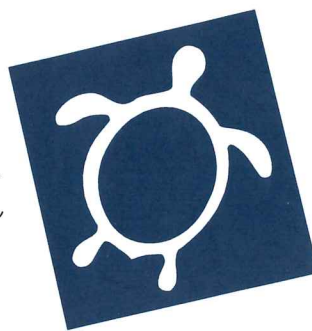


# Environment



# Hawai'i

a monthly newsletter

## *Stranger than Fiction: The Waikoloa Saga*

The cast of characters is like something out of a spy thriller. A landowner in jail in Moscow, accused of bilking a former business partner out of millions. A prior associate threatening mayhem to an attorney representing a creditor in federal bankruptcy court. A hardware store owner in rural Minnesota. Land sales that, to say the least, are in desperate need of explanation.

If you read it in a novel, it would strain credulity. But the recent developments surrounding a proposed residential subdivision near Waikoloa Village are all true.

And, despite the fact that time seems to have run out for compliance with conditions of development set by state and county agencies, it's not likely that the story will end anytime soon. Stay tuned.



Gates denoting the entrance to "Highlands Golf Estates," a subdivision planned in the 1990s but never built, flank the drive leading to land Waikoloa Mauka proposed to develop in 2006.

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## As Owner Is Held in Moscow Jail, LUC Mulls Reverting Waikoloa Land

On May 23, the dozen or so members of the state Land Use Commission gathered in a conference room in Kona, just south of the airport most had just flown into, to hear updates on several Hawai'i island projects that, for one or another reason, had encountered hiccups in proceeding with the plans approved years earlier by the commission.

One of those projects: the planned development known as Waikoloa Mauka.

Back in 2006, Waikoloa Mauka, LLC, had petitioned the LUC to place 731 acres east of Waikoloa Village, in the Big Island district of South Kohala, into the Rural land use district. The land was part of around 14,000 acres of Agricultural District land that the company, led by Stefan Martirosian

and financed by Vitaly Grigoriants, owner of a Russian oil company, had purchased in September 2005.

In the early 1990s, the same parcel had been granted county approvals for a martini-ranch subdivision built around a golf course. Progress on that was limited to erection of a rail fence, stone bollards, and a fancy gate that still announces to all who pass the entry to Waikoloa Highlands.

Eventually, the entitlements lapsed. Fires consumed the rail fence. And weeds have nearly obscured the entry gate. Meanwhile, owing to changes in the law, residential developments on agricultural lands had been banned, making LUC approval of the redistricting petition a necessary condition

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*Waikoloa from page 1*

if the new owners wished to develop the site into a residential subdivision.

In 2008, Waikoloa Mauka's petition, for 398 large house lots, was approved. Since then, virtually nothing has happened on the land.

When the LUC took up the matter of a status report on the project at the May meeting, staff informed the commissioners that they had notified the landowner at its last known address, in Glendale, California. They had also reached out to Benjamin Kudo, the attorney who represented Waikoloa Mauka in the redistricting hearings, and planning consultant Sidney Fuke. Both indicated that they no longer represented the company.

Finally, on May 22, one day before the meeting, the staff received an email from Natalia Batichtcheva in Glendale. Claiming to be an associate of Waikoloa Mauka principal Martirosian, Batichtcheva said she could not attend.

