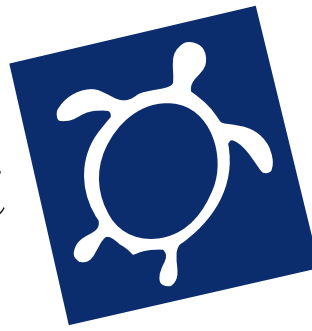


Environment



Hawai‘i

a monthly newsletter

Harboring Trouble

When the Board of Land and Natural Resources converted a long-standing revocable permit for land at Honokohau Harbor to a long-term lease, it had the best of intentions, responding to widespread calls to eliminate the practice of month-to-month occupancy in favor of more stable, lucrative leases.

But good intentions don't always yield good outcomes. In the case of this particular conversion, all parties involved – the former tenant, the current tenant, and the Division of Boating and Ocean Recreation – have divergent sets of facts to offer in explaining how things went south.

The state's abatement of lease rent to the tune of more than \$400,000 may solve a few of the issues surrounding this contentious lease. But if the goal is to have a stable, responsible party occupying valuable state land, well, the jury is still out on that.

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Land Board Approves \$400,000 Settlement For Damage Claims at Honokohau Harbor

The Department of Land and Natural Resources has been under pressure in recent years to transition, where appropriate, long-held revocable permits to a long-term disposition, be it a lease or an easement. But in the case of a nine-acre lot at the Honokohau small boat harbor in West Hawai'i, which had been under a revocable permit for 17 years, that transition has been anything but smooth.

Barely a year into its 10-year lease for a boat storage yard at the harbor, the two men who formed the new lessee Pacific Marine Partners, LLC (PMP) were suing each other over their respective ownership interests.

That dispute, between Jason Ho'opai and Jonas Ikaika Solliday, led at one point to frozen bank accounts and both men trying to kick each other out of the company via competing filings with the state Department of Commerce and Consumer Affairs.

The company fell behind on its rent, which led the state Board of Land and Natural Resources to vote in May to cancel

their lease. In June, the board rejected their requests for a contested case hearing.

But last month, the board approved a recommendation from the DLNR's Division of Boating and Ocean Recreation (DOBOR) to rescind the lease cancellation. What's more, the board approved a proposed \$423,641.66 settlement with the company over alleged problems with the property, including an illegal cesspool, incomplete fencing, damaged utilities, and difficulties evicting a company that had been on the property for years.

DOBOR noted in its report to the board that despite the rent arrearage, PMP had cooperated with the division on cleaning the property, improving operations, and growing revenue. It also reminded the board that PMP — which had continued to pay some of its rent despite the May lease cancellation — is paying five times more in rent than the previous tenant, Gentry Kona Marina (GKM), was paying. And once the settlement is paid off via rent credits, PMP will have paid more than \$1 million to the state, it stated. (The

Continued on Page 9

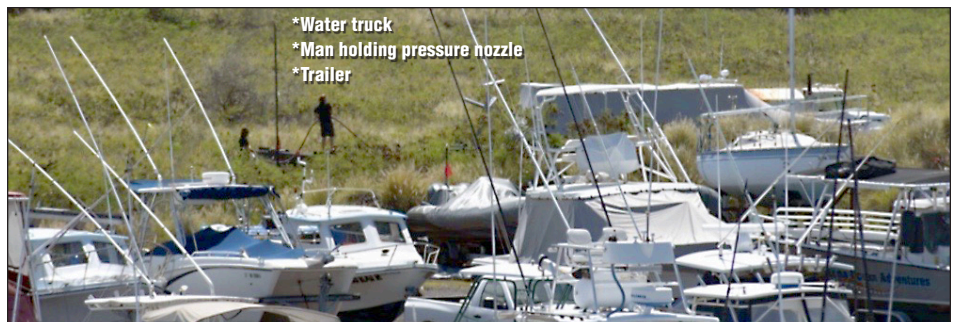


PHOTO: GKM

GKM presented this photo to the Board of Land and Natural Resources showing work being done at the Honokohau boat yard that would not have been allowed under its management. Pacific Marine Partners, LLC, took over the lot in late 2018.

Environment

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Hawai'i

August 2020

NEW AND NOTEWORTHY

Cell Tower Challenge: AT&T is suing Hawai'i County in federal court over the denial of a permit to erect a cell phone tower in Puna.

The complaint was filed July 2 in federal district court in Honolulu against the county and its Planning Department, and the Windward Planning Commission and its chair, Thomas Raffiyy. AT&T had sought a permit to erect a 105-foot-tall monopole, disguised as an evergreen tree (and called a "monopine") on an area of about 1,000 square feet in part of a 20-acre lot in the Puna District subdivision of Hawaiian Paradise Park.

On February 6, the commission held its first hearing on the application, which drew an unruly crowd of witnesses testifying against it and warning of radio waves, harm from 5G technology, and declining property values should the monopole be erected. The

commission voted to take up the permit application again at its next meeting in light of questions about the location of the public notice sign.

When the hearing resumed on March 5, still more testimony was allowed, repeating the same issues. The commissioners voted to deny the permit, 4-0, with new questions raised about the validity of the AT&T lease with the homeowners' association and concerns about the impact on a disused basketball court and playground if the monopole should fall.

The complaint lists eight claims for relief, including the fact that the commission's decision fell outside the 60-day timeline set in Hawai'i Revised Statutes for approval of broadband-related permits. HRS 46-89 states, "If, on the sixty-first day, an application is not approved, approved with modification, or disapproved by the county, the application shall be deemed approved by the county."

The court has set a scheduling conference for August 20.

On July 22, the Hawai'i County Council adopted a resolution that asks telecommunications companies in the county to "cease the building of 5G wireless infrastructure until such technologies have been proven through independent research and testing to be safe to human health and the environment."

PHOTO: ADC



Ohana Best, LLC's former license area.

Abandoned Farm: On July 22, the board of the state Agribusiness Development Corporation voted to rescind its January 2014 approval of a license to Ohana Best, LLC for 160 acres in Whitmore, O'ahu. The company last year sued the ADC in 1st Circuit Court for allegedly failing to provide an adequate source of water for farming, among other things, but no hearings have been held.

Although it had taken steps to prepare the land for farming — grubbing it, filing a soil conservation plan, and installing roadways — Ohana Best never actually signed its license.

"The property has since been abandoned and the improvements taken over by criminal trespassers," ADC staff stated in a report to the board. It states that the agency has had to remove encampments, install gates and barriers, and hire special duty officers and private security to keep trespassers out. "ADC and HPD have also had to sort through dozens of abandoned and stolen vehicles that were illegally dumped on the property," the report states. It adds that the agency has hired a contractor to dispose of the vehicles.

The report also notes that a reservoir was completed on the site in June, but due to the COVID-19 crisis, water from it might not be available until August or September.

