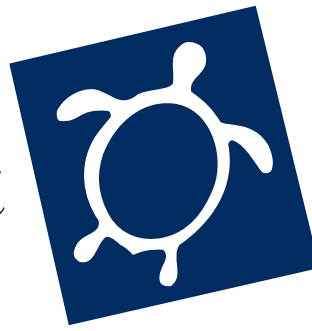


# Environment



# Hawai'i

*a monthly newsletter*

## *Stranger than Fiction: The Waikoloa Saga*

The cast of characters is like something out of a spy thriller. A landowner in jail in Moscow, accused of bilking a former business partner out of millions. A prior associate threatening mayhem to an attorney representing a creditor in federal bankruptcy court. A hardware store owner in rural Minnesota. Land sales that, to say the least, are in desperate need of explanation.

If you read it in a novel, it would strain credulity. But the recent developments surrounding a proposed residential subdivision near Waikoloa Village are all true.

And, despite the fact that time seems to have run out for compliance with conditions of development set by state and county agencies, it's not likely that the story will end anytime soon. Stay tuned.



Gates denoting the entrance to "Highlands Golf Estates," a subdivision planned in the 1990s but never built, flank the drive leading to land Waikoloa Mauka proposed to develop in 2006.

## IN THIS ISSUE

2

*New & Noteworthy: GEMS,  
Monk Seal Deaths*

3

*Wespac: Turtles, Bottomfish,  
and False Killer Whales*

5

*City Agency Head on Climate Change:  
'Adapt Or ... Get Our Okoles Kicked'*

7

*Non-Compliant Galbraith Farmers  
Frustrate State Land Managers*

10

*Bankruptcy Court Dismisses Petition  
Of Early Partner in Waikoloa Project*

11

*Ha'ena State Park Plan  
Seeks a Reduction in Visitors*

## As Owner Is Held in Moscow Jail, LUC Mulls Reverting Waikoloa Land

On May 23, the dozen or so members of the state Land Use Commission gathered in a conference room in Kona, just south of the airport most had just flown into, to hear updates on several Hawai'i island projects that, for one or another reason, had encountered hiccups in proceeding with the plans approved years earlier by the commission.

One of those projects: the planned development known as Waikoloa Mauka.

Back in 2006, Waikoloa Mauka, LLC, had petitioned the LUC to place 731 acres east of Waikoloa Village, in the Big Island district of South Kohala, into the Rural land use district. The land was part of around 14,000 acres of Agricultural District land that the company, led by Stefan Martirosian

and financed by Vitaly Grigoriant, owner of a Russian oil company, had purchased in September 2005.

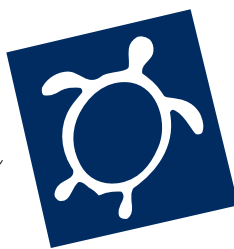
In the early 1990s, the same parcel had been granted county approvals for a martini-ranch subdivision built around a golf course. Progress on that was limited to erection of a rail fence, stone bollards, and a fancy gate that still announces to all who pass the entry to Waikoloa Highlands.

Eventually, the entitlements lapsed. Fires consumed the rail fence. And weeds have nearly obscured the entry gate. Meanwhile, owing to changes in the law, residential developments on agricultural lands had been banned, making LUC approval of the redistricting petition a necessary condition

**Continued on Page 8**

# Environment

Volume 29, No. 1



# Hawai'i

July 2018

## NEW AND NOTEWORTHY

**Harbor Rules Delayed:** Last September, the state Board of Land and Natural Resources voted to amend the Department of Land and Natural Resources' Division of Boating and Ocean Recreation's administrative rules to prohibit the abandonment and feeding of animals at the state's small boat harbors. Those rules remained unsigned by Gov. David Ige as of press time. This despite the announcement last month that three recent deaths of endangered Hawaiian monk seals on O'ahu had been caused by toxoplasmosis, a disease caused by a parasite found in cat feces, *Toxoplasma gondii*. An inquiry to the DLNR about why the rules might not have been signed went unanswered by press time.

Even so, a press release issued last month by Ige and DLNR director Suzanne Case encouraged people not to feed cats and other animals near water. "Feeding cats near water obviously increases the risk of transmission but, given the nature of the watersheds in Hawai'i, cats



Endangered Hawaiian monk seals.

PHOTO: DLNR

almost anywhere are probably contributing to the problem," Case said.

NOAA wildlife veterinary medical officer Michelle Barbieri made a similar point in an email to *Environment Hawai'i*. She stated that prohibiting the feeding of cats near water probably doesn't reduce the risk to monk seals by much because rain flushes the sturdy, long-lived toxoplasma oocysts — from wherever they are — into the ocean anyway.

"Oocysts can withstand harsh conditions and survive in soil, fresh and salt water for months to years. Long after the rest of the cat feces has decomposed, the oocysts remain infectious. It's also very important to acknowledge the fact that terrestrial and avian species (including endangered 'alala and nene) have been killed by toxoplasmosis too, so cat feces throughout the landscape put multiple species at great risk," she wrote.

**The GEMS Bank:** Face it. GEMS — the state's Green Energy Market Securitization

program — has pretty much failed in its original task of bringing the benefits of PV power to thousands of Hawai'i homes whose owners or renters could not otherwise pay for it. As of its last quarterly report filed with the Public Utilities Commission, of the \$150 million bond floated in 2014, less than \$5 million had been lent out to homeowners. Substantially more — nearly \$12 million — had been lent to commercial customers.

It's no secret that GEMS has been hindered by a clumsy roll-out, by contractors unprepared to deal with the relatively small Hawai'i markets, by Byzantine application requirements, and, finally, by the Public Utilities Commission's termination of the Net Energy Metering program, which allowed homeowners to recoup their solar energy investments at a faster rate.

This year, with passage of House Bill 1508, the 2018 Legislature has earmarked \$50 million of GEMS funds to be used as a revolving fund for state agencies wanting to purchase energy-saving equipment.

To conform to the legislation, the Hawai'i Green Infrastructure Authority, which administers GEMS funds, asked the PUC to approve an amendment to its lending programs allowing the loans to state agencies. The PUC approved the request, but denied HGIA's request that it be allowed to use interest on the loans to "grow" the revolving fund.

In an earlier order, the PUC required repayment of GEMS loans to be directed not to replenishing the balance of funds available for new loans or to pay the HGIA's costs, but to repay the Public Benefits Fee, which took a hit when the green infrastructure fee was established (to pay for the GEMS bond float).

On June 12, the HGIA asked the PUC to clarify its order, pointing out that if both principal and interest are directed to repayment of the Public Benefits Fee, the total amount available for loans will be depleted, contrary to the functioning of a revolving fund. As of press time, the PUC had not issued a response.

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### Quote of the Month

*"We're going to have to double down now [on educating people] if we're going to have a successful visitor industry. ... Otherwise we're going to get a reputation as a great place to come to get hurt."*

—Jim Howe

Department of Emergency Services



# Council Tries to Keep Rogue Vessels From Closing Entire Swordfish Fishery

If the National Marine Fisheries Service (NMFS) approves recommendations made last month by the Western Pacific Fishery Management Council, Hawai'i shallow-set longliners will have to immediately return to port in Honolulu for at least three days if they catch five endangered loggerhead sea turtles in a single trip.

