



*Hawaii's Thousand Friends*

**ANNUAL REPORT 2020**



Sharks Cove North Shore O`ahu

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Congratulations Board Member Carl Christensen

## President's Report Chuck Prentiss



It was disappointing to have to cancel this year's annual dinner because of COVID-19. It is always enjoyable to see so many come together with the common interest to protect the future of our community and our environment from damaging development. We know there was a cloud hanging over our last few gatherings when we heard of the withdrawal from the Paris accord and from so many other important environmental protections.

But the future looks bright, there is light in the tunnel. We can envision the return to better protection for our clean air, clean water, and the quality of life even for our flora and fauna friends. We have some hard work ahead of us but I am confident that working together we will quickly make a difference.

Wishing you happy holidays and a better, brighter and healthier 2021

## Stopping rail at Iwilei

In October (Star-Advertiser Oct. 2 "Swamped") we learned that future sea level rise will severely impact low-lying portions of central Honolulu from Waikiki to the airport, with "flooding at high tide on a daily basis within only two or three decades." These flooded areas include the last five miles of the current rail route, meaning that seven of the proposed rail stations, from Middle Street to Ala Moana Center, will experience daily flooding as early as 2040, only fourteen years after its planned completion (2026).

In addition to affecting many lives COVID-19 has decimated Hawai'i's economy and the general excise tax revenues, which normally flow from it. According to most projections, a return to pre-COVID economic activity is at least four to five years away.

The expected dramatic shortfall in GET revenues requires city and state governments to reexamine all public expenditures, including those for the rail project. In line with the drop-in tax revenue and costs soaring to a projected \$10 billion-plus rail construction needs to be paused at the earliest possible opportunity.

The construction cost of the final 4.1 miles of the current rail plan is likely to be "over \$2B", the amount disclosed by the CEO of Tutor-Perini Corporation in their PPP bid (Civil Beat, 9/18/20). This means that each mile will cost approximately \$600-650 million dollars per mile. At present, the City has \$1.4B in anticipated revenue (including \$744 million from the FTA) for this construction.

The current projected completion date for rail to Ala Moana is late 2025 (Star-Advertiser, 2/27/20, Gordon

Pang). Meeting this date requires approximately 1.05 miles of guideway construction per year for four years (2022-25). Using these numbers and delays in utility relocation, it is estimated that guideway and station construction to the Iwilei Station area would not be completed until late 2024 at the earliest and late 2028 at the latest.

In addition, operating and maintaining the completed system is "expected to cost the city on the order of \$140M a year...the cost will increase in increments from there" (Civil Beat, 8/27/20). At present, neither the City nor HART has specified how these costs will be paid.

Hawaii's Thousand Friends supports a new approach to finishing and rerouting rail in the future. We agree with the Reroute the Rail campaign that the train should be moved to higher ground to avoid areas of future sea level rise and to provide the option of going down Beretania Street ending at UH Manoa rather than through downtown Honolulu to Ala Moana Center.



graphic by John Pritchett

## Mauka to Makai (Mountain to the Sea) The need to protect and conserve our mountainous lands

The Covid pandemic in Hawaii has exposed many weaknesses and created many challenges in Hawaii's economic and social norms, forcing local and state governments to struggle with balancing public health and safety with economic demands of unemployment and business losses. The pandemic has demonstrated the fragility of Hawaii's dependence on tourism, and Hawaii's ability to sustain its communities in an island ecosystem, raising issues of sustainable carrying capacity of its land.

