

Price: \$5.00

The Nine Lives Of 'Aina Le'a

The beleaguered Villages of 'Aina Le'a project on the Big Island is turning out to rival the proverbial cat in the number of lives it has. From an upscale golf resort first proposed in 1987, to a development housing workers on the Kohala Coast, to a community where high-end and affordable housing were integrated, back to an upscale resort, with 400 affordable housing units clustered in a high-density corner to – who knows what will be next?

A better question might be: Who knows if anything will actually be built?

For more than 20 years, the Land Use Commission and owners of the 1000 acres of land where the development is proposed have gone back and forth over plans for the site. Time and again the project has seemed to die, only to rise, phoenix-like, with a new developer.

Now the LUC has given the project new life, with a new developer coming onto the scene who promises this time, really, to get building. With a March 31 deadline looming, can he make it?

Under New Management, 'Aina Le'a Is Given Yet Another Chance by LUC

The on-again, off-again Kohala development known as the Villages of 'Aina Le'a is on again. In August, the state Land Use Commission gave new life to the project when it backed away from the action it took last April to have the 1,060 acres of Urban land revert to the Agricultural classification.

Why the turnaround?

For one thing, the commissioners seemed swayed by arguments of DW 'Aina Le'a Development, LLC, which has taken over the project from landowner Bridge 'Aina Le'a, that it could raise the money necessary to kick-start the affordable housing component of the project. Robert Wessels, the "W" in DW, gave the commission copies of construction contracts and architectural drawings that he said showed DW 'Aina Le'a's commitment and ability to have the affordable units ready for occupancy by the

November 17, 2010, deadline that since 2005 has been a part of the Land Use Commission's conditions on urbanization of the parcel.

For another, the Hawai'i County planning director, Bobby-Jean Leithead-Todd, insisted that the new developers had the backing of the administration of Mayor Billy Kenoi. "My instruction from the mayor is, if I've got viable projects, I'm to work overtime to make sure approvals go through so the guys can start construction," she said. Although last spring she had given the developers a 50-50 chance at best of meeting the November 2010 deadline for affordable units, by the time the August meeting rolled around, she put the odds at 85-15 in favor of the developer.

And so, on a motion of six to three, commission members voted to rescind the

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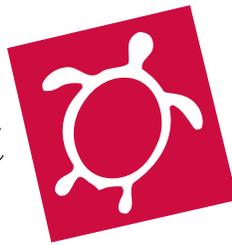
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*Update on Biocontrol
For Wiliwili Gall Wasp*



Seated at table, from left to right: Hawai'i County Planning Director Bobby-Jean Leithead-Todd, Robert Wessels, and Wessels' attorney, Alan Okamoto.

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NEW AND NOTEWORTHY

Gate-gate I: Recently, access over land controlled by the Natural Energy Laboratory of Hawai'i Authority (NELHA) has become a *cause célèbre*. In July, NELHA director Ron Baird announced that at the end of the month, he would be closing the main gate into the facility after business hours on weekdays and throughout the weekend, citing the lapse of NELHA's contract with a private security service. The road, which joins Queen Ka'ahumanu Highway about a mile south of the Kona airport turnoff, provides the only access to a state beach park and (until August) to a popular surf area known as Pine Trees.

At the July 28 meeting of the NELHA board of directors, board members asked Baird to explain his actions. Baird responded by blaming a number of factors, including the contemplated switch in NELHA's adminis-

trative parent from the Department of Business, Economic Development and Tourism to the Department of Accounting and General Services, which slowed the contract renewal process, and concerns over the security of NELHA facilities. Baird insisted the closure would not deny anyone access to the shoreline, since people were welcome to walk (the beach park is approximately two miles from the highway, down a hot, treeless road).

When the initial draft minutes of the meeting were distributed to board members, there was no mention of the discussion. At least one board member protested, resulting in a greatly abridged summary of the exchanges.

But this version also did not capture the discussion at the meeting adequately, in the view of Russell Tsuji, who represents the Department of Land and Natural Resources on the NELHA board. Tsuji reprimanded Baird, accusing him of instructing his staff to "defy my request" to have the minutes revised "to truly reflect what transpired at the last meeting." Baird's actions in this matter, Tsuji wrote in an email to Baird, were "reprehensible and insubordinate."

Gate-gate II: Tsuji's words were mild compared to the tongue-lashings administered to an absent Baird at a meeting a month later, called to discuss Baird's abrupt closure of the jeep trail to Pine Trees. According to pub-

lished reports, Soli Niheu of Waimea said Baird "needs to put his right hand on his left ear and his left hand on his right ear and pull his head out" of . . . – to the cheers of a crowd estimated at between 400 and 700 residents from across the Big Island. Many others called for Baird's resignation – or firing.

Chairing the August 21 meeting were area legislators Sen. Josh Green, Rep. Cindy Evans, and Rep. Denny Coffman. They listened as one after another witness testified to the dangers created by Baird's unilateral closure of the Pine Trees gate. What had sparked Baird's action was the opening of a road through the Kohanaiki area (now being developed into a residential neighborhood) to the shore. With that access open, Baird evidently reasoned, the NELHA access could be shut down.

But the Kohanaiki road, which branches off Queen Ka'ahumanu Highway, has no acceleration or deceleration lanes and no turn lanes, which makes it far less safe for cars entering and leaving than access via the NELHA intersection, which does have ample provision for turning traffic. Many of those testifying voiced concerns for their safety in using the new road.

Within three days, the gate blocking the jeep road to Pine Trees had been quietly lifted.

A Correction: Our September article, "Marine, Native Forest Bird and Plant Habitats Will All Suffer Under Climate Change Scenarios," erroneously identified the chlorophyll concentrations in dead zones found in the Pacific Ocean. The correct figure should have been less than 0.07 mg of carbon per cubic meter, not 0.7 as stated in the article.

Online Only: The state Environmental Council has gone on strike. This exclusive story is available only in the EH-Xtra column of our website, <http://www.environment-hawaii.org>. Access is free

Environment Hawai'i

72 Kapi'olani Street
Hilo, Hawai'i 96720

Patricia Tummons, *Editor*
Teresa Dawson, *Staff Writer*
Susie Yong, *Office Administrator*

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Quote of the Month

*"[F]or state pay, he risks his life
for plants like wiliwili."*

— **Darcy Oishi, Hawai'i
Department of Agriculture,
on state exploratory
entomologist Mohsen Ramadan**

LETTERS TO THE EDITOR

Praise and an Update from Wahiawa Dam Owner

To the Editor:

I want to compliment you on the accuracy and balance in Teresa Dawson's article on the Wahiawa Dam and Reservoir in your August issue. Good journalism will play an important part in unwinding the various problems involved because it helps create informed community involvement.

An update: Dole has already started the process of contracting for restoration of two or more of the existing upper gates. DOH has told me that the upper gates in the tower are likely to release much higher quality water. So getting this upgrade done will be a big step forward.

The City and County of Honolulu has told me that it has received \$29 million plus from the Feds to build the holding tanks at Wahiawa, which would solve the problem of the releases of untreated effluent and allow the effluent to be classified as R-1 water, and the design of those improvements is in process. The county told me the schedule is to complete actual construction by the end of 2011. I hope this is true. I have no way to confirm it.

The county's decision to solve the effluent problem by simply putting in a deeper outfall has created a lot of concern. To me it is just hiding a problem. Some at DOH are concerned there will be a bottom level river through the reservoir, right from the outfall to the outlet tower making matters even worse than now. And, of course there are other water quality issues, but it is my hope to work through them one by one until we can all view the Dam and Reservoir as a blessing to the Community.

