

H O N O L U L U

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WAIMAEA INDIVISIBLE

WHO WILL
SAVE
THE VALLEY?

BY CATHARINE LO

UA MAU KE EA O KA 'ĀINA I KA PONO

Faced with a complicated slew of possible outcomes, the City Council looks for the safest strategy to protect sacred Waimea Valley



MONTE COSTA

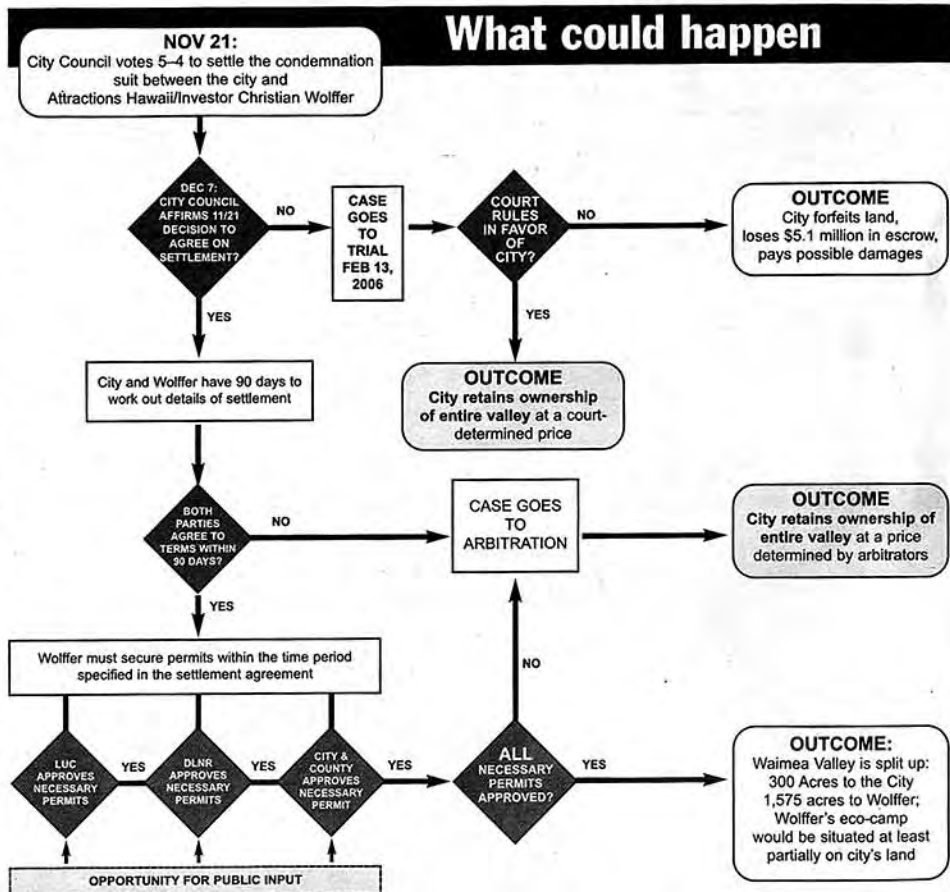
BY CATHARINE LO

On Dec. 7, the City Council will convene to make a very difficult decision with regard to the future of Waimea Valley. They will consider whether to affirm their Nov. 21 vote (5-4) in favor of accepting a lawsuit settlement that would divide the ownership of Waimea Valley between the city and New York investor Christian Wolfer, who acquired the valley in 1996 by assuming then-owner Attractions Hawaii's \$12 million mortgage. As it's been reported, the settlement would split the 1,875-acre valley thusly: 300 acres for the city; 1,575 acres for Wolfer with the option to build an eco-park on the city's portion and divide his 1,575 acres into as many as eight parcels.

The ostensible motivation for agreeing to the settlement is the opportunity for the city to secure the 300-acre parcel (commonly regarded as the park currently operated by the Audubon Society) with the \$5.1 million already invested; if the settlement does not happen, the case will go through a costly trial, opening up the possibility for the court to give Wolfer title to the entire valley if it decides that the \$5.1 million put up by the city to condemn the land in 2002 was not a fair price. Losing the valley altogether and having to pay additional damages may be the city's worst-case scenario.

Given the many unknown variables—among them which way the court would swing if the case goes to trial, whether regulatory authorities would approve the necessary permits, and at what value the land would be appraised—there are many possible outcomes, each with different implications.

"Every member is struggling with this decision," says Council Chair Donovan Dela Cruz, emphasizing how uniquely complex this case is. Further hampering the public's ability to understand what's



going on is the fact that it is a legal process, one in which confidentiality is essential so that the city doesn't jeopardize its own strategy.

