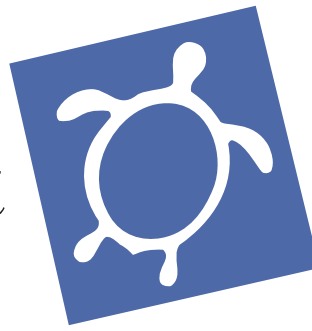


# Environment



# Hawai'i

*a monthly newsletter*

## Growing Pains

When the state committed to saving ag lands in Central O'ahu, few had any inkling that the prospect would cost so much or take so long for farmers to start making the land productive.

But, as articles this month show, the agency charged with purchasing and peopling the land has little to show for its efforts. Little, that is, besides a slew of unanticipated problems that beggar an easy fix.

Language. Undercapitalization. Sanitation. Irrigation. But also trespassers, homeless camps, illicit drug use and prostitution – no one imagined the Agribusiness Development Corporation would need to deal with all this and more.

But most puzzling of all is the profligacy with which the ADC has spent public funds buying many of these lands, for full asking price and above appraised value.

It's too late to negotiate for a lower price, but going forward, it may be appropriate to bring the ADC under the roof of the state's procurement laws.

## Whitmore Village South Parcel: More Trouble Than It's Worth?

When the state has made it a priority to purchase as much of your property in North-Central O'ahu as possible, there's really little incentive to budge on your asking prices, even for lands that are in questionable shape. That may explain why on February 26, 2015, Dole Food Company, Inc., was able to sell to the state Agribusiness Development Corporation (ADC) 257 acres in Whitmore Village for \$2.2 million more than the initially appraised value.

In July 2012, state Sen. Donovan Dela Cruz first raised with the agency's board of directors the prospect of buying the two parcels that make up the area known as the Whitmore Village South parcel. He noted that the purchase would secure for the ADC access to Lake Wilson, which was being eyed at the time as a major source of irrigation water for the agricultural hub he hoped to develop in and around Whitmore Village, an area he represents.

Dole's 2013 asking price for the land

was \$5,637,000, and according to City and County of Honolulu property tax records, the ADC paid \$5.6 million for it. This was despite a 2013 tax assessed value of \$4.58 million and an initial 2014 appraised price of \$3.4 million. Before staff brought a request to its board to approve the purchase, Dole had a counter-appraisal done, which set the market value at \$5.7 million.

Normally, state agencies are restricted by law to paying no more for and charging no less than fair market rates for "public lands." When the state Department of Land and Natural Resources' Division of Forestry and Wildlife purchased four parcels totaling 2,881 acres from Dole earlier last year, the original asking price for them came to just under \$15 million. An appraisal by John Child & Company, however, determined the fair market value to be \$16.56 million. The state ultimately negotiated a price of \$15,163,800.

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Some of the encroachments on former Dole Foods lands purchased by the Agribusiness Development Corporation in 2015.

# Environment

Volume 29, No. 8



# Hawai'i

February 2019

## NEW AND NOTEWORTHY

**Kaua'i TVR Dispute:** Elizabeth Kendrick and Joe Chaulklin are owners of a house in Anahola, Kaua'i, that has been offered as a vacation rental for years. Listed price for the Ginger Beach House, as it's advertised, is \$12,500 a week, plus a cleaning fee, taxes, and a reservation fee.

Their operation of the vacation rental was sanctioned by Kaua'i County up until December 12, 2017. After that, the county informed them that they could no longer legally rent out the house, since they had not submitted their application to renew their transient vacation rental (TVR) in timely fashion.

Kendrick and Chaulklin appealed the decision of the Planning Department, which proceeded to hold a contested case hearing on the matter. Their attorney, Gregory Kugle, argued that the mere fact that his clients missed a filing deadline should not result in the loss of their permit: "Requiring petitioners to forfeit their nonconforming use based on

a missed ministerial renewal date is inconsistent with state statute and county ordinance because petitioners did not discontinue their lawful TVR use." He also claimed that under Planning Commission rules, his clients should have had a 30-day grace period to submit their renewal application. Last but by no means least, he said, "the Planning Department disregarded basic principles of due process because it denied petitioners their valid vested property rights."

The hearing officer upheld the Planning Department's decision. At the request of Kugle, the full Planning Commission heard further argument in November 2018. And again, the denial of the TVR permit was upheld.

All the while, Kendrick and Chaulklin continued to rent out the Ginger Beach House. In late November, the county sought an injunction in 5th Circuit Court, seeking to force them to cease operations.

Last month, Kugle sought to have the litigation removed to federal court in Honolulu. Kendrick and Chaulklin, he stated, "are now and were at the time" the county filed its complaint "domiciled in the state of Wyoming."

Ginger Beach House, LLC, meanwhile, was registered to do business in Hawai'i in 2013. According to the Department of Commerce and Consumer Affairs, it is no longer in good standing, having failed to file an annual report for 2018.

**Hilo Landfill Closure:** For more than a quarter-century, Hawai'i County has been struggling to figure out how to close the Hilo landfill. Unlined, over-full, and with

wastes containing arsenic and other hazardous materials, the landfill has been a burr in the saddle of every administration since the early 1990s.

Now, though, the county's Department of Environmental Management believes the end is nigh. Department director William Kucharski said at a recent meeting of the Environmental Management Commission that the bids from contractors proposing to close the landfill would be opened this month (February).

That timetable has slipped a bit from the date Kucharski had announced earlier. In November, he had said bid opening would occur in January. He explained the reason at the EMC meeting: "We're looking at applying Astroturf" to cover the closed landfill, Kucharski said. "No one in the state has done that before, so the state contracting board has to review that."

While the municipal waste that previously was disposed of in Hilo will now be taken to the county's landfill on the west side, at Pu'u'anahulu, Kucharski said the increased traffic from county trucks would be minimal. "The new flow from Hilo will be about eight trucks per day," he said. With the addition of a second scale at Pu'u'anahulu, he added, current users of the west side landfill should not notice any increase in wait times.

(In October 1998, *Environment Hawai'i* published a short history of the landfill and the myriad problems associated with its closure. That article may be read at [www.environment-hawaii.org](http://www.environment-hawaii.org).)

**Corrections:** Our January "Board Talk" column incorrectly stated that the water diverted from Waikoko and Wai'ale'ale streams served hydroelectric plants along the Kekaha and Koke'e ditches. The plants served are, in fact, along the Ili'ili'ula-Wai'ahi Ditch system.

Also in January, a New & Noteworthy item on the Kahala Hotel suggested David Kimo Frankel had argued that the Land Board had violated the land use law. Actually, Frankel argued that the board had violated the coastal zone management law.

We sincerely regret the errors.

