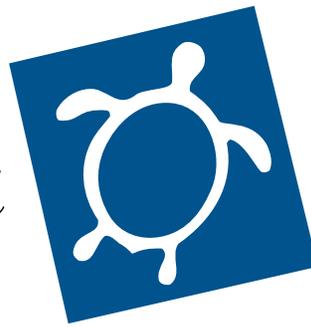


Environment



Hawai'i

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Appealing Prospects

Given today's dismal economic outlook, it is hard to know whether the action of the Hawai'i County Planning Board of Appeals will be much more than a footnote in the long and convoluted history of a major urban development planned on 1,000 acres of land at Puako, Hawai'i.

To be sure, the board did not give the developer what it had sought. But the action of the board last month, upholding a decision of the planning director, was practically the first time in the 20-year history of the project that it has failed to get the bureaucratic dispensation it needed to move forward. If the project has faced obstacles, they have been largely outside government's purview.

Still, in today's climate, the Puako developers probably will not be the first – or the last – to blame on government a stall-out that has its roots altogether elsewhere. The next move? No bets here, but don't be surprised to see the economic downturn employed as leverage in attempting to loosen government's reins.

Hawai'i County Board Deals Setback To Stalled Bridge Aina Le'a Project

The long-stalled development of more than a thousand acres near Puako, on the island of Hawai'i, was dealt a setback by the Hawai'i County Planning Board of Appeals at its meeting last month. The owner of the land, Bridge Puako, LLC, had asked the board to overturn county Planning Director Chris Yuen's denial of a "non-significant" zone change application it said was needed to develop affordable housing on one corner of the parcel.

Construction of affordable housing is a condition of a Land Use Commission redistricting decision dating back to 1989, when then-owner Signal Puako planned to build six golf course "villages" with 2,658 dwellings designed mainly for workers at Kohala and Kona resorts. A Japanese company, Nansay Hawai'i, took over the project in 1990 with plans to market to a more up-scale clientele. The LUC and the County of Hawai'i continued to require an affordable housing component, however, although it was attenuated over the years to the point where, under an order of the LUC in 2006, Bridge is now obligated to build just 385 units. All are to be completed with certificates of occupancy in hand by November 17, 2010.

When the Land Use Commission order was made, it was based on a master plan map showing the affordable housing tucked into the southeast corner of the 1,060-acre block of land that had been placed into the state Urban district. That map, however, was at odds with a more detailed zoning map that had been approved by the Hawai'i County Council. On the county zoning map, the area proposed now for affordable multi-family housing (apartment blocks) is designated for minimum five-acre agricultural lots.

And so, last spring, Sidney Fuke, a planning consultant to Bridge Puako (also known as Bridge Aina Le'a), filed a "non-significant

zoning change request" for four parcels within the Urban district having a total area of roughly 45 acres. Two of the parcels (zoned Ag-5a by the county) would see increased density, while the remaining two would see density reduced. Overall density for the total acreage would be slightly reduced, Fuke said. The changes were needed "to allow for the development of multi-family, affordable housing by maximizing the use of the land as it relates to the existing topography," Fuke said in the application.

Yuen, the planning director, denied the request on May 22. He noted that a recently passed county ordinance that gave the director authority to "administratively grant any non-significant zoning change" also gave the director authority to deny such changes. "The zoning designations for this area were made by the County Council based upon representations about the development made at that time by the owner, and the detailed metes and bounds zoning was adopted by the council based upon those representations and plans submitted by the owner," Yuen wrote. "Given that, it would be better public policy for a change to the zoning boundaries of 22 acres – a large land area – to be made by the county council, not administratively by the planning director."

Yuen took note of the "stated reason" for the proposed change – "to facilitate construction of affordable housing." Yet, he added, this "is not a convincing reason." In 1996, the county had reduced the affordable housing requirement from 60 percent of the total units to 20 percent, he pointed out. "It should be easier, not harder, to fulfill the project's affordable housing requirements," he concluded, "and fitting the construction of affordable housing into the zoning is something that the owner should have anticipated

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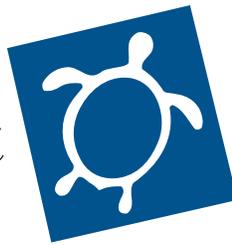
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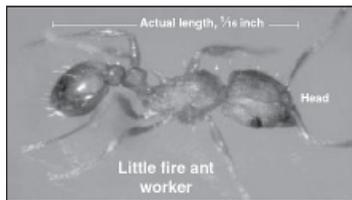
Volume 19, No. 6

December 2008

NEW AND NOTEWORTHY

Little Ant, Big Problem: It's only a sixteenth of an inch long, but don't underestimate the punch it packs. The little fire ant (*Wasmannia auropunctata*) was first found on the Big Island in 1999. Although a quarantine was placed on plants shipped from the Big Island, it turned up at Kilauea, Kaua'i, in 2004.

On the Big Island, it has grown from a nuisance to a major threat – to agriculture, to the health of humans, their livestock and their pets, (which can be blinded by ant stings), to property values, and even to native birds. Last month, the Hawai'i County Council's Committee on Environmental Management held a hearing on a resolution urging the county administration to set up a task force and coordinator to control infestations of the little fire ant – LFA – on the island.



Wasmannia auropunctata

The resolution drew widespread support from farmers who testified first-hand about the pain the ants inflict – economic as well as physical. While eradication may not be possible, one after another of those testifying spoke to the need for public education on methods to avoid spreading the ants' range.

Doug Cohn, a property manager who works on controlling ants, said that when an area is infested, there can be as many as 95 million ants per acre, and, when treetops become infested, the only way to control is with chainsaws, a bulldozer, and burning.

Many witnesses said the council should seek action from the state, noting that coqui continue to be found on plants imported from Puerto Rico. One pointed out that although the Legislature had approved a cargo inspection fee to beef up inspections on incoming goods, the Lingle administration had yet to implement that law. (*Environment Hawai'i* reported on this in the September 2008 issue.) The council committee approved the measure on a vote of 8-0; passage by the full nine-members had not occurred by press time, but would seem likely.

The state Department of Agriculture has prepared an information sheet on the LFA: <http://www.hawaiiag.org/hdoa/npa99-02-1fireant.pdf>.

Missing Mail: As longtime subscribers may know, each fall we send out our annual fundraising appeal. This year, the mail was dropped off at the main post office in Honolulu in mid-October, and, as usually occurs, we began receiving responses almost immediately.

(Thank you very much.)

But we soon noticed something very wrong. No responses were coming from the Big Island or from Maui, even though people on O'ahu, Kaua'i, and the continental United States had obviously received the mailers and were sending them back to us.

For those of you who have not received the notice of our annual appeal, we would ask that you please consider us for a year-end tax-deductible gift all the same. Your gift will mean all the more now, as it will count toward our fundraising target of \$15,000 to qualify for a matching grant from the Bill Healy Foundation.

Towers of Death: According to the American Bird Conservancy, the Federal Communications Commission has failed to initiate consultation under Section 7 of the Endangered Species Act for communication tower projects in Hawai'i, despite the fact that the U.S. Fish and Wildlife Service determined in 2004 that towers here would likely cause harm to the threatened Newell's Shearwater, the endangered Hawaiian goose (nene), the band-rumped storm petrel ('ake'ake), and the endangered Hawaiian petrel ('ua'u).