The shallow-set fishery, which targets swordfish, closed on May 8 in accordance with a settlement agreement between NMFS, the Hawai'i Longline Association (HLA), and plaintiffs in a lawsuit over the agency's 2012 decision to increase the fishery's annual loggerhead and leatherback sea turtle interaction limits from 17 to 34 and from 16 to 26, respectively.

Under the agreement, unless NMFS completes a new biological opinion (BiOp)—and issues new hard caps in accordance with that opinion—before the year's end, the fishery's annual loggerhead take limit starting January 1 will be 17, and will stay that way until a new BiOp is completed.

Independent of the lawsuit, NMFS already started the process of preparing a new BiOp in April, in response to the fishery exceeding its allowable take of olive ridley sea turtles and recording its first interaction with a

threatened Guadalupe fur seal, as well as the fisheries service's listing two new species as threatened (the oceanic whitetip shark and the giant manta ray).

According to Ann Garret, supervisor of NMFS's Protected Resources division, a new BiOp for the fishery will be completed by the end of October.

NMFS's Sustainable Fisheries division has already estimated that the fishery will likely interact with up to 37 loggerheads and 21 leatherbacks in a given year. And at its meeting last month, the council recommended that NMFS set new caps at those levels starting next year. Whether or not NMFS agrees will likely depend on what the expected effect that higher level of loggerhead take will have on the population. Mike Tosatto, head of NMFS's Pacific Islands Regional Office, says his agency would like to set limits on the fishery so that no more than one adult female loggerhead is killed in a given year.

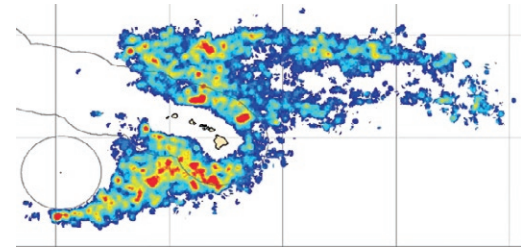
At the council's meeting, scientists with the Pacific Islands Fisheries Science Center suggested that the loggerhead population was "robust"—despite being listed as endangered—considering nesting increases in recent years.

Whatever the annual hard caps turn out to be, the council's recommended trip cap would prevent vessels from soaking their hooks too long in turtle hot spots, which is what some vessels apparently did this year, bringing the fleet one take away from hitting its loggerhead hard cap. Had the fishery not closed under the settlement agreement, it would likely have closed anyway given the rate at which it was hooking loggerheads. In most years, a vessel may catch a single turtle in a trip. This year, some vessels continued to fish in areas where they hooked eight or nine turtles.

According to the HLA's Roger Dang, some vessels owners denied catching any turtles this year, despite reports to the contrary. "When we first started getting reports saying there's a high rate of sea turtle takes, our knee jerk reaction was to call all the other [vessel] owners ... asking, 'Are you catching any turtles?' Their answer was no," he told the council.

"In any case, we said, 'We're in a high level of take, so please move. ... Then we had another take and another take. Maybe we realized it was not as effective as we hoped it would be,'" he continued.

In a draft environmental assessment for its proposed framework to manage logger-



Deep-set longline effort in 2016. The swath within federal waters south of the island chain will soon be closed to the fishery.

head and leatherback fishery interactions, council staff estimated that a trip cap of five interactions would have reduced the level of loggerhead take this year by 30 percent. It would have reduced last year's loggerhead take of 21, which was the highest it had been in more than a decade, by 14 percent. In comparison, a trip cap of three would have reduced loggerhead takes by 24 percent last year and 45 percent this year.

At its June meeting, members of the council's scientific and statistical committee failed to agree on what the ideal trip cap number should be. Some reportedly supported a cap as low as three; others preferred four or five. The council ultimately went with the number that was most beneficial to the fishery—five. This, despite a caution from its counsel, Kristen Johns.

"Our office advises the council to carefully consider the trip limit of five, ... whether it's reasonably calculated to protect the species," she said noting that the fishery had historically only interacted with five turtles in a given trip 2.7 percent of the time (between 2004 and February 2018).

Council member John Gourley responded that the hypothetical take reductions put forth by council staff suggest that a loggerhead trip limit of five "would work really well" to reduce interactions.

Having such a trip limit will allow the swordfish fishing season to continue "as long as possible," said council member Mike Goto, whose company United Fishing Agency runs the Honolulu fish auction. "The last time we had a closure was 2011. It wasn't really felt that deeply because it was in the latter part of the year, but this earlier closure really saw a deep effect," he said.

Council member Archie Soliei also said he supported the higher trip cap because he believed it would allow the fleet to develop voluntary sea turtle avoidance measures. "A lower limit would hinder the fleet's ability," he said.

The council also recommended that NMFS assist the industry in developing and implementing a three-year turtle interaction avoidance pilot program to improve data

**Continued on next page**

## For Further Reading

*Environment Hawai'i* has written extensively on the Hawai'i shallow-set longline fleet's effects on sea turtles. The following is an abbreviated list of articles. All and more are available at [www.environment-hawaii.org](http://www.environment-hawaii.org):

- "Court Orders Closure of Swordfish Fishery to Protect Loggerhead Turtles," EH-XTRA May 11, 2018;
- "With Looming Threat of Fishery Closure, Council Seeks New Ways to Save Turtles," and "Court Finds Federal Agencies Violated Law In Granting Permit, Setting Loggerhead Cap," April 2018;
- "Council Seeks To End Hard Caps On Swordfish Fleet's Turtle Takes," November 2017;
- "New NMFS Rule Allows Increased Injury to Turtles by Hawai'i Swordfish Fleet," November 2012.

sharing and communication across the fleet, which includes about 15 vessels. At the end of the program, the council would determine



## Bigeye Fishery Struggles to Avoid Whale Hookings, Serious Injuries

While the Hawai'i longline swordfish fishery has closed because of its incidental take of endangered sea turtles, deep-set longliners targeting bigeye tuna are facing the closure of a huge portion of their fishing grounds due to their recent uptick in false killer whale (FKW) hookings.

In late June, the National Marine Fisheries Service (NMFS) determined that all three of the false killer whales that were hooked by the fishery in late May and early June were seriously injured (meaning there is a greater than 50 percent chance the injury will lead to the animal's death). Under the current FKW take reduction plan, this will force NMFS to close a 112,575-square-nautical-mile swath of ocean south of the Main Hawaiian Islands.

(NMFS has not yet published notice of the closure in the *Federal Register*, but when the notice is published, it will specify when the exclusion will take effect. That will not be earlier than seven days after the notice is published, but will not be later than 15 days.)

At the Western Pacific Fishery Management Council's meeting last month, council staff suggested that NMFS's own policies might actually be endangering the whales.

Whether a FKW is released with just a hook in its mouth, or a hook with more than a meter of fishing gear trailing behind it (as in the three recent interactions), NMFS would consider the injury to the whale to be serious in either case under its current policy, council staffer Asuka Ishizaki said. She argued that this policy provides no incentive for fishermen to try to release hooked whales with as little fishing gear as possible.

The council ultimately recommended that NMFS review its serious injury determination policy for FKW and support research into post-hooking mortality "to inform revision of the policy."

"Ninety percent of interactions in this fishery do result in animals released alive, but do get classified as a serious injury. ... Common sense would tell you the more gear you can remove off the animal, you would be able to improve the survival of the animal," Ishizaki said.