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Hilo, Hawai'i 96720

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Environment Hawai'i is published monthly by Environment Hawai'i, Inc., a 501(c)(3) non-profit corporation. Subscriptions are \$65 individual; \$100 non-profits, libraries; \$130 corporate. Send subscription inquiries, address changes, and all other correspondence to

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*Environment Hawai'i* is available in microform through University Microfilms' Alternative Press collection (300 North Zeeb Road, Ann Arbor, Michigan 48106-1346).  
Production: Tim Officer

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ISSN 1050-3285

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### Quote of the Month

*"The more people we get, the more resources we lose. Where is balance?"*

— Keone Downing, Land Board

## ADC Improves Standards, Outreach In Effort to Secure Quality Farmers

As part from a few shiny starts, progress toward establishing the Whitmore Village area as an agricultural food hub has been underwhelming, to put it lightly. That was Agribusiness Development Corporation board member Douglas Schenk's take at the board's meeting last November.

"All of us are pretty unsatisfied. We put all this effort into getting all these lands," he complained.

Over the past several years, the ADC has been on a buying spree of former Galbraith Estate, Dole Food Company, and Castle & Cooke lands in North-Central O'ahu, driven and supported in large part by the area's state senator, Donovan Dela Cruz. About \$100 million has been spent and more than 3,000 acres have been acquired.

Establishing adequate water supplies and preparing the lands for farming have been challenging enough on their own. More recently, however, the ADC's struggles to bring their small farmers into compliance with their licenses and food safety standards have come to light.

As part of the ADC's purchase of the 1,000-plus acres of Galbraith lands in 2011, the City and County of Honolulu, which provided some of the funding, required that 300 acres be designated for use by small farmers.

In January of last year, ADC director James Nakatani reported that all but one of its smaller Galbraith tenants had failed either to meet the terms of their licenses or sign a license at all. And as a result, a number of them could not begin farming. Months later, ADC added that sanitation on some of the farms was also an issue.

In response, the board's investigative committee worked with staff on developing solutions.

"Basically, we need to get better, experienced farmers that are well-financed, that have a really good plan. I know it's hard to find, but if we fail to find those people, we're going to be where we are today: full of resources but [short on] performance," said Schenk, a member of the ADC's investigative committee.

According to the ADC's Ken Nakamoto, when initially shopping for tenants for the Galbraith lands, a couple of government agencies helped it create a list of candidate farmers, staff inspected their farms, and then negotiated licenses.

With input from investigative committee members, Nakamoto prepared a new license application and review standards to ensure that farmers are actually able to do what's required of them and to farm successfully.

Under the new form, which was approved by the ADC board in December, applicants would be required to have a minimum of five years of farming experience. They would also need to prove they have access to adequate capital — such as through a Department of Agriculture loan — and provide a farming plan covering the first five years of their tenancy.

"Farmers are undercapitalized. They cannot even throw away their own trash. They cannot afford a port-a-potty," Nakamoto said.

Schenk admitted that the new applications and standards might be daunting and that most farmers who have approached the ADC would fall short.

"That's, like, really telling. Maybe that's not the kind of people we want to be attracting. Maybe that's harsh, but, frankly, this reflects on all of us. ... What we're doing is not working," he said.

"A lot of problems we're experiencing today was due to poor vetting. The farmers giving us the most problems lack these," Nakamoto added.

Board member Robbie Melton asked whether the ADC could require training.

Nakamoto replied that the ADC had actually provided training on pesticide use and good farming practices to the Galbraith farmers, most of whom were immigrants.

"A lot of them come after work. Maybe they didn't pay attention or maybe they didn't understand what we're saying. They say 'Yes, yes,' and they go back and do what they do," he said. ADC chair Letitia Uyebara added that some of the early tenants required the assistance of an advocate to fill out forms.

Nakamoto said the ADC doesn't want to discriminate, but "we don't want the second-place guy. We want the best."

To this, however, ADC director Nakatani stressed that meeting food safety standards and keeping up with regulations are challenges not just for immigrant farmers, but small farmers across the board.

Nakamoto said some of the changes to the application process were meant to ensure that the farmers aren't blindsided by

time-consuming and/or expensive requirements they didn't realize they had to meet, such as having to prepare a conservation plan.

Board members and staff seemed split over whether or not the ADC should simply try to seek bigger farmers.

Kaua'i board member Sandi Kato-Klutke suggested that the ADC might try to offer more hands-on support for its small farmers, as Grove Farm does on Kaua'i.

"No matter what we do, we cannot outdo Grove Farm because of the amount of help they give their people," she said. Referring to the ADC's smaller tenants on Kaua'i, she added, "We are here saying we'll give you 50 acres. That's too much. Our two-acre farmer is our most successful on Kaua'i."

Chair Letitia Uyebara and then-DOA director Scott Enright both seemed to think bigger was better.

While the ADC is having an extremely difficult time with its Galbraith lands, capitalized enterprises are starting to show up in Hawai'i, Enright said. "The capital is not there for the two- and five-acre farms. It's hard to project out how this is all going to work if you're paying your taxes and permitting your structures and paying your farm laborers ...," he said.

He noted that the University of Hawai'i's GoFarm farmer training program has met with only limited success. "I know three farmers that are actually starting to make it out of all the people they're putting out of their program. I wish it was more successful, but it's not," he said.

Nakatani countered that one of the ADC's small farmers on Kaua'i has done very well, showing that there are "pockets where we can succeed," if farmers don't bite off more than they can chew in terms of acreage and then run into cash-flow problems.

Whether the ADC gets the new crop of farmers it wants remains to be seen. In addition to raising the qualification and review standards for prospective tenants, the board also voted to widen its search by reaching out to the state DOA, the U.S. Department of Agriculture, the Hawai'i Farm Bureau, Hawai'i Farmers Union Foundation, GoFarm, the Office of Hawaiian Affairs and various community groups.

(For more background on this, read the following articles at [www.environment-hawaii.org](http://www.environment-hawaii.org): "Compliance Problems with Small Farms Hamper Use of Former Galbraith Lands," March 2018 and "Non-Compliant Galbraith Farmers Frustrate State Land Managers," July 2018.)

— T.D.



*Whitmore from page 1*

Lands held by the ADC, however, were exempted by the state Legislature in 2003 from the state's definition of public lands. Even so, ADC staffer Ken Nakamoto says that while the ADC is not limited to purchasing lands at an appraised market value, "we believe it is a prudent practice."

When dealing with a dispute over fair market value, the DLNR often resolves the matter by having a third appraisal done by an appraiser agreed upon by both parties. In the case of the Whitmore South parcel, however, when ADC staff requested board approval in December 2014 to purchase the lands, the only appraisal analyzed in any detail was Dole's.

A staff report acknowledged that it had received appraisals estimating the value at \$3.4 to \$5.7 million. It added that the lands were specifically chosen for their proximity to other farmland under ADC control, existing infrastructure and industrial space, and access to water. The report also stated that the property's facilities would allow the ADC to immediately generate revenue.

"Currently, there are no other parcels available in the area with these unique features," it stated, adding that Dole had agreed to pay for an environmental assessment and title survey, which was estimated to cost about \$113,000.

The board approved the purchase, but the property has since turned out to be a hornet's nest of sorts, forcing the agency's tiny staff to negotiate encroachment agreements with angry neighbors, clear trees over dozens of acres, and battle a host illegal activities, from trespassing and trash dumping to drug dealing and prostitution.

