

## APT Committee

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**From:** Shay Chan Hodges <shay.chanhodges@gmail.com>  
**Sent:** Friday, August 27, 2021 5:25 PM  
**To:** APT Committee  
**Cc:** Gina M. Young  
**Subject:** FEASIBILITY OF PURCHASING AND MAINTAINING THE EAST MAUI IRRIGATION WATER DELIVERY SYSTEM (APT-40)  
**Attachments:** TIG Report Presentation-2.pdf; Sen Kahele Letter to County 2019.pdf

Aloha:

Please find attached documents related to my presentation as a resource person for Item APT-40.

I am enclosing a copy of the powerpoint that I will be presenting and a letter from then-State Senator Kai Kahele to Maui County Mayor Michael Victorino from May 2, 2019.

Mahalo for inviting me to present the findings of the Board of Water Supply's Temporary Investigative Group, approved on December 19, 2019.

—Shay

Shay Chan Hodges

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Former Member, Maui County Board of Water Supply  
Former Member, BWS Temporary Investigative Group

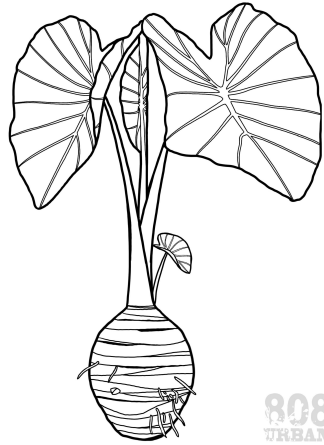
The background features abstract, overlapping green geometric shapes in various shades, including light lime green, medium green, and dark forest green, creating a modern, layered effect.

A Presentation  
of the  
December 19, 2019  
Maui County Board of Water Supply (BWS)  
Temporary Investigative Group (TIG) Report

“

*Explore the Feasibility of Purchasing and Maintaining the EMI Water Delivery System and Examine Other Alternatives for Ensuring That The People of Maui County Have Authority Over the Delivery of Water, Which is A Public Trust* ”

*Stated Purpose of the Investigation*



808  
URBAN

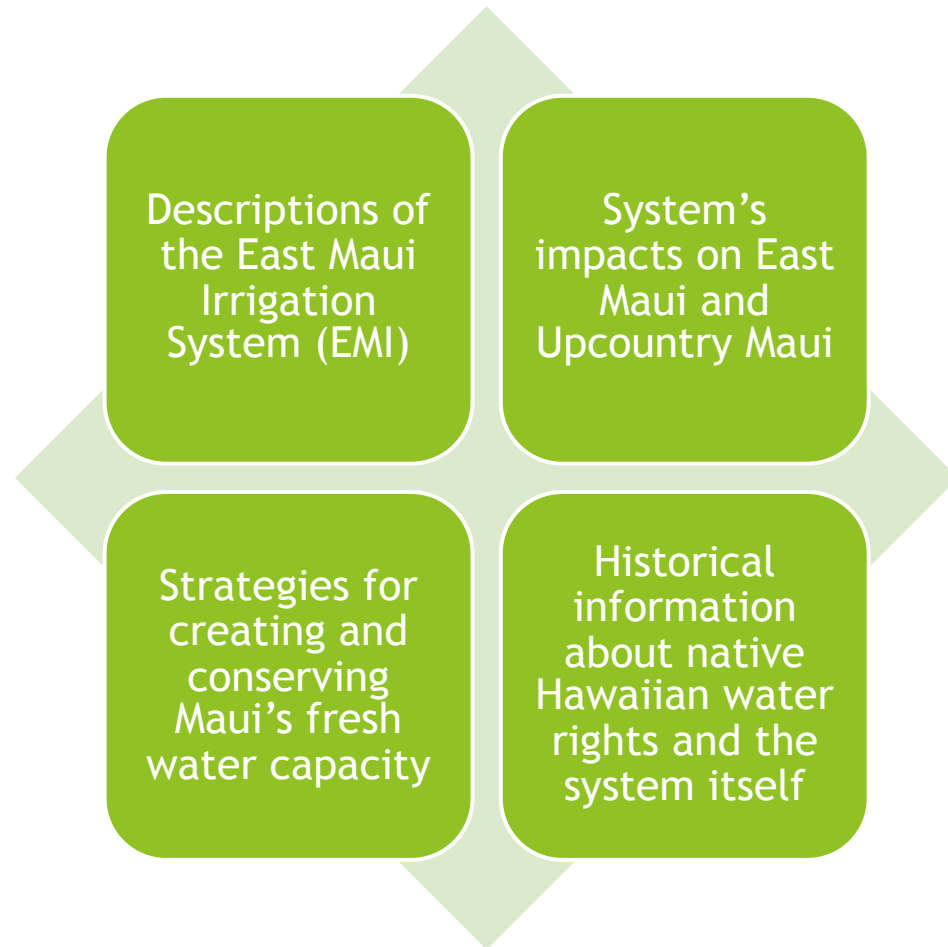
Needs of East Maui residents  
and taro farmers



