



ALEXANDER & BALDWIN
PARTNERS FOR HAWAII

October 24, 2018

VIA E-MAIL and U.S. MAIL

Ms. Suzanne D. Case
Chairperson
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 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 A&B/EMI’s third 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, and its second request was made by letter dated October 24, 2017. Copies of both letters are enclosed, with the November 23, 2016 letter providing a background of the East Maui RP’s.

The second holdover request was considered by the BLNR at its November 9, 2017 meeting and approved subject to conditions recommended by Department of Land and Natural Resources (DLNR) staff (see pages 6-7 of the Staff Submittal for item D-5, attached) as well as certain conditions imposed by the BLNR (the “*RP Additional Conditions*”), enumerated on

page 13 of the minutes of the meeting, which were approved on December 8, 2017, a copy of which minutes is also enclosed.

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

As recognized by BLNR when it granted EMI's first and second requests 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. Water collection enabled by the East Maui RP's continue to serve the needs of the public water system that serves Upcountry Maui, owned and operated by the County of Maui Department of Water Supply, as well as increasing diversified agricultural activities in Central Maui. 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's ("*CWRM*") for East Maui streams, 24 of which are within the area covered by the East Maui RP's. Any extension by BLNR of the holdover status of the East Maui RP's will be subject to the CWRM's recently issued IIFS decision.

BLNR's conditions have been met

A status report of A&B/EMI's compliance with the conditions imposed by the BLNR in 2017 for the second holdover request was recently provided to the Department of Land and Natural Resources, Land Division, a copy of which is also enclosed. Since our submittal letter, we have received all of the required regulatory approvals to proceed with work of permanently abandoning 15 of the taro stream diversions. That work will proceed immediately.

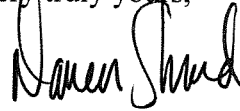
EIS/Lease process proceeding

Lastly, work on the Environmental Impact Statement ("*EIS*") that BLNR ordered A&B to prepare 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 has continued throughout the year, to the extent possible pending the CWRM's East Maui IIFS decision. With the issuance of the IIFS decision in June, the maximum amount of water that could be diverted pursuant to the state water lease could be defined, in turn enabling studies of the corresponding impacts to proceed. The current projected timeline estimates that the Draft EIS will be provided to the DLNR for its review, prior to publication, within the second quarter of 2019. Assuming no undue delays or challenges, the Final EIS should be able to be provided to the DLNR by the end of 2019, enabling the lease process to be initiated.

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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 S-7266 and to declare the holdover to be consistent with the public trust doctrine.

Very truly yours,

A handwritten signature in black ink that reads "Darren Strand". The signature is written in a cursive, flowing style.

Darren Strand
General Manager, Diversified Agriculture

Enclosures

cc: Linda Chow, Esq.
Summer L. H. Sylva, Esq.
Camille K. Kalama, Esq.
Isaac Hall, Esq.
Patrick K. Wong, Esq.
Caleb P. Rowe, Esq.
Kristin K. Tarnstrom, Esq.
Robert H. Tomas, Esq.
Russell Tsuji
Kevin Moore
Ian Hirokawa



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.

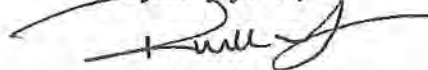
In order to preserve the operational integrity of the EMI Ditch System, an extensive and irreplaceable infrastructure that extends across a mix of State and private lands, EMI needs to have continued access to waters collected from the License Areas as well as the License Areas themselves. This will 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



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

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Chairperson
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Board of Land and Natural Resources
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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.

Ms. Suzanne D. Case
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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.

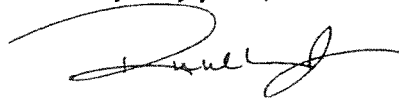
Any extension by BLNR of the holdover status of the East Maui RP's will be subject to the IIFS determinations of CWRM which will address the protection of the rights of downstream users and the public in accordance with the public trust doctrine.

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.

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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

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.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

¹ 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.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 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.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

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.

³ 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/cwrm/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,



