Volume 34, Number 1 July 2023

Environment Hawai‘i
a monthly newsletter

A Federal Case

A long-simmering dispute between a North Shore developer and the City & County of Honolulu has boiled over into a federal case. At issue is whether the developer should be required to obtain a Special Management Area permit for the roads and buildings proposed within a condominium property regime the developer created a decade ago.

The list of grievances enumerated in the federal complaint is long and wide-ranging, involving not just the disagreement over SMA requirements but also compliance with public-records laws and unfair tax assessments.

Meanwhile, an owner of a unit within the same CPR has moved forward with a full SMA permit application for her own project.

Confused yet? Teresa Dawson explains – to the extent possible – in her cover article.

This month's issue marks the start of our 34th year of publication. Thanks to all who have helped us achieve this milestone.

IN THIS ISSUE

Developer Sues City for Holding Up Permits, Subdivision at Marconi Point

In a complaint filed May 26 in U.S. District Court, the owner of nearly 100 acres of coastal, agricultural land on O‘ahu's North Shore alleged that the City & County of Honolulu violated his companies' due process rights by stymieing efforts to build farm dwellings and to subdivide lands within a condominium property regime he created a decade ago.

Among other things, Jeremiah Henderson III — through his companies Makai Ranch, LLC; Marconi Farms, LLC; MP Unit 21, LLC; and RCA Trade Center, Inc. — argues that the city Department of Planning and Permitting gave assurances early on that a handful of farm dwellings could be built without Special Management Area permits. Yet, according to the lawsuit and the city's permitting website, building permit applications for new farm dwellings have either been held in limbo or rejected.

Henderson's attorneys have pointed out that the department's current insistence on a Special Management Area review for the agricultural subdivision project is at odds with past positions the agency took with respect to his property and that of others.

But rather than being due to a more careful approach toward development within the Special Management Area, the city's about-face, Henderson alleges, is due to corruption within the DPP.

Henderson claims that one of his companies, Makai Ranch, has invested nearly $17 million in "pursuing, planning, designing, and constructing the infrastructure necessary to support anticipated uses of the property, plus additional expenses for the planning, designing, and constructing other agriculture and infrastructure improvements."

Having incurred those costs, he claims Makai Ranch has vested constitutional rights to building permits, roadway consolidation and re-subdivision, and agricultural consolidation and re-subdivision. He also claims that his companies and their successors also have vested constitutional rights to construct farm

continued on page 4

Marconi Point Condominiums property on O‘ahu's North Shore.

Environment Hawai'i
Volume 34, No. 1
a monthly newsletter
July 2023

NEW AND NOTEWORTHY

More 'Aina Le'a Delays: A year ago, the 38-acre parcel on which 'Aina Le'a had begun to build the first of nearly 400 units of "affordable housing" was sold at a foreclosure auction to Romspen Investment Corporation, one of the company's several creditors. By order of the 3rd Circuit Court, the writ of possession was to be issued within a matter of weeks.

That has yet to happen. In June, the court approved yet another delay – the fifth – in transferring ownership of the parcel. What lies behind the multiple extensions is the murky condition of the title. The commissioner in foreclosure, George Robinson, had informed the court last year of the difficulty he had in even getting a title company to prepare a title report.

Old Republic eventually agreed to prepare the report. In March, it presented the court and commissioner with an updated title report, but that report noted "several encumbrances that will need to be clarified and/or resolved before this matter can close."

In a stipulation providing for the latest time extension, issued by the court on June 26, the court noted that now "there are unresolved questions as to whether Old Republic will issue title insurance for any sale of the property" by Romspen or its agents.

And there do seem to be plenty of transactions that might cast a shadow over title to the property. More than a decade ago, 'Aina Le'a raised capital for the purchase of this and an adjoining parcel through the sale of "undivided land fractions" to hundreds of investors in Asia, giving each of them a tiny fee-simple share of the land. When the company entered bankruptcy, the investors were instructed to turn their fee interest over to a trust, which would manage their investments. Moreover, the property to be conveyed to Romspen had been subject to junior liens as well.

In 2021, the subject lot and two additional ones were also encumbered by an affordable housing agreement that 'Aina Le'a entered into with the Hawai'i County Office of Housing and Community Development. That agreement calls for 385 affordable units to be built on the land to be conveyed to Romspen, plus 120 to be built on other parcels. Soon after signing the affordable housing agreement, Robert Wessels, CEO of 'Aina Le'a, signed a purchase and sale agreement, committing to sell the lot to Lava Rock, LLC, a Florida company.

Michael Kliks: Hawai'i has lost yet another strong voice for conservation and science with the death in May of Michael Kliks. He was well known in Hawai'i as a champion of honeybees. Less well known was his background as a war photographer and parasitologist. In that latter capacity, he was one of the earliest researchers to investigate the deadly impacts of rat lungworm disease.

Michael Kliks

KIUC Permits: On June 7, the state Board of Land and Natural Resources appealed a recent ruling by 1st Circuit Judge John Tonaki in favor of Kia'i Wai O Wai'ale'ale and Friends of Maha'ulepu. The community groups had challenged the board's 2021 and 2022 renewals of Kaua'i Island Utility Cooperative's revocable permits to divert Wai'ale'ale and Waikoko streams, as well as the board's decisions to deny their requests for a contested case hearing.

Tonaki found that the Land Board had denied the groups' due process rights, and that "the board's failure to enter findings of fact or conclusions of law resulted in an inability to determine whether the board properly exercised the discretion vested in it by the constitution and the statutes in approving the permits."

Quote of the Month

"There are some balls in the air here. They're being juggled, and I'm not sure who the juggler is. And I'm not sure how many balls. But we need to understand all that."

— Dan Giovanni, Land Use Commissioner

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

Patricia Tummons, Editor
Teresa Dawson, Managing Editor

Environment Hawai'i is published monthly by Environment Hawai'i, 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 Hawai'i
421 Ka'anini Street, Hilo Hawai'i 96720.
Telephone: 808 933-2455.
E-mail:ptummons@gmail.com
Web page: http://www.environment-hawaii.org
Twitter: Envhawaii

Environment Hawai'i 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

Conservation Groups Will Take Part In Lawsuit Opposing Mosquito Release

On July 19, Environmental Court Judge John Tonaki will hear a motion by Tina Lia and Hawai'i Unites for a preliminary injunction barring an effort on Maui to reduce the prevalence of avian malaria-carrying mosquitoes where critically endangered Hawaiian forest birds live.

The plan, evaluated in an environmental assessment approved by the state Board of Land and Natural Resources in March, is to release into forested areas male mosquitoes carrying a strain of the *Wolbachia* bacteria that differs from that of resident mosquitoes. Any offspring resulting between the introduced and local mosquitoes would be inviable. As a result, the overall mosquito population would drop.

Lia, who formed the group Hawai'i Unites in January, has argued that the plan is experimental and could have devastating effects. Her complaint, filed in 1st Circuit Court, argues that the Land Board and Department of Land and Natural Resources violated both the Hawai'i Environmental Policy Act by not requiring a full environmental impact statement and state law on administrative procedures.

