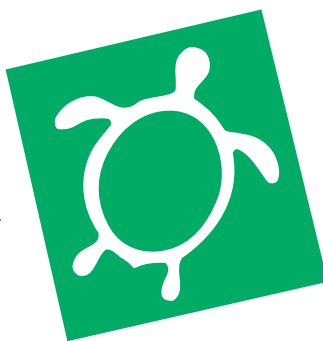


Environment



Hawai'i

a monthly newsletter

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Foreign Arrivals Are Up!

The same phrase that gladdens the heart of the visitor industry arouses dread in the hearts of the officials charged with keeping Hawai'i's environment and important crops safe from marauding invaders.

There's the giant coconut rhinoceros beetle, a native of India and recent arrival on O'ahu. The tiny but destructive macadamia felted coccid is originally from Queensland. Little fire ant (South America), albizia (Southeast Asia), coqui (Caribbean) – the list goes on and on.

The destructive critters and little-shop-of-horrors plants seem to arrive as fast as the airlines and ships can bring them in. The state's quarantine defenses are stuck, meanwhile, with a budget that would have been inadequate in the horse-and-buggy era.

As our cover article shows, the Legislature's \$5 million appropriation to address invasive species is better than it's been in years past, but – in the face of actual threats – not nearly sufficient.

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Legislature Balks at Biosecurity Bills, But Boosts Funds for Invasive Species

In 2010, a Maui driver suffered permanent brain injury in an accident caused, in part, by overgrown vegetation along the Hana Highway near Paia. He sued both the driver of the vehicle that hit him and the state of Hawai'i for damages.

The second driver settled last year. This year, the Legislature settled the man's claim against the state for \$700,000.

All because of an unmowed shoulder.

There is a lesson here, but it appears to have sailed right past the Legislature.

Across the islands, giant albizia trees loom over roads, parks, waste transfer stations, walkways and bicycle paths. Some threaten traffic on highways vital to public health and safety. Some are rooted on land belonging to public agencies. Many others grow on private land but extend their heavy, brittle limbs over public areas, posing a serious and real risk of injury to anyone passing below.

House Bill 1769 would have appropriated \$5 million — roughly seven times the cost of the Maui settlement for overgrown grasses — to control albizia where the trees pose special danger: along roads in Puna, and along streets and highways in Hilo that lead to the Hilo Medical Center. Both were areas identified by Hawai'i County Civil Defense as critical for emergency services and transportation routes.

The funds, to be appropriated to the University of Hawai'i, were to be directed in turn to the Big Island Invasive Species Committee.

Speaking in favor of the bill at its sole hearing, before the House Committee on Water and Land, Hawai'i County Council chair J Yoshimoto noted that albizia were "dangerous and deadly" trees, and that a falling albizia had already contributed to the death of one Big Island resident.



PHOTO: RUSSELL RUDERMAN

A towering albizia (*Falcateria moluccana*)

Waianuenue Avenue, he continued, "the main access route to Hilo Hospital, has been closed due to albizia trees falling and branches breaking off. Power is disrupted to the affected areas."

All other testimony was strongly in support of the bill as well. The Water and Land Committee passed it out, but it was never heard again.

Major Fails

Another bill that was intended to address dangerous trees made it nearly to the finish line — but at the last minute took a detour and ended up as a sentence in the report of the budget conference committee.

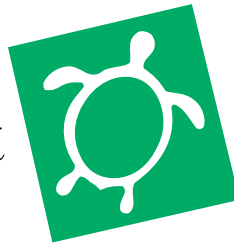
House Bill 2521 would have appropriated funds to the Civil Defense Division of the state Department of Defense to enable it to

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Environment Hawai'i

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NEW AND NOTEWORTHY

A Refuge Lost? Features at two units of the National Park Service on the western shores of the island of Hawai'i — Pu'uhonua o Honaunau and Kaloko-Honokohau national historic parks — are among dozens of significant cultural sites across the country that are at risk of disappearing as a result of climate change.

That was the message in a report released last month by the Union of Concerned Scientists: "National Landmarks at Risk: How rising seas, floods, and wildfires are threatening the United States' most cherished historic sites."

At Pu'uhonua, described in the report as "a wartime place of refuge," features vulnerable to sea level rise include the Great Wall, the 'Ale'ale'a heiau, and two historic sections of trail, the report states. "These and other irreplaceable cultural resources are located in low-



Kaloko-Honokohau National Historic Park

lying areas of the park that have repeatedly been damaged by storm surges and flooding in the past." With sea level rise, they will be even more exposed and vulnerable.

Up the coast at Kaloko-Honokohau, the report states, scientists from Stanford University and the University of Hawai'i "identified the Kaloko fishpond, the 'Ai'opio fish trap, and the 'Aimakapa fishpond as among the park's features most at risk from coastal hazards."

"The beach in front of the 'Aimakapa fishpond, which ... may be more than 600 years old, is currently eroding at a rate of three to four inches per year. Because the beach separates the pond from the ocean, ... the pond could be breached altogether by 2050," the report notes.

"Given the scale of the problem and the cultural value of the places at risk," the UCS report states, "it is not enough merely to plan

for change. ... We must begin now to prepare our threatened landmarks to face worsening climate impacts; climate resilience must become a national priority."

The full report is available online: <http://www.ucsusa.org/LandmarksAtRisk>.



TMT Final Judgment: Judge Greg K. Nakamura of the 3rd Circuit Court has signed off on the final judgment in a case involving the appeal of a permit to construct the Thirty Meter Telescope. He upheld the Board of Land and Natural Resources' award of a Conservation District Use Permit for construction of the facility near the Mauna Kea summit.

The judgment entered on May 5, confirms an earlier ruling that he had made in the case. As of mid-May, Richard Wurdeman, attorney for the six parties who brought the administrative appeal, said his clients had not decided whether to pursue further legal action.



Save the Date: On August 29, artist, chanter, scientist, and Facebook poster extraordinaire **Sam 'Ohukani'ohi'a Gon** will be the guest speaker at *Environment Hawai'i's* annual fund-raising dinner. Gon, recently named



one of Hawai'i's living treasures, will be speaking on the topic of the Hawaiians' pre-contact ecological footprint.

Tickets to the event, at the 'Imiloa Astronomy Center in Hilo, are \$65. A \$20 tax-deductible donation to *Environment Hawai'i* is included in the cost.

To reserve a seat, please call 808 934-0115 or email ptummons@gmail.com.



Correction: In our May "Board Talk" item on Legacy Land projects, we misspelled Laura Devilbiss's last name.

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Quote of the Month

"The owners ... made a conscious decision to protect their property by installing boulders, knowing that the wrath of Superman at OCCL was coming."

— **Ron Agor, architect**

State Supreme Court, Federal Appeals Court Schedule Hearings Over 'Aina Le'a Disputes

This month, the stalled-out development on the Kohala Coast known as 'Aina Le'a faces two important court hearings. On June 10, the 9th U.S. Circuit Court of Appeals will hear an appeal from the state of Hawai'i of a lower court denial of the state's efforts to have individual Land Use Commission (LUC) members dropped from a lawsuit alleging that the LUC violated the constitutional rights of landowner Bridge 'Aina Le'a and developer 'Aina Le'a Inc. Then, on June 25, the state Supreme Court will hear arguments in the state's appeal of a lower court ruling that overturned the LUC's order that the land be reverted from the Urban District to the Agricultural District.