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


000023

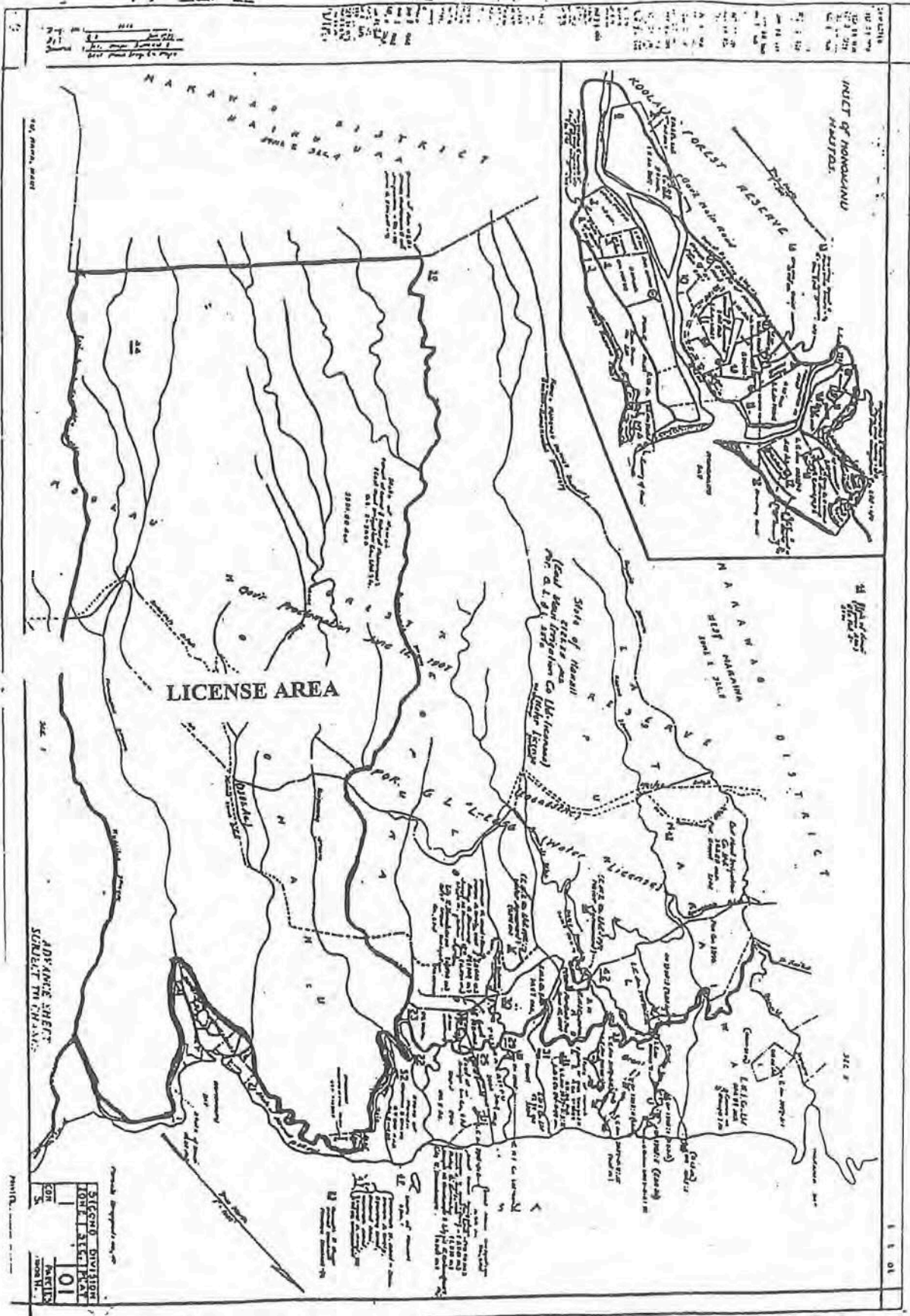


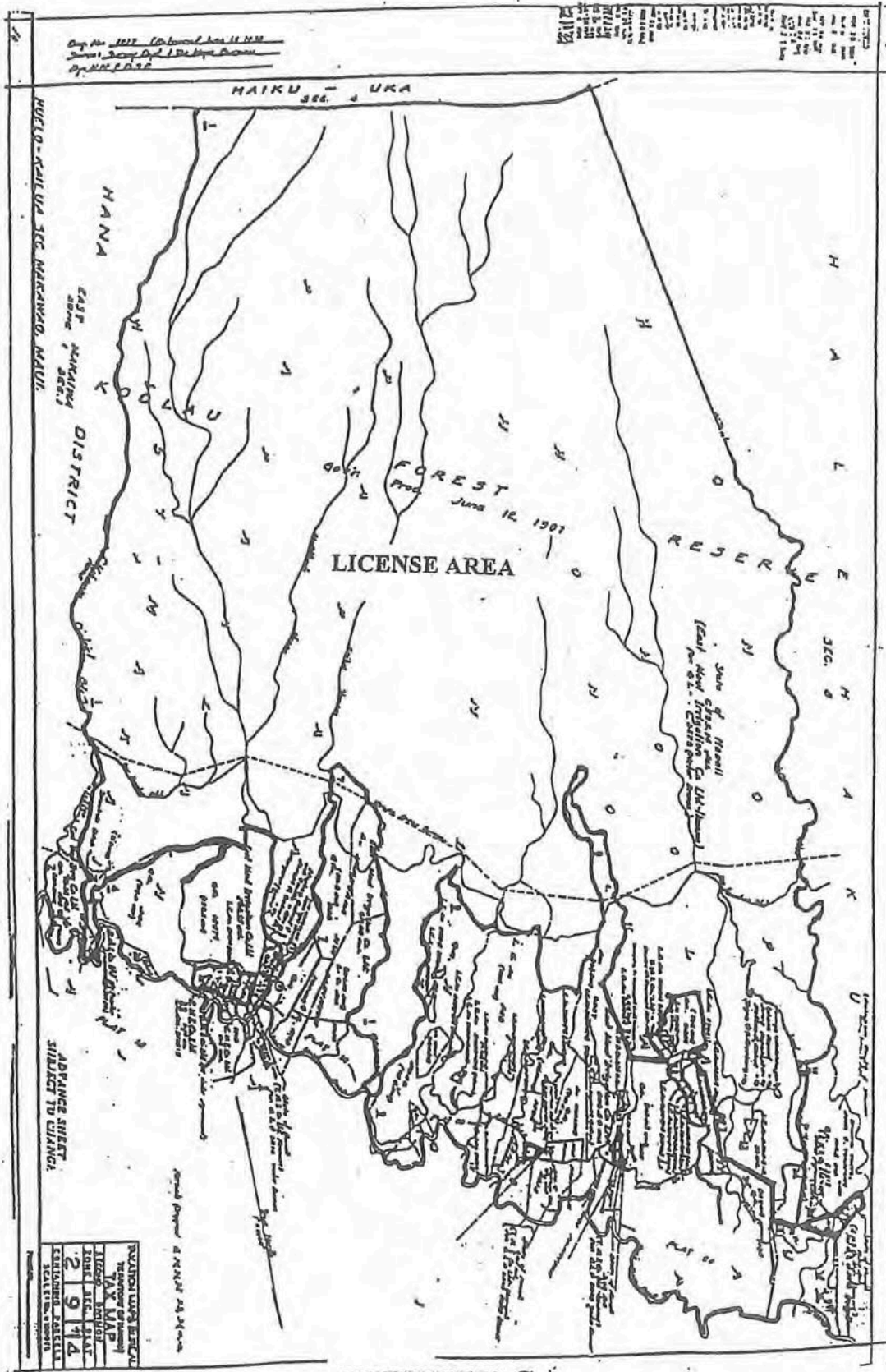
EXHIBIT A

EXHIBIT "2"

000024

Copy No. 1017
 Original No. 1017
 Date: 30th Dec 1944
 P. H. M. P. S. P.

Scale: 1 inch = 1 mile
 Contour Interval: 100 feet
 Projection: UTM
 Datum: Mean Sea Level
 Date of Survey: 1944
 Surveyor: P. H. M. P. S. P.



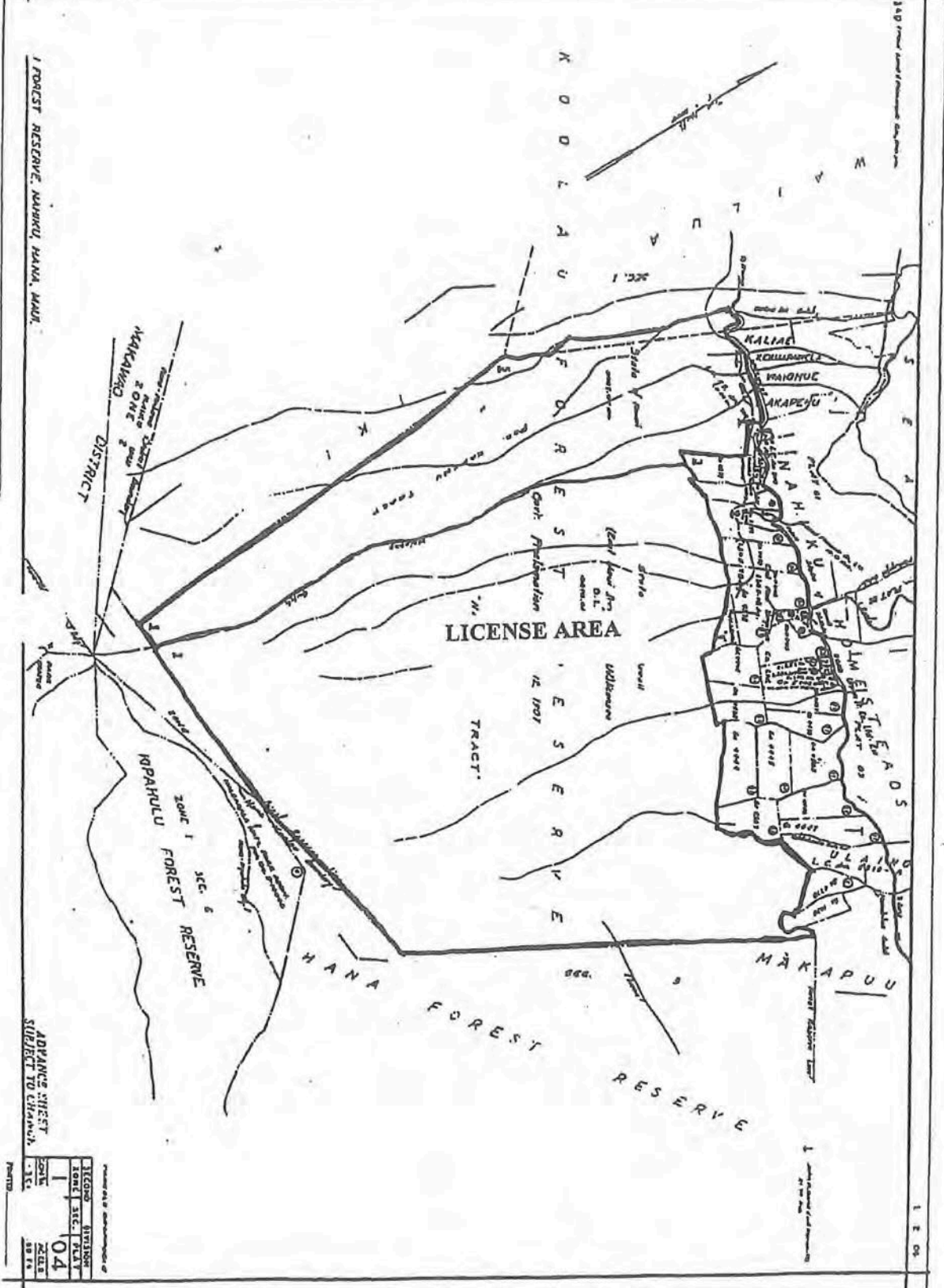
320

SECTION	2
TOWNSHIP	9
RANGE	14
COUNTY	
STATE	

EXHIBIT C

Date: 1927
 By: [Signature]
 For: [Signature]
 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
 1:20,000,000
 1:50,000,000
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 1:200,000,000
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FOREST RESERVE, MAHUKU HANA, MAUI.

