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Up In Smoke?

The biofuel boon has gone bust – at least on the island of Hawai'i. As we report in our lead article, just five years ago folks were fighting to lay a claim to state lands where they could grow crops for eventual conversion into fuel of one or another kind.

Nary an acre of state land has been given over to such projects, while managers of private land that had been planted with the intention of providing feed stock to a biomass power plant are now shipping their mature trees to Asia, awaiting the day when the plant is up and running. That day, as we report elsewhere in this issue, may yet be some distance off.

Also in this issue: an update on recent actions of the Land Use Commission, the Land Board, and the Agribusiness Development Corporation; the current status of plans for expanding the Turtle Bay Resort; and a commentary on our October articles on climate change.

IN THIS ISSUE

2
New & Noteworthy: Vulnerable Plants; False Killer Whales
3
Legal Questions Linger With LUC Deferral on Turtle Bay
5
Turtle Bay Development: Then and Now
7
Biomass Plant Faces Ongoing Legal Hurdles
8
Complex Ownership of the Hu Honua Plant
9
Board Talk: Renewable Energy, Diverting Water for Cattle, and More
11
Agribusiness Development Corporation
12
Letter: A Call to Action On Climate Change

PHOTO: FOREST AND KIM STARR

A stand of *Eucalyptus grandis* on the Hamakua Coast, Hawai'i.

Biofuel Industry on Big Island Fails To Follow Through on Big Plans of 2008

Five years ago, state land on the Big Island experienced the biofuel equivalent of a gold rush. Bioprospectors – folks wanting to make a fortune from crops that could be used as feedstock in a variety of biofuel products – were clamoring to enter into leases with the state Department of Land and Natural Resources.

Under a law passed in 2002 that was intended to push Hawai'i in the direction of energy self-sufficiency, the Board of Land and Natural Resources could negotiate leases of state land directly with bioenergy companies. For several years, no one took advantage of this new provision, but in November 2008, two companies – Hamakua Biomass Energy, LLC, and SunFuels Hawai'i, LLC — sought and were granted "approval in principle" to lease thousands of acres of state land on the Big Island.

The Land Board's action set in motion a chain of events that left few parties untouched and fewer still happy. Ranchers who lease large tracts of state land at a cost of a few dollars an acre per year were up in arms over the prospect of seeing state land withdrawn from their leases. Legislators expressed dismay over the expedited treatment the biofuel companies received – although they were the very ones who had crafted language providing for just such treatment. And other prospective biofuel companies were objecting to the apparent first-come, first-served method that the Land Board employed in doling out its favors.

After several raucous meetings in East Hawai'i attended by vocal representatives of all affected groups, then-Land Board chairperson Laura Thielen committed to

to page 6

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NEW AND NOTEWORTHY

Vulnerable Plants: Just how vulnerable are native Hawaiian plants to climate change? To answer that question, a group of scientists from the U.S. Geological Survey, the University of Hawai'i-Hilo, the Pacific Islands Climate Change Cooperative, the Fish and Wildlife Service, the Nature Conservancy of Hawai'i, the Hawai'i Cooperative Studies Unit, and the U.S. Department of Agriculture Natural Resources Conservation Service examined the several threats that climate change poses for native plants.

The result is a vulnerability assessment that considers the impact of climate change on more than 1,000 species, including 319 that are federally listed as endangered or threatened.

"Our results," the authors write, "show that the species most vulnerable to climate change also tend to be species of conservation concern due to non-climatic threats (e.g., competition and predation from invasive species, land-use change) ...Of particular concern are the numerous species that have no compatible-climate areas remaining by the year 2100. Species primarily associated with dry forests have higher vulnerability scores than species from any other habitat type."

PHOTO: FOREST AND KIM STARR

Heliotropum anomalum, one of the potential "wink-out" species.

Perhaps the most depressing part of the report is the list of "wink-outs" that is contained in appendix 4. A wink-out, as the name suggests, is a species for which there will probably be no future climate envelope. The appendix places more than 50 species in this category.

The 141-page report, "A Landscape-based Assessment of Climate Change Vulnerability for all Native Hawaiian Plants," is available online for free download from *http://www.scribd.com*, thanks to the Nature Conservancy's Sam Gon, one of the authors.

And Another Plant Threat: The U.S. Fish and Wildlife Service Office of Law Enforcement has announced it is investigating the theft of "very rare endangered plants at specific locations on Hawai'i island" and is requesting that anyone who may have information about such thefts call its Hilo office at (808) 933-6964.

"Anyone who provides key information resulting in a conviction of those involved may be considered to receive a reward," the OLE stated in a notice.

Clannish Killers: The more researchers learn about the behavior of false killer whales in waters around Hawai'i, the more clannish they seem to be. Two distinct populations of the large dolphins (*Pseudorca crassidens*) have been identified around the Main Hawaiian Islands: the insular population, which is generally found closer to the islands, and the pelagic population.

Now, in a paper published in the October edition of *Pacific Science*, a team of researchers led by Robin Baird of the Cascadia Research Collective puts forward evidence of a distinct population of false killer whales in waters off the Northwestern Hawaiian Islands. The suspicion that a separate population might exist had been discussed for several years, based on the ongoing work Baird and his colleagues Erin Oleson, Jay Barlow, Allan Ligon, Antoinette Gorgone, and Sabre Mahaffy. The *Pacific Science* article, titled "Evidence of an Island-Associated Population of False Killer Whales (*Pseudorca crassidens*) in the Northwestern Hawaiian Islands," is the first peer-reviewed publication to report on its existence.

The range of the NWHI population overlaps just slightly with that of the MHI population. From the movements of tagged individuals as well as encounters that were documented with photos, the researchers conclude that the range extends from French Frigate Shoals in the northwest to near Kaua'i, in the southeast, and from shallow nearshore waters to deep waters up to 90 miles from land.

Although the article did not give any estimate of the population size, a report by the Pacific Islands Fisheries Science Center last year pegged it at around 552.

Quote of the Month

"The public benefits that were so important – the parks and affordable housing – don't exist."

— Greg Kugle, Defend O'ahu Coalition

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Land Use Commission Defers Decision Regarding Turtle Bay Resort Redistricting

Serious legal questions surrounding the state Land Use Commission's 1986 Decision and Order to redistrict 236 acres owned by Turtle Bay Resort, LLC (TBR) will remain unanswered at least until the end of the next legislative session.

On November 8, after discussing matters in executive session, the LUC unanimously deferred deciding on Defend O'ahu Coalition's (DOC) renewed motion for an Order to Show Cause (OSC) why the land — currently a mix of a golf course and open space — shouldn't revert from the Urban District back to the Agriculture District.

An initial motion by commissioner Lance Inouye to deny the petition without prejudice failed.

