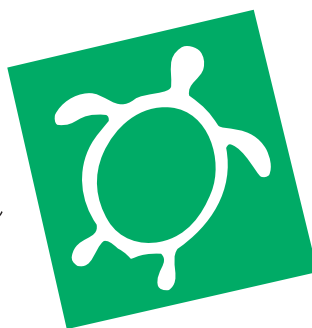


Environment



Hawai'i

a monthly newsletter

Full Court Press

Work may be stalled at the 1,000-acre site where the Villages of 'Aina Le'a is to be built. But when it comes to legal action, whoa, Nellie!

No fewer than four cases are ongoing at the moment. Two before the 9th Circuit Court of Appeals grew out of the Land Use Commission's vote in 2011 to revert the land to the state Agricultural district.

Meanwhile, in federal bankruptcy court in Honolulu, 'Aina Le'a, Inc., is hoping to win over its secured creditors to its reorganization plan. A hearing on that plan is set for later this month.

Finally, in what seems to be a Hail Mary pass, the unsecured creditors and 'Aina Le'a itself have teamed up in an attempt to reopen a case in state court that was subject to a final, unappealed judgment six years ago.

'Aina Le'a's Plan to Exit Bankruptcy Is Derided by Major Secured Creditors

"There comes a time when even the most optimistic real estate developer must concede that what lies at the end of the rainbow is a pile of debt, not a pot of gold."

With that statement, attorneys for Bridge 'Aina Le'a, LLC, opened their devastating critique of a reorganization plan that was submitted last fall by 'Aina Le'a, Inc., which is seeking to work its way out of bankruptcy and move forward with development of more than 1,000 acres it owns in the South Kohala district of the Big Island.

Bridge 'Aina Le'a is 'Aina Le'a's largest creditor, claiming that as of December 1, the debt stood at \$29,382,747, "with fees and costs continuing to accrue." The initial interest rate was 12 percent; that doubled when the loan went into default.

A decade ago, the two companies seemed joined at the hip in their efforts to move forward with the development of a planned community on the Kohala Coast of the Big Island. In 2009, when Bridge was under pressure to show it was legitimately performing on its commitments to move forward with development of the Villages of 'Aina Le'a, it brought forward 'Aina Le'a's predecessor company, DW Aina Lea Development, LLC, as the eventual purchaser of the land and builder of the infrastructure and homes.

In recent years, though, the two companies have been at loggerheads. And the animosity between the companies seems only to have grown as 'Aina Le'a attempts to haul itself out of bankruptcy and move forward with development of its land, heavily burdened by debt.

Starting March 13, 'Aina Le'a's reorganization plan will be subject to a hearing in federal bankruptcy court in Honolulu. Overcoming Bridge 'Aina Le'a's objec-

tions is only the first hurdle the debtor faces. Other large, secured creditors have indicated their dissatisfaction with the reorganization plan. A Canadian company, Romspen Investment Corporation, provided credit to 'Aina Le'a of nearly \$10 million, with 'Aina Le'a agreeing to a late charge of 5 percent of the overdue amount as well as to an interest rate of 17.5 percent on delinquencies. A Chinese investor, Libo Zhang, loaned 'Aina Le'a \$6 million. Both Romspen and Zhang have expressed their displeasure with the reorganization plan 'Aina Le'a submitted last fall.

Since then, 'Aina Le'a has revised its reorganization plan, with the latest iteration submitted to the court on January 2.

But that document would seem, on its face, to do little to address the concerns noted in the replies of Bridge, Romspen, and Zhang to the earlier plan.

Land Use Action Plan

At the heart of 'Aina Le'a's proposal to emerge from bankruptcy is what it calls its Land Use Action Plan. The company faces a number of obstacles before it can move forward with development, including the need to prepare and have approved a supplemental environmental impact statement (SEIS).

Yet 'Aina Le'a claims that it has Hawai'i County Planning Department support for a plan that would allow it to begin building – and selling – some of the residential units before that SEIS process was complete. Proceeds from those sales would then pay off creditors, who would be made whole in six to 10 years' time.

The construction, 'Aina Le'a says, could be done by obtaining "project district

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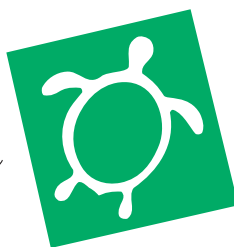
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March 2019

NEW AND NOTEWORTHY

Midway Mouse Plan OK'd: The Fish and Wildlife Service has released a final environmental assessment that clears the way for the eradication of mice from Midway Atoll's Sand Island by broadcasting the rodenticide Broadifacoum.

One of the biggest challenges facing the eradication effort is how to deal with the island's population of Laysan ducks, an endangered species highly sensitive to the toxin. To mitigate impacts to the ducks, the plan is to catch and remove them to nearby Eastern Island and hold them in captivity or cut their flight feathers until such time as the bait with the rodenticide, as well as the insects that have taken the bait, have lost their toxicity. That period could last as long as 22 months, according to timetables published in the biological opinion released by the service on January 30.

The final EA contains information unavailable in the draft, including a table that provides what the FWS terms allowable

estimates of the number of ducks that could be injured or killed. As many as 390 adult ducks – 65 percent of the total number of adults – could be injured in connection with the eradication program, with 198 (33 percent) dying. Sub-adults and ducklings would also take substantial hits, with as many as 135 and 60, respectively, being killed. Also, there would be no breeding for two years.

Cost of the project, to be undertaken by contractor Island Conservation, is placed at between \$4.5 million and \$5 million. The current timetable calls for the rodenticide to be applied starting in July.

The final EA and associated documents may be viewed at: <https://www.arcgis.com/apps/MapSeries/index.html?appid=c7bbcf5c95804186902ef938fco20f2>. (The documents are not available on a government website.)

Environment Hawai'i reported on the draft EA in our May 2018 edition, available at our website environment-hawaii.org.

Cert Granted: The U.S. Supreme Court has agreed to take up the appeal of Maui County from a 9th Circuit Court of Appeals finding that the county's Lahaina wastewater treatment plant was violating the Clean Water Act. The question the court will be addressing is this: "Whether the Clean Water Act requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater."

The appellate court ruled last March that the county-owned facility had been violating the Clean Water Act practically since the day

it began operations in the early 1980s. The plant injects between 3 million and 5 million gallons of treated wastewater each day into deep injection wells, where the effluent is mixed with groundwater and is transported to the ocean.

Effluent from the Lahaina facility has long been suspected of causing algae blooms and other adverse impacts to corals and other marine life off Kahekili Beach, popular with tourists and residents alike.

