

TO: Applicant: Alexander & Baldwin Inc. (A&B)/East Maui Irrigation Company, Limited (EMI),
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FROM: Prof. Richard "Dick" Mayer dickmayer@earthlink.net
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November 6, 2019

RE: East Maui Water Lease Draft-EIS

Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomano, + Huelo License Areas

INITIAL COMMENTS

1. In the Executive Summary, page 1- 20, it is stated that BLNR on July 8, 2016 requested/instructed that A&B and EMI should proceed with the preparation of an Environmental Impact Statement. A copy of that document should be provided so that it may be determined whether the Final-EIS meets the requirements of the BLNR.
2. Was the **Final-EIS** intended to be prepared for an auction bid by A&B and EMI **only**? Alternatively, **was it meant to be generic**, applicable and available for anyone who makes a bid at the lease auction?

SPECIFIC CONCERNS

OWNERSHIP AND MANAGEMENT

3. The Draft-EIS has capitalized "**EMI** Aqueduct System". This implies that EMI owns the aqueduct system. What proof is there of this ownership. Would it not be more correct to say "**East Maui's** aqueduct system" which has multiple owners?
4. Page 1 - 2 in section 1.3.1 there is an assertion made that **EMI is the owner of the EMI aqueduct system**. Provide proof that this is true, especially for the lands that are within the state lease area which I believe are owned by the State and could be utilized by anyone winning the lease in competitive bidding at an auction. The **aqueduct System on State lands does NOT belong to EMI**.
5. The draft EIS implies that the East Maui aqueduct system belongs to either A&B, EMI, or Mahi Pono. Provide detailed proof of ownership of the three separate sections of the East Maui aqueduct system: **a)** The portion within the four state-owned lease areas; **b)** the portion crossing the land now jointly owned by A&B and Mahi Pono; and finally, **c)** the portion of the system running from the A&B Mahi Pono lands to the Kamole Weir water treatment plant.

6. Even though Mahi Pono (at present a 50% owner of EMI) is registered in the United States (Delaware), seemingly it is not owned by an American entity. All of the Mahi Pono lands are ultimately owned by a foreign entity, which has established a domestic USA firm to merely own this investment. An additional complication in the ownership matter is that Mahi Pono is managed/operated by California interests, named Trinitas and Pamona Farming. There should be a clear explanation of the **management and financial relationships** among all of these entities: Hawaii's A&B and EMI, Canada's PSP, California's Trinitas and Pamona Farming, and Delaware's Mahi Pono.
7. Include in the Final-EIS any documents **that prove that the land under East Maui's aqueduct system** was transferred to A&B or EMI from the Kingdom. or Republic? or Territory? or State of Hawaii?
8. At the beginning of the Final-EIS, there should be a section devoted to the **ownership of Mahi Pono**. This should include the exact relationship between the investment company PSP, the California group known as Trinitas, the many, many LLC companies with Mahi Pono in their title and who are now the owners of numerous parcels of land throughout Central and North Maui.
9. The description should include both the financial relationships among these parties and entities as well as the decision-making management hierarchy among them. There should also be a very clear indication about how A&B's REIT (Real Estate Investment Trust) is linked to all of this. Apparently, the sales agreement between the two companies A&B & Mahi Pono leaves some question about the level of land ownership, easements, and other interest being maintained and retained by A&B.
10. Because the sales agreement that was publically displayed in December-2018 left many sections undisclosed, include the ENTIRE sales agreement between A&B REIT and Mahi Pono.
11. Describe the risks to the 2,550 Maui residents who will become dependent on the Mahi Pono farm plan, if MAHI PONO determines that it is **unprofitable to maintain its farming operations**.
12. Will the value of the marketed crops and animal products be **adequate to support this larger population, while providing investor PSP with an adequate profit?**
13. Is the **1938 agreement** the Territory of Hawaii and A&B **still relevant** today? If yes, then the 1938 agreement should be attached as an appendix and there should be an explanation as to how it is still relevant. It is referred to in the Executive Summary, page 1- 6 in the 3 middle paragraphs. On the other hand, is it only a part of the historical record, and not relevant to the auction?

