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The Gates-keepers At Agriculture

More than a few things are odd about the contractual arrangement between the Department of Agriculture and Biosecurity and a hitherto unknown company called Sunrise Strategies.

When *Environment Hawai'i* wanted to know more about the first contract, DAB immediately cancelled it, only to reissue it in slightly altered form within weeks. When the state Procurement Office asked DAB why it wanted to go with Sunrise Strategies, DAB chair Sharon Hurd fibbed, offering the implausible justification that the company had already been working for it for more than a year in a series of 89-day hires.

In all of the murk surrounding these contracts, one thing is clear: DAB is determined to continue using the services of Cedric Gates, a former state rep, and will let little stand in its way of achieving this.

Why?

IN THIS ISSUE

A Suspicious Contract, A Defeated Legislator, And a Department Hellbent on Hiring Him

Until Cedric Gates ran for state Senate in 2024, he seemed to be a rising young star in the Hawai'i Legislature and Democratic Party. He had served four terms in the House of Representatives and, in his last term, he had served as chair of the House Committee on Agriculture and Food Systems.

In 2024, he lost the race to represent the 22nd Senate District – a district stretching along the western edge of O'ahu, from Ko'olina up to Makua – to Republican Samantha DeCorte. It wasn't close. DeCorte won 53 percent of the vote, Gates 44 percent, despite DeCorte having been outspent by a 3-1 ratio.

Gates was not long unemployed. On January 21, 2025, the Department of Agriculture and Biosecurity hired him in a series of five 89-day temporary hire stints, not ending until February 28, 2026. According to the DAB, he was hired as a planner V, with a salary range of $6,667 to $7,629 per month. Although planning positions generally require applicants to have a bachelor's degree at a minimum, Gates' higher education ended with an associate degree from Leeward Community College.

Throughout the 2025 legislative session and the first two months of the 2026 session, Gates regularly appeared at hearings and met with legislators as DAB's legislative liaison.

On February 18, while Gates was still on the payroll of DAB, the department entered into a contract with a company called Sunrise Strategies USA, LLC, to take effect March 6 and run through September 6, 2027. Cost for the 18 months of work: $250,000. The scope of services stated specifically that it was not to include any lobbying, yet in other respects, the usual type of work performed by

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Deputy DAB director Dean Matsukawa, DAB director Sharon Hurd, and DAB legislative liaison Cedric Gates meet with Rep. Mike Gabbard in this photo from April 2025. CREDIT: GABBARD INSTAGRAM.

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NEW AND NOTEWORTHY

Rudo Statement: Alan Rudo, the former Hawai'i County employee at the heart of a scheme to profit from the sale of housing credits, was scheduled to be sentenced in federal court on May 28.

In anticipation, he has submitted to the court his own pre-sentence statement, asking for leniency. About a dozen family members and friends, including the rector of the Episcopal church in Waimea, attested to his reformed ways and good character.

"I am truly sorry for what I did," Rudo says in his statement. "I betrayed the trust the community placed in me and I caused harm that I can never take back." He talks about the consequences he has already faced: "I lost my marriage, my home, and the career I spent years building. But more importantly, I had to face the kind of person I had become and I did not like what I saw."

He concludes: "Your Honor, I am deeply remorseful. Whatever sentence the court imposes, I will continue to work to make amends and to live a life that honors the trust of my family, my community, and this court."

His lawyer reminded the court that Rudo "voluntarily forfeited approximately $1.4 million in real estate, offsetting most of the $2.1 million loss." This, plus three years of "flawless compliance" with court instructions and Rudo's "extraordinary post-offense rehabilitation" justify "a sentence of probation with appropriate conditions – including a period of home confinement if the court deems it necessary," he stated.

"The consequences Mr. Rudo has already endured are severe and life-altering. He has lost his home, his financial security, his marriage, and his professional standing. … A non-custodial sentence, with conditions, provides meaningful punishment without inflicting unnecessary harm on innocent family members who rely on him for care and support."

Kuilima Case Hearing: A hearing in 1st Circuit Court on motions filed by both the plaintiffs and defendants in a lawsuit over development at the Turtle Bay Resort has been rescheduled from June 19 of this month to July 2 at 10 a.m.

Earthjustice filed a complaint in February on behalf of the Center for Biological Diversity, Conservation Council for Hawai'i, and Kūpa'a Kuilima against the Honolulu Department of Planning and Permitting and Host Hotels & Resorts, LP, regarding the 2013 supplemental environmental impact statement that the defendants were relying on for the planned development by Host of about 50-acres between Kawela Bay and Kuilima Point, known as the H-1 site.

"On January 8, 2026, the State of Hawai'i Office of Planning and Sustainable Development published in *The Environmental Notice* DPP's determination that no further environmental review would be required for development of the H-1 site and claiming that the 2013 EIS would satisfy any such requirement.

"DPP's determination that no supplementation of the 2013 EIS is required violates [the Hawai'i Environmental Policy Act] because ecological developments in the project area—including the newly established presence of endangered bees and native seabirds and the intensified usage of the project area by endangered monk seals—constitute 'new information or circumstances that were not originally disclosed, not previously considered, and could have a substantial effect on the environment,'" the complaint states.

On February 23, Host filed a motion to dismiss the complaint. The DPP joined that motion.

"First and foremost," Host argued, "the complaint should be dismissed for failure to state a claim against Host, as Host is not the owner of the H-1 Parcel. Second, the complaint should be dismissed because plaintiffs have failed to join all necessary parties. The H-1 parcel is one of several located within the 'project area' covered by the 2013 SEIS. While the (unnamed) H-1 owner's rights are clearly implicated, other owners' rights are, or will be, also necessarily be impacted if plaintiffs were to obtain the relief sought in the complaint."

On March 27, the plaintiffs filed a motion for summary judgment, pointing out that there was "no genuine issue of material fact," and that they were entitled to judgment as a matter of law, "because DPP failed to take the legally mandated 'hard look' at appropriate factors before issuing its determination that the 2013 EIS remains valid."

Quote of the Month

"I would rather see a low fine get collected than a high fine that exists in the ether."

— John Dubiel, deputy attorney general

Environment Hawai'i
421 Ka'anini Street
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Patricia Tummons, Editor
Teresa Dawson, Managing Editor

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Environment Hawai'i
421 Ka'anini Street, Hilo Hawai'i 96720.
Telephone: 808 933-2455.
E-mail:ptummons@gmail.com
Web page: http://www.environment-hawaii.org
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BOARD TALK

To Protect Native Species, Habitat at Marconi, Land Board Seeks Revised Settlement Agreement

Complete removal of an unauthorized fence in the Conservation District at Marconi Point may not be the best outcome for the surrounding habitat and protected species in the area.

That's according to public comments presented to the Board of Land and Natural Resources at its May 8 meeting. And the Land Board ultimately agreed, refusing to approve a settlement agreement that would have required that the Association of Unit Owners of Marconi Point Condominiums remove the offending 150 feet of fence.