A recent ADC staff report states that a portion of the land along Uluwalu Circle

PHOTO: CITY & COUNTY OF HONOLULU DEPARTMENT OF PLANNING AND PERMITTING



Whitmore Village South parcel.

that abuts the Whitmore Circle apartments has been "plagued with criminal trespassing for years," resulting in some of the problems there today. The February 14, 2014, appraisal for the property, prepared for the Trust for Public Land by John Child & Company, fails to mention any such issues. The only improper use of the land noted in the appraisal was the construction by Waihi'i Farms, a tenant on the land for decades, of several unpermitted structures on 16 acres along Kaukonahua Stream.

### **Encroachments**

The ADC is no stranger to problematic occupants or conditions on its lands. It inherited several illegal piggeries when the DLNR transferred to it thousands of acres in Kekaha, Kaua'i, as well as a contaminated former pesticide mixing area near the old Kekaha Sugar Mill. The ADC struggled for

years to resolve both issues to the satisfaction of the state Department of Health.

In the case of the Whitmore Village South parcel, the ADC had received complaints from area residents about "rampant criminal activity occurring in the gulches and usable areas of the property," a December 12 staff report states. ADC staff worked to erect barriers and install 'no parking' signage to minimize illegal access to the property.

In the course of delineating and fortifying its property boundaries, the ADC discovered that several adjacent residents had been using portions of the former Dole land for years, decades even. Various pens and structures occupy the land, as well as crops, chickens and goats.

But when the agency sent notices to those landowners on August 13 informing them that the encroachments and any unclaimed property would be removed in 30 days, the backlash was harsh and swift.

Whitmore Village residents turned out in force to public meetings on the ADC's plans for the parcel. The vast majority of them expressed their dismay at the way the encroachment issue was handled. A few sovereignty activists asserted that the state did not legally own the land.

The ADC backed away rather quickly from its plan to sweep out the encroachments and began discussions with community members on a solution. The agency asked the city to consider establishing a community garden under the Department of Parks and Recreation's program, but was denied due to financial constraints and concerns over access by emergency vehicles.

"We're going out of our way trying to help these guys," the ADC's Ken Nakamoto said at the board's November 28 meeting.

*Continued to page 5*



One of the unpermitted structures behind the Whitmore Circle apartments.



*Whitmore from Page 4*

He'd already reached out to more than two dozen residents and planned to talk to more about what should be done.

"We're going to try to come up with a permit. The livestock might be an issue. There's issues about health and safety. Where's all the poop going?" he said. Nakamoto said he wanted to ensure the ADC did not incur any fines from the Environmental Protection Agency.

"Everybody has fighting chickens, swimming pools ...," he continued, stressing that figuring out how to manage these things is not part of the ADC's mission. Even so, he said he wanted the residents to know, "We're willing to work with you, but you've got to meet us half way. We can't take all the liability and you take all the benefit."

**A Deferral**

At the board's December 12 meeting in Wahiawa, Nakamoto presented his proposal to issue non-transferrable, month-to-month revocable permits for home gardening to Circle Mauka residents for up to 3,000 square feet. Annual rent would be a nickel per square foot.

In addition to complying with all city, state, and federal laws, permittees would have to be insured, allow occasional inspections, and indemnify the state.

"Although gardening is not part of ADC's mission, it is open to having discussions with the Whitmore residents about possible long-term plans to establish a community garden that the whole community can enjoy," ADC executive director James Nakatani wrote in a report to the board.

Nakamoto said permittees would have to submit a yard plan for ADC approval. "We cannot allow anything illegal. If [their use] gets fined, the fine comes to us because we're the landowner," he said.

A number of residents submitted written testimony supporting the idea of a permit. At the ADC's meeting, Jazmine Corpuz, one of the residents whose family keeps goats and chickens, proposed allowing the broader range of uses allowed on agricultural land. And rather than issuing short-term permits to individual landowners, she suggested that a community non-profit organization that would sustain the culture and traditions of the area — not unlike Ma'o Farms in Wai'anae — could take responsibility for tending the encroachment area, via a license or a cultural easement.

"We like do 'em right. We like the kuleana. Nobody complaining about us gardening ... and farming." She described

how one of her neighbors who also has encroachments opens his yard to the community when he makes an imu.

She said her family took on the goats to keep brush and weeds down, adding that she also has taro and banana patches there.

"That is ag land. That is not residential land. You cannot say we cannot have goats," she argued. "We do all kind vegetables that feed our whole street. ... That whole street is taken care of by all the neighbors."

With regard to the ADC's efforts to crack down on the other illegal activities in the area, "I agree. Mahalo, mahalo, mahalo," she told the board.

Following Corpuz's testimony, one member of the public — a supporter of the Polynesian Kingdom of Atooi — tried to argue that the property under dispute was crown land. ADC board chair Letitia Uyehara then quickly pounded a large gavel she had brought with her and demanded order. Which she got.

As far as she was concerned, the ADC's title to the land was clear, she said.

Before the board voted on Nakamoto's proposal, Corpuz urged board members to delay. "It's not going to hurt to take a little more time to work with the community ... instead of shouting like this at meetings," she said.

Nakamoto explained that the ADC intends to continue working on a long-term solution and the permits were a way to allow for that.

In the end, the board deferred the matter, which Corpuz took as a victory.

Nakamoto says that since that meeting, his office has not received any proposals that provide specifics.

**Held Up**

One of the main reasons for acquiring the Whitmore Village South parcel was because it could give tenants on ADC lands access to potentially important irrigation sources. But that's not likely to happen anytime soon.

Years ago, the Legislature appropriated several hundred thousand dollars to develop an irrigation system that would take water from Lake Wilson and/or the Wahiawa Wastewater Treatment Plant, which has long been capable of producing high-quality recycled water. But new federal food safety regulations have since set higher water quality standards for irrigation water.

Now, simply having an R1 designation — which is the cleanest type of recycled water under state guidelines — may not

be good enough to use on all manner of crops.

Nakatani told the ADC board last year that he traveled to Arkansas to observe how farmers there treat reservoir water to "bring it to a standard so it's safe." With his agency in the midst of constructing reservoirs for lands purchased several years ago from the Galbraith Estate, Nakatani said that maintaining water quality is going to be a big problem in the future.

While the ADC's lands in the Whitmore area do have access to some well water, the agency is still seeking to use water from the WWTP, which has used lake Lake Wilson as an outfall during emergencies. The state Department of Health has demanded that the WWTP have adequate secondary storage to retain effluent during emergencies and the ADC has committed to developing that storage on its lands. The City and County of Honolulu, however, has not signed a memorandum of understanding with the ADC to allow work to begin, according to ADC staff.

"We're waiting for the city. Maybe they don't want to commit themselves. We've been waiting for months," the ADC's Myra Kaichi told the board.

In the meantime, the ADC is proceeding with the necessary environmental studies. "We're just waiting for the MOU. Without that, we don't have a project," he said.