Howard Green
Sustainable Hawaii, LLC



Article Misinterprets

Kilauea Irrigation System Report

To the Editor,

Sustainable Resources Group Int'l Inc. (SRGII) felt compelled to respond to your August 2009 newsletter article titled "Kilauea Water System Report Confirms Illegal Diversion into Ka Loko Reservoir." SRGII prepared the report referenced in this article (Kilauea Irrigation Water Engineering Design and Monitoring Study) for the Kaua'i County Office of Economic Development, and made it available for public review and comment.

As you are likely aware, issues surrounding Ka Loko Reservoir are very sensitive and accurate and balanced reporting is necessary to provide the public with factual information. We have identified several errors in your article that we feel need to be clarified and corrected, and take exception to the fact that your reporters did not contact us during their preparation of the article to answer, refute, or clarify identified issues. Further, the article seems to be based on a cursory review by your reporter of our report, interpretations of our report by residents of Moloa'a watershed, and on statements made by Ms. Hope Kallai, a resident of the Moloa'a watershed. We respectfully request that you address the inaccuracies that we have identified in your article as described below and prepare an errata statement addressing the errors in your next publication.

Paragraph 3 on page 3 of the article implies that the SRGII report revealed that the disruptions to the Moloa'a Stream hydrology, as discussed in paragraph 2 on page 3, were attributed to the stream diversion at Kaluaa Stream. Our report clearly states, in at least two sections (Section 3.7, page 11; Section 7.6, page 61), that we did not assess the potential impacts of the stream diversion on the Moloa'a watershed. To state that our report revealed the diversion of water from Kaluaa Stream, which is a tributary of Moloa'a Stream, as the reason for observed changes to the flow regime in Moloa'a Stream is an interpretation made by your reporter and is not supported by any text or analysis contained in our report.

Paragraph 4 on page 3 of the article discusses the Moloa'a Ditch. Our report (Section 5.2, page 21) discusses two Moloa'a ditches, the "old Moloa'a Ditch and the second Moloa'a Ditch." We did not discuss the ditch alignment, amount of water it conveyed, or the uses of the water in the old Moloa'a Ditch. Your discussion in paragraph 4 is not accurate. It states the "original Moloa'a Ditch was part of the Kilauea Irrigation System..." Our report does not state this, but rather it states, "The second Moloa'a Ditch was used historically to convey water diverted from Kaluaa Stream to Ka Loko Reservoir and was the one inspected as part of this project." The article confuses the two ditches discussed in our paragraphs 4 and 5. We did not provide any discussion in our report on the old Moloa'a Ditch. For the record, the old Moloa'a Ditch was believed to be used to provide water to what was known as the Waipake Camp, and the water was used for domestic purposes and

livestock, not for irrigation.

Paragraph 8 on page 3 of the article incorrectly describes Moloa'a Ditch flow as carrying 1.3 million gallons per day. Our report does not state this, but rather states the following with respect to flow in Kaluaa Stream upstream of the ditch diversion (Section 5.2.2, page 22): "During the site visit flow in this section of the stream was measured to be 2 cfs or 1.29 million gallons per day (MGD)." Regarding the estimated amount of water being diverted into Moloa'a Ditch, the report then states "that approximately one-third to one-half of the total stream flow above the point of diversion was actually flowing into the opening of the Moloa'a Ditch, with the rest returned to the natural stream channel." One third to one half of the total flow equates to 0.425-0.645 MGD, not the 1.29 MGD your article states. This error grossly mis-states the amount of water by a significant amount. Either the reporter did not conduct due diligence and reported the 1.29 MGD values from a source other than our report, or was careless when they read our report.

Paragraph 2 on page 3 of the article states that residents of Moloa'a watershed have experienced two summers when the stream went dry since the late 1990s. We do not dispute the apparent observation that the stream went dry, and can verify that Kaluaa Stream is a tributary to the larger Moloa'a Stream and that water diverted from Kaluaa Stream would result in a proportional decrease of flow into Moloa'a Stream. However, it is important to note that during the period from 1998-2001, rainfall gages in the area of Moloa'a watershed recorded below average annual rainfall amounts. In addition there has been no hydrologic study of the Moloa'a watershed to estimate the contribution of flow into Moloa'a Stream from the subwatersheds that drain into it. Based on the above two points, we do not feel there is sufficient data and information to draw the conclusion that your article implies, that the sole reason for diminished stream flow in Moloa'a Stream is the stream diversion on Kaluaa Stream.

If we can be of any assistance or if there are questions regarding this letter please contact us.

Sincerely,
Andy Hood, SRGII Principal

Editor's note: The online edition of the August 2009 article has been corrected and reference made to this letter as well.

Environmental Assessment for Irradiator Is Ridiculed by Atomic Safety Board Judges

A three-judge panel of the Atomic Safety and Licensing Board has dealt a major setback to backers of a planned irradiator on state land at Honolulu International Airport. As a result, the public will have an opportunity to comment once more on the proposal of Michael Kohn and his limited liability company, Pa'ina Hawai'i, to build the facility.

In late August, the ASLB issued a 110-page-long decision on an appeal of the final environmental assessment (itself not even 16 pages long) prepared by the Nuclear Regulatory Commission staff. The EA was intended

“I can move forward if I want to, as long as I have the license.”
— **Michael Kohn, Pa'ina**

to disclose the impacts of the facility, intended to kill bugs on fruits for export by bathing them with gamma rays from up to a million curies of Cobalt-60.

The ASLB was asked by Concerned Citizens of Honolulu to rule on a number of alleged deficiencies in the NRC's analysis. Some of the allegations, the ASLB determined, were without merit or had been dealt with, either in the EA itself, in the accompanying administrative record, or in materials submitted during ASLB proceedings on the group's challenges. But three of the group's most important objections were upheld. First, the judges found, the NRC should have addressed the possibility that accidents could occur while the Cobalt-60 sources were in transit to the irradiator. Second, they faulted the NRC for its utter failure to consider electron-beam irradiation as an alternative to using Cobalt-60. Third, they ordered the NRC staff to consider alternative sites.

But whether public comment will be possible on all aspects of the revisions to the final environmental assessment is a question awaiting clarification. The NRC staff argues that the ASLB decision limits public comment to the analysis of alternative technologies and other sites, while the attorney for Concerned Citizens holds that it opens the door to comment on the discussion of possible transportation accidents as well.

On September 8, David Henkin, the Earthjustice attorney representing Concerned Citizens, formally asked the ASLB to clarify this question. In addition, Henkin asked that the group's claim that a full envi-

ronmental impact statement is required not be dismissed with prejudice so that, in the event the group's concerns are not answered in the final revised EA, the claim can be raised once more.

In a phone interview, Kohn sighed audibly when asked for his take on the ASLB decision. He expressed satisfaction with the fact that the board had agreed with Pa'ina that the NRC analysis concerning the risk of airline crashes, earthquakes, tsunamis, and flooding “are now correctly done in the EA.”

As to the requirement that the transport-

tation of Cobalt-60 needs to be addressed, Kohn called it “strange.” “That same contention, when raised as a safety contention, was by order of the higher court – the [Nuclear Regulatory] Commission itself – dismissed earlier, about a year and a half ago. I also say it's strange because we don't transport, we don't have a license to transport. If anyone wants to challenge that, they should challenge the company that does have the license for that, not us.”