At the time of the commission's vote, negotiations among representatives from the resort, state agencies and private land trust organizations regarding the protection of the resort's undeveloped coastal lands were ongoing. The working group, established by Senate Concurrent Resolution 164 of the 2013 Legislature, was to have ended its work and submitted a report to the Legislature on November 30.

Commissioner Dennis Esaski cited the group's work as the main reason behind his motion to defer taking action on DOC's motion. Commissioners also noted during discussion that the 60-day appeal period for TBR's supplemental environmental impact statement for its planned expansion, accepted by the Honolulu Department of Planning and Permitting on October 23, was still wide open.

While no decision was made, the attorneys representing the various parties to the case gave commissioners a lot to chew on over the next several months.

Old vs. New

Back in 1986, Kuilima Development Company (KDC) planned a massive expansion of the Turtle Bay Resort on O'ahu's scenic North Shore. The company, an arm of Prudential Insurance Company of America, proposed to add more units to its existing 500-unit hotel and to build three new hotels for a total of 1,450 new hotel units. The company also planned to build 2,063 resort condominium units.

In addition to the new visitor units, the company proposed to create public and private parks, a new golf course and club house, a stable, and a commercial center. It also agreed to build affordable housing units equivalent to ten percent of the resort units proposed for the redistricted area. Under the original plan, that would have equaled 100 units.

With regard to the redistricted area, the original plan called for 1,000 condominium units to be built on 78 acres. A new golf course would cover 132 acres and 16 acres of parks would have been created. The rest of the area, 10 acres, would have been used for a stable.

Once KDC got its entitlements from the LUC and the City & County of Honolulu in 1986, it sold the 800-plus-acre resort property to Japanese developer Asahi Jyken two years later, "just at the time Phase One was promised to be done," according Greg Kugle, an attorney representing DOC. Kugle called the move "speculation and land banking at its worst."

After completing some improvements initially (but none of the resort or affordable units), the development stalled for years. Then in 1999, the land was resold again, but little more happened until 2005 when the new owner, Oaktree Capital Management, sought bulk subdivision approval from the city.

Given the backlash from community members, as well as a change in market conditions, the resort unveiled a revised and largely downscaled expansion plan in 2011.

The plan still includes the golf course, parks and an equestrian center in the redistricted area. However, instead of condominium units, the resort is proposing to build single-family and multi-family resort homes totaling 265 units. It's also planning to build 160 affordable homes – called "community housing" in the environmental impact statement, but also referred to as "workforce housing" by TBR staff – within the redistricted area.

Unmet Conditions

The main, and some argue, only reason the LUC issues an OSC is when a landowner violates one or more conditions of the D&O to redistrict the property. (TBR further argues that the D&O must include a specific condition allowing for an OSC proceeding.)

In its 1986 D&O redistricting the resort's 236 acres, the LUC included conditions requiring the resort to 1) build "full-service hotels" on lands outside the petition area to ensure job opportunities for North Shore residents, 2) build housing for low to moderate income residents or employees, no less than 10 percent of the planned number of resort condominium units planned for the redistricted area, 3) fund the design and construction of improvements to Kamehameha Highway, 4) develop water sources to meet the expansion's demand, 5) help the U.S. Fish and Wildlife Service and the state Department of Land and Natural Resources protect Punaho'olapa Marsh, 6) protect archaeological sites, 7) ensure public access, free parking, and dedicate at least 10 acres to the county for parks, 8) develop a private sewage system, and 9) establish a coastal monitoring system.

PHOTO: LESLIE KUBA

Turtle Bay, where Turtle Bay Resort, LLC, plans to expand its existing hotel and construct hundreds of resort residential units all the way to Kawela, seen in the far distance

DOC contends that conditions 1, 2, 3, and 7 have not been met. Although neither the state Office of Planning nor TBR dispute that, they both argue that none of the conditions have been violated.

"[T]he boundary amendment approved in 1986 was issued without 'time performance' or 'compliance with representations' requirements," OP director Jesse Souki wrote in his response to the DOC's motion. "[P]arties subject to an administrative decision must have fair warning of the conduct government prohibits or requires."

TBR attorney Wyeth Matsubara also noted, "The plain reading of the D&O does not require TBR to complete the conditions within a specific time period."

To this, Kugle has argued that no conditions were needed because the LUC's administrative rules governed timing and scheduling of improvements.

The LUC's rules in effect at the time the D&O was approved required those requesting boundary amendments to make "substantial progress in the development area redistricted to the new use approved within a period specified by the commission not to exceed five years from the date of approval of the boundary change."

In addition, the rules also required developers to submit proof that the development

would be completed within five years of date of commission approval. "In the event the full urban development cannot reasonably be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments, each such increment to be completed within no more than a 5-year period."

To Kugle, these rules meant that substantial progress must have been made within five years.

To suggest that TBR is free from any performance deadlines is to "ignore the rules that the LUC and the developer were bound by," he wrote in one of his recent filings to the LUC.

'Substantial Progress'

One of the biggest debates since the DOC first filed its motion in 2008 has been whether or not there has been substantial progress within the redistricted area.

The D&O states that Kuilima Development Company had originally proposed to complete more than a dozen infrastructure improvement projects, including a sewage treatment plant, improvements to parts of Kamehameha Highway fronting the resort, and a new hotel along Kawela Bay, among other things within five years of redistricting.

With regard to the redistricted area, KDC planned to complete a new golf course, a stable, building pads for the proposed condominium sites, and 315 of the 1,000 condominium units in that first phase.

The rest of the resort improvements, both within and outside of the redistricted area, were proposed to be completed in 1996, the D&O stated.

Of the Phase 1 improvements that fall within the redistricted area, only the golf course has been completed. According to TBR attorney Matsubara, the golf course improvements cost $20 million.

Back in 2010, when the LUC last heard arguments on DOC's motion, Matsubara had argued that enough progress had been made to contest any reversion of the property. A TBR representative noted that the 192-acre 18-hole Palmer golf course, which lies mostly within the redistricted area, covers more than half of it.

PHOTO: LESLIE KUBA

A view of Kuilima Bay with Kahuku Point in the distance. The resort plans to expand its hotel and build resort residences along the bay. A park is planned for Kahuku Point.

Kugle then countered that substantial progress, according to the old LUC rules, referred to the new uses approved, which in this case were a golf course, 1,000 resort condo units, a public park, a private park, and a stable.

"Of those new uses, they have a golf course, no condos, no parks, no stable. I would say of the five new uses [approved], they've got one. ...The public benefits that were so important — the parks and affordable housing — don't exist," he said.

Given that the LUC has in recent years penalized two developers — by reverting lands or issuing an OSC hearing — who have either not made substantial progress in a timely manner or have departed from representations made at the time of redistricting, "it would be arbitrary to look at this situation and not issue an Order to Show Cause," Kugle told the commission last month.

