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Growing Pains

In central O'ahu, the farm land is there — thousands of acres, provided at no little expense mostly by public funding sources. But finding farmers to cultivate all of it is proving much harder, especially given problems with water and food safety regulations.

In our cover article, Teresa Dawson explores the hurdles to food sustainability that seem to have been glossed over in the state's race to purchase fallow lands on the fertile plains that were once planted with export crops. In short, it will take a lot more than set-aside acreage to grow farmers as well as crops.

Also in this issue: the dispute over a planned Kahuku wind farm is complicated by allegations of conflicted interests on the part of a Land Board member; fined tour operators question the Mauna Kea permit system; the Legislature considers measures to address shoreline encroachments; and irrigation, plantings, and sandbags help fortify a coastal berm in the exclusive Big Island enclave of Kuki'o.

IN THIS ISSUE

Compliance Problems with Small Farms Hamper Use of Former Galbraith Lands

First, it was a lack of water that constrained the growth of farming on 1,200 of the 1,700 acres of former Galbraith Estate land that the state purchased in 2011 for $25 million. With limited well water and the inability to access nearby irrigation ditches, that lack still exists, but the state Agribusiness Development Corporation (ADC), which manages the land, is working with its larger tenants on plans to build reservoirs. It's also seeking about half a million dollars from the Legislature to help develop a system that will allow its tenants to use treated wastewater from the Wahiawa Wastewater Treatment Plant.

The main problem the ADC is having now is with the farmers themselves, at least the smaller ones. According to a January 31 report by ADC executive director James Nakatani, of the 10 Galbraith tenants with farms smaller than 85 acres, only one of them, Chuan Produce, has fulfilled the ADC's requirements that they 1) sign a land license, 2) submit an approved soil conservation plan, and 3) obtain a certificate of liability insurance. And with new federal food safety regulations for small farms ($250,000 to $500,000 in annual produce sales) and very small farms (between $25,000 and $250,000 in annual produce sales) going into effect next January and the following January, respectively, and posing an even greater burden, it's unclear when or whether they'll ever get the green light to start farming.

While the Food and Drug Administration isn't expected to conduct routine inspections associated with its new standards right away, ADC staff have indicated they plan to eventually include a condition in all of its land licenses requiring tenants to

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This "Whitmore Enclave" is one of many possible layouts that have been prepared for the proposed agricultural hub in North-Central O'ahu.

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NEW AND NOTEWORTHY

Red Hill Rebuke: On February 21, Judge Jeffrey Crabtree of the 1st Circuit delivered a knockout blow to the state Department of Health. In granting a motion for summary judgment filed by the Sierra Club of Hawai'i, Crabtree found that the DOH rules exempting the Navy's massive and aging Red Hill tank farm from having to comply with regulations governing all other underground storage tanks in the state were invalid and contrary to the state Constitution.

"In 1992, the legislature required that DOH enact rules to ensure that (1) pre-existing underground storage [tanks] were upgraded (or replaced) to prevent releases by December 22, 1998, and (2) these tanks are maintained, repaired, and operated to prevent releases," attorney David Kimo Frankel wrote in arguing for the summary judgment. "The plain language of the law, its interpretation pursuant to the public trust doctrine, the reason and spirit of the law, the legislative amendments to the law, and legislative statements demonstrate that DOH is required to enact rules that require that underground storage tanks be upgraded and operated in a manner that prevents releases of petroleum into our water. Despite these statutory and constitutional mandates, DOH has failed to enact rules requiring the upgrading of existing tanks" at Red Hill.

In court filings, the DOH had already stipulated to a set of damning facts, including: that the tanks had leaked 27,000 gallons of jet fuel in January 2014; that petroleum-related compounds had been detected in monitoring wells "more than once"; and that groundwater contamination exists in an area below the Red Hill tanks.

The tank farm, with a capacity of more than 200 million gallons, sits just 100 feet above a major aquifer that is an important source of drinking water for O'ahu.

Last May, the Sierra Club had petitioned the DOH to amend its UST rules, and the DOH began that process a month later. Draft rules, including provisions that set a deadline for upgrades to Red Hill, were taken to public hearing in January. In asking the court to dismiss the complaint, the DOH argued that the department "has, in fact, initiated rulemaking" and intended to adhere to its schedule of having the new rules in place by May – "an aggressive timetable considering the complexity of the subject matter and procedural requirements."

Frankel said he expects Crabtree's ruling to result in changes to those proposed rules, including a faster timeline for the Navy to install leak detection and prevention measures and other more stringent requirements.

GEMS Update: The Hawai'i Green Infrastructure Authority has published its report for the second quarter of the 2017-2018 fiscal year. Highlights include the announcement that it has committed to financing $81 million in loans from the Green Energy Market Securitization fund.

But of that amount, how much has really been spent?

A large fraction ($46 million) is the amount that the Legislature authorized the HGIA to loan out (interest-free) to the Department of Education. The actual amount spent, as of December 31, was just shy of $2 million. Whether the DOE can encumber the remaining $44 million by the legislatively imposed deadline of June 30 this year is an open question. HGIA also counts as committed a nearly $10 million project – as yet unapproved – to underwrite installation of solar water heaters on Moloka'i. In other loan categories as well, the amount of money HGIA says is committed substantially exceeds what has been spent.

In short, of that $81 million, only around $10 million has actually gone out the door.

In 2013, when the Legislature approved the framework for the GEMS program (a $150 million bond float secured by Hawaiian Electric ratepayers), the announced intention was to help bring benefits of photovoltaic panels and other energy-saving technologies to segments of the population who would otherwise not be able to afford them. As of the end of last year, just 98 residential loans had been made, 88 of which went to households with annual incomes less than 80 percent of the adjusted median income.

Quote of the Month

"Property owners harden their shorelines for a number of reasons, but ignorance to the fact that their property will likely experience shoreline retreat ***should not be one of them.****"*

— Randy Ching, Sierra Club of Hawai'i

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Recusal Debate Delays Conclusion Of Contested Case for O'ahu Wind Farm

Nearly two months after hearing oral arguments in the contested case hearing over the Habitat Conservation Plan (HCP) and Incidental Take License (ITL) proposed by the Na Pua Makani wind farm, the state Board of Land and Natural Resources had yet to decide whether or not one of its members, Sam Gon, should have recused himself from participating.

Only after the board settles that matter will it issue a final decision on the petition filed in 2016 by the community group Keep the North Shore Country, which opposes the plan and the license to allow the incidental killing of protected species such as the endangered nene (Hawaiian goose) or ope'ape'a (Hawaiian hoary bat).

One board member, Stanley Roehrig, has already recused himself. Before oral arguments began on January 12, Roehrig announced that he had inadvertently had an *ex parte* communication with an "impassioned" legislator — later identified by fellow board member Chris Yuen as Sen. Lorraine Inouye of Hawai'i island — who wanted the wind farm project to succeed. Roehrig explained that she had called him to talk about the wind farm and while discussing it with her he did not realize it was the facility involved in the ongoing contested case hearing.