The Supreme Court will probably not schedule oral arguments until its next term begins in October.

The plaintiffs in the 2012 complaint against the county that began the litigation are the Hawai'i Wildlife Fund, Sierra Club-Maui Group, Surfrider Foundation, and West Maui Preservation Association, all represented by Earthjustice.

(*Environment Hawai'i* has published many articles on this subject, going back to 1992. All are available online at www.environment-hawaii.org.)

Speaking of Earthjustice: Last month, the environmental law firm announced that Isaac Moriwake will fill the vacancy left by former managing attorney for the Mid-Pacific office, Paul Achitoff. Achitoff retired earlier this year.

For more than a decade, Moriwake has successfully fought for stream restoration on behalf of community groups such as Hui o Na Wai Eha, Maui Tomorrow, and Po'ai Wai

Ola. He's also been a strong renewable energy advocate, representing the Hawai'i Solar Energy Association in dockets before the Public Utilities Commission, among other things.

"When I joined Earthjustice over 16 years ago, I would never have dreamed of one day leading our team in Hawai'i. So I can't even say this is a 'dream come true.' It's been one long wave, and I'm just happy to keep riding it," Moriwake stated in a press release.

PHOTO: EARTHJUSTICE



Isaac Moriwake

Environment Hawai'i

190 Keawe Street, Suite 29
Hilo, Hawai'i 96720

Patricia Tummons, Editor
Teresa Dawson, Managing Editor

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Environment Hawai'i
190 Keawe Street, Suite 29, Hilo, Hawai'i 96720.
Telephone: 808 934-0115.
E-mail: ptummons@gmail.com
Web page: <http://www.environment-hawaii.org>
Twitter: [Envhawaii](https://twitter.com/Envhawaii)

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Quote of the Month

"We really have our two boxes: leases and the RPs [revocable permits]. The leases are hard and the RPs are really easy. Maybe we need another box."

— Chris Yuen, Land Board

A Short History of 'Aina Le'a Development

Efforts to develop about 3,000 acres of land in South Kohala go back decades. The most recent chapter in the land's history starts in 1987, when Signal Puako, a subsidiary of Signal Landmark Properties – itself a subsidiary of The Henley Group – petitioned the Land Use Commission to put around 1,100 acres of the parcel it owned along Queen Ka'ahumanu Highway into the Urban land use district.

The urbanized land would form the center of a larger planned community, including the 1,900 acres of surrounding land still in the Agricultural district. The project would include 2,700 housing units, with 30 percent of them to be made affordable to families earning from 80 to 120 percent of the area median income and 30 percent more affordable to families with incomes from 120 to 140 percent of the median income. In other words, 60 percent of the units would be classified affordable by Hawai'i County standards.

Final approval of the redistricting petition was given by the LUC in January 1989. With the exception of a 40-acre buffer running alongside Queen Ka'ahumanu Highway, the parcel was now in the Urban land use district, opening the door to development of a full-blown community.

In July 1991, a new owner – Puako Hawai'i, a partnership of Signal Puako and Japan-based Nansay Hawai'i, Inc. – obtained an amendment to the original plan. Now there would be two golf courses and fewer homes: 970 apartments and around 580 lots intended for single-family residences. At least 1,000 units would still have to be affordable under the amended LUC order.

The collapse of the Japanese “bubble” in the early 1990s sank Puako Hawai'i's plans to develop the Kohala property and several other Nansay ventures around the state.

In 1999, Bridge acquired the 3,000 acres for \$5.2 million. Six years later, it asked the LUC to ease the affordable housing requirement, which the LUC did, reducing it to 20 percent of the total number of housing units built – but requiring, in light of the stalled development – that the 385 affordable units be completed and ready for occupancy by November 17, 2010. At the time, Bridge stated that it was likely the units could be finished in three years but, in an excess of caution, the LUC gave it five years.

As the deadline approached, the LUC was growing concerned that the deadline would not be met. In late 2008, with no work having begun on the housing, the commission voted to issue an order to show cause (OSC) to Bridge, requiring the company to set forth its plans to comply with the housing condition or risk losing the Urban land use designation.

In early 2009, Bridge introduced to the LUC DW 'Aina Le'a Development, LLC (DWAL), which it said would be developing the affordable housing. The LUC backed off the order to show cause, giving the new company a chance to show a good-faith effort to move forward on the project by completing at least 16 units of the affordable housing by March 31, 2010.

DWAL took title to 61 acres of the Urban-designated land in a remote corner of the property and proceeded to pour

Continued on next page

For Further Reading

Environment Hawai'i has reported extensively on the 'Aina Le'a development. Here are some of articles published:

- “Two Decades and Counting: Golf ‘Villages’ at Puako Are Still a Work in Progress,” March 2008;
- “After Years of Delay, LUC Revokes Entitlements for Bridge ‘Aina Le'a,” June 2009;
- “Under New Management, ‘Aina Le'a Is Given Yet Another Chance by LUC” and “Superfund Site, Failed Casino Project in History of New ‘Aina Le'a Developer,” October 2009;
- “Office of Planning ... ‘Aina Le'a Has Not Met, Cannot Meet LUC Deadlines,” June 2010;
- “‘Aina Le'a Seeks Two-Year Extension of Deadline for Affordable Housing,” October 2010;
- “LUC Takes Another Step Forward in Reversion to Ag of ‘Aina Le'a Land,” April 2011;
- “Judge Halts Work at ‘Aina Le'a and Orders Supplementary EIS,” February 2013;
- “Supreme Court Rejects Most Findings of Lower Court in ‘Aina Le'a Appeal,” January 2015;
- “‘Aina Le'a Makes \$200 Million Claim Against State over Stalled Development,” April 2017;
- “\$1 Million Settlement of ‘Aina Le'a Case Is Rejected in Final Days of Legislature,” July 2017;
- “As Its Creditors Close In, ‘Aina Le'a Files for Bankruptcy Court Protection,” July 2017;
- “‘Aina Le'a Controversies on Three Fronts: Federal Court, Bankruptcy Court, and County,” May 2018



An artist's rendering of the townhouses.

Bankruptcy from page 1

zoning” for the area proposed for affordable housing (Lulana Gardens) and the adjoining Ho’olei subdivision, proposed for single-family residences. Together, about 61 acres of land are involved. At the same time, the County Council would need to amend the zoning ordinance that authorized the entire project back in the 1990s, in order to remove the 61 acres from the “ambit of the ordinance,” as ‘Aina Le’a phrases it.

