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Power Plays At the LUC

It's all about power these days at the state Land Use Commission.

That's the inevitable conclusion to be drawn from the commissioners' discussions of legislative measures dealing with land use issues. They're jealous of the primary role of the Commission on Water Resource Management when it comes to determining water availability. Yet they seem all too willing to cede their own power to the counties when it comes to approving new boundary amendments.

And this is, apparently, how the governor wants it, given that he has appointed and now is approving for second terms so many of the commission's members.

It's a far cry from the commission's makeup of just a few years ago. And that's a shame.

IN THIS ISSUE

LUC Members Weigh in on Bills To Expand, or Shrink, Their Powers

Over the last year, the members of the state Land Use Commission have not held back when it comes to expressing their interest in becoming more involved in the legislative process. They have objected to testimony given by their executive officer, Dan Orodenker, when that testimony did not comport with the opinions of some of them.

To address their concerns, the LUC met on February 11 to consider bills relating to the commission specifically and land use issues in general and to discuss whether to adopt a position on them.

Several of the bills they discussed were unlikely to be resurrected from legislative limbo, with no hearings held or scheduled as of the date of the LUC meeting. Yet, irrespective of the viability of the bills, the comments of several of the LUC members shed light on the views they hold about their commission and the powers it has ((but maybe should cede to the counties) or lacks (but maybe should seize from another commission, specifically, the Commission on Water Resource Management).

LUC vs. CWRM

Senate Bill 2240, SB 3006, and House Bill 1848: All these measures would require anyone petitioning the LUC to obtain either a certification from the Commission on Water Resource Management that water is available for the projects in a proposed district boundary amendment (SB 3006 and HB 1848) or a certified statement from CWRM as to the availability of water in the hydrologic unit where the project is proposed (SB 2240).

Of the three bills, as of press time, only SB 2240 was still under consideration by the Legislature, amended by the Senate to require the petitioner seeking a boundary amendment to provide to the LUC in advance of the filing "a written statement from the Commission on Water Resources [sic] Management on current water availability in the hydrologic unit or unit where the parcel

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A rendering of buildings proposed for University of the Nations in a master plan from 2020. The recently approved final environmental impact statement states that the school "has identified two potential new well developments by third parties in the Kailua-Kona region from which U of Kona could be allocated water."

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NEW AND NOTEWORTHY

CNMI-ning: Last month, the federal Bureau of Ocean Energy Management moved forward with plans to open up to seafloor mining more than 69 million acres offshore of the Commonwealth of the Northern Mariana Islands and Guam. The action was part of the administration's Outer Continental Shelf leasing process. The next step is an environmental assessment. All of these actions are undertaken following Donald Trump's Executive Order 14285, "Unleashing America's Offshore Critical Minerals and Resources."

The original proposal was for about half the area – 35.5 million acres – all of which was east of the island chain and thought to contain ferromanganese nodules. Then, following industry interest in polymetallic sulfide deposits to the west of CNMI, the area of possible seafloor mining was expanded to 69.1 million acres.

David M. Apatang, governor of CNMI, commented on the proposal: "As expressed by many in the CNMI, little to no information has been made available by BOEM or any of its federal partners for anyone to thoroughly understand the potential effects of deep seabed mining to the near surface and abyssal plains."

Guam's governor, Lourdes A. Leon Guerrero, and other elected leaders of the island registered their opposition to the project. The legislatures of both Guam and CNMI have adopted resolutions calling for a moratorium on deep-sea mining.

BOEM has said that this has no bearing on plans to lease the area, according to a report in the *Pacific Island Times.* BOEM also informed the governors that the quantity of public comments on the proposal will not be a deciding factor either, the newspaper reported.

Guam Senator William Parkinson commented on BOEM's statement: "BOEM has now doubled down on a course the people of the Marianas have already rejected," the *Pacific Island Times* reported. "This is yet another example of federal agencies treating our region like a sacrifice zone, despite clear and unified opposition from Guam, the CNMI, marine scientists, and local communities."

Meanwhile, BOEM is proposing revisions to federal regulations governing mining on the outer continental shelf, including the regulation that requires the BOEM director to notify adjacent or affected state governors and local governments and organizations about environmental issues related to mineral prospecting.

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Quote of the Month

"Such a Kafkaesque runaround
is no remedy at all, much less
an effective remedy."

— Isaac Moriwake, Earthjustice

Show-Cause Hearing: On June 5, at an evidentiary hearing in 2nd Circuit Court, the state Department of Land and Natural Resources and the Board of Land and Natural Resources will have to show why they should not be held in contempt for violating the court's order regarding access to the historic Haleakalā Trail, which cuts through Haleakalā Ranch.

The order, which took effect January 1 after a stay of several months, requires the state to post signs showing the trail's location, prohibits the state from allowing obstructions, and bars the state from allowing anyone other than pedestrian members of the public and Native Hawaiian cultural practitioners from using the six-foot-wide trail.

Even so, attorneys for plaintiffs Public Access Trails Hawai‘i and David Henderson Brown argue — in a March 4 motion for an order to show cause for civil contempt and request for an evidentiary hearing — that the signs the DLNR has posted are inadequate, obstructions on the trail (i.e., ranch gates) remain, and vehicles have been allowed to cross those portions of the trail that intersect ranch roads.

The attorneys also argue that the state let a portion of the trail be cleared and graded for vehicular access.

As relief, PATH and Brown want the court to modify its order so that the DLNR and Land Board are prohibited from "failing to place a sufficient number of enduring, visible markers along the boundaries of the Haleakalā Trail property such that the location of the Haleakalā Trail can be readily identified … for the entire distance identified in the metes and bounds." They also want the order to be modified to prevent the state from allowing the installation or maintenance of obstructions "within, on, or across Olinda Road, or any other state-owned land, within 50 yards of Point 1 of the Haleakalā Trail as identified in the metes and bounds of the Final Judgment entered in Civil No. 11-1-0031(3)."

PATH and Brown also ask the court to impose compensatory civil sanctions and punitive sanctions, grant restitution for legal fees and costs, and appoint a special master to oversee the state's compliance with the order, and/or issue orders necessary to compel compliance.

Governor Proposes Few Changes In Makeup of LUC Membership

By law, the Land Use Commission has nine members. Five are at-large, four are representatives of their respective counties. One of these is to have expertise in Hawaiian culture and traditions.

At present, one seat is vacant. Two current members are hold-overs. Their terms expired June 30, 2025, but they have continued to serve since then.

These two are Nancy Carr Smith, from the Big island, and Myles Miyasato, an at-large member. Both have been renominated by Governor Green for terms that are to expire June 30, 2029.

There are three members whose terms are expiring on June 30 of this year. They are Ku‘uleiokalani Kamakea-‘Ohelo, an at-large member who also is the designated expert in Hawaiian culture and tradition; Michael Yamane, an at-large member; and Melvin Kahele, an at-large member.

Of those three, only Kahele so far has been nominated for a second term on the commission. The governor has indicated he would likely submit the name of Kamaka-‘Ohelo for a second term, although this had not been done by press time.

Just one of the four nominees is a new face: Ku‘uleialoha Santos, who works in construction on Kaua‘i.

Should the governor's nominees be approved by the Senate, that would mean that as of June 30, the LUC would have just one new member, Santos.

As of July 1, then, again assuming Green's nominees pass Senate muster, the LUC would consist of seven members not serving as hold-overs: Brian Lee (term expiring June 2027); Carr Smith (June 2029); Bruce U‘u (June 2028); Santos (June 2030); Ken Hayashida (June 2028); Kahele (June 30); and Miyasato (June 29). Should Kamakea-‘Ohelo be reappointed, that would be the eighth.

The one member whose term expires June 30 but who has not been proposed for a second term is Yamane.

