

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawai'i 96813

July 24, 2020

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Consideration of Settlement of Disputed Claims re Boating Lease No. LH-19-002,
Pacific Marine Partners LLC, Lessee, Honokohau Small Boat Harbor, North
Kona, Hawai'i, TMK: (3) 7-4-008:-003 (Por).

INTRODUCTION

The Division of Boating and Ocean Resources (DOBOR) manages the state's small boat harbors, including Honokohau SBH on the Big Island, a few miles from the Kona Airport. DOBOR leases land at the harbor to various tenants including Pacific Marine Partners LLC. PMP has a number of claims against DOBOR. We are recommending settlement in the amount \$423,000 for the reasons and on the terms stated in this submittal.

DISCUSSION

Honokohau SBH includes several separately managed parcels, one of which is a mostly vacant nine acre lot. For years the property was under a revocable permit to GKM, Inc. (GKM also has a lease for another parcel at Honokohau SBH on which it has various commercial use subtenants.) GKM used the nine acre parcel for boat storage. In other words, GKM allowed boat owners to haul out their boats on trailers and store them on the parcel, for payment of a monthly or yearly fee. As of 2018, GKM was paying \$7311.45 per month (or 5% of its gross receipts whichever is greater) as rent for the parcel.

A few years ago, the Board identified the boat storage parcel as a good candidate for a longer term, more lucrative disposition. DOBOR began the lease auction process. Eventually, PMP was the successful bidder. PMP entered into a lease with DOBOR, effective November 1, 2018. The lease rent is \$35,250 per month or 50% of gross receipts, whichever is greater.

PMP encountered substantial problems with the lease and the leased property. Those problems included:

1. GKM entered into a sublease with an entity called Hot Spots Welding and Fabrication LLC which was improperly occupying a portion of the leased premises without Board approval.

2. GKM installed a cesspool on the leased premises without the necessary permits and authorizations.
3. GKM destroyed the electrical connection to the property.
4. GKM interfered with water to the property.
5. GKM interfered with transfer of the boat storage customers to PMP
6. GKM removed personal property from the parcel, including the gate motor.
7. GKM allowed numerous apparently abandoned vessels on the parcel, not paying storage fees.
8. GKM left large amounts of trash, abandoned property, and solid waste on the property.
9. Both GKM and PMP did Phase I environmental site assessments of the property. There was considerable disparity. PMP was concerned that the property might be contaminated with waste oil, paint, or other contaminants.
10. The property is fenced on two sides. PMP believes that the property should be fully enclosed.
11. The property was not graded in a manner satisfactory to PMP.

These matters are more fully described in letters from PMP's counsel. Exhibit 1 is a letter from Mr. Duane Fisher dated August 21, 2019 and Exhibit 2 is a letter from Mr. Sunny Lee dated May 19, 2020.

To be clear, DOBOR denies each and every one of these claims in terms of both liability and amount. The State's Deputy Attorney General Bill Wynhoff has asked that staff refrain from discussing legal issues regarding the State's powers, duties, privileges, immunities, and liabilities in connection with the claims and the settlement. Mr. Wynhoff is available for further discussion, some or all of which the Board may wish to pursue in executive session.

Even though the State denies the claims, staff and the Department of Attorney General are recommending that the claims be settled. Despite all the problems, PMP has been a good tenant. PMP has been cooperative with DOBOR and has tried to help clean up the property, improve operations, and grow its revenues. Most importantly, PMP has paid a lot of rent. It is important to remember that PMP is now paying 5 times as much rent as was GKM. Over the course of the lease from September 2018 to now, it has paid \$664,818.65. We also note that the lease calls for 50% of gross receipts if those exceed the base rent. That has not happened yet but PMP is energetically working to increase revenue.

Staff believes the rent is fair. We also recognize, however, that if the matter is not settled then there will be messy litigation over an indefinite period. At best, the State will win, have a claim against PMP for back rent, and will have to re-let the premises.

Finally, a very important part of the settlement is that the consideration is paid over time by what is in effect a rent credit¹ in two parts. 1) The existing arrears (\$58,641.66) will be credited immediately. 2) Starting with the August 2020 rent, PMP will pay \$17,000 plus any percentage rent. This results in a rent credit of \$18,250 per month. It will take 20 months to use

¹ This settlement is not an amendment of the lease. Rather it is a settlement of disputed claims. Settlement also requires approval by the Attorney General.

up the rent credits. During that time, PMP will have paid an additional \$340,000 (at least). By then the total will be well over one million dollars.


DOBOR has also agreed to close the Hot Spots cesspool. We do not believe the cesspool is a large capacity cesspool. But we need to ensure that the closure is done promptly and correctly. And finally, the parties agree that PMP's Phase I environmental site assessment accurately reflects the baseline condition of the property.

We also note that at its May 20, 2020 meeting the Board authorized termination of the lease. The Board reaffirmed its action and denied requests for a contested case at its June 26, 2020 meeting. Since then PMP has paid \$185,250 in rent and agreed to settlement. The termination notice should be rescinded. Other notices of default have been sent but not considered by the Board.

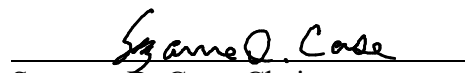
RECOMMENDATION:

- (1) That the Board rescind its decision to terminate the lease and rescind any other notices of default;
- (2) That the Board approve settlement on the general terms stated subject to approval by the Attorney General;
- (3) That the Board authorize the Chair and the Department of Attorney General to negotiate final terms of the settlement and execute a settlement agreement.

Respectfully submitted,


Ed Underwood
Administrator

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Attachments:

- | | |
|-----------|--|
| Exhibit A | Starn, O'Toole, Marcus & Fisher ALC – Regarding Rent Abatement and Environmental Remediation Claims Letter |
| Exhibit B | Bronster, Fujichaku, Robbins AAL – Response to Notice of Default Dated April 14, 2020 |

EXHIBIT A

STARN • O'TOOLE • MARCUS & FISHER

A LAW CORPORATION

August 21, 2019

VIA U.S. MAIL AND ELECTRONIC MAIL

Mr. William J. Wynhoff
Dept. of the Attorney General
Kekuanaoa Building
465 South King Street, Room 300
Honolulu, Hawaii 96813
bill.j.wynhoff@hawaii.gov

Re: **Rent Abatement and Environmental Remediation Claims Letter**
Pacific Marine Partners LLC Honokohau Small Boat Harbor
Boating Lease No. LH-19-002 (the "***Lease***")
TMK (3) 7-4-008:003 Portion

Dear Bill:

In follow-up to our ongoing discussions regarding the above-referenced Lease, Pacific Marine Partners LLC ("***Pacific Marine***") hereby requests that the Board of Land and Natural Resources ("***BLNR***") approve: (i) rent abatement in the maximum amount permitted by law and (ii) environmental remediation, as further described below. Capitalized terms not defined in this letter have the meanings ascribed to them in the Lease.