Work on the two projects could commence, the company says, on the basis of a 2010 environmental impact statement—the same EIS that was deemed inadequate when challenged by the Mauna Lani Resort Association in a state court action and which resulted in the determination that a supplemental EIS would need to be done.

“The project district application will be supported by the existing FEIS [final environmental impact statement],” completed in 2010, ‘Aina Le’a says, “with the understanding that ‘Aina Le’a “will be concurrently preparing an SEIS for the project.”

But a confounding factor is the determination by Hawai’i County that the SEIS would need to include not just the lands in the state Urban district owned by ‘Aina Le’a, but also the surrounding 1,900 acres in the Agricultural district owned by Bridge ‘Aina Le’a. The original development plan envisaged a unified community that covered all 3,000 acres, with shared infrastructure and services.

Now, though, ‘Aina Le’a “asserts and steadfastly maintains that its project is separate and independent from any potential development by Bridge on its adjacent land and is in no way a segment of any alleged

History from page 3

concrete pads and start work on several multi-unit buildings.

When the March deadline rolled around, though, the 16 units were nowhere near complete. A few had interior finishes and one had been decorated as a display unit for prospective purchasers. But even the finished units were a far cry from inhabitable. There was no approved wastewater disposal system. Electricity was from generators, not power lines. Water came from tanks. No paved road linked the buildings to the highway.

The LUC then reinstated the OSC and on March 10, 2011, issued its order to revert the 1,060 acres of Urban land to the Agricultural land use district.

Since then, the decision has been the subject of multiple lawsuits. — **P.T.**

larger undertaking.”

The land use plan anticipates proceeding with construction even as the supplemental EIS is being prepared — an approach that, ‘Aina Le’a says, “appears permissible under the Hawai’i County Code given [‘Aina Le’a’s] 2010 FEIS.” Although that document was challenged, it “substantively satisfies the requirements for processing the project district application. The project district application will be supported by the 2010 FEIS with the understanding that the FEIS will be supplemented prior to final action on the project district application.”

One of the major unresolved issues is the provision of potable water. Originally, ‘Aina Le’a proposed to use water from wells on land owned by Bridge, but that is no longer possible. Now, ‘Aina Le’a says, it will seek “to develop ... in coordination with the state Department of Land and Natural Resources and the County of Hawai’i Department of Water Supply the necessary water source, storage, and transmission facilities to provide an adequate supply of potable water to the project.”

‘Misleading, Speculative, Illusory’

The latest reorganization plan differs little from the one that has drawn fire from the other secured creditors, which Bridge attorneys characterized as “so haphazardly constructed, it is difficult to decide where to begin critiquing its deficiencies.”

First, they write, the claim that the current value of ‘Aina Le’a’s land is more than \$250 million appears to be “pure fiction” while the plan to obtain construction financing of more than \$100 million is “illusory.”

The proposal to pay off debt by selling units in the Lulana Gardens development consists of “a handful of spreadsheets with numbers plugged in seemingly at random. There are no studies, market data, absorption analysis, or any credible narrative explaining how and why the Lulana Gardens townhomes could be sold in the timeframes projected. ... There is no detail regarding utility costs, or even a credible explanation of when and how utilities will be brought to the property. ... It’s not clear how the Lulana Gardens project could possibly bring in \$29 million in revenue in ‘year one,’ since the supplemental EIS must be completed and approved, the Queen Ka’ahumanu intersection must be constructed, and the utilities must be brought to the property, before any sales could close.”

As to the county’s presumed consent to this development scheme, Bridge is simi-

larly skeptical. “There is nothing anywhere in the [plan] that the county supports or agrees with this land use compliance plan, or that the county thinks it is feasible and viable. That appears to contradict statements that ‘Aina Le’a, Inc.’s attorneys have made to this court, that ‘Aina Le’a, Inc., was working ‘magic’ with the County of Hawai’i Planning Department and that the County mayor was involved with and supportive” of the company’s plan.

Marguerite Fujie, attorney for Romspen, noted that the plan had “no confirming evidence that critical third parties, including the County of Hawai’i, the Mauna Lani Resort Association, and the State Circuit Court, are amenable to the proposed course of action.

Going Forward

If the secured creditors block ‘Aina Le’a’s path to reorganization, the company has indicated it may proceed to take legal action against certain of them.

In an attachment to the reorganization plan, ‘Aina Le’a identifies “retained causes of actions,” including against the “statement [sic] of Hawai’i,” based on the Land Use Commission’s decision to revert the Urban land into the state Agricultural district. Also, it threatens to take legal action against its former legal counsel, the law firm of McCorriston Miller Mukai MacKinnon, which now represents Romspen.

Against Bridge, it threatens legal action related to ‘Aina Le’a’s purchase of the bulk of the land, citing, among other things, “fraudulent inducement, ... breach of contract, misrepresentation, tortious interference, and stay violation claims.”

The creditors are now being asked to approve ‘Aina Le’a’s proposal to move forward with development and pay off its debt. Should they withhold their approval, it is still possible for the bankruptcy judge to decide to allow it, in what is known as a “cram down,” if the judge deems there is sufficient reason to believe it will work.

Should a reorganization plan not be approved, the creditors will have little recourse outside of court. Both Zhang and Romspen had initiated foreclosure actions at the time ‘Aina Le’a filed for Chapter 11 bankruptcy protection in 2017.

If ownership of the land does end up shared among Bridge, Zhang, Romspen, and the 1,000-plus Asian investors who bought into ‘Aina Le’a’s “undivided land fraction” offering, it is unclear just how any development could occur on the property. — **Patricia Tummons**

Unsecured Creditors Ask Court to Reopen EIS Lawsuit Adjudicated Six Years Ago

In late 2010, DW 'Aina Le'a Development, LLC, published a final environmental impact statement for its planned series of villages on about 1,100 acres of land in the Hawai'i island district of South Kohala, just mauka of the Mauna Lani Resort.

The Mauna Lani Resort Association (MLRA), unhappy with several aspects of the proposed development, timely challenged the final EIS with a complaint in 3rd Circuit Court.

One of the major points in the challenge was the fact that the EIS considered the project's impacts only on the land within the state Urban land use district, even though the EIS preparation notice had included both DW 'Aina Le'a's land as well as the surrounding 1,900 acres in Agricultural land that Bridge still held title to.

All 3,000 acres had been part of the original development plan presented to the Land Use Commission.

This, the MLRA argued, amounted to improper segmentation of the project. Named as defendants were not only DW 'Aina Le'a Development, LLC, but also Hawai'i County and its planning director, at the time B.J. Leithead-Todd.