14. Given the fact that Mahi Pono is owned by an international entity and that the profits from this entity will leave not only Maui, but the whole United States, what is the financial impact of a lease issued to a **non-Hawaii entity**, as compared to having the water lease obtained at auction: **a) by a Hawaii-based company, or b) by a public Maui Water Authority?**
15. In Section 3.4.20 Public Water Systems: Central Maui, it is **asserted that Central Maui receives its water from the East Maui aqueduct system**. The **potable water** used in Central Maui that is delivered by the Maui Department of Water Supply does not come from the aqueduct system. It is also false to say that the EMI aqueduct system is privately owned. Much of the so-called East Maui aqueduct system is on the State lease land and is NOT privately owned.
16. The last paragraph on page 4 - 140 is very important. The paragraph is important because it points to a fairly widely held belief that the **lease could be held by a public utility such as a Water Authority or by the Maui County Department of Water Supply**. (See the Maui Board of Water Supply TIG report of October-2019.) The paragraph's last sentence makes a very important point by asking who should get the profits from the sale of water delivered to central Maui.

FINANCES

17. The Executive Summary, page 3 – 17, mentions that the cost of water to the County is now **\$0.06 MGD and that it could rise**. This could have serious effects on the ability of the County to provide water for the UpCountry region. What is the range of the maximum potential rise and how will it be calculated/negotiated?
18. Water prices are a matter of considerable interest to the UpCountry farmers who now utilize this potable water to irrigate their farms. There seems to be no way to provide farmers with non-potable water. Consequently, any rise in the rates paid by the County water department could have significant impacts. Address them in the Final-EIS.
19. On page 3-18 at the end of the next-to-last paragraph, it states that the **City of Honolulu would get a \$120,000 in tax revenues**. Please explain why they, and not Maui County, would get the funds.
20. The leaseholder will have an obligation to deliver water to the DHHL lands. Since it will be expensive to build an adequate water line from East Maui's aqueduct system to the Department of Hawaiian Homelands land in Keokea and Waiohuli, there should be a provision in the lease that will set aside funding over the years from the **license fees to construct the necessary pipeline to transmit that water** (over 10 MGD) across Kula. Please describe how that could work.

21. A missing part of the large Draft Environmental Impact Statement is any consideration of **Mahi Pono's (or any other successful bidder's) need to withdraw (cease operations) from using the East Maui water over the 30-year lease** period. It could be for reasons that are financial, agricultural, labor problems, or something else such as a sale of the Mahi Pono owned lands to some entity not interested in farming.

What would be the impact: a) on the East Maui watershed, b) the Maui County Department of Water Supply's commitment to the UpCountry water needs, c) the Hawaiian Homelands, and d) the agricultural lands now owned by Mahi Pono.

AGRICULTURE AND WATER SOURCES

22. Various numbers are utilized throughout the document to explain the size of Mahi Pono's agricultural activities. There should be a clear table that explains the different land areas that are contained in the Mahi Pono purchase. For example, out of the 41,000 acres how much of it is **"Important Agricultural Land"**? How much is classified with a **Land Productivity** of A, B, C, D, or E? How much will be irrigated by water from **East Maui's aqueduct system, versus water coming from Na Wai Eha or central Maui wells?** How much land will actually be farmed?
23. **Groundwater** from wells in Central Maui Is discussed. Clarify. Does the **groundwater** from Central Maui wells also include water on the west side of Mahi Pono's land traditionally irrigated primarily from the Na Wai Eha watershed?
24. On page 4 – 5, it states that 4.9 MGD of water is delivered from **four UpCountry Wells** (Ha'iku, Po'okela and the 2 Kapakalua Wells). These wells are an important back-up source for UpCountry. How do these wells decrease UpCountry's dependence on East Maui's aqueduct system water?
25. On page 4 – 153, it states that 7.1 million gallons per day of UpCountry Maui's water comes from the East Maui irrigation aqueduct system. This is misleading since less than half of it is coming from the lease areas that are being analyzed in the EIS document. The rest is coming from other Mahi Pono lands, not the subject of this EIS. Correct this statement.