From their remarks, one thing is clear: The councilmembers share the ultimate goal of keeping the valley intact. Where they differ is on the most effective course of action—the least risky means to that end. The accompanying flowchart has been created to illustrate the possible scenarios and respective factors of influence.

The means to an end

If the publicly desired outcome is for the city to retain ownership of the valley and keep it whole no matter what the price tags, there are a few ways to get there. One is to reject the settlement and hope that the court awards the land to the city at whatever price it deems fair.

A second is to accept the settlement and hope that the case will go to arbitration, which is what would happen if both parties don't agree to the details of the settlement—for example, exactly where the property boundaries would be—within 90 days. If it gets to arbitration, ownership of the entire valley would be retained by the city at the fair value designated by the arbitrator.

A third way is to accept the settlement with both parties agreeing to the specific terms within 90 days, at which point Wolfer would have to seek appropriate permits from the DLNR, and possibly the LUC, and the city and county, depending on what kind of activity he proposes. At this permitting stage there would be land and environmental evaluations as well as the opportunity for public input—and public opposition has been known to effectively hinder permit approvals. If Wolfer does

not obtain the necessary permits within a time to be specified in the settlement agreement, the case would move into arbitration; again, if it moves into arbitration, the city would retain ownership of the entire valley at a price to be determined by the arbitrator.

A rejection of the settlement, which would take the case to court on Feb. 13, seems like the least complicated route. But guessing the outcome of a trial is a gamble—one that not all the council members are sure is the safest bet.

"That is so incredibly risky. The city and taxpayers could be left with millions out of pocket and absolutely nothing," says Councilmember Charles Djou, explaining his vote in favor of the settlement. "In an ideal world, the city could purchase Waimea regardless of the price tag, but in reality money does not grow on trees. The city does not have unlimited financial resources. There has to be a cer-

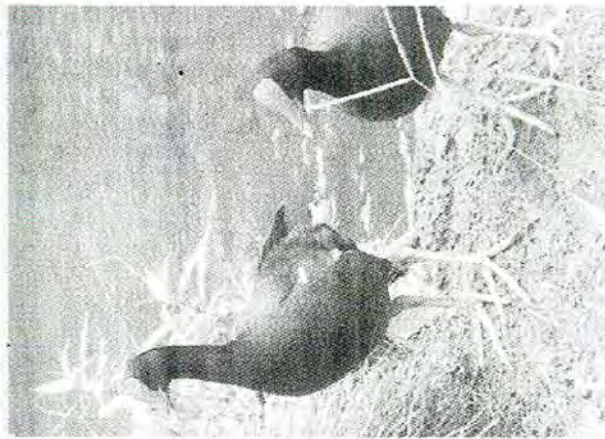
tain point at which the city's financial resources have to be taken into account."

This sentiment is shared by Mayor Mufi Hannemann, who, should the court award the land to the city at a non-amenable cost, has the option to walk away from the deal and give the land back to Wolfer. But he hesitates to set an upper limit on how much is too much for the city to pay (so as not to put the city at a disadvantage). The word from the mayor is, according to Press Secretary Bill Brennan, "Don't count on the city taxpayers to solely pick up the entire cost of the entire valley—which means we're open to others coming in and helping out." But since the city's not showing its cards, and since the price remains undetermined, no third party can guess how much they'd have to contribute to pay the tab, either.

Voting in favor of the settlement may not immediately achieve the desired outcome of keeping the valley intact, but may offer further and better opportunities down the line to achieve it. The City Council's decision boils down to this: Go to trial and hope the court rules in the city's favor, or accept the settlement and hope it gets to arbitration.

The voice of the public

According to Anthony Ching, the executive officer of the state Land Use Commission, "Waimea Valley from its head to the sea, from ridgeline-to-ridgeline, from top-to-bottom and side-to-side is entirely within the conservation district." Conservation districts typically include areas for protecting watersheds and water sources, forests and scenic and historic areas. The uses of conservation-zoned land are extremely prohibitive and regulated by the DLNR—



Waimea Valley is home to many native species, including the endangered moorhen. Fewer than 500 of these wetland birds are found on O'ahu and Kaua'i.

any land-use activity that is proposed would necessarily have to go through the state land board.

Assuming that the public bears a mighty power of persuasion, it makes sense that some of the councilmembers feel they should open the door for the DLNR, which calls for public input in its permitting process, to get involved. Wolfer, however, is not without leverage at this stage. His lawyers would likely pursue the precedent of a permit authorized by the DLNR in the '70s for the development of an ecocamp, arguing in addition that the city's condemnation of the valley precluded the developer from exercising that option.

