

**MAUNA LANI RESORT ASSOCIATION**  
**ANNUAL MEETING – December 22, 2020**  
**PRESIDENT’S REPORT (FOR 2019/2020 YEAR)**

*Note to MLRA Annual Meeting Delegates*

*Our Annual Meeting “President’s Report” typically recaps our Association’s “prior year highlights” and our Association’s “current year priorities”. Amongst the many challenges that MLRA encountered due to Covid-19, is that our Annual Meeting and various elections (which were originally planned to take place in April of this year) were required to be postponed to December 22, 2020. Since 2020 is nearly in our rearview mirror, the following President’s Report incorporates highlights of 2019 and 2020 activities, as well as a summary of the Association’s priorities for the upcoming year of 2021.*

**2019 & 2020 Highlights**

The MLRA Board members who represent the various constituencies of our membership continue to work together cooperatively, in a highly collaborative manner that facilitates continued progress on matters that benefit our community as a whole.

- The Association completed various improvement projects during 2019 and 2020 to maintain, improve and enhance our Common Areas including, among other things:
  - As we reported at our last Annual Meeting in 2019, major repairs and replacements to our Beach Club Gate structures and operator system were required—due to a major vehicular accident that caused extensive damage. All damages were repaired and 100% completed during 2019. The new gate operator system is now also equipped with an anti-tailgating device that inhibits the ability for more than one vehicle at a time to pass through the gate. As an additional measure, a speed bump was also installed in front of the Beach Club entry gate in order to further mitigate tailgating.
  - The previously “open” pedestrian access corridor has been equipped with a new access gate to prevent unauthorized foot traffic access into our private Beach Club parking lot. While the gate is currently not locked, it will be locked in the near future and will require the use of the member’s Beach Club gate access card for pedestrian access/entry. The addition of this new pedestrian gate will also lessen the illegal parking issues along South Kaniku Drive (where vehicles park along the shoulders and passengers illegally walk in through the pedestrian access corridor). Once our new vehicular gate system is fully installed shortly after the new year, the pedestrian gate will be tied in to the vehicular gate, requiring gate card access for pedestrian entry as well.
  - While all of the equipment and new gate access cards are in our possession, the installation and confirmation of our “go live date” for the new gate system has been rescheduled several times due to issues related to Covid-19 (our gate contractor is based on Oahu). In July of 2020 MLRA issued Registration Forms for our new cards to all MLRA members; those Registration Forms have all been validated and input into our new system database. We will begin mailing out cards for the new gate access

system in January to ensure that all members have their cards in hand (or in their units—if units are used as short-term vacation rentals) well in advance of the cutover date for the new system—which we anticipate will be in early to mid-February. As we communicated previously, the new gate card system will be equipped with a convenient proximity card reader, and the single card will provide access to both the vehicular gate and new pedestrian gate which has already been installed.

- As reported last last, during the 2018 holiday/winter season, the MLRA ran a test/pilot program to see if we could relieve peak season congestion at Makaiwa Bay by offering two (2) new shoreline areas for MLRA members and resort guests to enjoy:
  - **“Keiki Beach” (Nanuku Inlet)** – Located just south of Mauna Lani Bay Hotel. This area was populated with double-cabana lounges for the exclusive use of MLRA members and registered resort guests and we installed a new rinsing shower for your convenience. Chairs and cabanas were also anchored as we were experiencing issues with chaise lounges in these areas being dragged to the shoreline in front of the Mauna Lani Bay Hotel, and cabanas being moved, which causes damage to our furniture.
  - **“Kamehameha’s Landing”** – Located adjacent to the Canoe Hale, just north of the Eva Parker Woods Cottage, this historically significant area is intended to serve members who are seeking a more quiet/meditative area to enjoy the shoreline. This area was also populated with double-cabana lounges for the exclusive use of MLRA members and registered resort guests.

We are happy to report that this test/pilot program did receive much positive feedback from the community and we continue to believe that these areas are viable as continued shoreline venues on a long-term basis. Recently in 2020, we replaced all of the blue cabana hoods and cushions in these outlying areas with brand new hoods and cushions in a natural “sand color” so as not to detract from the aesthetics of the view planes in these areas.

- Starting in September of 2018, MLRA made a concerted effort to relocate feral goats from our property. From the time that MLRA launched this targeted herding & relocation program in September, we have removed in excess of 600 feral goats from the resort—far more than the total number of feral goats removed from the resort during the 11 prior years. We have also retained a secondary goat relocation contractor who is trapping goats that tend to populate the front-of-house areas of our resort where our primary goat relocation contractor is unable to herd goats with ATVs and herding dogs. These programs are ongoing and will continue for the long term.
- Several upgrades and major replacements were completed to our roadway landscape plantings and irrigation systems throughout the Common Area. All Common Area roadway lighting fixtures (including parking lot lighting at our Beach Club) were converted to LED lighting, which resulted in a substantial energy credit rebate as well as a demonstrated reduction in energy costs.