Needs of upcountry domestic  
and agricultural water users

The primary objective of the Temporary Investigative Group was to determine how best to ensure that the people of Maui have authority over the delivery of water.

# Report research and source documents include:



- ▶ EMI/Alexander & Baldwin Draft Environmental Impact Statement released in September 2019
- ▶ Water Department's Draft Water Use and Development Plan
- ▶ Studies
- ▶ Historical documents
- ▶ Hawaiian Homes Commission Act

# Considerations related to a purchase of the EMI System:



Determination of legal ownership of all aspects of the system



A thorough engineering and cost analysis



Annual costs of maintaining the system; including an assessment of liability issues



Potential revenues based on domestic water and agricultural water delivery



Potential positive impacts of control of revenue stream of Wailoa Ditch and/or entire system



Risk of a private equity firm and foreign pension fund controlling a significant amount of Maui water, and having influence over agricultural and food security for as much as 30 years.

# Opportunities related to community ownership of the EMI System:

Direct cost savings through improved maintenance

Indirect cost savings through mitigating health and safety risks

Support of culturally and community-based economic development as defined by the community

Economic and other benefits of accountability regarding streams flows

Non-monetary value of safeguarding of public health & community security

Access to environmental and infrastructural grants, diverse financing, and investment funds

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Watershed Protection

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General storage, wastewater, and other conservation options

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Renewable Energy and battery storage, (including wastewater use)

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Improved maintenance of water systems to reduce and eliminate water loss

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Integration of the above with agricultural recommendations that support food security and soil regeneration (with labor and affordable housing considerations)

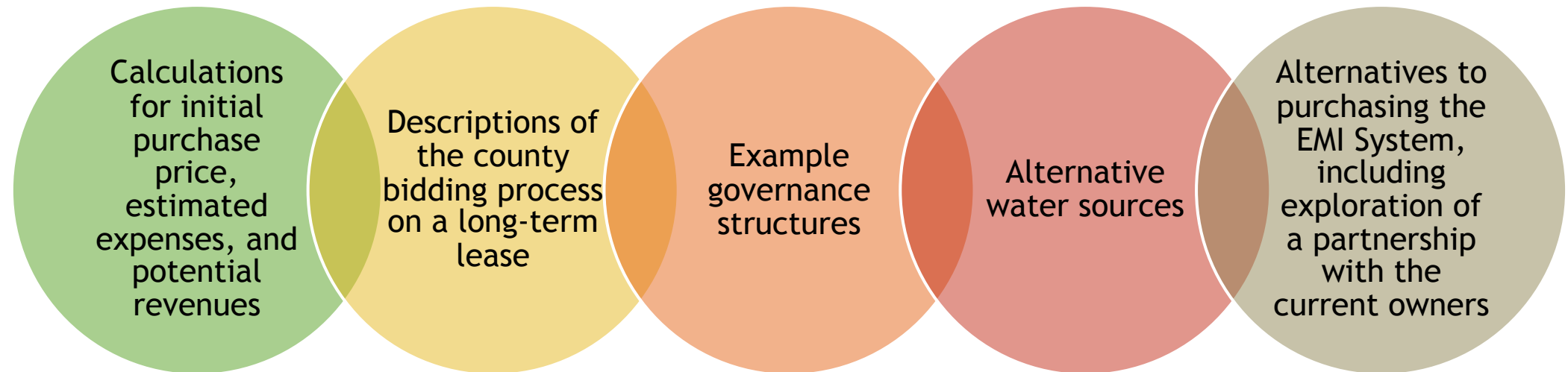
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Considerations of climate change  
& impact on future water access

