

CADES SCHUTTE  
A Limited Liability Law Partnership

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

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

SIERRA CLUB,

Plaintiff,

vs.

BOARD OF LAND AND NATURAL  
RESOURCES; DEPARTMENT OF LAND  
AND NATURAL RESOURCES; SUZANNE  
CASE, in her official capacity as Chairperson  
of the Board of Land and Natural Resources;  
ALEXANDER AND BALDWIN, INC., and  
EAST MAUI IRRIGATION, LLC,

Defendants.

CIVIL NO. 19-1-0019-01 JPC  
(Environmental Court)

DEFENDANTS ALEXANDER & BALDWIN,  
INC. AND EAST MAUI IRRIGATION  
COMPANY, LLC'S FIRST AMENDED  
RESPONSE TO PLAINTIFF'S SECOND  
REQUEST FOR ANSWERS TO  
INTERROGATORIES;

EXHIBITS "A" - "B"

No Trial Date Set

**DEFENDANTS ALEXANDER & BALDWIN, INC. AND  
EAST MAUI IRRIGATION COMPANY, LLC'S FIRST AMENDED RESPONSE TO  
PLAINTIFF'S SECOND REQUEST FOR ANSWERS TO INTERROGATORIES**

Defendants Alexander & Baldwin, Inc. ("**A&B**") and East Maui Irrigation Company, LLC ("**EMP**") (collectively "**Defendants**"), by and through their counsel, Cades Schutte LLP, pursuant to Rule 33 of the Hawai'i Rules of Civil Procedure ("**HRCP**") respond to Plaintiff

Sierra Club's ("**Plaintiff**") Second Request for Answers to Interrogatories to Defendants Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC (the "**Request**"), dated April 26, 2019, as follows:

### **GENERAL OBJECTIONS**

Defendants' specific objections and responses below to the individual requests below are in addition to the general objections and responses set forth in this section. These limitations and objections form a part of the response to each and every request and are set forth herein to avoid the duplication and repetition of restating them for every response. The absence of a reference to a general objection should not be construed as a waiver of the general objection as to a specific request.

1. Defendants' responses to the requests, notwithstanding the objectionable nature of any of the definitions, instructions, or requests, do not constitute (a) a stipulation that the information sought is relevant or admissible, (b) a waiver of the attorney-client privilege, the attorney work-product doctrine or any other privilege or doctrine, (c) a waiver of Defendants' general objections or the objections asserted in response to the specific requests, or (d) an agreement that requests for similar information will be treated in a similar manner

2. Defendants object to the Request as being improperly directed at multiple parties.

3. Defendants object to the Request to the extent that it seeks to impose burdens or obligations greater than imposed by the HRCPP and the Rules of the Circuit Courts of the State of Hawai'i ("**RCCH**"). Defendants will follow the HRCPP and the RCCH.

4. Defendants object to the Request generally as overly broad and unduly burdensome. Defendants have attempted to reasonably construe and respond in good faith to the Request in a timely fashion.

5. Defendants object to the Request to the extent that the interrogatories purport to require information not within Defendants' custody, possession, or control, or seek information that is not within Defendants' knowledge.

6. Defendants note that discovery and investigation are ongoing. Accordingly, the responses to the Request are given without prejudice to Defendants' right to amend and/or supplement its responses or to produce evidence of any subsequently discovered facts or if Defendants find inadvertent omissions or errors have been made.

7. Defendants reserve the right to supplement, withdraw, amend, correct, or revise these responses before the completion of discovery, as additional analyses are made, research is completed, and contentions are asserted or if Defendants find that errors or omissions have inadvertently been made or if additional or more accurate information becomes available and is required to be provided under Rules 26 and 33 of the HRCF. The responses and objections set forth herein are made without waiver of this right

8. The responses attached hereto are each specifically subject to the foregoing objections. All objections made in this response to the Request have been made by Defendants' counsel and the signature below shall take the place of a signature after each and every objection made.

9. Without waiving these objections, Defendants responds to the Request as follows, incorporating by reference these objections into each and every response.

DATED: Honolulu, Hawaii, July 15, 2019.

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A Limited Liability Law Partnership

A handwritten signature in black ink, appearing to read "David Schulmeister", written over a horizontal line.