I. Background

Pursuant to the Lease, Pacific Marine currently occupies the "Honokohau Small Boat Harbor, Lease Parcel" in North Kona, identified by Tax Map Key No. (3) 7-4-008-003 (portion) (the "***Premises***"). For decades, and up until the commencement of the Lease, Gentry Kona Marine ("***GKM***") occupied the Premises under a revocable permit from the Department of Land and Natural Resources ("***DLNR***").

In 2018, DLNR advertised the Premises for rent via a Notice of Public Auction dated June 1, 2018 (the "***Notice***"). The Notice described the Premises as approximately 392,040 square feet (nine acres) of unimproved, graded-gravel land with a chain-link fence, intended for use as a boat/trailer storage facility. The Notice also instructed interested parties on the public bidding process for the Lease. Pacific Marine bid on the Lease in reliance on the Notice, Lease, and the description of the Premises at the auction.

Although Pacific Marine attempted to conduct a due diligence inspection of the Premises prior to bidding on the Lease, GKM refused to allow access. Pacific Marine could only observe the Premises from outside the perimeter chain-link fence. After Pacific Marine won the auction for the Lease, DLNR facilitated a twenty-minute inspection of the Premises. During this brief

inspection, Pacific Marine observed utilities, including electricity, serving the Premises, and a functioning motorized security gate, but was not allowed to walk the entire property and discover the lack of perimeter fencing.

DLNR did not allow Pacific Marine to perform its own Phase I environmental study of the Premises until after execution of the Lease. After Pacific Marine bid on the Lease, GKM provided a Phase I report, which contained a number of irregularities. Pacific Marine questioned the reliability of GKM's Phase I report and, with DLNR's concurrence and approval, conducted its own Phase I study. We confirmed in writing with DLNR that, as between Pacific Marine and DLNR, Pacific Marine would not be liable for any pre-existing environmental conditions at the Premises.

After a fairly chaotic and disorganized few weeks leading up to the Lease commencement, Pacific Marine took possession of the Premises on November 1, 2018. Pacific Marine subsequently discovered the following issues, without limitation:

- (1) **Property Damage.** GKM appeared to have caused significant damage to the Premises prior to vacating, including, without limitation: disconnecting utility services and damaging utility lines (resulting in loss of electrical service, among other things), and ripping out the motorized security gate. Pacific Marine is not able to restore electrical service through the existing infrastructure because the control point for the electrical lines is located on a separate lot leased by GKM.
- (2) **Derelict Vessels.** GKM left approximately two dozen derelict vessels at the Premises, ranging from approximately 19 feet long to over 40 feet long.
- (3) **Solid Waste.** GKM left metal, equipment, and other debris at the Premises, in a volume estimated to fill the equivalent of approximately nine boat stalls.
- (4) **Illegal Tenant.** GKM entered into an illegal subtenancy of the Premises to Hotspots, a welding and fabrication company. Hotspots currently occupies approximately 7,000 square feet. GKM's arrangement with Hotspots was never approved by the DLNR or BLNR.
- (5) **No Grading.** Contrary to the advertised description of the Premises, the Premises is not graded-gravel land.
- (6) **Pre-existing Environmental Conditions.** Pacific Marine's Phase I study revealed serious pre-existing environmental conditions that were not disclosed by GKM's Phase I report. The pre-existing environmental conditions are described in more detail in Ian Sandison's February 20, 2019 letter (the "*Environmental Issues Letter*"), a copy of which is also enclosed herewith as Exhibit B for reference.

As a result of the issues described above, through no fault of its own, Pacific Marine has been deprived of the benefit of its bargain under the Lease, has been damaged in excess of one year's rent for the Premises, and has been forced to operate the Premises at a loss. Accordingly, Pacific Marine hereby requests rent abatement in the maximum amount permitted by law, in order to make the substantial improvements required to bring the Premises into the advertised and reasonably expected condition. In addition, Pacific Marine requests that DLNR reimburse Pacific Marine for the cost of completing the environmental remediation. These actions are proper and warranted given the circumstances here and the unacceptable condition in which the Premises were delivered to Pacific Marine.

II. BLNR Should Approve Rent Abatement for Pacific Marine in the Maximum Amount Authorized by Law.

As we have discussed on many prior occasions, HRS § 171-6(7) authorizes BLNR to waive up to one year of rent if substantial improvements are required to the leased land.¹ Here, the Premises were not delivered in the advertised condition, and GKM's actions have caused significant damages and negatively impacted Pacific Marine's ability to operate the Premises as a boat/trailer storage facility. Substantial improvements are therefore required to restore the damaged Premises to the advertised condition and afford Pacific Marine full use and enjoyment of the Premises.

Pacific Marine's conservative estimate of damages is summarized without limitation below and on Exhibit A.

¹ HRS § 171-6(7) states in relevant part that BLNR is authorized to:

Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed . . . one year for land to be used for resort, commercial, industrial, or other business use.

BLNR generally supports rent abatement when warranted, and, in fact, Chair Case has testified in support of expanding the rent abatement authorized under HRS § 171-6(7). More specifically, Chair Case stated in support of SB 1252 (proposed to increase the number of years for which rent may be waived or reduced) that "in many cases, a rent reduction or waiver equal to one year of ground rent would be an insufficient incentive to induce a developer to invest in the demolition of aged improvements on and redevelopment of public land, or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public land."

Pacific Marine Damages Estimate²

Item	Basis for Damages	Total
Property Damage	Cost of full perimeter fence (2 sides missing)	\$118,000
	Cost of security personnel to mitigate risk caused by lack of complete fence	\$7,311
	Cost to install solar power system	\$55,614
	Cost of generator and fuel for interim power	\$18,950
	Cost to replace security gate damaged by GKM	\$14,350
Derelict Vessels	Damages estimated at \$10 per foot of vessel length per month	\$66,280
Solid Waste	Damages estimated based on rental rate of \$260 per boat stall per month	\$20,280
Illegal Tenant	Hotspots illegally occupies approximately 7,000 square feet	\$56,000
No Grading	Cost to grade and level lot	\$58,720
TOTAL		\$415,505

A. Property Damage

1. Lack of Full Perimeter Fence

Pacific Marine reasonably expected to take possession of the Premises with a complete and secure perimeter fence. The Notice and the description of the Premises during the auction specified nine acres of graded-gravel land fenced with chain-link fencing. However, when Pacific Marine took possession of the Premises, Pacific Marine discovered that only two of the four sides of the perimeter were fenced.