As would be expected in a dispute whose roots go back nearly 30 years, distilling the disagreements into summary form is difficult, if not impossible. We present here only highlights of the arguments the courts will hear.



The Federal Case: A Shifting Black Cloud

The federal appeals court has before it a limited question: should individual members of the state Land Use Commission continue to be named as defendants in the civil case brought against them and the LUC by Bridge 'Aina Le'a and DW 'Aina Le'a, (DWAL) representing, respectively, the owner of most of the land where the development is to occur and the company that will be buying and developing the land in phases? (DW 'Aina Le'a, LLC, is the chief owner of 'Aina Le'a, Inc., and was the developer party identified in the disputed LUC proceedings.)

In a nutshell, the state wants the appeals court to peel off the individual commissioners from the case, arguing, among other things, that they should enjoy immunity inasmuch as their deliberations and decisions were done in good faith as part of their official duties.

Bridge and 'Aina Le'a, on the other hand, want the commissioners to continue to be a part of their litigation and are asking the appellate judges to remand everything back to state courts. There, Bridge attorneys suggest in their filings, the plaintiffs will be able to show that they were sorely harmed by the commissioners' "bias, animus, and knowing violations" of the law and will be free to pursue their case for millions of dollars in damages against not the state alone, but the nine additional individuals.

The underlying litigation was first brought in state court by Bridge and DWAL following a decision of Judge Elizabeth Strance of the 3rd Circuit Court in Kona. Strance determined that the LUC had improperly reverted the site of the 'Aina Le'a development from the Urban District back to Agricultural. Bridge and DWAL alleged several violations of constitutional rights, including violation of due process and a takings claim.

In light of the constitutional claims, the state asked that the case be removed to federal court. It was eventually assigned to Judge Susan Oki Mollway, who, on March 12, ordered the litigation to be stayed while the state appealed Judge Strance's ruling in state court.

The State's Position

Mollway did not rule on the state's claim of immunity for the individual members of the LUC. That means that, unless they are dismissed from the case by the 9th Circuit Court of Appeals, they live under a cloud of potential personal liability until the underlying case is resolved – and, if it goes against them, the consequences would be disastrous, given that Bridge and 'Aina Le'a are claiming damages in the tens of millions of dollars. Or, as the state put it in its appeal: the federal district court "consign[ed] the seven individual commissioners to years with the shadow of this lawsuit hanging over their heads."

The individual commissioners – Vladimir Devens, Kyle Chock, Thomas Contrades, Normand Lezy, Nicholas Teves Jr., Ronald Heller, Lisa Judge, Duane Kanuha, and Charles Jencks – "are entitled to quasi-judicial absolute immunity," deputy attorney general William Wynhoff wrote. "It is undisputed that they acted by way of a contested case hearing which under Hawai'i law is a judicial type of proceeding."

"The only way these immunities can be given effect is by ruling on them now," Wynhoff argued. "A decision to defer means that the immunities are effectively lost... By subjecting individual commissioners to this suit – potentially for years – abstention strips them of the critical benefit of immunity. This is not hypothetical. At least one individual commissioner has already been denied mortgage refinancing because of the pendency of this suit..."

"Any commissioner, no matter how loyal or diligent, cannot help but be influenced by knowing that a decision adverse to a developer

opens him or her to a lawsuit seeking personal liability for millions of dollars under federal law. This is especially so where the commissioner knows that — no matter what — the federal claims will remain pending for years.

"Moreover, the same thought cannot help but deter citizens from volunteering in the first place to join the commission or numerous other state boards that conduct contested cases."

'Beyond Ironic'

The brief filed by attorneys for Bridge 'Aina Le'a, LLC, paints quite a different picture. "After unlawfully reclassifying Bridge... property from Urban to Agriculture, and in the process violating almost every applicable statute, regulation, and constitutional provision since 2005, it is beyond ironic for the commissioners to now be complaining about the unfairness of this litigation," wrote Matthew Shannon, attorney with Bays Lung Rose & Holma, counsel for Bridge.

"Because the commission assumed multiple roles as rule maker, monitor of compliance, prosecutor, and arbiter, the commissioners are not entitled to immunity," Shannon continued. "Despite the commissioners' worn and overused analogy in the briefs, they acted unlike any judge in the country. Therefore, the commissioners are not entitled to immunity."

Bridge, he said, wants the case remanded to state court so that "the eventual takings litigation in this case, whether temporary or permanent," could commence. "Indeed, this litigation involves tens of millions of dollars in damages and decades of proceedings. Bridge should not be prejudiced by several more years of delays before litigation can even begin."

Rather than a nimbus hanging over the commissioners, it looms over Bridge, Shannon wrote. "The commission's unlawful conduct and subsequent state court appeal created a dark cloud of litigation over the project, which was exacerbated by the commission's refusal to re-open the docket and incorporate Bridge's successful administrative appeal ruling" – i.e., Strance's decision. The decision as to immunity "would be appropriate for the state court to decide," he wrote.

"Regardless, this court should not grant immunity to the commissioners at the initial pleading stage," he concluded. "The complaint sufficiently pleads allegations of repeated and knowing unlawful conduct by the commissioners. ... The commissioners' bias, animus, and knowing violation of the law subjects them to individual liability... Therefore, the commissioners have not met their burden of proof as public officials seeking immunity."

The appeals court will hear 15 minutes of arguments on the issues when it meets in Honolulu. The 'Aina Le'a case is the third on its June 10 schedule, which begins at 9 a.m. The hearing will take place at the federal bankruptcy courtroom, room 250L, 1132 Bishop Street.



Before the State High Court: LUC's Right to Enforce Conditions Versus Claims of Unequal Treatment

Two weeks following the appeals court hearing, the state Supreme Court will hear oral arguments in the state's appeal of Judge Strance's ruling that overturned the LUC's decision to revert the 'Aina Le'a land.

The state characterizes the case as having, at its heart, the right of the LUC to set and enforce conditions on the developers of land that the LUC has redistricted. It argues that reversion is the chief, if not the only, means the commission has at its disposal to make sure that developers comply with promises made. Hawai'i Revised Statutes and Supreme Court case law, argued Wynhoff in his application to transfer the case to the Supreme Court, "specifically affirm that the LUC may revert a property to its June 10 former land use classi-

fication for failure to substantially commence use of the land in accordance with conditions." The lower court, he added, "erred by ruling to the contrary, especially because the court did not overturn or even address any of the LUC's findings of fact."

In addition, he wrote, the lower court's consideration of the treatment of other developers whose land had been redistricted was not proper, inasmuch as the court's review of administrative appeals "shall be confined to the record," under HRS Chapter 91.

Strance's ruling also erred, he stated, in holding that "the LUC and individual commissioners violated developers' constitutional rights to equal protection and due process" — "without any opportunity for presentation of evidence and without regard to the right to trial by jury."

"The question of whether the LUC can ever revert a property pursuant to [HRS] Section 205-4(g) is a question of imperative or fundamental public importance," Wynhoff continued, noting that the question is before the LUC in at least two other pending dockets.

The public as well, he wrote, "needs to know whether conditions are enforceable. The answer to that question will affect public response to new petitions. Undoubtedly some members of the public who would conditionally support a petition will not do so if the reclassification is perforce unconditional."

'Orwellian Doublespeak'

The 'Aina Le'a parties — Bridge and DWAL — claim that in approving the reversion, the LUC stomped all over their constitutional rights. They claim they were held to higher standards than other, similarly situated developers. Also, the process of reverting the land, they claim, should have been undertaken as a *de novo* redistricting, with all that this entails.

