Volume 33, Number 9 March 2023

Environment Hawaiʻi
a monthly newsletter

Into the Weeds

The recent report by the Hawaiʻi County auditor confirms the worst suspicions about the sloppy way the county's Office of Housing and Community Development managed its program intended to encourage the development of affordable housing.

But more than that, the information it provided on the parties that bought and sold and continue to hold affordable housing credits provided a trail of bread crumbs that allowed *Environment Hawaiʻi* to track down the sorry details on many of the agreements the county entered into in the name of providing shelter to families otherwise unable to afford it.

Our report on the schemes we found is not comprehensive. For that, we would need, among other things, the cooperation of the Housing Office. None of the queries we posed to its administrator received a reply.

IN THIS ISSUE

Affordable Housing Gets Short Shrift As Developers Devise Work-Arounds

The Hawaiʻi County Office of Housing and Community Development sailed for years without any meaningful oversight of its handling of affordable housing credits. Internal controls were also sorely lacking.

That came to an end last summer, following criminal charges against Alan Rudo, who had been employed by OHCD until late 2018 and who had conspired with others to award to themselves housing credits that they then used to purchase land. The land was then resold or leased, with Rudo and his associates enriching themselves with the proceeds of those sales.

Two of the schemes Rudo carried out involved the sale of affordable housing credits. A third involved the diversion of property donated to fulfill an affordable housing obligation to a company that then resold the property, with Rudo and his co-conspirators sharing in the proceeds from that sale.

But the patterns of those schemes don't begin to exhaust the ways in which the complexities of Chapter 11 can lead to abuse.

The full extent of the use and abuse of affordable housing credits may never be known. As the Hawaiʻi County auditor points out in a recent report on the office, "In October 2018, two of OHCD's five server drivers failed simultaneously, resulting in data loss." Perhaps coincidentally, this was around the time that Alan Rudo had come under suspicion for his involvement in arranging a scheme to satisfy housing obligations for a proposed development outside of Waikoloa Village.

In any event, the auditor continues, "While some information was recovered through backups, OHCD has spent four years working to recover lost data. Some scanned data will never be recovered because the original documents were shredded."

Environment Hawaiʻi reviewed the tabulation of housing credits prepared by the auditor and has attempted to trace the transfer of credits as well as the ways in which affordable housing obligations have been satisfied by reviewing records maintained by the state Bureau of Conveyances. Not every agreement

continued on page 7

The Lokahi Kaʻu complex near the Kona airport earned AAA Development, LLC, 522 housing credits.
CREDIT: LOKAHIAPARTMENTS.COM

Environment Hawaiʻi
Volume 33, No. 9
a monthly newsletter
March 2023

NEW AND NOTEWORTHY

'Dr. Bob' Remembered: Professor Emeritus Robert A. Kinzie III passed away unexpectedly on December 31st, 2022, while he and his wife, Joy, were visiting their sons and grandchildren in Southern California.

Dr. Bob was a faculty member in the Zoology Department at the University of Hawaiʻi from 1972 until 2009. His pioneering research contributed to our understanding of how coral reefs function and how they might respond to environmental perturbations. He was also a pioneer in the study of the population biology of amphidromous species in Pacific Island streams. After his retirement, he continued to apply his knowledge and wisdom to preserving fragile island ecosystems through environmental consulting.

Over nearly four decades, students eagerly enrolled in Dr. Bob's Animal Ecology, Limnology, and Natural History of the Hawaiian Islands classes, labs, and seminars. Dr. Bob also taught in the Hawaiʻi Institute of Marine Biology's Edwin W. Pauley Summer Program in Marine Biology. He led the Ecology, Evolution and Conservation Graduate Program at UH for several years and served on the Hawaiʻi Natural Area Reserves System Commission.

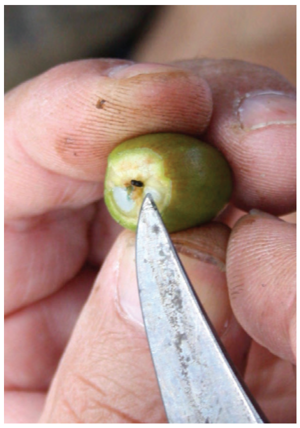
Just as his research embraced the natural environment of Hawaiʻi, Dr. Bob respected and loved the culture of the islands. Readily identified by his signature long hair and beard, he was a Sensei at the Windward Aikido Club, active in the local Cross-Fit community, and a devoted supporter of sustainable farming. His reach was exemplified by the encouragement and enthusiasm he bestowed upon those around him. (Contributed by Scott R. Santos)

Kaʻu Hearing Delay: Six years ago Ann and Peter Bosted filed a complaint with the Public Utilities Commission, challenging the permits issued to more than two dozen solar installations in their Kaʻu neighborhood of Hawaiian Ocean View Estates. While nominally they are owned by 19 different limited liability companies, ownership of all of them trace back to the same Chinese company with headquarters in the Cayman Islands.

The case was beset with delays but the commission finally scheduled an evidentiary hearing for March 9. Then on February 17, the Bosteds asked for yet another delay. The couple, who had been representing themselves, had engaged legal help, Ryan Hurley and Bianca Isaki, who filed a motion seeking a one-month postponement. The Bosteds "have previously been acting pro se and thus their new counsel will need to fully review the record, amend appropriate exhibit and witness lists as well as prepare for the hearing, all of which will help in developing an accurate record," the attorneys wrote in their memorandum supporting the request for postponement.

(*Environment Hawaiʻi* reported on this more extensively in our January 2023 edition.)

Coffee Berry Borer: Plans to release a tiny wasp, *Phymasatichus coffea,* are moving forward. Last month, the University of Hawaiʻi College of Tropical Agriculture and Human Resources (CTAHR) published a final environmental assessment for the release of the insect that preys on the coffee berry borer (CBB).



According to the EA, host-specificity studies conducted at the USDA Forest Service facility at Hawaiʻi Volcanoes National Park found that the wasp did not attack any native and beneficial beetles tested. "It is expected that *P. coffea* will become established as a classical biological control agent, providing sustained population suppression" of the coffee berry borer in Hawaiʻi.

In 2019, the state Department of Agriculture estimated crop losses due to the CBB amounted to $7.7 million.

Quote of the Month

"The program has under-served communities around the island. Excess credits are bought and held for long periods rather than to produce housing units."

— Hawaiʻi County Auditor Tyler Benner

Environment Hawaiʻi
421 Kaʻanini Street
Hilo, Hawaiʻi 96720

Patricia Tummons, Editor
Teresa Dawson, Managing Editor

Environment Hawaiʻi is published monthly by Environment Hawaiʻi, Inc., a 501(c)(3) non-profit corporation. Subscriptions are $70 individual; $120 non-profits, libraries; $150 corporate. Send subscription inquiries, address changes, and all other correspondence to:

Environment Hawaiʻi
421 Kaʻanini Street, Hilo Hawaiʻi 96720.
Telephone: 808 933-2455.
E-mail:ptummons@gmail.com
Web page: http://www.environment-hawaii.org
Twitter: Envhawaii

Environment Hawaiʻi is available in microform through University Microfilms' Alternative Press collection (300 North Zeeb Road, Ann Arbor, Michigan 48106-1346).
Production: Mark Taketa

ISSN 1050-3285

EDITORIAL

Reforms, Oversight Needed to Stem Abuses Of Hawai‘i County Housing Policy

When it comes to describing the practices and procedures of the Hawai‘i County Office of Housing and Community Development, words fail.