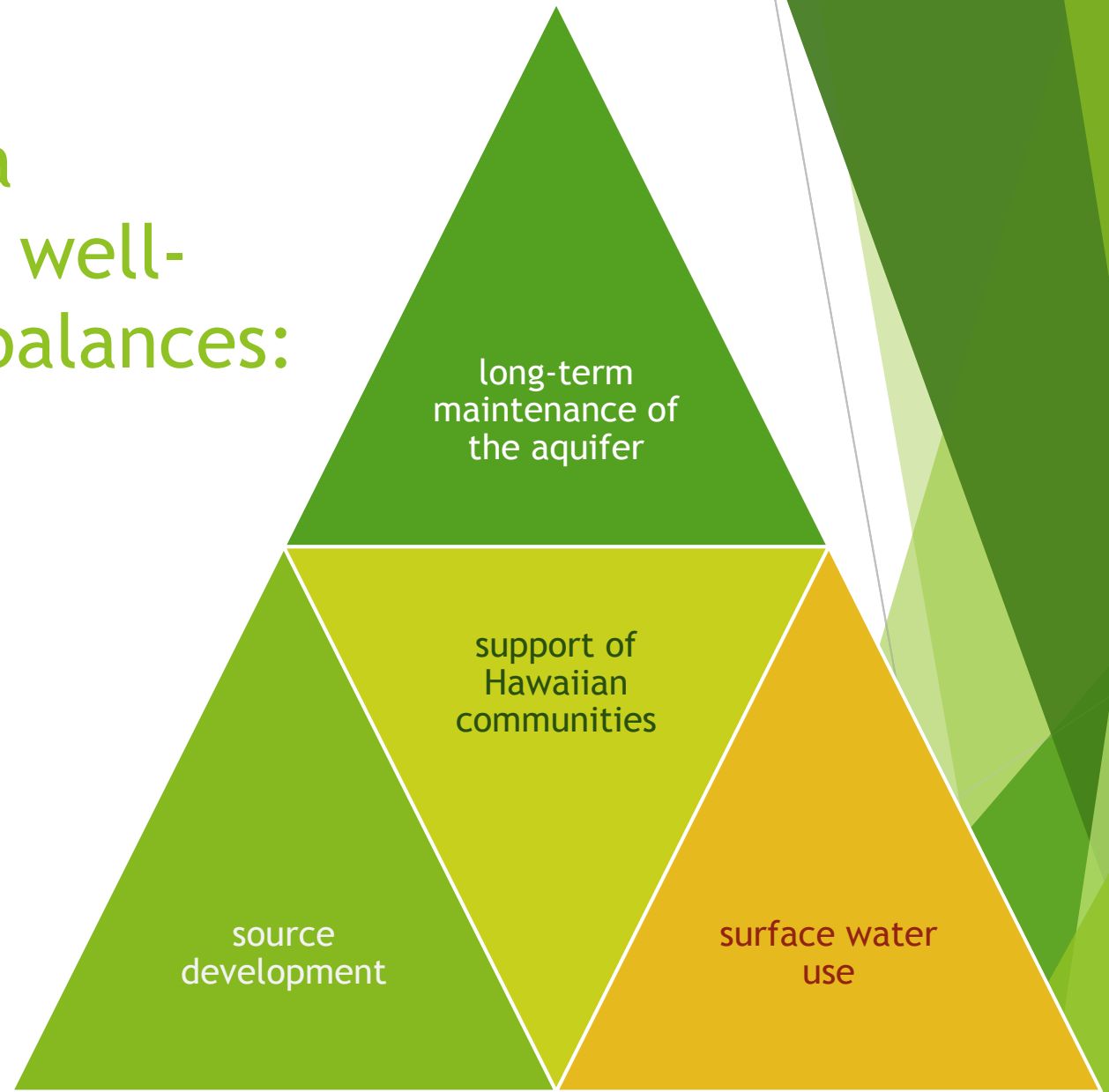




## Also included in the report:



Addressing all of these considerations requires a comprehensive, binding, well-funded water plan that balances:



# Addressing the considerations also requires that the following principles need to be followed:

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Communication among and within government entities

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Utilization of existing research and data, as well as funding of additional up to date research

