

Environment



Hawai'i

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A Numbers Game

Anyone reading the Ko'olau Loa Sustainable Communities Plan has good reason to be puzzled. Population projections and growth trends seem to shift on a whim, giving residents little reason to place their trust in the Honolulu Department of Planning and Permitting, the plan's author.

Perhaps the agency's new director, George Atta, will set things right. In the meantime, Teresa Dawson reports on all that's wrong.

Also in this issue:

We deliver our findings after a year-long investigation into a meeting of the nation's fishery managers;

We report on the findings of fact approved by the Land Board in the contested case over the Thirty Meter Telescope;

Our regular Board Talk column leads off with the puzzle of why the state is writing off a debt of nearly a quarter-million dollars, the legacy of a \$610-a-month revocable permit.

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of Farmland, Natural Areas*



PHOTO: LESLIE KUBA

The proposed Ko'olau Loa Sustainable Communities Plan would allow for the construction of nearly 900 housing units and a school on former ranch land in Malaekahana (pictured here).

Commission Approves Ko'olau Loa Plan Despite Questions Over Housing Figures

Some of the building blocks of the Ko'olau Loa Sustainable Communities Plan (KLSCP) have been moving targets in recent months. Information about the region's population, growth trends, and number of potential housing units was either absent from or sorely outdated in the version released by the Honolulu Department of Planning and Permitting (DPP) in December and presented to the Planning Commission in mid-March.

Over the course of hearings in March and April, the commission got the DPP to address those key issues after repeated failed attempts by members of the public. But with some data still being refined at the time of its vote, the commission basically left it to the City Council to decide whether the KLSCP actually accomplishes what its title suggests.

Second to the issue of whether to allow bed-and-breakfasts in Kailua, proposed development in Ko'olau Loa received the most public comments — both for and against — in a recent survey done as part of the city's preparation of the O'ahu General Plan. In particular, the proposed KLSCP provisions allowing for the construction of a new town on a panoramic stretch of rolling fields between Kahuku and La'ie have caused a huge rift in the Ko'olau Loa community. The new "rural metropolitan area," commonly referred to as Envision La'ie, would eliminate a lot of green space and add a lot of housing units, said Helber, Hastert & Fee planner Scott Ezer at a recent University of Hawai'i seminar on planning. The city contracted his company to help

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NEW AND NOTEWORTHY

PHOTO: C. HODGES/
HAWAII NATIONAL PARK



Hawaiian petrel, or 'ua'u.

Petrel Predation:

A new study by scientists from the University of Hawai'i, the National Park Service, and the U.S. Geological Survey has confirmed some-

thing long suspected: the endangered Hawaiian petrel, or 'ua'u, is a sitting duck for feral cats.

The study was based on monitoring of 14 petrel burrows on Mauna Loa with digital infrared video cameras in 2007 and 2008. The presence of feral cats was confirmed at eight of the 14 burrows.

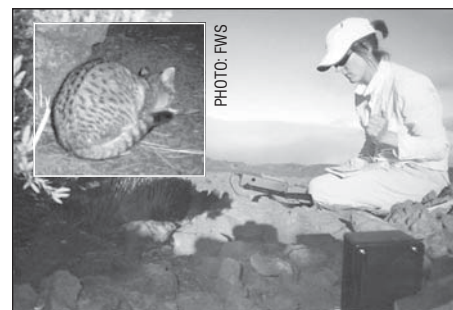
Until the cameras were installed, predation by cats was often suspected based on the condition of bird carcasses and presence of cat scat.

Predation by cats on live birds was confirmed once the video and still photographs from the infrared cameras were reviewed. In one instance, a cat waited near the entrance of a burrow for more than an hour. When the three-week-old petrel chick emerged, probably to exercise its wings, the cat quickly grabbed it. Remains of the chick were found more than 30 feet from the burrow entrance.

While predation on chicks has an impact on future population growth, predation on adults may be even more serious, says Darcy Hu, natural resources manager with the Hawai'i Volcanoes National Park and one of the study authors.

"This species has delayed sexual maturity, low reproductive potential, and extended nestling development, all of which place a premium on survivorship of the adult birds. Further, the birds also have a high degree of mate fidelity and may have difficulty replacing mates" that have been killed, she said. The authors of the study, "Videographic Evidence of Endangered Species Depredation by Feral Cat" (to be published in *Pacific Conservation Biology*), write that most of the 'ua'u whose remains were recovered had adult plumage and were either breeding or seeking pair-bonds.

One of the methods to limit predation is through construction of a predator-proof fence like the one that now protects Ka'ena Point on O'ahu. At present, the National Park Service is putting up such a barrier around 640 acres on Mauna Loa, protecting nearly four dozen petrel nesting sites. Assisting with the project are the



A biologist sets up a camera device to capture the Hawaiian petrel (*Pterodroma sandwichensis*) on film at night on the slope of Mauna Loa.

Inset: A feral cat eating a Hawaiian petrel.

Fish and Wildlife Service and two private groups, the National Fish and Wildlife Foundation and the American Bird Conservancy.

The Hawaiian petrel was once abundant and widespread throughout the archipelago. However, its current population is estimated at just around 15,000 individuals.

Fire Away: The state Department of Land and Natural Resources and its agents are officially free to aerially shoot feral ungulates spotted during helicopter flights over Mauna Kea required under a 1998 U.S. District Court order to protect of the palila (*Loxioides bailleui*), an endangered Hawaiian honeycreeper.

The Hawai'i county corporation counsel and the state deputy attorney representing the Department of Land and Natural Resources had recently drafted a stipulated agreement stating that the county would refrain from enforcing its 2012 ban on aerial hunting in cases where the DLNR was conducting hunts in accordance with the court order. But the county prosecutor refused to sign it.

And because of his refusal, U.S. District Judge Michael Seabright found that his court had jurisdiction over the matter and ruled April 8 that the federal order trumps the county ordinance.

Results from a recent palila survey have not yet been released, but Rob Stephens of the DLNR's Division of Forestry and Wildlife said in February that he noticed that the birds are pushing out into new areas, "which to me indicates that their core range is getting bad."

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Quote of the Month

"Being that we are just the committee
that recommends to the council on items
such as the community plan ...
I don't see any reason to hold this up."

— James Pacopac,
Honolulu Planning Commission

Meeting of Government Fishery Managers At Kohala Resort Costs Public a Quarter Million

A year ago, the nightly network newscasts were focused on the extravagant spending by the General Services Administration – specifically, a Las Vegas convention for its employees that cost taxpayers \$820,000.

After congressional inquiries into the event, attended by 320 or so GSA employees, the head of the GSA stepped down, two senior administrators were fired, nine GSA employees were put on administrative leave, and the administrator most directly involved with arranging the event resigned.

The GSA scandal was still making headlines when employees of the National Marine Fisheries Service and its eight regional fishery management councils gathered at the swank Mauna Lani resort on the Kohala Coast of the Big Island.

Unlike the GSA gathering, there were no magicians or homemade MTV-style videos to entertain the crowd, but, on a per-capita basis, the Hawai'i conference matched the Las Vegas party and raised it – substantially.