The group says that the FWS found that communication towers and their support wires disrupt nocturnal migration patterns and cause collisions with the rare birds. ABC noted that the service repeated its request for consultation in a letter to the FCC dated September 15, 2008, stating: "In accordance with section 7 of the ESA, we recommend the FCC work in good faith with the Service and the communications industry in Hawai'i to develop a project description for a programmatic consultation for existing and future towers in Hawai'i."

A month later, the Ninth Circuit Court of Appeals rejected an appeal by the Conservation Council for Hawai'i, the Forest Conservation Council, and ABC against the FCC for failing to protect the Hawaiian petrel and Newell's shearwater from fatal collisions at seven large communication towers on Kaua'i and the Big Island. The court affirmed U.S. District Judge David Ezra's dismissal of the case because the groups, which have been seeking greater FCC protection for the birds since 2004, lacked subject-matter jurisdiction.

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Quote of the Month

"We're getting out of land resource policy into energy policy."

— Rob Pacheco,

Board of Land and Natural Resources

Supreme Court Majority Supports Navy Sonar Tests without an EIS

Do the interests of national security trump those of the environment?

In a nutshell, that is the question that was posed to the U.S. Supreme Court as it considered the challenge of the U.S. Navy to two conditions of a preliminary injunction imposed on its use of mid-frequency sonar in anti-submarine warfare exercises off the coast of Southern California.

The answer, in a 5-4 decision handed up November 12 and written by Chief Justice John Roberts, is a qualified “yes – sometimes.”

But the practical effect of the Supreme Court decision is limited, both in California, where the case originated, and in Hawai'i, where questions similar to those raised in California are pending before federal Judge David A. Ezra.

Although the 9th U.S. Circuit Court of Appeals had upheld a preliminary injunction against the Navy that set conditions on the Navy's use of mid-frequency active sonar (MFAS) in the Southern California training exercises in order to protect marine mammals, including beaked whales, it stayed enforcement of two conditions of that injunction to which the Navy objected pending appeal to the Supreme Court. That meant that the Navy's exercises have been subject to several other court-imposed conditions, as well as some to which it consented. With the Supreme Court decision voiding the two challenged conditions, the Navy can complete the series of exercises it had planned – and which were the subject of the lawsuit filed by the Natural Resources Defense Council and other groups – without having to comply with the conditions of the injunction it found objectionable. (Those two conditions imposed limits on exercises when ocean conditions result in amplification of the underwater noise – so-called surface ducting – and required sonar to be shut down entirely whenever a marine mammal was sighted within 2,200 yards of a sonar source.)

In Hawai'i, the Navy conducts similar training exercises using MFA sonar. In 2007, a coalition of environmental groups – Ocean Mammal Institute, Animal Welfare Institute, KAHEA, the Center for Biological Diversity, and Surfrider Foundation, Kaua'i Chapter – sued the Navy and the National Marine Fisheries Service of the Department of Commerce, alleging failure

to comply with the National Environmental Policy Act and violations of the Endangered Species Act, the National Marine Sanctuary Act, and the Coastal Zone Management Act.

Judge Ezra, like his California counterpart, granted a preliminary injunction last February that set conditions on the sonar exercises, which were modified somewhat in March.

As Paul Achitoff, an attorney with Earthjustice representing the environmental groups, explains, only one of the conditions in Ezra's injunction – the limit on exercises when surface ducting is present – came before the Supreme Court. Ezra has adopted a condition limiting testing in the presence of marine mammals, but instead of halting sonar altogether when one is

“Of course, military interests do not always trump other considerations, and we have not held that they do.”

**– John Roberts,
U.S. Supreme Court Chief Justice**

spotted at a distance, as the California injunction did, it requires the Navy to power down sonar by 6 decibels whenever a marine mammal is spotted within 1,500 meters, by 10 decibels when one is within 750 meters, and ceasing sonar altogether only if one is spotted within 500 meters of the sonar dome.

The Hawai'i litigation also differs from that in California in that the plaintiffs are suing the National Marine Fisheries Service as well as the Navy. NMFS, they allege, violated the Endangered Species Act when it approved a biological opinion the Navy used in justifying its exercises. (Although NRDC also sued NMFS, alleging ESA violations, Judge Cooper found NRDC not likely to prevail on the ESA claim in her initial preliminary injunction order.)

The case against NMFS was to be argued before Ezra in October, but in light of the NRDC case coming before the Supreme Court, on October 3, Ezra ordered that all matters in the Hawai'i case be stayed.

Now that the Supreme Court has issued its ruling, Achitoff says he expects to be back in court “fairly soon.”

“Before we get to the issue of the extent to which the preliminary injunction should

be modified, I imagine the court would first address the issue raised by the Navy of mootness,” he said in a phone interview. The Navy has argued that, with the issuance of the Hawai'i Range Complex environmental impact statement last summer, and a new consistency determination to satisfy the requirements of the Coastal Zone Management Act, the claims made by the plaintiffs underlying Judge Ezra's preliminary injunction are moot.

The Court's Decision

The majority opinion of the court, written by Chief Justice Roberts, was joined in by Justices Samuel Alito, Anthony Kennedy, Antonin Scalia, and Clarence Thomas. Justice Stephen Breyer wrote a separate opinion, concurring in part and dissenting in part, with Justice John Paul Stevens joining with him with respect to his argument as to why the injunction should be vacated to the extent challenged by the Navy. Justice Ruth Bader Ginsburg wrote a dissenting opinion, joined by Justice David Souter.

The majority opinion gave deference to the Navy's need to train and the claims of national security interests it put forward. “Antisubmarine warfare is currently the Pacific Fleet's top war-fighting priority,” Roberts wrote, and MFA sonar is essential in tracking diesel-fueled submarines of potential enemies. The technology involved in its use is complex, he continued, and Navy personnel must undergo “extensive training to become proficient in its use.”

The lower courts had determined that the plaintiffs had a strong likelihood of prevailing on the claims of NEPA violations and, on the basis of a “possibility” of irreparable harm, the injunction was justified. The Navy argued that “possibility” alone was not sufficient to warrant an injunction; the threshold that needed to be crossed was “likelihood,” it said – and the Supreme Court majority agreed. “Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction,” Roberts wrote. “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may

only be awarded upon a clear showing that the plaintiff is entitled to such relief.”

But even if the plaintiffs had shown “irreparable injury” from the Navy’s actions, Roberts continued, “any such injury is outweighed by the public interest and the Navy’s interest in effective, realistic training of its sailors. A proper consideration of these factors alone requires denial of the requested injunctive relief.” And because of this, he added, there was no need to address the matter of whether the plaintiffs would prevail on the merits of the case, as lower courts had held.

In discussing the seriousness of the Navy’s need for sonar training, Roberts holds it up against the plaintiffs’ interests, which, in his description, seem trivial indeed. The Navy’s interests, he wrote, “must be weighed against the possible harm to the ecological, scientific, and recreational interests that are legitimately before this Court,” including whale-watching trips, underwater observation of marine mammals, scientific research, and photography. “While we

“I cannot agree that the mitigation measures the District Court imposed signal an abuse of discretion.”