Literally, words fail. Until just a few months ago, there were no written practices or procedures, at least when it comes to the OHCD's administration of valuable housing credits. And those that were hastily adopted in August 2022 still fall far short of what is required.

So exactly how valuable are those credits?

Well, a developer can buy his or her way out of building housing that is affordable to households earning up to and slightly over the area median income by simply buying those credits. So instead of having to pollute a luxury, upscale development with more downscale offerings, and thereby forego selling up to 20 percent of the lots to families with just average incomes, developers can simply purchase a credit or two, or dozens. Credits can sell for tens of thousands of dollars apiece, but they are still a bargain. There is utterly no way a house lot of any level of affordability can be developed as cheaply as a credit can be bought.

As described by the county auditor, the Office of Housing and Urban Development had practically no system of accounting for the fate of credits it had awarded over the previous two decades. The office was inconsistent in how it calculated the award of credits. It wrongly interpreted parts of the law – Chapter 11 of the County Code – that established the system allowing developers to earn credits in return for building affordable houses or improving land so it can be sold at affordable prices.

No policies or procedures. No administrative rules. No monitoring of the contractually binding affordable housing agreements made with developers that should have resulted in the construction of at least some affordable housing over the years.

How was this possible?

The audit report identifies several factors, including the sheer complexity of Chapter 11. This certainly helped to create the environment that allowed former county employee Alan Rudo to believe for years he could engage in criminal fraud with no one the wiser. Rudo was given deference as the in-house expert; the affordable housing agreements he worked out with developers weren't challenged, the documents he presented for signing were signed without question – not just by the housing administrator, but by the deputy corporation counsel and mayor or mayor's representative as well. All of them bowed before Rudo's Delphic mastery of Chapter 11 arcana.

The Scope of the Problem

Last year, Rudo's involvement in three affordable housing agreements led to serious federal criminal charges against him and three other men. But the review of documents we were able to obtain that relate to the award and transfer of those credits suggest a whole range of additional ways in which the system of awarding credits could have been, and probably was, abused. Perhaps not all rise to the same level of criminality. But they do suggest that, whatever lip service developers, including some who hold themselves up as pillars of the community, may pay to the critical need for affordable housing, their actions have betrayed that very cause.

Here are some of the issues that should be addressed in any program of reform.

Zombie Credits: The auditor concluded that there are more than 1,300 credits still outstanding. At least some of those are held by companies that have legally ceased to exist. And if they don't exist, neither can their assets. Any credits held by companies at the moment of their death should follow them to the grave. Efforts to claim them should be dismissed as fraudulent, absent some indisputable evidence that the credits were conveyed before the company was legally terminated. Given the lightning speed with which some of the LLCs have come and gone after their members have exploited weaknesses in the housing credit system, a quick death to any credits they may have held onto is fully warranted.

Dubious Provenance: Over the decades, the trade in credits has not been well documented. The affordable housing agreements themselves – at least the ones we have been able to review – contain a requirement that they be filed with the Bureau of Conveyances, just like any other legally binding contract that burdens real property. Yet developers have not uniformly complied, and there seems to have been no monitoring by the Housing Office to ensure that this occurs. (Had this been scrupulously observed, the failure of servers in 2018 may not have been quite so catastrophic, since many of the records could have been retrieved from the Bureau.) What's more, those same agreements also call for the advance approval of the Housing Office whenever credits are transferred. Perhaps the Housing Office did bless a good number of the credit transfers that have occurred, even though it may not be able to locate the supporting correspondence. In that case, the onus should be on those who wish to redeem those credits to sub-

continued on page 4

Many houses in the Waiakea Fairways subdivision back up against the Hilo Municipal Golf Course.

Footnotes to Housing Credit History

The two fraudulent housing schemes that Alan Rudo and his co-conspirators devised resulted in the award of 316 excess housing credits to two companies that had signed agreements to develop a total of 158 low-income apartments, 122 in Kealakehe, 106 in Waikoloa.

What happened to those credits?

Forty-six of the 104 credits awarded for the Kealakehe project actually were used to purchase the land for West View Developments, the sham company set up by Rudo, Rajesh Budhabhatti, Gary Zamber, and Paul Sulla Jr. Nine of the credits were to be used to satisfy on-site affordable housing requirements. Four were sold to the Rudo-affiliated company, Luna Loa, that had the affordable housing agreement to develop the Waikoloa site.

The remaining 45 credits were seized by the U.S. Marshal's Office.

The 212 credits awarded to Luna Loa were augmented by the four it obtained from West View, for a total of 216 credits. Of those, the audit states that 143 were "dissolved." Of the remaining 73, 30 ended up with D.R. Horton Homes, apparently used as part of the purchase price for the Waikoloa land. Four more credits were sold to RCFC Kaloko Heights at $50,000 each. Other credits were distributed to Big Island Housing Foundation (22), Moaniala Holdings (12), and Glori Nani Mau (5).

Another matched set of credits is found in the audit report's tabulated account of credits. KW Kohanaiki, LLC, said to have purchased 100 credits, and Bridge Aina Lea, LLC, said to have purchased 47.

Neither really purchased anything. Instead, as successor owners of property once owned by Nansay Hawai‘i, a huge Japanese land developer in the early 1990s, they share in the credits that Nansay earned when it built workforce housing in Waikoloa. (For details on this, see the article in the March 2008 edition of *Environment Hawai‘i,* "Affordable Houses Divided: Settlement Allocates Credit for Houses Nansay Built.")

— Patricia Tummons

Editorial *continued from page 3*

stantiate their claims. Show the receipts, or we'll show you the door.

Ultra-Vires Schemes: Time and again, what starts out as a by-the-book agreement, with developers and the Housing Office signing onto terms that are respectful of Chapter 11, they end up being amended with substitutions for performance that stray far beyond anything anticipated by the law. Instead of building apartments for rent or houses or improved lots for sale at affordable rates tied to the area median income, developers have been able to finagle deals that do nothing to advance the cause of affordability. At times, the temptation to self-deal seems to have been too great to resist, as our review of the Hilo One-Hilo Two deal shows. It's bad enough that staff at the Housing Office could have approved these. But how could these deals have won the stamp of approval of the Corporation Counsel, given that they are so untethered to the law? Was someone on the Housing Office staff being paid under the counter to shepherd these amendments through to final signing? While the thought may have been dismissed as too outrageous to entertain as recently as a year ago, given what is now known about the workings of the OHCD, it is no longer beyond the pale.

Moving Forward

The county auditor, Tyler Benner, is to be commended for his 55-page report on the affordable housing credits and their management. The recommendations it contains, recapped elsewhere in this issue of *Environment Hawai‘i,* should be embraced by the OHCD as well as the County Council. They provide a road map to a rational, accountable system of oversight that is much needed.

At present, the bewildering array of options available to developers to satisfy Chapter 11 obligations needs to be simplified. Better yet, it should end.