ADVANCE SHEET
SUBJECT TO CHANGE.

Scale of Denominations of	
1	1000
1	5000
1	10000
1	25000
1	50000
1	100000
1	250000
1	500000
1	1000000
1	2500000
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1	10000000
1	25000000
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1	250000000
1	500000000
1	1000000000

EXHIBIT E

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"

000029

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.

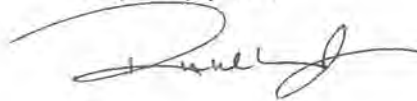
Any extension by BLNR of the holdover status of the East Maui RP's will be subject to the IIFS determinations of CWRM which will address the protection of the rights of downstream users and the public in accordance with the public trust doctrine.

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) 525-6632

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 (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.

Board of Land and Natural Resources
State of Hawaii
May 14, 2001
Page 3

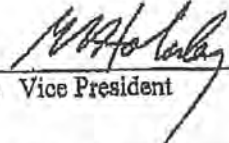
Summary: We request the Board to take the following action:

- 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.

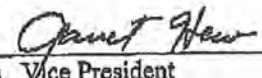
Thank you for your consideration of this request.

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.

STREAM	STATUS
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)		
Honopou	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.
Hanehoi (Puolua)	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.
Pi'ina'au	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.
Palauhulu	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.
Waiokamilo	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
				New Hamakua								
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.
				Lowrie								
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 2-9-006:028	EMI State of HI	20° 53' 59.83"	156° 13' 47.01"	638	Unlined channel	Construct stream overpass over ditch.
				Haiku								
Honopou	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.
Hanehoi (Puolua)	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

AMENDED

APPROVED BY THE BOARD
AT ITS MEETING HELD ON

Dec. 8 2017 *dku*

**MINUTES
FOR THE MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: THURSDAY, NOVEMBER 9, 2017
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

MEMBERS

Suzanne Case
Stanley Roehrig
Keone Downing

Thomas Oi
Chris Yuen

STAFF

Russell Tsuji--LAND
David Smith--DOFAW
Maria Carnavale--DAR

Alton Miyasaka--DAR
Ross Smith --Airports

OTHERS

Tom Heinrich (L-1)
DeMont Connor (M-9)
Ronald Tam (F-1)

Andrew Wilson (K-2)
Anita Bice (D-2)
Jesse Schiel (C-2)

Thirty-one people testified on item D-5. Please see attached spreadsheet for list of names.

Meeting called to order at 9:51. Chair Case noted that the delay was caused by technical difficulties.

Item J-1 will not be heard. Mr. Koehne has requested a contested case hearing through e-mail, and understands that he needs to submit a written request within ten days. The ten-day period starts today.

Chair Case read the standard contested case statement.

A. MINUTES

1. Approval of September 8, 2017

Board Discussion

Roehrig-Page 3 or 14. Noted that in Na Wahine o ke Kai the kahakō should be added: “Nā Wāhine.”

Public Testimony-None

Motion

Approve minutes with correction (Oi/Roehrig). Unanimous.

Item L-2

Request Authorization for The Chairperson to Enter Into an Agreement with the City & County of Honolulu to Enter and Construct within City & County of Honolulu Property, a Use & Occupancy Agreement with the University of Hawai'i for Construction Staging and Storage, Enter into A Tri-Party Letter Agreement to Construct Improvements in both University of Hawaii Property and City & County of Honolulu Easement, and Authorize the Chairperson to Enter into any other Agreements for the Mānoa Stream Improvements at Woodlawn Drive Bridge, Mānoa, O'ahu, Hawai'i, Tax Map Key: (1) 2-9-26:01; (1) 2-9-26:02; (1) 2-9-26:46.

Carty Chang presented for Engineering. Under the bridge the stream elevation is lower than upstream and downstream creating a bowl effect. This causes sediment to collect in this area. Project will modify area upstream and downstream of bridge, as well as under bridge to make it safer and decrease maintenance.

This area is complex with regard to jurisdiction so there are various agreements that the Chair will need to sign before this project can move forward. Recommendation is to authorize the Chair to sign the various agreements as noted in the submittal.

Board Discussion

Oi asked if this area had flooded in in the past. Chang clarified that in 2004 this was the area that overtopped and flooded Hamilton Library.

Public Testimony-None

Motion

Approve L-2 as submitted (Roehrig/Oi). Unanimous.

Item L-1

Request Authority to Submit the Final Environmental Impact Statement (FEIS) for Acceptance by The Governor for the Ala Wai Canal Dredging and Improvements Project, Waikīkī, Island of O'ahu, Hawai'i

Carty Chang summarized the submittal for Engineering. DLNR has jurisdiction over the canal and walls of the canal. Scope of work includes maintenance dredging of the canal and repairing damaged areas of the wall including stairways. Last Dredging occurred in 2002. If this project

is not done, sediments will continue to build up affecting water quality, flood carrying capacity and recreational use. Requirements of Chapter 343 were satisfied. Engineering will come back to the board for award of construction contract.

Board Discussion

Downing ask if the project could start in fall or winter to minimize disturbance to the paddling season. Also asked if they could use the Honey Bee site as a staging area, rather than Magic island. Ensure that contract require contractor to pay attention to the silt curtain being used for the transfer of sludge to the barge. Any spills will affect the surf sites. Would like these to be included as amendments. Chang said that they can accommodate the timing request. Will also coordinate with the canoe clubs to minimize impacts. Can look into use of the Honey Bee site, but cannot commit to it. Agreed to look into it.

Public Testimony

Tom Heinrich, testified in support of moving this forward. Also noted that Senator Brian Taniguchi is also in support of moving this project forward.

Motion

Approve Item L-1 as amended (Oi/Downing). Unanimous.

Amendment:

On page 3, under the heading Project Timeline and Cost, change the first sentence to read:

The DLNR proposes to commence dredging operations and construction of repairs upon approval of all required environmental permits, anticipated to be in Fall 2018.

Item L-3 Delegation of Authority to the Chairperson to Select and Contract Consultants for Projects in Support of Hawaii Revised Statutes (HRS) Chapter 179D, Dams and Reservoirs to: (1) Procure, Negotiate, Approve, Enter, Sign, and Execute Contracts and Agreements for HRS Chapter 179D Projects; (2) Negotiate, Approve, Enter, Sign, and Execute Supplemental Contracts to address unforeseen conditions for these HRS Chapter 179D Projects; and (3) Declare these HRS Chapter 179D Projects Exempt from the preparation of an Environmental Assessment or Approve an Environmental Assessment and Issue a Finding of no Significant Impact, if appropriate.