Staff recommended rescinding the license "so that the land can be opened to farmers and/or contractors capable of immediately handling large acreage."

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Quote of the Month

*"I would understand why you
wouldn't want competition.
I don't understand why we
wouldn't want competition."*

— Land Board member Chris Yuen
to Gentry Kona Marina

After Harsh Questioning, LUC Finally OKs Maui Landfill Permit

What Maui County thought would be a slam-dunk request to the state Land Use Commission turned out to be anything but.

Last month, the county went before the LUC with a request to have it extend, and expand by more than 40 acres, the special permit under which a 71-acre portion of the Maui Central Landfill has been operating for the last 23 years. The permit expired on October 31, 2018, but because the county had applied for the extension well before that date, the landfill could continue to operate under permit. (The remaining 55 acres occupied by the landfill also operates under a LUC special permit issued in 1986, one that has no time limit.)

No community opposition had arisen to the project in the previous four years, during which time the county Environmental Management Department had been preparing the extension request. That included publication of an environmental assessment and a hearing before the Maui Planning Commission to extend the county Special Use Permit under which the landfill operates. Nor did any member of the public or environmental group appear before the LUC when it heard the county's extension request on July 8 and 9.

For the better part of those two days, however, it was unclear if the request would be approved. The sticking point was the fact that the expansion area included just under 22 acres of land that the previous owner, Alexander & Baldwin, had had the LUC designate as Important Agricultural Lands.

"We knew the IAL would be an issue," said Elaine Baker, head of the county Environmental Management Department's Solid Waste Division. But working with the state Office of Planning and the Department of Agriculture, Baker thought the county had arrived at a way of dealing with it. As set forth in a July 1 memo from OP Director Mary Alice Evans to LUC executive officer Dan Orodener, the OP was recommending that the com-

mission approve the county's request with a proviso that within a year of the LUC's approval, the county submit a petition to the LUC to withdraw the acreage from IAL designation.

Dawn Apuna, the deputy attorney general representing the OP at the hearing, told the commissioners that the OP wanted to give the county a year "to determine whether removal of the 22 acres would significantly affect the IAL petition originally submitted by A&B." That petition resulted in the designation

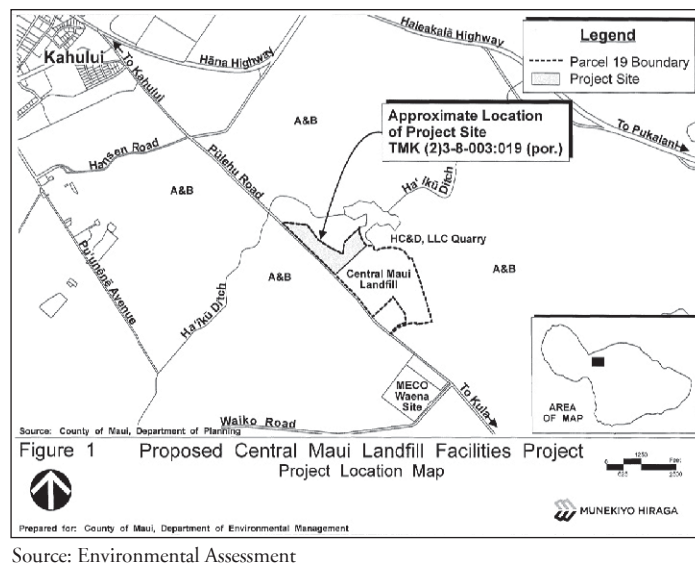
uses versus permanent. The way [HRS Chapter] 205 is constructed, the idea is that temporary uses can have a special permit, but permanent ones require a district boundary amendment.... I'm particularly concerned in this case, because even if [a special permit] has been done before, there are certain things you would not do after that landfill. No elementary school, for instance. You might do a sports field, you might not do housing. So there is a permanent change to the property as a result of landfill use. ... Some things you'd never do again."

Maui County deputy corporation counsel Mike Hopper weighed in on the reasons the county was seeking a special permit. "One important fact, ... was that this involves two already existing permits that have been in place for decades. ... It was reasonable for the Department of Environmental Management to decide to amend the permit for a time extension. The life of the permit has expired, but because the application was sought prior, the operation can continue."

What's more, he said, two more landfills in Maui County have been permitted under special permits. "It's the practice across the state," he said.

Also, "the piecemeal nature of landfill expansion, having to add additional land, is not consistent with the district boundary amendment process, which doesn't anticipate piecemeal" changes.

Baker, head of the county Solid Waste Division, attempted to address the commissioners' IAL concerns by proposing added conditions to the permit: "First one, within one year of approval of the amendment, the county shall identify county-owned agricultural property of similar acreage on Maui, have it designated as IAL to compensate for the loss of 22 acres of IAL associated with the landfill expansion. And upon restoration or closure of the Central Maui Landfill, where it is safe and practical to do so and if the land is still designated as Ag, the county shall seek to make lands available for future ag use in accordance with state guidelines."



of more than 27,000 acres as IAL. The reason for withdrawal, she said, is that "as a landfill, it no longer meets the definition of IAL."

She went on to say that redistricting the land under the special permit into the Urban land use district was not required. "A special permit is more appropriate," she stated. "A landfill is not necessarily an urban use. It is an unusual and reasonable use in the Ag District." Under state law, special permits are allowed for such "unusual and reasonable" uses.

"After 2030," she continued, "the land could potentially be used for some kind of agriculture. ... It's premature to say the area would be used for Urban use, so a district boundary amendment is not appropriate at this time."

LUC chair Jonathan Scheuer said he was bothered by the idea that special permits are only for temporary uses. "I'm struggling with the idea of temporary

Continued on next page

Hopper tried to address concerns that the proposed uses in the expansion area – offices, a warehouse, areas for household hazardous waste, electronic waste, metals processing, abandoned vehicles, and construction and demolition waste – would be more properly located in areas within the Urban District. These were accessory uses directly tied to the landfill operation, he said, and “appear to be integral to the operations of the landfill.”

Maui commissioner Lee Ohigashi was skeptical about the legal framework for removing IAL designation and asked Apuna how this might go forward.

“Apply the same process” as used in designation, she replied. “Just reverse the process.”

“Is that authorized under any statutory authority?” Ohigashi asked.

Apuna: “It’s reasonable that that would be your avenue to remove it.”

“So, your answer is no, it’s just reasonable. Is there any case authority you can cite?” Ohigashi continued.

Apuna acknowledged that this would “break new ground” for the commission.

At this point, Hopper noted that special permits can be allowed on IAL lands.

Ohigashi was not satisfied. “If we say, okay, you have to file for a declaratory ruling to remove the IAL, we determine that according to statutory criteria, that we don’t need a statute or regulation?”

Hopper agreed.