How to do that safely is another question. Under the take reduction plan, the fleet must

use weak hooks that are supposed to straighten under the weight of a FKW, allowing the animal to swim free without any gear attached. Instead of trying to keep the line taut or manipulating it to try to free hooked whales, however, some crews have chosen to cut lines with their wire leaders attached to prevent the gear from whipping back at them.

The council's Scientific and Statistical Committee, which also met last month, found that the weak hook requirement was not only ineffective, but also dangerous to fishermen. "It strongly supported development of modified gear requirements and release procedures to improve the success rate of hooks straightening so as to allow safe release of false killer whales without trailing gear," a council press release stated.

Federal fisheries scientists worked with longliners on a study in 2016 testing various contraptions — cages, pods, and chains — that might deter depredation of bait or catch by FKW, and therefore deter incidental hookings. "Spoiler alert: there's no magic silver bullet here," said David Itano, one of the scientists involved, at a FKW take reduction team meeting in April. While the pod seemed to perform the best, Itano noted that at \$6 to \$10 apiece, any of the gear tested would be expensive to employ. Ishizaki added that a summary of the study results were presented to the Hawai'i Longline Association (HLA) and "the interest has been lukewarm, I think, in general."

### Crew Training

Trevor Ryder, a team member representing the longline industry, told the team that in any case, "the quickest bang for the buck would be training of crew on line cutting, not cutting the line. Statistically, we could see a bigger return on crew training."

But training them to do what is one question. The HLA-recommended method is to tie the line of a hooked whale to the boat to maintain tension and, hopefully, straighten the hook. But data has shown that using "active tension" or the "fighting line method" may be the most successful in straightening the hooks. That could be because it's used 80 percent of the time.

Whether or not active tension is really the most effective way to de-hook whales, it may be safer for both the animals and the crew. NMFS protected species workshop instructor Colby Grady told the team that the HLA method could be "too immediate" and cause a hook to rip through a whale's jaw bone, or gear to come flying back on deck, or both.

How the crew members will be trained, when so many of them are foreigners who can't legally set foot on U.S. soil, is another

question. Ryder said he's taken the three-hour protected species training classes 15 times and shares what he learns with his crew. He added that the federal observers on board some of the vessels also try to instruct crew members on what to do when protected species are incidentally hooked. That said, he added, "I can't speak for all other captains and all the other crew."

In the case of the FKW hooked on May 23, NMFS reports that the observer on board asked the crew to get the captain, "but the crew did not speak English and did not appear to understand the request. ... The crew was unable to keep holding the line, so it was cut releasing the animal with the hook ... weight (45 g), leader (0.5 m of 2.0 mm diameter wire leader), and branchline (approximately 5 m of 2.0 mm diameter monofilament)."

According to NMFS data, since 2016, vessel captains were absent during the handling of hooked or entangled FKW more than a third of the time. For now, however, crew training across the entire 145-vessel fleet appears unlikely.

"There is no funding available to go down and train someone on the boat," Grady said. Whether U.S. Customs and Border Protection would allow some foreign crew members to obtain the same kind of protected species interaction training that their captains do — on land, and in a language they can understand — remains to be seen.



## Council Recommends Higher Bottomfish Limit

The Western Pacific Fishery Management Council has recommended that NMFS set the annual catch limit for Hawai'i's Deep 7 bottomfish species at 492,000 pounds, a dramatic increase from the current limit of 306,000 pounds. The new limit, which would be in effect until 2021, poses a 40 percent risk of overfishing, according to council staff.

A recent stock assessment developed by fisheries scientists with the assistance of some bottomfish fishermen showed that the fishery was far from overfished or subject to overfishing.

"The recent stock assessment is really a validation of the health of the fishery ... and the council has been on track since the 1980s," said council chair and part-time bottomfish fisherman Ed Ebisui.

"This is an excellent example when the scientific community engages with the fishing community ... and develops accurate results," added council member Dean Sensui.

—Teresa Dawson

## City Agency Head on Climate Change: 'Adapt Or ... Get Our Okoles Kicked'

When it comes to climate change, City & County of Honolulu Department of Emergency Services (DES) director Jim Howe is already taking steps to deal with what's coming.

"This is here. This is real. We have a choice. ... We can adapt or just kinda wait until we get our okoles kicked," he said.

As the city's former longtime ocean safety chief and DES director since 2017, Howe has spent a lot of time thinking about the many ways people can get hurt or killed on the island. And he's keenly aware of the new challenges climate change is likely to pose.

"We're kind of in the life and death business here. We see death quite frequently. How to manage that keeps me up at night quite frankly," he told the city's Climate Change Commission at its June 5 meeting.

With rising temperatures expected to bring more intense storms to the islands and raise sea levels, he said "our ocean conditions are going to become more hazardous," adding that drowning is the leading cause of visitor deaths and will continue to be.



Lifeguard stand at Kualoa Beach Park.

As a first step, his department has devised a prototype design for mobile lifeguard stands. Waves have already stolen much of Kualoa Beach Park on the windward side of O'ahu over the years and a portable stand would likely be necessary to continue to support lifeguards there as well as other beaches. "The tower at Kailua, we've moved it three times. At Sunset Beach, three times. The ones at Waikiki are beginning to fail," he continued.

The new portable towers, which he said will be equipped with solar power, will allow the city to maintain ocean safety as

shoreslines continue to erode.

Fixed structures on the beaches are not sustainable "and even now we are at great risk," he said. Severe erosion at Sunset Beach, for example, recently left a lifeguard station there on the verge of a 30-foot sand cliff, forcing the city to remove it for safety reasons. "That impacts [the lifeguards'] ability to do their job now," he said.

When it comes to privately owned structures near the shore, he views any protective hardening, such as a seawall, as an "attractive nuisance" that can lead to injury and death.

"We will have to try to manage those ... try to police it. That usually doesn't work. We can try to educate people to stay away from it. That usually doesn't work," he said. Given that, he suggested retreating from the shoreline and demolishing abandoned structures was probably best.

### Pathogens

Howe's ocean-related concerns go well beyond beach erosion caused by rougher waves and higher seas. Storm flooding will further erode beaches and affect nearshore water quality, he said.

"In the soils here, we have *Pseudomonas*," he said, referring to a bacteria that can cause deadly infections to the immunocompromised. "We also have staph" — another pathogen — "in the soil. We're going to start seeing some chronic health issues," he warned.

A 2016 article, "Climate Change: A Public Health Challenge and Opportunity for Hawai'i," by Samantha Hudson of the American Institute of Certified Planners and published in the *Hawai'i Journal of Medicine and Public Health*, noted that sewage discharges due to storm flooding can also send pathogens into the ocean, triggering beach closures to protect public health and safety.

To Howe, the problem seems almost intractable. "How do we keep people from going into the ocean? It has economic impacts. What does that do to our visitor industry?" he asked.

He noted that the state is starting to speak up more when it's not safe to go into the ocean, but there's no real way to stop people from going in.

"We're going to have to double down now [on educating people] if we're going

to have a successful visitor industry. ... Otherwise we're going to get a reputation as a great place to come to get hurt," he said.

### Disaster Preparedness

Howe pointed to a very recent example of the critical health issues that can arise after an extreme flooding event in an area where the only road in or out becomes impassable. After severe flooding effectively cut off the North Kaua'i towns of Wainiha and Ha'ena from the rest of the island in April, Howe said doctors had to be flown in to set up a clinic. With so many cesspools in the area, Howe said there was a concern about children contracting bacterial gastroenteritis, which can cause vomiting, severe abdominal cramps, and diarrhea. There were also a lot of septic wounds, he added.

