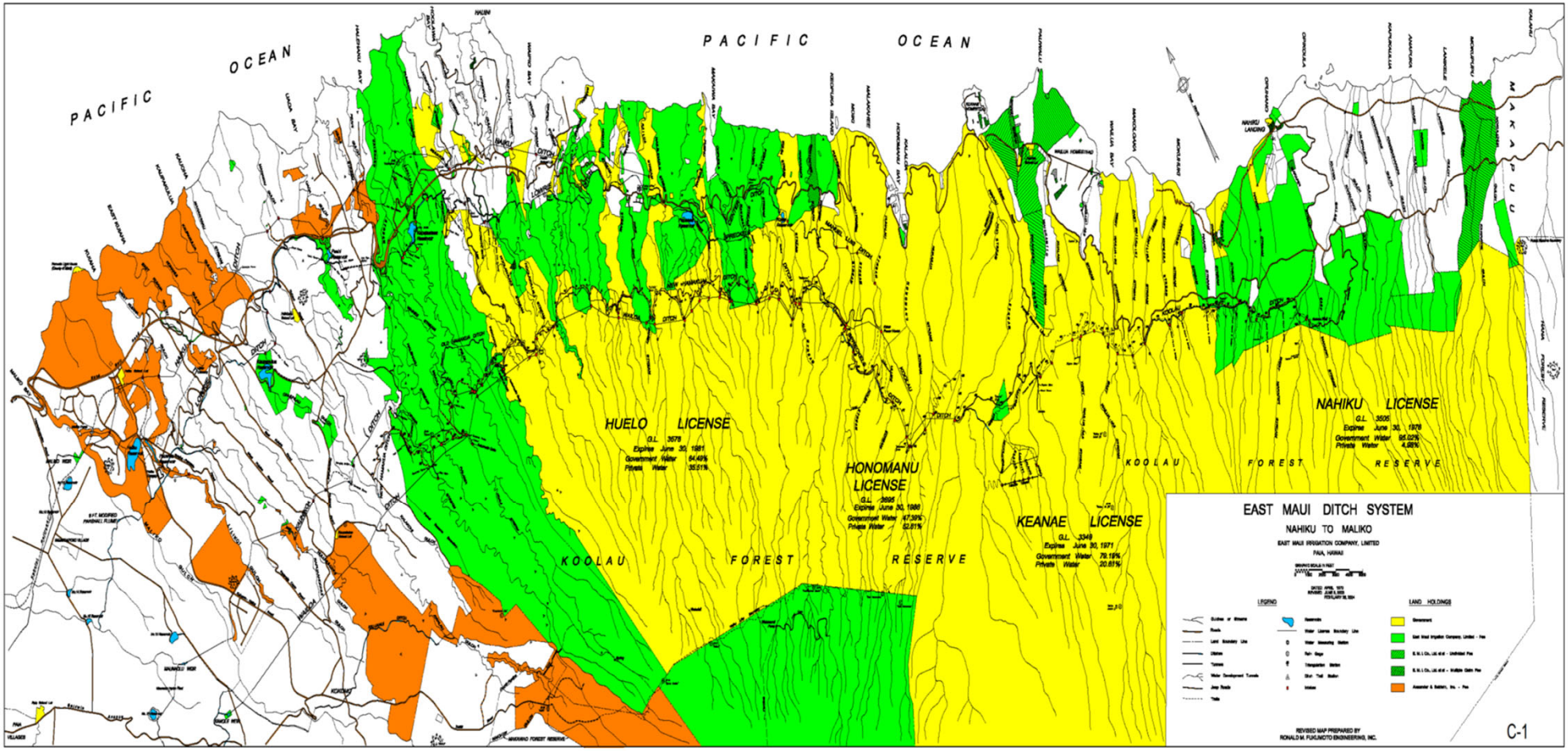
East Maui Water Licenses

The legal status of revocable permits, long term leases, and the EMI ditch system

What are the license areas at issue?

