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Out of Sight, Out of Mind, Out of Time

The small Maui community of Hana is known for its remoteness, as attest the many T-shirts and bumper stickers that celebrate the long, narrow, and winding road that residents and visitors alike must travel to arrive there.

But for the last few months, Hana's health clinic, run by the non-profit organization Hana Health, has been at the center of a dispute involving the federal Environmental Protection Agency, the state Department of Land and Natural Resources, and Hana Health itself, over who should bear the responsibility and substantial cost of removing the gang cesspools still in use at the clinic some eight years after being outlawed by the federal Clean Water Act.

Also in this issue, we file our final report on the lavish spring 2012 meeting of the federal fishery managers at the Mauna Lani resort; report on highlights of recent actions by the Board of Land and Natural Resources; give an update on the Ko'olau Loa Sustainable Communities Plan; and follow up with the Water Commission's initial response to the designation petition filed by the National Park Service.

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PHOTO: KANOA WITHINGTON / WIKIPEDIA.COM

An aerial view of Hana, Maui.

Eight Years After EPA Banned Their Use, Hana Clinic Still Relies on Gang Cesspools

Fourteen years ago, the Environmental Protection Agency banned large-capacity cesspools. Under the EPA's definition, an LCC (as the agency terms it) is any shallow injection well that receives sanitary waste from one or more buildings visited by 20 or more people on a typical day.

The ban was to be phased in gradually. No new LCCs were to be permitted after April 5, 2000. And all existing LCCs were to be removed from service by April 5, 2005.

The new rule received wide publicity in Hawai'i, where gang cesspools, as they are often called here, were in wide use. And in case anyone missed news reports, the state Department of Health, which administers EPA regulations, sent out notices to everyone it suspected might still be using them.

Among those receiving notice from the DOH was Cheryl Vasconcellos, executive director of the Hana Medical Center. By certified mail, in a letter dated July 10, 2001, Vasconcellos was informed that "all existing LCCs are subject to phase-out by April 5, 2005. The time allowance for phasing out existing LCCs is meant to give facilities time to upgrade their cesspool systems or prepare for cesspool closure."

Vasconcellos was in touch with the EPA concerning the cesspools several more times through the decade. In September 2009. Katherine Rao, the LCC program coordinator, required the Hana Medical Center, now known as Hana Health, to complete an LCC inventory form and submit that, along with a closure plan, to the EPA by October 30, 2009. In 2011, the agency sent an environmental scientist to Hana to investigate the cesspool matter further.

Fast-forward to 2013. Hana Health is still relying on a gang cesspool for disposal of its wastewater. And the EPA has run out of patience.

Notice of Default

Last May 29, Roberto Rodriguez, chief enforcement officer for the Safe Drinking Water Act in the EPA's San Francisco office, sent a formal notice of violation of the LCC ban at the Hana Health clinic. It was addressed not to Vasconcellos or anyone else in Hana, but to

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NEW AND NOTEWORTHY

False Killer Whale Recovery Plan: The beginning of this month was the deadline to submit information to the National Marine Fisheries Service on a recovery plan for the endangered insular stock of Hawaiian false killer whales. On October 2, the day before the federal government shut down, the NMFS published a *Federal Register* notice of intent to prepare the plan.

Given statements made at last month's Western Pacific Fishery Management Council meeting by NMFS Pacific Islands Regional Office director Mike Tosatto, work on the plan isn't going to begin anytime soon, even though the comment period has closed. "We are struggling to meet our diminished resource capacity with an increasing workload," he said. The NMFS does plan to convene a recovery team, but when is anybody's guess, he added.

"The timeline on that ... I'm not kidding, we are resource-challenged," he said. "We do not have funding to undertake recovery planning at this point."

At the Wespac meeting, the council voted to direct its staff to draft a letter to the NMFS requesting that a recovery team be convened to develop the plan.

The council also recommended that the team include fishery representatives from the council and the state of Hawai'i, as well as members of commercial and non-commercial fisheries sectors, "considering that a number of threats NMFS believes are contributing most significantly to the current or future decline of the Main Hawaiian Island insular false killer whales are related to fisheries."

At Long Last, An Update: For the first time since 1990, the state Department of Health is updating the Hawai'i Water Quality Plan, one of the key components of the state Water Plan. Gary Gill, DOH deputy director for Environmental Health, told the state Commission on Water Resource Management last month that his division plans to complete the revision by the summer of 2015.

Gill said much of the plan will be a compilation of his division's current work. His division includes a Clean Water Branch, a Wastewater Branch, and a Safe Drinking Water Branch.

Among other things, he said his division is encouraging counties to reuse wastewater. The DOH's goal is to have 30 million gallons of wastewater a day being recycled by 2015, he said, adding that currently, about 20 mgd is recycled.

Although his division wants more wastewater put to use, Gill said it's an area where regulators should proceed with caution. He described how his agency is still dealing with chemicals applied to sugar and pineapple plantation fields. In wells that are 1,000 feet deep, some of the chemical levels continue to rise even for pesticides that were banned years ago, he said. Regarding wastewater, the DOH wants to make sure contaminants don't make it down to the aquifer, he continued.

"The new frontier is pharmaceuticals. We want to make sure we're not drinking someone else's cancer medication," he said.

Until recently, the DOH intended to update the plan using its own staff, but "given our resources, we may use a consultant," Gill told the commission.

To this, water commissioner Jonathan Starr begged Gill to "please, please ramp up and get whatever consultants you need."

More Water Plan Updates: On October 16, the Water Commission approved the scope of work for the Central O'ahu water use plan, which is one of eight components of the O'ahu Water Use and Development Plan.

Over the past nine years, the Honolulu Department of Water Supply has completed water use plans for Ko'olau Loa, Ko'olau Poko, and Wai'anae. It's currently working on plans for the North Shore and 'Ewa areas and hopes to bring the North Shore plan to the Water Commission for approval next year.

Work on plans for O'ahu's primary urban center and East O'ahu are expected to begin in fiscal years 2016 and 2018, respectively.

The Central O'ahu plan, like the North Shore and 'Ewa plans, will assess water supply and demand; develop low, medium, and high water use scenarios; and generate an ultimate supply-demand scenario.

"It will drive a lot of decisions if you take the long view," the DWS's Barry Usagawa told the commission.

The Central O'ahu plan is expected to take 34 months to complete.

Quote of the Month

"Without water, we don't exist here."

— Peter Young, consultant, former DLNR director

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Wespac Fails to Account for Food, Drink At 2012 Reception It Hosted for CCC

What if you threw a party with no food?

In Hawai'i, that is simply unthinkable. Yet, if the federal government's response to our repeated requests for information about a party thrown by the Western Pacific Fishery Management Council (Wespac) last year are to be believed, more than 100 guests at an event hosted by the council at the Hulihe'e Palace had nothing to eat or drink.

Here's a brief recap – at least as brief as we can be.

In the course of four days (from April 30 to May 3), Wespac hosted two parties for the Council Coordination Committee. The committee, which is made up of executive directors, chairs, and vice chairs of the eight federal fishery management councils, meets twice a year: once in the Washington area and once in one of the eight regions, with the corresponding regional council being host.