"We look at Puerto Rico" — which was devastated by Hurricane Maria before 2017 — "as an example. If something like Kaua'i would happen for a longer term ... negative impacts of diabetes [would] cause a lot of deaths," he said. In Puerto Rico, the *New York Times* reported that there was a 46 percent increase in death due to diabetes last year compared to the two previous years. "Many people with diabetes had difficulty keeping insulin refrigerated, and some had trouble maintaining special diets," the paper reported.

Having adequate medicines is a key component in hurricane preparedness, but is never talked about, Howe said. People are told to have a 14 day supply of food and water, but there is a substantial portion of the community that is 65-years old or older that also requires medicines, he said.

"About 35 percent of the population on O'ahu. [That's] a lot of medically fragile folks who are aging in place at home," he said, adding that at the same time, "we have medical supply shortages. Nationally, not just here."

"Right now, we have a very good supply chain with Amazon and UPS," he said, expressing his worry that relying too much on home-delivered medicine may lead to the closure of local pharmacies, "which means we'll have less supply on island in case of emergency. We saw this happen on Kaua'i. The postal services could not deliver ... The medicines were being airlifted in. ... This is something that's an emerging trend. How that's going to play out is hard to say."

Howe's bleak assessment prompted commissioner Victoria Keener to question the finding of a journal article, published last year, that climate change didn't pose a significant public health risk to the state.

**Continued on next page**



"After hearing this kind of thing ...," Keener said, referring to Howe's litany of concerns.

"I might differ," Howe finished.

The paper — by Deon Canon (Daniel K. Inouye Asia Pacific Center for Security Studies), Frederick Burkle (Harvard Humanitarian Initiative), and Rick Speare (Tropical Health Solutions Pty. Ltd.) — analyzed potential health risks posed by air pollution, extreme heat and weather, and ultraviolet radiation. The abstract for the article, "Health Security in Hawaii by 2050: The Physical Effects of Climate Change," published in the *Journal of Homeland Security and Emergency Management*, stated, "[G]eneric climate change impacts are often used to justify actions without adequate supporting local evidence. ... Hawai'i's natural geography, robust water, and sanitation infrastructure render the islands less vulnerable to many of the often-mentioned climate change threats." The authors called the health security threat posed to Hawai'i by climate change over the next 35 years "slight in most areas and moderate with regard to ecosystem health."

Even so, Howe pointed out that communities across the island — especially those in danger of losing access to critical services if a single road washes out — are working with government agencies to establish emergency preparedness teams.

"My concern is the North Shore with 20 to 30 thousand visitors going out there a day. It's becoming quite crowded. If we were to have some kind of shock, many would not get back to Waikiki," he said, adding that the Leeward coast is also seeing more and more visitors.

Similar to Ha'ena, the Leeward Coast only has one way in and out: Farrington Highway. It also lacks a major emergency medical facility and many of the evacuation shelters are located in close proximity to the ocean, Hudson stated in her article.

"This vulnerability compounds with the social vulnerability of Wai'anae Coast residents, which includes a large proportion of elderly (over 65), youth (under 18), and people living below the poverty line. Flooding from storm surge and heavy rains have led to closures of Farrington Highway in the past. Sea level rise and more extreme storm events will increasingly contribute to erosion of the roadway," she wrote, suggesting that cross-sector planning with various state, county, and private entities was needed to assess critical infrastructure vulnerabilities holistically.

Unless these vulnerabilities are addressed, Howe sees potential conflicts

during emergencies, given the increasing number of visitors to areas where there may be nowhere for them to go.

"How do we tell our community to take these folks in?" Howe asked the commission. After the floods on Kaua'i, he said, there was some friction (as well as some fist fights) between locals and outsiders, but after a few days, they eventually bonded and "got past the 'who's going to get out first' mentality," he said.



## Commission Approves Sea Level Rise Guidance

At its June 5 meeting, the commission unanimously approved its official guidance on sea level rise, which includes several recommendations aimed at preventing the kinds of disasters Howe described earlier that day. Commissioner Chip Fletcher said they were the most comprehensive sea level rise recommendations in the United States.

How, when, or whether city agencies will take steps to codify any of the recommendations remains to be seen. But if they're ever implemented, they would achieve some of the goals of bills that the state Legislature failed to pass this year.

The recommendations call for "disclosure on all real estate sales, City Property

Information Sheets, and all other real estate transactions" of lands that fall within the 3.2 ft. and 6 ft. sea level rise exposure areas (SLR-XA) identified in last year's Sea Level Rise Vulnerability and Adaptation Report.

They also call for the city to amend its special management area (SMA) boundaries to include lands in the 3.2 SLR-XA that aren't already, and adopt the 3.2 ft. and 6 ft. SLR-XAs as hazard overlays for planning purposes, including in the general plan and sustainable community development plans. Basically, the recommendations call on all relevant city agencies to use the 2017 Hawai'i Sea Level Rise Vulnerability and Adaptation Report and online Viewer, for planning and land use regulation revision in general, as well as infrastructure assessment, "to mitigate impacts to infrastructure and critical facilities related to sea level rise."

The commission's final recommendation: that these agencies be given the resources and capacity necessary to implement the recommendations "and proactively plan for sea level rise, as it will rapidly become a major challenge to city functions."

The approved recommendations are fewer and intended to be more workable than the set Fletcher and commission chair Makena Coffman unveiled in early May. (For more on this, see, "City Climate Change Commission Drafts 'Revolutionary and Inconvenient' Rules," from our June 2018 issue.) — **T.D.**



Workers assess landslide damage to road to Ha'ena after April flood.

# Non-Compliant Galbraith Farmers Frustrate State Land Managers

The state Agribusiness Development Corporation (ADC) is at crossroads. Is it going to be strict a landlord that terminates land licenses for repeated non-compliance, or is it going to do whatever it can to help those small farmers — who stepped up to work on lands no one else wanted — adjust to the stricter requirements associated with occupying state land?

That was the question ADC board members wrestled with at their May 30 meeting. Over the previous few months, they had heard from staff of the rampant non-compliance of tenants on the agency's lands in North-Central O'ahu, purchased years ago from the Galbraith Estate. Specifically, most of them had not completed and obtained state approval of a soil conservation plan, which enables farmers to be exempt from having to obtain a grading permit from the county. ADC staff said that it's going to start requiring conservation plans as part of their land licenses. And it's likely they're required, as well, under federal food safety regulations.

At the May meeting, it became clear that the non-compliance among the tenants has been constant and went beyond a lack of a conservation plan.

"We were having small farmer problems since day one, and not with just the immigrants," ADC executive director James Nakatani said. "It's not that they don't know how to farm. They don't follow rules [about] cleaning the place up. It's constant coaching. It's a paradigm shift," he said.

The sugarcane and pineapple plantations that used to dominate the state's agricultural landscape managed operations largely on their own. When they started to close, the ADC was formed to help manage the transition to diversified agriculture on state lands. Over the years, the agency has still dealt mainly with relatively large tenants, such as the large seed companies in West Kaua'i lands. But managing the small farmers on the former Galbraith lands, however, is proving to be difficult.

One of them, Chuan Produce, has been using a quonset hut without permission from the ADC and refuses to pay the agency anything for it. The ADC sent the company a letter regarding its non-payment.