In a May 3 letter to deputy attorney general Danica Patel, Denise Antolini, on behalf of the community group Aloha Marconi Alliance, noted that the fence "is useful to prevent damage from ATV/vehicle/Ebike access across the Turtle Bay [Resort] and Marconi parcels and the public shoreline. Preventing such vehicles access is a high priority to protect the integrity of the beach and Mōlī [Laysan albatross] habitat (as well as turtle nesting) and thus serves a public and wildlife protection purpose. The fence also protects the Marconi (including [North Shore Community Land Trust] Unit 1) and Turtle Bay properties from trespassers and property damage."

The fence does, however, inhibit lateral public access across a coastal trail. Antolini suggested that the association replace the 10-15 feet of fence closest to the shore with fixed posts that would allow pedestrian access, but prevent ATVs, vehicles, and Ebikes.

The fence is an extension of one that developer Makai Ranch, LLC, built years ago along the boundary between its condo project and Turtle Bay Resort. Around the time the fence was extended, Antolini states, boulders and large chunks of concrete were also placed alongside it.

In late 2023, while investigating other potential violations along the coastline fronting the condominium project, the Department of Land and Natural Resources' Office of Conservation and Coastal Lands discovered that the original fence had been extended into the Conservation District without permits.

In April 2024, the OCCL recommended that the board fine the unit owners' association and/or Makai Ranch $15,000 for unauthorized fence construction in the Conservation District. The OCCL also recommended that the fence portion be removed.

Rather than pursue a contested case hearing over the OCCL's proposed penalties, attorneys for the agency and for the association negotiated a settlement.

In the interest of transparency, the OCCL and Patel presented the proposed agreement to the Land Board at its May 8 meeting for approval. According to OCCL administrator Michael Cain, settlement agreements are usually not brought to the board at its regular public meetings.

The agreement called on the association to remove the fence in a manner that doesn't disturb the Laysan albatross or other species in the area. The proposed fine would be waived.

Patel, representing the OCCL, told the board that the fence was the least egregious of the violations the DLNR had identified at Marconi Point.

She explained that the decision to waive the fine in exchange for removing the fence reflected the parties' efforts to "push the needle forward." She added that the unit owners' association had probably spent more than $10,000 in legal costs.

Patel acknowledged that removing the fence portion could open the area up to vehicular trespass, endangering the albatross that nest on the resort and CPR properties.

She recommended that the Land Board accept the settlement, which would resolve the OCCL violation case. The association could then apply for a permit to install educational signage and to construct a symbolic fence — posts with simple ropes strung between them — that would allow for pedestrian access along the shore, but prevent vehicles from traversing the area, where the North Shore Community Land Trust is restoring native habitat.

"OCCL can't process applications for a parcel until violations are resolved. We're not opposed to symbolic fencing if done correctly," she said.

The illegal fence portion at Marconi Point, with the impeding boulders and concrete in the foreground. CREDIT: ALOHA MARCONI ALLIANCE.

Attorney F. Palakiko Chandler IV, representing the unit owners' association, testified that if the Land Board were to add to the proposed settlement agreement any terms requiring symbolic fencing, he would need the association's approval.

In Aloha Marconi Alliance's written testimony, Antolini suggested that the existing fence could remain, "**so long as** the boulders/concrete impediments to [albatross] movement are **relocated** and **vegetation is kept cleared** to allow multiple pathways under the fence at appropriate intervals - maintained at least 18" wide." She noted that that work could be done with volunteer labor. Also, she stated that the lowest fence rail may need to be removed as well, to allow albatross to traverse the property boundary unimpeded. "This modification could be determined by NSCLT and wildlife experts once the boulders/concrete and vegetation are cleared."

She recommended that the parties be required to post signs — approved by DLNR, NSCLT, Turtle Bay, Marconi Point Condominiums, and the U.S. Fish and Wildlife Service — on both sides of the boundary fence near the shoreline with information noting

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Marconi Point Litigation Updates

Last October, U.S. District Judge Jill A. Otake granted a motion by the City & County of Honolulu and its Department of Planning and Permitting for summary judgment on a complaint brought in May 2023 by companies owned by the developer of the Marconi Point Condominiums project.

The companies argued that the city had violated their rights because it had given assurances years ago that development there — which sits entirely within the city's Special Management Area — would not require a Special Management Area permit, then later reversed its position.

The city and the DPP, however, have countered that 1) the agency never gave the official assurances the companies claimed it did, and 2) it always maintained the authority to exercise its discretion to require an SMA permit review.

The companies, all owned by developer Jeremiah Henderson III, appealed to the 9th U.S. Circuit Court of Appeals. They argued in their March 30 opening brief that the DPP had abused its discretion by relying on "speculative future development," and that the court had erred when it found that the agricultural subdivision permit filed by Makai Ranch, one of Henderson's companies, had not been automatically approved.

In its April 29 answering brief, counsel for the city argued that the appeal "addresses a critical question: whether Makai Ranch can use litigation to bypass the environmental review and public participation required before coastal development may proceed under the Hawai'i Coastal Zone Management Act. The answer is no. Environmental review must occur before development can be permitted in sensitive environmental areas.

"Makai Ranch owns property within [the SMA]. Makai Ranch's property is registered as a 'historic district' on the National Register of Historic Places, and it contains historic buildings that the CZMA is intended to protect. Portions of the property lie within the state 'conservation' zoning district, and the property contains a conservation easement. The property is located in an environmentally sensitive area, and development on the property requires rigorous review."

In their May 20 reply to the city's brief, Makai Ranch's attorneys argue that the case is not about discretionary land-use judgment, but is about the statutory limits on an agency's discretion. "The legislature imposed deadlines, defined exemptions, and required agencies to make decisions based on the project before them. DPP did none of those things," they wrote.

Solar Flare-Up

RCA Trade Center, Inc. and MP Unit 21, LLC — both Henderson companies — last year sued in federal court companies involved in the installation of solar PV panels on eight large agricultural warehouses at the Marconi Point Condominiums project.

RCA and MP Unit 21 own the condominium units upon which the warehouses sit, as well as the warehouses themselves. Years ago, they entered into leases with Hawaii FIT Sixteen, LLC, and Hawaii FIT Seventeen, LLC, which had planned to install a large rooftop PV system that would export electricity to Hawaiian Electric Company under its feed-in-tariff program.

RCA and MP Unit 21 alleged the solar companies and their contractors damaged the warehouse rooftops, causing them to leak. In their countersuit filed in January, the solar companies argued that their landlords had failed to disclose that the warehouses were built with faulty materials.

On March 20, RCA and MP Unit 21 filed complaints in 1st Circuit Court against Hawaii FIT Sixteen and Seventeen, arguing that the latter companies failed to comply with their leases. RCA and MP Unit 21 are seeking judgments giving them possession of the rooftops.

In April, the solar companies filed notices seeking to remove the March complaints to federal court. Then on May 5, RCA and MP Unit 21 filed a motion to remand the case to state court. Henderson stated in a declaration accompanying the motion that the rooftops "have experienced persistent and widespread leaks affecting all of the warehouses."

Since last October, RCA and MP Unit 21 have been trying to sell the warehouses for $14 million.

