

Environment



Hawai'i

a monthly newsletter

A Rudo Awakening

In June, *Environment Hawai'i* reported extensively on what appeared to be an elaborate criminal enterprise that had occurred right under the noses of Hawai'i County officials. It seemed incomprehensible that the federal Justice Department, known to have been investigating this for at least three years, had not yet brought charges.

As it turns out, the U.S. government had already begun a year earlier to quietly seize proceeds from sales of property that former county housing employee Alan Rudo and his three co-conspirators had acquired with their ill-gotten gains. On June 22, he signed a plea agreement owning up to millions of dollars in fraudulently obtained assets and consenting to cooperate with the feds in bringing his co-conspirators to justice. Before the end of the month, his three co-conspirators had been charged with similar crimes.

In announcing the charges, U.S. Attorney Clare Connors praised the reporting that *Environment Hawai'i* had published that first raised red flags about Rudo's schemes and, she said, led a county employee to alert the FBI.

Four Charged in Schemes to Defraud Hawai'i County Housing Program

On June 22, Alan Scott Rudo, a former staffer with the Hawai'i County Office of Housing and Community Development, signed a plea agreement with federal prosecutors, admitting his participation in a conspiracy to commit honest services wire fraud.

That plea agreement, made public in July, was the first inkling that the Justice Department was moving against four individuals involved in a series of schemes that put into their collective pockets more than \$10 million in land and other goods.

On July 18, Rudo appeared in court and formally entered his guilty plea to charges enumerated in a felony information filed with the U.S. District Court in Honolulu on July 11. On July 21, his co-conspirator Raj Budhabhatti was charged by means of a felony information filed in the same court. He was scheduled to enter a guilty plea on August 2.

July 21 saw the filing of a grand jury indictment against the remaining two conspirators: Hilo attorneys Gary Zamber and Paul Sulla Jr. Their arraignment is set for August 11.

In one sense, what Rudo and his co-conspirators did is simple: They devised at least three schemes that gamed the county's system of encouraging affordable housing development, with Rudo, on the inside of the housing agency, using his knowledge and position to advance the frauds.

In another sense, the schemes were quite complex. Two of the schemes involved setting up sham limited liability companies, having the county award them affordable housing credits despite no ability or intention of developing affordable housing, using those credits to pay for land that was then sold off or leased, and enriching the co-conspirators by millions of dollars. In a third

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The building in Cape Coral, Florida, purchased by Rudo's Dezing Artz company in 2020 for \$600,000 and sold on November 8, 2021 for \$800,000. On November 9, the federal government seized proceeds from this sale in the amount of \$752,064.46. CREDIT: GOOGLE MAPS

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NEW AND NOTEWORTHY

He'eia Estuary: The National Oceanic and Atmospheric Administration is asking for public comment on a revision of the management plan for the He'eia National Estuarine Research Reserve.

As described by NOAA, "this draft revised management plan is a minor update of the prior plan and maintains a strong foundation that honors the past by using indigenous resource management practices to support the sustainable co-management of the He'eia estuary. Core to the plan is the ahupua'a – the Hawaiian conceptualization of community that extends from mountain to oceans; and 'aina momona – using indigenous approaches to manage resources toward a state of sustainable abundance."

The draft revised plan includes "updated strategies and goals for the reserve's education, research, stewardship, and coastal training programs; staffing and organizational needs; and planned facilities and infrastructure development."



He'eia fishpond on O'ahu. CREDIT: HNERR

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ing programs; staffing and organizational needs; and planned facilities and infrastructure development."

The plan may be viewed online at: <https://heeianerr.org/request-for-comments-on-draft-revised-management-plan>. Comments should be received by August 21.

Seabed Mining News: One of the most aggressive companies in the race to mine metals from the ocean crust has run into problems. Not – or, at least, not only – because of growing opposition from many sectors to the very idea of seabed mining. But as a result of an even more fundamental problem: money woes. According to a July report in *Climate*

Home News, The Metals Company (TMC) is going broke.

TMC and its partner, Nauru Ocean Resources, have triggered an International Seabed Authority rule that requires the ISA to adopt rules for deep-sea mining by July 2023 in the Clarion-Clipperton Zone, stretching between Hawai'i and Mexico. Otherwise the ISA will have to give provisional approval to Nauru's licensing request anyway. With the ISA having failed to adopt such rules for nearly a decade, Nauru's ultimatum has thrown the agency into some turmoil, with members – who don't include the United States – struggling to reach agreement in July and August on procedures to govern seabed mining.

But even if it gets the green light, it may not have the funds to pursue mining operations. TMC is suing two parties who did not, TMC says, follow through on promises to invest more than \$300 million following the company's listing on the NASDAQ exchange last year. The company's share price has fallen from \$12 last September to less than \$1 as of last month.

As of March 2022, TMC had \$69 million in cash, *Climate Home News* noted, citing a recent SEC filing. "In 2021, the company estimated it needed \$7 billion for large-scale production."

Quote of the Month

“The Plumeria deal had been in the media. That's when this particular county employee became aware of the involvement of the county.”

— *Clare Connors, U.S. attorney for the district of Hawai'i*

Of Birds and Bees: Some Highlights Of the Hawai'i Conservation Conference

The theme of this year's annual Hawai'i Conservation Conference, held July 18 to 22 via Zoom, was "Pilina Maui Ola — Connections that Offer Resilience and Hope." So along with presentations reporting the latest results of various natural resource studies and management efforts, sessions explored the traditional and current connections between native Hawaiians and native species, as well as the ways partnerships and collaboration can build a strong conservation community.

The Hawai'i Conservation Alliance's conference website explained, "In Hawai'i, pilina or connections with place and with the living elements of the world around us, are the foundations of maui ola, our mutual well-being. For Kanaka 'Ōiwi (Hawaiians), the connections are ancestral, and for all of us in conservation, the aloha we form in the places we work are the basis for both our own dedication as well as the partnerships we build to address the challenges we face. ... We will share stories of success and hope to inspire pilina between people, communities, and place that lead to the innovations needed to address the challenges of conservation in a world undergoing unprecedented transformations."

The first installment in our coverage of the conference presentations focuses on birds:



'The Man Standing At the Forest Border'

The presentation by Kaleiheana-a-Pōhaku Stormcrow, a graduate student with the University of Hawai'i Wildlife Ecology Lab, stood out among the talks included in the session on seabirds and raptors. Others discussed how bird movements were tracked with radar or tags or described how their presence affects soil nutrients.

Stormcrow's work showed the abundance of information about pueo, the Hawaiian short-eared owl, that already exists in old Hawaiian language newspapers.

Assisted by translator Ralph Lalepa Koga from the University of Hawai'i's Hawai'i inuiākea (School of Hawaiian Knowledge), she searched the Papakilo Database, which includes a database of native Hawaiian language newspapers of the 19th century, and identified 1,268 articles related to pueo.