A 'Needle in the Haystack'

The very fact that an environmental assessment was prepared for the Honolulu irradiator is unusual. Customarily, the NRC regards such facilities as falling within a categorical exemption that the agency has adopted for actions with minimal environmental impact. But in this case, the NRC agreed in March 2006 to prepare an assessment to settle the initial challenge brought by Concerned Citizens.

In December 2006, the draft EA was made public. In February 2007, Concerned Citizens filed “detailed and lengthy” objections, stating that the document did not comply with NEPA and that a full environmental impact statement should be prepared instead.

At that time, the ASLB did not act on Concerned Citizens' claims since, as it points out in the August 2009 decision, “it anticipated and transparently indicated to [NRC] staff that ... many of the issues raised ... might be ‘readily cured in the ordinary course of the staff's performance

of its NEPA obligations” – that is, by considering public comment in preparing the final EA. But the final EA, the judges note, had “very few changes from the Draft EA,” and so the ASLB gave new life to the earlier challenges from Concerned Citizens.

In considering the points raised by Concerned Citizens, the ASLB judges did not limit themselves to looking only at the final EA and its appendices, but also considered other documents that the staff referred to or relied on and additional testimony from staff generated in the course of the ASLB proceeding itself. And when the staff fumbled and could not come up with satisfactory responses to the Concerned Citizens' allegations, the ASLB judges themselves went the extra mile to help the staff out.

For example, in discussing the allegation that the final EA did not contain sufficient evidence to substantiate the claim that the irradiator would have “potentially ... small beneficial impacts to socioeconomics,” the judges noted that the NRC staff had said it relied on several studies by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture. Yet the staff “does not point out where in the documents the alleged supporting information may be found,” the judges wrote.

The NRC has held that parties “must clearly identify evidence” and that they cannot “simply incorporate massive documents by reference,” they wrote. “Here, the staff has not complied with that commission directive... We have, nonetheless, ‘searched for a needle that may be in a haystack’ and ... in doing so, we found that the Final EA and staff exhibits, along with the staff's testimony, now ... support the staff's assertion regarding the potentially small beneficial impacts.”

In this fashion, the ASLB managed in the first 46 pages of the decision to dispose of most of the allegations made by Concerned Citizens.

Blistering Critique

In the second half of the decision, the discussion becomes far more interesting. The judges did not buy into the NRC staff's position that transport of the Cobalt-60 sources was an activity in no way “connected and intertwined” with operation of the irradiator itself. They seemed dismayed at the staff's utter failure to analyze electron-beam irradiation as an alternative to the use of Cobalt-60. And they disagreed with the view of NRC staff that analyzing alternative sites was simply not required in an EA.

The NRC staff dismissed concerns over

transportation accidents by referring to a Generic Environmental Impact Statement that purportedly addressed the transport of radioactive material. The judges observe in a footnote, “we have been unable to locate the GEIS” cited by NRC staff, but, once more going out of their way to make up for staff deficiencies, the judges were able to locate a GEIS that did refer “to the issues at hand.” Yet even that GEIS did not discuss transport of radioactive materials in an urban environment. Rather, the judges say in yet another footnote, the GEIS itself states that transport in an urban environment will be considered in a separate environmental study. “To date, the [NRC] staff has not filed or cited the allegedly forthcoming and relevant environmental study on the transportation of radioactive material in urban

was soundly denounced by the judges. “Even with the addition of its witness testimony [during proceedings before the ASLB] that largely reiterates the meager information in the Final EA, we cannot find that the Staff treatment of the methyl bromide and hot-water immersion alternatives receives a passing grade,” they wrote. Information that would have justified the staff’s statement that fumigation and heat treatment were not adequate to achieve the goals of Pa’ina Hawai’i was available, the judges found, in a letter from Kohn, the company’s principal, which referenced information compiled by a U.S. Department of Agriculture entomologist. “Rather than set out such basic, essential, and self explanatory information in the EA from independent staff research that meets professional stan-

ditions that it required a high level of technical support.

“Mr. Kohn’s letter, quote understandably, is an advocacy piece of a salesman for his proposed irradiator and we wish to make it clear we do not question his good faith,” the judges wrote. “Nonetheless, a number of the assertions in his letter about the Hawai’i Pride facility are clearly opinions, obviously strongly held, that need to be viewed through an objective lens. It is apparent from his letter and testimony that he has no actual experience purchasing or operating an e-beam facility.”

Blevins’ dismissal of e-beam technology came in for withering criticism from the ASLB judges. He ignored the NEPA requirement that all appropriate technologies to the proposed action be studied, developed, and described; his actions were “plainly contrary to” the requirement that he provide evidence that the mandated decision-making process has actually taken place; and in so doing, he frustrated “one of the overarching purposes of NEPA that information be made available to the public.”

For these reasons, the judges ordered the EA to be returned to NRC staff to consider “the appropriate and reasonable alternative of the e-beam irradiator.”

Kohn made no secret of his strong objections to this part of the ASLB’s decision. He disputed Weinert’s claim that his company has consistently made profits, mentioning the financial difficulties that the manufacturer of the Hawai’i Pride irradiator has had. “Maybe Hawai’i Pride is profitable now, now that Titan [the equipment manufacturer] has paid off their loan,” he said. “But it was a very dubious business deal to begin with.”

Kohn also claimed to have explored e-beam technology himself. “Of course I did my homework,” he said. “As a businessman, I’m going to look at the best possible solution. My irradiator costs \$1.3 million, but if I go to Titan, it’s \$4.5 million.” In addition, he said, he would need to build a concrete bunker with walls nine feet thick in order to shield the environment from the electron-beam irradiation. “I have asked a contractor and engineer, and they say the cost will be well over \$2 million, especially here by the airport.”

“There are other things, too,” Kohn said. “You cannot equate their [Hawai’i Pride’s] business model with ours. Ours is, we will treat small amounts of produce in batches, not like theirs, in a conveyor belt... If you only have 20 boxes, we’ll irradiate 20 boxes for you. The uniqueness of the cobalt irradiator is that it allows very small shipments to be irradiated.” Weinert, he says, requires his

“[T]he EA is deemed clarified by our decision and the agency’s treatment of these two alternatives can now be given the lowest possible minimum passing grade.” — **ASLB**

environments,” the ASLB notes.

In March, when the NRC staff finally attempted to address the Concerned Citizens’ complaints head-on, the ASLB was not impressed. In a filing with the board, the NRC “presented the testimony of Mr. Easton, one of its experts.” Easton had testified that over the last 30 years, there’s been no release of radioactive material from NRC-approved shipping casks involved in an accident – a statement contradicted by a witness for Concerned Citizens, who stated that in recent years, there had been at least two accidents involving such casks that resulted in radioactive releases.

The NRC staff was thus ordered amend the final EA “to take a ‘hard look’ and consider the environmental consequences of accidents that might occur during the annual transport of Co-60 sources to and from the proposed irradiator.”

‘Lowest Possible ... Passing Grade’

The discussion in the Final EA of alternatives to Cobalt-60 as a means of achieving the same goals was cursory and incomplete, Concerned Citizens alleged. The ASLB agreed.

“Although the discussion of alternatives in the EA need only be ‘brief’ it must nevertheless be sufficient to comply fully with” the National Environmental Policy Act requirements, the board noted.