Briefs on the motion are due this month. Judge Otake will decide after reviewing the briefs whether a hearing should be held.

— Teresa Dawson

Board Talk *continued from page 3*

that the area is "essential habitat for protected native wildlife including the Mōlī, green sea turtles, yellow-faced bee (*Hylaeus anthracinus* and *logicepts*), and monk seals; no ATV/vehicle/Ebike access and no dogs are allowed; and visitors should stay more than 30-feet away from any wildlife or nesting areas."

She stated that the partnership on signage would "help move the parties past prior conflict and toward the common goal of wildlife habitat conservation."

With the money saved by not having to pay a fine or completely remove the fence, Antolini suggested that the unit owners' association should donate $50,000 toward the construction of a predator-proof fence being considered for the area by the NSCLT, the USFWS, and the resort landowners.

Chandler told the Land Board that the unit owners' association was likely amenable to Aloha Marconi Alliance's ideas about what to do with the fence, "whether it is partial removal or half a removal of a fence."

The alliance's suggestion of a $50,000 donation for the predator-proof fence would have to be presented to the association's board. "We currently don't know how much it would cost to do any kind of fence removal," he said.

Patel noted that the boulders were located on Turtle Bay Resort's property.

Regarding her suggestion that symbolic fencing be installed after the 150 feet of unauthorized fence was removed, Maui Land Board member James Carpio asked whether any consideration had been given to using the existing fence posts to avoid further ground disturbance.

Cain pointed out that the proposed settlement agreement contained no provisions for a symbolic fence. Patel's suggestion was only in response to public testimony.

Antolini, testifying via Zoom, explained that the Aloha Marconi Alliance had first opposed the settlement flat out when it was set to be brought to the Land Board in April. But with the boulders being on the Turtle Bay Resort side of the fence and the North Shore Community Land Trust owning the condo unit immediately adjacent to the fence, the Alliance revised its recommendations to better protect the increasing number of albatross that nest in the area.

She seemed skeptical about whether

a symbolic fence like the one Patel had described would solve the ATV access problem. With the solution the alliance proposed, "I really see a streamlined win-win. The only hiccup is having a fence in the Conservation District that is not permitted. … It would be a legalized fence with the bottom rail removed," she said.

O'ahu Land Board member Denise Iseri-Matsubara asked Cain for his thoughts on the alliance's proposal. Cain replied that his office's preference is that unauthorized structures be removed from the Conservation District.

Patel added that they would gladly follow up with Turtle Bay to see if they would help to remove the boulders.

Like Carpio, Hawai'i island board member Riley Smith was interested in limiting impacts to the sensitive area and applauded the community members for devising a reasonable solution. Perhaps the board could let a modified fence stay a year or two year, or require that only one rail be left to prevent vehicle access, Smith suggested.

After the board met in executive session to discuss some legal questions, Iseri-Matsubara made a motion to decline to accept the settlement agreement and ask that the parties "come together on a revised settlement that better addresses the issues facing the critical habitat in the area."

The board unanimously approved her motion.

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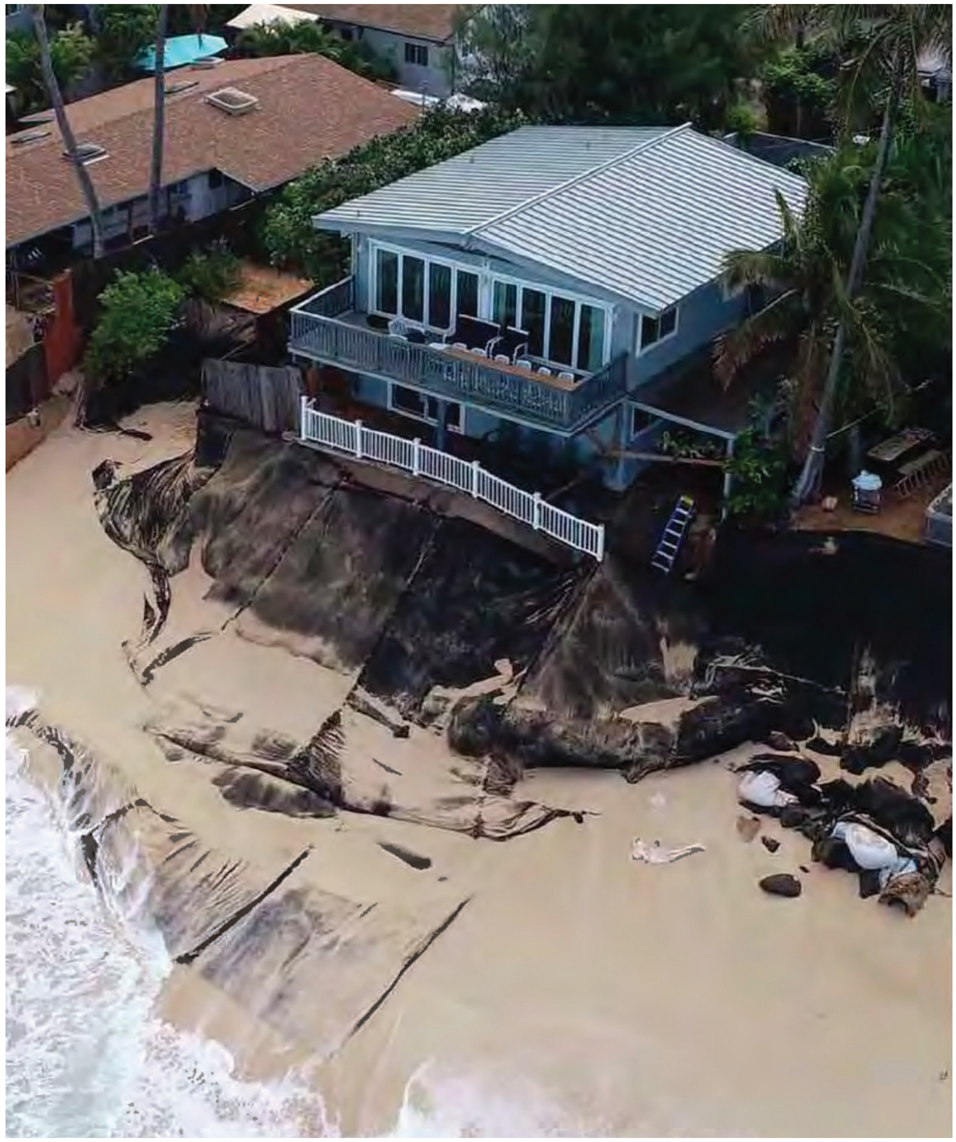
Settlement Cuts $1M Fine To As Little as $50,000



OCCL photo of shoreline area fronting the Freeman parcel.

On May 8, the Land Board voted to accept a slightly amended version of a settlement agreement signed in July 2025 regarding Conservation District violations by Eric and Moniza Freeman, who own a home on Sunset Beach.

On December 7, 2023, the Land Board had fined them $937,000 for illegal erosion control work on the eroding beach fronting their vacation rental on Ke Nui Road.

