minor)	None	Piinaau 6" steel and pvc pipe intake	K-31a	1-1-002:002	State of HI	20° 49' 37.77"	156° 10' 30.19"	1,359	Pipe	Remove steel and pvc pipes.
<b>Palauhulu</b>	confirm exempt under CWA 404(f)(1)(c); scope TBD	Site Plan - P Subzone	None	Kano	K-26	1-1-002:002	State of HI	20° 48' 56.10"	156° 09' 44.41"	1,708	Unlined channel	Most flow will be restored by removal of sluice gate. Scope of work for full restoration is to be determined. All work is anticipated to be restricted to tunnel.
	confirm exempt under CWA 404(f)(1)(c); scope TBD	Site Plan - P Subzone	None	Lalahai (# 3 intake - Hauolo Wahine Ditch)	K-27	1-1-002:002	State of HI	20° 48' 53.85"	156° 09' 54.45"	1,970	Concrete masonry	Scope of work for full restoration is to be determined. All work is anticipated to be restricted to tunnel.
	confirm exempt under CWA 404(f)(1)(c); scope TBD	Site Plan - P Subzone	None	Lalapipi (# 2 intake - Hauolo Wahine Ditch)	K-28	1-1-002:002	State of HI	20° 48' 55.12"	156° 09' 58.73"	2,024	Concrete masonry	Scope of work for full restoration is to be determined. All work is anticipated to be restricted to tunnel.
	confirm exempt under CWA 404(f)(1)(c); scope TBD	Site Plan - P Subzone	None	Kaauau (# 1 intake - Hauolo Wahine Ditch)	K-29	1-1-002:002	State of HI	20° 48' 56.82"	156° 10' 04.71"	2,037	Concrete masonry	Scope of work for full restoration is to be determined. All work is anticipated to be restricted to tunnel.
	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P Subzone	None	Hauolo Wahine	K-30	1-1-002:002	State of HI	20° 48' 59.61"	156° 10' 13.63"	1,964	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	confirm exempt under CWA 404(f)(1)(c); possible rock fill	Site Plan - P Subzone	None	Kaauau diversion tunnel to # 1 intake	K-29a	1-1-002:002	State of HI	20° 48' 59.58"	156° 10' 13.85"	1,964	Unlined channel	Seal diversion ditch with rock and concrete.
	None	Site Plan - P Subzone (very minor)	None	Hauolo Wahine small diversion	K-30a	1-1-002:002	State of HI	20° 48' 59.58"	156° 10' 13.85"	1,964	Pipe	Remove pipe.
	None	Site Plan - P Subzone (very minor)	None	Hauolo Wahine small intake	K-30b	1-1-002:002	State of HI	20° 48' 59.58"	156° 10' 13.85"	1,964	Pipe	Remove pipe.
	None	Site Plan - P Subzone (very minor)	None	Hauolo Wahine small intake	K-30c	1-1-002:002	State of HI	20° 48' 59.58"	156° 10' 13.85"	1,964	Pipe	Remove pipe.
<b>Waiokamilo</b>	COMPLETED 2007	None - P Subzone	None	Kualani (East Waiokamilo)	K-22	1-1-002:002	State of HI	20° 49' 28.49"	156° 09' 00.00"	1,472	Concrete masonry	Diversion closed in 2007. Concreted over diversion intake.
	COMPLETED 2007	None - P Subzone	None	Waiokamilo # 11 intake	K-23	1-1-002:002	State of HI	20° 49' 30.29"	156° 09' 09.86"	1,292	Concrete masonry	Diversion closed in 2007. Blocked water from entering ditch with boards located in tunnel.
	COMPLETED 2007	None - P Subzone	None	Waiokamilo # 12 intake	K-24	1-1-002:002	State of HI	20° 49' 29.69"	156° 09' 20.52"	1,269	Concrete masonry	Diversion closed in 2007. Concreted over diversion intake.
	COMPLETED 2007	None - P Subzone	None	Waiokamilo Kikokiko intake	K-25	1-1-002:002	State of HI	20° 49' 16.40"	156° 09' 27.59"	1,543	Concrete masonry	Diversion closed in 2007. Concreted over diversion intake.
	NA	NA	NA	Filipino Ditch Diversion	K-21b	NA	NA	N/A	N/A	N/A	N/A	No Diversion.
	COMPLETED 2007	None - P Subzone	None	6" Kulani aluminum pipe	K-22a	1-1-002:002	State of HI	20° 49' 32.33"	156° 09' 04.23"	1,368	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau ditch # 10 crosscut intake # 1	K-22b	1-1-002:002	State of HI	20° 49' 32.33"	156° 09' 04.23"	1,368	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau ditch # 10 crosscut intake # 2	K-22c	1-1-002:002	State of HI	20° 49' 32.33"	156° 09' 04.23"	1,368	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau ditch # 10 crosscut intake # 3	K-22d	1-1-002:002	State of HI	20° 49' 32.33"	156° 09' 04.23"	1,368	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau ditch # 10 crosscut intake # 4	K-22e	1-1-002:002	State of HI	20° 49' 32.33"	156° 09' 04.23"	1,368	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau ditch # 10 crosscut intake # 5	K-22f	1-1-002:002	State of HI	20° 49' 32.33"	156° 09' 04.23"	1,368	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau ditch # 10 crosscut intake # 6	K-22g	1-1-002:002	State of HI	20° 49' 32.33"	156° 09' 04.23"	1,368	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	4' pvc pipe intake East of # 11 intake	K-23a	1-1-002:002	State of HI	20° 49' 30.42"	156° 09' 09.15"	1,296	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau Ditch # 12 crosscut intake # 1	K-24a	1-1-002:002	State of HI	20° 49' 29.65"	156° 09' 15.82"	1,249	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau Ditch # 12 crosscut intake # 2	K-24b	1-1-002:002	State of HI	20° 49' 29.65"	156° 09' 15.82"	1,249	Pipe	Diversion closed in 2007. Removed pipe.