The staff’s discussion of two alternatives that were mentioned in the EA – methyl bromide fumigation and heat treatment –

dards... the EA in large measure provides nonessential, largely worthless generalities and some information of questionable validity,” they note.

Still, with this information in hand – even though it was not provided by NRC staff – the judges let the NRC off the hook: “With the addition of the information from the adjudicatory record, ... the EA is deemed clarified by our decision and the agency’s treatment of these two alternatives can now be given the lowest possible minimum passing grade.”

As for the altogether missing analysis of electron-beam irradiation technology, the judges were not so kind. The Final EA “makes only passing reference to the e-beam irradiator,” they observed. In addition, they write, the NRC staff provided no explanation as to why this technology was not considered. During the ASLB proceedings, Matthew Blevins, chief author of the EA, submitted written testimony stating that he considered the technology “economically uncertain,” on the basis of various web sites of anti-irradiation groups. Blevins admitted that he did not contact Eric Weinert, vice president of Hawai’i Pride, which operates an e-beam irradiator in Kea’au, on the Big Island. Most of Blevins’ statements about the deficiencies of e-beam technology were drawn from an email from Kohn.

To rebut Kohn, Concerned Citizens provided the testimony of Weinert, who disputed Kohn’s claims about the cost of electron-beam irradiation and his allega-

users to put between 1,000 and 2,000 boxes of fruit per week through treatment.

Aside from the cost of the facility, Kohn mentioned the cost of electricity consumed by the e-beam treatment as well as the reliability of the technology. He disputed Weinert's claims that Hawai'i Pride had had no major breakdowns since 2005.

"Eric Weinert and David Henkin are good friends," Kohn said. "Weinert has wholeheartedly supported Henkin to represent those five concerned citizens." In response, Henkin says he has never even met Weinert in person and has had only phone contact with him in connection with the ASLB action.

Alternative Sites

The NRC staff had argued that it need not look at sites other than the one preferred by Kohn at the Honolulu airport. The ASLB judges disagreed, invoking not only NEPA, but also the precedent established in the 9th U.S. Circuit, which requires "all reasonable alternatives" be considered, including alternative sites.

"Accordingly, the consideration of reasonable alternative sites or locations that would accomplish the project's purposes with less significant impacts ought to be considered," they wrote, again ordering the EA to be returned to staff "to consider and permit written comment on alternative sites."



A Premature Lease Request

On the agenda for the Board of Land and Natural Resources' meeting of September 11 was a proposal from the Department of Transportation's Airports Division that the board approve a direct lease of land at the Honolulu airport to Pa'ina Hawai'i. All totaled, the DOT was proposing leasing about half an acre to Kohn's company, with a proposed annual rental of \$76,492.80 for the first five years – although no rent would be due until the irradiator was built or 12 months had passed since the lease was signed, whichever came earlier.

The report given to the board by DOT director Brennon Morioka claimed that the NRC had completed its final environmental assessment for the irradiator and had issued a finding of no significant impact. Attached to the submittal was the NRC's August 2007 letter to Kohn, which included the final EA, a FONSI covering the facility, and a license for possession and use of radioactive materials. The DOT submittal also stated that with respect to complying with Hawai'i's envi-

ronmental disclosure law, Chapter 343, "the tenant shall be responsible for compliance."

On being informed by Henkin that the NRC had been ordered to revise the final EA and that it was anything but final, Russell Tsuji, deputy director of the Department of Land and Natural Resources, determined that the matter was unripe for board consideration.

Kohn was asked why the matter of a lease got as far as the Land Board agenda even though the matter of the sufficiency of the EA was still pending before the ASLB.

The lease had to go through various levels of approval, Kohn said – the DOT leasing department, then the attorney general's office, then the head of DOT, and then, finally, the Land Board. "When this process took place, we had no idea that the ASLB would actually come up with its order or decision, which came right at the same time when it was going before the Land Board," Kohn explained. "Even though the ASLB decision said that the EA is probably 99.9 percent complete, it's still not final. So I think it would be better to wait until the EA is completely done, confirmed by the higher court." (In his conversation with *Environment Hawai'i*, Kohn consistently referred to the NRC as the higher court.)

But, Kohn was reminded, the subject of the sufficiency of the EA was in dispute throughout this time; it was at the very heart of the issues before the ASLB.

Kohn disagreed, pointing to the Final EA and FONSI that the NRC issued in 2007, as well as his materials license, issued at the same time. "I had gotten a license, which has never been revoked," he said. "That was the basis for me to go ahead and ask for the lease."

"I can move forward if I want to, as long as I have the license," he insisted. The license "gives me the right to store and use Cobalt-60... The ASLB said unless we have a lease, there was no need to put a stay on the license. This forced me to get the lease to get clarification. If we had a lease, then the ASLB would have to make a decision on whether they wanted to order a stay of the license or not. At least then we'd have a way to appeal it. At this point, we're just in limbo."

That may change soon. In his motion to the ASLB to clarify its August 27 ruling, Henkin also asked that the ASLB revoke Pa'ina's materials license. "The board's holding that the EA failed to provide statutorily mandated information is ... inherently inconsistent with the staff's approval of Pa'ina's license, which was based on the deficient EA," Henkin wrote. "Given the controlling 9th Circuit law and the board's invalidation of the final EA, Concerned Citizens believes the

board's silence about the fate of the license approval was inadvertent." And in the event that the silence was *not* inadvertent, Henkin asked the board to reconsider. "Pa'ina would not be prejudiced in any way by temporary revocation of its license, as it has neither secured a lease for its proposed irradiator site nor begun construction."

A State EA?

The DOT's submittal to the Land Board included a brief discussion of the requirements of the state environmental impact disclosure law, Chapter 343. Compliance with 343, the DOT said, would be the tenant's responsibility.

Kohn was asked how he intended to comply. "Anyone who wants to build something on state land is subject to Chapter 343. There is, however, already an EA for that parcel," he said, referring to one prepared by the state two decades ago. "That EA will be submitted with the request for the Land Board to grant us a lease. On top of that, we will also submit the EA with the FONSI that the NRC has concluded."

Would there be anything beyond that? Kohn was asked.

"I don't think the land has changed since then," he replied. "Everybody else has been allowed to build there without challenge. Why shouldn't we?" — *Patricia Tummons*

For Further Reading



More background on the plans of Pa'ina Hawai'i for an irradiator may be found in these articles from previous issues of *Environment Hawai'i*, available online at www.environment-hawaii.org:

"Honolulu Airport Is Proposed as Site for Cobalt-60 Food Irradiation Facility," September 2005;

"Group Requests NRC Hearing on Proposed Airport Irradiator," November 2005;

"Draft EA Is Released for Irradiator Proposed Near Honolulu Airport," February 2007;

"Whatever Happened to the Food Irradiator at Honolulu Airport?" April 2008;

"Irradiator Dispute Keeps Simmering," Page Two item, November 2008.

Access is free to current subscribers. Others may purchase a two-day pass for \$10.

Commissioners Lambast NEON Reps For 'Surprise' Selection of NAR Site

I'm appalled," state Natural Area Reserves System commissioner Sheila Conant said at the commission's August meeting, referring to the U.S. Forest Service's and NEON, Inc.'s (short for National Ecological Observatory Network) failure to consult the commission before deciding to build an observatory within the Laupahoehoe NAR, on the windward side of the Big Island.

Noting that the Forest Service had failed to inform NEON that the proposed observatory site was within a NAR, NEON's Henry Loescher told Conant, "We are, too ... We'll own it, but we're in shock, too."