"When I got my [Land Board] materials, I found out it was this case. It was a contested case. That communication with that legislator was inappropriate. I should have checked," he said.

"I decided I should recuse myself. I apologize to everyone for doing that. … The next time, I'm not going to talk to any legislator before I open my docket and that's that," he said.

"I was also called by Sen. Lorraine Inouye," board member Yuen added. He said his wife had taken a message from Inouye, who said she wanted to talk about the wind farm, proposed for the Kahuku area on O'ahu. "I called her back telling her I can't talk on the matter," he said.

What's more, Inouye, chair of the state Senate Committee on Transportation and Energy, sent a letter to all of the board members about the project, according to board chair Suzanne Case.

"We did accidentally distribute it. I was out sick and our regular board person was out sick. So it went out. I immediately saw that it went out. I followed up in an email to board members not to read the letter so we did not have any *ex parte* communications. None of the board members read it," she assured the parties in the case.

Maxx Phillips, one of the attorneys representing Keep the North Shore Country, told *Environment Hawai'i* that she requested a copy of the letter, but had not received one.

With regard to Gon's recusal, the group had approached state deputy attorney general Cindy Young — before the Inouye issue arose — to ask that Gon recuse himself because he was involved in the approval of Na Pua Makani's habitat conservation plan when he was a member of the state's Endangered Species Recovery Committee (ESRC).

Based on Young's advice that his recusal wasn't necessary, Gon participated in the oral arguments. After Phillips reiterated her client's objection to Gon's involvement, Case said the board would be issuing a Minute Order setting forth a schedule under which the parties would submit motions regarding the recusal request.

Oral Arguments

In her proposed findings of fact, conclusions of law, and decision and order, hearing officer Yvonne Izu recommended that the Land Board deny the HCP and ITL, mainly because of what she saw as flaws in the company's approach to estimating predicted bat interactions and determining mitigation measures. She found, among other things, that Na Pua Makani improperly used only one other wind farm — the Kahuku Wind Power facility — as a proxy for expected bat take, despite the fact that the turbines used by that facility are considerably smaller than the ones Na Pua Makani intended to use. Ultimately, she found that the plan failed to meet the statutory requirement that mitigation measures protect the species covered under the plan "to the maximum extent practicable." (For more information on this, see our December 2017 cover story, "Wind Farm Plan to Protect Rare Bats Is Inadequate, Hearing Officer Finds.")

John Manaut, the attorney for Na Pua Makani, stressed during oral arguments that state Division of Forestry and Wildlife (DOFAW) biologist Scott Fretz felt the HCP adequately met the state's requirements and stood by ESRC recommendations.

Manaut also pointed out that Izu had issues with just a small portion of the HCP, namely, the sections dealing with bats and a "minor point" regarding water birds.

"Overall, the mitigation measures required under the HCP will provide net environmental benefits … even though benefit to ope'ape'a may be uncertain," he said.

"There was no analysis by the hearing officer why the agencies were wrong in their recommendation. No finding of fact or conclusion of law how or why DOFAW or ESRC failed to properly analyze the statute or use the best available science," he said.

He noted that the plan's recommendation to curtail the wind turbines until wind speeds reached 5 meters per second to help avoid killing bats during low wind was taken directly from the ESRC's own bat guidance document. (Izu and Keep the North Shore Country argued there were studies that suggested that curtailment up to 6.5 mps would prevent the killing of even more bats.)

"There's really no basis to second-guess the standard in the bat guidance," Manaut said. "It's particularly important to apply that in the area of Kahuku. We have the neighboring Kahuku project that has been very successful in using cut-in speed [the speed at which blades start turning] of 5 mps. For several years now, utilizing 5 mps, they have experienced one observed bat fatality. … The hearing officer's recommendation, for whatever reason, completely ignored that fact," he said.

Manaut also disputed the arguments that taller turbines would kill more bats. Tetra Tech, the consultant that authored the Na Pua Makani plan, suggests that there are no definitive studies that tie turbine height to bat mortality, he said. The one study that Keep the North Shore Country offered to dispute that was "inconclusive," he said.

"There is no proven science that shows a difference in bat take in differences in turbine height," he claimed. But in his next breath, he conceded that common sense might lead one to think "there could be some issue with take and height."

He then reported that Na Pua Makani would now be including as a condition of the ITL that it would limit the maximum height of its turbines to 570 feet, down from the 656-foot turbines evaluated in the proposed HCP and ITL submitted for approval in 2016.

SIMULATION: NA PUA MAKANI HABITAT CONSERVATION PLAN

A simulation of the proposed Na Pua Makani wind farm in Kahuku, O'ahu.

What's more, Na Pua Makani planned to reduce the number of turbines at its facility from nine to eight.

"Even though the applicant believes the HCP should be compliant as written … these additional measures should alleviate concerns raised by the hearing officer's findings," Manaut said.

While data from both Kawailoa — another O'ahu wind farm that has been estimated to have taken many more bats than expected — and Kahuku were considered, an agreement among the state and federal agencies was reached to focus on Kahuku "as the best surrogate based on location, topography, habitat, wind regime, number of turbines," he said.

He also pointed out that Na Pua Makani would provide $4.6 million for bat research under the plan, and should those studies indicate that a certain action should be taken, "through adaptive management, the applicant is required to make those adjustments."

Manaut concluded his arguments with a warning: "Are we going to create a problem where developers are not going to want to invest in this state?" Wind farm developers are not going to want to spend a significant amount of money on the permitting process, only to face a long contested case hearing brought by opponents who do not want wind farms in their back yard, he said. He then argued that the contested case hearing process was being used as a tool to limit renewable projects in Kahuku. "That's essentially what we have here," he said.

In her rebuttal arguments, Phillips urged the board to uphold Izu's recommendations.

"The applicant needs to go back to the ESRC, which would take a fresh look [at the HCP and] ensure compliance with the endangered species law," she said.

To Manaut's argument that there was agreement among agencies and the applicant to use the Kahuku wind farm as the surrogate for estimating bat takes, Phillips suggested that the facility wasn't exactly the most thorough in assessing fatalities. She noted that in 2012, the Kahuku wind farm reduced its bat search radius, as well as the frequency of its searches. She also said, "the applicant continually tries to shift the burden [of meeting the requirements of the state's endangered species law] from themselves to agencies, the ESRC, the petitioner …"

She argued that while the Kahuku wind farm has had only one bat take since implementing a cut-in speed of 5 mps, data from mainland wind facilities do, indeed, show that bat deaths decrease with higher cut-in speeds.

"We're not making a mockery of the state approval process," she said. But, she added, the ESRC needs to consider all the reliable data and science in front of them. "It can't be just cherry-picked by the applicants. The experts the applicants relied on, neither have a Ph.D. or are experts on ope'ape'a. The reality is there are a lot of things we don't know about the ope'ape'a. We know a lot more now than we used to," she said.