Dan Giovanni, the commissioner from Kaua'i, was not convinced. “My feelings are aligned with those of Mr. Ohigashi,” he said. The proposed uses extend the life of the landfill but need not be sited adjacent to it, he noted.

“If this was purely a request for an amendment to make a larger landfill, I could accept Mr. Hopper’s argument that the modification of the permit made a lot of sense, but that is not what this is about.”

Hopper noted that a landfill “is not only composed of what’s in the ground.... I don’t see how a special permit for a landfill would be allowed but these uses would not be.”

Ohigashi asked Dan Morris, the deputy attorney general assigned to the LUC that day, whether it would be possible to approve the time extension but deny the expansion. Morris replied that

it would not be. If the commissioners wanted to grant the time extension but deny the expanded footprint, he said, “that would require remand to the county of the changed request. It wouldn’t be the same special permit that was approved by the county. ... You can’t grant in part and deny in part ... without some attendant remand to the county.”

Arnold Wong, an at-large member of the LUC, was more sympathetic to the county than Ohigashi. “I’m in a quandary,” he said, referring to the problem of the IAL. “I want to figure out a way to go around it. I don’t know how to do it.”

Ohigashi then ripped into the county, saying that at any time, the county “could have come forward with an extension of time. It’s a simple motion. All they had to do was say, ‘hey, we need some extensions of time here because our permit is running out.’ ... But they chose to package it together with a 40-acre industrial complex. ... The Wailuku Industrial Park would fit this bill. So, rather than being in a quandary, I would remand, with instructions to them that they show in the record where this is necessary for the purposes of extending the life of the landfill and if so, come back with a boundary amendment.”

Finally, Big Island commissioner Nancy Cabral made a motion to grant the county’s request with two conditions: that within a year, the county will apply to the LUC to have a similar area designated IAL, and that after the landfill is closed, the county will seek to make it available for future ag use “in accordance with state and federal guidelines.”

Giovanni offered an amendment asking that the IAL petition be brought within five years of approval.

During the discussion on the motion, Ohigashi repeated his strong opposition: “Simple reason why. I’m guided by what I believe the law is. As I review this matter, it became apparent to me that what we’re trying to do is utilize the amendment process for an existing special permit to create a new project.... What the county is trying to do is create a 40-acre industrial park. It’s not an accessory use. ... The second part that really bothers me is, if they were planning on this five years ago, why didn’t they come up five years ago ... and ask for a declaratory order or declaratory relief.”

Cabral amended her motion to include

conditions set forth in the OP’s memo, including the petition to withdraw the 22-acre IAL land within one year.

Gary Okuda, also an at-large commissioner, spoke against the motion. “We’re faced with the situation where not only is there what I would think is a good project, but also a project which might have a need in the community, but we are basically told to look the other way on violations of process or procedure because the end result justifies the frankly sloppy way we went about this.”

Dawn Chang, at-large commissioner (and also the only woman on the panel), weighed in: “I think the County of Maui was operating the landfill historically like all other landfills, by special permit. Was that right? In hindsight, maybe not. But I don’t think they were trying to do something extraordinary. So I’m not as offended by the county’s actions. ... When I look at those lands, I don’t think they’re IAL. I would rather look at true ag land that can be used as IAL.”

Scheuer concluded the discussion by saying that the deliberations “aren’t meant to increase suffering. We’re just trying to do our best... I hope you understand we’re sympathetic, ... trying to be consistent with our duties yet not be tone deaf.”

When the roll-call vote was finally called, approval of Cabral’s amended motion passed five to three, the bare minimum needed.

Meanwhile, in Kihei

Over the course of the five years it was being developed, the landfill special permit amendment received virtually no opposition.

Not so with the first matter on the LUC’s two-day agenda in early July. That concerned a petition by then-owner Ka’ono’ulu Ranch to redistrict 88 acres of land in Kihei, Maui, that, over the course of its 26-year history, had generated considerable community opposition.

Before the commission was the request of the current landowners – Pi’ilani Promenade South, Pi’ilani Promenade North, and Honua’ula Partners – that the commission dismiss its Order to Show Cause proceeding launched more than seven years ago. The OSC followed the failure of the landowners to commence work on the project, which, over the course

Continued on next page

Judge Hears Motions by 'Aina Le'a, Hawai'i County on Need for New EIS

On July 20, 3rd Circuit Judge Robert Kim heard arguments in the most recent litigation brought by 'Aina Le'a, Inc., intended to knock down hurdles that block its planned development of a mix of luxury and affordable housing, commercial space, and shops over more than 1,000 acres in the Big Island district of South Kohala.

The instant case was filed last March by Lulana Gardens, LLC, a subsidiary of 'Aina Le'a that claims to own the 38-acre parcel designated for 385 units of affordable housing. It is asking the court to overturn the Hawai'i County Planning Department's insistence that a decision by 3rd Circuit Judge Elizabeth Strance in 2013 that tossed out a 2010 environmental impact statement means that the developer must prepare a new one before it can move forward with further work on the site.

Michael Matsukawa, attorney for

Lulana Gardens, argued that because construction on the townhouse blocks continued to go on for several years before the county issued a stop-work order, the county was in effect barred from requiring a new EIS.

"The most important thing," Matsukawa told Kim, "is that the construction was allowed to continue."

County deputy corporation counsel Sinclair Salas-Ferguson disputed that. The county had no idea that the developer was continuing to work on the affordable housing project. Yes, the county had issued permits for the townhouses, he acknowledged, but the county still could withhold issuance of certificates of occupancy and other approvals needed before the units could be sold.

"The allegation is that from 2013 to 2017, when the county issued a stop-work order, ... the county didn't complain about the construction," Salas-Ferguson said.

"The county [stop-work] letter said yes there are permits, but no valid EIS. ... If a developer is doing something without the proper permissions and the county doesn't catch it, that isn't equivalent to the county giving the developer permission. ... They constructed that on their own volition, and when the county found out about it, they issued the stop-work order. ...

"If somebody gets away with a violation of the law, that doesn't mean they have a right to violate the law. ... They don't get the benefit. If they did work that wasn't authorized, that's on them. That's in the county letter: 'proceed at your own risk,'" he said.

At the conclusion of the hearing, Judge Kim denied 'Aina Le'a's motion for partial summary judgment. Then he instructed both attorneys to prepare findings of fact and proposed conclusions of law with respect to most of the points raised in the county's motion to dismiss the complaint. The briefs are due on August 20, with the attorneys having five additional

Continued on next page

LUC from Page 4

of a more than a decade, had morphed from a subdivision of light-industrial and commercial lots to a megamall and workforce housing.

With two community groups (Maui Tomorrow and South Maui Citizens for Responsible Growth) and one individual (Daniel Kanahele) intervening in the case, a history of changing plans, a series of landowners, a withdrawn environmental impact statement, and a failed effort at mediation, it promised to be a contentious hearing.