**– Ruth Bader Ginsburg,
U.S. Supreme Court Justice**

do not question the seriousness of these interests, we conclude that the balance of equities and consideration of the overall public interest in this case tip strongly in favor of the Navy.” Still, he added, “Of course, military interests do not always trump other considerations, and we have not held that they do. In this case, however, the proper determination of where the public interest lies does not strike us as a close question.”

Further, he wrote, the case itself centers around the “legal claim... that the Navy must prepare an EIS, not that it must cease sonar training.” Thus, “there is no basis for enjoining such training in a manner credibly alleged to pose a serious threat to national security.”

Concurring and Dissenting

Breyer’s separate concurring and dissenting opinion focused on the issue of whether the district court was “legally correct in forbidding the training exercises *unless* the Navy implemented the two controverted conditions.”

“Several features of this case lead me to conclude that the record, as now before us, lacks adequate support for an injunction,” he wrote. “Given the uncertainty the figures [of potentially harmed marine mam-

mals under the injunction] create in respect to the harm caused by the Navy’s original training plans,” Breyer wrote, “it would seem important to have before us at least some estimate of the harm likely avoided by the Navy’s decision not to contest here *four of the six mitigating conditions* that the District Court ordered. Without such evidence, it is difficult to assess the *relevant* harm – that is, the environmental harm likely caused by the Navy’s exercises with the four uncontested mitigation measures (but without the two contested mitigation measures) in place.”

Breyer also questioned why lower courts did not give deference to Navy officials’ claims of vital national security interests and their objections to the two conditions they challenged. “I would thus vacate the preliminary injunction ... to the extent it has been challenged by the Navy,” he wrote, with Stevens concurring.

Stevens agreed with Breyer’s analysis of the case. But Breyer then went on to say that while vacating the injunction and re-

manding it to a lower court would be his decision under ordinary circumstances, those circumstances did not apply in the present case. “At this point, the Navy has informed us that this set of exercises will be complete by January, at the latest, and an EIS will likely be complete at that point, as well,” he wrote. “Thus, by the time the District Court would have an opportunity to impose new conditions, the case could very well be moot.”

“In my view, the modified conditions imposed by the Court of Appeals ... reflect the best equitable conditions that can be created in the short time available before the exercises are complete and the EIS is ready. The Navy has been training under these conditions since February, so allowing them to remain in place will, in effect, maintain what has become the status quo. Therefore, I would modify the Court of Appeals’ February 29, 2008, order so that the provisional conditions it contains remain in place until the Navy’s completion of an acceptable EIS.”

In her dissent, in which Justice Souter joined, Justice Ginsburg clearly sided with the lower courts. “If the Navy had completed the EIS before taking action, as NEPA instructs, the parties and the public could have benefited from the environmental

analysis – and the Navy’s training could have proceeded without interruption. Instead, the Navy acted first, and thus thwarted the very purpose an EIS is intended to serve. To justify its course, the Navy sought dispensation not from Congress, but from an executive council [the Council on Environmental Quality] that lacks authority to countermand or revise NEPA’s requirements. I would hold that, in imposing manageable measures to mitigate harm until completion of the EIS, the District Court conscientiously balanced the equities and did not abuse its discretion.”

“The EIS is NEPA’s core requirement,” Ginsburg continued, citing past Supreme Court decisions to support her position. An EIS, she wrote, “demonstrates that an agency has indeed considered environmental concerns, and ‘perhaps more significantly, provides a springboard for public comment.’”

The fact that the Navy would be releasing an EIS only *after* completion of its 14 planned exercises in Southern California “defeats NEPA’s informational and participatory purposes,” she wrote. “The Navy’s inverted timing, it bears emphasis, is the very reason why the District Court had to confront the question of mitigation measures at all. Had the Navy prepared a legally sufficient EIS before beginning the SOCAL exercises, NEPA would have functioned as its drafters intended: The EIS process and associated public input might have convinced the Navy voluntarily to adopt mitigation measures, but NEPA itself would not have impeded the Navy’s exercises.”

Ginsburg was especially critical of the Navy’s recourse to the Council on Environmental Quality. The “alternative arrangements” it devised offered no chance for public participation and were one-sided, based only on information provided by the Navy, she wrote. The District Court’s “considered judgment,” on the other hand, was “based on a two-sided record. More fundamentally, even an exemplary CEQ review could not have effected the short-circuit the Navy sought. CEQ lacks authority to absolve an agency of its statutory duty to prepare an EIS.”

“In light of the likely, substantial harm to the environment, NRDC’s almost inevitable success on the merits of its claim that NEPA required the Navy to prepare an EIS, the history of this litigation, and the public interest, I cannot agree that the mitigation measures the District Court imposed signal an abuse of discretion,” Ginsburg concluded. “For the reasons stated, I would affirm the judgment of the Ninth Circuit.”

— P.T.

New Report Supports Lifting Annual Limit On Interactions between Loggerheads, Fishers

For the most part, the National Marine Fisheries Service agrees with the Western Pacific Fishery Management Council's proposed rule changes for Hawai'i's shallow-set longline swordfish fishery, and based on the council's recommendations, the service is expected to announce new rules that will allow the fishery to harass, injure or kill up to 138 threatened loggerhead sea turtles over a three-year period, an average of 46 "takes" a year. Current rules cap the taking of loggerheads at 17 a year.

On October 15, NMFS released its biological opinion (BiOp) on the council's proposal – initiated by the Hawai'i Longline Association in February 2007 – to eliminate the effort limit (2,120 sets a year) on the fishery and increase the hard caps for loggerhead and

endangered leatherback turtle takes. In the BiOp, which is required under Section 7 of the Endangered Species Act, the service supported the council's recommendation to increase the number of annual interactions the fishery can have with threatened loggerhead sea turtles from 17 to 46. The BiOp states that considering increases in nesting over the years (due in large part to the council's conservation efforts in Japan), such an increase would probably not reduce

"reproduction, numbers, or distribution of the North Pacific loggerhead population."

NMFS did not, however, support the council's recommendation to increase the annual hard cap for interactions with endangered leatherback turtles from 16 to 19, even though it found that both proposed increases would result in less than three dead adult females of each species a year, which – again, according to the biological opinion – would not jeopardize the survival of either species. The BiOp stated that because of concern about the declining nesting levels of the Western Pacific leatherback population, NMFS

could not support increasing the leatherback take limit.

While the council had asked NMFS to incorporate into the BiOp the council's conservation efforts – in Japan, Indonesia, and Baja Mexico – as an offset to the Hawai'i longline fleet's impacts on turtle populations, the agency chose not to since the conservation measures and the proposed rule changes are "two different actions with regard to ESA Section 7," NMFS deputy assistant administrator Samuel Rauch wrote in a July 22 letter to council executive director Kitty Simonds.

Although the council did not get everything it wanted, on October 17, the council revised its recommendations to reflect the BiOp's findings, and again asked NMFS to consider using or including results of conser-

vation projects in future BiOps. Council member Peter Young, a stalwart opponent of the proposed increases, dissented, while state of Hawai'i council representative Dan Polhemus, who had also voted against the measure in the past, did not, since the vote was "in alignment with the BiOp."

Before the vote, NMFS Pacific Island Regional Office's Lance Smith, who helped write the BiOp, explained that although an annual take level of 19 might not jeopardize the

leatherback population, his agency felt it was necessary to keep the leatherback take level at 16 as a mitigation measure.