As to Manaut's assurances that more conservative measures can and will be implemented through adaptive management, Phillips argued that altering approved HCPs and ITLs isn't simple. The majority of wind farms throughout the state are in the process of making major amendments to their HCPs and ITLs, since regulations allow new conditions to be added only in "a limited number of extraordinary circumstances," she said.

"The agencies' hands are tied," she said.

Board Questions

Before delving into the arguments presented about surrogates, cut-in speeds, and other areas, board member Yuen raised the "big picture" issue of climate change.

"One of the findings the board is supposed to make is [whether the project is] not detrimental to the environment. We can consider the environmental benefits of the project. In the environmental impact statement, it says the project will eliminate 58,000 tons of carbon dioxide going into the air. In every documentary on climate change … one of the things you see is a wind farm as a solution," he told Phillips.

"At issue right now isn't whether I personally believe in renewable energy. It's whether this HCP is in compliance with the law," she replied.

With regard to the dispute whether or not the Kawailoa wind farm's bat takes should have been factored into the projected takes by the Na Pua Makani facility, Yuen asked Phillips what she proposed. Would she have the board weigh the data for those facilities "50-50? 25-75?" he asked.

She said she believed it was the ESRC's task to determine that.

To this, Yuen said, "They saw the plan. They saw the proposal. They approved the idea of just using Kahuku. Why do we tell them now to include Kawailoa?"

"Suppose the situation were this: You were representing the opponents of a wind farm at Kahuku and the adjacent wind farm at Kahuku was already operating and had a much higher take than a wind farm four miles away and the applicant said 'Let's average.' Wouldn't you be arguing that's completely wrong?" he continued.

Phillips said she would argue that an assessment be made that considers both facilities.

"This question of why are more bats killed at Kawailoa, in the minutes of the ESRC, they say Kawailoa is an outlier, an exception," Yuen said.

Phillips, however, argued that without pre-construction monitoring, "we don't have the data to know whether or not this area is going to have [bat] take closer to Kahuku or Kawailoa."

Yuen then asked whether economics should be considered when determining whether an HCP minimizes take "to the maximum extent practicable," suggesting that Na Pua Makani might not meet its electricity production contract under stricter conservation measures.

Phillips said economic elements should absolutely be considered. "This is why it needs to be sent back to ESRC so it can be properly weighed," she said.

Yuen noted, however, that the types of mitigation Na Pua Makani is proposing are exactly what's called for in the ESRC's bat guidance document.

Phillips agreed, but added a caveat: "The guidance document is supposed to be a working document and, as information comes in, should be expanded and tweaked. A fresh look needs to be given by the ESRC to what constitutes appropriate mitigation for projects such as this."

Gon, however, was skeptical.

"I have published on Hawaiian bats. I understand them more than [most people]. The consensus is it remains a fairly poorly understood creature," said Gon, senior scientist for The Nature Conservancy of Hawai'i.

Despite his previous decisions on the Na Pua Makani case, "the idea of my ability to take in fresh information … is not in question," he continued. "I'm actually in a really good position to determine whether or not what I hear today does represent relatively new information. So the decision was made in consultation with the AG [attorney general] to remain in this deliberation," he said.

"The idea the ESRC didn't consider other turbine projects … and the ramifications of that is probably erroneous," he said, adding that the committee had visited many of the wind farm projects proposed to assess what was most appropriate to apply to the Na Pua Makani HCP.

The committee's decision to follow the guidance from state and federal agencies to use the existing Kahuku facility as a surrogate was not lightly made or made in an effort to try to fudge data, he said.

"In fact, they considered, with a great deal of concern, the fact that the takes of ope'ape'a were higher than expected," he said.

At this point, Phillips noted for the record that her client objected to Gon's participation.

"There's nobody on our side saying ESRC didn't do their job. We're saying the applicant didn't do their job," Phillips added.

Recusal Filings

On January 24, Phillips and attorney David Kimo Frankel followed up with a motion and memorandum arguing for Gon's recusal. They cited two reasons: 1) Gon's participation violated the state's laws on contested case hearings and 2) Gon's prior participation on the ESRC prejudiced his views.

Hawai'i Revised Statutes sections 91-9 and 91-13 forbid the board from considering matters that are not specifically in the record, they wrote.

Because Gon served on the ESRC when it was considering Na Pua Makani's HCP, "It seems obvious that his participation would have provided him very specific information about this [HCP] that is not in the record. In any case, at the January 12, 2018, meeting, Gon specifically made reference to knowledge that is not in the record," they wrote, citing his statement about the ESRC visiting many wind farm projects and considering records for them to assess which was the most appropriate to apply to the Na Pua Makani project.

Not only did their clients dispute Gon's recollection, they argued it wasn't supported by evidence in the record, "[a]nd it taints this entire board's deliberative process," they wrote.

Once Gon is recused, their client must be allowed to question Department of Land and Natural Resources staff and the ESRC as to the accuracy of Gon's statements and to present any corrected information to the Land Board, they wrote.

With regard to Gon's alleged prejudice, Phillips and Frankel cited a relatively recent court ruling regarding telescope construction on Mauna Kea that due process prohibits decision-makers from being biased and from "prejudging matters and the appearance of having prejudged matters."

Gon was a member of the ESRC that made the motion to approve Na Pua Makani's HCP, which Izu later found to be lacking, they noted. "Clearly, Gon views these positions as a criticism of him. … Most importantly, before Keep the North Shore Country had any opportunity to present any evidence or cross examine the applicant's 'experts,' he proclaimed that '[t]he suggestion that the habitat conservation plan is fatally flawed or inadequately researched is problematic in his mind.' Gon's statement reveals prejudice," they wrote.

Addressing the case that the deputy attorney general relied on in her decision to allow Gon to continue participating — *Liberty Dialysis-Hawaii, LLC v. Rainbow Dialysis, LLC, et al.* — Phillips and Frankel argued that her reliance was misplaced. In that case, the state Supreme Court had found that members of the State Health Planning and Development Agency's committees did not need to recuse themselves from a reconsideration proceeding.

Phillips and Frankel pointed out that the court's decision did not involve any interpretation of HRS Chapter 91. "It boggles the mind why anyone would think that this case has any relevance to the case at hand," they wrote.

In their rebuttal, Na Pua Makani attorneys Manaut and Puananionaona Thoene argued that a different statute — HRS 84-14 — should apply. That law states that no state employee can take an official action directly affecting an undertaking in which they have a substantial financial interest, or an undertaking in which they are "engaged as legal counsel, an advisor, a consultant, representative, or other agency capacity." Neither instance applies to Gon, they argued.

They also claimed that Gon's statements at the January 12 meeting "contain no new information that is not already in the record or information that was not otherwise available to the public."

