

Breaking Up Is Hard To Do

That old Neil Sedaka song could be the anthem of the Natural Energy Laboratory of Hawai'i Authority. Or maybe the Jackson 5's "Never Can Say Goodbye."

In either case, our review of the accounts of several tenants at NELHA revealed an administration that struggles to find a balance between taking a hardline stance against tenants with delinquent accounts, on the one hand, and trying to work with businesses that may only be going through a rough patch, with success just around the corner.

The result? Lingering delinquencies. Deadbeat tenants. And more than a million dollars owed by just one tenant written off as uncollectible.

NELHA can be commended for attempting to live within its means, and certainly the current administration is more diligent and responsible than previous ones. But as our articles suggest, it may be past time for NELHA's landlord to shorten the leash.

NELHA Tenant Receives Millions In Grants, But Still Can't Pay Its Rent

Half an hour into the May meeting of the state Natural Energy Laboratory of Hawai'i Authority, the dozen or so board members in attendance passed around a shoebox designed to hold a pair of Bedrock sandals and a tiny glass bottle of what was described as "liquid gold omega-3" oil.

Small beer indeed from Cellana, Inc., a NELHA tenant that more than a decade ago had promised a yield of thousands of gallons a year of biodiesel wrung from the cells of marine algae. That same promise had resulted in Cellana receiving grants totaling in the millions from the federal departments of Energy and Agriculture.

Now, though, Cellana was more than \$211,000 in arrears on its rent to NELHA for the six acres it occupies on a narrow slice of lava-paved land lying between the runway

of the Kona airport and the blue waters of the Pacific Ocean.

The matter the NELHA board was considering was whether to give up on Cellana — cancel its sublease and give the debt over to a collection agency — or allow it more time to make a go of its ever-evolving business plan.

Martin Sabarsky, Cellana's CEO, addressed the board via a phone link from his office in San Diego.

"Over the previous 18 months we've had no revenue to speak of to supplement equity and [pay down] debt," he acknowledged. "We're trying to bring on larger funding." Sales of algae to an ink manufacturer had been soaring, he said, as, back in the conference room, Cellana's on-site representative

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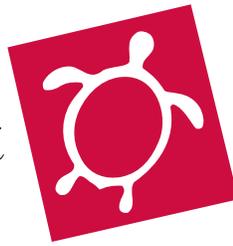
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Cellana's facility at Keahole.



NEW AND NOTEWORTHY

Laniakea Ruling: On July 5, the Department of Land and Natural Resources (DLNR) granted an appeal by shoreline access advocate Doug Meller of a shoreline certification obtained by the state Department of Transportation (DOT) for its jersey barriers at a popular city-owned parking area at Laniakea Beach on O'ahu's North Shore. Meller had provided photos to the DLNR showing that the barriers impeded the high wash of the waves and argued that the shoreline can't be set at the seaward edge.

Initially, the DOT had put up the barriers in December 2013 to block public parking across the street from the beach because the pedestrian traffic to and from the lot was clogging traffic and posed a public hazard. Concerned surfers who had used the parking area sued, twice, alleging that the DOT had failed to obtain a special management area (SMA) use permit and a shoreline variance from the City and County of Honolulu to install the barriers.

The 1st Circuit Court later required the DOT to remove the barriers and not replace them until it received all necessary permits, but on August 24, 2015, the agency put them



PHOTO: DOUGLAS MELLER

The Department of Transportation's jersey barriers at Laniakea parking area

back. Two years later, it applied for a shoreline certification, a prerequisite for an SMA permit. The state surveyor recommended approval of the certification, but on August 1 of last year, Meller appealed.

DLNR director Suzanne Case ultimately determined last month that the DOT's shoreline certification was improper. Her decision, however, notes that to properly certify the shoreline, the DOT does not need to remove the barriers, but does need to prove that they are 1) an authorized improvement or 2) that they don't interfere with natural shoreline processes.

Meller noted in an email to *Environment Hawai'i* that the DOT has not monitored the inland wash of winter surf and has no data to document that it is not episodically obstructed by the barriers. What's more, he wrote, "the DLNR ruling explicitly found that '...waves wash at least to the base of the concrete barriers in their present location. Therefore, the concrete barriers likely interfere with the natural shoreline processes.'" He also noted that an SMA permit and shoreline variance "require an Environmental Assessment (which the DOT doesn't want to prepare) and a certified shoreline survey." Meller

says the attorney for the plaintiffs in the lawsuit is seeking a settlement that mitigates congestion, improves safety, and retains public parking.

Hololani Lawsuit: Na Papa'i Wawae 'Ula'ula and the West Maui Preservation Association last month filed a lawsuit to prevent the Hololani Condominium from installing sheet metal along the shoreline of Kahana Bay starting on August 1.

The condominium was granted a Conservation District Use Permit in 2014 to construct a similar sheet-metal/revetment project, but failed to obtain the required approval from the state Legislature and governor for an easement for the portion of state land upon which the erosion control project would sit. As a result, the condo board decided to move the shoreline hardening project inland. But that, the groups argue, still isn't legal.

"The new sheet metal armoring project is Hololani's attempt to work around its failure to obtain approvals for a different seawall and rock revetment from the state earlier this year. ... The Legislature rejected the project and did not pass a concurrent resolution during the 2018 session after a tremendous outpouring of community opposition to Hololani's proposed seawall," a press release from the groups states.

The groups argue that Hololani's new project still extends beyond private lands and onto the public beach, and therefore, still needs an easement as well as a certified shoreline determining the location of that easement. Hololani had applied for a shoreline certification, but later withdrew the application, claiming that it was no longer required.

"Shoreline hardening can cause erosion, harm reef ecosystems, fisheries, monk seals, and dissipate beaches leading to the accompanying loss of lateral access. Kahana Bay was once rimmed with large expanses of sandy beaches. As the shoreline has become increasingly hardened, Plaintiffs, which include Hawaiian cultural practitioners, observed decreases in limu and changes in fisheries," the press release states.

The Environmental Court was expected to hold a hearing on a preliminary injunction on July 27.

(For more background on this, see our July 2014 Board Talk item, "Board Approves Seawall to Protect a Maui Condo," available at www.environment-hawaii.org.)

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Hilo, Hawai'i 96720

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

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

Production: Frances Officer

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ISSN 1050-3285

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Quote of the Month

"It should never be one family telling another you cannot catch this. ... It needs to be the department."

— **State Rep. Lynn DeCoite**
on proposed sustainable fishing rules for North Moloka'i

EDITORIAL

What Is NELHA Doing?

The Natural Energy Laboratory of Hawai'i Authority — NELHA — has been allowed to run on its own for some years now. It has a special fund that typically brings in around \$5 million a year, most of which comes from rents and other fees paid by its tenants. Their number and operations vary frequently, but at the moment, there are 35.

Driving through NELHA's 870 acres, which lie immediately to the south of the Kona airport, the landscape offers a bewildering array of sights. Next to the Queen Ka'ahumanu Highway is a landmark set of modernistic buildings, the Gateway Energy Center, that was intended to showcase energy efficient building techniques. For the most part, it has remained empty, although now NELHA is entertaining a proposal from the University of Washington to use the buildings for the physician-assistant training program it is establishing on the Big Island. That's not really anything anticipated when the state set aside the area for the demonstration and development of alternative energy programs, but, well, little that is on the NELHA campus is in line with those goals.