Unbeknownst to the county when it signed off on the final EIS, 'Aina Le'a and Bridge had entered into a joint development agreement (JDA), which provided for most of the services and infrastructure that 'Aina Le'a needed for its development to eventually be used as well by Bridge when it got around to building on the Agricultural land. Yet the EIS made no mention of the JDA. Its content was disclosed to the county only in December 2012, at which time the county ceased to defend its previous acceptance of the EIS and instead asked the judge to remand the matter to the county for further proceedings.

In February 2013, Judge Elizabeth Strance ruled that the county Planning Department had erred in accepting the final EIS and granted the county its request that it be allowed to require the developer to prepare a supplemental environmental impact statement (SEIS) dealing with all 3,000 acres. Until that SEIS was final, all development on the land was tolled, Strance stated in her order, which 'Aina Le'a did not appeal.

Now, though the committee of unsecured creditors of 'Aina Le'a, Inc., are asking that the court reopen the matter. On

February 1, Ted N. Pettit of the law firm Case Lombardi & Pettit, representing the committee, filed a motion in 3rd Circuit Court seeking to intervene in the lawsuit and also to substitute the 'Aina Le'a, Inc., for the original defendant, DW 'Aina Le'a Development.

Both 'Aina Le'a's reorganization plan, presented to its creditors, as well as court filing by the unsecured creditors' committee state that "regular meetings" have been held with county representatives, the committee's land use counsel, and representatives of 'Aina Le'a. In an addendum to the motion, Robert Wessels, the chief executive officer of 'Aina Le'a, also says he has "been working with representatives" of the Planning Department and other agencies on a plan "to resolve the tolling order" of Judge Strance. On February 6, Pettit disclosed to

original party in the case – DW 'Aina Le'a Development, LLC – it is not necessary to substitute the current director of planning for Leithead-Todd, even though "that office is currently held by Duane Kanuha."

Kanuha has not served as planning director since 2016. Although he was recently named deputy director of the department, the current director, who has held the job since December 2016, is Michael Yee.

Kanuha has, however, been involved in talks with 'Aina Le'a since his return to the Planning Department. Yee confirmed to *Environment Hawai'i* that Kanuha is in regular discussions, on the order of once a week or so, with attorneys for the company.

At the time of the LUC vote to revert the 'Aina Le'a land to the Agricultural district in 2011, Kanuha served as a commissioner. He was one of just two members who did not support the majority decision. Still, Kanuha is named as a defendant in the Bridge 'Aina Le'a lawsuit in federal court, which is seeking damages from individual commissioners as well as the state.

"Judgment has been entered and not appealed.... There is no ongoing proceeding in which to intervene."

— **MLRA Attorney Randy Vitousek**

the bankruptcy court that Dennis Lombardi was the attorney involved in negotiations with the county on behalf of the unsecured creditors – whose interests are so closely aligned with those of 'Aina Le'a as to be indistinguishable. (Pettit acknowledges to the bankruptcy court that he is proposing "a unique coordination between the debtor and the [unsecured creditors' committee]," but to justify this, he refers to "commentary found in Collier on Bankruptcy," a sort of bible for bankruptcy law: "The primary purpose of a [creditors] committee in any case ... is to maximize the return to the constituency represented by the committee.")

"Mr. Lombardi has substantial experience in developments comparable to the debtor's 'Aina Le'a development and in development of affordable housing projects," Pettit added. "He has been directly involved in ongoing discussions with county officials concerning implementation of the land use action plan." (For his services, Lombardi is charging \$650 an hour.)

No County Commitment

In a footnote to the brief supporting intervention, Pettit explains that while it is necessary to substitute 'Aina Le'a, Inc., for the

Yee said he was not aware of Kanuha's prior involvement in the 'Aina Le'a case until *Environment Hawai'i* brought it to his attention.

Whatever Kanuha's involvement, Yee stated that there was no commitment on the part of the county to go along with the proposed plan of 'Aina Le'a to move forward on the basis of the 2010 EIS.

No Active Litigation'

While the county Planning Department was involved in the talks, not so the Mauna Lani Resort Association.

"It is the MLRA's position that the ... litigation has been completed," its attorney, Randy Vitousek, wrote in a February 12 reply to the unsecured creditors' committee request to intervene. "Judgment has been entered and not appealed, and the court's order tolling development until the applicant complies with [Hawai'i Revised Statutes chapter 343] is final. There is no ongoing proceeding in which to intervene."

In any event, "the proposed intervenor is not a proper party, does not meet the requirement for intervention as of right or permissive intervention, and the request to intervene is untimely." — **P.T.**

Award of \$1 in Damages to Bridge Is Subject of Appeal to 9th Circuit Court

More than ten years ago, the state Land Use Commission ordered Bridge 'Aina Le'a to explain why it had not begun work to develop more than 1,000 acres of land in South Kohala that had been put into the Urban land use district back more than two decades earlier, in January 1989.

That order-to-show-cause (OSC) vote launched a series of events that has yet to reach its conclusion. A case before the 9th U.S. Circuit Court of Appeals almost certainly will not move the process toward development of the land any further down that road, but, however it is decided, it will mark an important milestone in the seemingly interminable history of litigation and legal issues surrounding efforts to build out a town of more than 2,000 homes with a commercial center, school, golf course, and other amenities.

Bridge 'Aina Le'a sued the state over that vote and the subsequent decision of the LUC, in 2011, to revert the Urban land back to the Ag district. The company alleged the votes had violated its constitutional rights to due process and equal protection and claimed that the action amounted to an unconstitutional taking of its property. That lawsuit eventually reached the Hawai'i Supreme Court, which, in November 2014, found that the LUC had not complied with its own rules when it voted in 2011 to revert the land to the state Agricultural district. It did not, however, uphold Bridge's claim that its constitutional rights had been violated.

As the state case made its way up to the Hawai'i Supreme Court, Bridge was also seeking to recover the economic damages it claimed the LUC vote had caused it. That case was being heard in federal court. During the pendency of the state litigation, the federal case was on hold.

After the Hawai'i Supreme Court made its ruling, the federal case was taken up once more, with Bridge 'Aina Le'a seeking around \$50 million in damages from the state.

Settlement talks proved productive. In mid-2016, the state attorney general's office and lawyers for Bridge reaching an agreement that provided for the state to pay Bridge \$1 million and the case being dropped. By this time, Bridge had sold or had an option to sell most of the Urban

district land to another company, DW 'Aina Le'a, LLC, that ultimately would take over development plans.

