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Environment Hawaiʻi

a monthly newsletter

Decoding CWRM

Adaptive management. It's the newest car on the lot when it comes to management approaches intended to give agencies flexibility to respond appropriately and in a timely manner to the challenges of resource allocation.

But in embracing this approach, as the Commission on Water Management has done in the case of the Keauhou aquifer system on the Big Island, has it escaped the legal framework of the state's Water Code?

Our interview with Ciara Kahahane, the executive officer heading up CWRM, explores this and related issues.

IN THIS ISSUE

A Conversation with Ciara Kahahane

Environment Hawaiʻi editor Patricia Tummons recently interviewed Ciara Kahahane, the deputy director of the Department of Land and Natural Resources and effectively the executive director of the Commission on Water Resource Management. The focus of the discussion was the way in which the Keauhou Aquifer Sector Adaptive Management Plan interfaced with the Hawaiʻi Water Code, Chapter 174C, Hawaiʻi Revised Statutes.

In 2017, the commission denied a 2013 petition by the National Park Service to designate the area to protect the inflow of fresh groundwater into the Kaloko-Honokohau National Historic Park in the face of growing development.

Modeling by the USGS has predicted that groundwater recharge in the Keauhou aquifer system will decrease significantly in the coming decades under both "wet" and "dry" climate scenarios.

For now, the Water Commission has opted to implement the adaptive management plan rather than designate the area as a groundwater management area, which would require water users to obtain permits.

What follows is a lightly edited transcript of the interview.

EH: I have a question about the interface between the Adaptive Management Plan for Keauhou and Chapter 174C. I'm not seeing how they work well together. If there is a mismatch, does CWRM anticipate amending 174C?

Kahahane: The adaptive management plan and the application of adaptive management principles are actually called for in the 2019 update to the commission's Water Resource Protection Plan. The guiding policy adopted in that plan, one of the guiding policies adopted, was to apply adaptive management principles in the face of scientific uncertain-

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An aerial view of the Kaloko fishpond in 2012. CREDIT: NPS.

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NEW AND NOTEWORTHY

ADC Squatters: Last March, *Environment Hawaiʻi* reported on Pacific Biodiesel's rent-free use of 1.53 acres of land owned by the Agribusiness Development Corporation. The ADC's "Hawaiʻi Agribusiness Plan 2025" report, dated January 2026, states that the parcel, in Shipman Industrial Park just south of Hilo, "is currently vacant but being evaluated as a strategic site for agribusiness processing, distribution, and/or value-added manufacturing."

Yet Pacific Biodiesel continues to occupy the land. As of late January, dozens of its tanks were parked on the lot, which adjoins the company's refinery.

It is not just the state that is losing money. County property tax records do not reflect any encumbrance on the property, whose market value is pegged at $750,400. The state pays no taxes on unencumbered land, but property taxes on an adjoining vacant lot, of identical market value, come to nearly $8,000 a year.

The reportedly vacant ADC-owned lot in January.

ADC's asset manager Lyle Roe was asked about the ongoing occupancy of ADC land by Pacific Biodiesel. The ADC response was to treat the query as a Uniform Information Practices Act request, stating that the agency "requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions."

The form response noted as well that the agency would notify *Environment Hawaiʻi* "within a reasonable time not to exceed twenty business days" of its decision as to whether it would even provide an answer.

For background, see the "Pacific Biodiesel Occupies ADC Land in Keaʻau; No Lease, No Rent," *Environment Hawaiʻi,* March 2025.

Cart before Horse: In November, the Agribusiness Development Corporation approved issuance of a permit to Kun Hu Farm to utilize 136 tillable acres in Central Oʻahu. Because "a slightly substantial financial investment by the applicant will be necessary to clear and prepare the premises for planting," the annual rental rate of $1,800 per acre – or $150 per acre per month – was discounted to $75 per acre per month for six months. After that, the full rent, amounting to $244,800 a year, would be in effect until the first rental reopening, in the tenth year of the permit. Crops to be grown on the site included basil, taro, dragon fruit, and purple sweet potato.

In January, the ADC had to back up a bit. As stated in the staff submittal to the ADC board, "At the time of the November 2025 meeting, ADC's staff were unaware of the existing permit" over 24 acres of the same land. They were "now requesting the cancellation of this permit so that a new license can be issued to Kun Hu Farms [sic]."

ADC property manager Alison Neustein explained that in November, staff didn't believe that revoking the permit to Robert's Equipment Service would require board approval. "We were hoping we could just cancel it …, but the attorney general recommended taking it to the board to approve."

Under the RP, issued in February 2023, Robert's Equipment Service was paying $14 per acre per year. Following board approval of the termination, Robert's was to be given 30 day's notice to vacate.

Quote of the Month

"If they take my license, there is no way to pay the fine. … You would be crippling a family and do no good."

— Konane Zager, fisherman

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Warehouse Owners, Solar Firms Sue Each Other Over Botched Solar Development at Marconi Point

The lawsuits over activities at Marconi Point on O'ahu's North Shore just keep coming. This time, they're over the development of a large solar photovoltaic system on the rooftops of eight agricultural warehouses on land owned by RCA Trade Center, Inc., and MP Unit 21, LLC.

On November 11, the two companies, and an affiliated company, Marconi Farms, LLC, filed a complaint in U.S. District Court against Valta Solar LLC; Hawaii FIT Sixteen, LLC; Hawaii FIT Seventeen, LLC; Clean Power Construction LLC (CPC); and BayWa R.E. Power Solutions, Inc.

The complaint includes 15 counts, alleging breach of contract, misrepresentation, negligence, trespass, and conspiracy, among other things. The plaintiffs seek damages, disgorgement of profits, declaratory and injunctive relief, and attorneys' expenses.

On January 20, the Valta-related defendants (which do not include BayWa) filed a countersuit, also alleging breach of contract, negligence, and misrepresentation, among other things. They also seek damages, as well as accrued interest on amounts owed and unpaid, disgorgement of funds due to unjust enrichments, and attorneys' costs.

Basically, the warehouse developers — despite receiving a $7.9 million USDA-backed loan — didn't have enough money to complete all eight warehouses. So the solar companies, which had lease agreements for the tops of those warehouses, agreed to loan MP Unit 21 up to $2 million to help complete construction.

Once the structures were done, the companies would build and operate a PV installation. Power from the facility would be sold to Hawaiian Electric Company (HECO) under feed-in-tariff agreements secured by Hawaii FIT Sixteen and Seventeen in 2011, each for 500 MW.

