GENTRY'S
KONA MARINA
HONOKOHAU HARBOR
74-425 Kealakehe Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

July 21, 2020

Chairperson Suzanne Case
and
Members of the Board of Land and Natural Resources

Re: Board of Land and Natural Resources (BLNR) meeting July 24, 2020, Item J-2

Dear Chairperson Case and Board Members:

After reading Item J-2 submittal for its July 24, 2020 BLNR meeting, GKM submits the following testimony with regards to the "DISCUSSION" section of the submittal for Item J-2:

Background

GKM was promised a long term lease by a former property manager on the parcel TMK: (3) 7-4-008:003 (por) or "Boat Park". Back in 2009 GKM was encouraged to expand the boat park from 6 to 9 acres by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DLNR-DOBOR) and the community boating group. In this process GKM spent a great deal of resources on obtaining an Environmental Assessment for the expansion. In order for GKM to grub the additional 3-acre area an Archeological Inventory survey was being required from the State of Hawaii, State Historic Preservation Division as a historic trail was noted in the south east vicinity of the three acres. (GKM believes that trail may have been impacted with recent grubbing activities by the current leaseholder PMP). Additionally, GKM would have had to obtain a very costly National Pollutant Discharge Elimination System (NPDES) permit. With these requirements it was unfeasible to go forward with expanding and we twice notified DLNR-DOBOR property manager in writing of the challenges and asked for help, which went unanswered (Exhibit A).

GKM continued to be interested in a long term lease on the nine acres so that the expense of the improvements would be justified; however, when the lease went out to bid the terms of the lease (i.e. the annual rent) was unfavorable to make the improvements and pay such a high annual lease rent. There were no utilities available to the property. GKM had been making due with a small amount of power supplied from GKM's electric at its adjacent leased property under Harbor Lease H-82-4. GKM also continued to pay the total lease amount for the expanded nine-acre parcel even though GKM could not expand.

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Termination of the Revocable Permit

Upon notice of termination of the Boat Park revocable permit by letter dated September 6, 2018 from DLNR-DOBOR asking GKM to vacate the premises by October 31, 2018, GKM promptly gave notice to our tenants to vacate when the letter was received by GKM on September 10, 2018. GKM also asked DLNR-DOBOR for an extension of time (after 19 years of leasing the property) to move-out off the property which was denied by DLNR-DOBOR. (Exhibit B)

DLNRs Interference in Vacating Premises and Denial of a Move-out

The Honokohau Harbor DLNR-DOBOR office after learning that we gave notice to tenants to vacate posted a notice on their window of their office telling all tenants they did not have to vacate, as well as they made phone calls and sent emails to our tenants (Exhibit C). Steve Schmelz, District Harbor Manager, burst into my office asking if I was operating under legal counsel as GKM had no right asking tenants to vacate the premises.

The posting of notices and the communication coming out of the DLNR-DOBOR office completely undermined GKM's move out process and eliminated any management and GKM's ability to collect any rents owed to GKM. Some vessels were behind in their payments to GKM, and GKM continued communicating with those owners for payment. Our ability to collect rents owed (approximately $25,000) to GKM was impeded when the State of Hawaii told all tenants they could stay. There were no abandoned vessels as all vessels had owners and GKM was in communication with the owners.[1]

GKM also gave notice to Hot Spots Welding to vacate the premises. After receiving our notice to vacate Cameron Noftz, Hot Spots 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.

GKM asked all tenants to vacate by October 14, 2018 which would allow GKM two weeks to clear the property. As a result of the communication from the DLNR-DOBOR offices very few tenants moved out and all remaining tenants continued to ignore any and all further requests by GKM.

Phase I Environmental Assessment

GKM was able to hire and complete a Phase I Environmental Assessment by Lehua Environmental. Lehua Environmental performed their site inspection and completed the survey just prior to GKM vacating the premises on October 31, 2018. There were no Recognized Environmental Conditions (RECs). GKM had been told by many who

[1] On May 21, 2019 the State of Hawaii alleges that there were 13 abandoned vessels in the boat park and requested contacted information for those vessels. On May 22, 2019 GKM provided the names and addresses of those vessels listed.

viewed the Boat Park that it was the cleanest boat storage facility they have ever seen – some even called it pristine.