Chang presented for the Engineering Division. This submittal is in support of the Dam Safety program, HRS Chapter 179D.

Board Discussion

Page 2 of 4, number five regarding the purchase of drone. Downing believes that the DLNR should purchase a drone and train a staff person to use it, and have the drone available for the entire DLNR.

Amendment:

On page 2, Item 5 change the first sentence to:

The Division desires to purchase a consumer pro-grade drone aircraft and related software to update the aerial photography of selected regulated dams and reservoirs.

Public Testimony-None

Motion

Approve Item L-3 as amended (Roehrig/Downing). Unanimous.

Item D-1 Rescind Prior Board Action of April 25, 2014, Item D-1, *Extension of Lease Term for General Lease No. S-4259, (Contract No. DACA84-5-70-16) to the United States of America Department of the Air Force, Waimea, Kauai, Hawaii, Tax Map Key: (4) 1-2-001:009;*

Withdrawal from Governor's Executive Order Nos. 1509 and 1510 to the Division of State Parks and Reset Aside to the Department of Accounting and General Services, Information and Communication Services Division (DAGS/ICSD), for Microwave and Radio Communication Site Purposes;

Grant of Perpetual, Non-Exclusive Easement to DAGS/ICSD for Access and Utility Purposes; and Issuance of Immediate Management Right-of-Entry to DAGS/ICSD for Public Safety Microwave and Radio Communication Site Purposes at Kukui and Pohakuwa'awa'a, Kōke'e, Waimea, Kaua'i, Tax Map Keys: (4) 1-2-001:009, and (4) 5-9-001:016 por. & 023.

Russell Tsuji presented for the Land division.

Tsuji noted that they would like to amend recommendation five (5) to add utility in addition to access. Tsuji noted that Chris Kinimaka is present if there are questions.

Board Comments

Yuen asked if one of these is the golf ball looking thing, to which Tsuji answered "no."

Public Testimony-None

Amendment

Page 5, Recommendation 5 is amended to read:

Authorize the issuance of a perpetual, non-exclusive easement to DAGS/ICSD, covering the area identified as a road right-of-way on TMK (4) 5-9-001:016 por, for access and utility purposes .

Motion

Approve Item D-1 as amended (Oi/Yuen). Unanimous.

Item D-7 Issuance of Right-of-Entry Permit to Hawaiian Electric Company, Inc. on Lands Encumbered by Governor's Proclamation dated December 31, 1918 for Mokulē'ia Forest Reserve and Unencumbered Lands, Mokulē'ia, Waialua, Wai'anae-Kai, O'ahu, Tax Map Key: (1) 6-7-003:018, 024; 6-8-001:001, 8-5-006:001.

Russell Tsuji presented for Land Division. This is a right-of-entry (ROE) request for HECO to do research on a new alignment for utility purposes in the Mokulē'ia Forest Reserve. After consultation with the NAR Commission and the Hawaii Invasive Species council they are developing a plan to relocate existing lines and poles to minimize future environmental impacts.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-7 as submitted (Yuen/Downing). Unanimous.

Item K-1 Conservation District Use Application (CDUA) OA-3802 by Dr. Clayton Honbo & Nanaina O Pali Ku, LLC for After-The-Fact Approval of an Existing Concrete Seawall, Located on Kaneohe Bay in the Ko'olaupoko District, Island of O'ahu, seaward of Tax Map Key: (1) 4-6-001:019.

Tiger Mills presented for the Office of Conservation and Coastal Lands (OCCL) for an after-the-fact seawall. The property is surrounded by a residential subdivision in which most of the neighboring properties have hardened shorelines. There are no beaches along this section of the shoreline. Access is either through the water or through privately owned parcels. A previous owner had tried to rectify the situation by applying for a CDUA for the seawall, however the BLNR denied the application without prejudice for "further investigation into the possibility that any land use violation that may exist in addition to the seawall." Nothing further was done for 35 years. The current owner would like to legalize encroaching seawall. No additional work is being proposed. Staff requests an after-the-fact authorization of the seawall. Staff would also like to add one amendment to Item K-1:

Amendment—include a deed recordation condition that the permittee will place the location of the seawall in recordable form as part of the deed instrument of his property.

Staff had not actually checked if the submerged portion of the seawall goes down 7 feet as alleged. Downing said he questioned applicant's motives. Mills said she will share his concerns with applicant. Downing indicated that he was not requesting a change in the submittal.

Roehrig noted that this property is part of a land court subdivision and asked if the AG looked at HRS 501 relating to how Land Court property deeds are changed. Since the AG had not, Roehrig suggested it be done before the Board passes this item.

Yuen clarified that OCCL's no tolerance policy on seawalls, adopted in 1993, does not apply to this seawall because it was built prior to the adoption of the no tolerance policy. Mills agreed.

Applicants' representative was asked to come forward.

Mills confirmed for Roehrig that the wall is not in the registered title area of the owner. She noted that the certificate of title will include the metes and bounds survey. Exhibit 6 shows the surveyed area and shows that the wall is on State Land in the accretion area. Oi noted that he had checked the original land court application, and there were no calls for a wall along the property. That means that the wall is not on original map.

Jennifer Lindberg for current landowner approached the board and noted that they are working with Calen Miyahara, from Land Division to get an easement for the encroachment. However, they first have to get a certified shoreline and then they can apply for a lease of the easement area. Right now, they are working on the shoreline survey.

Roehrig noted that the Land Court judge is the correct party put the easement on the map, not the land board. Lindberg said they are working with the Land Division, and are aware its long process. She also noted that they need the after-the fact CDUP for the seawall before they can go to land Court.

Mills offered to strike the amendment because the land disposition should cover OCCLs concern about the recording the land disposition. There was a short discussion on whether land dispositions would be recorded.

Public Testimony-None

Motion

Approve K-1 as submitted (Roehrig/Yuen). Unanimous

Item K-2 Time Extension Request for Conservation District Use Application (CDUA) MA-3746 by Andrew P. Wilson for the Installation of an Above Ground Waterline Located Along Mākena-Keone'ō'io Road in Honua'ula, Makawao, Maui, Tax Map Key: (2) 2-1-004:046, 068, 073, &113.

Tiger Mills presented for OCCL. This is a time extension request by Andrew Wilson for an above ground waterline along the road that goes through the 'Āhihi-Kīna'u NAR. Mills detailed reasons for the request for extension. In 2015 the staff recommendation was to deny the permit, but the board passed the permit. Staff recommends approval of time extension for 2 years.

Roehrig recused. He was Co-counsel with Mr. Wilson on this matter. Withdrew as counsel when he joined Land Board.

Chair Case noted that she had originally voted against this permit, and so she will again vote against this item. There was discussion on how many votes would be needed to pass this item.

Public Testimony

Andrew Wilson noted he was available for questions. He pointed out that the original request was in 2015. In August 2016, there was an extension granted by the chairperson, which did not go before the board. This request is for a second extension.

There was a discussion on whether this item could pass with three votes. Member Yuen stated that he had looked up HRS §171-5 and he believed that the motion could pass with three votes.

Motion

To approve Item K-2 as submitted (Yuen/Oi). Motion passed 3-1, Case opposed, Roehrig recused.

Items M-1 to M-15

There was a request to withdraw Item M-15.