Gon's involvement with the ESRC also does not require his recusal, they argued. "Expertise and knowledge in a particular area has been a long-standing consideration for persons serving on state agencies and boards," they wrote, later citing another Hawai'i Supreme Court decision that found that a good conflict-of-interest statute should "not prohibit so much that competent people will be discouraged from serving. For example, a state would be hurt more than helped by a statute which in effect barred experts from serving on advisory boards."

Although not a party to the contested case, Gon, on February 21, chose to file a disclosure in which he basically argued for his continued participation. He recounted his "considerable knowledge and understanding" of the bat's biology, including the fact that he had authored a journal article on it. He added that although he was on the ESRC when it considered Na Pua Makani's HCP, he understood that as a Land Board member, his deliberations must be based on the evidence in the record "and the various presentations to the Board considered in the light of my experience, training, and background."

"I am fully capable of considering issues before the board … without prejudice or bias toward any result or party. I respectfully submit that my experience, training and background will be of service to the [Land Board] in reaching a fair and appropriate decision on this matter," he wrote.

The board had not decided on the matter as of press time. ***—Teresa Dawson***

ADC from page 1

obtain Good Agricultural Practices (GAP) certification. A USDA website states that GAP is a voluntary audit that verifies that fruits and vegetables are produced in a way that minimizes risks of microbial food safety hazards. To receive GAP certification for the Galbraith lands, which have highly erodible soils, a soil conservation plan would be required.

As of January 31, only Chuan Produce and Ho Farms, LLC (which occupies 62 acres), had submitted approved plans to the ADC, most had not even signed a land license, and only half of them had insurance.

"We haven't been able to communicate effectively with them. Maybe that's our problem," Nakatani said at the ADC board's meeting that day. Most of the small farmers are from southeast Asian countries. With regard to the widespread lack of conservation plans, he lamented, "I don't know exactly how you force these people to do what they're supposed to do."

To this, board member Lloyd Haraguchi complained, "I'm tired of working with these people who will not comply."

Other board members went so far as to suggest that the agency forgo trying to keep small farms on the land and just go with the bigger ones.

"In Hawai'i, three percent of the farming population produces close to 80 percent of the ag crops … and the rest are, like, really sad. And that's where we're at," said Letitia Uyehara, marketing director for wholesaler Armstrong Produce, Ltd. and former deputy director of the state Department of Agriculture.

"Just to throw it out there, we have Galbraith Estate [lands] and we're supposed to put farmers on 200 acres. Where does it come from we have to have the small farmers?" asked board member Denise Albano, president of the non-profit Feed the Hunger Foundation. (Currently, the small farms occupy about 300 acres. Two large tenants have licenses for a total of nearly 400 acres.)

Nakatani responded that the requirement to accommodate small farmers was made by the City & County of Honolulu, which contributed $4 million toward the purchase of the Galbraith lands.

"There's something wrong with that model," Albano replied.

To these concerns, Nakatani pointed out, "sometimes it's not an issue with big versus small." The new food safety regulations are likely to be daunting to any local farmer, he suggested. For example, the ADC was established in large part to manage some of the former sugarcane ditch irrigation systems and facilitate diversified agriculture operations on former plantation lands. Under the new rules, any of the ADC's tenants served by those irrigation ditches can't use the ditch water to grow leafy greens. Tree crops, however, can use ditch water.

"We never anticipated we would run into a roadblock like this, food safety. … If you don't have a conservation plan, we're not going to allow you to start farming, because that's not kosher," he said.

ADC executive director James Nakatani (left) with board member Letitia Uyehara (right) and state Department of Agriculture director Scott Enright (in background) on a site visit to lands purchased as part of the Whitmore Village Agricultural Development Plan.

Some farmers have prepared their lands and told the ADC, "We're ready to farm," even though they don't have an approved plan, Nakatani continued, adding, "Sometimes it's not their fault. They don't understand. …

"What we don't want to do is make a mistake that gives us a black eye. … We're used to giving licenses and leases and saying, 'It's up to you.' [but] we're trying to build a system … of food safety. We didn't anticipate it would be so difficult," he said.

"You can pay me now or pay me later, but it's irresponsible for us to let it go. … Safety is a priority for us," he said.

As Kaua'i board member Sandi Kato-Klutke reported earlier in the meeting, food safety does not seem to be much of a priority on private agricultural land she visited recently. The farm there was in such poor shape, she said, she didn't want to get out of her car. What's more, she added that the Kaua'i Farm Bureau has been telling small farmers, such as the one she visited, that they do not need to abide by the new Food Safety Modernization Act regulations if they make less than $25,000 a year, which is true. Even so, ADC staff said it's likely insurance companies will still require them to demonstrate some basic compliance before providing any liability insurance.

No White Elephants

The fact that so few Galbraith farmers are actually farming has made planning for a processing and packing facility in the area nearly impossible, Nakatani said. At the meeting, member Yukio Kitagawa asked about the status of funding for the facility, which is a key component of the Whitmore Village Agricultural Development Plan, of which the Galbraith lands are a major part.

Last year, a request for $4 million to design and build the facility was whittled by the Legislature down to $650,000. Those funds are now being used to help make the old Tamura Warehouse, purchased in 2013 for $4.49 million, usable.

This year, the ADC's request for $15 million for a 75,000 square foot food safety-certified post-harvest facility did not make it into the governor's budget bills.

While Kitagawa seemed concerned that such an important piece to the Whitmore project lacked any significant funding, Nakatani said he wasn't really worried about it given the compliance and irrigation issues facing the agency, as well as the lack of actual farming occurring.

"If we don't get the people on the land and farm it, then why would you do the other half? One of the issues is the farmers can't get on the land. We have a conservation program that's not adaptive to the movement of agriculture," he said, noting that the Department of Land and Natural Resources, not the Department of Agriculture, administers the state's soil and water conservation program.

"What's the projected time frame for the

packing and processing facility in Whitmore?" Kitagawa asked.

Nakatani replied that it depends on how fast farming happens. "Right now, we don't have the masses. We're happy with planning and design funds at this time," he said.

He added that his agency's priority is to build a reservoir that can supply clean water to the farmers. The new food safety rules include strict requirements on the amount of *E. coli* in irrigation water, which may complicate the state's and Honolulu's efforts to use treated wastewater from the Wahiawa Wastewater Treatment Plant as a major water source to the Galbraith lands.

"The priority right now is to get Galbraith up and running," and the ADC's tenants there haven't even been able to tell him what they would want in a post-harvest facility, despite repeated inquiries, he said.

"I don't want to spend $15 million on this white elephant and nobody uses it. … That's what we struggle with, how to design something that will be useful. And it will continue to be a struggle until these guys come onboard and say, 'This is what we need,'" he said.