In searching just the terms "manu pueo" and "pueo aumakua," Stormcrow unearthed references to its appearance, the sounds it makes, its behaviors, its habitat, its diet, the cultural relationships the people had with it, and more.

Indigenous knowledge of nature is coded in cosmology and cultural practices, she explained. However, she added, it has been dismissed by conventional scientists, despite being "a parallel and equal line of inquiry."

The elusive pueo, her abstract notes, is challenging to study. No population assessment or significant survey efforts have ever been done. The bird is considered endangered on O'ahu and was included last year in the U.S. Fish and Wildlife Service's list of birds of conservation concern.

Despite the limited information about pueo, its historical relationship with native Hawaiians has meant that it's often referred to in ka'āo (legends), mo'olelo (histories), and 'ōlelo no'ēau (proverbial sayings), her abstract states.

"We can use this indigenous knowledge to fill some data gaps pertinent to life history and historical distribution and habitats of pueo and to co-develop new knowledge as we build bridges between indigenous science and conventional science," it continues.

The newspapers, printed between 1834 and 1948, are the largest archive of printed indigenous knowledge in the world, and are being used to resurrect biocultural knowledge and improve natural resource management, she said.

The newspapers describe the pueo's large staring (nunui 'ā'ā) eyes, hidden ears, strong pointed beak, long claws, broad

wings, and size ("big as a mother hen").

Its song is described as like a whisper; its alarm call, a woman's wail; and there's a reference to the sound of pounding kapa, which she suggested refers to the wing claps pueo make during mating rituals.

According to mele, the pueo is the second born child of Hina (the moon) and the god Kū, and is the younger sibling of Māui, who according to legend pulled the Hawaiian Islands from the sea with a fish hook.

"Because of that, [pueo] would have a pilina or relationship to the sea," she said. And, in fact, her archives search found a list of animals associated with the sea and the pueo was included.

She added that she also found references to pueo at ponds or springs, open plains, dryland agricultural areas, remote and cloud forests, lo'i kalo, and streams.

Pueo are thought to live on all of the main Hawaiian islands. Stormcrow found 61 place names associated with pueo throughout the state: 21 on Hawai'i island, 14 on Maui, 14 on O'ahu, 5 on Kaua'i, two on Lana'i, two on Moloka'i, and one on Ni'ihau.

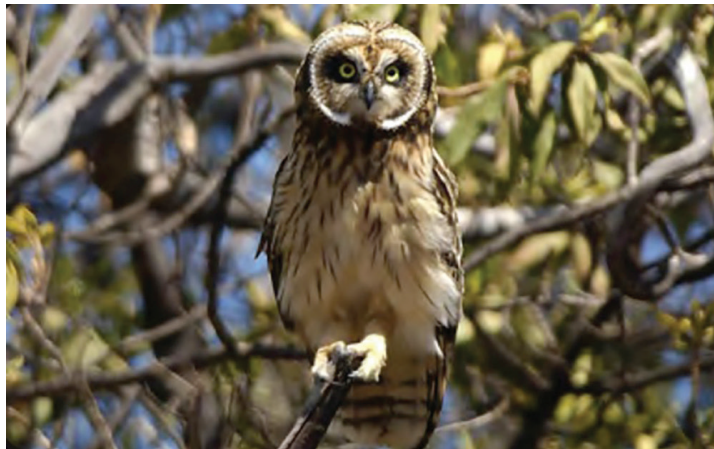
In addition to pueo being the younger sibling of Māui, which connects it to the sea, it is also considered to be the kinolau or physical manifestation of the god Kāne. Stormcrow found references to pueo being called Kānekupahu'a or Kāneikapahu'a, which translates to "the man standing at the forest border."

"It's interesting when you think about edge habitat and how there's a higher abundance of prey species. ... I think that there's a ton of evidence indicating that [pueo] do hang out in those places a lot," she said.

Finally, with regard to habitat, she

pointed to a re-discovered 'ōlelo noe'au from an 1896 newspaper: "We have no place to refute you, Pueo, for you are the child born of this place and you know the lay of the land in this entire region as a man knows the berms of his taro field."

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Pueo (Hawaiian short-eared owl). CREDIT: TOM DOVE

Of Birds and Bees *continued from page 3*

This saying indicates that the pueo perhaps had the largest home range of any other bird, she said.

With regard to pueo behavior, Stormcrow noted that the bird, in addition to being the kinolau of Kāne, is also the kinolau of the god Kū. She noted that Kū season, around March, is when the ʻāā star (Sirius) is on the horizon at sunset. It's also when pueo are generally more active, she said.

She added that the newspapers also held a ton of references to pueo being nocturnal, a fact that has recently been supported by Hawai'i Wildlife Ecology Lab research using VHF tags. That tagging work found that pueo are most active at night, she said.



Pueo Tagging Study

Marie-Sophie Garcia-Heras, a post-doctoral researcher with the University of Hawai'i, immediately followed Stormcrow, presenting results from efforts to track a handful of pueo fitted with GPS-VHF transmitters on O'ahu last year.

"[V]ery little is still known about its ecology including its daily/annual movements. ... [T]his was the first time pueo were tracked using this type of device," her abstract states.

She found that pueo are somewhat territorial and that they often use natural habitats during the day and agricultural fields and urban areas at night.

"They are very much nocturnal birds [and] very much use urban-related habitat," where they likely hunt rodents and insects, she said. Spending so much time in urban areas could lead to collisions with cars or exposures to pesticides, both of which could negatively affect their health and fitness, she added.

"Some birds exhibited localized movements (within 10 km), while others travelled longer distances (2-3 trips up to 45 km), including visits to other islands (Moloka'i, 73 km away)," her abstract states.

The pueo that went to Moloka'i was there for three days before returning, she said, adding, "Inter-island movements had not been documented before with Western technology."

In tracking the birds, Garcia-Heras also documented, for the first time in the world, an owl having a second clutch. "This same female had already successfully fledged three weeks earlier," she said.

She added that her work on pueo movement has ended due to a lack of funding.



The Birds and the Bees

In a 2015 article in *Elepaio*, the journal of the Hawai'i Audubon Society, André Raine and Brooke McFarland reported a case where a swarm of feral honey bees forced a breeding pair of endangered Hawaiian petrels (ʻuaʻu) to abandon their burrow on Kaua'i.

The birds tried repeatedly to return to the burrow, which they appeared to have been preparing for nesting, but quickly exited covered in bees. They eventually gave up.

The event, captured on camera, occurred in the spring of 2013 and is believed to be the first recorded instance of feral honey bees causing Hawaiian petrels to abandon an active burrow, the article states. The bees were introduced to Hawai'i in 1857.

Even though field crew destroyed the hive that the bees had built in the back of the burrow, the petrel pair did not return to it that year or the one following.



Protective gear is necessary for the dangerous job of vacuuming feral honey bees from bird burrows.