The OP and TBR point out, however, that the D&Os for those two projects (the Villages of 'Aina Le'a on Hawai'i island and the proposed mega-mall on Maui) contained conditions regarding performance and/or representations. The Turtle Bay Resort D&O did not.

Retroactivity

If TBR has, indeed, violated the LUC's old rules governing the timing of development, Matsubara argues that the commission could initiate a boundary amendment proceeding in redistrict the area, but it cannot grant an OSC hearing.

The statute establishing the OSC process was adopted years after the 1986 D&O. Matsubara argues that rules or laws affecting an entity's substantial rights cannot be applied retroactively.

The Order to Show Cause process is "extremely difficult," as it shifts the burden of justifying the current district designation onto the petitioner, he told the commission. "It definitely affects [TBR's] substantial rights."

So, the process for enforcing the resort's D&O is essentially frozen, asked one commissioner.

"That is correct, because it affects our substantial rights. That's case law," Matsubara responded, citing the Hawai'i Supreme Court's decision in *Richard vs. Metcalf.*

Kugle, however, argued that agencies can apply new rules to old decisions and cited another, more recent case, *Morgan vs. Kaua'i Planning Commission*. In that case, the Hawai'i Supreme Court supported the Kaua'i Planning Commission's application of a 1992 rule on a 1981 Special Management Area permit.

Curve Ball

Back in 2010, the OP had argued that the D&O should be amended to include performance deadlines and a number of commissioners at the time seemed eager to do so. But those commissioners are now gone. And in its arguments last month, the OP seemed to want the OSC motion to simply go away.

"The Office of Planning is not unwilling to find violations or support reversions. In this case, it's not a case for an Order to Show Cause. It's better to end this process now. You simply can't find the violation. It is important there be a finality to our decisions," said deputy attorney general Bryan Yee, representing the OP.

Kugle responded, once again, that there was no need to include an express condition regarding when improvements should be completed because rules were in place that already did that.

"It is not at all appropriate to say they don't have fair notice," Kugle said.

In the end, though, the commission's decision had nothing to do with the arguments presented. After holding a rather lengthy executive session, the commissioners returned and immediately asked Matsubara and Kugle what they knew about SCR 164, which established the working group to investigate ways to protect the coastal areas owned by TBR (in lieu of pursuing a Senate bill seeking to purchase the the property for $50 million or condemn it through eminent domain).

Matsubara had not even heard of the resolution. Kugle said he knew little about it other than the entities that composed the working group. (The group includes representatives from TBR, the Board of Land and Natural Resources, the State Historic Preservation Division, the LUC, the Legacy Land Conservation Commission, the Trust for Public Land, and the North Shore Community Land Trust.)

Before the final vote on Esaki's motion to defer the matter, commissioner Ronald Heller said that although there hadn't been much discussion about the working group, its negotiations "may affect whether this is the best time to make a decision."

"There are a couple things that could change things materially – an agreement with the state or an appeal of the final SEIS," Heller said. "It might be better to know where we stand ... before we try to make a decision."

Before the commission voted to defer the matter, Esaki said he thought it shouldn't be brought back until after the next legislative session. ***— Teresa Dawson***

PHOTO: TURTLE BAY RESORT, LLC SEIS.

An artist's rendering of the proposed hotel expansion and resort residential units along Kuilima Bay.

Supplemental EIS Says Economics Don't Justify Full Build-Out at Turtle Bay

When plans to build 3,500 more units at Turtle Bay Resort resurfaced in the mid-2000's, the move set off alarm bells among community members worried about the impacts such a massive development would have on the North Shore's rural character, as well as government officials who believed such projects should have some kind of shelf life.

As many expected, in the supplemental environmental impact statement (SEIS) prepared for the revised plans, the resort's landowners (currently Turtle Bay Resort, LLC, or TBR) have significantly downscaled the project. TBR has reduced the number of proposed hotel units by 75 percent and the project's overall density by 60 percent. Rather than building some 2,000 resort condominiums, TBR is proposing to build 590 "resort residential" units, which could consist of duplexes, single-family homes, or multi-family homes. The proposed hotels also will not be full-service, but will more likely be timeshares or condo-hotels.

The reduction has largely been characterized in news reports and by resort representatives as a response to public input, gathered over the past two years from hundreds of meetings and interviews with community leaders. (According to resort representatives, the company spent $37 million developing the new plan, including $2 million on a supplemental environmental impact statement and community outreach.)

Ralph Makaiau, TBR's project manager for development who has worked at the resort for 40 years, adds he's put great effort into convincing the property's various landowners over the years (there have been at least four) that their most valuable resource is the beauty of the land, not things like scented bathroom soaps and soft pillows.

Even so, TBR's SEIS for its revised project includes a full build-out as an alternative. However, the document also explains how that's not really an option, at least not right now.

In the mid-1980s, when then-landowner Kuilima Development Company received land use entitlements for the expansion, the City & County of Honolulu's development plan for Ko'olau Loa called for another 4,000 units at the resort. A report by Hallstrom Appraisal Group, Inc., at the time also predicted that demand for resort units on O'ahu would grow from just under 40,000 units to nearly 60,000 units by the year 2000. The report stated that the Turtle Bay Resort property could absorb between 5,000 and 6,000 of those resort units.

Those projections have since proven false, according to TBR's SEIS.

HVS International Consulting and Evaluation, an "internationally recognized firm specializing in real estate market assessment," concluded that the project envisioned in the mid-1980s "is currently NOT a financially viable scenario due to changes in market conditions," the SEIS states.

"The density of development and the total number of units in the full build-out alternative were predicated upon creating sufficient mass for the development to create economies of scale. But comparable projects completed elsewhere in Hawai'i since 1985 have demonstrated that success can be achieved at a reduced scale. ...

"Based on the proprietary market analysis conducted for the resort owners, it is estimated that current and anticipated market conditions would require 39 years for the market to absorb the available new resort and residential units. Assuming construction of a full build-out alternative was to begin in 2015, it is estimated based on anticipated market absorption rates that the final units would be constructed in 2053," it continues.

The SEIS, prepared by Lee Sichter, also notes that traffic impacts of the full build-out alternative would be "at least twice the traffic impacts as those anticipated for the proposed action." ***— T.D.***

For Further Reading

The following articles are all available on the Archives page of our website, *www.environment-hawaii.org,*

"Spurred by Kuilima, Environmental Council Considers Shelf Life of Disclosure Documents," June 2006;

"Attorneys Debate How Deadlines Apply to Kuilima Resort Expansion Project," "Need for the Proposed Development," and "Kuilima Resort Submits Status Report," September 2008;

"Commission Delays Forcing Developer to Justify Urban Designation at Kuilima," March 2009;

"No New EIS for Kuilima," (New & Noteworthy), July 2009;

"Land Use Commission Tries But Fails to Resolve Dispute Over Kuilima Resort," and "State Supreme Court Hears Arguments Over Supplemental Review of Kuilima Expansion," March 2010.