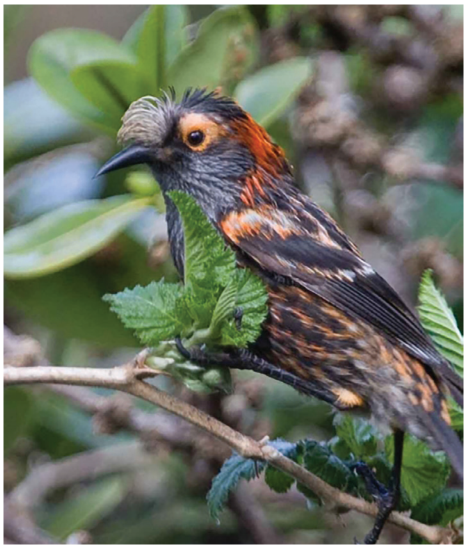
On June 26, attorneys for the state filed a partial motion to dismiss the complaint. That motion will also be heard on July 19.

The attorneys argued that Count II of the complaint should be dismissed because the plaintiffs fail to allege any facts showing the Land Board departed from proper procedures for approving an EA and issuing a finding of no significant impact, or for denying a contested case hearing.

Lia had orally requested a contested case hearing at the Land Board's meeting in March, but it was denied. She and her group filed the complaint before the board could decide on their written petition for a contested case hearing, which was eventually denied as well.

The state deputy attorneys general noted that HEPA allows the public to challenge agency determinations, which plaintiffs have done in Count I. However, the act does not allow for contested case hearings on the acceptance of an EA because such a decision does not affect a constitutionally protected interest, they added.

"Because the final EA is only an environmental review of the project and does not itself permit any action in the project to go forward, it cannot affect property interests," they wrote.



Crested honeycreeper, or 'ākohekohe. CREDIT: USFWS

Maui parrotbill, or kiwikiu. CREDIT: USFWS

Intervention

Also on June 26, the American Bird Conservancy filed a motion to intervene as a defendant.

The mosquito release is a project of a consortium of state, federal, and non-profit agencies known as "Birds, Not Mosquitoes." ABC, a founding member, has "invested over $500,000 in developing and testing the incompatible mosquito in a laboratory setting, and led community engagement efforts to raise awareness of the plight of Hawaiian honeycreepers and the IIT (incompatible insect technique) solution with the general public, community leaders, and legislators," ABC's memorandum in support of its motion states.

"ABC seeks to intervene to support the defendants and the adequacy of the EA. … [T]he complaint would stop ABC's rescue efforts in its tracks, and in all likelihood result in the extinction of some of the species ABC has tried so hard and long to protect," the memo continues.

On June 29, the Earthjustice law firm, on behalf of the Conservation Council for Hawai'i, filed a motion not to intervene, but to merely participate in the case through the filing of amicus briefs.

In its memorandum supporting its motion, CCH noted that it has been involved in "countless matters before state and federal agencies and courts on environmental issues, including matters concerning protection of endangered and threatened species. CCH has been a party to lawsuits, settlements, and agency proceedings concerning the protection of endangered and threatened wildlife, including participation in various habitat conservation planning processes statewide. … CCH has also been directly involved in legal matters under the Hawai'i Environmental Policy Act … which is the law at issue in this case."

"Likewise, CCH's counsel Earthjustice has had extensive experience practicing for over 30 years in matters concerning the protection of native and imperiled wildlife in Hawai'i and the application of the HEPA law…. CCH and Earthjustice note that Plaintiffs appear to have copied liberally from a complaint Earthjustice filed in another case before this Court, which further highlights how CCH and its counsel can offer important insights regarding Plaintiffs' proffered interpretations and application of HEPA in this case.

"Plaintiffs' request to halt the program known as Birds, Not Mosquitoes directly affects CCH's interests in preventing the extinction of endangered native species. As CCH will explain in further detail in its brief should this court grant CCH's request to participate as amicus, the balance of harms weighs heavily against granting plaintiffs' requested relief. … If the spread of avian malaria is not promptly mitigated, at least two species of endangered birds, the kiwikiu *(Pseudonestor xanthophrys)* and 'ākohekohe *(Palmeria dolei),* are expected to go extinct within two to ten years. Plaintiffs' motion relies heavily on alarmist speculation and conjecture in their attempt to halt the program in its tracks and threatens to harm the public's interest in conserving and protecting Hawai'i's gravely imperiled native wildlife and ecosystems," CCH's memorandum states.

Both ABC's and CCH's motions did not require hearings.

— Teresa Dawson

Marconi Point *continued from page 1*

dwellings, agricultural buildings and other agricultural structures and infrastructure "and to otherwise use the property for agricultural purposes without an SMA Permit," the complaint states.

In addition to seeking declaratory and injunctive relief, Henderson is seeking attorneys' fees, damages and compensation for the taking of his companies' real property interests.

The city has until the end of this month to respond to the complaint. Exhibits filed as part of the complaint provide some insight into the city's position with regard to whether or not SMA permits would be needed for the improvements he has proposed.

In a January 21, 2022, letter to one of Henderson's attorneys, Greg Kugle, then-DPP director Dean Uchida responded to their assertion that the DPP was required to approve the proposed subdivision, which would consolidate and subdivide the land into four lots of roughly 20 to 23 acres each.

Uchida wrote, "Recent site inspections by DPP building inspectors identified multiple new structures in the panhandle area to the east of the Turtle Bay golf course, constructed without building permits.

"As the entire property is in a Special Management Area, these unpermitted structures, as well as any existing, proposed, or planned structures, and improvements to the property, which constitute a larger project, are subject to SMA review and permitting. The DPP will not allow the development of the property to continue in the pattern of segmenting into individual, unrelated projects, which has occurred thus far."

SMA-Exempt?

According to a *Honolulu Advertiser* article by Andrew Gomes, Florida-based J. Henderson Co., purchased the land in 2005 for $2 million with plans to subdivide it into an agricultural subdivision with house lots. But by November 2009, the company was offering it for sale via sealed bid. The company had listed it for sale earlier in the year for $15 million.

The property ended up remaining with the Henderson-related company Makai Ranch, which eventually established an agricultural condominium property regime — Marconi Point Condominiums — consisting of 32 units in 2013.

Over the years since then, 15 units covering about 58 acres have been sold to various buyers for a total of around $11 million. The remaining units remain with Makai Ranch or have been conveyed to Marconi Farms, MP Unit 21, or RCA Trade Center.

Over the last decade, various unit owners have applied for building permits for new farm dwellings. None of them has yet been permitted to build one.

In the meantime, some unit owners have erected very house-like structures — some on CPR units where farm dwellings are not allowed — but violation cases against them were closed after they submitted declarations that the buildings were simply agricultural structures (i.e., a barn or storage shed). One violation case where a farm dwelling is allowed remains open. (See our November 2022 article on this)

Before offering units for sale, an architect for Makai Ranch, Gregory Quinn, inquired with the DPP about the number of farm dwellings that would be allowed on one of the larger parcels within the CPR, Lot E.