² Totals are for the period from November 2018 through August 20, 2019 (the commencement of the Lease through the present). Estimates for repairs and other remediation work not yet completed are based on proposals obtained by Pacific Marine for the applicable work. Where work has been completed (e.g., installation of the solar power system), estimated actual costs are provided. An itemized monthly breakdown of damages estimates for lost space is provided in Exhibit A.

The lack of a complete perimeter fence interferes with Pacific Marine's full use and enjoyment of the Premises as a boat/trailer storage facility because it leaves the Premises and the boats and trailers stored there vulnerable to trespass, thefts, and vandalism. Pacific Marine has incurred \$7,311 to date in costs for 24-hour security to patrol the Premises and has also had to provide additional lighting and signage. Because security cannot monitor all of the open Premises simultaneously, multiple instances of theft and trespass have occurred. The Premises will likely continue to be plagued by theft, trespass, and vandalism without a complete perimeter fence to secure it. Pacific Marine has obtained an estimate for the perimeter fence in the amount of \$118,000.

2. Lack of Power/Damage to Utilities

During its inspection, Pacific Marine observed electricity serving the Premises. Pacific Marine reasonably expected that it would have access to existing utility lines and infrastructure (and would contract with a utility provider for service). Instead, after taking possession of the Premises, Pacific Marine discovered that GKM had disconnected utility services and damaged utility lines, resulting in loss of electrical service, water service, and waste management service.

Pacific Marine is not able to restore electrical service through the existing infrastructure because the control point for the electrical line lines is located on a separate lot leased by GKM, and GKM has been "uncooperative" to say the least. Pacific Marine therefore installed a solar power system at a cost of approximately \$55,614. The solar power system is currently the only financially viable power solution for Pacific Marine, and it has forced Pacific Marine to operate at a lower power capacity than it anticipated. In order to increase capacity in the future, a different (and significantly more expensive) solution will be necessary. In addition, before the solar power system was installed, Pacific Marine incurred approximately \$18,950 in costs for a generator and fuel in order to conduct its operations.

3. Damage to Motorized Security Gate

After Pacific Marine's inspection, GKM appears to have caused significant damage to the motorized security gate and related equipment. Pacific Marine observed the gate functioning during its inspection and reasonably expected it to still be functioning when Pacific Marine took possession of the Premises. An operational security gate at the entrance and exit of the Premises is critical to the security and functionality of the Premises as a boat/trailer storage facility. The estimated cost to replace the gate and related equipment is approximately \$14,350.

B. Derelict Vessels

GKM left behind approximately two dozen derelict vessels at the Premises, ranging from approximately 19 feet long to over 40 feet long. Since the commencement of the Lease term, some vessels have been removed, but the majority of the derelict vessels remain on the Premises.

Pacific Marine reasonably expected to take possession of the Premises without derelict vessels left by the prior occupant. The derelict vessels restrict Pacific Marine's full use and enjoyment of the Premises by occupying space that Pacific Marine could otherwise rent for boat/trailer storage and by creating potential safety hazards and detracting from the overall appearance of the Premises. Pacific Marine estimates that the derelict vessels have caused damages in the amount of approximately \$66,280. This estimate is based on \$10 per foot of vessel length per month, based on current monthly rent rates, and takes into account the removal of some of the vessels. An itemized monthly breakdown of the estimate is included in Exhibit A.

C. Solid Waste

GKM also left behind solid waste, consisting of metal, equipment, and other debris. The solid waste occupied the equivalent of approximately nine boat stalls. Since the commencement of the Lease term, BLNR has made some efforts to clean up the solid waste. However, its contractors have not adequately completed the job, and approximately three boat stalls worth of solid waste remains at the Premises. The solid waste restricts Pacific Marine's full use and enjoyment of the Premises by occupying space that Pacific Marine could otherwise rent for boat/trailer storage and by creating potential safety hazards and detracting from the overall appearance of the Premises.

Pacific Marine estimates that the solid waste has caused damages in the amount of approximately \$20,280. This estimate is based on the current monthly rental rate of \$260 per boat stall per month and takes into account the removal of some of the waste. An itemized monthly breakdown of the estimate is included in Exhibit A.

In addition to the rent abatement requested by Pacific Marine for the damages it has already incurred as a result of the solid waste, Pacific Marine requests that, as a part of the environmental remediation described in Section III below, BLNR promptly clean-up the remainder of the solid waste to a standard acceptable to Pacific Marine or agree to reimburse Pacific Marine for the cost of cleaning up the solid waste itself.

D. Illegal Tenant

GKM appears to have sublet the Premises to Hotspots, a welding and fabrication company. Hotspots currently occupies approximately 7,000 square feet, and Pacific Marine is unable to use that space for operations of its boat/trailer storage facility.

Pacific Marine reasonably expected to take possession of the Premises without a subtenant. There was no mention of a subtenant in the Lease or Notice, and no sublease documents were ever given to Pacific Marine, as would be customary if a lessee is taking possession of property subject to an existing subtenant. Moreover, the termination of GKM's license should have terminated any subtenant or sublicensee of GKM as a matter of law.

Pacific Marine estimates that it has been damaged in the amount of approximately \$56,000 as a result of the lost space occupied by Hotspots. The estimate is based on the current rental rate of \$0.80 per square foot per month, and an itemized monthly breakdown of the estimate is included in Exhibit A. This figure does not include the thousands of dollars of attorneys' fees Pacific Marine has incurred to deal with Hotspots.³

Pacific Marine will not take responsibility for the illegal subtenant, but it is willing to assist the State in evicting Hotspots.

E. No Grading

The Notice expressly stated that the Premises would be "graded-gravel land." Pacific Marine therefore reasonably expected to take possession of a graded and leveled Premises. However, the Premises was not delivered as a graded-gravel lot, negatively impacting the rental rate that Pacific Marine is able to charge for the boat stalls. The estimated cost of grading and leveling the Premises is approximately \$58,720.