For the last several years, development interests have been heavily represented on the LUC. Carr Smith is a real estate agent. Kahele is affiliated with the Teamsters union. Miyasato also is affiliated with organized labor, most recently serving as a lobbyist for the Hawai‘i Operating Engineers Industry Stabilization Fund.

Yamane, an electrical engineer, was appointed in 2022 to fill the O‘ahu seat but the LUC website identifies him as an at-large member.

Hayashida, whom the LUC identifies as holder of the O‘ahu seat, is a civil engineer and founder of KAI Hawai‘i, Inc., an engineering firm. Although he is not a registered lobbyist, he has submitted testimony this session more than two dozen times on behalf of NAIOP, an organization that represents the interests of developers and owners of commercial real estate. Hayashida is president of the Hawai‘i chapter of NAIOP.

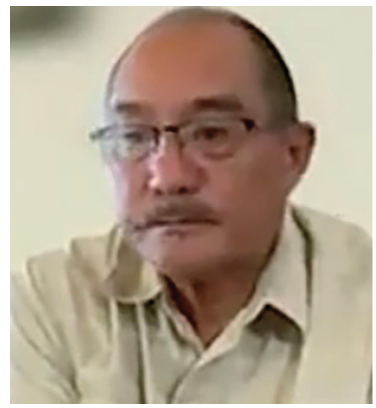
Among the bills he has testified on is House Bill 1844, one of the measures that the LUC considered February 11 that would require LUC approval of lands designated as urban in county planning documents. At that time, Hayashida abstained on a vote that would have had the LUC support the measure. In his testimony March 19 before the Senate committees on Water, Land, Culture and the Arts and Energy and Intergovernmental Affairs, however, Hayashida, testifying on behalf of NAIOP provided lengthy testimony in support.

Bruce U‘u, who occupies the Maui seat on the commission, has long been affiliated with the Hawai‘i Regional Council of Carpenters.

Commission chair Brian Lee, holding an at-large seat, is a registered lobbyist for the Hawai‘i Laborers-Employers Cooperation and Education Trust.

Since 2024, Kamakea-‘Ohelo has been the director of ‘Oiwi Wellbeing and ‘Aina for the Office of Hawaiian Affairs.


Nancy Carr Smith


Myles Miyasato

A Contentious Commissioner

Just one of the sitting commissioners is a woman, Carr Smith. Her presence on the commission has been contentious. *Environment Hawai‘i* has received credible reports that she is the subject of formal complaints by LUC staff.

Carr Smith confirmed that she was the subject of complaints of harassment, but added that the investigation into them had not yet concluded. "I was accused of violating a policy that doesn't apply to volunteers," she said, adding that this was something that was uncovered by an investigator.

At the January meeting of the LUC, where the agenda included an overview of the commission's administrative procedures, Carr Smith, attending via Zoom, was questioning why an item was not placed on the agenda despite her having made a request for it through the commission chair. At an earlier meeting, in a discussion of how to place items on the agenda, commissioners were told that the agenda was worked out between staff and the commission chair and that individual commissioners could put requests for items to be placed on the agenda through the chair. At this meeting in particular, commissioners were instructed that they were not to address staff directly but rather put all questions to the commission chair.

"Isn't it true that you, chair, asked for an item to be posted today, a training which would include protected classes and harassment, and this was not put on the agenda?" Carr Smith asked Chair Lee. Apparently referring to executive officer Daniel Orodenker, she stated, "He just made it sound like if you ask, then it's there. So I thought that there had been a request for that, and it didn't come to fruition, so if somebody could explain, please."

Lee responded, "I think in that situation, we have to try to work with the deputy attorney general's office, and I didn't hear anything back."

Orodenker weighed in: "Yeah, staff is not expert on that, and neither is our current deputy attorney general, who is present today. It would take a special – or a different division of the Attorney General's office to handle that type of information, or our Human Resourc-

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LUC *continued from page 1*

is located." At press time, SB 2240 was in the House, awaiting hearings from the committees on Water and Land and Judiciary and Hawaiian Affairs.

Orodenker provided the commissioners with a history of the genesis of the bills. Representatives Kyle Yamashita (Maui) and Mark Hashem (Honolulu) "called me in some time last summer and expressed consternation over the Pulelehua project because the [Maui] County had denied them permits because they didn't have any water.

"They expressed to me that they wanted to make sure that this didn't happen again. And I told them that was the Legislature's prerogative. I explained to them what had already occurred at the Land Use Commission. And they decided to go ahead with the measure anyway on their own"

On February 3, the House Committee on Water and Land heard testimony on HB 1848, during which, Orodenker said, David Arakawa of the Land Use Research Foundation in his testimony opposing the measure had suggested that commission staff had had a hand in lobbying for the measure. Orodenker called this out as a misrepresentation and denied any involvement of staff in the genesis of the bill. Instead, he said, Hashem and Yamashita asked whether LUC staff supported the measure – "and all we said was that we supported it."

He added that he did not believe the measure is necessary, "given the changes at the Land Use Commission and the discussions that we have had with the Commission on Water Resource Management…. My position remains that this is a policy call on the part of the Legislature and that the only thing that we really should be testifying on is whether or not the measure itself poses any technical difficulties."

LUC chair Brian Lee reminded commissioners that they had "already addressed this twice and rejected it unanimously," referring to the shelving of rules in 2024 that would have called for CWRM input and the commission's rejection of a proposed memorandum of understanding between the LUC and CWRM that would have encouraged greater coordination between the agencies.

"CWRM already has the ability to provide testimony," Lee continued "They're given that option. Maybe this bill should be targeted at CWRM – that they need to provide and respond to our open requests for comment."

Other commissioners then piled on.

Myles Miyasato, an at-large member held over since his term expired last June 30, questioned whether CWRM's calculation of the sustainable yield of an aquifer is "an exact science or a speculative assumption."

Orodenker noted that CWRM is required to set sustainable yields statewide and that "they are the arbiters. They have to set a sustainable yield."

Miyasato: "I just have a problem with that because from what I see their sustainable yield method is one-dimensional. Right? Two barriers, basically – salt water, fresh water barrier and the salt rock and what's contained in between on a profile. When they pump water, GPMs [gallons per minute], test the salt salinity – once the salinity increases theoretically that's your GPM sustainable yield kind of in a nutshell.

"If you had a three-dimensional – a satellite with X-ray vision – and you could show me that aquifer three-dimensional I would say you can certify your water ability. But you know, even the Ota well [proposed for the Keauhou aquifer in Kona] – they can't even schedule the meeting because they need more research. They cannot determine if a new well will impact sustainable yield in another well nearby if the aquifer is even connected.

"So, yeah, I just have a problem with this bill being – that the methodology is one-dimensional and clear – in my mind kind of theoretical. You can drill a well 50 feet away, hit a pond, and have all the water you want.

"I mean, I've seen it in the mainland. They have agricultural subdivisions, ten acres, in Madera, California, about a half hour north of Fresno. Ten-acre lots. Every lot is only provided with electricity. You do your own leach field, drill your own well on every single lot. I have a friend with a lot right in the middle. His neighbor built up on the hill. Beautiful view. Other neighbor, same thing up on the ridge. They're hauling water during drought seasons. He has water…. In three lots it varies, you know, sustainable yield. So, you know, I just have a problem with them certifying before us and condemning something."

Chair Lee noted his agreement with Miyasato. "It's up to this commission to decide who they want to believe," he added.

Big Island Commissioner Nancy Carr Smith, a holdover appointment, chimed in: "I too don't think that CWRM is the proper agency to certify whether there's water or not. I think that the counties control their water sources and provide water to their customers. I understand CWRM's role in it and with well permits and all that. But I just – this just doesn't seem appropriate to me."