"Contrary to the LUC's assertions," wrote DWAL attorney David Minkin, with the firm McCorriston Miller Mukai MacKinnon, "the plain language of HRS 205-4(g) does not authorize the LUC to automatically reclassify property as punishment for any violation of an LUC condition. Indeed, there is nothing in HRS 205-4(g) that grants the LUC the authority to change a state land use classification by a process different from that which is required" in an original boundary reclassification petition. Should the court approve of the LUC's "asserted power to automatically reclassify," he continued, it "would impermissibly encroach upon the powers of the Legislature."

The same point was made in Bridge's brief, written by Shannon. The state's argument that the boundary amendment requirements don't apply to reversions "is classic Orwellian

doublespeak," he wrote. "But regardless of the commission's verbal tap dancing, it is not disputed that a 'reclassification' and 'reversion' accomplish the same result: they both change land use district boundaries from one classification to another."



Meanwhile, in Other Courts And the County

Although these two cases have dragged out for years, one lawsuit brought against 'Aina Le'a, Inc., last February was disposed of at near-warp speed. That case involved a complaint brought by Randstad Professionals (dba Tatum), a human-resources company, alleging that 'Aina Le'a owed it approximately \$50,000 in unpaid invoices for services that began around November 2012. The complaint was served on 'Aina Le'a's Hawai'i office later that month, but 'Aina Le'a made no reply within the specified 20 days from the date of service. As a result, Randstad Professionals won a default judgment and an order of garnishment against the Hawai'i banks where 'Aina Le'a is believed to have accounts.

In another case involving an 'Aina Le'a creditor, the primary contractor in the early phase of work at the site, Goodfellow Bros., also won a judgment against the company. According to its attorney, Lyle Hosada, the unpaid debt amounted to approximately \$2.3 million as of mid-May.

Rescinded Approval

In January, the Hawai'i County Planning Department notified 'Aina Le'a that the county was rescinding its approval of the second phase of residential structures the company planned to build. Plans for the second phase, involving single-family residences, won approval from the county, but the Mauna Lani Resort Association (MLRA) took the county to court, alleging that the environmental impact statement that 'Aina Le'a had prepared for the development and other work at the site was deficient.

The MLRA prevailed in court and 'Aina Le'a was instructed to revise the EIS. On January 30, Planning Director Duane Kanuha cancelled the approval. "In light of ... Judge Elizabeth Strance's ruling of March 28, 2013, that compliance with Hawai'i Revised Statutes (HRS) Chapter 343 was inadequate, and considering that there has been no action relative to compliance with redoing or supplementing the EIS, the Planning Director hereby rescinds the approval," Kanuha stated in a letter to Michael Riehm, architect for the developer.

— Patricia Tummons

For Further Reading

Over the years, *Environment Hawai'i* has published numerous articles on the 'Aina Le'a controversy. Here are several that will provide additional background to the dispute.

- "Judge Halts Work at 'Aina Le'a and Orders Supplemental EIS," March 2013;
- "LUC Takes Another Step Forward in Reversion to Ag of 'Aina Le'a Land," April 2011;
- "Some Progress Reported at Site that Won Reprieve from LUC," March 2010;
- "Under New Management, 'Aina Le'a Is Given Yet Another Chance by LUC," October 2009;
- "Bridge 'Aina Le'a Gets Drubbing from the Land Use Commission," March 2009;
- "Two Decades and Counting: Golf 'Villages' at Puako Are Still a Work in Progress," March 2008.

All are available through the *Environment Hawai'i* online archives: <http://www.environment-hawaii.org>. Access for current subscribers is free; others may purchase a two-day archive pass for \$10 through PayPal.

Bill Requiring 'No Net Loss' of Areas For Game Hunting Fails to Win Passage

Unlike other invasive species measures before the Legislature, intended to control or eradicate pest species, House Bill 1902 was intended to protect some of the most damaging and invasive animals in the state: feral pigs, sheep, goats, mouflon, and deer. As introduced, it would have required the Department of Land and Natural Resources (DLNR) to embrace a policy of no net loss of public hunting acreage.

The heart of the measure, introduced by Big Island Rep. Cindy Evans and co-sponsored by more than a dozen of her colleagues, read: "If the department makes land within a public hunting area unavailable for hunting, the department shall make available for hunting an area of land equal to or larger in size than the area made unavailable, provided that the land made available shall be (1) of equal or greater quality wildlife habitat ... and (2) in as close geographical proximity to the land made unavailable as is reasonable under the circumstances."

Not surprisingly, the bill drew strong support from hunting organizations, individual hunters, and the Hawai'i Rifle Association, an affiliate of the National Rifle Association. Daniel Read, state liaison with the NRA's Institute for Legislative Action, urged passage of the measure as well. Cleon Bailey, with a group called the Congressional Sportmen's Foundation, testified that his group had helped other states enact similar legislation, and that now "No Net Loss" laws have been passed in nine other states.

The Department of Land and Natural Resources opposed the measure. First, testified William Aila, DLNR director, "the requirements imposed by the bill may be impractical or impossible to achieve. Many of the state's most important public hunting areas are managed through voluntary cooperative agreements with private landowners or through agreements with other government agencies. The department does not necessarily have control over areas that a landowner may choose to withdraw from such agreements."

Aila pointed out the department's other obligations that could interfere with public hunting: "the department is mandated to manage lands for the protection of natural and cultural resources. ... Control of game mammals in certain areas is an essential management tool for that purpose. Restricting the department's ability to carry out those responsibilities will result in loss of watershed yield

and function, damage to native ecosystems, sedimentation and damage to nearshore fisheries and marine environments, and may result in lawsuits resulting from take of endangered species."

Contrary to hunters' claims that public hunting areas are shrinking, Aila stated, "[A]creages of public hunting areas are increasing. ... In the past decade, more than 17,000 acres of new hunting opportunities have been added ... and an additional approximately 28,000 acres are in the process of being added." Across the state, 900,000 acres of public hunting lands are available, which, he said, "constitutes a large proportion of the approximately 1,000,000 acres managed by the Division of Forestry and Wildlife (DOFAW) statewide."

The recently established Hawai'i County Game Management Advisory Commission weighed in with supportive testimony, as did Big Island Mayor Billy Kenoi. "The nine members of this commission, all long-time outdoorsmen ... have advised me that game management areas on the island of Hawai'i are disappearing at ... alarming rates." This measure is ideal as it will protect the interests of Hawai'i's hunters and give the state the flexibility to move suitable lands into game management status and unsuitable lands into conservation."

The Sierra Club opposed the bill as did Earthjustice, Conservation Council for Hawai'i, The Nature Conservancy of Hawai'i, the Big Island Invasive Species Committee, the Oah'u Invasive Species Committee, Hawai'i Audubon Society, Friends of Hakalau Forest National Wildlife Refuge, the Kaua'i Watershed Alliance, and CGAPS (the Coordinating Group on Alien Pest Species). Dozens of individuals weighed in as well with testimony in opposition to the measure.

