

# Environment



# Hawai‘i

*a monthly newsletter*

## *Streaming Live From a Live Stream*

Virtual meetings have their drawbacks, but at a recent meeting of the Commission on Water Resource Management to discuss the future of He‘eia Stream, the upside was on full display. With testimony delivered from the very area affected, commissioners were able to see and hear the waterbirds that inhabit the wetland fed by the stream.

As the manager of one of the organizations working to restore the wetlands noted, the sounds of the ae‘o nearly drowned out one testifier: “I would say the ae‘o are testifying in support” of restoring stream flows, cut off for decades by diversions by the Honolulu Board of Water Supply.

How the BWS will respond to the commission’s call to devise a plan to improve stream flows isn’t known just yet. In the meantime, stay tuned to the CWRM meetings. There may be more ae‘o sightings yet to come.

## IN THIS ISSUE

**2**

*New & Noteworthy: Waikoloa 2.0,  
Kern Confirmed, and Dairy Drama*

**3**

*Study Maps Areas Where  
Fishers, False Killer  
Whales Overlap*

**4**

*ADC Tries to Explain  
Slow Progress in Using Lands*

**8**

*Board Talk: Aquarium Fish Poaching,  
Kawailoa Wind Farm,  
And Kaua‘i Tower Dispute*

**12**

*Supreme Court Rejects Claim  
Of Taking by Bridge ‘Aina Le‘a*

## Commission Pressures BWS To Meet Proposed He‘eia Stream Flow Standards

Even in the rainy Ko‘olaupoko region of Windward O‘ahu, which stretches from Hakipu‘u to Makapu‘u, there is competition for water when it’s dry.

Over the past several years, efforts to restore taro fields, an ancient fishpond, and the estuary at He‘eia have come a long way. But the organizations leading those efforts say they need more freshwater for the pond to function properly, for agricultural plans to be fulfilled, and for the ecosystem to thrive and be more resilient to the effects of climate change.

Staff with the state Commission on Water Resource Management last fall unveiled its proposal to restore at least some of the flow into He‘eia Stream that for decades has been diverted by a tunnel dug into the underground dike system at Ha‘iku.

“This area has incredible potential to be one of the most prominent biocultural landscapes that features Hawaiian

practices and complete restoration from mauka to makai, at least here on O‘ahu, if not the state,” Water Commission geologist Ayrton Strauch said at a commission meeting last September.

The He‘eia National Estuarine Research Reserve (HNERR), Paepae o He‘eia, Kako‘o ‘Oiwi, the Kane‘ohe and Kahalu‘u neighborhood boards, the Office of Hawaiian Affairs, the Hawai‘i Community Development Corporation, and others have expressed their support for the BWS’s proposal.

The Honolulu Board of Water Supply (BWS), however, has questioned some of the commission staff’s conclusions about what influences the stream’s flow, and warned that requiring 1.77 million gallons of water a day to flow in the stream below BWS’s tunnel at all times will affect its ability to serve its customers in the region.

*Continued on Page 5*



PHOTO: TESTIMONY OF DANE BISHOP, PAEPAE O HEEIEA

To avoid draining He‘eia Stream, only a trickle of water is allowed to enter an intake gate at He‘eia fishpond.

# Environment

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# Hawai'i

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## NEW AND NOTEWORTHY

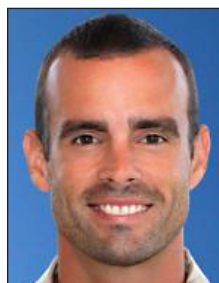
**Waikoloa Project 2.0:** The proposed affordable housing project on 11.7 acres of land near the Big Island community of Waikoloa is going back to the drawing board. Two bills that would have allowed the development of commercial space, affordable housing units, and a large hardware store on the site were pulled, following the request of County Council member Tim Richards. Richards told the County Council on February 3 that he had assurances from the Planning Department that it would be working with landowner Danny Julkowski to come up with a more viable proposal for the site.

As *Environment Hawai'i* had reported previously, Julkowski purchased the site following several transactions that trace back to a former developer, Waikoloa Mauka, LLC, that seems to be the subject of an FBI investigation.

In August, the county's Leeward Planning Commission voted to recommend denial by the full council of Julkowski's project. At the time, Julkowski was represented by planning consultant Zendo Kern.

(For details of that meeting, see the article in the September edition of *Environment Hawai'i*.)

**Kern Wins Approval:** At the same council meeting where Julkowski's project was shelved, Zendo Kern won council approval of his nomination by Mayor Mitch Roth to serve as director of the county's Planning Department.



Zendo Kern

Kern's nomination drew fire from multiple witnesses, who referenced his lack of formal training (he never attended college and has a high school degree after two years of home schooling) and his past work representing developers, including several whose applications were withdrawn following irregularities.

The council's Planning Committee voted 5-4 against confirming his appointment.

Yet when the County Council took up his nomination, council member Heather Kimball changed her vote, allowing Kern to win appointment by the slimmest possible margin.

**Dairy Drama:** Last July, the Honoka'a Land Company (HLC), a subsidiary of a California company that channels foreign investors into projects that qualify them for eventual permanent U.S. residency, sued Boteilho Hawai'i Enterprises, owner of a dairy on the northern tip of the Big Island. The lawsuit accused Boteilho Enterprises and its owner, Edward Boteilho Jr., of breaching a contract to sell the dairy. The contract, signed three years earlier, had not resulted in the transfer of the dairy. The sale had stalled after the discovery of contamination on the property.

According to Boteilho, he had offered to reduce the \$2 million sale price by half. Yet he received no response. Boteilho then turned to Dutch-Hawaiian Dairy Farms. In June, Boteilho won the DOA's approval to move forward with the sale.

Days later, HLC sued Boteilho and Dutch-Hawaiian Dairy Farms, as well as its owners. The plaintiff alleged not only breach of contract, but also tortious interference with contractual relations by Dutch-Hawaiian Dairy.

In December, 3rd Circuit Judge Robert Kim granted Boteilho's motion for summary judgment on the breach of contract issue, agreeing that HLC was "unable to show it is ready, willing, and able" to carry out contract terms.

Attorneys for Boteilho filed a proposed "final judgment re: specific performance" with the court in January. HLC objected. The court had not issued a decision by mid-February.

(For more background on this case, see the article in the December 2020 issue of *Environment Hawai'i*: "Big Plans for Foreign Investment in Dairy Operations Run Aground.")

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## Quote of the Month

"Would we get 100 percent success on the small farms? I'm not sure about that, but if anybody knows how to accomplish that, that would be great."

