

SETTLEMENT AGREEMENT BETWEEN ALL PARTIES

Stop Cane Burning, an unincorporated association, Trinette Furtado, Karen Chun, and Brad Edwards (collectively, the “**Stop Cane Burning Parties**”), on the one hand, and the Director of the Department of Health, State of Hawai‘i (the “**Director**”), and Alexander & Baldwin, LLC, a domestic limited liability company (“**A&B**”), on the other, enter into this Settlement Agreement and Release (“**Agreement**”) as a result of litigation initiated in the Environmental Court in the Circuit Court of the Second Circuit, State of Hawai‘i (“**Circuit Court**”), Civil No. 15-1-0351(3) (“**Lawsuit**”).

I. RECITALS

A. A&B has historically conducted agricultural burning on the Island of Maui to harvest sugar cane crops through its Hawaiian Commercial & Sugar Company division (“**HC&S**”).

B. On July 1, 2015, the Stop Cane Burning Parties initiated the Lawsuit against the Director by filing a Complaint in the Circuit Court to restrict agricultural burning.

C. On July 6, 2015, the Stop Cane Burning Parties filed an Amended Complaint in the Lawsuit that added A&B as a defendant party and asserted the following claims:

Count One: Unlawful delegation of legislative power;

Count Two: Violation of the right to a clean and healthful environment;

Count Three: Violation of the public trust;

Count Four: Violation of equal protection;

Count Five: Violation of Chapter 344, HRS; and

Count Six: Violation of Chapter 343, HRS.

(collectively, the “**Claims**”).

D. The Stop Cane Burning Parties, the Director, and A&B (collectively, the “Parties”) have investigated the merits of their respective claims and defenses asserted in the Lawsuit to attempt to reach a settlement to resolve the Claims.

E. Each of the Parties acknowledges that continued litigation of the Claims, including an appeal or appeals, will result in considerable expense and passage of time and recognizes that litigation involves uncertainties and risks. The Parties have determined that settlement and compromise would be beneficial and would constitute an appropriate resolution of the claims and defenses with respect to the Claims as between the Parties, and therefore agree that this Agreement is not and shall not be construed as an admission by any of the parties of liability or fault of any kind whatsoever or as recognition of the relative merits of any Party’s claims or defenses.

THEREFORE, in consideration of the material covenants and other good and valuable consideration set forth below, the receipt of which is hereby acknowledged, the Parties hereby stipulate and agree as follows:

II. AGREEMENTS

A. Between A&B and the Stop Cane Burning Parties

1. No later than July 1, 2016, A&B will agree to cease all agricultural burning of HC&S’s current sugar cane crop (A) on all public (state or county) lands identified within Agricultural Burning Permit Number 16-001P (“**Public Lands Permit**”) and (B) within the footprints of the following five purported “old county roads”: (1) Kihei-Makawao Road; (2) Waiko (Waikapu) Road; (3) Paia Mill Road; (4) Spreckelsville Road; and (5) Sunnyside Road, the locations of which are generally depicted in Exhibit A hereto.

2. For all remaining agricultural burning of HC&S’s current sugar cane crop conducted on all fields under its current Public Lands Permit and its Agricultural Burning Permit

Number 16-002P (“**Private Lands Permit**”), A&B will agree to not conduct any agricultural burning:

- a) after 3:30 p.m. on any day;
- b) on any Sunday;
- c) of any field within 4 weeks of applying ripener within that field;
- d) of any field within 8 weeks of applying any other herbicide within that field;
- e) of any fields that A&B has applied any other pesticide within that field at any time during the current crop season beyond the allowable application of ripener or herbicide sprayed prior to the time constraints described in c) and d) above and the chlorine treatment to water within the field irrigation systems;
- f) within 2,000 feet of a school that is in session or within 2 hours before the time it is in session. “In session” means the time of the start of regularly scheduled school instruction for pupils; and
- g) after December 25, 2016.

3. In the event A&B does not comply with any restrictions enumerated in number 2 above, A&B will agree to donate \$1,000 to the American Lung Association.

4. Karen Chun, Brad Edwards, and Trinette Furtado will release and waive all claims, and will not assert, directly or indirectly, any additional claims, administrative complaints, or any other legal proceedings against, and will not seek to intervene in any legal or administrative proceedings involving, A&B or any of its affiliated entities including but not limited to HC&S and its employees acting on behalf of HC&S, for any and all claims or violations of any laws or regulations, currently known or unknown, arising in any manner out of

any agricultural operations on the Island of Maui involving agricultural burning or chemical uses for agriculture conducted at any time before the date this Agreement is signed.