The longer the ADC takes to deal with the issue, "we're losing credibility," ADC staffer Ken Nakamoto said, adding that

non-compliance is becoming a pattern among the tenants. "For the most part, they comply, [but] it's one thing today" — i.e., loose animals — "it's another thing tomorrow," he said.

As far as board member Yukio Kitagawa was concerned, the ADC should "get rid of them." Like Nakatani, Kitagawa was a former director of the state Department of Agriculture.

Nakamoto, however, softened. "To put it in context, nobody wanted to farm Galbraith. These farmers took the risk. ... We didn't want to punish the risk takers," he said.

"We can continue going on ... or we can take a tougher position: You don't do this and you're out," he said.

Nakatani offered, "Beating them up doesn't solve it. You need coaching."

Board chair Letitia Uyehara countered that the agency could receive heavy criticism for putting people on the land who don't produce safe food.

To this, and suggestions from other board members that the ADC should stick with larger farms, Nakatani urged the board not to discriminate against the small farmers. "Let's look at solutions, not just criticize," he said, noting that his agency has already chosen to shorten its license terms from 35 years to 10, "so we make sure they follow our rules."

(For more background, see, "Compliance Problems with Small Farms Hamper Use of Former Galbraith Lands," from our March 2018 issue.)

## Conservation Planning

Creating a soil conservation plan doesn't necessarily cost any money. But it can cost valuable time, according to Jean Brokish, executive director of O'ahu Resource Conservation and Development Council (RC&D), a non-profit group dedicated to helping local farmers with conservation planning.

The USDA Natural Resource Conservation Service (NRCS) and the Soil and Water Conservation District (SWCD) both provide plans for free, but with their limited work force and specific priorities — which are to work with people pursuing Farm Bill funding — the reality, especially on O'ahu, is that non-priority farmers can end up waiting six months to three years for a free plan, she

said. "If you need this to get your lease ... you're kind of stuck," she said.

The challenge that the ADC's tenants are facing is not unique, she continued, noting that many large landowners, such as Kamehameha Schools, require conservation plans. "It can be a real bottleneck," she said.

Enter the 808 Planner, a tool developed by O'ahu RC&D to create soil conservation plans more quickly, albeit for a price of a few thousand dollars. It's based on an Idaho program developed around 2005 and was meant to address the fact that there was less and less government support for conservation planning at the time, she said.

A Hawai'i version was developed in 2009, but died when the state couldn't figure out how to host it on its internet server. In 2011, O'ahu RC&D revived the project with the help of a planning grant from the Ulupono Initiative. After some 30 meetings with stakeholders, Brokish says her organization obtained even more funding from both public and private organizations, including the state Department of Agriculture, NRCS, SWCD, the South O'ahu County Farm Bureau, the Marisla Fund, and the Atherton Family Foundation.

The site (808planner.org) officially launched in June 2017, but Brokish said it's still being improved as her organization receives feedback from its users. (For example, users aren't yet able to save a pdf version of their plan.)

In its first six months, the planner helped create 53 conservation plans covering 4,300 acres across the state, she said, noting that that rate was on par with what the federal agencies, which have staff on all islands, achieve in a year.

About two thirds of the plans were for farms on O'ahu, where she had done the most outreach, but about 15 percent each came from Maui and Kaua'i, and the rest came from Hawai'i island. To be official, those plans would still need to be approved by the local SWCDs, and she's not sure how many of the 808 Planner users took that second step.

With regard to how the planner would help those farmers whose first language is not English, she said the nice thing about an online platform is that its text can be translated. While she acknowledged that language barriers are a problem with getting things like this done, the 808 Planner isn't likely to be able to address that any time soon.

"I think that's a dream, that's down the road or it would take significant support from somebody to go through and translate parts of the program," she said. — **T.D.**



### Waikoloa from page 1

if the new owners wished to develop the site into a residential subdivision.

In 2008, Waikoloa Mauka's petition, for 398 large house lots, was approved. Since then, virtually nothing has happened on the land.

When the LUC took up the matter of a status report on the project at the May meeting, staff informed the commissioners that they had notified the landowner at its last known address, in Glendale, California. They had also reached out to Benjamin Kudo, the attorney who represented Waikoloa Mauka in the redistricting hearings, and planning consultant Sidney Fuke. Both indicated that they no longer represented the company.

Finally, on May 22, one day before the meeting, the staff received an email from Natalia Batichtcheva in Glendale. Claiming to be an associate of Waikoloa Mauka principal Martirosian, Batichtcheva said she could not attend.

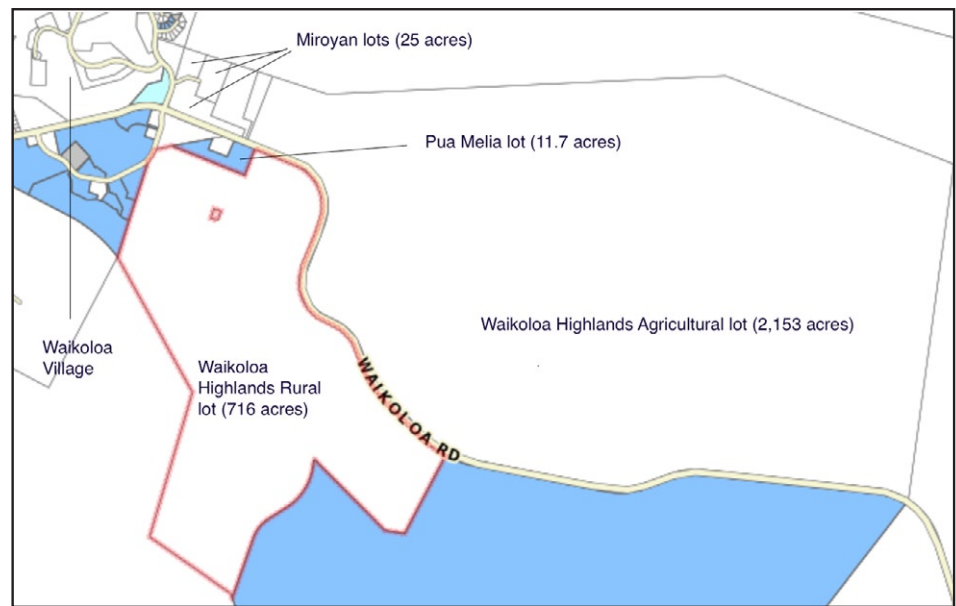
LUC staff noted that the 10-year deadline for compliance with certain conditions of the LUC approval would be expiring on June 10. A county representative stated that the deadline for compliance with terms of a rezoning ordinance had expired two months earlier.

With no one representing the landowner, and no progress on development evident, members of the Land Use Commission voted unanimously to have the chairman and executive director prepare an order for the landowner to show cause as to why the land should not be reverted to its prior status. A hearing on a show-cause order will probably take place in August.

So where was Martirosian, the landowner? As it turns out, he was in a Moscow jail, where he had been held since last fall, awaiting extradition to Armenia on several charges of financial fraud involving his former business partner, Grigoriant. Grigoriant, owner of Armbusinessbank, a leading Armenian bank, has accused Martirosian of swindling him out of nearly \$50 million. Last October, an Armenian court indicted Martirosian in absentia on charges of fraud. When Martirosian flew into Moscow's Domodedovo airport, he was detained at the request of Armenian authorities.