— Myra Kaichi, ADC

# Study Maps Areas Where Fishers And False Killer Whales Overlap

For years now, an issue that has stymied efforts to protect false killer whales from the often fatal interactions with the gear of non-longline commercial fishers has been the fact that there are no reliable figures on just how often such interactions occur.

"In Hawaiian waters there are no observer programs in nearshore fisheries, yet interactions with fisheries are likely the greatest threat to the endangered main Hawaiian Islands insular population of false killer whales," write the authors of an article recently published in the journal *Biological Conservation*.

Their research, however, points the way to a possible solution. Relying on photographic records and the tracks of satellite-tagged individuals, lead author Robin Baird and his colleagues determine the areas where the animals are most likely to be found. They then overlay those areas to the maps of zones that show where and how many fish are reported to be caught by commercial, non-longline fishing vessels.

In this way, the authors are able to identify regions where fishers are most likely to encounter false killer whales, ranked according to a "fishery overlap index."

Here's how they describe the metric: "For example, if there is a single vessel fishing in an area with several false killer whales, the probability of a whale overlapping in space and time when the vessel hooks a fish would be relatively high. If there were many vessels fishing in an area and only a single whale, from the perspective of the fishermen the probability of overlapping at a time when the vessel hooked a fish would be relatively low." Also, the index takes into account the fact that there is some likelihood that false killer whales will be attracted to fishing vessels or their catch.

To determine fishing effort, the authors reviewed commercial catch reports for the years 2007 through 2017 and data on tagged false killer whales from that same period. Their analysis revealed several areas of high or very high use by the false killer whales, and also some low-density areas, with seasonal variation as well. The highest use areas were in the areas between Moloka'i and O'ahu, including the Penguin Bank, and off the northern point of Hawai'i Island.

Fishery overlap indices (FOI) were then

calculated for 90 of the state's statistical areas where commercial fishermen report their catch. "These 90 areas accounted for 95.4 percent of all of the false killer whale time from satellite tag data analyses," the paper states.

Their findings might be considered counter-intuitive by some. "There is a natural tendency to assume that the areas with the greatest amounts of fishing effort may be the areas with the highest probability of interactions occurring," the authors write, "but from the perspective of the fishermen, this may not be the case. ... While Kona is the area with the highest fishing effort, regardless of which measure of fishing effort was used (total catch, days fished, or the number of licenses), Kona was in the bottom 10 percent of the 90 areas for which FOIs were calculated."

PHOTO: ROBIN BAIRD/CASCADIA RESEARCH



A Hawaiian false killer whale injured by fishing gear.

"Our findings have important implications for how to address depredation and bycatch of false killer whales in nearshore fisheries in Hawai'i," the researchers write. Armed with this information, managers can better direct efforts to mitigate interactions between fishermen and these animals.

"Fishermen that regularly fish in areas with high FOI values could be the focus for targeted outreach efforts to aid in improving identification skills and generally raising awareness of the behavior of different species, particularly as it relates to the likelihood of depredation of catch," they write. "For example, melon-headed whales and short-finned pilot whales, two other similar looking species, feed primarily at night and deep in the water column on squid or small fish that are unlikely to overlap with the catch of most nearshore fisheries. Knowing that these species are unlikely to depredate catch may benefit fishermen, who sometimes may pull gear or move to a different area if they think

there is a high likelihood of depredation from whales nearby."

In addition, measures that would be useful in gathering more information on interactions between fishermen and false killer whales, such as on-board observers or electronic monitoring, could be targeted to where such interactions are most likely to occur, based on the fishery overlap indices.

## Next Steps?

With the interactions of the non-longline commercial fishery with false killer whales well established and possible mitigation measures identified, what is now needed to implement them?

"I think the next step has to be some targeted outreach and engagement efforts with fishermen that fish off the east side of O'ahu, off Moloka'i, and off Kohala in particular," Baird said. The state Department of Land and Natural Resources has been engaged in outreach efforts for several years, supported by a grant from the National Oceanic and Atmospheric Administration, he added, "so I suspect they'll play a major role."

The Take Reduction Team established by NOAA to reduce fishery interactions with false killer whales, of which Baird is a member, does not include any representation from the non-longline fishery and has not considered its impacts. "Unless both those things change," Baird said, the TRT "would not be the right group to take on these issues."

When the TRT was formed, Baird and others advocated for the inclusion of non-longline members, but, he said, the National Marine Fisheries Service "typically doesn't take action unless there are observed 'takes' of the animals (as bycatch or by hooking) involving a specific fishery." Since there are no observers in the non-longline fishery, "we are caught in a situation where there is lots of evidence of interactions (e.g., depredation and hookings), but nothing that has triggered the fishery's reclassification." (Under the Magnuson-Stevens Act, fisheries are classified according to the likelihood that they interact with marine mammals.)

"Unless some of the non-longline fisheries are reclassified from Category III (with 'a remote likelihood of or no' bycatch) to a Category II ('occasional incidental mortality and serious injury'), I don't think any sort of electronic monitoring or observer programs will happen," Baird said. — **Patricia Tummons**



## Agribusiness Agency Explains Reasons Behind Slow Progress in Utilizing Lands

My thing is, you never turn away what the Legislature gives you.”

That’s what state Agribusiness Development Corporation (ADC) executive director James Nakatani told then-Department of Agriculture director Scott Enright five years ago, when Enright asked why, out of all of Castle & Cooke’s inventory, the ADC board was being asked to authorize the purchase of a seemingly less-than-ideal 91-acre lot for \$2.3 million in funds provided by the Legislature.

But what if the Legislature gives you way more than your handful of staffers can handle?

Over the past several years, the ADC has spent \$81,737,925 in legislatively appropriated funds to acquire 3,752 acres in Central O‘ahu, to help meet Sen. Donovan Dela Cruz’s dream of turning Whitmore Village into an agricultural hub.

With that money, the ADC protected a huge swath of land from urban development. But it also became responsible for fixing a host of problems: poor soil quality, limited or no access to irrigation water and some of the parcels themselves, overgrowth, squatters, and abandoned vehicles and trash, to name a few.

It was only a matter of time before the largesse, coupled with the slow progress toward making the lands productive, drew criticism over whether that was money well spent. And after failed at-

tempts in 2017 and 2018, the Legislature finally passed Act 28 in 2019, which mandated a performance audit of the agency.

The Office of the Auditor’s January report on the ADC revealed some shocking mismanagement. It also determined that the agency has fallen far short of the mission it was supposed to fulfill after the Legislature created it in 1994.