WATER USE

26. The last two paragraphs on page 4 - 140 are very important. The first of these paragraphs misleads when it says that the EMI Aqueduct System supports the two water treatment plants known as Olinda and Piiholo. That is not accurate. Both of these plants get water from lands now owned by Mahi Pono, but are NOT connected to the aqueducts coming from the East Maui lease areas.

27. Pages 4 - 148. There needs to be an explanation as to why the **Maui Water Department needs so much more water after 2008** than in 2006. Going from 3.23 MGD to 7.1 MGD in such a short time frame. Does the 7.1 MGD count the water delivered from Piihola and Olinda? Kula Ag Park?

WORKERS AND HOUSING

28. **Sugar plantation workers** were unionized, had very high level of technical skills, maintaining machinery, driving huge trucks, etc. and were **highly paid**. What will Mahi Pono do to recruit workers who can afford to live on Maui? What are the proposed salary rates? Moreover, if **workers are paid adequate living wages**, will those salary rates allow the leaseholder to have profitable agricultural operations? Discuss the labor situation at length.
29. Page 4 – 169. There is an estimate that there will be **more workers** needed than was the case with sugarcane, and that in addition to the employees there will be indirect employment (those servicing the Mahi Pono employees).
790 farm jobs plus 350 additional indirect jobs → 1,140 workers. At least 2,550 family members.
There needs to be robust discussion/analysis about how Mahi Pono will get workers given the Maui's existing very **low unemployment rate**. How many workers will need to be imported?
30. A very important consideration that has been left out entirely is **housing** for all of the new imported employees and their families. Not only will workers find it difficult to find a house, but they also will add to the pressure on the existing labor force who are seeking affordable housing.
31. **4 – 144, plus 4 - 145** refer to **labor problems and housing issues**. This should be a valuable and important part of the environmental impact statement. Unfortunately, there is no indication of how these issues will be handled (mitigated) in the future. There is a now shortage of workers on Maui and there is a very significant shortage of affordable housing for these employees. These very important impacts have NOT been mitigated, nor even addressed.

WATER USE AND CONSUMERS

32. Reviewers of the Final-EIS will need to know **who might be consuming the water** being delivered from East Maui. For example, the Maui Water Department, Mahi Pono for the use on its agricultural fields, the Kula agricultural Park and it's future extension, Hawaiian Homelands (both UpCountry in Keokea and in Central Maui at Pulehunui), Nahiku residents. **Anyone else?** Only then can we know the impacts that these waters would have.

33. Provide a detailed listing of those entities that would have access to the water and **what they will be paying for that water**. At what **rates per 1,000 gallons will water be sold to each**? The same rate for each purchaser?
34. Be very specific as to whether there are any other potential users of the water. For example, A&B for use on its agricultural properties? Or A&B for use on **any non-agricultural development project**? Any other entity that might utilize the water for future non-agricultural developments?
- To determine all the potential environmental impacts and if Mahi Pono gets the East Maui lease at auction, **is A&B expecting to receive any water**? If yes, will the water be used for any non-agricultural development?
35. Describe the **impacts and implications if Mahi Pono decide that it no longer wants or needs the water** for agricultural uses. Could it be used for other purposes?
36. **Would the aqueduct system continue to be maintained** which may be necessary for both the Maui County Department of Water supply and for the Hawaiian homelands?
37. The paragraph at the top of page 4 - 58 makes it clear that CWRM considered it important to **allow water to be utilized on the IAL lands in Central Maui**. It did not make any provision for the use of water for any other Central Maui lands. The Final-EIS should differentiate between the IAL lands, and other Mahi Pono lands and water needs/uses in Central Maui.
38. In the Executive Summary, near the top of page 2 – 4, it indicates that the **DHHL staff has identified a need in the future for over 11 million GPD**. What effect will DHHL's needs (which by law must be satisfied) have on the Central Maui agricultural operations and on Mahi Pono's profitability?
- Describe the **specific impact that would take place when DHHL indicates that they wish to have the required 11 million gallons of water per day** for their use in Keokea and Pulehunui. What will be the effect at that time on the agricultural operations of Mahi Pono?
39. The discussion at the bottom of page 3 - 19 is **intended to significantly scare UpCountry farmers**. Since the majority of the water used in the UpCountry area does not come from the East Maui lease areas, the threat is not as dire as stated in the Draft. Please correct.
40. At present, about 17,000 acres of EMI lands are owned **50/50 by Mahi Pono and A&B**. How long will this last? What will happen after Mahi Pono becomes a 100% owner and how would that affect the water lease? Will A&B, (now a Real Estate Investment Trust (REIT), retain **any rights to the water**? Will A&B receive any discounted rates for the use of that water? Will they be able to use the water for non-agricultural purposes?

