

CADES SCHUTTE  
A Limited Liability Law Partnership

DAVID SCHULMEISTER 2781-0  
TRISHA H. S. T. AKAGI 10186-0  
Cades Schutte Building  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813-4212  
Telephone: (808) 521-9200

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  
RESPONSE TO PLAINTIFF SIERRA  
CLUB'S FIRST REQUEST FOR  
ADMISSIONS

DEFENDANTS ALEXANDER & BALDWIN, INC. AND  
EAST MAUI IRRIGATION COMPANY, LLC'S RESPONSE TO  
PLAINTIFF SIERRA CLUB'S FIRST REQUEST FOR ADMISSIONS

Defendants Alexander & Baldwin, Inc. ("**A&B**") and East Maui Irrigation Company,  
LLC ("**EMI**") (collectively "**Defendants**"), by and through their attorneys, Cades Schutte LLP,  
respond as follows to Plaintiff Sierra Club's ("**Plaintiff**") First Request for Admissions to

Defendants Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC (the “Request”), dated March 8, 2019 as follows:

**GENERAL OBJECTIONS**

1. Defendants object to the Request to the extent that it seeks to impose burdens or obligations greater than the requirements of Rules 26 and 36 of the Hawai‘i Rules of Civil Procedure (“**HRCP**”).
2. Defendants object to the Request as being improperly directed at multiple parties.
3. Defendants object to the Request as vague, ambiguous, or fail to describe the information sought with sufficient particularity to enable Defendants to frame a response.
4. Defendants object to the Request as being 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 Request purports to require information not within Defendants’ possession, custody, or control, or seeks information that is not within Defendants’ knowledge.
6. Defendants object to the Request to the extent that it seeks information which is protected by the attorney-client privilege or the work product doctrine, or which is otherwise protected against or privileged from disclosure by law or rule of court.
7. Defendants’ responses do not admit the relevance or materiality of the subject matter of the Request. Defendants’ responses are made expressly subject to, and without waiver of, any objections to competency, relevancy, materiality, privilege, or admissibility as evidence for any other purpose in any proceeding.

8. Defendants expressly 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, and/or if Defendants find that inadvertent errors or omissions have been made or if additional or more accurate information becomes available and is required to be provided under HRCF Rule 36.


**SPECIFIC OBJECTIONS AND RESPONSES**

1. Defendants' specific objections and responses 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.

2. Objections to the Request were made by the undersigned counsel.

DATED: Honolulu, Hawaii, April 8, 2019.

CADES SCHUTTE  
A Limited Liability Law Partnership



---

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

**DEFENDANTS ALEXANDER & BALDWIN, INC. AND  
EAST MAUI IRRIGATION COMPANY, LLC'S RESPONSES TO  
PLAINTIFF SIERRA CLUB'S FIRST REQUEST FOR ADMISSIONS**

1. Between the time of Judge Nishimura's order invalidating Revocable Permit No.s 7263, 7264, 7265 and 7266 in January 2016 and BLNR's decision in December 2016 to holdover the revocable permits, Alexander & Baldwin, Inc. and/or East Maui Irrigation Company, LLC (including their agents, subsidiaries, officers and employees) continued to enter upon and access the areas encompassed by the 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) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007).

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

**Response:**

Defendants object to Request No. 1 on the grounds that it is compound and vague as to the term "access," which is duplicative of the term "enter upon" and is not otherwise defined by Plaintiff. Defendants will construe the request as asking whether Defendants entered upon the areas encompassed by the subject revocable permits between January 2016 and December 2016. Defendants also object to the characterization of the "BLNR's decision in December 2016" as the decision to put Revocable Permit Numbers S-7263, S-7264, S-7265, and S-7266 (together "RPs") into holdover status was not made in December 2016. Defendants will construe "Judge Nishimura's order invalidating Permit No.s 7263, 7264, 7265 and 7266 in January 2016" as referring to the January 8, 2016 "Order Granting Plaintiffs' Motion for Partial Summary Judgment," filed October 21, 2015 in Civil No. 15-0650-04 in the Circuit Court of the First Circuit, State of Hawai'i.