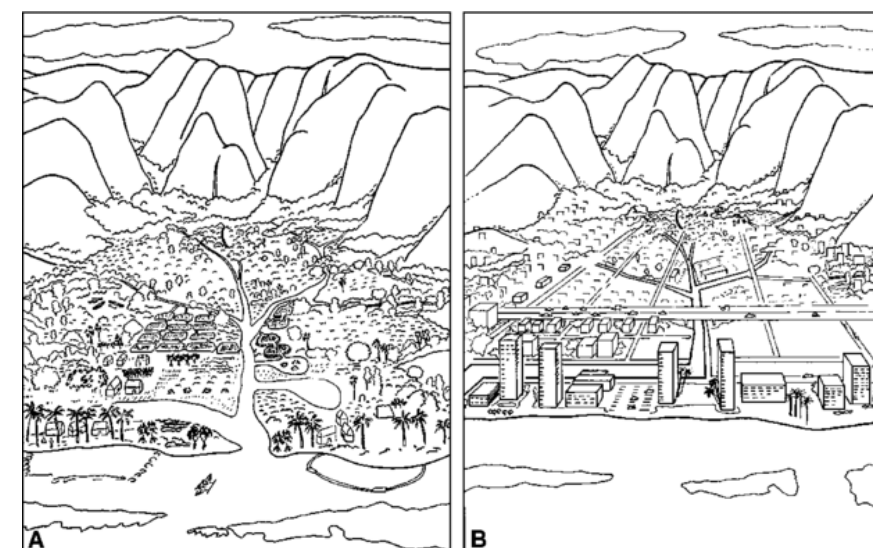
As Hawaii attempts to restart its economy, regulations promulgated in the pandemic attempts to speed up the regulatory process for building and development permits present unforeseen and unintended consequences on Hawaii's protection and management of open space and its coastal lands. In Hawaii's industrialized economy, the Ahupua'a concept of sustainability has all but disappeared, except in some rural areas of Hawaii, where are able to obtain the majority of the food resources from the land and sea.

Today, Hawaii's residential communities dominate the coastal plains, intruding into the valleys, foothills and ridges of Hawaii's mountains, last bastion of Hawaii's open space, endemic plants and animals, and which continue to serve as the valuable watersheds that recharge Hawaii's groundwater and stream baseflow. In many areas of Hawaii, open space on the coastal

foothills, ridges and hillsides provide an intrinsic sense of place, such as Kailua, Hanalei, Lahaina, and Waimea.

In 1961, the State of Hawaii adopted its Land Use Law establishing an overall framework for land use management where all lands in the State of Hawaii are classified into one of four land use districts: (1) Urban, (2) Rural, (3) Agricultural and (4) Conservation. Hawaii State Office of Planning indicates that the State Land Use Law (Act 187, SLH 1961) original intent was to "preserve protect and encourage development of lands in the State for those uses and purpose of which they are best suited for the public welfare." The Hawaii State Legislature determined that the lack of adequate controls had caused the development of Hawaii's limited and valuable land for short-term gain for the few while resulting in a long term loss to the income and growth potential of the State's economy. Development of scattered subdivisions, created problems of expensive or reduced public services, and the conversion of prime agricultural lands to residential use were key reasons for establishing the statewide land use system. (Hawaii State Office of Planning, website, 2018).

In 2006, 5% of the State's Lands (4,112,790 acres) are classified urban. Conservation (1,973,609 acres)  
*(continued on pg. 7)*



Nancy Hulbirt, Publication and Illustration Services, School of Oceans and Earth Science and Technology, University of Hawai'i

# Preserving and protecting Sharks Cove for future generations

Sharks Cove on O`ahu's North Shore is a global treasure, a fragile costal ecosystem that is part of the Pupukea Marine Live Conservation District (MLCD), whose water quality is now threatened by a 3-acre, \$18 million dollar, 34,500 square foot commercial tourist-oriented development across from this marine protected area.

Despite three years of community opposition, a history of over \$200,000 in assessed fines, continuing violations of the law, and the failure to demonstrate compliance with the high standards of the state and county laws that protect Hawai`i's precious coastal resources, developer Hanapohaku was granted a fast-track approval by the Honolulu City Council and Department of Planning and Permitting to build across from Sharks Cove.