A report to the board that day by the DLNR's Office of Conservation and Coastal Lands explained that despite oral and written warnings about their unauthorized activities starting in January 2022, the couple "failed to remove debris and past unauthorized erosion control structures" and "willfully continued to allow unauthorized work within the Conservation District in the subject area on at least twenty-two separate days or occasions."

The Freemans requested a contested case hearing on the board's decision to accept the OCCL's fine and removal recommendations, but before hearings began, they started negotiating a settlement agreement with the state.

In July 2025, deputy attorney general John Dubiel and the Freemans signed a settlement that, once approved by the Land Board, would do the following:

It would require the Freemans to move their house to the back of their lot and remove all debris, foundations, shoreline protections and any other structures on state lands fronting their property by December 31, 2025. If they applied for all necessary work permits by October 1, 2025, the Freemans would be allowed to request a one-time extension of up to six months to complete removal so long as they showed that they would not receive a required permit in time, or that "despite reasonable efforts they would be unable to safely complete the removal work due to weather." The agreement would also require the Freemans to plant vegetation and restore the dune no later than December 31, 2025.

The fine would be reduced to $510,000 once they did what was required. The fine could then be reduced further on a dollar-for-dollar basis to as little as $10,000, based on what they proved was reasonably spent on correcting their violations.

If they failed to comply by December 31, 2025, the full $937,000 fine would become due and owing.

The agreement was not binding until the Land Board approved it. However, it seems that a six-month extension was at some point granted, given that the OCCL did not bring the settlement agreement to the board for approval until its May 8 meeting, where Dubiel noted that the Freemans had just two months to meet all their requirements under the time-extended agreement. (The matter was originally on the agenda for the board's April 10 meeting, which was cancelled.)

In explaining why the fine had been so

drastically reduced, Dubiel told the board last month that he just wanted the matter resolved. "I didn't want it to go to a contested case and have it drawn out forever," he said.

He said the Freemans moved their house about 40 feet back from the shoreline last year, but work to remove the encroaching sandbags and sand-filled "burritos" didn't start until a week before the board's meeting.

He noted that the work generated concerned calls from the community.

"They did not do an adequate job of informing the community. They also did not get the permit from the [Honolulu] Department of Parks and Recreation to block the right-of-entry [adjoining their property]," Dubiel said, adding that they have since obtained that permit.

With regard to the Freemans' plan to restore the dune, Dubiel said "we had significant comments. … Until that can be done, they won't be in compliance with the settlement agreement."

In response to community members who had expressed their displeasure with the proposed settlement terms, Dubiel again said he just wanted to get things moving as fast as possible.

Attorney Eric Robinson, representing the Freemans, testified that the couple was amenable to providing monthly reports to neighbors and the community to address their concerns. He said that they were working on completing a dune restoration plan and that he was "optimistic we can get this resolved in time."

Land Board member Riley Smith noted his concern about public testimony regarding the proposed new fine.

Denise Antolini, North Shore resident and retired professor and associate dean at the University of Hawai‘i Richardson School of Law, had stated in written testimony, "The $10k minimum cash fine is shockingly low and should be rejected given the **record of knowing noncompliance and the continuous major illegal work in the shoreline.** I do not oppose the use of the 'dollar for dollar' method for reducing the proposed fine of $500,000 based on the cost of relocation of the house and the removal of shoreline materials – if documented properly and verified, and disclosed publicly in this proceeding (but that information has not been provided …)."

She added that the fact that the Freemans' home was a **$1,037/night** vacation rental "makes the cash fine absurd." The minimum fine would be roughly equivalent to a ten-night stay, she continued, "only about 3 percent of the potential *one year* of rental income at that rate ($378,505). The Freemans have owned the property since January 2021 – so, in theory, they have had five years of that very high rental income – potentially $1,937,525. Even if the actual income is a portion of that advertised amount, it is still substantial and, if there is a dispute about that, then the Freemans should document their rental income for the board and the public as part of this settlement."

She recommended that the board set a minimum cash fine of at least at 10 percent of the proposed fine, which would be $97,300.

"I wish I could be enthusiastic about this proposed settlement as I recognize the importance to OCCL and the AG – and of beachfront landowners -- of settling cases that result in the mauka relocation of a beachfront home along the 'Kammies' shoreline. I believe that this is now the sixth house to be relocated or demolished at Kammies due to severe coastal erosion and illegal shoreline materials. However, it is precisely because this shoreline is so important and because these illegal shoreline materials are so damaging to the public beach that this settlement has to be done right, not rubber-stamped," she wrote.

Ke Nui Road resident Randall Myers also stated in written testimony that "the potential for a reduction to $10,000 is a slap on the wrist and dilutes the consequences to the Freemans and the many other beachfront owners … who choose rogue mitigation efforts."

In addressing Smith's concerns about the reduced fine, Dubiel said, "I understand it's frustrating. We have these huge fines that never get collected on. I would rather see a low fine get collected than a high fine that exists in the ether." He noted that he had previously worked as counsel for the Honolulu Department of Planning and Permitting. "We worked on a lot of the fines that would never get collected," he said.

Robinson later added that the Freemans had spent between $800,000 and $900,000 on efforts to comply with the board's orders.

Land Board member Kaiwi Yoon expressed skepticism of Dubiel's rationale for reducing the fine. "What data set is informing the opinion that BLNR fines aren't going to be exacted upon as compared to what DPP is doing?" Yoon asked.

Dubiel said he did not have a data set.

"That was my concern," Yoon replied, explaining that the Land Board had only recently, within the past four to six years, "taken a very strong advocacy position on this issue. It's not as though we had a long run on this."

Board member Denise Iseri-Matsubata asked why the burritos were still there.

Dubiel tried to explain that the delay was due in part to not being able to get removal work — which requires an excavator — going before the North Shore high surf season started or after the surf season ended.

"Had they not had three years?" Iseri-Matsubara asked.

Dubiel said that the parties were in a contested case in 2025, but began settlement negotiations during pre-hearing procedures.

During public testimony, Antolini said she supported the way the Freemans moved their house back, the removal of all the material in the shoreline, and dune restoration.

Things were moving in the right direction, but the board was being provided with insufficient information on compliance, she said.

"I really think that the information is insufficient for you to make an informed decision," she said.

Maui resident Kai Nishiki testified that the community there is facing situations similar to those on Oahu's North Shore. She said she consistently testifies before the Maui Planning Commission, "I beg them not to accept these really minimal settlements that come out of these negations. … Often the damage that is done is irreparable. We need to enforce these large fines. … People need the spankings to happen."

After meeting in executive session to discuss legal matters, Smith asked OCCL administrator Michael Cain whether he thought the Freemans could comply with the agreement's terms by June 30.

Cain said he believed they could.

Iseri-Matsubara made a motion to approve the settlement agreement with an amendment increasing the minimum fine from $10,000 to $50,000, which must be paid by June 30.

"Part of our responsibility as a board is to set the tone. … What happened and the length of time it existed is not okay. We still think that is a reasonable amount. We want to make to this settlement," she said.

She asked how requiring a performance bond would affect the settlement agreement. Dubiel said that because they were two months from the deadline for compliance, "it would be hard."

