



July 12, 2024 BLNR Meeting

**K-3:** Petitions for a Contested Case Hearing re Item C-5 on the April 26, 2024, Board Agenda: Request for Administrative Fine of \$1,502,500 and Other Penalties Against LKG HI Properties, LLC (Sushil Garg as Managing Agent), Yue-Sai Kan Trust (Yue-Sai Kan as Trustee), Sushil Garg, Individually, Yue-Kai, Individually, and Benjamin Lassary, Individually for Violation of Section 195D-4(e)(2), Hawai'i Revised Statutes, and Section 13-124-11(a) and (b), Hawai'i Administrative Rules, for the "Take" (Killing) of Two Species of Endangered Nalo Meli Maoli (aka Hawaiian Yellow-Faced Bees) in October 2023, Across Multiple Units of the Marconi Point Condominium Property Regime, Kahuku, O'ahu, Hawai'i, TMK (1) 5-6-003:053

Aloha Chair Chang and members of the Board,

**Aloha Marconi Alliance supports OCCL and DOFAW's position** with regard to the request for a contested case by the alleged violators at Marconi noted above, noting that the Yue-Sai Kan settlement will remove her and her trust from this contested case (see our testimony on K-2).

The Alliance **does not support** the inclusion of "Turtle Bay" in the contested case. The allegations of Makai Ranch that it was somehow not responsible for the extended (plastic board) Western Boundary Fence into the conservation zone and down to the shoreline are **not credible**. See other testimony submitted by Alliance members on this specific issue.

Given the **high public interest** in this contested case, and the **unprecedented violations** at issue, and recognizing that outside parties are not allowed to intervene according to DNLR rules, **the Alliance requests full transparency in the contested case proceedings** including:

1. Creation of a **dedicated page** on the OCCL or DOFAW web site that provides the public a "one stop" place to review all relevant documents and video of proceedings;
2. On-line live **streaming and recordings** of all proceedings;
3. On-line timely posting of **all documents** submitted by the parties and hearing officer, the same day as submitted.

We are aware that, in similar extraordinary contested cases in the past (e.g., Mauna Kea Contested Case), DLNR OCCL has made documents and proceedings public, enhancing public accountability and transparency, which we applaud. We ask that this extra step again be done for this very important enforcement matter.

On behalf of our native wildlife and 'āina, mahalo nui,

**Aloha Marconi Alliance Steering Committee**

Lynell DaMate  
Chris Tarski  
Angela Huntemer  
Jonee Peters  
Maxx Phillips  
Denise Antolini

**From:** [Henry Fong](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Marconi Point Testimony  
**Date:** Thursday, July 11, 2024 12:41:57 PM

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To whom it may concern,

Our names are Hana Lopes, Kimo Lessary, Misi Fogle, Ben Lessary Jr and Almo Napa'a. We were all previously working for Sushil Garg on his Marconi Land. We were hired by Mr. Garg to do Landscaping, maintenance and clean up of the property. During our time working for Mr. Garg, we were instructed by him and his wife to clean up the conservation and beach area to include the cutting of Naupaka and beach heliotrope. It is also important to note that at this time we removed and disposed of a significant amount of trash and plastic flotsam that was scattered in the conservation and beach areas.

We also want to testify that during our time working on the Marconi Land we witnessed first hand the positive efforts by Ben Lessary in the early establishment and protection of the habitat for the layson albatross and the other nesting and migrating birds that visit and live on and around the Marconi land.

