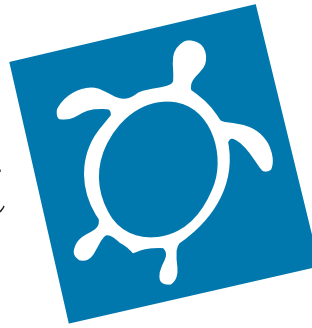


# Environment



# Hawai'i

*a monthly newsletter*

## *Losing Ground*

It's a good day when you go to the beach. When the beach comes to you – not so much.

That's the situation facing growing numbers of homeowners who have oceanfront properties. As the shoreline moves landward, turf that was once theirs is no more. And structures – seawalls, revetments, and the like – intended to hold back the sea now require permits and easements, obtained only at great cost, if at all.

It's difficult for homeowners, and, as our cover story relates, almost as hard for the agencies issuing the permits.

And on the subject of difficult issues, we take a look at the lawsuit just filed by folks in East Maui, whose legal battles to have water put back in their streams are beginning to rival those of Jarndyce v. Jarndyce, we take a peek at what some engineers really think about climate change, and we discuss the irrepressible kayak outfitters of West Hawai'i, who, banned from one area, simply pop up in another.

On the brighter side, the long struggle of the Ka Iwi Coalition to protect mauka lands seems, finally, to have a happy ending. Well done!

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## DLNR, Land Board Seek Improvements To Handling of Shoreline Erosion Impacts

It's becoming a regular thing. A little too regular for some.

On February 27, the state Board of Land and Natural Resources faced yet another case where landowners had to pay fines and fees and obtain an after-the-fact use permit and an easement because erosion had caused their private, shoreline property to become state-owned Conservation District land.

In 2002, the Department of Land and Natural Resources' Office of Conservation and Coastal Lands became aware that a small portion of an unpermitted seawall along property owned by August and Veronica Monge of Hau'ula, O'ahu lay within the Conservation District. Although it was the Monges who brought the matter to the DLNR's attention, the Land Board fined the couple \$600 for the unauthorized construction, which occurred before they

bought the property in 2001, and they were required to either remove the wall or apply for an after-the-fact Conservation District Use Permit.

The couple applied for a CDUP, but by the time the matter was ready to come to the Land Board, erosion had caused nearly the entire seawall to fall within the Conservation District. Driven by Hawai'i Supreme Court decisions, the state has changed the way it now determines where the shoreline lies, and this, too, has contributed to the wall being set further inland from the coast, OCCL administrator Sam Lemmo told the Land Board.

"Now we have an after-the-fact [permit] for the whole wall, when, in 2002, it was a little bit," he said, adding that if the Land Board were to approve the CDUP, the Mon-

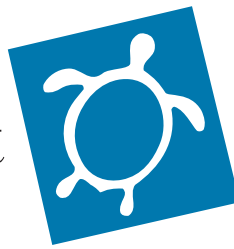
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The Monge family's seawall in Hau'ula, O'ahu.

PHOTO: DLNR

# Environment Hawai'i



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## NEW AND NOTEWORTHY

**Navy Plans for Biosecurity:** A Regional Biosecurity Plan for Micronesia – broadly defined to include every island state from Hawai'i in the northeast to Micronesia in the southwest – has been released by the U.S. Navy and cooperating agencies.

The document runs to several hundred pages and is not so much a description of what will be done as it is of what should be done. It acknowledges that each jurisdiction “will need to develop specific details for action items they determine are practical, warranted, and feasible to enact.” Nor does the plan “set laws or regulations” or “define the responsibilities or obligations of any jurisdictions, agencies, or offices. Again, these elements are left for the appropriate authorities to determine.”

Nonetheless, the plan has great value as a catalogue of the dangers invasive species pose to island ecosystems, the efforts – successful and not – of responsible authorities to curb introductions of invasives, and the many government and private agencies within each jurisdiction whose responsibilities include the interdiction, eradication, or control of invasive alien species.

While the U.S. Navy took the lead in preparing the document, it gives credit for the initiative to Micronesia. “The Micronesia Chief Executives and their council on invasive species ... have been in the forefront of regional [invasive alien species] work for almost a decade,” the plan states in its Executive Summary. After the Department of Defense announced plans for a massive relocation of military forces from Okinawa to Guam in 2007, concerns over increased threats of invasives were heightened. Although the scope of the relocation has since been scaled back, the Navy went forward with steps to address biosecurity regionally, culminating in the new plan.

The biosecurity plan, unveiled April 9, is available online: <http://guaminsects.net/anr/sites/default/files/RBPC.pdf>

awarded the nonprofit Malama Kaua'i a \$120,000 grant to pay for construction materials needed to develop the Kilauea Agricultural Park, a project anticipated decades ago.

“In the 1970s, when the Kilauea Sugar Mill closed, lands were sold off and we saw the development of gentlemen's estates. In one of these deals, the community was supposed to receive 75 acres to support displaced plantation workers, and the Kaua'i community, so they could continue agricultural production. But since the '70s, the community has wrestled to get access to this land. After a 30-year battle, we finally got it,” Malama Kaua'i's website states.

Malama Kaua'i is providing the funds for the project while the group 'Aina Ho'okupu o Kilauea obtains its own nonprofit status “with the purpose to develop the site into a regional agricultural park and food shed as set forth by a master planning process as commissioned by the County of Kaua'i in 2008,” the website continues.

The Ag Park is intended to include both organic and conventional production farms, four acres of incubator farms, a farmers' market, a 250-plot community garden, a three-acre composting and recycling center, and a 4-acre renewable energy park.

**Our First Subscriber:** Robert Merriam was working in the state Legislature as an aide to Rep. Virginia Isbell in the spring of 1990. That is when, in a completely unwarranted act of faith, he wrote a check for \$25.00 to *Environment Hawai'i*, becoming our very first subscriber months before our first issue saw light of day.

For the next 25 years, Merriam continued to subscribe.

Last month, his son Keith called the office to cancel his father's subscription. His father would not be reading *Environment Hawai'i* any more, he said. At age 87, Robert passed away April 1.

### Environment Hawai'i

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### Quote of the Month

*“Put it in your specs and make it work.  
All of you can do it.  
You don't need legislation.”*

— Attorney Ian Sandison



# Hawaiian Farmers, Cultural Practitioners Demand Environmental Review for East Maui Water Diversion

**H**ave Alexander & Baldwin, Inc., and its subsidiary, East Maui Irrigation Co., Ltd., been illegally diverting more than a hundred million gallons of water a day from East Maui streams?

Last month, on behalf of East Maui residents Healoha Carmichael and Lezley Jacintho, as well as the nonprofit group Na Moku Aupuni o Ko'olau Hui, Native Hawai'i Legal Corporation attorneys filed a complaint in 1st Circuit Court arguing that the state Board of Land and Natural Resources' annual approval of revocable permits to the companies violates Hawai'i's environmental review law. The four permits — for the Nakihi, Keanae, Huelo, and Honomanu areas — allow the companies to use some 33,000 acres of state ceded land to divert an average of 165 million gallons a day (mgd) from East Maui, the complaint states.