Biofuel continued from page 1

involving them all in working out, with the help of the energy branch of the Department of Business, Economic Development, and Tourism, a policy that would lead, eventually, to an equitable, "win-win" solution.

Today, not one biofuel company has obtained a lease of state land under the 2002 law (Chapter 171-95, Hawai'i Revised Statutes). Of the five biofuel companies that expressed an interest in leasing state land for growing energy crops in 2008, two have quietly sunk from sight (including Hamakua Biomass). One ended in bankruptcy. One went out of business – but its principal, phoenix-like, has recently come back to life and is once more promising to use Waiakea timber for a hardwood lumber mill. And the fifth, **SunFuels, Hawai'i, LLC**, which said it would produce biodiesel through the breakdown of wood fiber, has abandoned that lofty if elusive high-tech goal. While it no longer is a business in good standing with the state, its parent remains active in biomass management on the Big Island.

Meanwhile, Hu Honua, the biomass-fueled power plant being built in Pepe'ekeo, intended as the destination for many of the eucalyptus trees and unsalable wood from the mill, is facing an uncertain future. Among other things standing in the way of its completion are a pending settlement with the Environmental Protection Agency over its permit to operate, a challenge in 3rd Circuit Court over the Special Management Area permit awarded to it by the Hawai'i Planning Commission, and another complaint in 3rd Circuit Court alleging it has breached terms of its lease with the underlying landowner. Until last month, it also faced legal action in Delaware, where a former owner was claiming the current owners conspired to defraud it of $5.5 million through sham transactions. On October 24, that lawsuit was withdrawn.

Update

SunFuels Hawai'i, LLC, was one of the two entities back in 2008 that received approval in principle for a lease of state land to grow biofuel crops. Although it has not received any state land and is delinquent in its filings with the state Department of Commerce and Consumer Affairs, its parent company, Merica Hawai'i, Inc., lives on and has an abiding interest in biofuels.

Forest Solutions, Inc., is a sister company to SunFuels. Both are owned by parent Merica Hawai'i, which is in turn owned by David Saalfield. Nicholas Koch, its manager, says the company mainly manages stands of timber on land owned by other entities. It is not harvesting any trees at this time, Koch told *Environment Hawai'i*, but when Hu Honua goes online, some of the trees belonging to the company's clients may provide fuel for the plant, he said.

Hawai'i Island Hardwoods is a limited liability company whose members are four separate entities: Delta Investments, LLC, Waikii Ventures, Inc., J. Quinn Company, LLC, and Koaaina Ventures, Ltd. For several years, it had a license to take timber from 1,095 acres within the state's Waiakea Timber Management Area, just south of Hilo. Last May, however, the Land Board agreed with a request from HIH that its license be transferred to **Tradewinds Hawaiian Woods, LLC**, which had purchased the assets of Hawai'i Island Hardwoods. According to a report to the board prepared by the staff of the Department of Land and Natural Resources' Division of Forestry and Wildlife, HIH had not performed on its license for five years.

PHOTO: FOREST AND KIM STARR

Eucalyptus grandis (flooded gum, red gum), plantation at Hamakua Coast, Hawai'i.

Tradewinds Hawaiian Woods, LLC, is now the sole entity holding a license to log the eucalyptus and other trees planted on the Waiakea timber area. When the Land Board transferred HIH's license to Tradewinds, however, the company did not yet exist. It filed papers with the Delaware Secretary of State's office only on May 28 of this year, 18 days after the board approved the license transfer, and was registered with the Hawai'i Department of Commerce and Consumer Affairs on June 3.

Although Tradewinds Hawaiian Woods might be new, the company representative making its case to the Land Board was a familiar face. Don Bryan, Tradewinds' chief executive officer, had been the principal of **Tradewinds Forest Products, LLC**, the company that had had a license to take logs from the Waiakea timber area for a decade. That license was terminated by the board on July 7, 2011. At that time, Tradewinds had paid $758,500 in license fees to the state, but still owed $210,000, which the Land Board forgave.

On May 10, Bryan told the Land Board that he has a new investor, Dan Fuller of Fuller Management, and that with the new capital, construction on a "full, commercial-scale sawmill" would start in the summer of 2013 and would be completed by mid-2014. Bryan has experienced further delays.

Tradewinds Forest Products, LLC, has the same name as the company that Bryan founded and headed for years but now claims no relationship with the original company. In 2009, when the original Tradewinds was seeking capital to finance its construction of a veneer mill, a couple of events occurred. On December 21, the original Tradewinds changed its name to TRR Investments, LLC. On the same date, a new company, also called Tradewinds Forest Products, LLC, registered with the Department of Commerce and Consumer Affairs. Five days earlier, it had filed papers announcing its formation with the Delaware Secretary of State.

In October 2009, the Land Board had approved transferring Tradewinds' license from the old company to the new one, which involved not only Bryan, but also Scott Harlan of Rockland Capital and Bob Saul of a firm called GMO Renewable Resources. (GMO, Saul explained to the board, referred not to genetically modified organisms but to three partners in a Boston asset management firm: Grantham, Mayo, and van Otterloo.) GMORR, in turn, was involved in Long Horizons Fund, which, Saul explained, owned the lease held by Hamakua Planta-

Biomass-Fueled Power Plant Near Hilo Continues to Face Legal Challenges

When it was originally proposed, the Hu Honua Bioenergy power plant, just north of Hilo in the village of Pepe'ekeo, seemed like an answer to several challenges facing the Big Island and the state as a whole. Using wood (biomass) as a fuel would help Hawai'i move away from reliance on imported fossil fuels. The plant would be a market for mill ends and sawdust from a planned commercial sawmill that would process eucalyptus and other logs from state and private plantations along the Hamakua coast. By employing workers to build and operate the facility, the power plant would also be a source of well-paying jobs in a region still recovering from the shutdown of sugar plantations decades ago.

The original plant on the site had burned bagasse, augmented by fuel and (from 1985 on) coal until the mid-1990s, when the sugar plantation, owned by C. Brewer, ceased operations. Much of the company's land holdings, including the plant site, was sold to Continental Pacific, LLC, a Florida-based land broker that has purchased several large properties throughout Hawai'i. The plant continued to operate, burning coal, until December 31, 2004.

After the plant shut down, it was purchased by Pacific Rim Energy Partners, which proposed to restart it using eucalyptus from lands in Hamakua owned by Kamehameha Schools, as well as the state's Waiakea Timber Management Area. By 2008, ownership of the plant had transferred to Hu Honua Bioenergy, LLC, whose members included Ethanol Research Hawai'i, LLC (owned by Daniel KenKnight) and MMARV Bioenergy (a subsidiary of Baltimore-based Municipal Mortgage & Equity, LLC). Heading up Hu Honua was Richard McQuain, a former executive with Hawaiian Electric Industries.