Lot E contains four old and mostly derelict structures that were part of the Marconi Wireless Telegraphy Station complex, which is listed on the state and national historic registers.

On May 8, 2014, then-DPP director George Atta informed Quinn that the old structures that were likely built in 1914 did not affect the right to build a farm dwelling on the 20.52-acre parcel.

The gate fronting the Marconi Point agricultural condominium property regime.

Atta stated that the city ordinance 25-1.3(2)(A) exempted a single-family residence from the need to obtain an SMA permit if the floor area was less than 7,500 square feet. But each farm dwelling and any accessory uses had to be contained within 5,000 square feet, he added.

"[T]he processing of a building permit for a farm dwelling is permitted on the site, provided that all LUO [Land Use Ordinance] and other development standards are met," Atta wrote.

That apparently did not mean that building permits would necessarily be approved for the site without undergoing an SMA review. On October 6, 2016, the DPP created an advisory for the entire CPR area that stated that the department's residential examiner would review building permits for Land Use Ordinance compliance "and if SMA is triggered or not." If the reviewer determined that a special use permit or SMA permit was required, then the building permit application would be routed to the Zoning Plan Review Branch to determine whether a special use permit and/or a special management area permit were required.

The DPP issued the advisory a few months after receiving applications from the owners of Units 8 and 11 for farm dwellings.

According to the complaint, "The owner of Unit 8 began to experience problems with the permitting delays and began the process of asserting a legal claim against Makai Ranch."

The DPP's website notes that the agency is still awaiting the submission of agricultural development plans for both units.

"To mitigate the owners' damages, Makai Ranch hired architect and third party reviewer William Wong (and/or his firms Jenken Pacific Inc., and/or Asia Pacific Consultants, LLC) to facilitate expedited processing of the Unit 8 applications," the complaint states. And here, Henderson alleges, things went sideways.

Pay to Play?

On March 29, 2017, an employee of Wong's, Jackson Lee, emailed Unit 8 owner Mary Breen that the city wanted an archaeological inventory survey (AIS) for the area to be conducted before it would issue a permit.

Makai Ranch informed Lee that an AIS had already been done for the entire property.

The complaint alleges that Wong and Lee refused to accept the state Historic Preservation Division's approval of the prior AIS, claiming that additional approvals from the agency's archaeology section were still required.

"Wong was intentionally delaying and interfering with the processing of the Breen permits in an attempt to force Makai Ranch to pay additional consulting fees for an unnecessary AIS," the complaint states. This, despite the DPP confirming on April 17, 2017, that the SHPD review, part of the permitting process, was complete.

A little more than a week later, on April 28, the DPP added a note to the permit file that an agricultural site development plan was required before further processing. This same requirement was also imposed on the building permit application for Unit 11.

Then on May 2, 2017, "without authorization from Makai Ranch or Breen, Wong sent a letter to DPP stating, 'Please cancel the permit application immediately.'"

The complaint argues that an agricultural site development plan is only required when six farm dwellings are going to be built on an oversized lot. In this case, only two farm dwellings were being proposed for Lot E, one on Unit 8 and one on Unit 11.

On May 23 of that year, Henderson sent a letter to the DPP asking it to approve the farm dwelling permits for those units.

The July 6 reply by then-acting DPP director Kathy Sokugawa indicates that the agency was taking a broader view of development within the CPR.

Sokugawa pointed out that, in responding to a consolidation/subdivision application submitted in March to widen Marconi Road, her department had already informed Henderson that the development of the agricultural CPR units could not occur "piecemeal or incrementally." Rather, the entire project had to first comply with the city's subdivision rules and regulations, as well as the city's subdivision ordinance.

"This," she continued, "will not only ensure an orderly development of the land, and the provision of adequate utilities and roads to serve the residents' needs, but will also ensure the properties provide feasible agricultural use to purchasers or tenants, and that covenants and restrictions will be in place to maintain the properties in agricultural use. In addition, the entire development must be evaluated for SMA, or shoreline compliance, and whether it will have a significant environmental or ecological effect on coastal resources.

"Accordingly, until a subdivision approval has been obtained and SMA compliance has been determined, the DPP will withhold permits to move or construct any buildings and install any appurtenant utilities within the boundaries of the agricultural condominium, except as provided by state law."

In an August 25, 2017, reply, Makai Ranch's attorneys Kugle and Loren Seehase argued that the state Coastal Zone Management Act, as well as the city's ordinances implementing that act, exempted several actions from the definition of development, including the construction of single-family residences under 7,500 square feet that are not part of a larger development; repair and maintenance of roads with existing rights-of-way; the subdivision of land into parcels larger than 20 acres; the creation of land rights; and the use of any land for "cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes."

The CZM act, however, also states that "whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as 'development.'" The city's ordinances contain similar language.

In deferring Makai Ranch's roadway subdivision application, the DPP explained it had based its determination that a larger development was planned for the Marconi properties on the company's prior correspondence, a public report, and the building permit applications.

Even so, the complaint blames the DPP's position exclusively on corruption. In 2021, Wong pleaded guilty to bribing DPP employees (he's expected to be sentenced this month), and at least one former DPP employee involved in the permitting at Marconi Point, Kanani Padeken, pleaded guilty to accepting bribes.

"Plaintiffs believe that, when Makai Ranch declined to pay additional consulting fees to Wong or his affiliates for a new AIS, Wong contact Calvert Hung, Kanani Padeken, or some other employee at DPP, with whom Wong had a relationship, to cause DPP to stop, delay, or otherwise impede the processing of the Breen permit applications. Plaintiff believes this intentional delay was just one of many instances of the corrupt 'pay to play' system that has been widely publicized in the news media as plaguing DPP," the complaint continues.

"Conceptual rendering of how the hotel building might look following restoration. Family residence or retreat with beachfront?" From promotional materials for a January 2022 auction of units 16-19. Those units, which include the historic Marconi Point buildings, sold for around $4 million to Greystone HI Investments, LLC. CREDIT: HAWAII LIFE

The complaint then lists dozens of building permit applications associated with the CPR that have been affected or potentially affected by the DPP's moratorium. It includes the farm dwelling applications, as well as permit applications filed by Makai Ranch to pour foundations for eight buildings.

The complaint also alleges that the moratorium was a regulatory taking of Makai Ranch's property rights.

"In addition, the DPP defendants imposed different requirements on Makai Ranch than similarly situated agricultural condominiums, violating Makai Ranch's equal protection rights. Once such example is the Waialee condominium project located near Kawela Bay, which like the [Marconi] property, is located within the SMA, and contains several zoning lots and multiple condominium units with five farm dwellings," it states.

Agricultural Subdivision

Despite the arguments that the proposed buildings and roadway improvements were not part of a larger development that was subject to SMA regulations, the city held firm on its position when Makai Ranch submitted an application on February 14, 2020, to subdivide its 96 acres into four 20- to 23-acre agricultural lots with roadways.