"By authorizing the use of this environmentally and culturally significant area of Maui without complying with Hawai'i Revised Statutes Chapter 343, the BLNR violated the law. By their continued diversion of East Maui water without undertaking environmental review, so did Alexander & Baldwin and East Maui Irrigation," it continues.

As a result, "[p]laintiffs' traditions and customs of growing kalo, gathering from East Maui streams, and fishing along the coastline have suffered," the complaint states.

The NHLC has asked that the court halt the diversions — except for 8.4 mgd to the Maui Department of Water Supply "for public health, safety, and welfare" — until Chapter 343 is fully complied with.

## *A Long Time Coming*

A&B's predecessors initially received permission from the Kingdom of Hawai'i to divert water from East Maui and A&B/EMI continued their diversions under licenses from the Territory of Hawai'i. As those licenses expired in the 1970s and 1980s, the companies maintained their diversions via month-to-month revocable permits from the Land Board.

State law limits the term of temporary water permits to one year. Even so, the Land Board skirted that restriction by alternating the names on the permits. A permit held by A&B one year would be granted to EMI the next and vice versa.

For years, at each annual swapping, NHLC attorneys complained that the Land Board's actions kept the status quo without any assessment of environmental or cultural impacts.

In May 2001 the companies requested that the Land Board authorize a public auction for a 30-year lease for the East Maui watersheds and renew their revocable permits to continue the diversions in the meantime. The NHLC, on behalf of Na Moku Aupuni o Ko'olau Hui and cousins Beatrice Kekahuna and Marjorie Walleit, requested a contested case hearing, as did attorney Isaac Hall on behalf of the nonprofit environmental group Maui Tomorrow.

The Land Board deferred voting on the long-term lease and the revocable permits, and instead granted a holdover permit to cover the diversions during the contested case.

A year later, the contested case was still ongoing and the Land Board was poised to renew the holdover permits. Despite requests from Hall and the NHLC's Alan Murakami for a contested case on whether the Land Board could even do that, the board granted a "holdover of the existing revocable permit on a month-to-month basis pending the results of the contested case," the Land Board's May 24, 2002, meeting minutes state.

The following year, the 1st Circuit Court found that an environmental assessment or impact statement would need to be done before the Land Board could grant a long-term water lease, but was silent on whether one was necessary

for the short-term permits. Rather than dealing with that issue head on, the parties instead focused on getting some water released to East Maui taro farmers while the contested case hearing proceeded.

In a 2004 contested case filing, the NLHC complained that the Land Board had not even pretended to assess whether the revocable and/or "holdover" permit best served the state's interest.

"[B]y providing no mechanism for downstream users to redress harm they suffer from excessive diversions by A&B/EMI, the BLNR has ensured the exact opposite result, i.e., to give A&B/EMI carte blanche power to divert without regard for what best serves the interest of the state," the filing added.

In 2007, based on its hearing officer's recommendations, the Land Board ultimately approved a release of 6 mgd into a single East Maui stream, Waiokamilo, to satisfy the needs of the taro farmers in Wailuanui. Despite the order, "EMI has maintained that it ceased all diversions from Waiokamilo Stream shortly thereafter because it knew that the natural undiverted flows would not sustain a flow of 6 mgd except during rainy conditions," stated NHLC attorney Ashley Obrey in an email.

## *Routine Approvals*

More than a decade since it first began, the contested case before the Land Board is still open. The case had been dormant since 2009, with the focus shifting in recent years to efforts before the state Commission on Water Resource Management to amend the interim insert flow standards (IIFS) for more than two dozen of the diverted East Maui streams. The NHLC initiated the IIFS proceedings around the same time it requested a contested case hearing from the Land Board.

When the Land Board issued its last order in the contested case in 2009, it was assumed that a final order would come only after the Water Commission determined, through the IIFS process, how much water should remain in those streams to allow native Hawaiians to adequately exercise their traditional and customary rights. It was thought (although not by the NHLC) that the Land Board lacked the expertise to determine that on its own and would be better equipped to resolve the long-term

PHOTO: OFFICE OF HAWAIIAN AFFAIRS



Native Hawaiian cultural practitioner Healoha Carmichael, pictured here, is asking the 1st Circuit Court to end water diversions in East Maui that have left streams dry.

water lease issue with input from the Water Commission. But with the IIFS process also taking years to resolve, the NHLHC asked the Circuit Court last year to order the Land Board to reconvene its case and make its own assessment of the diversions' cultural and environmental impacts. The court granted the NHLHC's request, ordering the Land Board to move toward rendering a decision.

"In other words, BLNR can no longer afford to delay a decision on A&B's now long-pending, long-term lease application which has made a mockery out of the entire process," Obrey stated.

Still, no one knows how long it will be before final, non-appealable decisions are made in the contested case hearings before the Water Commission and Land Board. It's been 14 years already and A&B and EMI continue to divert water, paying the state the same minuscule rate it had in 2001. And they had been doing so under "holdover" permits.

Five years ago, Murakami told *Environment Hawai'i* that holdovers don't exist in either statutes or rules and that his clients may need to address the legality of that at some point. That point appears to have come when an EMI president Garrett Hew, testifying at a March hearing before the Water Commission, stated that the companies' water permits have been continuously renewed by the Land Board since 1987.

Under state law regarding holdovers for land uses, HRS Ch. 171-40, the Land Board may grant a lessee a one-year holdover extension following the lease's expiration. If the Land Board does not decide by the end of that one year how to dispose of the land, it may then issue a month-to-month revocable permit to the lessee.

Since 2002, the Department of Land and Natural Resources' Land Division has regularly included in its bulk list of permits recommended for annual renewal by the Land Board the four water permits to A&B and EMI held over from 2001. The "holdover" aspect of these permits seems to be reflected by the fact that the DLNR has not alternated the permit holder each year as it had in the past. Instead, A&B has maintained the same three revocable permits and EMI has kept its same one granted by the Land Board in 2001.

Despite the apparent limitation of holdovers to one year, Land Division administrator Russell Tsuji suggests that the term can be more broadly construed.

Holding over, he said, "is generally thought of as the continued tenancy and status quo, on the same terms and conditions as in the past unless otherwise so noted. Gen-

erally you'll see us do more of it in connection with expiring leases under HRS 171-40. My view [is], although 171-40 is about expiring long-term leases, the concept is the same for revocable permits, from a real estate or real property perspective."

This practice, however, apparently contradicts what the East Maui community understood the situation to be.

"The basic premise is that the BLNR, rather than reissuing revocable permits each year (supposedly!), 'held over' the last revocable permit until the contested case hearing regarding A&B's long term lease was resolved," Obrey said.

The complaint states that the Land Board had repeatedly represented that "as early as 2003, the revocable permits were not in operation until its decision on whether to award a long term lease, and there were no further requests for the issuance of such permits."