The first reception of the spring 2012 CCC meeting was at the Mauna Lani resort, the meeting venue. According to the National Oceanic and Atmospheric Administration, the parent agency for all regional councils, the hotel collected payment directly from those in attendance and Wespac was not involved.

The second reception was held at the Hulihe'e Palace. To transport guests, Wespac contracted with Jack's Hawai'i, Inc., which provided two large coaches to ferry CCC members and their guests to the site of the party, nearly 30 miles away in the town of Kailua-Kona. That cost $488.40. Wespac also paid the Daughters of Hawai'i $500 to rent the site, $2,500 to Big Island Tents to set up canopies, $1,014.58 to Waimea Party Rentals for furniture, and $500 to John Keawe, a slack-key guitar master. Costs for the set-ups, transportation, and entertainment total more than $5,000.

But, apparently, guests were on their own when it came to food and drink. Wespac has told the National Oceanic and Atmospheric Administration it has no records other than what it has provided so far.

FOIA Frustrations

If we are still writing now about an event that took place more than 18 months ago, it can't be helped. The final response of the Department of Commerce to a series of Freedom-of-Information-Act requests *Environment Hawai'i* filed in connection with the CCC meeting was made in late September. (Wespac, as a contractor to the National Marine Fisheries Service, does not respond directly to FOIA requests. Rather, they have to go through NMFS and its parent agencies, including the National Oceanic and Atmospheric Administration and, ultimately, the Department of Commerce. Still, as a federally funded agency, Wespac is accountable under FOIA.)

We first reported on the CCC meeting in June of last year, the same month in which our initial FOIA requests were filed. An article in the May 2013 edition of *Environment Hawai'i* reported on costs associated with the CCC meeting other than the costs of the receptions, which Wespac executive director Kitty Simonds stated were paid for entirely by the people in attendance. (The cost to the federal government of 66 federal employees or council members in attendance came to more than $236,000, we found.)

We continued to press NOAA for information on the receptions, however, and on the omission of any information on costs associated with the presence of several personnel associated with Wespac.

On September 26, Barbara Fredericks, assistant general counsel for administration in the Department of Commerce's Office of the General Counsel, responded. Her letter stated that NOAA had conducted "an additional search for records responsive" to the appeal we had filed. Since Wespac had not been involved in collecting funds for the event at the hotel, there were no responsive records, Fredericks wrote.

As regards the Hulihe'e Palace affair, Wespac did produce records that showed it had paid for the tents, furnishings, and buses with company credit cards and for the music and venue with checks drawn on Wespac's bank account.

But it also provided four "receipts," each consisting of a statement on Wespac letterhead purported to be signed by the council's fiscal officer, Randy Holmen. In each case, the receipt indicated that Kitty Simonds had given Holmen a personal check to reimburse the council for one or another of the expenses that Wespac had paid. (Copies of the checks themselves were not provided.)

The first two of these receipts were dated May 4, 2012, acknowledging Simonds' check 7118 in the amount of $500 to pay for rental of Hulihe'e Palace and another payment of $500 (no check number provided) for the services of John Keawe.

The third receipt, dated May 23, 2012, was for Simonds' check 7360 in the amount of $2,499.98, covering payment of charges from Big Island Tents.

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

The fourth and final receipt was not prepared until December 4, 2012, more than seven months after the event was held. This was to acknowledge Simonds' payment of $1,500.98, via her personal check 7443, to cover the charges from Waimea Party Rentals and Jack's Hawai'i, Inc.

In February of this year, in our appeal of NOAA's earlier response to our request for records, we had asked specifically for: "copies of invoices or other documentation of costs associated with two evening receptions... including charter buses, invoices from caterers or other food and drink charges, and wait staff" and "records of income received for these two receptions from the attendees."

According to Fredericks of Commerce's Office of the General Counsel, with regard to the May 2, reception, "all responsive documents are being provided to you."

When *Environment Hawai'i* called a Wespac staffer to inquire if, indeed, the poor guests had gone hungry that evening, we were told, "I'm not at liberty to talk about FOIA requests." ***— P.T.***

For more on the CCC meeting, see articles in the June 2012 and May 2013 editions of Environment Hawai'i.

Branching Out: From Clinic to Farm, To Commercial Kitchen, to Business Center

In October of 2011, Governor Neil Abercrombie received a letter from Cheryl Vasconcellos, seeking his help "to overcome some bureaucratic red tape... Hana Health would like to renovate and/or construct new buildings and improve services ... as well as remove and/or close large capacity cesspools."

She sought his assistance with three specific tasks: "(1) secure state approval for the proposed uses of the property, (2) rezone the two parcels of property leased from the state, and (3) meet a number of conditions and requirements imposed by funding sources."

In addition to Hana Health having to deal with large-capacity cesspools "owned by the state," Vasconcellos wrote, a new "nutrition center" was being built and a business training center, senior housing, and new medical facility were being planned.

Also, she wrote, "a permanent farm market stand and child care facility for Hana Health employees are also slated for development. These capital improvement projects are expected to be paid for by various state, federal, and private grants and loans. However, funding and development is contingent on the coordination and cooperation of DLNR."

"While Hana Health believes that all the activities it seeks to do in the proposed buildings complies with the lease," Vasconcellos said, "there is a simple solution if the state insists that the lease terms prohibit them. The state and Hana Health can simply amend the lease to allow for the social services that the state already encourages. All the activities and services Hana Health seeks to do or continue to do are consistent with public policy. Hana Health is requesting pre-approval for all plans described in this letter."

The "pre-approval" sought was apparently not forthcoming, since five months later, Vasconcellos was writing Maui legislators asking for their help with the interpretation of terms of Hana Health's lease with the state.

The Department of Land and Natural Resources' "interpretation of the use provision in our lease is preventing Hana Health from meeting the health and social service needs of the Hana community," she wrote. Commercial activities were anticipated in the 1996 legislation that privatized the former state facility, she continued, citing the original plan that included a snack bar and laundromat.

By the time these pleas for assistance were written, Hana Health had already branched out substantially from the operation of a limited health- and dental-care facility. While it had not been able to develop the blue-sky proposal of a wellness village anticipated in a 2004 environmental assessment – replete with guest cottages, pools, conference center, and other amenities found usually in resorts – it had developed a commercial farm and had built greenhouses on much of its 12 leased acres. Produce from "Hana Fresh" was being sold to upscale hotels and restaurants as well as supermarkets on Maui and at Hana Health's own roadside market.

The nutrition center, which includes a commercial-grade kitchen, prepares meals not only for kupuna and others in the Hana community, but for the tourist market as well. In a 2012 interview available in an online podcast, Vasconcellos says that she had recently been approached by Roberts Tours, which wanted the nutrition center to provide food service for Japanese tours in Hana three times a week. "Also," she continued, "Polynesian Adventure Tours contacted me last week. They want to bring their visitors to our farm market for lunches as well."

Hana Health's website advertises farm tours every Thursday. "The morning includes a 45-minute walking tour of the Hana Fresh farm, followed by a Farm Market breakfast." Cost is $25 per head, with a minimum head count of four.