The above projects were completed with the Association’s Reserve funds, which are separate from monthly “operating expenses” and are set aside on an annual basis to fund major repairs—or to replace Common Area components due to age and/or obsolescence.

- Our Community Design Committee—the “CDC”, reports continued active new home construction and renovation projects throughout Mauna Lani. The CDC is also continuing the revised **Construction Hours & Activities Rules** which, since 2017 now include, among other things, a new rule prohibiting all construction activities during the resort’s annual “festive period” surrounding the Christmas and New Year’s holidays. This new festive period restriction was successfully executed during the 2018 holiday season and is in full force and effect.

## **Legal Updates**

- MLRA is continuing to monitor activities related to upstream projects which may have downstream impacts on our community. The primary project that we continue to actively monitor is the **Aina Lea development** (located directly across the street from our highway entry. *(Attached to this report is an article from Ms. Pat Tummons of **Environment Hawaii**, which provides an accurate and detailed synopsis of the current status of the Aina Lea project.)*
- **EXCLUSIVE RESORTS AT PAUOA BEACH** - As reported in the Notes to MLRA’s Fiscal Budget for 2018 (and in subsequent years), in 2017 the Association became aware of the March 28, 2017 Finding of Facts and Conclusions of Law (the “FOFCOL”) in the case of Roaring Lion, LLC, et al v. Pauoa Bay Properties, LLC, et al (Civil No. 04-1-0332). While the Association is not a party to this legal action, the FOFCOL issued by the Judge in the above-entitled action are significant, as the Judge concluded that eight (8) apartment units owned and operated by Exclusive Resorts PBL1, LLC (“ER”) within the Pauoa Beach subdivision are, in fact, “Commercial Apartments” under the MLRA DC&R, and not “Residential” units as previously represented by the developer/owner of these units. As such, ER units should have paid (and currently should pay) assessments at the Commercial Apartment rate of 51.73 Commercial units per month, rather than at the Residential rate of 8 units per month.

In this regard, in September 2017 the Association notified ER of MLRA’s intent to collect the shortfall in assessments from the period of August 2008 through September 2017 in the amount of **\$537,156**, along with interest at 12% per annum in the amount of **\$462,171** as prescribed in MLRA’s governing documents. Additionally, ER continues to be assessed by MLRA at the proper Commercial Apartment rate, effective October 2017.

While ER continues to dispute MLRA’s position, the MLRA Board intends to diligently pursue this matter and additional legal actions are currently being contemplated.

The MLRA will continue to monitor these and other nearby project sites to ensure that: impacts to our brackish and potable water resources; impacts from wastewater treatment facilities; and, impacts from use of properties and coastal areas that we maintain, are adequately identified and mitigated. This Board does not enter into any legal action lightly—however, we do believe that proper planning and smart development in this region is vital for the long-term protection of our

collective investments here at Mauna Lani. As such, the MLRA will continue to be active in protecting this community's precious resources.

#### **RESERVE FOR MAJOR REPAIRS & MAINTENANCE 2019 & 2020**

Actuals expenditures for 2019 are presented in the Audited Financials in the Treasurer's Report.

Total expenditures scheduled for completion in 2020 equal **\$969,036**. Projects anticipated for completion in 2020 include the following:

	<b>2020 budget</b>
Charges to Reserve	(969,036)
FP- Camera/Surveillance System	(11,739)
FP - Interpretive & directional signage	(8,000)
BC - Pedestrian access gate	(7,697)
BC - Renovation permitting & plans	(15,000)
BC - Roof & gutter system	(63,000)
BC - Kitchen expansion	(50,000)
BC - Bar relocation/new outdoor bar	(153,000)
BC - Walkway relocation & landscape	(20,000)
BC - Restaurant renovation (other)	(35,000)
BC - New Public restrooms	(185,000)
BC - Restripe cart parking area	(3,000)
BC - Chaise lounges	(22,000)
LS - ML Drive Mauka irrigation line	(241,000)
LS - Irrigation cart	(18,200)
LS - Storage facility	(50,300)
LS - Extraordinary Replacements	(7,800)
RW - Light pole painting	(32,000)
RW - Traffic calming measures	(17,000)
RW - BC traffic circle island concrete ca	(17,300)
SEC - Network video recorder	(2,700)
SEC - Radar Speed sign (new)	(8,700)
SEC - Refrigerator	(600)

The balance in **Reserve for Major Repairs and Maintenance** will approximate **\$3,090,418** at December 31, 2020.