East Maui Water Lease Draft-EIS Dick Mayer Page 7

41. It seems that the estimate for the **future payments by Mahi Pono** to the Department of Land and Natural Resources for the water is **absurdly low**. On page 4 - 150, they are estimating the cost to be \$0.10 per thousand gallons, giving the State an annual revenue of **only** about \$268,000 in 2030.
- This figure might make agricultural production very profitable, but it would deny DHHL the funds needed to bring water to the Hawaiian Homelands areas. That would be a serious negative impact, but would make Mahi Pono's investor very profitable.
42. On **page 4-150 and PDF pages 1777 + 1780**. It is unclear how the number \$846,700 was calculated or obtained. What is the referenced "Special Land Development Fund"? How is it different from the annual cost for the water lease?
43. On page 4 – 153, it is stated that there are 830 businesses in UpCountry Maui, generating an annual payroll of \$232 million. This seems very, very high. Consequently, an accurate source should be provided for these numbers, not just "Gale Cengage Learning".
44. On page 1793, 2nd paragraph, last word should be **billion**, not **million**.

MISCELLANEOUS

45. The executive summary states in the second paragraph that no construction activity will be required. It seems that this is incorrect since there will be considerable construction activity to reconfigure many of the diversions, to close down a number of the diversions and to repair the ditch system where it leaks, and to restore reservoirs and irrigation systems. **Construction has impacts; what are they?** How will they be mitigated?
46. Because water has high value, indicate the potential for building **new reservoirs, water tanks and lining the existing reservoirs** throughout Central Maui. These one-time costs may provide considerable benefits and reduce negative impacts over the length of the lease and even thereafter.
47. It is mentioned several times that the food supply will be for **local** consumption. However, nowhere is it defined **what local means**. Does it mean Maui Island? Maui County? Or the State of Hawaii? Or something else?
48. The EIS states that there will be **250 acres** utilized for a **utility-scale solar PV operation**. The Solar PV developer AES has stated publicly that there will be about **500 acres** needed for that project. Please explain the difference.
49. There is a recommendation to form a **Core Working Group** made up of residents and communities that will be affected by this lease. The Final-EIS should make provision for how this group will be formed and how the leaseholder will utilize its input. Will their recommendations be merely studied or actually implemented? Will the leaseholder commit to financially helping to facilitate the Core Working Group's activities?

50. Executive Summary, page x. Will the leaseholder assist getting the **Core Working Group** into action as well as helping the Keanae and Wailua communities to move past historical impacts?
51. On the third line of the Executive Summary page xiii, the use of the word "**commercial**" raises a number of questions that are not examined elsewhere. Why is it being used here? What are the implications?
52. There are several references at the end of chapter 3 to the fact that the federal government's regulations allowing **herbicides and pesticides** means that there will be no environmental impacts. This is false since the federal government has permitted the use of toxic herbicides that have been shown (in several court cases) to cause severe health problems and the death of individuals.
- I am an example of that problem. Having used Monsanto's herbicide Roundup, I was diagnosed with stage 4 Non-Hodgkin's lymphoma, and I (and 40,000 other people) am now a plaintiff in a lawsuit against Monsanto for damages. The federal government's blessing and herbicide approval does not eliminate negative impacts that must be evaluated in the Final-EIS.
- There needs to be a strong statement in the Final-EIS that makes it very clear that Monsanto's **herbicide Roundup** or its generic versions will NEVER be used in the East Maui watershed. This overused chemical has been proven to be a cause of cancer. I am a personal victim.
53. Section 3.4.19 **Traffic**. There is a ridiculous assertion that there will be no traffic impact. However, the Draft-EIS also makes the claim that there will be an additional 2,550 individuals, if the lease is issued. How can it then assert that there will be no traffic impact? There certainly will be, and it needs to be discussed because Maui's roads are already crowded.
54. Somewhere in the introductory chapters of the environmental impact statement there should be a clear statement that these auctioned "**public waters**" are for potentially private use and sale. They are governed by the State of Hawaii's "**public use**" doctrine. Implications and impacts of that doctrine on the lease of these waters needs to be clearly explained and legally defended.
55. With regard to 3.4.1 Public Services and Facilities, it is stated that there will be no impacts. Since we now have full employment on Maui Island, it can be presumed that the impacts will come from the additional 2,550 additional residents resulting from the Mahi Pono operations. Such a large number of **additional Maui Island residents will have numerous public services and facility impacts**, ranging from schools, playgrounds, traffic, potable water needs, wastewater, solid waste, to both police and fire protection.