Bills

Meanwhile, the flow of money to acquire hundreds of acres of agricultural lands mostly owned by Dole and Castle and Cooke in the Whitmore area has continued unabated. Last year, the Legislature appropriated $23.7 million for the purchase of several parcels there totaling more than 300 acres. That's in addition to the roughly $70 million already spent on lands formerly owned by the Galbraith Estate, Dole Food Co., Castle & Cooke, and others. All tolled, the ADC should soon control some 3,100 acres of farmland in the Whitmore area, according to a staff report.

What's more, Senator Donovan Dela Cruz introduced bills last year and this year to establish a special fund dedicated to the purchase of agricultural lands. Last year's failed. This year's is still alive and, like last year's Senate Bill 433, seeks to siphon money from the state's Barrel Tax, which is already distributed across the Department of Health's environment response revolving fund, the energy security special fund, the energy systems development special fund, and the agricultural development and food security special fund, as well as the general fund.

The Department of Budget and Finance stated in testimony that it had serious concerns with increasing the distribution of the Barrel Tax beyond what is established in Section 243-3.5, of Hawai'i Revised Statutes, while several others, including representatives from the ADC, the Ulupono Initiative, the Trust for Public Land, and the Hawai'i Cattlemen's Council, supported the measure.

"Quality agricultural land is one of the main prerequisites for local food production. Yet, living in an island community that faces constant pressure for development means the amount of quality agricultural land is becoming scarcer for farmers and ranchers to access. This fund will help keep key lands in agriculture and provide expanded opportunities for farmers and ranchers to obtain access to high-quality land at affordable rates," Ulupono general partner Kyle Datta stated in testimony to the Senate Committees on Agriculture & Environment and Water & Land.

Although there doesn't appear to be much standing in the way of the state's expenditure of millions of dollars more on lands to add to the ADC's inventory — especially given that the mastermind behind the Whitmore Village plan, Sen. Dela Cruz, is chair of the Senate's powerful Ways and Means Committee — there are a few who are not so fond of the practice.

In a bill introduced last year that called for an audit of the ADC, R.R. Kemble had this to say: "Sufficient Irrigation water at affordable rates is one of the most critical components for production agriculture. ADC's ongoing acquisition of fallow Dole and Castle and Cooke agriculture land at premium purchase prices should be carefully reviewed. Much of the lands being acquired have no water allocation. Available ground water resources for the area are limited. Given the state's investment in purchasing the Galbraith lands, the audit should help the agency define its priority of developing and placing into service an irrigation water system for the area. The audit needs to look into why ADC needed almost four years to secure a final environmental assessment for water infrastructure projects after the State's purchase of the Galbraith lands."

Nakatani and Department of Agriculture director Scott Enright testified against the bill, which ultimately failed. Nakatani noted that his entire staff consists of four people and that an audit would pose an undue burden on them. ***— Teresa Dawson***

Alterations to Kekaha Ditch Diversions Hinge on ADC's $3.6M Funding Ask

In April 2017, the state Commission on Water Resource Management approved a settlement agreement signed by the Agribusiness Development Corporation (ADC), the Kekaha Agriculture Association (KAA), the Kaua'i Island Utility Cooperative, and the community group Po'ai Wai Ola, to resolve a years-long dispute over alleged water waste by the KAA and ADC and restore flows to streams in West Kaua'i diverted by those agencies via the Koke'e and Kekaha ditch systems.

At the time, the settlement was hailed by the parties as a victory in that it avoided the historically fraught contested case hearing process, which in other water cases has dragged on for more than a decade.

Under the agreement, the ADC and KAA had to file modification plans for the Kekaha Ditch, which diverts some of the streams, within 45 days of the agreement's signing. That hasn't happened. And last December, Earthjustice attorney Isaac Moriwake complained to the Water Commission about the delay.

"We're just pulling teeth on the implementation details," he said.

It turns out that one of those details is the fact that the ADC lacked the funding to meet that deadline. The governor's budget bills this session include a request for $3.6 million to plan, design, and construct the necessary modifications to the Kekaha ditch system.

"Modifications include changes to the existing concrete diversions, and the installation of transducers and telemetric equipment to instantaneously relay water flows to the [Water Commission]," an ADC report states. (For more background on this, read, "Kaua'i Utility, Agriculture Groups Commit To Restoring, Monitoring Diverted Streams," in our May 2017 issue.) ***— T.D.***

Board Fines Companies $2,500 Each For Unpermitted Tours of Mauna Kea

On January 26, the state Board of Land and Natural Resources voted to fine two tour companies that cater to Chinese tourists $2,500 each for conducting commercial activities within the Mauna Kea forest reserve without a permit.

Dave Smith, administrator for the Department of Land and Natural Resources' Division of Forestry and Wildlife recommended that the board first fine Feng Yi Guo. He told the board that his division had sent her a cease-and-desist notice on December 5, 2017, after Office of Mauna Kea Management rangers documented her company's vans taking customers to the Hale Pohaku area of the mountain on 19 occasions over a 90-day period. Even so, Smith said her company continued to bring people there.

"We just see this as a pattern of abuse. The place is just inundated with people," he said, adding that DOFAW generally doesn't allow commercial use in the forest reserve on Mauna Kea because the general public use is so high.

In her defense, Feng testified that her company tried 10 years ago to get a commercial use permit from the University of Hawai'i, which manages the summit, to take tours to Mauna Kea. "We've been talking to them and talking to them. We don't get any answers. We don't get any straight answers why we don't go up there," she said.

She argued that her company vehicles only drive on the access road and do not go on any hills. She asked for photographic proof that they went on DLNR land.

"How do you know that we're doing tours if our drivers stay in the bus, in the car, just like taxis?" she asked. "Did we actually do anything to jeopardize safety, jeopardize the environment? … We educate our customers. We do not want them to do anything wrong," she added.

She also argued that her company provides a safe way for them to get around the island. "The Chinese people, they do not drive well. That's a fact. … They don't get any driving experience until 35 or early 40s," Feng said.

In questioning Feng about her company's practices, board members determined that at least in some instances, her company was parking at the University of Hawai'i's visitor center at around dusk, letting passengers walk up the cinder cone within the forest reserve, and waiting for them long enough for them to view the sunset.

"There is no sign that says people can't go up the hill. If you don't want people to go, you should put a sign or gate," she said.

To Yuen, it was pretty clear her company was conducting commercial tours and he moved to approve DOFAW's recommendation.

"I think a fair inference of the facts is the group is being taken on a sunset tour and taken to Hale Pohaku and being left to do something on their own," he said.

For board member Keone Downing, the case highlighted the need to revisit the commercial tour permitting issue. "We're coming to a situation where we're worried about carrying capacity. At the same time, we're allowing eight permittees to have their permits forever," he said.

Maui board member Jimmy Gomes also said he felt for Feng, but in the end, the board voted unanimously to approve Yuen's recommendation.

The second company DOFAW's Smith recommended fining, Green Travel & Tour, was also believed to be conducting sunset tours, he said. And in that case, he said his division had a picture of one of its vehicles in the forest reserve.