In an April 24, 2020, deferral letter, the DPP listed 14 conditions that would need to be satisfied before it would act on the application. They included consultation with the agency's Land Use Permits Division regarding the project's compliance with the city's SMA ordinances, since the division had already taken the position that the cumulative impact of the proposed improvements, "all of which is or may become part of a larger project, may have a significant environmental or ecological effect, and therefore, is 'development.'"

They also included evidence of compliance with requirements from the state Department of Health Wastewater Branch, Honolulu Board of Water Supply, Civil Engineering Branch, as well as receipt of comments from the state Department of Agriculture and the Department of Land and Natural Resources' Historic Preservation Division.

More than a month earlier, on March 5, the DPP asked SHPD to comment on the application. SHPD's April 20 reply noted that the U.S. Department of Agriculture had initiated a National Historic Preservation Act, Section 106 consultation that month on the proposed construction of eight single-story agricultural structures, parking, turnarounds, and landscaping within the Marconi Wireless Telegraphy Historic District. The USDA had determined that the project would have an adverse impact on the site. (The USDA review was triggered by a loan Makai Ranch received to develop the agricultural structures.)

"The USDA has indicated that while construction has started on 3 of the 8 proposed buildings, all ground disturbing work is pending completion of Section 106 consultation," SHPD wrote. A draft Memorandum of Agreement was under SHPD review and Section 106 consultation was ongoing at the time.

Given that, SHPD administrator Alan Downer requested that the DPP postpone Makai Ranch's consolidation and resubdivision request "until the Memorandum of Agreement to address adverse effects to history properties has been completed and executed."

That MOA with Makai Ranch was not completed until August 2, 2021.

Automatic Approval

Given SHPD's request, the DPP supplemented its April 24 deferral letter on May 8, adding compliance with the division's requirements to the list and clarifying that the deferral would expire on July 23, 2020, which was 90 days after the initial deferral.

If Makai Ranch failed to submit a written deferral extension request before the deadline, the subdivision application would expire and need to be resubmitted. The ranch did end up requesting an extension, and on July 10, the DPP granted it, noting that the application would expire on January 23, 2021, if all requirements were not met by then.

On August 27, 2020, Kugle wrote to Sokugawa, again protesting the SMA requirement. He noted that in a 2008 subdivision application deferral letter to the owners of land adjacent to Makai Ranch's property, the DPP stated that that subdivision was exempt from SMA permit requirements because the proposed lots were greater than 20 acres in size.

"[T]here was no 'cumulative impact' or 'significant effect' determination. Makai Ranch is likewise SMA exempt," he wrote.

Kugle also addressed some of the other requirements of the deferral. Paul Matsuda, principal of the consulting firm G70, responded to the remaining ones in an August 28 letter to the DPP, requesting approval of the project's preliminary subdivision map.

After the DPP went months without responding, Kugle wrote to then-DPP director Uchida on January 22, a day before the application was to expire.

Kugle argued that because the department had not responded to the August letters from him and G70 within 30 days, automatic approval of the preliminary map was required.

The city's subdivision Rule 2-202(b) states, "The director shall act on the preliminary map with [sic] 30 days after filing." Another section of the rules adds that a deferral by the director "means that the preliminary map requires further consideration, study or consultation, or additional reports or data are required from the subdivider, or minor changes … are required."

The rules allow for an initial 90-day deferral plus a single six-month extension, if requested. Failure to receive tentative approval by the end of the deferral renders the application null and void.

Once the Planning Commission's subdivision committee and other governmental agencies review and comment on a final subdivision map, the DPP director "shall act upon the final map within 45 days after filing" by either approving or disapproving it, the rules state.

Nowhere in the rules does it state that the DPP director's failure to act on either the preliminary map or the final map by the deadlines of 30 days and 45 days, respectively, results in automatic approval.

The city ordinances on land subdivision, however, do state that the director "shall approve or disapprove the final map within 45 days after receipt thereof unless the subdivider waives this requirement and consents to an extension of such period in writing; otherwise such map shall be deemed to have been approved."

Kugle argued that Rule 2-202(b) required the DPP to act on the preliminary subdivision map within 30 days, "or by September 30, 2020," which was 30 days after Makai Ranch's representative had responded to the DPP's requests.

Uchida did not respond until June 28, 2021. In his letter to Kugle, he stated that Makai Ranch's application expired in January. He explained that the automatic approval provisions for subdivision applications don't apply to those that have not progressed beyond tentative approval. "Only applications that have received tentative approval and submit final subdivision maps are entitled to automatic approval if the DPP does not approve or disapprove the final map within 45 days," Uchida wrote.

"Although documents and revised preliminary maps were submitted on August 28,

Adjacent to the Marconi Point condominiums is a restoration project at Kahuku Point, which provides habitat to native seabirds, including Laysan albatross. Albatross have been found nesting on the Marconi Point lands. Endangered Hawaiian yellow-faced bees and Hawaiian green sea turtles also inhabit and nest in the area.

2020, … this submittal did not address all of the deferral requirements. In addition, not all the agencies reviewing the application indicated their acceptance or approval of the proposal. … The lack of, or delay in, an agency's response does not constitute justification for the DPP to disregard compliance with their requirements and regulations," Uchida wrote.

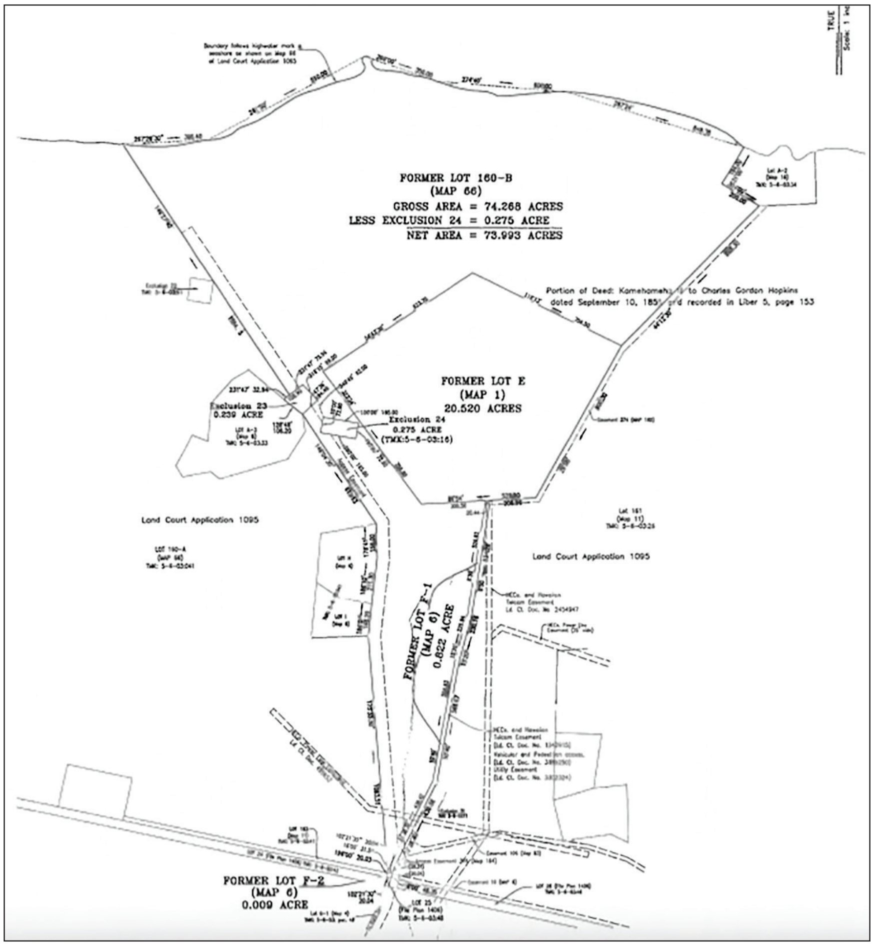
Uchida noted that Makai Ranch had failed to meet eight of the requirements of the deferral. They included confirmations from the DOH's Wastewater Branch, the Civil Engineering Branch, the Traffic Review Branch, and SHPD that their requirements had been met, or a determination from the DPP's Land Use Permits Division as to whether all the existing, proposed, or planned structures and improvements within the subdivision constitute "development."