According to the complaint by RCA and MP Unit 21, around mid-2023, "Valta, through FIT 16, began to slow disbursal of draws from the MPU 21 note, leaving MPU 21 without the means to timely pay [contractor] AP Builders for its work.

"As a result of the delayed payments, AP Builders threatened to walk off the job and to assert mechanics' liens against the property for nonpayment.

"Following these threats, Valta demanded that MPU 21 engage its subsidiary, CPC, to complete all remaining work on the property, including (1) completion of improvements on the MPU 21 warehouses; (2) application of roof coatings for both RCA warehouses and MPU 21 warehouses; and (3) installation of underground electrical infrastructure improvements for both RCA warehouses and MPU 21 warehouses."

RCA and MP Unit 21 entered into agreements with CPC for the remaining work, which they estimated would cost less than $1.2 million. AP was paid what it was owed. CPC then delegated some of the work to BayWa.

In the months that followed, warehouse tenants began complaining about leaks and other problems. MP Unit 21 hired a real estate inspector who found that the roof coating was improperly installed and the PV installation crew "damaged the roofing system during installation," the complaint states.

The complaint continues that the solar companies promised to fix the roof leaks, but never did, and that roofing company estimates suggest that it would cost nearly $2.4 million to repair the damaged roofs or nearly $3.3 million to replace them, not including solar panel removal, reinstallation, and taxes.

In February 2024, the Marconi companies' complaint notes, CPC invoiced them for just over $2 million for costs the companies say are unsupported. What's more, the complaint states, the contractors used the companies' vacant land for storage of equipment and materials without permission and without payment of rent.

"The fair market rental value for such use is approximately $18,000 per month per building," the complaint states.

It argues that the plaintiffs are entitled to a declaration and injunctive relief, finding that: "(1) the CPC agreements were breached by CPC, (2) defendants must provide a full accounting of all funds disbursed under the MPU 21 note, (3) defendants must correct and repair all defective construction work at no additional cost to plaintiffs, and (4) defendants must cease their unauthorized occupation and use of plaintiffs' property and compensate plaintiffs for such trespass and use; and (5) plaintiffs are entitled to recover all reasonable attorneys' fees and costs incurred in enforcing their contractual and equitable rights."

An aerial view of the solar panel-topped warehouses at Marconi Point. CREDIT: PETER FOWLER/ENDURE FILMS.

A Different View

The counterclaim filed by the Valta companies paints a very different picture.

They state that MP Unit 21 "drew down, used and/or received at least $1.69 million in funds from FIT 16 under the MPU note, not including interest," and was obliged to repay it by the note's maturity date of March 1, 2023.

With regard to the roof defects identified by the real estate inspector, the solar companies point out that the steel warehouse components bought and installed by RCA and MP Unit 21 had extensive corrosion and deterioration.

In February 2024, RCA and MP Unit 21 sued materials supplier Schulte Building Systems for damages totaling $1.89 million. The companies argue that the metal roof purlins were improperly galvanized and corroded as a result. The case has been stayed pending the outcome of arbitration pursuant to a contract between Makai Ranch (the original project developer) and Rhino Steel Building Systems, which was involved in the sale of the steel frame components.

The failure to inform the Valta companies about that lawsuit is just one instance where RCA and MP Unit 21 breached lease terms that require that the tenants be promptly informed and given copies of any pending litigation, the counterclaim argues.

"RCA/MPU discovered and/or had *actual notice* of the material defects, problems and unacceptable condition of the steel components sold by Rhino Steel and/or Schulte Building as early as March 2021 and no later than June 4, 2021," it states, noting that counsel for the landowners sent a letter to Rhino on that day, demanding replacement components.

Four subsequent demand letters "stated that the steel components ordered by RCA, MPU and/or Makai Ranch were non-conforming and defective," it adds.

In 2021, RCA and MP Unit 21 sued Rhino in federal court in Texas. The February 2024 lawsuit against Schulte followed. And in between, RCA, MP Unit 21, Makai Ranch, and Marconi Farms all sued the City & County of Honolulu and its Department of Planning and Permitting over construction delays caused by Special Management Area requirements. (Last year, the U.S. District Court issued a ruling against the companies in its complaint against the city, which the companies are appealing.)

"RCA/MPU deliberately and consciously withheld material information from the Valta tenants about the condition of the warehouse structures and their disputes, arbitrations and litigation with the sales representative, Rhino Steel, the supplier/manufacturer, Schulte Building, and the DPP (as to permitting problems). RCA/MPU neglected, failed and/or refused to inform, disclose, reveal and/or share the information that it had about pre-existing problems with the steel and purlins that it ordered and received and with permitting and entitlements as to the DPP. … RCA/MPU are liable for each and every non-disclosure of material facts that it made to the Valta parties in the leases and CPC agreements in an amount to be established at trial," the counterclaim states.

The Valta companies also argued that the warehouses, which are near the ocean, are not fully enclosed with windows and walls, leaving the interiors exposed to the elements.

"The unfinished nature of those warehouse structures leads to oxidation, corrosion, and rust of various components and materials framing the buildings. By leaving such warehouses/structures open to the elements, owner(s) created an environment where the structural components of the warehouses, including the manufactured steel, would be directly exposed to the salt air, outside weather, and other conditions contributing to the destruction of usable steel parts," they stated.

They added that RCA and MP Unit 21 breached the leases by "(i) failing to ensure that the Valta tenants had properly constructed steel warehouses/buildings ready for the installation of the commercial solar rooftop panels, (ii) providing steel structures that were not defective, (iii) notifying Valta tenants of threatened and/or actual litigation and arbitrations that RCA and MPU filed, (iv) complied with its covenant to provide the Valta tenants 'quiet enjoyment' as promised under the leases, and (v) failed to honor, abide by and comply with its covenants to deliver property in compliance with permits, regulations, laws and uses as referenced therein.

"Additionally, [the landlords] have thwarted, impeded, prevented and/or failed to honor its obligations to assist and cooperate with FIT 16 and FIT 17 to obtain approval for the electric transmission of solar energy from the rooftop solar panels (sometimes referenced as 'energizing' the system)," the counterclaim stated.

Whether the project, as constructed so far, will be eligible to receive the federal tax credits that expired at the end of last year remains to be seen. On December 10, the companies filed with the Federal Energy Regulatory Commission a Form 556, which is a Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility.

The companies state that their facilities were expected to be installed by December 31, 2025, and to begin operation that same day.