It took nearly a year for NMFS, its parent agency the National Oceanic and Atmospheric Administration, and the Western Pacific Fishery Management Council – host of the event – to respond to the several Freedom of Information Act requests made by *Environment Hawai'i* to determine the cost. (An appeal for information we believe should be available but was not provided is pending.)

So far, we've been able to tally costs for 66 of the people who attended at government expense. Travel, per diem payments, hotel rooms, and compensation (for council members) come to more than \$236,000. (Compensation for those on the government payroll is not included.) That breaks down to an average of more than \$3,500 per person, well above the \$2,500 per-head cost for the GSA event.

Even if you factor out the \$57,000 in compensation paid to the 20 council members in attendance – they received an all-expense-paid trip to Hawai'i, plus they were paid for the trouble of taking it – the average per-person cost still comes to more than \$2,700, which again exceeds the cost of the GSA's Las Vegas convention.

In addition to being paid for actual time at the CCC meeting, each council member also received compensation for the entire time spent on the road. Nor does that count what they received in per-diem payments or the cost of their travel.

Rates and totals of compensation for coun-

cil members varied widely. In the case of Wespac council members, for example, three – McGrew Rice, Julie Leialoha, and David Itano – were paid a flat \$1,000 apiece, while a fourth, Sean Martin, received \$1,718.61. Wespac did not provide any information on the cost of travel for these four members, their hotel expenses, or per-diem charges. (Council executive director Kitty Simonds was asked in an email to explain the lack of information on travel expenses, hotel, and per-diems for those council members; no response had been received by press time.) Wespac council chair Manny Duenas of Guam was paid \$4,010.09 for his presence, over and above the \$4,400 paid for his travel, hotel, and per-diems. Stephen Haleck of American Samoa received an equal amount of compensation, with associated costs of just over \$3,600.

The two members of the Caribbean council who attended each received \$4,907 as



A Mauna Lani chef cooks an omelette for a CCC member at the group's 2012 meeting.

compensation, with total costs coming in at more than \$9,000 each.

Seven of the eight councils were represented by two members, whereas Wespac had six in attendance.

Government Rates

Initial inquiries to NMFS about the selection of the high-priced venue were met with statements that the room rates charged by the hotel and the per-diem rates paid to participants all met with the government standard rates set for the Kohala Coast. At the time, the government room rate for the area was \$180 a night, exclusive of taxes, while the per-diem rate, covering meals and incidental expenses, was \$116.

Few other guests at the Mauna Lani Bay Hotel pay the government rate, so it could be argued that the CCC was getting a bargain. However, the combined per-diem and hotel rates for the Kohala Coast are among the

highest in the country. If you factor in the long travel time for most participants (time for which the per-diem meter is ticking), the cost of lodging and meals picked up by the government soars.

By tradition, the CCC meets twice a year. The first meeting is generally held outside Washington in Silver Spring, Maryland, where NMFS has its headquarters. The second meeting is hosted by one of the eight councils at a location somewhere in the council's jurisdiction. Had Simonds wanted, the meeting could have been held in Honolulu; not only would allowable per-diem and hotel rates have been slightly less (by approximately \$6 a day), but the cost of air travel would have been significantly reduced, as would travel time. Ground travel costs would also have been pared back, since most participants at the Kohala meeting either paid for a rental car or charged upwards of \$160 for a shuttle ride from the Kona airport to the hotel and back.

Had the three-day meeting been held on the mainland, lodging costs for many participants would have been for two or three nights. However, in Hawai'i, most participants ended up charging the government for four or five nights. Some stayed longer, but had to pay for those extra nights. Although Kona is just an hour's flight away from Honolulu, where Wespac has its offices, many of the Wespac staffers arrived three days in advance of the start of the CCC meeting and did not leave until two days after its close. The council paid hotel and per-diem costs for all.

A Free Lunch?

On April 30 and May 1, evening events were held for participants, but no billings from the hotel or any other party were provided through the FOIA process. The first event, a reception, was apparently held at the hotel; the second, an evening of food and entertainment, was held at the Hulihe'e Palace in Kona, requiring a fleet of charter buses to transport participants to and from the hotel. Despite repeated requests for information on the hiring of the charter buses, rental of off-site facilities, payment of caterers, etc., no records were provided. According to the Daughters of Hawai'i website, rental of the facility alone costs \$2,000 (for events with 51 to 100 persons in attendance).

In one email from a NMFS staffer requesting information on the events, the staffer states that Simonds has informed her that, "Per our discussions, CCC participants and their guests who choose [sic] to attend the receptions paid for those events individually and they were not sponsored by any outside entity or the council."

There is no way of verifying this, nor does

NMFS seem interested in pressing the point. Although participants were apparently expected to pay for their dinners, whether the total amount collected was sufficient to cover all costs cannot be known from the responses of NMFS to the Freedom of Information Act requests. (In the unlikely event the amount collected exceeded costs, it would be interesting to know where the surplus went.)

Also, the participants were provided with a sumptuous breakfast buffet on May 2, replete with omelet stand, and a cold lunch buffet on May 3. In both of these cases, participants receiving per-diem payments were expected to adjust their reimbursement requests downward by an amount equivalent to the government allocation for such meals. According to the expense reports reviewed by *Environment Hawai'i*, most participants did not make such adjustments.

In any event, the question also remains as to how much the hotel-catered breakfast and lunch cost. According to the same email quoted above, Simonds informed NMFS that “the costs of the two meals served are included in this room rental” – i.e., the costs of renting meeting rooms. In the original agreement between the hotel and Wespac, however, there were to be no charges for meeting rooms, with free meeting rooms being one of several “concessions” offered to the council. (Other concessions included two upgrades from standard rooms to ocean-view one-bedroom suites – which would otherwise cost \$450 a night – as well as complimentary WiFi, flower-lei greetings, and tropical juices upon arrival.) The concessions, however, were “based on the room, food, and beverage commitments included in the letter of agreement” – commitments that included four continental breakfasts and four lunches. Should those commitments change, the agreement says, the hotel could “re-negotiate” these concessions.

In the final bill, a room rental charge of \$18,059.08 appears, along with a charge for audio-visual equipment rental of \$1,947.81. There is no itemized breakdown of what is included in the \$18,059 expense.

It would appear, then, that instead of free meeting rooms, the council paid more than \$18,000 for two meals for the 60 or so participants – or an average of roughly \$150 per meal.

In addition to the ballroom where the meeting was held, the council occupied space in several smaller meeting rooms, including a suite of offices designated for “Kitty Simonds, Executive Director.”

Finally, Simonds signed a check for \$1,369.80 to Eric Kingma, one of the council staffers attending the meeting. No paperwork was provided to explain what this payment

was for. Simonds was asked about it, but no response had been received by press time.



NMFS Gives CCC New Guidance on Public Meetings

At the Mauna Lani CCC meeting, council participants spent half a day behind closed doors, with NMFS personnel and the public excluded from observing the proceedings. The official meeting notice published in the *Federal Register* stated that the meeting would begin at 1:30 p.m. on May 1, but the agenda passed out to meeting participants said that the morning would be spent in a “council only” session.

There is no such thing, however, as a “council only” meeting, since the law that established the CCC provides that it consists solely of council members and their executive directors. Thus, a “council only” meeting still meets the definition of a CCC meeting, which by law has to be open to the public except under very narrow circumstances.