Suddenly, less than 24 hours before the meeting was to start, the parties to the case submitted a stipulation, which, if approved by the commission, would put paid to all past grievances. The proposed agreement would set the scope of development back to what had been proposed in the 1994 petition for a boundary amendment placing the land into the Urban District: 123 lots intended for commercial and light-industrial use mauka of Pi'ilani Highway, now with the added set-aside of two conservation areas, together amounting to just shy of five acres.

Attorney Marjorie Bronster, representing the Pi'ilani landowners, told the com-

missioners that the petitioners "listened to what has happened in the past, to the community... The megamall as described in the 2013 plan has been withdrawn and will not be built ... That is a commitment that Pi'ilani Promenade has made."

"In May, the parties were at an impasse. I didn't believe it would be possible to come to a settlement," she said. "We worked very hard and were able to come up with an agreement, actually within the last 48 hours. That's why we submitted the stipulation at 12:18 on July 7, yesterday. It was a long, hard road to get here. But the agreements laid out in the stipulation make specific requests to the commission that will obviate any need for a hearing on any of the currently pending motions... We ask the commission to adopt the stipulation as an order."

The conservation easements, she said, would "basically be no-build zones." "We believe this will not violate the 1995 decision and order and accordingly we ask the commission to accept ... the stipulation."

The attorney representing the intervenors, Tom Price, wanted to make sure the commissioners were aware that the conservation easements were first proposed

by his clients – not the landowners. "I would like to note that this was something presented and entered into evidence this morning, but it had been submitted at an earlier date to the commission," on June 26, he said. "This is something the petitioners on their own were proposing to the commission."

Commissioner Gary Okuda wanted to pin down Bronster on the landowners' commitment to the conservation easements. "Is the conservation easement designation irrevocable? If there's a change to the layout, will the location as described still be irrevocable?" he asked.

"That is the plan," she replied. "Paragraph Five of the stipulation, what the petitioners [landowners] agreed to do, they agreed to continue to consult in good faith with lineal and cultural descendants and the Aha Moku o Kula Kai, on easements to be established. The plan is this would run with the land and be irrevocable."

The commissioners unanimously approved the request to convert the stipulation to an order, along with the map indicating the location of the easements.

— *Patricia Tummons*

Will LUC Find That Vacation Rentals Can't Be in the Agricultural District?

This month, the state Land Use Commission will resume its discussion of whether or not farm dwellings in the Agricultural District can be used as short-term vacation rentals, or STVRs.

In February, Hawai'i County submitted a petition to the LUC for a declaratory order that transient vacation rentals aren't allowed in farm dwellings. And the state Office of Planning seems to agree.

The county passed an ordinance in November 2018, Bill 108, that limited where vacation rentals on the island would be allowed and how they would be regulated. The bill also established a process for owners of rentals outside permitted vacation rental areas to apply for a nonconforming use certificate.

The county denied dozens of applications for certificates from owners of existing vacation rentals in the state Agricultural District. Many of them petitioned the Board of Appeals for a

contested case hearing, but the board stayed those appeals pending a decision by the LUC.

In May, attorneys representing many of those landowners filed their own petition with the LUC. In it, they argued that contrary to the county's position, farm dwellings built after 1976 can be rented out for less than 31 days.

The county has argued that a 1976 amendment of Chapter 205 of Hawai'i Revised Statutes to allow and define farm dwellings prevents such dwellings from being used as vacation rentals. "The effort is too cute by half," the attorneys for the landowners stated in their petition to the LUC. "Chapter 205 expressly contemplates the lease of farm dwellings [and] does not regulate the duration of those leases. ... The only question before the Commission is whether, as of June 5, 1976, Chapter 205 prohibited leases of farm dwellings for a period of less than

31 days," they wrote.

In a response submitted last month, the county argued that the issue is not the length of time a farm dwelling is being rented out, but whether or not that use — a short-term vacation rental — is allowed under Chapter 205. Under that law, the farm dwelling's use must be related to agriculture, the county argues.

The LUC took up the petitions at its meeting last month, but was unable to reach a conclusion before the meeting ended. It is scheduled to resume discussions later this month and has instructed the county, the landowner petitioners, and the state Office of Planning (OP) to prepare briefings to clarify their positions.

In a July 17 submission to the LUC, the OP was critical of the landowners' petition and seemed to share the county's position that the way the farm dwellings were being used was important.

"The Petitioners' actual use of their dwellings is essential because it provides the facts and basis upon which to apply the requested interpretation of the 'farm

Continued on next page

'Aina Le'a from Page 5
days to reply.

Judge Kim did, however, deny one of the county's arguments: that the case should be heard in environmental court.



Bridge Takes Appeal To U.S. Supreme Court

On July 15, Bridge 'Aina Le'a, LLC, the company that at one point owned all 3,000 acres where the Villages of 'Aina Le'a were first proposed back in the late 1980s, appealed to the U.S. Supreme Court a decision in 9th Circuit Court that rejected Bridge's claims of taking against the state of Hawai'i Land Use Commission.

Bridge agreed to sell its 1,000 or so acres of land that were the subject of the redistricting petition in 1989 to DW 'Aina Le'a (now 'Aina Le'a, Inc.) more than a decade ago. But when the LUC decided to revert the land to the state Agricultural District after finding that 'Aina Le'a and Bridge had failed to complete promised development of the affordable housing

units, both Bridge and 'Aina Le'a sued the state.

Bridge ended up pursuing its claim for damages in federal court. The "takings" that Bridge alleged to have occurred as a result of the reversion were temporary, since the reversion was overturned in court and, in any case, 'Aina Le'a eventually paid Bridge handsomely for the Urban District land. A federal district court jury found that Bridge had indeed been damaged — to the tune of \$1. Both the state and Bridge appealed. The 9th Circuit Court decided that even \$1 in damages was too much.

Now Bridge, through attorneys Michael Berger of the national firm Manatt, Phelps & Phillips and Bruce Voss of the Honolulu firm of Bays Lung Rose & Holma, is asking the U.S. Supreme Court to take up the case. The petition for a writ of certiorari focuses on the appellate court's findings under two takings theories: *Penn Central* and *Lucas*.

The 9th Circuit's ruling "eliminates property owners' ability to recover for temporary property takings under any theory, and that ruling conflicts with decisions of other courts, including this Court," the petition states. "[D]oes this

Court need to clarify the rules for recovery for temporary regulatory takings?"

Second, "In light of the confusion in the lower courts as to the application of the *Penn Central* factors — to the point where it has become almost impossible for property owners to prevail on this theory — should this Court reexamine and explain how *Penn Central* analysis is supposed to be done — or dispensed with?"

Third, the petition suggests that the court may need to clarify the standards to determine whether temporary takings occur under either *Penn Central* or *Lucas*.