Instead of allowing developers who do not wish to build affordable housing themselves to earn credits in the current fashion, the county should require them either to make in-lieu payments, tied to realistic cost estimates for new affordable units, or to donate improved land. This would provide the county with the funds and/or the land to develop affordable housing itself or to support non-profits that would undertake the work.

The ability of developers to earn credits for offsite housing has led to the easy proliferation of upmarket, exclusive gated communities. At the same time, on the rare occasions when affordable housing has actually been built, it has been off-site. The unsavory consequences of such segregation along socio-economic lines should not be overlooked.

The county will still need to deal with the state-mandated system of credits earned by contractors developing housing for the Department of Hawaiian Home Lands, but those credits are just a small fraction of the total number outstanding.

Apart from addressing the matter of credits, there is a crying need for internal controls and segregation of duties within the Housing Office. As the auditor says, "One individual should not oversee key elements of the affordable housing process. Compensating controls should be implemented to reduce the risk of duties that cannot be sufficiently segregated."

The Housing Office has recently implemented procedures that are intended to address many of the problems identified in the audit. However, the auditor found that those policies and procedures, not written by the Housing Office until August 2022, were not reflected in the forms that they continued to use. In addition, monitoring practices were still insufficient and were not addressed in those policies and procedures. Moreover, "no new projects were available during the audit to test compliance with new procedures."

The fact that affordable housing agreements – both past and future – are now receiving the close scrutiny they deserve is progress, to be sure. But much, much more is going to be needed before Hawai‘i County has anything approaching an effective program that will not just encourage the development of affordable housing, but actually get it built.

See also the editorial in the June 2022 edition of *Environment Hawai‘i:* "Big Island's Housing Policy: Troubled, Confusing, Ineffective."

Audit Reveals Hawai‘i County Has Poor Control of Housing Credits

The Hawai‘i County Office of the Auditor has released its report on the handling of affordable housing credits issued by the Office of Housing and Community Development (OHCD). And it isn't pretty.

The County Council requested the audit after the U.S. attorney in Honolulu, Claire Connors, brought criminal charges against four men – including a former county Housing Office employee – accused of gaming the county's system of awarding housing credits in return for the development of affordable housing units. Altogether, the federal government alleges, the men enriched themselves through fraudulently obtained credits to the tune of more than $10 million.

Conducted under the supervision of county auditor Tyler Benner, the audit found little good to say about the OHCD's practices prior to the issuance of federal criminal charges. Of the 49 developers receiving excess affordable housing credits, the OHCD had no affordable housing agreement on file for 24 of them, or nearly half, the report found. The agreements with four other developers were missing required signatures. Seven developers were awarded credits before any housing was built, six developers resold those pre-awarded credits, and four developers resold pre-awarded credits without any affordable units constructed. Two developers were awarded more credits – a total of 48 more– than they were entitled to.

Overall, the audit found, "We found prior internal controls were generally inadequate and not operating according to best practices to prevent, detect, and deter fraudulent transactions."

When addressing the circumstances that contributed to the fraud, the auditor notes one of the unique provisions in the County Code. "Other jurisdictions use a combination of in-lieu fees and land conveyance to satisfy all or a portion of housing obligations. Hawai‘i County is the only county that awards 'excess' credits and does not charge in-lieu fees," the report states.

The complexity of Chapter 11 itself was identified as another contributing factor. That law offers developers and would-be developers a veritable smorgasbord of options by which affordable housing obligations tied to developments may be fulfilled: "developing finished lots, selling, or renting the required units on- or off-site, conveying land or infrastructure, or purchasing affordable housing credits." Given this complexity, "At approximately 44 percent, purchasing [credits] has become the most often used method of satisfaction" of the affordable housing requirement, it found.

The relatively easy availability of credits has resulted in a market of sorts, small, yet often incredibly lucrative. Of the 1,800 or so credits that the OHCD has issued since 1988, at least 638, or 35.2 percent, "have been sold at least once," the auditor found.

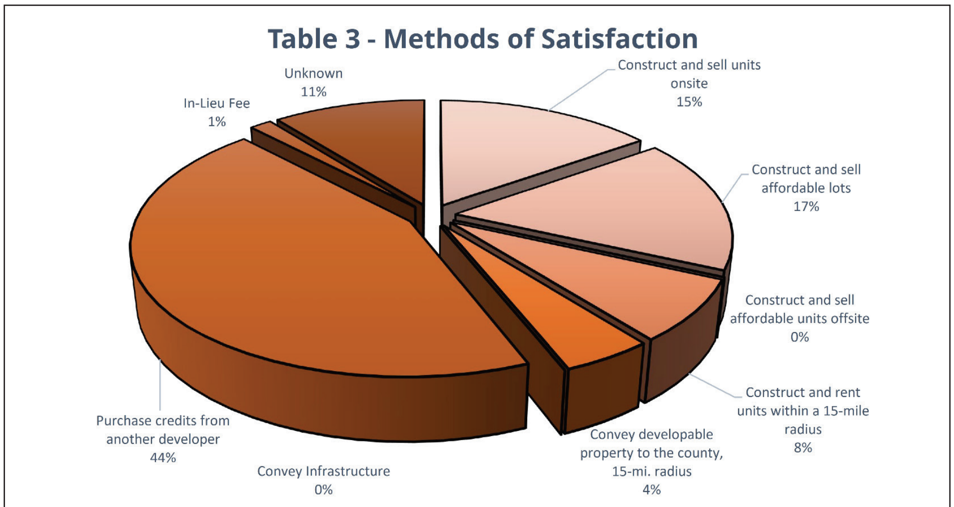


Table 3: Methods of Satisfaction, compiled Office of the County Auditor

"Historically, private credit sales have varied in price from as little as $5,000 to as much as $75,000 each."

According to the audit, Housing Office staff said that "historically, they were advised not to interfere with private-party credit transactions."

"However," the audit continued, "credits have significant potential values. When used as intended, credits provide developers with a means to liquidity, which in turn contributes to housing production. However, when bought and held, the lack of liquidity means less overall capital investing in developments, and production suffers. As public stewards, behaviors, actions, and decisions must be made in the public's best interest. OHCD should have a solid understanding of credits' impact on production.

"The program has under-served communities around the island. Excess credits are bought and held for long periods rather than to produce housing units. For OHCD to successfully achieve its mission of providing affordable housing, foundational reforms must accompany improvements to its internal control system."

Pre-Award of Credits

Following the revelations by the federal prosecutor last summer, details of two of the criminal schemes involving the award of excess affordable housing credits were aired in public (and also in the June 2022 issue of *Environment Hawai‘i).* Central to those schemes was the pre-award of credits to two self-described development companies before the first shovel of earth was turned, before the very first approval of plans, and even before title to the land was deeded to the developers.

As the auditor discovered, however, the Office of Housing and Community Development had pre-awarded credits to not just those two firms, but to at least seven firms over the years. Six of them resold credits. Four of them resold the credits without any affordable units having been constructed.

In one of the pre-award cases, the developer was a non-profit; in that case, the pre-award of credits helped it to raise the capital needed to move forward with the development, much as was anticipated when Chapter 11 was adopted. That developer did build affordable units.