Environment Hawai'i asked the NOAA Office of the General Counsel for an explanation of why the “council only” session was allowed. In June, Emily Menashes, the acting director of the NMFS’ Office of Sustainable Fisheries (the branch that nominally oversees the CCC) responded. “As the CCC is a relatively new body,” she wrote, “NMFS is continually working to ensure that this body meets the purposes of the amended Magnuson-Stevens Act and that we are providing clear guidance for the CCC meetings.” (The CCC was established in 2007 when Congress reauthorized the MSA.)

Environment Hawai'i requested copies of any records of the improperly closed CCC meeting. We were informed that none were kept.

“The Council members and executive directors attending the CCC meeting have found that it is helpful for them to meet informally ... to share common experiences. These informal meetings are not considered meetings of the CCC,” Menashes wrote in an August response. “We are still working on guidance to the CCC regarding meeting notification, providing documents and considering public testimony at the CCC meetings.”

When asked if NMFS was intending to solicit public comment on the guidance, Menashes stated it was not. However, she wrote on November 21, “the guidance will be made public prior to the February 2013 CCC meeting.”

By mid-February, in advance of the CCC meeting held later in the month in Silver

Spring, a document headed “Guidance to Council Coordination Committee Regarding Meetings” was available on a NMFS website.

Among other things, it would seem to ban the “council only” closed sessions; “Neither NOAA Fisheries, NOAA General Counsel, nor any other federal entity is a formal member of the CCC, and therefore the procedures described below apply regardless of whether federal personnel are present.”

Closed sessions are to be allowed only under the circumstances set forth in the MSA. Before any part of a meeting is closed, the guidance states, “the CCC should consult with NOAA General Counsel to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings.”

The next CCC meeting has been scheduled for later this month, in Washington, D.C. The group will meet both before and after a three-day conference called Managing Our Nation’s Fisheries, held at the Mayflower Hotel. The opening reception will be held Sunday evening, May 5, with meetings on May 6, and May 9-11. In between, CCC members will be attending the third Managing Our Nation’s Fisheries conference.

Any members of the public hoping to attend the CCC meeting would have to sit out three days, while the council members and executive directors attend the MONF conference. They could have attended the conference – but that would have required registration of \$299 (not including hotel) as well as quick action: by the end of March, registration had already closed, with more than 400 participants.

So who is attending the conference? Among those registered are seven Wespac council members, seven staff (including Simonds), and four members of its Scientific and Statistical Committee. Also attending are Sean Martin, president of the Hawai’i Longline Association (and past council chairman), HLA’s director, Svein Fougner, and one of its attorneys, Peter Flournoy. Former council chairman Manny Duenas of Guam has registered as a representative of the Guam Fisherman’s Coop.

Based on a review of the affiliations of registrants, just two other regional council have more registered participants: the Pacific Fishery Management Council, which is the official host of the event, will have 20 of its associates present, while the North Pacific council, which has jurisdiction over the rich waters of Alaska, is sending 19. The remaining five councils had registered a total of 48 staff and council members, for an average of just over nine per council. — *Patricia Tummons*

Land Board Gives Final Approval To Permit for Thirty Meter Telescope

The scene outside the Hawai'i County building in Hilo was as colorful as it was noisy the morning of February 12. Groups of Native Hawaiians and others opposed to the construction of the Thirty Meter Telescope, many decked out in the billowing skirts of kahiko hula or draped in kihei of scarlet and gold, beat drums, blew conchs, and chanted.

Just down the street, dozens of protesters in more conventional attire, many of them summoned by the Chamber of Commerce or labor unions, signaled their support of the project by waving bright yellow "Thirty Meter Telescope YES!" signs and flashing shakas at passing traffic. Car horns added to the cacophony, though it was rarely possible to know where a given driver's sentiments lay.

Inside, the county council chamber was slowly filling as both supporters and opponents of the telescope gathered to witness final arguments in the contested case hearing on the Conservation District Use Permit that is needed to allow the telescope, with an 18-story-high dome and half-acre support building, to be built in an area called the northern plateau, some 300 feet below the area where most other telescopes have been built on Mauna Kea.

As the scheduled start of the hearing approached, project opponents began a long procession into the chamber, a deafening drum accompaniment echoing through the building's central atrium.

Entire classes of students from a Hawaiian-language immersion school paraded in, many of them holding aloft their hands strung with a cat's-cradle of red cord forming triangles to represent the mountain.

Several of the Hawaiian petitioners sprinkled seawater around the board members seated at the council dais, a ceremony intended to purify the site and remove harmful influences.

Once the hearing began, only those who had been officially admitted as parties to the contested case were allowed to address members of the Board of Land and Natural Resources. It was their approval of the permit almost exactly two years earlier that was the subject of the contested case hearing, and on this day, the petitioners as well as the applicant would be given a chance to tell the board directly what they thought of the recommended findings of the hearing officer.

Notwithstanding the theatrical demonstrations, and with the exception of an outburst from Abel Lui, a Hawaiian evicted from county land after years of litigation, the arguments of proponents as well as opponents shed no new light on the issues at the heart of the dispute. They did, however, give board members some idea of just how high passions ran.

Exactly two months later, on April 12, the Land Board met again to decide the matter. No pomp or theater this time. No chants, no sign-waving, no buttons or cat's cradles. Not even an audience.

And, just as they did two years earlier, the

six board members, including chairman William Aila and Sam Gon (both respected Hawaiian cultural practitioners), unanimously approved the permit allowing construction of the \$1.3 billion telescope. More precisely, they approved hearing officer Paul Aoki's proposed findings of fact, conclusions of law, and decision and order practically as he had submitted it last November.

By press time, none of the six petitioners had appealed the Land Board decision to state circuit court.

Rejected Claims

While the conditions imposed on the TMT are far stricter than those in permits issued for telescope construction in the past, most if not all of them were proposed by the TMT Observatory Corporation itself and included in the project's environmental impact statement and management plan.

By contrast, the arguments of the petitioners were by and large categorically rejected:

The telescope will harm the wekiu bug: Addressing this claim, the hearing officer wrote, "Petitioners generally dispute [the applicant's] positions regarding the fauna and flora in the vicinity of the Project, primarily through the testimony of Ms. [Deborah] Ward. The majority of Ms. Ward's written testimony focused on the wekiu bug. Unlike Mr. [Jesse] Eiben, however who was qualified as an expert entomologist with particular expertise in the wekiu bug, Ms. Ward is not an entomologist... The documents relied upon by Ms. Ward to support her concerns regarding the wekiu bug all date from 1996 or earlier... Mr. Eiben's research is more current, occurring over the last six years."

It will damage historic sites: Archaeologist Sara Collins, formerly with the State Historic Preservation Division and now with Pacific Cultural Surveys, Inc., was retained to conduct a survey of historic sites in all the areas that might be affected by the telescope construction. "All of the [surveys] done of the summit area of Mauna Kea have been reviewed by SHPD; SHPD determined that the TMT Project would have no significant impact on the historic properties," Aoki wrote. Two modern-era "find spots" were identified in the area where the telescope is to be built, but, he noted, neither can be considered a "Historic Property." Kalani Flores, a member of the Case-Flores Ohana, which was admitted as a petitioner, "claimed that the [Conservation District Use Application] was incomplete because '[t]here's find spots there that are left out of the map'," Aoki noted. "Mr. Flores's assertion was made in closing argument and does



PHOTO: FACEBOOK PAGE, PROTECT MAUNA KEA

Supporters of the Native Hawaiian petitioners in the TMT contested case gather on the lawn outside the Hawai'i County building before a final hearing in February.

not constitute evidence; and Petitioners have no competent or credible evidence to support this position.... '[F]ind spots' are modern, are not historic properties... and SHPD found no incompleteness."