It's very likely that even if the land board grants the permits, other discretionary permits might be needed from the city and county—if, for example, the proposed activity falls within the Special Management Area (SMA), a belt around the island that

DEC. 7 PUBLIC HEARING

A public hearing on the Committee Report in favor of the settlement agreement on Waimea Valley will be held Dec. 7 at 2pm in the Council Chambers at Honolulu Hale. Persons wishing to testify are requested to register by 2pm on that same day. Register to testify or submit written testimony at <http://www.honolulu.gov/council/agendas.htm> or via fax at 527-6910. For more information, call 527-4236.

A BRIEF HISTORY OF WAIMEA VALLEY

1092

O'ahu chief Kamapua'a places the ahupua'a of Waimea in the care of the island's kahuna.

1100s

Pu'u O Mahuka, O'ahu's largest heiau, is established on a Pūpūkea ridge overlooking Waimea.

1700s

Kahuna nui Ka'oputupuolu builds heiau throughout the valley, some of them for use in communicating with people on Kaua'i.

1795

King Kamehameha, chief of the Big Island, Maui and O'ahu, gave control of Waimea to his top kahuna nui, Hewahewa.

1848

Nearly 800 years of kahuna stewardship over Waimea comes to an end with the Mahele.

late-1800s

Waimea's abundant fishing and farming feed people as far away as California. In 1898, a flood destroys homes and crops of the approximately 1000 Hawaiians living in the valley.

protects coastal lands including parts of Waimea. SMA permits, as well as subdivision, zoning and building permits, must be approved by the city and county—and here again, the public can testify.

Finally, should Wolffer seek to change (or move) the conservation district boundary, it would require the review and consent of the Land Use Commission. Such a petition would allow multiple opportunities for public comment. According to Chings, the developer would also be required to submit an environmental assessment or environmental impact statement.

1929

Castle & Cooke purchases Waimea, leasing the land to cattle ranchers.

1970s

Bishop Corp. purchases Waimea for \$355,000. Waimea Falls Park is established. For the next 25 years, ownership of the valley is held by different members of the Pietsch family.

1996

Investor Christian Wolffer picks up \$12 million mortgage held by Attractions Hawaii (owned by a member of the Pietsch family) and assumes control of Waimea.



Auntie Ka'ula Chun, a Waimea Valley kupuna, emphasizes the importance of preserving "the last of the treasures we have today."

For what it's worth

In 1971 Bishop Corp. (no affiliation with Bishop Estate), a group of local businessmen, purchased Waimea Valley for \$355,000.

When Christian Wolffer put it on the market in 2000, he asked for \$25 million. When the city sought to acquire Waimea in 2002, they committed to an appraised value of \$5.1 million. Ask the Hawaiian historians, anthropologists, archaeologists and kupuna, and they'll tell you that the valley is priceless.

The question of the land's worth is relevant in three distinct ways. First, in terms of the judgment that will be made either by the court or through arbitration, the value in question is what the land was worth in 2002 when the city entered into condemnation proceedings. This value is not subject to whatever market fluctuations that residential, commercial or agricultural land might have undergone.

The valley's value can also be affected by the condition to split Wolffer's 1,575 acres—puffing up its worth as eight lots (on each of which he could seek to build a residence). At the same time, in the city's interest, it sets a maximum number of lots, safeguarding against the slim likelihood

2000

Wolffer puts the valley up for sale at \$25 million, later lowering the price to \$19 million.

2001

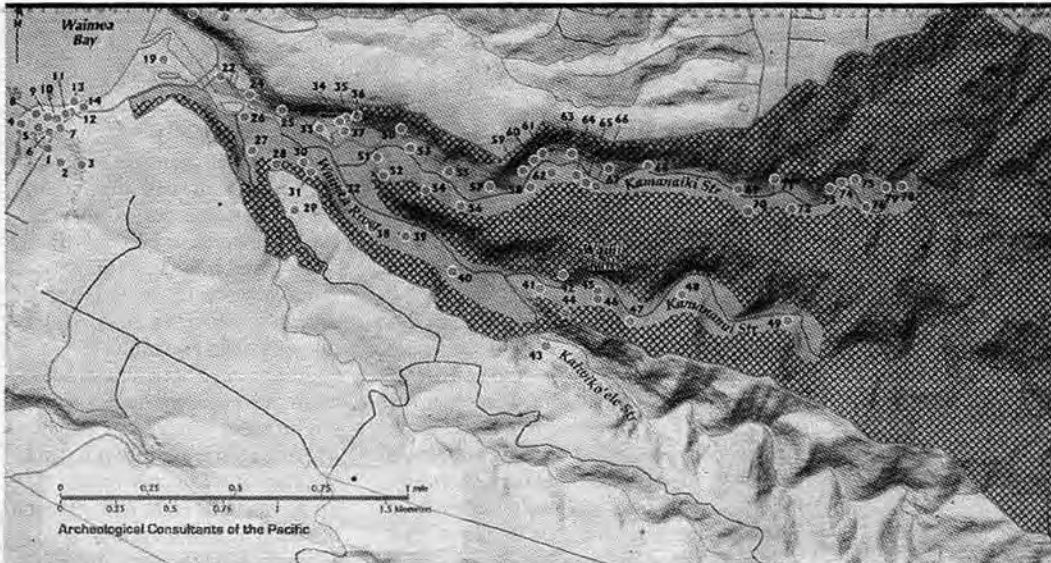
Wolffer puts the valley under bankruptcy protection.