"Due to the large daily volume of correspondence received, the DPP is unable to provide written acknowledgement of every correspondence item it receives, and whether it is acceptable or not to satisfy a requirement. … [I]t is the responsibility of the applicant or its agent to keep track of the status of the outstanding items on the deferral or supplemental deferral letters," he added.

Kugle countered in a letter on November 8, 2021, that Makai Ranch "was deprived of the opportunity to submit its final map for approval because the DPP did not timely respond to Makai Ranch's deferral comment responses, which was the only factor standing in the way of a tentative approval." He again argued for automatic approval of the preliminary map and explained how the DPP's deferral requirements had either been met or were unnecessary. He also noted that SHPD had entered into an MOA on August 2, 2021, which was one of the requirements that was supposed to have been met by the extension deadline of January 23, 2021.

In his January 21, 2022, response, Uchida reminded Kugle that the subdivision application had expired and stated that his department would not consider specific subdivision requirements without a new application.

"The updated preliminary maps and documents must include and explain the additional development which occurred on the property since the subdivision application's expiration," Uchida wrote, noting the new structures that had been constructed without building permits. "In order for a subdivision application to be processed efficiently, compliance with SMA requirements must be determined for the cumulative impact of all development on the property prior to subdivision application submittal," he wrote.



An SMA-Major permit application has been filed for the Former Lot 160-B section of the Marconi Point CPR.

Going Rogue

In Henderson's complaint, his attorneys argue that his companies are entitled to a declaration that the DPP violated their rights and to an injunction and relief ordering the agency to approve ministerial building permits and the subdivision applications for the roadway and the agricultural subdivision.

While he appears to be doing everything he can to avoid having to obtain an SMA permit, a consultant for the owner of Unit 1, which is one of the few that are allowed a farm dwelling under the CPR declarations, has filed a SMA-Major permit application with the DPP for Lot 160-B.

Lot 160-B is one of the five lots that make up the Marconi Point lands. It encompasses 74 acres along the shoreline.

Mark Howland of WHALE Environmental Services, LLC, has been assisting Unit 1 owner Yue-Sai Kan in her efforts to build a farm dwelling on her four-acre oceanfront lot, which she bought from Marconi Farms for $3.6 million.

Her building permit application as well as her exemption for an agricultural structure she built without permits that incurred a violation have been stalled pending the resolution of SMA issues.

Howland serves on the Honolulu Authority for Rapid Transportation board along with current DPP director Dawn Apuna. He says that the DPP "asked if we could clean up this mess."

Because the permit application covers only Lot 160-B, which includes oceanfront units 1-6, 16-19, and 28-32, as well the mauka units 7-9, "it only takes care of part of the mess," he added. The permit application is filed on behalf of the Marconi Point Condominiums.

Howland says that under the Honolulu City Council's Bill 42, which the mayor signed in March, an SMA major permit may be obtained for one-family and two-family detached dwellings on a single zoning lot without having to conduct an environmental assessment or impact statement first. Under the CPR covenant, he says, only units 1 and 5 within Lot 160-B can have farm dwellings.

How this permit application affects Henderson's lawsuit against the city is unclear. The attorney who signed the complaint, Ross Uehara-Tilton, did not respond to questions by press time.

— Teresa Dawson

Land Use Commission Has Questions About Waikapu Housing Development

Fifteen years ago, the Land Use Commission approved the redistricting request of Emmanuel Lutheran Church of Maui. By the commission placing the land into the Urban District, the church could move forward with an ambitious, $20 million, 10-year plan to build new classrooms and facilities for its school and a new sanctuary. Most of the development would occur on about half of 25 acres owned by the church, lying between Honoapi‘ilani Highway and Waiale Road, south of Wailuku.

Today, the landscape – weedy trees and scrub grasses – is mostly unchanged.

But in other respects, it is vastly different.

In 2018, the church had yet to move forward with its plans. Acknowledging that it was unable to finance its grand plans and still having to pay off a hefty mortgage, it approached the LUC with a plan to bifurcate the project and subdivide the land. It had already lined up a party to purchase about half the property, but it needed LUC approval of the proposed subdivision and sale of approximately 12.5 acres to Waikapu Development Venture, LLC (WDV). President of WDV is Peter K. Martin, whose projects elsewhere, especially in West Maui, have not been without controversy.

On November 29, 2018, the commission approved the requested amendments. Specifically, the LUC order issued after that meeting states, "Upon the completion of the subdivision process to split the petition area into two large lots, ELC [the church] will sell one of those lots to WDV. ELC will develop the updated ELC project on the portion of the petition area it retains. WDV will develop the workforce housing project authorized under County of Maui Resolution No. 18-150." The housing project was to be developed within four years of the date the LUC's decision took effect.

Although the vote was made in November, the language of the final order was not approved by the commission until June 27, and the certification – the final signing-off on the decision, before which it has no legal effect – was not made until July 11, 2019.

Despite the absence of official sanction and the fact that the parcel had not yet been subdivided, WDC and the church moved forward with the sale of the property.

On June 28, officers of both parties signed two documents: a warranty deed and an agreement of sale. The deed was filed with the Bureau of Conveyances on July 3; it describes the property being sold as the entire parcel, with a purchase price of $1,150,000. The agreement of sale was filed

continued on page 9

Developer Seeks Fair Taxation, Disclosure of DPP Documents

UIPA Request: In addition to seeking declaratory and injunctive relief, as well as damages, fees, and compensation (see cover story), the complaint filed in May by Marconi Point-related companies owned by Jeremiah Henderson III have also asked the U.S. District Court to compel disclosure of information and documents regarding the Honolulu Department of Planning and Permitting's investigations of corruption within its agency.

The complaint alleges that corruption was at the root of the DPP's change of heart with regard to whether the work proposed at Marconi Point constituted development under Special Management Area rules.

On August 19, 2021, the law firm Damon Key Leong Kupchak and Hastert, which represents Henderson's companies, filed a request with the DPP to access government records.