CREDIT: SCREENSHOT FROM ANDRÉ RAINE PRESENTATION

In his presentation at this year's Hawai'i Conservation Conference, Raine, who works for Archipelago Research & Conservation on Kaua'i, reported that the feral bee problem is getting worse.

While there were no recorded swarms or burrow takeovers from 2014-2016, they have been recorded every year since and they've been found in more and more burrows each year.

Even so, the threat is still relatively small. The number of burrows affected last year represented only 0.3 percent of all monitored burrows.

The bees have affected petrel burrows the most, but threatened Newell's shearwaters (ʻaʻo) and other unidentified species have also suffered.

On Kaua'i, managers documented bee swarms at more than 85 percent of management sites, Raine said, adding that burrow swarms have been confirmed on Lana'i and on Mauna Kea on Hawai'i Island, as well.

Hundreds to thousands of bees can overwhelm a burrow in a couple of hours, he said.

Of the 10 burrow takeovers, "six resulted in a seabird mortality (including two instances where both adults of a breeding pair were killed)," according to Raine's abstract. In another case, on Lana'i, a petrel chick died from bee stings.

"A lot of these burrows, the birds just don't come back," he said,

Even when bee hives were removed, a burrow takeover resulted in a failed breeding season 100 percent of the time. And in the following year, breeding occurred in only 28.6 percent of those burrows.

Raine said the bees appear more likely to take over burrows located at the base of a cliff wall, rather than those in root systems.

Using vacuums to suck the bees out is one possible solution, he said, but it's a "pretty daunting task." Workers would have to wear a protective suit in hot weather.

A preventative solution could be to remove hives found near bird colonies, as hives are constantly splitting and making new ones, he said. Swarm traps using pheromones is another possibility.

The bees threaten not only the birds but also the resource managers working to protect them. Raine said he's allergic to bees and doesn't want to get stung and go into anaphylactic shock while trying to photograph a bird.

He said that as climate change is increasing and mosquitoes range to higher elevations, the same may occur with the feral bees, allowing them to access higher altitude bird colonies.

After Raine's talk, Jim Jacobi of the USGS commented, "Just when you think with predator control things are getting better finally, all of a sudden then something like this comes along."

"It's not happening a lot, but the fact that we're seeing now every year, as opposed to never seeing it at all, we're now seeing one to two a year and seeing it across the board, I'm worried it could be an emerging issue," Raine replied.

—Teresa Dawson

A Remembrance of Fern Duvall: Naturalist, Artist, Gardener, Chef, Friend

(Contributed by Sheila Conant)

I met Fern not long after he took over the 'alalā captive propagation project. He was working and living at Pōhakuloa. Marie Morin and I drove up to Pōhakuloa to meet the new aviculturist. Fern was working outside at a picnic table on which there was a microscope and a baby – his son, Kai – on a blanket. It's an image I will never forget.

Fern was thrilled to take on the daunting task of bringing the 'alalā back from the brink of extinction. The aviaries at Pōhakuloa were small and primitive, and Fern had a modest budget. It was a war zone: helicopters flying a few hundred feet above, explosions nearly every day. The birds' behavior clearly indicated they were severely stressed. It was through his determined efforts that Olinda Prison was renovated to provide the birds a new home. The rest is history, including our 35-year friendship, which is very dear to me. During his tenure as aviculturist, Fern got to know every bird by name and could recite its lineage and recount its behavior.



Fern Duvall holding an 'ua'u chick.

CREDIT: SHEILA CONANT

We did so many things together, most involving birds, but also trading orchids and water lilies, cheering one another through serious illnesses, exchanging views on dog training and cooking and enjoying birds, plants and invertebrates. He loved hearing the bullfrogs in the pond next to our home in Honolulu—they reminded him of his childhood home in Michigan. I've no idea how many times he was our house guest, nor I his, but I do remember it was always fun.

Fern was the best naturalist I have ever known. His depth of knowledge about birds, plants, invertebrates, ecosystems, and his devotion to conserving these priceless

resources were incredible to me. Always confident of his convictions, Fern was never hesitant to speak his mind, whatever the views of his listeners. He was softspoken, but never backed down. Fern's gentle nature, cheerful demeanor and his kindness were a joy to his friends and colleagues. He did scold me a few times because of something I did or thought (he was right to do so—usually), but it only deepened my respect and affection for him.

After some time, Fern handed over the 'alalā project to others. He missed the birds very much, but he was joyous about all the new conservation and education projects he became involved in. He was dedicated, and always deeply thoughtful, in his management of Maui County Natural Area Reserves, a task he grew to love.

Fern was no stranger to personal tragedy, which he accepted with remarkable grace. His ability to accept disappointment, sadness and grief seemed boundless. His love of exploring native ecosystems, hiking, gardening, creating artwork must have been instrumental in helping maintain his calm demeanor in the face of loss and disappointment. There were also many joys in his life. When Fern told me about meeting Mary, who became his wife, his happiness was obvious. He grew happier with Mary than I thought possible, probably because she's so good at laughing and smiling. My husband, David, performed their marriage at a wonderful celebration of their wedding with dozens of friends and relatives. I am so glad Fern and Mary were together when we lost Kai.

By the time Fern was ready to retire, he had grown optimistic about the future of conservation in Hawai'i because he had such faith in the younger folks. Many of those he helped with permits, access and information about their organisms (plants, snails, birds and other animals), have now stepped up to the challenges we face here in the extinction capital of the world. It was so good to see he was leaving things in good hands when he retired at the end of last year. He died just two months later.

I will miss him more than I could ever say and will remember him whenever I see a lovely Hawaiian forest bird, a rare and beautiful Hawaiian plant or one of the spectacular orchids he gave me in full flower.

I recall Edna St. Vincent Millay's words:

*My candle burns at both ends;
It will not last the night;
But ah, my foes and oh, my friends—
It gives a lovely light.*



Dieter Mueller-Dombois

On July 19, less than a week shy of his 97th birthday, Dieter Müller-Dombois died. He was a towering figure in Hawaiian conservation for six decades. As a professor at the



Annette and Dieter Müller-Dombois

University of Hawai'i, he left his stamp on hundreds of students and faculty.

A video tribute to Müller-Dombois, produced in 2012 by the state Department of Land and Natural Resources, notes his profound contributions "to our knowledge of botanical science, ecology, and conservation in Hawai'i and beyond.

Flint Hughes of the U.S. Forest Service, who has built on Müller-Dombois's work on 'ohi'a, said Müller-Dombois "was interested in everything. He wanted to understand everything." Hughes cites him as a co-author on a recently published work describing how 'ohi'a forests can quickly regrow in areas where they have been razed.

Sheila Conant, a colleague of Müller-Dombois at the University of Hawai'i, remembered him doing "some really wonderful work characterizing ecosystems in the Hawaiian islands, which are the epitome of examples of what sort of ecological and evolutionary processes take place on islands."