Character of Use

All the admittedly commercial activity would seem to violate the limits on Hana Health's use of the site contained in the lease approved by the Board of Land and Natural Resources in 1998. In approving the lease, the Land Board stipulated that its use be "Eleemosynary (charitable) purposes, including those described in the Lessee's Articles of Incorporation and for other social services commonly provided by the government."

Paragraph 12 of the lease itself is more specific. "The Lessee shall use or allow the premises leased to be used solely for health care services to the Hana community as set forth in Lessee's articles of incorporation and for other social services commonly provided by the government."

As early as 2003, Vasconcellos seemed to be chafing at the lease restrictions. In connection with plans for the wellness village being floated at that time, she obtained an opinion from John Reyes-Burke of the law firm Burke Sakai McPheeters Bordner Iwanaga & Estes that determined the proposed uses "reasonably constitute 'health care services,' 'medical services,' 'assisted living services,' 'health education,' and/or 'related community services' for the Hana community (or other social services commonly provided by the government). Moreover, the ancillary or multiple-use facilities, such as the administrative offices, the restaurant, or the conference center, appear to be reasonable or necessary to accomplish the provision of health care services and the operation of the entity ... providing them."

The planned wellness village did not materialize, and for the next six years, the issue of disputed interpretations of the character of use for the leased land lay dormant.

It arose again, however, in 2009, in connection with the "nutrition center." To move forward with permits for construction, Vasconcellos required approval from the DLNR. In a letter dated August 20, 2009, then-DLNR director Laura Thielen gave her blessing, provided that, "Users of this facility shall be limited to employees and patients of Hana Health and no commercial sale of products from the facility shall take place." If, Thielen went on to say, the use of the facility "substantially deviates from the current purpose and intent as stated above, the state of Hawai'i reserves the right to reconsider the terms and conditions under which this approval is granted."

A Lien

Not only has Hana Health engaged in commercial activity, it has also accepted a loan that places a lien on state property without the approval of the Land Board.

Paragraph 11 of the lease forbids the lessee to allow any lien to be made against the premises or any improvements. Paragraph 19 gives the state a lien against the buildings and improvements to ensure performance by the lessee of lease terms. And Paragraph 20 states the lessee "shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease."

Yet to find the funds needed to open the nutrition center, Vasconcellos accepted a $1.5 million loan from the RSF Social Investment Fund of San Francisco. Security for the loan, as spelled out in the financing statement filed with the Bureau of Conveyances, includes "all of the following property, now owned and hereafter acquired by Debtor [Hana Health] or in which Debtor has or may hereafter acquire an interest ... and all proceeds and products thereof: accounts, chattel paper, instruments, deposit accounts, commercial tort claims and general intangibles resulting from Debtor's farm, kitchen, or nutrition center operations."

According to Daniel Ornellas, the DLNR's Maui District land agent, the RSF lien should never have been granted and, if the matter should ever come to court, would not be recognized as valid.

A Means to an End

Vasconcellos has repeatedly stated that the commercial activity is needed to support the provision of health care services to Hana and surrounding underserved communities. In addition, she says, the farm it operates meshes nicely with its mission of improving the health of low-income, mainly Hawaiian residents.

"One of the main focuses of what we're doing is addressing the social determinants of health – high rates of unemployement, lack of education, lack of a stable food supply that is actually nutritious," she stated in an interview with the director of RSF that forms the substance of the podcast mentioned earlier. "And so we have several programs besides the medical center that provides a full range of primary care, dental health care, etcetera. We started about seven years ago the Hana Fresh farm... It started as a youth program with Hana School, to provide employment opportunities to young kids, especially at-risk youth. ...We also run a daily farm market for the Hana community...and we also do prepared meals."

With the nutrition center now open, she said, "We're looking forward to making that a very successful, profitable venture that provides an additional revenue stream to support the health center, which is pretty reliant on grants."

"We're at break-even right now," she said. "It will be the meals to tourists that will generate a revenue stream, which was the plan from the beginning for the nutrition center."

Vasconcellos was asked whether she had approached the DLNR about changing the lease terms. By press time, she had stated only that "[a]ddressing all of the misinformation and false assumptions inherent in your questions would take more time than I am able to devote right now." ***— P.T***

Hana continued from page 1

Russell Tsuji, administrator of the Land Division for the Department of Land and Natural Resources.

"Cesspools allow raw sewage to be discharged into the ground and are a public health and environmental concern," Rodriguez wrote. "EPA hereby requires you, as the owner of the subject facility ...to provide the following information," including the location and types of wastewater systems receiving sewage, copies of "any and all plans for replacement wastewater treatment and disposal system(s)," and copies of "any and all correspondence with any engineers, contractors, or other entities" regarding the conversion of LCCs to other systems of wastewater disposal.

Failure to comply could expose the state to penalties as much as $37,500 per day per violation, Rodriguez stated. "In addition ... EPA may issue an administrative order assessing a civil penalty of not more than $16,000 for each day of violation."

The letter, Tsuji later told *Environment Hawai'i,* "was a blast out of the blue." Although Tsuji had been aware of other state facilities — Waianapanapa State Park near Hana, Malaekahana State Park on O'ahu — where the EPA had indicated concerns with gang cesspools and for which the state had undertaken a plan of action to remove them, "we never got notified of anything else."

But Hana Health, a non-profit organization, leases from the DLNR the land on which it has a clinic, kitchen, and several other buildings – and the cesspools. For that reason, it was Tsuji, not Vasconcellos, to whom the enforcement action was addressed.

The lease rent is nominal, but lease terms include the DLNR's standard condition that the lessee comply with all federal, state, and county authorities.

On June 5, just two days after he had received Rodriguez' letter, Tsuji sent a notice of default to Hana Health, citing its failure "to comply with rules and regulations of the federal government, specifically related to the continued operation of a Large Capacity Cesspool" in violation of the EPA's regulations. Also, "we hereby demand Hana Health pay for all of the state's attorneys' fees and costs in connection with this matter, and indemnify, defend and hold harmless the state as to the actions of the EPA."

Tsuji set a deadline of 60 days for Hana Health to cure the violation. Otherwise, Hana Health could see its lease cancelled and the DLNR initiate other legal action, he warned.

A Call to Action

From documents obtained from the EPA through a Freedom-of-Information-Act request, it seems that Tsuji's letter did spur Vasconcellos to act quickly – not, however, to cure the violation, but to circle the wagons.

Vasconcellos, unlike Tsuji, had had advance warning that the EPA was about to lower the boom. The day before Rodriguez' letter to Tsuji, Aaron Setran, the environmental scientist in the Enforcement Division of the EPA's Water and Pesticides Branch, had emailed Vasconcellos, asking her "if the cesspool(s) servicing the main facility is/are still operational, and if you and/or the state have made any substantive progress toward converting/closing the cesspool(s)."

In reply, Vasconcellos stated that a contract Hana Health wanted to sign for this work was in the attorney general's office awaiting approval. Once that was received, she wrote, "I will begin the planning for cesspool closure and hope to have that part of the project completed within 12 months of the state's approval to move forward."

"The amount of time this is taking is ridiculous, but it is what it is," she wrote. "I can only keep bugging them to get everything moving. Very frustrating!"

Within a day of receiving Tsuji's notice of default, Vasconcellos emailed Setran: "As expected, the state is coming after Hana Health to comply with EPA requirements. I will be working on a strategy over the next week or so, along with legal counsel and board."