The firm sought materials provided to the FBI, the U.S. attorney for Hawai‘i, and/or any other state or federal investigative or law enforcement agency "related to investigation of William Wong, Wayne Inouye, Kanani Padeken, Jocelyn Godoy, Jason Dadez, and/or Jennie Javonillo." All of them have pleaded guilty to federal corruption-related charges.

The firm also wanted records and communications between DPP employees and the FBI, information related to misconduct of the DPP employees who pleaded guilty, as well as copies of all records produced to other requestors of information about the public corruption within the DPP.

The DPP denied the firm's Uniform Information Practices Act request on September 14, 2021.

"The request is the subject of a pending appeal to the Hawai‘i Office of Information Practices (OIP). However, OIP advised plaintiffs that due to short staffing and a significant backlog, plaintiffs' appeal would not be adjudicated in a timely manner and thus plaintiffs should consider initiating a court proceeding," the complaint states.

Fair Taxation: In addition to the DPP, the complaint names the city's Real Property Assessment Division (RPAD) as a defendant.

"[T]he defendants have violated plaintiffs' constitutional rights by on one hand preventing plaintiffs from using their property for lawful agricultural purposes, while on the other hand simultaneously taking the position that the city is entitled to greater real property tax revenue because plaintiffs' properties are not in active agricultural use," it states.

It argues that the division improperly cancelled an agricultural dedication that would have resulted in lower property taxes within the Marconi Point condominium property regime. Litigation between the division and Makai Ranch led to a settlement covering taxes through 2018. The division effectively denied the ranch's agricultural dedication petition in subsequent years.

"The RPAD defendants issued their assessment notices for the current 2023/2024 real property tax year on or about December 15, 2022. Despite the fact that plaintiffs' units are unimproved (because of the DPP defendants' refusal to issue the necessary permits and approvals), the RPAD defendants assessed plaintiffs' units at rates much higher than fair market value and much higher than the rates used to assess plaintiffs' neighbors, even plaintiffs' neighbors within the same Project," the complaint states.

Henderson's companies seek a declaration from the court that the RPAD is violating county ordinances by improperly assessing their properties.

— Teresa Dawson

two days later, and only on this document does there appear the description of the property to be sold as "proposed lot 'A-2' … being 12.760 acres, more or less," about half of the undivided property.

And so, despite the commission having authorized the sale of only half of the land, and even that to occur only following county subdivision, the developer today owns the entire parcel. Maui County tax records show WDV as the sole owner of record, with Emmanuel Lutheran holding an "agreement of sale." Emmanuel Lutheran Church will only regain the half of the property where it intends to build its facilities once the subdivision is completed.

The church did manage to pay off its mortgage a month later. In 2016, when it had refinanced earlier loans, the balance stood at around $411,000. In August, the mortgage was paid off, but the church had little left over with which to pursue its own plans.

A Slowdown

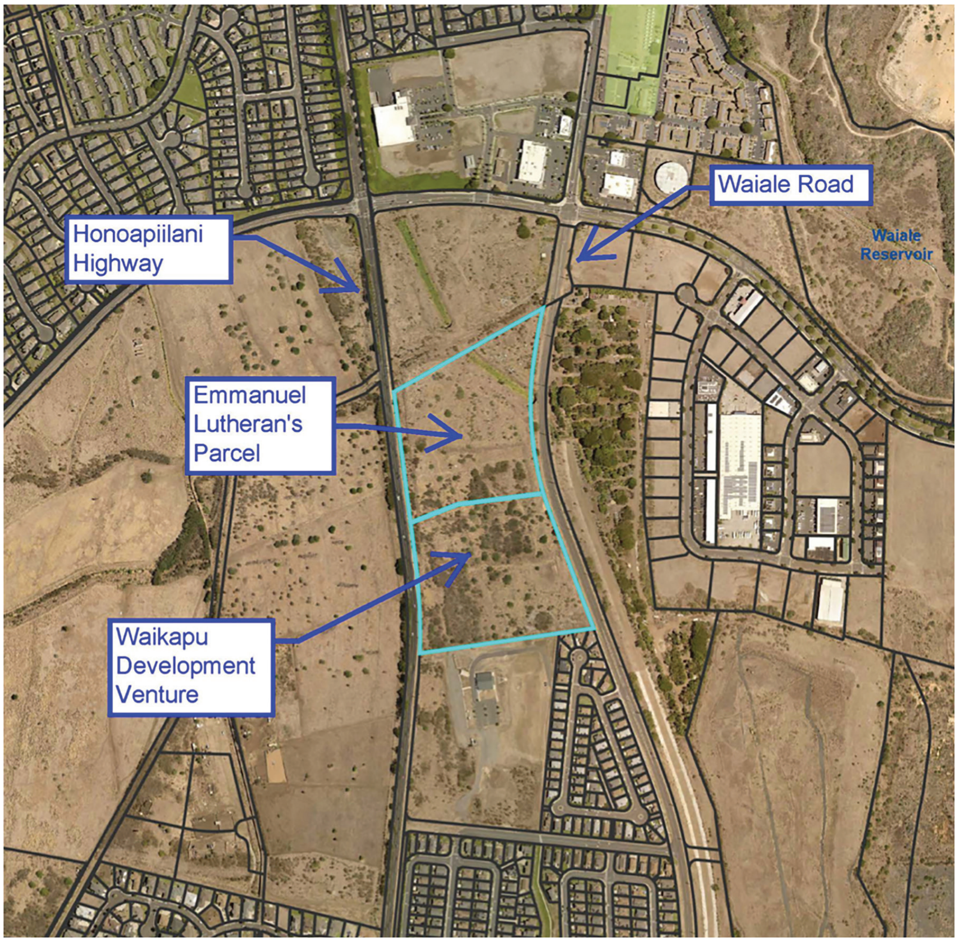
In 2018, WDV had given the commission reason to believe that it would complete construction of 80 units of workforce housing within four years. It had the agreement with the church providing for purchase of about half of the church's property. The timeline it presented to the LUC had the first families moving into the new homes by the end of 2020.

Based on those representations, the commission voted to approve WDV's plan, "provided that WDV's Waikapu Affordable Workforce Housing Project shall be developed within four years."

WDV presented a similarly ambitious schedule to the Maui County Council, which approved plans for the housing – 68 single-family houses plus six duplexes and a one-acre "pocket" park – in September of that year, again with a four-year deadline for completion: September 7, 2022.

Recognizing it would require more time, in 2020, the developer sought, and received, a time extension from the county. In July of that year, the County Council granted WDV two more years – until September 2024 – to complete the housing. Finally, in late 2022, the developer began work on a waterline along Waiale Road, one of the conditions of the affordable housing project. But that was pretty much the only progress. The promised subdivision of the church lot into two parcels of about 12.5 acres each had not yet – and still has not – been completed.

Nor were these the only undone tasks. One of the requirements of the boundary redistricting was that annual reports be filed with the Land Use Commission. From 2018 until April 2023, neither the church nor WDV filed anything with the commission.