A Moscow court held an extradition hearing on May 25, two days after the LUC meeting. It approved the Armenian extradition request, which Martirosian is now appealing to a higher court.

But wherever Martirosian may be, if and when the order to show cause takes place,



he will be represented by counsel before the LUC. Attorney Steve Lim of Carlsmith Ball now counts Martirosian as a client.

### A Movie Impresario

After purchasing the Hawai'i land, Martirosian seems to have lost interest in the idea of developing it. Instead, his attention turned to Hollywood. There, he and a partner known as Remington Chase (a.k.a. William Paul Elliott, a.k.a. William Westwood) teamed up to produce more than a dozen movies, including *Lone Survivor* and *Alex Cross*. Grigoriant has alleged that he provided roughly \$100 million in support of this enterprise and that Martirosian used only about half of that, pocketing the rest.

In 2014, after an article appeared in *LA Weekly* about Martirosian's criminal past, Martirosian dropped out of sight. By that time, creditors were closing in on Waikoloa Mauka. In lieu of foreclosure, banks took over much of the land purchased nine years earlier, leaving him with the parcel that was the subject of the LUC petition as well as a 2,153-acre Agricultural lot on the opposite side of Waikoloa Road from the proposed subdivision.

As far as development of the Waikoloa land was concerned, Martirosian appeared to be making little headway. As a condition of redistricting, the LUC required annual progress reports to be filed. Fuke, the planning consultant, submitted the first of these only in 2014 — five years overdue. The second — and so far last — such report was filed in February 2016.

The latter report differs little from the first, with both reflecting the lack of progress by the landowner in complying with conditions of the LUC approval.

### Ownership Changes

One of those conditions requires the LUC to be notified in the event of a change in land ownership. "There has been no change in ownership relative to the petitioned area," Fuke reported in both submissions. Yet, on October 14, 2014, Waikoloa Mauka quit-claimed the petition area and the parcel to the north and east, a total of around 2,900 acres, to Waikoloa Highlands, Inc., a company formed just days earlier in Colorado. (In October 2016, Fuke told *Environment Hawai'i* he knew nothing of the transfer.) Although the documents filed with the Colorado secretary of state do not disclose the principals of the corporation, and Martirosian's name appears nowhere in any of the annual filings since then, the several addresses provided over the years, most of them in Glendale, California, match up with those of other affiliates of his. Finally, on June 8, Lim, recently retained by the landowner, formally notified the LUC of the 2014 transfer of title to Waikoloa Highlands.

That's not the end of the land transfers, however.

In late 2016, in the final days of the administration of Mayor Billy Kenoi, Sidney Fuke worked out a deal with Hawai'i County to set aside 11.7 acres of land to satisfy a condition of the rezoning ordinance requiring the developer to donate land for affordable housing. Under terms of the agreement, effective December 1, 2016 — four days before Kenoi left office — the conveyance had to be accomplished within 180 days. Another requirement was that the housing agreement be recorded at the Bureau of Conveyances within 30 days of

**Continued on next page**



its execution — i.e., by the end of December 2016. That did not happen. In fact, it still hasn't happened.

Perhaps one reason it could not be recorded within the specified time was that the subdivided lot did not exist at the time the agreement took effect — indeed, the subdivision to create the lot had not even been applied for. To meet the 180-day deadline, the subdivision had to be fast-tracked. Yet not until March 28, 2017, did Fuke submit to the Planning Department an application for the subdivision. “The primary reason for this is to enable the conveyance [of an] 11.707 acre area to the county for the development of an affordable housing project,” Fuke stated. In addition to the 11-acre lot, he wrote, a 3.244-acre lot “is intended to be conveyed to another entity that will indirectly support the housing project.” Altogether, the subdivision would carve two lots, totaling 14.951 acres, out of the larger parcel, now reduced to 716 acres.

Seven weeks later, the subdivision was approved.

### ***Belated Filings***

On June 1, 2017, the subdivision map was filed with the Bureau of Conveyances by the surveyor, Chrystal Thomas Yamasaki. The subdivision requirement in the housing agreement was thereby accomplished.

As to the sale of the affordable-housing lot, though, it was not recorded at the Bureau of Conveyances until January 29, 2018, nearly nine months past the required deadline — although the notarized signature of Natalia Batichtcheva, claiming to represent Waikoloa Highlands in the sale, is dated June 1, 2017.

Nor, contrary to Fuke's statement in

the subdivision application, were any of the newly carved out subdivided lots transferred to the county. Instead, under the terms of the housing agreement, the 11.7-acre parcel was to be transferred to Plumeria at Waikoloa, LLC. Although described in the agreement as a non-profit corporation, the Department of Commerce and Consumer Affairs shows it as only a “domestic limited liability company” — formed just two weeks before the county representatives signed the agreement. DCCA records show Paul Sulla Jr., a Hilo lawyer, as its manager. The purchase price for the lot: \$55,000.

According to Fuke, the insertion of the requirement that the land be sold to Plumeria at Waikoloa was done on the instruction of Alan Rudo, housing specialist with the county Office of Housing and Community Development. (*Environment Hawai'i* has requested to review OHCD records but was unable to do so by press time.)

Signing the housing agreement, the subdivision application, and the deed of sale to Plumeria at Waikoloa was, again, Natalia Batichtcheva, on behalf of Waikoloa Highlands. Fuke, who negotiated the housing agreement, was asked if he had seen any evidence that she in fact had the authority to act on the company's behalf — including documents such as corporate filings or a power of attorney. “No,” was his reply.

Less than three months after recording the sale with the state Bureau of Conveyances, on April 24, 2018, Plumeria at Waikoloa resold the land, for \$1.5 million, to Pua Melia, LLC, a company registered in Hawai'i in January 2016. The only manager associated with Pua Melia is Danny Joseph Julkowski of Cook, Minnesota.

Neither the first conveyance — from Waikoloa Highlands to Plumeria at Waikoloa — nor the second — from Plumeria at Waikoloa to Pua Melia — mentions any requirement that the land be used for affordable housing purposes. In fact, the agreement between the county and Waikoloa Highlands setting terms for satisfaction of the rezoning requirement for affordable housing is not mentioned at all in either document.

Still, Julkowski said he has an ironclad agreement with the county housing agency and will not be affected should the Waikoloa Highlands property be reverted to the Agricultural district by the LUC. He said that agreement (not reviewed by *Environment Hawai'i*) allows him to build a commercial center, including a hardware store, in return for his developing affordable housing on the

site. He has nothing to do with Waikoloa Highlands, he said, adding that even the infrastructure he builds on his site — water, sewer, power — will not be connected to the surrounding land.

He said his plans for the lot include not just affordable housing, but also retail businesses and offices. He said he expects to be able to apply for the necessary county approvals as early as this summer.

Jeff Darrow, a planner at the Hilo office of the county Planning Department, knew nothing of the housing agreement, much less of Julkowski's plans for the commercial center, when asked for comment by *Environment Hawai'i*.

### ***Who Benefitted?***

Julkowski, meanwhile, seemed surprised to learn that he paid \$1.45 million more for the property than the previous buyer. In fact, he said, the seller had initially demanded \$2 million.

Who received the proceeds?