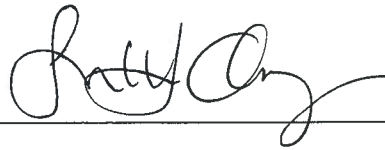
DAVID SCHULMEISTER  
TRISHA H. S. T. AKAGI  
Attorneys for Defendants  
ALEXANDER & BALDWIN, INC. and  
EAST MAUI IRRIGATION COMPANY, LLC

## INTERROGATORIES

1. How was the water that was taken out of the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266 used for each month in 2017, 2018 and 2019 (including for each month: how much water was delivered to whom; for what purpose was the water used that was delivered; and how much water is estimated to have been lost to seepage).

Answer:

OBJECTION: Defendants object to Interrogatory No. 1 as overly broad, unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that the interrogatory seeks information related to water taken by person(s) other than Defendants, such information is outside the scope of Defendants' knowledge and is not related to the claims and defenses asserted in this litigation. Defendants further object to the interrogatory as vague and ambiguous, particularly the terms "taken" and "used," which are not defined. Defendants construe the request as seeking the Defendants' uses of water that Defendants removed from the areas encompassed by the subject RPs for each month in 2017, 2018, and 2019.



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As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that their uses of water that Defendants removed from the areas encompassed by the subject RPs for each month in 2017, 2018, and 2019 are set forth in the table attached hereto as Exhibit "A."

**Water Uses**  
(in millions of gallons)

Year	Month	East Maui Water License Water	Kamaole <sup>1</sup>	Ag Park <sup>2</sup>	Diversified Ag <sup>4</sup>	Historical/ Industrial <sup>5</sup>	Reservoir / Fire Protection / Hydroelectric / Seepage / Evaporation <sup>3</sup>
2017	Jan	689.86	53.9	14.754	124	31	466.21
2017	Feb	723.10	25.283	10.962	112	28	546.85
2017	Mar	776.29	2.614	12.669	124	31	606.01
2017	Apr	623.56	75.497	14.023	120	30	384.04
2017	May	771.62	17.142	5.749	124	31	593.73
2017	Jun	650.25	26.14	1.596	120	30	472.52
2017	Jul	780.27	62.801	20.867	124	31	541.60
2017	Aug	700.82	43.323	20.835	124	31	481.67
2017	Sep	662.29	112.656	19.518	120	30	380.12
2017	Oct	686.87	41.9058	19.082	124	31	470.88
2017	Nov	792.81	24.1075	14.514	120	30	604.19
2017	Dec	899.42	9.5452	13.895	124	31	720.98
2018	Jan	770.27	60.4754	13.739	124	31	541.06
2018	Feb	729.29	17.485	10.671	112	28	561.13
2018	Mar	869.52	10.921	13.626	124	31	689.97
2018	Apr	674.92	9.002	0.401	120	30	515.51
2018	May	1,016.13	21.679	0.498	124	31	838.96
2018	Jun	1,012.61	48.1786	0.588	120	30	813.84
2018	Jul	1,239.17	40.916	0.698	124	31	1,042.55
2018	Aug	839.31	25.555	17.211	124	31	641.54
2018	Sep	624.91	33.826	13.713	120	30	427.37
2018	Oct	785.63	25.9101	16.101	124	31	588.62
2018	Nov	467.61	36.25	16.389	120	30	264.97
2018	Dec	653.98	52.72	16.935	124	31	429.32
2019	Jan	528.06	74.921	15.444	124	31	282.69
2019	Feb	701.52	31.1333	6.588	112	28	523.80
2019	Mar	947.43	69.5676	14.124	124	31	708.74
2019	Apr	906.65	3.731	17.208	120	30	735.72
2019	May						

<sup>1</sup> The numbers in this column are based on reports received from the County of Maui and have not been independently verified by EMI. Operationally, a minimum of approximately 6 mgd must be reliably conveyed to / made available to the County each and every day so that the County has flexibility regarding when to run its plan depending upon weather conditions, demand, water available from its Piholo plant, etc. Water conveyed by EMI but not used by the County is redirected by EMI to reservoirs located on the former plantation.