The ADC has jurisdiction over tens of thousands of acres of former sugarcane and pineapple plantation lands, mainly on Kaua‘i and O‘ahu. The agency was intended by the 1994 Legislature to spearhead programs facilitating the transition of agricultural infrastructure from plantation use to other agricultural uses, to conduct marketing analyses to direct how the state’s agricultural industry should evolve, and to “provide the leadership for the development, financing, improvement, or enhancement of agricultural enterprises.”

The ADC has been able to keep its Kekaha lands, on Kaua‘i, productive largely with the aid of its tenants, organized as the Kekaha Agriculture Association. The association manages day-to-day operations and maintenance of the vast former sugarcane plantation irrigation system.

While the ADC has been criticized by environmental groups and others for management at Kekaha (it’s even been sued), those lands were already owned by the state.

In Central O‘ahu, on the other hand, the ADC started purchasing thousands of acres of land in 2012 during a kind of fire sale by former pineapple plantation land owners, mainly the Galbraith Estate, Dole Foods, and Castle & Cooke.

“[A]s of December 2019, ADC has licensed 534 of Galbraith Lands’ 1,227 acres. Eight years after acquiring the Galbraith Lands, more than half of those agricultural lands remain unlicensed,” the audit states.

“Finding new tenants for its other former plantation lands purchased from 2013 to 2019 has been similarly difficult,” it continues, noting that more than 1,700 acres of ADC’s Central O‘ahu lands are vacant.

### Office Mismanagement

The audit notes that the ADC’s senior executive assistant, former state deputy attorney general Myra Kaichi, admitted that the retirement of its longtime secretary Cindy Doi left its file management lacking.

ADC staff also informed the auditor that documentation of its land management policies, land acquisition guidelines, inventories of landholdings, tenant listings, and complete tenant files were nonexistent.

Of the 83 tenant files that were prepared in response to the auditor’s questions, “Sixteen tenant files were missing contracts, 21 did not contain the board approvals to issue tenant contracts, and more than half of the files contained no evidence the tenant had complied with insurance requirements,” the auditor found.

What’s more, the auditor found contracts that executive director Nakatani entered into with tenants for the use of ADC lands were inconsistent with what the ADC’s board of directors had approved. For example, in 2014, it approved a 35-year license for a lot at an annual rent of \$100 per acre for the first three years. The executed contract is for a different lot at an annual rent of \$200 per acre, the report stated.

“Because of the poor condition of ADC’s records, we could not determine if these discrepancies were the result of clerical errors or if documents accounting for the differences were misfiled

*Continued on next page*



Kelena Farms, run by former ADC board member Larry Jeffs, on ADC lands in Central O‘ahu.

*ADC from Page 4*

or never created in the first place,” the report stated.

“Poor documentation could render the corporation unresponsive, unable to account for its actions, or both, and increase the risk of fraud, waste, and abuse going undetected,” it added.

*Minimalist Developer*

During the audit, Kaichi also admitted that the agency was bad at land management, and said, “Development is what we do. It’s not our role to oversee the day-to-day activities of farmers.”

But a glance at the listing of land in Central O’ahu the ADC is about to offer up to prospective licensees suggests that development isn’t something the agency does either, at least not yet.

The ADC board last month authorized the solicitation of bids for five sites. They range in size from 91 acres to more than 500, totaling 1,482 acres. The staff reports identify only 547 of the acres as farmable.

All five areas need to be cleared of overgrowth. Three of the five areas are littered with abandoned vehicles and other junk. Most of the lands lack an on-site water source managed by the ADC and would require farmers to procure water from Dole or the Honolulu Board of Water Supply, or somehow develop a new source and infrastructure on their own.

Gates securing the 91-acre, former Castle & Cooke parcel at Mililani Mauka have deterred illegal dumpers and will stop most thieves, but the steep and narrow access road to the property makes it difficult for large trucks and equipment to get through, a staff report states.

For this parcel, as well as a 230-acre lot purchased from the Galbraith Estate, the ADC staff has not even determined the farmable area. Even so, rent would start at \$100-200 per acre per year, although rent credits for land improvements may be applied.

It’s anyone’s guess when the state will see a penny in rent, given that costs of clearing the land, securing water, and establishing adequate access are just the start for any successful bidders. At last month’s legislative briefing, Nakatani explained that preparing former pineapple land, which these lands are, is much

harder than preparing former sugarcane land. There’s no irrigation and it takes a lot to de-acidify the soil, he said.

On one of its more problematic Whitmore parcels, the ADC has towed off more than 150 abandoned vehicles, but it’s taken awhile to even start clearing the area. The ADC’s Ken Nakamoto told legislators that criminal activity there was out of control. “It wasn’t because of a lack of effort. We were literally outgunned,” he said, noting that squatters had enough firearms and heavy equipment that law enforcement officers didn’t want to enter.

Another distraction from preparing the lands for farming: meeting the needs of the surrounding community.

“Security is an unfunded mandate. A very expensive one. The residents reached out to ADC for help. Kupuna were being harassed by thieves and stray dogs,” Nakamoto said. “We took action. It’s these kinds of unfunded mandates that take a lot of time and effort away from staff. For a staff of four it really takes a toll.”

He said that the ADC plans to solicit potential farmers for its Central O’ahu lands this spring. Whether the lands will be in much better shape than they are now remains to be seen.

Whether it will even be around to manage those lands is also up in the air. A bill seeking to transfer its land and staff — except Nakatani — to the DOA was still alive at press time.

Rep. Amy Perruso, who introduced the bill, asked Kaichi and Nakatani about finding ways to get more small farmers onto the ADC’s lands. Kaichi said that the ADC has been talking with the DOA for years about how to do that, but one problem has been, if they are organic farmers, “how do we buffer them so they don’t get contaminated” she said. She added that she’s not sure if the DOA would be able to manage that.

“Would we get 100 percent success on the small farms? I’m not sure about that, but if anybody knows how to accomplish that, that would be great,” she said.

In any case, managing more small farms will be expensive, she warned. “When we are addressing the needs of 100 farmers on 10 acres each, the cost goes up ... compared to one farmer on 1,000 acres,” she said.

“If we had the funding, we could probably do more,” she said. She sug-

*He’eia from Page 1*

The tunnel is only one of nearly 20 water sources in the region that the BWS relies on. Even so, manager and chief engineer Ernie Lau stated in a November 23 letter to the commission that the BWS lacks flexibility in meeting the needs of customers between Ha’iku Valley and Maunawili Valley because its tunnel and well in Kahalu’u have been separated from its water system. “[A] connecting 16-inch water line across the He’eia wetland has been permanently taken out of service due to pipe erosion, leakage and potential main breaks that would be inaccessible to repair,” Lau wrote.