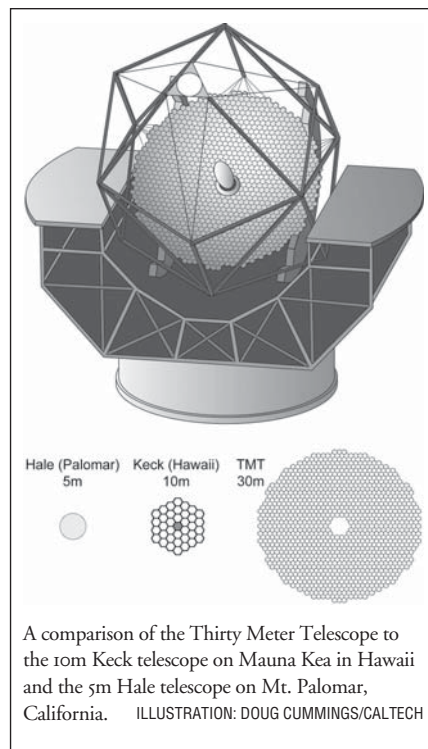
It will interfere with cultural practices: Many of the Hawaiian petitioners – Kealoha Pisciotta, the Flores-Case Ohana, Clarence Kukauakahi Ching, and Paul Neves — asserted that the presence of the telescope would interfere with or block their cultural practices at the summit. First of all, Aoki determined that they "did not offer testimony or evidence that would support a finding that these practices are connected to a firmly rooted traditional or customary native Hawaiian practice dating back to 1892" – and therefore legally protected. They did testify to such practices as stacking rocks, "tracking the so-called 'precession,' and practices related to viewplanes," Aoki wrote. With regard to the stacking of rocks, "Neither Ms. Pisciotta nor any of the other petitioners ... testified that any of petitioners engages in this practice, much less that such practice of theirs would be adversely affected by the TMT."

Pisciotta also testified about "an abstract 'need to track the precession,' which she described as a '26,000 year cycle ... [that] is the measure of the wobble of the earth's axis, and the time it takes for the wobble to make a complete cycle.' According to Ms. Pisciotta, tracking this 'wobble' is important because 'relative to earth the pole stars appear to change over time'; '[i]f the pole stars change it drastically impacts navigation'; and if these changes are not noted, celestial navigators will get 'lost at sea'." However, he continued, she did not provide any evidence to suggest Native Hawaiians tracked the precession from Mauna Kea: "Perhaps even more signifi-

"[T]raditional celestial navigation is not dependent on going to the summit of Mauna Kea and making observations from there."

cantly, she did not testify that she (or anyone else) has a modern practice of tracking the precession from Mauna Kea. And, she did not identify any way in which building the TMT Project would interfere with anyone trying to track the precession."

The testimony of Chad Baybayan, a Hawaiian navigator appearing as a witness for the university, undercut the claims of the importance of the precession. "He explained that most of traditional Polynesian naked eye navigation is done without seeing the pole star Polaris, ... refuting the suggestion that celestial navigators will get lost at sea if they do not track changes in the location of the



pole stars over time. He further testified that according to his training and practice, traditional celestial navigation is not dependent on going to the summit of Mauna Kea and making observations from there."

Hours were spent in the contested case with the petitioners discussing how the telescope would interfere with important viewplanes from the summit to other islands or landmarks. Several of the maps submitted to illustrate them were challenged by the lawyers for the applicant, the University of Hawai'i-Hilo, as having come from a document that had been digitally altered to bolster the petitioners'

claims. Although the petitioners disputed that, in his findings of fact, Aoki determined that the maps had, indeed, been altered. In any event, Aoki found, the maps were irrelevant: "All of the identified viewplanes represented to be of significance to cultural practices ... emanate from a single point: the actual summit of Mauna Kea, located on Pu'u Wekiu. It is undisputed that the TMT Observatory will not be visible from Pu'u Wekiu. Therefore it will not obstruct any viewplanes from Pu'u Wekiu and will not interfere with any practices involving viewplanes from Pu'u Wekiu."

Petitioner Paul Neves "testified that 'these are alignments not of the eye but of the heart.' ... He emphasized that even if the TMT Observatory will not visually obstruct a viewplane, merely knowing that the Observatory is there will offend his beliefs... These types of emotional impacts ... are undoubtedly heartfelt, but they are not the subject of" Hawai'i administrative rules, Aoki wrote.

It will harm groundwater resources: "The watershed recharge areas for Mauna Kea occur at lower elevations where it rains, and not in alpine deserts, where precipitation is minimal," Aoki wrote. "The impact from any theoretical waste spill at the Project location would be negative. However, it would be unlikely that any spill would be large enough that it would have any impact on the drinking water for Hawai'i County. The main threats to Mauna Kea's aquifer occur at lower elevations in areas of heavier population and use."

As to the petitioners' "generalized 'concerns' about water issues, including runoff, Lake Waiau, and groundwater," Aoki continued, "they did not substantiate those concerns with credible evidence. By contrast, the University established through reliable, probative, substantial and credible evidence ... that Petitioners' concerns about water issues are unsupported."

Conditions

Among the conditions in the Conservation District Use Permit, the TMT is to provide \$1 million annually in funds to a community benefits package, to be administered by a board of advisors to The Hawai'i Island New Knowledge (THINK) Fund. It is also to partner with other institutions to develop a Workforce Pipeline Program that is to train local residents for jobs in science, engineering, and other technical fields.

The TMT Observatory Corporation is also to pay "substantial" rent, to be deposited into the Mauna Kea Land Fund and used only for management of Mauna Kea.

In addition, the CDUP includes, by reference, all the promised cultural and environmental mitigation measures included in a host of planning documents, such as the TMT Management Plan, the EIS, and the CDUA application.

The DLNR has posted several of the documents associated with the TMT application on its website. See: <http://hawaii.gov/dlnr/occl/manuals-reports>. —P.T.

For details on the contested case hearing, see the articles in the January 2012 edition of *Environment Hawai'i*.

Ko'olau Loa from page 1

draft both the KLSCP and the O'ahu General Plan.

"There are a lot of people who want housing," he said. "Equally, there are a lot of people who see it as a last stand ... of keeping the country country."

On April 3, a few planning commissioners expressed their concern that the infrastructure in Ko'olau Loa — especially the lone two-lane coastal highway — may not be able to handle the proposed mini-city

the Planning Commission that none of the changes in the proposed general plan revision would significantly affect the Ko'olau Loa region. For example, the current plan dictates that Ko'olau Loa should have only 1.4 percent of the island's population, and so does the proposed revision.

But whether the KLSCP helps to attain that population distribution goal is far from clear. In the last two months, the DPP has not only significantly adjusted the population numbers in the region, it's also reversed the anticipated population trend.