Carr Smith made a motion to have Chair Lee work with staff on testimony to oppose the measures and Maui commissioner Bruce U'u seconded it. When it came to voting, they were the only two votes in favor of the measure. Despite having criticized CWRM methodology so strongly, Miyasato abstained, saying that he would be "waiting to see if the companion bill's got legs." Other members also abstained. When it came time for Lee to cast a vote, he declined to do so, saying that since the motion is moot, "I am not going to vote on this as is proper with Robert's Rules of Procedure." The final vote:

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LUC Membership *continued from page 3*

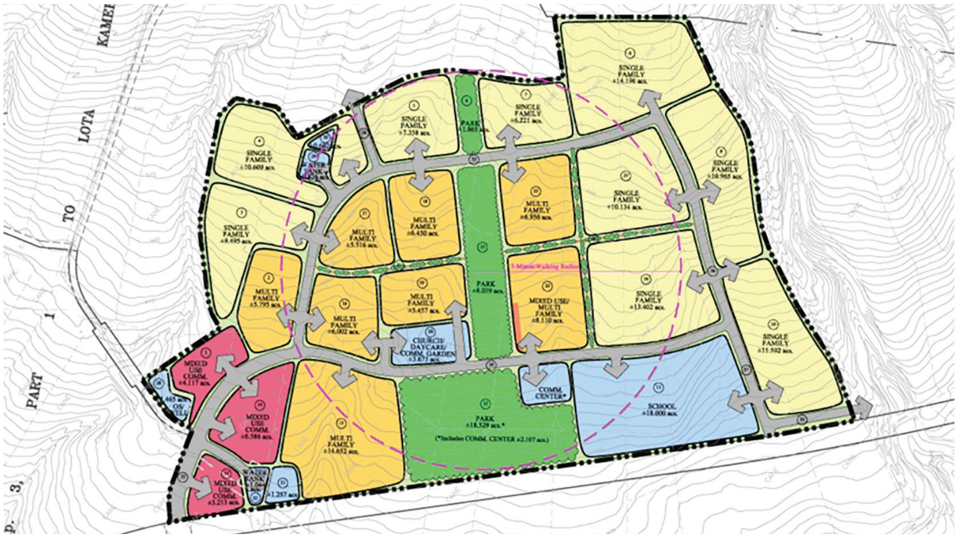
es Department. Our Human Resources Department at the Department of Business and Economic Development has indicated they're uncomfortable with presenting that to the commissioners. All of us who work for the state, whether supervisors or non-supervisors, we go through several different training sessions on human resources, harassment, all of those things. And they didn't have a presentation that they felt would be appropriate for commissioners or that they were comfortable giving. …

"So I guess the answer to the question is sometimes, even if it's requested, it's not possible, you know. We do the best that we can. If there are legal reasons or, for lack of a better word, an inability to develop the right person to come and talk to us on an agenda item, we can't schedule it. And there are some agenda items that are difficult for us to schedule because we can't find a way to deal with them under the Sunshine Law."

Lee added, "Yeah, it's a continuing thing we have to work with the deputy attorney general's office on, scheduling some of these touchy agenda items."

Carr Smith replied that that was not a very satisfactory answer. "If the state employees are trained on a variety of things, as was just mentioned, I would think that volunteers on boards and commissions could be trained equally. And especially if we're subject to complaints, we should be able to be trained so that we are aware of the things we shouldn't do. Thank you."

— Patricia Tummons



A preliminary design for Pu‘ukoli‘i Village, a project first approved by the LUC in 1993 that has yet to see the first house built. CREDIT: KA‘ANAPALI LAND MANAGEMENT CORP.

two in favor of the LUC opposing the measures, and five abstentions.

"But I think now we have informed the executive officer," Lee said. "And he can give more flavor in any testimony."

On February 27, the Senate Committee on Judiciary heard SB 2240, Senate Draft 1. Orodenker submitted testimony, noting that the LUC "did not take a position on this measure."

His testimony continued: "The LUC staff supports measures that will ensure that proposed and approved projects will actually be able to be constructed in a timely manner, particularly those that could provide affordable workforce housing. Provision of timely, authoritative, and accurate information is critical for informed decision-making. Knowing whether or not water is available for projects will prevent costly expenditures by developers on projects that will, ultimately, be denied permits for lack of water."

SB 2240, Senate draft 2, passed the Senate but the House had not acted on the measure as of press time.

SB 2537 and HB 2103: These measures would require at least one member of the LUC to have "substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural land practices," with future appointments to fill this seat to be made from a list of nominees given to the governor by the Office of Hawaiian Affairs. It would also require at least one member to have "substantial experience in the area of water resource management."

Orodenker pointed out that the law already requires one member to have expertise in Hawaiian culture and land use – a position currently filled by at-large member Kū‘ikeokalani Kamakea-‘Ōhelo. "This just changes the way in which that commissioner would be selected" in the future, he said.

Commissioner Miyasato objected to the measure. "I don't feel a board, another state board, should be dictating who comes on another board. I think it's the governor's privilege to be able to appoint people in certain positions to follow what he promised he'd be trying to achieve. Yeah, for another board to shove something down another board's throat, I don't think that's right."

Commissions, he continued, "are designed to give citizens a voice in their government and provide a means of influencing decisions that shape the quality of life for residents of our state. It's meant to have a cross-section of Hawai‘i's residents to offer vital testimony.

"Yeah, other than that, OHA can come testify. Any water expert can come testify and we will duly note their testimony. So that's where I stand on this."

Carr Smith agreed. "We have the cultural specialist already required," she said. "And I think that's important. The water specialist I don't think is important because of the fact that they can come and provide testimony."

Carr Smith then made a motion "to instruct and authorize the chair to work with the executive officer on this bill to not support it basically and to give the reasons why as stated in our discussion." The motion did not receive a second.

The Senate bill did not survive crossover. The House bill was amended to require not one but two experts in Hawaiian culture on the commission as well as one member with expertise in water resource management.

At the March 24 hearing on HB 2103 before the Senate committees on Hawaiian Affairs and Water, Land, Culture, and the Arts, the LUC submitted testimony. It noted that the commission met to discuss this and other bills in February, but "at that time, the LUC did not take a position on this measure."

It went on to say that "The Land Use Commission staff notes, however, that additional expertise that would assist the commission in rendering a decision and balancing its public trust responsibilities with economic development is helpful."

At the same hearing, commissioner Miyasato testified in opposition.

"I come before you today as a retired union representative and currently tending to horses and cattle," he said. "I'm speaking in opposition of HB 2103 The current process already allows OHA to send a water expert representative to attend and share concerns and support with the Land Use Commission or correspond prior with CWRM or OPSD [the Office of Planning and Sustainable Development]. It's actually OPSD that has the responsibility for environmental review of petitions before the Land Use Commission. OPSD has an open public comment period.

"So again, there's already an established avenue. This measure strips away the core reason for having boards and commissions. Boards and commissions were created to provide an opportunity for citizens to have a voice in their government and provide a means of influencing decisions that shape the quality of life for the residents of Hawai‘i. Thank you for your time."

(Editor's note: In collating the positions of government agencies to present to the LUC as it considers boundary amendment petitions, the OPSD has no public comment period.)

At the conclusion of the Senate hearing, Senator Chris Lee deferred the measure, but added, "We will be returning to that another day."

Miyasato was the only person out of dozens who testified on the measure to oppose it.

One of those testifying in favor was Jonathan Likeke Scheuer, a former LUC member himself and chair of the commission for several years.

"The lack of any required water management expertise on the Land Use Commission has meant that the LUC must often make land use decisions without the ability to properly assess developer's assertions regarding the availability of water. Many thousands of approved housing units languish, in some cases because the LUC approved of them but now, as it turns out, water is not available.

"During my eight years serving on the LUC, I often heard blithe reassurances from project proponents and their consultants that there was sufficient water available, even when readily available public information, to those who were aware of it, revealed that these statements were questionable at best….