For all of the reasons stated above, substantial improvements are needed to restore the damaged Premises to the advertised condition and afford Pacific Marine full use and enjoyment of the Premises. The cost of restoring the Premises and the damages already incurred by Pacific Marine as a result of the unacceptable condition of the Premises are estimated to be at least \$415,505. Therefore, waiver of the first year's rent for the Premises is appropriate and warranted under HRS § 171-6(7), and Pacific Marine requests that the BLNR approve the same.

III. BLNR Should Approve Environmental Remediation for the Premises.

As set forth in the Environmental Issues Letter, the total estimated costs for environmental investigation and remediation of the pre-existing conditions on the Premises (as identified by the Phase I environmental assessment) range between \$1,104,000 and \$4,059,000.

Since the Environmental Issues Letter was sent, DLNR has undertaken removal of certain accessible solid waste and derelict vessels, and Pacific Marine has undertaken National Pollutant Discharge Elimination System permitting. The estimated costs of addressing the remaining pre-existing conditions on the Premises range between \$474,000 and \$1,864,000. The remaining pre-existing conditions on the Premises include, without limitation: Hotspots' septic tank / cesspool (both closure and installing a new septic system), Hotspots' hazardous waste disposal, light maintenance areas investigation and cleanup, perimeter berms investigation and cleanup, and Premises-wide impacted soil investigation.

³ The situation with Hotspots is still not resolved as of this writing. Hotspots remains in possession despite demand being made that Hotspots vacate the Premises.

Mr. William J. Wynhoff
Dept. of the Attorney General
August 21, 2019
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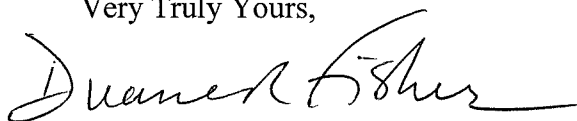
Pacific Marine requests that BLNR approve the environmental remediation claims identified in the Environmental Issues Letter and agree to reimburse Pacific Marine for the costs to complete the environmental remediation. Pacific Marine has consistently asserted that it will not be liable for pre-existing environmental conditions and has put DLNR on notice that it will not bear the costs of remediation for such conditions. Accordingly, BLNR should approve environmental remediation for the pre-existing environmental conditions at the Premises.

IV. Conclusion

Pacific Marine has mitigated damages in good faith but has not received the benefit of its bargain under the Lease. For all of the reasons stated above, BLNR should approve Pacific Marine's request for: (1) rent abatement equal to one year's rent under the Lease, pursuant to HRS §171-6(7), and (2) reimburse Pacific Marine for environmental remediation as described in the Environmental Issues Letter.

We appreciate your efforts to date and hope that we are able to mutually resolve this matter. If we are unable to reach a satisfactory resolution, Pacific Marine may be forced to consider other options for pursuing its claims. Please contact me at your earliest convenience to discuss availability for a meeting with you and Chair Case.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Duane R. Fisher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Duane R. Fisher
Counsel for Pacific Marine Partners LLC

Enclosures

c. Jason Ho'opai
Ian Sandison, Esq.

EXHIBIT A

Pacific Marine Damages Impact Table

Description	2018			2019			PRESENT				
	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May.	Jun.	Jul	Aug.	Total
Derelict Vessel											
Large Wooden Boat: 60x30+trailer	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$18,000.00
B11 - Annie - HA-2023-D ~19'	\$190.00	\$190.00	\$190.00	\$190.00	\$190.00	\$190.00	\$190.00	\$190.00	\$190.00	\$190.00	\$1,900.00
HA-0370-D Bandit ~20'	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$2,000.00
951938 Atulia Kaiua-Kona ~35'	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$3,500.00
Ho Ihi Kai / Fiberglass ~40'	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$4,000.00
HA-1350-F / ~25'	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$2,500.00
HA-4851-D Hula Baby ~25	\$250.00	\$250.00	\$250.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$750.00
Outasile ~40'	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$4,000.00
Sally Gakona ~35'	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$3,500.00
Unmarked Bertram Hull ~40'	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$400.00	\$4,000.00
W-98 HA-6338-D ~28'	\$280.00	\$280.00	\$280.00	\$280.00	\$280.00	\$280.00	\$280.00	\$280.00	\$280.00	\$280.00	\$2,800.00
Reel of Fortune HA-4507-D ~30'	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$3,000.00
Y-24 : HA-1779-CP Sunbridge ~25'	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$2,500.00
HA-3103-G Express Cruiser ~21'	\$210.00	\$210.00	\$210.00	\$210.00	\$210.00	\$210.00	\$210.00	\$210.00	\$210.00	\$210.00	\$2,100.00
Lei Makani ~ 35'	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,750.00
R1-Second Hand Rose ~44'	\$440.00	\$440.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$880.00
W-46 Dive Bomb HA-1491-CP ~30'	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$0.00	\$0.00	\$2,400.00
W-47 Spare Rib HA-6641-G ~25'	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$0.00	\$2,250.00
W-51 Research HA-8057-H ~30'	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$0.00	\$0.00	\$2,100.00
WN-1135-R Desire ~30'	\$300.00	\$300.00	\$300.00	\$300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,200.00
HA-0402-G Stingray ~20'	\$200.00	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$400.00
Y-76 : HA-6103-G Pursuit ~25'	\$250.00	\$250.00	\$250.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$750.00
Total Loss Due to Derelict Vessels	\$8,020.00	\$8,020.00	\$7,380.00	\$6,880.00	\$6,580.00	\$6,230.00	\$6,230.00	\$5,930.00	\$5,630.00	\$5,380.00	\$66,280.00
Solid Waste											
Debris (1 Stall)	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$0.00	\$0.00	\$2,080.00
Equipment (5 Stalls)	\$1,300.00	\$1,300.00	\$1,300.00	\$1,300.00	\$1,300.00	\$1,300.00	\$1,300.00	\$1,300.00	\$0.00	\$0.00	\$10,400.00
Material (2 Stalls)	\$520.00	\$520.00	\$520.00	\$520.00	\$520.00	\$520.00	\$520.00	\$520.00	\$520.00	\$520.00	\$5,200.00
Waste (1 Stall)	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$2,600.00
Total Loss Due to Solid Waste Occupying 9 Stalls	\$2,340.00	\$2,340.00	\$2,340.00	\$2,340.00	\$2,340.00	\$2,340.00	\$2,340.00	\$2,340.00	\$780.00	\$780.00	\$20,280.00
Illegal Tenant Hot Spots											
7000 sqft Pad	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$56,000.00
Total Loss Due to Illegal Tenant	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$5,600.00	\$56,000.00