"So it's a precautionary decision on your part," Simonds said.

"We look at it that way," Smith said.

Several government agencies and conservation organizations, including the state Office of Hawaiian Affairs and the U.S. Environmental Protection Agency, submitted written testimony against raising the effort and take limits. An October 6 letter from the Ocean Conservancy, the Turtle Island Restoration Network, the Caribbean Conservation Corporation, Defenders of Wildlife, and the Cen-

ter for Biological Diversity, points out that in November 2007, NMFS determined that a petition from two of the groups to reclassify the North Pacific population of loggerheads from threatened to endangered status "may be warranted."

"In light of NMFS's own findings that the North Pacific loggerhead could be quasi-extinct within a few decades and may warrant significantly greater protection, a proposal that nearly triples the number of these turtles allowed to interact with the Hawai'i shallow-set longline fishery is inappropriate to say the least," they wrote.

Despite the various arguments against the proposal, council staffer Eric Kingma said none of them provided any basis for revising the council's position. (All of the written comments were based on NMFS's draft environmental impact statement for the proposal, and not on the BiOp, which was released in the middle of the council's three-day meeting.)

At the council's meeting, Jim Cook of the Hawai'i Longline Association (and a former council chair) testified that while the environmental effects of eliminating the 2,120-set effort limit and increasing the turtle takes would be minimal, the benefit to the economy and the fishery will be huge, with potential catches worth between \$20 million and \$40 million.

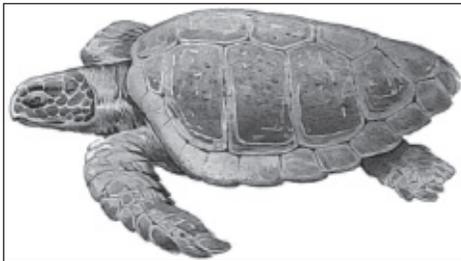
Dismayed that it wasn't credited for its conservation efforts abroad that may be propping up sea turtle populations, the council approved a recommendation that a letter be sent to NMFS asking that council staff be allowed to preview BiOps before they are released so it can provide information on the best science available.

(More background on this topic is contained in the following articles, available at no charge to subscribers, at www.environment-hawaii.org. Non-subscribers may purchase a 2-day archives pass for \$10: "Fishery Council Narrows Scope of Study on Expanded Longlining Effort," November 2007, "Fisheries Council Approves Proposal to Raise Caps on Turtle Interactions," May 2008, and "Fishing Council Relaxes Turtle Limits, NMFS to Initiate New Biological Opinion," August 2008.)

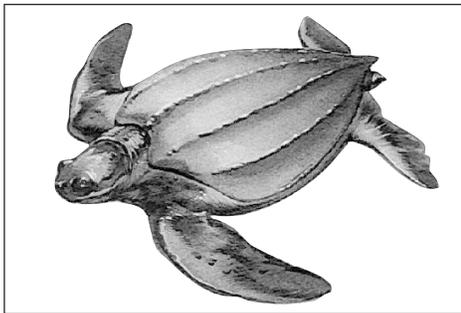


Council Splits Difference On Bottomfish Limits

At the council's October meeting, scientists with the National Marine Fisheries Service's Pacific Islands Fisheries Science Center unveiled a new and improved bottomfish



Loggerhead Sea Turtle



Leatherback Sea Turtle

stock assessment, which indicates that overfishing is still occurring in the Main Hawaiian Islands, but not to the extent previously thought. And while some council members held differing, and sometimes opposing, views

“The data is so poor and the conclusions are so broad.” — David Itano, council member

on the soundness of the assessment, the council approved a recommendation to increase the annual bottomfish catch limit in the MHI from 178,000 pounds to 241,000 pounds. This new level is for the fishing season that opened on November 15 and will end next August 31.

In 2006, using state Division of Aquatic Resources commercial catch data from as far back as the late 1940s, NMFS determined that the “deep seven” species of bottomfish in the MHI (ehu, hapupu’u, kalekale, onaga, lehi, gindai, and opakapaka) were being caught at an unsustainable rate, and ordered state and federal agencies take immediate action to bring catch rates down to safer levels. So, based on an admittedly weak stock assessment by NMFS scientists, the council set an annual total allowable catch limit (TAC) of 178,000 pounds and the state instituted a revised complex of closed areas. The TAC represented a 24 percent reduction from the commercial catch in 2004.

But this past fall, in response to concerns raised by the council about the stock assessment’s accuracy, the science center revisited and standardized its data and came out with a new assessment. NMFS also came up with several possible TACs that posed varying degrees of risk of overfishing. While the previous stock assessment suggested that there has been a 70 percent decline in the catch per unit effort (CPUE) since the late 1940s for MHI bottomfish, the new assessment, which included a larger sample of trips per year, indicates that the decline has been no more than 50 percent.

At the council’s Scientific and Statistical Committee meeting, which was held just prior to the council’s meeting, the committee found several faults with the assessment and chose to do its own preliminary analysis of the data. Its results were vastly different. The SSC found that the stock is not being overfished and that over the past 15 years, the fishery has been quite stable. Instead of supporting NMFS’s recommended 2008/2009 season TAC of 249,000 pounds, which would pose a 50 percent risk of overfishing in the MHI, the SSC recommended a TAC of 254,050, which is a significant reduction of the average catch for the deep seven species from 1982 through 2007.

In supporting the SSC’s recommendation, new council member Dave Itano said, “Data from the early years is very suspect. The NMFS’s

refinement is good, but I wouldn’t take it as gospel. The data is so poor and the conclusions are so broad,” he said, adding that using more recent data, which the SSC did, is more reliable.

Council member Dan Polhemus recom-

mended keeping the TAC at 178,000 pounds at first, then suggested increasing it to 200,000 pounds, which represented the maximum fleet capacity over the past few years. NMFS Pacific Islands Regional Office director William Robinson, on the other hand, suggested a TAC of 241,000, which posed a 40 percent risk of overfishing and would provide a “management buffer” in case the fishery accidentally overshoots the TAC.

After a motion by Polhemus to keep the TAC at 178,000 pounds failed, council member Manuel Duenas moved to accept Robinson’s suggested TAC of 241,000. The motion passed, with Polhemus and council member Peter Young voting in opposition.



Statistician Lectures On Truth in Science

Often at its meetings, the council will schedule informational presentations that are either directly or tangentially related to the council’s business of fisheries management. So in addition to presentations on the status of the state’s ‘Aha Kiole advisory committee and the Hawai’i aquaculture industry, the council in October heard a presentation by Pierre Kleiber, a statistician who sits on the council’s Scientific and Statistical Committee, titled, “Truth and Honesty in Fishery Science.” But during Kleiber’s presentation, it became unclear whether he was speaking to the council or to the conservationists sitting in the audience.

Kleiber touched on several topics that he

**“People have to question both sides of science.”
— Tina Owens, LOST Fish Coalition**

believes have been skewed in scientific journals and in the media, including concerns over mercury in fish and a famous paper by fisheries scientists Ransom Myers and Boris Worm in the journal *Nature* that suggested massive overfishing was occurring globally.