2002

In February, the city takes possession of the land, depositing \$5.1 million in escrow with the courts to begin the condemnation process.

2003

Audubon Society takes over management of the valley, operating the Waimea Valley Audubon Center.



GRAPHIC: ARCHEOLOGICAL CONSULTANTS OF THE PACIFIC

Waimea Valley has 78 documented archaeological sites. These include sacred stones, fishing shrines, heiau, agricultural terraces, rock shelters and burial caves. Because the inland areas and steep valleys are so difficult to access, at least 80 percent of the valley, represented here by the crosshatched area, has not been inspected for archaeological sites.

that he would seek to split the land into even more parcels.

Longtime valley supporters believe that if the price is right, a third party—like the Office of Hawaiian Affairs (OHA), Bishop Estate, the Audubon Society, the Sierra Club, the Nature Conservancy—could swoop in, make an offer in the public's interest and effectively save Waimea—a move that nobody seems willing to make until they know how much it will cost. Many in the community are looking to the state, which recently projected a \$632 million budget surplus. State Rep. Brian Schatz, D-25th (Makiki, Tantalus), suggests that the state could tap into the Legacy Lands Fund or, as in the case of Sandy Beach, a direct appropriation

from the General Fund could be made to assist with the purchase of the land. (Calls to the governor's office for comment on this possibility were not returned.)

"It is certainly my hope that a white knight—the state, the federal government—would offer to step in and buy the whole thing. The council would welcome that with open arms," says Djou.

The life of the land

Support for the valley's preservation runs deep and wide. Native Hawaiians, community groups and conservation groups underscore its immeasurable historic and cultural significance. Those familiar with the valley say that it holds a special mana, and the sto-

ries they tell suggest it has touched their souls.

"Waimea is one of the last undeveloped areas on this island. It was and is a very special place to many kanaka," says Butch Helemano, kahu of the Pu'uomahuka heiau situated on the valley's bluff. "Waimea was the seat of political power for many decades, and the seat of religious power for hundreds of years.... Developers need to stop and soul search before they destroy what little we have left."

Recently, archaeologist Joseph Kennedy completed an OHA-funded assessment of the valley for the Audubon Society, which currently manages the valley on a month-to-month, 30-year lease.

The Audubon Society has been commended for its proper stewardship of the valley since it took over in 2003. The map of the area that has been surveyed—mostly the front—implies how many more archaeological sites exist in the rest of the valley. Kennedy warns against letting go of a place that has yet to be surveyed. "We should look at it as a whole before we are prepared to give it up," he says. "The ahupua'a split up loses its integrity."

"The thought that development might happen along the ridges—what will happen to the archaeological sites along the walls of the valley? They want to build houses for a nice view, but at the cost of what? Something that is irreplaceable. If we lose that, we lose a very, very important source of history and culture. Schoolchildren come and learn things here they can't learn in the classroom," says Aunty Ka'ula Chun, one of Waimea's most respected kupuna.

"I feel that all of the people of Hawai'i, who live here in Hawai'i, have the responsibility to take care of what we have now. Lend us their voices to help save the valley from being divided... The state and OHA have an obligation to do what they can. They owe it to our kids. Not just this generation, but the generations to come."

The decision City Council makes Dec. 7 does not close the question of the valley's destiny. The best course of action is difficult to determine. Throughout the process, the governing bodies would do well to remember the state motto: "Ua mau ke ea o ka 'āina i ka pono." The life of the land is perpetuated by righteousness. In the case of Waimea Valley, perhaps the best strategy to split a log would apply: The first blow must go with the grain before you strike against the grain. ■