At the commission’s January meeting, Strauch conceded that the Ha’iku tunnel and well “are important for providing municipal water needs for the Windward district.” However, he noted that the Kane’ohe Marine Base’s golf course, the BWS’s biggest customer in the region, uses what seems to be an excessive amount of potable water, when recycled water would suffice.

“There are other alternative sources [that] can make up the deficiency of

*Continued to page 6*

gested that perhaps ADC can give a license to a group of farmers and allow it to figure out how to set up their irrigation infrastructure so that they can do more with less, and keep things affordable.

“We can get 10 farmers together and have them make it work with five meters,” she said, adding that’s something the DOA may not have the flexibility to do.

Perruso worried that these kinds of conversations are being contained within state agencies and haven’t included community associations, the farmers union, the farm bureaus, and the University of Hawai’i.

“Would ADC and DOA be open to a broader discussion [that] looks at how we can move forward? I worry we tinker on the edges ... and we end up in 10 years saying that was a lost opportunity. ... There are a lot of interesting and exciting ideas coming from the community,” she said.

“That’s spot on. We’ve actually been talking to a lot of people,” Kaichi replied. She added that the ADC board recently approved a strategy to address the audit’s 28 recommendations. — **T.D.**



*He'eia from Page 5*

reduced withdrawal from Ha'iku tunnel," he said.

Commission staff proposed at the January meeting giving the BWS 180 days to figure out how it will meet a proposed interim instream flow standard (IIFS) of 1.77 million gallons a day in He'eia Stream below the tunnel. After hearing public testimony, however, commissioners said they wanted things to happen a lot sooner than that, especially since two of them would be leaving the commission in June.

Water Commission deputy director Kaleo Manuel said he would bring a revised proposal to the commission next month, giving current commissioners two months to refine things before formally adopting the new IIFS.

*'A Trickle'*

During public testimony, Paepae o He'eia executive director Hi'ilei Kawelo, who oversees the care and management of the fishpond, stressed how little water in He'eia Stream currently reaches the ocean.

The 88-acre pond has three gates along the stream to let water in. The most makai gate functions tidally to let brackish water in. The one most mauka lets in just a trickle of water, Kawelo said.

"Our makaha (gate) is boarded up by two 2-by-12s to not allow freshwater to come into the pond. If we pulled the boards, we would drain the stream. That's how little water makes its way down to our muliwai. You all know the importance of freshwater to stream and

estuarine health and to the fishery of Kane'ohe Bay. Our third gate, which is most mauka, is completely plugged up. It doesn't allow water into the stream," she said.

"One day, hopefully soon, within 180 days, we'll see an increase in freshwater making its way into our loko i'a and out into Kane'ohe Bay," she said.

In written testimony, she explained, "The balance of fresh water and salt water input is what allows for phytoplankton production and algal growth, thus supplying herbivores like mullet and awa (milkfish), the keystone fishpond fish, food to grow. In addition, there was an 'auwai (fresh water irrigation ditch) that was constructed traditionally to redirect the once abundant amounts of fresh water from He'eia Stream to the southeast corner of the fishpond."

She continued, "We always wondered why there is so little fresh water in the stream, thinking that through our years of restoration and the removal of invasive vegetation, we would see an increase in the amount of water in the stream. Just recently, it was brought to our attention that water is and has been diverted from He'eia Stream since the 1940s. With climate changing before our very eyes, we see sea level rising higher and higher every year. Rising sea levels inundate He'eia stream all the way up to Long Bridge quite often. Now, more so than ever before, the amount of instream flow needs to be maximized to give us a fighting chance against the impacts of climate change and help us realize our vision of 'Aina Momona (abundance)

for He'eia."

According to a November report by HNERR, research by University of Hawai'i at Manoa PhD candidate Evan Lechner suggest that increased circulation from an influx of fresh water would also improve oxygen and salinity levels in the pond.

*Stunted Growth*

Just mauka of the fishpond, another non-profit, Kako'o 'Oiwī, has been busy clearing the land and has restored 14 acres of lo'i kalo. Ten more acres are ready for reopening, once enough water is available, and the potential is there to expand lo'i across 100 acres, according to staff with the He'eia estuarine reserve.

Kako'o 'Oiwī executive director Kanekoa Schultz testified in support of the proposed IIFS via Zoom, from the field.

"Behind me, you can see the wetland and hear the ae'o (endangered Hawaiian stilt) flying around. That water brings back the habitat for the endangered birds we see. Allowing the water to come back or increase, it gives Ka'ko'o 'Oiwī and our wonderful community a chance to hear the sounds of our ancestors. It allows us to fish, practice our culture," he said.

A powerpoint by HNERR also noted that lo'i expansion will prevent sediment from reaching the fishpond and bay during storm floods.

HNERR's Frederick Reppun, who helps coordinate the programs of the non-profits doing restoration work in the area and the Hawai'i Institute of Marine Biology, said the proposed IIFS "moves us one step closer to the restoration we all want to see. It doesn't get us there by any means."

The average flow increase under the new IIFS will be enough to complete some of the immediate lo'i restoration planned, but in the long term, he said, "we need to look at how we can further increase flow or better use what's available."

Schultz said he looked forward to working with the BWS, but said 180 days is almost an entire kalo planting season and asked if the deadline for the agency to prepare to meet the IIFS could be shortened. Or perhaps there could be an interim release of water, the effects of



A 1928 aerial shot "captures the Native Hawaiian agro-ecology and aquaculture systems in He'eia that depended on and managed a substantial flow of water and nutrients through the stream and wetlands, and out into the estuary," according to the He'eia National Estuarine Research Reserve.

*Continued on next page*

which could be studied while allowing Kako'o 'Oiwī a chance to plan ahead, he suggested.

### **Ecosystem Benefits**

As Kawelo and Schultz pointed out, increasing freshwater flow into He'eia Stream will benefit native fish and waterbirds. In its powerpoint, HNERR expanded on those benefits, and also described how insects and the state's only terrestrial mammal will benefit, as well. (The 1,385-acre He'eia estuarine reserve was established in 2017 as part of the National Oceanic and Atmospheric Administration's National Estuarine Research Reserve System, which is aimed at protecting and studying estuarine systems and includes 29 sites nationwide.)

HNERR's powerpoint noted that flood modeling indicates that if the baseflow of He'eia Stream is restored to pre-1940 levels, the amount of wetland habitat would more than double, from eight acres to 19 acres.

"Recent fish monitoring in He'eia shows native populations are only at the stream mouth, with almost 100 percent invasive aquarium fish detected through the wetland and He'eia Stream. Native fish, such as 'aholehole and 'ama'ama (mullet) were once found throughout the wetland," it stated.