Finally, the petition seeks a review by the court of the ability of appellate courts to overturn jury decisions in takings cases. "In light of *Penn Central*'s clear direction that cases like this are to be determined ad hoc, on their individual facts, and this Court's approval in *City of Monterey v. Del Monte Dunes* ... that takings liability be decided by a jury, do appellate courts need to stay their hands (as mandated by the 7th Amendment's Re-examination Clause) when — as here — reviewing jury findings of fact-based takings issues, particularly when the trial judge confirmed those findings?"

— Patricia Tummons

TVR from Page 6

dwelling' definition," OP director Mary Alice Evans wrote. She added that the petitioners' question about whether farm dwellings can be rented for less than 31 days "is not a 'specific factual situation' upon which this Commission can apply the definition of 'farm dwelling' because relevant facts and circumstances were not provided. Are the renters farming the land or is there agricultural activity providing income to the renters? Or are the renters vacationers or tourists who are not engaged in and do not derive income from farming on the premises? Petitioners don't say. These are essential facts without which the Commission cannot provide an answer to Petitioners' question."

"OP requests that this Commission grant the declaratory relief requested by the County and deny the declaratory relief requested by Petitioners such that a farm dwelling may not be used as a STVR," she concluded.

In written public testimony submitted to the LUC, several residents of Kohala Ranch expressed their support for the county's petition.

"It has been our understanding that the Legislature did not intend for [short term vacation rental or STVR] use within the Agricultural District under the auspices of being a 'farm dwelling.' ... Unfortunately, our quality of life in Kohala Ranch has been adversely affected by an influx of STVRs into our community. Many of us have repeatedly been disturbed by frequent and excessive noise and light pollution caused by inconsiderate vacation renters who not uncommonly occupy the rentals in large groups," they wrote. They submitted screen shots from the vacation rental website VRBO of a number of Kohala Ranch properties — owned by some of the petitioners — being advertised for rent. Some were going for \$1,400 to \$1,500 a night.

Whatever the LUC decides, one testifier pointed out that the Kohala Ranch Community Association's rules prohibit STVRs. "The fine for violation of the restriction on Short Term Vacation Rental Use shall be \$5,000 (per incident) levied as an individual or specific assessment against the particular lot owner," the Kohala Ranch Rules state.

(For more background, see, "Hawai'i County Asks LUC to Declare That Farm Dwellings Can't be Vacation Rentals," from our March 2020 issue.) — **T.D.**

Hu Honua Asks PUC to Reverse Denial of Power-Purchase Agreement

Hu Honua Bioenergy has lost its effort to win Public Utilities Commission approval of its power purchase agreement with Hawaiian Electric. The PUC rejected the agreement on July 9, on the grounds that the price per kilowatt-hour was not competitive with that contained in more recent solar-battery storage deals that the agency had approved.

Technically, the agreement between Hu Honua and Hawaiian Electric was premised on obtaining a waiver from the

On July 20, Hu Honua asked the commission to reconsider its decision on an expedited basis and vacate its July 9 order within three weeks.

One of the points argued by Hu Honua is that from the time of the 2017 order through the Supreme Court appeal, Hu Honua's ongoing work and investment in the plant — which it says is now 99 percent complete — was done with the blessing of the commission. Life of the Land, it stated, had asked the court to stay the PUC's decision and order

approving the plant, but the Supreme Court denied the request. "Given the denial of the stay, under Hawai'i law, the 2017 [decision and order] was still effective and Hu Honua was still obligated to comply with the commission's di-

rective to 'make all reasonable attempts to complete the project' in a timely manner.' Hu Honua did just that."

A Set-Up by the PUC?

Another argument raised in Hu Honua's request for reconsideration hypothesizes that the PUC set Hu Honua up for a negative decision.

The hypothesis goes like this: while the Supreme Court decision was pending, the PUC "orchestrated and accelerated new renewable projects to be solicited for Hawai'i island," write the company's attorneys, Dean Yamamoto, who has been representing the company for years, and Bruce Voss, who was brought on board last month.

The Big Island utility, HELCO, was ordered to "expedite the request for proposals for new variable energy projects ... in two separate phases," they write. The commission "even incentivized HELCO with a significant money kickback ... if HELCO were able to solicit these projects, enter into [power purchase

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Hu Honua plant (credit Hu Honua/Honua Ola)

PUC of the requirement that the utility award power purchase contracts based on competitive bidding. The denial of that waiver meant the agreement was not approved. The per kWh cost in the Hu Honua agreement was more than twice that in agreements between the utility and grid-scale solar installations.

The reason the PUC was considering the matter in the first place was because of a decision last year by the Hawai'i Supreme Court. In 2017, the group Life of the Land had appealed a prior approval of the waiver directly to the high court, arguing the PUC had failed to consider the impact of greenhouse gas emissions that would be generated by the plant, which is designed to burn eucalyptus and other trees grown on Hawai'i island. The Supreme Court agreed and remanded the case back to the PUC.

Hu Honua, which says it has invested some \$400 million to refurbish what started out as a plantation-owned power plant that burned bagasse, has argued that the PUC's July order went beyond the scope of the remand.

agreement] contracts, and submit to the commission for approval by the end of 2018.” These first-phase projects were undertaken with the expectation that they would be “complementary, or in addition, to Hu Honua’s 24/7 firm renewable energy.”

The second phase projects were solicited as “a possible replacement for Hu Honua and/or PGV.” (PGV, or Puna Geothermal Venture, was pulled out of service following the eruption in the East Rift Zone of Kilauea volcano in May 2018. It planned to restart operations in early 2020, but that schedule has been pushed back.)

“In hindsight,” Hu Honua argues, “it appears the commission had been setting the stage for accelerating these new ... renewable projects on Hawai’i Island in order to possibly replace Hu Honua with these projects or use them as a basis to deny Hu Honua’s [amended and restated power purchase agreement] should the Supreme Court remand the 2017 [decision and order]. However, at no time ... did the commission recommend to Hu Honua that it should stop or hold off on construction despite knowing that Hu Honua was continuing to construct and was obligated to continue to construct pursuant to its 2017 [decision and order] during the pendency of the appeal.”

Violating the Court Order?

The Supreme Court remand found that the commission had failed to consider greenhouse gas emissions as required by law. The PUC “shall give explicit consideration to the reduction of [greenhouse gas] emissions in determining whether to approve” the power purchase agreement, the court ordered. The commission was also instructed to hold an evidentiary hearing on the subject “that complies with procedural due process.”

In reopening the hearing on the Hu Honua power purchase agreement, the commission not only ordered that the subject of Hu Honua’s greenhouse gas emissions now be made a part of the proceedings, but it also opened up for further briefing the changes in the energy market on the Big Island over the last two years.