Kaichi added that without a finalized MOU, the state Department of Budget and Finance will not release the funds that have been appropriated for the Lake Wilson irrigation project.

"The ADC has been ready to proceed since July 2018. To date, we have not received a response from the City and County of Honolulu," Nakamoto stated last month in an email to *Environment Hawai'i*.

— **Teresa Dawson**

*For Further Reading*

"Water May Be Limiting Factor On Former Galbraith Ag Lands," December 2013;

"Bringing Water to Land ADC Acquired Near Whitmore Could Top \$11 Million," July 2015;

"Agribusiness Corporation Eyes Effluent to Irrigate Former Galbraith Estate Lands," October 2016.

All articles are available at [www.environment-hawaii.org](http://www.environment-hawaii.org).

## Land Board Denies Haseko Access for One'ula Drainage Work

After a series of setbacks, those seeking to protect limu resources in 'Ewa Beach got a reprieve at the December meeting of the Board of Land and Natural Resources. The board voted 6-1 to deny an easement and construction right-of-entry permit for a drainage project at One'ula Beach Park intended to allow more runoff from Kalo'i Gulch to enter the ocean.

For more than a decade, Haseko ('Ewa), Inc., has advocated for the drainage improvements. The Ocean Pointe developer originally intended to direct runoff from its residential project into the marina it planned to build, but was thwarted by the City and County of Honolulu over worries that the proposed drainage channel would interfere with a sewage outfall in the area. Instead, the city granted Haseko a Special Management Area use permit to alter a sand berm at the nearby beach park to allow stormwater to enter the ocean there.

However, when Haseko came to the Land Board in 2007 for a Conservation District Use Permit (CDUP) for the project, native Hawaiian cultural practitioners who gather limu from the area objected and initiated a contested case hearing. Following the recommendation of its hearing officer, the Land Board voted in January 2009 to deny Haseko's permit application because it felt that with the proper infrastructure, runoff could be contained within the 7,500-acre gulch.

Haseko tried again to obtain a CDUP in 2012, this time with a slew of new co-applicants: the University of Hawai'i-West O'ahu, the Department of Hawaiian Home Lands (DHHL), and the Honolulu Department of Planning and Permitting (DPP). The university and DHHL lobbied for

the drainage project because it would allow them to develop lands designated for runoff retention. Then-DPP director David Tanoue called the drainage project a "key component of continued development of Kapolei as a second city."

The board approved the permit, which was again challenged by limu gatherer Henry Chang Wo. After another contested case hearing, the Land Board voted in June 2014 to uphold its approval. Chang Wo, represented by the Native Hawaiian Legal Corporation, challenged the decision in 1st Circuit Court, which remanded to the board the matter of whether a supplemental environmental impact statement (SEIS) needed to be done because an endangered Hawaiian monk seal had been spotted in the project area.

Before the board decided on that issue, however, Chang Wo died and efforts to fulfill his request that the community group KUA replace him were unsettled at the time of the Land Board's December 2018 meeting. The courts had, however, recently denied efforts by the NHLC to stay work on the berm pending the outcome of its appeal.

Because the CDUP requires construction begin to begin in a year and be completed in three, Haseko sought the board's permission in December to access the land and begin work. According to a report from the Department of Land and Natural Resources' Land Division, the berm alterations would take about one month to complete.

### Questionable Need

Because the Land Board had issued a CDUP for the project and determined that an SEIS was not required, the granting of an

easement and right-of-entry permit might have seemed like a foregone conclusion to some. It wasn't.

When the board took up Haseko's request, board members immediately questioned the company's attorney, Yvonne Izu, about why the project was necessary, especially when Izu had informed the board

that Haseko's developments in the area had adequate stormwater storage.

"Why do you need this if you have storage?" Land Board chair Suzanne Case asked. Kaua'i board member Tommy Oi then said he would support lowering the berm only when it becomes necessary. He later noted that on Kaua'i, sand at river mouths is removed during emergencies, but is brought back afterward.

Board member Chris Yuen, however, said he thought there was no harm in lowering the berm now and added that parts of Ocean Pointe could flood if the project did not proceed. Lowering the berm by four feet would allow a 10-year storm to overtop the berm, he said.

"If it's greater than a 20-year storm, it will overtop the berm anyway," Izu added.

Board member Downing pointed out that Haseko's onsite storage could probably hold 10-year-storm flows.

"It may," Yuen acknowledged, before adding that such things are hard to determine with much certainty.

To Downing, the potential impacts of sea level rise also needed to be considered. He asked how many feet sea level needed to rise before the ocean starts flooding the area. According to the Land Division report, Haseko plans to lower the berm and raise the channel bed at One'ula Beach Park, resulting in a 500 x 100-foot grassy swale 4.5 feet above mean sea level.

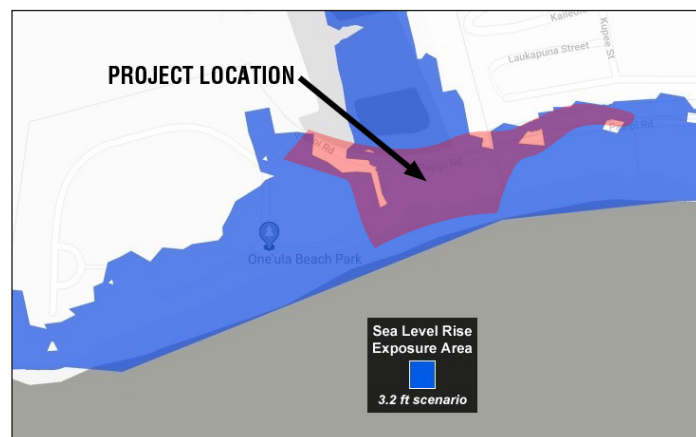
The Honolulu Climate Change Commission has advised that planning and development along the shoreline should take into account a rise in sea level of between 3.2 feet and six feet. Also, a recent study by University of Hawai'i researchers found that a four-foot rise in sea level at 'Ewa Beach would result in "enormous flooding" by groundwater and the ocean.

"If we start lowering things on our island for a 10-year flood ... there's more chance of ocean going in than flood going out," Downing said.

Yuen replied that in the coming decades, someone could put the berm back, and with sea level rise, "the berm will start to eat away, too."

Several members of the public, including KUA members, testified in opposition. KUA's Wally Ito testified that storm water was harmful to limu and that increased urbanization resulted in less recharge to the aquifer. KUA executive director Kevin Chang also questioned whether limu in the area would be safe to eat if it's exposed to all the heavy metals and motor oils that are carried in stormwater runoff.

*Continued to page 7*



*Kalo'i from page 6*

"Do the right thing for our resource. ... There are options other than cutting down the sand berm," Ito said.

"We believe you must ask yourself whether the applicant ... will not interfere with a public trust purpose," Chang later added.