1. Issuance of a Revocable Permit for Aircraft Parking, Lani Lea Sky Tours LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-76: Portion of 23.
2. Issuance of a Revocable Permit for a Field Office, R. M. Towill Corporation, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 085 (Portion).
3. Issuance of a Revocable Permit for Aircraft Parking, Anthony Serna, Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.
4. Issuance of a Revocable Permit for an Office Space for Administration, Briefing, Training and Breakroom for United States of America, General Services Administration for an on Behalf of U.S. Department of Homeland Security, Kapalua Airport, Tax Map Key: (2) 4-3-01: Portion of 68.
5. Issuance of a Direct Fixed-Base Facility Lease to Keāhole FBO I LLC, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 003.
6. Issuance of a Revocable Permit for an Office Space and a Greeters' Station, MC&A, Inc., Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.

7. Issuance of a Revocable Permit for Aircraft Parking, David A. Osterholt, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
8. Issuance of a Revocable Permit for Temporary Office Space, U.S. General Services Administration for Transportation Security Administration, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
9. Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft, Mauna Loa Helicopter Tours LLC, Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8
10. Issuance of a Revocable Permit for Equipment Parking, Ramp Office, Ticket Counter, Curbside Check-In and Baggage Claim Office, United Airlines, Inc., Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8.
11. Issuance of a Revocable Permit for Temporary Office Space, U.S. General Services Administration for Transportation Security Administration, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
12. Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft, Mauna Loa Helicopter Tours LLC, Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8
13. Issuance of a Revocable Permit for Equipment Parking, Ramp Office, Ticket Counter, Curbside Check-In and Baggage Claim Office, United Airlines, Inc., Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8.
14. Issuance of a Revocable Permit for Equipment Parking, Ramp Office, Ticket Counter, Curbside Check-In and Baggage Claim Office, United Airlines, Inc., Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8.

Ross Smith from HDOT-Airports was present to answer questions.

Board discussion.

Item M-13: Oi asked if the helicopter will only be stored at the T-Hangar? Smith said yes, they will fly out of their space at the heliport. Yuen asked Smith to confirm that FAA's position is that public auction of these fixed base operations would put any Federal Grants HDOT has in jeopardy. Smith confirmed.

Public Testimony

DeMont Connor of Ho'omana Pono, LLC, testified in support of Item M-9. He said that these efforts will help to create jobs for the Big Island, which needs an economic boost.

Approve Items M1-M14 as submitted (Roehrig/Oi). Unanimous.

Item D-5 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.

Ian Hirokawa presented for the Land Division. These revocable permits are in the 2nd of a 3-year holdover authorized under act 126 SLH 2016. An EIS preparation notice was published earlier this year and an EIS is in process. He noted that there are several testifiers.

Board Discussion

Roehrig stated that he believes that DLNR should aggressively hire consultants to determine rent and charging structure so that the state maximizes its revenue for the sale of water in the East Maui Watershed. Roehrig suggested that it might be best to have multiple leases for the water. Hirokawa said that this will be a part of the EIS process.

Public Testimony

30 people testified on this item. See attached spreadsheet for summary of positions.

Rick Volner, Jr. General Manager, A&B, with Garrett Hew, retired former EMI manager. Mr. Volner asked the board for approval this year. He was here to provide an update for the Board: Over the past year A&B has develop an initial diversified agriculture plan with input from nearly 200 parties interested in farming the former sugar lands. There is a total of 36,000 acres of agricultural lands. Volner provided maps that showing planned uses of their lands. The overall goal is to establish diversified agriculture on the former sugar lands. Each use should use less water than when it was in sugar.

Proposed uses:

- 8000 acres of livestock operation (initially).
- 1,500 acres for mechanically harvested row crops.
- 800 acres with county for smaller plots.
- 5,000 acres for larger diversified operations.
- 2,000 acres for Pongamia.
- 1,000 for beverage crops.
- 800 acres for biogas feedstock.

Orchard crops, pastures and dairy initiatives have not gone as well. They are looking for new uses and farmers for these lands. Over 15,000 acres under active negotiations. A&B has made significant progress on the EIS. The EIS preparation notice was put out in February 2017. A&B held meetings on the proposed EIS which were attended by 270 people. Additionally, 145 comment letters were received. EIS studies are in progress. However, the Interim Instream Flow Standards (IIFS) recommendation is a critical pathway, so both A&B and potential partners are waiting for the IIFS decision.

Exhibit 5 of the board submittal shows status of compliance with the 2016 conditions.

In addition to Mr. Volner, 29 people testified on this item. Fifteen (15) testified in support and fourteen (14) testified in opposition. Seven of the testifiers also sent in written testimony, and two people sent in only written testimony, one in support, and one providing comments. A petition with 300 signatures in support of the holdover was also received.

People who testified in support cited the following issues:

- Need to support agriculture on Maui, specifically diversified agriculture, and in turn this would support the economy of Maui (13)
- The EMI ditch provides water critical to the residents of upcountry Maui. The head of the Maui Board of Water Supply noted that Maui county does not have alternate plans if water from the EMI ditch is not available.
- Investors will not invest in farming or in the water infrastructure if they don't have guarantees of to water for the long-term.

Those in opposition noted the following issues:

- More water should be returned to the streams for the native ecosystem and taro, particularly since A&B is only using about 20 MGD of its 80MGD allocation. This includes about 6MGD for the county (11).
- A&B has not provided enough information to show that 1) they have met the conditions required by the board in the 2016 renewal, and 2) to show that they need all 80MGD (5).
- A&B's uses and structure of use does not meet the criteria of the Public Trust Doctrine, noting that water is held in the public trust for public use before private use (6).
- Use of more sustainable farming methods would require less water, and therefore allow more water to go back into the streams. (2)
- Additional conditions are needed to ensure the equitable use of the water and access to the streams (6).
- Diversions are causing hardship to the people who rely on Hanehoi stream for water (2).
- Water is being wasted (2)

Roehrig asked David Taylor (MBWS) how is water allocated when a residential subdivision is developed. Who makes the decision on who gets or does not get water? Taylor provided the county process for allocating water. Roehrig followed up by asking who decides if water goes to increasing residential opportunities or to farming or cattle operations? Taylor responded that the County Council has made that decision through a series of ordinances, specifically in how water meters are allocated.

Downing-asked the representative from the Cattlemen's Association how much water is used per day for a ranching operation. The response was that there is a lot of variability and no good estimate.

OHA asked for a deferral and proposed the following conditions.

1. Condition of 80 MGD maximum should be revisited, especially if they are using less water. They can always come back and ask for more.
2. No reason for diversions from Nahiku and Keanae areas.
3. Formal conditions of access for traditional and cultural purposes. Appreciate informal accommodations, but the formal agreements will ensure traditional and cultural practices over time regardless of the personalities involved.
4. Allow for community members to monitor stream conditions. Waikapu provides an example.
5. Require water meters at the diversions to facilitate compliance.
6. Periodic updates for outstanding and holdover conditions.
7. Still have dry streams that were ordered to be restored. The delay has been caused by the rejection of permits. Require information on the status of this condition.

Oi asked if OHA is in support of the revocable permit or opposed to them. OHA responded that there is not enough information to evaluate the submittal for either the BLNR or OHA. Oi then asked if OHA benefits from any funds that DLNR collects from A&B? OHA acknowledged that they do get some funds. However, their primary concern is that the water permits meet the public trust document.

Downing asked the representative from the Hawaii Farm Bureau what he expected to happen in the third year. The response was that they would like a long-term permit for water to ensure stability for farmers. However, there is a point at which irrigation cost more than farmer is willing to pay, so the value of the water is somewhat dependent crop value.

Roehrig questioned why each of the parties isn't asking for a long-term lease, instead of only A&B? He noted that there may need to be legislation or county ordinances passed to facilitate the systemic distribution of water.

Justin Texeira, in response to a question from Yuen stated that he grows zucchini, cucumber, Maui onion, and green onion. He grows other crops depending on weather and bugs. On the flower side he grows orchids, tuberose, 'ilima and other flower crops that need to be re-planted every several years.