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OUR REFERENCE NO.:
069882-1

February 20, 2019

VIA E-MAIL

William J. Wynhoff
Department of the Attorney General
Land Transportation Division
425 Queen St.
Honolulu, HI 96813

Re: Environmental Remediation of Honokāu Harbor, Kailua-Kona, Hawai'i
TMK No. (3) 7-4-008:003 (Portion)

Dear Bill:

This letter follows up on our discussions regarding environmental issues at the Pacific Marine Partners, LLC d/b/a Honokohau Marine Storage ("**Pacific Marine**") site at Honokau Harbor, 74-429 Kealakehe Parkway, Kailua-Kona, Hawaii, located on a 9-acre portion of the parcel designated by TMK No. (3) 7-4-008:003 (the "**Property**"). We have been retained by Pacific Marine for the purpose of coordinating the work pertaining to the Property by environmental consultants separately hired by Pacific Marine to (1) conduct a Phase I environmental site investigation, (2) prepare aerial photographic documentation of the condition of the Property and (3) prepare a cost estimate for remediating "recognized environmental conditions" ("**RECs**") identified in the Phase I report. In addition, we have briefly analyzed the certain environmental laws implicated by each REC.

I. Background

Pacific Marine currently leases the Property from the State of Hawai'i, Board of Land and Natural Resources ("**BLNR**") pursuant to Boating Lease No. LH-19-002 ("**Lease**") for the operation of a boat/trailer storage facility and vehicle parking purposes. Among other things, the Lease requires Pacific Marine to comply with all applicable federal, state, and county environmental impact regulations (collectively, "**Environmental Laws**").

It is our understanding that at the time Pacific Marine and the BLNR entered into the Lease, the parties were generally aware that the Property contained numerous preexisting environmental / contamination / hazardous materials / environmental conditions (collectively "**Preexisting Conditions**") that needed to be addressed in order to bring the Property into

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compliance with Environmental Laws, and, that Pacific Marine did not bear any responsibility for those pre-existing Environmental Conditions on the Property.

The parties have also generally agreed that the Preexisting Conditions need to be accurately identified and ultimately resolved in accordance with applicable Environmental Laws. Because of the uncertainty of the extent and severity of the Preexisting Conditions and unknown cost to resolve them, BLNR and Pacific Marine have agreed to a stepwise approach toward resolution, starting with the efforts outlined in this letter. In that regard BLNR has agreed to abate or reduce the rent owed under the Lease for the purpose of paying for the environmental consulting work necessary to (1) conduct a new Phase I environmental site investigation, (2) prepare aerial photographic documentation of the condition of the Property and (3) prepare a cost estimate for remediating RECs identified in the new Phase I report.

As a conceptual model, BLNR has proposed that it will use a rent abatement/reduction approach to paying for Pacific Marine's engagement of environmental consultants to remediate Preexisting Conditions on the Property.

II. Phase I Environmental Investigation

Pacific Marine's environmental consultant, Environmental Science International ("ESI") conducted a Phase I environmental investigation of the Property including a December 6, 2018 site inspection and video reconnaissance. Enclosed is the resulting Phase I environmental report ("**Report**"). The reconnaissance video has been sent to you via a Dropbox file sharing link. The Report observed, among other things, the following:

- A number of temporary structures, including an office trailer and one permanent structure with a concrete slab floor.
- An unpaved, small boat storage yard near its apparent storage capacity.
- Small-capacity petroleum storage tanks and pails (fuel and lubricating oil), and de minimis releases of oil from boats and vehicles indicating poor housekeeping.
- A welding and fabrication shop (Hot Spot Marine Fabrication) with small quantities of hazardous materials, such as paints, solvents/thinners, coolant, cleaners, compressed gases, and solid waste.
- Two openings or portals to an apparent septic system, or cesspool, at the location of the Hot Spot fabrication shop at the northwest corner of the Subject Property.
- Uncontrolled dumping of waste materials or waste-like materials consisting of scrap metal, old tires, construction debris, wood and metal debris, unidentifiable materials, a tractor, and an old air compressor on or around the berms at the eastern and northern boundaries of the Subject Property, also indicating poor housekeeping.

- Apparent abandoned or derelict vessels and trailers, some with highly weathered exteriors that have resulted in releases of paints, metals, and other debris to the ground surface.
- An adjacent property to the west with numerous commercial businesses and activities, septic systems, and above ground and underground fuel storage tanks.

In connection with the foregoing observations, ESI considers the following issues to be RECs:

- The undocumented waste water system at the Hot Spot fabrication shop;
- Uncontrolled dumping;
- Collection of otherwise *de minimis* release of oil, paint, or other hazardous substances, solid wastes; and
- Abandoned or derelict vessels.

In addition, the accumulation of contamination on the surface soil due to historical use of the Property for, *inter alia*, storage, repair, and alteration of vessels since around 1983 is considered a REC.

Applicable Environmental Laws

The RECs identified in the Report trigger certain statutory and regulatory regimes, including, but not limited to, the following:

A. Undocumented waste water system at the Hot Spot fabrication shop

1. Hawai'i Clean Water Act (HRS Chapter 342D) - Individual Wastewater Systems

The permit requirements for individual wastewater systems ("IWS") are set forth in HAR Chapter 11-62, which was promulgated pursuant to the Department of Health's authority under, *inter alia*, Chapter 342D to regulate discharges of water pollution. HAR Chapter 11-62 requires the owner to apply for a permit, and defines an "owner" as the person who has legal title to the individual wastewater system, or a duly authorized representative of that owner.¹ HAR Chapter 11-62 also prohibits any "person" from using any IWS, including a cesspool or septic system, without written authorization from the director of the Hawaii Department of Health ("DOH").²

¹ HAR § 11-62-03. Note that under the terms of Lease ownership of all improvements located on the land prior to or on the commencement date of the lease is reserved to the Lessor.

² HAR 11-62.31.1(f).

The lack of any DOH records for the Hot Spot's waste water system could therefore indicate a potential violation of Chapter 342D and HAR Chapter 11-62. Such violations are subject to a civil fine of up to \$25,000 per day for each offense.³

2. Federal Safe Drinking Water Act

The Federal Safe Drinking Water Act ("SDWA")⁴ was enacted in 1974 and under the federal regulations adopted to implement the SDWA, all "large capacity cesspools" ("LCCs") were to be closed by April 5, 2005. All LCCs not operational or not already under construction by April 5, 2000 were prohibited.⁵

LCCs include cesspools at commercial business facilities that have the capacity to serve more than 19 people a day⁶. The owner (including the owner of the land on which the cesspool is located) and operator of such cesspools may both face fines for failure to abide by the April 5, 2005 closure deadline.