While the settlement amount fell short of what Bridge was demanding, Bridge still was suffering no loss on the real estate deals it had made. In 1999, it had purchased 3,000 acres (the parcel with 1,060 acres in Urban and 30 in Ag, and another 1,900 acres in Ag that surrounded the mostly Urban land on three sides) for just \$5.2 million, after several previous owners had been unable to move forward with the urban development proposed to the LUC back in 1987. In March 2009, it sold off a 61-acre parcel of Urban land to DW 'Aina Le'a, Inc., for \$5 million and gave DW 'Aina Le'a an option to purchase the remainder of the Urban land.

From 2009 to 2015, Bridge sold off all but a 27-acre lot of the Urban land, zoned Commercial, to 'Aina Le'a, for total purchase price of around \$32 million.

In its brief to the appeals court of January 30, the state takes note of the gains made by Bridge: "Bridge bought the entire 3,000 acres for \$5.2 million and received from DW for the sale of the property \$18 million in cash and a secured \$14 million note, much of which was received after the reversion. There can be little doubt that, even taking into account the approximately \$3 million Bridge spent working on the property, Bridge made a profit."

A \$1 Award

Ignoring the advice of the state attorney general, the 2017 Legislature did not approve the settlement and litigation resumed in federal district court in Honolulu.

By the time the jury heard the case, in March 2018, several pretrial motions had been heard to limit the scope of testimony and evidence that could be presented.

Critically to Bridge 'Aina Le'a's case, the presiding judge, Susan Oki Mollway, had granted the state's motion to dismiss the report of Bridge 'Aina Le'a's accountant. The accountant, David Burger, stated that in the five-year period that the reversion was being litigated, Bridge had earned an average of 10.12 percent a year on its capital investments. Separately, Bridge's appraiser, Steven Chee, reported that the LUC's vote in 2009 to revert the property reduced its value by \$34 million. By multiplying the \$34

million by the return on investment and the period – 5.68 years – that the devaluation lasted, Bridge's experts calculated the company's losses as a result of LUC action at \$19,543,744.

The state objected to the Burger and Chee statements. Burger's statement did not meet the court's standards for expert testimony. And without Burger's report, Chee's lacked any effect.

Bridge attempted to supplement Burger's statement with additional information, but the time for submission of evidence had passed.

The jury heard the case, but was not able to hear any evidence supporting Bridge's claim of damages. When the verdict was returned, the jury had found that Bridge had suffered damages, but Judge Mollway had not allowed them to determine just what those damages should be. Instead, having disallowed Bridge's reports supporting its damage claims, Mollway granted nominal damages of \$1.

By not allowing the jury to hear the damage evidence, Bridge says, "the district usurped the role of the jury which – having found that a taking occurred – should have been permitted to determine which expert's testimony to credit and which rate of return to apply."

Appeals

In its October 31, 2018, brief to the 9th Circuit, Bridge says that the Mollway's ruling to exclude evidence of the company's losses "form the centerpiece of this appeal."

"The district court placed more importance on the 'teeth' that the federal rule [on evidence] than on Bridge's right, mandated by the U.S. and Hawai'i constitutions, to receive an adequate award of just compensation," the brief from Bridge attorneys Bruce D. Voss, Matthew C. Shannon, and John D. Ferry III states.

What's more, Bridge also is asking the appellate court to overturn the decision of Mollway to grant immunity to the individual commissioners on the LUC who voted in favor of the reversion. And it appeals the lower court's decision to dismiss its claim that its constitutional rights to equal protection were violated, for which it also sought damages.

The state has also appealed the lower court decision to deny several of its motions having to do with assessing damages.

The appeals court has not yet set a date for hearing arguments on the case.

—P.T.

—*P.T./T.D.*

DLNR, Land Board Struggle to Resolve Concerns over Revocable Permits

Despite pressure to abandon their practice of renewing revocable permits (RPs) every year with little to no review or rent adjustment, the state Department of Land and Natural Resources (DLNR) and its board last year settled for incremental progress, as the latter, once again, renewed hundreds of Land Division permits, this time with just a slight uptick in rent.

In February 2016, spurred by a series of critical articles by the *Honolulu Star-*

idea because they believed the fee hikes were too great.

There is no similar mandate to set rents for revocable permits at market value. Even so, in 2013, the DLNR's Land Division obtained a preliminary appraisal of its 350 RPs, which estimated that the rents being charged were 1,000 to 4,000 percent below market rent. A more recent evaluation of the 247 permits deemed worthy of appraising also found that, with a few exceptions, the

"We've said all this time, and continue to say, we have leftovers and remnants – stuff no one else wants."

— Land Division Administrator Russell Tsuji

Advertiser's Rob Perez, as well as concerns expressed by members of the public and the Land Board itself, the DLNR formed a task force to evaluate how it renews its month-to-month RPs. Those concerns focused mainly on stagnant rents and the failure to evaluate whether environmental reviews were required for the uses to which the land was being put or whether the permits should be converted into some kind of long-term disposition, such as a lease or easement.

As the Land Board's discussion of the Land Division's annual permit renewals late last year revealed, raising rents to market value and transitioning permits to long-term dispositions or to other state agencies has been problematic, to say the least.

"We've said all this time, and continue to say, we have leftovers and remnants—stuff no one else wants," DLNR Land Division administrator Russell Tsuji told *Environment Hawai'i*. The state Departments of Education, Transportation, and Agriculture, as well as the University of Hawai'i and Agribusiness Development Corporation, "took the good lands and left us with what [the] Land [Division] has," he said.

Rent

Earlier this year, the Land Board debated whether or not it should send to public hearings rules proposed by the DLNR's Division of Boating and Ocean Recreation that would vastly increase mooring fees at the state's small boat harbors by setting them at market value, as required by the state Legislature. While the board as a whole voted to send the rules to public hearings, two board members opposed the

division was under-charging permittees, but to a smaller extent—seven to 1,000 percent below market rates.

According to DLNR responses to questions Perez posed last year, the difference between the 2013 and 2018 appraisals is that the latter factored in the short-term tenancy and use restrictions in determining market rent.

While state law does not require the DLNR to charge market rent for the permits, rents charged and conditions imposed on permittees do need to serve the best interests of the state. With that in mind, the Land Division proposed marginal rent increases—either three or ten percent—from 2018 to 2019.

"I don't think it's possible to increase someone's rent by 90 percent and expect them to remain on the property."