That leaves two cases in which the county pre-awarded credits to companies that then sold them off, with no affordable housing ever built by either the companies awarded the credits or the companies who purchased them: Lava Kuakini, LLC, which was pre-awarded 10 credits in 2005, and Suffolk Investment, which was pre-awarded 50 credits. Both those entities have been dissolved.

Poor Documentation

With access to records at the Office of Housing, the auditor was able to come up with a list of credits awarded, credits sold and purchased or otherwise alienated, and credits redeemed. Overall, the auditor could account for 1,811 total credits, all but 161 of which were awarded by the county. (The Department of Hawaiian Home Lands awarded those remaining 161 to developers of affordable housing on DHHL land, an award allowed under state law.)

Of the total number, 781 were sold, transferred, confiscated by the federal marshal, dissolved, or brokered. A total of 660 credits had been purchased, and 335.8 were redeemed, which means the county accepted the credits in satisfaction of developers' affordable housing obligations. Altogether, the auditor concluded, there remain 1,354.2 credits still outstanding, available to be sold to developers wanting to satisfy affordable housing obligations by surrendering credits instead of building affordable homes or apartments or developing improved lots for sale at affordable prices.

But a relatively high percentage of the files for the various affordable housing projects – 40.7 percent, or 24 of the files – did not include executed affordable housing agreements. "Of the remaining projects," the audit states, "we noted four instances where required signatures were missing."

It goes on: "We note 22 instances where the Bureau of Conveyance (BOC) recordation could not be confirmed between missing AHAs or incomplete project files. Furthermore, we noted 12 instances of AHA were not recorded" with the Bureau of Conveyances.

The poor documentation, lack of signatures, lack of recordation, and other irregular features of several of the affordable housing agreements may yet change the total number of credits available. In a footnote, the auditor states: "The status of some projects may be pending administrative review by the Office of the Corporation Counsel and is subject to change."

Recommendations

The litany of problems with the OHCD's management of its system of awarding affordable housing credits and working out affordable housing agreements is extensive, as laid out by the Office of the County Auditor.

Its report identified four "deficiencies" related to OHCD's compliance with Chapter 11:

- The OHCD pre-awarded and over-awarded affordable housing credits;
- It misinterpreted areas of the code;
- It lacked Internal control systems and program oversight; and
- There was no segregation of duties.

The OHCD also lacked clear policies and procedures, the auditor found:

- There were no administrative rules;
- The qualifications of developers were not vetted;
- There was no monitoring of compliance by contractors with the affordable housing agreements;
- The record of credits awarded was incomplete; and
- There was no timely recognition of the credits awarded by the DHHL.

To address these issues, the auditor listed seven recommendations:

- The Hawaii County Council should revise Chapter 11;
- OHCD should establish administrative rules regarding administration of its affordable housing policy;
- OHCD should "clarify and enforce policies and procedures to ensure consistency throughout the department and industry best practices;"
- OHCD should "perform ongoing monitoring of their internal control system's design and operating effectiveness as part of their operations;"
- It should "use software and technology as a monitoring tool to improve managing affordable housing agreements and credits;"
- "Incompatible duties" should be segregated; "one individual should not oversee key elements of the affordable housing process;" and
- OHCD should provide ongoing internal control training to employees involved in the affordable housing process.

Response

Susan Kunz, the county housing administrator, replied to the audit in a letter appended to the report. Regarding the first recommendation, Kunz stated that her office had "already engaged a consultant" to review Chapter 11 and provide recommendations for changes. "The final report … should be available within the next two months." Last summer, Kunz informed the council and *Environment Hawai'i* that the consultant's report would be available in last September or October.

Kunz agreed that OHCD should adopt rules, but again proposed waiting until after the issuance of the consultant's report and any changes to Chapter 11 that the council might approve "as a result of this audit."

With respect to the third recommendation, Kunz said that her office "had already begun to establish written policies and procedures together with flow charts to document workflow on all processes associated with the implementation of Chapter 11." She also concurred with the next recommendation, stating that her office "will regularly evaluate the effectiveness and efficiency of such ongoing monitoring and oversight and will implement changes/improvements as appropriate."

As to the fifth recommendation, Kunz concurred, but with reservations. Her office would look into software options "within the limits of available resources," she wrote.

In response to the critique that her office had not appropriately segregated incompatible duties, Kunz said the OHCD "has begun to separate duties by establishing policies, procedures, flow charts, and internal controls" to address this issue.

As far as training is concerned, Kunz stated that her office would "ensure that its employees are allowed to attend appropriate training sessions … such as ethics training" and would also use regular bi-weekly staff meetings "to train staff on different aspects of Chapter 11."

Not waiting for the consultant's report, the County Council has already moved to tighten up its oversight of OHCD. On February 8, it unanimously passed Bill 9, which amends section 19 of Chapter 11. Previously, that section, titled "Reports by housing administrator," stated that the administrator "may provide timely periodic reports to the council … including but not limited to the approval of excess credits, the acceptance of transferred credits, and the choice of resale restrictions."

Bill 9 amends that by making such reports mandatory instead of optional. Among other things, the housing administrator is now required to provide the council with any new affordable housing agreements within 30 days of the date of execution. Also, the administrator is to provide quarterly reports to the council that include a list of developers in possession of excess affordable housing credits and an accounting of "significant actions taken under authority" of Chapter 11. Mayor Mitch Roth signed the bill in late February.

The first such report from the housing administrator is to be submitted by March 1.

— Patricia Tummons

Work-Arounds *continued from page 1*

executed by the Housing Office was found there, and many of the credit transfers can only be inferred since not every transfer was recorded.

Despite it all, we were able to track a few. And they paint a discouraging picture of just how developers and their agents have gamed the system for the last two decades.

Credits, In Brief

Chapter 11 of the Hawai'i County Code was established to force developers of residential subdivisions or commercial zones to build or at least underwrite the construction of housing that is to be within reach of households earning up to 120 percent of the area median income (AMI) through a complex system of credits. Credits may be obtained by building low-income housing or by purchasing credits earned by other developers, among other ways.

As the county auditor describes it, "Developers who agree to construct new affordable housing units in excess of any requirements required under Chapter 11-15(a) may earn 'excess credits.'" Although the auditor states that the credits earned may be transferred without the approval of the administrator of the Office of Housing and Community Development, at times the affordable housing agreements made with developers require advance approval. But subsequent trades are not always submitted for approval and the result is that the OHCD has no way of tracking who owns what. In addition, the past practice of awarding credits before any have been earned, contrary to clear language in Chapter 11, has complicated things.

In any event, the trade in excess credits has led to abuses, including criminal fraud.

An article in the June 2022 edition of *Environment Hawai'i,* "Housing Agency Has Had Difficulty Tracking Low-Cost Housing Credits," contains a more complete discussion of Chapter 11 and the system of housing credits it sets up.

Hilo One, Hilo Two

The county auditor reports that Hilo One, Inc., purchased six credits that it then redeemed. We investigated. Here's what we found:

In 1993, the state Land Use Commission approved a petition to move into the state Urban Land Use District about 24 acres of land north of Hilo, in the Pauka'a community. One of the conditions was that the developer, Hilo One, Inc., satisfy affordable housing conditions set by Hawai'i County. President of Hilo One is Roland J. Higashi, a prominent Hilo businessman and former member of the state Board of Land and Natural Resources.