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Transparency by all government and private entities involved in water production and delivery

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Accountability of all government and private entities involved in water production and delivery

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Mechanisms that ensure accountability to ALL stakeholders, including decision-making in and by affected communities

# Recommendations

Immediate & Long-Term

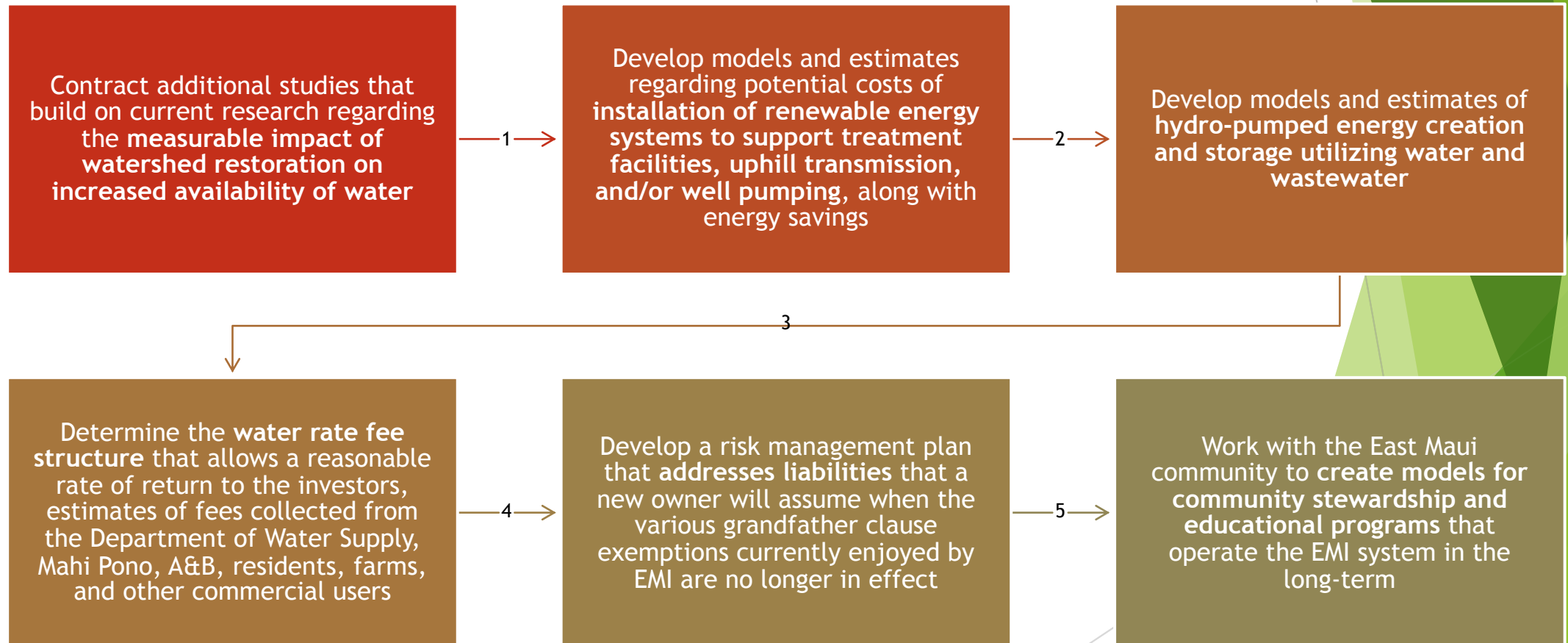
The TIG report, as approved by the Board of Water Supply, made the following recommendations for immediate action:

- ▶ **Maui County should immediately apply for a long-term (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas.**
- ▶ **Maui County should immediately re-negotiate a new contract with EMI/Mahi Pono that does not require that EMI/Mahi Pono obtain a Revocable Permit or Lease in order for the Kamole Treatment Plant to access Wailoa Ditch waters.**

► In the near-term, the TIG report noted that the financial incentive structure of a private equity-controlled water delivery system is misaligned with the long-term public interest, and the TIG recommends that the County of Maui exercise its powers of eminent domain as soon as possible to begin the process of supporting acquisition of the system.