By June 21, Vasconcellos had involved state legislators and the offices of U.S. Sen. Mazie Hirono and U.S. Rep. Tulsi Gabbard. Mele Carroll, chair of the state House of Representatives' Human Services Committee whose district includes East Maui, invited Kehau Yap of Hirono's staff, Karey Oura-Kapoi from Gabbard's staff, other legislators, and officials from the DLNR and DOH to an "URGENT meeting on June 24" with Vasconcellos.

"I am very concerned about this situation because the state doesn't have an extra $37,000 per day (fine amount) until the situation is cured," Carroll wrote. "This could take up to two or more years to remedy the situation."

Blame Game

Over the next month, Vasconcellos retained the services of Pam Bunn, an attorney with the Honolulu firm of Alston Hunt Floyd & Ing. She also provided Setran with documents that she said backed her claim that, if Hana Health was in violation of the cesspool ban, both the DOH and the DLNR should share in the blame since they had been fully aware of the problem.

From 2000 through 2005, three environmental assessments were prepared in association with improvements at the Hana clinic. The first, in 2000, was for the expansion of the clinic. In 2004, an EA was prepared for developing a $26 million wellness village, complete

with 20 guest cottages, six small units for elderly housing, two swimming pools, a fitness center with rock-climbing wall and weight room, a commercial kitchen and restaurant, a technology and conference center, and gift shop. Both were forwarded to the DOH and DLNR for comment. "All of the EA's we completed were related to Hana Health's planned expansion efforts," she wrote in an email to Setran on July 30. "Neither DLNR nor DOH commented on the wastewater system currently in use by the health center."

In an email to Setran in late July, Vasconcellos wrote that the accepting agency for the 2004 document was the Department of Land and Natural Resources. "There were lots of architect exhibits/drawings in this document … but nothing related to waste water," she informed him. (In fact, there is a drawing in the engineer's report, appended to the EA, that shows where septic systems and leach fields would be placed to serve the new structures anticipated in the EA.)

The third document, prepared in 2005, was an EA submitted to the U.S. Department of Housing and Urban Development, in connection with a grant application to underwrite the improvements outlined in the 2004 EA.

In each of the three documents, there is an acknowledgement that the existing cesspools will need to be replaced, along with a promise of plans for this to be provided at some future time. The 2004 document, for example, states that, "The project site will be service by multiple [independent wastewater systems], designed in accordance with state of Hawai'i, Department of Health guidelines and rules. Plans and specifications for the IWS will be determined during the project design process and will be submitted for review and approval to the Department of Health prior to implementation."

In an October 1 letter to *Environment Hawai'i,* Vasconcellos claims that up until a few months ago, neither the DLNR nor the DOH suggested it was Hana Health's responsibility, as the lessee, to take action.

Stalling Out

Nearly all of the improvements anticipated in the 2004 EA have been put on hold. In 2008, though, Vasconcellos began planning in earnest to build the kitchen – a.k.a. nutrition center – that had been called out as one of the last of the several structures to be built in the 2004 planning documents. The nutrition center was among the structures planned to be built in Phase III of the wellness center, long after the fitness center, traditional cultural healing center, administration building, reception building, and wellness cottages.

Before receiving a permit to build it, Vasconcellos needed to get Maui County Council approval for a boundary amendment and change in zoning. At a hearing of the council's Land Use Committee, she was asked to provide updated cost estimates for the overall project.

In response, she indicated that plans had been significantly scaled back. The original cost projection for the 5,600-square-foot nutrition center was $1.8 million, she wrote: "Since that time, the cost of constructing a 3,700-square-foot nutrition center increased to $3.4 million, almost a doubling of the cost of a facility that is 2,100 square feet smaller than originally planned." As a result of value engineering, she continued, the cost might be brought down to $1.17 million.

Applying the same formulas to estimate cost to build the rest of the planned structures, she wrote, "it is very clear that for this project to be financially feasible, it will need to be reduced in size by approximately 75 percent. Instead of approximately 79,000 square feet of space … the entire project will need to be reduced to approximately 24,100 square feet of space," with a revised cost estimate of $21.7 million.

In light of the increased costs, she continued, "we have decided to focus on the top priorities identified through the planning process," which were the medical center renovations, the nutrition center, the physical therapy/fitness center, and kupuna housing. First to be undertaken on Vasconcellos' list was the nutrition center. The wellness cottages were no longer on the to-do list. By this time, most of the area where they were to be built was under cultivation as part of Hana Health's farm subsidiary, called Hana Fresh. "Hana Health intends to preserve the Hana Fresh organic farm," Vasconcellos told the County Council.

Inherited Problems

As Vasconcellos pushed forward with plans for the nutrition center, raising funds and getting approvals for this project, the EPA continued to make noises about the illegal cesspools.

So Hana Health retained the services of the Honolulu firm of Burke McPheeters Bordner & Estes to intercede on its behalf with the EPA. The firm's John Reyes-Burke informed Katherine Rao, LCC program coordinator for the EPA in San Francisco, that Hana Health had no information on any cesspools on site. As to the location of the cesspools, he wrote, "Virtually all existing structures on the property, including particularly any large capacity cesspool(s) which are the subject of the EPA's [September 29, 2009] letter, were presumably constructed for the state of Hawai'i, and the requested information would appear to reside with the state."

Hana Health, he continued, "acceded to the existing cesspool(s) and other pertinent structures on the property, and has no information regarding either the number or specific location" of any of cesspool. In any event, as part of its long-term plan, Hana Health was intending "to replace the aging (approximately 75 year old) clinic building, presumably the principal utilizer of the subject cesspool(s)," Reyes-Burke wrote. However, "the scope and timing of such improvements have been scaled back and/or delayed, in large part due to budget constraints. While this new development of cesspool remediation is sure to add to such financial limitations, Hana Health proposes a plan of improvement in which the requirement for closure of the subject cesspool(s) is integrated with, for example, the replacement of the clinic building."

Around this same time, in letters to Maui legislators, Vasconcellos wrote that the EPA "has requested a closure schedule," including hiring an engineer to design an alternative wastewater system, getting plans approved by the DOH, and constructing the new system and closing the old.

"I'm sure that you are aware of the significant expense this project will entail and Hana Health is not in a position to cover anticipated costs without additional financial support from the state," she wrote. If, as she expected, the EPA was to require a new wastewater system be installed before the new medical center was built, "a legislative appropriation specifically for this project will be necessary," at a cost of several hundred thousand dollars.

She also called on them to urge the Department of Health to release $400,000 in capital improvement funds included by the Legislature in the 2009-2010 budget. This, she said, wasn't for cesspool mitigation specifically, but "so that we may proceed with the development of design/construction documents for a new and expanded medical facility," including a new wastewater system compliant with EPA regulations. Actual construction "will be more long term and require several million dollars," she noted.

In June of 2012, the funds were finally released. Yet nearly a year later, Hana Health had still not executed a contract for any work.