In the event of noncompliance, SDWA authorizes the EPA to impose penalties of up to \$11,000/day for violations occurring before January 12, 2009, and up to \$16,000/day for violations thereafter, with a maximum penalty of \$187,500.⁷ These fines are in addition to the requirement for compliance (i.e., the cost of closure of the LCC).⁸

Based on our experience with EPA enforcement, if the undocumented waste water system at the Hot Spot facility is a cesspool, then EPA would likely consider it a LCC.

B. Uncontrolled dumping, abandoned and derelict vessels, and other releases of solid waste, and hazardous substances and materials

1. Hawaii's Environmental Response Law⁹ (Chapter 128D)

Chapter 128D is the Hawaii analog of the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Chapter 128D imposes strict liability for remediation costs and damages associated with the release or disposal of hazardous substances. As such, Chapter 128D would be a statutory basis of any state law claim against either Pacific Marine and / or BLNR in connection with environmental cleanup of the Property. HRS § 128D-6 imposes liability on, *inter alia*, the "owner or operator or both of a facility or

³ HRS § 342D-30.

⁴ See 42 U.S.C.A. §§ 300f to 300j.

⁵ See 40 CFR § 144.88.

⁶ 40 CFR § 144.81(2).

⁷ See 42 USC § 300h-2(c)(1); 40 CFR § 19.4

⁸ See 42 U.S.C. §300h-2(c)(1) (authorizing the EPA to impose fines or require compliance).

⁹ Haw. Rev. Stat. Chap. 128D.

vessel,” as well as “any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances are disposed of.”

In addition to the liability for costs, any person who willfully, knowingly, or recklessly violates or fails or refuses to comply with Chapter 128D shall be subject to a civil penalty of up to \$50,000 per day for each separate violation.

Oil is included in Chapter 128D's definition of hazardous substances, whereas in CERCLA, oil is specifically excluded from the definition of hazardous substances. This is important because the RECs identified in the Phase I Environmental Site Assessments refer to oil related contamination.

2. Hawaii Solid Waste Disposal Law (Chapter 342H)

Chapter 342H governs solid waste pollution in the State of Hawaii, and sets forth a permitting requirement for solid waste management facilities, landfills, *etc.* The uncontrolled dumping of solid waste on or around the berms at the eastern and northern boundaries of the Property likely fall within HRS § 342H-30 prohibitions against operation of an open dump,¹⁰ operation of an unpermitted solid waste management system,¹¹ and / or improper disposal of solid waste.¹²

HRS § 342H-9 provides for penalties of up to \$10,000 for violations of Chapter 342H.

C. National Pollutant Discharge Elimination System (NPDES) Permit

While not specifically noted as a REC, in its report, ESI noted that there is no record of an NPDES permit for the Property. Based on the past and current use of the Property for boat

¹⁰ "Open dump" means a disposal site that is operating in nonconformance with applicable standards, relevant permit conditions, rules, or this chapter. *See* HRS § 342H-1.

¹¹ "Solid waste management system" means a system for the storage, processing, treatment, transfer, or disposal of solid waste. *See* HRS § 342H-1.

¹² "Solid waste" means garbage, refuse, and other discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved materials in domestic sewage or other substances in water sources such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants, or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923). *See* HRS § 342H-1.

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the atmosphere, lands or waters of this State. *See* HRS § 342H-1.

storage and light maintenance, it is possible that an NPDES is required for industrial storm water discharge. We are working with our client to determine whether and when to apply for an NPDES permit.

1. Federal Clean Water Act

The federal Clean Water Act ("CWA")¹³ was enacted to restore and maintain the integrity of the waters of the United States.¹⁴ The CWA accomplishes this goal in large part by regulating discharges of pollutants into the waters of the United States. One of the key provisions of the CWA is Section 402,¹⁵ which requires that parties obtain permits (an NPDES permit) before discharging any pollutant into the navigable waters of the United States.

Under Section 402, the EPA may authorize states to administer the NPDES permit program within their borders. In 1974, the EPA delegated administration of the NPDES permit program within the State of Hawaii to the Department of Health. The State NPDES permit program is governed by HRS Chapter 342D and HAR Chapter 11-55, and is discussed in further detail below.¹⁶

Chapter 40, Part 122 of the Code of Federal Regulations ("CFR"), the implementing federal regulations for the NPDES program, requires an NPDES permit for, *inter alia*, "discharge associated with industrial activity."¹⁷ In 40 CFR §122.26(1)(14), "storm water discharge associated with industrial activity" is defined as including storm water discharge from transportation facilities classified as Standard Industrial Classifications ("SIC") 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171.

The Property likely falls within SIC 44 (water transportation), specifically 4493 corresponding to Marinas:¹⁸

Establishments primarily engaged in operating marinas. These establishments rent boat slips and store boats, and generally perform a range of other services including cleaning and incidental boat repair. They frequently sell food, fuel, and fishing supplies,

¹³ The CWA was originally enacted in 1948 as the Federal Water Pollution Control Act. The Act became known as the CWA by way of amendments in 1977.

¹⁴ See 33 U.S.C. § 1251.

¹⁵ Section 402 of the CWA is codified in 33 U.S.C. § 1342.

¹⁶ See *Molokai Chamber of Commerce v. Kukui (Molokai), Inc.*, 891 F. Supp. 1389, 1392 (D. Haw. 1995) ("Section 402(b) also permits each state to implement the Clean Water Act through its own permit program, so long as the program conforms to federal guidelines approved by the EPA administrator. The EPA administrator has authorized the Department of Health of Hawaii to issue and enforce discharge permits").

¹⁷ 40 CFR § 122.26.

¹⁸ https://www.osha.gov/pls/imis/sic_manual.display?id=921&tab=description

and may sell boats. Establishments primarily engaged in building or repairing boats and ships are classified in Manufacturing, Industry Group 373. Establishments primarily engaged in the operation of charter or party fishing boats or rental of small recreational boats are classified in Services, Industry 7999.

- Boat yards, storage and incidental repair
- Marinas
- Marine basins, operation of
- Yacht basins, operation of

Since the Property is used for the storage and incidental repair of boats, it probably requires an NPDES permit under the Hawaii NPDES Permit Program. Once again, we are working with our client to determine whether and when to apply for a Hawaii NPDES permit.