— Richard Howard, Land Division

In its reports to the Land Board, the division explained that it was not implementing the recommended market rents because that might spur permittees to abandon their permits, "resulting not only in the loss of revenue, but also forcing the division to expend resources to maintain these lands." Rather, the incremental increases would achieve rents closer to market value without causing any major disruptions, the division stated.

Board member Keone Downing asked staff whether they thought the division would reach market rents in ten years with the incremental increases.

"Unfortunately, we'll probably have to do this [again] in five years. The increases that the appraisers gave us, they said three percent a year for next five years," the division's Richard Howard replied.

"We're going to appraisers to get things we're scared to charge the people. So why do we go to appraisal?" Downing asked.

"We have to know what market is. ... It's good to know. I don't think it's possible to increase someone's rent by 90 percent and expect them to remain on the property," Howard replied.

At a later meeting, Downing questioned the division's Kevin Moore why it chose to cap its rent increases at 10 percent, especially when the recommended market rents were so much higher. "How did you get to 10? The 10 could just as easily be 30. It wouldn't be that much more," he said.

Moore replied, "We didn't want to go over 10 percent for fear of getting pushback from tenants ... and being a burden for us to manage."

As a precautionary measure, the Land Board delegated authority to its chair to adjust the rents recommended by the Land Division. If those rents are implemented as approved by the board, the total increase this year over last year's rent will only be about \$16,000, since O'ahu's total rents decreased, while those for the other islands increased. The appraisal alone cost \$500,000, according to division staff.

No Takers

In addition to choosing to keep rent increases low, the division has tried only a handful of times since the 2016 task force report to find long-term tenants via

public auction and has failed in a number of cases.

One of the main criticisms levied against the DLNR and Land Board has been that by simply renewing revocable permits year after year, they are creating de facto leases and denying opportunities for other interested parties to bid.

In testimony to the board, the Office of Hawaiian Affairs bemoaned the fact that no timetable had been established to convert some three dozen RPs to a long-term disposition, as recommended by the revocable permit task force.

Continued on next page

Meanwhile, Boating Division Considers How to Auction Waikiki Catamaran Permits

When it comes to maximizing income from Waikiki's catamaran operations, the administrative rules for the Department of Land and Natural Resources' Division of Boating and Ocean Recreation (DOBOR) would have to be amended to allow them to be issued via a public auction, according to division administrator Ed Underwood.

The catamarans have the potential to make a lot of money. The six permitted operations that have a DOBOR permit to load and unload passengers and set anchor on Waikiki beach can carry dozens of passengers at a time. The Mana Kai can carry 26 people, while the Makani can carry nearly 80. A daytime tour can cost \$20/hour to more than \$40/hour a head, while a Friday fireworks sail goes for \$50 to \$100 a head.

Permittees currently pay DOBOR a monthly rent of \$200 or three percent of gross receipts, whichever is greater.

When DOBOR sought board approval last September to renew the permits, Land Board member Keone Downing said the three percent of gross revenues seemed low and questioned why the permits aren't auctioned off.

Underwood conceded that "there would be a huge interest in these permits" if they were put up for auction. However, his report to the board explained that no other parties are eligible to receive a similar permit "because it is concurrent with the issuance of a Waikiki Catamaran Registration from the department to operate catamarans on Waikiki Beach. The permittees listed herein are the only companies possessing such a registration."

Even so, Downing suggested that the division audit each permittee's account and if and when the board takes up the matter of auctioning off the permits, it could also address the percentage rent.

Unlike permits for thrill craft and parasail

operations, which can be auctioned off, Underwood said DOBOR would need to amend its rules to auction the Waikiki catamaran permits.

"It's something to look at," Downing said.

"It does seem to fly in the face of other commercial activities on the beach. [If there is] interest beyond the six, it does strike me as inequitable," board member Sam Gon said,



Catamarans on Waikiki Beach.

expressing surprise that no one from the public had shown up to testify on the matter.

Underwood said that his division has an auditor that could carry out Downing's request.

— T.D.

Permits from Page 8

"Notably, many of these RPs involve parcels that have been continuously issued to the same permittees for years, if not decades, and several have been approved for conversion to leases since the 1990s or prior. Delays in the conversion of such RPs to longer-term, market value leases or similar dispositions accordingly represent continued lost opportunities to obtain a more appropriate return from the private use of public lands, including public trust lands whose revenues are subject to Native Hawaiians' pro rata share," OHA wrote.

Division administrator Tsuji tried to explain to the board how some of the lands under revocable permit are undesirable. As an example, he noted that the division tried to auction off a parcel in Mapunapuna two or three times recently and got no takers. That parcel is notoriously vulnerable to flooding and even board member Sam Gon acknowledged, "Nobody's gonna want that."

Tsuji also complained that preparing to auction a parcel is expensive. "Before we go out, we gotta get it appraised. You spend money with package being publicized ..." he said. Tsuji added that compared to other agencies such as the Department of Transportation or Department of Agriculture, where parcels under their jurisdiction are contiguous, his division has "one parcel here and there."

"When [DOT] harbor guys lease out the industrial [lots], they do one appraisal for the whole area and charge pro rata per square foot. [For] every single one [of the Land Division's parcels], we have to do an appraisal," he said.

Board member Chris Yuen suggested that perhaps the division needed more flexibility in how it disposed of its lands.

"We really have two boxes: leases and the RPs. The leases are hard and the RPs are really easy. Maybe we need another box," Yuen said.

While revocable permits are not a "favored disposition," under state law, the bulk of the division's properties that are under RPs are not of great interest to anybody, he continued.

Yuen reminded the board of a couple of pasture lease auctions the division did for Hawai'i island in recent years, which got only one bidder. Another for an agricultural lot got none, he said.

"We've haven't had rip-roaring success when we have gone out for public auction," he said.

Board member Downing suggested that the division forgo getting an appraisal and simply set the lease upset price at the revocable permit rent.

"What you're really trying to do is get at least RP price. If you used an appraised price, chances are you're not going to get

anybody to bite," he said.

While Tsuji said that might not be a bad idea, he said the statute may require the division to get an appraisal. "Another idea, too, if we could do direct lease, it would make it so much easier. ... Now [direct leases are] limited to renewable energy, non-profits," Tsuji said.

Yuen said that the laws governing how the division disposes of its lands are similar to the state's procurement laws, which are based on the suspicion that somebody's getting a special deal. "They wind up setting these very elaborate procedures that have had the result of not doing very many public auctions anyway. ... Another kind of statutory procedure, with oversight, would help," he said.

Despite the difficulties the Land Division has had successfully auctioning a lease, board member Stanley Roehrig reiterated his concerns that so many of the RPs were several years old and suggested that the division redouble its efforts to secure long-term dispositions.