Next to that is what's left of the failed effort of Sopogy to generate electricity by collecting solar energy in mirrored troughs. That project, at least, was in keeping with NELHA's founding objectives.

Continuing down the main road, most of the area is rough lava dotted with tufts of fountain grass. Here and there are buildings where seawater bottlers and marine aquaculture companies have their operations. For the most part, the buildings are poorly maintained; it is hard to know, by driving past, which ones house ongoing businesses and which ones have been abandoned.

More than a decade ago, the Department of Land and Natural Resources surrendered its oversight powers to the NELHA board of directors. And the Legislature has also turned a blind eye to what NELHA does, so long as its expenses are paid out of its special fund and it doesn't ask much else.

NELHA's annual reports do not help much, when it comes to figuring out how the public's resources are being stewarded. Like too many other state agencies these days, the annual report to the Legislature is a public-relations document, growing exponentially in megabyte size even as it

shrinks proportionately in real content. A picture may be worth a thousand words at times, but a picture book is no substitute for text and tables.

The articles in this issue point out some of the problems NELHA has had with managing its tenants. To be sure, they do not take notice of the economic benefits of the operations on NELHA lands. (NELHA itself does a more than adequate job when it comes to public relations.)

While acknowledging those benefits, however, we need also point out what seem to be some inherent problems that our (admittedly incomplete) review of NELHA operations has raised.

Sublease Compliance

The accumulation of unpaid rent is an ongoing problem at NELHA. Tenants are responsible not only for payment of their land rent, but also for the seawater and freshwater they use and for their portion of NELHA's huge electric bill. The back rent,

combined with 1-percent-a-month interest on outstanding balances and monthly late fees, can mount quickly. In the case of most of the desalinated water bottlers, they also pay a royalty fee so their customers can be assured that the water comes from Kona. Finally, as is standard in most commercial leases, businesses are also supposed to pay an annual percentage rent fee, if their gross income exceeds a certain threshold.

NELHA has bent over backwards to accommodate its tenants. Sometimes that has paid off, as with the recent acquisition of Big Island Abalone — which had huge arrearages — by KOWA. At other times, the forbearance has not paid off.

And rent payments are not the only area where tenants have often fallen short of sublease requirements.

Time and again, in the lease files reviewed by *Environment Hawai'i*, tenants had to be begged and cajoled

to provide evidence that they had adequate liability insurance. And at times, even when a policy was provided, it was not from an insurer authorized to do business in Hawai'i, representing another lease violation.

On several occasions, tenants have sub-sub-leased their property out to other companies, with NELHA neither giving its consent nor even being informed. That, too, is a clear violation of sublease terms, yet there seems to have been no penalty.

Lessees are responsible for maintaining their property. No one would expect manicured lawns, but when canvas covers of ponds are shredded, PVC pipes are scattered like so many pick-up sticks, signs are faded and even broken — it smacks of a ghost town, not the center of thriving entrepreneurship that NELHA wants to portray.

County Taxes

Another issue is the lack of any requirement that NELHA subleases are recorded at the Bureau of Conveyances. This means that the County of Hawai'i has no formal means of knowing who is on which lot. No good reason exists as to why NELHA should not include this as a requirement of each lease, just as the DLNR requires it of all DLNR lessees.

Continued on next page



Today Makai Ocean Engineering has the only OTEC facility at NELHA.

Tenant Property Taxes Bills Go Unpaid

Tenants of the state's Natural Energy Laboratory of Hawai'i Authority are, like all other tenants of state-owned lands, expected to pay property taxes based on the assessed value of the land and improvements they occupy.

In the case of many of those tenants, property taxes have gone unpaid for years. In a few other cases, tax bills have inexplicably dropped to zero in recent years, although previous tax bills were comparable to those sent to other NELHA tenants.

Environment Hawai'i asked the real property tax division of the county Department of Finance to explain the discrepancies. The only person who could answer our inquiries, we were told, was the tax assessor for the area. She, however, was out of the office for the entire month of July.

NELHA does not routinely inform the tax office of changes in tenants. And, since NELHA tenants are not required to record their leases with the state Bureau of Conveyances, the county has no way of knowing who is occupying the land and is responsible for taxes. As a result, some of the parties listed as sublessors of NELHA lots on tax rolls no longer occupy the property. Examples include Hawai'i Deep Marine Farms (still on the tax rolls), Troutlodge Marine Farms (now taken over by Jamestown Point Whitney Venture), Noritech (defunct, but continues to be billed by the tax office).

Meanwhile, other tenants in what NELHA calls its research campus (the more

makai end of the NELHA property) have gone for years without ever being billed for property taxes. These include Kampachi Farms, LLC (which owns the giant off-shore cages where kampachi is raised to market size), and Fatfish Farms, LLC, dba Kanaloa Octopus Farm, which hosts daily commercial tours for \$30 a head.

Greg Barbour, executive director of NELHA, says that the organizations on

the research lot "are typically carrying out R&D work and demonstrations, and/or are pre-commercial or research projects. These projects are also considered short-term."

Barbour says that NELHA "does inform the county of any new activity regarding long-term leases (including new leases and terminations) so that the county may keep track of tax liabilities." However, "it is tenants' responsibility to pay taxes when due."

Here is a breakdown of some of the property-tax anomalies for a few of the tenants.

Cellana, 6.2 acres			
Year	Assessed valuation	Taxes owed	Taxes paid
2018	\$4,826,700	0	0 (not yet due)
2017	\$381,100	0	0
2016	\$24,900	0	0
2015	\$1,212,100	\$12,181.61	\$12,181.61
2014	\$1,244,600	\$12,508.24	\$12,508.24
2013	\$24,900	\$250.25	\$250.25
Destiny Deep/Enzamin, 3.1 acres			
2018	\$1,891,200	\$20,235.84	0 (not yet due)
2017	\$1,901,200	\$20,342.84	0
2016	\$1,509,000	\$14,815.72	0
2015	\$1,474,200	\$15,183.55	0
2013	\$1,510,800	\$14,955.41	0
2012	\$1,488,100	\$13,861.12	0
2011	\$1,523,200	\$14,181.44	0
2010	\$1,558,400	\$14,499.90	0
2009	\$1,611,100	\$14,661.01	0
Total taxes, interest, and late fees (as of 7/31/18)			\$267,396.12
Troutlodge Marine Farms/Jamestown Point Whitney Venture, 1.07 acre			
2018	\$356,400	0	0
2017	\$356,700	0	0
2016	\$6,000	0	0
2015	\$11,200	\$112.57	\$112.57
2014	\$11,600	\$116.59	\$116.59

(Quite apart from NELHA management's lack of interest in seeing that the county participates in the successes of NELHA tenants, there's the lack of transparency by the county itself when it comes to assessing and collecting taxes on the tenants for whom it does have billing information. We look forward to an explanation of this from the county.)