On April Fool's Day in 2010, MMARV Bioenergy's interest was purchased by a group of investors who had formed a Delaware limited liability company called C Change Pacific. The company continued to press forward with its plan to refurbish the Pepe'ekeo plant, obtaining a Special Management Area permit from the Hawai'i County Planning Commission and receiving from the Hawai'i Department of Health, in 2011, a permit to operate under the federal Clean Air Act.

In 2012, Hu Honua and the Big Island utility, HELCO, signed a power purchase agreement (PPA), which was then put before the state Public Utilities Commission for its approval. As of press time, the PUC was in the final stages of considering the agreement, under which Hu Honua would supply 21.5 megawatts of power to the Hawai'i island grid.

But the plant still must overcome several hurdles before the way is cleared for its operation:

The Clean-Air Permit

A group of nearby residents, organized as Preserve Pepe'ekeo Health and Environment (PPHE), is fighting in federal district court to vacate the covered-source permit Hu Honua received from the DOH. PPHE sued the Environmental Protection Agency in September 2012 after the agency failed to respond to the group's petition asking the agency to object to the permit.

As of press time, the EPA had until December 4 to respond to the petition, but had requested, because of the government shutdown, that it be given until February 7. Attorney Marc Chytilo, representing PPHE, says the judge must agree to the extension.

If the EPA decides to object to the state permit, the permit would be vacated and Hu Honua, the state, or both, would then be allowed to respond and re-initiate the permit process. If the EPA does not object, Chytilo says, "that decision is reviewable in federal court."

The SMA Permit

The fate of Hu Honua's Special Management Area permit is also in limbo. Several neighbors objecting to the permit's validity filed a complaint in 3rd Circuit Court in July 2011. In August 2012, Judge Greg K. Nakamura found the permit deficient inasmuch as the application did not include a thorough-going archaeological inventory study (AIS) and remanded it back to the Planning Commission for further review.

The commission accepted a revised AIS earlier this year.

Judge Nakamura had not issued a decision by press time.

Lease Violations?

On September 23, Maukaloa Farms, LLC, which owns the land leased by Hu Honua, filed a complaint in 3rd Circuit Court seeking to halt all further work on the site. According to the complaint, Hu Honua was required to get Maukaloa Farms' approval for all improvements costing $500,000 or more, as well as a bond covering the anticipated costs. Construction to date, the complaint states, "far exceeds" this amount.

No trial date had been set as of press time. ***– P.T.***

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tions on about 14,000 acres of land owned by Kamehameha Schools. (Technically, the lease is held by a subsidiary of Long Horizons Fund: LHF Lopiwa, LLC. The two managers of that entity, in turn, are GMO Long Horizons Manager, LLC, and GMO Renewable Resources, LLC.)

Despite Land Board approval of the license transfer, the transfer never did happen. As Harlan explained in a letter to the Department of Land and Natural Resources' Division of Forestry and Wildlife in July 2011, the license transfer "was contingent on the newly formed Tradewinds getting financing for plant construction (which unfortunately did not happen)." In fact, the relationship between Bryan and the new investors had soured a year earlier, according to Harlan: "In mid-2010," he told DOFAW admistrator Paul Conry, "we suspended development activities while we awaited market improvements and investigated other business opportunities for the use of our timber resources. At that point, we terminated the employment of the development team at Tradewinds," a team that included Bryan.

Today, Tradewinds is harvesting many of the trees from the KS land. Last year, the company shipped some logs to O'ahu, to see if they could be used as fuel in the AES power plant at Barber's Point. That did not work out. Since then, the logs have been shipped to markets in Asia. Last month, some 18,000 eucalyptus trunks that had been stockpiled on vacant land mauka of Kawaihae Harbor were loaded up and set sail for China, according to Bill Stormont of American Forest Management, the firm that oversees the forestry operations for Tradewinds on the KS lands.

— Patricia Tummons

Withdrawn Delaware Lawsuit Sheds Light On Complex Ownership of Hu Honua Plant

When the Hu Honua plant was proposed in 2008, the owners were Ethanol Research Hawai'i, a company owned by Hawai'i alternate energy entrepreneur Daniel KenKnight, which held around 10 percent of the equity, and MMARV Bioenergy, a subsidiary of Municipal Mortgage & Equity, or Muni Mae, a large mortgage company.

After the mortgage market collapse of 2008, Muni Mae sold off most of its renewable energy holdings. Its sale of the Hu Honua interest was the last to go, in 2010.

Last September, however, MMARV Bioenergy sued several entities having an equity interest in Hu Honua. At the heart of the complaint was the allegation that the defendants had sought to defraud MMARV from $5.5 million that it was entitled to when the Public Utilities Commission approved the power purchase agreement between HELCO and Hu Honua. Little more than a month later, the complaint was withdrawn without prejudice – meaning it could be refiled at some future date.

At the time that MMARV Bioenergy sold its interest in Hu Honua, Muni Mae had already taken out a $2.5 million loan from C Change Pacific, which, according to the later purchase agreement between the two entities, was to cover MMARV Bioenergy's "required capital contributions to [Hu Honua]" and which would be used "to fund the operations of Hu Honua Bioenergy." C Change Pacific was itself a subsidiary of a company called Transformative Energy & Materials Capital, Inc. (TEM), owned by John Sylvia, Roger Berry, Virginia Foote, and Roger Preston.

Under the purchase agreement executed on April 1, 2010, the price was $5.5 million at closing, plus an additional equity contribution to Hu Honua of $2 million. Also, C Change was to bear all "transaction expenses," an amount that was estimated to be less than $1.25 million, and was to forgive any outstanding balance on the 2009 loan. In addition, the agreement called for a "deferred cash payment" of $5.5 million to be paid to MMARV Bioenergy "upon the Final PUC Approval Date (if and when such Final PUC Approval Date occurs)."

The purchase agreement did specify certain conditions under which the deferred payment could be avoided by C Change. If, to take one example, C Change sold its interest in Hu Honua and was unable to recover its investment, it would not have to make the deferred payment to MMARV Bioenergy. On the other hand, if C Change contemplated selling off Hu Honua, it was supposed to provide timely notice to MMARV Bioenergy, allowing it not less than 30 days in which to make its own bid for the assets. (In later filings with the SEC, MMARV Bioenergy's parent company indicated it had taken a $5.3 million loss in the sale.)

In the three years following the sale, C Change Pacific changed its name to HIPP, LLC, and took out several loans from what seem to be closely related companies. The chief executive officer of HIPP, for example, Sylvia, also is a partner in a company called Grandis Ventures I, LLC, one of several entities that extended substantial loans to HIPP and Island Bioenergy. (Island Bioenergy is the sole member of Hu Honua Bioenergy, LLC; the two members of Island Bioenergy in 2013 were, according to filings with the state Department of Commerce and Consumer Affairs, HIPP and Grandis Ventures I.)