#### **THE BOARD'S PRIORITIES FOR 2021**

In addition to the ongoing priorities already mentioned, we have another busy year planned.

- The MLRA has again been able to successfully manage its operating budget and fund its Reserve without the need for any dues increase in 2021, and the Association continues to operate in good financial health.

- In response to community concerns regarding speed compliance and roadway safety within our Common Area roadways, the Board established an *ad hoc* **Traffic Calming & Roadway Safety Committee (the “TCRSC”)** which is chaired by MLRA’s Residential Representative Director, David Gross. The TCRSC is comprised of five (5) MLRA owner/members and has been meeting on a regular basis to formulate recommendations in this regard for the Board’s consideration and implementation. TCRSC Chairman, David Gross, will provide a brief summary and update of their current progress and activities at the Annual Meeting.
- A new MLRA website is currently being developed which, when launched in early 2021, will offer a much informative, interactive and robust member website experience.
- Total Major Repair & Replacement Reserve expenditures scheduled for completion in 2021 equal **\$1,030,840**. Projects scheduled for 2021 include the following:

	<b>2021 budget</b>
ADM- FF&E	(3,000)
BC - Roof & gutter system	(63,000)
BC - Kitchen expansion	(50,000)
BC - Bar relocation/new outdoor bar	(453,000)
BC - Walkway relocation & landscape	(20,000)
BC - Restaurant renovation (other)	(35,000)
BC - New Public restrooms	(225,000)
BC- Extraordinary RESTAURANT	(9,000)
BC- Extraordinary NON-RESTAURANT	(9,000)
FP - Interpretive & directional signage	(14,340)
FP-Fishpond Camera System	(5,500)
FP-Raise fishpond rock wall	(16,000)
GW-Used bulldozer	(47,200)
LS - Extraordinary Replacements	(12,000)
RW-Raise light pole bases	(68,100)
SEC-Refrigerator	(700)

The balance in **Reserve for Major Repairs and Maintenance** will approximate **\$2,243,164** at December 31, 2021, after completion of the projects listed above. The forecasted and budgeted Reserve balances are in line with the Association’s 50% Reserve funding goal.

In closing, I’d like to again remind everyone that the Regular meetings of the Board are open to all members, and meeting dates are posted on our website and are emailed to all subassociation boards. Likewise, all approved Board Meeting Minutes are also posted on the MLRA website and emailed to the subassociation boards. As always, the MLRA Board invites all members to communicate any concerns you may have—and we welcome your suggestions on how we might serve you better. Please do not hesitate to contact us at any time throughout the year.

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# ‘Aina Le‘a Update: From State Court, To County Planners, to U.S. Supreme Court

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For years, the various owners of land in South Kohala where the ‘Aina Le‘a development is proposed have struggled to move forward with their plans. The problems they have faced related to permitting and entitlements, but also to finances.

The current owners of the 1,100 acres in the state Urban land use district that are at the heart of the development are all subsidiaries of ‘Aina Le‘a, Inc. That company, headed up by Robert Wessels, has gone through several metamorphoses since Wessels first came onto the scene more than 10 years ago.

In August 2019, ‘Aina Le‘a emerged from bankruptcy, thanks largely to a loan from Iron Horse Credit, secured by the property. But since June, Iron Horse alleges in a 3<sup>rd</sup> Circuit complaint filed October 13, ‘Aina Le‘a has been in default. “As of October 1, 2020,” the complaint says, ‘Aina Le‘a “owed plaintiff the sum of \$5,429,772.97,” with additional amounts “continuing to accrue.” The loan agreement states that interest has been prepaid, but ‘Aina Le‘a will still pay 8 percent annual interest on the principal balance of the loan. If the loan goes into default, the interest rate jumps to 18 percent.

The complaint also names as defendants three parties known to hold superior mortgages: Romspen Investment Corp., Bridge ‘Aina Le‘a, LLC, and Libo Zhang, a Chinese national.

On November 29, ‘Aina Le‘a filed its response. Among other things, argued its attorney, Mike Matsukawa, “the circuit court may lack subject matter jurisdiction” because the federal bankruptcy court retained jurisdiction “over certain subjects and issues that pertain to or are related to the bankruptcy plan” referred to in the Iron Horse complaint.