"East Maui taro farmers, as well as those who gather and fish along its stream beds and shoreline, are disappointed and shocked that the state, through its revocable permit process, continues to grant permits to the biggest diverters of stream water in the islands," an April 14 NHLHC press release states.

"[T]he BLNR has indeed reissued/renewed permits to A&B/EMI despite the holdover (which, again, we have always argued was illegal)," Obrey stated.

The Land Board has "completely absolved A&B, since at least 2003, of having to submit any kind of request or application whatsoever to continue diverting in this manner and for as long as objections to their long-term lease application were still pending," she continued.

The Land Board most recently renewed the permits for another year on December 12, 2014, without any environmental assessment or declaration that the issuance of the permits is exempt from the requirements of HRS Chapter 343. The NHLHC complaint, on the other hand, states that the Land Board's action does not qualify for an exemption because of the diversion's significant cumulative impact.

Edward Wendt, an east Maui taro farmer and Na Moku president, said an environmental assessment is "a must." The Land Board, A&B, and EMI "can't continue on like they are without acknowledging the severe impacts on this area and the people who call it home," he said.

Although the irrigation system diverts an average of 165 mgd, the permits allow the companies to divert up to its maximum capacity of 450 mgd, "almost three times more than the island of O'ahu uses daily,"

## For Further Reading

Environment Hawai'i has given extensive coverage to East Maui water issues over the years. For more background, see the following:

- "Appeals Court Orders Contested Case in East Maui Water Dispute," EH-XTRA, November 30, 2012;
- "Water Commission Denies Hearing on Flow Decisions for East Maui," November 2010;
- "Water Commission Amends Flows for Six of 19 East Maui Streams," July 2010;
- "Water Commission Defers Vote on East Maui Stream Restoration," March 2010;
- "Water Commission Amends Standards for Six Diverted East Maui Streams," and "Land Board Resumes Discussion of Diversion of East Maui Water," November 2008;
- "Land Board Orders EMI to Release Water to Meet Needs of East Maui Taro Farmers," May 2007;
- "Commission Gains Funds, New Tools to Pin Down Water Use, Stream Needs," September 2006;
- "Ex-Judge Says East Maui Farmers Don't Need More Water for Taro," August 2006;
- "East Maui Taro Farmers May Receive Interim Relief From Water Diversion," December 2005;
- "Water Commission is Urged to Look at Lessons from Mono Lake Dispute," August 2005;
- "Board Talk: Land Board Favors EMI Water Diversion," March 2003;
- "Board Talk: East Maui Water Dispute Heats Up with Hearing Officer's Recommendation," January 2003;
- "Board Talk: Contested Case on Renewal of EMI Water Permits," July 2001;
- "Battle Looms Over Waters Diverted from East Maui Streams" and "Complex Legal Issues Surround A&B's Taking of East Maui Water," August 1997.

the press release states.

Most of the water that A&B and EMI divert feeds the 30,000 acres of sugarcane fields in Central Maui owned by A&B subsidiary Hawaiian Commercial & Sugar. A little more than 8 mgd is used by Maui County for residential use in Upcountry and Nahiku.

— T.D.



## BOARD TALK

# Land Board Grants \$1M to Save Ka Iwi Land From Development

On April 10, despite its staff's recommendation to deny, the Board of Land and Natural Resources unanimously approved the release of \$1 million for Livable Hawai'i Kai Hui's purchase of 181 acres of mauka lands on East O'ahu's scenic Ka Iwi coast.

The nonprofit must still secure \$2.5 million from the City and County of Honolulu's Clean Water and Natural Lands program and raise an additional \$500,000 in private funds to meet the \$4 million sales price, but the April 10 Land Board decision was a key hurdle in the decades-long community effort

"His duties are not to a charitable cause. ... There are other entities that can move faster if this is not approved today. This is our only solution," she said.

Ka'akua said the community group Ka Iwi Coalition asked TPL for help acquiring the property in the 1980s, but the opportunity to purchase arose only last year.

### Proper Procedure

DOFAW's main objection to the hui's proposal was the timing of it. The project itself met perfectly the mission of the Legacy Lands

thirty years," a DOFAW report states.

The Legacy Land Commission ranked the project as one of the top five for fiscal year 2015.

The DOFAW report on the project states that acquisition of the Ka Iwi mauka land would protect open space and safeguard undocumented cultural sites that include traditional Hawaiian rock walls, paths, terraces, and "at least two pohaku lele (balancing or floating rocks) that have religious significance."

Because no specific state agency had been identified in the original application as the intended fee holder, DOFAW decided it would take ownership and designate the lands as a forest reserve. However, shortly before 2015 grant requests were brought to the Land Board for final approval, the state Department of the Attorney General expressed concerns over the compatibility of a privately held easement overlaying a state forest reserve.

By the time the Land Board voted in February on the fiscal year 2015 Legacy Lands package in February, the easement issue had not been resolved. The board approved a handful of other projects, but deferred action on the Ka Iwi purchase.

The intent of the deferral was to allow DOFAW staff to work with Livable Hawai'i Kai Hui on a lease or stewardship agreement that would give the nonprofit some say over how the lands would be managed, absent a conservation easement. However, the group quickly expressed its preference to become the fee owner, rather than DOFAW.

"The Ka Iwi Coast did not do this to be red-lined out at the last minute," hui president Elizabeth Hurley explained to the Land Board.

Although DOFAW did not object to the change, it was a substantial departure from what had been represented in the original application for funds. The agency was concerned that allowing an applicant to significantly revise its project after the Legacy Land Commission made its recommendations would set a bad precedent and might also seem unfair to other applicants. So at the Land Board's April 10 meeting, DOFAW administrator Lisa Hadway recommended that the Land Board deny the hui's request for funds and instead award the money to the two projects ranked next in priority. Those both happened to be purchases by DOFAW, one for 3,717 acres at Pupukea and another for 1,420 acres at Helemano on O'ahu.

Although DOFAW's recommendation was an attempt to maintain the integrity of the Legacy Land process, Hadway noted



PHOTO: JUDY HARRIS

to protect the land from development.

The hui had until April 15 to sign a purchase agreement with the U.S. bankruptcy court receiver appointed to liquidate foreclosed properties held by Management Solutions, Inc., including the Ka Iwi lands. But the nonprofit was not about to sign an agreement and plunk down a \$25,000 non-refundable deposit without the \$1 million in state Legacy Land Conservation Funds.

The Department of Land and Natural Resources' Division of Forestry and Wildlife, which administers the Legacy Lands program, had suggested that the Hui try to obtain the funding in next year's grant cycle, rather than this year's, because recent amendments made to the initial application were too significant.