"This bill is an absolutely common sense proposal."

When Three is a Majority

House Bill 1845: This measure would allow district boundary amendment petitions to be approved by a simple majority of members present at a meeting. The quorum for the nine-member commission is five, which means that, if this measure were to pass, a boundary amendment could be approved by as few as three members – or just one-third of the authorized commission membership.

The only concern that LUC members seemed to have in discussing this and two other bills (no longer alive in this session) was that petitions concerning Important Agricultural Lands are required by the state Constitution to have the approval of a two-thirds majority of the members. With the caveat that the Legislature should carve out an exception for IAL, the commissioners were happy to endorse this legislation on a vote of seven to one, with one abstention.

At press time, the measure had passed to the Senate but no hearing had been scheduled.

Ceding to the Counties

HB 1844, SB 36, SB 2185, and SB 2218: All these would amend the state land use law, Chapter 205, by requiring the commission to reclassify lands into the state Urban District whenever a county requests this, so long as those lands have been designated by the county for urban growth. The purpose sections of the bill say the measures are "to support the development of affordable housing by requiring the [commission], at the request of a county, to reclassify lands designated for urban growth under a county general or development plan as being in the urban state land use district."

Orodenker told the commissioners that he and the LUC staff have "a lot of technical concerns on this." If enacted, the LUC would have no discretion, he noted, and, "from a technical standpoint, this violates constitutional due process. And we have serious concerns about whether the Supreme Court would validate it."

LUC staff planner Scott Derrickson said that the three Senate bills were pretty much dead for the session. The House bill had been heard on February 10 before the House Committee on Water and Land, but the proposed amendments had not yet been published.

LUC chair Lee commented that historically, the LUC "was enacted in the early ‘60s because of all the unchecked growth, such as, you know, subdivisions on volcano land… And so there needed to be some oversight. Some people feel that the counties have developed a better process after 40 years."

Vice chair Carr Smith, spoke in favor of the measure. "I support the concept of this. I think the counties – they have done their own planning. And that should carry weight over the state's plan in my opinion," she said. "And the bill also speaks to expediting development of affordable housing. I know certainly for my county that I support those concepts."

Commissioner U‘u generally agreed with Carr Smith: "I've been hearing for a while that the county wants some of the powers back to a degree for their lands. And, you know, the process is long enough… I'm just looking for balance myself, really. And my balance is protecting our environment along with creating homes. And we're at a deficit of balance currently. So I think this would bring balance…"

Commissioner Dan Giovanni of Kaua‘i expressed his concerns about due process and asked Orodenker to expand on his earlier comments.

"When you impact the value of property under both the United States and the State constitutions you're entitled to due process so that there isn't a taking," Orodenker said. "There are situations where landowners do not want their land urbanized … in a lot of cases because of the tax implications. And that can be a problem for some legacy lands that are held by families that have held them for generations but don't have any intention of developing them. I think that the underlying problem is that right to due process for the change in classification, which can impact value."

Derrickson then referred to the opening section of the bills, where the purpose is described. "If you read these bills, they're talking about the long time it takes to – and the added cost for affordable housing development.

"I've worked here for almost 40 years now, so I have a little bit of a track record. And I do have some experience.

"The Land Use commission, you guys, are required by law to make decisions within 365 days. I've looked back at the Land Use Commission's decision-making process for district boundary amendments over the last 30 years. There's only been one instance where it took 365 days. The general trend is six months or sooner. And for affordable housing projects that are under the 201H law, it's 45 days. So when there's a discussion about long delays for affordable housing development, I can tell you that it's not at the Land Use Commission level."

U‘u made a motion, seconded by Carr Smith, that the LUC submit favorable testimony on the bill. The motion failed, having received just two votes in favor – those of the movants.

On March 19, the Senate committees on Energy and Intergovernmental Affairs and on Water, Land, Culture, and the Arts deferred action on HB 1844.

Senate Bill 1157 would achieve much the same thing as the bills just discussed, although by a slightly different method. Under this measure, counties could amend district boundaries for lands in excess of 15 acres if those lands are proposed for urbanization in the county general plan or development plan. The LUC took no position on this. It did not pass out of the Senate.

No Interest in Enforcement

SB 2986: Ever since the Supreme Court's decision in the ‘Aina Le‘a case limited the commission's ability to revert land if the conditions attached to redistricting decisions were not carried out, the commission has been powerless to enforce conditions if "substantial commencement" of use of the land had occurred. This bill would change that by allowing the LUC to "amend, revise, or modify a decision and order … or fine a petitioner, upon finding that a petitioner or its successors or assigns have not adhered to the conditions… regardless of whether there has been substantial commencement of use of the land." The bill also defines substantial commencement as "completion of all public improvements and infrastructure required by [the LUC] … within and outside the project area, and completed construction of twenty percent of the physical private improvements so that they are usable or habitable."

In commenting on the bill, Orodenker pointed out that neither he nor his staff had anything to do with the genesis of this bill. That said, he added: "Ten years ago we supported a similar measure. But we have not dipped our toes into this issue since."

There seemed to be little interest on the part of the commissioners in this bill. No vote in support or opposition was made. The bill passed the Senate and is now in the House. No hearing had been scheduled by press time.

— Patricia Tummons

Groups Ask Court to Declare Prohibition On East Maui Water Lease to Private Party

"Climate change and variability in weather patterns makes it impossible for [the Board of Land and Natural Resources] to guarantee that anyone will be able to take a particular amount of water from East Maui streams for delivery to Central Maui."

That's according to a complaint filed March 18 in Environmental Court by the nonprofit groups Nā Moku Aupuni O Koʻolau Hui and the Sierra Club of Hawaiʻi. In it, they ask the court to declare — pursuant to Hawaiʻi Revised Statutes Chapter 632-1 governing "actual controversies" — that the Land Board is "prohibited from entering into a long-term disposition of water from East Maui with a private party."

In May 2001, East Maui Irrigation Company and its then-parent company, Alexander & Baldwin, Inc., applied to the Land Board for a 30-year lease to continue their diversion of East Maui water for sugarcane fields in Central Maui. The companies had for decades diverted dozens of East Maui streams under annually renewed revocable permits covering four watershed license areas.

A&B and EMI completed a final environmental impact statement for the proposed lease in 2021. By this time, sugarcane cultivation had ended and Mahi Pono, LLC, which purchased the former cane fields from A&B, had begun growing diversified crops on the land.

Mahi Pono took over ownership of EMI last year. Today, the companies divert tens of millions of gallons of water a day under a single revocable permit allowing use of the irrigation system, over which the state holds an easement.

Nā Moku — a nonprofit organization representing native Hawaiian taro farmers and practitioners of traditional and customary practices in East Maui — and the Sierra Club have long fought the board's renewal of the companies' permits, as well as the board's consistent, seemingly automatic denial of the groups' contested case hearing requests.

Last November, anticipating more controversy with the impending expiration of the revocable permit for 2025, Department of Land and Natural Resources director Dawn Chang proposed that the Land Board initiate a contested case hearing on a long-term disposition of rights to divert water from East Maui.

The scope of the hearing would encompass both the possible issuance of a long-term lease via a public auction and a possible set-aside of the Land Board's management authority over the system to the county. (In 2022, Maui voters approved the establishment of an East Maui Water Authority to take over the collection and distribution of East Maui water for the public benefit.)

After the county asked the Land Board for more time to devise a solution and members of the public noted that such a hearing was only warranted for a disposition to the companies, not for a set-aside to the county, the board voted on November 14 to defer a decision on Chang's proposal for six months.

Earlier in the year, the Commission on Water Resource Management heard a briefing from its staff on drought conditions in East Maui streams that raised serious questions about how both instream and offstream uses would be met in the future.