Rick Warshauer was one of the few licensed hunters to oppose the bill, which, he said in his testimony, "makes no sense, is unjustified, and should be killed." Rather than enact a no-net-loss measure, "a much better approach to increase hunting opportunities is to liberalize the hunting rules, which make very little sense in the context of this century's realities. Licensed hunters 'make up only eight-tenths of one percent of Hawai'i's population,' he wrote. "It is a tough task to attempt to control hunted animals on the 900,000 acres (90 percent) of DOFAW land open to hunting with so few of us. We can, however, provide an

'Don't Sell Our Birthright'

The following testimony was submitted by J.B. Friday. Although he is a forester with the U.S. Forest Service Institute of Pacific Islands Forestry in Hilo, he was testifying on his own behalf:

I am writing to testify against House Bill 1902.

You probably know the story of Jacob and his brother Esau from the Old Testament. Esau came home one day and was hungry. Jacob was cooking stew, but he would not give his older brother any until the older brother swore away his birthright. Esau was the kind of guy who never thought beyond the next meal and happily agreed, but for the rest of his life he regretted his decision.

Our birthright here in Hawai'i is the land, with the plants and animals that are unique to this land, such as the palila and the 'i'iwi, the halapepe and the 'iliahi. Don't sell our birthright. Don't sell out the palila and the 'i'iwi for goats or pigs or sheep. There will always be goats and pigs and sheep, but once the native plants and animals of Hawai'i become extinct they will be gone forever. They need our protection. We can't give up on them now. Please allow the foresters to do their work and protect the forest. Please vote against HB 1902.

inordinate amount of political pressure for unreasonable demands... Every year our incredulous claims supersede actual facts on the status of our watersheds and hunting areas, especially when the adverse impacts of overabundant game animals are concerned."

The bill sailed through the House of Representatives. After its second hearing in the Finance Committee, language was added to establish a Hunting Advisory Commission within the DLNR and to require the department to "make reasonable efforts to prevent and replace the loss, destruction, or degradation of public hunting areas on any island of the state instead of strictly prohibiting a reduction in acreage."

In the Senate, the "no net loss" language was dropped, and the duties of the proposed Hunting Advisory Commission were spelled out further. Also, a "hunting pilot program" was to be set up on the island of Hawai'i. Among other things, it would be tasked with setting up a game management plan for the island, in consultation with the county's existing Game Management Advisory Commission.

The House disagreed with the Senate changes, but conferees did not manage to work out the differences. — P.T.

Invasives continued from page 1

cut, trim, or remove “dangerous trees or branches that pose a hazard to other properties” — a task that is authorized by statute but for which the department has never received sufficient funds.

At its first hearing, before the House Committee on Public Safety, the measure received overwhelming support. Springer Kaye, manager of the Big Island Invasive Species Committee, informed the committee that the acreage covered by albizia, “the most notorious hazard tree, is expanding on Hawai'i island at a rate of 10 percent per year.” She brought up an element of social justice as well, noting that albizia “threaten the homes of our lowest income families, who lack the resources to address an expensive threat.” Removing hazard trees from isolated locations also is in the public interest, Kaye said: “These trees serve as a seed source, spreading invasive species to road

Mark Kikuta of Pearl City was one of those who had sought assistance from Siglar. “I am a homeowner with a hazardous albizia tree hovering over my home that grew another 10 feet this year,” he told the committee. He and his neighbors, whose houses are also threatened by the tree, have tried for some time to get the owner of the land where the tree is growing to trim its branches, he said. “My family are afraid that one day a 15+ mile wind/rainstorm will cause huge branches or even the tree to fall and destroy my home.”

Testimony from Marvan Wakabayashi, another Pearl City resident, stated that an overhanging albizia threatened his family, his grandchildren, and also children from Palisades Elementary whose shortcut to school passes under the tree.

After the first hearing, the bill was amended to allow funds to be used to address other threats, including unstable rock or soil hazards and clogged streams or



Miconia (*Miconia calvescens*).

and power line easements. Hazard trees also overhang sidewalks and roads, dropping branches and creating a safety hazard.” She added that other state and city governments have faced civil liability judgments over lawsuits involving falling trees and limbs ranging upwards of \$12 million.

Steve Siglar, with Hawai'i Civil Defense, told the committee that since the legislation was passed, in 2009, allowing his agency to remove hazardous trees from private property, it had received 199 requests for assistance. “Of those ... 138 have been resolved. The remaining 61 are being followed up on; however, a number of those will not be resolved because the tree owner refuses to respond in any way to the concern. When the tree owner refuses to respond, SCD [State Civil Defense] follows up on the situation, but due to lack of funding cannot take action. ... To date, a number of cases that fall in this category have resulted in the trees of concern eventually failing and causing severe damage to electrical infrastructure and the property/lives of the citizens who had originally asked for state assistance.”

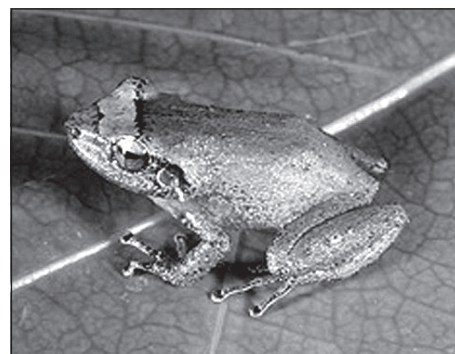
waterways. It then sailed through the Senate, substantially unchanged. Although it was assigned to conference committee on three separate dates, House Bill 2521 never made it to passage.

Instead, \$1 million was inserted into the state Department of Defense budget with the intention that the funds be used “to eliminate or mitigate the threat that hazardous natural conditions pose to residents, such as unstable or overgrown trees.” (Another \$1 million was inserted into the budget of the Department of Land and Natural Resources for rockfall mitigation.)



Biosecurity

Biosecurity was a notion that captured the attention of many legislators this past term. But as popular as the idea seems to have been, none of the several measures addressing this issue, focusing on quarantine of imports and inter-island shipments, made it to passage.



Coqui Frog

PHOTO: WIKIPEDIA.ORG

House Bill 1932, for example, would have boosted the Department of Agriculture's (DOA) budget to carry out “pre-entry measures to minimize the risk of invasive pests entering the state;” to conduct port inspections to detect, quarantine, or destroy pests on arrival; and to administer post-entry measures to mitigate the establishment of pest species.

Once in the Senate, the bill was burdened with language calling for the DOA to work with exporting states and countries to establish pre-entry inspection programs and encouraging public-private partnerships that would develop the facilities where inspection and treatment would occur.

Testimony throughout two months of hearings was supportive from a wide range of individuals and organizations. Scott Enright, administrator of the Department of Agriculture, while indicating he favored the measure, suggested that legislators simply add funds to the department's plant-pest and quarantine budget.

By the time the Legislature adjourned, the bill had died in conference. Enright's biosecurity budget was essentially unchanged from last year's.

House Bill 2468 was another one designed to improve the state's defenses against new pests. It would have given funds to the Department of Business, Economic Development, and Tourism (DBEDT) to study the feasibility of establishing quarantine inspection and treatment facilities for incoming and outgoing cargo at one or more sites on the Big Island. DBEDT director Richard Lim estimated the cost of the studies at \$300,000.

The bill lost focus once it hit the Senate. There, Sen. Donovan Dela Cruz of Wahiawa amended it by inserting into it the contents of two bills he had introduced but which were effectively killed by the House. The first would have established an agricultural foreign-trade zone in Wahiawa. The second would have established an agricultural high-tech park, again in Wahiawa.

The bill didn't survive the added weight and died in conference.

Rising Opposition

House Bills 1932 and 2468 generally received favorable support. Not so with bills that would have beefed up the quarantine protocols and penalties for interisland shipment of invasive species.