# Long-Term Stewardship Recommendations: Evaluate Capital Expenses of Acquisition & Modernization & Research Forward-Thinking Revenue & Expense Models



## Conclusion:

- ▶ This TIG believes that ownership of the EMI Water Delivery system by the people of Maui or a partnership - in the form that is most cost-effective, accountable, environmentally responsible, transparent, and meets the needs of the island's diverse stakeholders, in particular native Hawaiians - will ultimately be the only way to guarantee that the public trust is maintained and remains safely in community hands.
- ▶ The TIG therefore recommends that the County of Maui take immediate steps to secure community ownership and control of the EMI water delivery system, or a partnership.





The Senate  
Office of Kaiali'i Kahele

May 2, 2019

Michael P. Victorino, Mayor  
County of Maui  
200 South High Street, 9th Floor  
Wailuku, Maui, Hawai'i 96793

Re: State Lands Water Lease Application

Aloha e Mayor Victorino,

With the adjournment of the 30th Legislature, 2019 Session, and the legislature's inability to reach agreement on the most sensible way to address revocable water permits reviewed and issued by the Department of Land and Natural Resources (DLNR), I would like to use the interim to help facilitate long-term water dispositions on the island of Maui.

As I have said many times through the course of the session, I strongly support the County of Maui and its Department of Water Supply's (DWS) ability to continue to depend on surface water diverted from state lands in East Maui via the East Maui Irrigation Company, LLC (EMI) aqueduct to provide for constitutionally-protected public trust purposes, including domestic water supplies for Upcountry Maui residents. EMI conveys water through the Wailoa Ditch for processing by the Kamole Weir Water Treatment Plant (WTP), as well as through the Hamakua Ditch to supply water to the County's Kula Agricultural Park. Importantly, Kamole Weir WTP is both a primary and backup water source during drier periods for DWS's Upcountry Maui system, and is a crucial supplier of reliable and sustainable domestic drinking water and fire protection for Upcountry Maui residents.

Since April 30, 2000, when the "1973 Agreement" expired, DWS has operated under an informal, unwritten "Memorandum of Understanding" with EMI. DWS entered into a formalized "Water Delivery Agreement" with EMI just last year, on September 14, 2018. Three months after that agreement, Alexander & Baldwin sold 50% of its ownership interest in EMI to Mahi Pono, LLC (Mahi Pono), with the remaining 50% ownership interest to be sold to Mahi Pono when "certain events in the future" occur.

In light of these developments, I would highly recommend that the County of Maui and DWS immediately submit a water lease application to the DLNR. A copy of the Request for State Lands Application Form is attached for your convenience. Doing so now will provide the Board of Land and Natural Resources ample time to review and issue a revocable permit to the

County of Maui and DWS by the end of this year so that Maui County secures its own, independent authority to continue to provide its residents with access to diverted surface water imported from state lands in East Maui via the EMI aqueduct system. Domestic water use is a protected “public trust purpose” and I am confident that as the necessary application requirements are satisfied, the County of Maui and DWS will secure a long-term water lease from the State of Hawai‘i.

I truly believe it is in the best interest of the County of Maui to secure its own long-term water lease with the State of Hawai‘i and to free itself from its dependency on private, commercial, third-party operators who are not duty bound, as we are, to uphold the state’s public trust obligation to conserve and protect Hawai‘i’s natural resources for the benefit of present and future generations.

I am committed to working with you, your administration, and DWS to navigate this process. Indeed, our working together to be better stewards of the East Maui watershed and to provide for constitutionally-protected public trust purposes serves the public’s best interest.

If you have any questions or would like to discuss this further, I can make myself available. Please do not hesitate to contact me.

Me ka ha‘aha‘a,



Senator Brian I. Kahele  
Chair, Senate Committee on Water and Land

Enclosure

cc: Governor David Y. Ige, State of Hawai‘i  
Senate President Ronald D. Kouchi  
Senator J. Kalani English  
Senator Gilbert S.C. Keith-Agaran  
Senator Rosalyn H. Baker  
Clare Connors, Esq., Attorney General, Department of the Attorney General  
Chair Suzanne D. Case, Department of Land and Natural Resources  
Ceil Howe III, Principal, Mahi Pono, LLC  
Shan Tsutsui, Senior Vice President of Operations, Mahi Pono, LLC  
Jeff Pearson, Director, Department of Water Supply, County of Maui