Hawaiʻi Revised Statutes Chapter 171-58 allows for the short-term, one-year disposition of water rights through revocable permits from the Land Board, as well as the long-term disposition of water rights via a public auction.

However, in their recent complaint, Nā Moku and the Sierra Club argue, "A long-term disposition of water from East Maui to a private party would adversely affect Nā Moku Aupuni O Koʻolau Hui and the Sierra Club."

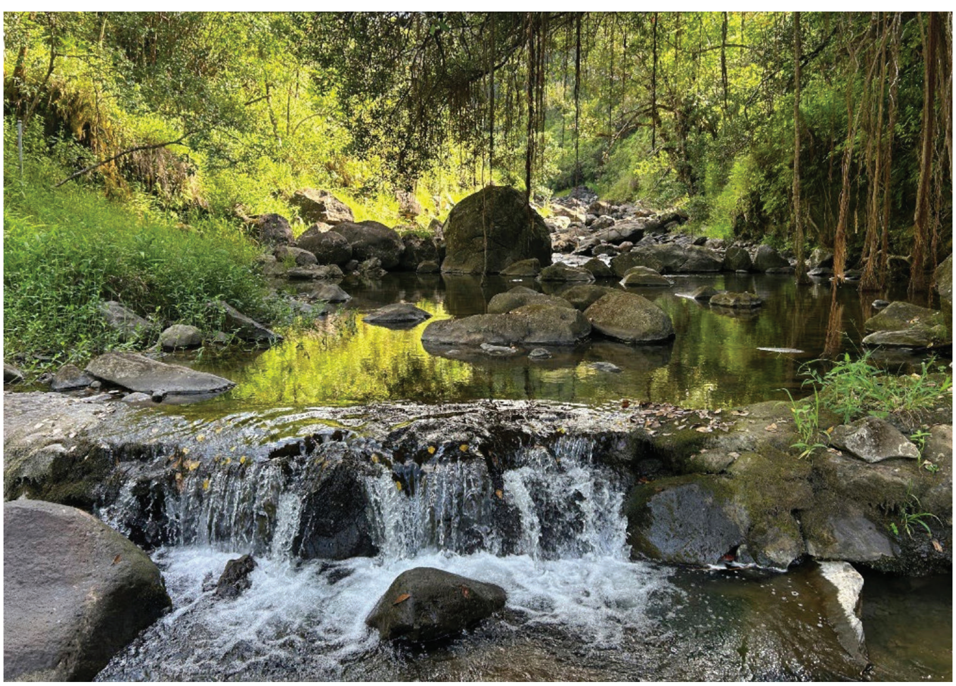
Not only can the Land Board not guarantee what the weather will be over the next three decades, they continue, it "cannot create barriers impeding meaningful community participation in an agency's proceedings and determinations on matters affecting the environment.

"Typically, a lease provides the lessee with some form of vested rights. The public trust doctrine bars providing private parties vested rights to water. …

"Because a long-term lessee would have no recourse if BLNR decided to reduce or eliminate the amount of water allocated to the lessee, a long-term lease cannot provide any sort of assurance or guaranty or stability to the lessee. A long-term lease would, however, preclude community members from meaningful participation in discussions about the use of public trust resources for decades following execution of a lease."

Currently, both groups have active cases in Circuit Court over past decisions by the Land Board to approve revocable permits and deny contested case hearing requests regarding the diversion of East Maui water.

continued on page 8



Naʻiliʻilihaele Stream, East Maui, in 2025. CREDIT: CWRM.

East Maui *continued from page 7*

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A Partial Stay

On March 6, 1st Circuit Judge Lisa W. Cataldo issued an order staying part of the Land Board's decision last December that approved a revocable permit for the diversion of 41.72 million gallons of water a day from East Maui streams and that denied the Sierra Club's contested case hearing request on it.

The Sierra Club appealed, then asked the court to stay the board's allocation of 35.22 mgd to Mahi Pono and EMI, leaving in place the allocation of 6.5 mgd to Maui County.

The groups wanted the court set a cap of 23 mgd on the companies' diversions in 2026.

"While the law allows the Sierra Club to stay the entirety of BLNR's December 2025 decision, the Sierra Club has no wish to deprive Upcountry residents of water or to bankrupt Mahi Pono. Instead, it seeks a reasonable, balanced, and equitable approach. It seeks to prevent more water than was taken in 2025 from being taken until this court rules on the merits. A stay may affect Mahi Pono's expansion plans and its commercial operations, but a delay in commercial expansion is not irreparable harm. …

"A cap of 23 mgd can help ensure that too much water is not taken from streams. It serves to (a) prevent the harm to our streams from being exacerbated; (b) encourage EMI to expeditiously modify the diversion structures that CWRM ordered years ago; (c) create an incentive for Mahi Pono to reduce system losses and use water more efficiently; and (d) keep more water in east Maui streams," the group stated in its January 26 motion for a partial stay.

(Last October, Judge Cataldo issued an opinion in a case brought by the Sierra Club over water diversion permits the board issued for 2022. In it, she instructed the Land Board that for any future water permits, the board was to 1) require practical mitigation measures to reduce system losses, 2) ensure that the Water Commission's IIFS are fully implemented before allowing more water to be taken from East Maui streams, and 3) render necessary findings regarding traditional and customary practices. The Land Board and Mahi Pono/EMI appealed her decision to the Intermediate Court of Appeals on February 27.)

In the Land Board's memorandum in opposition, deputy attorney general Miranda Steed countered, "BLNR can demonstrate through testimony during the [December] meeting and from the declaration of Ayron M. Strauch, a hydrologist with the Commission on Water Resource Management who has directly monitored East Maui streams as part of CWRM's East Maui monitoring program, that: (1) substantial progress has been made in restoring flows to East Maui streams; (2) the traditional and customary practice areas Sierra Club references are not experiencing dry stream conditions as a result of diversion; (3) a system-wide numerical cap bears no direct relationship to stream-specific instream flow conditions; and (4) Sierra Club's characterization of ongoing harm is materially inaccurate."

In her order, Judge Cataldo noted that Strauch's declaration "reflects EMI's overall progress toward compliance with CWRM's 2022 [interim instream flow standards] modification orders. Dr. Strauch also confirms, however, that some of the ordered modifications remain unsatisfied, with some diversions in the [revocable permit] area still awaiting permits more than three years later."

She added in a footnote, "The court takes Dr. Strauch's statements at face value, but for a number of reasons, it cannot accept representations that a water permittee is 'voluntarily' restricting non-compliant diversion activity 'to the extent practicable' as a substitute for actual completion of the ordered modifications. First, no representative of EMI or Mahi Pono submitted a similar declaration. Second, on this motion, the court must determine irreparable harm to Sierra Club's instream uses, and in that context, Dr. Strauch does not explain what 'voluntarily' allowing water flow 'to the extent practicable' actually means in terms of water usage and eliminating irreparable harm."

The Sierra Club had filed a motion to strike declarations and exhibits — including Strauch's declaration — submitted by the Land Board and EMI/Mahi Pono that were not part of the case record.

In her March order granting the partial stay, Cataldo denied the motion to strike, writing, "this court's review on the *merits* of this agency appeal will be confined to the agency decision record. … In the limited context of considering Sierra Club's motion for a stay, the court concludes it should consider the most updated information possible when evaluating irreparable harm."

In granting the stay, Cataldo chose to cap Mahi Pono's and EMI's allocation at 30 mgd, rather than 23 mgd.

She found, among other things, that the December recommendation by the Department of Land and Natural Resources' Land Division to approve the permit failed to account for more than 10 mgd of surface and groundwater available to meet the companies' needs.

She pointed out that the record shows that the Water Commission and Strauch "have consistently taken the position that 7 mgd of pumped groundwater represents 'sustainable yield' for the aquifer, at least in the short term."