House Bill 1994 would have established a statewide quarantine system to prevent the interisland shipment of material containing coqui or the little fire ant. This would be achieved by, among other things, putting the burden on the shipper to ensure that transported goods were not carrying the unwanted species and setting a schedule of fines and penalties for non-compliance. It also called for establishment of a task force within the Hawai'i Invasive Species Council to address intrastate biosecurity.

The bill had two hearings. At the first, support was strong from environmental groups, organizations fighting invasive species, and individuals. Support from agencies such as the Departments of Land and Natural Resources, Transportation, and Agriculture was less enthusiastic. They generally applauded the bill's intent but stopped short of urging its quick passage.

By the time the second hearing was held, it had attracted strong opposition from the landscape and floral export industry. Although it made it across to the Senate, the bill, which was referred there to four separate committees, never had much of a chance.

Senate Bill 2347, intended to prevent the interisland shipment of coqui and other pests, made it further down the legislative pike—but the longer it was alive, the more opposition it seemed to attract.

As introduced, the bill would have added a new section to the Department of Agriculture laws, requiring that all nursery stock, whether from certified or non-certified nurseries, be treated before shipment offsite—whether to another island or simply another locality on the same island as the nursery. Anyone purchasing nursery stock without proof that it came from a clean site would have to bear the cost of eradication if their property were determined later to be infested.

The penalties proposed by the bill were especially harsh in the eyes of many critics. The existing statute, which penalizes the intentional shipment of prohibited animals, would be applied to anyone doing so merely with “gross negligence.” Anyone who “imports, possesses, harbors, transfers, or transports, including through interisland or intransit movement, ... any pest” designated by statute or rule would also be subject to penalties, whether the possession was intentional or not.

Nurserymen and the Hawai'i Farm Bureau testified against the bill, while the Department of Attorney General weighed in with questions about the removal of criminal intent from the criminal provisions.

Amendments attempted to address some of the concerns, but in the end, the measure was still thought to impose too onerous a burden on farmers and nurserymen who want as much as anyone else to see the coqui, fire ants, and other pests eradicated.

A letter to Rep. Chris Lee, chairman of the Energy and Environmental Protection Committee, provides some insight not only into the demise of this particular measure, but into the political deals that course like an underground stream throughout the entire legislative session.

The letter, dated April 1, was from the Waimanalo Agricultural Association and was signed by Clifford Migita, its president.

“The Waimanalo Agricultural Association,” Migita wrote, “is reminding you of your assurance to kill SB2347 by pulling it from the Finance Committee and getting it into your EEP committee. You attended an emergency meeting that was called to discuss this bill and you told us that you would sit on the bill and kill it. We are holding you to your word. We feel there should be: NO COMPROMISE. NO SUGGESTIONS. NO TASK FORCE. NO FURTHER STUDY.”

In fact, Lee appears to have done exactly what WAA sought in the waning days of March. According to the Legislature's log, on March 21, the bill had been referred to the Finance Committee, but before that panel held a hearing, on March 28, it was re-referred to Lee's committee and the Committee on Agriculture.

Lee's committee held a hearing on the bill on April 1. It gutted the language of the earlier draft and replaced it with language, suggested by the DOA, to beef up the department's ability to inspect shipments of plants and other materials not just inter-island, but also within islands (intra-island). Also, it would have required the DOA to “conduct a pathways and commodities risk assessment on little fire ants, coqui frogs, and other listed pests” to improve on methods of prevention, risk mitigation, and best management practices.

The bill was not heard again.



Big Island Earmark

House Bill 1904 would have allocated \$2 million in general funds to the Hawai'i Invasive Species Council (HISC),

with instructions that it be used for “education regarding the prevention and eradication of invasive species on the island of Hawai'i.”

The bill had one hearing early in the session. Testimony from the DLNR and environmental groups was supportive generally, but cautioned that the specific direction of HISC funds to one island could work against the council's larger mandate to address invasive species statewide.

DLNR Director William Aila noted that Hawai'i island “has the state's largest populations of little fire ants, coqui frogs, and the invasive plant *Miconia calvescens*.” But, he went on to say, the state “faces serious invasive species threats on all islands” and he suggested that it would be more appropriate for invasive species control on the Big Island to be considered “within the context of statewide needs.”

Similar testimony was offered by The Nature Conservancy of Hawai'i (TNCH). While it appreciated “the crisis situation that exists with respect to invasive species, particularly on Hawai'i Island,” it stated, “we hope that the necessary response to the pest issues on Hawai'i island will not prevent the state and its partners from also devoting appropriate attention and funding to pest issues across the islands...”

TNCH went on to note the “unintended financial impacts” that such earmarked funding has had in the past. In 2007, “the Legislature's provision of specific funding for coqui control was really a shifting of existing funds from other invasive species programs, which then caused layoffs in the Island Invasive Species Committees and a hiatus in the Hawai'i Invasive Species Council's research grant program.”

The testimony went on to ask that the Legislature “avoid a piecemeal response and instead take a comprehensive approach of providing significant and consistent funding to address the full range of invasive species priorities across the state.”

Apart from the sympathetic testimony, HB 1904 drew the wrath of the Big Island hunting community. Members of the Hawai'i Hunting Association and the Hawai'i Sportsmen's Alliance sought to have the funds go toward education or, in the alternative, to have HISC define invasive species in such a way as to exclude game animals.

In the end, the arguments against earmarking HISC funds carried the day. The House Committee on Water and Land's report stated that increasing the HISC's “total funding benefits the council's statewide mission... [P]roviding sufficient

And the Winner Is . . . The Felted Coccid?

Albizia? Little fire ant? Coqui frog? All are well known and notorious invasive species, but they lost out in the single-species contest to win legislative funding for control efforts.

The sole winner in this category was the macadamia felted coccid (*Eriococcus ironsidei*), or MFC. While it may lack the high profile of other invasives, it had staying power in the Capitol steeplechase. As introduced, House Bill 1931 called for an appropriation of \$735,000 to the Department of Agriculture to support development of new methods of treatment and prevention of infestation by this tiny, scale-like insect that stunts tree growth and can even result in dieback. As approved, it allocates not quite half of this amount — \$360,000 — for the same purpose.

According to the DOA, the insect, native to Australia, was first detected on macadamia trees in South Kona in 2005. It has since spread around the island all the way to Honoka'a on the Big Island, but has not yet been found on other islands.

Retired DOA entomologist Patrick Conant supported the measure, giving legislators a

brief history of the devastation caused by the MFC. "I documented the spread of MFC from South Kona all the way to Honoka'a over the years since its initial discovery in 2005," he wrote. "I am very familiar with its devastating effects on macnut trees in Pahala, and Honoka'a fields appear to be headed toward that same fate."

Research at the U.S. Department of Agriculture's Pacific Basin Agricultural Research Center in Hilo suggests that the insect punctures the tree, which in turn allows a fungus to infect it and brings about a slow death, he wrote. "Large, old, good producing trees are dying off in Pahala, so I consider this a crisis for the macadamia nut industry, and the problem needs solutions soon before damage worsens."

Officers with Royal Hawaiian Orchards, L.P., testified that the company had teamed up with the Edmund C. Olson II Trust and had already spent \$250,000 to support CTAHR research. "Unfortunately, we will not be able to sustain this," wrote Jon Miyata, the company's chief accounting officer, in his testimony.