Hu Honua cries foul on this point. “The commission’s Order Revoking

Waiver mistakenly, unreasonably, unlawfully, and erroneously frames the commission’s decision as a decision to deny HELCO’s request for a waiver from the competitive bidding framework... [T]his is an inaccurate and misleading characterization as the commission had already granted a waiver ... in its 2017 [decision and order], which was not at issue in *In re HELCO*” – the Supreme Court case – “and not impacted by that decision on remand. Accordingly, there was no renewed request for a waiver by HELCO pending before the commission for the commission to deny. The commission’s Order Revoking Waiver was a unilateral revocation of Hu Honua’s waiver from the competitive bidding framework sua sponte by the commission, and it ignores the Hawai’i Supreme Court’s remand.”

Political Pressure

The proceedings of the Public Utilities Commission are arcane and formal. While the commission does hold public hearings on rate requests, the actual deliberations are conducted mainly through exchanges of information requests, briefings on highly specific subjects, and written memoranda. When the commission does hold hearings and arguments in the course of its deliberations, those are public – but it’s the rare hearing that is attended by anyone other than the parties involved.

The Hu Honua documentary record, on the other hand, is filled with letters and emails, most of them submitted by its employees and their relatives and friends, logged in the docket as “public comment.”

On July 20, however, the efforts of Hu Honua to put political pressure on the PUC became evident in a docket entry described as “public comment (the Senate, State of Hawai’i).”

The comment was from state Senator Glenn Wakai. A covering email he sent was addressed to commission chair James Griffin. “We talked earlier this year about the important role the PUC can play in expediting energy projects, so we can get our neighbors working,” Wakai wrote. “It came as a shock to me that the PUC did just the opposite on July 9. Hu Honua had an obligation to ensure its facility would not add to

GHG emissions, but no one thought the project would be sent to the ‘back of the line.’”

In the letter proper that he submitted, Wakai, who represents a Senate district stretching from Kalihi to Salt Lake on O’ahu, says he was “stunned by your decision to close the Hu Honua ... application on July 9. On numerous occasions in the past two years, the developers updated me on the status of the project. I was always impressed with their desire to create energy out of an old sugar mill and provide quality jobs for the residents of Hawai’i Island.”

“I understand the 2019 Supreme Court decision on greenhouse gases remanded the case back to you for that specific issue. What I don’t understand is how your order on July 9 did not even consider the GHG that you were ordered to contemplate. Instead you shut down the project which would have replanted trees to create a carbon negative operation. In addition, the plant will deliver green energy baseload power at a lower rate than costlier intermittent solar.”

Wakai warned that the decision “creates significant liability and exposure for the state. ... This pulls back the red carpet Hawai’i rolled out to lure offshore investments. State gaffes have already killed the Superferry and the TMT. Let’s not add Hu Honua to the list of failures.”

The company is also attempting to gin up community support, holding a rally of sorts for its employees and their families and supporters on the same day the motion for reconsideration was filed.

“We are not going to accept a ruling from a state commission whose members – I believe – do not know or care about our island, our community, or our people,” Warren Lee, president of Hu Honua, told the crowd.

LOL Responds

Life of the Land lodged its response to Hu Honua just two days later. Among the chief points it raises is that the PUC was well within its rights to revoke the waiver from the competitive bidding requirement. That waiver was granted when HELCO and Hu Honua won approval for the first power purchase

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agreement they entered into back in 2008.

In 2017, when an amended agreement was brought before the PUC, the commission clarified that the waiver was not perpetual. In the utility's filings, it indicated that it presumed that the 2008 waiver was still valid.

Life of the Land points out, however, that HELCO was put on notice that this presumption was not correct. The order approving the 2017 agreement states that "circumstances on the island of Hawai'i have changed since the commission initially granted the waiver.... HELCO's reliance on a waiver granted 8-1/2 years ago is incompatible with such change in circumstances."

When the PUC reopened the proceeding in 2019 following the Supreme Court ruling, it specifically allowed Life of the Land to address all questions associated with the power purchase agreement, including the matter of the waiver.

"Hu Honua did not object within the time limit and is now barred from doing so," LOL states in its response.

— **Patricia Tummons**

For Further Reading

Environment Hawai'i has followed the efforts of Hu Honua to reclaim the old Pepe'okeo power plant for the better part of a decade. Here is a selection:

- "Hu Honua Faces New PUC Hearing, Well Issues, DOH Fines, and a Lawsuit," June 2019;
- "PUC Puts the Brakes on PV Project in Ka'u, Biofuel Plant in Pepe'okeo," September 2016;
- "Creditor Owed \$30 Million Presses Forward with Foreclosure Action against Hu Honua," December 2014;
- "Withdrawn Delaware Lawsuit Sheds Light on Complex Ownership of Hu Honua Plant," December 2013.

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settlement will cover PMP's rent arrearage of \$58,641, and for the next 20 months, reduce the company's minimum monthly base rent by \$17,000.)

While DOBOR's report states that PMP has agreed to the settlement, the controversies surrounding the management of the parcel are far from settled. In approving DOBOR's recommendations, the board directed the Department of the Attorney General to investigate who else might be responsible for the costs incurred to address the problems identified by PMP and to pursue recovery of those costs.

DOBOR stated in its report to the board that it was denying "each and every one of [PMP's] claims in both liability and amount." But at the board's meeting a month earlier, deputy attorney general William Wynhoff conceded that the division would agree that some of the problems that had been identified were PMP's fault, while others were DOBOR's. He added, "GKM has played a very pernicious role."

In addition to the state's investigation into other potentially liable parties, PMP faces a lawsuit filed by a man whose welding business was evicted from the parcel after PMP took possession. And with regard to the lawsuit between Ho'opai and Solliday, one of Solliday's attorneys, David Swatland, said that the parties had an arbitration meeting scheduled for October 19-20. "During the coming month they will be engaged in discovery," he stated in an email.

A Final Plea

On August 17, 2017, the Land Board voted to approve a request by DOBOR to hold a public auction for a ten-year lease of the parcel.

GKM, which has a lease from DOBOR for adjacent state land, operated the boat yard under a revocable permit since 2003. At the board's meeting then, GKM manager Tina Prettyman urged the board not to proceed with an auction, especially with the proposed upset rent of 50 percent of gross revenue or a base rent set by an appraisal, whichever was greater. She said 15 percent of gross revenue was more reasonable.

She also claimed that a previous administrator for DOBOR had years ago assured GKM that the department would try to issue a long-term lease to the company. This, despite a requirement under state law that public lands be disposed of through a public auction, except in very limited circumstances.

Years later, when the current DOBOR administrator, Ed Underwood, tried to make good on his predecessor's representations, the Office of the Attorney General advised him that a direct negotiation of a lease would not be appropriate, according to DOBOR staffer Dana Yoshimura.