Similar to Feng's experience, Green Travel manager Chun Kai Huang said his company asked UH's Office of Mauna Kea Management for a commercial use permit 15 years ago and didn't exactly deny any illegal activity. He did suggest that penalizing tour companies wouldn't relieve overuse. "If you have 500 vehicles going up to the mountain one time … why would you concentrate on tour companies? … You would end up with 450 [vehicles]. Is that so much different?" he asked.

With regard to the photo evidence, Chun said that was taken when one of his employees took some of his visiting relatives on a tour.

Yuen noted that DOFAW's report indicated that rangers documented Green Travel in the forest reserve on four separate incidents in 2017, since a cease-and-desist notice was served.

To all of the calls made that day for new commercial use permits, board chair Suzanne Case said, "If you have been paying attention to the broader discussion, there should be further limits on vehicles, not more permits."

Former Land Board member Rob Pacheco, whose tour company holds one of the OMKM's eight commercial use permits for Mauna Kea, testified that some years ago, there was a proposal that the permits be cycled through, with those for the two lowest earners being put out to bid. But that proposal never went anywhere, he said.

He also complained that the DLNR's "hierarchy of uses" policy — where natural resources come first, then public uses, then commercial uses — is flawed, especially when commercial tour guides are highly educated. Under the policy, "people can't go into the Alakai [a sensitive natural area on Kaua'i] who know what they're doing," he said, offering just one example. Even so, his company won't go where it's not permitted, he said.

"I've lost business from other tours … doing stuff in areas we don't go to. That's part of doing business and being pono in attempting to follow rules," he said.

Smith said he agreed with Pacheco, at least with regard to Mauna Kea. "I think commercial might be the best way to go, but they need a permit. … We felt and continue to feel there are too many people. We need a master plan. Maybe commercial permits would be part of the mix," he said.

With regard to the violation case, he continued, "this is probably the softest penalty possible. … Quite frankly, it's not fair to the permitted folks .. if you're only paying $2,500."

Green Travel owner Dien-Jung Lin told the board, "$2,500 is not a big issue. The issue is, how long like this?" referring to the inability to bid on a permit.

"I think the tension is there are a lot of people that don't want so many people on the mountain," Case replied.

Still, Lin and Feng wanted a chance. Pacheco stated earlier in the board's meeting that he pays $6 a head under his permit terms. "We could pay $10," Lin said. To which Feng added, "We want to pay $15."

In the end, Yuen moved to approve DOFAW's recommendation, saying that there was enough evidence to support the allegation that at least one Green Travel tour in the forest reserve had taken place that was not explained by the employee's family visit.

"We have evidence of a violation. Regardless of how good the character of the person, we have to treat it as a violation," Yuen said before the board unanimously approved his motion. ***— T.D.***

Shoreline Encroachment Bills Limit Easement Terms to Encourage Retreat

On January 24, with aid from staff with the Department of Land and Natural Resources, several legislators introduced a pair of bills regarding shoreline encroachment easements — House Bill 2653 and Senate Bill 3093 — as an alternative to bills endorsed for years by the department. Those earlier bills repeatedly failed largely because they appeared to encourage the construction or maintenance of structures too close to the shoreline in the face of impending sea level rise.

PHOTO: DEPARTMENT OF LAND AND NATURAL RESOURCES.

Legislators are hearing bills this session that seek to foster a retreat from areas threatened by sea level rise, and to educate new property owners about the potential hazards and permitting requirements associated with coastal properties. The illegal seawall construction at a North O'ahu lot pictured here is the subject of a recent enforcement case by the City & County of Honolulu's Department of Planning and Permitting.

On January 12, members of the state Board of Land and Natural Resources agreed to send a letter to the Legislature urging it to hear bills, carried over from last session, that would allow the board to charge less than fair-market rent for easements covering shoreline structures that, through erosion, now sit below the high wash of the waves.

Because the state has taken the position that it owns the land below the shoreline, the DLNR's Land Division has for years pursued and secured perpetual, non-exclusive easements for those structures so that 1) the state is protected from being sued if someone gets hurt on them, and 2) the state is compensated for the landowners' use of public property.

As the Land Division brought more and more of these easement requests to the board, many of them to expand existing easements, some board members grew increasingly frustrated that landowners were being charged — perhaps, unfairly —thousands of dollars or more to keep their legally built structures.

Following the board's decision, DLNR staff began talks with legislators on new bills. Rather than simply hearing the carried-over bills, House speaker Scott Saiki and several senators led by Les Ihara crafted a compromise that recognized recent findings in the state's Sea Level Rise Vulnerability and Adaptation Report (SLR report), as well as the importance of encouraging retreat from the shoreline.

"In December 2017, the Hawai'i climate change mitigation and adaptation commission accepted the [SLR report], which … found that with 3.2 feet of sea level rise by the mid to later part of the 21st century, 6,500 structures would be lost across the state, 20,000 residents would be displaced, and over $19,000,000,000 in damages would be incurred on property and structures. The SLR report further found that the state and counties will need to act upon this threat and develop adaptation measures to ameliorate the social, economic, and environmental impacts of sea level rise. … The purpose of this Act is to support a managed and orderly shoreline retreat strategy," the bills state.

Under HB 2653 and SB 3093, the Land Board would be allowed to charge less than fair-market rent for shoreline encroachment easements, but only for easements with a term of 10 years or less. The board could extend the term in increments for an aggregate total of up to 35 years.

The reason for allowing only temporary easements is to "enable these landowners to relocate a special shoreline encroachment landward of the shoreline setback line … provided that the granting of this easement shall not be construed as state ownership of the special shoreline encroachment," HB 2653 states.

The bill had originally called for the encroachment to be moved landward of the "sea level rise exposure area" identified in the SLR report, which refers to areas that modeling projections suggest will experience chronic flooding. While the report recommends that the area be officially recognized as a statewide vulnerability zone, either legislatively or through executive action, "there presently is no sea level rise exposure area officially designated by the state or county authorities at this time," state Office of Planning director Leo Asuncion wrote in his testimony on the bill, which was later amended to incorporate his suggestion that encroachments be moved landward of county shoreline setback lines.

DLNR director and Land Board chair Suzanne Case submitted testimony fully supporting the House bill (The Senate version had yet to be heard as of press time).

"The goal of this measure is to provide a process for the state and coastal property owners to work collaboratively on dealing with the long-term impacts of sea level rise through a managed retreat strategy. The property owner would be able to maintain the structure protecting their property for a reasonable amount of time, while the burden of requiring a land owner to pay again for land they once owned is avoided. The limited term duration of the easement provides the Board with greater oversight and the flexibility to implement future policies in regards to shoreline protection structures. Additionally, it provides the Legislature with time to evaluate and enact laws to address the impacts of sea level rise. The state can better focus its limited resources on working to find a solution of sea level rise rather than conflict with private landowners," she wrote.

