

FIRST CIRCUIT COURT  
 STATE OF HAWAII  
 FILED  
 10:45 o'clock A M.  
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 K. Otsuka  
 Clerk, 10th Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
 STATE OF HAWAII

HEALOHA CARMICHAEL, LEZLEY  
 JACINTHO, and NA MOKU AUPUNI O  
 KO'OLAU HUI,

Plaintiff(s),

vs.

BOARD OF LAND AND NATURAL  
 RESOURCES, CARTY CHANG, in his  
 official capacity as Interim Chairperson of  
 the Board of Land and Natural Resources,  
 the DEPARTMENT OF LAND AND  
 NATURAL RESOURCES,  
 ALEXANDER & BALDWIN, INC.,  
 EAST MAUI IRRIGATION CO., LTD.,  
 HAWAIIAN COMMERCIAL AND  
 SUGAR CO., and COUNTY OF MAUI,  
 DEPARTMENT OF WATER SUPPLY,

Defendant(s).

) CIVIL NO. 15-1-0650-04 (RAN)  
 ) (Environment; Declaratory Judgment)  
 )  
 ) ORDER GRANTING PLAINTIFFS'  
 ) MOTION FOR PARTIAL SUMMARY  
 ) JUDGMENT, FILED OCTOBER 21, 2015;  
 ) CERTIFICATE OF SERVICE  
 )  
 )

Hearing:

Date: November 24, 2015  
 Time: 10:30 a.m.  
 Judge: Rhonda A. Nishimura

I do hereby certify that the foregoing is  
 a full, true, and correct copy of the  
 original on file in this office.  
 [Signature]  
 Clerk, Circuit Court, First Circuit

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT,  
FILED OCTOBER 21, 2015

On October 21, 2015, Plaintiffs Healoha Carmichael and Lezley Jacintho (collectively, "Plaintiffs") filed herein Plaintiffs' Motion for Partial Summary Judgment. On November 16, 2015, memoranda in opposition to Plaintiffs' Motion were filed herein by Defendants Board of Land and Natural Resources ("BLNR"), Department of Land and Natural Resources ("DLNR"),

and Suzanne Case (collectively, the “State Defendants”); Defendant County of Maui, Department of Water Supply (“DWS”); and Defendants Alexander & Baldwin, Inc. (“A&B”) and East Maui Irrigation Co., Ltd. (“EMI”; collectively, the “A&B Defendants”). On November 19, 2015, Plaintiffs filed herein their reply memorandum in support of Plaintiffs’ Motion.

Plaintiffs’ Motion came on for hearing before the Honorable Rhonda A. Nishimura on November 24, 2015. Summer L.H. Sylva, Esq., Camille K. Kalama, Esq., and David Kimo Frankel, Esq. appeared on behalf of Plaintiffs. Linda L.W. Chow, Esq. appeared on behalf of the State Defendants. David Schulmeister, Esq. and Elijah Yip, Esq. appeared on behalf of the A&B Defendants. Caleb P. Rowe, Esq. appeared on behalf of DWS.

The Court, having reviewed Plaintiffs’ Motion, the memorandum attached thereto, the memoranda in opposition, Plaintiffs’ reply memorandum, and the files and records herein, and for good cause shown, hereby GRANTS Plaintiffs’ Motion for the following reasons:

1. Plaintiffs filed the First Amended Complaint herein pursuant to Hawaii Revised Statutes (“HRS”) Chapter 343.
2. HRS §343-5(a)(1) requires an environmental assessment (“EA”) for “actions” which “[p]ropose the use of state or county lands.”
3. HRS §343-2 defines “action” to mean “any program or project to be initiated by any agency or applicant.” “Agency” means “any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.” “Applicant” means “any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action.”

4. At issue in this lawsuit is the decision of the BLNR at its December 12, 2014 meeting to renew, *inter alia*, the following revocable permits (collectively, the “Revocable Permits”) for a one-year period:

- a. Revocable Permit No. S-7263, approved by the BLNR to A&B on July 1, 2000 for the right, privilege, and authority for the development, diversion, and use of water from the Honomanu license area at the monthly rental rate of \$1,698.32, expiring on June 30, 2001, and subject to extension for additional one-year periods by action of the BLNR;
- b. Revocable Permit No. S-7264, approved by the BLNR to A&B on July 1, 2000 for the right, privilege, and authority for the development, diversion, and use of water from the Huelo license area at the monthly rental rate of \$6,588.40, expiring on June 30, 2001, and subject to extension for additional one-year periods by action of the BLNR;
- c. Revocable Permit No. S-7265, approved by the BLNR to A&B on July 1, 2000 for the right, privilege, and authority for the development, diversion, and use of water from the Keanae license area at the monthly rental rate of \$3,476.22, expiring on June 30, 2001, and subject to extension for additional one-year periods by action of the BLNR; and
- d. Revocable Permit No. S-7266, approved by the BLNR to EMI on July 1, 2000 for the right, privilege, and authority for the development, diversion, and use of water from the Nahiku license area at the monthly rental rate of \$1,426.88, expiring on June 30, 2001, and subject to extension for additional one-year periods by action of the BLNR.

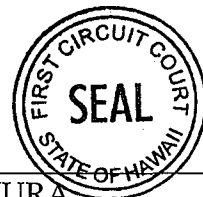
5. The State Defendants, DWS, and the A&B Defendants (collectively, “Defendants”) argue that the decision of the BLNR to “continue” the Revocable Permits in December 2014 on a holdover basis is not an “action” under HRS §343-5. Defendants argue that no EA was required. The BLNR’s December 2014 decision to continue the Revocable Permits does not constitute an “action” subject to the EA requirements of Chapter 343.

6. Nevertheless, pursuant to HRS §171-58(c), the BLNR authorized A&B’s use on a holdover basis. This holdover status has continued uninterrupted for the last 13 years. HRS §§171-10 and 171-55 authorize the “temporary” occupation of public lands. A&B’s continuous uninterrupted use of these public lands on a holdover basis for the last 13 years is not the “temporary” use that HRS Chapter 171 envisions. *See also* Black’s Law Dictionary, 10<sup>th</sup> edition. Otherwise, holdover tenants could arguably be allowed to occupy public lands almost in perpetuity for continuous, multiple one-year periods. Such a prospect is inconsistent with the public interest and legislative intent.

7. Plaintiffs’ Motion is GRANTED. Revocable Permit Nos. 7263, 7264, 7265, and 7266 are invalid.

DATED: Honolulu, Hawai`i, JAN - 8 2016

RHONDA A. NISHIMURA



RHONDA A. NISHIMURA  
Judge of the above-entitled Court

CERTIFICATE OF SERVICE

The foregoing "ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED OCTOBER 21, 2015", has been entered and copies thereof served on the following parties via court jacket:

SUMMER L.H. SYLVA, ESQ.  
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AND NATURAL RESOURCES, AND SUZANNE CASE

The following party was served via U.S. Mail:

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Attorneys for COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY

DATED: JAN 0 8 2016

**K. Otsuka**

Clerk of the Court, 10<sup>th</sup> Division