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December 26, 2018

TO: Jeff Pearson, Deputy Director
Commission on Water Resource Management

FROM: David G. Smith, Administrator
Division of Forestry and Wildlife 

SUBJECT: Comments on Alexander and Baldwin, Inc. application for a stream diversion works permit for abandonment

Thank you for the opportunity to comment on the application for a stream diversion works permit for abandonment submitted to the Commission on Water Resource Management (Commission) by Alexander and Baldwin, Inc., dated as revised on October 16, 2018, noted as received by the Commission on December 5, 2018, and filed as I.D. SDWP 4915.6, document 20658 (<https://dlnr.hawaii.gov/cwrm/surfacewater/review/>). We appreciate the intent of the application to restore stream flow within the watershed units and commend the applicant for its commitment to watershed protection and stewardship as a member of the East Maui Watershed Partnership.

The Division of Forestry and Wildlife (Division) is responsible for the management of forest and wildlife resources that may be affected by the actions proposed in the subject application. In particular, the Division is responsible for the protection and recovery of indigenous plants and animals that depend on riparian habitats that may be affected by the proposed action, and for the conservation of the natural resources of the State's Forest Reserve System. The application requests authorization for the abandonment of 15 diversions affecting numerous streams in the Honopou, Pi'ina'au, and East and West Wailuanui watershed units. Fourteen of those diversions are located within the Ko'olau Forest Reserve, and therefore may directly affect the plants and wildlife within those reserves. One is located downstream of the Forest Reserve, such that the proposed work may affect stream biology in the Forest Reserve indirectly by influencing dispersal of plants and animals.

In its Conclusions of Law, dated June 20, 2018, the Commission notes that instream uses shall be guided by the general principles set forth in §13-169-20, Hawaii Administrative Rules, which include that, where practicable, streams should be maintained with water sufficient to preserve fish, wildlife, scenic, aesthetic, recreational, and other uses, *and stream systems should be retained substantially in their natural condition* (emphasis added).

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The application includes a description of the mechanical and structural alterations that are proposed to prevent stream water from entering into the diversion system, thereby returning the water to the stream. The proposed work includes removal of collecting pipes, covering of intake grates, sealing of tunnels, and removal sluice gates that would otherwise serve to divert water. In a number of locations, the description appears to propose to leave substantial structures and fixtures in place, and notes for others that the "scope of work for full restoration is to be determined". Features proposed to be left in place may include concrete fixtures, channels, walls, catchments, and tunnels that potentially alter stream flows and surfaces, exacerbate erosion, encourage establishment of invasive species, degrade plant and wildlife habitats, and affect wildlife dispersal and movements.

While we understand that the intention of the proposed work is to discontinue water diversion, and that the removal of those fixtures and structures may not be necessary to restore stream flow, it is not clear what assessment was done to retain the stream systems substantially in their natural condition upon the abandonment of the diversions, and how ecological processes may be affected by structures and fixtures left in place. Please refer to the comments submitted by the Division of Aquatic Resources (DAR) regarding their concerns for the restoration of stream habitat. We also note that the applicant holds State revocable permits (S-7263, S-7264, S-7265, S-7266) for the use of water and operation of those diversions located in the Forest Reserve. Under the terms of those permits, those improvements and other structures should be removed upon termination of the permits (see Additional Condition B.5).

We appreciate that practical considerations may bear on the assessment of the removal and disposition of those fixtures and structures and that their removal may not be feasible or advisable in all cases, and request additional information concerning the criteria and decision process used to determine whether and why structures and fixtures are proposed to be left in place. We have had initial discussions with the applicant and appreciate their efforts to address our concerns but feel that additional details and information is needed to assess those aspects of the proposal.