B. Between the Director and the Stop Cane Burning Parties

1. The Clean Air Branch of the Department of Health, State of Hawai‘i, will continue to follow Hawai‘i law regarding environmental assessments for all future open air agricultural burn permits. Environmental Assessments may be required to obtain an open air agricultural burn permit on government lands.

2. The Director will pay \$10,000.00 (TEN THOUSAND DOLLARS) to the Law Office of Lance Collins as soon as practical after the execution of this settlement agreement and entry of the dismissal of the lawsuit with prejudice in the form attached hereto as Exhibit B.

3. Karen Chun, Brad Edwards, and Trinette Furtado will release and waive all claims, and will not assert, directly or indirectly, any additional claims, administrative complaints, or any other legal proceedings against, and will not seek to intervene in any legal or administrative proceedings involving, the Director of the Department of Health, State of Hawai‘i, and the Department of Health and its employees acting on behalf of the Department of Health, for any and all claims or violations of any laws or regulations, currently known or unknown, arising in any manner out of any agricultural operations on the Island of Maui involving agricultural burning or chemical uses for agriculture conducted at any time before the date this Agreement is signed.

III. STIPULATION TO DISMISS

Promptly following the execution of this settlement agreement, the Parties shall execute and file a notice to dismiss all claims in the Litigation with prejudice in the form of attached Exhibit “B” in accordance with the Hawai‘i Rules of Civil Procedure, and thereby dismiss all

claims in the Lawsuit, and take such other and further action as may be required to effect the same.

IV. PARTIES' KNOWLEDGE AND ADVICE OF COUNSEL

Each Party enters into this Agreement with the advice of counsel.

V. AUTHORITY

Each Party warrants and represents that he, she, or it (1) has authority to sign on behalf of himself, herself, or the entity he or she represents and that this Agreement has been validly authorized and constitutes a legally binding and enforceable obligation of each Party; and (2) has not assigned, transferred, or conveyed any of the claims asserted in the Lawsuit that are released herein.

VI. COMPLETE AGREEMENT

This Agreement constitutes the sole and entire agreement between the Parties with respect to the matters set forth herein, and no modification, alteration or amendment shall be binding unless expressed in writing signed by all of the Parties. No representation, warranty, covenant, inducement or obligation not expressly included in this Agreement shall be binding on, and this Agreement supersedes all prior negotiations, agreements, arrangements and undertakings among, the Parties with respect to the matters set forth in this Agreement. It is the intent of the Parties that this Agreement is an integrated agreement and that no parol evidence may be introduced to vary in any manner its terms and conditions.

VII. MISCELLANEOUS PROVISIONS

A. Successors and Assigns. This Agreement shall inure to the benefit of the Parties and their respective successors and assigns.

B. Attorneys' Fees, Costs, and Expenses. All Parties hereto shall bear their own attorneys' fees, costs, and expenses related to the Lawsuit, and no Party will make a claim

against any other Party for attorneys' fees, costs, or expenses incurred in the Lawsuit or in the settlement of any and all of the claims asserted in the Lawsuit.

C. No Waiver. A waiver of any breach of this Agreement by any Party (i) must be in writing, and (ii) shall not be deemed to be a waiver by any Party of any other breach of this Agreement.

D. Captions or Headings. The captions or headings of paragraphs in this Agreement are inserted for convenience, reference, and identification purposes only, and shall neither control, define, limit, nor affect any provision of this Agreement.

E. Construction. The Parties agree that the normal rules of construction that any ambiguity in a document is construed against the drafting party shall not apply to the interpretation or enforcement of this Agreement, as the Parties each participated in the drafting of this Agreement.

F. Hawai'i Law. This Agreement shall be considered to have been negotiated, executed, delivered, and to be wholly performed in the State of Hawai'i, and the rights and obligations of the Parties to this Agreement shall be construed in accordance with, and governed by, the internal, substantive laws of the State of Hawai'i, without giving effect to that State's conflict of laws or choice of law principles.

G. Jurisdiction of the Circuit Court. The Parties submit, for the purposes of any action or proceeding with respect to this Agreement, to the residual jurisdiction and venue of the Circuit Court.

H. Severability. The covenants and conditions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof or of any covenants and conditions shall not affect the validity or enforceability of any other provision.

I. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. This Agreement will not be effective until executed by all of the Parties hereto. Signatures transmitted via facsimile or by other electronic transmission such as in portable document format (“pdf”) shall have the full force and effect of originals.

EACH PARTY HERETO ACKNOWLEDGES THAT HE, SHE, OR IT HAS READ THIS ENTIRE DOCUMENT, FULLY UNDERSTANDS ITS TERMS AND EFFECTS, HAS CONSULTED WITH HIS, HER, OR ITS OWN INDEPENDENT COUNSEL IN RELATION HERETO, AND HAS HAD ALL OF HIS, HER, OR ITS QUESTIONS ANSWERED BY SUCH COUNSEL. EACH PARTY HERETO ACKNOWLEDGES THAT HE, SHE, OR IT IS FREELY AND VOLUNTARILY ENTERING INTO AND EXECUTING THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

APPROVED AS TO FORM AND
CONTENT:

Lance D. Collins, Esq.

STOP CANE BURNING, an unincorporated
association

By: _____
Its:

Dated: _____, 2016.

TRINETTE FURTADO

Dated: _____, 2016.

KAREN CHUN

Dated: _____, 2016.

BRAD EDWARDS

Dated: _____, 2016.

APPROVED AS TO FORM AND
CONTENT:

Dana A. Barbata, Esq.

**DIRECTOR OF THE DEPARTMENT OF
HEALTH, STATE OF HAWAII**

By _____
Its

Dated: _____, 2016.

APPROVED AS TO FORM AND
CONTENT:

Kelly G. LaPorte, Esq.

ALEXANDER & BALDWIN, LLC.

By _____
Its

Dated: _____, 2016.

CADES SCHUTTE
A Limited Liability Law Partnership

KELLY G. LaPORTE 6294-0
ELIJAH YIP 7325-0
TRISHA H.S.T. AKAGI 10186-0
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4212
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Attorneys for Defendant
ALEXANDER & BALDWIN LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

STOP CANE BURNING, an unincorporated
association, TRINETTE FURTADO, KAREN
CHUN and BRAD EDWARDS,

Plaintiffs,

vs.

DIRECTOR OF THE DEPARTMENT OF
HEALTH, STATE OF HAWAI'I and
ALEXANDER & BALDWIN, LLC, a
domestic limited liability company,

Defendants.

CIVIL NO. 15 1-0351(3)
(Environmental Court)

**STIPULATION FOR DISMISSAL
WITH PREJUDICE OF ALL CLAIMS
AND ALL PARTIES**

Judge: The Honorable Joseph E. Cardoza

Trial Date: None

**STIPULATION FOR DISMISSAL WITH
PREJUDICE OF ALL CLAIMS AND ALL PARTIES**

Pursuant to Rules 41(a)(1)(B) and 41.1(a) of the Hawai'i Rules of Civil Procedure, the parties to this matter hereby stipulate and agree as follows:

1. The above-entitled action (including, without limitation, all complaints, amended complaints, and all other claims for relief) is hereby dismissed with prejudice.
2. Each party will bear its own attorneys' fees and costs of suit.
3. All claims and all parties are dismissed with prejudice by this stipulation.

EXHIBIT B

All other claims and parties are dismissed, and there are no remaining claims, parties, and/or issues. All appearing parties have signed this stipulation. Trial had not been set as the matter was resolved by agreement of the parties.

SO STIPULATED AND AGREED:

LAW OFFICE OF LANCE D. COLLINS

Dated: _____

By: Lance D. Collins, Esq.

Attorney for Plaintiffs
STOP CANE BURNING, TRINETTE
FURTADO, KAREN CHUN and BRAD
EDWARDS

CADES SCHUTTE, LLP

Dated: _____

By: Kelly G. LaPorte, Esq.

Attorneys for Defendant
ALEXANDER & BALDWIN LLC

ATTORNEY GENERAL OF HAWAI'I

Dated: _____

By: Dana A. Barbata, Esq.

Attorney for Defendant
DIRECTOR OF THE DEPARTMENT OF
HEALTH, STATE OF HAWAI'I

APPROVED AND SO ORDERED

JUDGE OF THE ABOVE-ENTITLED COURT

Stop Cane Burning, et al. v. Director of the Department of Health, State of Haw., et al., Civil No. 15-1-0351(3); STIPULATION FOR DISMISSAL WITH PREJUDICE OF ALL CLAIMS AND ALL PARTIES