Laura Ka'akua of the Trust for Public Lands, however, told the Land Board, "We can't wait another year to apply for funding in the next Legacy Lands cycle. The properties [Ka Iwi] are the last properties that have not been sold. The court-appointed receiver has sold the entire portfolio except for these two. The federal bankruptcy judge issued strong language to get rid of these properties.

program, which aims to provide government agencies or private nonprofits with funds to purchase the fee of or a conservation easement over ecologically, agriculturally, or culturally important lands that need protection from development. But DOFAW has typically only allowed applicants to significantly change their projects before the Legacy Land Commission's final decision-making meeting.

In a typical annual cycle, applications are submitted to the program by a certain deadline in the fall and after initial review by staff are brought to the Legacy Land Commission for ranking and approval. The Land Board usually then approves the commission's recommendations and authorizes the distribution of funds, which total, on average, a few million dollars a year.

In the case of the Ka Iwi mauka lands, Livable Hawai'i Kai Hui proposed to have the state hold the fee, with the City and County and the nonprofit holding a conservation easement over the land.

"For the purposes of this project, [the Hui] is representing the Ka Iwi Coalition, which has a role in caring for the area for over

that the Land Board was free to grant the award. The Legacy Land Commission's and program staff's recommendations are merely advisory, she said.

According to Legacy Land program administrator Molly Schmidt, the commission met on March 31 to discuss the amended application, but ultimately chose not to comment on the appropriateness of amending the application so late in the process. Rather, it simply affirmed its support for the protection of the Ka Iwi coast.

### ***Making the Case***

The Land Board need not worry that the approval of the Ka Iwi project would corrupt the Legacy Land process because the circumstances of the case were so unique, Hurley told the Land Board. What's more, she blamed the Attorney General's office for the lateness of the group's changes.

She noted that the group's application, which clearly articulated what entities would hold easements, was circulated to all agencies last September. Although she seemed to sympathize with the AG's concerns, she lamented that they came to light after the Legacy Land Commission's last hearing in 2014.

"It put us in a position to come to you for an amendment," she said, adding that she thought this was an isolated incident.

"And we didn't cause it. ... We're simply reacting to it," she said.

The TPL's Ka'akua added that the changes were necessary not just to allay the AG's concerns, but also because recent negotiations with the bankruptcy court receiver have disclosed that he will only be able to issue a special warranty deed for the property. Such a deed would not be acceptable to the state on land the state would own, but would be acceptable to a nonprofit, she said.

"This project at this point will only happen if it is owned by a nonprofit willing to step up," she said.

Even so, Land Board member Chris Yuen asked Hurley whether her organization would be open to operating under a lease or other stewardship arrangement with DOFAW as the fee owner.

Had the possibility been raised earlier in the approval process, the hui would have considered it and there would have been ample time to work out the details, she replied.

"We don't have the grace of time [and given] the additional hundreds of thousands of dollars we will have to raise ... we cannot just go with 'We're well-intended, we'll work things out,'" she said.

Yuen asked about what provisions would

be in place to ensure the land's protection if the Land Board voted to approve the hui's proposal.

"What are the consequences if performance is not up to par?" he asked.

Ka'akua said that the city, which would hold a conservation easement over the land, could bring legal action, and the state would also be able to step in if the deed restriction terms were not met.

"It's a very well-monitored situation," she said.

In the end, the Land Board voted to approve the amendments to the Ka Iwi mauka lands project application and authorize the board's chair to encumber the \$1 million for the purchase.



## **Board Terminates Permit For Sand Island Off-Road Park**

On March 27, the Land Board terminated the revocable permit held by the nonprofit Sand Island Off Highway Vehicle Association, Inc. (SIOHVA), at the organization's request. Nearly a decade ago, aided by federal funds earmarked for motorized recreation, the DLNR's Division of State Parks laid the groundwork for the development of an off-road vehicle park on about 30 acres of state land at Sand Island that had become a dumping ground and homeless camp. At the time, the only other legal place on the island for off-roading was the Kahuku motocross park on the North Shore, while illegal off-roading was a growing problem for State Parks at Ka'ena Point.

With a lot of volunteer labor from future users, a park was created. And after a successful trial period that began in 2006, the Land Board issued a revocable permit to the SIOHVA in 2010. Since then, however, the park, located near the Sand Island sewage treatment plant, has struggled with city and state violations and has failed to draw many off-road enthusiasts other than BMX bicycle riders and remote-control car hobbyists.

"Due to our inexperience, we got a series of violations from the [city's] DPP [Department of Planning and Permitting] for grading without a permit," State Parks deputy director Curt Cottrell told the Land Board.

The project then froze, federal money was lost, and the SIOHVA's leadership changed out of frustration with the permitting elements, he said.

Even so, Cottrell said the portion of the park where children ride BMX bicycles has become a successful venue, and the remote-control car area is also used regularly. The

4-wheel-drive truck area, however, went fallow, as did the pee-wee motocross area, he said.

Over the past few years, new unauthorized uses have appeared, such as a commercial fitness/obstacle course training operation.

Cottrell said the park was meant to meet a desperate need to create a legal playground for off-road vehicles. With the obstacle course operation, "they want to create a demand. ... This is not meeting an existing demand," he said.

Cottrell said the park has been poorly managed in general, with gates left open and illegal storage of construction equipment.

After State Parks sent the organization notices of default, "they said, 'We want out,'" Cottrell told the board.

He said his division has been working on drafting a revocable permit that would allow the entity that runs the BMX area to continue operations, and it may do the same with the remote-control car area.

The division is also negotiating with the group that runs the Kahuku motocross park.

"They're interested in taking a chunk of the property for off-highway vehicle riding," he said. "Our intent is to come back to you with new RPs."

Without a continuous presence on the property, "there's a whole chunk of land that is going to go fallow that may fill up with bad uses," Cottrell said.

Although the owner of the obstacle course training company objected to the termination — and even submitted a request for a contested case hearing, which he later withdrew — Land Board member Chris Yuen said he couldn't see forcing the SIOHVA to stay when its president has asked the board to terminate the permit.



## **Pupukea Agreement**

On April 10, the Land Board approved a five-year agreement between the DLNR's Division of State Parks and the North Shore Community Land Trust that allows the nonprofit group to continue its work helping to manage the 1,100 acres at Pupukea-Paumalu it helped the state acquire in 2007.

State Parks had issued special use permits to the trust for the past five years to assist with planning, management, and monitoring of the Pupukea-Paumalu State Park Reserve, which contains trails used for hiking, biking, and horseback riding.

— T.D.

*Seawall from page 1*

ges would also need to obtain an easement for the encroachment on state land.

The board ultimately approved the permit, but not before Hawai'i island Land Board member Stanley Roehrig called on the OCCL and the state, in general, to find ways to address the effects of coastal erosion on shoreline structures in a broader way, rather than one property at a time.

"I think the state needs legislation that treats everyone identical. Because of climate change, the sea is rising. So how are we going to deal with it?" Roehrig asked.

A study by University of Hawai'i scientists published recently in the journal *Natural Hazards* found that based on historical erosion rates and sea level rise projections by the Intergovernmental Panel on Climate Change (IPCC), coastal erosion of Hawai'i beaches may double by mid-century, a March 23 press release states.