After working with the Forest Service and the University of Hawai'i, NEON, a non-profit organization supported by the National Science Foundation, announced in early 2007 that it had selected the Laupahoehoe Forest Unit of the Hawai'i

land outside the NAR. NEON also plans to have data collection sites in the Pu'u Wa'awa'awa section of the HETF.

According to minutes of the May NARS Commission meeting, the tower is the facility's largest component and will include an instrument hut, boardwalks, and grid power, among other things.

"This is not just a simple tower," the minutes state.

The project is estimated to cost \$8.6 million, including \$7 million for the tower and power to the site. NEON representatives said that construction was expected to begin in 2012.

Although NEON's consultant, CH2MHill, released a draft environmental assessment in late August covering the entire NEON project, commissioner Rebecca Alaka'i noted that because the project will

In response to concerns expressed by commissioners about the power lines, NEON representative Jody Boylard said the site would require more power than could be generated by solar panels and would need to be connected to the electricity grid.

Experimental Tropical Forest (HETF) as a candidate for its Pacific neotropical site, one of 20 core long-term ecological data collection sites throughout the nation.

Apparently, the NARS Commission didn't get the message.

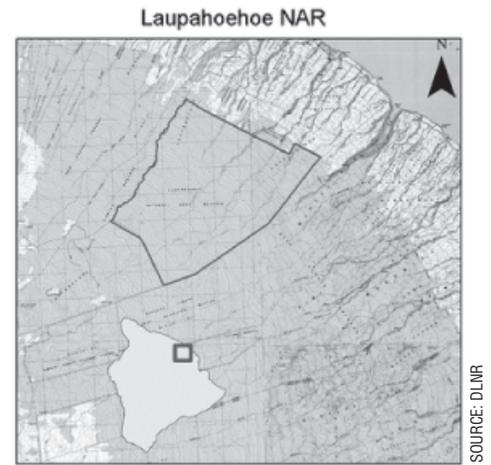
It wasn't until May 26 that NEON unveiled its plans to the NARS Commission, which was surprised to say the least. The commission is responsible for making recommendations to the state Board of Land and Natural Resources on activities within all NARs and is supposed to participate in reviewing NAR-related projects within the experimental forest, which is managed by the Forest Service.

NEON proposes to build a 100-foot tower and install underground power lines in the NAR, and take soil samples from the area. Some structures, such as the tower, would remain in place for 20 years, others only five. NEON's core site would be built near the proposed Pacific Southwest Research Station – Institute of Pacific Islands Forestry Laupahoehoe Research and Education Center (LREC), which will be located on state

use state lands, a state EA also needs to be done.

In response to concerns expressed by commissioners about the power lines, NEON representative Jody Boylard said the site would require more power than could be generated by solar panels and would need to be connected to the electricity grid. Still, commissioner Patrick Conant noted that the road to the site, Blair Road, "is a long way up," according to the meeting minutes. He also was reported to have expressed concern about minimizing damage. Hawai'i island NARS manager Lisa Hadway also noted that in addition to being within the NAR, the tower site and the road lie within the protective subzone of the Conservation District (construction within the Conservation District typically requires a use permit from the Land Board). She also said that endangered plant and animal species inhabit the project area.

Despite the commission's and NARS staff concerns about the potential damage to the Laupahoehoe NAR, Boylard and the Forest Service's Christian Giardina explained that



the site was selected for very specific reasons. Boylard said that access via the road was a key factor, while Giardina added that the site's topography and air flow across the landscape also made it an ideal site.

Even so, Sheila Conant was far from sold on the project. She noted that when the HTEF was first proposed a few years ago for Laupahoehoe, including the NAR, there were heated discussions about how some of the experiments would affect the NAR.

"[N]othing like construction in the NAR was mentioned, so this is a big surprise to us today. Make sure this is not the only place you want to do this," she warned NEON. Other commissioners instructed NEON to keep the NARS in the loop from now on.

Commissioner Jim Jacobi acknowledged that the project would undoubtedly collect valuable ecological information, but he questioned why the Forest Service didn't bring the project to the commission sooner. He said he thought a presentation should have come before the commission more than a year ago.

At the commission's August meeting, when asked again if the tower could be built outside the NAR, NEON's Loescher, once more citing the area's desirable wind flow, suggested it would be unlikely, especially since NEON plans to complete its final design review next month. Even so, Hadway said she has been "the thorn in the side of NEON," trying to get CH2MHill to amend the language in its environmental assessment to allow for some flexibility, should the NARS site prove infeasible.

To deal with issues raised by the NEON project, the commission voted to establish a subcommittee, consisting of Sheila Conant, Flint Hughes (who also works for the Forest Service), Alaka'i, and Jacobi.

The 1,000-page environmental assessment for the entire NEON project can be found at http://neoninc.org/sites/default/files/NEONEA_Aug28.pdf. The comment period ended September 28.

Puako from page 1

previous order that the developer show cause as to why the land should not be reverted. Two conditions were attached to the motion: one, that the developer complete construction of at least 16 affordable housing units by March 31, 2010; and two, that the Hawai'i County Planning Department provide the LUC with quarterly progress reports on the project. (The motion itself was later determined to have been technically flawed. A re-do was scheduled for the LUC's meeting in late September.)

A Clean Slate

The very fact that the developer has changed seemed also to play into the commissioners' more accommodating views. Relations between Bridge 'Aina Le'a personnel and the commission had become frayed, to say the least, in a series of fractious meetings over the last year. In February, Bridge signed an agreement with DW 'Aina Le'a to have it

considerable stake.)

Three weeks after the LUC voted to have the land revert to Agricultural, DW 'Aina Le'a asked that it be given status as a "competitor" with Bridge in the LUC case and that the commission stay enforcement of the reversion order. In June, the commission agreed to grant the stay, re-open the show-cause hearing, and allow a one-day hearing for DW to submit additional evidence why the land should not revert.

That hearing occurred August 27 at the Marriott Waikoloa hotel, just a few miles from the land in question.

Although in the end the commissioners agreed to give DW 'Aina Le'a a shot at developing the land, beginning with the affordable units, it faces a number of possibly insuperable obstacles. Among other things, over the next 13 months, DW must not only build the affordable units themselves – planned to be in two dozen 16-unit blocks on some 60 acres – but also provide access from Queen Ka'ahumanu Highway,



they've done it before, that the Department of Health can give fairly quick approval."

Wessels also mentioned that the plant would likely be put on land in the state Agricultural District, prompting Commissioner Lisa Judge to point out that while such plants are an allowed use in the Urban district, "it's not a permitted use on Ag land, which will necessitate additional permits from the county."

"Is there a reason you've chosen the longer path?" she asked Wessels.

"We certainly didn't want to choose the longer path," Wessels replied, adding it was mostly a matter of aesthetics. "The manufacturer of the package plants says you can hide it, bury it, but you still have to have ponds. Our desire is to have it as far away from the residential area as possible."

For intersection improvements, which involve use of state lands, an environmental impact statement will almost certainly have to be prepared. In 2007, an EIS preparation notice was published in anticipation of revamping the entire 'Aina Le'a devel-

"I don't believe the connection to the highway requires an EIS."