Robinson stated that he and Eric Freeman were agreeable to the $50,000 minimum.

With that, the board approved Iseri-Matsubara's motion.

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Board Declines Settlement Of Kernot Violation Case

A last-minute proposal by the owners of another Ke Nui Road property to delay for another year the removal of unauthorized erosion control structures scuttled the Land Board's approval of a settlement agreement that would have resolved a Conservation District violation case that has dragged on for years.

The property is owned by Sunset Oasis LLC; Willam and Melinda Kernot are its members.

On January 12, 2024, the Land Board approved a recommendation from the Office of Conservation and Coastal Lands to fine the company and the Kernots $948,000 for noncompliance with an emergency erosion control permit, construction of a shoreline erosion control device, and encroachment on state land.

The office had sent the Kernots three warning letters regarding the violations that occurred between December 2020 and January 2024.

Although the Kernots requested a contested case hearing after the board's vote approving the OCCL's recommendation, they ultimately sought to settle the matter.

At the Land Board's May 8 meeting, deputy attorney general Danica Patel and OCCL administrator Michael Cain requested that the board approve a settlement agreement that was drafted some time last year.

Under the proposed agreement, the fine would drop to $500,000 if the Kernots moved their house from the shoreline and removed all encroachments on state land fronting their property by July 31. The agreement required them to pay $20,000 of that fine by April 1, 2025, and another $34,000 by July 31, 2025.

The remaining $446,000 could be further reduced based on verified costs the Kernots incurred to correct the violations.

"We do acknowledge it took a while to bring this matter to the board," Patel said, noting that some deadlines have already passed.

Attorney Bernard Bays, representing the Kernots, reported that they are not as close to compliance as the Freemans are. The Kernots have redesigned their house for the move mauka, and the architectural work is being reviewed by the Honolulu Department of Planning and Permitting. He added later that May is the month when it would be safe to remove the shoreline protection structures. Given that this wasn't going to happen that month, he proposed pushing the removal deadline to next year.

Bays prepared a revised settlement agreement that would change the deadline to move the home and remove the encroachments to May 31, 2027. Also, by October 1 of this year, the Kernots would pay the $54,000 in fines that they were set to pay last year.

Bays said it was probably going to cost the Kernots $900,000 to $1 million to comply with the board's orders. "That's a lot of money. I think they are getting hurt a lot," he said.

Acting Land Board Chair Ryan Kanaka'ole asked Cain whether his office was amenable to the changes. Cain deferred to Patel, who said, "That would be another year of unlawful use of state lands in a dangerous condition, so this may be appropriate for a performance bond or an increase in fines."

Bays agreed with the need to increase the fine to account for the continued occupation of state land. The fine was based on cases where the department had charged $1,000 a month for the use of state land.

Board member Denise Iseri-Matsubara asked Cain his thoughts on the proposed timeline.

Cain did not mince his words. "They received their initial notice of violation on January 13, 2021. We have been struggling with them for five years and five months to have these unauthorized structures removed from state land. I'm very uncomfortable agreeing to another year delay given how much of a fight it has been just to reach this point," he said.

Iseri-Matsubara then questioned Bays about when the Kernots applied for their permit to move the house. Bays said he did not know.

"My concern is the application was not put in until recently," she said, adding that she didn't think tacking on an additional $1,000 a month fine over the next year was sufficient.

North Shore resident Denise Antolini pointed out that the house is close to one that fell into the ocean and another that had to be demolished. "It's a vulnerable area. Time is of the essence," she said. She also pointed out that the Freemans are doing erosion control structure removal now. "I don't know about this idea that May is the month to do removal. … The summer months are completely sufficient to get this done," she said.

She also agreed that the proposed fine was insufficient. As she did regarding the Freeman case, she recommended in her written testimony that the fine be at least 10 percent of the initial fine amount of $948,000 "— that is, a cash fine of at least $94.8k."

After meeting in executive session, the Land Board approved a motion by Iseri-Matsubara to decline to accept the settlement agreement and to request that the parties devise a new one in which the fine was more commensurate with the delays, and that considers requiring a performance bond.

— Teresa Dawson

Shoreline fronting the Kernot house (center). CREDIT: OCCL.

Cedric Gates *continued from page 1*

lobbyists seems to have been anticipated in the contract.

Soon after notice of the contract award appeared on the state HANDS website (Hawai'i Award and Notices Data System), *Environment Hawai'i* filed with the department a request for information about the contract. At 3:51 p.m. on March 16, the same day the department received the request, Marci Clingan, an assistant to DAB chair Sharon Hurd, notified the Department of Accounting and General Services' Procurement Office that the contract had been cancelled, citing as the reason "incorrect process of procurement."

When DAB finally responded to the request for information on March 30, it included the cancellation notice, suggesting that the contract had been closed out.

Resurrection

No sooner had the department cancelled the first contract than it began preparing a second. Once more, it was seeking Procurement Office approval for issuing the contract under the bid exemption allowed under Chapter 103D, Hawai'i Revised Statutes.

On March 24, the department forwarded to the Procurement Office the revised contract with Sunrise Strategies. The description of work did not seem to change much, but the term of the contract had dropped to twelve months, while the payment decreased to $180,000.

The Procurement Office had questions about the contract. For more than two weeks, numerous email exchanges occurred between that office and DAB. Finally, on April 11, notice of the approved contract was posted on HANDS. Although the department had wanted to have the contract term run from March 15, 2026 (a day before the previous contract was even cancelled) through March 15, 2027, the Procurement Office stated that it could not approve post-dated contracts. As a result, the term is given as from the "date of CPO approval to 4/10/27." (The CPO is the chief procurement officer.)

On the exemption request form, the department was required to "explain in detail why it is not practicable or not advantageous for the department to procure by competitive means."

DAB responded: "the services being procured requires a well-rounded, diverse, unique skillset unique to agricultural matters in the state. The agency selected [Sunrise Strategies] can put forward an individual that has demonstrated effective advocacy with agricultural issues, having served as the Chair of the Agriculture and Food Systems Committee (AGR) in the Hawai'i House of Representatives." The only individual meeting this description is Cedric Gates.

Once more, *Environment Hawai'i* filed requests for information from DAB and the Procurement Office.

An Employee

While processing the exemption request, Pauline Yang of the Procurement Office asked DAB director Sharon Hurd on March 31, "Has the vendor provided any advisory, advocacy, or legislative coordination support to the department prior to this exemption request? If so, please describe the nature of that work."

Hurd replied as though the vendor – Sunrise Strategies – and Gates were one and the same. In describing the work Sunrise Strategies had done for DAB, she basically listed the tasks that Gates carried out during his series of 89-day hires from January 2025 through February 2026.

Sunrise Strategies, she stated, "provided advisory support and legislative coordination to the department prior to the exemption request." The vendor also "met with administrators and managers of the six Divisions and Administrative Services Office to learn the challenges of the Divisions/Branches and to put together legislation. … Reviewed legislation with deputy and director to prioritize bills (Operations and CIP) and budget items. Set up meetings with Senate and House leaders. Arranged for meetings with Senate and House AEN/AGR agriculture committees and committee chairs. Tracked legislation important to Department," she stated.