Prettyman said she worried that if the Land Board voted in favor of an auction, boaters who owe GKM back rent simply wouldn't pay. She said GKM had \$300,000 in uncollected debts. She added that her company had put in close to a half million dollars in improvements to the property over the years. "There was a lot of gravel that needed to be brought in," she said.

Prettyman said that GKM took in a little less than \$50,000 a month in revenue from the property. Its monthly rent under the revocable permit was \$7,800. Based on the current revenue, Land Board member Chris Yuen seemed to think that a rent of 50 percent of gross revenue was doable.

"If somebody continued this business and grossed close to \$50,000 and paid 50 percent as the upset ... that would leave \$25,000 a month left. Your operating expenses are more than \$25,000 a month?" Yuen asked.

Prettyman said the expenses were significant. "There is a huge administration side of it that people don't recognize," she said.

In response to Prettyman's concern that a new lessee on the parcel could start competing with GKM's businesses on its adjacent parcel, Yuen said, "I would understand why you wouldn't want competition. I don't understand why we wouldn't want competition." He added that GKM had had a permit for the property for 14 years. "That's a lot of time to recover investment," he said.

Before the board's vote, there was some discussion about whether or not GKM

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could take its improvements, such as fencing, with it when its permit expired. Kaua'i board member and former DLNR land agent Tommy Oi pointed out that improvements become state property upon termination of leases, but remain the permittees' property under revocable permits.

False Advertising

Apparently, prospective bidders were not made privy to the board's discussion regarding existing improvements on the property.

DOBOR's public notice for the auction, held July 13, 2018, described the land as an unimproved gravel lot, fenced with a chain-link fence. The upset rent was 50 percent of gross revenue or \$423,000 a year, whichever was greater.

PMP, which had formed just a few days before the auction, was not allowed to inspect the property before bidding. It was the only bidder.

In late August, according to testimony Solliday submitted to the Land Board this past June, he was granted permission by GKM to do a post-bid partial inspection of the property with the DOBOR harbormaster. He stated that he saw that the property had water and electricity, but that there was also a business, Hotspots Welding, operating on the parcel. He said he also found that only about six of the parcel's nine acres were graded and graveled, "with approximately 10-12 feet high berms littered with tires and debris." The fencing was incomplete and there were hazardous waste barrels, construction debris and derelict vessels throughout the property, he stated.

"PMP's counsel Duane Fisher notified DLNR and deputy Hawai'i attorney general William Wynhoff of the false advertised conditions of the leased parcel. In short, the leased property was not what was advertised," Solliday wrote.

GKM vacated the property in November 2018, taking with it the motor for the front gate, Solliday claimed. GKM submitted a Phase 1 environmental site assessment of the property, but PMP, which questioned the reliability of that report, hired Environmental Science International to conduct its own assess-

ment. Before doing so, PMP confirmed in writing that between PMP and the DLNR, PMP would not be liable for any pre-existing environmental conditions found on the lot.

PMP's consultant wound up finding a number of environmental conditions in need of remediation, including an unpermitted cesspool associated with Hotspots Welding; uncontrolled dumping; minor releases of oil, paint, or other hazardous substances and solid wastes; and abandoned or derelict vessels.

In a February 2019 letter to Wynhoff, attorney Ian Sandison, who was representing PMP at the time, described how the identified hazards, especially the illegal cesspool, might violate state and federal environmental and health laws, exposing it to tens of thousands of dollars a day in fines. Remediating the hazards would cost between \$1.1 million and \$4 million, according to his letter, which asked Wynhoff and DLNR director Suzanne Case to meet with him and his clients to discuss matters.

Six months later, on August 21, PMP attorney Fisher asked the Land Board to approve a rent abatement, given all of the property's defects. He claimed that PMP had incurred damages totaling \$415,505 since November 2018, including lost revenue due to waste, derelict vessels and an illegal tenant occupying space that could otherwise be rented, as well as costs incurred to complete the fence around property, to hire security in the meantime, to install a new power system and security gate, and to grade and level the lot.

While GKM was under no obligation to leave any of its improvements on the property, Fisher described the company's decision to disconnect utilities and remove the motorized security gate as property damage.

Fisher wrote that PMP knew there was a functioning security gate when they bid on the property and expected it to still be there when it took possession.

He also asked that the Land Board agree to reimburse PMP the costs to remediate the environmental hazards on the property, such as the cesspool. Fisher estimated those costs could range from \$474,000 to nearly \$2 million.

Before the month was over, however, PMP had begun to unravel.

A Sinking Ship

According to Solliday, he had learned that Ho'opai had taken out more than \$100,000 in loans without Solliday's knowledge or consent, which was a violation of their operating agreement. The agreement requires unanimous consent of all members to take on liabilities greater than \$10,000.

That same agreement allows for a member to be involuntarily withdrawn and dissociated from the company, so Solliday filed a notice with the state Department of Commerce and Consumer Affairs that he was the sole owner. Ho'opai followed suit with a similar filing, which led to Solliday filing another. And on it went.

To the court, to DOBOR, and to various banks, Ho'opai has represented that he owned 95 percent of PMP, with Solliday holding the remainder. And, he stated, because he believed Solliday owns a less than ten percent interest in the company, he did not list Solliday as a co-owner or provide any of Solliday's financial information to DOBOR when he submitted PMP's lease bid in 2018. Such information would have been required from any owner with more than a 10 percent interest.

Solliday, on the other hand, has argued that it was his idea to bid on the harbor lease and that both had signed an operating agreement that gave each of them a 50 percent ownership interest. A shareholder agreement they also signed, which includes the 95-5 percent split, is invalid, Solliday's attorneys have argued, because PMP is a limited liability company, and LLCs do not have shareholders.

In October, after banks had frozen PMP's accounts and would only allow expenditures approved by both men, Ho'opai sought Land Board approval to identify him as the sole owner of PMP. By then, the company had failed to pay its rent for several months.

The Land Board denied Ho'opai's request. And a few weeks later, 3rd Circuit Judge Melvin Fujino held a hearing on a petition Ho'opai had filed for a temporary restraining order and preliminary injunc-

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tion against Solliday.

At the November hearing, Ho'opai's attorney, Sunny Lee, conceded that PMP's shareholder agreement had "a lot of things in there that were not intended to be. It was a document that Mr. Ho'opai downloaded off the internet and cobbled together."

Lee warned that Solliday's contestation of the ownership percentage might lead to PMP being stripped of its lease. Lee said that any assignments of interest need to be approved by the Land Board beforehand. In PMP's case, its bid application showed a company owned by Ho'opai to be the 95 percent owner. "Now Mr. Solliday is claiming 50/50. It is a violation of the terms of lease because that was not what DLNR agreed to when they assigned the lease to Pacific Marine Partners," Lee said.

Solliday's attorneys countered that the operating agreement contains a clause that invalidates any other agreements. It states, in part, "Only the written terms of this agreement will bind the members."