Subject to and without waiving these limitations, objections, and general objections, Defendants state as follows:

A&B:  *Admit*       *Deny*

EMI:  *Admit*       *Deny*

2. Between the time of Judge Nishimura’s order invalidating Revocable Permit No.s 7263, 7264, 7265 and 7266 in January 2016 and BLNR’s decision in December 2016 to holdover the revocable permits, Alexander & Baldwin, Inc. and/or East Maui Irrigation Company, LLC (including their agents, subsidiaries, officers and employees) continued to divert water from streams within the areas encompassed by the 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) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007).

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 2 on the grounds that it is compound and vague as to the phrase “continued to divert water,” which is not defined. Defendants also object to the characterization of the “BLNR’s decision in December 2016” as the decision to put the RPs into holdover status was not made in December 2016. Defendants will construe “Judge Nishimura’s order invalidating Permit No.s 7263, 7264, 7265 and 7266 in January 2016” as referring to the January 8, 2016 “Order Granting Plaintiffs’ Motion for Partial Summary Judgment,” filed October 21, 2015 in Civil No. 15-0650-04 in the Circuit Court of the First Circuit, State of Hawai‘i.

Subject to and without waiving these limitations, objections, and general objections, Defendants state as follows:

A&B:  *Admit*       *Deny*

EMI:  *Admit*       *Deny*

3. The diversion of water from streams in east Maui can harm some native aquatic species populations.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 3 as overly broad and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information related to streams that are not within the areas encompassed by the RPs and thus not the subject of this litigation. Defendants further object to the Request on the grounds that it is vague and ambiguous as to the kind of “diversion of water,” the type of “harm,” and what

“native aquatic species populations” are referred to in the Request as these terms are not defined. Defendants also object to the Request as it calls for information that is outside the scope of Defendants’ knowledge and asks Defendants to speculate as to whether any type of diversion could possibly cause any type of harm to any type of native aquatic species population. Defendants are thus unable to respond to this Request.

4. Diversion structures on streams in east Maui can themselves harm native aquatic populations by impeding migration of species upstream and larvae flowing downstream.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 4 as overly broad and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information related to streams that are not within the areas encompassed by the RPs and thus not the subject of this litigation. Defendants further object to the Request on the grounds that it is vague and ambiguous as to the type of “diversion structures,” “species” and “larvae” referred to in the Request as these terms are not defined. Defendants also object to the Request as it calls for information that is outside the scope of Defendants’ knowledge and asks Defendants to speculate as to whether any type of diversion structure could possibly impede migration of any type of species upstream and the flow of any type of larvae downstream. Defendants are thus unable to respond to this Request.

5. Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC do not know how much water is diverted from Kolea Stream, Punaluu Stream, Kaaiea Stream, Oopuola Stream (Makanali tributary), Puehu Stream, Nailiilihaele Stream, Kailua Stream, Hanahana Stream (Ohanui tributary), Hoalua Stream, Waipio Stream, Mokupapa Stream, and Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries).

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 5 as compound, vague and ambiguous, especially as to the amount of water and time period referred to in the Request. Defendants construe the request as referring to the total amount of water ever diverted at any time by any person or entity from the listed streams.

Subject to and without waiving these limitations, objections, and general objections, Defendants state as follows:

A&B:  *Admit*       *Deny*

EMI:  *Admit*       *Deny*

6. In April 2016, Alexander & Baldwin, Inc. issued a press release in which it announced that it was fully and permanently restoring water to a number of streams in East Maui including Hanehoi.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 6 as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these limitations, objections, and general objections, Defendants state as follows:

A&B:  *Admit*       *Deny*

EMI:  *Admit*       *Deny*

7. Alexander & Baldwin, Inc. and/or East Maui Irrigation Company, LLC continue to divert water from Hanehoi stream.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 7 as compound and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these limitations, objections, and general objections, Defendants state that diversion structures exist on Hanehoi Stream which are in the process of being modified in accordance with permits obtained from CWRM, that Defendants have taken steps to allow water to flow over, around, or through the

remaining diversions until all of the permitted work is completed, but some water may still unintentionally be diverted as a result of the remaining diversions.

8. Diversion structures that still exist on Hanehoi Stream impede the migration of aquatic species within Hanehoi Stream.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 8 as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the Request as vague, ambiguous, overly broad and unduly burdensome to the extent that it seeks information that is outside the scope of Defendants' knowledge and asks Defendants to speculate as to whether the modifications in their present condition could possibly impede migration of any type of species. Defendants are thus unable to respond to this Request.