Here are some of the claims alleged in the First Amended Complaint, which explain the reasons HTF joined Save Sharks Cove Alliance, Malama Pupukea-Waimea, Surfrider Foundation, Larry McElheny, Cora Sanchez and John Thielst in the lawsuit against the City and County of Honolulu, Honolulu City Council, the Department of Planning and Permitting and Hanapohaku, the landowner.

## Count 1 Against the City

(Failure to exercise public trust responsibilities to protect fresh and marine water resources the park, and the MLCD in violation of the Hawai`i Constitution Article X1-Section 1, Article X1-Section 7 and Common Law Public Trust Doctrine

### Article X1 Conservation, Control and Development of Resources

**Section 1** - For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State

All public natural resources are held in trust by the State for the benefit of the people.

**Section 7 Water Resources** – The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.



## Hawaii's Public Trust Doctrine

Long before Hawai`i became a territory and state, the Hawaiian Kingdom - as with the English monarchs - held land in trust for the common good. In granting land ownership interests during the Great Mahele in 1848 the Hawaiian Kingdom expressly reserved its sovereign prerogatives to encourage and even to enforce the use and enjoyment of lands for the common good. By maintaining this sovereign right, a public trust was imposed upon all the waters of the kingdom. The public interest in the waters of the kingdom necessitated retention of authority and the associated duty to maintain the purity and flow of Hawaii's water for future generations.



Photo: Manuel Jose Cruz

## Count 11 against all defendants (Right to a Clean and Healthful Environment in Violation of Hawai`i Constitution, Article X1 Section 9 Environmental Rights)

Each person has the right to a clean and healthy environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulations as provided by law.

## Count III – Against City

(Failure to follow the North Shore Sustainable Communities Plan in Violation of Hawai`i Revised Statute (HRS) Chapter 205A & Revised Ordinances of Honolulu (ROH) Chapter 25)

The O`ahu General Plan was adopted in 2002 and sets forth the City's broad policies for long-range development with the 8 Development/Sustainable Communities Plans serving as detailed schemes for implementing and accomplishing the development objectives and policies of the General Plan.

The North Shore Sustainable Communities Plan (NSSCP), adopted in 2011 by ordinance has the force and effect of law, details the goals for the region to remain country, with wide open space, vistas and rural communities and to be an essential haven and respite for urban Honolulu.

The Hawaii Supreme Court ruled that in 1998 that "the county general plan does have the force and effect of law insofar as the statute requires that a development within the Special Management Area must be consistent with the general plan."

The Court also held that a community plan "adopted after extensive public input and enacted into law" is part of the General Plan.

## Count IV – Against Department of Planning and Permitting (DPP)

(Improper issuance of after-the-fact Special Management Area (SMA) \*\*Minor Permit, and failing to enforce the \*\*Minor Permit Conditions, in violation of HRS 205A & ROH Chapter 25)

Hawai`i Revised Statutes (HRS) §205A-2 requires all State agencies to consider the objectives, policies, and guidelines of the Coastal Zone Management Act, HRS

205A, and the rules and regulations issued hereunder and to enforce them with respect to any development within or affecting the SMA.

HRS §205A-2 requires that all agencies give full consideration to the "ecological, cultural, historic, esthetic, recreational, scenic, and open space values" before and/or when taking or allowing actions that impact resources within the SMA.

## Count VII – Against City

(Improper acceptance of inadequate Environmental Impact Statement (EIS) in violation of ROH Chapter 25 & Hawai`i Administrative Rules (HAR) Title 11, Chapter 200)

For SMA Major Permits, ROH Chapter 25 requires applicants to submit an environmental impact statement (EIS) for review.