One testifier, DeMont Conner of the Ho'omanaopono Political Action Group, strongly opposed the bill, arguing in written testimony that "[t]he state is NOT the caretaker of the affluent homeowners who knew or should have known that natural shoreline erosion was inevitable & that their property would be subject to reduction in the size of their real estate. These shoreline homeowners, especially in Kailua & Lanikai have harassed & erected illegal gates to keep Hawaiians from accessing 'their' (the affluent shoreline homeowners), beaches. This BILL is a purely special interest bill to favor the affluent shoreline homeowners & may be unconstitutional."

(For more background on this issue, see "Bills Facilitating Shoreline Easements Fail For Fifth Year at Legislature," from our March 2017 issue, and "Land Board to Legislature: Please, Consider Shoreline Easement Bills," from our February 2018 issue, both of which are available at *www.environment-hawaii.org*.)

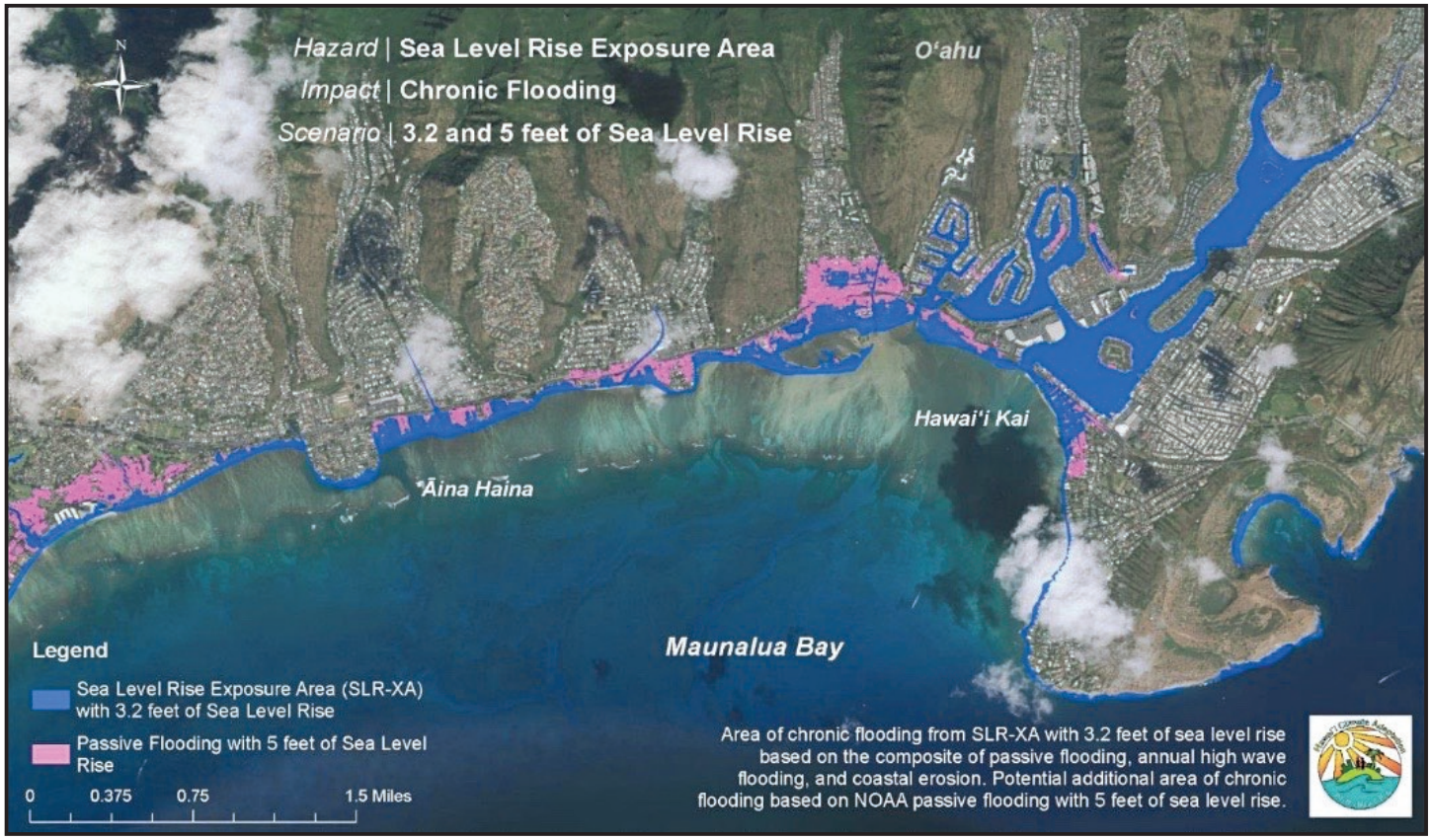

IMAGE: SEA LEVEL RISE VULNERABILITY AND ADAPTATION REPORT

One of the many Sea Level Rise Exposure Area maps in the new Sea Level Rise Vulnerability and Adaptation Report.

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Bill Would Ensure Land Purchasers Know Of Sea Level Rise Threat

The current draft of Senate Bill 694 is another attempt this session to work into law the primary recommendation in the new Sea Level Rise Vulnerability and Adaptation Report released earlier this year.

The bill, as originally introduced last year by Sens. Gil Riviere, Will Espero and several others, sought to require an "oceanfront purchaser statement" — to be recorded with the Bureau of Conveyances — to ensure that new oceanfront property owners understood the special hazards, permitting requirements, and limitations that could affect oceanfront properties, especially given the prospect of sea level rise.

The Senate Committee on Water and Land, however, amended the measure last month to instead require a "sea level rise hazard exposure statement" in which new property owners acknowledge the hazards, permitting requirements, etc., that may affect properties — oceanfront or not — within the Sea Level Rise Vulnerability Area (SLR-XA) detailed in the SLR report.

Beginning on November 1, 2019, every sale or transfer of real property would have to include a sea level rise hazard exposure statement executed by the purchaser or transferee, under the bill.

The statement would include acknowledgment "that the purchaser or transferee has looked at the appropriate sea level rise hazard exposure map and accepts risks of purchasing or accepting a transfer of property that is at risk of climate-related exposure," the bill states.

Department of Land and Natural Resources director Suzanne Case testified in support of the original bill. She noted, "The first recommendation of the SLR Report is to 'Recognize the SLR-XA as a statewide vulnerability zone.' The SLR-XA demonstrates the extent of the potential exposure of land and structures to flooding and erosion with an increase of 0.5, 1.1, 2.0, and 3.2 feet of sea level rise throughout the state."

"The department believes that it is critical that buyers understand the hazards and risks they are assuming in purchasing oceanfront property, in the spirit of transparency and disclosure and to support informed decision making by buyers and government agencies," she wrote before asking that the bill be amended to include disclosure requirements for sea level rise exposure, which the committee did.

The Sierra Club of Hawai'i's Randy Ching also supported the original bill, calling it a critical step toward protecting shorelines and residents.