Two other companies linked to the four original C Change partners involved in the Hu Honua purchase were set up as well: PHXPARBLK and Vanterra TEM.

In June, the *Wall Street Journal* published a notice that Grandis, Vanterra, and PHXPARBLK would be foreclosing on HIPP and Island Bioenergy. "The collateral being sold," the announcement stated, "consists in large part of membership interests in IBE and Hu Honua Bioenergy, LLC." Excluded from the sale, however, were claims on HIPP by Trilateral Energy, LLC, a Nevada company that, on its website, now says it is one of the owners of the Hu Honua plant.

On June 24, Sylvia informed Michael Falcone, the president of MMARV Bioenergy, that Grandis had purchased at the foreclosure sale all of the ownership interest that Falcone's company had conveyed to C Change/HIPP in the 2010 sale. "[D]ue to the time constraints imposed by a pending foreclosure sale …. HIPP was unable to provide 30 days prior notice to MMARV…." The purchase price was $49,626,444 – an amount equal to HIPP's indebtedness to Grandis, Vanterra, and PHXPARBLK, Sylvia stated. If MMARV Bioenergy desired, Grandis would agree to sell the company back to MMARV Bioenergy for that same amount within 30 days, Sylvia said.

Since the purchase price – a huge loss for HIPP, technically – did not result in HIPP recovering its investment or making a profit, HIPP avoided any obligation to pay MMARV Bioenergy the $5.5 million at the time of PUC approval of the power purchase agreement. Or, as Sylvia put it in his letter to Falcone, "in no event is any portion of the Disposition Proceeds … or any other sum payable to MMARV…"

MMARV Bioenergy did not elect to repurchase its interest in Hu Honua and instead, on September 9, sued HIPP and all its related companies and individuals in the Delaware Court of Chancery.

Among other things, the lawsuit alleged that approval of the power purchase contract would increase the value of Hu Honua by as much as $200 million. Thus, the lawsuit continued, "the $50 million equivalent sale price of the transfer of HIPP's interest in Island Bioenergy … was far below fair-market value. Upon PUC approval of the power purchase agreement, the power plant will be entitled to over $800 million of electricity purchases over the life of the agreement along with valuable tax credits."

According to the lawsuit, HIPP agreed to the "secret sale only because, following the sale, the individual defendants retained their economic interest in the project. Through the transaction, the individual defendants attempted to enhance the value of this asset by eliminating the obligation to make the payment to MMA."

On October 24, the lawsuit was withdrawn. ***— P. T.***

BOARD TALK

Renewable Energy Project in 'Ewa Morphs Again with New Investor

Having accrued a delinquency of $787,350 under its agreement with the state Department of Land and Natural Resources to construct renewable energy facilities at the former 'Ewa feedlot site at Campbell Industrial Park, IEP-ORP, LLC has withdrawn as developer and offered up London-based solar company Investricity Ltd. to take its place.

With Investricity offering to build a 30 megawatt solar park (rather than the 5-10 MW biomass projects IEP-ORP had proposed), to pay the debt already incurred under the agreement, to post a bond of more than half a million dollars to secure most of that debt, and to pay an annual rent of $3.3 million, the state Board of Land and Natural Resources unanimously approved the assignment of IEP-ORP's development agreement to Investricity on November 8.

IEP-ORP and its predecessors had held the option to develop the feedlot since 2010, but were never able to keep up with the progress and payment deadlines. More than once, the companies came close to losing their option, but managed to persuade the Land Board to amend the development agreement.

Up until a few months ago, IEP-ORP (a partnership between International Electric Power, LLC and O'ahu Renewable Energy Park) was still struggling to meet conditions imposed by the Land Board in March in lieu of terminating the agreement altogether. The company had missed the board's deadline to complete an environmental assessment for its projects on 17 acres of the former feedlot. By missing the deadline, the company lost exclusive rights to the project site.

IEP-ORP had also decided it didn't want to meet the board's condition that the company post a $528,000 bond to cover its debt as of November 2012.

In August, IEP-ORP proposed amending the development agreement to allow the company to continue its hold on the property. The company proposed to pay its delinquency in installments, with all payments to be made by September 1, 2014, whether or not it executed a power purchase agreement with Hawaiian Electric Company or acquired financing for the project.

However, the company did not promise to post a bond of $528,000. It only said it would consider it.

The Department of Land and Natural Resources' Land Division was prepared to bring IEP-ORP's proposal to the Land Board on September 27, but at the company's request the matter was withdrawn. Less than a month later, the Land Division learned that IEP was no longer interested in pursuing the project and West Wind Works, LLC, the original party to the development agreement and an affiliate of ORP, "introduced Investricity as a potential developer for the 'Ewa Feedlot, and requested a modified Development Agreement be assigned to Investricity," a November 8 Land Division report states.

Investricity was not only comfortable with the payment deadlines in IEP-ORP's August amendment proposal, it was also willing to post the bond as was required by the Land Board earlier this year.

However, the solar company wanted to expand the project area to the entire 110-acre feedlot, which was the original area covered by the development agreement. It also wanted to postpone the draft EA deadline until at least five or six months after the assignment of the development agreement.

Should the solar farm succeed, it would provide one percent of O'ahu's power, an Investricity report claims.

At the Land Board's November 8 meeting, Land Division administrator Russell Tsuji recommended approving the various modifications to the development agreement in accordance with Investricity's representations, as well as assigning the agreement to the company.

"Sounds like a great deal," said at-large board member David Goode, who had in the past been highly critical of IEP-ORP's continuous inability to perform, as well as its downscaling of the project from its original goal of 20 MW of renewable energy.

"If they can make their obligations, yes," Tsuji replied.

Attorney William McCorriston, representing both IEP-ORP and Investricity, thanked Tsuji and his staff for their patience and supported the assignment.

"I think it's a better project, more acreage, and better financial commitments behind it. Although it's been a struggle, the positives far justify the patience that has been shown. We are agreeable to pay the back rent," he said.

The first installment of about $130,000 is scheduled to be paid within 10 days of the executed agreement.

The Land Board approved the Land Division's recommendation. Whether or not the company will stay on track with the modified agreement remains to be seen. Before the final vote, Goode pointed out that the agreement calls for getting HECO's approval of a PPA within a couple of months.

McCorriston admitted that the approval "is not going to be within a couple of months." Even so, he said he thought the benchmarks Investricity has agreed to are doable. He added that the company is also looking for alternative buyers of the solar farm's electricity.

"HECO's not our only source of revenue for the project," he said, but chose not to elaborate.