Juvenile 'ama'ama move between the stream and estuary daily as conditions allow, and increased streamflow would likely create the deeper, wider channels that they prefer to evade predators, it continued.

Native gobies will also benefit from the more defined channels and habitat connectivity that will result from increased stream flow, it stated, noting that with the mangrove removal and habitat restoration done so far, researchers with HNERR, The Nature Conservancy, and the state Division of Aquatic Resources have observed previously undocumented o'opu naniha in the area.

HNERR pointed out that the upper reaches of the He'eia watershed are critical habitat for the blackline Hawaiian damselfly (*Megalagrion nigrohamatum nigrolineatum*), and "reductions in streamflow likely limit the available habitat for *Megalagrion*, particularly during drought periods and in the middle and upper reaches that are prone to drying."

The organization also suggested that the endangered Hawaiian hoary bat, which commonly forage for water-dependent insects along stream edges, may also benefit from a stream with more water in it.

Referring to Schultz's testimony from the field, HNERR manager Kawika Winter told the commission, "I almost heard the ae'o louder than his testimony; and I want to congratulate the [commission] staff because the ability to open up these hearings such that people can testify in their place gives the 'aina a chance to speak for itself, and we heard the 'a'ina testifying right there. I would say the ae'o are testifying in support of a restoration of stream flow."

### **Next Steps**

After the Ha'iku Tunnel was drilled, the base flow of He'eia Stream dropped from about 2 mgd to about 1 mgd, Strauch told the commission.

"That's a pretty big percentage," commission chair Suzanne Case said.

Strauch said the stream really suffers during the dry season, when less than 300,000 gallons per day flows. "That is a trickle of water and that is affecting the instream values. That's what we are working on protecting," he said.

Although the BWS disputes that the tunnel alone is what's caused the drop in stream flow — noting that flows did not rebound when the tunnel was out of service between 2010 and 2014 — Case said restoring greater flow to He'eia was a great opportunity to better understand the impacts of freshwater withdrawals.

"We know a fair amount of about temperature impacts of flow on kalo [warm flow is bad], but on invasive species, I don't know so much. In fish ponds, does the mangrove stay gone at different salinity levels? What do the waterbirds need in terms of salinity? This is a great place to study that," she said.

Commissioner Neil Hannahs seemed eager to keep the progress made so far going, as he was involved in the management of some of the lands and worked with some of the non-profits when he was employed by Kamehameha Schools, a major landowner in the area.

"It's been amazing what's happened to date. The potential of this to be iconic, a demonstration and continuing center of learning about our environment [is]

very gratifying," he said.

Winter noted that in addition to the Ha'iku Tunnel, a BWS channel also shunts water out of He'eia and into Kane'ohe. He asked whether the commission is exploring ways to add that water back to He'eia Stream.

Strauch said that channel, which takes water from a spring near Haleiwa Joe's, is a harder engineering challenge. "I'm not giving up. This [new IIFS] is maybe step one of multiple steps," he said.

The BWS's Lau said he would appreciate the commission's help in efforts to get the Kane'ohe Marine Base, which uses an average of 2 mgd, to go back to watering its golf course with recycled water. "We tried to put pressure on them. They have their own time frame," he said.

Barry Usagawa, program administrator for the BWS, added that conservation is the most cost-effective way to reduce the demand for potable water.

He said there are five large non-residential users in the system: the state hospital, Windward Community College, Pali Golf Course, Hawaiian Memorial Park, and Hawai'i Pacific University, which will convert to a Castle Medical Center expansion. Aside from conservation, the next less-expensive solution to meet the IIFS is to drill more wells, he said. "But the other side of Hawaiian Memorial Park Cemetery is Kapa'a Quarry, which has non-water bearing blue rock. The closer you get to Kailua, there's no chance for finding additional sources. You have a big impoundment at Ho'omaluhia dam that's a possibility and would take infrastructure to get water from the dam to the big users, but it's a cost," he said.

However the BWS resolves its distribution problems, commissioner Kamana Beamer said he would like to see some action on the IIFS proposal before 180 days.

"Domestic water use is a priority [but] there's a lot of non-public trust uses going on right now that are affecting the public trust. I think any of the non-public trust users should be notified that there is an upcoming decision by the commission," he said.

"If we can get important issues addressed, maybe not perfected ... we can get it on the agenda by June, if not sooner," Hannahs added.

— **Teresa Dawson**



## BOARD TALK

## Board Levies \$272,000 in Fines Against West Hawai'i Aquarium Fish Poachers

On February 26, the state Board of Land and Natural Resources levied a record fine against husband and wife aquarium fish collectors Stephen Howard and Yukako Toriyama.

The couple made headlines last September after Howard abandoned Toriyama and her diving partner, Hitomi Sasaki, as they illegally harvested hundreds of juvenile reef fish 30 to 40 yards off the western coast of Hawai'i island.

Enforcement officers with the Department of Land and Natural Resources (DLNR) had received a tip that Howard had launched his boat from the Honokohau Small Boat Harbor and was fishing within the West Hawai'i Regional Fishery Management Area, which has been off-limits to aquarium collectors for the past few years as a result of a court order.

When officers tracked Howard to a spot off Ho'okena and asked whether he had any other passengers, he told them that he was alone on the vessel. The officers then confronted Howard with the fact that they had seen him pick up two passengers at the Kailua pier. Howard then lied, saying, "Oh, I just took them to swim with dolphins and dropped them back off," according to a DAR report to the Land Board.

One of the officers then conducted a safety inspection of Howard's vessel and found that the vessel registration had expired and that Howard lacked a boat

operator's certificate and the required safety equipment. The officers instructed Howard to return to shore, but he hesitated. Another officer inspected his vessel again and found aquarium collection gear.

They asked Howard once more where his female passengers were. He denied that anyone else was with him and returned to shore, where he was again asked where Toriyama and Sasaki were.

DLNR Division of Conservation and Resources Enforcement launched a search and rescue mission, assisted by the county police and fire departments, the National Oceanic and Atmospheric Administration, and the U.S. Coast Guard.

Howard was arrested, but was allowed by officers to use his cell phone to make a call. "Howard, after allowed access to his cell phone, began to delete text messages from his phone. When the officers attempted to retrieve the phone from Howard, Howard threw it into the water," the report states.

The search and rescue mission ended after the women were spotted with their dive gear at a Kona-area gas station.

Directed by Sasaki and with assistance from NOAA's Office of Law Enforcement, biologists with the DLNR's Division of Aquatic Resources (DAR) recovered and released 235 fish of ten different species. Most of them were yellow tangs

and their total retail value was estimated at \$24,730.