"When we modeled future shoreline change with the increased rates of sea level rise projected under the IPCC's 'business as usual' scenario, we found that increased SLR causes an average 16 to 20 feet of additional shoreline retreat by 2050, and an average of nearly 60 feet of additional retreat by 2100," Tiffany Anderson, lead author and post-doctoral researcher at the UH-Manoa School of Ocean and Earth Science and Technology, said in the release.

"This means that the average amount of shoreline recession roughly doubles by 2050 with increased SLR, compared to historical extrapolation alone. By 2100, it is nearly 2.5 times the historical extrapolation. Further, our results indicate that approximately 92 percent and 96 percent of the shorelines will be retreating by 2050 and 2100, respectively, except at Kailua, O'ahu, which is projected to begin retreating by mid-century," she said.

Because of climate change, Roehrig said at the Land Board meeting, "there's going to come a time when every single beachfront lot is going to be in the Conservation District. He argued that the case-by-case way the DLNR deals with the resulting problems is unwieldy and noted that since he began serving on the Land Board last July, about a dozen shoreline erosion-related cases have come before it.

"I cannot imagine the amount of time it takes you to work up one of these. I read this stuff and my eyes glaze over," he said, referring to OCCL staff.

And when heavy fines for unauthorized emergency shoreline work are involved, as has happened recently for a number of properties on O'ahu's North Shore, con-

tested cases often follow. Given that such cases could become more common with sea level rise, Roehrig said, "You can't pay me to come to do the ones on the North Shore. Every single one takes an hour or two and there are thousands of lots."

He said the Legislature needs to change the law to help streamline the process, perhaps by automatically placing properties in certain areas into the Conservation District, thereby eliminating the need for a Land Board hearing on an after-the-fact CDUP. He also suggested that landowners in critical areas could be required to obtain some kind of insurance so "everybody shares the burn."

OCCL administrator Lemmo told Roehrig that he and his colleagues constantly think about the kinds of issues Roehrig had raised.

"You're articulating what people are feeling. ... It's not falling on deaf ears," Lemmo said. "It's a troubling area in land use."

Legislative intervention has been discussed, but for now, Lemmo said, "We're trying to kind of muddle through it day-to-day."

"The only light I see shining on this is the fact we are the ones doing the state's sea level rise adaptation and vulnerability report," he said, adding that when it is finished at the end of 2017, the report should at least provide a scientific framework to address the problem.

"We need legislation before 2017," Roehrig replied. Depending on when solutions are implemented, he suggested that land values along the shoreline are either going to skyrocket or tumble.

With significant sea level rise decades away, Lemmo said, the state has time to address impacts, "but not a lot of time. That's why we need the time to get it right."

Last August, the Land Board approved a memorandum of agreement between the OCCL and the University of Hawai'i's School of Ocean, Earth Science and Technology, chiefly to help the OCCL with its efforts to "protect and conserve beaches, dunes and coastal communities from the deleterious effects of coastal erosion and sea-level rise," an OCCL report to the Land Board states.

The agreement was made in response to the state Legislature's creation that year of an Interagency Climate Adaptation Committee, which has been tasked with completing a Sea Level Rise Vulnerability and Adaptation Report by December 31, 2017.

**Easements**

While the fines for unauthorized shoreline

construction in the Conservation District can seem enormous, reaching tens of thousands of dollars in some cases, they pale when held against the potential cost of the easements that must be obtained for structures that are allowed to stay.

Because courts have determined that all land seaward of the high wash of the waves belongs to the state, for nearly every CDUP that the Land Board issues for a private seawall or shoreline structure, the DLNR's Land Division follows up at a later meeting with a request for approval of a non-exclusive easement to cover the encroachment on state land.

At the Land Board's March 27 meeting, Land Division administrator Russell Tsuji said his agency works closely with the OCCL on a lot of issues. Often when walls are found to be within the Conservation District, the state's position has been that it doesn't necessarily own the structure, even though it owns the land. Instead, the seawall is seen as an encroachment, "no different than if your neighbor built part of his wall on your land," he told the board.

And encroachments may become more common given the way shorelines are certified now.

"The state may certify the shoreline at the face of an existing legal structure, but if the shoreline goes around and behind your wall, even if you built it legally, your wall is behind the shoreline," Lemmo said.

It is highly likely that many thousands of beachfront landowners need an easement for their seawalls or revetments, but the Land Division does not aggressively seek them out. More often, landowners wanting to sell or renovate their property discover encroachments during the associated shoreline certification process.

Once the Land Division determines an easement is necessary, a lengthy and expensive process ensues. In its recommendation to the Land Board for approval of a non-exclusive easement, the division often includes a fine of \$500 for any encroachment larger than 100 square feet, in accordance with a Land Board policy established in 2002. The easements are usually for 55 years and the landowner is required to make a one-time rental payment based on an appraisal — for which the landowner must also pay — of fair market value.

If the wall was legally built, the square-foot value of the wall would be the same as that of submerged land upon which it sits, Tsuji told *Environment Hawai'i*. Generally, submerged land values are 50 percent of the abutting fast land value. Appraisals also factor in discounts based on the level of likely



public use given the location and height of the structure.

In some cases, the easements have run into the hundreds of thousands of dollars. For example, a recently approved easement for a 1,400 square foot seawall fronting an apartment building on Maui cost \$130,000.

"The ones for condos on Maui can be hugely expensive," Tsuji said.

He added that some easement cases remain open long after Land Board approval because appraisals can sometimes take a year or more to complete and some landowners don't want to pay after the appraisal comes in.

When they do pay, 20 percent of the money goes to the Office of Hawaiian Affairs, which receives rent from the use of ceded land. The rest goes to the OCCL's beach restoration fund, Tsuji says.

Before the easements are issued, they must also receive approval from the governor and the state Legislature. In the current session, bills have been introduced to authorize a variety of shoreline easements for structures on submerged lands in Lahaina on Maui, Pulawai on Lana'i, and Waikiki, Hau'ula, Kahuku, and Kahalu'u on O'ahu.

### Capping Costs

This legislative session, the DLNR has supported bills that would allow the Land Board to charge less than fair market rent for legally built shoreline structures that have, through movements of the shoreline, become encroachments.

House Bill 956 and Senate Bill 1125 would have added a new section to the state land use law for "special shoreline easements," which

could be granted for structures authorized by the government and built landward of the shoreline and within the property line at the time of construction. The Land Board would have the discretion to determine on its own the value of the special easement. Also, the easements would not have to receive final approvals from the governor and the Legislature.

In testimony submitted February 6 to the House Committee on Water and Land, DLNR interim chairperson, Carty Chang, pointed out that many of the structures that are now seaward of the shoreline are a liability concern for the department.

"In exchange for the granting of an easement, the Department requires insurance and indemnity protection," Chang stated. To make it easier and more palatable for landowners to acquire easements, the DLNR wants to keep the cost down and speed up the process.