<sup>2</sup> The numbers in this column are based on reports received from the County and have not been independently verified by EMI. Operationally, a minimum of approximately 1.5 mgd must be reliably conveyed to / made available to the County each and every day so that the County can be flexible regarding how to meet the needs of the Ag Park. Water conveyed by EMI but not used by the County is redirected by EMI to reservoirs located on the former plantation.

<sup>3</sup> The numbers in this column include water not separately accounted for in the columns to the left, including seepage and evaporation, which cannot be directly measured. The EMI system is operated in a manner that insures continuous water availability in the reservoirs to meet the County's needs for fire protection for brush fires, the risk of which has increased due to the reduction of the irrigated acreage following the cessation of sugar cultivation. When the EMI/HC&S system was under full sugar cultivation, seepage and evaporation (mostly from reservoirs) approximated 22% of total deliveries. Since a proportionately larger percentage of total deliveries is now used to maintain water levels in the reservoirs, seepage and evaporation will necessarily be higher until irrigation needs increase. Imported water that is used for hydroelectric power generation is also directed to the reservoirs.

<sup>4</sup> Diversified Ag includes the users/uses described in Exhibit B.

<sup>5</sup> Historical/Industrial Uses are uses other than plantation and A&B uses. These include uses by entities located either adjacent to or within the boundaries of the farm and are further described in Exhibit B.

### Historical / Industrial Uses

User	Use
HC&D, LLC and subtenant Maui Paving	Restrooms, concrete batching, fire suppression, and dust control
Imua Energy Maui, LLC (fka Maui EKO Systems LLC and tenant of County Central Maui Landfill)	
Mill Area Fire Suppression	Fire suppression
New Leaf Ranch (non-profit)	
Plant Supplements Mixing Plant	Feedstock operations
Costo Maddela (pasture tenant)	Animal water
Maui Demolition & Construction Landfill (Decoite Trucking)	Tank and stand pipe for truck filling (irrigation, dust control)
Gary Vares, Sr. and Gary Vares, Jr.	Tank for animal troughs
Brendan Balthazar	Tank for animal troughs
Manuel Lopes and Christopher Lopes	Tank for animal troughs
Harriet, Michael, and Jordan Santos	For pasture troughs
Leonard Pagan	For livestock use
Harry Cambra	For livestock use

### Diversified Ag

User	Use
Maui Best	Sweet potato
MANA/CMF	Row crop/energy crop
Ulupono trials	Cassava trials
HARC trials	Cane variety trials
Kulolio stock water	Stock water/cattle
Terviva trials	Pongamia orchard

VERIFICATION

STATE OF HAWAII                                 )  
  ) SS.  
COUNTY OF MAUI                             )

I, Mark Vaught, being first duly sworn upon oath, depose and say:

That the foregoing answers to the foregoing Interrogatories are true to the best of my knowledge and belief.

Mark Vaught

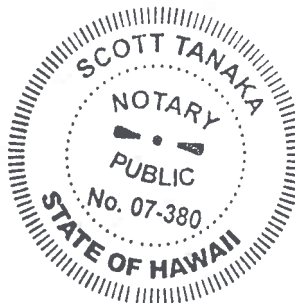
Subscribed and sworn to before me  
this 2 day of August, 2019.

Scott Tanaka  
\_\_\_\_\_  
Notary Public, State of Hawaii

Name Printed: SCOTT TANAKA

My Commission Expires: 03/25/2022

My commission expires: \_\_\_\_\_



NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Defendants Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC's First Amended Response to Plaintiff's Second Request for Answers to Interrogatories

Doc. Date: July 15, 2019 or  Undated at time of notarization.

No. of Pages: 8

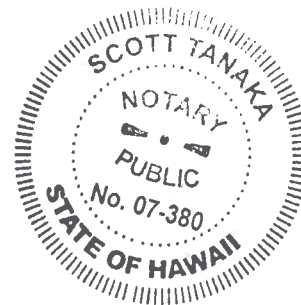
Jurisdiction: Second Circuit  
(in which notarial act is performed)

Scott Tanaka  
\_\_\_\_\_

Signature of Notary

AUG 02 2019  
Date of Notarization and  
Certification Statement

SCOTT TANAKA  
\_\_\_\_\_  
Printed Name of Notary



(Official Stamp or Seal)