D. Hawai'i Clean Water Act (Chapter 342D)

1. Hawaii NPDES Permit Program (Chapter 342D)

Chapter 342D governs water pollution in the State of Hawaii. As discussed above, under Section 402 of the CWA, parties must obtain an NPDES permit before discharging any pollutant into the navigable waters of the United States. In Hawaii, this permit requirement is rooted in HRS Chapter 342D, and is implemented by HAR Chapter 11-15. The HAR provisions require NPDES permits for two major categories of activities: i) "point source"¹⁹ pollutant discharges flowing into State waters; and ii) construction activities disturbing one or more acres of land. Any such activities occurring on the Property must be properly permitted, or penalties may be imposed. Such penalties can include monetary fines of up to \$25,000/day.²⁰

III. Cost Estimate for Remediation

Below are the estimated costs to remediate the RECs identified in the Report.

¹⁹ The term "point source" is defined as "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. The term does not include return flows from irrigated agriculture or agriculture storm water runoff, except return flows from agriculture irrigated with reclaimed water." See HAR § 11-55-04(a).

²⁰ See HRS § 342D-30 through 39 for a specific list of applicable penalties. See also HAR 11-55-35 (referring to the HRS Chapter 342D penalty provisions).

A. Abandoned or Derelict Vessels

There are about 26 abandoned or derelict vessels on the Property. Pacific Marine obtained the following quote from a potential contractor for the removal and disposal of the abandoned or derelict vessels.

	Estimated Cost²¹
Initial Vehicle Inspection	\$1,000.00 - \$3,500.00 for each vessel
Lab Testing	\$800.00 - \$1,500.00 each vessel sample
On-site Disassembly/Demolition	\$20,000.00 - \$75,000.00 each vessel
Waste Disposal	Dump Fees \$108.00 cost plus 15% per ton -Special handling fees \$108.00 cost plus 15% per ton

Pacific Marine is in the process of obtaining quotes from additional contractors.²²

B. Other Environmental Conditions

The following are estimates for the cost²³ to investigate and remediate the other ECs identified in the Report.

	Low Range	High Range	Average
Perimeter Berms - Investigation and Remedial Actions	\$160,000	\$1,030,000	\$595,000
Light Maintenance Areas - Investigations and Remedial Actions	\$74,000	\$194,000	\$134,000
Septic Tank/Cesspool - Close, Investigate, and Remedial Action	\$90,000	\$360,000	\$225,000

²¹ Abandoned or derelict vessel cost estimates provided by PENCO.

²² Additional cost estimates are being requested from Sea Engineering, Parker Marine and Cates International.

²³ Cost estimates provided by Marietta Canty, LLC.

Install New Septic Tank (Possible option)	\$75,000	\$125,000	\$100,000
Welding and Fabrication Shop - Housekeeping/disposal	\$15,000	\$50,000	\$32,500
Property-Wide Potentially Impacted Soil - Investigation	\$60,000	\$105,000	\$82,500
Derelict Vessel Inspection/Testing/Disposal	\$610,000	\$2,160,000	\$1,385,000
NPDES Permit/Storm Water Pollution Control Plan	\$20,000	\$35,000	\$37,500
Totals	\$1,104,000	\$4,059,000	\$2,591,500

We would like to set up a meeting with you, Chair Case our client and our client's other counsel, Duane Fisher, to discuss how best to proceed. We look forward to hearing from you.

Sincerely,



Ian L. Sandison

Enclosure (1)

CC: Jason Ho'opai (w/enclosure)
Duane Fisher, Esq. (w/enclosure)

4846-6701-5302.4.069882-00001

EXHIBIT B

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A Law Corporation

Bronster Fujichaku Robbins
ATTORNEYS AT LAW

May 19, 2020

Via E-Mail: [bill.j.wynhoff@hawaii.gov]

Bill J. Wynhoff, Esq.
Department of Attorney General
465 S. King Street, Suite 300
Honolulu, HI 96813

Re: Honokohau Small Boat Harbor
LH-19-002
Pacific Marine Partners LLC
Notice of Default Dated April 14, 2020

Dear Bill:

This responds to the Notice of Default dated April 14, 2020 and in furtherance of the discussions that Board of Land and Natural Resources ("BLNR") has had with Pacific Marine Partners LLC ("PMP") regarding Boating Lease No. LH-19-002 ("Lease") related the Honokohau Small Boat Harbor, including the August 21, 2019 and February 20, 2019 letters from PMP's former counsel. This letter is subject to Hawaii Rules of Evidence Rule 408.

As a preliminary matter, PMP must inform BLNR that the economic conditions related to PMP's operations at the Honokohau Small Boat Harbor have been drastically affected by the Covid-19 pandemic. In a typical month, PMP receives approximately \$42,000 in income from its tenants. However, in March and April, PMP collected a total of \$24,019. Many of PMP's customers have been closed for business since the issuance of the Governor's emergency proclamations. Accordingly, with this background, PMP hopes that BLNR can appreciate the economic conditions along with the issues at the start of PMP's possession of the Lease have made it significantly difficult for PMP to become current on its obligations under Lease.

EXHIBIT B

After PMP took possession of the Premises on November 1, 2018, PMP discovered significant issues with the Premises, as more fully set forth below and previously detailed in letters from PMP's former counsel¹. These issues impacted PMP from the on-set of the Lease and as result PMP has incurred and will incur substantial costs to restore the Premises to allow PMP full use and enjoyment of the Premises.

Additionally, after PMP took possession of the Premises, it discovered that there are significant environmental issues present on the Premises which need to be address. PMP is willing to undertake the remediation of these pre-existing environmental issues in exchange for agreement by BLNR to reimburse or otherwise compensate PMP.

PMP is still optimistic that with the assistance of BLNR that PMP will be able to fulfill its obligations under the Lease and continue to make the relationship a positive win-win for both parties. Accordingly, PMP requests that BLNR approve: (1) rate abatement in the maximum amount permitted by law and (2) credit for environmental remediations which PMP is willing to undertake.

I. Relevant Background

As you are aware, PMP is the current leasee of the Honokohau Small Boat Harbor located in North Kona, identified by Tax Map Key No. (3) 7-4-008-003 (portion) ("Premises") pursuant to the Lease, which is dated September 10, 2018.

On or about June 1, 2018, a Notice of Public Auction ("Notice") for the lease of the Honokohau Small Boat Harbor was published in the Star Advertiser. The Notice described the Premises as "containing approximately 392,040 square feet of unimproved graded-gravel land, fenced with chain link fencing".