Carey Ann Sasaki of the Procurement Office followed up with additional questions, wanting to know details about the department's relationship to Sunrise Strategies.

Sasaki asked DAB to clarify "whether the advisory and legislative coordination support previously provided by Sunrise Strategies LLC was performed under a contract or any other form of arrangement."

Hurd replied: "Previously provided advisory and legislative coordination support was performed by employee of Sunrise Strategies LLC who was a DAB 89-day temporary staff." The response, while not grammatical, affirms that throughout Gates' five 89-day terms with DAB, he was actually employed by Sunrise Strategies.

"Just to confirm," Sasaki asked, "has the DAB 89-day temporary staff who provided advisory and legislative coordination support ended his/her temporary term with DAB?"

"Yes, his temporary employment terminated in February," Hurd replied.

"Is he/she still employed by Sunrise Strategies USA LLC? If so, is that why DAB would like to contract with Sunrise Strategies USA LLC?" Sasaki asked.

Hurd's response: "Yes."

Contradictory Accounts

To win Procurement Office approval of the Sunrise Strategies contract, Hurd needed to show it was uniquely qualified. To do this, she had to attribute the work done by Gates to Sunrise Strategies, describing Gates as its employee.

One problem with this is that 89-day hires are available only to individual persons. Inquiries with the Department of Human Resources Development confirmed this. No one there had ever heard of a department hiring a company on an 89-day basis.

Also, if Sunrise Strategies had been hired by DAB as a contractor, with Gates as its employee, then there would need to be some record of that contract. Sunrise Strategies first makes an appearance on the list of contracts awarded by the state in March.

Companies that contract with the state must file a certificate of vendor compliance, showing that they are in good standing with respect to federal and state tax laws, state business registration requirements, and labor laws. Sunrise Strategies did not file a certificate of compliance with the Procurement Office until April 9, 2026. There's no record of any earlier contract with Sunrise Strategies on the HANDS website. Moreover, Gates was retained by DAB as an 89-day hire before Sunrise Strategies had even organized as an LLC (February 2025).

Environment Hawai'i asked DAB directly: "When Cedric Gates was employed as an 89-day hire, was he directly employed or was he instead working as an employee of Sunrise Strategies?"

The answer is puzzling: "We do not have records with that information."

Email Evidence

Environment Hawai'i asked DAB for any email correspondence between Gates and DAB from February 18 through April 22, roughly the time in which the two contracts were being negotiated.

In response, Marci Clingan, who works in the office of the DAB chairperson, stated that no such exchanges existed.

But on February 19, Clarine Orodio, in DAB's Human Resources office, emailed

"Cedric," asking, "Could we please get a proposal for this contract?" The response came from admin@sunrisestrategiesusa.com, forwarding what DAB represents as a draft proposal. This email came a day **after** the contract was already awarded.

Outlook

Re: [EXTERNAL] Re: Contract Agreement

From Sunrise Strategies <admin@sunrisestrategiesusa.com>
Date Thu 2/19/2026 4:39 PM
To Orodio, Clarine F <claire.f.orodio@hawaii.gov>
Cc Clingan, Marci <Marci.Clingan@hawaii.gov>

1 attachment (289 KB)
Sunrise_DAB_Proposal.pdf;

Aloha Claire,

As requested, please find Sunrise Strategies USA LLC's proposal attached for your review and processing.

Please let me know if you need anything further from us.

With Aloha,

Sunrise Strategies USA LLC

On Thu, Feb 19, 2026 at 9:12 AM Orodio, Clarine F <claire.f.orodio@hawaii.gov> wrote:
Hi Cedric,

Could we please get a proposal for this contract. Thank you!

Thanks,
Claire Orodio
Departmental Human Resources Officer
1428 South King Street, Honolulu, HI 96814
Phone (808) 973-9480

Sunrise Strategies

Among other records, *Environment Hawai'i* obtained a "Contractor's Standards of Conduct Declaration," signed by Sunrise Strategies' administrative officer, Jason Henderson, in connection with the first (cancelled) contract and the second (ongoing).

Among the attestations are two that would seem to relate directly to the involvement of Cedric Gates.

Declaration 2: "Contractor has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned."

Declaration 4: "Contractor has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee…"

Declaration 2 relates to Section 84-15(b), HRS, while Declaration 4 relates to Sections 84-18(b) and (c), HRS. Both are part of the state's Standards of Conduct law.

Section 84-15(b), relating to contracts, says: "A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned." It is hard to imagine that Gates was not involved in the discussions leading up to both the contract entered into in February, while he was still employed by the DAB, and the later contract, signed after the first contract was cancelled. Gates, after all, fits the description of a "person … who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned."

Many of the statements from Hurd justifying Sunrise Strategies' contract refer specifically to the work that had been done by Gates while he was employed by the department.

Section 84-18 deals with restrictions on former employees. Paragraph (c) states: "No former employee, within twelve months after termination of the former employee's employment, shall represent any person or business for a fee or other consideration on matters in which the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served."

The proposal for services that Sunrise Services provided to DAB includes a "budget breakdown" describing the duties and anticipated pay for the senior advisor. Though not named, again, this can only be Cedric Gates, given the statement that the "advisory leadership" described in the budget states this person has "experience working from within the legislative process itself – not as an outside advocate, but as a principal participant in the committee deliberations, budget negotiations, and interagency coordination that shape how agriculture and biosecurity policy is made and implemented in this state." The budget calls for payment of $81,000 for the person in this position for the duration of the contract.

A Newly Registered Lobbyist

Until February 18, 2025, Sunrise Strategies USA, LLC, did not exist. On that day, Jason Henderson filed articles of organization for the company, whose sole member was Oceania Marketing Group, LLC. That entity was itself formed by Henderson on November 20, 2023.

Last August 25, Oceania Marketing Group, filed its annual report with the Department of Commerce and Consumer Affairs, adding a second name – that of Devin Gates – to the list of members. An obituary of Cedric Gates' mother, Easter Asuega-Gates, lists Devin as a grandson, suggesting Devin is a nephew of Cedric. (Sunrise Strategies did not respond to an email from *Environment Hawai'i* asking whether Devin was related to Cedric and what the relationship was between Oceania Marketing and Sunrise Strategies.)

Sunrise Strategies USA, LLC, has an online presence – more a framework than a fully fleshed out website. Though the firm is barely more than a year old, its website describes itself as "Your Bridge to Hawaii's Decisionmakers" and boasts of more than 25 years of "combined experience," "1000+ legislative bills passed (cumulative experience)," and $250M+ Grants & Funding secured (cumulative experience)." In small type at the bottom of the page is this: "Figures shown reflect the combined prior professional experience of team members and affiliated work over time, and are not limited solely to activities undertaken by Sunrise Strategies since its formation." A search of the website for the names of any team members, or anyone at all, does not bear fruit. The phone number provided on the website is the same as that for Oceania Marketing Group and as that used by Cedric Gates in connection with his company, Manehu Tech, LLC, while he was trying to drum up sales of residential solar power in the Wai'anae area. (Manehu Tech is not in good standing, having failed to provide annual reports to the DCCA for the last two years.)