At the Land Board's February 26 meeting, DAR staff recommended imposing a fine of \$59,615 against Howard and \$48,000 against Toriyama. The two were accused of committing several violations, including possessing aquarium collecting gear, an unregistered, fine-meshed lay net, and illegally collecting aquarium fish species. Howard also faced fines for several violations regarding the state of his vessel.

According to DAR's David Sakoda, the division refrained from recommending fines against Sasaki because she was instrumental in helping officials locate the trapped fish that had been harvested and left in baskets in the ocean, and in providing the information needed to bring violation cases against Howard and Toriyama.

For many of the proposed fines, DAR recommended a fraction of the \$1,000 maximum because the couple were first-time violators, Sakoda said.

"We could fine them a lot more," said Maui Land Board member Jimmy Gomes. "Personally, I feel that's the direction we should be in, to really set a precedent. Whether they can pay or not is not the issue. It's what they've done."

Sakoda said the proposed fines were based on his division's guidelines on administrative sanctions, but added, "You do have the discretion. You're not locked into that."

Gomes asked whether the Land Board could suspend them or otherwise prevent them from obtaining a commercial marine license in the future.

Kaua'i board member Tommy Oi suggested that in the event they don't pay the fine, the department find a way to confiscate Howard's boat, which probably cost about \$100,000. Taking his boat would also prevent future violations and send a message to other potential violators that they could lose their boats, as well, he argued.

Sakoda said his division doesn't currently have the authority to seize assets, but that a court could order the seizure of a boat for unpaid fines.

Inga Gibson of Pono Advocacy testified that she has seen the trio illegally harvesting aquarium fish more than once and thought the fines should be much higher and include Sasaki. "To think

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PHOTO: GIOVANNI PARKS

Last September, the state Division of Aquatic Resources recovered and released 235 fish of ten different species that had been illegally collected in waters off West Hawai'i. The Land Board last month fined the perpetrators nearly \$300,000.



this was an isolated incident is pretty outrageous,” she said, adding, “Howard left two divers in the open ocean to avoid arrest. ... Howard lied repeatedly to officers about their whereabouts.”

She argued that since the court invalidated all aquarium collection permits more than a year ago, several people have been caught poaching aquarium fish. Last year, three aquarium collectors were caught with more than 500 fish taken from the off-limits area. Two of them eventually agreed to pay a \$76,400 fine.

“We really need to send a message. ... [Poaching] is the norm, not the exception. Any legal aquarium trade only provides cover for illegal activity,” she said.

More than two dozen people submitted testimony calling for the imposition of maximum fines.

Gomes agreed and recommended that the board fine the couple the maximum allowed under the rules. That turned out to be a fine of \$235,000 for the 235 fish taken, which both Howard and Toriyama would be responsible for paying. Howard faced additional individual fines of \$28,000; Toriyama's additional fines were totaled \$9,000. In total, they would owe the state \$272,000.

The board unanimously approved the increased fines.

Howard and Toriyama are also facing criminal charges in Hawai'i District Court in relation to the incident.

Neither Howard nor Toriyama attended the Land Board's virtual Zoom meeting, despite multiple efforts by DLNR staff to serve them with notice in person and by certified mail, phone, and email. Sakoda said it appeared that Toriyama received one of the notices that had been mailed out, and staff attempting to deliver a notice to one of their residences was told by the new tenants that the couple had moved out a week earlier.

“Are these people considered flight risks? ... If they up and go, what then?” asked board member Kaiwi Yoon.

“That's a good question,” Sakoda said. He pointed out that Howard has been served with a criminal complaint and has a trial set for later this month. “From what I've heard, they may very well be flight risks. ... They'd probably be in bigger trouble with the courts than the BLNR,” he said.

### Another Case

In another poaching case, the Land Board

deferred voting on a proposed \$69,800 fine against aquarium collector Jason Beevers. Beevers' boat was spotted within the West Hawai'i Regional Fishery Management Area by DLNR enforcement officers last August. Illegal collecting gear and more than 300 fish, mostly yellow tang, were found when an officer inspected the boat after it landed.

In advance of the board's February 26 meeting, Beevers requested a contested case hearing, forcing the board to defer any decision-making.

Dozens of Hawai'i island residents submitted written testimony asking the Land Board to impose the maximum fines against Beevers. According to a DAR report, that would total \$349,000.



## Kawailoa Wind Farm Habitat Conservation Plan

On February 26, the Land Board unanimously approved an amended habitat conservation plan (HCP) and incidental take license (ITL) for the 30-turbine, 69-megawatt Kawailoa wind farm on O'ahu's North Shore.

The original plan and license for the facility, approved in 2012, sorely underestimated the number of endangered Hawaiian hoary bats that would be killed, and also did not anticipate that any threatened Hawaiian petrels would be taken.

The wind farm quickly exceeded its authorized bat take of 60 and also killed two petrels, which required it to amend its HCP and ITL.

To reduce its bat take, the facility has increased the periods of time, during low wind, when the blades do not spin. It also installed acoustic deterrents on each turbine in the summer of 2019.

According to a DLNR Division of Forestry and Wildlife (DOAFW) report, the facility has likely killed up to 94 bats to date. However, there have been no observed bat takes since October 2018.



Kawailoa wind farm in North Oahu.

The amended HCP allows Kawailoa to kill up to 220 bats, 19 adult/fledgling petrels, and 5 chicks/eggs.

In July 2019, the DLNR's Endangered Species Recovery Committee barely mustered the four votes needed to approve the amended HCP. Some members were unsure of whether the island's bat population could handle such a high level of take, given that it was unclear whether the mitigation measures proposed are sufficient to offset that take. The Land Board was set to vote on the plan and license in September 2019, but a contested case hearing request by the community group Keep the North Shore Country derailed that.

The group and the wind farm eventually agreed last November to a settlement calling for an expanded search area for downed animals and additional funding for petrel research. The settlement resulted in the Land Board's dismissal of the case in January.

DOFAW administrator Dave Smith told the Land Board last month that with the deterrents in place, he hoped there wouldn't be any significant bat take going forward.

“I'm really pleased to hear, whether due to deterrents or good luck, no bat strikes since October 2018,” board member Sam Gon said.

Matt Stelmach, a biologist with Tetra Tech who helped draft the HCP, assured Gon that the lack of bat strikes isn't because there aren't any more bats in the area. “There are acoustic detectors at the site and nearby mitigation sites and the [bat detection] trend has been stable or increasing for all those sites,” he said.