Michael Kumukauoha Lee, who had opposed the CDUP a decade ago, suggested that the Land Board require all users of the outflow to "put in scrubbers so runoff doesn't affect the limu" and to require an SEIS. He said he would request a contested case hearing if the board did not agree to his recommendations.

*Effects on Limu*

With the CDUP-related matters still under appeal, NHLC attorney Alan Murakami argued that the Land Board was required to take a precautionary approach in evaluating Haseko's request. In the contested case hearing and court records, he argued, there had been no affirmative showing that the additional runoff resulting from the berm alteration won't harm the limu or its consumers.

*For Further Reading*

- "Limu Stewards Oppose Plan to Alter Sand Berm in 'Ewa", Board Talk, May 2012;
- "Board Grants Contested Case on Kalo'i Gulch Berm Project," Board Talk, October 2012;
- "Fight Over 'Ewa Drainage Project Continues as Limu Gatherer Challenges It in Court," October 2014;
- "Does the Kalo'i Drainage Project Need a New EIS?" EHextra, April 1, 2015;
- "Future of Kalo'i Gulch Case Hinges On Limu Group Replacing 'Uncle Henry,'" November 2015;
- "NHLC: It Would Be 'Illogical, Unfair' To Bar Substitution in Kalo'i Gulch Case," December 2015;
- "Circuit Court Dismisses Appeal Of Kalo'i Gulch Permit," November 2017.

All articles are free to the public at [environment-hawaii.org](http://environment-hawaii.org).

To this, board chair Case said she was confused by Murakami's arguments. "This is a request to grant an easement. ... The substantive issues have already been evaluated [in the CDUP hearings]," she said.

"No, they have not been," Murakami replied, noting that KUA has so far been barred from making substantive arguments before the board and is appealing that situation.

He also pointed out that Izu was the only person present to argue in favor of the easement and right-of-entry permit. No one from DHHL, DPP, or the university showed up to testify in support. What's more, Murakami said, Haseko has indicated it does not need the berm to be lowered to complete its development projects. Given that, "What is the rush to grant this easement?" he asked.

Yuen replied that he, too, wants the case to be heard on the merits and was disappointed that the court did not support the Land Board's decision to allow KUA to replace Chang Wo as the petitioner. However, he continued, the kind of storm that would cause runoff to overtop a lowered berm would also result in dirty water flowing into the ocean everywhere else. "Those were the findings at the end of the contested case hearing. I think they're well supported. You can challenge that. I hope you get the chance to challenge that [but] I don't think a day [of] water going into ocean, rapidly dispersed, is going to affect limu," he said.

Murakami conceded that Yuen's take on runoff effects was probably true from the standpoint of a casual beachgoer. "Our clients are dealing with actual consumption," Murakami pointed out, adding that the Land Board is required to find that the project poses no harm to the health of those who gather and consume limu from the area.

"Yes, there's reason for concern. Nobody likes pollution, [but] you're talking about absorbing toxins by a plant. A plant will not absorb toxins in a day," Yuen replied.

"If that is so, an expert should be able to say that," Murakami said.

Board member Downing also took issue with Yuen's characterization of the problem.

"I cannot sit here and listen to someone tell me or say that one hour of freshwater, two hours of stormwater, cannot destroy things," Downing said.

"No, I said the toxins would not be absorbed in an hour," Yuen interjected.

Even so, Downing continued that recent heavy rains in 'Aina Haina, where he lives,

resulted in thousands of dead shrimp and some dead octopuses on the beach.

"I've never seen so many mantis shrimp on my beach. That was just a few hours of fresh water," he said. As for limu, "the silt that's going to come down is going to strangle the limu. ... I'm not the scientist, but I saw it happen. The only limu that survives this is the gorilla ogo and the mudweed [both introduced species]," he said.

Yuen noted that the effects of runoff can differ from spot to spot, depending on how much mixing there is and how long the freshwater is in contact with the ocean floor. In the case of One'ula Beach Park, "we had this hearing, we had testimony, we had the findings ... that the storm runoff was not likely to harm the creatures," Yuen said.

Murakami noted that the board's decisions in this case have not been unanimous and said he hoped further evidence would convince the board not grant the permit and easement.

Board member Stanley Roehrig agreed with Murakami about the need to take a precautionary approach and made a motion to deny Haseko's request. He said lowering the berm should only be allowed if there is an emergency proclamation by the governor.

Yuen said he preferred to defer the matter pending a decision on the appeals by the court.

The rest of the board, however, seemed to side with Roehrig.

Before the vote, Izu made one last comment. "This thing about the impact on limu ... that was all part of the contested case. This board nevertheless approved the CDUP. I don't think this is the time to re-litigate these issues. If you would like to defer it because it's not needed now, that's the board's decision and something I could live with."

Downing seemed to oppose the project for reasons that went beyond the impacts to limu and its consumers. "The more people we get, the more resources we lose. Where is balance? I'm not for one side of the other. Yes, limu is important to me. I grew up on the beach. Development is important to me, but where is the balance? ... How much do we need to develop?" he said.

In the end, the board voted to deny the easement and right-of-entry permit.

"I think it's premature. The procedural issues haven't been worked out," Case said.

Yuen was the sole dissenter.

—Teresa Dawson



## BOARD TALK

Public Hearings to be Held  
On Fee Hikes at Small Harbors

When it comes to the state's small boat harbors, "It's kind of a chicken and egg or cart and horse thing. We can't repair these things without funding [and] these places need to be fixed up," explained Finn McCall of the Department of Land and Natural Resources' Division of Boating and Recreation (DOBOR) at the Board of Land and Natural Resources' December 7 meeting.

DOBOR has proposed a host of administrative rule changes that will raise harbor fees high enough to cover repair and maintenance costs, and bring mooring fees up to fair market rates as required by the state Legislature.

The agency first brought its rule package to the board in October, seeking approval to take the changes out to public hearings. Division administrator Ed Underwood explained that the state Legislature had amended the boating statute to require all fees for mooring in harbors be set in accordance with an appraised market value.

But when DOBOR proposed to do exactly that, it did not go over well.

"We've been getting calls of how ridiculous it might be, a 300 percent or 500 percent [increase]," said Maui Land Board member Jimmy Gomes.

Stanley Roehrig, a board member from Hawai'i island, added that he knew someone with a berth whose fee would go from \$74.16/month to \$180/month under DOBOR's proposed rules. "He's in his early 70s. A 245 percent increase. He's probably going to take his boat out of the water. ... I know a fair amount of these gentlemen. A lot of them are senior citizens ... tinkering

on their boat. These are makule (elderly) guys and you're going to raise their rate 300 to 500 percent. You guys are pupule (crazy)," he told Underwood.

Kaua'i board member Tommy Oi was less sympathetic. "You gotta realize, when you have a boat in a slip, it's a privilege. Like an airplane at an airport. It's not something that you're supposed to have. You have it because you want to have it. ... Even the boaters forget that. If you don't want [to pay] move out and let someone else get in there," he said.

Roehrig said that was a hard message to send to senior citizens.