Eventually, the land was developed with 21 luxury housing lots ranging in size from 15,000 square feet to more than an acre.

Not until 2016 did the developer work out an affordable housing agreement with the Housing Office.

By then, Hilo One had sold the Pauka'a property to RJL, LLC (members are Roland, Janice, and Laurie Higashi, as well as Hilo real estate agent Robert G. Williams). To satisfy the affordable housing conditions, the county and RJL agreed that RJL would need to earn six credits. This, RJL proposed, would be achieved by selling 12 lots created in a different subdivision, Waiakea Fairways, in the area of Hilo known as Waiakea Uka, at prices affordable to households earning no more than 100 percent of the area median income, or AMI.

In November 2017, however, RJL wanted to change the terms. In an amended agreement, RJL, the county, and a third party – Hilo Two, LLC – agreed that the affordable housing condition could be met simply by selling off all 49 lots in the Waiakea Fairways subdivision, bounded on two sides by Hilo's municipal golf course, at set prices per lot, ranging from $135,000 for the smallest to $195,000 for the largest, with those next to fairways priced toward the upper end. (Hilo Two had two managing partners: RJL, LLC, and RS Williams, LLC. It submitted articles of termination to the state Department of Commerce and Consumer affairs in July of last year.)

The amended agreement had no calculations to suggest that any of those lots were within the range of affordability to households earning 100 percent of the AMI. The fact that the lots were substantially larger than other lots in the neighborhood – around 20,000 square feet versus 15,000 for the neighborhood – and that many of them backed onto the golf course would seem to put them in a range affordable only to a higher income bracket.

"[I]n the interest of providing affordable lots to Hawaii residents, JOINING PARTY [Hilo Two] is prepared to offer and sell the lots in the Waiakea Fairways Subdivision for not more than the prices shown on the schedule attached hereto," the amended agreement states.

All 49 lots have since been sold at prices at or below those specified in the attachment.

The original agreement listed eligibility requirements for the purchasers and restrictions on resales for 10 years. "Applicants shall intend to utilize the affordable housing lot as their permanent and primary residence and be owner-occupants during the affordable housing period," that agreement stated. In addition, buyers "must not own more than fifty-one percent or more interest in real property suitable for dwelling purposes within one year prior to the date of application."

All that was jettisoned in the amendment.

In early 2018, the first lots in the Waiakea subdivision began to sell. One of the earliest buyers snatched up not one but two of them for $132,683. The schedule appended to the agreement set maximum prices for each of those lots at $135,000. The buyer was none other than RJL, LLC. Over the next year, RJL built a three-bedroom, two-bath house on one of the lots and promptly resold it for the market-rate price of $459,000. RJL built a similar-sized house on the second lot, which it sold in 2019 for $420,000.

Another lot was purchased by RS Williams, LLC, one of the members of Hilo Two. That lot, obtained for $98,733, was resold a year later, with no further improvements, for $240,000.

On January 3, 2018, two lots were sold to one buyer, real estate agent Terry Schoneberg, at the scheduled prices, for a total payment of $310,000. Two days later, Schoneberg sold off one of the lots, whose scheduled price was $150,000, for $175,000, reaping $25,000 in 48 hours. In August, that second lot, whose scheduled price was listed at $160,000, was sold for $186,000. For an initial investment of $310,000, Schoneberg saw a return of $51,000 in less than eight months.

Several of the still undeveloped lots now have market values of upwards of $300,000, according to the county tax assessments. One vacant lot that sold for $175,000 in 2017 is now offered for sale at $318,000. Those lots with houses that are near the golf course have assessed market values approaching or even exceeding $1 million and recent sales have surpassed that.

Today the median household income in Hilo is around $70,000 a year.

Yet another affordable housing agreement involving Higashi and Williams is mentioned in the audit report: that between the county and a company known as Kona Three, LLC. The members of the company are OIP, LLC (Robert Williams, manager), RJL, LLC, and Richard Wheelock, a real estate agent in Hilo.

Kona Three owns around 69 acres of land in Kona, just mauka of Queen Ka'ahumanu Highway and north of Lako Street, where it says it intends to develop 450 residential units. The land was part of a much larger development proposed in the early 1980s by the Gamlon Corp. for around 172 acres. The Land Use Commission approved the project in 1983, with the condition that 10 percent of the units built be affordable. Gamlon and a successor company, Gamrex, developed 103 acres with 215 single-family houses, but never fulfilled the affordable housing requirement.

In 2015, Kona Three purchased the undeveloped land intended for multi-family housing. In an environmental assessment published in 2020, it stated that it proposed building "up to 450 multi-family residential units in clusters of two- and three-story buildings. … Units would target local renters and buyers in the 'market' price points." None of the housing, in other words, would be priced so as to be affordable.

Early last year, the Housing Office and Kona Three signed an affordable housing agreement making it clear that Kona Three did not intend to develop any affordable housing on the site – or anywhere else, for that matter.

Kona Three, the agreement states, "proposes to satisfy the … affordable housing requirements … through the acquisition of affordable housing credits."

The total number of credits that would be needed to satisfy those affordable housing obligations was put at 67, or 10 percent of the total number of units developed over all 172 acres. The audit report states that Kona Three has a commitment to purchase those credits, although the seller is not identified.

The affordable housing agreement contains language that, up to this point, had never been inserted into such agreements: "The developer shall provide proof and OHCD shall verify excess credits are valid."

A home at Waiakea Fairways.

Lava Kuakini I: Kaha'olino Partners

According to the auditor, Kaha'olino Partners, LLC, purchased seven affordable housing credits to satisfy the affordable housing obligations associated with its development. Here's what we were able to learn about that:

In late 2004, Kaha'olino Partners, whose principal was Kona real estate agent Philip Tinguely, purchased about 21 acres of land in Kona north of Kaiminani Drive. The seller was another LLC, C L & D Eight, an entity managed by yet another LLC, Nani Kona Aina, whose sole member was Dan Bolton of Kona.

The land had been rezoned by the County Council a couple of years earlier and at that time, an affordable housing condition had been placed on the proposed 35-lot development.

One means of satisfying affordable housing obligations is for developers of market-rate housing to partner with those developing more affordable complexes. And so Kaha'olino Partners entered into an agreement on September 21, 2005, with the Housing Office and a newly formed LLC called Lava Kuakini. One of several members of that entity was Edward J. Rapoza, who, like Tinguely, sold real estate in the Kona area.

Lava Kuakini had no development experience and had acquired the land it proposed to develop with an affordable housing complex just two days earlier, September 19. That day, it inked an agreement with Stanley T. Tomono for a tract of land along Kuakini Highway, just south of Kona Village.

Despite this lack of experience, the county Housing Office agreed to allow Kaha'olino Partners to push its affordable housing obligation onto the young back of Lava Kuakini.

Kaha'olino Partners, the tripartite agreement stated, had agreed "to purchase a minimum of seven affordable housing excess credits to satisfy the requirements of this agreement with Lava Kuakini, LLC, the developer of approximately 14 acres of real property … which is proposed for development … of approximately 212 multiple-family residential units, 50 percent of which are to be developed as affordable housing units."