"The problem under current law is that the Board must charge fair market value as determined by an appraiser for the easement," Chang stated. "[G]iven the volume of easements that are expected to be processed, this exemption would greatly expedite the disposition process. Allowing the easements to be granted at less than fair market value via a streamlined process would assist in encouraging compliance from littoral landowners entering into easements with the state. By resolving the liability and indemnity issues, taxpayers will have greater protection from potential legal and financial liability against the state with regard to these structures," Chang wrote.

He added that by facilitating landowners' compliance, the bill would reduce the

burden on DLNR staff from having to pursue enforcement actions.

The Committee on Water and Land chose to defer HB 956 while SB 1125 never even got a hearing this session.

Similar bills were introduced in the 2013 Legislature. In testimony, Jesse Souki, then-director of the state Office of Planning, expressed concern at the time that accelerated sea level rise wasn't being taken into account.

"Due to the dynamic nature of the location of the shoreline, the proposal ... may promote structures within the shoreline area toward coastal hazards, including storm waves and coastal erosion. This policy could potentially increase the risk of coastal hazard threats to life and property along the shoreline," he wrote.

Other members of the public opposed the bills outright. Neil Frazer argued that, if enacted, the bill would "effectively relieve private landowners from the burden of removing structures such as sea walls that are now in tidal waters but were built for the private benefit of those landowners."

"That is wrong, I think," he continued. "Landowners who build near the ocean should clearly understand that their structures will eventually fall into the ocean and require clean-up, and that they will have to pay for that clean up."

To address the concerns raised, the 2013 House version was amended to require the Land Board to consider shoreline protection, public access, and "risks to life and property from coastal hazards" when approving easements. That requirement is also included in the bills introduced this year.

— **Teresa Dawson**

## 2014-2015 Seawall-Related Land Board Actions

Date	Name	City	Description
Apr 10, 2015	Christopher K. Eldridge and Wanaao W. Eldridge	Waikiki, Oahu	Easement for 37 sq. ft. for seawall and steps
Feb 27, 2015	August and Veronica Monge	Hauula, Oahu	After-the-fact CDUP for 350 sq. ft. seawall
Nov 14, 2014	David G. Jorgensen and Annete Thatcher Jorgensen	Koloa, Kauai	Easement for 545 sq. ft. of seawall
	AOAO of Hale Ono Loa	Mahinahina, Maui	Easement for 1,954 sq. ft. seawall
	AOOU of Hale Kai Condominium	Honokowai, Maui	Easement for 1,287 sq. ft. seawall and revetment
	Eve G. Anderson Trust	Waimanalo, Oahu	Easement for 4,491 sq. ft. seawall and steps
	Glenn Wachtel	Haleiwa, Oahu	Contested case hearing for unauthorized excavation, erosion control structure
	Grand View APT, Inc.	Waialua, Oahu	Violation case for unauthorized reconstruction, expansion of erosion control structure
	LTC Winston Marbella	Ewa Beach, Oahu	Violation case for unauthorized repair of erosion control structure
Oct 10, 2014	Tropical Sands Apartments [aka The Kainalu]	Waikiki, Oahu	Reconstruction of 1958 seawall
Jul 25, 2014	Sutton Family Partners	Waialua, Oahu	Violation case for unauthorized erosion control structure
Jul 11, 2014	Wesley and Diane Hickey	Kihei, Maui	Easement for 1,261 sq. ft. seawall
Jun 27, 2014	Matthew and Shawneen Schweitzer	Alaeloa, Maui	Easement for 546 sq. ft.
	AOOU of Hale Kai Condominium	Honokowai, Maui	Easement for 1,287 sq. ft. seawall and revetment
May 9, 2014	Stephanie Skow, Katherine Skow, Matthew Nelson	Kawaihau, Kauai	Easement for 852 sq. ft. shoreline structure
	Hololani Resorts Condominiums	Kahana, Maui	CDUP for shoreline protection structure
Apr 25, 2014	Grand View APT, Inc.	Mokuleia, Oahu	Violation case for unauthorized shoreline protection structure
Apr 11, 2014	DOT-Highways Division	Olowalu, Maui	CDUP for Honoapiilani Highway shoreline boulder revetment
	Kathryn and Morris Mitsunaga	Waialua, Maui	Violation case for unauthorized construction of erosion control structure
	Maui County Department of Environmental Management	Kahului, Maui	CDUP for Wailuku-Kahului Wastewater Reclamation Facility revetment
Feb 14, 2014	Matthew and Shawneen Schweitzer	Alaeloa, Maui	Conservation District violation



# Local Civil Engineers Explore Ways to Protect Infrastructure from Climate Change Impacts

I can't tell you how many ulcers I get in a matter of hours when there's a possibility I could lose 30 pump stations in one event," said Timothy Steinberger, the former director of Honolulu's Department of Environmental Services.

The cause of Steinberger's ulcers was the city's wastewater system, much of which is located along coastlines or in areas vulnerable to flooding.

With climate change and associated sea level rise, some of O'ahu's most critical infrastructure — Honolulu harbor, the Honolulu International Airport, sewage treatment plants and pumping stations, and

chapter of the American Society of Civil Engineers and local law firm Carlsmith Ball, LLP, featured panel discussions with local engineers and planners, including Steinberger, and a series of talks by William Wallace, co-creator of the Envision rating system, which, similar to LEED, is aimed at producing sustainable projects.

"There are a lot of things that are happening that are pretty scary," Wallace said. Along with anticipated changes in storm intensity and temperature, new engineering solutions will be needed as engineers become less able to trust the "body of knowledge of how things have historically

it to be more robust to account for unusual or extreme circumstances; 2) identify an adaptation strategy so that when conditions change beyond a certain point, "we'll adapt to another level;" and 3) design so that if the project is, for example, damaged by a storm, operations can recover quickly.

As an example, he described efforts by city of Olympia, Washington, to design a suite of engineering solutions to be incrementally implemented as sea levels rise. They include tide gates, various kinds of barriers, outfalls, and pump stations, among other things.

Like Honolulu, much of Olympia's critical infrastructure sits in low-lying areas. And with the city located at the base of Puget Sound, those areas are particularly vulnerable to flooding.

Research has shown that even a small rise in sea level greatly increases the probability of flooding in Olympia's downtown area. Lands identified in the past as being vulnerable to impacts of a 100-year flood would be affected every 18 years if sea level were to rise just half a foot, according to a 2011 City of Olympia Engineered Response to Sea Level Rise technical report.

The report specifies the location, type, and cost of structures that need to be installed with each incremental change in sea level. For example, the report recommends that flood barriers be installed at certain locations on the west facing shoreline of the city's peninsula before sea level rises a quarter of a foot, and along the east facing shoreline before it rises half a foot. If sea level rises by 50 inches, the report recommends that the barriers be increased in height.