OHA Payments

Perhaps if NELHA had to pay even nominal rent to the state, it would be more aggressive in making sure tenants kept current with lease rents and other fees. As it is, the only non-NELHA agency to receive income from the use of this vast expanse of state-owned land is the Office of Hawaiian Affairs.

As with all leases of ceded land, OHA is to receive 20 percent of the rent proceeds. In recent years, payments have faltered,

owing largely to the exodus of water bottling companies.

But apart from that, NELHA pays rent based on receipts, not on what it is owed. So NELHA is able to write off more than a million in back rent and fees with no penalty. OHA could make a legitimate claim that it should be paid what is owed, not what is taken in. If NELHA doesn't collect, that should not be OHA's problem.

Oversight

When the Board of Land and Natural Resources gave up its oversight of NELHA subleases, it was largely because NELHA had failed for years to keep the BLNR in the loop. Presented with a huge backlog of subleases that the BLNR had little choice but to bless after the fact, it may have been an easy decision for the board to throw up its hands and have little more to do with NELHA.

In hindsight, that was a mistake. NELHA's current executive director, Greg Barbour, and his staff can't bear all the blame for NELHA's problems, many of which may be traced back to his predecessor, Ron Baird. And to give credit where due, Barbour has been diligent in efforts to keep NELHA expenses in line with income to the special fund.

But overall, the state's interest in making its \$100-million-plus investment in NELHA infrastructure — seawater pipelines, pumps, roads, buildings, and other improvements — warrants a higher degree of oversight and involvement than it has been given.

At a minimum, the Land Board should require NELHA to provide it — and the Office of Hawaiian Affairs — with regularly updated lists of tenants and rents. As things stand, NELHA is accountable to no one but itself.

And it shows.

At NELHA, Tenant Debt Accumulates For Years, Then Is Simply Written Off

The Natural Energy Laboratory of Hawai'i Authority (NELHA) occupies around 870 acres of ceded land on the Kona coast of the Big Island, between the Keahole airport, immediately to the north, and the town of Kailua-Kona, eight miles to the south. In directions that most Big Islanders would understand, NELHA is roughly five miles to the north and west of Costco.

NELHA leases the area from the state Department of Land and Natural Resources. To accommodate its tenants, it subleases land to them or grants them so-called Facility Use Agreements (FUAs), depending on the length and type of occupancy they need and the resources they desire. Those resources include pipelines that can deliver both deep (very cold) and shallow (warm) seawater to practically the entire NELHA acreage, all the way to Queen Ka'ahumanu Highway, proximity to the Kona airport, as well as abundant sun for solar power and a dry, lava-paved landscape that offers a sterile palette for aquaculture enterprises.

As the name suggests, NELHA was founded to help develop natural energy sources; the pipelines into deep water were initially laid down to provide cold seawater to support demonstration ocean thermal energy conversion projects. Soon, though, the seawater pipelines allowed the development of marine aquaculture — everything from the grow-out of cold Maine lobsters to the culture of abalone exported to Japan to the production of health supplements made with marine algae.

Then came the water bottlers. Deep seawater, desalinated via an energy-intensive reverse osmosis process, is bottled and sold as a nostrum in Asian markets, for the most part. For years, NELHA touted this as the highest-value “food” export produced in Hawai'i. A decade ago, there were seven tenants who produced or proposed to produce bottled seawater. Today, the number of bottlers is three.

Terms of the original lease to NELHA required the approval of the Board of Land and Natural Resources for each sublease, a process that was observed mostly in the breach. To expedite approvals, in 2001, the Land Board approved a change allowing its chairperson to exercise this authority — and, at the same time, it gave after-the-fact consent to nearly 40 subleases that had already been executed by NELHA.

But that process, too, was regarded as imposing too heavy a burden on NELHA and the Department of Land and Natural Resources' Land Division. So, in July of 2006, the Land Board gave up even the appearance of exercising any authority over NELHA and allowed it to enter into subleases with no oversight at all. The DLNR does have one voting member on NELHA's board of directors; in recent years, that has been Bruce Anderson, who headed up the department's Division of Aquatic Resources and who is now director of the state Department of Health. Replacing him is Bob Masuda, who attended his first meeting representing the DLNR just last month.

The Result

Thanks to the changes in lease language, the state landlord has no clear idea of how many tenants are at NELHA, what they produce, or what rent they pay. NELHA does not provide a tenant list to either the DLNR's main Land Division office in Honolulu or to the DLNR's district land office in Hilo.

NELHA does pay to the Office of Hawaiian Affairs what it says is 20 percent of the rental income it receives from its tenants on ceded land. For the most recent fiscal year, that came to about \$330,000, which is about \$75,000 less than what NELHA had forecast in its budget, based on expected lease payments — and around \$200,000 less than a decade ago.

In the case of one tenant, the water-bottler Savers Holdings, NELHA has written off back rent and other fees that amount to more than \$1 million. In another case, the hugely touted Sopogy plant consisting of solar-energy-collecting troughs, went out of business owing nearly \$52,000 to NELHA. At the moment, another tenant, Cellana, owes around \$240,000 in back rent.

As of June 30, when the 2017-2018 fiscal year ended, arrearages were put at around \$300,000.

Overall, rental income (including percentage rents and royalty payments, for use of the Kona trademark on bottled water) in fiscal year 2017-2018 was 18 percent less than what had been budgeted, owing to delinquencies and the departure of Hawai'i Deep Marine, a water bottler.

Environment Hawai'i was able to review lease files for some of the tenants that had racked up arrearages or voluntarily terminated their leases early. Here's what we found:

Sopogy/Keahole Solar Power

More than 1,000 mirrored, heat-collecting troughs that were once part of Sopogy's efforts to develop an alternative energy source at Keahole still stand on land alongside the busy Queen Ka'ahumanu Highway, at the mauka border of NELHA and just to the south of NELHA's Gateway Center, the iconic building with the Erector-Set-like superstructure that is a landmark on the way from the airport to Kailua-Kona.

The troughs are all that remain of the plan of Sopogy, led by entrepreneur Darren

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Sopogy's mirrored troughs. In the background, the NELHA Gateway Center.

Kimura, to build a 1-megawatt power generating facility at NELHA. Sopogy subsidiary Keahole Solar Power last made rent payments to NELHA in October 2013. In March 2014, with back rent, late charges, and interest amounting to \$44,953.44, NELHA executive director Greg Barbour attempted to inform Sopogy that it was being given “one final chance to address your past due account.”

The letter, sent by FedEx to Harry Jackson, KSP/Sopogy president, was returned to the shipper, undeliverable as addressed.

But by that time, Sopogy was foundering. In mid-April 2014, it liquidated all its assets. Even before that, the Keahole Solar plant at NELHA had been transferred to a new owner, the alternative-energy giant SunEdison. For five years (from 2012 through 2017), SunEdison purchased the required liability insurance for Sopogy’s operations, continuing the coverage for years even after Sopogy no longer existed and the lease had been terminated. The list of “named insured” on the policies includes “Keyhole [sic] Solar Power, LLC” at “Keyhole Point, Kailua-Kona.”