GKM understands that PMP had their own Phase I Environmental Survey performed well after they took over the storage facility. During PMP's tenancy GKM witnessed many vessels and trailers being worked on in the boat park and work on vessels still continues today. Shortly after PMP took tenancy of the boat storage facility, GKM witnessed a large steel trailer being pressure washed to remove paint chips (Exhibit D). GKM regularly patrolled and monitored the boat park and did not allow work in the boat park during its tenancy. GKM is also unaware of any cesspool at Hot Spots Welding.

Utilities, Improvements and GKM Assets

On October 24, 2018 GKM flew with their attorney, Stephen Whittaker, to Honolulu and met with Suzanne Case, DLNR Chairperson, and Bill Wynhoff, Deputy Attorney General, State of Hawaii, and was told that PMP would be interested in purchasing our 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.

GKM fully cooperated in turning over the property on October 31, 2018 as we had agreed under the Revocable Permit, without incident, and in very good condition.

We were informed at the time by DLNR-DOBOR and our own counsel that retrieving the few pieces of equipment left behind (a boat cradle, a tractor, a compressor, a wagon jackstand trailer, and a metal beam as part of a gantry) was not going to be a problem. On November 7, 2018 GKM went to remove its boat cradle and PMP reported the incident as trespassing.

We made at least 5 attempts to remove GKM's equipment starting as early as November 13, 2018 without success. We discovered around April 18, 2019 that Cameron Noftz, of Hot Spots Welding, had cut the compressor up into a barbeque at the request of Jason Hoopai, PMP.

On May 9, 2019, GKM was finally able to gain entry to remove the tractor and the metal beam for the gantry. (GKM had made five other attempts and were turned away by PMP). We were denied removal of the wagon trailer by Richard Lindberg, employee of PMP, as he told me it was not on the list of approved items we could remove. GKM was never able to retrieve the compressor and the wagon trailer (PMP had already destroyed the trailer by twisting the frame in moving it into a pile). GKM made requests to gain entry to remove the trailer which went unanswered. GKM later learned our trailer was disposed of.

GKM Denies Any Wrongdoing

GKM feels it has been a very good tenant of the state since taking over Gentry's Kona Marina in 2002. Noting:

- GKM paid all rents on time
- GKM enforced no working on vessels in the boat park
- GKM provided a clean, safe, storage facility at fair prices. (Rents have quadrupled for some tenants)
- GKM vacated the storage facility as agreed upon under the Revocable Permit
- GKM left the boat storage facility clean and in very good condition

GKM continues to cooperate with DLNR-DOBOR despite GKM being unfairly targeted by DLNR/DOBOR.

Sincerely,

Tina Prettyman
General Manager

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EXHIBIT A-1

January 23, 2011

Via facsimile: (808) 587-1977

Mr. Bill Andrews
Property Manager, State of Hawaii
Department of Boating and Ocean Recreation
333 Queen St., #300
Honolulu, HI 96813

Re: Expansion of Boat Storage Facility

Dear Mr. Andrews:

We are in receipt of the copy of the letter dated January 6, 2011 from Office of Hawaiian Affairs regarding the Draft Environmental Assessment submitted for the proposed boat park expansion from the existing six acres to nine acres.

The letter from the Office of Hawaiian Affairs has recommended an archeological assessment of the three acre expansion. I am aware that this type of assessment can be very expensive. This is an especially risky proposition for us on a 30-day revocable permit for the expansion project. We originally did not believe we would need one based on the published Report on the Archeological Reconnaissance Survey of the Honokohau Small Boat Harbor Expansion Area by Aki Sinoto, dated March 26, 1975, Department of Anthropology, Bishop Museum.

When we obtained the original land lease for the six acre boat park, we were given a five year term, and various uses (see copy of Boating Lease No. B-93-01). This allowed us to make a small investment to develop the dry land storage facility, which we did and obtained all necessary approvals. However, even on a five year lease it was difficult to justify making any further improvements beyond the dry land storage facility.