"[A]t least include conditions regarding some of the concerns raised."

— Dean Hazama, Planning Commission

north of La'ie and resort development at Turtle Bay. They added that it's unclear how many more housing units the plan proposes for the region. Both chair Ka'iulani Sodaro and commissioner Dean Hazama suggested deferring the commission's decision on the regional plan until the City Council approves the O'ahu General Plan, a draft of which had recently been released for public comment.

But within a few minutes of expressing their concerns, they voted along with the rest of the commission to approve the plan on the conditions that DPP staff do the following:

- Clarify the number of potential housing units already allowed under current zoning;

- Indicate how many more housing units the revised plan envisions; and

- Include specific language in the plan about whether any of the proposed units are being moved from one area to another. (This condition refers to the fact that the 1999 KLSCP identified two parcels in the back of La'ie where Brigham Young University planned to build 550 housing units, which were never built. The revised plan states that the university now plans to build 875 units on 300 acres of former ranch land in nearby Malaekahana.)

The plan now goes to the Honolulu City Council for approval. Whether the council will vote on it before taking up the O'ahu General Plan remains to be seen. The council has already held off voting on three SCPs that the commission has approved. A draft of the general plan is expected to be submitted for commission approval later this year.

Distribution Guidelines

In arguing for a swift approval of the KLSCP, DPP chief planner Kathy Sokugawa told

The version of the plan released by the DPP last December projected that Ko'olau Loa's resident population would increase from about 14,500 in the year 2000 to about 15,500 in 2035, "representing an increase of less than one percent per year over a 35-year period."

The department also projected that by 2035, the area's population would account for approximately 1.4 percent of O'ahu's population. (The DPP made these projections in September 2009, according to a footnote in the proposed KLSCP.) But at the Planning Commission's March meeting, one area resident pointed out that 2010 census numbers indicate that Ko'olau Loa's population already far exceeds 15,500.

Commissioner Hazama asked DPP's Raymond Young why the population numbers in the plan differed from the recent census numbers. Young stated merely that his department had a population projection for O'ahu from the state Department of Business, Economic Development and Tourism, but was "still working towards getting projections for plan areas." He said that while he understood that "there are some population discrepancies," his department had no choice but to use 2000 census numbers.

"Part of the reason we're having trouble with that, the way the new census numbers are done is a little different. We need to make some adjustments. Our statistical staff is hard at work," he said.

Mainly, the DPP needed to subtract out census data for Pupukea — the stretch of land between Kawela Bay and Waimea Bay — because, for some reason, it's not included in the KLSCP area. Without Pupukea, the Ko'olau Loa population was about 16,800 in 2010.

When the Planning Commission met in

early April to decide whether to forward the KLSCP to the City Council, Young presented new population numbers, as well as a new growth trend.

First, he said that contrary to the plan he presented a month earlier, the population in Ko'olau Loa will decrease by 2040.

"Our preliminary findings indicate by 2040, Ko'olau Loa would be 1.5 percent of the island population," he said. Currently, it's at about 2 percent, up from 1.66 percent in 2000, and 1.7 percent in 1990.

The DPP's statistician has determined that the KLSCP area contains 16,732 people. Young said the population is expected to shrink to 16,172 by 2035. Although he did not say why his department now believes the population is going to shrink instead of grow, recent population forecasts by both DPP and DBEDT suggest that O'ahu's population will grow more slowly than before because of its aging population and mature economy.

In an email to *Environment Hawai'i*, Young indicates that even now, the DPP's projections are in flux. "DPP is researching what the difference in population numbers are attributed to and an update of its population forecast based on the 2010 Census for the development plan regions, including Ko'olau Loa," he wrote. He provided no bases for the projections he presented in April.

The U.S. Census estimates that about 953,000 people lived on O'ahu in 2010. Based on a 2011 DPP report's prediction that O'ahu's population will grow by "only 4,000 more residents a year by 2035," the population in the Ko'olau Loa SCP region would actually have to shrink to fewer than 15,000 people to meet the general plan percentage distribution goal.

A Major Caveat

The DPP's assertion that Ko'olau Loa's population will shrink by 2035 omitted one key point: that projection does not include the proposed expansion planned by the Mormon Church for Malaekahana and La'ie.

The KLSCP points out that BYU-Hawai'i, a Mormon school, plans to roughly double its student population in La'ie, from 2,700 to 5,000. Also, the KLSCP notes, Hawai'i Reserves, Inc. (HRI), a developer for the church, plans to build 875 housing units, mostly for BYU-H staff, faculty, and area residents already employed by church-affiliated entities. The remainder would be sold at market rates.

Just how many more people the expansion will add to Ko'olau Loa is unknown. The 300-acre area at Malaekahana that is

proposed to be included in the KLSCP community growth boundary is roughly the same size as the urbanized area of Kahuku, home to more than 2,600 people.

"When we make these projections, they never include projects not approved through the zoning process," Young told *Environment Hawai'i*. Until a developer comes to the department for a zoning change and gives some indication of the anticipated density, it's very difficult to estimate how a project will affect the population, Young said.

Even so, the KLSCP states that the expansion won't affect the population much since many of the houses will simply meet pent-up demand from people already living in the area. Furthermore, according to the plan, traffic won't be affected because most of the residents will live and work in the immediate area. Also, a connector road planned to be built at the base of the mountains will string Kahuku, Malaekahana, and La'ie together, further minimizing traffic on Kamehameha Highway, the plan states.

"It did not make sense to risk the loss of such a major economic driver of the area."

— Raymond Young, DPP

HRI had first proposed building 1,260 units at Malaekahana. In 2009, the Public Advisory Committee (PAC), tasked with drafting the initial plan, chose to preserve Malaekahana as open space. That year, several dissenting PAC members who supported HRI's proposal sent the DPP amendments that would meet the church's and the community's needs.

Of the new units proposed, approximately 350 of them would alleviate pent-up demand and overcrowding, the group claimed. "Another 400 units are intended to serve direct employment growth from BYU-Hawai'i and Polynesian Cultural Center expansion, and 300 more units are expected to be needed to accommodate multiplier effect and indirect growth from this expansion. The last 210 units are needed for market rate homes that may include vacation homes and second homes and therefore are not expected to increase area population. These 210 units are needed to help pay for workforce housing units and infrastructure," their draft stated.

Only 875 units made it into the plan. The KLSCP provides no breakdown of who the intended occupants of those units are. PAC member Dee Dee Letts testified in March that 400 of the proposed

Malaekahana units would be market-rate homes.

Buildable Units

At the Planning Commission's March meeting, one La'ie resident after another described their cramped living quarters and expressed their desire for a home in the area of their own or for their children. Census figures confirm that homes in Ko'olau Loa are more densely packed than in any other region on the island. And within Ko'olau Loa, La'ie houses are the most crowded.

The KLSCP proposes the Malaekahana expansion as a solution. But according to Letts, ample housing is provided for under current zoning.

In written testimony, Letts states that the DPP has said that it expanded the community growth boundary to include Malaekahana because the plan the PAC had drafted ignored housing needs. Not true, she argued, adding that the DPP removed a section in the community's draft on "identified areas in La'ie and Kahuku that would provide 720 units."