Not until December of that year did Lava Kuakini finally execute its own agreement with the Housing Office for that affordable development. In the intervening year, it had shepherded through the County Council an ordinance that changed the zoning for the property from Agricultural 5 acres to Multiple-Family Residential, subject to a condition that the Housing Office demands are met. The agreement with the Housing Office clearly anticipated that Lava Kuakini would be selling off some of the credits it received for developing low-cost housing: "the developer intends to enter into agreements with developers of other projects for the sale of affordable housing excess credits generated on-site" at the Kuakini property.

But no longer was Lava Kuakini going to build 212 units. This agreement called for just 50 single-family residential lots or multiple-family units, with at least half of them developed in each phase to be affordable.

For 12 years, there is nothing further in records filed with the Bureau of Conveyances concerning the Kaha'olino Partners' progress toward meeting its affordable housing requirements.

Then, on August 6 of 2018, an "affordable housing release agreement" was lodged with the Bureau of Conveyances, freeing Kaha'olino Partners from any and all obligations to develop affordable housing. No affordable units had been built by Kaha'olino Partners itself. Nor had any credits been purchased from third parties that the company was able to surrender to the county to fulfill its Chapter 11 obligations.

Instead, there was only the promise that "the affordable housing requirement has been secured and will be satisfied at the affordable housing site" owned by Lava Kuakini. The agreement was signed by Tinguely, manager of the Kahaʻolino Property Owners Association, and by Steven S.C. Lim, identified now as manager of Lava Kuakini.

By that time, however, Lava Kuakini was six feet under. Two years earlier, on April 19, 2016, Rapoza had submitted articles of termination to the state Department of Commerce and Consumer Affairs. In fact, Lava Kuakini had conveyed its interest in the Kuakini property as far back as May 2013, selling the land that it had acquired for $1.4 million to Kuakini Highway 75-6099 Corp., a California company, for $2,065,000.

The audit report states that Lava Kuakini obtained 10 credits and sold seven of them – presumably the credits that Kahaʻolino Partners was said to have purchased. If so, the sale of those credits is not recorded at the Bureau of Conveyances. And, in any event, Lava Kuakini should have had no credits to sell. There is still no housing on the Kuakini property.

Lava Kuakini II: C L & D Nine

In the auditor's "comprehensive accounting of credits" – a table presenting his conclusions as to the total number of credits obtained, sold, purchased, redeemed, and yet outstanding – there's an entry for one developer, C L & D Nine (another LLC that traces back to Dan Bolton), that shows it purchased two credits and surrendered them to satisfy its housing obligations. From records at the Bureau of Conveyances, we learned this:

On January 12, 2006, the Housing Office signed on to a tripartite agreement with C L & D Nine and Lava Kuakini. Per its terms, C L & D Nine, the developer of a luxury, gated, 16-lot subdivision about half a mile upslope of Queen Kaʻahumanu Highway in Kona, would satisfy its affordable housing obligations by purchasing "a minimum of three affordable housing excess credits" from Lava Kuakini's affordable development.

As with every affordable housing agreement *Environment Hawaiʻi* was able to review, this one had deadlines for submitting to the Housing Office designs and plans for marketing, periodic progress reports, deadlines for fulfilling the affordable housing requirements (in this case five years), and, "to secure the completion of construction of the affordable housing units," the county may require the developer to post a bond for the full costs of construction. "The agreement shall provide a mechanism for the county, in the event of a breach of the agreement by the developer, to complete the construction of the affordable housing units," it said.

Also, the agreement "shall run with the land … and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns."

Then something odd happened. Barely 10 months after the initial agreement was signed, the county agreed to release 13 of the 16 lots in the C L & D Nine subdivision (now known as Meilani View Estates) from the initial agreement. In addition, the county released Lava Kuakini from any obligation to provide credits to C L & D Nine.

"In consideration of the premises herein, the county, Lava Kuakini and the developer [C L & D Nine] do hereby cancel, release and discharge Lava Kuakini as a party to the January 12, 2006 agreement," this "partial release and amendment" stated. The county also agreed to "release, discharge, and forever quitclaim unto" C L & D and Lava Kuakini all "right, title and interest which the county, Lava Kuakini, and the Developer may have acquired up to the date of this partial release and amendment of agreement in and to the real property identified herein above."

Just three of the subdivided lots in the Meilani subdivision – 5, 9, and 13 – were kept by the county as hostage to ensure the affordable housing obligations were fulfilled.

The county's leverage was further reduced in 2014, with the execution of a "partial release" that removed the cloud from Lot 5. This time, the agreement was not between the county and C L & D Nine, but rather with CLW Hawaii Investments, signed by Clarence L. Werner, its manager. (CLW, original owner of the property, had entered into a development agreement with C L & D Nine. No one involved at the time seemed to notice that the agreement was made with a party who wasn't signatory to the original agreement.)

Why did the county give up its hold on Lot 5?

Just days before the county release was signed, a document was lodged with the Bureau of Conveyances recording the assignment of one affordable housing credit by GBH-Kai Maluna, LLC, to CLW Hawaii Investments. And it was this that bought the freedom for Lot 5.

The final release was executed in the spring of 2015, this time with C L & D Nine signing on behalf of the developer. That document states only that the county "hereby confirms that the developer has obtained three affordable housing credits and has fully satisfied any and all of its affordable housing obligations and duties."

So far as Bureau of Conveyance records go, there was just the one credit, the one obtained by CLW in 2014, that was applied against the three-credit obligation of C L & D Nine.

Where did the second and third credits come from? The auditor's tabulation says two were obtained, though no source is provided. The requirement that three credits were needed under the affordable housing agreement isn't accounted for in the tabulation.

Westpro

As complicated as these other transactions may be, the group of agreements involving AAA Development and a host of related LLCs is hands-down the Gordian knot of affordable housing credits.

AAA Development, LLC, still holds on to no fewer than 522 credits, according to the auditor's tabulation – although, to be sure, he says it should have received just 488. In either case, AAA's credits amount to between 36 and 38 percent of the total number of credits still outstanding, far more than any other credit holder.

But AAA is just one of a vast number of limited liability companies that are, or were, so closely related, it is difficult to determine who continues to hold possession of what. Complicating matters further is the fact that following the 2008 downturn in real estate, many of those affiliated LLCs lost to foreclosure lands that were subject to affordable housing agreements.

Westpro Holdings appears to have been the first member of this family of LLCs to receive credits, back in 2003. A document filed with the Bureau of Conveyances in 2012 makes reference to the county awarding six credits to Westpro in an agreement of April 2003. According to that 2012 record, the agreement called for affordable housing to be built on five parcels (four of them just shy of 15 acres) in Kona, lying between Kuakini and Queen Kaʻahumanu highways, makai of the sprawling Pualani subdivision. The land remains undeveloped.

Exactly what Westpro was to do in return for those credits was not specified in the 2012 document.