The tiny macadamia felted coccid poses a threat to one of Hawai'i's most important cash crops.

PHOTOS: CTAHR, HAWAII.EDU

Some 13 percent of the macnut trees in Pahala are "severely infected," Miyata stated. If effective treatment is not found, he and other testifiers warned, the entire \$35 million-a-year macnut industry in Hawai'i would be significantly damaged and potentially hundreds of jobs lost. — **Patricia Tummons**

funds for the council to successfully carry out its mission should be a priority." The bill never made it to a second hearing.



HISC Funds Increase Nearly Seven-Fold

After batting down the several bills that would have earmarked funds to combat one or another species or invasive-species tasks on a specific island, the Legislature took to heart the need for ramped-up spending overall to combat invasives.

House Bill 1716, which calls for \$5 million in general funds for the Hawai'i Invasive Species Council, was the vehicle for this. Remarkably, it made it through four committee hearings without a single amendment.

According to testimony from the DLNR's Aila, although the governor's budget included \$1 million in supplemental funds for HISC (over and above \$750,000 already included in the budget for fiscal year 2014-2015), the administration was supportive of this measure as well. "With recent discoveries of new invasive species infestations," Aila stated, "the governor

and the department are now supporting the \$5,000,000 supplemental appropriation. . . . This is the amount calculated by HISC support staff to maintain project capacity and function in FY15."

The measure was praised by all who testified. And while a nearly seven-fold increase over the 2013-14 fiscal year appropriation is a major advance, Josh Atwood, HISC coordinator, provided a bit of history

"The governor and the department are now supporting the \$5,000,000 supplemental appropriation."
— **William Aila**

that put the appropriation into a larger context.

"The Legislature created the HISC in 2003 as a tool for cabinet-level, interagency coordination on invasive species issues. . . . The initial goal for the 2004 Executive Budget was \$5,000,000 in general funds. Actual appropriations from the general fund from FY05-09 varied between \$1,000,000 to \$2,000,000 annually, dropping to \$0 from FY10-13. In FY14, the Legislature approved \$750,000 in general funds for each year of the FY14-15 biennium.

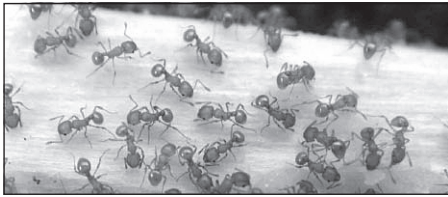
"The invasive species problem in Hawai'i was described in a 2002 Legislative Reference Bureau study as requiring \$50,000,000 annually across all funding sources. The subsequent decade has seen an expansion of many priority invasive pests: Little Fire Ants have spread from Hawai'i Island to Kaua'i and Maui and have been detected for the first time on O'ahu. Axis deer have been illegally

transported from Maui to Hawai'i Island, threatening critical agricultural and conservation areas. Coqui frogs have been detected in every county, though vigilant detection and control programs have thus far kept coqui from establishing on Kaua'i, O'ahu, and Moloka'i. The reduction in Vector Control staff at the Department of Health has resulted in reduced monitoring for mosquitoes that may carry yellow fever, dengue fever, or malaria."

As of press time, the bill had not been signed by the governor.

— **Patricia Tummons**

Appropriation to Control Little Fire Ants Loses Out in Waning Days of Session



PHOTOS: DLNR

Little Fire Ant (*Wasmannia auropunctata*).

The little fire ant (LFA) has been making headlines lately — not on the Big Island, where dealing with its painful stings seems now to have become part of the price of paradise, but on O'ahu. There, its presence on some three to four acres of uncultivated land in Waimanalo has resulted in an all-hands-on-deck summons to eradicate the infestation.

Maui and Kaua'i also have seen infestations of the LFA (*Wasmannia auropunctata*). The source for all of them is the Big Island, where the ant was first detected in 1999.

While the state Department of Agriculture is determined to control the spread of LFA on other islands, on Hawai'i Island, the ant remains on the move. From Puna, where it was first identified, its range has expanded northward up to the coast to Hilo and on into Hamakua, and westward around to Kona.

The presence of LFA in Hawai'i County beach parks has been especially unsettling. Tourists and residents alike have felt the ants' painful stings at some of the most popular and well-used shoreline areas in the Hilo neighborhood of Keaukaha. In March, the county Department of Parks and Recreation went so far as to close the Richardson Ocean Park for a day so workers could treat for ants.

“There are areas we don't go into at all because of little fire ants.” — Springer Kaye

The spreading infestation on the Big Island was the rationale behind Senate Bill 2920. As introduced, it called for the appropriation of \$306,237 to the Parks Department, to be used to fund a pilot program to address the spread of LFA in county parks, to test methods of control and eradication, and to develop strategies that other counties could implement.

Later drafts added \$250,000 for a canine team to detect the presence of ants and \$350,000 for a statewide public awareness and education campaign. The former would be undertaken by the Hawai'i Ant Lab,

which is a project of the University of Hawai'i's Pacific Cooperative Studies Unit, while the latter would be carried out by the statewide Hawai'i Invasive Species Council.

The bill made it all the way to conference, where it died in the last few hours of the legislative session.

'Astronomical' Costs

Support for all drafts of the bill was enthusiastic — although state agency heads tem-

pered their comments with the caveat that the appropriations should be additive and not take away from the administration's proposed \$1 million in additional funds for general invasive species work.

Lyn Howe, a farmer in the Puna district, noted that property values in the area had already been affected because of the ant's presence. “Farmers cannot harvest crops without full gear protection,” she wrote. “We absolutely need more research funding to be put into this disaster. The present cost of treatment is astronomical and therefore many of our farmers and residents do not do it or just treat around their homes and abandon their crops.”

Springer Kaye, director of the Big Island Invasive Species Committee, spoke in strong support of the detector-dog program, noting that the Hawai'i Ant Lab “is well positioned and well-connected professionally to develop and implement” such a

program. She also stated that she had great confidence in the Parks Department's pilot program. “As the Hawai'i Ant Lab will undoubtedly be asked to focus more on new infestations on Maui and O'ahu, it is even more important that Hawai'i County be given leeway to try to tackle this problem without constraints,” she wrote.

In a phone interview, Kaye expanded on the ways in which her group's efforts are harmed by the LFA. “A big part of our job is to send guys out and have them walk transects in forest reserves, surveying large acreages,” she said. “It's harder to do that

now, when crews encounter little fire ants. There are areas we don't go into at all because of little fire ants.”

'By Hook or Crook'

Cas Vanderwoude, the director of the Hawai'i Ant Lab, did not offer testimony on the bill. “Because I had a conflict of interest, being a potential beneficiary, it didn't seem appropriate to provide testimony,” he told *Environment Hawai'i* in a phone interview, expressing a reticence rarely encountered in the annals of Hawai'i's legislative process.

When asked about the cost of eradicating the Waimanalo infestation, Vanderwoude responded that he “couldn't say. The Ant Lab is taking the lead in the operational side,

“Potted plants are at the top of the list when it comes to the ants' preferred means of interisland transport.” — Cas Vanderwoude

supervising treatment of the area.” Eradication in Waimanalo, he added, “will get done by hook or by crook.”

But that is a “known infestation,” he added. “There are a lot of unknown infestations on O'ahu as well — incipient little infestations that are difficult to find. We have no way of tracking them. We know that last year a wholesaler on the Big Island sent hapu'u logs, used by orchid growers, to O'ahu, and that at least one of those shipments had infested logs. There's no way to contact the end user and systematically check all those properties.”