- The proposed Charter Amendment would authorize the County to pursue long term water leases of state land in East Maui.
- The four license areas are the Honumanū license area, the Huelo license area, the Keʻanae license area, and the Nāhiku license area ("license areas"). They comprise approximately 33,000 acres of land.
- The license areas are under the jurisdiction of the Board of Land and Natural Resources ("BLNR"), which issues permits and licenses and sets rates and conditions for their use.

The license areas are in yellow below



What is the EMI Ditch System?

- Since the 1930s, the Territory and then the State has issued water permits to A&B and EMI allowing them to divert water from streams in East Maui.
- The ditch consists of approximately "388 separate intakes, 24 miles of ditches, fifty miles of tunnels. . . numerous small dams, intakes, pipes and flumes." CWRM, FoF, Concl. of Law and Decision and Order dated June 20, 2018, CCH-MA13-01
- The ditch system spans the length of the license areas, as well as privately owned land.
- The ditch system delivers water to agricultural fields in central Maui, various private businesses, the County's water distribution system in Nahiku, and the County's Kamole Weir Water Treatment Plant and the Kula Agricultural Park via the Wailoa Ditch

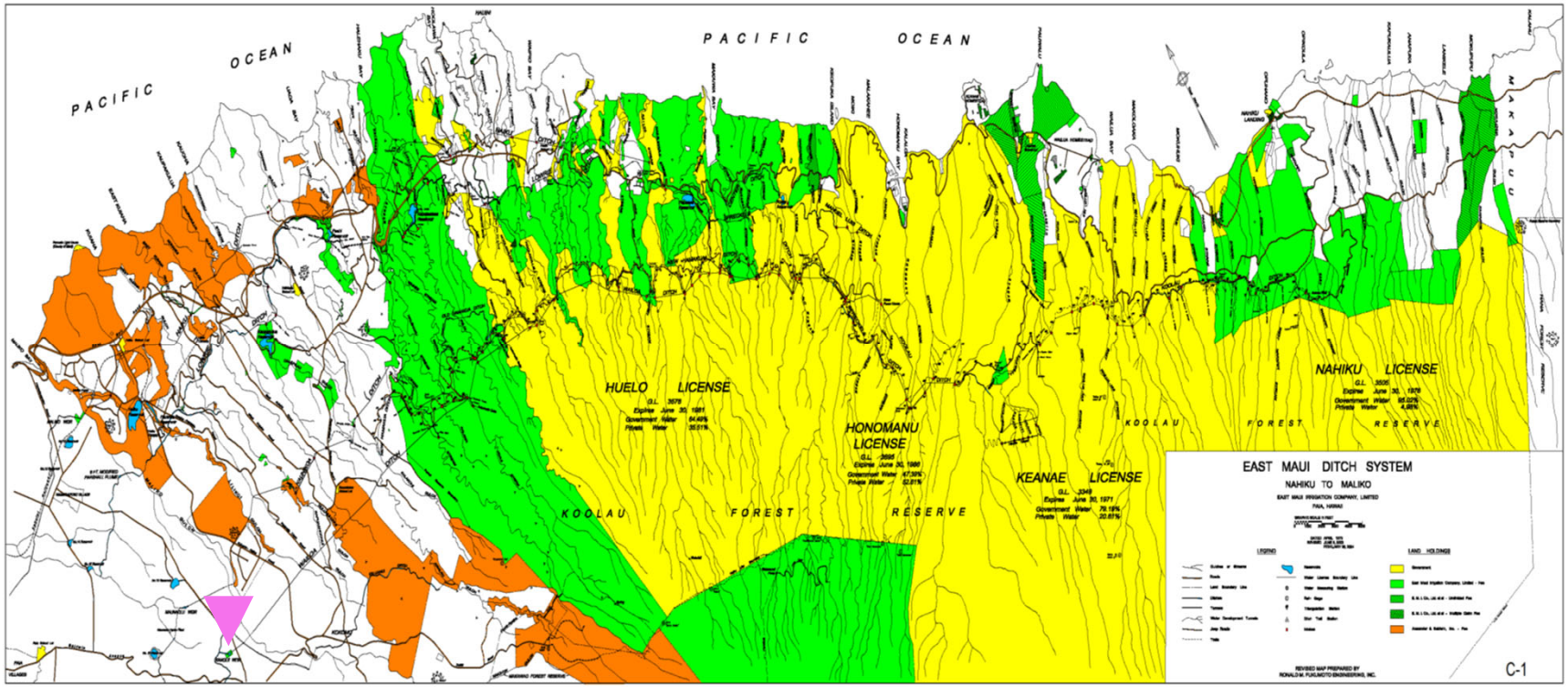
Status of the License Areas

- In 2001 A&B and EMI applied for a 30 year lease over the license areas.
- A contested case hearing was requested by Nā Moku Aupuni O Koʻolau Hui ("Nā Moku"), a Native Hawaiian non-profit organization, along with three Native Hawaiian individuals. The Contested Case hearing was put in abeyance while the Commission on Water Resource Management ("CWRM) considered the Interim Instream Flow Standards for 27 streams in East Maui.