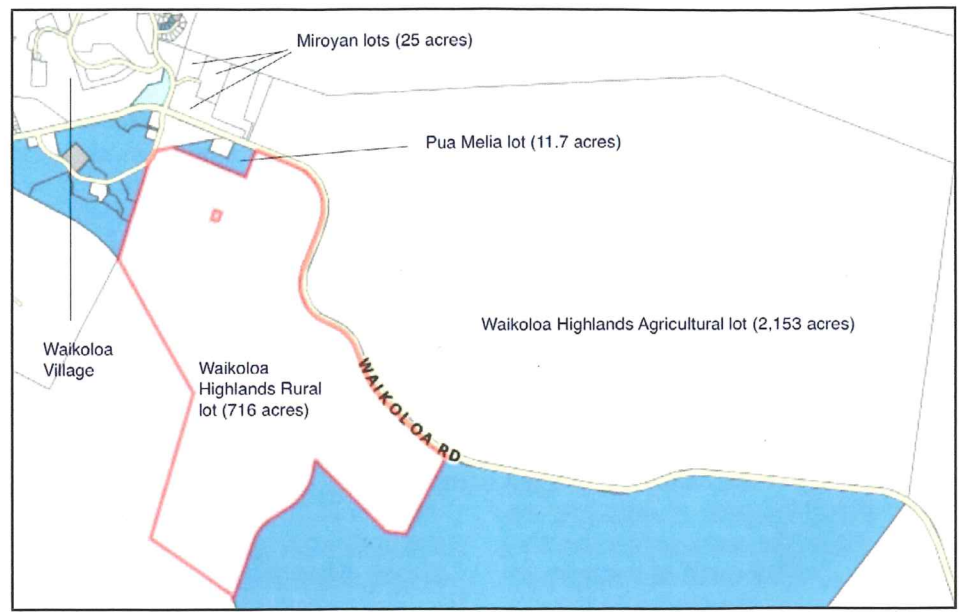
LUC staff noted that the 10-year deadline for compliance with certain conditions of the LUC approval would be expiring on June 10. A county representative stated that the deadline for compliance with terms of a rezoning ordinance had expired two months earlier.

With no one representing the landowner, and no progress on development evident, members of the Land Use Commission voted unanimously to have the chairman and executive director prepare an order for the landowner to show cause as to why the land should not be reverted to its prior status. A hearing on a show-cause order will probably take place in August.

So where was Martirosian, the landowner? As it turns out, he was in a Moscow jail, where he had been held since last fall, awaiting extradition to Armenia on several charges of financial fraud involving his former business partner, Grigoriants. Grigoriants, owner of Armbusinessbank, a leading Armenian bank, has accused Martirosian of swindling him out of nearly \$50 million. Last October, an Armenian court indicted Martirosian in absentia on charges of fraud. When Martirosian flew into Moscow's Domodedovo airport, he was detained at the request of Armenian authorities.

A Moscow court held an extradition hearing on May 25, two days after the LUC meeting. It approved the Armenian extradition request, which Martirosian is now appealing to a higher court.

But wherever Martirosian may be, if and when the order to show cause takes place,



he will be represented by counsel before the LUC. Attorney Steve Lim of Carlsmith Ball now counts Martirosian as a client.

### *A Movie Impresario*

After purchasing the Hawai'i land, Martirosian seems to have lost interest in the idea of developing it. Instead, his attention turned to Hollywood. There, he and a partner known as Remington Chase (a.k.a. William Paul Elliott, a.k.a. William Westwood) teamed up to produce more than a dozen movies, including *Lone Survivor* and *Alex Cross*. Grigoriants has alleged that he provided roughly \$100 million in support of this enterprise and that Martirosian used only about half of that, pocketing the rest.

In 2014, after an article appeared in *LA Weekly* about Martirosian's criminal past, Martirosian dropped out of sight. By that time, creditors were closing in on Waikoloa Mauka. In lieu of foreclosure, banks took over much of the land purchased nine years earlier, leaving him with the parcel that was the subject of the LUC petition as well as a 2,153-acre Agricultural lot on the opposite side of Waikoloa Road from the proposed subdivision.

As far as development of the Waikoloa land was concerned, Martirosian appeared to be making little headway. As a condition of redistricting, the LUC required annual progress reports to be filed. Fuke, the planning consultant, submitted the first of these only in 2014 — five years overdue. The second — and so far last — such report was filed in February 2016.

The latter report differs little from the first, with both reflecting the lack of progress by the landowner in complying with conditions of the LUC approval.