Until March of this year, Sunrise Strategies had no official lobbying presence at the state Capitol. On March 4 and 5, however, Benjamin Gates (brother to Cedric) registered as a lobbyist with Sunrise Strategies on behalf of three companies: Kalshi, Inc., the firm recently in the news for accepting bets predicting current events; VGW Corporate Services Australia Pty Ltd., an online gaming company; and Pharmaceutical Research & Manufacturers of America (PhRMA, more commonly known as Big Pharma). On April 20, Cedric Gates registered as a Sunrise Strategies lobbyist, also on behalf of VGW Corporate Services Australia. The two brothers are the only registered lobbyists affiliated with Sunrise Strategies, according to state registration records.

— Patricia Tummons

Note: The March edition of *Environment Hawai'i* reported on the first (canceled) contract. We erroneously stated that the term of the contract was for six months instead of eighteen.

Mahi Pono Awaits Dozens of Permit Approvals To Complete East Maui System Modifications

"My career has spanned quite a while. In that time, I have seen the weather patterns change so dramatically, it takes all the historic data and throws it away, because it's just no prediction for tomorrow. A great example of that is last year. The drought we experienced last year, I think, was the worst in 105 years."

That's what Mahi Pono, LLC water resources director and East Maui Irrigation Company manager Mark Vaught told the state Commission on Water Resource Management at a briefing last month on the companies' efforts to comply with the agency's 2018 and 2022 interim instream flow standard orders, which required modifications to EMI's system so that more water stayed in East Maui streams.

The briefing addressed a near-term conundrum regarding a revocable permit the state Board of Land and Natural Resources granted to Mahi Pono and EMI last December allowing them to continue diverting tens of millions of gallons of water a day from East Maui to its thousands of acres of agricultural fields in Central Maui, and to the county in Upcountry.

The discussion that followed explored the larger questions that Vaught's comments raised, mainly, how should the waters of East Maui best be managed to meet instream and offstream uses in a changing climate?

Permit Delays

Two months before the Land Board's December decision, 1st Circuit Judge Lisa Cataldo had instructed the board to ensure that future permits to divert East Maui streams, 1) required the implementation of practical system loss reduction measures, 2) made sure that the Water Commission's IIFS orders were fully implemented before allowing more water to be taken, and 3) rendered necessary findings regarding traditional and customary practices.

The Sierra Club of Hawai'i, plaintiff in the case before Judge Cataldo, had argued at the December Land Board meeting that Mahi Pono and EMI had not fully completed the system modifications required by the Water Commission's IIFS order, and, therefore, should not receive a permit allowing the diversion of more than 23 million gallons of water a day, which was approximately what the companies diverted in 2025. Mahi Pono had pushed for 41.55 mgd.

The Department of Land and Natural Resources' Land Division had recommended at that time approval of a permit allowing the diversion of up to 41.72 million gallons a day (35.22 mgd for Mahi Pono's agricultural uses in Central Maui and 6.5 for Maui County municipal uses and the Kula Ag Park).

Recognizing the requirements imposed by Judge Cataldo, the division stated in its board submittal that its staff had consulted with Water Commission staff "and was informed that the applicant's diversion of water was compliant with the IIFS. CWRM staff also noted that the applicant was working in good faith to obtain numerous regulatory approvals to remove outstanding diversions in the Huelo region to comply with the 2022 IIFS decision."

The board ultimately approved the Land Division's recommendations and denied contested case hearing requests from Nā Moku Aupuni O Ko'olau Hui and the Sierra Club. They appealed the decisions in 1st Circuit Court, and in March, Judge Cataldo granted the Sierra Club's motion for a partial stay of the board's decision. Now, instead of being allowed to divert 35.22 mgd, Mahi Pono may only divert 30 mgd this year, until she decides otherwise.

The Land Board and Mahi Pono/EMI have appealed Cataldo's October ruling, which was formally issued in January.

In the meantime, Grant Nakama, Mahi Pono's senior vice president of operations, reported to the Water Commission at its May 19 meeting that all of the 235 permits necessary to complete all of the modifications required under the 2018 and 2022 commission orders had been applied for; 174 had been approved.

He reported that permits were required from the Water Commission, the DLNR's Office of Conservation and Coastal Lands and state Historic Preservation Division, the state Land Use Commission, and the U.S. Army Corps of Engineers.

Water Commission deputy director Ciara Kahahane noted that her agency had issued its permits to the companies for the remaining diversion modifications in October and November of last year, following the receipt of SHPD concurrence, which had been pending for years.

She added that in January, her office had formally requested written reports from Mahi


An enlarged pipe in the Lowrie Ditch at Hanawana Stream (left) is one of the completed modifications. An open sluice gate on O'opuola Stream is one of the voluntary, temporary measures that have been implemented pending permit approvals for permanent modifications (right).

Pono about the outstanding permits and approvals, as well as the modifications made.

"Staff is reviewing them. We will request other documents, if necessary," she said, adding that they asked the company for the briefing that day to make sure the matter "remains visible to the commission and the public."

Nakama did not specify when all of the companies' permit applications were submitted, although Vaught noted that they had not applied for an OCCL site plan approval for an off-stream system modification until January of this year.

For the 130 diversion modifications called for in the Water Commission's orders, 79 have been completed, while 51 are awaiting permit approvals, he said.

For the modifications called for in the 2018 commission order, Mahi Pono has 23 permit applications pending with the USACE and 11 with the OCCL. For the 2022 order, the company has another 23 permits pending with the Army Corps.

Nakama noted that for 11 sites where modification approvals are pending, Mahi Pono and EMI have voluntarily installed measures restoring more stream flow than is required by the commission's IIFS orders.

Storage

With all the talk of the efforts to restore more water to the streams, Water Commissioner Lawrence Miike asked Nakama, "Are you okay with the water you're getting?"

Nakama said that was a question that arises every year with the Land Board's renewal of the water diversion permit. The court's reduction of the 2026 allocation of 35 mgd to 30 mgd was "not ideal, but we don't really have a choice," he said. "We are just getting by."

Before detailing the modification efforts, Nakama had described the scope of Mahi Pono's diversified agriculture operations on the island. Of the company's 35,000 acres in Central Maui, 12,900 acres were either planted with crops or grazed by cattle. That acreage required 33 mgd, he said, adding that what could not be supplied by East Maui streams was supplied by pumped groundwater.

He noted that 18,322 tons of what was produced was consumed in-state, including 667 tons of beef and 3,550 tons of watermelon.

"Even if we were to take the rest of the water after all other instream uses are satisfied, the municipal uses are satisfied, there's still not enough water to plant all our acres. So I think we're limited in terms of the amount of acres we can plant," he said.

He added that there will be a time when it cannot plant any additional crops under the current IIFS.

Commissioner Moses Haia asked Nakama what alternative water sources Mahi Pono was considering, noting that it was in the community's best interest to leave as much water in the stream as possible.

First, Nakama pushed back on what Haia thought was in the community's best interest.