Paul Sulla, the attorney who filed the corporate registration for Plumeria at Waikoloa, said that other people were involved in the company, although he refused to name them. “We were involved in a consortium that started in 2014, when the lava was coming down the hill,” he said, referring to the lava flows that stopped just outside of Pahoa village, in Puna. “Housing became a premium, so we started working with agencies in the county. Basically, it continued, and we were people who had more to offer in our proposal,” he said, explaining why Plumeria at Waikoloa was selected. There was no bidding process, he said.

As to why the company wasn't formed until November 2016, Sulla stated that “you don't form it 'till you're ready to take title. It's not unusual.”

When asked who received the \$1.45 million in proceeds from the sale, Sulla said: “A lot of effort, energy, went into this. The record title had to be cleared, a mortgage had to be paid off.” His only interest, he said, was getting affordable housing done.

The mortgage Sulla was referring to is the one that Waikoloa Highlands gave to 77 Holdings of Utah in 2015. As *Environment Hawai'i* reported in November 2016, Envision Entertainment Corporation, a Hollywood production company owned by Martirosian and his partner, Remington Chase, borrowed \$1.275 million from 77 Holdings, with the loan secured by the only two parcels that Waikoloa Highlands owned at the time (the 731-acre redistricted

**Continued on next page**

### ***For Further Reading***

Our November 2016 edition has several articles on this project, including:

- “Waikoloa Highlands Development at Standstill, 8 Years after LUC Action;”
- “Original Waikoloa Highlands Partners Share History of Cocaine Trafficking.”

We have made all archived articles except those appearing in the last six months free of charge. You may view these two and other articles at our website, [environment-hawaii.org](http://environment-hawaii.org).

## Bankruptcy Court Dismisses Petition Of Early Partner in Waikoloa Project

Back in 2005, when Waikoloa Land Co. and Waikoloa Cattle were working out a deal to sell off most of the undeveloped land they held, one of the key parties in the negotiations was Michael Miroyan. When the sellers learned of the Miroyan's criminal history, they did not want to transfer the property to him.

As a result, Miroyan worked out a deal with Stefan Martirosian, the principal of the company, Waikoloa Mauka, that did end up purchasing the land, calling for Miroyan to hold a 20 percent interest in the company that held title to the land. Then Martirosian apparently tried to stiff Miroyan, leading to a lawsuit. Eventually, they worked out a deal that called for Miroyan to receive three lots at the intersection of Waikoloa Road and Paniolo Drive, just outside of Waikoloa Village.

In talks with the county, Martirosian had committed that land for development of affordable housing and a community park. But after Miroyan acquired it, he had other plans, and, as reported elsewhere in this issue, the affordable housing component of the Waikoloa Highlands development moved elsewhere.

Miroyan proceeded to take out nearly \$1.3 million in loans using the land, held by his company Hawaiian Riverbend, as security.

In 2014, Miroyan's creditors initiated foreclosure proceedings, leading him to file for Chapter 11 bankruptcy protection in 2016. His reorganization plan called for the sale of his three lots, with the proceeds – estimated by Miroyan at around \$7 million – used to satisfy his creditors.

The creditors disputed Miroyan's es-

timate of the value of the property and sought to have the bankruptcy judge order a foreclosure sale. In an early filing in the case, in August 2016, the Kai Trust (Kenneth K. Tai and Tae K. Tai, Trustees of the Kai Family 1998 Trust), went so far as to assert that Miroyan had no equity in the property at all and was using cash obtained after the petition was filed for gambling: "Debtor Hawaiian Riverbend ... has not shown any credible evidence to rebut the Kai Trust's prima facie evidence that there is no equity in the property. Debtor also has no ability to reorganize given the lack of equity in the property. In fact, Debtor's sole member Michael Miroyan has recently used the post-petition cash assets for personal use, such as by withdrawing large sums of cash without a proper accounting, and going on gambling sprees at a casino in San Jose." Documents filed with the court by Miroyan himself showed he spent \$4,164.90, withdrawn from Hawaiian Riverbend's bank account, at Casino M8trix in San Jose.

In reply, Miroyan claimed that the fact that Hawaiian Riverbend's account had any money at all was a result of his putting his personal funds into it in expectation of having to pay a civil engineer and travel to Hawai'i. "In hindsight," he wrote, "I probably should have withheld contributing capital until they [sic] were absolutely necessary."

As to the charge he used funds to gamble, Miroyan denied that. "Between July 15-18, 2016, I withdrew approximately \$4,667.95 funds from the [Hawaiian Riverbend] account at a Casino M8trix location. I did not use the funds for gambling as alleged.

the county planning staffer, learned that proceeds from the sale of the 11.7-acre lot appeared to have been used to pay off a mortgage on the larger properties owned by Waikoloa Highlands, he said that this was likely in violation of the ordinance, which required that the affordable-housing land be donated.

What the proceeds didn't pay for were the taxes. At press time, more than \$94,000 was owed in property taxes on land owned by Waikoloa Mauka or Waikoloa Highlands, the successor company

— *Patricia Tummons*

I believed that I had made excess contributions for the month of July 2016 and was entitled to use it."

The Kai Trust urged the court to allow an "efficient foreclosure sale [to] occur as soon as possible and to avoid relitigating the same issues that were fully briefed and ready to be decided by Judge [Ronald] Ibarra [of the 3rd Circuit] prior to the filing of this Chapter 11 petition."

The assessed value of the property was only \$472,000, the trust continued. "Miroyan does not specifically set forth any value ascribed to the property, nor does [his declaration] contain any support or basis for the argument that the property is worth \$6.5 million. It is pure, unsupported conjecture."

By the start of 2018, the two secured creditors were growing impatient, as was the court, since Miroyan had not identified any buyers for the property.

In his order dismissing the bankruptcy case on February 2, Judge Robert J. Faris denied Miroyan's request for a hearing, noting that the court had given Miroyan "and all other parties in interest an opportunity to state their positions in writing."

"Mr. Miroyan has availed himself of that opportunity by filing extensive papers, all of which I have carefully reviewed. A hearing is not necessary," Faris wrote, then added:

"Further, Mr. Miroyan sent an email to counsel for the Kai creditors prior to the status conference that was abusive, profane, and threatening. While the email contains no explicit threats of violence, its tone and content are beyond inappropriate. Mr. Miroyan has forfeited whatever right he might have had to a hearing."

That "abusive, profane, and threatening" email was sent to attorney Matthew Shannon on December 11, 2017. Referring to a status conference, Miroyan asks Shannon "if you are going to make the date in the courtroom, because I'm gonna be in that courtroom and I'm gonna make sure that you get what you get for your lying in wait and murder... [ellipsis in original] and the minute you get in front of that judge, I'm not payin' your greedy clients a penny because they don't deserve shit and you don't either. You deserve what I'm going to give you which is the lawsuit of your punc [sic] ass life, you coward bitch. I don't know why Chucky boy gave a fucking piece of shit like you a pass ... [ellipsis in original] but I'm not giving you no pass, coward fucking bitch. I want to be in that courtroom with you and what are you gonna do if you're not hiding in the

Continued on next page

### From page 9

parcel and the 2,158-acre parcel to the north and east of it).

Release of the mortgage was recorded at 8:01 a.m. on May 11, 2018, as document A67050157. With that cleared up, it became possible to record the deed to Pua Melia, document A67050158.