For Further Reading

For background on both of these items, read the following Board Talk articles, all which are available at *www.environment-hawaii.org:*

"Land Board to Decide Future of Proposed O'ahu Energy Park", September 2012;

"West Wind Works Bows Out, Successors Downsize Project," March 2013;

"Land Board Amends, Transfers Renewable Energy Agreement," May 2013.

Board Defers on Agreement for Kahuku Wind Project

A proposed 25 MW wind energy farm at Kahuku on O'ahu's North Shore still doesn't have a lease seven years after the Land Board approved the project in concept.

On November 8, the Land Division presented to the Land Board a draft development agreement that the division believed would help the project, proposed by Na Pua Makani Power Partners, LLC, along and also serve the state's best interest.

However, without explanation, the Land Board withdrew the matter at the Land Division's last-minute request.

The agreement would have required the company (an affiliate of West Wind Works, LLC) to execute a power purchase agreement with HECO by December 15 and obtain approval of that PPA from the Public Utilities Commission by June 30, 2015.

The company would have had until March 31, 2016 at the latest to meet nine conditions, including securing financing and all construction permits required by the city.

Under the agreement, Na Pua Makani would have continued to pay $12,000 a year to control the property until a lease is issued.

⁂

Land Board Approves Permit For Waikane Cacao Farm

The owner of 327 acres of Conservation District land in Waikane, O'ahu, hopes to make the area as famous for its cacao as Kona is for its coffee.

On November 8, Paul Zweng's Ohulehule Forest Conservancy received Land Board approval of a Conservation District Use Permit to establish a 5-acre pilot organic cacao farm, as well as a baseyard, office, a meeting pavillion, processing facilities, a shade house and a nursery for cacao, as well as native and rare plant species to be used for forest restoration.

The permit also allows him to improve and repair access roads. Also, unauthorized trails established by recreational off-road vehicles may be closed, according to a DLNR report.

Under Conservation District rules, agriculture is a permitted use within the resource subzone. According to K. Tiger Mills, a planner with the DLNR's Office of Conservation and Coastal Lands, the cacao trees will take three to five years to mature. The Land Board gave Zweng six years to complete the work covered by the CDUP and required him to provide an update within three years.

When asked by Maui Land Board member Jimmy Gomes about whether cacao will thrive in such a wet area (it gets 80 to 100 inches of rain a year), Zweng said the island's largest cacao grower is Dole, which cultivates its crop on 23 acres located in open, relatively dry conditions. Because cacao is a sub-canopy crop, he continued, Dole has to apply more water and pesticide to its fields.

Zweng plans to use koa to provide shade for his cacao trees.

"We think Waikane-Waiahole is actually a much more appropriate place to have cacao. ... We're looking forward to actually showing that," he said.

Zweng's goal is to grow cacao on about 46 acres. He also plans to conduct lowland forest restoration, including fencing, on 19 acres.

⁂

UH Researcher Gets Permit To Track Fish Movement

Do crowds of humans in the water affect where fish go? That's what University of Hawai'i researcher Alex Filous will attempt to find out by inserting tags into sharks and other large, ecologically important fish his team manages to catch in the state's Molokini Shoal Marine Life Conservation District, a popular snorkeling spot off Maui for tourists and locals alike.

On November 8, the Land Board granted Filous a special activity permit for the work, which will focus on whitetip reef sharks (*Triaenodon obesus*), gray reef sharks (*Carcharhinus amblyrhynchos*), giant trevally (*Caranx ignoblis*), bluefin trevally (*Caranx melampygus*), kahala (*Seriola dumerii*), green jobfish (*Aprion virscens)* , unicorn fish (*Naso unicornis*), and enuenue (*Kyphosus spp.*).

The permit allows Filous to take and insert tags into as many as 15 individuals of each species. He will also deploy an array of acoustic receivers and recorders in the ocean that will allow him to track the fishes' movements wherever they go.

⁂

University Seeks New Lease For Mauna Kea Observatories

On November 8, the University of Hawai'i requested that its leases for the Mauna Kea Science Reserve and Hale Pohaku facilities be cancelled and that the board issue new 65-year leases for those areas with lease rent and performance bond to be set at zero dollars. The university also asked that its easement over 71 acres of the mountain be extended by 45 years.

Nearly a dozen observatories are located within the lease areas as are the Onizuka Center for International Astronomy, comfort stations, a laborers camp, and cabins.

In August, the UH requested the cancellations, new leases, and easement extension citing a need to address internal changes made by the UH in how it manages lands on Mauna Kea, to reflect management actions and reporting requirements adopted by the Land Board, to assist in implementing legislation regarding the Mauna Kea lands managed by the univerisity, and to "provide a basis for developing sublease agreements with current and ... any potential future telescope project."

Currently, the university subleases its facilities to 10 different institutions for an annual rent of $1 each.

The university's request, and the Land Division's recommendation that the Land Board approve it, drew a large crowd of opponents on November 8, including representatives from the Office of Hawaiian Affairs and the UH student assembly. Several testifiers requested a contested case hearing and argued that if any leases are granted, the rents for both the lease and subleases should be much more than was being proposed.

In its request for a contested case hearing on behalf of Kalani Flores, attorneys for the Native Hawaiian Legal Corporation argued that the Land Board needed to conduct its own analysis of impacts the leases might have on native Hawaiian rights and practices. The board could not simply rely on the cultural impact analysis conducted by the university as part of its comprehensive management plan, they argued in a November 7 letter to the board.

They also argued against the Land Division's assessment that no environmental assessment need be prepared, noting that the Hawai'i Environmental Policy Act requires an EA for uses of state land and leases are considered a use.

HEPA also does not allow exemptions for land uses in sensitive areas or which have significant cumulative impacts, they continued, and federal law requires environmental reviews of project renewals to be conducted "as if the previous project never occurred."

Finally, they stated, the proposed lease rent was a breach of the state's fiduciary duties to the ceded lands trust.

"First, by providing the leases to the University of Hawai'i *gratis*, this board will be ignoring the interests of native Hawaiians, who, through the Office of Hawaiian Affairs, would benefit from the payment of 20 percent of any such lease rent demanded by the board. The board ... cannot favor the public's use of the Mauna Kea Science Reserve over native Hawaiians' right to 20 percent of all revenue derived from the public land trust. Therefore, the [DLNR] must charge fair market value for the leases to insure that native Hawaiians receive their mandated 20 percent share of all revenue, and must require the university to charge fair market value in all subleases made under the leases," they wrote.

The Land Board lost quorum on November 8 before it could vote on the university's request. It will decide on the matter at a future meeteing. ***— T.D.***

Water May Be Limiting Factor On Former Galbraith Ag Lands

Within a year of purchasing more than 1,100 acres of agricultural land from Galbraith Estate, the state Agribusiness Development Corporation (ADC) has voted to lease out about as much as it can without an additional source of water and/or requiring crop rotation.

The only well serving state lands recently purchased from Galbraith Estate.