Paul Reppun in opposition to the permits. He encouraged the state to ensure that Central Maui stays in farming forever. He suggested that the state should own the land. Case noted that he is opposed to the permits, but testified in support of farmers. Yes, he said that any of the water that is not being used, should be returned to the streams.

Camille Kalama representing (Na Moku Aupuni o Koolau Hui (Na Moku) testified in opposition and asked for the following conditions:

- provide explicit rights of Native Hawaiians to access 32,000 acres, including keys to locks on gates. Currently there is a working relationship but there should be an explicit condition in favor of practitioners (Na Moku).
- Require A&B to clean-up debris. There is old machinery and equipment alongside the streams. Restoration of streams should include restoration of watershed.

- A&B should meter diversion areas so that it can report on how much water it diverts out of each stream that it diverts.
- Monthly reporting of water uses on the plantation, by category of use:
 - 6 mil to Maui county.
 - How much to existing operations on A&B,
 - How much to reservoirs.
 - How much is going to farmers.
 - How much is wasted?

Yuen asked if the RP is denied does that require that water transmission out of East Maui be stopped? Kalama did not believe it did because the County and other parties requested an interlocutory appeal. She noted that the second part of the appeal would have been injunctive relief, but the court proceeding did not get that far. Yuen still questioned what authorizes any water in the ditch at all if there is no RP?

Yuen asked Kalama how much water could be diverted if CWRM adopted the hearing officer's most recent recommendation. She replied it was not one set number but generally, about 100 MGD.

There was a discussion on how much water can be diverted. It was agreed that the amount varies, depending on conditions, and it will depend on the decision of the Commission on Water Resource Management.

David Frankel testified in opposition and pointed out some issues with the staff submittal regarding the conditions required in the 2016 permit (page 2):

- There is no one in DLNR checking to see if there is compliance with conditions. The staff submittal does not include the status of 2016 conditions. He suggested that the board ask the Chair to assign someone at CWRM work with someone at Land Division to check up on conditions.
- There should be studies on stream aquatic life. Suggested that A&B pay DLNR to do the study. He noted that there is more water in the stream compared to 3 years ago and it would be good to know if that has a positive effect on stream life.
- Condition 5 does not make sense. It references a DAR report but does not give a name or citation and the report is not included in the submittal. The issue is not erosion, but that A&B needs to remove barriers that prevent aquatic life from going upstream. There are structures that need to be removed, and DLNR needs to check with A&B on what they have done to comply with the intent of this condition.

Frankel suggested conditions similar to the Na Moku conditions above including:

- Reduce the amount of water to 10-mgd, after A&B pumps 70-mgd from their own land.
- Give A&B a deadline to complete the draft EIS.
- Include a detailed progress report that discloses status of each stream diversion, including date a diversion became or will become inoperable.

- Don't holdover Nahiku and Keanae. If they are needed, A&B can come and ask for water from those streams.

There was a discussion with A&B about how much ground water they would reasonably need. A&B calculated that they would ultimately need about 80 MGD. Yuen asked why the delays in restoration of the streams. Volner noted that it depends on the status of the stream and the level of restoration. A&B submitted a permit for stream abandonment and was asked for additional information, which they also submitted. They have not heard back from permitting agencies but they will request get a status report and report back to the Board.

Regarding the lack of a designated POC, Volner noted that he and Mr. Hew have been working with the community and that seems to be working. However, if necessary, A&B can designate a POC.

Yuen asked what happens to 60mgd that you are not using? Volner noted that its staying in the watershed. While the majority of water is staying in stream of origin some divisions go into ditch systems that do not get returned to the same stream, but stay in the watershed. Volner noted that this is a small percentage of the water that does not return to the same stream.

In response to a question from Roehrig, Volner noted that the 20MGD that A&B uses is the amount that is measured at Maliko Gulch and includes the County of Maui amount. Roehrig asked what would be a fair number for the Board to allow A&B for next year? Volner said that A&B is waiting for a ruling by the hearings officer on the IIFS. If there is an artificial limit before that ruling, then investors in the proposed diversified agriculture projects will wait until they have guarantees that water is available. During that time, prices will go up and it will just make it that much harder to keep the land in agriculture.

Roehrig noted that the history of trying to find something new for sugar has not been successful. Volner agreed but stated that if A&B doesn't have the water to keep Central Maui in agriculture they may not even have a chance to try to find a crop or crops to replace sugar.

Motion

Yuen moved to approve Item D-5 with amendments.

1. The holdover permit shall comply with all conditions required by the Commission on Water Resources Management's Interim Instream Flow Standards decision.
2. Reword condition 5 so it addresses the ability of stream biota to move upstream.
3. Need a more specific report on progress regarding removing diversions and fixing pipe issues before the end of holdover period.
4. A&B needs to clean up their debris starting with more accessible areas and along streams.

Oi seconded the motion noting that in the future he wanted staff to provide more detailed recommendations. For example, rather than just saying that A&B met the public trust, he would like to know how A&Bs activities met the public trust doctrine.

Downing noted that he would vote for the holdover this time but he was not pleased with A&B's reluctance to willingly provide information on the amount of stream diversions, and their use of the water. He does not feel that A&B should be banking water. He would like A&B to report on what this water allows them to do for Maui as well as to have the taro farmers say how much water they need. He also would like to know from taro farmers how much water they need, as well as A&B. Maui needs to take care of ALL Maui. Suggested that the water lease go to a cooperative where everyone would have a voice in how it was used.

Roehrig commented that the situation is better than last year. However, A&B needs to show due diligence in cleaning 'opala off land. He also doesn't believe that A&B should not own the water forever. He noted Mr. Reppun's testimony and encouraged the County to develop infrastructure for water and for farmers in Maui county. He stated his concern that the county approves subdivisions for developers without thinking about the water needs. He admonished the county to start taking care of the upcountry people and develop water infrastructure before allowing more development. Roehrig noted that he is not in favor of 80MGD and would prefer 50MGD. He thanked everyone for coming and sharing their input.

Vote

Unanimous

Item D-2 Authorize a One-Year Holdover of General Lease No. S-3722, Hawaii Pacific Baptist Convention, Lessee; and Authorize Staff to Prepare and Publish a Request for Interest to Gauge Whether there is Interest among Prospective Developers in Conducting an Environmental Assessment to Rezone State Lands to Commercial Use and Facilitate the Issuance of a Long-term Lease for Commercial Purposes, Waiākea Cane Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-4-057:023 Baptist Church Item

Russell Tsuji presented for Land Division. This is a request for a 1-year holdover of a General Lease of a parcel which is ideally situated for a use associated with the University of Hawai'i. The year hold-over would allow the Land Division to test the water for a higher yield opportunity and give the Baptist Convention time to search for an alternative location.

Board Discussion

Yuen said that the property is small for student housing, but the location is very good, and may have better uses.

Public Testimony

At the time this item was heard, no one indicated that they wanted to testify, so the vote was taken without public testimony. Toward the end of the meeting, 2 people indicated that they were there to testify on Item D-2. The Board allowed them to testify although the vote had already been taken.

The first testifier provided no name. She indicated an interest in the property and was referred the Land Division staff.

Anita Bice, Director of Hilo Baptist Convention Mission (BCM). They agree that Land Division should put the land to highest and best use, but they want the board to make sure that whoever gets the lease has a concrete plan to use it, rather than allowing it to sit empty while they make decisions. Bice noted that they provide an important service for UH students who are suicidal or need counseling. She gave some examples of students they have successfully counseled and what those students are now doing with their lives. She noted that the BCM is making positive changes in people's lives every day.