"He was a good scientist but he was also a very kind person," Conant said.

He is survived by his wife, Annette. The DLNR video is available at: <https://www.youtube.com/watch?v=Vu0LC95xmh8>

— Patricia Tummons

Four Charged *continued from page 1*

fraud, described by *Environment Hawai'i* in reports on the now-defunct Waikoloa Mauka housing project, Rudo, Sulla, and Zamber schemed to acquire, through a shell company called Plumeria at Waikoloa, 11.7 acres of land along Waikoloa Road at minimal cost. Plumeria at Waikoloa then sold that land for \$1.5 million, more than 27 times the nominal fee paid for it.

Forfeited Proceeds

The plea agreement signed by Rudo calls for the forfeiture of funds and other goods acquired through the fraudulent schemes.

First, there's a "money judgment" against Rudo in the amount of \$2,114,170. The felony information filed against Budhabhatti seeks a money judgment of at least \$925,724.

Second, there are proceeds from the sales of properties they acquired using the fraudulently obtained funds. These seizures total an additional \$2,323,890.

The Kealakehe property. West View Developments, a company that Rudo, Budhabhatti, and Zamber put together, with the blessing of then-county housing administrator Susan Akiyama Kunz, acquired around 14 acres of land in 2015 for what was supposed to be an affordable housing development encompassing all three parcels that made up the acreage. Soon thereafter, the OHCD agreed that the development could be built on just two of the three parcels, freeing up the third, a seven-acre parcel, to be used without restriction. In May 2021, that parcel was sold for \$950,000. On June 4, the federal government seized proceeds from that sale in the amount of \$938,428.16.

The Florida property. This is a 5,088-square-foot commercial building in Cape Coral, Florida, near Fort Myers, that a Rudo-owned LLC, Deziign Artz, acquired in July 2020 with funds gained through his illegal housing schemes, for \$600,000. He sold it on November 8, 2021, for \$800,000. The government seized proceeds of \$752,064.46 from that sale on November 9.

The Ninole property. The government has claimed proceeds in the amount of \$499,626.34 from the sale of this property, a 2.7-acre parcel of vacant land along the Mamalahoa Highway in Ninole, around 20 miles north of Hilo. This property was purchased in 2018 by Plumeria at Waikoloa, which by this time had a new name: Peaceful Ventures. The recorded sale price at that time was \$350,000, but it is doubtful that this was a true arms-length transaction, since the seller, Rainha Iemanja Capital Holdings, LLC, was managed by Sulla himself and his wife, Jamie Ann Wallace-Sulla, who had held

the land, under one or another LLC or trust, since 2000. In April 2020, Peaceful Ventures conveyed the title to another LLC, SZ Ventures, whose sole member was Sulla. SZ Ventures sold the property on December 17, 2021, for \$537,500, well above the assessed value of \$215,000. On January 6, the federal government seized proceeds from that sale in the amount of \$499,626.34.

The Puna property. Kaha Kii Hale, LLC, whose sole member was Rudo, acquired this 12,000-square-foot lot with a small home on it in July 2015 for \$85,000. In September 2016, the title was transferred to Rudo as the trustee of Bright Antares Trust, with Sulla preparing the conveyance documents. The recorded sales price was the same -- \$85,000. In June 2020, Sulla again prepared the documents conveying title from the trust to Rudo himself. On January 26 of this year, Rudo sold the property for \$150,000. On January 31, the same day that the transaction was recorded at the Bureau of Conveyances, the government seized the proceeds of that sale, amounting to \$133,771.33.

The total value of the cash judgment and seized proceeds from property sales comes to roughly \$4.5 million. In addition to that, according to Rudo plea agreement, the government on April 4 seized 45 affordable housing credits; the value of such credits varies but has ranged as high as \$60,000 each in the past. At that upper range, the value of the credits would be in excess of \$2 million.

But there are other properties that Rudo acquired in recent years that the government has left untouched, so far.

The most expensive one is a 3,000-square-foot home on an acre of land in the O'oma Heights subdivision in Kona. This property was purchased for \$950,000 by Plumeria at Waikoloa in June 2018. On April 14, 2020, Plumeria at Waikoloa – a.k.a. Peaceful Ventures – conveyed title to Rudo's Deziign Artz, with a recorded purchase price of \$900,000. Less than three months later, Deziign Artz sold the property for \$725,000, with Rudo's wife, Margaret Reynolds, signing the conveyance documents as Deziign Artz's manager.

Reynolds herself also acquired significant property in recent years. In February 2019, she bought a 3,000-square-foot house on half an acre of land in Kona for \$1.35 million, taking out a \$1 million mortgage to finance the purchase. Three years later, this past February, the mortgage was paid off and she now owns the property free and clear.

Over and above the seizures and forfeitures, the government has placed a *lis pendens* on the two lots at Kealakehe that are still held in the name of West View Developments. As stated in the government's filing with the

federal court, "the United States shall seek to forfeit certain real property ... titled in the name of West View Developments, LLC ... as property, real or personal, which constitutes or is derived from proceeds traceable to a violation of any offense constituting a 'specified unlawful activity.'"

'The Waikoloa Scheme'

The government describes in some detail the three schemes Rudo and his co-conspirators orchestrated. The "Waikoloa Scheme" involved Rudo working with principals of a development company, Waikoloa Mauka, LLC, to engineer a scheme intended to satisfy county requirements that it earn about 80 affordable housing credits. This was eventually



Danny Julkowski, who purchased Waikoloa land from Plumeria at Waikoloa in what the Justice Department describes as the Waikoloa Scheme, has listed the lot for sale.

accomplished by having the developer subdivide an 11.7-acre parcel from its much larger holdings and transfer title to what Rudo put forward as a non-profit organization called Plumeria at Waikoloa.

The scheme began around December 2016, the government alleges, when Rudo "took various steps to obtain OHCD's approval of an AHA," or Affordable Housing Agreement. Rudo "represented that Company-C [now identified as Plumeria at Waikoloa] 'was a Hawai'i non-profit corporation,' as required by county regulations. In fact, and as Rudo then knew, [it] was a for-profit corporation that had been formed by Individual-1 [Sulla] for the purpose of selling the Waikoloa property for a profit." The scheme was finalized in June 2017, when the county, relying on Plumeria at Waikoloa's representations that it was a non-profit, released the developer from its obligations to provide affordable housing.

The conspiracy gets more complicated in January 2018. According to the indictment, on January 22, "Sulla formed two trusts – Active REI and Ad Astra – benefitting Rudo. On the same day, Sulla formed SZ Ventures, LLC, which was to be operated by Sulla and

Zamber with the understanding that “no profits or cash distributions shall be guaranteed until [the Waikoloa property] is sold.”

The following day, SZ Ventures and DeSign Artz, LLC – a company set up by Sulla but owned by Rudo – entered an agreement calling for their joint ownership of Plumeria, again with the understanding that “no profits or cash distributions” were to occur until the Waikoloa property sold.