(For more background on this issue, see "Board Talk: Lack of Detail in Permit Renewal List Draws Fire from Public, Board Members," from our February 2016 issue and "Rent, Subdivision Issues Confound Efforts To Fix DLNR's Revocable Permit Mess," from our May 2016 issue.)

— Teresa Dawson

BOARD TALK

Unearthed Solar Farm Deal Forces Change to Legacy Land Purchase

Eight years ago, an industrial development proposed by Tropic Land, LLC on two agricultural lots in Lualualei Valley drew crowds of supporters and opponents to meetings of the City and County of Honolulu's Planning Commission and the state Land Use Commission (LUC).

To make its development possible, the company needed the city to amend the Wai'anae Sustainable Communities Plan to allow industrial uses on about 260 acres amidst agricultural lands in the valley. That amendment was ultimately adopted, but the company's failure to win enough votes from LUC members to change the land use district from Agricultural to Urban — in part because of its inability to secure access from the U.S. Navy, which controls the main access road — effectively halted the project. And years later, the company, whose investors were facing financial troubles, put the lands up for sale.

Enter the Wai'anae Community Re-Development Corporation (WCRC), more commonly known as MA'O Organic Farms. MA'O operations director Gary Maunakea-Forth was one of the most vociferous opponents of the Tropic Land development, telling the LUC in 2011, "We look at Lualualei Valley as a huge opportunity. The soils there are good. Lualualei Valley is the Tuscany of O'ahu."

The non-profit organization bid on both of Tropic Land's parcels, which had a total appraised value of about \$4.3 million. On the smaller, 21-acre parcel, MA'O proposed to plant a variety of food crops. If it manages to buy the larger 236-acre parcel, the organization plans to expand farming and build leasehold homes for farm managers and "others working in the broader community food systems movement," according to a 10-year plan released in December 2017.

In mid-2018, with the help of a \$750,000 grant from the state's Legacy Land Conservation Program, the Trust for Public Land (TPL) bought the property with the intention of eventually transferring it to the WCRC. According to a report prepared by the Department of Land and Natural Resources' Division of Forestry and Wildlife (DOFAW), which houses the Legacy Land program, TPL

later became aware of a May 2015 unrecorded license agreement Tropic Land had entered into with Oahu SPE 101-14, LLC, a company that planned to develop a solar energy farm on 2.4 acres of the land TPL had just purchased.

The solar company secured a Feed-In-Tariff agreement with Hawaiian Electric Company in December 2017 and is in the process of selling its interest to AES Distributed Energy, Inc. Under various agreements, that company will ultimately be able to operate a solar farm on the property for 20 to 30 years.

Because the initial Legacy Land grant did not contemplate this use, DOFAW asked the Board of Land and Natural Resources on February 8 to amend its approval of the grant to allow the solar farm to be built. After the license expires, the land will be used for farming.

Land Board member Chris Yuen asked Maunakea-Forth whether the license came up during negotiations over the purchase price of the property.

Forth replied that he was aware of it, but failed to convince the company owners to give the land back.

"I don't have a problem with what's being proposed," Yuen said, adding that if he were selling the property, "I would say, look, I have a revenue stream that I'm giving up in selling this property and it would have bumped up the valuation."

The TPL's Steve Rafferty explained that the license came up in due diligence investigations that occurred after the initial Land Board approval. "The solar company showed up when we were very close to closing. They [Tropic Land] had a back-up buyer. Our option was to not buy the property or buy the property and roll the dice, so we bought the property and we're holding it until MA'O can get fully funded." Rafferty reported that the organization has received \$350,000 from Freeman Foundation, which will allow MA'O to complete the sale.

To Yuen's point about the land's value, a second appraisal, which factored in the license, determined the property's value to be nearly \$1.4 million, rather than the \$1,000,060 TPL paid for it. "Ironically, this turned into a bargain sale," Rafferty said.

Land Board chair Suzanne Case asked whether it might be possible to elevate the solar panels, allowing farming to occur underneath. There are a couple of solar farms in the state, one on O'ahu and another on Kaua'i, that allow for sheep grazing.

"We have no control over the type of installation," Rafferty replied.

Maunakea-Forth said that the company has a solar farm next door and the panels there are three to four feet off the ground. He also said his organization was less interested in farming beneath the panels and more concerned about how or whether the solar company would use herbicides to control weeds.

Under a revenue-sharing condition of the Legacy Land grant, \$424,528 will be returned to the Legacy Land Conservation Fund if the solar farm operates for 20 years. The fund would receive \$653,978 if the license agreement extends to its maximum 30 years.

The board ultimately approved the amendment to its 2018 grant approval.

According to MA'O's 10-year plan, planting of perennial crops is expected to start on the property this year, with production ramping up to cover 10 acres by 2022. —T.D.

For Further Reading

All of the following articles are available for free at www.environment-hawaii.org.

- "Whatever Happened to ... Tropic Land's Plan to Build an Industrial Park in Lualualei?" November 2012;
- "Farmers Oppose Urbanizing Farm Land in Nanakuli," EH-XTRA (5/02/2011);
- "Concerns Over Lack of Access Halt Efforts to Build Light Industrial Park in Nanakuli," May 2011;
- "Drama Continues Over Industrial Use of Agricultural Land in Lualualei Valley," March 2011;
- "State, City Commissions Face Tough Decisions on Proposed Industrial Park in Lualualei Valley," February 2011.

Water Commission Questions Remedies For Illegal Construction on Maui Stream

Last May, Commission on Water Resource Management staff proposed a rather meager fine — \$1,000 — for what appeared to be massive unauthorized alterations to Kuiaha Stream along a property in Haiku, Maui. It also proposed assessing \$500 in administrative fees.

Agents of the landowner, the Bock Family Revocable Trust, had allegedly graded, grubbed, filled, and channelized some 800 feet of the stream and installed two culverts, all without permits from any state or county agency. The principal trustee is Rainer Werner Bock, widely known for his extensive collection of Oceanic art and Hawaiian antiquities.

The work appears to have begun in January 2013, but it wasn't until August 2016 that the commission became aware of what had occurred. Downstream neighbor Audrey McCauly had complained that the work done to increase the developable portion of the trust property resulted in mud and debris flowing onto hers.

It was several months before commission staff asked for a response from the trust. After receiving a notice of alleged violation on August 23, 2017, the trust applied for an after-the-fact stream channel alteration permit from the commission shortly thereafter.