(For more background on this, “Wind Farm Barely Gets Preliminary OK To Kill 160 Additional Endangered Bats,” from our August 2019 issue.)

*Continued on next page*



## Dispute Heats Up Over Ownership Of Kaua'i Communications Tower

What happens when a squatter is providing a critical public service on state lands without a valid lease or permit to be there? What if that squatter claims it owns all of the improvements on the site (except the buildings) that the state plans to lease to a new service provider, and that claim is based on a notarized amendment to a now-expired lease?

How these thorny questions are answered may impact efforts to expand and improve emergency communication capabilities in and around Hanapepe, Kaua'i. Whether they are answered in court or in negotiations remains to be seen.

The "squatter" in this case is InSite Towers Development, LLC, which years ago took over ownership of a number of Hawaiian Telcom's communications towers, including one at Hanapepe.

In 2013, the lease for that tower site expired, as did a one-year holdover that was never actually executed. Even so, InSite continued to manage the land and to lease space on the tower to Hawaiian Telcom, because its principals claim that it owns the tower and all improvements on the land, except for any buildings.

A standard condition in Department of Land and Natural Resources (DLNR) leases is that ownership of all buildings and improvements on the land reverts to the state when the lease expires. But in Hawaiian Telcom's 1963 lease, sold at public auction, the language requiring the surrender of improvements was crossed out, with the change initialed by a notary.

Why this was done remains a mystery. Counsel for InSite speculates that it was to give ownership rights to the lessee. The state disagrees, arguing the Hawai'i Supreme Court determined decades ago that such amendments to leases issued at public auction are prohibited.

So on January 8, the DLNR's Land Division recommended that the Land Board terminate InSite's use of the land and issue a direct lease to New Cingular. New Cingular plans to provide space on the tower to AT&T, which is the federal contractor to implement the FirstNet

broadband network for first responders.

The board approved the staff's recommendation. InSite then requested a contested case hearing, but the Land Board denied that request at its February 12 meeting.

At the January meeting, InSite's attorney, Rosemary Fazio, urged the Land Board to give the lease to InSite and approve a license to AT&T. In the alternative, she asked the board to defer the matter to give the parties an opportunity to negotiate a fair settlement. She noted that AT&T had actually been working with InSite on renting space on the tower, but abandoned that effort when it realized that the tower's ownership was an issue.

Land Division administrator Russell Tsuji had argued that InSite is not eligible for a direct lease for two reasons: 1) it's currently not a Public Utilities Commission-certified communications service provider (although it has applied to be one), and 2) it owes the department back rent.

Even though it had neither a lease nor permit to use the land, InSite took control of the Hanapepe tower in 2014 and had been collecting rent for Hawaiian Telcom's use of it.

Until very recently, InSite paid no rent to the state, arguing that it was told by a Land Division agent that the state could not accept rent without a lease in place.

The law allows the Land Division to directly negotiate leases with communication service providers, but not with a company such as InSite, which merely rents space on towers to companies that are. As an alternative, the Land Division proposed holding a public auction for a lease of the site and issuing InSite a month-to-month revocable permit to keep using it in the meantime. Until a fair market rent could be determined, the division proposed charging InSite the same rent that Hawaiian Telcom had paid under its expired lease.

When presented with the proposal in 2016, however, InSite did not want to pay any rent until a fair market value could be determined by an appraisal, according to a January 8 report to the Land Board. That plan eventually fizzled, but InSite continued to operate the tower without paying any rent.

In 2019, as the company began working toward becoming a Public Utilities Commission-certified communications provider, the Land Division renewed its efforts to collect rent, and back rent,

from InSite. Invoices the division sent went unpaid.

Then last May, the division sent InSite a demand letter advising the company to pay the interim rent within 30 days and provide evidence of its PUC registration within 60 days.

InSite did not answer until September 28, and offered only to pay a portion of the rent the Land Division said it owed.

In its January report to the board, the division noted, "Interestingly, InSite's September 28, 2020, letter with its offer to finally pay rent was sent not long after New Cingular Wireless PCS, LLC contacted Land Division about applying for a lease of the site in early August 2020."

New Cingular had submitted an application for a direct lease of the site on September 1.

At the board's January meeting, Tsuji said he wasn't aware until recently that InSite had not paid any rent. "I said Jesus Christ, you're occupying the property, you're making money, and over five years you're not paying anything to the state?" he said. He added that InSite eventually sent a check for \$15,524.18, which is about \$700 less than what the Land Division had invoiced. What's more, the company made it clear that if the division cashed it, the state could not seek the remainder.

He added that before sending the check, InSite's counsel had offered to pay half of what was owed now, and the other half on the condition that it get a direct lease.

"They are not even qualified ... and they owe us rent," another disqualification, he said.

With regard to InSite's claim that it owns the tower, Tsuji questioned whether the notarized change to the lease was even valid. "I don't know. It doesn't matter," he said, noting that the Hawai'i Supreme Court's 1963 decision in *Kahua Ranch v. State* determined that auctioned leases can't be amended.

Fazio countered that InSite has always been ready, willing, and able to pay rent. As a gesture of good faith, she said InSite has now paid every single dollar it received from Hawaiian Telcom.

She continued that the PUC has not yet acted on its certification due in part to COVID.

She said the facts of InSite's case are different from those in *Kahua Ranch*, where the DLNR had wanted to change

*Continued on next page*



the water rights in a lease after the ranch had won it at auction.

"That's not what we have here," she said, adding that she doesn't know what the public notice was in connection with the 1963 lease to Hawaiian Telcom, and whether it mentioned that the lessee would own the improvements. She also didn't know whether there were competitive bidders for the lease.

She added that InSite has made costly improvements to the site and the tower, "all on reliance upon the fact that it was a holdover tenant ... while its PUC application was going to be approved."

"AT&T knew for the past two years that InSite owns the tower. It shouldn't be expected or allowed to scoop InSite's improvements for free. I don't want to sound like I'm making threats ... Let's just consider the delays that would result if InSite is not acceptable for a new lease," she said. InSite would have to secure a Conservation District Use Permit to remove its tower. AT&T would have to get a permit to build one and it would likely cost about \$250,000. "During all this time, what would happen to the Hawaiian Tel transmitter and the people of Kaua'i who rely on Hawaiian Tel's service? ... This is a matter of real public concern," she said.

Board member Chris Yuen questioned InSite's interpretation of the changes to the Hawaiian Telcom lease back in 1963.