— Robert Wessels, DW 'Aina Le'a

take over development. (DW had a walk-on developer role in 2007, but that earlier development agreement fell through. According to documents given to the LUC, to settle disputes that arose back then, resulting in DW losing a \$1,000,000 non-refundable down payment, Bridge agreed to sell in installments to Relco, a company owned by Wessels, the 1,062 acres of land reclassified to Urban, with Relco then agreeing to assign the purchase agreement over to DW, in which Wessels also holds a

figure out and build some way of dealing with sewage from the occupied units, and install water lines and other utility services to the project.

Alan Okamoto, the attorney for DW, questioned Wessels about several of these issues when arguing DW's case at the August hearing. When asked about how wastewater would be handled, Wessels responded, "We are putting in our own package plant on this first phase. It's a cartridge plant. The supplier feels like



**NARS Eyes
Kulani Site**

As part of its expansion program, the NARS staff is looking to add to the system nearly 7,000 acres of forest surrounding the Kulani Correctional Facility, a large part of which has been fenced and ungulate-free for years. This past summer, the state Department of Public Safety announced that it would close the facility in an effort to cut costs. Although the state Department of Defense has also proposed using some portion of the property for a military-style rehabilitation

program for teens, the NARS Commission voted at its August meeting to seek a Division of Forestry and Wildlife review of a proposal to add the Kulani lands, which some commissioners believe include some of the best native forest on the island.

The proposed NAR parcel, which does not include the 500 or so acres that the correctional facility occupies, is adjacent to the state's 12,106-acre Pu'u Maka'ala NAR and to Kamehameha Schools' Keauhou Ranch. All three properties are part of the Ola'a-Kilauea Partnership, a natural resource management initiative, which also includes lands owned or managed by Hawai'i Volcanoes National Park, Kamehameha Schools,

the U.S. Fish and Wildlife Service, the U.S. Geological Service, the U.S.D.A. Forest Service, and The Nature Conservancy of Hawai'i.

If DOFAW supports the addition and if the state DOD has no objections, the commission will likely forward the proposal to the state Board of Land and Natural Resources for final approval.

At the same meeting, the commission recommended forwarding for Land Board approval a proposal to add Moloka'i's 261-acre 'Ilio Point to the NARS or to designate it as a wildlife sanctuary, and add a 5,800-acre parcel known as Tract 22 to the Kahuale'a NAR on Hawai'i island. — T.D.

opment as a project district, a move that would ease permitting and zoning issues at the county level. No draft EIS has been released yet.

According to planner Sidney Fuke, now working for DW 'Aina Le'a, studies for the EIS are nearly all complete and the draft document will probably be released mid-November. "So, if the [state] Department of Transportation requires an accepted EIS before intersection improvements are made, it could be signed off in the first part of next year," he said. But he insisted that building permits for the affordable units would not have to await completion of the EIS, and Leithead-Todd backed him up on this. The only project that might be delayed by the need to have a completed EIS was the pack-

"I was intrigued by the fact that they all spoke English." — Bobby-Jean Leithead-Todd, Hawai'i Planning Director

age sewage treatment plant, she said. But, she added, "I don't think we have a problem getting the EIS submitted and accepted, and getting the package site completed."

Wessels was even more sanguine about the potential delays that could be associated with compliance with Chapter 343, the Hawai'i environmental disclosure law. When asked by Bryan Yee, deputy attorney general representing the Office of Planning, whether in his view the EIS approval was required before the project road could be connected to the Queen Ka'ahumanu Highway, Wessels replied, "I don't believe the connection to the highway requires an EIS."

Yee: "You think you can connect up this road, part of the Villages [of 'Aina Le'a] project before the EIS is completed?"

Wessels: "I believe we can, yes."

Financing

One of the first points brought up by Okamoto in presenting DW's case before the LUC was that of financing. He mentioned specifically "a recent press release concerning funds from Singapore relating to this project," and asked Wessels to elaborate.

Wessels described how the Capital Asia Group in Singapore "acts almost like a bank. They have agreed to provide and have actually sent money to Hawai'i escrow to fund construction on the affordable [housing] site."

Leithead-Todd also praised the Singapore investors, noting that she and Mayor Kenoi had joined them for dinner recently when about a dozen of them were

visiting the island. "They were real people, not a fictitious offshore bank," she said. "I was very impressed." Leithead-Todd later told *Environment Hawai'i* that she and Kenoi did not pay for their meals, at a restaurant at the Mauna Kea Beach hotel, but that she believed Sidney Fuke picked up the tab. She had no clear idea of the cost of her meal, but said she remembered her entrée was \$28, "so I'd put a value of at least \$100 on it."

Asked if the subject of the 'Aina Le'a development came up, Leithead-Todd said it did not arise in her conversations. "My conversations were more about what they did, their medical backgrounds," she said. "I was intrigued by the fact that they all spoke English.... They invited us to have

dinner with them. It was not so much a business-type meeting as a social gathering."

According to the press release referred to by Okamoto, Capital Asia Group pledged \$62 million to the affordable housing portion of the overall project. The group's website (www.capitalasiagroup.com) suggests, however, that they are not using investment capital already on hand as a source of the funds, but are rather soliciting investors to purchase shares, at \$9,600 each, in the land itself. Ten shares purchase "one investment lot," with 432 such "investment lots" available. Liquidity is not a problem, evidently, with CAG promising an "assured exit" within 30 months and a 30 percent return on investment. Maps on the web page describing the "real estate projects" are lifted from the schematic diagrams prepared for the 'Aina Le'a development, showing the proposed subdivided lot for the affordable housing in the context of the larger Urban land as well as a site plan for the blocks of townhouse units.

On August 29, just two days after the LUC hearing (less than 24 hours, if the international date line is taken into account), Capital Asia Group offered a seminar on "Hawai'i Real Estate Participation – The Villages of 'Aina Le'a" at the Pan Pacific Hotel in Singapore. "You own the land, we build on it," the invitation read.

Wessels confirmed that the investors would actually be taking an undivided interest in the land on which the affordable housing is to be built. Capital Asia Group "is selling undivided shares, that's correct,"

he told *Environment Hawai'i* in a telephone interview. "Because of the nature of many Asian investors, rather than do financing with interest, they actually take title and enter into a joint venture, then they sell. They buy a fractional interest, then they [enter into] a joint venture with the builder, then when the project is completed they sell it, with the builder. They enter into a sales agreement at the same time they do the purchase. It's a kind of unique financing, but it fits the Asian culture."

Will individual investors then have their ownership recorded? "Yes," replied Wessels. "That will be recorded in the Bureau of Conveyances."

At the August LUC meeting, Wessels said that his company was poised to take title to the land slated for affordable housing just as soon as the LUC had voted to allow the project to go forward. As of press time, however, the matter was still in escrow. By phone, Wessels told *Environment Hawai'i* that he expected the deal to close by the end of September.

— *Patricia Tummons*



For Further Reading

More background on the 'Aina Le'a development may be found in these articles from previous issues of *Environment Hawai'i*, available online at www.environment-hawaii.org:

"2 Decades and Counting: Golf 'Villages' At Puako Are Still a Work in Progress," March 2008;

"Hawai'i County Board Deals Setback to Stalled Bridge 'Aina Le'a Project," December 2008;

"Bridge 'Aina Le'a Gets Drubbing From the Land Use Commission," March 2009;

"Affordable Housing Agreement Could Give Bridge Two Credits for Each Unit Built," March 2009;

"After Years of Delay, LUC Revokes Entitlements for Bridge 'Aina Le'a," June 2009;

"Commission Stays Decision to Revert Puako Land," July 2009.