The DLNR Responds

On July 12, William Aila, head of the Department of Land and Natural Resources, responded to the EPA's notice of violation. Hana Health had assumed all responsibility for compliance with federal, state, and county laws when it assumed control of the property,

BOARD TALK

Land Board Fines Another Maui Kayak Tour Company

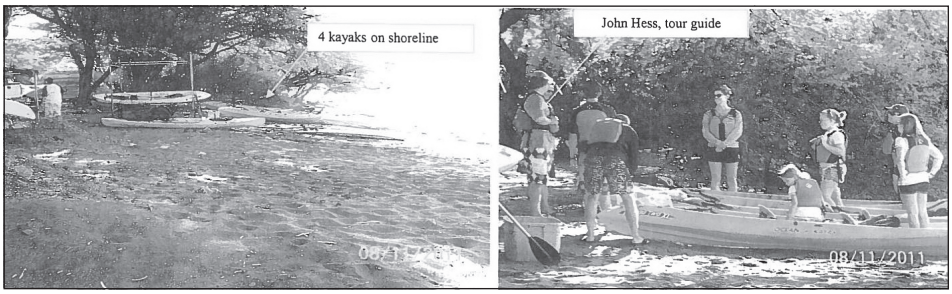

PHOTO: DLNR

DLNR photos of gear storage and safety briefings by Maui Kayaks, Inc., at Olowalu beach.

Paul Noble offered every argument he could to justify his kayak tour company's use of the state's Olowalu Beach Reserve on Maui: Some nameless Department of Land and Natural Resources employee on O'ahu told him years ago it was okay; his company is just transiting the beach, not conducting commercial operations on it; no one is flocking to Olowalu beach anyway — it's dirt filled and overrun with thorny kiawe; a guided tour is safer than letting tourists rent kayaks on their own; people will lose jobs if he has to operate differently...

Even so, on September 27, the state Board of Land and Natural Resources found that Noble's Maui Kayaks, Inc., had been illegally using Olowalu beach to conduct business. The board imposed a $1,000 fine and required the company also to pay $580 in administrative costs.

Since 2008, the DLNR's Land Division has issued Maui Kayaks several oral and written warnings to stop staging kayaks and holding safety briefings on Olowalu and Makena beaches. In 2010, Noble and some of his staff even took Maui County's educational course (in which the DLNR participates) on rules and regulations governing commercial uses on public lands.

Still, Noble continued to conduct his business as usual.

"We feel after years of this, it's time to take action," said DLNR land agent Ian Hirokawa at the Land Board meeting.

Noble, however, tried to explain that he isn't doing anything illegal.

"We traverse the area. The question is how quickly," he told the board. He said his staff greets customers on the beach, where they receive a short safety briefing before entering the water. He added that he has considered doing the safety briefing somewhere offsite, but it would be impractical.

"We don't make any money on land. ...Our whole business is operating on the water," he said.

Not only was the proposed fine unfair, so were all of the complaints against his company, because his was only one of six companies operating at Olowalu, he said.

Noble pleaded with the board to establish a permitting process that would allow him to use the beach.

"We have never been told we cannot be at this area. We have been told we don't traverse in a timely fashion," Noble said finally.

Maui land agent and former DLNR enforcement officer Larry Pacheco disagreed with Noble's claim that his operation is not land-based.

"If you're setting up kayaks and doing briefings, you're taking up state land for your operation," Pacheco said.

He also pointed out that Noble has a permit to operate from a county park.

Aila said, and the DLNR had no information concerning any cesspools on the site. "We also checked with [the Department of Health] whether they have materials responsive to your request, since the Hana Health Clinic was administered and managed by HDOH until 1998."

Hana Health, Aila said, "has indicated to DLNR that it will contract for the necessary planning and design studies that will identify all large capacity cesspools that may be on the property, and provide for their closure."

"Hana Health," he continued, "has received a grant-in-aid award from HDOH, which grant-in-aid funds may be utilized for the purpose of constructing a septic system to replace any large capacity cesspool(s). Hana Health has indicated to DLNR that it will seek bids for the preparation of plans to construct a septic system and will make every effort to find monies in its current budget to pay for the preparation of plans. As we believe Hana Health likely has the financial means to resolve this issue, DLNR expects Hana Health to take all appropriate action in a timely manner. In the event Hana Health does not have sufficient funds in its current budget to pay for the plans, it is our understanding that Hana Health will request a grant-in-aid from the state Legislature for consideration during its 2014 session... Therefore, DLNR respectfully requests that the EPA suspend any enforcement action in this matter ...until such reasonable time is necessary to resolve this matter."

"In addition," he concluded, "please consider that any assessment of fines or penalties against the state of Hawai'i may result in the Board of Land and Natural Resources terminating" Hana Health's lease.

Vasconcellos says that shortly after a 2010 grant-in-aid appropriation of $900,000 was released to Hana Health in May 2013, the organization issued a request for proposals and retained an engineering consultant to design an upgraded wastewater system.

"Replacement of the wastewater system had always been part of the planned modernization of the medical facility, and I have no insight into why, even with the support of the Governor and our Maui legislators, the release of the funds was delayed for so many years," Vasconcellos writes in her letter to *EH*. She adds that engineering specifications and construction documents have been prepared for the closure and replacement of the large-capacity cesspools and that Hana Health will seek permits for the work once it receives Aila's approval.

"The schedule has been discussed with the EPA, which has not expressed any objection but has instead indicated it is pleased that Hana Health is proceeding with the work rather than litigating with the State over whose responsibility it is to do so under the Lease," she writes.

For now, it appears that the EPA enforcement action is on hold. With the DLNR raising the prospect of shutting down Hana Health if the EPA moves forward with fines or worse, the agency seems to have backed off. No one wants to bear the blame if the remote communities of East Maui are left with no place to seek medical help short of traveling the long, treacherous Hana Highway.

— Patricia Tummons

"You cannot move your operation down the road two miles and take up public space," Pacheco said.

The tours, which start at 7 a.m., have been disturbing neighboring landowners, he added.

"Every time people lock their cars, their horns are beeping," he said.

Although the DLNR is capable of issuing permits for commercial uses, Pacheco said his division thinks Olowalu beach is too narrow and too close to the highway to be a suitable site for tours.

Maui Land Board member Jimmy Gomes asked whether it was possible to levy a larger fine to address all of the times the DLNR's warnings have been ignored.

Deputy attorney general Linda Chow said, "That would be a very difficult thing to do."

Upon a motion from Gomes, the Land Board unanimously voted to approve the Land Division's recommendation to fine Maui Kayaks. Noble then requested a contested case hearing, but did not follow up in ten days with a written petition, as is required by law.

Earlier this year, the Land Board found two other Maui kayak tour companies operating out of Olowalu had illegally conducted commercial operations on state land. In those cases, however, the fines were reduced or eliminated because so much time had lapsed between the initial violation and the enforcement action. Even so, those companies are contesting the board's findings.

Land Division administrator Russell Tsuji says the recent enforcement cases have caused the other companies that had been operating at Olowalu to go elsewhere.

PHOTO: DLNR

Pu'u Maka'ala Natural Area Reserve

Board Approves Plan For Pu'u Maka'ala NAR

Several hundred Hawai'i island hunters and their supporters last year signed a petition against the DLNR's proposed management plan for the 18,700-acre Pu'u Maka'ala Natural Area Reserve. But on September 27, with support from scientists, natural resource managers, and conservation groups, the Land Board chose to support its staff's recommendation to approve the plan, which will guide management actions over the next 15 years.