Vanderwoude disputed the suggestion that the state Department of Agriculture had written off efforts to control the ant on the Big Island.

“When it first arrived,” he said, the Department of Agriculture did respond very well. Given the resources, they did the best they could. After two or three years of trying to eradicate the ant, they realized it was not feasible. And if it's not feasible, it's not economically sound to continue to spend public money to eradicate. So then they stepped up their inspection procedures.”

— The DOA's mandate is limited, however, to inspection of propagative materials being shipped interisland, Vanderwoude noted. “There have been cases where the ant has been transported in non-propagative materials — a used car, pieces of wood. The DOA has no mandate or resources to inspect or regulate those items.”

Still, “potted plants are at the top of the list” when it comes to the ants' preferred means of interisland transport, he said. “They make perfect little ant farms.”

— P.T.

BOARD TALK

State Land Board Grapples with Threat Of Coastal Erosion to Infrastructure, Homes

April was a difficult month for the state Department of Land and Natural Resources' Office of Conservation and Coastal Lands (OCCL). Despite its long-standing policy against shoreline hardening, the office twice recommended that the Board of Land and Natural Resources approve major rock revetments along Maui shorelines to protect critical infrastructure.

Meanwhile, the agency moved to fine landowners on O'ahu's North Shore more than \$45,000 for illegal structures hastily installed this past winter to protect their properties from severe ocean swells that devastated the area.

Harrowing Highway

Similar to Kamehameha Highway on O'ahu, waves regularly wash over Maui's Honoapi'ilani Highway during high surf. The road, the main artery between Lahaina and Wailuku, has been in trouble for years, and on April 11, the Land Board unanimously approved an OCCL recommendation to grant a Conservation District Use Permit (CDUP) to the state Department of Transportation (DOT), which plans to dump large boulders along a 900-foot section at Olowalu.

More than a decade ago, the DOT installed a temporary, emergency revetment along the highway after storm waves severely undermined the road there. According to OCCL administrator Sam Lemmo, the DOT wants to replace that revetment with a "more permanent, better engineered" shoreline protection structure.

He said that while he knows armoring isn't the best thing for beaches, abandoning the highway isn't an option right now. Given the quality and location of the beach at Olowalu, neither restoration nor placement of offshore breakwaters is a desirable option, he added.

Ideally, his office wants the county to relocate the highway, but it can't, at least not right now, he told the Land Board. The Maui County Council has voted to buy land to relocate the highway and the DOT is "seriously considering" relocation, he said, but in the meantime, the boulder revetment will fortify the highway.

"We don't see a lot of ecological impacts and the need is very high," Lemmo said. Although his office was recommending approval of the CDUP, it was with a "serious recommendation urging the relocation of the whole highway."

At-large Land Board member David Goode, who also works with Maui County, said that as properties in the area are subdivided for development, the county is carving out sections to allow the highway to be moved mauka.

"Funding will be a main constraint," he said.

Wastewater Woes

As uncomfortable as Lemmo was with condoning the Honoapi'ilani erosion control project, the 1,100-foot rock revetment Maui County wants to construct to protect its Wailuku-Kahului Wastewater Treatment Plant seemed to cause him even more grief.

Unlike Olowalu, which has only a thin stretch of cobble beach, the wastewater plant is flanked by large, high-quality, sandy beaches that are frequented by a variety of ocean users. A 400-foot revetment already protects a portion of the facility, but the county's Department of Environmental Management wants to extend it to a total of 1,350 feet.

All of Maui County's wastewater treatment plants are located in coastal areas, but its Wailuku-Kahului wastewater treatment plant, at just three feet above sea level, is particularly vulnerable to tsunami inundation and sea level rise. The facility was partly flooded by the 2011 tsunami from Japan.

To protect the plant, which serves tens of thousands of Maui residents, the county is proposing to excavate the coastline, install and bury the revetment, and cap it with sand.

Lemmo estimated that erosion would expose the structure in about a decade or two and that beach loss in the adjacent area would accelerate in tandem with sea level rise.

Again, he said, there are few alternatives in this case. The county determined that beach nourishment would be too expensive and it would be too difficult to find a good source of sand for an area that large, he said.

"You're talking about massive quantities of sand," Lemmo said.

The county also considered retreating from the shoreline, but "at the end of the day, some facilities can't be relocated and those will be threatened by coastal hazards," Lemmo said. A county study estimated that it would cost \$400 million to \$500 million to relocate the plant; the county's total annual budget is \$600 million.

"Once again, like Olowalu, [this is] a major facility critical to maintaining public safety and

welfare," Lemmo said. "They've done, in our estimation, all they can do to protect the beaches. We're not happy about this situation. It's a very difficult recommendation I have to make because it will result in beach degradation."

Although his office recommended approval of the CDUP, it included a condition requiring the county to "implement a decommissioning plan for the ... facility by June 30, 2064, and restore the shoreline to the best possible condition as practical."

At the Land Board's April 11 meeting, Maui Department of Environmental Management director Kyle Ginoza asked that the condition be deleted. While relocating the plant is a priority for the county, it first needs to find the money before it can start planning a move, he said.

Even if the county could afford to move the plant, it would still need to maintain a pumping facility near the shore, he added.

"As long as people like to live along the shoreline, we're going to have this problem," Ginoza said.

When Maui Land Board member Jimmy Gomes asked whether a private entity could fund the relocation, Ginoza noted that a company has proposed doing exactly that, but the county would lose some of its design flexibility and authority. Ultimately, it would be up to the County Council to decide whether to put up the money or not, Ginoza said.

"What happens if the board denies this? What other recourse do you have?" Gomes asked.

Ginoza said a denial would set the stage for a battle between the county and the state Department of Health if waves somehow breached the facility.

"[If] we're spilling sewage ... we would have to get an emergency permit for an emergency revetment, or stop taking sewage and tell everyone to stop flushing the toilet," he said.

"You know and I know you can't stop them from using the facilities," Gomes replied.

Ginoza said finally that "there really is no fallback for us. ... There is no real, plausible Plan B absent raising taxes and raising sewer fees."

Unsatisfied with the county's planning efforts, Dan Purcell, a member of the public, asked for a contested case hearing on the matter. Because he did not follow up with a written petition, the Land Board was free to approve the CDUP at its April 25 meeting, which it did with only a slight amendment to the OCCL's recommended conditions.

Mayhem at Mokuleia

This past winter, homeowners along O'ahu's Sunset Beach pleaded with the DLNR for help

as waves ripped away at their land. The agency forbade them from installing any seawalls but did allow them to push sand around to create protective berms, which largely did the job. In Mokuleia, however, a few desperate landowners chose to harden the shoreline fronting their homes, knowing that they might be fined. And on April 11, the Land Board fined two of them \$10,000.

In December 2012, as waves threatened a home owned by Kathryn and Morris Mitsunaga, the DLNR authorized the emergency installment of a sandbag wall, which could be left in place for up to three years. But this past January, with the wall failing, the Mitsunagas, without DLNR approval, placed large boulders along the shore.

On April 11, the OCCL recommended fining them \$15,000 for unauthorized construction and \$500 in administrative costs. It also recommended that the board require the revetment to be removed.

At the Land Board's meeting, OCCL administrator Sam Lemmo noted that most of the properties in the area are protected by seawalls built decades ago. The four or five properties that have not been armored are suffering from the flanking effects of the seawalls, he said.