Among other things Plaintiffs allege that the Final EIS didn't "fully declare the environmental implications of the proposed action and... discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinions on environmental effects, a statement should include responsible opposing views, if any, on significant environmental issues raised by the proposal." HAR §11-200-16 Draft EIS Content Requirements)

The FEIS did not properly evaluate the "secondary or indirect" "impacts or effects" related to the Proposed Development, defined in HAR §11-200-2 as: "effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." HAR §11-200-17(i)

The FEIS did not evaluate the "cumulative impact" related to the Proposed Development, defined in HAR §11-200-2 as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

# Kawainui and Hamakua Marsh Complex Wetlands of International Importance

In October Governor Ige approved the Kawainui and Hamakua Master Plan Project Final Environmental Impact Statement (FEIS), which the Office of Environmental Quality Control (OEQC) will then publish in the Environmental Notice.



Marsh is important as a major component of a larger cultural district which would include...the ponding/wet agricultural area...remains of extensive terracing systems, ceremonial sites, burial sites, and habitation areas associated with this agricultural complex."

In 2005 the Ramsar Convention on Wetlands accepted Hawaii's Thousand

Friends and National Audubon Society's application and designated Kawainui and Hamakua Marsh Complex as a Wetland of International Importance. The Ramsar Convention is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation of rare or unique wetlands that are important to conserving biological diversity.

The wetland complex provides habitat for four endemic Hawaiian waterbirds listed as endangered under the U.S. Endangered Species Act: the koloa maoli, Hawaiian Coot or alae ke oke o, Hawaiian Moorhen or alae ula, and Hawaiian Stilt or kukuluao o (ae o). The Hawaiian Duck is listed as Endangered and the Hawai'i Coot as Vulnerable on the IUCN Red List of Threatened Species (IUCN, 2004) and is critical for maintaining the biological diversity of this biogeographic region.

Kawainui provides a migration path from the ocean to mountain streams for indigenous and endemic amphidromous fish and crustaceans including indigenous goby, endemic goby, endemic eleotrid, and endemic shrimp.

Hawaii's Thousand Friends believes that only a fully restored and functioning Kawainui Marsh, which provides an abundance of wetland habitat and protection for Hawai'i's endangered waterbirds and migratory birds, whose water quality is as clean and pure as possible, has adequate water to provide sufficient waterbird habitat and facilitates native amphidromous and crustaceans migration, actively protects known archaeological sites and seeks to discover as yet unearched historical and archaeological sites, and is a secure and safe place to visit, can host a limited number of people and the development planned to accommodate them.

Following OEQC publication of the Master Plan/FEIS the public has 60 days to appeal. If no appeal is initiated then everything contained in the Master Plan/FEIS can be implemented. This includes:

- Increasing visitors from the existing 2,500 a month to 9,050 visitors a month,
- Building a 5,600 sq ft Education Center on Kapa`a Quarry Road and a 1,740-gallon septic system with a 1,500 sq ft leach field,
- Kauhale area, adjacent to the Education Center, will have eight structures totaling approximately 8,250 sq ft,
- Erecting nine buildings equaling 9,600 sq ft at the Kapa`a Cultural Center on Kapa`a Quarry Road, which includes a caretaker's house and a 500-gallon septic tank with a 600 sq ft leach field. This facility will be open by invitation only,
- Building three buildings with a 7,000 sq ft floor area at Wai`auia Cultural Center located at the entrance to Kailua. This facility will be open by invitation only,
- Creating two new office buildings with a new restroom and septic system, totaling about 10,000 sq ft for the Department of Fish and Wildlife (DOFAW) maintenance station behind Castle Hospital,
- Building 3.51 miles of trails, seven parking lots, a new bridge over Maunawili Stream, and 595 foot of boardwalk along Kapa`a Quarry Road.

The approximately 1000-acre Kawainui Marsh, located in what was once the center of a caldera of the Koolau shield volcano in Kailua, is the largest remaining emergent wetland in Hawai'i, and the largest ancient freshwater fishpond.