MAP CREDIT: WAIKAPU DEVELOPMENT VENTURE

An Update – and a Request

On April 13, 2023, the LUC received a nine-page letter signed by Martin (for WDV) and by two church officers (for Emmanuel Lutheran). "We apologize for the gap in reporting and respectfully request your acceptance of this report satisfying reporting requirements for 2018, 2019, 2020, 2021, 2022, and 2023," they wrote.

The church "still does not have the ability to begin or complete construction by the March 7, 2018, deadline of ten years," their letter stated, attributing the delays to "numerous factors," including financial issues and falling enrollments. "The Covid-19 pandemic made development even more difficult," they added.

WDV also referred to Covid and "current economic conditions" in explaining its own failure to complete construction by the July 11 deadline. In addition, Martin complained of county and state agencies being slow to review construction plans.

A month later, with the LUC staff having pointed out technical and other problems with the March report, WDV and the church filed a revised one. This set forth more accurately the conditions of the 2018 amendment to the original LUC decision, as well as a proposed document to record with the Bureau of Conveyances, replacing one filed in 2022. Along with the revised report and attachments, Peter Horovitz, the attorney who had been representing WDV for years, notified the LUC of a change of counsel. Henceforth, Jeff Ueoka would be counsel of record for WDV, Horovitz stated.

On June 6, the commission met to discuss the annual report and hear a status update from Ueoka. A representative of the church, Leif Sjostrand, was present as well, although the church had no specific plans so far as development of its parcel was concerned.

Ueoka, however, had quite a bit to share with the LUC.

The project has been on hold for a while, he acknowledged, but now the "team" was working with the county on getting approvals for a $10.65 million grant and modifications to the original workforce housing proposal. From the commission, he said, WDV was "hoping for an extension of the completion of construction deadline. We were going to ask for a deadline of July 11, 2027 – but would like to extend that to September 2027, to line up" with the county permit.

Modifications to the original layout now included no duplexes, but rather only single-family houses. To accomplish the revised layout, sidewalks had been relegated to just one side of the street, cul-de-sacs had been eliminated, and the "pocket" park had also been erased. The duplexes were dropped, Ueoka said, since they were not as easily marketed as single-family homes.

"We wanted to have the county take over the detention basin and greenways in hopes of eliminating … the need for a home-owners association. But the council wasn't keen on that when we proposed it. Also, we need to modify the zoning language in regards to the duplexes," Ueoka told the commission.

"We need to go through with the 201H amendment," he said, referring to the chapter in state law that gives developers of affordable housing certain exemptions from standard conditions. "And we are probably going to need to come back to you guys to get extension of timelines in the district boundary amendment. We need to complete the two-lot subdivision and have to go through subdivision plans, plans for infrastructure improvements, house plans for the subdivision. Hopefully, by the end of 2024 we can start work on the homes, and in 2025, 2026, homes should be done. People should move in. That's the dream."

When questioned by commissioner Lee Ohigashi about the prospects of the county grant, Ueoka reported that just the day before, the fiscal year 2024 budget for the county had been approved, including the affordable housing award, "subject to receipt of approval of the 201H time extension."

Commissioner Gary Okuda pressed Ueoka on the financial strength of WDV. "The status report doesn't actually get into financial ability," Ueoka replied. "Recently, the membership group" – referring to the membership of WDV – "has evolved and there is the ability to get construction financing for this project. It was on hold due to changes in pricing and everything. … Now with the county subsidy, … it's a strong possibility this project can be financed."

The Ka Pa‘akai Question

Okuda went on to ask Ueoka about the ethnographic study that had been appended to the status report. The study, by Honua Consulting, was intended to satisfy the requirement imposed by the LUC in 2018 that a new cultural impact assessment be done to fulfill the commission's obligations under *Ka Pa‘akai.*

"Have you or anyone else reviewed the cultural impact analysis study?" Okuda asked Ueoka. "It's a document prepared by Honua Consulting titled Ethnographic Survey …"

Okuda quoted from the *Ka Pa‘akai v. Land Use Commission* decision of the Supreme Court. The Honua Consulting report, he said, "that was intended to satisfy or present evidence so that the Land Use Commission could satisfy and do its duty as required by Article 12 of the Hawai‘i State Constitution and as emphasized by the Hawai‘i Supreme Court in *Ka Pa‘akai.* Correct?"

Ueoka agreed.

"In reviewing the report," Okuda continued, "persons were interviewed to determine whether or not there would be impacts with respect to the matters which the Hawai‘i State Constitution says that government agencies have a duty to protect. Correct?"

Again, Ueoka agreed.

Okuda continued: "And it looks like two people were interviewed in the study. What is the evidence in the record that was submitted to us, anywhere in the record, that these two people that were interviewed have knowledge and experience in customary and traditional rights of native Hawaiians relevant to giving us the ability to make the decisions and carry out our duties as required by Article 12 and the *Ka Pa‘akai* case? What makes these two people reliable or persuasive or … relevant witnesses?"

"Like anything, it's subjective," Ueoka said. "I believe Honua Consulting selected these individuals. Since Maui is small, I do know both of them. They're local guys, born and raised. I'm not sure what you would want to see further. We relied on Honua Consulting's knowledge and general background and expertise in this, why they chose these two individuals."

"But," Okuda continued, "is there anything in the report prepared by Honua Consulting that indicates what the qualifications or the standards are that were used to determine who to interview to gather evidence as to whether there is or is not impacts which are relevant to a *Ka Pa‘akai* or Article 12 analysis?"

Ueoka then read passages from the report, noting that one of those interviewed, Ikaika Blackburn, "is 'associated with the project area through his lifelong residency in Wailuku, Maui, and Na Wai ‘Ehā [a group that has litigated water rights in the area]. It talks about Mr. [Daryl] Fujiwara, 'a lifelong resident of Maui and active community member, he brings a helpful perspective and expertise on the cultural resources, traditions, and customs that exist in the project area. He does not believe that the project will negatively impact cultural resources, traditions, or customs.'"

"But," Okuda asked, "what's the evidence that these people have the qualifications, either age, education, experience, training, as either cultural practitioners or somebody who would have relevant knowledge to give the type of analysis that the Hawai‘i Supreme Court said we on the Land Use Commission better take a look and seek out, otherwise we'll get reversed again.

"For example, you could say I'm a lifetime resident of Kailua, O‘ahu, where I grew up. I'm familiar with where the beach is, I went swimming at the beach once in a while. But I would never claim that I was a cultural practitioner or anyone with real knowledge of what the cultural practices were or are in Kailua or the general area. I can point out where the heiau is, but just growing up in the area, I'm not sure if that would qualify me to give the type of expertise.

"I'm just making a point that perhaps you might consider some type of supplementation going forward. Because if the analysis and the work that the Land Use Commission is required to affirmatively take is not present, that can stop even giving approvals on extensions, if we don't have evidence that complies with the re-

Architect's rendering of a 700-square foot house.
CREDIT: 2018 WAIKAPU DEVELOPMENT VENTURE 2018 SUBMITTAL TO LUC.

quirements of *Ka Pa'akai* and Article 12. … I'm not sure whether the record is sufficient at this point where further action could be taken."

Ueoka said WDV would follow up with Honua Consulting. "They determined who to interview and we trusted them," he said.