She added in footnotes, "To the extent Mahi Pono submitted evidence regarding the adverse effects of 'excessive' or 'sustained' groundwater usage on specific crops, … these are long-term concerns and any stay ordered by this court is intended to be short in duration. …

"While all appellees voiced concerns regarding groundwater usage in opposition to the motion — none of them seemed to take issue with Mahi Pono pumping groundwater well in excess of the aquifer's sustainable yield during a drought year [2025], or that EMI's 2021 EIS requested issuance of a long-term lease that anticipated groundwater pumping at more than twice the sustainable yield.

"In any case, if any party perceives an issue with unregulated, non-sustainable use of groundwater to the detriment of the relevant aquifer, that party may avail itself of the appropriate regulatory mechanisms for establishment of a groundwater management area."

She also pointed out that EMI's water use report for October 2025 shows that an average of 1.6 mgd is available from surface waters "gained from the area between Honopou and Maliko."

And then there's the water diverted for, but not used by, Maui County. The Department of Water Supply and the county's Kula agricultural park used an average of 3.98 mgd, according to the Land Division staff submittal on the revocable permit.

"For the 2026 RP, the total amount allocated to the County of Maui is 6.25 mgd, meaning that on average, Mahi Pono will have access to roughly 2.27 mgd of water not used by the County. Based on the foregoing, even if a stay is ordered, Mahi Pono will have access to multiple alternative sources of water for irrigation, amounting to an average of 10.87 mgd," Cataldo wrote.

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Certiorari Granted

On May 26, the Hawai‘i Supreme Court will hear arguments over whether the Intermedi-

continued on bottom of page 9

Storm Damage Leaves Wailuku Water In Financial Peril, Company Reports

In a letter to the Public Utilities Commission on March 25, Douglas Codiga, attorney for the Wailuku Water Company, reported that the recent severe storms so severely damaged its irrigation and water delivery systems that the company is on the verge of bankruptcy.

"The significant anticipated costs associated with repairing and replacing components of the WWC system damaged by the Kona Low storm are expected to greatly exceed WWC's current financial capability without regulatory support from the Commission," Codiga wrote. "Absent [PUC] intervention, WWC currently anticipates that it may be forced to seek bankruptcy protection partly due to the impacts from the Kona Low storm and its current regulatory environment."

Although evaluation of damages has been hampered by lack of access, Codiga continued, "the current assessment is that many of these facilities, including siphons and important intakes, have been badly damaged or destroyed by the storm." There follows a list of a dozen such facilities, including the I‘ao intake in the Wailuku River, the Waihe‘e ditch south, several reservoirs, the Spreckels ditch intake in the Waihe‘e River, and "general WWC system-wide ditch debris."

WWC operations have been "severely and adversely impacted," Codiga continued, "including the ability to provide non-potable water delivery to customers," including approximately 85 percent of its customers using water for diversified agriculture or for native Hawaiian traditional and customary practices. Also, WWC has not been able to provide non-potable water to the county Department of Water Supply.

Codiga went on to say that even before the storm, the company's financial condition was "weak and unstable" as a result of the PUC's failure to lift a suspension order, which has had the effect of freezing rates charged to customers since 2009. As recently as November 12, he noted, the PUC denied WWC's motion to terminate the suspension.

"WWC submits that it is reasonable to assume cost estimates to repair or replace critical components of the WWC system will be in an amount that is extremely high – likely in the millions – relative to WWC's operations and management and capital costs prior to the storm," Codiga stated. "In addition, a corresponding and significant reduction in utility revenues is expected due to interruption of service to paying customers. As a practical matter, WWC's weakened financial condition resulting from the … Suspension Order appears likely to hamper and delay any efforts by WWC to restore service to its customers by funding repairs or replacement of damaged components of the WWC system."

— Patricia Tummons

For further reading in *Environment Hawai‘i*:

- "Wailuku Water Rate Case before PUC: Opened in 2008, Suspended Ever Since," May 2025;
- "Commission Grants Contested Case on Wailuku Water Waste Allegations," July 2020;
- "Wailuku Water Co. Sells Ditch Water Without Consent of Utilities Commission," December 2007.

East Maui *continued from page 8*

ate Court of Appeals improperly dismissed a case brought by the Sierra Club over the granting of water diversion permits to A&B and EMI for 2019 and 2020 and the denial of the groups' contested case hearing requests on those permits.

The ICA, citing the Hawai‘i Supreme Court's decision last year in a case regarding development on Maui *(Maui Lani Neighbors, Inc. v. State),* ruled that the Sierra Club had failed to exhaust its administrative remedies, including a court appeal filed under HRS Chapter 91 (which deals with contested cases).

The Sierra Club had filed its complaint regarding the permits for 2019 as an original action, not a Chapter 91 appeal. The group complained that the Land Board had violated the state environmental review law, HRS Chapter 343, breached its trust duties, and violated the state coastal zone management law, HRS Chapter 205A.

In its January 12 application for a writ of certiorari, which the Supreme Court granted last month, the Sierra Club wrote that the ICA "gravely erred when it held that the Environmental Court lacked jurisdiction to decide whether the Board of Land and Natural Resources breached its trust duties and violated HRS Chapter 205A when BLNR authorized Alexander & Baldwin, Inc., and East Maui Irrigation Company to take all the baseflow from a dozen East Maui streams – dewatering them completely 70 to 80 percent of the time. This 'jurisdictional' issue was (a) not litigated in the Environmental Court, (b) not raised by any party for more than six years after this case was filed and five years after a lengthy trial, and (c) wrongly decided by the ICA.

"The ICA misread *Maui Lani Neighbors, Inc. v. State* to suggest that the exclusive means of challenging an agency decision is via an HRS § 91-14 appeal – even when the agency rejected a request to participate in a contested case hearing."

In an amicus brief on behalf of Hui Ho‘opulapula Nā Wai o Puna and Conservation Council for Hawai‘i, Earthjustice attorney Isaac Moriwake added, "When BLNR rejected Sierra Club's [contested case hearing] requests and issued diversion permits in violation of Sierra Club's constitutional rights and BLNR's constitutional duties, there were no remedies left to exhaust since BLNR is not qualified to judge the legality of its own actions, and Sierra Club lacks further recourse from the agency that violated its rights.

"Further, no *effective* remedies exist where BLNR has committed to the same unlawful course through years of repetition, while stonewalling any opportunity to contest these violations before the agency. Such obstruction forces community members to expend time and resources to challenge the denial of a [contested case hearing], then litigate the [hearing] before the agency that already prejudged the case and denied due process to begin with. Meanwhile, the agency and diverter benefit from the delays. By the time Sierra Club labors through that 'process' and seeks judicial relief, the time for the next year's permit has already arrived or passed, starting the loop all over again. Such a Kafkaesque runaround is no remedy at all, much less an effective remedy."

— Teresa Dawson

BOARD TALK

Land Board Votes to Acquire Wahiawā Irrigation System

“If the state does not acquire the system as a whole, basically it’s a damned if you do, damned if you don’t,” the Land Division’s acting assistant administrator Lauren Yasaka told the state Board of Land and Natural Resources at its February 27 meeting.

The division had requested that day that the board approve the acquisition of nearly 126 acres of land in and around the Wahiawā Reservoir from Dole Food Company, Inc. and Sustainable Hawai‘i, LLC.