In 2016, SunEdison itself filed for bankruptcy protection and as one of Sopogy’s creditors, NELHA received notice of the filing. It failed to register its claim with the bankruptcy court — and, according to a handwritten post-it note on the bankruptcy notice, no one at NELHA seems to have been aware that SunEdison now held title to Keahole Solar Power’s assets, such as they were. “Keahole Solar Power never informed NELHA of any acquisition,” Barbour told *Environment Hawai'i*. “It was therefore not immediately clear that NELHA would be able to file as a creditor.”

Only in late January of this year did NELHA write off the Sopogy debt as uncollectible. In a form filed with the attorney general’s office on January 29, Barbour states that it is “unknown” if the debtor has filed for bankruptcy. In response to the question, “Is debtor a corporation?” the response, puzzlingly, is “no.”

A final puzzle in the Sopogy file is the presence of a letter, sent on October 12, 2016, from a collection agency purporting to represent the U.S. Department of the Treasury, Bureau of Fiscal Service. The letter, from Pioneer Credit Recovery, Inc., states that NELHA owes \$1,276,035.22 to the Treasury Department. The debt includes \$958,105.80 in principal, \$6,194.88 in interest and \$311,734.54 in other, unspecified charges. No information on the nature of the debt is provided by Pioneer. Barbour was asked about this: “We suggest that you contact Pioneer Credit Recovery directly,” he responded.

In the latest twist, the mirror troughs abandoned by Keahole Solar may be put to a new use. In June, NELHA announced it had received a \$2 million grant from the Department of Energy to use the troughs in a project to desalinate up to 132,000 gallons per day of seawater. At the May NELHA board meeting, Barbour described the project as costing \$4.2 million.

Environment Hawai'i asked Barbour how that \$2.2 million deficiency would be made up. The DOE grant is actually \$1.9 million, he replied. “NELHA proposed a total cost share of \$2,311,938. Of that, Trevi [Systems, of Petaluma, California] will contribute \$1.3 million. NELHA will contribute \$800,000, and Cyanotech will contribute \$200,000.”

Cyanotech has also agreed to purchase the fresh water produced at the plant, which, Barbour told the NELHA board, will allow the new gas station/restaurant/convenience store proposed at the NELHA entry to rely on county water. For some years, NELHA withdrawals from the county Department of Water Supply system have exceeded its allotment.

Savers Holdings

The largest write-off of debt by far is that of Savers Holdings, a Korean-owned company that had hoped to sell desalinated deep-sea water to Asian markets.

Savers was one of the early entries in the bottling business. Its lease began in 2004 and was terminated only in 2013.

But in the nearly 10 years that it was billed for rent and other fees, Savers never shipped

out a single bottle, much less a case or a shipping container, of desalinated water. It never erected a building on the six acres it leased. About the only evidence of the company’s presence is a partly leveled and graded lot.

Initial rental rates were \$200 per acre per month, but an escalation clause in the rent raised that tenfold, to \$2,000 per acre per month, after six years. Late fees and interest (1 percent per month on unpaid balances) caused Savers’ arrearage to grow quickly.

By 2009, Savers was deep in debt to NELHA. But time and again, its principal, Dal Hwan Joo, continued to express to then-NELHA director Ron Baird his confidence that a group of investors would come forward with the funds needed to build a thriving water-export business on the bare land. And time and again, Baird agreed to let the debt ride.

By October 2011, back rent, late fees, and interest had accumulated to nearly half a million dollars. On October 25, at the U.S. Embassy in Seoul, Dal signed a promissory note, pledging to pay a total of \$469,882.59 (representing \$388,800 in rent and \$81,082.59 in interest) to NELHA in a series of payments over the next 18 months.

Dal continued his efforts to raise funds, at one point appearing to line up a pledge of at least \$7 million from an investment fund established by the South Korean government.

Yet a year after the promissory note was signed, Dal had failed to bring Savers’ account current.

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This lot near the shore is a de facto dump for equipment and furnishings no longer needed by NELHA administrators or tenants.



A pet goat stands guard at a mariculture farm.

Finally, in 2013, Barbour, the new executive director of NELHA, sent a notice of termination to Dal. At that point, the arrearage was \$672,145.33.

The arrearage remained on NELHA's books for the next three years, with interest and late fees continuing to mount. By the time NELHA sought to write this off as an uncollectible obligation in January of this year, the total due came to \$1,060,083.69.

Barbour was asked if NELHA had ever used a collection agency in an effort to reduce arrearages. No, he replied. "The Department of Attorney General has a branch charged with this responsibility." Yet it seems as though NELHA has never employed the AG to pursue debt. As to the delay in writing off the Savers Holding and Sopogy debts, Barbour said that the attorney general "also requires a debt to exist for a minimum of two years before a write-off procedure can be started." In Savers' case, the debt had accumulated some seven years before being written off.

Destiny Deep

This water bottler, originally known as Enzamin, has now apparently turned most of its operations over to the production of plastic bottles used by other bottlers at NELHA. Regardless of its revised business plans, it has struggled for years to keep current on its payments.

As of mid-July, its arrearage came to just over \$38,300.

That arrearage can't hold a candle to what Destiny Deep owes the County of Hawai'i. For years, the company has not paid property taxes on its land and improvements, which

have a total taxable value of nearly \$1.9 million. As of last month, its tax bill came to just under a quarter of a million dollars.

Hawai'i Deep Marine

The Japanese-owned Hawai'i Deep Marine began water-bottling operations in 2004 on 4.5 acres of land. At one point, its "Kona Nigari" water — desalinated water, brine, and salt — was being sold in Japan for more than \$400 per 750-ml flask. If that were too pricey, it was also available in a two-ounce bottle, selling for a mere \$33.50, advertised as a "seawater concentrate" to mix with regular water for drinking.

For more than a decade, Hawai'i Deep Marine was in operation, shipping its products to foreign markets in Asia and South America.

In 2017, however, HDM was, in the words of Barbour, "unable to fulfill its original intended business plan for water desalination and salt production." It "walked away from the project and forfeited all ownership interest," he added. At the time it surrendered the lease, the company was current in its obligations to NELHA.

According to Barbour, an appraiser has estimated the depreciated value of the abandoned building to be \$2,785,413, with the reverse osmosis equipment valued at around \$63,000 and brine-drying structures at \$65,000.

Meanwhile, another Japanese-owned company, KOWA, which is taking over the lease and operations of NELHA tenant, Big Island Abalone Corporation, is also proposing to move into the building left behind by Hawai'i Deep Marine. It has asked the NELHA board for approval of a 30-year commercial lease on the site, where it wants to grow out hiramé (a type of flounder), shrimp and nori, and possibly have a restaurant on the site as well. Barbour says the company has proposed purchasing the building for \$3 million.

KOWA has no interest in either the reverse osmosis equipment or the brine-drying trays, however. In April, NELHA listed both on Craigslist. At the time of the May meeting, NELHA staff reported that a "local company" was interested in purchasing some of the reverse osmosis equipment for \$5,000. NELHA itself might be able to use some as part of its "forward osmosis" project.