“This paper is just wringing our hands,” he said about the *Nature* article, adding that the authors selectively used just a portion of catch data from what was available and omitted any tag data or size information. He showed charts

comparing the Worm and Myers results to those derived from data taken by the Western and Central Pacific Fisheries Commission on catches of albacore and bigeye tuna that showed wildly divergent stock scenarios. Although Kleiber and other local fisheries scientists prepared a rebuttal to the study, it took a while before it was published, he said. The “tunageddon” paper by Worm and others, which he said suggested that “all the fish would be gone” by 2048, would have received a grade of “F” in a statistics course, he said.

Kleiber also criticized the way media coverage of mercury in fish scared people, especially pregnant mothers, away from eating fish. He said a subsequent study, which showed that fish are safe to eat if they contain a higher level of selenium than mercury, no matter what the mercury level is, did not receive the same coverage.

“If you feel you’re suffering from mercury poisoning, the best thing to do is get a yellowfin [which has high selenium levels] and eat it,” he said.

In the middle of these complaints, Kleiber showed a picture of a couple of people, including outspoken council critic Keiko Bonk, wearing “Bad Kitty” (referring to council executive director Kitty Simonds) T-shirts and calling for an investigation of the council’s actions. Without directly referring to the people in the picture, Kleiber then talked about how even The Nature Conservancy recognizes that researchers pursuing single-issue advocacy science are in danger of losing their credibility.

In an accompanying report, Kleiber wrote, “Our experience in attempting to rectify the public record by publishing in high impact scientific journals revealed an evident editorial bias favoring ecological disaster stories. That bias in part reflects the growth of the environmental movement in our society and concomitant spread of an ecological political correctness [sic]. It may also simply reflect journalistic partiality for the greater impact of sensational claims as opposed to sober reality.”

He continued that so-called spinning of science for political ends is widespread and reflects “social and political currents in our society that value spin above truth and fantasy above reality.”

In response to Kleiber’s presentation, Tina Owens of the LOST Fish Coalition testified that government agencies are themselves not above spinning science and that “people have to question both sides of science.”

— Teresa Dawson

Puako from page 1

doing some time ago.”

Bridge Aina Le'a appealed. The 22.5 acres proposed for rezoning at increased density amount to “approximately three-fourths of one percent of the total Aina Lea development owned by the petitioner,” wrote Bridge attorney Randall Sakumoto, referring to all of the roughly 3,000 acres owned by the company in the Puako area. Of the 1,060 acres in the Urban district, the 22.5 acres amount to just 5 percent of the total area, he noted.

Yuen's decision, moreover, was not in accord with the county code as it existed when the non-significant zoning amendment application was filed, Sakumoto wrote. Until it was changed in April, the code allowed the planning director to “administratively grant any non-significant zoning change,” so long as it did “not result in a net increase in the density allowed” or was “the lesser of a five percent or one acre increase or decrease in the area of any zoning district(s).”

The appeal noted four approvals of other non-significant zoning change applications Yuen had approved in arguing that Yuen's decision in the Puako case was “arbitrary and capricious.”

When the matter came before the Appeals Board, Yuen was represented by deputy corporation counsel Amy Self. “This is a situation where the director, by language in the [county] code, has been given discretion whether to grant a non-significant zoning change or not,” Self told the board. “The County Council ... did provide criteria [the applicant] has to meet, but the important thing to keep in mind is that when the Council provides language that indicates the planning director has discretion, which is indicated by the word *may* and not the word *shall*, it is left up to the director. Unless that decision is unreasonable or conflicts or contradicts the purpose of the ordinance, then it is up to his discretion.”

In testimony, Yuen pointed out that over the years he has served as planning director, he had grown more uncomfortable with the broad leeway granted in county law for the award of so-called non-significant zoning changes. In one case that pre-dated his tenure, he noted that one “non-significant” change had involved moving a resort hotel some two and a half miles from the site originally approved in the council's rezoning of a piece of property. His discomfort had caused him to propose the new, more restrictive law, passed last April, scaling down the maximum acreage that can be categorized as “non-significant.” Still, he told the Appeals Board, the decision to deny the application of Bridge

Puako was made in conformance with the law existing at the time the application was made.

As further justification, Yuen noted that the area proposed for multi-family affordable housing had originally been designated for less dense development because of a floodway running through the land. “So this was set aside and not zoned to be in residential use, it was kept in agricultural use” when the County Council approved the rezoning, Yuen said.

Fuke testified that although the director is given discretion in the county code to approve non-significant zoning changes so long as they fall within criteria set by the code and implementing rules, it was “a reach” to think that a director could deny a change if it did fall within those criteria.

Yuen rejected that. “Let's take the flooding,” he said. “It doesn't say in the rules that if you're trying to move the zoning from being open, in a flood plain, and you swap it so you have housing in a flood plain – it doesn't say in Rule 8 that you *shouldn't* do that, but that's why the director has discretion. ... You use your discretion not to do something dumb – not to put multi-family zoning in a flood plain.”

Yuen was also somewhat dismissive of the claims of Bridge Capital that it needed to have the county approval quickly in order to meet their deadline of November 2010 for affordable housing. He noted that when Bridge sought relief from the high affordable housing requirement, the LUC was skeptical, “but [Bridge] told the LUC that if they had this approval they were ready to go and could issue a contract for construction for affordable housing.” (The actual words of Michael Bowen, representing Cole Capitol/Westwood Development Group, a now-gone development partner of Bridge, were: “If this condition is amended, Westwood is prepared to begin development of this project immediately in conjunction with [Bridge].” No hint was given of any need to tweak the county zoning ordinance.)

Further casting doubt on the urgency, Yuen noted, was the fact that the original appeal was to have been heard in September, but was continued until November at the request of Bridge – and Bridge sought to delay even that, but the county refused to go along. “It doesn't seem like they're in a hurry to get a decision on this,” he said.

As an alternative to rezoning, Yuen had suggested in his denial letter that the owner ask the council for “administrative flexibility through ‘project district’ zoning.”

Fuke noted that Bridge had applied for this more than a year ago, but was informed

it would need to prepare an environmental impact statement before the Planning Department could process it. For that reason, Fuke said, Bridge decided to seek the non-significant zoning change.

Yuen pointed out that had the developer sought full County Council approval of the zoning change, it could have been done by now.

In its annual progress report to the LUC filed in October, Bridge Aina Le'a reported that work was continuing on a draft environmental impact statement needed for the project district zoning. Botanical and faunal surveys were complete, as were a burial treatment plan and a cultural impact assessment. Other reports that would need to be included in the EIS, including engineering, drainage, socio-economic and noise studies, were still awaiting completion, the report said. “It is presently anticipated that all studies ... will be completed by the end of the year and the draft EIS will be submitted for review and acceptance by the Planning Department by sometime in February 2009.”

The March 2008 edition of Environment Hawai'i contained several articles describing the status of the Bridge Aina Le'a development at Puako. They are available online at our website: www.environment-hawaii.org.



Mahukona Negotiations Leave Watchdog Group Out in the Cold

With all the changes that have been made to a development planned for Mahukona in the two decades since it first saw light, the confusion that surrounds current plans may be altogether understandable. “It's so convoluted, it's crazy,” said Toni Withington, representative of a community group that has been following the ever-changing project on the historic Kohala coast of the Big Island.