The form states, "The generation is delivered to the host utility via a 480V interconnection line and metered at the point of delivery."

However, a 2026 update to the Public Utilities Commission by Hawaiian Electric on its feed-in-tariff program suggests that the FIT 16 and 17 projects are still under construction and have not been completed or received meter installation.

— Teresa Dawson

Kahahane *continued from page 1*

ty. And that's something that we try to do with things like instream flow standards already. This [Keauhou] adaptive management plan is trying to do that in the context of groundwater management. And there are a few different ways that we see it fitting within the existing framework of 174C and the broader Hawai‘i state constitution and the public trust doctrine.

So, one of the ways is when the commission makes a permitting decision right now, particularly when it assesses resource impacts and impacts to traditional and customary practices under the Kapa‘akai framework, it's really looking at the impacts on a well-by-well basis. And it often lacks information about the cumulative impacts of those groundwater withdrawals. So that's one way that it's working within the existing framework.

Another way is by directly informing our sustainable yield updates in the Water Resource Protection Plan. Of course, the Water Resource Protection Plan is where sustainable yields are actually set statewide.

And right now, Keauhou has only one sustainable yield number for the entire aquifer, even though we know that there are at least three different aquifer bodies out there: the basal lens, which is a thin, mostly brackish lens closest to the coast; the high-level water, which is mostly above the Mamalahoa Highway, which seems to be a little bit more resilient to pumping than the basal, though we're not quite sure; and then there's also the deep confined, which is way, way beneath the water of the basal aquifer.

One of the things we're hoping to do with this adaptive management plan is set three different sustainable yields and really start to manage those three aquifers separately.

So that's one way that the [adaptive management plan] is going to directly inform the Water Resource Protection Plan, which is something that 174C already calls for.

And finally – this is something we may want to figure out how we're going to implement, we may want to implement a statutory fix, or administrative rules somewhere down the line, to better implement the adaptive management plan.

But right now, we're very early in the

plan development process overall. And so, we haven't made any final determination regarding what kind of adjustments, if any, we would make.

EH: What efforts are being made to assess current usage and planned usage in the adaptive plan management of Keauhou? Why have these estimates of current and planned usage not been discussed so far?
Kahahane: So, we have actually, if you're talking about authorized planned use, we've been discussing that with the County of Hawai'i and trying to find a unified way across all four counties of determining what authorized planned use is and how it's measured. So those conversations are ongoing between staff and all four of the county planning departments.

EH: It doesn't appear in the adaptive management plan at all.
Kahahane: No, currently, it's not a part of the AMP. It's something that was separately required as a condition of non-designation by the commission and it's something that is separately required under the state Water Code.

And so we're proceeding, not necessarily including it within the AMP itself, but still, that is definitely something that we're looking at and that we are working to track.

EH: Should it not be included in the AMP? It seems to be a pretty important element.
Kahahane: Well, one of the things with the AMP, we're trying to keep the AMP really focused on specifically monitoring, managing, and adapting to changed conditions. Those changed conditions may include how much use there is, how much development there is.

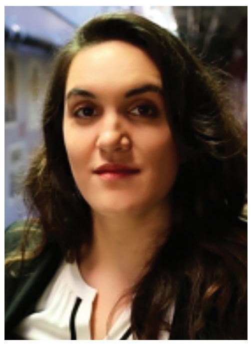
But one of the struggles that we've had with the AMP so far is a little bit of scope creep. We're trying to keep the AMP very focused on this first generation, and I'm mindful that it has so much potential as a tool that we do want to keep throwing more stuff into it.

But extras, like building in a more specific consideration of authorized planned use, that's probably not going to come in until later generations of the plan, if at all.

EH: If the purpose of the AMP is to monitor water levels and manage on that basis, then I have several questions. What enforcement power does CWRM have in areas that have not been designated as management areas by the commission? How can CWRM require that pumpage be reduced in areas that might be showing increased salinity or lower water levels?
Kahahane: So the enforcement is one that, again, we're really early in the stages of the plan development. We haven't necessarily decided what the final triggers for action thresholds for protection are going to be, and what the management actions are.

So the conversation about enforcement is really not going to come in until later on in the planning process.

EH: How can you keep tabs on water usage and water salinity and water levels if you don't have 100 percent reporting – as I don't think you do in the case of Keauhou, or even statewide?


Ciara Kahahane.
CREDIT: CWRM.

Kahahane: So, our reporting compliance, you're right. There are always a certain percentage of folks who are not reporting. Our staff follows up with people if they haven't received well reports from them.

And for Keauhou, I don't have the specific updated numbers as of January 2026, but the percentage of wells that were reporting is contained in one of my briefings to the commission – I can't remember the exact month.

But actually, most of the non-reporting, all of the non-reporting wells were smaller individual wells. We actually have very good compliance in Keauhou from the larger well operators. So, yes, we have some non-reporting wells. Generally, when the commission makes a permitting decision, we take those non-reporting wells, and we assume that they're pumping as much as they possibly can, right? So if someone's not reporting their water use to us, we take the pump capacity and we multiply it as if they're pumping it 24-7.

EH: How recent was the latest permit you issued in the Keauhou area?
Kahahane: We have not issued a pump installation permit in Keauhou since the commission declined to designate the area as a groundwater management area.

EH: Has there been any penalty applied for lack of reporting?
Kahahane: No. We have not gone after anyone for a penalty at this time.

EH: A while back, Keith Okamoto, director of the Hawai'i County Department of Water Supply, told the Board of Water Supply that you had said the county did not need to complete the Keauhou Water Use and Development Plan, a draft of which was published in 2017. Keith said that he hadn't worked on it since then, on your advice.
Kahahane: My conversation with Keith was really focused on our planned update to the Hawai'i Water Plan framework. So that's been something that commission staff started on before my time – I think in my predecessor's time, they started updating. This is the framework that governs all of the different components of the Hawai'i Water Plan. The Water Use and Development Plan is, of course, part of that. And my word to Keith at the time was, let us figure out what we're going to do as far as updating this framework, because he didn't want to start a plan and an entire planning effort, bring on a contractor, if we were just going to change the requirements midstream.

That was months ago, and we've had subsequent conversations where I think that we've been able to give Keith enough certainty with regard to where we're going with the Hawai'i Water Plan Framework update that my last conversation with him on this was that they were going to start, at least, the planning process for the Keauhou Water Use and Development Plan.