For years, the OCCL has been working with the landowners in the area on remedial options, i.e., sandbags, he said, but this year, "we had some very serious oceanic events."

The Mitsunagas' property was damaged and they "essentially decided unilaterally to install a boulder revetment to save the house," Lemmo said, adding that the owners of a number of other properties did the same and faced fines as well.

Architect and former Kaua'i Land Board member Ron Agor, testifying on behalf of the Mitsunagas, said the waves one night in January "literally knocked the front foundation wall out [and] eroded six feet below..."

"The owners ... made a conscious decision to protect their property by installing boulders, knowing that the wrath of Superman at OCCL [Lemmo] was coming," Agor said.

Agor said that he had designed repairs to the home that would allow the couple to remove the revetment and that they would be receiving an emergency permit from the City and County of Honolulu to do the work.

"I certainly sympathize with the situation. Those kinds of things are probably happening in the middle of the night ... and you desperately need to take action. It's hard to consult with offices that won't be open until the next day. ... Nevertheless, we have our shoreline protection and processes to deal with," Land Board member Sam Gon said.



The Mitsunagas' house, above, was damaged in winter storms

Kathryn Mitsunaga testified that the night the boulders went in, a huge 40-foot wave wiped out their windows. "We knew it was illegal [but] we had to do something to save our house," she said.

Several Land Board members seemed sympathetic to her plight and asked Lemmo what leeway they had with the proposed fine. Lemmo noted that his office's penalty schedule recommends fines of \$10,000 to \$15,000 for the kind of violation the Mitsunagas committed.

He urged the board to impose the maximum fine, noting that he had other cases in the area that are very serious and willful, "people building seawalls despite government agencies saying you shouldn't do this."

If the board is too lenient, people will put armor stones in and "there's going to be a tremendous outcry [and it] will be very difficult to prosecute these cases," he said. "I'm really just cautioning you. ... I gotta get that on the record."

In the end, the Land Board voted to lower the fine to \$10,000 plus the \$500 in administrative costs.

Two weeks later, Lemmo presented a violation case of armoring that occurred next door to the Mitsunagas. This time, it involved prop-

erties owned by Grand View Apt., Inc., as well as a City and County of Honolulu right-of-way.

The same large storm in January that damaged the Mitsunagas' property also undermined a seawall along the properties owned by Grand View. Officers of the company testified that a portion of the wall leaned over the beach so precariously, they worried that someone could get hurt or killed if it fell.

Like the Mitsunagas, the company installed boulders along the shore, but it also cemented them together in a wall that spanned its two properties as well as the county right-of-way. While the structure largely replaced a previously existing seawall, it also encroached seaward onto state land, Lemmo said. The armoring of the right-of-way was all new construction.

In addition to recommending that the board require removal of those portions of the structure within the Conservation District, Lemmo also urged it to impose the maximum \$15,000 fine for the construction along Grand View's property, another \$15,000 for the work on the right-of-way, plus \$1,000 in administrative costs.

Howard Hanzawa, an officer of Grand View, said he didn't have any problem with the enforcement action and, in fact, said the OCCL is "doing a good job." However, he seemed to want to find a way to keep the structure in place.

He pointed out that in December, with massive waves already threatening the properties, his brother, Dean, also a Grand View officer, called the DLNR and the city warning that something needed to be done.

Waves scoured sand and soil from the right-of-way, creating a 12-foot deep ditch, Howard Hanzawa said. Water then started

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Malama Solomon Makes Headlines Again for Land Use Infractions

Malama Solomon, who represents the Kohala District in the state Senate, is seeking to subdivide a 125-acre parcel of Hawaiian Home Lands leased to her mother, Flora Solomon, in an area above the Hawai'i Preparatory Academy in Waimea. Details of the subdivision request, which was filed with the Hawai'i County Planning Department on December 18, were published last month in an article by *Honolulu Star Advertiser* reporter Rob Perez, part of a longer investigation into apparent inequities in the Department of Hawaiian Home Lands' policies on land disposition.

The subdivision request, Perez wrote, "could rectify a violation at least a decade old of having too many residences on the property." DHHL rules permit just one house per pastoral lot, plus a building for workers. "Four residences ... are among the nine structures on the overall parcel, according to county records," he added, of which just two have been reviewed by DHHL.

Those four structures were built with the blessing of the county Department of Public Works, however. Noelani Whittington, the department's public in-

formation officer, said all had been built since 1999 with proper permits and approvals from the county.

The most recently permitted of those structures, Whittington said, includes a commercial kitchen and storage area. On the map showing the proposed subdivision, one building is identified as a halau: Malama Solomon's sister, Hulali Solomon Covington, is the kumu hula of the Beamer-Solomon halau, while Malama herself has been identified in the press as its historian. One is identified as a "work cottage." The remaining two are simply labeled "structure."

All the paperwork related to the subdivision application has been signed by Malama Solomon, who represents that she has power of attorney for her elderly mother.

On May 5, the same day on which Perez's article ran, Planning Department director Duane Kanuha wrote Sidney Fuke, the planning consultant assisting in the filings. He asked that Fuke provide "evidence of A.L. Solomon as Power of Attorney for Flora B. Solomon." A.L. Solomon is Alice Leiomalama Solomon, the senator. As of May 13, the requested documentation did not appear in county files.

flowing up through the right-of-way, into the backyards of Grand View's parcels on opposite sides, and back down into the sea, he said. Two-ton boulders were being tossed around like basketballs, he added.

"The hydraulic pressure pushed the seawall towards the ocean. It wasn't vertical anymore," he continued.

Neighbors in the area testified that the waves had created a critical and dangerous situation

Howard Hanzawa added that if the City

and County of Honolulu hadn't created a right-of-way that cut his seawall in half, the revetment would have protected the properties.

"If we could have done it another way we would have.... My main concern is [the wall] would fall on somebody and kill somebody," Dean Hanzawa said.

He suggested that the state develop an emergency committee that could advise landowners on their options.

Surveyor Dennis Esaki, a relative of the

Past Infractions

This is not the first time Solomon and members of her immediate family have run afoul of state laws regulating land and water:

- In 1991, the state Board of Land and Natural Resources awarded a non-bid lease of 200 acres near Hawi to Randolph Solomon, the senator's father, to grow cattle feed. The lease was made nearly three years *after* a state law went into effect to ban the practice of direct leases for such purposes. When Solomon claimed he could not make money off the land while being restricted to growing fodder, he asked that the purpose of the lease be changed. The Land Board agreed, subject to approval of the attorney general. The AG disapproved. The Land Board asked a second, third, and fourth time, but each time the result was the same. Finally, in 1997, the lease was cancelled.

- In 2011, Malama Solomon hired a bulldozer operator to get to her agricultural property, where she intended to plant breadfruit trees. To get to her land, she had the operator cross unencumbered state land, damaging several historic sites in the process. The Land Board did not fine her, but required her to do restoration work on the damaged sites.

- In 2012, the state Commission on Water Resource fined Solomon \$50 for unauthorized work in a stream channel bordering a house site in Hilo.

— **P.T.**

Hanzawas and a state Land Use Commissioner, hinted that an easement could possibly be granted for the encroachment. In any case, he seemed to want to survey the seawall.

With the Land Board about to lose quorum, Lemmo suggested that it defer the matter and have Grand View survey the area of new construction that is seaward of what previously existed. The board then voted to defer the matter.

— **Teresa Dawson**