But those same lands, burdened apparently by the nine-year-old affordable housing agreement, were sold by Westpro to Suffolk Investment, LLC, in 2004. And although the deed makes no mention of credits, nor is any affordable housing agreement called out in the descriptions of the parcels sold, Suffolk claimed ownership of those six credits when it conveyed them in 2012 to Kona Country Club for $43,000 apiece.

That claim of ownership doesn't seem to have been made by any of the other successors to land once owned by Westpro or related companies. (The Housing Office and the auditor say that Suffolk purchased Westpro and in this fashion came into possession of Westpro's credits. If that happened, there is no public record of the sale of the business, which, according to the Department of Commerce and Consumer Affairs was administratively terminated in 2014. At the time of its last annual filing, John Stevens, its organizer, was still listed as manager. Suffolk itself was administratively terminated in 2021, after having filed no annual reports for three years.)

In 2004, Westpro again entered into an affordable housing agreement with the county. Under this agreement, Westpro would make five houses available for sale at prices affordable to households earning up to 140 percent of the area median income in the 48-unit second phase of its Puʻuhonua subdivision, which Westpro was building on land south of Kaiminani Drive. The set price calculated at that time was $262,700 for a three-bedroom, two-bath house of 1,104 square feet with a carport on a 10,000-square-foot lot. The affordable houses would simply be used to earn the five credits that Westpro needed as a condition of its subdivision approval; there were no "excess credits" earned.

The only Westpro credits to which reference may be found in Bureau of Conveyance records are these two sets: the six credits awarded in a 2003 agreement, and the five credits earned and used up in the development south of Kaiminani Drive.

The audit report, however, states that Westpro received a total of 50 credits, all of which have been sold.

Seascape

Another Westpro-related LLC called Seascape Development was formed in 2005. In January 2006, it took title – from Westpro – to land in Kona where, eventually, two apartment complexes would arise: the low-income complex known as Lokahi Kaʻu, where a total of 306 units would be built; and, immediately makai of that, the 104-unit complex known now as Kona Seascape.

The Lokahi parcel would be sold in early 2008 to AAA. The makai parcel, however, was retained by Seascape Development. In March 2006, Seascape and the county Housing Office signed an affordable housing agreement, calling for Seascape to build 108 affordable units, all of which were to be sold to households earning between 120 and 140 percent of AMI. For each unit, the county immediately awarded Seascape half a credit, for a total of 54 credits. "The developer may transfer said credits" with the approval of the Housing Office, the agreement said. But if any such credits were to be transferred, Seascape promised to build and sell, within three years of the time the first credits were sold, units sufficient to account for the transferred credits. In other words, if Seascape sold three credits, it would need to build six affordable units within the next three years.

Seascape built most of the units but by December 2007, it was apparently not selling them as quickly as it anticipated and, what's more, it was under increasing financial pressure from lenders. On December 12, the county amended its agreement with Seascape, releasing it from all further obligations. The condition was that Seascape would sell all those units yet unsold at a price of not more than $293,403 per unit to anyone who could pay it, regardless of their income levels.

For most of the previous year, Seascape and related entities had been falling behind in payments to lenders. As soon as one would threaten to foreclose, another was found – but inevitably at ever higher rates.

Around 2010, as Seascape and related Westpro companies were litigating in federal court over terms of a $7 million note issued in late 2007 that had gone into default, it received a bail-out of sorts from one Richard L. Fischer, who did acquire an equity interest in at least one of the Stevens-related LLCs.

And what of the Seascape credits?

In July 2006, long before its financial troubles began, Seascape conveyed 24 credits to GBH-Kai Maluna. In 2014, as noted earlier, GBH assigned one credit to CLW. The remaining 23 credits that Seascape transferred to GBH were assigned in 2017 to Hualalai Health, LLC, "to be used in connection" with Hualalai Health's development of nine acres it owns in Kona, between Hualalai Road and Queen Kaʻahumanu Highway.

On the same date Hualalai Health recorded its receipt of those credits, it turned around and used 17 of them as security for a loan it has received from a company called Hualalai One More Time. The security agreement states that Hualalai One More Time may transfer the credits, so long as it "shall apply the proceeds of any sale to principal and interest" on Hualalai Health's outstanding loan. When the loan is fully paid off, Hualalai One More Time is to return the unsold credits to Hualalai Health.

Signing for Hualalai Health, a Washington-state LLC, was Bruce D. Beard. Beard, it may be recalled, is one of the people involved in Honuaʻula, the developer that leased land in Kealakehe from one of the Alan-Rudo-affiliated companies, West View Development.

As for the remaining 34 Seascape credits (the original 54 less the 24 conveyed to GBH), according to the auditor: 12 were sold to Pinn Brothers Construction, 10 to SCD Kona 108, and eight to WB KD Acquisitions.

And as for Seascape? For a short time, its annual business registration filings listed Richard L. Fischer as its manager. The company was terminated in 2013.

AAA

Then there is the AAA affordable housing agreement. On February 28, 2008, AAA Development, LLC – through Westpro, its managing LLC – signed on with the county to develop 306 units of low-income housing to be rented to households earning less than 60 percent of the AMI. For this, the county agreed to award two credits each for the 108 one-bedroom and 108 two-bedroom unit and one credit for each of the 90 studio units, for a total of 522 credits.

Within days of the agreement being signed, AAA sold the land on which these units were to be built to Hoʻolehua Housing, LLC, a company that traces back ultimately to a firm that specializes in affordable housing development. The units were built and the development, known now as the Lokahi Kaʻu apartments, continues to serve low-income households.

It may be useful at this time to look into the origins of AAA. It was formed in November 2006 as Aliʻi Anna Apartments, LLC, with its sole stated purpose "affordable housing credits, county of Hawaiʻi." The organizer and sole manager-member listed was Westpro Holdings, LLC, Alan Dickler, manager. The signature of Dickler or that of John R. Stevens would always appear on the documents entered into by Westpro or its many affiliated LLCs. Barely six weeks after its formation, Aliʻi Anna Apartments changed its name to AAA Development.

The first affordable housing agreement AAA signed with the county – and the only one – was for the Lokahi apartments. If it has assigned any of the credits it received, there is no evidence of it at the Bureau of Conveyances. And according to the auditor's report, the county has no record of any transfer, either.

Unlike the other Westpro-affiliated LLCs, AAA is still nominally active, with its business agent filing timely annual reports with the Department of Commerce and Consumer Affairs. Richard L. Fischer remains its sole named manager.

— Patricia Tummons

Articles in the June 2022 and August 2022 editions of *Environment Hawaiʻi* report more fully on the fraudulent schemes devised by Alan Rudo and his associates. Available free online at www.environment-hawaii.org

BOARD TALK

Former ‘Ewa Feedlot Update Falls Short As Board’s Questions Go Unanswered

Hawai‘i Land & Livestock’s plans for a 110-acre lot adjacent to the state’s largest slaughterhouse keep evolving. And with the state Department of Land and Natural Resources looking to exercise its right to lease that same land for a renewable energy project — so long as it doesn’t unreasonably interfere with agricultural uses there — the Board of Land and Natural Resources wants a good explanation for why it should not seek to reclaim management authority.

So far, it has not gotten one.