EH: How would the framework process change the way in which the county water use and development plans are developed?
Kahahane: One of the major things that we're thinking of updating is, one, clarifying the method for calculating authorized planned use. And two, building in specific consideration of impacts on traditional customary practices at the macro scale. There are a lot of different things.

But one of the major updates for the Water Use and Development Plans is really requiring the counties to at least get an idea of what kinds of practices are happening in a given area and how they might potentially be affected by its plans for source development.

This is still pretty early in the process. We're still discussing internally these framework updates.

And while we've had preliminary conversations with the counties about them, we don't have anything official documented in writing that we're really ready to roll out.

But this is going to come before the commission when we're ready to announce it publicly and start accepting public input.

EH: It seems that there's a bit of a circularity here. How can you update the Water Resource Protection Plan if you don't have the

county Water Use and Development Plans, and vice versa? They're really dependent on each other.
Kahahane: They are, they absolutely are. And in a way, the circularity is kind of by design, to have the plans talk to each other, back and forth, and not necessarily have one informing the other one.

So, yes, absolutely, the county's plans for source development are going to inform what the commission does, including in the Water Resource Protection Plan, and that, in turn, is going to inform what the county does. So it's really sort of by design to have the plans feeding into each other.

EH: When was the last update to the county's Water Use and Development Plan – the last one that was approved by the County Council?
Kahahane: The Keauhou Water Use and Development Plan was actually not approved by the council.

EH: Do you know how far back in time the last approved Water Use and Development Plan for the county occurred? I think it was back in the 2000s.
Kahahane: That sounds right.

EH: About 20 years ago. And can that be relied on moving forward, trying to assess water use? Trying to determine questions of designation?
Kahahane: It's the best thing that we have right now. So, at a certain point, we don't have more from the county that we're able to rely on. Of course, we're working with the county to update the Keauhou and certain aspects of the Water Use and Development Plan.

That's why this Adaptive Management Plan effort is so important, to bring in some of those unanswered questions, like, what are the cumulative impacts of withdrawals in the Keauhou aquifer?

EH: Are you displeased with the 2017 update?
Kahahane: I think, actually – I may be misspeaking here – but that was before my time. But I believe that it was actually approved by the commission. It just didn't receive County Council approval. And there's a lot in there on review that I think is good and is going to stay.

My understanding is that one of the objections from the public was that it didn't contain enough consideration of traditional and customary practices and the impacts of those. And that's something that we're actively working to fix.

EH: I had a question about the monitoring well, the deep monitoring well that you've mentioned as having been financed by the Legislature. It seems like that's planned to go on the very same site that the county already has a deep well. Is that correct?
Kahahane: If you're talking about the Kaloko well, that is on a county site. They don't already have a deep well there, so that's its own separate thing. The other two deep monitor wells that we got funding for this past year from the Legislature, we haven't decided where we're going to site them yet.

EH: There was one that was to be sited right next to an existing county well. Is that the same monitoring well that needs to be resealed?
Kahahane: If we're talking about Kaloko, yes.

EH: That is, then, what we're talking about. Why is that on the same site as a county well?
Kahahane: Well, it's difficult when we're looking for a place to site a deep monitor well. We're really constrained not only by where we would optimally like to put it, but where there's land available. The county has been a very good partner to us in letting us site wells on their property.

I assume that when staff sited that well, they looked at what state lands were available and couldn't find anything that was a good candidate, and so went to a county site instead.

EH: What is the status of the Ota well? You say that no wells have been permitted in Keauhou since roughly 2017-18, but I know that this proposed well has been rather contentious.
Kahahane: It has been rather contentious, yes. Its last trip to the commission was back in April of 2025, and action on that well construction permit was deferred.

Before that, the most recent time that they were up to the commission would have been before me. They actually did get a pump installation permit but, of course, they challenged and requested a contested case hearing.

So as of this moment, I don't have an idea when the Ota well is going to be back up to the commission. It is one of many wells that people are interested in constructing out in Keauhou.

EH: Going back to the deep confined aquifer … I'm concerned if that is included as one of the aquifers that can be tapped for future well development, it seems awfully deep, for one thing.

The county already has many, many problems keeping its existing deep wells operational. At any given time, there may be up to, like, 40 percent of the deep wells that are offline because of problems. They've maybe dropped equipment to the bottom of the well and need to figure out a way to fish it out, or they have problems with pumps that can't be easily accessed. If you read the minutes of the Board of Water Supply, every meeting includes a discussion of the Kona deep wells. And it's expensive. The county Department of Water Supply is the largest electric consumer in the county, and its in large part because of these deep wells.

So if you have an aquifer that is even deeper than that, I don't know how you expect to make that feasible and why that should be considered as part of the available supply of fresh water.

The other reason why I think it's maybe inappropriate to consider as a source of fresh water is that most of the research that has been done to evaluate the existence of this has been done offshore. And if you have offshore wells, then that raises another question of the feasibility of using this aquifer as a source of fresh water.
Kahahane: Yeah, I definitely understand your concerns. That's more policy stuff that wouldn't necessarily be a decision that's made by staff, though I'm sure that considerations like those that you just raised would be weighed by the commission if they were to make a determination regarding a proposed deep well into the deep confined aquifer, especially one that was actually going to pump instead of just a monitoring well.

Ultimately, the reason that it's being included within a potential update to the Water Resource Protection Plan and to the Adaptive Management Plan is we know that there's interest. People have already proposed wells into the deep confined, so we need to put information before the commission on the potential impacts and how much we expect to be in the aquifer, and any considerations like those you raised. But also what people are saying in favor of exploring the deep confined. That's all stuff that we're just trying to make visible and give the commission the information it needs to make a good decision.

EH: A few years ago, I went to a discussion. I was not an invited participant, but I busted the party. There was a lot of discussion at the meeting, which was led by the Natural Energy Laboratory of Hawai'i Authority, advocating for the Ota well. They were saying that there wasn't any problem addressing water supplies in the Keauhou region because we have this basically unlimited deep confined source.

So I think by including it as an aquifer, you have sort of given succor to the people who think that we don't need at all to be concerned about freshwater availability.

At the very least, there should be some kind of an asterisk attached to every mention of this deep confined aquifer so as not to get people's hopes up that this is a viable and reasonable and feasible and practicable and economical means of acquiring fresh water.

Kahahane: That's not my intent to lead people towards considering it to be just a free, fresh, and available supply of freshwater. It is something that we have to look at, especially as we think about what recharges it. Where's the recharge area? How much water that would otherwise be going to the high level or the basal is actually in the deep confined, and how these aquifers interact with each other.