As for the rest, it could well end up in the equipment graveyard of NELHA, about an acre of land near the coast where for three decades the abandoned pipes, barrels, pallets, file cabinets, and other detritus from former tenants have languished.

— P. T.

Cellana from page 1

showed off the phial of oil and the shoebox printed with what was described as algae-based ink.

Sabarsky went on to say that Cellana had received "money for a commercial development at NELHA, ideally located on county land just to the south of NELHA."

No one pressed him on that comment, but the only county land south of NELHA is a popular surfing and camping spot known as Pine Trees (Kohanaiki Beach Park). The chance that it could be the site of an industrial-scale algae production facility is not great.

Continuing to address the matter of moneys owed to NELHA, Sabarsky proposed issuing NELHA warrants "as partial compensation and a thank you as we work through our current cash crunch." The warrants would give NELHA an equity stake in the company and presumably pay off when — or if — Cellana stock eventually soars.

After Sabarsky concluded, NELHA executive director Greg Barbour shared with the board his own thoughts on the subject. NELHA, he said, "is an economic development agency. We try to give every chance to tenants. ... We've had ups and downs with Cellana over the years. They brought their arrears down to under \$100,000 at one point."

"Now," he continued, "Martin [Sabarsky] is trying to monetize his assets. I'm comfortable giving them another 90 days and [to] see how they can begin reducing their arrears. If we do terminate the lease, we would have significant equity in the property [and] the buildings there. Our risk level is low and the potential upside of having another successful company at NELHA is something we can go with for another 90 days."

Board chairman William Mielcke proposed giving Cellana 90 days. "If no significant progress" by that time, he said, "then termination."

Barbour replied that the board did not need to take a vote on the matter. The discussion, he said, was "just an update."

As of mid-July, when the NELHA board met again, Cellana was still in arrears, with the mid-August deadline to begin reducing the debt just a month away.

Grand Plans

Cellana traces its roots back to 2004, when it was founded as HR BioPetroleum by C. Barry Raleigh, dean of the University of Hawai'i's School of Ocean and Earth Sci-

Continued on next page

ence and Technology (SOEST) from 1989 to 2003, and Mark Huntley, a SOEST faculty member. (Huntley is no longer associated with the firm.) Providing much of the initial capital for its pilot facility at NELHA was a \$700,000 grant from the Defense Advanced Research Projects Agency (DARPA), channeled through CEROS (Center of Excellence in Research for Ocean Science), which was itself based at NELHA.

Back then, HR Biopetroleum held out the promise that the algae grown in its photobioreactors and raceway ponds just makai of the Kona airport would be the source of thousands of gallons of microalgae oil per year, with a per-acre yield of up to five times that of oil-palm crops.

Soon after its founding, the company formed a partnership with Royal Dutch Shell. Funding of that joint venture amounted to \$80 million, according to information on Cellana's own website.

The grants kept coming. Cellana reports that it was a "team member in a \$44 million" grant from the Department of Energy's program to develop biofuels and that it was leader in a DOE grant for \$9 million in 2010. In 2011, it was awarded \$5,521,173 in a grant jointly funded by the DOE and the U.S. Department of Agriculture, intended (at least in part) to explore the use of algae as the base for animal feed.

That same year, HR BioPetroleum acquired Shell's interest in the project and changed its name to Cellana.

And more grants: In 2014, the DOE awarded \$3.5 million to Cellana to develop algae-based feedstocks. In announcing the grant, a press release from U.S. Sen. Brian Schatz's office said Cellana's research efforts "have created a successful business model using algae to produce various products including low-cost animal feed, high-quality nutritional oils, and a new form of renewable biofuel. ... The Cellana project also helps the Energy Department meet its goal of reducing the cost of algal biofuel to a competitive level by 2022."

"To date, over \$100 million has been invested in developing Cellana's algae strains, patented and proprietary production technologies, and its Kona Demonstration Facility," the company boasts on its website.

And yet Cellana has rarely been current in its lease payments to the state. As to when the arrearage might be satisfied, CEO Sabarsky told *Environment Hawai'i* he hoped "we can partially pay them next year."

Grant Plans

In a phone interview, Sabarsky said one of

the chief reasons that Cellana could not pay the state what it was owed was the fact that the grant pipeline it had relied on for years had apparently dried up.

"It was surprising that we haven't got grants," he said. "We expected to be competitive for additional grant programs." The company, he said, had proved itself a leader in this technology and had planned on getting a share of the \$30 million or so that the Department of Energy has received each year to support development of biodiesel fuels.

"It was a big blow to get zero grants," he said, and to see less qualified firms be awarded funds. Now, he said, the company is no longer even applying for federal grants and is instead turning to private-sector sources.

In 2012, the Delaware-registered company filed with the Securities and Exchange Commission an offering of up to \$3.6 million in equity, at \$9.64 a share. After five months, Cellana reported raising just \$429,000 from 13 investors. There have been no SEC filings by Cellana since then.

As to Sabarsky's statement that the company was eyeing a production facility on county-owned land, he clarified that funding for this was not in hand. "We do not have the money for doing the development work ... for the plot of land I was told might be available. I understood it was about 300 acres."

Former Hawai'i County mayor Billy Kenoi had approached him with the idea that Cellana might use the site, he said. He added that he was unaware it was the site of a beach park, but suggested the parcel was large enough so that the surfers and campers would not be inconvenienced by the presence of a biodiesel facility. (The county-owned parcel consists of 217 acres and lies in the Conservation District.)

If that site is not available, he said, there's another site of 80 acres on NELHA-leased land where Cellana could build a 50-acre production-scaled facility. Cellana, Sabarsky said, had already signed a term sheet for occupancy of this land, setting forth the basic outlines of the terms and conditions of a final sublease.

For now, Cellana's six-acre lot at NELHA is quiet — or, as Sabarsky put it, "we're between product runs."

"We're taking a pause right now," he continued. The pilot facility "has accomplished its mission. We are taking a furlough. There's no need for people at the facility," he said.

Compliance Issues

Under terms of the sublease Cellana has with NELHA, it is to pay \$11,188.80 a month for the 6.216 acres it occupies (a standard rate of \$1,800 per acre per month). In addition, it is to pay for the seawater, fresh water, and electricity it uses. If rent is not current, a late fee of \$50 a month is added to the balance owed, and NELHA also charges interest at a rate of 1 percent per month.

A review of the sublease file shows that Cellana has not been current on its rent payments for the last six years.

But the rental deficits are not the only area of non-compliance with sublease terms.

As with most other NELHA tenants, the company is required to submit annual reports of gross sales for each calendar year, with the reports due on March 31 of the following year. Cellana has failed to submit the reports for at least the last two years. Required liability insurance has at times been missing for more than a year; its recent policy expired on April 30.

Then there is the matter of monitoring the discharge of its wastewater, which is emptied into a trench that leads directly to the sea. A monitoring report is required to be kept by Cellana. If levels of total suspended solids or biochemical oxygen demand exceed prescribed levels (45 mg/liter and 30 mg/liter, respectively), the company is to notify the Department of Health's Wastewater Branch within five days of the date the exceedances occurred. In addition, the disposal trench is to be inspected once a year by a qualified independent professional, and the results are to be submitted to the wastewater branch within 45 days of the test being conducted.