### *Ownership Changes*

One of those conditions requires the LUC to be notified in the event of a change in land ownership. "There has been no change in ownership relative to the petitioned area," Fuke reported in both submissions. Yet, on October 14, 2014, Waikoloa Mauka quit-claimed the petition area and the parcel to the north and east, a total of around 2,900 acres, to Waikoloa Highlands, Inc., a company formed just days earlier in Colorado. (In October 2016, Fuke told *Environment Hawai'i* he knew nothing of the transfer.) Although the documents filed with the Colorado secretary of state do not disclose the principals of the corporation, and Martirosian's name appears nowhere in any of the annual filings since then, the several addresses provided over the years, most of them in Glendale, California, match up with those of other affiliates of his. Finally, on June 8, Lim, recently retained by the landowner, formally notified the LUC of the 2014 transfer of title to Waikoloa Highlands.

That's not the end of the land transfers, however.

In late 2016, in the final days of the administration of Mayor Billy Kenoi, Sidney Fuke worked out a deal with Hawai'i County to set aside 11.7 acres of land to satisfy a condition of the rezoning ordinance requiring the developer to donate land for affordable housing. Under terms of the agreement, effective December 1, 2016 — four days before Kenoi left office — the conveyance had to be accomplished within 180 days. Another requirement was that the housing agreement be recorded at the Bureau of Conveyances within 30 days of

*Continued on next page*



its execution — i.e., by the end of December 2016. That did not happen. In fact, it still hasn't happened.

Perhaps one reason it could not be recorded within the specified time was that the subdivided lot did not exist at the time the agreement took effect — indeed, the subdivision to create the lot had not even been applied for. To meet the 180-day deadline, the subdivision had to be fast-tracked. Yet not until March 28, 2017, did Fuke submit to the Planning Department an application for the subdivision. “The primary reason for this is to enable the conveyance [of an] 11.707 acre area to the county for the development of an affordable housing project,” Fuke stated. In addition to the 11-acre lot, he wrote, a 3.244-acre lot “is intended to be conveyed to another entity that will indirectly support the housing project.” Altogether, the subdivision would carve two lots, totaling 14.951 acres, out of the larger parcel, now reduced to 716 acres.

Seven weeks later, the subdivision was approved.

### *Belated Filings*

On June 1, 2017, the subdivision map was filed with the Bureau of Conveyances by the surveyor, Chrystal Thomas Yamasaki. The subdivision requirement in the housing agreement was thereby accomplished.

As to the sale of the affordable-housing lot, though, it was not recorded at the Bureau of Conveyances until January 29, 2018, nearly nine months past the required deadline — although the notarized signature of Natalia Batichtcheva, claiming to represent Waikoloa Highlands in the sale, is dated June 1, 2017.

Nor, contrary to Fuke's statement in

the subdivision application, were any of the newly carved out subdivided lots transferred to the county. Instead, under the terms of the housing agreement, the 11.7-acre parcel was to be transferred to Plumeria at Waikoloa, LLC. Although described in the agreement as a non-profit corporation, the Department of Commerce and Consumer Affairs shows it as only a “domestic limited liability company” — formed just two weeks before the county representatives signed the agreement. DCCA records show Paul Sulla Jr., a Hilo lawyer, as its manager. The purchase price for the lot: \$55,000.

According to Fuke, the insertion of the requirement that the land be sold to Plumeria at Waikoloa was done on the instruction of Alan Rudo, housing specialist with the county Office of Housing and Community Development. (*Environment Hawai'i* has requested to review OHCD records but was unable to do so by press time.)

Signing the housing agreement, the subdivision application, and the deed of sale to Plumeria at Waikoloa was, again, Natalia Batichtcheva, on behalf of Waikoloa Highlands. Fuke, who negotiated the housing agreement, was asked if he had seen any evidence that she in fact had the authority to act on the company's behalf — including documents such as corporate filings or a power of attorney. “No,” was his reply.

Less than three months after recording the sale with the state Bureau of Conveyances, on April 24, 2018, Plumeria at Waikoloa resold the land, for \$1.5 million, to Pua Melia, LLC, a company registered in Hawai'i in January 2016. The only manager associated with Pua Melia is Danny Joseph Julkowski of Cook, Minnesota.