	COMPLETED 2007	None - P Subzone	None	Koolau Ditch # 12 crosscut intake # 3	K-24c	1-1-002:002	State of HI	20° 49' 29.65"	156° 09' 15.82"	1,249	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau Ditch # 12 crosscut intake # 4	K-24d	1-1-002:002	State of HI	20° 49' 29.65"	156° 09' 15.82"	1,249	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Koolau Ditch # 12 crosscut intake # 5	K-24e	1-1-002:002	State of HI	20° 49' 29.65"	156° 09' 15.82"	1,249	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Small intake west of main # 12 crosscut	K-24f	1-1-002:002	State of HI	20° 49' 30.21"	156° 09' 22.51"	1,230	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Small intake west of main # 12 crosscut	K-24g	1-1-002:002	State of HI	20° 49' 30.21"	156° 09' 22.51"	1,230	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Small intake west of main # 12 crosscut	K-24h	1-1-002:002	State of HI	20° 49' 30.21"	156° 09' 22.51"	1,230	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Small intake west of main # 12 crosscut	K-24i	1-1-002:002	State of HI	20° 49' 30.21"	156° 09' 22.51"	1,230	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Small intake west of main # 12 crosscut	K-24j	1-1-002:002	State of HI	20° 49' 30.21"	156° 09' 22.51"	1,230	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	East Kikokiko 2" pipe intake	K-25a	1-1-002:002	State of HI	20° 49' 30.21"	156° 09' 22.51"	1,230	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Kikokiko small intake	K-25b	1-1-002:002	State of HI	20° 49' 17.25"	156° 09' 27.63"	1,524	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Kikokiko 6" pipe intake mauka of bridge	K-25c	1-1-002:002	State of HI	20° 49' 30.49"	156° 09' 22.92"	1,244	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	West Kikokiko 4" pipe intake	K-25d	1-1-002:002	State of HI	20° 49' 30.49"	156° 09' 22.92"	1,244	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	West Kikokiko 3" pipe intake	K-25e	1-1-002:002	State of HI	20° 49' 30.49"	156° 09' 22.92"	1,244	Pipe	Diversion closed in 2007. Removed pipe.
	COMPLETED 2007	None - P Subzone	None	Kikokiko 3" pvc pipe intake under bridge	K-25f	1-1-002:002	State of HI	20° 49' 30.49"	156° 09' 22.92"	1,244	Pipe	Diversion closed in 2007. Removed pipe.
Wailuanui (East and West)	confirm exempt under CWA 404(f)(1)(c); possible rock fill	Site Plan - P Subzone	None	East Wailuanui # 6 intake and sluice basin	K-18	1-1-002:002	State of HI	20° 49' 14.09"	156° 08' 26.75"	1,318	Concrete masonry	Seal intake opening with rocks and concrete.
	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P Subzone	None	East Wailuanui # 6 control house intake	K-19	1-1-002:002	State of HI	20° 49' 20.42"	156° 08' 26.61"	1,280	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P Subzone	None	Wailuanui # 7 intake	K-20	1-1-002:002	State of HI	20° 49' 22.70"	156° 08' 28.63"	1,290	Concrete masonry	Seal intake opening with rocks and concrete.