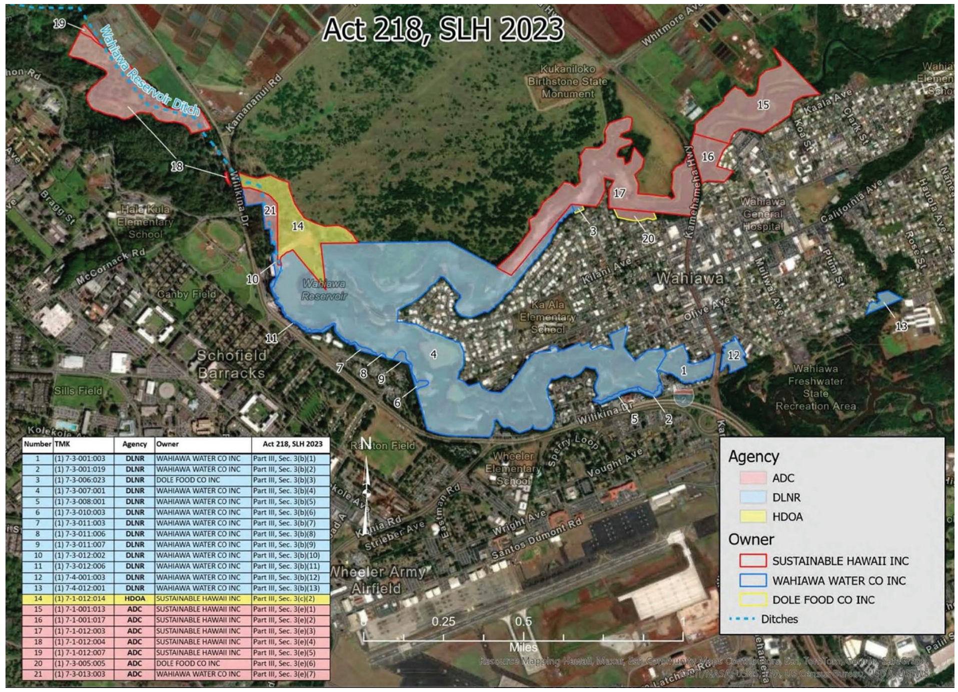
“If we don’t acquire it, Dole will decommission the dam and spillway, which leaves the ag users with no water. Loss of small business. Loss of food security and all of that. If we do acquire, you know, it’s a dam. It’s a spillway. With the flooding we have” — which resulted after heavy rains last month and devastated North Shore neighborhoods and farms downstream — “I understand it’s a lot of peoples’ concern. But, the state has the ability to manage and it is a public health and safety matter. So it is most likely better to be within the state’s responsibility,” Yasaka said.

In 2023, the state Legislature passed Act 218, which authorized the Department of Land and Natural Resources and the Agribusiness Development Corporation to acquire, improve and maintain the Wahiawā Irrigation System, which is co-owned by the two companies.

Act 218 allocated $26 million, $5 million to acquire the reservoir’s spillway from Sustainable Hawai‘i and $21 million to enlarge it and bring it into compliance with dam safety standards. Dole plans to donate its lands in and around the reservoir to the state.

For more than a decade, the ADC has been eyeing the reservoir as a source of irrigation water for its thousands of acres of agricultural fields in Central O’ahu, many of which were purchased from Dole. At the same time, the DLNR and its board had been trying to get Dole to improve the dam and its undersized spillway through enforcement actions and fines.

In April 2021, the Land Board found Dole in violation of rules requiring the dam spillway to be able to handle a probable maximum flood and fined the company $20,000 for “failing to submit a dam safety permit application to address the safety deficiencies with the spillway by the deadline of March 1, 2021. In addition, Dole and Sustainable Hawai‘i, Inc. were given two hundred seventy (270) calendar days from the date of the Board action to submit a plan to address the spillway safety deficiencies with a conceptual design for the spillway remediation,” according to a Land Division report to the board last month.



Number	TMK	Agency	Owner	Act 218, SLH 2023
1	(1) 7-3-001:003	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(1)
2	(1) 7-3-001:019	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(2)
3	(1) 7-3-006:023	DLNR	DOLE FOOD CO INC	Part III, Sec. 3(b)(3)
4	(1) 7-3-007:001	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(4)
5	(1) 7-3-008:001	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(5)
6	(1) 7-3-010:003	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(6)
7	(1) 7-3-011:003	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(7)
8	(1) 7-3-011:006	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(8)
9	(1) 7-3-011:007	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(9)
10	(1) 7-3-012:002	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(10)
11	(1) 7-3-012:006	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(11)
12	(1) 7-4-001:003	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(12)
13	(1) 7-4-012:001	DLNR	WAHIAWA WATER CO INC	Part III, Sec. 3(b)(13)
14	(1) 7-1-012:014	HDOA	SUSTAINABLE HAWAII INC	Part III, Sec. 3(c)(2)
15	(1) 7-1-001:013	ADC	SUSTAINABLE HAWAII INC	Part III, Sec. 3(e)(1)
16	(1) 7-1-001:017	ADC	SUSTAINABLE HAWAII INC	Part III, Sec. 3(e)(2)
17	(1) 7-1-012:003	ADC	SUSTAINABLE HAWAII INC	Part III, Sec. 3(e)(3)
18	(1) 7-1-012:004	ADC	SUSTAINABLE HAWAII INC	Part III, Sec. 3(e)(4)
19	(1) 7-1-012:007	ADC	SUSTAINABLE HAWAII INC	Part III, Sec. 3(e)(5)
20	(1) 7-3-005:005	ADC	DOLE FOOD CO INC	Part III, Sec. 3(e)(6)
21	(1) 7-3-013:003	ADC	WAHIAWA WATER CO INC	Part III, Sec. 3(e)(7)

Lands to be acquired under Act 218. CREDIT: DLNR.

Following the board’s decision, a bill in the 2022 Legislature that would have the state acquire the Wahiawā Irrigation System passed but was vetoed by the governor.

Still, a 2022 quarterly report to the Securities and Exchange Commission by Dole Hawai‘i’s parent company indicates that it did not anticipate spending any money to make the improvements the state had called for.

The report states, “In February of 2020, the state of Hawai‘i and Department of Land and Natural Resources provided notice to Dole of a deficiency in the spillway and embankment stability of a company-owned reservoir that requires mediation by 2025. Dole contracted a third party to perform an improvement study which resulted in an estimate of costs to modify the spillway of approximately $20.0 million. As the impacted reservoir is currently being actively marketed to potential buyers, the company does not deem a resulting loss from the contingency to be probable and, thus, has not recognized a liability in the consolidated balance sheets.”

Under Act 218, the acquisition must be completed by June 30. Otherwise, the act will be repealed on July 1. According to Yasaka, “We [the DLNR and ADC] have to sign and do everything together.”

The ADC was scheduled to entertain a request at its March 31 meeting to delegate authority to its executive director to negotiate terms of a transfer agreement to acquire the Wahiawā Irrigation System. That meeting, however, was cancelled.

In addition to recommending that the Land Board approve the land acquisition, the Land Division also asked that the board rescind a dam remediation schedule it had imposed in 2021, once the transfer of lands to the ADC was recorded at the Bureau of Conveyances.

When pressed by Land Board member Kaiwi Yoon on Dole’s dam remediation efforts following the board’s 2021 decision, Jared Gale, Dole’s chief legal officer, replied that the company’s efforts “went until Act 218 was passed.” He said that it didn’t make a lot of sense for Dole to start a project when the state would be acquiring the lands, so the remediation timelines were extended so the transfer could take place. If Act 218 were repealed, he added, “those timelines would kick back into effect.”

“I can say that we did comply with every step that was due before the deadlines were paused,” he said.

Cleanup

If and when the state acquires the lands, there will be a lot of cleaning up to do. Dole representatives tried to assure the Land Board last month that license agreement language ensures that its tenants will be on the hook for remediation costs on lands they occupy. However, a bill in the Legislature would appropriate millions of dollars should the state somehow be stuck with the bill.

A Phase 1 environmental site assessment found many areas of concern, including "vagrant activities" on all of the parcels to be acquired.

"Because of the homeless populations and illegal dumping, there are areas in which there are some petroleum contamination," Yasaka said.

The assessment also found "unlawful disposal and burning of waste materials, including hazardous/regulated substances, electronic waste, tires, and construction debris," as well as stained soil.