Then, on January 28, Rudo was removed as the owner of DeSign Artz and replaced with the two trusts, Active REI and Ad Astra, that benefited Rudo.

All this set the stage for the transfer of the Waikoloa land to be conveyed to Plumeria at Waikoloa on January 29. The recorded sale price was \$55,000. Less than a month later, Plumeria at Waikoloa had identified a buyer and in May of that year the property was transferred to Pua Melia, LLC, owned by Danny Julkowski, at a cost of \$1.5 million.

“Through a variety of subsequent transactions,” the indictment states, “the proceeds of the Waikoloa sale were distributed by Sulla and divided among himself, Zamber, and Rudo, with Rudo’s share constituting bribes and kickbacks.”

The information against Rudo then states that later that year, on November 5, Sulla sent an email to Rudo and Zamber, “directing the disposition of the proceeds in proportion to our percentages.” Finally, “On or about February 18, 2019, [Sulla] sent an email to Rudo, [Zamber], and another person explaining the entities created to conceal

The Key Role Played By Environment Hawai'i

In a July 25 news conference announcing the charges against Rajesh Budhabhatti, Gary Zamber, and Paul Sulla, Clare Connors, the U.S. attorney for the district of Hawai'i, gave credit to reporting done by *Environment Hawai'i* in launching the investigation into corruption within the Hawai'i County Office of Housing and Community Development.



U.S. attorney Clare Connors

Near the end of the conference, Connors was asked whether there had been a whistleblower who tipped off the FBI.

Connors replied that a county employee provided the tip after he had been alerted to the fact that some of the documents he had been involved in approving were suspect. “When he became aware of that, he reached out to the FBI,” she stated.

“The media had been covering certain of these transactions,” Connors went on to say. “The Plumeria deal had been in the media. That’s when this particular county employee became aware of the involvement of the county.”

“The media, was it the *Environment Hawai'i* newsletter?” Connors was asked.

“Yes, I believe it was,” she replied.

The county employee who tipped off the FBI was former housing administrator Neil Gyotoku. *Environment Hawai'i* reported on the Plumeria at Waikoloa deal beginning in July 2018, when questions began to arise about the deal in the context of hearings by the state Land Use Commission. — P.T.



The Waikoloa affordable housing project, the only one built on land involved in the fraudulent housing schemes.

Rudo’s financial and ownership interest in [Plumeria at Waikoloa.] Through a variety of subsequent transactions, the proceeds of the Waikoloa sale were distributed among Rudo, [Sulla], and [Zamber].”

The Kailua-Kona Scheme

To effect this scheme, Rudo and all three of his co-conspirators formed West View Developments, the government alleges. The felony information adds that in September 2015, using his official county email address, Rudo emailed Ron Brown, who owned around 13 acres of land in Kailua-Kona. Rudo explained to Brown “the benefits of owning [affordable housing credits]. Rudo made it appear as if he was acting in the county’s best interest to provide affordable housing,” the information states, when in fact he was attempting to persuade Brown to sell the property to West View.

Rudo then proceeded to obtain the OHCD’s approval for an affordable housing agreement (AHA-2) between the county and West View Developments. “AHA-2 granted [West View] 104 AHCs in exchange for a

promise to develop approximately 52 affordable housing units on the Kailua-Kona property, which it did not own,” the information says. (A fuller history of how West View Developments acquired the affordable housing credits and the land itself is in the June issue of *Environment Hawai'i*.)

After the county released about seven acres from the requirement that affordable housing be built on the site, West View sold that land for \$950,000, and, according to the government, “the proceeds of that sale were intended to be distributed among Rudo and the co-conspirators.”

As *Environment Hawai'i* reported, West View went on to lease the remaining land for \$84,000 a year to a prospective developer. It also sold two of the affordable housing credits for \$60,000, the government states, “which [Budhabhatti] intended to use to purchase ‘a Hawai'i-like home’ ... in the Bay area.” The sale of those two credits, it goes on to say, “was facilitated by a letter drafted by Rudo for [Zamber’s] signature under which [West View] sought OHCD’s approval of the transfer.”

“While taking official acts on behalf of the county with regard to [the West View affordable housing agreement], Rudo failed to disclose his ownership interest in [the company]. Following his December 2018 resignation from OHCD, Rudo was prohibited from having any involvement with [the company] for one year. Rudo nonetheless continued to engage in, and benefit from, [the company’s] business without the county’s knowledge.”

The South Kohala Scheme

“In or about February 2015, Rudo endorsed and ultimately secured OHCD approval of an AHA (‘AHA-3’) between the county and Company E,” the federal information states, referring to Luna Loa Developments. That agreement, signed by the then-OHCD administrator Stephen Arnett, granted the company 212 affordable housing credits on its promise to develop 106 affordable units on 4.6 acres of land in Waikoloa, South Kohala. The government’s information says, “While participating in OHCD’s approval process, Rudo did not disclose his ownership interest in [Luna Loa], which was also owned by” Budhabhatti and Zamber.

The government provides details of how Luna Loa obtained the land by helping it “negotiate deals to buy the South Kohala property, resell it at a profit, and retain and sell AHCs, all without developing any affordable housing units.”

Steps taken by Rudo, it continues, included: “using knowledge and expertise gained from his position at OHCD, Rudo

identified various landowners who might be interested in buying AHCs. Rudo thereafter drafted letters for [Zamber] to sign ... soliciting offers from those landowners for the purchase of AHCs that the company had acquired through AHA-3.

“On or about April 8, 2015, [Luna Loa] sold four AHCs ... for \$200,000, and the proceeds were deposited into a bank account belonging to [Luna Loa] and controlled by [Budhabhatti]. This occurred even before Luna Loa had title to the property.”

The government continues: “In late April 2015, [Luna Loa] entered agreements under which it would (i) purchase the South Kohala property from one real estate development company and (ii) resell the property to another real estate development company. After closing the two transactions on the same day, [it] retained 17 AHCs from AHA-3 and took fees of approximately \$45,000.”

In March 2016, Budhabhatti and Zamber sold five of the affordable housing credits for \$150,000, with the proceeds from the sale deposited into Luna Loa’s bank account, controlled by Budhabhatti. Two months later, West View transferred four of its credits to Luna Loa. Two weeks later, Luna Loa sold 12 affordable housing credits for \$384,000, the government says. Again, proceeds were placed into the Luna Loa bank account.

“Through a variety of subsequent transactions, the proceeds of the foregoing AHC sales were distributed among Rudo and the co-conspirators,” the government says. “While taking official acts on behalf of the county with regard to AHA-3, Rudo failed to disclose his ownership interest in [Luna Loa], or the fact that he was receiving proceeds from the foregoing transactions.”