Underwood explained that the fee hikes in general are intended to get the division to the point to where it at least breaks even. "By 2019, we are \$875,000 in the negative," he said, adding that DOBOR could spend the additional money from the new fees to tackle its \$300 million worth of deferred maintenance. Some of DOBOR's fees haven't been touched since 1994, he noted later.

At that October meeting, the board held off a vote on sending the rule package to public hearings, instead asking DOBOR for more details on its expenses, revenues, and repair costs. When the matter returned to the board in December, Roehrig questioned the logic behind charging more money for dilapidated or vandalized facilities. "You want to raise the rates for electricity. No more electricity," he said of one harbor that had its power system vandalized.

Similar to what McCall told the board, Land Board chair Suzanne Case said the board members were pointing out the

department's dilemma. "We have fees that haven't been raised in a long time ... It is a chicken and egg thing," she said.

Whether or not board members think the fee increases are fair or justified, they may not have much, if any, discretion to fiddle with DOBOR's recommended mooring fees, since they were based on the appraisal, member Chris Yuen argued.

"The law says we set the fees based on the appraisal. If the appraisal is \$11 a foot a month, that's what the fee is supposed to be," he said.

While Roehrig didn't disagree, he took issue with how the appraisal was done. He cited the appraisal, which stated that it "employed the hypothetical condition that the facilities are usable for their intended purpose although our site visit revealed catwalks under repair or construction, condemned or unusable."

During public testimony, boat owner Randy Cates argued that if DOBOR raised its fees as proposed, it would eliminate a lot of commercial fishermen and affect local seafood production, especially on the outer islands.

"You'll get yachts that sit [and are] used a few times a year, rather than the fishermen that catch fish that goes into the restaurants," he said. (One of DOBOR's more controversial proposals is to base mooring fees on slip length, rather than vessel length, which some have argued puts small boat owners at a disadvantage.)

Cates added that about 95 percent of He'eia Kea small boat harbor is used by commercial tour boats, which can carry 1,200 passengers per day. He said commercial operators charge \$140 for a four-hour tour, on the low end. If DOBOR decided to charge them \$3-5 a person to land at the harbor, that would generate \$1.2 million, he said.

Currently, DOBOR gets only 38 cents per person. "What the boating division is receiving from this large impact of tourism is out of balance. ... They overwhelm the harbor. We can't get a parking space," he said.

When asked by Yuen how he arrived at the 38 cent figure, Cates said he took the daily amount of allowable passengers, 800, assumed operations during six days a week

*Continued on next page*



Ala Wai small boat harbor in Waikiki.



and “just divided it. Quick math.”

Cates also complained that the commercial operators charge their customers a transportation fee from the hotel to the harbor and a smaller fee from the Kane'ohe Bay sandbar to the harbor. DOBOR only gets the small fee. “It’s unfair. Boating division knows it’s not fair,” he said.

Case said she was aware of the practice and added, “we are looking into it.”

Board member Sam Gon moved to approve the request to take the rules to public hearings, which he said was one of the best ways to explore the points that had been raised.

Referring to critical news stories in recent years alleging severe under-charging of lessees and permittees by the department, Oi added, “now it’s time to put up or shut up.”

While the way the money would be spent was not part of the rule package, board member Keone Downing said he had a problem with the fact that boating fees from individual harbors go into a general DOBOR fund and not back into that harbor. If there’s a way to start looking at ensuring that funds generated by a harbor goes to improving that harbor, “then excess can go to others ... then I can stand behind raising fees,” he said.

Board members Gomes and Roehrig said they thought the proposed increases were simply too high. “You have commercial fishermen that’s going to be by the wayside,” Gomes said.

“I would defer this until we can tailor [fees] to the various facilities around the state and focus on protecting our local fishermen,” Roehrig added.

Yuen, however, again referred back to the legislative directive. “Sometimes the Legislature tells us what to do and we have to do it. I think the Legislature told us appraise what these slips are worth and charge the people what the appraisal says. ... I think we can phase it in over a reasonable time period [but] we’re not supposed to decide, nah, we think this is a little too much for the people to bear. If it’s too much, we’re not going to fill the harbors,” he said.

In the end, the board approved Gon’s motion, although Roehrig and Gomes opposed it.

## ❖ ❖ ❖ Four Areas Opened To ‘Deep 7’ Fishing

The Board of Land and Natural Resources voted on January 11 to open up to bottomfish fishing four of its 12 bottomfish restricted fishing areas (BRFAs). A 2018 stock assessment of the seven main targeted bottomfish species by the Pacific Islands Fisheries Science Center found that the stocks were neither overfished nor subject to overfishing.

That was not the case a decade ago, when stock assessments suggested that some species of bottomfish were highly imperiled. In response, the Land Board voted to establish 19 BRFAs around the

off Poipu, Kaua’i; Penguin Banks south of Moloka’i; Hana, Maui; and Leleiwi, Hawai’i Island.

So why four and not all?

Some people are uncomfortable with the ACL being set at a 42 percent risk of overfishing, DAR’s Ryan Okano told the board. Also, the division lacks data on non-commercial take, which some estimate is as high as commercial take, he said.

“To the extent the concept is that it [the BRFA system] has been contributing to the recovery, you want to be careful about it and you want to monitor it,” added Land Board chair and DLNR director Suzanne Case.

Retired DAR biologist Alton Miyasaka, however, testified in favor of opening all of the BRFAs. All the science indicates the bottomfish stock is doing well and the BRFAs are merely a holdover from a time before joint federal and state regulation, he said, adding, “That time has passed. ... The BRFAs themselves have outlived their usefulness.”

Several members of the public, many of them commercial bottomfish fishers, echoed Miyasaka’s sentiments.

Fisherman Roy Morioka suggested that it was highly unlikely that the commercial catch this year would come anywhere near the ACL, since the fishery was well into the 2018-2019 season (which started in

September) and had only caught around 15 percent of its 492,000-pound limit. “We’re not gonna get even close. The governing factor primarily is weather,” he said.

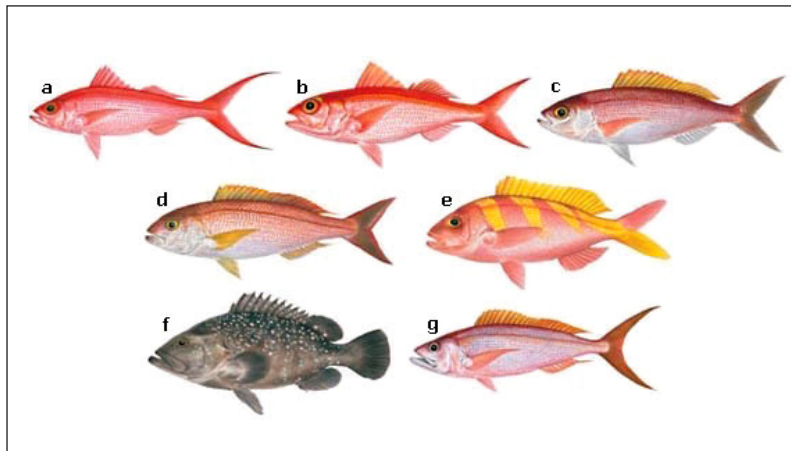
He added that by keeping the BRFAs, the state was killing the bottomfish fishery, because they force vessels to travel farther out to sea to catch fish. A small-boat guy would never be able to travel 20 to 30 miles to reach some of the good fishing banks, he explained.