EH: That's fine, but if you think of that as a third aquifer that can be folded into the Water Resource Protection Plan, which identifies the sources of available water, I think that's another step. I don't know why you would include something which doesn't have any kind of proven availability.

Kahahane: Well, understanding the availability is something that we're looking to do, we're actively exploring. Whether we decide that there is a sustainable yield for the deep confined aquifer, or if we determine that it's not suitable as a water source remains to be seen.

EH: Now that the contract with Guild Consulting has expired, has it presented to the commission a final plan or a final report on the Keauhou Adaptive Management Plan it was to prepare?

Kahahane: So, the final report – let me back up just a little. The Guild contract had multiple phases, culminating in the preparation of a plan.

Due to a number of factors, including just the length of time it took to herd together all of these groups, it ended up not proceeding to the final phase of that contract.

So the final deliverables for the contract are going to be reports of discussions from the expert groups that are going to form, really, part of the foundation of the final adaptive management plan. But as we explore preparing that final plan, we're thinking it's going to be a while longer down the road than we had previously anticipated. There's just a lot of discussion, I think, that we still need to have. And so, that final plan is probably going to be prepared either in-house by commission staff or we'll seek another contract.

EH: So, basically, Guild didn't deliver its final deliverable?

Kahahane: We decided to pause before the final phase of the contract. So there were deliverables for each contract phase. We've stopped at phase – I think it's phase two of the contract, which was to convene these expert groups and prepare a report of the proceedings.

So we've gone up to that phase, but we didn't complete that final phase, which is to prepare successive drafts of the Adaptive Management Plan, present them to the commission, and eventually, for commission staff to propose one as final.

EH: Did they get full pay on their contract?

Kahahane: They're only being paid for the phases of work that they actually completed. So not the full amount, no.

EH: What did they get paid?

Kahahane: I don't have that off the top of my head.

EH: Basically, the plan is not complete at this point?

Kahahane: That's correct. We're still very early, very early stages of the plan.

EH: How useful will it be if it's always going to be in flux?

Kahahane: I think it'll be useful. It will always be in flux, and that's the beauty and the struggle of adaptive management.

But ultimately, everything the commission does is in flux. We might make a decision one day that, because of sea level rise or climate change, becomes outdated in a few years. That's just the reality of water management, and so I think, I hope that this will be useful. I believe that it truly will be useful. And it's something that I would like to see us do in places like, for example, Lahaina, where we know that there are resource impacts, that climate change is changing the amount of rain that we're seeing there, the amount of recharge to the aquifer.

This sort of adaptive management strategy, while it might not take the exact form that we're thinking for Keauhou, it's something that I would like us to see and like us to use statewide one day.

EH: I do have a couple more questions. At one point, you were discussing with the commission plans for developing monitoring wells in Keauhou. And you said something to the effect of, if the Legislature did not give you the funds, then you could go to other sources in the community. Do you remember saying that?

Kahahane: Yes.

EH: And this has me a bit concerned, because I think that there's always a quid pro quo when you are getting money from private sources to develop a public resource. There's the expectation on the donor's part that they will get some benefit from it. And if it turns out that they don't have it, then I think that really puts everybody in an awkward position. So when you mentioned that, who did you have in mind? What did you have in mind?

Kahahane: No one specific in mind, but I will say, for quite some time, folks have been advocating for the commission to find its own reliable and renewable source of funding. According to a study done by USGS a few years ago, the full cost to fund a water manage-monitoring network in Hawai'i is something like $170 million. And our budget for the commission is now about $5 million a year.

So we have a substantial shortfall in terms of being able to do everything that we know needs to be done to responsibly manage and monitor our water resources.

And I totally understand your concerns about the quid pro quo aspect of seeking private funding. It is something that I think, you know, we already have a watershed management fee for DOFAW [the Department of Land and Natural Resources' Division of Forestry and Wildlife] that is imposed on certain applicants. So, I think of it as being similar to that.

And it really follows from the concept of, if you have a well in an area and you're taking out water, you're causing the commission staff to actually have to expend time and energy and effort monitoring the impacts of what you're doing. You should pay some of the cost to defray what the commission staff are doing. And that actually was similar to one of the conditions that was imposed on the Ota well permit.

EH: Going back to your funds: you have a pretty high vacancy rate. And how is this being addressed. I mean, it's really, really high.

Kahahane: We do. So our current vacancies, we have 13, no, sorry, 15 positions that aren't filled right now. Someone just retired at the end of December. We're lucky to have a staff who've been with the commission for a very long time, but that also means that a lot of them are retiring all at once.

Only five of our current vacancies are actually positions that are ready to be filled

Two New Appointments to Water Commission

In December, Governor Josh Green announced the appointment of Moses Kalei Nahonoapi‘ilani Haia III and Juanita Reyher-Colon to fill vacant seats on the Commission on Water Resource Management.

Moses K.N. Haia, III, J.D.d. & Juanita N. Reyher-Colon.
CREDIT: CWRM.

Haia is an attorney whose career included years with the Native Hawaiian Legal Corporation, where he advocated strenuously for the management of natural resources in accordance with state and federal laws.

Reyher-Colon is executive director of the Hawai‘i Rural Water Association, a member of the Maui County Board of Water Supply, and chair of the executive board of the American Water Works Association, Hawai‘i section.

With these appointments, the Water Commission is back up to the full complement of nine members.

Aurora Kagawa-Viviani, whose term expired last June, had continued to serve on CWRM in a holdover position. Her tenure will be remembered for her probing questions and diligent preparation. She had applied to serve a second term but was passed over.

The appointments of Haia and Reyher-Colon are subject to confirmation by the Senate.

right now. The other 10 are new positions that actually have to be established before they can be filled. There's a process for this.

Right now, we've completed a reorganization that is enabling us to actually work on filling those positions right now. We're actively writing the position descriptions for five of those positions. For some of the remaining positions, we actually need to seek additional legislation to enable us to hire exempt staff. Because all of our hydrologists right now are civil-service exempt. We would actually have to create an entire new civil service class if we wanted to fill some of those positions as intended.

And that just – for many reasons I won't go into right now – is not going to work.

For five of the positions, we just need to update the position descriptions and get them into recruitment. For five of the new positions we need to write brand new position descriptions for them.

And for five of those positions, we actually need to seek a legislative fix.

EH: Why so many exempt positions?
Kahahane: Well, it is very difficult to find qualified hydrologists who are willing to take a civil service position. And that's for a number of reasons. The amount of scientific expertise that they are bringing to the commission, having positions be exempt allows us to hire at a higher rate of pay and be more competitive with the private sector and with federal government, which is where most of our competition comes from.