Neither the first conveyance — from Waikoloa Highlands to Plumeria at Waikoloa — nor the second — from Plumeria at Waikoloa to Pua Melia — mentions any requirement that the land be used for affordable housing purposes. In fact, the agreement between the county and Waikoloa Highlands setting terms for satisfaction of the rezoning requirement for affordable housing is not mentioned at all in either document.

Still, Julkowski said he has an ironclad agreement with the county housing agency and will not be affected should the Waikoloa Highlands property be reverted to the Agricultural district by the LUC. He said that agreement (not reviewed by *Environment Hawai'i*) allows him to build a commercial center, including a hardware store, in return for his developing affordable housing on the

site. He has nothing to do with Waikoloa Highlands, he said, adding that even the infrastructure he builds on his site — water, sewer, power — will not be connected to the surrounding land.

He said his plans for the lot include not just affordable housing, but also retail businesses and offices. He said he expects to be able to apply for the necessary county approvals as early as this summer.

Jeff Darrow, a planner at the Hilo office of the county Planning Department, knew nothing of the housing agreement, much less of Julkowski's plans for the commercial center, when asked for comment by *Environment Hawai'i*.

### *Who Benefitted?*

Julkowski, meanwhile, seemed surprised to learn that he paid \$1.45 million more for the property than the previous buyer. In fact, he said, the seller had initially demanded \$2 million.

Who received the proceeds?

Paul Sulla, the attorney who filed the corporate registration for Plumeria at Waikoloa, said that other people were involved in the company, although he refused to name them. “We were involved in a consortium that started in 2014, when the lava was coming down the hill,” he said, referring to the lava flows that stopped just outside of Pahoa village, in Puna. “Housing became a premium, so we started working with agencies in the county. Basically, it continued, and we were people who had more to offer in our proposal,” he said, explaining why Plumeria at Waikoloa was selected. There was no bidding process, he said.

As to why the company wasn't formed until November 2016, Sulla stated that “you don't form it 'till you're ready to take title. It's not unusual.”

When asked who received the \$1.45 million in proceeds from the sale, Sulla said: “A lot of effort, energy, went into this. The record title had to be cleared, a mortgage had to be paid off.” His only interest, he said, was getting affordable housing done.

The mortgage Sulla was referring to is the one that Waikoloa Highlands gave to 77 Holdings of Utah in 2015. As *Environment Hawai'i* reported in November 2016, Envision Entertainment Corporation, a Hollywood production company owned by Martirosian and his partner, Remington Chase, borrowed \$1.275 million from 77 Holdings, with the loan secured by the only two parcels that Waikoloa Highlands owned at the time (the 731-acre redistricted

Continued on next page

## *For Further Reading*

Our November 2016 edition has several articles on this project, including:

- “Waikoloa Highlands Development at Standstill, 8 Years after LUC Action;”
- “Original Waikoloa Highlands Partners Share History of Cocaine Trafficking.”

We have made all archived articles except those appearing in the last six months free of charge. You may view these two and other articles at our website, [environment-hawaii.org](http://environment-hawaii.org).



## Bankruptcy Court Dismisses Petition Of Early Partner in Waikoloa Project

Back in 2005, when Waikoloa Land Co. and Waikoloa Cattle were working out a deal to sell off most of the undeveloped land they held, one of the key parties in the negotiations was Michael Miroyan. When the sellers learned of the Miroyan's criminal history, they did not want to transfer the property to him.

As a result, Miroyan worked out a deal with Stefan Martirosian, the principal of the company, Waikoloa Mauka, that did end up purchasing the land, calling for Miroyan to hold a 20 percent interest in the company that held title to the land. Then Martirosian apparently tried to stiff Miroyan, leading to a lawsuit. Eventually, they worked out a deal that called for Miroyan to receive three lots at the intersection of Waikoloa Road and Paniolo Drive, just outside of Waikoloa Village.

In talks with the county, Martirosian had committed that land for development of affordable housing and a community park. But after Miroyan acquired it, he had other plans, and, as reported elsewhere in this issue, the affordable housing component of the Waikoloa Highlands development moved elsewhere.

Miroyan proceeded to take out nearly \$1.3 million in loans using the land, held by his company Hawaiian Riverbend, as security.