With regard to concerns that a 42 percent risk of overfishing might be too high, Wespac’s Marlowe Sabater pointed out that the process by which the ACL is determined includes buffers and accounts for scientific and management uncertainty.

Even so, Case pointed to a 2014 paper on University of Hawai’i scientist Jeff Drazen’s evaluation of the effectiveness of BRFAs, which “repeatedly suggests BRFAs have positive effects. This is why I’m uncomfort-

*Continued on next page*

PHOTO: DEPARTMENT OF LAND AND NATURAL RESOURCES



The Deep 7 bottomfish species: a) ‘ula’ula koa’e or onaga (*Etelis coruscans*); b) ‘ula’ula or ehū (*E. carbunculus*); c) kalekale (*Pristipomoides sieboldii*); d) ‘opakapaka (*P. filamentosus*); e) ‘ukikiki or gindai (*P. zonatus*); f) hapu’u (*Epinephelus quernus*); and g) lehi (*Aphareus rutilans*).

Main Hawaiian Islands.

In addition to the state’s actions, the National Marine Fisheries Service later began setting annual catch limits (ACL) based on recommendations from the Western Pacific Fishery Management Council (Wespac). The council has set the current limit at 492,000 pounds – up from 306,000 – at a point where scientists predict there is a 42 percent chance that, if the limit is reached, the stocks would be subject to overfishing.

The council and bottomfish fishers have argued for years that the state should abolish all of its BRFAs because they believe NMFS’s ACL provides sufficient protection of the stock.

In light of the new stock assessment, the Department of Land and Natural Resources’ Division of Aquatic Resources (DAR) recommended that the board open four of the 12 remaining BRFAs — those

able with the recommendation to open up all of them," she said.

Sabater said that Drazen's work had been reviewed by Wespac's Scientific and Statistical Committee, which concluded that there wasn't enough baseline data in that study to justify a conclusion that BRFA's have positive effects.

"So there's uncertainty either way," Case said.

"I'm saying the uncertainty ... has all been accounted for," Sabater replied.

Land Board member Chris Yuen suggested that the question of the effectiveness of BRFA's could be answered by beginning a study now of the remaining ones.

Sabater agreed that was possible. DAR planned to increase the resolution of its monitoring grids, which would provide higher resolution data to set up a baseline, he said.

Yuen made a motion to approve DAR's recommendation to open only four. However, he added, "I'm not wedded to keeping the others. This issue should be re-examined at some point." He recommended that DAR report back in three years, which is when an updated stock assessment is expected to be issued. At that time, the board would consider any recommendation DAR had regarding the other BRFA's.

The board unanimously approved the motion.



## Kaneohe Yacht Club Keeps Permit, For Now

The Kaneohe Yacht Club (KYC) in Windward O'ahu has been operating for nearly a century, and in that time, its members have had the exclusive use of the piers it has built on state submerged land. That may soon change, depending on the type of long-term disposition the Board of Land and Natural Resources ultimately approves for the club's improvements.

At the board's January 11 meeting, the Department of Land and Natural Resources' Land Division proposed canceling the club's month-to-month revocable permit for recreational boat pier purposes, which had been annually renewed since 1977 with the same rental amount of \$177.89 a month until 2016. That year, the Land Board raised the rent by 1.5 percent to \$183.23 a month.

In 2016, a revocable permit task force identified the club's permit as one that should be converted to a long-term disposition, such as a lease or easement. Easements for encroachments on state submerged lands are typically non-exclusive, meaning that the public is allowed onto any private improvements within the covered area.

While yacht club representatives expressed concern about this condition, the Land Division recommended that the Land Board convert the club's permit to such an easement anyway. "If KYC chose not to convert the RP into a long-term disposition, staff would have to recommend the board terminate RP 5407 and demand KYC remove all improvements on state lands," a staff report stated.

The report also noted that the area covered by the permit, 8,014 square feet, is, inexplicably, nowhere near the total area being used, and the club appears to have also made a number of unauthorized improvements, including two finger piers, a boat ramp, a floating pier, and a walking plank. Based on a November 2018 inspection, the division estimates that the various authorized and unauthorized improvements cover about 21,000 square feet.

The division recommended the issuance of a 55-year easement. The division would require a one-time payment, the amount of which would be determined by an appraisal of fair market value.

Until the easement was finalized, the permit would continue at an increased rent of \$1,000 a month or 10 percent of gross revenues from the land, whichever is greater, starting March 1.

Board member Keone Downing suggested that the division require more than just one payment for the easement, since the club's slip fees will probably change over time.

Land Division administrator Russell Tsuji said that for leases, rent adjustments are normally done after 10 years.

Board member Tommy Oi asked why the permit was never turned over to the DLNR's Division of Boating and Ocean Recreation (DOBOR).

"Because it's not a public harbor. ... It's submerged lands," replied board chair and DLNR director Suzanne Case.

"Cause we get everything nobody wants," Tsuji added, which drew a lot of laughs.

Years ago, the department legitimized a slew of private, illegal piers scattered across Kaneohe Bay through a limited amnesty program. The yacht club, however, failed to take advantage of it before the program ended, land agent Barry Cheung told the board.

Board member Stanley Roehrig took issue with the division's apparent willingness to forgo the rent lost due to failures over the years to make sure the permit reflected the actual area being used. The pier had been extended repeatedly, but "you folks never collected any money from that. They were charging people, they were collecting money," he told Tsuji.

Tsuji replied that his division wasn't involved in any expansion of the area used, but the Office of Conservation and Coastal Lands was. Conservation District Use Permits were issued for some of the work.

"Nobody collected the money for using the water area for all these years. How could it slip through the cracks? Nobody caught it until now," Roehrig complained.

"They raised the rent in 2016," Case noted.

"Excuse me, 2016 ... 29 years we never collect money. So what are we gonna do? We just waive it?"

Case pointed out that the division never charged the club and said the thing to do was simply charge fair market going forward.

"Arguably, the yacht club could say we waived [the rent]," Tsuji said.

Board member Chris Yuen estimated that the division probably didn't lose out on that much rent, maybe \$10 a month.

"A more basic question: What are we calling the easement area? Is it just the piers and catwalks or does it include the area that's shaded by the boats?" Yuen asked.

Cheung replied that leases or easements for a dock or pier are usually confined to the footprint.



An unauthorized floating pier at Kaneohe Yacht Club.



"You raise a good question. We don't have anything in the entire state of Hawai'i like this and maybe it should be under DOBOR," Tsuji said.

Yuen did not comment on that, but said that the state does charge boats to moor.