In 1979 the Kawainui Marsh Archaeological District was declared eligible for listing on the National Register of Historic Places. According to its determination, "Kawainui

## Mauka to Makai *(continued from pg. 3)*

and agriculture (1,928034 acres) are the largest classified areas, (Report on Urban Lands in the State of Hawaii, (2006, Hawaii State Office of Planning Department of Business, Economic Development and Tourism). As such, there is tremendous pressure to convert or utilize conservation and agricultural lands for residential and other commercial development.

What the State has experienced in recent times is the use of agricultural lands for quasi residential/ag uses (agricultural house lots) (e.g., Olomana Heights Subdivision, Kailua) and the conversion of agricultural to urban with the decline of commercial agriculture (e.g. Residential development above Lahaina). Just as significant, is the use of conservation lands, especially those lands with open space and scenic value as opposed to historic, cultural and environmental value, for commercial activities, such as wind and photo-voltaic farms (e.g. Kahuku and Waianae wind farms), and cemetery expansion Hawaii Memorial Park Cemetery Expansion, Kaneohe. A Conservation District Use rule change now allows one residence of not more than 5,000 square feet on each privately owned, conservation zoned property (e.g. MDHE LLC single residential home and reforestation CDUA OA-3818, Kailua).

Besides the reduction in open space and alterations to scenic attributes of the hillsides and ridges, the developments alter the drainage and erosion patterns with downstream impacts to streams, wetlands and nearshore waters, and introducing or aggravating of water quality impacts in spite of water quality discharge criteria and best management practices.

The present and future demand for urban land uses is not known and difficult to predict. As sea level rises, communities may be forced to relocate to higher ground, into conservation-zoned ridges, mountains and watersheds. The State Hawaii Office of Planning has not performed a Five-year Boundary Review for urban lands since 1990, although a non-boundary study was done in 2006.

All levels of government and island communities need to start discussions to identify the needs and demands for economic and urban growth in light of present and future social, cultural, economic and climatic changes. A valuable aid in that discussion, is a Five-year Boundary Review to update present and future urban demand to determine and recommend boundary changes with the intent of protecting conservation

## Congratulations Dr. Carl C. Christensen

Our longtime Thousand Friends board member, Dr. Carl Christensen, has had an illustrious career as a land-use and environmental

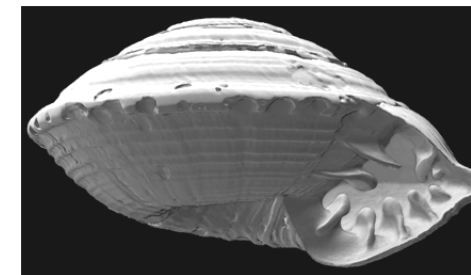


Photo: J. Slapcinsky Endodonta christnseni

attorney, a law professor, and a staff of the United States Senate. He also has worked tirelessly behind the scenes to find, protect, and classify the land snails of Hawai'i and the Pacific. He is a scientist and curator of Bishop Museum's uniquely valuable collection.

Now an endemic snail has been named after him, Endodonta christnseni.



Endodonta christnseni, the last surviving of 11 species endemic to the Hawaiian islands, was first discovered in 1923 on the outlying Hawaiian Island of Nihoa and not reported again until 1980 by Dr. Christensen.

As the October 15, 2020 Bishop Museum Occasional

Paper reads: "Giving this species a name puts it on track for conservation and other Hawaiian land snails will begin to receive the increased management resources needed to conserve them in the face of the ongoing biodiversity crisis... Unless protection of this species is implemented, it may be extinct within the next decade and we will lose the last of a lineage that existed for millions of years, and the stories it could tell."

Congratulations, Carl!



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*As we shelter in place and embrace where we live let us not forget to preserve and protect our greater home, our 'āina.*

*The struggle is uphill. Shoddy decision-making multiplies. Threats to the environment mount. Consider renewing your membership and giving a gift of membership to a friend or family member as we continue to testify, analyze, and advocate in the public interest.*

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