A staffer at the Wastewater Branch said no reports had been filed since 2011.

On June 27, 2013, what was described as less than 10 gallons of diesel fuel leaked from the generator room at Cellana's facility. Approximately 80 percent was reported to have been contained inside the room, but some did leak to the soil outside. According to a form submitted to the Department of Health's Hazard Evaluation and Emergency Response office, the "time that the person in charge ... obtained knowledge of the release [was] April 2, 2014." The form itself was dated April 16, 2014. Cellana informed the DOH that, as of April 17, 2014, it was "currently working with ERM (Honolulu) to remediate the contaminated soil."

Winding Down

Whatever hopes Sabarsky might have for

Continued on next page

BOARD TALK

Discord Stalls Hearings on Rules For Moloka'i Subsistence Fishing Area

The volunteer group Hui Malama O Mo'omomi has led efforts to protect and educate people about the marine resources on Moloka'i's North Shore since the mid-1990s, teaching hundreds of children from throughout the state about conservation and traditional Hawaiian fishing practices. But even though the state Board of Land and Natural Resources voted on April 13 to send to public hearings rules that would give teeth to the group's practices, sentiment—held by state Rep. Lynn DeCoite and others—that the proposal did not come from the community and that some of its provisions were unreasonably strict seems to have stalled the rule-making process for now.

At the board's meeting, the Department of Land and Natural Resources' (DLNR) Division of Aquatic Resources (DAR) described the collaborative process that led to the creation of the proposed rules to establish a Community-Based Subsistence Fishing Area (CBSFA) at Mo'omomi. The Hui had submitted an initial proposal to the department last year, and DAR later held a number of scoping meetings on the island before bringing a final draft of the rules to the board for permission to take them to public hearings. The proposed CBSFA would span an 18-mile stretch of ocean from the northwestern tip of the island at 'Ilio Point, past Mo'omomi, to Nihoa Flats, just before Kalaupapa National Park, and extend a mile out to sea.

With a few tweaks, the Land Board unanimously approved DAR's recommendation. But that was only after the board considered written and oral testimony from dozens of people in support, including the Office of Hawaiian Affairs, as well as those who were strongly opposed. Among the latter were ten fishermen who were flown in to Honolulu by

Cellana's operations at NELHA, the facility itself – including buildings, raceways for growing out algae, and equipment – is shut down for all intents and purposes. The only Kona employee stopped work last month.

And on June 12, Cellana was sued in 1st Circuit Court for failure to pay a service provider \$10,534 by a due date of April 13.

NELHA might be willing to let arrearages accrue to the six figures. ProService Hawai'i? Not so much. — *Patricia Tummons*

chartered helicopters. They described their experiences with the Hui's leader, Kelson "Mac" Poepoe, and some of his cohorts, as being downright foul.

"We've been pushed around and harassed from the Hui Mo'omomi. ... By passing this, you're pretty much putting this into their hands. ... I think it's gonna get ugly. It's been that way for the past 25 years," Lolly Agliam told the board.

University of Hawai'i ethnic studies professor Davianna McGregor, who helped develop the Moloka'i subsistence study in the early 1990s that laid the groundwork for the statewide CBSFA program, countered that Poepoe has long been vilified by "those who feel they can do whatever they want."

"Only two uhu?"
— **Walter Rawlins**

"I've never seen Mac behave like that to anyone. ... He has become the center and target of attack, unjustly, I feel," she said

Before approving the request to take rules out to hearings, board members made it clear that they were not about to referee the disputes that had obviously been festering for years.

"There's no way to deal with a blow-by-blow incident, who's right and who's wrong," board member Chris Yuen said.

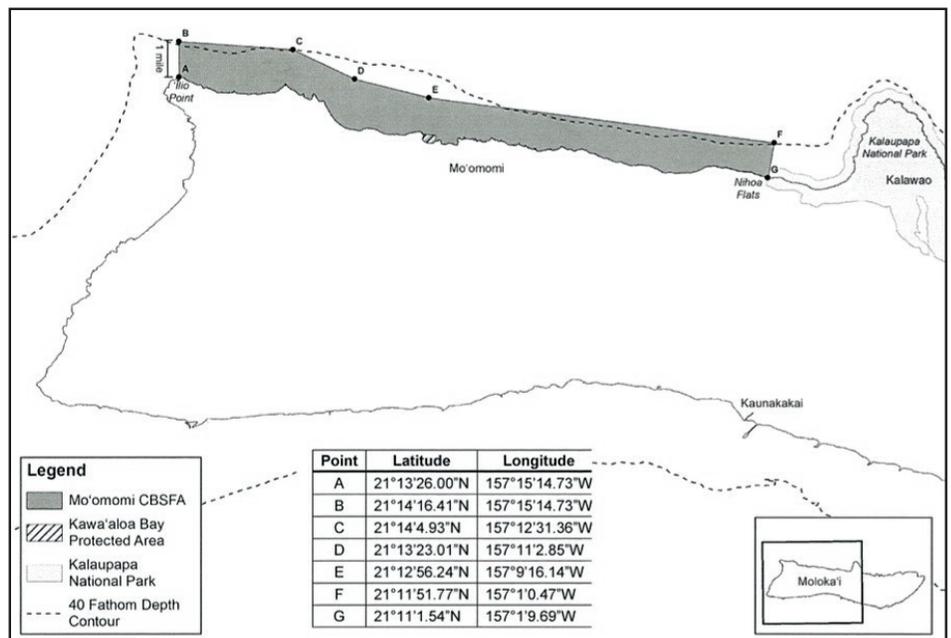
Board member Stanley Roehrig later added, "We're not into the power trip. That's

not our kuleana. We're not going to pick sides. This is not a boxing match." He continued that if the rules are adopted, "people like Mac, the other strong personalities, you all gonna lose power. It's going to be the kuleana of the state government. The DLNR is going to have to come in and make sure all of our DOCARE [Division of Conservation and Resources Enforcement] officers are not bullies, they're well trained, and when they go down the beach, they enforce the laws fairly [and] no back their friends."

Whether or not Roehrig's clarification allayed all of the fishermen's concerns remains to be seen. Retired commercial diver Walter Rawlins, for one, seemed fine with the idea of state management. "Let DLNR handle it. I got not problem," he said. (He did, however, question one of the proposed restrictions: "Only two uhu? ... That's not gonna work," he said.)

As of late July, no hearings had been scheduled and DeCoite's concerns apparently led Gov. David Ige to fly to Moloka'i to discuss the issue with some of the rules' opponents. At the Hawai'i Conservation Conference held last month, Ige hinted that the rules may not be going anywhere anytime soon. "I wanted to ensure we could have a better start of that process," he said, adding that he looked forward to ensuring that any rules going forward came from the community and that "all voices are heard."