PMP was not allowed to conduct a proper due diligence inspection of the Premises prior to submitting its bid on the Lease pursuant to the Notice of Public Auction. Instead, PMP could only observe the condition of the Premises from outside of the perimeter chain-link fence. It is PMP's understanding that

¹ August 21, 2019 letter from Dwayne Fisher and February 20, 2019 letter from Ian Sandison, which are incorporated by reference.

DLNR had the right under the prior lease with Gentry Kona Marine ("GKM") to allow for inspection by prospective bidders as PMP but that DLNR did not exercise that option.

Further, PMP requested that it be allowed to conduct a Phase 1 environmental study of the Premises prior to submission of its Bid. However, DLNR did not allow PMP to do so until after execution of the Lease. After execution of the Lease, PMP, with the consent of DLNR, conducted a Phase 1 study. The Phase 1 study identified numerous pre-existing conditions that need to be remediated. See February 20, 2019 letter from Ian Sandison.

II. Request for Rent Abatement Under HRS § 171-6(7)

PMP respectfully requests that BLNR authorize rent abatement pursuant to HRS § 171-6(7) for one year of lease payment, or \$387,000 for substantial improvements that PMP has and will have to do restore the Premises to the advertised and usable condition to afford PMP full use and enjoyment of the Premises.

The basis of PMP's request, as previously set forth, and summarized below is due to the Premises not being delivered to PMP in the condition that was advertised in the Notice and the damage that was apparently done by the prior leasee which have impacted PMP's ability to operate the Premises as intended under the Lease.

It is worth mentioning that PMP has, in the hopes of reaching an amicable resolution, acted in good faith and undertaken many actions to further goodwill between the parties.

(1) Property Damage: As set forth in the August 21, 2019 letter from Mr. Duane Fisher, the total amount that PMP is seeking for Property damage is **\$214,225²**.

It appears that GKM caused significant damage to the Premises before vacating, including disconnecting utility services, damaging utility lines and taking out the motorized security gate. Additionally, it was discovered that significant portions of the perimeter fencing were missing. In sum, the

²The totals are based on actual costs and estimated costs from bids and proposals.

Premises was materially different than what PMP had observed prior to submitting its Bid.

The majority of this Property Damage amount is related to the perimeter fencing. As set forth in the Notice, PMP expected that there would be perimeter fencing around the entire Premises. A perimeter fence is a must for small boat harbor such as the Honokohau Small Boat Harbor because it is a necessary security measure and vital to retaining customers to prevent thieves and vandals from accessing customers boats and vessels.

The remainder of the Property Damage claim relates to PMP's creative solutions to resolve the unusable conditions of the Premises upon turnover should be commended and reimbursed by way of rent abatement. As noted above, the Premises had no electricity at takeover and so PMP bought a generator for interim use and then installed a solar power system. PMP had to hire security while a new security gate was installed.

(2) Derelict vessels. Most of the approximately 24 derelict vessels that were left in the Premises by the former leasee have been removed. However, PMP was unable to rent out those spaces occupied by the derelict vessels and accordingly, PMP estimates the damage at **\$66,280**.

(3) Solid Wastes. Again, due to the condition that the former leasee left the Premises, including mountains of solid wastes (metal, equipment, debris), PMP was unable to lease out approximately 9 boat stalls. BLNR has cleared most of the solid waste. Accordingly, PMP estimates the damage at **\$20,280**.

(4) Hotspots. At the time of PMP's possession of the Premises, it was discovered that the former leasee had improperly sublet a portion of the Premises to Hotspots Welding and Fabrication LLC. Initially, Hotspots refused to vacate the Premises. As a result, PMP incurred significant attorneys' fees dealing with Hotspots. PMP was also damaged by not being able to use the approximately 7,000 square feet of space that Hotspots was occupying.

However, due to efforts by PMP, in approximately December of 2019, Hotspots vacated the Premises. However, Hotspots also left the Premises full of debris and waste, which PMP has incurred costs to clear out. Unfortunately, due to its efforts to remove Hotspots, PMP has been named in a lawsuit by one of the former members of Hotspots. The lawsuit is ongoing and PMP is incurring attorneys' fees and costs in defending against the baseless lawsuit.

PMP is therefore requesting damages in the amount of **\$88,500**, which includes not being able to use the space in the Premises occupied by Hotspots for over a year, cleanup of Hotspots' space, and attorneys' fees it has incurred in its effort to remove Hotspots.

(5) No Grading. As previously pointed out, the Notice described the Premises as being "graded-gravel land". Some significant portions of the Premises is not graded and PMP has estimated the cost of grading and leveling the land at approximately **\$58,720**.

The total cost related to restoring the Premises to the advertised condition to allow PMP full use and enjoyment of the Premises as under the Lease is estimated at **\$448,005**. Accordingly, PMP requests that BLNR approve rent abatement under HRS § 171-6(7) for one full year or **\$423,000**.

PMP proposes that the rent abatement be applied as follows: (1) applied towards the outstanding lease payment, which PMP understands to be approximately \$148,000, and (2) the remaining amount prorated over the next twelve months to reduce the monthly lease payment owed to BLNR.

III. Environmental Remediation

The total estimated costs for investigation and remediation of the remaining pre-existing conditions on the Premises ranges between \$474,000 and \$1,864,000 related but not limited to: Hotspots' septic tank/cesspool (closure and installation of new septic system), Hotspots' hazardous waste disposal, Premise-wide investigation, perimeter berms investigation and cleanup, and Premise-wide soil investigation. As previously set forth, PMP has consistently asserted that it will not be liable for pre-existing environmental conditions and that PMP will not bear the costs of remediation of such conditions.

PMP is willing to discuss creative approaches to resolving the remediation of the pre-existing conditions, including receiving Lease rent credit from BLNR in exchange for PMP agreeing to remediate some or all of the pre-existing environmental conditions.

IV. Conclusion

PMP appreciates the opportunity to continue the dialogue to resolve these outstanding issues and further the relationship with BLNR at the Honokohau Small Boat Harbor. For the above stated reasons, and as previously discussed and presented, PMP requests (1) rent abatement for one year's rent under the Lease pursuant to HRS § 171-6(7) and (2) reimburse PMP for environmental remediation. We are available at your earliest convenience to hopefully bring this matter to a close.

.

Very truly yours,

/s/ Sunny S. Lee

Sunny S. Lee
Matthew Terry