"If these boats, if they were moored in the ocean in a harbor, the state would charge them a fee. It wouldn't be the value of the block that got dropped into the ocean," he said, adding that he wasn't sure basing the rent on the pier's footprint was a valid approach.

Board member Downing also pointed out that the club doesn't just control what happens on the piers, but also uses the water between the piers where the boats maneuver. "Maybe they let the public come in. I'd like to talk to the yacht club. ... We gotta be careful what we ask the appraiser to appraise," he said.

Case said she thought the board should defer the matter, given all the questions board members raised, and KYC commodore Frederic Berg agreed.

"We probably should step back," he said.

While some board members were looking to treat the club's facilities like those at a public boat harbor, he said, "I look at it as just another pier in Kane'ohe Bay, like the private piers. ... Much like a homeowner who has a pier in front of their house, we have a pier in front of the club. ... We don't make a profit. We set the rates to recover the costs. ... Some of us live on the bay. The yacht club is our access."

Board member Oi asked whether the club would be agreeable to transferring jurisdiction from the Land Division to DOBOR.

"I have no idea of what the impacts would be," Berg replied.

Referring back to what Land Division proposed, Downing asked, "Can the public walk on there and go fishing?"

Berg said he wasn't sure whether the revocable permit allows that, but any boat that needs help or assistance would have safe harbor, even if they were non-members.

Downing repeated, "Can the public go onto the pier and fish?"

Tsuji reminded Berg and the board that the easement being proposed was for non-exclusive use.

"Are you clear that's what's being proposed?" Case asked Berg.

"Yes," he replied.

The board then voted to increase the permit rent and require the submission of a statement of gross monthly revenues. It deferred action on the easement. —*T.D.*

## Wespac Meetings on Maui Cost Taxpayers Nearly \$300,000

At the June 2018 meeting of the Western Pacific Fishery Management Council, the council was expected to greatly increase the allowable annual catch for several bottomfish species in light of a recent assessment that determined that the Main Hawaiian Islands stock is far healthier than past assessments indicated. The planned Fisher's Forum event, typically held in the evening after the first day of each council meeting, was slated to focus on "Hawai'i's Bottomfish Story."

Since most of the state's commercial bottomfish fishers are based on Maui, it was perhaps understandable that the council would hold its June meeting and a joint standing committee meeting there. (Standing committee members are also council members.)

But why would the council also hold its Scientific and Statistical Committee (SSC) meeting there? The general public rarely, if ever, attends SSC meetings and the SSC is a large — and, therefore, expensive — body to move around. Even so, for some reason, the council has decided in recent years to start holding its SSC meetings on outer islands when they precede a council meeting that is going to be held abroad. The one before the October 2018 council meeting in Guam and Saipan was held in Hilo, on Hawai'i island. The October 2017 SSC meeting held before the council's meeting in American Samoa was held

in Lihue, Kaua'i. Previous to that, SSC meetings were held at the council's office in Honolulu.

With regard to the June 2018 meetings, the venue could hardly have been more swanky: the Wailea Beach Resort Marriott, where a basic garden-view guest room in June costs \$495 a night for a member of the general public. And that doesn't include the daily resort fee of \$35 for internet, bike rentals, intro scuba, Mai Tai drinks, discounts, and the like.

Discounted room rates are available for government employees, but it's unclear how much meeting participants paid for their individual rooms. In response to a July 3 Freedom of Information Act request, the National Oceanic and Atmospheric Administration (NOAA) provided *Environment Hawai'i* with an invoice, dated July 3, for use of the hotel from June 4 through June 18. The invoice does not itemize any expenses and merely includes a brief summary indicating how much the hotel charged for rooms, meeting space, and miscellaneous expenses.

The June meetings spanned seven days — June 6-8 for the SSC and June 10-13 for the standing committees and council — but the council incurred expenses at the Marriott over 15 days, the invoice suggests. While council staff may have needed a day or two preceding the meetings to prepare for them, it's unclear what expenses were



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incurred over the five days following the council meeting's end and why.

Total room costs paid by Wespac came to \$105,418.03. The meeting space cost \$41,132.01. Miscellaneous expenses came to \$7,334.53. In all, Wespac spent \$153,884.57 at the Marriott. Had the meeting been held on O'ahu, the SSC would likely have met in the council office, and the council would have met at its usual venue, the Fuller Hall at the Laniakea YWCA, which costs \$150/hour to rent. Four full days of council and committee meetings would cost a mere \$14,400 at that rate, if charges covered 24-hours a day.

Wespac has not yet provided the names of those whose rooms it paid for or indicated how long they stayed, but the total number of appointed council members, SSC members, Advisory Panel members, and Wespac staffers who attended the meetings, as well as the meeting's transcriber, is 42.

In addition to the Marriott costs, Wespac paid out \$41,001.84 for airfare, \$5,696.39 for ground transportation, \$26,943.43 in per diem expenses, and just under \$34,000 in compensation to appointed council members, SSC, and AP members.

The nine SSC members who were not government employees received compensation. Each of them received \$1,500, except for chair James Lynch, who received \$2,000. The six council members not employed by the government also were compensated. Each of them received \$3,032.50, except for council member Michael Goto, who received \$2,426.

Finally, 11 Advisory Panel members attended the Maui meeting, even though no Advisory Panel meetings were held on the island. Only AP members Judith Guthertz



PHOTO: EKREM CANLI

Wailea Beach Resort Marriott

and Felixberto Reyes, from Guam-CNMI, and Gary Beals, from Hilo, received a stipend of \$800 to attend the council meeting.

Together with the \$7,603.20 paid to the Rainbow Dining Room in Kahului, where the Fisher's Forum was held, the council paid a grand total of \$269,087.95 for the Maui meetings.

#### NOAA Expenses

In early October of last year, *Environment Hawai'i* submitted a second FOIA request to NOAA, seeking more detailed information about the Wailea expenses, as well as similar data on the most recently held council and committee meetings in Honolulu, for comparison purposes. The request also included information on travel expenses incurred by Honolulu-based employees with the National Marine Fisheries Service Pacific Islands Regional Office (PIRO) and the Pacific Islands Fisheries Science Center (PIFSC) who attended the meetings.

In November, NOAA provided a spread-

sheet showing some of its PIFSC and PIRO employee travel expenses, as well as sign-in sheets from the meetings.

Nineteen employees from PIRO and PIFSC attended the Maui meetings. Their airfare and ground transportation costs totaled \$6,721. Only a handful of them stayed overnight.

Although *EH* did not ask for room, meal or incidental expenses, the federal per diem rate for Maui is \$269 per night for lodging and \$160 per day for meals and incidentals. (By comparison, O'ahu per diem lodging rates are \$177 per night and \$138 per day for meals and incidentals.)

Based on those Maui rates, the PIFSC and PIRO employees could have incurred an additional \$10,769 as a result of their travel to Maui.

A handful of members of NOAA Fisheries' Office of General Counsel and Office of Law Enforcement also attended the meetings. At similar rates to the other federal employees, their attendance would have raised total NOAA employee costs to more than \$20,000.

— T.D.