From a proposal calling for an 18-hole golf course, 240-room hotel, up to 150 one-acre house lots, tennis courts, and other resort amenities, the development has been significantly downscaled. Now, representatives of landowner Kohala Preserve Conservation Trust (formerly Surety Kohala, and before that, Chalon) say that they're foregoing the golf course entirely. The hotel has dwarfed into a “temporary” complex of three duplex cabins. And last spring, KPCT asked the Hawai'i County Planning Department for approval of a consolidation-resubdivision request that would establish 48 house lots rang-

ing in size from just over an acre to nearly 80 acres.

The original plat map was submitted in March. The Planning Department raised objections almost immediately, and over the next two months, KPCT submitted revisions. In July, then-Planning Director Chris Yuen deferred a decision on the subdivision request, awaiting comment from agencies including the state Historic Preservation Division and Department of Health, since the original conditions of approval of the development required actions to satisfy their concerns.

■ ***“KPCT is not even at te starting gate 18 years after the issuance of the [permit].” – KAKO’O***

But for Kamakani O Kohala Ohana (KAKO’O), a citizens’ group concerned with protecting the aesthetic and natural resources of North Kohala, the county should have rejected the latest plans and voided the entire project altogether. The deadline for *completion* of the project expired on July 14, 2008, it argues. Despite “a recent flurry of marginal activity, KPCT is not even at the starting gate 18 years after the issuance of the Change of Zone (COZ) and Special Management Area (SMA) Permit.”

“KPCT has an obligation to perform all conditions of the original ordinance and permits, not to amend the agreement 18 years later to meet a scaled-back, phased project,” KAKO’O spokeswoman Withington wrote in a letter to Yuen last July. Her letter, which runs to 10 pages, details the many ways in which KPCT has not lived up to the commitments and conditions set forth in the original county approvals. “KPCT has been segmenting the project into small phased chunks so as to avoid the public review processes mandated by county and state statutes,” Withington wrote. “Many of the required plans and documents are missing from pertinent agencies, and many of the agencies are unaware of material changes to the development plan.”

In August, KPCT petitioned the county Board of Appeals, asking it to overturn Yuen’s deferral. By law, the county had 45 days within which to deny or defer approval of the subdivision, wrote KPCT attorney Randall Sakumoto of the Honolulu law firm of McCarriston Miller Mukai MacKinnon. That 45-day period expired June 21, he continued. The Board of Appeals was asked to invalidate the deferral decision and confirm that the subdivision map “has been automatically approved.”

Kamakani O Kohala Ohana petitioned the Board of Appeals to be allowed to inter-

vene in the case. KPCT objected, arguing that the decision under appeal was limited to the subdivision request. “No decision relating to the underlying merit of the Mahukona project, or to any zoning permit, SMA permit, or other entitlement relating to the Mahukona project has been appealed,” Sakumoto wrote. “Therefore, the board has no authority to address any of the issues raised by KAKO’O.”

KAKO’O then filed an “objection to issuance of an automatic approval . . . and demand for automatic disapproval of subdivision application”—a bill of particulars, which,

Withington told *Environment Hawai’i*, didn’t begin to touch on all the problems related to the landowners’ fulfillment of obligations under the zoning ordinance, special management permit, and other approvals, but which still came to more than 20 pages.

Full House

When the Board of Appeals met to consider the petitions on November 14, the small Kona conference room was crowded with people from Kohala, eager to testify about their concerns over the owner and the planned development. Residents pointed out the deteriorating amenities at Mahukona Park, where improvements were to be put in place by KPCT as a condition of development. Native Hawaiians were worried about the protection of the many historic sites in the area, while hikers voiced their concern over restricted coastal access.

■ ***“We’ve been aced out of everything.”***

— Toni Withington, KAKO’O

But when the time came for the developer to present its case, a stunned silence fell over the crowd. Attorney Joel Kam, representing KPCT, told the board: “As you know, the parties have been involved in discussions, trying to work out differences that exist between my client and the department. We ask for another continuance until the next meeting of the board. We understand that this is inconvenient for the proposed intervenors. If the board is so inclined, we would like to ask that the board allow the intervenors to say what they have to say but defer a decision on the application to intervene until we find out whether it’s really necessary.”

The county deputy corporation counsel representing the Planning Department, Amy Self, agreed. “We have no objections. The parties are working hard to settle this. . . . We

are agreeable to continuing this so the parties do have a chance to complete settlement negotiations.”

Board Chairman Joel Gimpel exercised his authority to postpone the hearing, without recourse to a vote of the board members. “I’m going to defer this until January 16,” he said, to the obvious disappointment of the Kohala residents. At that meeting, if the county and KPCT still had not settled their differences, “we will consider the petition to intervene,” he said. He did allow Withington to make a statement on her group’s petition to intervene.

“I think the people who talked to you earlier have indicated the public in Kohala has had no opportunity to participate in any way in this resort since November 8, 1993,” Withington said. “We’ve been aced out of everything. We take this opportunity to talk to the county because we think the county should know Kohala is upset . . . about being aced out, about public access, use of the Conservation District and shoreline, improvements for the park. . . . These are the emotional aspects. But our petition contains a very specific procedural account of what has gone on in this case. Our legal arguments . . . are clear and straightforward. . . . Our group believes the law requires you to determine the preliminary plat was submitted on March 4 and the planning director responded appropriately. . . . I don’t see how negotiations between the developer and director can change those facts.”

“The law requires the planning director to disapprove subdivision,” Withington continued, “because the applicant has not complied with conditions of zoning [set by the

County Council] and the Special Management Area permit issued to it. We very carefully document at least five or six areas where this has happened. There are other areas where conditions have not been met as well. We think perhaps the planning director erred in deferring when the law says he should have disapproved.”

Gimpel offered Withington little hope that the petition to intervene would be granted. “The jurisdiction of this board is limited to final decisions of the director,” he said. “As I view it, the issue before us right now is whether director’s final decision to defer was proper under the law. If he chooses to enter into a settlement with the petitioner regarding the subdivision application, then the matter is concluded.”

— Patricia Tummons

BOARD TALK

Land Board Endorses Proposals For Biofuels, Biomass Facilities

We're getting out of land resource policy into energy policy," Hawai'i Island Land Board member Rob Pacheco said at the board's October 10 meeting.

Ever since the state Legislature passed Act 145 earlier this year to allow the Department of Land and Natural Resources to directly negotiate leases for proposed agricultural-energy facilities, renewable energy companies have been lining up to apply for state land leases. To ensure that the Board of Land and Natural Resources supports the best, most viable projects and doesn't just approve them on a first-come-first-served basis, DLNR director and board chair Laura Thielen announced at the meeting that her department will consult with the state Department of Business, Economic Development, and Tourism's energy experts on such projects before they are brought to the board.

With the increasing number of requests for land leases from renewable energy companies, Thielen said she worried that her board and her department "don't have the expertise to pick and choose."

Two large renewable energy projects being proposed for state land on the Big Island have already put the Land Board in the position of making some very tough land use and energy policy decisions. Not only must the board decide whether the plan of Hamakua Biomass Energy, LLC, to turn Hamakua's eucalyptus trees into electricity and the proposal of SunFuels Hawai'i, LLC, to turn trees into biofuel are viable and worth locking up thousands of acres of public land, it must also make sure those projects won't harm the island's tenuous ranching, dairy, and forest products industries, which uses or plans to use much of the same land.