In 2014, Miroyan's creditors initiated foreclosure proceedings, leading him to file for Chapter 11 bankruptcy protection in 2016. His reorganization plan called for the sale of his three lots, with the proceeds – estimated by Miroyan at around \$7 million – used to satisfy his creditors.

The creditors disputed Miroyan's es-

timate of the value of the property and sought to have the bankruptcy judge order a foreclosure sale. In an early filing in the case, in August 2016, the Kai Trust (Kenneth K. Tai and Tae K. Tai, Trustees of the Kai Family 1998 Trust), went so far as to assert that Miroyan had no equity in the property at all and was using cash obtained after the petition was filed for gambling: "Debtor Hawaiian Riverbend ... has not shown any credible evidence to rebut the Kai Trust's prima facie evidence that there is no equity in the property. Debtor also has no ability to reorganize given the lack of equity in the property. In fact, Debtor's sole member Michael Miroyan has recently used the post-petition cash assets for personal use, such as by withdrawing large sums of cash without a proper accounting, and going on gambling sprees at a casino in San Jose." Documents filed with the court by Miroyan himself showed he spent \$4,164.90, withdrawn from Hawaiian Riverbend's bank account, at Casino M8trix in San Jose.

In reply, Miroyan claimed that the fact that Hawaiian Riverbend's account had any money at all was a result of his putting his personal funds into it in expectation of having to pay a civil engineer and travel to Hawai'i. "In hindsight," he wrote, "I probably should have withheld contributing capital until they [sic] were absolutely necessary."

As to the charge he used funds to gamble, Miroyan denied that. "Between July 15-18, 2016, I withdrew approximately \$4,667.95 funds from the [Hawaiian Riverbend] account at a Casino M8trix location. I did not use the funds for gambling as alleged.

the county planning staffer, learned that proceeds from the sale of the 11.7-acre lot appeared to have been used to pay off a mortgage on the larger properties owned by Waikoloa Highlands, he said that this was likely in violation of the ordinance, which required that the affordable-housing land be donated.

What the proceeds didn't pay for were the taxes. At press time, more than \$94,000 was owed in property taxes on land owned by Waikoloa Mauka or Waikoloa Highlands, the successor company

— Patricia Tummons

I believed that I had made excess contributions for the month of July 2016 and was entitled to use it."

The Kai Trust urged the court to allow an "efficient foreclosure sale [to] occur as soon as possible and to avoid relitigating the same issues that were fully briefed and ready to be decided by Judge [Ronald] Ibarra [of the 3rd Circuit] prior to the filing of this Chapter 11 petition."

The assessed value of the property was only \$472,000, the trust continued. "Miroyan does not specifically set forth any value ascribed to the property, nor does [his declaration] contain any support or basis for the argument that the property is worth \$6.5 million. It is pure, unsupported conjecture."

By the start of 2018, the two secured creditors were growing impatient, as was the court, since Miroyan had not identified any buyers for the property.

In his order dismissing the bankruptcy case on February 2, Judge Robert J. Faris denied Miroyan's request for a hearing, noting that the court had given Miroyan "and all other parties in interest an opportunity to state their positions in writing."

"Mr. Miroyan has availed himself of that opportunity by filing extensive papers, all of which I have carefully reviewed. A hearing is not necessary," Faris wrote, then added:

"Further, Mr. Miroyan sent an email to counsel for the Kai creditors prior to the status conference that was abusive, profane, and threatening. While the email contains no explicit threats of violence, its tone and content are beyond inappropriate. Mr. Miroyan has forfeited whatever right he might have had to a hearing."

That "abusive, profane, and threatening" email was sent to attorney Matthew Shannon on December 11, 2017. Referring to a status conference, Miroyan asks Shannon "if you are going to make the date in the courtroom, because I'm gonna be in that courtroom and I'm gonna make sure that you get what you get for your lying in wait and murder... [ellipsis in original] and the minute you get in front of that judge, I'm not payin' your greedy clients a penny because they don't deserve shit and you don't either. You deserve what I'm going to give you which is the lawsuit of your punc [sic] ass life, you coward bitch. I don't know why Chucky boy gave a fucking piece of shit like you a pass ... [ellipsis in original] but I'm not giving you no pass, coward fucking bitch. I want to be in that courtroom with you and what are you gonna do if you're not hiding in the

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parcel and the 2.158-acre parcel to the north and east of it).