Motion

Approved as submitted (Roehrig/Yuen). Unanimous.

Item F-1 Request Approval to Adopt Amendments to Hawaii Administrative Rules, Chapter 13-74, Amending Section 13-74-20 (Commercial Marine License) and Adding Section 13-74-46 (Commercial Marine Dealer Report).

Alton Miyasaka presented for DAR. This submittal is for a rule amendment to increase commercial use license fees upon approval of the Governor.

Board Discussion

Miyasaka noted that DAR had tried to increase fees for non-residents and was challenged because non-resident fees were \$200/year and residents were \$50. The issue was settled out of court by agreeing to charge the same fees for residents and non-residents. In the meantime, DAR has lost income and so now is raising fees for everyone to \$150.

The Board Members expressed concern that weekend fishermen who sell a part of their catch would be most affected by this fee increase because it would apply to all of the people on the boat, regardless of whether or not they were fishing. They noted that commercial fishermen did not seem too bothered with the fee increase.

Miyasaka said to address the concerns of weekend fishermen, DAR would like to create a vessel license, which would be the equivalent of a commercial license for everyone on the vessel. The key will be how much is charged for the license. DAR plans to further discuss this in December, and hopefully have a rule package ready for the Board at the January meeting.

Miyasaka noted the vessel license is a way to get fishermen more compliant. He pointed out that even at \$50 a person, people don't want to pay the fee. It's a different thing from the commercial license fee, which is being increased to make up for lost revenue.

Miyasaka clarified that they want to move forward on these rules before moving the vessel license because they need to make up a funding shortfall. There was a short discussion on how the fee would work.

Downing asked if the forms can be simplified? Miyasaka explained why they could not be simplified.

Roehrig noted that he needed to leave for his flight.

Public testimony

Ronald Tam testified that he is not opposed to the fee increase, but does not believe that funding for the scientific management of fisheries should come from Commercial Marine License holders. He thinks it should be funded out of general funds. Also submitted written testimony.

Motion

Approve Item F-1 as submitted (Yuen/Downing). Roehrig and Oi opposed. The motion did not pass. After a discussion with the deputy attorney general, it was decided that a motion to defer was not necessary. The issue would be deferred to another meeting.

Roehrig left the meeting.

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to the Monument Co-Trustees: the U.S. Department of the Interior, U.S. Fish and Wildlife Service; U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and the Office of Hawaiian Affairs for Access to State Waters to Conduct Conservation and Management Activities and Authorize General Conservation and Management Activities by the Department of Land and Natural Resources, Divisions of Aquatic Resources & Forestry and Wildlife.

Maria Carnavale presented for the Papahānaumokuākea and provided the board members with the 2016 Annual Report on Permitted Activities. She noted that page 37 of the report gives 2016 permit data.

Board Discussion-None

Public Testimony-None

Motion

To approve item F-2 as submitted (Oi/Yuen). Unanimous.

Item C-2 Request Approval to Settle Claim Between DOFAW and Fee Owner Sharon Jensen to Reduce Easement While Still Providing Access to Forest Reserve, Mānoa Valley, Honolulu, Oahu – TMK No. (1) 2-9-072-012.

David Smith presented for DOFAW with Marigold Zoll.

Board Discussion

Yuen asked if the applicant's representative was available?

Jesse Schiel of Kobayashi, Sugita and Goda, indicated that he was present to represent the landowner.

Yuen noted that he found it strange that this situation came about and asked how it happened. Mr. Schiel was not sure and noted that his client acquired the lot after it was subdivided. He noted that the owner has approved plans. There was a discussion on restrictions on lot.

Zoll said the original easement was for a road, but the topography makes a road improbable. There was a discussion on the small lot sizes and the purpose of the subdivision. Yuen said it seems to him that this was set up so the lots would not be built on.

David Smith agreed that the lot probably wasn't meant to be built on. However, on the advice of deputy AG Linda Chow, he was advised to allow the owner to build. The parcel is not usable by DOFAW anyway. Case asked if there was notification to the neighbors? Yuen wanted to insert a clause that the state is not liable for rockfall onto the property. He asked Schiel if he had any objection. Schiel agreed the request was reasonable. He suggested the AG draft the language.

Public Testimony-None

Motion

Approve Item C-2 with a clause stating that the state is not liable for any rockfall that would affect the property(Yuen/Oi). Unanimous

Item E-1 Amend Prior Board Action of August 26, 2016, Agenda Item E-3, Issuance of a Revocable Permit to Mary Thronas, Trustee of the Mary Thronas Trust for Pasture Purposes, Lot 23-A and 23-B, Wailua Rice and Kula Lots, Wailua, Lihue, Kauai, Hawaii, Tax Map Key: (4) 4-2-003:003.

Curt Cottrell presented for State Parks. He stated that Parks has 3 RPs. Kauai DOFAW is interested in taking this parcel, but in the meantime, this RP is a patch. The submittal is to Issue a new RP to the successor of last RP holder and correct deficiencies.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-1 as submitted (Oi/Downing). Unanimous.

Item E-2 Approve Amended Submittal of December 9, 2016, Agenda Item E-3: Issuance of a General Lease to Ke'ehi Memorial Organization for the Operation, Maintenance and Administration Purposes of Ke'ehi Lagoon Memorial (aka Pacific War Memorial), situated at Ke'ehi Lagoon, Honolulu, O'ahu, Tax Map Key: (1) 1-1-03:004.

The purpose of this Amendment is to (1) Correct the Statutory Authority under which the Board is acting in Granting the Lease, (2) Correct the Leased Acreage, (3) Request that the Board declare that the Project is Exempt from the preparation

of an Environmental Assessment, and (4) Clarify the Relationship between Ke'ehi Memorial Organization and Disabled American Veterans, Department of Hawai'i, and Delegate Authority to the Chairperson to Consent to a Future Sublease between these parties.

Curt Cottrel presented for State Parks. This submittal corrects four deficiencies in the original submittal and delegates authority to the Chairperson to Consent to any future sublease between the parties.

Board Discussion-None

Public Testimony-None

Motion

Approve Item C-2 as submitted(Downing/Yuen). Unanimous.

Item C-1 Amendment to the Lanai Cooperative Game Development and Management Agreement with Lanai Resorts, LLC to Extend the Agreement to February 28, 2021.

David Smith presented a summary of the item for DOFAW.

Board Discussion

Oi noted that the game management area on Lanai supports the whole community. People rent rooms in their residences to make money. Hunting season also generates income for restaurants and others.

Public Testimony-None

Motion

Approve Item C-1 as submitted (Oi/Yuen). Unanimous.

Item C-3 Request Approval to Enter into a Memorandum of Agreement Between the Hawaii Tourism Authority and the Department of Land and Natural Resources, Division of Forestry and Wildlife for \$47,000 in Grant Funds to be Provided for Public Outreach Related to Rapid 'Ōhia Death on Hawai'i Island for Fiscal Year 2018.

David Smith presented a summary if the submittal on behalf of DOFAW.

Board Discussion-None

Public Testimony-None

Motion

Approve Item C-3 as submitted (OI/Downing). Unanimous

Item D-3 Set Aside to the Division of Boating and Ocean Recreation for Small Boat Harbor and Related Purposes; Issuance of Immediate Management Right-of-Entry to the Division of Boating and Ocean Recreation, Kealakehe, North Kona, Hawai'i, Tax Map Key: (3) 7-4-008:071.

Russell Tsuji presented on behalf of Land Division. This area is part of the Honokohau Boat harbor. A former Chairperson asked that this parcel be held for an interested developer (Jacoby). However, the development didn't work out. In the meantime, DOBOR thought this was their property and started using it. This submittal is to correct the oversight of not returning the property to DOBOR.