In the main, the defense comes down to blaming the county. “The Defendants’ inability to fully perform their obligations for the loan and the defaults that the Plaintiff has asserted ... are the result of and caused by the County of Hawai‘i and the Planning Director, Department of Planning for the County of Hawai‘i’s failure and refusal to perform the obligations on their part to be performed under the bankruptcy plan, which performance conditions the Defendants’ obligations to the Plaintiff...” the brief states.

As *Environment Hawai‘i* reported in 2019, when ‘Aina Le‘a was emerging from bankruptcy, the company claimed that it possessed all necessary permits to move forward with construction of 385 units of affordable housing and other projects it had dangled before investors.

Yet even then, the county Planning Department put the company on notice that it was still required to prepare an environmental impact statement, as the county had earlier determined that one prepared more than a decade ago was inadequate. That determination followed a legal challenge to the EIS brought by the Mauna

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Ditch Managers Fail  
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New & Noteworthy:  
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‘Aina Le‘a Update:  
From State Court, To  
County Planners, to U.S.  
Supreme Court  
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Big Plans for Foreign  
Investment In Dairy  
Operations Run Aground  
December 4, 2020



Lani Resort Association, which owns property that lies between ‘Aina Le‘a’s property and the ocean.

But earlier this year, Lulana Gardens, LLC, one of the companies ‘Aina Le‘a established to develop the affordable housing project, filed a complaint against the county and Michael Yee, its planning director, asking the court to find that that earlier EIS is sufficient, notwithstanding the county’s determination.

Third Circuit Judge Robert Kim heard arguments in July on Lulana Gardens’ motion for partial summary judgment, and ruled against it on August 24.

Since that ruling, there have been no additional documents filed in that litigation.

Perhaps recognizing that they would need to prepare a new EIS after all, last month, representatives of ‘Aina Le‘a met with Planning Department staff to discuss what was needed to get the department to accept an EIS preparation notice for the development. Once the EISPN is accepted by the county, the county can then forward it to the state Office of Environmental Quality Control for publication in its bi-monthly Environmental Notice.

In the normal course of events, the EISPN triggers a range of comments from the public and interested agencies, which comments are then used in developing a draft EIS. The draft EIS is once more considered by county planners before being forwarded for publication in the OEQC’s Environmental Notice. Following a comment period, a final EIS is prepared and published. If no legal challenge is brought, the way is cleared for the county to issue the necessary permits.

From the time an EISPN is published to final, unchallenged acceptance of an EIS can take a year or more.

### ***Bridge ‘Aina Le‘a Seeks Cert***

In July, Bridge ‘Aina Le‘a, which once owned the ‘Aina Le‘a project site and which still owns about 2,000 Agricultural acres wrapping around the Urban land on three sides, appealed a 9<sup>th</sup> Circuit Court decision to the U.S. Supreme Court. That appellate court ruling earlier this year had the effect of denying Bridge compensation that it says was owed to it by the state when the Land Use Commission reverted the Urban land – now owned by ‘Aina Le‘a – to the state Agricultural District. The reversion was effected in 2011 following Bridge’s failure to complete construction of at least 16 affordable housing units by March 31, 2010 – the deadline set by the LUC following years of delay in fulfilling conditions set in the redistricting order.

That reversion was overturned in state court but Bridge has claimed that it nonetheless is owed compensation for the period of time in which the reversion was in effect.

Bridge filed its petition for a writ of certiorari on July 17. Since then, a host of organizations and individuals have filed amici curiae briefs in support of Bridge, including the Pacific Legal Foundation (joined by the Cato Institute and New England Legal Foundation), University of Hawai‘i law professor David Callies with three other “takings” scholars, the National Association of Home Builders, the Owners’ Council of America, the National Association of Reversionary Property Owners, and Reason Foundation.

No one has stepped forward as an amicus of the state.

On September 30, however, the outside legal counsel retained by the state filed his request to extend the deadline for the state’s response. It was filed on November 25.

“The extension is warranted because the undersigned counsel ... was recently retained as counsel of record and must familiarize himself with the issues and record,” he wrote in the request, which was granted by the court.

That undersigned counsel? None other than Neal Katyal, the former acting solicitor general of the United States, but perhaps better known for his frequent appearances on MSNBC, where he is the resident legal analyst.

### ***— Patricia Tummons***

#### ***For Further Reading***

Over the years, *Environment Hawai‘i* has written numerous articles on the ups and downs of this proposed development. All articles may be viewed free of charge on our website, [www.environment-hawaii.org](http://www.environment-hawaii.org). For a full list, readers may wish to use the search engine in the upper right corner of the home page.