	confirm exempt under CWA 404(f)(1)(c); possible rock fill	Site Plan - P/R Subzone	None	West Wailuanui # 9 intake	K-21	1-1-002:002	State of HI	20° 49' 28.71"	156° 08' 41.71"	1,273	Concrete masonry	Seal intake opening with rocks and concrete.
	None	Site Plan - P Subzone (very minor)	None	3" aluminum pipe intake by # 6 control house intake	K-19a	1-1-002:002	State of HI	20° 49' 20.14"	156° 08' 26.80"	1,287	Pipe	Remove pipe.
	None	Site Plan - P Subzone (very minor)	None	Wailuanui stream intake # 8 intake pipe	K-20a	1-1-002:002	State of HI	20° 49' 26.10"	156° 08' 29.54"	1,254	Pipe	Remove pipe
	None	Site Plan - P/R Subzone (very minor)	None	8" steel pipe intake East of # 9 intake	K-21a	1-1-002:002	State of HI	20° 49' 28.58"	156° 08' 41.45"	1,280	Pipe	Remove pipe
				<b>New Hamakua</b>								
Honopou	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P Subzone	None	Honopou	NH-22	2-8-008:007 2-9-014:001	EMI State of HI	20° 53' 11.00"	156° 15' 08.50"	1,194	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	confirm exempt under CWA 404(f)(1)(c); possible rock fill	Possible Site Plan - R Subzone/AG	None	Wailole	NH-23	2-8-008:007	EMI	20° 53' 12.91"	156° 15' 26.59"	1,190	Concrete masonry	Seal intake opening with rocks and concrete.
Hanehoi (Puolua)	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - P Subzone	None	Hanehoi (Huelo intake)	NH-17	2-9-014:001	State of HI	20° 53' 04.20"	156° 13' 52.50"	1,204	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	likely exempt but could require 404 permit, 401 WQC	Site Plan - P Subzone	None	West Hanehoi intake (Puolua)	NH-17a	2-9-014:001	State of HI	20° 53' 11.50"	156° 13' 57.15"	1,187	Unlined channel	Construct stream overpass over ditch.
				<b>Lowrie</b>								
Honopou	likely exempt but could require 404 permit, 401 WQC	None - AG	None	Honopou long strainer	L-15	2-9-004:039	EMI	20° 54' 32.71"	156° 14' 47.26"	615	Unlined channel	Construct stream overpass over ditch.
	likely exempt but could require 404 permit, 401 WQC	None - AG	None	Honopou siphon	L-16	2-9-004:038	EMI	20° 54' 33.97"	156° 14' 55.28"	638	Unlined channel	Construct stream overpass over ditch.
	None	None - R Subzone/AG	None	Honopou side ditch	L-17	2-9-014:017	State of HI	20° 54' 31.79"	156° 15' 01.66"	605	Concrete masonry	Close existing control gate.
Hanehoi (Puolua)	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - R Subzone	None	Hanehoi Huelo # 1	L-5	2-9-014:009 2-9-009:019	EMI	20° 53' 43.44"	156° 13' 27.40"	708	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Site Plan - R Subzone	None	Hanehoi Huelo # 2	L-6	2-9-014:009 2-9-009:019	EMI	20° 53' 49.05"	156° 13' 37.98"	676	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	confirm exempt under CWA 404(f)(1)(c); minimal/no fill	Possible Site Plan - R Subzone/AG	None	Hanehoi Huelo # 3	L-7	2-9-014:009 2-9-009:019	EMI	20° 53' 52.46"	156° 13' 40.00"	653	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.