EH: As I understand it, the Adaptive Management Plan grew out of the commission's decision to deny the National Park Service's petition to designate the Keauhou aquifer as a groundwater management area. The petition was denied in 2017, I believe, and then there was a symposium on ground-water dependent ecosystems and the Park Service prepared an adaptive management plan for the commission.

That plan seems to have been largely shelved. Then suddenly, seven, eight years later, there's this Adaptive Management Plan that doesn't really seem to have much in common with what the Park Service had proposed. And it seems to kind of come out of the blue.

You know, the commission itself was really unclear about the utility or the procedures that would occur under this plan. I don't believe that at any time before the actual engagement of Guild that the commission was asked to approve that. Is that not right?
Kahahane: That's accurate. Commission staff had been working on that draft plan for a few years. The most recent draft that I have is from December of 2022, so they had continued working with the National Park Service on it for a while.

The concerns that we were hearing from the community were really broader than the area of the National Park itself. There are a lot of really valuable resources in other places, like Kailua Bay, that are not within that plan.

This effort to expand and have a more regional focus is designed to serve across aquifer systems and we are using the National Park Service plan as part of our jumping-off point, as well as the report from the groundwater-dependent ecosystem symposium.

In addition, the Water Resource Protection Plan does direct us specifically to build on the work that the National Park Service did and to propose a set of actions and triggers, and a suite of possible management actions to the commission for their decision-making.

So, while that's quite a ways down the road, and we have a lot of consultation with the community and other stakeholders to do before we get there.

That's the general framework of what was set out in the Water Resource Protection Plan and what's in the National Park Service plan is still our guiding star in working on this broader plan.

EH: And you're not worried at all about enforcement or requiring water well operators to cut back on their usage if you determine that there's a need? You're not concerned about enforcing the plan?
Kahahane: I've considered a lot of different mechanisms for how this plan could be enforced. Ultimately, what we choose is going to be something that's determined after we get to the end of the planning effort.

But I see a lot of ways that we could potentially enforce something like this, with or without designation as a groundwater management area, which the plan doesn't assume one way or the other.

I think a plan like this is necessary both before and after designation.

EH: Thank you very much.

Haleakalā Trail Injunction Effect Remains Unclear, While Hiking Advocates Press for Improvements

Late last year, with an injunction cutting off vehicular access across any part of the historic, state-owned Haleakalā trail set to take effect on January 1, attorneys representing Public Access Trails Hawai‘i and founder David Henderson Brown offered to negotiate with attorneys representing the Department of Land and Natural Resources.

PATH successfully sued the department years ago to improve public access to the trail, but the injunction, the state claimed, threatened to hamper resource management by the DLNR and others. So on November 21, PATH attorney Nathan Jacobs reached out to deputy attorney general Miranda Steed.

"At this time, PATH is not inclined to stipulate to extend the stay [of the injunction] past January 1, 2026. That said, if the parties are making positive, continuous progress toward a mutually agreeable resolution, our client is willing to revisit that position," he wrote.

Steed replied on December 1, asking what kinds of resolution PATH and Brown were seeking. "[A]re you looking to resolve the whole case, or just a portion, such as access under the injunction?" she asked.

Jacobs replied the same day, "In accordance with the court's guidance that a mutually-agreed-to outcome would be better for all parties than the remedies available to the court, PATH would not want to limit the scope of negotiations. PATH would also welcome [Haleakalā Ranch Company] participation in the interest of achieving a global resolution that incorporates their equities."

After no reply came, Jacobs sent another email on December 17 asking for negotiations "at the state's earliest convenience."

Two days later, Steed replied in an 11:19 a.m. email that a recent survey of the trail — required as part of a stipulation last year to say the injunction — "depicts the trail intersecting with some of the roads (mostly dirt roads) that run mauka from Olinda Gate on ranch property. Because any disruption in access can have devastating effects on state projects, particularly Birds Not Mosquitoes, we are filing a motion to modify the order to allow incidental vehicular use of the trail by DLNR and its agents. We are asking for similar relief that was given to the County [Department of Water Supply] and [Maui Electric Company] and previously included in the court's stay of the order last spring that PATH did not object to. If PATH is agreeable to modifying the order to allow DLNR and its agents vehicular access to the trail where it intersects with the road, I can draft a stipulation that modifies the order and withdraws the motion."

By 3:20 p.m., she had filed the motion in 2nd Circuit Court.

She asked the court "to remove the prohibitions against incidental uses of the subject trail for purposes other than hiking, walking, or running by DLNR and its agents where the trail crosses existing roads."

On December 24, attorney Michael Biechler, who also represents PATH and Brown, filed an application for a hearing on the motion. In it, Biechler argued that a hearing was necessary on the state's motion to allow for the cross-examination of Scott Fretz, chief of the Maui branch of the DLNR's Division of Forestry and Wildlife (DOFAW), whose declaration about the kinds of resource management activities — including critical invasive mosquito control efforts — could be impeded by the injunction accompanied the state's motion.

"State defendants had ample opportunity to elicit much of the testimony that declarant Fretz now provides during trial in which he was a witness and elected not to do so. Now, because state defendants' motion is styled as a non-hearing motion, plaintiffs are placed in a situation where they are expected/required to respond to these new and uninspected allegations without the aid of discovery or even so much as a chance to ask the witness about those statements – ostensibly on the possibility that if plaintiffs do not adequately refute the statements in Fretz's sworn written testimony, then the result of the entire trial and three years of litigations will be undone. The prejudice to plaintiffs in allowing testimony of this nature, and of the import that state defendants claim it has, without allowing plaintiffs and the court to further inspect that testimony, is manifest. Plaintiffs need the opportunity and the court would benefit from cross examination of Fretz," Biechler wrote.

On December 26, 2nd Circuit Judge Peter T. Cahill granted the request for a hearing, scheduling it for March 27.

Steed then filed a motion on December 29 seeking to move up the hearing. (Numbers refer to docket entries.)

"When the stay [775] of the Order for Injunctive Relief [640] ends on January 1, 2026, DLNR and its agents will be unable to make the necessary daily incidental vehicular to carry out the Birds, Not Mosquitoes project," she stated, noting that the state had only received the results of the survey — which showed that the trail crossed roads used by DOFAW and others for natural resource management activities — on December 15.

Judge Cahill, however, denied her motion the next day.