The cost for the various barriers needed to manage a rise in sea level of one foot was estimated at about \$8.5 million. With a four-foot, two-inch rise, the cost grows to \$13.6 million. Additional costs include \$30 million for a 500 cubic-foot-per-second pump station, and \$7.5 million for two smaller pump stations.

Whether or not such projects will receive full funding remains to be seen, but Wallace said the city has already designed a boardwalk with adaptability in mind. It was designed to last 25 years rather than the standard 50 years, and is both flexible and saltwater resistant.

He then asked seminar attendees, "Is anyone doing anything that deals with adaptation in this way? Are we all linear?"

"Uh-oh," he said, on seeing not a single hand raised.

Granted, civil engineers are "at the bottom of the food chain" and, generally, get told what to do, he said.



PHOTO: WIKIPEDIA

Honolulu International Airport Reef Runway

electrical and transportation systems — are vulnerable to flooding.

A recent modeling study by University of Hawai'i scientists on the combined threat of a 1-meter rise in sea level and tsunami or hurricane inundation found that \$34.8 billion, or 80 percent, of the economy located along Honolulu's urban core may be affected by the combined hazard.

At a one-day infrastructure sustainability seminar in downtown Honolulu last month, dozens of local engineers discussed the need to design projects to weather the impacts of climate change.

The seminar, sponsored by the Hawai'i

operated," he said.

Although researchers globally have been trying to characterize anticipated, local impacts of climate change, Wallace stressed that infrastructure projects must account for unforeseen conditions.

"There may be tipping points beyond which we don't know what is going to happen," he said.

## Contingency Planning

Whether the concern is temperature change or sea level rise, engineers have three ways they can incorporate sustainability into a project, Wallace said. They can: 1) design

"We're trying to give you that information so you can knock on the project manager's door and, for example, convince him or her not to put a road right next to the shoreline," he said.

He admitted that education may not be enough in some cases.

"There is high resistance to change by owners and operators of existing systems that have a stake in the status quo," he said.

Regulators here may also still be struggling with how to incorporate the sea level rise and coastal inundation research released over the past year or so. Modeling has shown that in Honolulu and Kaka'ako, flooding as deep as 1.5 meters could reach Beretania Street, located just mauka of the core of downtown Honolulu. In the back of the Mapunapuna industrial area, at Pearl Harbor, Waikiki, and the airport's reef runway, flooding could be as deep as two meters.

The modeling also identified, on a block-by-block basis, which parts of the upcoming rail system are vulnerable to inundation hazards.

At last year's Ocean Sciences conference in Waikiki, University of Hawai'i's Dolan Eversole, who participated in the sea level modeling work unveiled last year, said he saw some "very surprised looks" when he presented the information to local managers.

They were not sure what to do and kept asking him, "So now what?" he said.

Last year, the state Legislature established a committee to complete a sea level rise vulnerability and adaptation report by December 2017. Whether it will identify specific actions needed to protect infrastructure remains to be seen.

O'ahu's broader planning documents — the General Plan and the Sustainable Community Plans for the island's different regions — generally have not factored in climate change impacts, according to Steinberger, who now works at HDR, a private engineering company.

"A lot of the plans don't even take into account the possibility of sea level rise. ... Projects going out right now don't take into account sea level rise. Plans for wastewater components don't even take into account tsunami or hurricane inundation," he said.

"When you look at the General Plan, it does need to be redone and take into account what is happening in the world," he added. A draft general plan is expected to be released this fall.

When it comes to getting funds for

sustainability projects, Steinberger said the city council often argues they're unaffordable and questions whether they're really necessary.

In planning for a sustainable future, Steinberger said, "you've got to fight for these things all the time. Unfortunately, we lose a lot of the time. That's what gives you a lot of grey hair."

### Effecting Change

When asked how to generate the political will to make the necessary infrastructural changes, Wallace admitted that it's difficult given the costs involved and the "nitwits" in certain governmental positions who are still declaring that climate change isn't happening.

He even criticized the ASCE, stating that its greenhouse gas emissions policy is "full of crap."

"It's still hemming and hawing," he said, despite the society's code of ethics that calls for engineers to take into account public health, safety and welfare. Ignoring or minimizing climate change is an ethical violation of "what our duty is as engineers."

He suggested that engineers need to start telling politicians things they don't want to hear.

Ian Sandison, an attorney with Carlsmith Ball and a former engineer, challenged local engineers to start developing a set of criteria for sustainable infrastructure that can find its way into specifications issued by agencies such as the U.S. Army Corps of Engineers and the Honolulu Department of Planning and Permitting.

"There is nobody that doesn't say, 'My project is sustainable.' There is almost no agreement on what that word means," said Sandison.

Simply discussing sustainability in a

### For Further Reading

- "City of Olympia Engineered Response to Sea Level Rise," by Coast & Harbor Engineering: <http://olympiawa.gov/community/sustainability/-/media/Files/PublicWorks/Sustainability/Sea%20Level%20Rise%20Response%20Technical%20Report.ashx>

- Combined sea level rise inundation risk map for urban Honolulu: <http://oos.soest.hawaii.edu/pacios/projects/slr/>

- "Doubling of coastal erosion under rising sea level by mid-century in Hawai'i," *Natural Hazards*. Tiffany R. Anderson, Charles H. Fletcher, Matthew M. Barbee, L. Neil Frazer & Bradley M. Romine (2015). <http://link.springer.com/article/10.1007%2Fs11069-015-1698-6>

project's environmental impacts statement didn't seem adequate to him. Those statements "just talk about impacts, but don't really have a metric," he said.

"How can we provide a legal incentive for a more sustainable project rather than a less sustainable project?" he asked. Absent new "sustainability" metrics, on a "very micro level," engineers can adopt the standards in the Envision rating system, he added.

"Put it in your specs and make it work. All of you can do it. You don't need legislation. It's within your power to make a significant change here," he said.

— T.D.



Emergency repairs of coastal infrastructure are expensive and disruptive. To repair this 610-foot stretch of Kamehameha Highway in Ka'a'awa — part of which crumbled onto the beach earlier this year — the state Department of Transportation has set aside \$8 million. As of last month, the department was still considering whether to close the road entirely or partially, and whether work would occur 24/7 or only during the day. The highway is the only route in or out for the thousands of residents along O'ahu's northeast coast. Construction is expected to begin this month and end in August.

PHOTO: HAWAII DEPARTMENT OF TRANSPORTATION



## After Crackdown at Kealakekua Bay, Kayak Vendors Launch from Kahauloa

A real-life game of Whack-a-Mole is being played out in and around Kealakekua Bay, on the Kona Coast of the Big Island.

Two years ago, the state Board of Land and Natural Resources strictly limited the number of kayak companies that could launch from Napo'opo'o Pier, on the bay's south end. The move was intended to address many of the problems that had developed over the years, including the sale of illicit drugs, proliferation of unpermitted commercial tours, harassment of resting spinner dolphins, and accumulations of trash and human waste at the unserviced, archaeologically sensitive Ka'awaloa Flat near the Captain Cook monument.