In 2019, via an executive order from then-Governor David Ige, the land, a former feedlot, was transferred from the DLNR to the Department of Agriculture, which subsequently granted HLL a 35-year lease. The company had said it needed the land to provide water to the slaughterhouse and as a holding area for cattle awaiting processing.

But three years into its lease, HLL is still preparing the land to receive cattle, aided by a trucking company (alternately referred to as either All American Trucking or American Hauling) that has set up its baseyard there.

Prompted by concerns raised by the DLNR, the DOA recently decided that the trucking company needs to go, since a baseyard is not an authorized use of the property.

On February 10, the DOA and HLL manager Bobby Farias were expected to provide the Land Board with a schedule for the baseyard’s removal, as well as an update on plans for the larger property.

All the Land Board got was a February 6 letter that Farias and Aaron Eddington of Hawai‘i Meats sent to Board of Agriculture chair Sharon Hurd, informing her that HLL, Hawai‘i Meats, and American Hauling, Inc., would enter into an agreement that the trucking company would remove by April 1 all equipment and materials not needed for slaughterhouse operations or for clearing the lot.

“Without restating the entire history of the feedlot, two key facts are important as background: First, when Hawai‘i Land & Livestock entered into the lease, the property was not in a condition to be used for any purpose. Substantial effort has been made to clear and prepare the property for ongoing agricultural usage. Put simply, the property is in a better condition than we found it. Second, at the time the lease was entered into, American Hauling was already occupying a portion of the property,” the letter states.

American Hauling/All American Trucking base yard on land leased by Hawai`i Land & Livestock.
CREDIT: DLNR

If American Hauling fails to make satisfactory progress or vacate, Farias and Eddington stated that they will seek eviction.

It’s unclear when American Hauling/All American Trucking started occupying the property. The DLNR did not respond by press time to questions about whether the baseyard was there before or after the land was transferred to the DOA.

At a previous Land Board meeting, Farias said that cattle pens of various sizes would span the entire leased area. At another, he said that some of it would be used to grow forage, and a small section could become a hog processing facility.

In the February letter to the DOA, Farias and Eddington reported that they were working to “find partnerships and solutions to compliment ranching and agriculture needs.” That included a potential partnership with SUMA Farms LLC, a company established in 2016 to develop “a network of Bana grass suppliers for cattle feed and feed stock for renewable energy,” the letter stated.

Farias and Eddington stated that they are considering producing natural gas on 40 acres of the property by processing Bana grass and the slaughterhouse’s waste.

“This partnership would allow Hawai‘i Meats to better realize the full capacity of the facility through long-term waste management. In addition, SUMA Farms is confident that it can produce cattle feed for

Environment Hawai'i, Inc.
421 Ka'anini Street
Hilo, Hawai'i 96720

Address Service Requested

Nonprofit Organization
U.S. Postage
PAID
Permit No 289
Honolulu, HI

Printed on recycled paper

local ranchers," they wrote.

"Of primary importance to Hawai'i Meats are the water usage rights associated with the leased property which are currently shared for use by Hawai'i Meats," they wrote, noting that the DOA had committed in lease documents to providing the slaughterhouse with an additional 20,000 gallons of water a day.

"In addition to the need for water, Hawai'i Meats requires a portion of the [former feedlot] property for cattle holding pens, on-site support parking and storage for cattle trailers, cattle feed and other facility equipment," they added.

No timelines were attached to when the property would be put to the uses intended when the governor ordered the transfer of the land from the DLNR to the DOA.

At the Land Board's February 10 meeting, DLNR Land Division director Russell Tsuji pointed out that HLL has fallen behind on meeting deadlines in its lease that required the company to generate at least 50 percent of its income from agricultural uses on the property by December of last year.

Neither Farias nor Eddington attended the meeting, and DOA deputy director Morris Atta said he could not provide the Land Board with any greater detail on HLL's plans for the property.

"The issues of the lease compliance, reservation of water rights, are … somewhat novel to me at this point. It was never raised before. I would need to go back and actually talk to our staff and our lessee," Atta said.

Board member Riley Smith questioned whether the DOA had the ability to manage HLL. Last year, the board approved a right-of-entry to allow developers of a proposed solar-to-hydrogen energy project to conduct due diligence studies on HLL's lease area. Farias had been adamant that such a project would be incompatible with his planned uses.

At the February board meeting, Smith told Atta that HLL's lease clearly allows for an energy project to be developed on the property by a DLNR lessee. Smith also questioned whether the water allocated to HLL's property could be used by the slaughterhouse run by Hawai'i Meats on an adjacent property.

"There's a lease and they need to conform. I think your tenant just needs to be managed," Smith told Atta.

Board member Kaiwi Yoon added that he hoped American Hauling wasn't planning to relocate to somewhere else on the property.

"We are pro-ag, also pro-renewable energy. Also pro …

"Compliance," board member Aimee Barnes interjected.

Yoon agreed and suggested the DOA was placing the Land Board in an untenable position by allowing apparent violations to linger on the property.

The board members agreed that Farias should come to the board at one of its March meetings to answer questions about how the property is going to be used.

"There are many questions probably better responded to by the lessee without putting you in an awkward position," board member Doreen Canto told Atta.

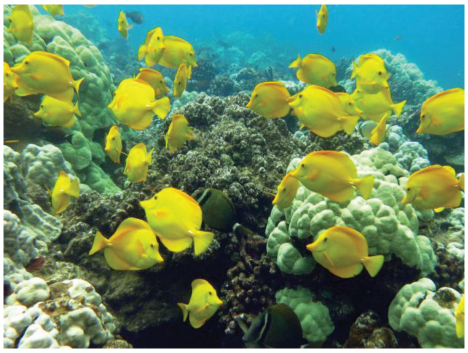
(For more background: "Slaughterhouse Operator Wins Reprieve From DLNR Effort to Reclaim Feedlot," January 2023; and "Board Talk: Slaughterhouse Squabble, Eroding Graves, Fireworks Denied," May 2022. Both are available free on our website, www.environment-hawaii.org.)

Board Grants Permit For Aquarium Fish Dealer

On February 10, the Land Board granted a revocable permit to Hawaiian Sealife, Inc., for warehouse space at the Honolulu airport for its live tropical fish import/export business and wholesale made-in-Hawai'i products.

A month earlier, the board deferred voting on the permit after members of the public testified that an audit of the company's purchases and sales of locally caught aquarium species needed to be done to ensure what's being reported is accurate. Robert Wintner, owner of Snorkel Bob's dive shops, suggested that a lot more fish from Hawai'i was being sold than what's been reported.

No one from Hawaiian Sealife had attended the meeting to answer questions about its activities.



Yellow tang. CREDIT: NOAA

Last month, however, Hawaiian Sealife president Richard Xie testified that his company has been inspected by the USDA, the U.S. Fish and Wildlife Serivce, and the state Division of Aquatic Resources.

"We file fish reports. … We have the most transparent business in Hawai'i," Xie said.

DAR's David Sakoda told the board that the division has reviewed Hawaiian Sealife's purchases and "didn't see anything to suggest any thing falsely reported. … Everything was closely aligned."

(For more background, see, "Efforts to Quash Aquarium Collecting Ramp Up at Land Board, Legislature," from our February 2023 issue.)

— Teresa Dawson