"The PAC did look at vacantly zoned URBAN lands within the Ko'olau Loa area and noted that there are enough acres in addition to those mentioned above currently zoned to meet the need. The problem with these acres is that they are not owned by HRI. A chart of currently urban zoned lands and the number of units those lands can accommodate has not been included in the SCP although it was requested by the PAC," she wrote.

The Planning Commission asked the DPP's Young to provide it with that information at its next meeting. On April 3, Young reported that current zoning — in R-5, R-7.5, and country (Urban District) areas — allowed for up to 4,356 housing units between Hau'ula and Kahuku: 3,588 units on private lands, 174 on city land, and 595 on state land. Those totals do not include lands with slopes greater than 20 percent, considered by many to be unbuildable for physical or economic reasons.

Although some people might see this as more than enough currently zoned land to meet any projected housing needs for the area, Young said that development in flood zones would need to meet certain standards, which would result in higher costs.

"Much of those properties, even including BYU sites, are in flood areas," he said. Some sites, such as the Kahuku High School property or Malaekahana State Recreational Park, may allow for additional structures, but are unlikely to meet the area's housing needs, he added.

In La'ie, Young noted that several hundred potential dwellings are allowed by current zoning. Most of the land is already used by BYU or the Mormon Church, he said, adding that some of the church's great lawn and other large open grass fields could be made available for housing.

"The bottom line is if you were to take constraints into consideration, that 4,000-some units would perhaps be substantially smaller," he said. In any case, his department supported the KLSCP as proposed.

Hazama asked Young how many units there would be if lands in flood zone areas were removed.

"Based on limited time, we do not have a figure for you. It would be substantially less. We cannot back it up at this point," Young responded.

When asked about the area in La'ie where 550 units were approved for BYU housing but never rezoned, Young said the reason why the new plan shifts development to Malaekahana is because "the owners thought back in that area the development constraints were far too great -- steep, not contiguous parcels. Malaekahana would be flat, more easy."

The development proposed in the new plan represents about a 30 percent increase over what's allowed in the 1999 plan, Young said.

When commissioner James Pacopac asked at the March meeting whether the KLSCP reflected a compromise between the opposing community factions, Young said simply, "We feel it's the department's position. It's the best we can present to you at this time to address affordable housing, jobs and to keep the community from losing a major economic driver. ... It did not make sense to risk the loss of such a major economic driver of the area." The Mormon Church and its affiliated entities (BYU-H, PCC, HRI.) own most of La'ie town and reportedly employ nearly a third of all residents in the Ko'olau Loa SCP area. Both PCC and BYU-H have argued that they need to expand to remain financially viable.

Final Words

At the April meeting, Pacopac, for one, supported the DPP's plan.

"Being that we are just the committee that recommends to the council on items

BOARD TALK

DLNR Eats \$230,000 Remediation Bill For Contaminated North Kona Property

It's not unusual for the Department of Land and Natural Resources to request permission from the Board of Land and Natural Resources to write off uncollectible accounts. Rarely does the amount owed exceed five figures. Last month, though, the DLNR's Land Division asked the board to write off a whopping \$227,131.85 owed by Franklin Hulce, a former revocable permit holder in Pu'u Anahulu, North Kona.

Perhaps as shocking as the amount owed is the length of time it took for the matter to come to the board. Hulce's permit for residential and agricultural use was terminated more than a decade ago, in November 2001.

Hulce, who held a revocable permit on the eight-acre site starting in 1991, was required by his permit to leave the land in good condition. However, a DLNR inspection of the property that was made a month after his wife notified the Hilo land office

such as the community plan ... I don't see any reason to hold this up," he said.

Chair Sodaro said she had concerns about the DPP's "grip of population percentages." And after hearing about the potential units available, she said she wanted more clarity on the population forecast for the area.

"I appreciate the need for a general plan context," she said, adding that she saw "no value in escalating the community conflict to the council level." She suggested that the incoming DPP director [George Atta] facilitate discussions to "continue to resolve a lot of the passion and concern over lifestyle, infrastructure..."

Her concerns were not shared by commissioners Rodney Kim, who moved to approve the plan, or by Daniel Young, who seconded the motion.

Hazama asked that the motion be amended to "at least include conditions regarding some of the concerns raised. ... One would be definitely specifying the... housing count."

Sodaro asked that another condition be added to provide clarity on the lands in La'ie being exchanged for housing development in Malaekahana.

The commission then approved Kim's motion with the amendments proposed by Hazama and Sodaro. —*Teresa Dawson*



The state spent nearly a quarter million dollars cleaning this site in Pu'u Anahulu, North Kona.

that she would be moving to California and wished to terminate the RP, found considerable environmental contamination, the kind more often found at an industrial site. In addition to various types of debris, the inspection found possible paint contamination, spilled chemicals, an abandoned gas pump, storage tanks, diesel tanks, conveyor systems, vehicles, and "numerous smaller materials spread throughout the property and overgrown by the grass," according to a May 2002 letter from land agent Gordon Heit to Hulce.

When Hulce failed to respond to the division's request that he clean the property, the division remediated the property itself, incurring costs of nearly \$230,000, with the bulk of the cost relating to dismantling buildings on the site that had been built when lead-based paint and asbestos were in common use.

Over the next six years, the department sent regular letters to Hulce, informing him of his liability for clean-up costs. This past February, the Civil Recoveries division of the Department of the Attorney General approved the Land Division's request to write off the account.

At the Land Board's April 12 meeting, without a word from the public, Land Division staff, or any board members, the Land Board agreed to let the case go.

Failed Oversight

The Hulce case brings to the forefront a worrisome chapter in the history of the Land Division's Big Island office. Up until the early 1990s, Glenn Taguchi was the Hawai'i Island land agent; his tenure is remembered mostly for all that he left undone. Inspections of DLNR properties were rare and, when done at all, were haphazard. Correspondence piled in his

office, with few letters ever receiving acknowledgement.

After Taguchi left, two DLNR staffers were sent over from Honolulu to try to clear up the backlog of correspondence. One of the letters they found was from Frank Hulce, who, in October 1993, had written Taguchi to ask if he might be able to lease the site when the existing lease on the property, to one Woodrow Miller, expired the following year.

"As you know from my previous visit with you," Hulce wrote Taguchi, "we have been subleasing this property from the Miller Family Trust for the last 14 years." If Taguchi was indeed aware of this, then he should also have known that Hulce's occupancy of the property was something requiring the Land Board's blessing. However, Taguchi appears not to have brought this to the attention of anyone at the Land Division.

Hulce was also concerned that he was using the property – since 1978 – in a manner not sanctioned by lease terms. It had come to his attention "that the property was to be used for agricultural purposes only," he told Taguchi. "We believe that our present use as a baseyard and shop for our construction company is not in compliance with the intended use and would like to request a change in use for this property." Also, he notes, "for most of this time" – 13 years – "I have personally lived in the house that was the teacher's cottage." (The Pu'u Anahulu land had once been the site of a two-room schoolhouse and housing for its teacher.)

Not until two years later – in August 1995 – did the Land Division attend to the matter of Hulce's occupancy of the land. Hulce's son, Robin, had approached the division once more to try to straighten things out. In a meeting on the site with acting Hawai'i District land agent Sam Lee, Robin Hulce agreed to give the department in writing his thinking on how best to resolve the situation.