56. Figure 4-1 on PDF 115 only has the green areas indicated. The developed areas in blue are not disclosed. Show the "Developed open space."

57. Chapter 5 I was the Vice-Chairman of the General Plan Advisory Committee that developed the Countywide Policy Plan and the Maui Island Plan. In Chapter 5, the East Maui Water Lease Draft Environmental Impact Statement makes a mockery of the goals and objectives that are found in the two plans.

Whenever there is a policy or objective in the table that would violate the two plans, the Draft-Environmental Impact Statement merely states that the goal or objective is "**N/A**" (**Not Applicable**). There are dozens of instances of this avoidance of compliance with the Maui Island Plan and the Countywide Policy Plan. Do you see even ONE instance where they show any impact? The tables are majorly incorrect, misleading and dishonest

If the Final-EIS persists in indicating that either or both the Maui Countywide Policy Plan or the Maui Island Plan do not have any negative impacts from an East Maui Water Lease, then it will be challenged vigorously as being a whitewash and unresponsive to the Maui County General plan.

The policies and objectives of the two plans will be seriously impacted and violated. The fact that water has been removed from East Maui for over a century, coupled with the fact that less water will now be withdrawn, does not mean there will be no or a low level of impacts. The Final-EIS should make that clear and also indicate how those impacts will be mitigated. Impacts need to be addressed.

59. In Appendix G on page 106, there is a very useful recommendation to form a Core Working Group. The paragraph headed by the word "Transparency", discusses a long-standing problem with skepticism over the water withdrawals that have been held in the past. The exact statement reads as follows, "The proposed action has elicited skepticism and distrust over many decades, and these feelings prevent willingness for participating in mediation and collaboration. While developing trust among the various groups will be challenging, the first step is transparency. Being open about intent, plans and activities can begin to establish credibility and open the door to dialogue."

This is an insightful recommendation and needs to be followed up, earlier rather than later. Many issues will arise over the succeeding months and years, before and after the lease is issued. There needs to be an excellent relationship between the leaseholder and the broader Maui community. The leaseholder should not be afraid to create the recommended Core Working Group that will serve not just as a "yes" sounding board. It should be a group that can critique operations, evaluate lease compliance and provide useful advice that must be handled appropriately by the leaseholder.

60. Missing from the Draft-EIS is a comprehensive analysis of the effects on Maui's economy of having a water lease controlled by an off-island entity. If the water lease is obtained by a non-Maui or non-Hawaii entity whether it be based in California or Montreal, there are significant impacts to Maui's economy that need to be understood, analyzed, and if necessary, mitigated.

Presumably, the use of the water from the lease areas will generate very sizable profits. If these profits are going to be shipped elsewhere as now happen so often with Maui's many off-island, owned hotels, there would be negative impacts by comparison to having that water utilized and operated by a Water Authority or some other institution that is locally based. Revenues and profits would circulate and multiply on-island.

Because of this impact of exported, disappearing profits, the Final-EIS must describe how those funds could remain in Maui and benefit the residents of Maui, solving problems such as affordable housing, highways, infrastructure, etc. Profits draining away from our tourist industry have resulted in local residents being unable to afford a home. Similarly, an off-island leaseholder could do similar damage to its own employees who would have difficulty purchasing or even renting a home.