Under the plan, captive-raised endangered 'alala (Hawaiian crow) may be released, some 5,000 acres will be fenced, and feral pigs will be eradicated. Also, the DLNR will take steps to add 342 acres of former pasture land to the NAR. When the nearby Kulani Prison is reopened, NARS staff plans to resume its practice of recruiting prisoners to carry out some of the plan's management actions, DOFAW's Lisa Hadway told the Board.

Eradicating feral pigs is the plan's main goal. The DLNR's Division of Forestry and Wildlife plans to install 17 miles of new fencing in the NAR at an estimated cost of $1.7 million. The plan states that once the fencing is complete and pigs are removed from the enclosed area, "approximately 14,600 acres or 78 percent of Pu'u Maka'ala will be ungulate free."

The plan also calls for $300,000 for weed control in the newly fenced areas. Total cost of the plan over 15 years is $3.9 million.

While individual public comments on the plan largely supported the proposed actions, DOFAW also received strong opposition from the hunting community, which argued that the proposed new fenced area includes some of the best hunting ground on the island.

DOFAW's September 27 report to the Land Board points out that the new fencing will affect only two percent of the island's hunting areas.

And at the Land Board's meeting, Conservation Council for Hawai'i executive director Marjorie Ziegler pushed for more. Although she said she was grateful for the additional protections the plan proposed, "not enough is being done for NARs," she said.

Ziegler noted that DOFAW's game management policies are not consistent with the goals of the NAR System. Specifically, she called out DOFAW's bag limits for game mammals in NARs on Kaua'i.

NARs are supposed to include areas that represent the best or most unique natural habitats in the state. But on Kaua'i, because of resistance from hunters, bag limits still apply to game mammals caught inside NARs on that island.

"If the reserve is going to be used for continental barnyard animals ... don't make it a NAR," she argued. She then urged DOFAW to improve its game management program.

> *"If the reserve is going to be used for continental barnyard animals ...don't make it a NAR."* ***— Marjorie Zeigler, Conservation Coouncil for Hawai'i***

"We're there if you want to designate sustained-yield hunting in appropriate areas. We'll back you up," she said.

Regarding the DLNR's larger plan to double the amount of protected watershed areas statewide over the next decade, Ziegler pointed out that even if that goal is met, those areas still will make up just 20 percent of the state's forests.

"What happens to the 80 percent that's not managed? ...What are we going to do, cut back on 80 percent of our water uses?" she asked.

Kaua'i Land Board member Shawn Smith thanked Ziegler for her comments and said he wanted to explore getting rid of NAR bag limits on his island.

⁂

Oceanic Institute Merger With HPU May Force Changes at Sea Life Park

The days of marine mammal shows, dolphin rides, and parties at Sea Life Park may be numbered.

The popular East O'ahu theme park is likely going to have to become more of a learning center now that its landlord, Oceanic Institute, is being subsumed into Hawai'i Pacific University.

That's the word from HPU president Dr. Geoffrey Bannister, who, with OI acting president Shaun Moss, last month asked for and received the Land Board's permission to approve the merger of the two entities, the mutual cancellation of OI's lease of 105 acres of state land in Waimanalo, and the direct issuance of a new 65-year lease to HPU for scientific research and "public exhibiting facilities of marine life."

OI's lease, acquired via public auction, was set to expire in 2027 and could not be renewed, according to Land Division administrator Russell Tsuji. That posed a problem for HPU, which has employed OI for the last decade as a research arm and contributed $10 million to its work. The upcoming lease expiration "creates certain limitations on HPU in securing future grants and donations," stated a Land Division report to the Land Board.

"Some grants we can't assume unless we have an extended lease," Bannister told the board.

Because HPU is a non-profit, the Land Board can issue a lease directly, rather than through a public auction. Although non-profits may also pay a discounted rent, HPU will pay market rent, Tsuji told the board.

Bannister said that HPU and OI are nearing the end of a 10-year agreement, and the university wants that relationship to continue.

"The way we see it, we've been living together for 10 years. We'd like to get married," he said. The merger, which is expected to be completed some time next year, will allow the two organizations to focus on science rather than on "a lot of back room things."

Bannister said he supported the Land Divisions recommendations regarding the merger and new lease, including conditions requiring HPU to honor OI's subleases until they expire or are renegotiated.

At-large board member San Gon asked Bannister, "What do you plan to do with the adopted children?" referring to sublessees Sea Life Park and Gloria Bridal Services, Inc.

Both entities have 15 years left on their subleases. Once they expire, "it would be in Sea Life Park's interest to link to education more than they have in the past. [It] probably should be as educational as it can be," Bannister replied. He did not speak to the future tenancy of Gloria Bridal Services, Inc., which operates the St. Catalina wedding chapel overlooking Manana island (a.k.a. Rabbit Island).

⁂

Oceanic Institute to Build Pilot Feed Mill Facility

More than a decade after receiving an appropriation of nearly $1 million from the state Legislature to build an experimental feed mill in Panaewa, Hawai'i, just outside of Hilo, the Oceanic Institute has yet to begin construction. On September 27, the Land Board granted OI its fifth time extension to complete the work.

> *"[W]e've been living together for 10 years. We'd like to get married."*
>
> ***— Geoffrey Bannister, HPU***

In an August letter to the DLNR, OI acting president Shaun Moss blamed the delay on "behind the scenes hurdles."

The mill is now going to cost about $3.3 million, $1 million more than initially thought, he continued. But with additional funds from the state Department of Agriculture, the U.S. Department of Agriculture, and private donations, the company says it's prepared to proceed.

"OI is also in ongoing discussions with Ulupono Initiative to improve production efficiencies of the feed mill. Ulupono's interest in the feed mill stems from their broader interests in island sustainability and their desire to help develop local solutions to reduce the high cost of terrestrial and aquatic feed," Moss wrote. "OI's feed mill will provide a platform to test novel feed formulations on a commercial scale and this is of significant value to Ulupono. Currently, OI and Ulupono are exploring funding opportunities to support enhanced capabilities of the feed mill."

Moss told the Land Board that his company is preparing an environmental assessment for the mill right now and that he anticipates breaking ground next fall. The mill is expected to produce feed for pigs, chicken, cattle, and aquaculture, he said.

Maui board member Jimmy Gomes, who also manages Ulupalakua Ranch on Maui, asked whether the feed would be available to ranchers statewide.

Moss said the mill is meant to be an intermediate step between the lab and the ultimate goal of a commercial feed mill. OI will use the mill to test feed made from local ingredients and see if those ingredients allow species to thrive.

⁂

Church, Orchard Receive Forest Stewardship Funds

A Hindu church seeking to grow koa, mahogany, and a small amount of sandalwood on about 80 acres of former Lihu'e Plantation cane land will receive roughly $128,000 in state forest stewardship program funds once it wins approval of a 35-year lease from the state Agribusiness Development Corporation.

On October 11, the Land Board approved a recommendation from DOFAW to release the funds if and when the ADC board approves a long-term lease to the Saiva Siddhanta Church, which has farmed the 312-acre Kalepa property for years under short-term permits.