According to a memo that Lee forwarded to Mason Young, Land Division administrator in Honolulu, Frank Hulce was interested in continuing to stay on the land as a tenant, but the character of use would need to be changed – from apiary usage to construction baseyard and residential.

The Land Board approved an RP in 1995, with both Frank Hulce and Robin Hulce as named permittees. Rent was set at \$610 a month.

Three years later, Robin Hulce wanted his name taken off the permit.

On January 15, Charlene Unoki of the Honolulu Land Division, who was preparing the revised permit documents for board approval, received a phone call from the Hilo office, informing her that it had some "concerns about Hulce." In a site visit with Robin Hulce, Robin was informed that he was to remove and clean the property of any construction debris. Also, he may have been renting [out] the house. Dad [i.e., Frank Hulce] was not living there."

Despite the concerns, Robin Hulce was removed from the RP, and although Frank Hulce had by then relocated to the mainland, his wife continued to occupy the larger and newer of two single-family residences on the property.

Demolition and Debris

In October 2001, Beverly Hulce informed the Land Division that she, too, would be leaving Hawai'i and requested that the RP be cancelled. In response, the DLNR notified Hulce that he was responsible for "ensuring the premises and improvements are in a clean, sanitary and orderly condition." If the DLNR had to incur charges to bring the property into that condition Hulce would be liable for them.

When the DLNR agents conducted their inspection in mid-November, they found that the house Beverly Hulce had been living in was "cleaned and ready for occupancy," but other structures were problematic. "The warehouse was left open and appears to have been pilfered. Gas pump and underground storage tank should be removed. Two tanks at front of property appear to be diesel tanks... Property is littered with debris consisting of miscellaneous construction material and equipment, abandoned vehicles, conveyors."

The second house, which was occupied by a tenant who was apparently renting from Hulce, "is heavily congested with a wide variety of materials, including vehicles, boats, pipes, cages, various animals and small engines, larger engines." The tenant told the DLNR staff that "all property belonging to him will be removed by end of November."

In a letter mailed out on May 7, 2002, Hulce was given 30 days to let the department know what his intentions were regarding cleaning up the site. By then, he was living with another relative, Phyllis Hulce, in Meeker, Colorado, who signed for the certified letter.

With no response from Hulce, the DLNR proceed to hire contractors to evaluate the site, clean up the unregistered underground storage tank, and remove weeds to reveal the full extent of debris on site. Preparing a plan to demolish the asbestos- and lead-paint con-

taminated structures fell to the DLNR's Engineering Division.

By January 2006, the plan was done and the DLNR began receiving bids on the work. That phase of the work alone accounted for \$204,205 of the final clean-up tab of \$228,961.85.

Giving Up

When all the bills were in, the DLNR's Fiscal Office subtracted from the total the \$1200 security deposit made by Hulce and a rental overpayment of \$610. The total owed came to \$227,151.85. The DLNR sent the bill to Hulce on February 20, 2008.

Finally, the DLNR received a response—not from Hulce, but from former Hawai'i attorney general Michael A. Lilly, now counting Hulce among his clients. "Mr. Hulce has asked me to inquire about the attached bill," Lilly wrote. "He does not understand the basis for any claim against him... He hasn't lived in Hawai'i for many years. What is the basis of the claim?"

The DLNR provided Lilly with a history of Hulce's tenure on the property, as well as copies of the bills, reports, and other documents prepared in connection with the remediation work. No further communication from Lilly appeared in the DLNR files that *Environment Hawai'i* was able to review.

Over the next two years, the DLNR's Fiscal Office continued to send monthly bills to Hulce by certified mail. The amount was always the same—no interest or other fee was tacked onto the amount. Occasionally, the statements would be returned unopened, marked unclaimed or unable to deliver by the U.S. Postal Service. More often, they were signed for by Hulce himself or Phyllis Hulce.

On October 26, 2010, Heit asked Fiscal to turn the delinquency over to collectors. Nearly two and a half years later, deputy attorney general Steve Bumanglag approved the Land Division's request to remove the delinquency from the DLNR's books. We asked the deputy attorney general for the department whether the state had attempted to recover any part of the amount owed through the services of a collection agency. No response was received by press time.

Apart from the size of the bill, there is the question—not addressed in any of the DLNR files we reviewed—of the extent to which Hulce should be held accountable for the cleanup costs. As the photographs in DLNR files make abundantly clear, Hulce did lay waste to state land. However, the schoolhouse and teacher cottage were built long before Hulce occupied the site, and he almost certainly had nothing to do with the presence of lead-based paint and asbestos in construction materials used for those buildings.



Restoration Group Gains Access to Royal Fishpond

This is a pretty historic day for us," Chris Cramer said, anticipating the Land Board's approval. After multiple attempts over the past several years, his nonprofit has finally been granted access to an ancient Hawaiian fishpond at the edge of Maunaloa Bay.

On February 22, the Land Board granted the Maunaloa Fishpond Heritage Society a two-year right of entry to a beachfront property and adjacent fishpond known as Kalauha'aha'i, which were once part of the summer home of Queen Ka'ahumanu and King Kamehameha.

Two decades ago, the state Department of Transportation inadvertently damaged the pond's fresh water source while widening a highway. Over the years, the pond has deteriorated.

"That area saw a huge change in the ecosystem," says Cramer, president of the fishpond society. The pond, once filled with mullet, aholehole (flagtail), awa awa (milkfish) and prawns, became dominated by tilapia, Cramer stated in a piece he wrote in 2010 for *The Moloka'i Dispatch*.

At the time, the DOT, which had condemned the property, wanted to auction off the Kalauha'aha'i property as well as another property attached to the nearby Kanewai fishpond, which the society had been restoring. The society appealed to the state Legislature and then-Governor Linda Lingle, who eventually blocked the sale with Act 210. The act prohibits the sale of government-owned Hawaiian fishponds.

Because the state was no longer able to sell the land, the Department of Land and Natural Resources sought to lease it to a non-profit for a nominal fee, but needed federal approval since federal funds were used to condemn the property. (Although the DOT condemned the property, the land was conveyed not to the DOT, but to the state of Hawai'i. As a result, the DLNR has the authority to lease the property.)

"We were able to get the green light for that and we do have an applicant willing to take this on," DLNR Land Division administrator Russell Tsuji told the Land Board in February.

Tsuji recommended granting a right-of-entry to the Maunaloa Fishpond Heritage Society, which has proposed restoring the pond and turning the now dilapidated house into a heritage center for the community. The

Land Board unanimously approved the recommendation.

Already, sewer repairs done about a year and a half ago by the City and County of Honolulu have somehow restored some fresh water flow to Kalauha 'iha'i, Cramer says.

"Rupia [a native sea grass] came back, smaller invertebrates. ... The water level went up quite a bit," he told *Environment Hawai'i*. He told the Land Board that he had recently spotted an awa awa in the pond.

With its right-of-entry, the fishpond society plans to study the pond to determine what more can be done to restore it. Eventually, it plans to seek a lease for the site.

"The dream is to restore the fresh water," Cramer says. His organization has already completed engineering studies and received estimates of how much it would cost to tap into the lava tube that had once fed the pond.

"It's a really short area, from one side of the road to the other," he says.