"The language stricken out, let's say the striking out is valid. I don't see a clause that then says, the improvements belong to the tenant and may be removed. Am I missing something? ... Having that clause [regarding improvements] stricken out, would that mean then that the ownership of the improvements is a matter of law, the law of fixtures specifically?" he asked. (Fixtures are not personal property, but real property that is transferred with real estate. Fixtures put in place by a tenant belong to the landlord if the tenant is evicted.)

"I agree the lease says just what the lease says. The relevant interpretation of the lease has to do with the intention of the parties. ... How do you infer the intention of the parties when there is an affirmative striking and there is an obligation of the tenants to construct improvements? ... That's the legal analysis I think a court would apply. ... Hopefully, we're never going to get there," Fazio replied.

"Do you think the state has any obligation to continue leasing to InSite?" Yuen

then asked, given that Fazio had suggested that in the five or six years the Land Division allowed the company to stay, it had given the company an expectation that the company would ultimately get a lease.

"Yes and no," she said, adding that it's the state's property and it can lease to whomever it wants to. However, "there is an anticipatory expectation in connection with all of the actions InSite has taken in good faith reliance that it was going to be issued a new lease if it could obtain PUC status. InSite has spent a lot of money and time on this project," she said.

If the board chooses not to grant InSite the lease, "a commercially reasonable settlement can be reached between AT&T and InSite," she said.

Board chair Suzanne Case said any settlement would hinge on the interpretation that InSite owns the tower. "There are other parties that are already qualified to get a direct lease. ... Our obligation is to figure out what is in the best interest of the state," she said.

AT&T's Elizabeth Song noted that as the FirstNet contractor, it has been working to improve public safety communications throughout the state. "The surrounding area has been identified by Kaua'i County as critical. ... This site would give increased capability to call 911," she said.

Everett Kaneshige, of the state Department of Defense, who is the state's point of contact for the FirstNet project, added that Governor Ige decided in 2017 to be a part of it. "The state must work with AT&T to make sure terms and condi-

tions are fulfilled, [including] additional tower sites to build out and improve coverage on all islands. This tower site falls into that and was proposed by AT&T to meet their quota as part of the tower commitments made to the state," he said.

"The other items brought to the board, quite honestly, are between AT&T and InSite. ... From the public safety perspective, what we've been told, that is an area where coverage is poor. So whatever can be done to basically improve coverage and improve it quickly, that is the nature of the state's interest, from the DOD's perspective," he added.

In the end, the Land Board voted to approve the Land Division's recommendations with a few amendments to give New Cingular a revocable permit and right-of-entry to quickly occupy the site to ensure there is no gap in service. The board also affirmatively stated its position that it owns the tower, but added that if InSite chose not to remove the tower, that would not be interpreted as a waiver of its ownership claim.

"I think in the long run, InSite can go to court and ask the court to declare they own the tower. If they do, the counsel for InSite talked about negotiations. ... Obviously, there's going to be a common ground between AT&T. InSite's options will be to remove the tower. AT&T's option is to buy the tower. ... Our action today should not force them to take action to remove the tower between now and February 7. ... I'm perfectly content to have this thrashed out in court at some point," Yuen said. — T.D.



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## U.S. Supreme Court Rejects Bridge 'Aina Le'a's Claim of Taking

The U.S. Supreme Court has laid to rest, once and for all, the claim of Bridge 'Aina Le'a that the state of Hawai'i owes it money for a temporary taking. That "taking" claim arises from the Land Use Commission's 2011 decision to revert Bridge's land in Kohala to the state Agricultural District. A year later, a state court overturned the LUC's reversion, a judgment that was upheld ultimately by the Hawai'i Supreme Court.

Bridge pursued its claim of damages amounting to more than \$30 million in federal court. At the district level, the court found Bridge had suffered damages – amounting to \$1. At the appellate level, the 9th Circuit determined that even that award was unmerited, meaning that Bridge could not seek to recover its costs of litigation from the state, which the company placed at more than \$700,000.

Last July, Bridge appealed to the Supreme Court. On February 22, the Supreme Court denied cert. Justice Clarence Thomas was the sole justice to file a dissent, in which he argued that the precedent-setting Supreme Court cases that addressed takings claims – *Penn Central Transportation Co. v. New York City* and *Lucas v. South Carolina Coastal Council* – needed to be clarified by the high court. "The current doctrine is 'so vague and indeterminate that it invites unprincipled, subjective decision making' dependent upon the decision-maker," Thomas wrote, quoting an article by John Echeverria, "Is the Penn Central Three-Factor Test Ready

for History's Dustbin?" published in the *UCLA Journal of Environmental Law and Policy* (2005).

### 'Aina Le'a Update

Bridge 'Aina Le'a no longer owns the 1,060-acre tract that was subject to the reversion order, having sold off all but around 27 acres. One of the predecessors to the current owner, 'Aina Le'a, Inc., also filed a takings claim in federal court. As we reported in January, that case – filed in 2017 by DW 'Aina Le'a – was initially dismissed on the ground that it was untimely filed.

On appeal, the 9th Circuit Court of Appeals asked the state Supreme Court for a determination on whether a six-year or two-year statute of limitations should be applied. In December, the state Supreme Court ruled that the proper statute of limitations was indeed, as DW 'Aina Le'a had argued, the more liberal six years, under a "catch-all" provision in the state Constitution.

In light of that ruling, on January 25, the appellate court remanded the case to Honolulu District Court.

### Meanwhile...

Although the state Supreme Court ruling came down in 'Aina Le'a's favor, it is still facing existential legal challenges.

Iron Horse Credit, whose loan to 'Aina Le'a back in 2019 allowed the company to exit bankruptcy, is seeking to foreclose against 'Aina Le'a. Iron Horse's most recent court filings show a balance owing of \$5,944,530.30 as of January 31.

Iron Horse is asking the 3rd Circuit Court to order the property used to secure the loan be sold at auction. A hearing on the motion is set for April 14.

On February 22, Hawai'i County property taxes for 2020 came due. For the 1,000-plus acres owned by 'Aina Le'a, the 2020 taxes total \$224,785. None of that was paid by the deadline.

Those are not the only arrearages. Unpaid property taxes from prior years, plus interest and penalties, on the 'Aina Le'a holdings come to \$657,459.

### For Further Reading

*Environment Hawai'i* has published many articles over the years on the dispute over the 'Aina Le'a development. All are available online at our website, [environment-hawaii.org](http://environment-hawaii.org).

Articles dealing with the more recent court cases are:

- "High Court Ruling Favors 'Aina Le'a on Question of Statute of Limitations," January 2021;
- "'Aina Le'a Update: From State Court, to County Planners, to U.S. Supreme Court," December 2020;
- "Appellate Court Overturns Award of Damages to Bridge 'Aina Le'a," March 2020.