"This bill ensures homeowners are well-informed of the risks of owning property along the shoreline. It also helps to protect public beaches at risk of expedited erosion due to shoreline hardening. … Property owners harden their shorelines for a number of reasons, but ignorance to the fact that their property will likely experience shoreline retreat *should not be one of them*," he wrote.

Testifying in opposition to the original version of the bill, the Hawai'i Association of Realtors (HAR) argued that it already has its own Oceanfront Property Addendum, "which discloses pertinent information specific to the ownership of oceanfront property. … Having set terms and conditions of the statement contained within the Hawai'i Revised Statutes becomes less flexible when laws, rules, or regulations change. Furthermore, HAR believes that having a set statement may not be able to adequately address current industry practices, thereby potentially exposing sellers, buyers, and real estate licensees to risk."

The amended bill was referred to the Committee on Commerce, Consumer Protection, and Health, which had not held a hearing on it by press time. — ***T.D.***

At Kuki'o, Sandbags, Irrigation, And Plantings Encroach on Beach

One of the most exclusive enclaves in Hawai'i is the gated community of Kuki'o, adjoining the Four Seasons Hualalai resort on the western coast of the Big Island. Although homes in the area have a property-tax valuation as high as $74.250 million (for computer developer Michael Dell's sprawling "Raptor Residence"), members of the public can still enjoy the beauty of the beach fronting the area.

For now, at least. While the beach remains.

In recent years, the area along the shoreline has been planted with naupaka and pohuehue (beach morning glory). Approval for the plantings was granted in 2001 by then county Planning Director Chris Yuen. Yuen gave the okay in response to a request to install the "landscaping improvements" made by WB Kukio Resorts, LLC, the developer of the area. The improvements, wrote James Leonard of PBR Hawai'i, the planning consultant for Kuki'o Resorts, would not "interfere with public access, public views, and activity to and along the shoreline."

Leonard stated further that the improvements "would not affect beach processes or artificially fix the shoreline." Rather, they "are planned in the area of the shoreline setback area mauka of the existing certified shoreline…. These plantings are proposed primarily as an expansion of the existing coastal native plant communities that are adaptable to the conditions present and support the natural beach berm located within the shoreline setback area."

Photos that Leonard submitted along with a map showing the areas of the proposed plantings depict a broad expanse of sand from the ocean to well within the setback area. The berm he referred to is shallow and sandy, characterized with low naupaka patches and occasional coconut palms and beach heliotrope trees.

That same area today is, for the most part, covered with a dense growth of naupaka. The berm has been fortified with sandbags that are positioned in breaks in the naupaka where the mauka homeowners have private paths to the beach. Shredded bags buried in the sand suggest that the efforts to buttress the berm have been occurring for some time.

Irrigation lines (both abandoned and in current use) have been placed shoreward of the top of the berm, often extending into bare sand. In addition, in at least one spot, remnants of geotextile fabric can be seen poking out from the sand.

Plantings have often been used in an effort to fix the shoreline and protect private property in Hawai'i. The most egregious example of this might be the north shore of Kaua'i. At Ha'ena, property owners installed a sandbag revetment more than two decades ago to address what they said was an emergency situation created by large ocean swells. Since then, a dense cover of naupaka has grown over the sandbags and the property owners have attempted to certify the shoreline at the base of the revetment. (For more on this, see the October 2017 cover story in *Environment Hawai'i*: "Whatever Happened to … The Ha'ena Sandbag Revetment.")

Another disputed shoreline, once again at Ha'ena, Kaua'i, led to a landmark Supreme Court decision in 2006 that drew a line in the sand, so to speak, as to just how shorelines were to be determined. That decision, *Diamond v. State of Hawai'i*, made it clear that surveys were not to use the vegetation line to determine the shoreline when the debris line or reach of the high wash of the waves was further inland.

"The utilization of artificially planted vegetation in determining the certified shoreline encourages private landowners to plant and promote salt-tolerant vegetation to extend their land further makai, which is contrary to the objectives and policies of

A photo that was included with the 2001 request for approval of plantings at Kuki'o beach. Yellow tape marks the certified shoreline.

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HRS Chapter 205A as well as the public policy we set forth in *Sotomura*," the high court found, referring to a 1973 decision. The justices went on to conclude, "We therefore reconfirm the public policy set forth in *Sotomura* and HRS Chapter 205A and reject attempts by landowners to evade this policy by artificial extensions of the vegetation lines on their properties."

Whether it is the intention of the Kuki'o Community Association, which owns the lot where the plantings have been made, to fix the shoreline or merely to afford more privacy to the über-rich mauka landowners (including Michael Dell, Paul Hazen, the ex-CEO of Wells Fargo and now chairman of KKR Financial, Sutter Hill Ventures' David Anderson, and David Roux of the investment firm Silver Lake), is not clear. Questions posed to the association's manager, Paola Pagan, were not answered by press time.

The state Department of Land and Natural Resources' Office of Conservation and Coastal Lands (OCCL) has management responsibility for lands makai of the certified shoreline. On its website, it says that owners of lands along the coast "are required to maintain the vegetation along the seaward boundary of their property to ensure that it does not inhibit the ability of the public to access the shoreline."

"In the past, some coastal landowners have made efforts to induce or cultivate vegetation along the shoreline to create a privacy buffer and, in some cases, attempt to alter the location of the natural shoreline. A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing a beach transit corridor. Obstructing access to public property is a misdemeanor.

"OCCL is the lead agency with authority for maintaining public access along Hawai'i's shorelines. Along beach transit corridors where the abutting landowner's human-induced, enhanced, or unmaintained vegetation interferes or encroaches with beach transit corridors, the Department of Land and Natural Resources may require the abutting landowner to remove the landowner's interfering or encroaching vegetation."

Sam Lemmo, OCCL's administrator, was asked if the situation at Kuki'o beach was something that might concern his office. He replied that he or someone from his staff would need to take a look at it. With the OCCL having no staff on the Big Island, the next visit by Lemmo's staff to the area might be months away.

— Patricia Tummons

It's the Law

In 2010, the Legislature passed Act 160, which makes it clear that landowners are not to interfere with the public's access to beaches by means of plantings or other activities. The act defines beach transit corridors as the area seaward of the shoreline and authorizes the Department of Land and Natural Resources to require abutting landowners to remove "interfering or encroaching vegetation."

In addition, the legislation amended the state's Coastal Zone Management Act (HRS 205A) to prohibit, as a policy, private property owners "from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor."

Finally, the act put the onus on the DLNR to police the beach transit corridors and ensure that the abutting property owners keep the public areas "passable and free from the landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach transit corridors."

Violators can face misdemeanor penalties of $1,000 for first-time offenses and $2,000 for second offenses and those following.

In the photo on the left, irrigation lines extend into the bare sand. At right, disintegrating sandbags are exposed seaward of naupaka plantings.