The church will provide matching funds over the 10-year period covered under the grant and has promised to maintain the reforested areas for an additional 20 years. About $125,000 in funds from the U.S. Department of Agriculture's Conservation Reserve Enhancement Program support the church's project as well.

Under the terms of the Land Board's approval, the church will be required to give the DLNR a percentage of commercial harvest income until half of the initial grant amount is repaid.

At the same meeting, the Land Board approved $72,000 in forest stewardship funds for Kauapea Orchards, LLC on Hawai'i island. The company, which will provide matching funds, plans to restore a native forest buffer along streams and plant hardwoods on former sugarcane and pasture land in Hamakua.

About 18 acres will be dedicated to species such as tropical cedar, Mexican cypress, blue marble, rainbow eucalyptus, tallowwood, 'ohi'a, rosewood, pheasantwood, mahogany, trumpet tree, and teak. Like the church, Kauapea Orchards will also be required to give the DLNR a percentage of its commercial harvest revenue until $27,640 is repaid.

Debate Over La'ie Expansion Continues As Community Plan Nears Council Vote

The Honolulu Department of Planning and Permitting continues to stand behind its Ko'olau Loa Sustainable Communities Plan, which proposes expanding the urban growth boundary in La'ie to allow for the construction of an entirely new town on agricultural land in Malaekahana. The move, DPP argues, is in part an attempt to relieve overcrowding in La'ie, where multiple generations living together – often with several children each – is commonplace.

But some members of the City Council's Zoning and Planning Committee aren't convinced those families will be able to afford any of the 875 new homes proposed to be built by Gunstock Ranch owner Hawai'i Reserves, Inc. (HRI). According to the plan, some of those homes will be affordable, some will be market-priced, and the rest will be for faculty and staff of nearby Brigham Young University (BYU), which is seeking to grow its student population from about 2,700 to 5,000.

At the end of a four-hour public hearing on October 8, committee chair Ikaika Anderson pointed out that he has four children and lives in a multi-generational household.

"Without question, our people need affordable housing, [but] we need to learn the price of those homes," he said, noting that he also wanted to know whether the new jobs that are expected to be generated by the proposed developments in the area will provide adequate wages.

As Ka'a'awa resident Dee Dee Letts testified during the meeting, research has found that the vast majority of La'ie residents currently don't earn enough to purchase a home on O'ahu.

Committee member and North O'ahu district council representative Ernie Martin said he wanted answers from the DPP on how and why it chose to amend the community's June 2009 version of the plan, which proposed keeping the current urban growth boundary intact and limiting the expansion of the Turtle Bay Resort.

At the beginning of the October 8 meeting, new DPP director George Atta admitted that the issue he had the most difficulty with was the revision to the urban growth boundary.

"We don't move it very easily," Atta said. Even so, he said his department's decision to move it was based on good planning principles.

He said if an area experiences natural, organic growth, or economic changes, his department must consider how they affect the vitality of the community.

In La'ie, much of the proposed development — often referred to as Envision La'ie — grew out of a community outreach effort driven by HRI, a large property owner in La'ie and a land manager for the Church of Jesus Christ of Latter-Day Saints. In addition to BYU-Hawai'i, the Polynesian Cultural Center (PCC), also a church-affiliated entity in La'ie, is also planning a major expansion. A new hotel that will employ BYU students and an adjacent commercial center have already received city approvals.

Letts and others who opposed the DPP's revisions suggested allowing more growth in La'ie, but within the existing growth boundary.

"I propose you look at where you're putting it rather than whether we need it or not," she said, adding that there is plenty of land in the area already in the state Urban District and that BYU-Hawai'i is the least-dense campus in Hawai'i.

Letts suggested that height limits could be increased to allow for vertical rather than horizontal growth. But DPP planner Raymond Young told *Environment Hawai'i* that wasn't likely to happen because it might affect the rural character of the area.

The bill to amend the Ko'olau Loa Sustainable Communities Plan – Bill 47 – passed first reading by the Honolulu City Council on August 7. The plan must receive approval by the full council twice more before it becomes an ordinance.

"Please understand, Bill 47 has a ways to go," Anderson told the crowd at the October 8 hearing.

Jockeying for Position

As the plan moves closer to a final vote by the City Council, representatives both for and against it are doing whatever they can to sell their case – taking meetings with council members, seeking support from neighborhood boards around the island, circulating petitions, and sending email blasts and posting notices asking supporters to attend crucial meetings.

For example, opponents of Bill 47 have won the support of neighbor hood boards and community associations for Kawela Bay, the North Shore, Waiahole-Waikane, Punalu'u, Ka'a'awa, Kahalu'u, Kailua, and La'ie Point. Supporters of the bill have the Ko'olau Loa Neighborhood Board, and the Kahuku and La'ie community associations on their side.

The divide between the two factions is most easily determined at public hearings and meetings by T-shirt color: Those in support wear pale blue "Envision La'ie" shirts; those against wear deep green "Keep the Country Country" shirts.

For the October 8 Zoning and Planning Committee meeting held in the Kahuku High & Intermediate School cafeteria, BYUH posted a notice on its calendar informing Envision La'ie supporters to show up at 5:30 for food and to sign-up in advance for their free blue T-shirt.

On the day of the meeting, on the school lawn immediately fronting the doors to the cafeteria, friendly women served burgers at the front of a tent to a small crowd decked out almost entirely in blue T-shirts. In the back, where a large Envision La'ie sign swayed in the breeze, were trays of cookies and stacks of more blue shirts.

Envision La'ie supporters distribute food and T-shirts at Kahuku High & Intermediate School.

According to the state Department of Education's website, anyone seeking to use school facilities must submit an application 10 days in advance. Depending on the type of use, daily or hourly fees may apply, ranging from $1/hour for a practice room to $232/hour for an auditorium. The fee for use of school playfields/grounds is $5/hour.

"We just came and set up. I'm not aware we called anybody," said Elisabeth Logan, assistant manager for Human Resources and Communications for HRI. "There was no school today."

The Polynesian Cultural Center provided the desserts, BYUH supplied the burgers, and HRI set everything up, she said. ***— T.D.***

For more background on this issue, see our May 2013 cover story available at *www.environment-hawaii.org.*

Commission Barely Approves Time Extension To Review Petition to Designate Kona Aquifer

The state Commission on Water Resource Management has too much to do and too little staff to waste time on a petition to designate an aquifer where pumping is nowhere near the sustainable yield. That, basically, was the sentiment of three of the seven water commissioners who met on October 16 to decide how to proceed with the National Park Service's September 13 petition to designate the Keauhou aquifer system in West Hawai'i as a groundwater management area.

Other commissioners, however, felt that – at a minimum – the park service should be allowed to properly present its case. On the day of the meeting, the federal government was still shut down and NPS representatives had been allowed to testify briefly to ask for a deferral until December, which would give it time to prepare a substantive response to the analysis and recommendations prepared by commission staff. The Office of Hawaiian Affairs also supported a deferral for similar reasons.

Staff had recommended that the Water Commission chair be given until December 2014 to make a recommendation on whether or not the designation process should proceed. This would give staff a chance to review the results of crucial studies on hydrology and evapotranspiration that aren't expected to be completed until the fall of next year. It would also give the agency time to consult with appropriate agencies and potentially affected parties.