	likely exempt but could require 404 permit, 401 WQC	Site Plan - R Subzone	None	Hanehoi	L-5a	2-9-014:009 2-9-009:019	EMI	20° 53' 42.40"	156° 13' 27.19"	704	Unlined channel	Construct stream overpass over ditch.
	likely exempt but could require 404 permit, 401 WQC	Possible Site Plan - R Subzone/AG	None	Hanehoi	L-5b	2-9-014:009 2-9-009:019	EMI	20° 53' 47.43"	156° 13' 28.52"	629	Unlined channel	Construct stream overpass over ditch.
	likely exempt but could require 404 permit, 401 WQC	Possible Site Plan - R Subzone/AG	None	Hanehoi	L-5c	2-9-014:009 2-9-009:019	EMI	20° 53' 49.56"	156° 13' 32.28"	653	Unlined channel	Construct stream overpass over ditch.
	likely exempt but could require 404 permit, 401 WQC	Not in Conservation District	None	Hanehoi Roseapple (Puolua)	L-7a	2-9-006:033	EMI	20° 53' 58.40"	156° 13' 45.60"	638	Unlined channel	Install pipe or box culvert with wing walls through which ditch can pass beneath stream or construct stream overpass over ditch.
	likely exempt but could require 404 permit, 401 WQC	Not in Conservation District	None	West Hanehoi	L-7b	2-9-006:033 <b>2-9-006:028</b>	EMI State of HI	20° 53' 59.83"	156° 13' 47.01"	638	Unlined channel	Construct stream overpass over ditch.
				<b>Haiku</b>								
<b>Honopou</b>	confirm exempt under CWA 404(f)(1)(c);	Not in Conservation District	SMA Assessment for exempt activity	Honopou	H-8	2-9-003:042	EMI	20° 54' 53.41"	156° 14' 47.53"	399	Concrete masonry	Bolt steel plates or concrete over diversion intake grate and seal opening below grate with rock and concrete.
<b>Hanehoi (Puolua)</b>	CWA 404(f)(1)(c); minimal/no fill	Not in Conservation District	SMA Assessment for exempt activity	East Hanehoi (Pancho)	H-3	2-9-006:004	EMI	20° 54' 11.76"	156° 13' 32.38"	459	Concrete masonry	Bolt steel plates or concrete over diversion intake grate.
	CWA 404(f)(1)(c); possible rock fill	Not in Conservation District	SMA Assessment for exempt activity	West Hanehoi (School)	H-4	2-9-006:002 2-9-009:033	EMI State of HI	20° 54' 05.34"	156° 13' 26.57"	484	Concrete masonry	Seal intake opening with rock and concrete.

Total diversions = 69 (Not including Filipino Ditch Diversion) - 28 Waiokamilo diversions that were closed in 2007 = 41

Major diversions registered with CWRM in 1989
Minor diversions registered with CWRM in 1989

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

**Defendant A&B/EMI's Exhibit AB-70**

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

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