**State of Hawaii**  
**Department of Land and Natural Resources**  
**Land Division**

**REQUEST FOR STATE LANDS (Direct Negotiation) – APPLICATION FORM**

This Application Form is for persons requesting State lands for the following categories:

- Right to temporarily enter onto State lands for a specific purposes
- Access, utility or other easements to private property
- Month-to-month revocable permit where an auction is prohibited
- Direct lease to eleemosynary organizations, public utilities, etc.
- Purchase of remnant
- Land patent in confirmation of Land Commission Award
- Land license
- Water lease pursuant to HRS Section 171-58

Please note the following important points:

- 1) Statutorily, directly negotiated leases and permits can only be issued in certain situations. In most cases, you must compete for the use of State lands through the public auction process. If you are interested in bidding on State leases through the auction process, please contact the District Branch staff in your county to obtain further information.
- 2) Persons who have had, during the five years preceding a previous sale, lease, license, permit or easement cancelled for failure to satisfy the terms and conditions are not eligible to purchase or lease public lands.
- 3) The use of State lands triggers the environmental assessment requirements of Chapter 343, HRS. Please contact the Office of Environmental Quality Control for their opinion of whether an environmental assessment is required and the process to be followed. Phone number: (808) 586-4185. Website:  
<http://hawaii.gov/health/environmental/oeqc/index.html>
- 4) You are responsible for contacting the appropriate agencies to verify that your proposed project has complied with all applicable zoning and permitting laws and regulations (e.g., State Land Use classification, Special Management Area, County General Plan, etc.).
- 5) You will be responsible for paying processing fees. If you are granted a disposition, you will be required to obtain insurance, among other requirements.

All applications must be complete to be considered for processing. Please submit two copies of the completed application form to the District Branch office in your county:

Oahu District Branch  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813  
Phone: (808) 587-0433; Fax: (808) 312-6357

Maui District Branch  
54 High Street, Room 101  
Wailuku, Hawaii 96793  
Phone: (808) 984-8103; Fax: (808) 984-8111

Hawaii District Branch  
75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
Phone: (808) 961-9590; Fax: (808) 961-9599

Kauai District Branch  
3060 Eiwa Street, Room 205A  
Lihue, Hawaii 96766  
Phone: (808) 274-3491; Fax: (808) 241-3535

**STATE OF HAWAII  
DEPARTMENT OF LAND & NATURAL RESOURCES**

**REQUEST FOR STATE LANDS  
APPLICATION FORM**

For DLNR use only:

Date of request: \_\_\_\_\_  
 Date request recvd: \_\_\_\_\_  
 Date request no. issued \_\_\_\_\_  
 Request number \_\_\_\_\_  
 Land Code: \_\_\_\_\_  
 Unit Code: \_\_\_\_\_  
 Status: \_\_\_\_\_ Future \_\_\_\_\_  
 Type of Request: \_\_\_\_\_  
 Assigned Land Agent: \_\_\_\_\_

**I. APPLICANT**

Should a land disposition result from your application, the following information will be used in the preparation of the legal documents. Therefore, please include all applicable, full legal names and addresses, one for each person/entity (attach additional sheets as necessary). If title is held by a trust, please include the trustee(s) name(s) and full description of the trust (e.g., George D. Smith, Trustee of the George D. Smith Revocable Living Trust dated June 1, 2001).

Applicant name(s): \_\_\_\_\_

Last name	First Name
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Mailing address: \_\_\_\_\_

No. and Street

City	State	Zip Code
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Phone numbers:

( ) _____	( ) _____	( ) _____
Work	Home	Cellular

( ) _____	( ) _____	_____
Pager	Fax	E-mail address

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Applicant intends to hold title as:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Individual             | <input type="checkbox"/> Corporation                   | <input type="checkbox"/> Partnership         |
| <input type="checkbox"/> Husband and Wife       | <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Trust                  | <input type="checkbox"/> Non-Profit Corporation        | <input type="checkbox"/> Association         |
| <input type="checkbox"/> Joint Venture          | <input type="checkbox"/> Limited Liability Partnership |  |
| <input type="checkbox"/> Other (specify): _____ |  |  |

For individual or husband and wife, type of tenancy:

- Tenant in Severalty     Tenants in Common     Joint Tenants     Tenants by the Entirety

For individual, marital status:

( ) Single ( ) Widow/widower ( ) Married – spouse of: \_\_\_\_\_

For partnership or corporation, state of incorporation: \_\_\_\_\_

II. AGENT

If you have an attorney, consultant or other person processing this request for you, please include the following information.