- Since 2000, East Maui Irrigation ("EMI") and/or Alexander & Baldwin, Inc. ("A&B") have received revocable permits from the Board of Land and Natural Resources ("BLNR")over the four license areas which provide them with the "right, privilege, and authority for the development, diversion and use of water" while a long term lease over the license areas is pursued.
- An Environmental Impact Statement ("EIS") regarding the long-term lease was filed on July 20, 2021. A corrected EIS was filed on September 8, 2021. The BLNR voted to accept the EIS on September 24, 2021.
- On June 1, 2022, the BLNR heard Oral Argument over the continuation of the revocable permits for 2022. The proposed decision by BLNR requires rental payments by EMI and A&B, and place several conditions on the use of state land.
- The Contested Case Hearing for the long-term lease has not been scheduled.

Long Term Lease Rights

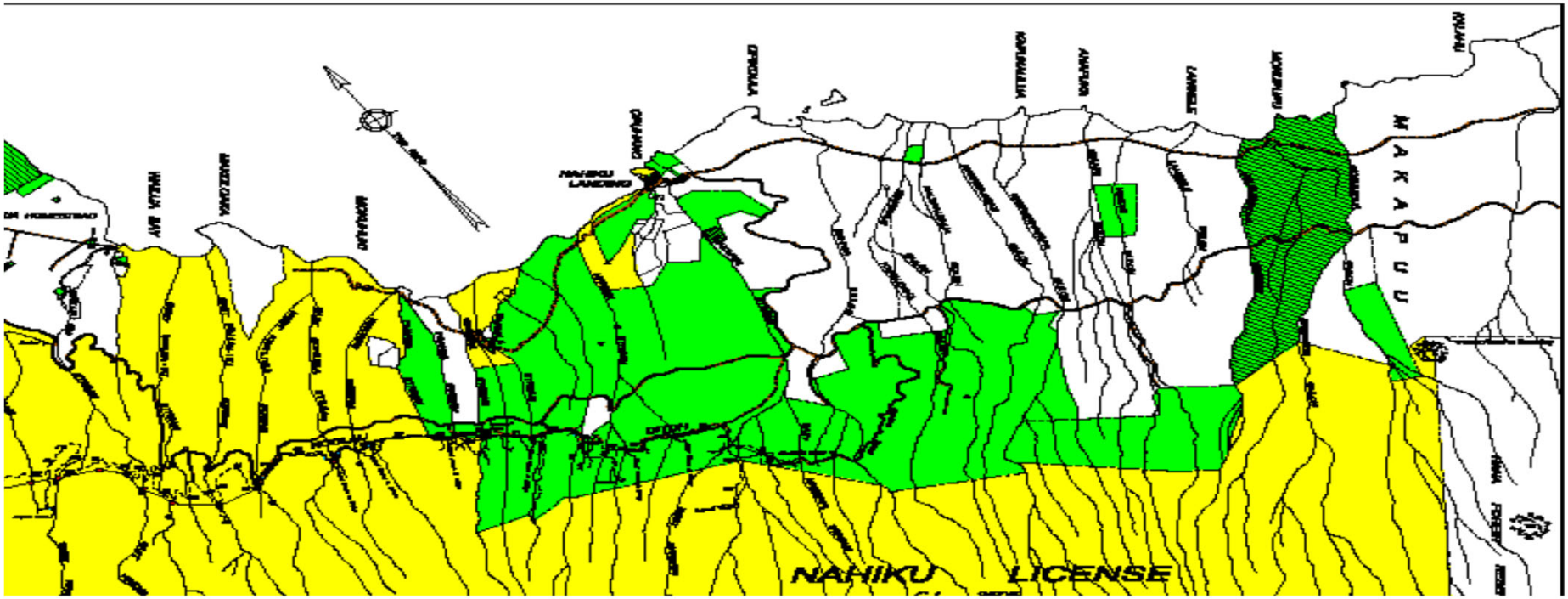
- A long term lease would give the County the right to divert and transport water from State land.
- A long-term lease would not:
  - authorize use of the ditch system on privately owned land (an agreement or eminent domain proceedings would be required).
  - authorize delivery of water to the County of Maui's Kamole Weir Water Treatment Facility ("Kamole Weir") which provides water to the Upcountry Service Area. The Wailoa Ditch spans several acres of privately owned land before it reaches Kamole Weir.
- The long term lease may be subject to rental payments to BLNR as well as several conditions similar to those currently being considered by BLNR for Revocable Permits. The proposed conditions on the 2021 revocable permits include a watershed management fee in an amount equal to the current rent.
- Use of water from the license areas would also be subject to regulation by the CWRM. For example:
  - Any diversion of water would need to assure that the Interim Instream Flow Standards are being complied with, along with other conditions and requirements set by CWRM.
  - Any removal, installation or alteration to diversions would require Stream Diversion Works