Superfund Site, Failed Casino Project In History of New 'Aina Le'a Developer



Robert Wessels

"Mr. Wessels has been around for a while, he has done projects, although not in Hawai'i." — Alan Okamoto, attorney for DW 'Aina Le'a

In the eyes of the members of the Land Use Commission, the fact that Bridge 'Aina Le'a had found a fresh face to take over development of the Villages of 'Aina Le'a project near Puako, Hawai'i, was a definite plus. And this was a factor that Alan Okamoto, attorney for Robert Wessels, a principal of the firm DW 'Aina Le'a Development, LLC, played up in his closing argument to the commission on August 27, when the commission was about to vote on whether to give life to the moribund project.

Gerald Takase, deputy corporation counsel representing the County of Hawai'i, also

"The site also included abandoned tank trucks and semi-trailers full of drums of waste." — EPA

touted Wessels as a can-do person: "We have a new player involved. He appears to have the wherewithal to move forward at this time. The planning director and mayor are satisfied that this entity is viable and want to give them the opportunity to go forward."

Commissioner Reuben Wong bought into the idea: "At one hearing," Wong said, "I asked the deputy attorney general to look into the possibility, what does the law allow if there's a new player who can develop the property? We do see a new player coming on the scene in an attempt to make the project happen."

Time-Share Litigation

Actually, Wessels does have a history in Hawai'i. In the 1980s, his name was among the list of defendants in a lawsuit alleging time-share fraud brought by the state Attorney General. Other defendants included Ho'olae Paoa, one of the principals in Bridge 'Aina Le'a, and brothers Joseph and Eugene Klein of Florida. State court records show that these men and others affiliated with a company called United Resorts, Inc., offered time-shares in the old Rocana hotel (now the Ewa Hotel on Cartwright Street in Waikiki) without registering or filing disclosure state-

ments. In 1987, the state sued URI, four other closely affiliated companies, all based in Florida or Nevada, as well as five individuals (the Kleins, Wessels, Paoa, and Helen Brown), alleging that in addition to failing to register as time-share agents, the defendants, either singly or in concert, also "engaged in deceptive or unfair acts or practices," "deposited maintenance fees collected from owners of time-share interests into accounts in Nevada and elsewhere," and "allowed owners of time-share interests to come to Hawai'i anticipating use of units ... who were denied use because of the defendants' failure to retain units for owners' uses," among other things.

By the end of 1987, URI was in bankruptcy, and a year later, the state's lawsuit against it and other companies was dismissed without prejudice.

Hawai'i was not the only state whose attorney general was interested in United Resorts. According to an article published in

the *St. Petersburg Times* in April 1989, Joseph Klein was president of URI in 1984, when the state of Nevada issued it a permit to sell time-shares so long as a trust fund was established to receive funds paid by owners toward fixed expenses. In 1986, Nevada sued to stop URI from diverting money from the trust. "As a result," wrote *Times* reporter Elizabeth Whitney, "the trust arrangement was tightened," but in March 1987, the state was back in court, this time charging URI with contempt for failing to comply with the trust agreements. Two months later, the company filed for Chapter 11 bankruptcy, sidelining the lawsuits both in Nevada and Hawai'i.

"After filing the bankruptcy," continued Whitney, "Klein sold his shares in United Resorts and Robert Wessels became president. In December 1987, the court appointed a trustee to run the company. Some of the company resorts were foreclosed and more than 20,000 purchasers lost the week's access to the vacation resort for which they paid \$5,000 to \$7,000."

In a phone interview last month, Wessels said he was not aware of the Hawai'i lawsuit. As for his involvement in the failed companies, he said he had been asked to come in by a Nevada official "to help straighten out the

mess... I was one of the people who helped work out, get things squared away.... You'll find my name in several reorganization things as well. That's one of the things I did for years — go in as court-appointed manager."

Wessels said he had little to do with Paoa. "I met him at that time. ... In part of the cleanup of things, I actually bought, my company bought a piece of property from United Resorts and provided several million to settle some of their things," Wessels said.

A Superfund Site

In 1993, Wessels started up Enviropur, a company that took over a troubled waste-oil recycling facility outside of Chicago. "There was a company called Moreco Energy, which operated a waste-oil refinery in Chicago," Wessels said when asked about his involvement in this business. "There were a number of sites where they'd collected waste oil and they had enormous environmental liabilities. When it went into bankruptcy, they contacted me to help them work through the situation.... I settled the environmental liabilities, developed a number of programs. I took it out of reorganization and took it public, listed it on NASDAQ."

The operation ran into trouble when, in September 1994, it accepted waste oil contaminated with PCBs from Argonne National Laboratory. "The company went back into reorganization after that," Wessels said. In December 1996, the Chicago-area operation was acquired at a bankruptcy court auction by ICHOR Corp., a subsidiary of Drummond Financial Corp., the senior secured lender.

While the Illinois operation was slowed by having to deal with the Argonne waste, the company announced in 1995, most of its revenues came from operations of its California subsidiary, Enviropur West, which had waste oil facilities in Signal Hill and Patterson. By mid-1995, however, according to company press releases that quoted Wessels, Enviropur West was having financial difficulties, with one creditor demanding immediate repayment of \$1.7 million loan. In March 1996, the company announced it had lined up a buyer for its California operations, the sale of which, it stated in a press release, "has become essential due to increased pressure by the State of California to fund closure requirements." The sale would relieve the company of more than \$17 million in liabilities, the company said.

The deal fell through. Enviropur West filed for bankruptcy in April 1996. In September 1996, the bankruptcy trustee in California abandoned the Signal Hill property, "leaving behind tanks and drums containing approximately one million gallons of ignitable hazardous waste," according to an Environmen-

tal Protection Agency fact sheet. "The site also included abandoned tank trucks and semi-trailers full of drums of waste." The final cost of cleanup – shared among federal, state, and city governments as well as nine private parties (not including bankrupt Enviropur) – came to about \$4 million. Wessels, in the phone interview, said he knew nothing of the site having been abandoned. "I was not aware of anything left behind there," he said. In any case, "the whole Signal Hill area is a Superfund site," he added.

The Kenosha Casino

Starting about 1994, Wessels and several other Chicago residents were involved in a company that planned to develop an \$800 million casino in Kenosha, Wisconsin, just across the border from Illinois, to be run by the Menominee Indian Tribe. The proposal, for the third-largest Indian-run casino in the United States, was brought to a halt when it turned out that two of the principals had known ties to Chicago organized crime figures.

Up until 1999, the company, known as Nii-Jii Entertainment, LLC, was making progress. It had acquired an option to purchase a dog-racing park, had won voter approval of a referendum in favor of the casino, and had agreements with state and Indian governments concerning profit-sharing. All that was needed was regulatory approval from Wisconsin and the Bureau of Indian Affairs.

Then it all started to break down. Morgan F. Murphy Jr., a former member of Congress from Illinois, close associate of former Chicago Mayor Richard Daley, and one of the parties who had put the casino plan together, had once owned a television station with John Serpico. Serpico, head of the Laborers' International Union of North America, was indicted in August 1999 on charges of money-laundering, racketeering, soliciting kickbacks, and fraud. In addition, Murphy had been a partner in a real-estate and financing venture with Serpico and John Crededio, also suspected of ties to organized crime.