Agent name:

\_\_\_\_\_

Last name

First Name

Agent address:

\_\_\_\_\_

No. and Street

\_\_\_\_\_

City

State

Zip Code

Phone numbers:

( ) \_\_\_\_\_ ( ) \_\_\_\_\_ ( ) \_\_\_\_\_

Work

Home

Cellular

( ) \_\_\_\_\_ ( ) \_\_\_\_\_

Pager

Fax

E-mail address

III. TYPE OF REQUEST

- ( ) Right-of-entry (right to temporarily enter onto State lands for a specific purpose)
- ( ) Grant of easement (access, utility, seawall, etc.)
- ( ) Month-to-month revocable permit
- ( ) Direct lease (eleemosynary organizations, public utilities, government, renewable energy producers, etc.)
- ( ) Purchase of remnant
- ( ) Land patent in confirmation of a Land Commission Award
- ( ) Land license
- ( ) Water lease pursuant to HRS Section 171-58

Is this request being made to resolve an encroachment or other violation? ( ) Yes ( ) No

If yes, explain: \_\_\_\_\_

\_\_\_\_\_

IV. LOCATION AND AREA

If your request pertains to a specific parcel, please specify below.

Island:

( ) Oahu

( ) Kauai

( ) Molokai

( ) Hawaii

( ) Maui

Town: \_\_\_\_\_ Tax Map Key: \_\_\_\_\_

Area: \_\_\_\_\_ acres/sq.ft. (circle one)

County Zoning: \_\_\_\_\_

State Land Use:     Agricultural                       Rural  
                                  Conservation                       Urban

Is property located in a Special Management Area?  
 Yes                                       No

V. USE

Identify the specific uses intended.

- Agriculture                                       Easement - Access
- Business/Commercial                       Easement - Utility
- Industrial                                       Easement - Seawall
- Pasture
- Other (specify): \_\_\_\_\_

A. Fully describe your proposed use of the public lands and/or water: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Attach a location map showing a preliminary sketch or plot plan of your proposed project in relation to the tax maps.

C. Describe any improvements you intend to place on the land and their approximate value: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. If constructing improvements, attach a Plan of Development showing improvements to be constructed and their location on the public lands including a timeframe for construction.

E. Is it your opinion that an environmental assessment is required? ( ) Yes ( ) No

If no, identify exemption: \_\_\_\_\_

If yes, describe completion of EA: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

F. Describe what other permits or approvals are required for this use and whether you have obtained such permits or approvals:

\_\_\_\_\_

\_\_\_\_\_

VI. OTHER

A. If you are applying for a revocable permit for any type of use, you are required to provide the following information:

1) Describe your qualifications and experience in running this type of operation; and

2) Describe your long-term intentions for this operation. (Note: Revocable permits are temporary and may be revoked at any time.)

B. **If you are applying for a revocable permit for pasture or agricultural use, you are required to complete Attachment A.**

C. If you are applying for a water lease, you are required to provide the following information relating to the statutory criteria for issuance of a water lease:

1) Will your use of water cause any pollution?\_\_\_\_\_. Explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2) Will your use of water be consumptive or non-consumptive? \_\_\_\_\_

Explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



- 3) If your use of water will be non-consumptive, will the water you use be returned to the same stream or other body of water from which it was drawn? \_\_\_\_\_  
 Explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 4) If your use of water will be non-consumptive, will your use of the water affect the volume and quality of water or biota in the stream or other body of water? \_\_\_\_\_  
 Explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 5) Will any part of the requested water lease involve lands in the conservation district? \_\_\_\_\_. If yes, provide the status of any conservation district use application you have applied for: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

VII. CERTIFICATION

I/We hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected or my/our lease/permit/agreement may be cancelled.

\_\_\_\_\_  
 Printed Name

X \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

X \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

**For DLNR Use Only:**

**TO CLOSE FUTURE TENANT:**

Reason for closing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved by DLA: \_\_\_\_\_

Date request closed: \_\_\_\_\_