In a May 2018 report to the commission, staff stated that the work done on trust land had adversely affected the stream's ecology and made it impossible for aquatic species to migrate upstream. Staff recommended that the trust prepare a remediation plan to stabilize the banks, recreate riffles and pools for stream organisms, and recreate flood storage capacity, among other things. More than one of the trust's neighbors testified to the staff that the property used to serve as a natural holding area for flood waters.

While state law allows for a maximum fine of \$5,000 a day for a violation, the law at the time the violations occurred allowed for a maximum fine of \$1,000. And commission staff chose to treat the work that had been done as a single violation that occurred on a single day.

When presented with staff's recommendations, commissioners immediately questioned why the fine was so small.

"It seems like the channelization is a big violation," said commission chair Suzanne Case. Commissioner Mike Buck added that the work obviously took more than one day to complete. (McCauly later testified that

the work spanned six months.)

Staffer Rebecca Alakai told the commission, "This is the way the applicant wrote the permit application. They put it all in as one. ... We don't know when the daily fines would kick in." Fellow staffer Dean Uyeno added that the fine was set based on advice from a deputy attorney general.

Commissioner Neil Hannahs expressed concern, as well. "If the purpose of a fine is meant to be a deterrent, at this level, it doesn't deter anything. It's just the cost of doing business," he said.

Alakai agreed, but said that the remediation plan will be expensive to implement. She had recommended that the trust obtain an approved remediation plan within six months and complete implementation within two years. "If he doesn't, then the daily fine will kick in," she said.

Commissioners expressed concern that if it approved a stream channel alteration permit and the work ends up damaging the properties of people downstream, the commission could be liable. What's more, the county is requiring the trust to obtain a flood development permit, which may need to be approved first.

The commission chose to only find that a violation had occurred and require a remediation plan be submitted within six months, but deferred voting on the proposed fine and permit application.

The trust filed an appeal with the Hawai'i Supreme Court because "they did not like

that the commission denied the permit and was set to impose a fine," according to Alakai. The court stayed action on the case until March, to give the commission time to revisit the issue once a remediation plan was drafted.

Deferred, Again

On February 19, staff brought the matter back to the commission. It again recommended the same \$1,500 fine, and also sought approval of an after-the-fact stream channel alteration permit that included remediation as a condition.

Under the remediation plan submitted by the trust, it would widen the stream, reduce side slopes, recreate ripples and pools, and raise the stream beds at the culverts, among other things.

Commissioner Buck repeated his dissatisfaction with the low fine. "This was a pretty blatant violation," he said. He also worried about the trust completing the remediation in a timely manner and asked whether the commission could require a bond for the work.

Commissioner Hannahs added his concern that the plan may not adequately address flooding, especially since the county had not approved a flood development permit.

While staff had also recommended that the trust apply for a flood development permit and submit a copy to the commission once it's approved, Hannahs suggested that if the commission approved the SCAP, the trust might get the impression that its remediation plan is adequate.

Dealing with flooding should be the first step, Buck said.

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Alakai replied that the Water Commission's kuleana in this case is merely to ensure that mauka-to-makai flow is re-established, and the remediation plan as proposed would achieve that.

"And you're satisfied with that," Hannahs asked.

Alakai said that she was.

Attorney Paul Mancini, representing the trust and trustee Rainer Werner Bock, tried to assure the commission that it won't and can't proceed with any remediation until it has all of the necessary permits. "None of us want to do something that doesn't work," he said.

When asked by commissioner Kamana Beamer what Bock was thinking when he made all of the stream alterations, Mancini suggested that property owners in the area, in general, "tend to go to self help" to solve their problems and "try to use a bit of intuition."

"Did Mr. Bock make a mistake? Yes, he did," Mancini said, adding that he thinks violations for people trying to protect their homes are going to become more common, both along streams and along the coastline.

"You see trees, automobile parts blocked in the stream. ... Sometimes your cleanup isn't exactly what should have been done and you end up in a hole," he said.

During public testimony, McCauly complained that the remediation plan lacked detail and was mainly conceptual. "Anything that the commission approves needs to be coordinated with the county," she said.

In the meantime, she said she still struggles with what she says are new flood conditions resulting from Bock's work.

"A couple times a week now, I can't get in and out of my property," she said, explaining that she sometimes has to put her boots on to wade to her house through the floodwaters and leaves her car on the other side.

Bock's engineer Stacy Otomo countered

that it was quite unfair to pin the flooding problems in the watershed on a single property.

"Not if you have 20 years experience," McCauly interjected.

After an executive session, Buck made a motion to defer staff's recommendations, but directed the commission's director to write a letter to Bock stating the commission's desire to have input from other agencies on the remediation plan.



Marvin Kaleo Manuel New CWRM Director

On February 19, the Water Commission unanimously approved Marvin Kaleo Manuel as its deputy director, a job held most recently by Jeffrey Pearson.

For the past decade, Manuel was a planner for the Department of Hawaiian Home Lands (DHHL), working with private landowners, as well as federal, state, and county officials to secure water sources for beneficiaries and develop water policy plans for the agency.

As Water Commission director, Manuel said he planned to continue to advocate for more staff and resources to handle the commission's workload and to be proactive in protecting public trust uses of water. He also said he recognized that there needs to be a shift on in how water resources are treated, especially considering the potential impacts of climate change.

Wayne Tanaka of the Office of Hawaiian Affairs, University of Hawai'i law professor Kapua Sproat, Hui O Na Wai Eha



One of the unauthorized culverts constructed on Kuiaha Stream on Maui.

president Hokuao Pellegrino, and former Water Commission deputy Yvonne Izu all testified before the commission in support of Manuel's appointment.

"He's proven himself to be well-respected in the Hawaiian community and the community at-large," Pellegrino said.

Izu, an attorney now who represents diverters of stream water, such as Alexander & Baldwin and the Kaua'i Island Utility Cooperative, said that in her work over the years with Manuel in his capacity at DHHL, "we've gotten along really excellently. One thing I really appreciate about Kaleo, he's always looking for solutions, always keeping the public trust in mind. Always coming from a traditional Hawaiian perspective, but always looking for solutions."

Sproat, director for Ka Huli Ao Center for Excellence in Native Hawaiian Law, said she's partnered closely with Manuel on a statewide water law and advocacy training program, which she said he initiated.

"Kaleo really brings the vision and street cred to this commission. ... He's worked with communities on every single island. He's really earned the reputation of being fair," she said, adding that she's witnessed him handle conflicts among DHHL beneficiaries "with poise, dignity and grace." — T.D.