At its November 14 meeting, the Land Board voted to support both projects by approving in principle leases to both companies. Hamakua Biomass, which had received Land Board approval-in-principle for a 64-acre processing facility site in early October, was granted a similar approval for 10,500 acres of vacant agricultural and, possibly, Conservation District land, which will be used to grow feedstock. The board also approved in principle a lease to Sunfuels Hawai'i for 10,000 acres, which is the mini-

mum acreage company representative John Ray said would be needed to run a successful operation.

The decisions do not guarantee that the Land Board will issue leases for these projects, but they do give the companies the assurance they need to continue discussions with the utilities and various other entities.

Hamakua Biomass

Energy projects have many moving parts and the stalling of any one of them could spell disaster. In the case of Hamakua Biomass, the company is negotiating the purchase of thousands of acres of eucalyptus along the Hamakua Coast from Kamehameha Schools, is working to obtain a power purchase agreement with the Hawaiian Electric Light Company for 25 megawatts of electricity, and is seeking approvals from the Public Utilities Commission, among other things.

If all goes as planned, says company CEO Guy Gilliland, Hamakua Biomass will be a "viable operation" within 18 months, setting up a plant and operating using trees from land owned by Kamehameha Schools. Plantings on state land should begin by 2010 and those trees will power its plant from 2020 on, he said. According to DBEDT energy project facilitator Joshua Strickler, Hamakua Biomass needs a lease of state land to ease HELCO's concerns about a secure, long-term energy supply. "They're worried about what happens after the Kamehameha Schools lease ends [around 2020]," he told the Land Board in November.

Whether the state can deliver the 10,500 acres of vacant land that Hamakua seeks is unclear. Of the 23,380 acres first identified by Hamakua for possible inclusion in a lease, 18,385 acres were identified by the DLNR's Division of Forestry and Wildlife as being predominantly native forest in the Conservation District – including Natural Area Reserve lands – that are inappropriate for energy production. While the division identified about 1,000 acres of commercially usable trees within the state's forest reserve, a DLNR report states that both the department and DBEDT felt those trees would be better used in the forest products industry rather than for energy. As of the

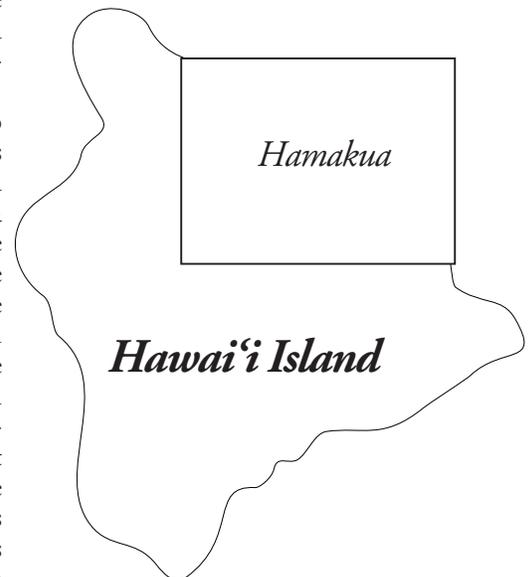
November meeting, the DLNR had identified only a few thousand acres of vacant land that could be used.

Still, on November 12, DLNR land agent Gary Martin recommended that the board approve in principle a lease of up to 10,500 acres, with the terms and conditions to be brought to the board at a later date. Martin also stated that should the lands on Hamakua's list not be suitable for commercial forestry, Hamakua should work with the DLNR to identify other lands.

During public testimony, Hamakua resident Elizabeth Cole said that she supported renewable energy, but was concerned that the lands were being treated as though they were a commodity, while the public sees its land as an asset. On behalf of Big Island council member Dominic Yagong for North Hilo, she asked that the matter be deferred until the Land Board next meets on the Big Island, since, "minimally, from all the discussions I've been hearing, I think about 50 square miles [are at stake]."

Also concerned with project's impact on the island was Greg Smitman, associate director of The Kohala Center, a nonprofit organization that is under contract to prepare an agriculture management plan and land map for the county to help with long-range planning. He asked whether there would be an opportunity for individual farmers to grow biomass to fill the proposed processing plants or would the plant operators supply their own fuel. He also asked how appraisal rates would be set, whether Hamakua was taking into account costs of property improvement, and what soil, slope and climate characteristics, if any, made the lands suitable for biomass use.

In a similar vein, board member Sam Gon said, "Whenever we're talking tens of thou-



sands of acres that might be put into a particular land use, you have to think about the consequences and the balances of the uses that are to occur potentially on that landscape.” He asked DBEDT’s Strickler whether his discussions with DLNR staff included the full range of possible uses for the lands being sought, including pasture, restoration, and conventional food agriculture.

Strickler said that he has met several times with staff from the DLNR’s forestry and land divisions and made sure that land set aside for conservation was not considered. However, he added, “speaking on behalf of DBEDT, that’s not really our job in that the land issue, we feel, is a DLNR issue... We looked at it more in terms of viability of technology and sustainability.”

Whether the DLNR chooses to help Hamakua look for lands beyond the few thousand acres that have been identified “is going to be one of the tough decisions this board is going to have to wrestle with,” Thielen said, adding that the recent flood of renewable energy projects is the first time in many years that people are seeking large tracts of land.

In the end, the board voted unanimously to approve the lease in principle and required that a public hearing on the project be held in Hamakua. Land Board members Tim Johns, a Hawaiian Electric Company board member, and Taryn Schuman had recused themselves from the matter.

Board member Gon said the board’s decision will merely trigger a series of actions and does not lock the state into any commitments. “The major discussions lie ahead,” he said. In addition, Gon added that Hamakua would likely be required to complete an environmental assessment for its project. (Had the board not acknowledged this fact, Henry Curtis of Life of the Land said he would request a contested case hearing.)

Before the board’s vote, Strickler asked the Land Board whether it would be possible to expedite the lease by delegating final approval to Thielen. She and board members Gon and Jerry Edlao all responded that they would rather the lease come back to the full board.

Thielen said that while delegation may be possible “down the line,” she felt, “because this [direct negotiation of energy leases] is new... it’s better to be working through the board and have public testimony. It’s more helpful.”

SunFuels Hawai'i

At the start, both the general manager of SunFuels Hawai'i, LLC, the Land Board’s chair, and the DLNR’s land division administrator apologized for the way the company’s project was introduced to the public. An

article in the *Honolulu Advertiser* on November 12 announced that the board would be considering issuing a lease in principle to the company for lands that are currently leased or under permit to Big Island ranchers and dairymen, causing somewhat of a panic, since none of the lessees or permittees had been contacted by the DLNR or SunFuels about the company’s proposal to plant trees on their lands to make biodiesel.

The potential acreage cited in the article and in the DLNR’s Land Division November 14 report to the board was around 37,000 acres. But as SunFuels’ John Ray explained to the board, that number was a gross total of all the tax map key parcels the company had identified for possible tree planting and not the net acreage that will actually be planted with eucalyptus or other species of trees.

At the Land Board’s November meeting, Land Division administrator Morris Atta said he opposed “right off the bat” the inclusion of any dairy lands, since the industry is so fragile. He apologized for not notifying all of the interested parties before the matter was brought to the board and for giving anyone the impression that the board would actually be awarding a lease for occupied lands.