Although neither Serpico nor Crededio was involved in Nii-Jii Entertainment, the fact of Murphy's association with him was enough to sink the project. According to a lawsuit brought by investors, "Murphy's association with Crededio and Serpico disqualified Murphy from participating in [the casino] venture because regulatory authorities generally refuse gaming licenses to enterprises whose membership includes persons with either a past or current association with individuals of notorious and unsavory reputation, especially convicted criminals and those involved in organized crime."

In 2001, the investors sued Murphy and his law partner, Richard Boyle, and Murphy's son Morgan Murphy III, in Wisconsin circuit court, and by the time the trial ended, they had been awarded \$244,947,709 in damages – the seventh largest award in the nation for 2005. Wessels, who had been hired as a consultant and who also had a stake in the company, was then sued in 2007 in the same Wisconsin court by largely the same parties, who sought more than \$110 million in damages.

Wessels countersued, and also had the lawsuit moved to federal court, apparently not wanting to risk trial in the same venue that had awarded such a large amount in the first trial. In 2008, the parties worked out a settlement. Wessels said that he ended up receiving payment of \$175,000. "The group owed me a fairly large amount of money in consulting fees," Wessels said, explaining that the lawsuit against him was motivated by the investors not wanting to pay him. "I was going to collect my money and go after them" in his countersuit, he added, "but then the attorney said it'd cost me a lot of money, \$500,000 to get \$1.5 million."

As for his involvement with Murphy, "he has always been a very, very upstanding person," Wessels said. "Everyone I've ever talked to about Morgan Murphy, they've always held him in very high regard. Anybody can accuse anybody of anything, but I believe it was a totally false accusation."

According to the complaint filed against him, Wessels "styled himself 'General Manager' of the Kenosha casino development venture, was a long-time close associate of Murphy and at all relevant times was fully

familiar with Murphy's background." The complaint accused them all of engaging in racketeering by having: offered membership in Nii-Jii without disclosing the risks arising from Murphy's background; "bribed public officials and persons associated with them in order to influence their handling of regulatory and governmental decisions;" "created false payables" that were "capitalized on the financial statements mailed" to investors; and "lied to public officials," among other things.

Wessels described his role as that of project manager. "I put the project together," he said. He also took credit for the successful campaign to win voter approval for the casino.

A Stint in Macau

In arguing for transfer of the case against him to federal court, Wessels stated that he no longer resided in the United States but was instead a permanent resident of Macau. Attached to the court records was a copy of his residency card.

Wessels was asked whether he continued to reside in Macau.

"Not any longer," he said. "For a three-year period I spent most of my time there. ... I was putting together for a group of investors a hotel project in the peninsula of Macau – pulling it together, doing presentations for Merrill Lynch."

His work there is done now, he said. Because of the financial situation, he added, "the company that owns the land, they have delayed in going forward and building the hotel. But the government did publish the concession for the hotel to be built."

Wessels now claims his residency to be in Nevada. — P.T.

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Biocontrol Update for Erythrina Gall Wasp

There are places he's gone to in this last exploration that I will never send him to again... A lot of people here do a lot of really good work, but Mohsen, for state pay, he risks his life for plants like wiliwili."

With those words, state Department of Agriculture entomologist Darcy Oishi sang the praises for Mohsen Ramadan, an exploratory entomologist with the department whose valiant efforts to save Hawai'i's wiliwili trees are starting to pay off.

In 2005, the invasive erythrina gall wasp (*Quadrastichus erythrinae*) swept through Hawai'i like a wildfire, killing or crippling countless native wiliwili trees (*Erythrina sandwicensis*) and non-native erythrina trees statewide in about six months. The wasps lay their eggs in the trees' leaves and stems, causing them to eventually shrivel and die. Erythrina trees here — which are commonly used for landscaping, windbreaks, and for various cultural purposes — seemed doomed, but Ramadan's travels through Africa yielded a possible savior: *Eurytoma erythrinae*, a Tanzanian parasitoid wasp and the most dominant natural enemy of the erythrina gall wasp.

Ramadan collected *E. erythrinae* from Africa in 2006. In November 2008, after conducting tests to ensure that the wasp would not prey on non-target insects here, the DOA unleashed it, first on O'ahu, then at sites on Lana'i, Kaua'i, Maui, Moloka'i, and Hawai'i. To date, nearly 4,000 *E. erythrinae* have been released.

According to Oishi, who provided a status report on the biocontrol effort at the annual Hawai'i Conservation Conference last July,

the DOA established four monitoring sites each on the islands of Kaua'i, O'ahu, Maui, and Hawai'i, encompassing up to ten trees per site.

Oishi said that by May, most of the monitoring sites showed that *E. erythrinae* were making a significant dent in gall wasp populations and trees were beginning to recover. He added that his department has not observed any effects on non-target species.

At the Koko Crater and the Lili'uokalani botanical gardens on O'ahu, Oishi said the DOA found that by May, *E. erythrinae* had probed (which eventually leads to the gall wasp's death) or replaced more than 50 percent of the gall wasp populations. Likewise, the Kamehameha Golf Course and Lahaina Luna on Maui and Pu'u Wa'awa'a Forest Reserve and South Point on Hawai'i also showed "good activity" by May, he said.

On Kaua'i, Oishi said that trees at Makauwahi showed some evidence of recovery as early as March, but trees at the National Tropical Botanical Garden showed "not much recovery at all," a possible result of pesticide use. Oishi explained that chemical treatments that may have been applied to control the erythrina gall wasp seem to have also inhibited the establishment of *E. erythrinae*.

In all, Oishi said that the rate of parasitism in the field was about 75 percent, adding that where there are high densities of *E. erythrinae*, they attack the gall wasps' eggs, larvae, and pupae. In low-density areas, *E. erythrinae* attacks only mature larvae and pupae.

Oishi said it appears *E. erythrinae* is spreading on its own and that a second, unknown parasitic wasp has been found attacking erythrina wasps at several sites. The parasite has also been found attacking, to a limited extent, *E. erythrinae*.

Although *E. erythrinae* is now established on the larger Hawaiian islands, Oishi said "it's still too early to determine the long-term

effects on trees." The DOA has recently completed host-specificity studies of another erythrina parasitoid, *Aprostocetus nitens*, "just in case *Eurytoma erythrinae* doesn't do what we need it to do," he said. With an average longevity of 101 days, *A. nitens* should stay in the field longer than *E. erythrinae*, which has an adult longevity of about 40 days, he said. A third biocontrol agent, *A. exertus*, may also be tested, depending on fund availability.

Wekiu Bug Faces Climate Change Impacts

The highly specialized wekiu bug (*Nysius wekiuicola*) lives only at the summit of Mauna Kea, above 11,500 feet, scavenging frozen insects swept mauka by the wind. The bugs live exclusively in the first foot or so of loose rock of the summit's cinder cones and escape from being frozen themselves by burrowing deep into the ash layer.

According to wekiu researcher and conference presenter Jesse Eiben, climate change-induced warming could affect their survival. By studying the bugs in a lab, Eiben was able to determine that wekiu grow more slowly and live longer at colder temperatures. While he said he didn't expect warming to kill the bugs directly, Eiben noted that the summit's cold temperatures immobilize prey. If it warms, prey could live longer and with less moisture, available food resources might change, he said. In addition, Eiben said the bugs might be crowded out. A loss of 1,000 feet of habitat due to warming would reduce the wekiu's habitat by 40 percent.

— Teresa Dawson

The Hawai'i Conservation Alliance webpage contains links to more than 70 talks and presentations given at this year's Hawai'i Conservation Conference: http://hawaiiiconservation.org/2009hcc_presentations.asp