The Indictment

While both Rudo and Budhabhatti were the subject of felony informations that set forth the charges against them, Zamber and Sulla



Alan Rudo

were indicted by a federal grand jury. While many of the crimes are the same, the difference is that both Rudo and Budhabhatti agreed to plead guilty. Zamber and Sulla apparently did not, resulting in charges being brought by means of a grand jury indictment. Zamber and Sulla face one count of conspiracy to commit honest services wire fraud and six counts of honest services wire fraud. In

addition, Sulla was charged with one count of money laundering.

Over and above the forfeitures and seizures set forth in the informations against Rudo and Budhabhatti, the government seeks personal money judgments against Sulla for \$551,225 and against Zamber for \$171,792, such sums “having been obtained directly or indirectly” as a result of the criminal actions listed in the indictment.

As to the money laundering charge against Sulla, the government states: “On or about December 23, 2021, ... the defendant knowingly conducted a financial transaction affecting interstate commerce, which financial transaction involved the proceeds of specified unlawful activity, ... knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds” of the unlawful activity. The transaction involved shifting more than \$500,000 from a Title Guarantee Escrow account to one managed by Old Republic Exchange.

Both Sulla and Zamber have stated that they will contest the charges against them.

— Patricia Tummons

For Further Reading

Many articles in the June 2022 edition of *Environment Hawai'i* discuss what the government calls the Kailua-Kona Scheme and the South Kohala Scheme. These include:

“The Intriguing History that Underlies a Kona Affordable Housing Development;”

“Editorial: Big Island’s Housing Policy: Troubled, Confusing, Ineffective;”

“Housing Agency Has Had Difficulty Tracking Low-Cost Housing Credits;”

“He Owned the Land for Just a Day But Received 212 Credits from County.”

The following articles provide details on what the government calls the Waikoloa Scheme:

“Waikoloa Mauka Project Now Subject of FBI Investigation, Developer Says,” September 2020;

“Editorial: Oversight Required for Hawai'i County Housing Office,” January 2019;

“As Owner Is Held in Moscow Jail, LUC Mulls Reverting Waikoloa Land,” July 2018.

Sierra Club Appeals BLNR Decision Over Four East Maui Stream Permits

For now, the four permits granted in 2020 by the Board of Land and Natural Resources to Alexander & Baldwin and its East Maui irrigation Company so they could continue diverting 45 million gallons of water a day (mgd) from East Maui streams remain in effect, albeit with several new conditions.

After the Land Board rejected a request by the Sierra Club of Hawai'i for a contested case hearing on those permits, the organization appealed to the Environmental Court. In May of last year, the court ordered the board to hold a contested case hearing. In the meantime, it also limited the amount that could be diverted to 25 mgd. On May 2 of this year, the court further reduced that amount to 20 mgd, noting that the companies had not been using any more than that for months and that 5 mgd is a lot of water to be wasting.

On June 28, after holding a contested case hearing and receiving recommendations from its hearing officer, board chair Suzanne Case, the Land Board signed a decision and order upholding its earlier cap of 45 mgd.

The Sierra Club had asked for a cap of 25 mgd until the state Commission on Water Resource Management issued its decision on the group's still-pending September 2021 petition to amend the interim instream flow standards of a dozen streams in Huelo that fed into the EMI ditch system. Those streams were not included in a CWRM order in 2018 that addressed flow standards in two dozen other East Maui streams.

Next month, commission staff members are expected to present their recommendations on the IIFS petition for those 12 streams.

The Land Board's decision and order in the contested case hearing states, "It would be better to wait until CWRM has acted on the current IIFS petition, or at least until revised staff recommendations are available, before the Board institutes specific limits on stream diversions in the 12 streams. The Board would be shooting from the hip if it did so on the current record."

The order notes that Maui County and Mahi Pono, which co-owns EMI with A&B, used 25.4 mgd last October, includ-

ing 5.81 mgd of pumped groundwater. By the end of last year, Mahi Pono anticipated it would need 0.63 mgd more.

"As it is not clear how much water can be sustainably pumped, with a 25 mgd cap, there would be little to no additional water available for any of the plantings Mahi Pono currently planned in 2022. ... Freezing Mahi Pono's diversified agriculture farming operations would also halt any corresponding increase in employment and food security for the state that could be expected from the continued development of Mahi Pono's operations," the decision and order states.

It adds that the real limit to water use is that it be put to reasonable and beneficial uses, which is a condition of the permits. The permits also do not allow for any wasting of water.

Recognizing the Sierra Club's argument that water diverted by the companies into unlined reservoirs in Central Maui is, in fact, being lost through seepage and evaporation, the board amended the permits to require a better accounting of what goes into those reservoirs.

Under the new conditions, A&B and EMI must provide the board with a list of all of its reservoirs that receive water from the permitted stream diversions, and that list must describe the capacity of each reservoir, their surface areas, what fields they irrigate, what any of them are lined with, the estimated amount of daily evaporation, the cost and time to line unlined reservoirs, and information on those that are planned to be taken out of service.

The companies, which have argued that the water in the reservoirs is needed to fight fires, must also provide the board with the number, location, timing, and approximate acreage of fires fought during each quarter using water from the reservoirs. It must also specify which of its reservoirs were tapped to fight these fires.

To get a sense of how much groundwater can be sustainably pumped to meet Mahi Pono's needs, the companies are also required to list all of their irrigation wells and provide quarterly information on the water and chloride levels in those being used.

Finally, the board added conditions

that tasked DLNR's Division of Forestry and Wildlife staff to work with the Maui Fire Department to determine the feasibility of using ocean water to fight fires. Both DOFAW and the DLNR's Land Division were also required to bring to the board a proposed watershed management fee and/or requirement that would be imposed on the companies before the next renewal of their permits or before a request for authorization to issue a lease at a public auction came before the board.

All seven of board members signed the decision and order, which was officially filed on June 30.

Appeal

The Sierra Club appealed the board's decision a week later. Represented by attorney David Kimo Frankel, the group argued in its filing with the Environmental Court that both A&B and the Land Board failed to meet their burden to justify the diversion of up to 45 mgd under the permits.

It added that the Land Board breached its trust duties by increasing the diversion cap before the Water Commission set new instream flow standards and before the submission and implementation of a plan to reduce system losses to less than 20 percent. The board also breached its trust duties by allowing the base flow from the dozen Huelo streams to be taken and largely lost, the group added.

"Mahi Pono asserted and BLNR concluded that Mahi Pono will need 21.69 mgd for agriculture in 2022," the group noted. "Mahi Pono requested, and BLNR provided, a cushion, or buffer, of an additional 4 mgd."

Despite the permits requiring the companies to put the water to reasonable and beneficial uses, the group argued that most of the water taken from East Maui streams in 2020 and 2021 was not.

"Although given the opportunity, A&B never provided any evidence that any of the water that flowed into the reservoirs in any single day or month was actually needed and used for irrigation in that month or a subsequent month," the group stated.