While Ray said his company has been assessing the available feed stock on the island for the past year and a half, he said he had not yet spoken to the tenants on any of the state properties about a co-existence plan. He also said he did not expect his proposal to be on the Land Board’s agenda so soon.

He said that the company is focusing mainly on “marginal,” private lands that are not being used to grow food crops, and added that he would consider a lease of 6,000 to 8,000 acres of state land “a huge success.” The actual acreage SunFuels will need depends on the feedstock species, other land uses, and native habitats involved.

With regard to why the Land Board should support his proposal, Ray said that hybrid electric cars simply can’t meet all of Hawai’i’s transportation demands, so there will continue to be a need for biodiesel.

“We’re a very large, rural island and that’s never going to change [and]... I don’t think there’s room for two power plants and what we want to do. I think there’s room for one power plant [and us],” he said.

In his testimony before the board, state Department of Agriculture deputy director Duane Okamoto expressed his concern about the potential for conflict with other agricultural uses. In addition to including two dairies in its proposed list of properties, Okamoto said, SunFuels’ proposal included other lands that are slated to be transferred from the DLNR to the DOA.

Alan Gottlieb, president of the Hawai’i Cattlemen’s Council, also saw a conflict and asked that the Land Board ensure that there is no net loss of state grazing lands as a result of renewable energy projects.

“We need a core of large producers to make the industry viable,” he said, adding that in addition to the dairy industry, “our industry is fragile, too.” He did, however, seem open to co-existing with an energy company if it results in improvements to the land.

Dean Okimoto of the Hawai’i Farm Bureau Federation worried about the effects renewable energy projects will have on farmers statewide. “There are too many farmers at risk now,” he told the board. “They’re scared to spend this money [to improve their operations] and their lands are going to be taken away” in an effort to put lands to their “highest and best use.”

Opposing the project for entirely different reasons was Life of the Land’s Henry Curtis, who suggested that in the eight to ten years that it will take SunFuels to start producing biodiesel, electric vehicle technology may improve to meet all transportation needs. He added that ocean thermal energy conversion and wave energy alone could meet the islands energy needs. “Why do we need to convert lands?” he asked.

He also said that the state should require an environmental assessment of the project, since the technology that will be used to make the biodiesel is still being tested. “We’re guinea pigs,” he said.

Cole, of Hamakua, was also concerned that the Land Board was not looking at the islands’ energy picture as a whole. “You folks are being asked to make very deep energy policy decisions... [promoting the use of] eucalyptus for electricity may preclude wind or pump storage hydro,” she said.

In discussing how to proceed, it was clear the board held many of the same concerns as those who had testified. Maui Land Board member Jerry Edlao said that the lessees currently on the land have been good stewards. “If we move forward, it’s like saying, ‘We don’t care about you guys.’... I cannot support this unless there is more dialogue,” he said. Even so, Kaua’i board member Ron Agor felt the need to move things forward, with certain conditions.

Based on a motion by Gon, which incorporated amendments reflecting the wishes of various board members, the board voted to approve in principle a lease to SunFuels of 10,000 acres and ordered the company to work with all concerned tenants and stakeholders on securing land use agreements, among other things. Board members Tim

Report Suggests Greenhouse Gas Emissions In Hawai'i Grew 22 Percent Since 1990

How high, exactly, will the bar be? One of the first requirements needed to carry out Hawai'i's pioneering greenhouse-gas regulation law was to develop a benchmark for future regulation. Under the law – Act 234 of the 2007 Legislature – Hawai'i's greenhouse gas emissions in 2020 are to be no higher than what they were in 1990. An important element in that regulation, then, is determining with some degree of precision just who was emitting what nearly two decades ago.

The law says that DBEDT is to complete "an updated inventory of emission sources" in 1990 by December 31, 2008, starting from estimates contained in a report published by the state in 1997. To refine and verify those estimates, DBEDT hired a consultant, ICF International, whose report was the subject of

a hearing in Honolulu last month.

So, just how much work lies ahead of Hawai'i if it is to retreat to 1990 emission levels within the next decade?

If aviation emissions are included, not much at all. We're practically there already. But if they're not, and according to Act 234, aviation emissions are not to be included in the 1990 emission inventory, the state must reduce its 2007 emissions of greenhouse gases by a huge amount – about three million metric tons. To give an idea of how much gas that is, all aviation emissions for 2007 totaled 3.80 MMT, according to ICF.

Recalculations

In 1990, total emissions, including offsetting carbon "sinks," came to 19.8 million metric tons of carbon dioxide or other gases whose atmospheric warming potential was measured in terms of its carbon-dioxide equivalence, ICF found. In 2007, total emissions of CO₂ and its equivalents came to 20.4 MMT, or roughly a 3 percent increase.

When aviation emissions are excluded, 1990 emissions total 13.62 MMT, and 2007 emissions total 16.61, a roughly 22 percent increase. Broken down, under the "excluding aviation" scenario, energy emissions increased 18 percent, transportation emissions increased 21 percent, and electric power emissions increased 27 percent.

At a public hearing last month on the draft inventory, ICF representatives Anne Choate and Susan Asam explained that the company

had begun its work in late summer and would continue to crunch through data before the final report is due by the end of the year.

The latest total estimates represent a significant departure from the state's earlier estimates of 1990 emissions as well as those for intervening years. The 1997 state report figured net emissions for 1990 were about 15 MMT and included air travel within state and excluded military fuels altogether. ICF's 13.62 MMT figure excludes air travel emissions, but includes military fuels. ICF's John Venezia also explained at a Greenhouse Gas Emission Reduction Task Force meeting last month that recalculated emissions from electric power generation came in higher by about 18 percent than they did in the 1997 report.

The ICF report also is at variance with other recent statistics compiled by DBEDT suggesting that at the end of 2005, Hawai'i greenhouse gas emissions were about 7.5 percent higher than they were in 1990. (For details, see the January 2008 edition of *Environment Hawai'i*.)

Low Turnout

At last month's public hearing at the State Capitol on the draft inventory, about two dozen people attended and only a handful of them actually offered comments, including one man who merely testified to plug his plug-in hybrid car company, and another who suggested climate change was not a result of fossil fuel emissions but instead from cow burps and events such as the eruption of Mount Pinatubo. Another testifier, Henry Curtis of Life of the Land, complained that the inventory did not factor in emissions associated with all of the goods that are imported here as well as the carbon dioxide within the soil. — P.T./T.D.

Johns and Taryn Schuman recused themselves from voting on the matter.



New Agreement Could Net \$40 Million in Federal Funds

After the controversial energy items had been voted on and nearly everyone had filed out of the meeting room, the Land Board heard a request from the Division of Forestry and Wildlife to approve a Hawai'i Conservation Reserve Enhancement Program (CREP) agreement between the state and the U.S. Department of Agriculture.

"This is actually a big deal," DOFAW administrator Paul Conry said. According to his report to the board, the Hawai'i CREP has the potential to provide up to \$42 million in federal funds to local farmers, ranchers, and agricultural producers over the 20-year period of the program.

Under the program, enrolled landowners and lessees must conserve their watersheds by planting hardwoods, creating a riparian forest buffer, or restoring wetlands, among other things, depending on the lands involved and the state's goals for those lands. In exchange, the landowners or lessees receive rental payments, reimbursements, and other incentive payments from the government.

The board unanimously approved the agreement, which must still be signed by the governor. — T.D.

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