After a lengthy and heated discussion, the commission voted 4-3 to approve staff's recommendation.

Initial Assessment

At the October 16 meeting, the Water Commission staff addressed the NPS's assertions that the potential for increased pumping threatened the groundwater flow to Kaloko-Honokohau National Historic Park, as well as the natural and cultural resources that rely on that flow.

In its petition, the NPS noted that projected water demands for the Keauhou region vastly exceed the aquifer's sustainable yield of 38 million gallons a day.

To this, the commission staff's report noted that the estimated recharge for the area is 152 mgd. So even if pumping reaches the sustainable yield, 114 mgd would still flow to the ocean and provide a buffer against any climate changes, it stated. It also stated that only 12 to 14 mgd are pumped from all 105 wells that tap the aquifer and that county population projections suggest that by 2025, pumping would reach 20 mgd, roughly half of the sustainable yield.

However, commission staff also pointed out that full build-out under current county zoning would require 38 mgd, or 100 mgd if agricultural uses are included. Full build-out of the county General Plan would require 175 mgd.

One of the aquifer's wells has experienced increased salinity and there are serious disagreements over the water resources, the report continued.

Given the current level of pumping, "we don't feel like the sustainable yield is a problem in this area," staffer Paul Eyre told the Water Commission. A recent well measurement by CWRM staff revealed that water levels are not dropping but do fluctuate with rainfall. An observation well within the park also suggests water salinity hasn't changed much, he said. "If it has, the water has become a bit fresher," he added.

With regard to future withdrawals, he said that pumpage of 175 mgd "equates to serving a population of about a million people. I don't know how reasonable this projection is." (The entire island of O'ahu has fewer than 1 million people.)

To this, commissioner Kamana Beamer interrupted, "I'm sorry, but it is in a county plan that came to your commission."

Still, Eyre said, "if the National Park case is sufficient to designate the Keauhou aquifer, the same case ... will apply to all aquifers along the ocean."

Beamer then asked whether those aquifers were subject to plans that, like Keauhou, call for buildout that exceed the sustainable yield.

On this point, commission geologist Roy Hardy answered, "We do know if you were to look at zoning anywhere in the state and apply duties, we're over-zoned" with regard to sustainable yields.

While his staff seemed to be arguing that the prevalence of over-zoning was reason *not* to designate, Water Commission director William Tam pointed out that the commission in 1992 designated a surface water management area in Windward O'ahu because proposed developments authorized by the county exceeds the sustainable yield.

The staff report called out four specific studies that will be critical to informing the commission's ultimate decision: an evapotranspiration study by University of Hawai'i climatologist Thomas Giambellluca, a groundwater recharge update by the U.S. Geological Survey, a USGS isotope study that will analyze the relationship (if any) between high-level groundwater and basal groundwater in the Keauhou area, and a 3-D groundwater model of the aquifer that incorporates those three studies as well as other research. The last study is expected to be completed some time after September 2014.

Given that, commission staff recommended delaying until December 2014 a decision on whether to proceed with designation.

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Opposition

Before hearing any testimony from the public, commissioners Milton Pavao, Ted Yamamura, and William Balfour were already pushing for the outright denial of the petition.

"Can we deny without prejudice and just have them come back when they're ready?" Yamamura asked.

The commission had received several written testimonies against the petition. They included letters from the Hawai'i Island Economic Development Board and the Hawai'i Leeward Planning Conference (both of those were signed by Jacqui Hoover), the Land Use Research Foundation, the Hawai'i Department of Water Supply, and SCD-TSA Kaloko Makai, LLC, which plans to develop more than 1,100 acres of lands above the park.

The most vehement opposition came from Kaloko Makai's Stanford Carr. In his letter, he called the NPS an agency "that seems to be operating under its own agenda of dictating land uses, and picking and choosing who qualifies as an acceptable land user in Kona, notwithstanding the decision of the people of the County of Hawai'i to intentionally focus urban development within the Kona Urban Area designated under the Kona Community Development Plan. ...

"More compelling than anything I could say, the data gaps in the NPS petition make it crystal clear that NPS' efforts are premature, unsupported by facts, inconsistent with the requirements of the Water Code, and should be rejected."

Should the commission choose not to reject the petition, Carr continued, "please consider this SCD-TSA Kaloko Makai, LLC's written request for a contested case hearing."

Quirino Antoino, Jr., manager of the Hawai'i County DWS also recommended denial on behalf of his office, as well as the mayor's.

"No on wants to damager the aquifer or harm traditional and customary practices," said former Water Commission chair Peter Young, currently a consultant for Kaloko Makai. "Without water we don't exist here."

He mentioned that the Kona Water Roundtable, composed mainly of private consultants, has reviewed a lot of research over the years about the hydrology of the Keauhou aquifer system. And they've determined that high-level water at Keauhou is separated from the basal aquifer by impermeable rock and that the recharge to the aquifer is much greater than initially calculated, he said.

He urged the commission to deny the petition.

"It doesn't mean you don't do anything," he added. He recommended that the commission wait to see what the USGS studies yield next year, and also look at other studies, including those on anchialine ponds. He then quoted a 2011 NPS inventory report that stated that none of the major ponds within the park have been studied in detail to characterize ecosystem status or hydrologic connectivity.

"They're concerned about it, but they have not studied it yet. Why don't we get that studied?" Young said.

Never-never Land?

To commissioner Balfour, any discussion of potential pumpage of the aquifer decades from now is "way, way premature."

"I don't think its necessary. You're talking about ... development 20 or 30 years out. Come on, that's never-never land. We've got lots of fish to fry," he said.

Commissioner Beamer, on the other hand, seemed to welcome the opportunity to do some long-term planning.

"To me, 35 years is not that far out," he said. "The resource will still be there. ... I don't mind thinking about it."

He added that it was the Water Commission's constitutional mandate to consider the issues presented by the petition.

"I would not want to not do that," he said.

Tam expanded on Beamer's argument. He said that the commission did not have the evidence to make a decision on whether or not the petition has merit, including the outstanding studies, water claims by the Department of Hawaiian Home Lands, and traditional and customary claims, among other things.

"To make a decision without that would be arbitrary and capricious," he said.

Even so, deputy attorney general Julie China said that the descriptions of the agenda item in the public notice and staff submittal were broad enough to allow the commission to deny the petition that day.

When Yamamura asked China whether such a vote would be arbitrary and capricious without the kind of evidence Tam suggested was necessary, China said only, "You have what was presented to you."

Commissioner Jonathan Starr said he didn't feel right about discussing the merits of the petition yet.

"Neither the petitioner has been able to present to us nor have other parties ... such as the mayor, the county council, the Department of Planning," he said.

Commissioner Pavao asserted that anything short of denial would just be more work for commission staff.

To this, Tam pointed out, "We do this work. This is what we do. ... We don't make decisions based on our staff."

Starr then made a motion to extend the review period to December 2014. He added that the extension shall not preclude the commission from gathering data, holding workshops or site visits, or "proceeding with decision making when the commission has received adequate input." Beamer seconded the motion.

In the end, Starr, Beamer, commissioner Loretta Fuddy, and chair William Aila supported the motion. ***— T.D.***