Questions to the DLNR about if and how the injunction has affected the Birds, Not Mosquitos project were not answered by press time.

Biechler argues that the department can still access the forest without crossing the trail.

In an email, he stated that DLNR deputy attorney general Danica Patel "represented to me, during a discussion where DLNR again conveyed that they refuse to conduct settlement discussions, that it would cost 'several million' dollars to use helicopters to access the DOFAW bird conservation activities in the area if they could not drive on the Haleakalā Trail."

"Theoretically," he added in a phone interview, "they could go just to the left of the trail. If the ranch builds a road just ten feet to the left [of where the trail intersects the ranch road used by DOFAW]. The ranch could do it in a heartbeat. … It doesn't make sense to spend $1 million on helicopters."

He said his clients would be agreeable to modifying the orders if the DLNR would mark the trail using fence posts with reflectors, but that the state has refused to discuss the possibility.

The trail markings that were installed during the DLNR-sponsored survey late last year "are *not* trail markings, and in fact are already being lost to damage, destruction, and/or the elements, with no less than three of them already unable to be readily located (one was a paint marking on a rock in the middle of the road, one was a pin that is in the road and now covered or removed to the point where it could not be located by PATH supporters knowledgeable about the location of the pin when installed)," his email stated.

He said that the surveyor was not required to install the kind of trail markings a member of the public, or even Haleakalā Ranch, might want (fences post with reflectors).

Still, he added, "I think what the court wants, my client wants, is for them [DLNR] to make it into a trail. Make sure it's graded.

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BOARD TALK

Land Board Imposes Fine, Revokes Permit For Illegal Longlining in Territorial Waters

The punishment of commercial fisherman Konane Zager continued last month with the state Board of Land and Natural Resources voting on January 9 to fine him $10,051.90 and suspend his commercial fishing license for illegally longlining in state waters last May.

Following up on complaints of suspected illegal longline activity, officers with the Department of Land and Natural Resources' Division of Conservation and Resources Enforcement found that Zager had deployed shortlines tied together — effectively making a longline — about seven miles off the Kona coast.

Zager's line, which measured 3.69 nautical miles, had hooked three yellowfin tuna. DOCARE ordered that one of the fish be released alive. The other two were later sold.

Longlining is prohibited in state territorial waters, an area that extends 12 miles from shore, as well as federal waters out to about 50-75 miles. Any line longer than one nautical mile is considered a longline, under state law.

Zager told DOCARE officers that the GPS on his vessel was malfunctioning and caused him to over-extend his line, according to a report by the DLNR's Division of Aquatic Resources.

He apparently said that he had "messed up."

Officers confiscated his gear and his boat but later returned them after he pleaded no contest in June to a criminal charge of violating Hawai'i Revised Statutes 189-2.5(b). That law states, "It is unlawful to engage in longline fishing or to sell or offer for sale, any marine life taken with longline fishing gear within the boundaries of the State's territorial sea."

Third Circuit Judge Kimberly Tsuchiya ordered him to pay a $250 fine plus a $30 crime victim fee.

Last month, when the Land Board took up a recommendation from DAR to impose civil fines for the same incident and to revoke his commercial marine license, Zager objected.

DAR proposed a $1,000 fine for the illegal longlining, plus $1,000 per fish illegally caught, for a total of $4,000. The division also recommended recovering DAR's and DOCARE's administrative costs regarding the incident, which totaled $6,051.90.

In extensive written testimony, Zager argued that state waters extended only three miles from shore, and, therefore, the Land Board lacked the jurisdiction to penalize him.

Zager's testimony, in which he referred to himself in the third person, also explained why he had tied his shortlines together, describing previous incidents where his gear had been stolen or vandalized. (His testimony began by stating that he was submitting it "on his own behalf, appearing pro se with the assistance of counsel.")

"In the absence of his critical GPS tracking capability, and under conditions of extreme exhaustion [from bait fishing all night] and acute financial pressure, Mr. Zager took a protective measure he believed was reasonable at the time by temporarily tying his shoreline gear together so it could be more effectively monitored and safeguarded against loss, theft, or vandalism," his written testimony stated.

"This action was not taken to evade enforcement, but to prevent further destruction or disappearance of legally owned gear in an environment where DLNR had repeatedly failed to provide protection despite years of documented reports," he wrote.

He called DAR's recommendation to charge him for the time DLNR staff spent on the enforcement action "double charging," noting that the department's personnel are "salaried public employees whose compensation is already funded by taxpayers — including Mr. Zager himself."

Ultimately, DAR's proposed penalties were "retaliatory, excessive, punitive, and fundamentally unjust," he wrote.

At the Land Board's meeting, DAR policy specialist Charlie Taylor noted that the state law prohibiting longlining requires that the commercial marine license of violators be revoked.

He added that the comments about the state being punitive or harsh ignored the fact that Zager's actions also violated federal laws regarding longlining.

Longlining in federal waters outside of the prohibited zone is subject to a limited entry permit system, and permittees must obtain certifications regarding marine mammal protection, among other things.

"We don't consider this a punitive action at all," Taylor said.

With regard to Zager's argument that the state lacked jurisdiction to impose the fines or revoke his license, Taylor said, "Those issues should be adjudicated in the court … and there was already an opportunity to adjudicate this issue."

DAR's report to the board also pointed out that state law allows enforcement of the longline prohibition in state marine waters, which are defined as "extending from the upper reaches of the wash of the waves on shore

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Trail *continued from page 9*

It doesn't need it to be on the Na Ala Hele trail system."

He noted that at the 2024 trial that preceded the injunction, Fretz testified about potential trail construction costs: For an existing trail, the cost to bring it to DOFAW standards would be minimal; a new trail would cost $130,000 per mile.

"At 3.3 miles, the Haleakalā Trail would cost, at most, $430,000 to construct (as an existing trail, DLNR appears to agree that the work would be exempt from HRS 343 based on a list of pre-approved exempt management actions DLNR identified in 2020)," Biechler stated.

He added that while PATH has offered in the past to help DLNR manage the trail, "I think they're hostile to the idea."

He argues that DOFAW has done "the minimum amount" of what's required under the injunction to inform the public about the location and potential dangers of the trail by posting signage.

Whatever the final trail markings look like, Biechler says that the fact that the new survey shows the trail head beginning just inside Haleakalā Ranch property, rather than at its Olinda gate, is an "interesting conundrum" that needs to be resolved.