In other words, thanks to the county affordable housing agreement, the last obstacle to Martirosian holding clear title to more than 2,800 acres of Waikoloa land was cleared away. When Darrow,



weeds, you punk ass motherfucker, what are you gonna do when you're exposed? You're going to pay with your chickenshit reputation and you are going to be deposed by me you piece of shit." (Chucky Boy is an apparent reference to Chuck C. Choi, the attorney who represented Hawaiian Riverbend at one point.)

The Kai Trust has revived its foreclosure lawsuit in 3rd Circuit Court. The other creditor, Cory TerEick, has not reactivated his lawsuit.

#### **'A Poorer Man By Far ...'**

As his bankruptcy court hearings were ongoing, and even after his reorganization petition was dismissed, Miroyan was still trying to work out a deal with the county that would allow him to develop one of his three lots, at the corner of Pan-iolo Drive and Wailoloa Road, zoned CV (commercial-village).

In pleadings by email, he variously proposed a car wash, gas station, and a self-storage business, but was told that none of these was in conformity with the zoning.

His emails to the Planning Department require more than a ream of paper to print out. As with the bankruptcy court filings, the papers Miroyan has filed with the county are extensive, to say the least, and often rambling.

Last October, for example, Miroyan claimed to have been double-crossed by his former partners planning consultant Sidney Fuke. "What he [Fuke] and Rudo [the affordable housing officer] are proposing to do across the street ... damages me and changes everything and leaves me a poorer man by far, shouldering by myself financial responsibilities that were meant and signed in an agreement against the two properties to be shared equally by HR [Hawaiian Riverbend] and Waikoloa Mauka."

Miroyan and Waikoloa Mauka had agreed to share the costs of intersection improvements, and Miroyan also implies elsewhere that he was the one who identified the developer that ultimately purchased the affordable housing lot. (As an aside, Miroyan seems to have known far more about the affordable housing agreement than the Planning Department staff to whom his tirades were addressed.)

In the meantime, taxes have been accruing on the three parcels still held by Hawaiian Riverbend. As of last month, the total due came to \$65,550.67. — **P.T.**

## BOARD TALK

# New Master Plan For Ha'ena State Park Is the First to Seek a Reduction in Visitors

**B**efore the massive flooding in April that even further isolated the remote towns of Wainiha and Ha'ena, located at the end of the road on Kaua'i's North Shore, the 300 or so residents there were being overrun by tourists. On a peak day, according to Division of State Parks officials, some 2,000 people visited Ha'ena State Park, often on their way to the world-famous Kalalau Trail, and hundreds of cars regularly crowded the streets.

Not anymore. And if the new park master plan approved May 25 by the state Board of Land and Natural Resources achieves its goals, it will never be that way again.

"Following that [flooding] ... it was like it rolled back 50 years. It was like when it was when I was 10 years old. You could go to Ke'e and see one or two people on

the beach. You could actually go swimming and not worry about your car being broken into. This flood has been mother earth's way of crying out to us and saying, 'Enough is enough,'" Ha'ena resident Chipper Wichman told the board as he testified in support of the plan, which he has spent decades helping draft.

"If this plan is not adopted, there is no legal mechanism for even trying to scale back. This is a critical moment in time," he said.

"We have an opportunity and a window of time before hordes of visitors descend upon Ha'ena again to implement parts of the plan," State Parks administrator Curt Cottrell added. "We're working at Kealakekua Bay (on Hawai'i island),

**Continued on next page**



The entrance to Ha'ena State Park, post-April flooding.

PHOTO: DLNR



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Kawainui Marsh (on O'ahu), and Ha'ena. The major theme is communities are under siege by the visitor industry. ... The days of big box tourism and massive visitor centers we believe are obsolete," he said.

The Ha'ena park master plan, a draft of which he recommended the Land Board approve, represents a paradigm shift: For the first time, his division is attempting to reduce visitation at a state park.

"Ha'ena, besides the beauty of Ke'e beach, is the gateway to the Kalalau trail and the Na Pali coast," he said, noting that in 2007, more than 500,000 people hiked into Kalalau. "We know that in the decade since then, it is way off the Richter scale in terms of increased visitation now," he said.

To reduce the number of visitors to the historic 65-acre park, the plan proposes a 100-stall parking lot located inside a gate along the highway and envisions a shuttle service, run by either the county or private entities and perhaps based at the resort community of Princeville, located six miles away.

"At the moment, putting aside the flood damage, you could cram 300 cars in [the park]," Alan Carpenter, State Parks assistant administrator, told the board.

Under the plan, the division would set a cap of 900 visitors a day to the park. That number would exclude "permitted overnight campers, hunters with valid permits, local residents, cemetery caretakers, volunteers attending various events, or kupuna or cultural practitioners who have cultural or ancestral ties to the area," according to a DLNR press release. Those non-fee paying visitors would also have access to half of the 100-lot parking area, Carpenter said.

Two new restrooms using green wastewater treatment technology are also planned. Currently, only a single comfort station serves the entire park and it leaches into an area containing significant ancient Hawaiian burials, a situation Wichman calls unconscionable.

While all of the Land Board members

seemed to support the intent of the plan, a number of them voiced concerns about how it would actually be implemented.

"I do think we have to be careful about some of the aspects of some of this. If we try to do some things by decree, this 900-person limit, that doesn't mean you only end up with 900 people or 100 cars, especially if you have 2,000 people who want to go to one of the most beautiful places in the world. ... I think what's going to happen is if you cannot get into this park, you'll go to the county park," board member Chris Yuen said.

Yuen endorsed the idea of a shuttle and recommended that the division find ways to encourage its use, since the pre-flooding vehicle situation was "completely chaotic," with visitors who couldn't fit into the parking lot just pulling over onto the side of the road, in some cases blocking traffic.

If the number of cars is significantly reduced, "maybe you could let 2,000 people in," he said.

He also said that regulations may need to be passed to enforce the 900-person cap, suggesting that a person who wants to walk into the park without buying a ticket ahead of time is probably not going to be deterred if all they're doing is "violating the master plan."

Kawika Winter, a member the community advisory council that helped draft the master plan, explained that he didn't see the 900-person limit as a hard cap. "It's not like if you're [visitor number] 901, we're going to tell you you can't come in. We're gonna look at, on a monthly average, 900. If we start to tick above that, then there are mitigation measures we can put in place to bring that back down," he said.

"You could pay one price for walk-in entry or another if you have a vehicle," Carpenter said.

Land Board chair Suzanne Case sug-



PHOTO: DLNR

Flood damage to Ke'e beach parking lot.

gested that the kinds of details being discussed could be hashed out another day. "What we're talking about today is a plan, not about the implementation steps. Some of them will need rules, some will not," she said.

"This I believe is the first time we are proposing a limit in a state park. There's a lot of new territory ... Certainly there are going to be issues. Certainly there's going to be illegal parking, but the point is to try to get it a lot better than it is now, which is chaos," she continued.

In any case, Carpenter noted earlier, implementation is not going to happen overnight. His division only has \$100,000 budgeted for improvements at the park and it's likely to cost millions to actually implement the plan, he said.

In the end, the board unanimously approved the environmental impact statement and a draft of the plan, which is expected to be quickly finalized administratively.

(For background on this issue, see our article in the November 2010 *Environment Hawai'i*, "Board Talk: Land Board Approves Draft of Ha'ena Park Master Plan," and the May 2017 issue, "Board Talk: Land Board Renews Ha'ena Curator Agreement." Both issues are available free at [www.environment-hawaii.org](http://www.environment-hawaii.org))

— T.D.