Farmland, Natural Areas Receive Funds, Protection

It was a first, and possibly a reflection of the state's goal to reduce its dependence on imported food. On March 3, the Land Board approved Legacy Land program funding mostly for agricultural projects. The board unanimously approved its staff's recommendation to grant a little more than \$3.3 million to the following projects:

- \$1.146 million to help the state Agribusiness Development Corporation and the Trust for Public Land buy 456 acres of agricultural land in Whitmore Village, O'ahu, from Dole Foods, Inc. The total acquisition cost is estimated at around \$10.2 million, and additional funding is expected from the Navy and Army buffer programs, as well as the City and County of Honolulu's Clean Water and Natural Lands Fund. (For more on this, read our February article, "ADC Board Supports Intent To Buy Whitmore Village Lands.")

- \$1 million for a 3.44-acre buffer around Windward O'ahu's Ulupo heiau, located on the edge of Kawainui Marsh. The DLNR's Division of State Parks is expected to get another \$1 million in private funds to acquire the property.

- \$1 million for a 254.517-acre conservation easement to protect agricultural lands and open space on property owned by Vipassana Hawai'i in North Kohala, Hawai'i. Total project cost is over \$4 million.

- \$198,707 for a 265-acre conservation easement to protect agricultural lands on

Hamakua Springs Country Farm, also on Hawai'i island. Total project cost is \$802,328.

The Natural Resources Conservation Service's Farm and Ranchland Protection Program is providing funds for both Hawai'i island projects, which were proposed by the Hawaiian Islands Land Trust.

These projects were the first ones to be subject to regulations passed by the 2012 Legislature requiring agencies receiving Legacy Land funds to provide an easement or deed restriction or covenant to the DLNR, the ADC, the Public Land Development Corporation or the Department of Agriculture. In response to the new law (Act 284) the Legacy Land program developed a new consultation process, which requires applicants to run their projects by the four agencies before submitting a formal application for funds.

"[T]he four consulting agencies had the opportunity to request a conservation easement prior to the review of the project by the [Legacy Land Conservation] Commission. No such requests were made by the consulting agencies," states a DLNR Division of Forestry and Wildlife report to the Land Board.

FWS Grant

In addition to winning funds for its Hawai'i projects, the HILT will receive \$500,000 from the DLNR to acquire and protect 12 acres of estuary adjacent to the Kilauea Point National Wildlife Refuge on Kaua'i's north shore. The funds are part of a \$1 million grant from the U.S. Fish and Wildlife Service to the DLNR's Division of Forestry and Wildlife (DOFAW) to acquire and restore Kaua'i wetlands.

DOFAW's larger goal is to protect 200 acres of wetland and upland bird habitat in Kilauea that provide resting and nesting habitat for thousands of seabirds, as well as the endangered Hawaiian goose, or nene.



Board Adds Ko'olau Lands To O'ahu Reserve System

The Land Board recently approved the first two natural area reserves to be located in O'ahu's Ko'olau mountain range. On the windward side is Kaluanui, a 376-acre stretch of steep mountain ridges above Sacred Falls State Park. On the leeward side is the 1,500-acre Poamoho reserve, just above the Schofield Barracks Military Reservation.

Kaluanui includes one of the island's few unaltered streams, supporting "the full assortment of native fishes," a DOFAW report states. What's more, nearly 30 rare species, including an endangered damselfly, have been documented in the reserve. The reserve falls within federally designated critical habitat for 12 plant species.

"The inclusion of this area into the NARS would increase the representation of O'ahu's lowland wet and wet cliff ecosystems, which are found in only tiny sections of existing O'ahu reserves," the report states.

On March 8, the Land Board unanimously approved the new reserve, which was originally proposed by damselfly expert and former DLNR Division of Aquatic Resources administrator Dan Polhemus.

Environment



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On April 12, the Land Board approved the removal of 1,500 acres from the 'Ewa forest reserve for the creation of the Poamoho NAR. The reserve includes two dozen rare or endangered plant and animal species not found in Kaluanui. The U.S. Army leases most of the reserve (1,300 acres) as part of its Kawaihoa Training Area, but plans to restrict its activities to those allowed under NARS rules. Recommendations on lease amendments to make sure Army activities are consistent with NARS rules are expected to come to the Land Board for approval soon.



Spreckelsville Groins May Slow Beach Erosion

Dumping vast amounts of sand on a beach isn't the only way to preserve it. In March, the Stable Road Beach Restoration Foundation, Inc., made up of seven beachfront property owners, received Land Board approval to install a series of rock groins along 600 feet of coastline in Spreckelsville, Maui.

Under its new Conservation District Use Permit, the foundation may install four 100- to 135-foot-long rock groins along the beach. The groins will replace ones made of degradable sand bags that the foundation installed in 2010 to slow the erosion of the beach.

"The reason this is an interesting project is ... this project demonstrates there are different ways to approach beach restoration," DLNR Office of Conservation and Coastal Lands administrator Sam Lemmo told the Land Board at its March 8 meeting.

The groins, which will jut out from the beach like fingers (one of them curved), will be buried by sand at their mauka ends and will slope downward into the sea.

According to Lemmo, the groins will fill with sand and allow excess sand to move around.



PHOTO: DLNR

Erosion of project area before installation of experimental groins.

"It slows the lateral movement of sand. It doesn't stop it," he said.

"These guys have done a tremendous job. They've done their due diligence. They've done a really professional job ... without consultants, which is fascinating," he added.

At the time of the board's meeting, the foundation had yet to obtain approvals from Maui County, the U.S. Army Corps of Engineers, the state Department of Health, and the Coastal Zone Management Program.

"I'm comfortable moving forward ... and show[ing] other agencies they've got our authorization," Lemmo said.



Land Board Amends, Transfers Renewable Energy Agreement

The troubled 110-acre, 20-megawatt renewable energy complex proposed for Campbell Industrial Park has been scaled back both in size and output. It's also got new developers: O'ahu Renewable Energy Park (OREP), and International Energy Power, LLC (IEP).

After months of negotiating with the DLNR, OREP and IEP agreed at the March 8 Land Board meeting to post a performance bond covering the \$528,125 in unpaid fees that West Wind Works, LLC (3W)

had incurred under its 2010 development agreement with the DLNR. They also agreed to post a bond to cover future development fees of \$53,318 a year. In exchange, the Land Board would transfer the development agreement from 3W to OREP and IEP. (OREP is an affiliate of 3W.)

The Land Board approved the transfer of the development agreement as well as several amendments, including a repayment schedule for 3W's debt. Under the amended agreement, IEP-OREP will pay \$132,031 now, and the rest in increments — when the companies are placed on Hawaiian Electric Company's short list of bidders for its renewable energy request for proposals, when they sign a power purchase agreement with the utility, and when they secure financing.

"[A]ll future development agreement fees would remain dependent on IEP-OREP obtaining other discretionary approvals, two of which are not expected to occur until 2015, including BLNR's issuance of a lease to IEP-OREP, LLC for the project site," a DLNR Land Division report states.

OREP and IEP plan to build up to two 5 MW biomass plants on about 17 acres. Feedstock will come from West O'ahu's PVT landfill, which accepts construction and demolition waste.

— Teresa Dawson &
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