Now just three commercial kayak companies are each permitted to launch no more than two guided tours daily from the pier, crossing the bay and landing at Ka'awaloa Flat. Ten more kayak outfitters, having a total of 74 kayaks, have permits to transit the bay (though they are not allowed to land at Ka'awaloa Flat), according to Curt Cottrell, assistant administrator of the Department of Land and Natural Resources' Division of State Parks.

But while the situation at Napo'opo'o Pier has improved thanks to the new permitting system, that at a small boat ramp in a residential neighborhood on Kahauloa Bay, a few hundred yards to the south, has worsened.

On most days, dozens of parked rental cars line the narrow county roads along the south side of Kealakekua Bay. Many belong to guests at the dozens of vacation rental houses in the area, but even more belong to customers of commercial kayak companies that launch from a small boat ramp at the unpaved end of Kahauloa Road. Until recently, a bright turquoise porta-john sat in the middle of the county road right-of-way immediately mauka of the boat ramp. A crew of local men keeps busy helping tourists launch and land at the boat ramp, covered now in carpet to avoid scratches to the kayaks' plastic hulls. Visitors are told to "tip" the locals \$5 for their assistance, according to several reviews published on travel sites such as TripAdvisor.

From dawn (the earliest tours launch at 6:30) till dusk, kayakers in a steady stream make the journey from their parking spots, often blocks away, to the boat ramp.

While the operators of guided tours are

limited to two tours per day, other kayak companies have no similar limits. Cottrell was asked whether these companies are limited only by what they can sell. "Yes," was his one-word response.

### Lots of Talk

Altogether, about 350 vessels – kayaks, stand-up paddleboards, zodiacs, and other vessels – hold six-month special use permits that allow transit across Kealakekua Bay, Cottrell said.

The permitting system, he added, has given his division a robust database of all vessels that may have an interest in entering Kealakekua Bay.

"For example," he continued, "we received a call that a zodiac was following a whale and calf last year, in violation of the law. DSP [Division of State Parks] sent out an email to all of the zodiac vessel owners who have [special use permits], saying that if

the vessel was identified they would lose their permit. The behavior changed. So the permit process has improved upon the accountability of behavior a bit – but ... kayak vending in a new location is an ongoing issue."

Some of the companies that launch from the Kahauloa boat ramp have sales offices in nearby towns. Other permittees, Cottrell says, "are launching from wherever they can and soliciting patrons from their vehicles – mainly in the Kahauloa Bay area."

To address that, Cottrell said the DLNR discussed the matter with Wally Lau, managing director of the County of Hawai'i. A few weeks ago, he said, "we had a telcon with a county rep and, at DLNR, with the interim chair, enforcement staff, and



Kayaks at Kahauloa.

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our staff on the other line ... but nothing was really determined." The county had looked into creating a new parking area, he continued, "but that fell through. There was a subsequent meeting on the Big Island with DSP staff and others, but I have not heard if there were any results or strategies developed. For now, it is status quo."

*Environment Hawai'i* requested to speak with Lau, but he had not returned calls by press time.

Maile David represents the area on the Hawai'i County Council. In a phone interview, she said she was well aware of the problems caused by customers of kayak operators parking along the crowded shoulders of county roads in the area.

The issue "is consuming a lot of time," she said. "We're trying to address the kayakers and other activities as well. ... People who come to the area, whether to kayak or visit Manini Beach, park in people's driveways. It's a safety issue; ambulances and other emergency vehicles can't get in."

"We have to do something," she continued.

In mid-April, David reported that she had met with county engineers in the Public Works Department. "They did a site visit and [the department] is working on mapping out a location for no-parking signs," she said in an email. "I also understand that they are working as fast as they can and will keep me posted."

### ***A Paper Park***

The parking problem as well as the dearth of public recreational areas in and around Kealahou could be alleviated if the county Department of Parks and Recreation were to take advantage of a sizable tract of land it controls at the northern end of Kahaloa Bay, where it meets up with the larger Kealahou Bay.

More than 60 years ago, the territorial government of Hawai'i ceded control of the

5.6-acre site to the county government, with the intention that the area be used for "a public park and playground." While it appears on some maps as "Napopo'o Park," the land itself has been little changed since June 1, 1953, when Executive Order No. 1566 was signed by Gov. Samuel Wilder King.

Over the last several years, Hawai'i County has pressured the state to turn over additional park land, including the cabin area at Hapuna Beach and part of the Mauna Kea State Recreation Area. In 2014, it succeeded in getting approval from the state Board of Land and Natural Resources to assume management of the latter, and since last summer, the county has taken out building permits for roughly half a million dollars in work at the site. (All of that has been used to improve park restrooms – the only public comfort station available to travelers on the heavily trafficked Saddle Road linking Hilo and Kona.)

But when Ken Van Bergen, deputy administrator of the county's Parks Department, was asked about a park at Napopo'o, he said nothing was in the works.

Why not?

"It's just a matter of prioritizing things," he replied. "Right now, the department is going to the [county] council for a sixty- or seventy-million [dollar] bond. The park expansion is as large as it's ever been. We've got the pedal to the metal, man, and can only do so much."

He said there were no plans to develop the area.

What's more, council member David added that area residents were opposed to developing the set-aside land as anything other than a "passive, walking park" and most certainly didn't want a "recreational park" with a parking lot.

"The community down there is adamant about not having that parcel be used for parking," she said.

"If this was a cultural park, it wouldn't take too much to [improve] it. You

wouldn't have to alter the ground. I'd like to see a community effort to clean it up," she said.

According to Jason Armstrong, public information officer for the Parks Department, "several area residents have complained in recent months that they don't want the park land developed. The residents, whose numbers seem to be growing, are worried the land will become a parking area for kayak vendors and their customers. ... Rogue kayak operations have been occurring in this area for years, and that continued activity has upset many area residents."

The jurisdiction of the DLNR is generally limited to state waters, state park land, unencumbered state land, or land in the Conservation District. Most of the activity of the "rogue" kayak operators occurs on county roads or other land not under DLNR jurisdiction.

However, the permit issued by State Parks includes language that calls out language in the Hawai'i County Code that bans the use of "any portion of a county street for the purpose of displaying, vending, hawking, selling, renting, or leasing any goods, wares, food, merchandise, or other kinds of property." The State Park permittees are "to abide by these permit conditions and all County, State, and Federal laws and regulations. Any violation of these conditions, laws, and regulations may result in immediate suspension of this permit."

Cottrell was asked whether a company displaying its rental kayaks on a county road would be in violation of the State Park permit and, therefore, subject to enforcement by the DLNR's Division of Conservation and Resource Enforcement.

"That is correct," he replied. "If a permittee is documented and sighted soliciting patrons and renting kayaks from a county road, they are in violation of the ... permit. Revocation and/or civil penalties may be applied."

— **Patricia Tummons**