Components of the Ditch System on Private Land

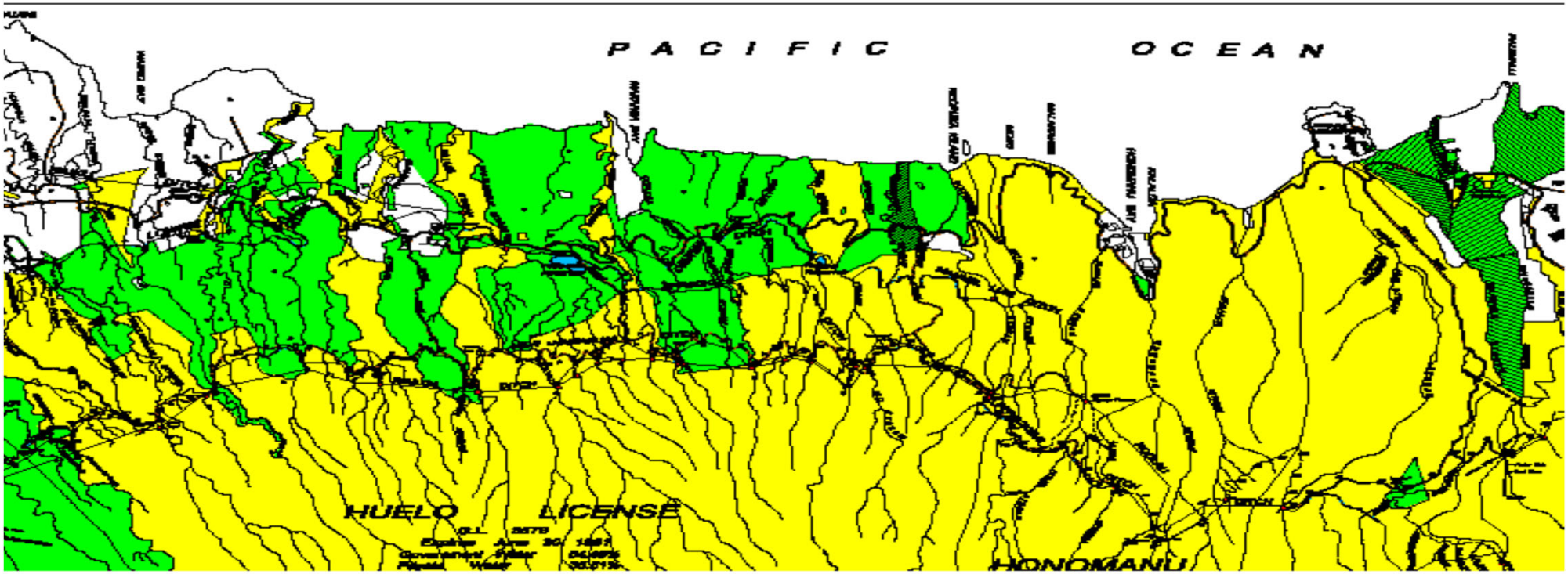
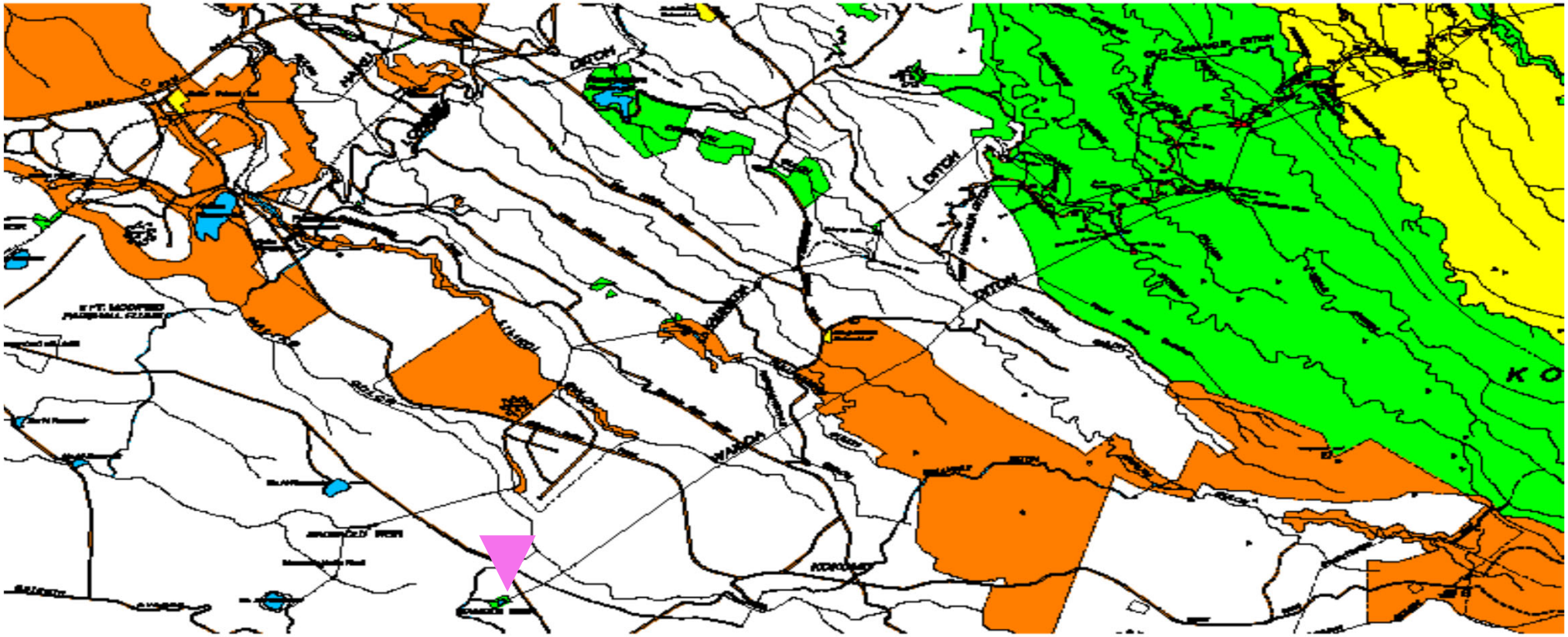


- The Ditch system both begins and ends on privately owned land.
- Green areas = land owned by EMI
- Orange areas = land owned by A&B
- White areas = privately owned by other entities.
- The pink arrow points to the location of the Kamole Weir Water Treatment Facility

The Ditch System Begins on Privately Owned Land



The Ditch System passes through various parcels of privately owned lands throughout



The Wailoa Ditch passes through private land before it reaches Kamole Weir WT Facility