The 2016 final judgment in the trial over the trail recognized that the survey at the time "was very clear the trail starts at the top of Olinda road at the gate," he said. Now, he wonders, is the new survey off by 60 feet or did they move the gate?

For now, hikers access the trail through a puka in the ranch's gate, he said.

— Teresa Dawson

Illegal Longlining *continued from page 10*

seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary." The United States territorial sea around Hawai'i extends 12 miles from shore.

"At the end of the day, a conviction was secured. Both the prosecutors and the judge found the venue was proper," Taylor said. "The statute mandates anyone convicted … has their license revoked. There's no discretion."

"DAR's not trying to get money out of this," he continued. If, for any reason, the board wanted to change the recommendation, the division at least wanted the board to support the mandatory penalties of revoking the permit for one year and not allowing him to get a new one until the year is up, he said.

Zagar, testifying via Zoom, asked that the Land Board read his written testimony.

In arguing against the license revocation, he stressed that fishing is his sole source of income.

"If they take my license, there is no way to pay the fine. … You would be crippling a family and do no good," he said.

The board met in executive session to discuss issues surrounding the seizure of Zager's gear and boat and why they were returned.

Hawai'i island board member Riley Smith reported afterward that in executive session board members had received guidance from a deputy attorney general regarding the seizure of property. "I'm good on that," he added.

Smith then asked whether it was possible for the board to sanction crew members as well. And the time of the incident, one crew was helping Zager.

Taylor said the question came up internally. "There was not a criminal citation issued against the crew member at that time. For our purposes, we were just sticking to what was criminally pursued," he said, adding that he agreed with Smith's sentiment that crew members also need to be made aware of the risks they face participating in illegal fishing.

Smith said he would like to prevent future occurrences of illegal fishing and send a consistent message. "Crew needs to think twice before participating in criminal actions," he said.

The Land Board ultimately adopted a motion by Smith to approve DAR's proposed recommendations, with the amendments that the department provide its enforcement files to the National Marine Fisheries Service's Office of Law Enforcement, and that DOCARE pursue consequences to crew members who may be considering participating in illegal activities in state waters.

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Public Hearings to Be Held On Hydrogen-Solar Project Lease

On November 14, the Land Board approved the withdrawal of approximately 100.7 acres from a 110-acre lot at Campbell Industrial Park, known as the 'Ewa feedlot, that had been transferred by executive order from the DLNR to the Department of Agriculture and Biosecurity in 2019.

The withdrawal would leave the DAB and its tenant, Hawai'i Land & Livestock (HL&L), on the property with about 9.4 acres.

On January 9, the Land Board amended its action to have the executive order transferring the land back to DLNR also remove the Land Board's right to issue leases for renewable energy projects on the land left with DAB and HL&L.

When the entire 110 acres were under DAB jurisdiction, a 2022 inspection by DLNR Land Division staff found that a hauling company was illegally using several acres as a baseyard. This, together with HL&L's resistance to a proposed a renewable energy project by Eurus Energy on most of the area, prompted the DLNR to get most of the land back.

The hauling company has since relocated.

A report to the Land Board by Luke Sarvis, a special assistant to DLNR director Dawn Chang, states, "The subject parcel is largely undeveloped. At present, there remain significant remnants of the historic feedlot operations as well as some perimeter fencing and dirt roads. Eurus proposes to construct and operate a renewable hydrogen generation facility. This project envisions a 20-megawatt photovoltaic system to generate electricity which would then power an electrolyzer to separate hydrogen from oxygen using recycled water supplied by the Honolulu Board of Water Supply."

According to an overview of the project, named the Olai Green Hydrogen and Solar Project, "The hydrogen would be transported off site to purchasers either by truck or by pipeline. If the hydrogen is transported off site by truck, loading facilities would be constructed by the applicant near the hydrogen production area but the trucks and/or truck-trailers would be owned and operated by a third party. If the hydrogen is transported offsite via a pipeline, a third party would construct, own, and operate the pipeline and would be responsible for obtaining any necessary permits and/or approvals. Electricity generated by the PV system may also be delivered to the regional electrical grid to be used by others."

In 2022, the Land Board granted Eurus a right-of-entry permit to conduct due dili-

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Illegal Longlining *continued from page 11*

gence activities. Under state law, the Land Board may issue a direct lease for renewable energy projects and avoid the normal requirement that leases be awarded via a public auction.

Before the board can issue a direct lease, at least two public hearings must be held on the island where the project is located.

In addition to approving the amendment to its November action, the Land Board also authorized the DLNR to conduct two public hearings and to have chair Chang set the dates and appoint a hearings officer. Eurus would be required to reimburse the department of all costs incurred.

Wind Farm Wins Approvals Of Lease, Conservation Plan

At its January 23 meeting, the Land Board granted a new 25-year, 200-acre lease to Kaheawa Wind Power I, which had been operating under a holdover permit after its previous 20-year lease expired last January.

To address the impact or possible impact of the company's 20 wind turbine on protected species, such as the nene (Hawaiian goose) or the 'ōpe'ape'a (Hawaiian hoary bat), the Land Board also approved a habitat conservation plan and an incidental take license for the facility.

Last year, Earthjustice expressed concern over proposed measures in the draft HCP, as well as the fact that the wind farm had fallen short on its mitigation of nene take under its previous plan.

The state Endangered Species Recovery Committee later recommended approval of the plan, so long as certain amendments were made.

In written testimony on behalf of the Center for Biological Diversity and the Conservation Council of Hawai'i, Earthjustice attorney Harley Broyles noted that the final HCP includes as mitigation the requirement to curtail the turbines when wind speeds are 6.5 meters/second or lower, "from sunset to sunrise, which will help to minimize 'ōpe'ape'a take."

Kaheawa wind farm. CREDIT: DLNR.

The final HCP also requires the project to fully shield all outdoor light fixtures, install motion sensors or otherwise ensure that outdoor lights are off when not in use, and limit the short wavelength content of outdoor lights to no more than 2 percent blue light content, measures that will help to minimize the take of 'ua'u (Hawaiian petrel) and 'a'o (Newell's shearwater) caused by light distraction. "These are just a few notable changes made in the final HCP that are necessary for the Kaheawa I's compliance with legal requirements and crucial for protecting Hawai'i's imperiled native species," their testimony stated.

According to a DLNR press release, the 30-megawatt wind farm "can power about 17,000 Maui homes each year."

Lease rent will be $300,000 annually, or 3.5 percent of annual gross revenue, whichever is higher, with a rental reopening after ten years.

— Teresa Dawson