Should the rules go out as approved by the Land Board, it did require that hearings be held on all of the main Hawaiian islands, not just those in Maui County. And once they've been held, the board committed to making sure that its final vote on the rules is held on Moloka'i. **Continued on next page**



New Limits

The 1994 Governor's Moloka'i Subsistence Task Force report that McGregor helped author found that the populations of white-saddle goatfish (kumu) and spiny lobster (ula) in the proposed CBSFA area had nearly collapsed, and according to the Hui's 2017 proposal, more recent monitoring suggested that the lobster population had still not recovered.

But at the Land Board's meeting, DAR staff presented data highlighting the fact that surveys done in 2017 found that the reef fish biomass of North Moloka'i was higher than anywhere else in the state, barring the uninhabited Northwestern Hawaiian Islands.

"Mean total biomass on North Moloka'i is nearly 3.5 times higher than the statewide average ... and over 15 times higher than the north shore of heavily fished O'ahu," a DAR report by scientists Whitney Goodell and Alan Friedlander stated. The report also noted that for three of the species to be covered under the CBSFA regulations — kole, kumu, and uhu — their mean biomass in North Moloka'i was 1.5 to 2 times higher than other north shores in the Main Hawaiian Islands, particularly O'ahu.

Fisherman Aaron Boswell and others seized upon this new data as proof that no new fishing regulations were needed.

In a scoping recent meeting with a DLNR representative, Boswell said attendees were informed that the fish at Mo'omomi was plentiful, almost double other areas, he said. "My question for him was, 'Why do we need you?' Boswell asked.

McGregor argued that despite the overall bounty of the area, the handful of species covered under the rules are still at risk of overfishing. Indeed, Goodell and Friedlander wrote in their report, "[L]ong-term community fishers have expressed concerns with what they observe as recent declines in overall catches, as well as declining fish size.

As resources throughout the state decrease, it is likely additional pressure will be placed on the resources of this area. As a result, it is increasingly important to consider future management plans that will help maintain the quality of this ecosystem in the face of increasing effort."

Testifiers who helped create the state's first and only CBSFA a couple of years ago at Ha'ena on Kaua'i's North Shore expressed their support for the Mo'omomi proposal, noting that there is already evidence that the restrictions at Ha'ena have increased the number and size of fish there.

The Mo'omomi CBSFA rules would establish the following:

Parrotfish, or uhu: A prohibition on the take of uhu 'ele'ele and uhu uliuli, a closed season of April 1 through June 30 for uhu palukaluka and uhu ahū'ula, and a total daily bag limit of two for those species. The board approved similar rules for the island of Maui years ago.

Whitesaddle goatfish, or kumu: A daily bag limit of two, a maximum size limit of 16 inches, and a closed season of January 1 through March 31.

Goldring surgeonfish, or kole: A daily bag limit of 20, a minimum fork length of 5 inches, and a closed season of April 1 through June 30.

Pacific threadfin, or moi: A maximum size limit of 18 inches in fork length, and a gear restriction allowing take only by hook and line, spear, or throw net. (The existing daily bag limit is 15.)

Spiny lobster, or ula: A daily bag limit of two, and harvest allowed only by hand or hook.

Limpet, or opihi: A prohibition on take or possession while diving.

Seaweed, or limu: A prohibition on taking with holdfast or roots attached.

General regulations: Except for torching, no take or possession of marine life would be allowed while night diving from

6 p.m. to 6 a.m. No SCUBA spearfishing or commercial fishing would be allowed, except trolling and bottomfish fishing in waters deeper than 40 fathoms.

Kawa'aloa Bay Protected Area Regulations: No fishing or gathering would be allowed, except for hand-harvest of a'ama crab, shoreline limu gathering dur-

ing the day, throw netting during the day, and hook and line fishing from shore during the day, using only artificial lures.

Restricting Access

O'ahu's Randy Cates said he first visited Mo'omomi some 40 years ago and has been diving there nearly every year since. And when the Legislature approved a small-scale, two-year pilot subsistence fishing project there in 1995, Cates said, he testified in support of it. The implementation of that project, however, backfired, at least for him, personally.

"I saw acts of violence increase, especially on me," he said. While the proposed rules had been touted by then-DAR administrator Bruce Anderson and others as merely a means to control excessive fishing — and not to control access to the fishing grounds — Cates argued that was not the case.

"You're going to ban spearfishing with SCUBA and have a bag limit, but allow gillnets. But with a gillnet, you can't tell two kumu to go into the net. It's not based on science," he said, asserting that the SCUBA fishing ban was really just a way to restrict access.

A SCUBA spearfishing ban would force him to free dive or snorkel, which would, in turn, force him to fish right next to the shoreline, which he said is disrespectful to the fishers onshore. What's more, it puts him at risk of violence, he said, noting that he had an altercation with someone there as recently as late last year.

Cates added that free diving, especially for older people, is not the safest or smartest thing to do, suggesting that by banning SCUBA-aided fishing, the DLNR would effectively be barring him from the area.

"If SCUBA is somehow giving you an advantage [to catch more fish], then why allow gillnets? ... If truly the gear type is the concern, why would you allow a gear type that's indiscriminate?" he asked.

In 2007, the Land Board banned the use of gillnets statewide, except in waters around Moloka'i, where residents vehemently opposed such regulation. (More than 1,700 Moloka'i residents had signed a petition opposing any rule changes to gillnets.)

Land Board member Roehrig, at least, was swayed by Cates' argument. In making a motion to approve DAR's recommendation, Roehrig noted that he wanted the proposed rules to be amended to ban the use of gillnets, or cross nets, as he called them.

DAR's Anderson reminded the board that "the entire island of Moloka'i rejected the lay gillnet rules" and under the proposed rules they would continue to be allowed, except in

Continued on next page



PHOTO: HUI MALAMA O MO'OMOMI

A hui member teaches children how to hand-catch octopus.

the Kawa'aloa Bay nursery area. "The community chose not to recommend any rule on limits on lay gill nets," he said.

Land Board member Yuen agreed with Roehrig that gillnets do take a huge amount of fish compared to other methods, but discouraged the board from touching "a hot button that the group that's promoting this decided not to include."

"There's reasons from a community level for not pushing things that sound good to us. I think we should probably leave that one alone," Yuen said.

Roehrig recounted that when he used gillnets when he was younger, "we would have to carry a hammer in our shorts because nets would get stuck on the coral. ... That's not a good thing either. If it's an area that doesn't have a smooth bottom, cross netting is problematic."

Shae Kamaka'ala, CBSFA coordinator for DAR, noted that the ocean floor in the area is mostly sandstone.

With regard to access, she noted earlier in the meeting that it was one of the main issues raised during DAR's scoping meetings on the rules, particularly vehicular access to Kawa'aloa Bay. While much of the coastline along the CBSFA is owned by the Department of Hawaiian Home Lands, which does not restrict access, significant portions are controlled by the Moloka'i Land Trust, The Nature Conservancy of Hawai'i, and Moloka'i Ranch, which do.

"Access has always been an issue in our community," McGregor testified. "The reason TNC closed off weekend access is because fences were cut, huge amounts of oipihi taken for commercial use, and a turtle was killed. ... Ka'awaloa Bay was a nesting beach for turtles. That was the last straw," she said.