On lands occupied by Dole tenant Agsalda Builders, Inc., unlabeled drums, petroleum products, hazardous substances, and hazardous waste were seen being improperly stored and/or released onto the ground, according to the Land Division report.

"Further, soil stockpiles from identified sources were present, along with an open burial pit," it added.

Uses on another parcel, from the 1940s to 1980s, included auto sales and repair and gas, oil and tire services. These uses "may have resulted in the release of petroleum hydrocarbons into the environment [and] may have led to the release of heavy metals." Improper storage of solid and hazardous waste was also seen on this parcel.

Two dozen soil samples taken from accessible areas under a limited Phase II environmental site assessment found hazardous chemicals and heavy metals.

"Several remedial actions are suggested, including reporting the contamination under state emergency laws, conducting an Environmental Hazard Evaluation, and preparing a removal action work plan to address and mitigate identified hazards. The report underscores the importance of ongoing monitoring and evaluation of contaminant migration, particularly pertaining to runoff affecting irrigation water quality in the region. Overall, the findings highlight the critical need for immediate actions to safeguard both public health and the environment surrounding Lake Wilson Reservoir," the Land Division report states.

Following Yasaka's presentation, board member Denise Iseri-Matsubara was clearly concerned about the remediation that will need to be done.

Yasaka said that work with state attorneys was ongoing to "tighten up" language in Dole's month-to-month tenant licenses. "They want more assurances to make sure funding is available," she said.

With regard to the banks surrounding the reservoir, because of the homeless population, the state "may have to do more investigation on those," she added,

"Sounds like this is not going to occur prior to transfer," Iseri-Matsubara said.

"We are prepared," Yasaka replied. "We're making sure there is funding available for that."

"Has the area of potential effect been defined?" Yoon asked.

"Not thoroughly," Yasaka replied, adding that funding was being sought to further delineate the area after acquisition.

"I'm just trying to ascertain … what would be the financial burden on the state," Yoon later said. "In my experience, these things can be very costly. … We're not talking about tens of thousands or hundreds of thousands of dollars. We're talking much greater than that."

Gale noted that at least with regard to its tenants, they are obliged to hold at least $2 million in general liability insurance, which could cover cleanup costs.

On March 24, Gov. Josh Green proposed changes to his fiscal year 2027 supplemental budget to deal with the growing costs associated with the transfer, including a $4 million allocation to the DLNR's Division of State Parks "for plans, design, and construction to conduct additional testing for contamination and environmental hazards; to implement remediation measures and debris clearing to protect public health and safety; to ensure compliance with Department of Health requirements; and to perform related work at Lake Wilson."

"The funding mechanisms are to assume the worst-case scenario … as a safety measure," Yasaka told the board.

"Whatever the amount comes out to be … the first thing is to have the licensee clean up its mess," Iseri-Matsubara said.

An Ag System

State Department of Agriculture and Biosecurity director Sharon Hurd and ADC executive director Wendy Gady both testified in support of the acquisition.

Hurd noted that while Dole had maintained the system until now, the recent storms showed that "it really does need to be maintained in a more current manner."

Gady added that if the reservoir is decommissioned, 9,000 acres of agricultural land would be unusable, or farmers would have to pump groundwater, putting pressure on the aquifer.

"You are lucky if six months out of the year you have rain," she said. A loss of farming in the area would increase the fire fuel load, she added.

In written testimony, she stated that the reservoir's "continued availability for irrigation is essential to keeping surrounding agricultural lands in active production and supporting the state's broader goals of increasing local food production and reducing reliance

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A Cancelled DAB Contract Seems To Have Been for Help with Testimony

In February, the Department of Agriculture and Biosecurity, Office of the Chair, entered into a $250,000 non-bid contract with Sunrise Strategies USA LLC. The contract was to take effect March 7 of this year and run through September 6, 2027.

The description: "Specialized Legislative Process Advisory, Training, Facilitation, and Public Outreach Support Services on Agriculture and Biosecurity."

On March 16, *Environment Hawaiʻi* filed a Uniform Information Practices Act request, seeking a copy of the contract, the scope of work, and copies of invoices, if any, submitted by the contractor.

On March 30, Janelle Saneishi, the department's longtime public information officer, replied, providing the contract as well as notice that, as of March 16 – the same day the department received the UIPA request – the contract had been cancelled.

Saneishi also included a copy of the scope of services. The very first task listed was "Legislative Process Advisory and Education (Internal Support)." This included "monitoring and summarizing publicly available Hawaiʻi state legislative and administrative developments related to department priorities for internal planning purposes," "preparing internal informational briefing materials …," and "facilitating strategy discussions with department leadership and designated staff." Also, the contractor was to provide a "legislative session summary" and "annual recommendations and lessons-learned report, once during the term, timing [to be] coordinated with the department."

Other services included "developing messaging frameworks and key message guidance for department staff use, including talking points, FAQs, and audience-specific message maps," and "media readiness support for department leadership and staff."

Under the heading "Legislative Interaction and Scope Limitation," there's the statement: "No lobbying under this agreement." The contract "does not authorize or require contractor to engage in lobbying activities on behalf of the department."

The original notice of the contract was posted on HANDS, the Hawaiʻi Awards & Notices Data System. Any mention of the contract has now been removed.

Sunrise Strategies was organized in February 2025; its sole member is Oceania Marketing Group, LLC. The two principals of Oceania Marketing are Jacob Henderson and Devin Gates.

— Patricia Tummons

on imports. The irrigation systems serving these lands are directly interdependent with Lake Wilson [also known as the Wahiawā reservoir], relying on its stored water to provide consistent and reliable delivery. In turn, acres of Agribusiness Development Corporation lands currently in production depend on that consistency to sustain crops, maintain yields, and support local farmers."

Public testimony, both written and oral, largely supported the acquisition.

In its testimony opposing the Land Division's recommendations, the Environmental Caucus of the Democratic Party of Hawaiʻi wrote, "While Act 218 authorizes this transfer, the board should not finalize it without a full, transparent accounting of the **liability, cost, and public-safety implications** that would shift from a private corporation to Hawaiʻi taxpayers. … **Why should Hawaiʻi taxpayers assume Dole's long-deferred maintenance, upgrades, and liability?"**

Earlier in the meeting, Dole's Gale contended that the company had only became aware of the contamination in its properties after the environmental site assessments were done, had not deferred any maintenance, and that it didn't make sense to upgrade the dam when the state was interested in acquiring it at the same time Dole's footprint in the area was shrinking.

In the end, after meeting in executive session, the board approved a motion by Iseri-Matsubra to approve the Land Division's recommendations. Yoon was the sole dissenter.

In accordance with those recommendations, the board also issued a right-of-entry to the Division of State Parks, as well as a set-aside for the lands' addition to the Wahiawā State Freshwater Recreation Area for park purposes.

— Teresa Dawson

For Further Reading

See the following articles on our website, environment-hawaii.org:

- "Board of Ag and Biosecurity: ʻEwa Feedlot, Wahiawā Dam Spillway Purchase," October 2025;
- "Dam Dilemma Clouds Possible Purchase Of Critical Water Source for ADC Lands," and "ADC Agrees to Million-Dollar Settlement, Anticipates Big Ask For Irrigation Funds," November 2023;
- "Board Talk: Board Pre-Approves Fines to Spur Critical Fixes to Wahiawā Reservoir," June 2022;
- "New & Noteworthy: ADC; State Offices Reorganized," August 2021;
- "Agribusiness Corporation Eyes Effluent To Irrigate Former Galbraith Estate Lands," October 2016;
- "Bringing Water to Land ADC Acquired Near Whitmore Could Top $11 Million," July 2015;
- "Dam Safety Trumps Effluent Concerns at Central Oʻahu's Wahiawā Reservoir," August 2009.