Release of the mortgage was recorded at 8:01 a.m. on May 11, 2018, as document A67050157. With that cleared up, it became possible to record the deed to Pua Melia, document A67050158.

In other words, thanks to the county affordable housing agreement, the last obstacle to Martirosian holding clear title to more than 2,800 acres of Waikoloa land was cleared away. When Darrow,



weeds, you punk ass motherfucker, what are you gonna do when you're exposed? You're going to pay with your chickenshit reputation and you are going to be deposed by me you piece of shit." (Chucky Boy is an apparent reference to Chuck C. Choi, the attorney who represented Hawaiian Riverbend at one point.)

The Kai Trust has revived its foreclosure lawsuit in 3rd Circuit Court. The other creditor, Cory TerEick, has not reactivated his lawsuit.

### 'A Poorer Man By Far ...'

As his bankruptcy court hearings were ongoing, and even after his reorganization petition was dismissed, Miroyan was still trying to work out a deal with the county that would allow him to develop one of his three lots, at the corner of Paniolo Drive and Wailoloa Road, zoned CV (commercial-village).

In pleadings by email, he variously proposed a car wash, gas station, and a self-storage business, but was told that none of these was in conformity with the zoning.

His emails to the Planning Department require more than a ream of paper to print out. As with the bankruptcy court filings, the papers Miroyan has filed with the county are extensive, to say the least, and often rambling.

Last October, for example, Miroyan claimed to have been double-crossed by his former partners planning consultant Sidney Fuke. "What he [Fuke] and Rudo [the affordable housing officer] are proposing to do across the street ... damages me and changes everything and leaves me a poorer man by far, shouldering by myself financial responsibilities that were meant and signed in an agreement against the two properties to be shared equally by HR [Hawaiian Riverbend] and Waikoloa Mauka."

Miroyan and Waikoloa Mauka had agreed to share the costs of intersection improvements, and Miroyan also implies elsewhere that he was the one who identified the developer that ultimately purchased the affordable housing lot. (As an aside, Miroyan seems to have known far more about the affordable housing agreement than the Planning Department staff to whom his tirades were addressed.)

In the meantime, taxes have been accruing on the three parcels still held by Hawaiian Riverbend. As of last month, the total due came to \$65,550.67. — P.T.

## BOARD TALK

# New Master Plan For Ha'ena State Park Is the First to Seek a Reduction in Visitors

Before the massive flooding in April that even further isolated the remote towns of Wainiha and Ha'ena, located at the end of the road on Kaua'i's North Shore, the 300 or so residents there were being overrun by tourists. On a peak day, according to Division of State Parks officials, some 2,000 people visited Ha'ena State Park, often on their way to the world-famous Kalalau Trail, and hundreds of cars regularly crowded the streets.

Not anymore. And if the new park master plan approved May 25 by the state Board of Land and Natural Resources achieves its goals, it will never be that way again.

"Following that [flooding] ... it was like it rolled back 50 years. It was like when it was when I was 10 years old. You could go to Ke'e and see one or two people on

the beach. You could actually go swimming and not worry about your car being broken into. This flood has been mother earth's way of crying out to us and saying, 'Enough is enough,'" Ha'ena resident Chipper Wichman told the board as he testified in support of the plan, which he has spent decades helping draft.

"If this plan is not adopted, there is no legal mechanism for even trying to scale back. This is a critical moment in time," he said.

"We have an opportunity and a window of time before hordes of visitors descend upon Ha'ena again to implement parts of the plan," State Parks administrator Curt Cottrell added. "We're working at Kealahou Bay (on Hawai'i island),

*Continued on next page*



The entrance to Ha'ena State Park, post-April flooding.

PHOTO: DLNR

Environment



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