Judge Fujino sided with Solliday. "Mr. Lee admits that his client was the one who prepared [the agreements]. At best, there is ambiguity. We believe that the shareholder agreement doesn't apply," Fujino said.

He pointed out that the shareholder agreement included provisions that are not applicable and that Ho'opai had submitted a document to the Bank of Hawai'i in August 2019 that stated that Solliday owns more than 25 percent of the company.

Fujino then denied Ho'opai's request for a temporary restraining order and preliminary injunction against Solliday. In April, the judge granted Ho'opai's request that the case be stayed and that the parties be ordered into arbitration. Solliday's attorneys appealed Fujino's April decision to the Intermediate Court of Appeals, but no hearings have been held.

On May 22, the Land Board cancelled PMP's lease for non-payment of rent. Ho'opai asked the board hold off, pointing out that PMP has had to spend money curing defaults with the property. "When I bid and won at the auction, I was anticipating this high price would come with all the bells and whistles.... It was very much not the case," he said. He pointed

out that PMP's rent is many times more than previous ground rents.

Despite owing substantial back rent, "PMP has paid more in one and a half years than [GKM did] in the past five years," he told the board.

"These issues down at Honkohau Harbor have been festering, for lack of a better word. [We're] stepping up to the plate to take this on," he said.

When pressed by board members to specify how much PMP has paid to clean up the property, Ho'opai could not answer. "A lot of those numbers are with my attorney," he said.

Board members also could not get Ho'opai to tell them how much gross revenue PMP had generated.

"Percentage rent requires accounting to DLNR for your income. Have you delivered any of that information to DLNR?" asked Land Board chair Suzanne Case.

Ho'opai said his attorneys had been in the process of delivering gross receipts.

"You haven't actually given it to the DLNR," Case said.

"Do you know your gross receipts for 2019?" board member Chris Yuen asked.

Ho'opai said he could contact his bookkeeper.

Before voting to cancel the lease, deputy attorney general Wynhoff reminded the board that, under PMP's lease, it would still have 60 days to cure its default.

'Unfairly Targeted'

On June 26, the Land Board rejected Ho'opai's and Solliday's petitions for a contested case hearing. Solliday had submitted testimony to the board that criticized the actions of DOBOR, Ho'opai, and GKM. He blamed DOBOR for failing to inspect the property and ensure it was suitable before auctioning it. He blamed GKM for not fully disclosing site conditions and for Hotspots Welding's unpermitted warehouse and cesspool, and the dumping of hazardous materials and construction waste, among other things.

He also blamed DOBOR for Hotspots remaining on the property for years without authorization and without addressing the environmental hazards.

"[U]pon PMP's acquisition of the lease, DOBOR claims PMP got an 'as is' property and directs PMP to tackle the illegal trespassing business Hotspots Welding, including entering its trespass lawsuit. PMP is still embroiled in and at risk in expensive litigation with Hotspots Welding thanks to DOBOR," he wrote.

Solliday recounted that on November 15, 2019, he had to call the police after finding a man who had sneaked into the boat yard "naked with a woman out in the open." The police found the couple hiding at Hotspots and gave them a warning against trespassing, he wrote, adding

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that less than an hour after the police left, PMP's two surveillance cameras outside Hotspots's warehouse went offline. The camera wires appeared to have been intentionally cut or damaged, Solliday wrote.

"PMP's water service was also turned off as the water lines ran through Hotspots. I ended up installing new water lines that went around Hotspots," he added.

When Land Board member Jimmy Gomes asked Wynhoff about the issues Solliday had raised, Wynhoff said, "These claims are worthy of consideration and worthy of respect." Even so, he said the parties were not entitled to a contested case hearing.

But a month later, after negotiation with PMP's attorneys, DOBOR recommended Land Board approval of the \$423,600 settlement and rescission the lease cancellation.

In its July 24 report to the board, DOBOR listed the 11 issues with the property that PMP found problematic. GKM was blamed for most of them, including interfering with the transfer of boat storage customers to PMP, destroying the electrical connection and interfering with the water supply to the property, abandoning vessels, and installing an illegal cesspool.

In testimony submitted on July 21, GKM's Prettyman rebutted the accusations.

With regard to the problems PMP has had getting water and electricity to the property, she explained that there never were utilities on the property. "GKM had been making do with a small amount of power supplied from GKM's electric at its adjacent property," she wrote.

She pointed out that on October 24, 2018, before PMP took possession of the

property, GKM and its attorney met with Land Board chair Case and Wynhoff. GKM was told that PMP wanted to buy GKM's assets. "GKM made an offer and our offer was rejected at the last minute leaving GKM scrambling to remove GKM's improvements and some of GKM's equipment," Prettyman wrote.

As for interfering with the transfer of boat storage customers, Prettyman stated simply that once GKM got notice from DOBOR to vacate the premises by October 31, 2018, the company gave all of its tenants similar notice.

DOBOR then posted a notice at the harbor office, and made calls and emails to GKM's tenants telling them they did not have to leave, she stated. That "completely undermined GKM's move-out process and eliminated any management and GKM's ability to collect any rents owed. ... [V]ery few tenants moved out and all remaining tenants continued to ignore any and all further requests from GKM," she wrote.

She continued, "There were no abandoned vessels as all vessels had owners and GKM was in communication with the owners. GKM also gave notice to Hotspots Welding to vacate the premises. After receiving our notice to vacate, Cameron Noftz, Hotspots Welding, approached me in the parking lot and told me that he was told by both DLNR and PMP that he did not have to vacate. Cameron Noftz completely ignored our notice to leave and became very hostile." (Solliday and even Hotspots employees have sought temporary restraining orders against Noftz, who claims he was robbed of his interest in the company through forgery. He is suing his former partner, Stacie Horst, as well as Ho'opai and PMP. Ho'opai and PMP



PHOTO: GKM

A notice posted at the Honokohau harbor office.

deny Noftz's allegations against them.)

Prettyman also contested the claim that GKM left PMP with an unsuitable property. GKM's Phase 1 Environmental Assessment found no recognized environmental conditions. She said that GKM never allowed vessels to be worked on at the boat yard, but that PMP has. She added, "GKM is also unaware of any cesspool at Hotspots Welding."

She also stated that when GKM attempted in November 2018 to remove some property that had been left, PMP reported the incident as trespassing.

"We made at least five attempts to remove GKM's equipment starting as early as November 13, 2018, without access," she wrote.

She concluded that GKM, when it managed the property, paid its rent on time, prohibited vessel work, offered fair prices ("Rents have quadrupled for some tenants," she said), and left the facility in a "clean and in very good condition."

"GKM continues to cooperate with DLNR-DOBOR despite GKM being unfairly targeted," she wrote.

DOBOR and attorneys for Noftz and Ho'opai did not respond to questions by press time.

— Teresa Dawson