Board Discussion

Early in the meeting, Kaua'i board member Tommy Oi questioned DAR staff about how they planned to enforce rules for 18 miles of coastline. He noted that at the Ha'ena CBSFA, "they live in the area. They're the eyes of the area. This area [on Moloka'i] is so big. There's no residents along the shore."

Kamaka'ala replied that DAR partners with the non-profit Makai Watch, which is a program that trains members of the public how to spot, document, and report violations. "We did it for Ha'ena twice with the community there," she said.

DAR's Anderson admitted that the two DOCARE officers on Moloka'i were certainly taxed as it is, but said that with educational outreach to the community, "compliance should be as good as anywhere."

State Rep. DeCoite, who represents the area most affected by the rules, stressed the need for the DLNR to beef up its enforcement on the island. "It should never be one family telling another you cannot catch this. ... It needs to be the department," she said.

To Roehrig, the concerns raised by DeCoite and others highlighted the need to give people a chance to voice their concerns "out in the open" and smooth out the rules "so it's more pono," he said before making his motion to approve DAR's request.

"As far as access is concerned, it's a two-edged sword. It's a blessing and a curse," he added. He relayed that at his nearshore home on Hawai'i island, raiders come in the middle of the night and take turtles, sea slugs, "everything. They just loot. They're not from our neighborhood and they take everything."

Board member Keone Downing chose not to offer any amendments, but expressed some concerns about the rules as proposed. For example, with regard to the ban on SCUBA spearfishing, he echoed a complaint similar to one raised earlier by Cates.

"I'm 64. Diving 25 feet three to four times a day is a lot easier with a tank. ... We're eliminating a whole group of people who grew up diving. [SCUBA fishing] allows us to feel important to go and dive and not have someone else go and dive for you," he said.

Taking care not to name names, Downing seemed to also suggest that Poepoe should step away from his lead role in stewarding the area. "Everybody has been talking about personality and the personality they talking about believes from listening from their side, this person put a lot of time in. If you really

care about Mo'omomi, they should start thinking about an exit strategy for that person so the island can heal and move forward," Downing said.

To the general complaints made about the Hui, Yuen noted that the proposal before the board was "a set of rules of how much fish people can take, not who gets power." He acknowledged that there were things that needed to be worked out in the community, but if the rules are enacted, "they will be the DLNR's rules and enforced by the DLNR's people."

(For more background, read, "Moloka'i Group Awaits Decision From BLNR on Subsistence Fishing Zone," from our February 1999 issue.)



Ban on Rock, Coral Take Stalls Seawater Air Conditioning Project

At the same April 13 meeting, the Land Board granted another, far less controversial request from DAR to send rules out to public hearings. The division sought to amend rules that prohibit the take of coral or live rock in order to exempt renewable energy projects, which would include those that reduce the consumption of non-renewable energy. The proposed rule changes would also allow the division to require mitigation for any coral or live rock removed or damaged by a renewable energy project.

In its report to the board, DAR explained that it has received proposals in the past decade for offshore wind turbines, wave

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generation buoys, and deep-sea air conditioning systems, all of which might require infrastructure to be placed in areas covered with stony coral or live rock.

The Land Board has already issued a Conservation District Use Permit for a seawater air conditioning project in Honolulu, but according to then-DAR administrator Bruce Anderson, it can't proceed without the proposed rule changes.

The project has been planned for a decade, but 30 pieces of coral the size of a microphone stand in the way, he continued.

"If we want to support these projects, there's often no alternative to disturbing coral," he said. He added that if the rules are adopted, the state will be able to require greater mitigation than is called for under permits issued by the U.S. Army Corps of Engineers for these same projects.

Board member Keone Downing seemed skeptical of the need for the air conditioning project's take of coral. "Why haven't they looked at going into deeper water? ... Why aren't they going under the surface?" he asked. He added that when telecommunications cables were installed in Makaha on O'ahu's west shore, installers made sure they exited in the sand, not in coral.

Anderson tried to assure Downing that his division was very diligent in seeing to it that any damage to coral is properly mitigated. "We charge a lot of money for any coral damage, \$250 for half a meter of coral is charged." In this case of the seawater air conditioning project, mitigation will include the transplanting of impacted corals.

"Believe me, the state's taking some leadership, nationally. ... I assure you, we're not allowing people to indiscriminately come in and take corals," he said.

Board member Chris Yuen made a motion to approve DAR's request. "It seems like a very reasonable approach to take. There is a difference between telecommunications cables and pipes. ... If this project goes through, it prevents a lot of greenhouse gas from going into the atmosphere. If we can't do something



PHOTO: HONOLULU SEAWATER AIR CONDITIONING PROJECT FEIS

The center of a proposed receiving pit for the Honolulu Seawater Air Conditioning project.

about that, there aren't going to be corals anyway from coral bleaching," he said.

To this, Anderson noted that 60 percent of building energy costs come from controlling temperature, so by cooling them with seawater, "we're saving a lot of fuel when we look at that."

Before the vote, board member Stanley Roehrig informed Anderson that the next time he comes to the board to seek permission for such a project, "come with some proof that it's de minimus or a small matter if you're going to break up coral." (The rules, if approved, would allow the department to permit the taking of coral for a renewable energy project without coming to the Land Board. Also, Anderson is no longer DAR administrator; he's head of the state Department of Health.)

The board ultimately approved the motion, with Downing dissenting.



Title Cloud Results In Gratis Addition to Ka'ena NAR

More than six years ago, the Land Board approved a Division of Forestry and Wildlife request to spend \$86,450 from the state Land Conservation Fund toward the purchase of three-fourths of an acre of sand dunes on the Mokuleia side of the Ka'ena Point Natural Area Reserve (NAR) on O'ahu.

The Natural Area Reserves System Com-

mission has recommended that the area be added to the NAR. According to a report by the DLNR's Land Division, the parcel "contains basalt benches with numerous tide-pools and a diverse intertidal flora and fauna, [and] rare coastal sand dune communities." Monk seals have been known to rest there, and the acquisition of the land would allow the department to better control invasive species as well as illegal human activities, the report added.

The Tom family (Gordon, Clayton, and Randall Tom and their spouses) were the would-be sellers, but a title search conducted by the department following the board's approval uncovered a significant cloud on the title, specifically, "an undocumented transfer of the fee interest in the property purportedly made by the initial Royal Patent Grant recipient," a Land Division report states. "Given the significant passage of time since the unrecorded conveyance, resolving the title issues would be prohibitive to both the landowner and the department due to the significant costs incurred," it states.

The Tom family offered to continue with the transfer if the state just paid off their outstanding property taxes. The state was prevented from doing so by the clouded title. The North Shore Community Land Trust then stepped in, offering to pay the back taxes. As of last month, taxes due on the property totaled \$6,143.45.

At its June 8 meeting, the Land Board approved a request by the Land Division to acquire the property from the Toms via a quitclaim deed, since it would come at no cost to the state.

— **Teresa Dawson**



PHOTO: DLNR

New addition to the Ka'ena Natural Area Reserve on O'ahu's North Shore.