9. Alexander & Baldwin, Inc. and/or East Maui Irrigation Company, LLC continue to divert water from Honopou Stream.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 9 as compound and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these limitations, objections, and general objections, Defendants state that diversion structures exist on Honopou Stream which are in the process of being modified in accordance with permits obtained from CWRM, that Defendants have taken steps to allow water to flow over, around or through the remaining diversions until all of the permitted work is completed, but some water may still be unintentionally diverted as a result of the remaining diversions.



10. Diversion structures that still exist on Honopou Stream impede the migration of aquatic species within Honopou Stream.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 10 as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the Request as vague, ambiguous, overly broad and unduly burdensome to the extent that it seeks information that is outside the scope of Defendants' knowledge and asks Defendants to speculate as to whether the modifications in their present condition could possibly impede migration of any type of species. Defendants are thus unable to respond to this Request.

11. Invasive species are growing on the state lands covered by revocable permits S-7263, S-7264, S-7265, and S-7266.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 11 as overly broad and unduly burdensome to the extent that it requires Defendants to inspect the 33,000 acres of land encompassed by the RPs and/or seeks information that is outside the scope of Defendants' knowledge. Defendants' responses are thus limited to their current knowledge.

Subject to and without waiving these limitations, objections, and general objections, Defendants state as follows:

A&B:  Admit       Deny

EMI:  Admit       Deny

12. Invasive species growing in East Maui are a threat to the watershed and native forest ecosystems.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 12 as overly broad and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information related to areas that are not within those encompassed by the RPs and thus not the subject of this litigation. Defendants further object to the Request on the grounds that it is vague and ambiguous, especially as to the type of “invasive species” and “threat” that are referred to in the Request, and the terms “watershed” and “native forest ecosystems,” as those terms are not defined. Defendants also object to the Request as it calls for information that is outside the scope of Defendants’ knowledge and asks Defendants to speculate as to whether any type of invasive species is posing some kind of threat to the “watershed” and “native forest ecosystems.” Defendants are thus unable to respond to this Request.

13. The diversion of water from East Maui streams can adversely affect native aquatic species, native stream habitat, ecosystem health, recreational values, natural beauty, and cultural uses.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 13 as compound, overly broad and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information related to streams that are not within the areas encompassed by the RPs and thus not the subject of this litigation. Defendants further object to the Request on the grounds that it is vague and ambiguous, especially as to the terms “adversely affect,” “native aquatic species,” “native stream habitat,” “ecosystem health,” “recreational values,” and “natural beauty,” as those terms are not defined. Defendants also object to the Request as it calls for information that is outside the scope of Defendants’ knowledge and asks Defendants to speculate as to whether any type of diversion of water from any stream in East Maui could possibly adversely affect the items listed in the Request. Defendants are thus unable to respond to this Request.

14. In 2019, Alexander & Baldwin, Inc. and/or East Maui Irrigation Company, LLC have diverted water from one or more streams and dumped/transferred that water to one or more other streams.

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 14 as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information related to streams that are not within the areas encompassed by the RPs and thus not the subject of this litigation. Defendants further object to the use of the term “dumped” and any connotations or value judgments associated with the use of such term. Defendants also object to the Request as compound, vague, ambiguous and confusing. Defendants construe the request as asking if in 2019 Defendants have ever diverted any amount of water, even unintentionally, from any one stream in the areas encompassed by the RPs which may have subsequently entered another stream in the areas encompassed by the RPs.

As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state as follows:

A&B:  *Admit*       *Deny*

EMI:  *Admit*       *Deny*

15. In 2016, 2017 and 2018, Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC took no more than 25 million gallons of water daily from state lands in east Maui (as measured at Honopou Stream).

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 15 as overly broad, compound, vague and ambiguous.

Subject to and without waiving these limitations, objections, and general objections, Defendants state as follows:

A&B:  *Admit*       *Deny*

EMI:  *Admit*       *Deny*

16. In 2016, 2017 and 2018, Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC took no more than 20 million gallons of water daily from state lands in east Maui (as measured at Honopou Stream).

*If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.*

Response:

Defendants object to Request No. 16 as overly broad, compound, vague and ambiguous.

Subject to and without waiving these limitations, objections, and general objections, Defendants state as follows:

A&B:  *Admit*       *Deny*

EMI:  *Admit*       *Deny*