A 'Critical Path'

Commissioner Michael Yamane wanted to know about the status of the two-lot subdivision.

"Where are you in that process, and has the sale already occurred, or does the subdivision have to happen first, and is that a critical path for you to pursue the development?" he asked.

"The sale, there you gotta wait till the subdivision's completed, of course, per county rules," Ueoka replied. "But we're close on the subdivision. The waterline, my understanding, is that's the last big thing, and the two-lot subdivision should be completed soon."

"Has the sale already been closed?" Yamane asked.

"I'm not 100 percent sure if the sale is closed. But typically, for this one, my understanding is it closed in the sense that they both hold title to the whole property," Ueoka said.

When Yamane asked if any money had changed hands, Ueoka turned to someone sitting in the back of the for the answer: "A million fifty thousand for the land," Ueoka then told Yamane.

Is it possible to proceed without the subdivision? Yamane wanted to know.

"You can submit while the two-lot subdivision is pending," Ueoka replied. "We can submit the 80-lot subdivision, which can be reviewed concurrently by the County of Maui."

Members of the commission expressed concern over the ability of Waikapu Development Venture to go forward. Commission chair Dan Giovanni asked Ueoka about what he called "go/no-go issues."

What if the county subsidy doesn't come through? Giovanni asked.

"If we don't get it, it's a no-go," Ueoka said, adding that the project "was in the process of being scrapped before an owner representative worked with the County Council."

When did that happen?

"It started the beginning of May," Ueoka said, with the council giving approval just one day before the LUC meeting. "We still need to work with the mayor and administration" on details, he said.

"So that's weeks to months away," Giovanni noted, with Ueoka agreeing.

As to the amendment of the 201H plans, Ueoka said, WDV "would like to get to the council in the next couple of weeks." There was work to do in setting deed and resale restrictions, owner occupancy conditions, and the like. "We hope to get started in the next couple of weeks. Then it needs to go to committee and then the council. That's six to eight weeks."

There was the matter, too, of getting Land Use Commission approval of a time extension. "We hope to get through this process with the commission by the end of summer," Ueoka said.

Finally, there was the matter of the two-lot subdivision. "If that fails, it's a no-go. We're closing up that last requirement, so that should be okay," he said.

Then there were the subdivision infrastructure plans and permitting, which would take multiple months for approval. In 2024, Ueoka said, he anticipated subdivision improvements will go in. "We're not anticipating it being overly painful. County water, county sewer. That'll probably take at least 12 months. Building permit processing – assume that's months. Home construction can commence when we get building permits."

Giovanni then asked about financing. "When will you get a construction loan?"

Ueoka said that WDV had been in touch with lenders, but if a loan isn't obtained, "that would be a no-go. I give that weeks to months."

Climate Change Issues

"In the changes you're proposing, you're eliminating the park area, green space. No landscaping in rights of ways," Giovanni noted. So, he asked Ueoka, "I'd like you to inform this commission of what steps you're taking as a developer to be respectful of the impact you might have … [You're] taking Ag land and covering it with a lot of concrete here."

Even though there would not be trees in the rights of way, Ueoka said, "there will still probably be grass or something. … There's a big drainage area that will be grassed, and green along Honoapi'ilani. But you're right, no park."

In the end, the commission asked for the parties to the docket to report back within three months. This, Giovanni said, would allow the commission "to get a clear understanding of what the church is planning. … You can give us a clearer update of the financial transactions between the parties. You can give a clear indication of the go/no-go conditions." Giovanni also invited Maui County "to give us a more detailed presentation on their view of this project.

"This could be an important workforce housing development for Maui. There's no question about the need. We want to assist in making it successful, keeping it on track," Giovanni said.

"But there are some balls in the air here. They're being juggled, and I'm not sure who the juggler is. And I'm not sure how many balls. But we need to understand all that."

— Patricia Tummons

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

Court Orders Reduction in Diversions Of Water from East Maui Streams

It's almost an annual event these days. The Board of Land and Natural Resources issues month-to-month revocable permits allowing the diversion of millions of gallons a day of water from East Maui streams. And the permits are challenged by the Sierra Club of Hawai'i.

In the most recent development, Environmental Court Judge Jeffrey P. Crabtree ordered a reduction in the amount of water that Alexander & Baldwin and East Maui Irrigation (A&B and EMI, respectively) may divert, reducing it from 40.49 million gallons per day (mgd) to 31.5 mgd.

Most of the water is intended to be used by EMI co-owner Mahi Pono, LLC, which is working to develop diversified agriculture in Central Maui on lands formerly owned by A&B.

In his decision, Judge Crabtree sounded almost weary from the many challenges that have come before him over the A&B/EMI revocable permits (RPs).

"This [environmental court] presided over a previous proceeding involving the 2021 RPs," he wrote in his decision in the current case, issued June 16. "The court ruled that a contested case hearing was constitutionally required, and that the denial of the constitutionally required contested case hearing meant the defective permits 'cannot stand.' … The same issue is presented in this case. … The court concludes the requested contested case hearing was constitutionally required for these RPs for 2023."

But, as in that earlier case, Crabtree did not vacate what he describes as the "defective" RPs. "Doing so," he wrote, "would potentially leave a legal vacuum until BLNR can act and issue new permits."

Instead, he ordered the RPs to be reduced. The actual reductions in flow amount to around 5 mgd – from 40.49 mgd to 35.48 mgd. However, he also ordered the companies to avail themselves of the 4 mgd in groundwater that they had not been pumping, thereby allowing total reductions in stream flows of roughly 9 mgd – or around 22 percent.

Despite the ordered reductions, the amount of water allowed to be diverted is still greater than in recent years. As the Sierra Club pointed out in a press release, "In May 2021, the environmental court had chastised the BLNR for its similarly arbitrary decision-making, and reduced the amount of water that could be taken … from 45 mgd to 25 mgd. A year later, the court capped the amount at 20 mgd. The BLNR subsequently increased the amount of water that A&B and EMI could take to more than 40 mgd."

Over and above the disputed diversions, the Sierra Club was suing the Land Board over the board's denial of a contested case hearing. As a result, members of the group, including its attorney, David Kimo Frankel, were allowed just three minutes each to attempt to explain their objections to the proposed RPs.

Judge Crabtree listed all the issues that the Sierra Club "would have likely fully disputed at a contested case hearing had it been given the opportunity." He then went on to note, "These are multi-faceted and complex issues, involving facts, policy, law, and substantial impact on the public interest. That is precisely why a contested case hearing is necessary: get the facts, exhibits, witnesses, arguments, and perspectives out on the table, subject to cross-examination, hearing full argument (not three minutes) and create a full and robust record. Do that, and the chances increase for getting a solid, objective decision that protects our natural resources while also balancing legitimate needs to use those natural resources."

(For more background, see our January 2023 article, "DLNR Almost Missed Out On Nearly $200,000 in Rent," available at www.environment-hawaii.org.)

— Patricia Tummons

An orchard on Mahi Pono's lands in Central Maui. CREDIT: MAHI PONO, LLC