"I don't think it's in the community's best interest to leave as much stream water as possible in the streams. I think the intent is to comply with the order to restore water as ordered and use the remainder for beneficial uses for the community at-large," Nakama said.

To Haia's follow-up question about whether recycled water was being looked at, Nakama said it was.

"R1 sources are being discussed at several levels. Without disclosing too much … I would generally say Mahi Pono would be open to using … R1 water and we are engaged in those discussions actively," Nakama said.

Commissioner Juanita Reyher-Colon asked whether Mahi Pono planned to pursue water-saving technologies.

Nakama replied that for some of the crops, each plant has a micro-sprinkler; weed mats that preserve soil moisture are also emptied.

Generally, he said, the irrigation system is very efficient, with an on-farm system loss of just 5.4 percent.

Mahi Pono is able to achieve such a low system loss rate because it avoids using its unlined reservoirs, the seepage from which could be considered waste.

If the company were to fully exploit its reservoirs, filling them all, they would provide a 10- to 20-day supply of irrigation water, Nakama said. "So that's not a long period of time. For efficiency purposes, we've chosen to bypass our reservoirs," he said.

Vaught said they may not receive enough water to make using the reservoirs worthwhile. "If you're allotted 28 mgd, if we need 28 mgd, there's nothing left over … to store," he said.

Commission chair Dawn Chang, however, countered, that the water from the large rain events that have become more prevalent with climate change are not being captured and taken advantage of.

"I completely agree," Nakama said. But he added that regulatory and permitting restrictions stood in the way. "A lot of rules in place restrict our ability to operate," he said.

Commissioner Wayne Katayama asked what Mahi Pono's total storage capacity was.

Vaught said it was 120 million gallons, compared to 350 million gallons when the area was cultivated for sugarcane.

Nakama blamed the limited duration of the annual permit for impeding investments in reservoirs.

"It would always help if the commitment was longer-term," he said. (Mahi Pono is seeking a long-term license from the Land Board to continue to divert East Maui water to Central Maui.)

Even so, Chang suggested that requiring

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Environment Hawaiʻi, Inc.
421 Kaʻanini Street
Hilo, Hawaiʻi 96720

Address Service Requested

Mahi Pono *continued from page 11*

the use of reservoirs should become a standard condition to capture the heavy rains. "I do see due to climate change we have these very extreme conditions and we're not prepared," she said.

"If there were a theoretical requirement to use reservoirs … that would come at the expense of our system loss number," Nakama said.

Former Water Commission hydrologist Roy Hardy, a consultant for Mahi Pono, noted that aquifers **are** reservoirs. If a reservoir is leaking, it's recharging the aquifer, he said.

The use of aquifers is another concern, Chang replied. "When you don't have enough [surface water], you use groundwater. That doesn't help the health of the aquifer," she said.

Haia later added, "with respect to [Hardy's] statement about reservoirs, to be clear, it all depends on where it sits, whether it's going to provide water to the aquifer."

Nakama said that Mahi Pono typically uses only three to five of its reservoirs with a total capacity of 50 million gallons in a given quarter.

And the water just goes in and comes out, Vaught said. "We reduced our dependence on reservoirs because it inflated the system loss number. … we were getting dinged on that."

To address Chang's concerns about the need to store more water, Maui Department of Water Supply deputy director Kimo Landgraf stated that the county was in the design phase for of a 140-million-gallon reservoir at its Kamaole Water Treatment Facility and that it was looking at acquiring and refurbishing one of Mahi Pono's reservoirs with a capacity of about 100 million gallons. Landgraf also mentioned that the county would be acquiring a 100-million-gallon reservoir in West Maui from Maui Land and Pineapple, part of a sale of MLP's West Maui water assets announced last month.

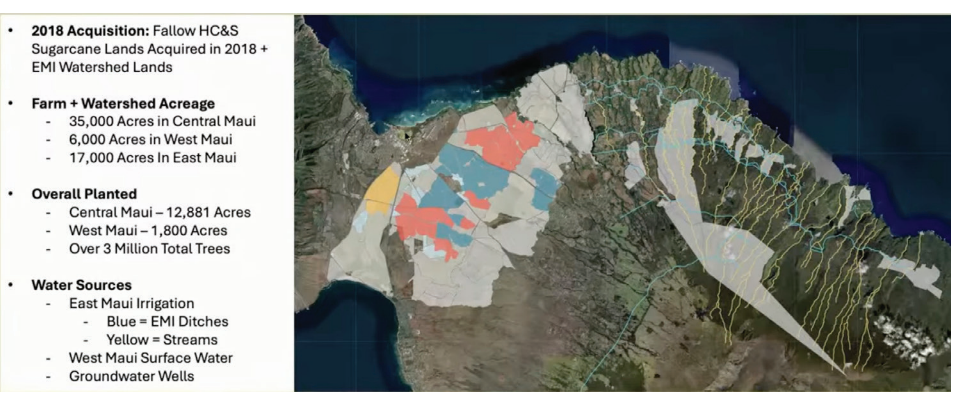
"They all will be lined because we don't want to lose any of the water," he said.

Sierra Club of Hawaiʻi director Wayne Tanaka also advocated for Mahi Pono to line its own reservoirs. He said he was also glad to hear that the company potentially had 20-30 days of backup supply water if its reservoirs were lined.

"That's a huge amount of potential certainty compared to, for example, the East Maui kalo farmers and others who've been forced to shoulder far more than their share of the burden during low-flow periods over the last century or so," he said.

He also took issue with Nakama's claims that the one-year permit made it difficult to commit to lining its reservoirs.

"Just to the lining issue and the one-year permit excuse, I wanted to point out that Mahi Pono has planted crops that take years to mature and signed a $60 million deal with Alexander & Baldwin for decades worth of water delivery. So the one-year limitation on the permit really has not prevented them from making long-term investments, except I guess when it comes to lining reservoirs and saving our public trust resources," Tanaka said.



Mahi Pono, LLC's land on Maui. CREDIT: MAHI PONO, LLC.

What's Next?

What happens as a result of the appeal by the Land Board and Mahi Pono of Judge Cataldo's decisions remains to be seen. In the meantime, the Sierra Club and Nā Moku Aupuni O Koʻolau Hui have sought a court declaration that the Land Board is barred from issuing a long-term water license to a private party.

In their complaint, also before Judge Cataldo, the groups point to the same concern Vaught and the water commissioners had raised, that climate change and variable weather patterns make it impossible for the Land Board to guarantee the ability to divert a set amount of water from East Maui streams.

"BLNR wants to enter into a long-term disposition of water with a private party. It has been working for years towards a long-term disposition of water. And it is poised to do so," the groups state in a court filing. They argue that they are seeking declaratory relief "to prevent the attempt to vest rights to use water to a private party. What is a long-term disposition that vests no rights? An empty gesture? Moreover, to the extent that any disposition would not grant any such rights, its only purpose is to remove the issue from BLNR's agenda for years, thereby effectively preventing members of the public from raising concerns to the entire board."

Judge Cataldo had not ruled by press time on a motion by the Land Board to dismiss the groups' complaint.

— Teresa Dawson