Bill, you have also mentioned to me on numerous occasions the need for additional facilities for our recreational ramp users. Additionally, our ocean and recreation users have shared with us that they would like to see improved roadways in the boat storage facility as well as storage lockers for their equipment or gear. Currently we are constrained from doing any further improvements to the existing boat storage facility due to the lack of a long term lease.

EXHIBIT A-1

In consideration of the above, I am requesting the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, consider the following:

- Renew the original six acre lease with GKM Inc. for a minimum term of fifty five years.
- Commit to issuing a fifty-five year lease to GKM Inc. for the three acre expansion so we may continue to develop adequate boat storage facilities for our harbor users.

If there are any questions with what we are proposing, please contact me directly at (808) 329-7896. I look forward to working with you.

Sincerely,

Tina Prettyman
General Manager

Enc.

/tp

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EXHIBIT A-2

January 23, 2012

Mr. William R. Andrews
Property Manager, DLNR – DOBOR
333 Queen St., Suite 300
Honolulu, HI 96813

Re: Expansion of Boat Park at Gentry's Kona Marina and Final Environmental Status Update

Dear Mr. Andrews:

As discussed with you on the telephone last Friday, our plans for the three acre expansion of the current boat park facility will require a National Pollutant Discharge Elimination System (NPDES) General permit from the Department of Health, Clean Water Branch (HAR Chapter 11-55). When we initially built out the existing boat parking facility in 1996 we were not required to obtain this permit. In 2003 the law changed to include any land disturbances greater than or equal to one (1) acre must apply for this permit for storm water runoff associated with construction activities, including clearing, grading and excavation.

We looked at our options, but it is not reasonable to hire a private engineering firm to finalize the NPDES due to the high cost. We already have spent a significant amount of money and time to go through the Environmental Assessment process (hiring a land surveyor for staking, a botanist, and an archaeologist, etc.) for making improvements to state land that is only on a 30-day revocable permit and we haven't even touched on the ground work expenses. I have started the General Permit application for the NPDES (over 29 pages long!), but will need your assistance and probably the assistance of your engineering department to finalize it before submission to the Department of Health.

As far as the Final Environmental Assessment (FEA), we will be ready to finalize it as soon as we can be assured that we will be able to get through the NPDES permitting process. As I mentioned to you on the phone, it doesn't make sense to go forward with a permit and pay for land we won't be able to utilize or is too costly to improve. Again, we want to reiterate that we would much prefer to go into a long term lease with DLNR for not only the six acres, but the entire 9 acres. It would then make sense to make substantial improvements that would better serve the boating community and justify the lengthy process and development expense.

I am working on finalizing everything I have done on the NPDES and forwarding it to you by the end of the week. Please feel free to call me with questions.

Sincerely,

Tina Prettyman
General Manager

EXHIBIT B

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September 11, 2018

Ms. Suzanne Case, Chairperson
Board of Land and Natural Resources
1151 Punchbowl St.
Honolulu, HI 96813

Via certified mail

Re: Request for Extension

Dear Ms. Case:

GKM, Inc. is receipt of your letter dated September 6, 2018 of Notice to Vacate the premises held by revocable permit No. 5 by October 31, 2018.

We are proceeding in sending 30-day notice to vacate to all of our tenants. We will need additional time to clean and clear the property and as a very good tenant of the State of Hawaii we would like to request a 90-day extension of time on the property we have utilized for almost 24 years.

Thank you for your consideration. We look forward to hearing back from you with a favorable response.

Sincerely,

Tina Prettyman
General Manager

7017 2620 0000 7020 9199

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Exhibit C

BOAT STORAGE ANNOUNCEMENT!!
REGARDLESS OF WHAT GENTRY STATES
YOU DO NOT NEED TO REMOVE-VACATE YOUR VESSEL
PLEASE GO TO
MAHALO@HONOKOHAUSTORAGE.COM
REPORT
OIL OR CHEMICAL SPILLS TOLL FREE
800-424-8802
OR COMMERCIAL 202-267-2675

EXHIBIT D

Will deliver
a clear photo
upon request