Board Discussion

Yuen pointed out that this is a large piece of property and a potentially large decision, but we don't have any plans for the property at this time.

Public Testimony-None

Motion

Approve Item D-3 as submitted (Yuen/Oi). Unanimous.

Item D-4 Issuance of Right-of-Entry Permit to the United State Geological Survey on Lands Encumbered by Governor's Executive Order No. 2577 to the County of Hawai'i, Wai'ōhinu, Ka'ū, Hawaii, Tax Map Key: (3) 9-5-002:065.

Russel Tsuji presented for Land Division.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-4 as submitted (Downing/Oi). Unanimous.

Item D-6 Amend Prior Board Action of October 28, 2016, (Item D-6), *Issuance of Revocable Permit to Kwock Nam Lau Trust and Eunice Y.M. Lau Trust for Parking Purposes; Termination of Revocable Permit No. 7544 issued to Kwock Nam Lau Trust; Nu'uaniu, Honolulu, O'ahu, Tax Map Key: (1) 2-2-010: portion of 021.*

An Amendment to Change the Applicant to Lorraine Lau Young Trust and Liana Lau Benn Trust due to the Recent Change in Ownership of the Private Property, Tax Map Key: (1) 2-2-010:015.

Russell Tsuji presented for the land division. He noted that this is an amendment to note a change in ownership.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-6 as submitted (Yuen/Downing). Unanimous.

Item D-8 Set Aside to City and County of Honolulu for Fire Station and Allied Purposes, Pearl City, 'Ewa, O'ahu, Tax Map Key: (1) 9-7-020:004.

Russell Tsuji presented for the Land Division. This item is to correct the lack of a set-aside for the Pearl City Fire Station.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-8 as submitted (Downing/Yuen). Unanimous.

Item M-16 Extension to December 31, 2018, the Right-of-Entry to D.R. Horton Hawaii and Royal Contracting Co., LTD, at Kalaeloa Barbers Point Harbor, O'ahu, Tax Map Key: (1) 9-1-014, portions of 024 and 039.

Russel presented for DOT-Harbors.

Board Discussion-None

Public Testimony-None

Motion

Approve Item M-16 as submitted (Yuen/Downing).

Motion to Adjourn (Downing/Oi). Unanimous.

Meeting Adjourned at 4:47 pm.

There being no further business, Chairperson Suzanne Case adjourned the meeting at 4:47 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the

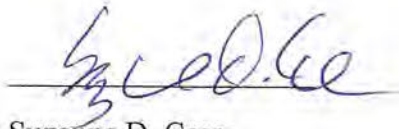
Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case

Chairperson

Department of Land & Natural Resources

**HOLDOVER OF EAST MAUI WATER PERMITS
2017 BLNR CONDITIONS: STATUS OF COMPLIANCE
OCTOBER 16, 2018**

CONDITIONS PER 11/9/17 STAFF SUBMITTAL (pp. 6, 7)

- 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.**

Status: The CWRM's July 18, 2016 order has been complied with. Streams that were ordered to remain undiverted were undiverted as total needs from the East Maui watershed remained at 20-25 million gallons per day (MGD). The CWRM's July 2016 order has now been superseded by the CWRM's June 2018 East Maui IIFS decision.

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

Status: Total water diverted from East Maui streams approximated 20-25 MGD throughout 2018. All water was used to meet the needs of the County of Maui for its Upcountry and Nahiku public water systems, the Kula Ag Park, and fire suppression needs, as well as for diversified agricultural needs on former sugar lands in Central Maui.

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

Status: All four sluice gate diversions on Honomanu Stream have remained open to-date, 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 permittees can apply for the diversion of additional water if necessary during the term of the permits**

Status: As mentioned above, total water diverted for use in Upcountry and Central Maui has approximated 20-25 MGD this past year.

- 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**

Status: See response to question 2 below, in "Additional Conditions".

BLNR ADDITIONAL CONDITIONS (Pg 13, 11/9/17 BLNR Meeting Minutes):

1. The holdover permit shall comply with all conditions required by the Commission on Water Resource Management’s Interim Instream Flow Standards decision

Status: 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. In that the current need for water from the East Maui streams averages 20-25 million gallons per day (MGD), only that amount of water is being diverted from the East Maui watershed—well within the bounds of the June 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. The Permittee is also in the process of submitting a proposed compliance plan to the CWRM staff to outline the diversion modifications that will be made to ensure compliance with the IIFS decision once irrigation demands increase, as is expected over the coming months and years.

2. Reword Condition 5 [sic] so it addresses the ability of stream biota to move upstream.

Status: (NOTE: Our response to this condition assumes that a typo was made, and that this condition in intended to refer to rewording condition 7, rather than condition 5. We assume the focus was to address the need to create pathways to allow for the upstream movement of stream biota.)

A number of modifications have been made on the EMI ditch system to facilitate the upstream movement of stream biota, as follows:

- *Hanawi Stream: Modifications were made at the intake to ensure a constant wetted path across both sides of the dam diversion, via a pipe extending over the dam.*
- *Waiohue Stream: A two-inch pipe was installed to divert water from the upstream waterfall to the dam to create a wetted path across the dam.*
- *East Wailuaiki Stream: A two-inch pipe was installed to bring water from upstream across the top of the dam to create a wetted path across the dam.*
- *West Wailuaiki Stream: A two-inch pipe was installed between the upstream waterfall and the dam, to provide a wetted path across the dam.*
- *Honopou Stream at Haiku Ditch: Rocks were concreted in place next to the pipes in the dam to create a wetted path for upstream migration*
- *Puolooa Stream at Lowrie Ditch: The 8” pipe that carries water over the top of the ditch was extended to reach the small pool below the ditch to provide connectivity.*

These actions have removed physical obstacles to upstream movement and/or provided wetted areas around dams. In addition, in our implementation of the June IIFS decision, we will be addressing the movement of stream biota as needed.

3. Need a more specific report on progress regarding removing diversions and fixing pipe issues before the end of holdover period

Status: We believe the pipe issues referred to above related to a pipe at Puolua Stream at the Lowrie Ditch. As mentioned in the last bullet point above, the pipe was extended to provide wetted pathways for the movement of stream biota.

As for the removal of diversions on the seven taro streams that A&B earlier volunteered to restore, permit applications have been submitted to the CWRM for the work necessary to permanently modify and abandon some 70 diversion structures on the EMI system and we are awaiting their approval. Additionally, approval has been sought from the Office of Conservation and Coastal Lands (OCCL) for work on diversions located within the Conservation District. Note that we have already sought and received concurrence from the Army Corps of Engineers and the County of Maui that Section 404 and Special Management Area (SMA) permits are not required for this work. Once approvals are received from the CWRM and OCCL, we will proceed with the planned work. Please note that pending this "final work" to permanently abandon these diversions, we have been able to accomplish the return of more than 90% of the water formerly diverted from these taro streams by making operational adjustments to the system, such as the opening of sluice gates, etc.

4. A&B needs to clear up their debris starting with more accessible areas and along streams.

Status: We have removed an abandoned tractor along Pi'ina'au Road, after first checking with the State Division of Forestry and Wildlife (DOFAW). Ownership of the tractor was unknown, but DOFAW had no objection to our removing and disposing of the item. There was little other debris specifically identified, however existing operating procedures which require the removal of all construction equipment, forms and tools when doing maintenance work on the ditch system have been reinforced with EMI crews, as well as the removal of any debris they may find during the course of their work. We also urge that if anyone has information about debris in the watershed area, please let us know and we will take action to remove the items.