Other than 48,000 to 100,000 gallons a day used for dust control, A&B failed to prove any water in its catch-all use category.

ry of “reservoir/fire protection/evaporation/dust control/hydroelectric/ system losses,” was actually used, it argued.

In January 2020, A&B included 25.09 mgd in that category. By March of this year, that number had dropped to 5.5 mgd.

“Taking water from streams and depositing that water into reservoirs which allow most of that water to seep into the ground is not a reasonable, beneficial, or efficient use of water,” the Sierra Club stated.

It added that A&B produced no data or any expert to show how much of the water that seeps from the reservoirs reaches the aquifer below “and is actually contained in it for future use.”

The group further argued that A&B’s own final environmental impact statement on its proposed long-term water license for the four permit areas stated that the sustainable yield of the aquifer tapped by its wells is 32 mgd.

Mahi Pono pumped an average of 4.2 mgd last September and 5.81 mgd last October 2021, and “was unable to say that its pumping for groundwater in September 2021 or October 2021 had any adverse impacts,” the group stated.

“Pumped groundwater would cost Mahi Pono about 52 cents per 1,000 gallons, which is still less than farmers in Central O’ahu pay for water from the Waiahole ditch,” it stated.

Finally, the Sierra Club argued that the Land Board failed to determine if the proposed water use abridged or denied traditional and customary native Hawaiian rights, and also that the permit conditions were poorly drafted.

The Sierra Club asked the court to reverse the decision to continue or hold over the permits for another year. It also asked the court to come up with a remedy to allow water to continue to flow to central Maui under appropriate conditions, to modify the Land Board’s decision, to remand the case with instructions, award attorneys’ fees and costs, and provide any other proper or just relief.



Seawall Case Heads to Trial Amid Attorney-Client Rift, Claims of Withheld Evidence

On August 22, a jury-waived trial was expected to begin in the state’s case against James and Denise O’Shea, and their com-

plaint against their former neighbor, Rupert Oberlohr.

The state argues that the couple built a seawall on state land in 2017 without any government approvals after the wall in front of their Sunset Beach home failed.

The O’Sheas have argued that the wall that collapsed was built by the state and that the new wall is on their private property. They also argue that work Oberlohr did on his portion of the old wall caused it to fail.

Prior to settlement talks last year, Environmental Court Judge Jeffrey Crabtree issued an order granting in part and denying in part the state’s motion for summary judgment, which *Environment Hawai’i* reported on last November.

Although the state and the O’Sheas seem to be near a settlement, as of late last month, the parties were still arguing over the production of evidence and the O’Sheas’ attorneys had filed a motion to withdraw as counsel.

On July 29, Crabtree held a hearing on motions by the state and Oberlohr to compel the O’Sheas to provide them with a logbook James O’Shea had mentioned in a deposition. The logbook apparently contains details of what transpired around the time when the old seawall failed and other potentially relevant information.

Mr. O’Shea has refused to give the logbook to his lawyers, whose motion to withdraw as counsel was also set to be heard that day.

In the state’s motion to compel production of documents, state deputy attorneys general argued, “As discussed herein, not only should the O’Sheas be ordered to produce the logbook, they have also violated this Court’s order to produce all documents responsive to the State’s Second Request for Production of Documents. In addition to attorneys’ fees, sanctions are appropriate to correct the prejudice that would result if the O’Sheas are allowed to benefit from their refusal to produce the logbook.”

Oberlohr’s attorneys also want the logbook. And as the O’Sheas have put the home up for sale for just under \$2 million, Oberlohr’s attorneys have asked for the seller’s disclosure statement. The attorneys argue in a July 26 memo in support of the state’s motion that they had sought those documents more than a month ago.

The O’Sheas’ attorneys opposed the state’s motion, asking the court to deny it

until the attorneys themselves receive the documents from the O’Sheas.

“Trial is four weeks away, yet the O’Sheas’ counsel claims that neither document has been received or reviewed by Defendants’ counsel as of ... July 21, 2022,” Oberlohr’s attorneys wrote.

They added that Denise O’Shea testified that the disclosure statement “included information about the pending lawsuit and that they tried to ‘disclose ... [e]very single thing we could think of.’ ... [I]t is both admissible at trial as party admissions and reasonably calculated to lead to the discovery of other admissible evidence.”

With regard to the motion to withdraw as counsel, one of those attorneys, Greg Kugle of the law firm Damon Key Leong Kupchak Hastert, stated in a declaration that, “The attorney/client relationship has irretrievably broken down. As such, good cause exists for Damon Key’s withdrawal as Defendants’ counsel.”

At the hearing, state deputy attorney general Lauren Chun “placed on the record the settlement terms between the State of Hawai’i and the O’Sheas, noting that the settlement is contingent upon approval by the Attorney General and the BLNR,” court minutes state.

Judge Crabtree granted the motion to compel and the requests for attorney’s fees and costs. He denied without prejudice the O’Shea attorneys’ motion to withdraw. He also bifurcated the trials. The O’Shea vs. Oberlohr trial will proceed as scheduled on August 22. The State vs. O’Shea trial will be rescheduled if the settlement is rejected.



Work Proceeds on Condo In Koloa Despite Worries Over Blasting

On May 11, E Ola Kakou Hawai’i and Friends of Maha’ulepu filed a motion in the 5th Circuit Court seeking a preliminary injunction to stop work on the construction of the 279-unit Kauano’e o Kōloa luxury condominium project in Po’ipū, Kaua’i.

The community groups are concerned that the development will endanger cave wolf spiders and amphipods that they believe live in lava tubes beneath the property. They’ve also lamented that archaeological features may also be damaged or destroyed, if they have not been already.

A hearing on the groups' motion for a preliminary injunction was held on July 20.

In an opposition memo filed July 12, attorneys for MP Elko II, LLC; Kauai Hale, Inc.; MP Financial Group, Ltd., dba Meridian Pacific; 5425 Pau a Laka LLC; and Earthworks Pacific, Inc., argued that the developers had met conditions imposed decades ago by the state Land Use Commission to protect any wolf spider or blind amphipod habitats or archaeological sites worthy of protection.

The attorneys noted that on May 9, the archaeological firm Cultural Surveys Hawai'i certified to Kauai County officials that the property did not contain any archaeological sites that were significant or worthy of protection.

They added that biologist Steve Montgomery certified on May 12 that the property did not contain any habitats of the wolf spider or cave amphipods that were worthy of preservation.

According to Meridian Pacific vice president of construction Colin Thompson, project developers began using explosives on May 27 to prepare the ground for infrastructure. He said the blasting, as well as any grading, is expected to be completed in November.

Kauai County, which is also a defendant in the case, added in its June 30 memorandum in opposition to the injunction that staff from the state Historic Preservation Division and the Division of Conservation and Resources Enforcement (DOCARE) inspected the property on June 3 to see whether any worthy archaeological sites or spider/amphipod habitats were in danger of being harmed.