Most of that leased land has gone to a single farmer, Larry Jefts, a former ADC board member who has also been contracted by the agency to help prepare the land for farming. In addition to the 150 acres the ADC board leased to Jefts' Kelena Farms, Inc., back in May, the board approved an additional 80 acres to the farm on October 30.

The board has also approved a new lease to Ho Farms, which currently grows a variety of crops on 40 acres in Kahuku, on O'ahu's North Shore.

The single well serving the Galbraith lands has recently been refurbished to meet federal emission standards and can now finally be put to use. However, Jefts says, it can only irrigate about 300 acres. Factoring in crop rotation, which would leave about half the land fallow at any given time, the well is sufficient to serve up to about 600 acres, he says.

He adds that the state's plan to use effluent from the Wahiawa Wastewater Treatment Plant that has been oxidized and filtered to all but eliminate viruses and bacteria (known as R-1 water) may not be sufficient to serve the rest of the land. Jefts says one of his buyers has already stated it would not purchase produce irrigated with R-1 water.

Some of the equipment Larry Jefts uses to prepare the Galbraith land for farming

The 2012 state Legislature appropriated $750,000 for the planning and design of an irrigation system that would take water from the North Fork of Kaukonahua Stream. But according to Jefts, this option is no panacea, either. He laments that proposed federal food safety standards may require expensive testing of crops irrigated with surface water, which may deter farmers from using anything other than well water.

Pumping the existing well is already going to cost more than what the Honolulu Board of Water Supply charges for water. And according to ADC executive director James Nakatani, a proposal made by France's Akuo Energy late last year to build solar greenhouses that could help meet the Galbraith farmers' electricity needs hasn't gone anywhere because the company still needs to find someone other than Hawaiian Electric Company to buy its power.

As of the ADC's September meeting, an appointed committee composed of representatives from the Hawai'i Farm Bureau Federation, the City & County of Honolulu, and the University of Hawai'i's College of Tropical Agriculture and Human Resources had reviewed about 30 applications for Galbraith lands.

Pressing Ahead

Also at the October 30 meeting, the ADC board voted to support, in concept, state Sen. Donovan Dela Cruz's Whitmore Village Agricultural Development Plan. Although the approval included no specific projects or contracts, the board has already started investigating the purchase of lands in the area for processing and distribution facilities.

At its September 25 meeting, the board voted to enter into an agreement with Castle & Cooke Hawai'i to buy 24 acres of land in Whitmore. The 2012 Legislature appropriated $3.6 million for the purchase.

The ADC board has also agreed to negotiate a purchase of the Tamura Warehouse in Wahiawa, owned by Tamura Enterprises, Inc. The proposed purchase price is $4.29 million.

OIP Complaint

On November 4, *Environment Hawai'i* asked the state Office of Information Practices to annul all of the votes taken at the ADC board's October 30 meeting and require the agency to redo a site visit to various agricultural lands and facilities that was held after the meeting. The reason: the ADC board's agenda inaccurately described the meeting site. The meeting was to start at 9:30 and, according to ADC staff, concluded about an hour later, long before our reporter finally found the meeting room.

The agenda stated that the meeting would be held at the Hawai'i Agricultural Research

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LETTERS

A Call to Action on Climate Change

Your articles (*Environment Hawai'i,* October 2013) touched on several issues which I think a lot about these days. Our state has underway a process which acknowledges the reality of climate change and sea level rise. It remains to be seen if it is a "planning" process, because such would include discussions of impacts, evaluations of costs, and means of implementation. Your articles ask the question, "Is this process fast enough and is it going in the right direction?" (Please excuse my paraphrasing.)

You will remember Martha Black, who chaired a series of "water" workshops some years ago. My view of those workshops is that they were an astounding and awesome success because they brought together many interested persons who discussed water-related issues in a civil and collaborative setting. Martha was not affiliated with government, yet she had the respect of agencies and they participated in the workshops, as did businesses, cultural, and environmental groups. I often think of those workshops and their success, which I believe was due to Martha being a sincere, thoughtful person whose agenda was for the public good – and the attendees responded in kind.

Maybe if we had a series of "climate change-sea level rise" workshops, originated not by an agency, but by the community — the workshops could start with the basic premise that the climate is changing and the sea will rise. Chip Fletcher's "blue line" and the reports of others have given us some guidance (wide swings in weather, a one-meter rise in sea level in 100 years, lessening of tradewinds, reduced aquifers, shortfall in irrigation or drinking water, more flood hazards, etc., etc.). The workshops would begin the community discussion of how to respond (create reservoir storage for irrigation water, harden shorelines, retreat from shorelines, flood-proof critical public infrastructure like sewage treatment and power plants, etc.) to these threats.

While it makes logical sense to expect the agencies to take the lead in the innovative strategic planning required for the massive infrastructure and life-style changes which are needed in the long term, I think it behooves us to remember that government responds to the will of the people, rather than the other way around.

I commend your newsletter for reporting on these issues. Your publication is widely read and respected. It is a great venue for this extended discussion. Perhaps you readers have thoughts on how to get some action. My question is: Where is the next Martha Black? We need you!

Eugene P. Dashiell, AICP
Kailua, O'ahu

Center (HARC) Conference Room on Kunia Drive in Kunia, O'ahu. Although there is a conference room located at HARC's offices on Kunia Road, the meeting was actually held five miles away in an unmarked room of a warehouse complex surrounding the Pa'ina Hawai'i, LLC, irradiation facility. Pa'ina was one of the sites visited following the meeting and is located, according to the agenda, at 92-1780 Kunia Road.

In its response to *Environment Hawai'i*'s complaint, ADC executive director James Nakatani pointed out that a member of the public — a staffer from Sen. Dela Cruz's office — had managed to find the meeting, but only after first going to the HARC offices and eventually getting directions to the meeting site from HARC staff.

He added that one of his staff members "was positioned at the driveway along Kunia Road between 9:25 and 10:00 to catch the attention of anyone interested in attending the meeting, and to waive [sic] them into the driveway and parking area."

Environment Hawai'i's complaint notes that state law requires the agenda of an open meeting to be posted at the meeting site whenever feasible.

To this, Nakatani argues that posting the agenda would not have helped *EH* to find the conference room since one would have had to "purposefully roam around the premises" to find it. He states that his agency is considering getting a banner or large sign that can be posted when the ADC meets in rural areas.

Rather than having the ADC redo the meeting and site visits, Nakatani asked that the October 30 votes be allowed to stand, "subject to voidance in the event a member of the public requests an opportunity to testify on any matter decided at that meeting, or requests that the board re-deliberate on any matter, upon notice to be given at a future meeting of the ADC board."

As of press time, the OIP had not given its advice on the matter. ***— T.D.***

Site of the October 30 ADC board meeting. The door to the meeting room is at far right.