On June 14, the county's attorneys noted, the Pacific Islands Fish and Wildlife Office of the U.S. Fish and Wildlife Service informed the county that, "Everything that has been presented to us including the information from the on-site monitors, which are highly qualified individuals, and the site visit from the State's DOCARE officer are pointing to no cave openings and no impacts to endangered or threatened species as a result of the activity at the site."

The attorney representing the community groups argued in a July 15 memorandum supporting the injunction that Montgomery's determination that there was no habitat on the property worthy of protection was based on coring samples that suggested there was no water beneath the

surface. Water, Montgomery stated, was a necessary component of any underground habitat for the cave spiders and amphipods.

However, the groups argued that they had a witness who would testify that water in fact was found in percolation tests.

When it came time to hear the motion on the preliminary injunction, Judge Kathleen Watanabe chose not to.

According to an email to supporters, Friends of Maha'ulepu's Bridget Hammerquist reported, "[O]ur hearing before Judge Watanabe last Wednesday July 20 did not go well. Basically, the judge denied our right to call witnesses at an injunction hearing and is forcing plaintiffs to take deposition testimony instead. She continued all hearing dates giving the developer more time to blast and potentially cause irreparable harm to the environment...."

The hearing on the injunction has been moved to October 18, just weeks before the blasting work is expected to conclude.



Kahala Hotel Permit

On May 22, Environmental Court judge Dean Ochiai affirmed the Land Board's November 2021 decisions to renew a revocable permit to ResortTrust Hawai'i, LLC for land fronting the Kahala Hotel & Resort and to deny Honolulu resident Tyler Ralston's request for a contested case hearing.

"[Ralston's] primary complaint with



Pre-set lounge chairs on state land fronting the Kahala Hotel & Resort. CREDIT: TYLER RALSTON

RP 7915 is that it allows [ResortTrust] to preset 70 beach chairs on the RP premises, which he claims deprives him of constitutionally-protected property interests," Ochiai wrote.

Under a 1963 agreement, the previous owners of the hotel were allowed to create a sandy beach and swimming lagoon on state property makai of the hotel "for use and enjoyment by the public," Ochiai stated in a footnote. Much of that beach has since been grassed over and is used by the hotel to pre-set lounge chairs for its guests.

Ochiai determined that Ralston has had ample opportunities to testify before the Land Board on the permit, and, therefore, has had ample due process.

Ochiai's final order was issued June 17. A few days later, attorney David Kimo Frankel, representing Ralston, filed a notice of appeal with the Intermediate Court of Appeals.

—T.D.



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Wespac Seeks Outside Counsel To Challenge Auditor's Findings

Last year, the Office of the Inspector General for the National Oceanic and Atmospheric Administration released a scathing audit of the way in which the Western Pacific Fishery Regional Management Council (WPRFMC, or Wespac for short) had used monies from its Sustainable Fisheries Fund. The fund is separate and apart from the council's congressionally appropriated budget and comes from fines levied against foreign-flagged vessels fishing illegally in U.S. waters and from payments made by the Hawai'i based longliners to the U.S. territories in return for allocations of a portion of the territorial bigeye tuna quotas.

The OIG determined that \$1,237,671 in costs were not allowable.

The council challenged the OIG's findings. Among other things, the council pleaded ignorance of federal requirements regarding administrative costs and employee compensation; it claimed records that would have documented some expenses were not retained past the required retention period; and it said it was unaware that certain expenditures required NOAA's written approval to be allowable expenses for federal awards.

In response to the council's rebuttal of the auditor's findings, the OIG turned the matter over to NOAA's Grants Management Division for a final determination.

If the council had hoped that that division would look on its pleadings more sympathetically, those hopes were dashed in February. By letter dated February 22, the director of that division, Arlene Simpson Porter, informed the council that it endorsed the OIG findings to the last dollar.

What's more, Porter informed the council that her letter "serves as the first official notification of a debt owed to NOAA. [The

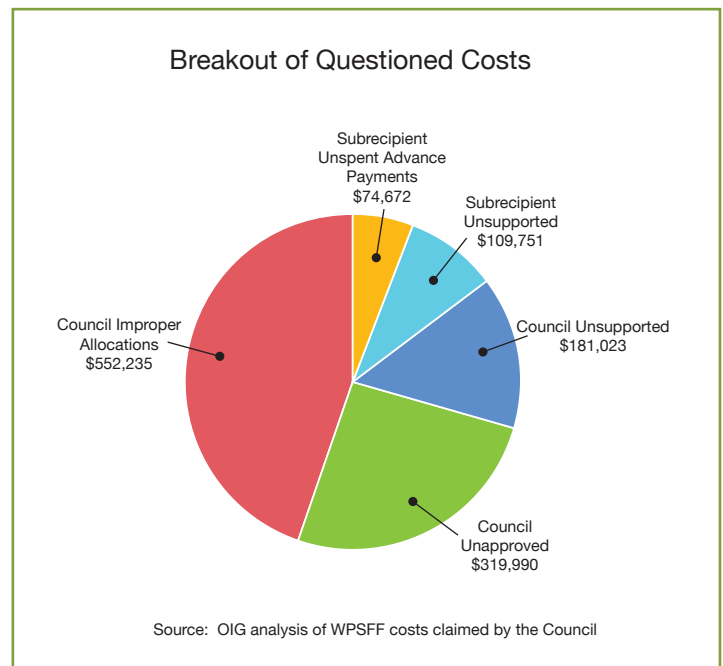
council] will receive a billing notice from the NOAA Finance Office requesting \$1,237,671 in payment for the disallowed costs ... Repayment of the debt will be due 30 days from the date of the billing notice."

Should the council not pay, Porter continued, "NOAA is entitled to take all appropriate steps to collect delinquent debts and will do so in this case if the debt is not paid as demanded above."

The council has appealed those findings and is seeking outside legal counsel to help it prepare a defense. In June, a press release posted on the council's website announced a request for proposals: "Private legal counsel and/or other relevant outside services to support the WPRMFC's [sic] response to NOAA GMD Audit Resolution Determination."

The chosen contractor "shall provide legal review and analysis" of the OIG's final report, the Grants Management Division's determination letter, "and other relevant information to assist the council in drafting its formal response to the NOAA GMD."

The notice was posted on June 17, and the selected contractor was supposed to begin work June 25, 2022 – "or as soon as available" – with work to be completed by August 1.



Environment Hawai'i has attempted to determine who was retained by the council, what they are being paid, and from what funds payment is being drawn. So far, neither NOAA nor the council has provided an answer. NOAA Grants Management Division said that the council has been given until August 30 to respond to its determination.

— P.T.

For Further Reading

The OIG report and the council's response were the subject of reporting in the December 2021 edition of *Environment Hawai'i*: "Fisheries Fund Awards by Wespac Are Criticized by Commerce Auditor."