Sincerely  
Hana Lopes  
Kimo Lessary  
Misi Fogle  
Ben Lessary Jr.  
Almo Napa'a

Sent from my iPhone

Wayne Hu  
56-1089 Kamehameha Highway, Unit 11  
Kahuku, Hawaii 96731

July 10, 2024

Board of Land and Natural Resources  
State of Hawaii  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Re: Grant of Petitions for a Contested Case Hearing and Request for Delegation of Authority to Chairperson for the Appointment and Selection of a Hearing Officer to Conduct All Hearings for Contested Case Hearing Requested, for Agenda Items C-5, C-6, and K-1 of the April 26, 2024, Board Meeting  
TMK: (1) 5-6-003:053

Dear Chair Chang and Members of the Board:

My name is Wayne Hu, and I and my wife, Tara Hu, are owners of Unit 11 within the Marconi Point Condominiums project (the "Project"), which is the subject property at issue in the above-referenced Agenda Item K-1. I am a Board member of the Association of Unit Owners of Marconi Point Condominiums ("AOUO"); however, I submit my testimony today solely in my capacity as a unit owner of the Project and not as a representative, or on behalf, of the Association of Unit Owners of Marconi Point Condominiums (i.e., one of the named violators as to Agenda Item K-1).

I wish to bring to the Board's attention the unauthorized, May 6, 2024, letter submitted by Sushil Garg, as President of the AOUO, requesting a "contested case hearing" that was not approved by the Board of Directors of the AOUO prior to his submission of his letter on or about May 6, 2024.

Mr. Garg did not have permission by the AOUO's Board of Directors to submit his unilateral request for a contested case hearing, nor did he have permission to engage his personal attorney, Kalani Morse, Esq., to draft that written request.

Although Mr. Garg's letterhead makes it appear that he wrote the May 6, 2024, letter and that he is presenting it to the Board as President of AOUO, the mailing address at the bottom of Mr. Garg's May 6, 2024, letter is the address of his personal attorney, i.e., Kalani Morse, Esq., who is defending Mr. Garg with respect to its Agenda Item no. C-5. Mr. Morse is not the attorney for the AOUO and he should not be writing letter purporting to act on its behalf.

Kalani Morse, Esq. is representing Mr. Garg, in his personal capacity, as to Agenda Item C-5 before this Board and Mr. Morse should not be drafting letters on behalf of Mr. Garg acting in his capacity as President of the AOOU. That is a blatant, undisclosed conflict-of-interest by Mr. Morse and by Mr. Garg. Mr. Morse knows, under our Hawaii Code of Professional Responsibility (governing attorney conduct) that he cannot represent Mr. Garg, as his personal attorney, and also Mr. Garg, acting on behalf of our AOOU, particularly without first making full disclosure of that fact and then obtaining the consent of each Unit owner in our AOOU. Even then, Mr. Morse representation is “so conflicted”, there is no way he can represent both the interest of Mr. Garg and our Association, which had nothing to do with Mr. Garg’s conduct alleged in your Board Agenda Item C-5.

Although Mr. Garg is the President of the AOOU, he did not have, and does not have, authority to speak on behalf of our AOOU or the Project without first obtaining the prior approval of our AOOU’s Board of Directors. As a member of the AOOU’s Board of Directors, I can assure you that the Board of Director of our AOOU did not authorize Mr. Garg’s May 6, 2024, letter to your Board. Even had Mr. Garg asked, our AOOU would not have authority to support Mr. Garg or his actions and/or omissions. Our Board has no authority to support a Unit owner’s personal deeds as regards allegations of wrongdoing by your Board.

Further, Mr. Garg’s May 6, 2024, letter suggests that our AOOU is involved in all of the allegations included in Agenda Items C-5, C-6, and K-1. The AOOU has nothing to do with, or involvement with, Agenda Items C-5 and C-6. Those Agenda Items involve Sushil Garg and his company and Yue-Sai Kan. It appears Mr. Garg is trying to use “smoke & mirrors” to confuse the Board as to the matters that are before the Board and the parties and/or persons who have responsibility for those actions. To find cover, Mr. Garg tries to involve and include our AOOU and its members as cover for his own actions involving his own properties (i.e., his Units).

My wife (Tara Hu) and I have requested a contested case hearing as to Agenda Item K-1 in our individual capacities as the owners of Unit 11 and members of the AOOU – in default of the AOOU hiring an attorney to defend our Association. Mr. Garg does not represent our Association. Although I am a member of the Board of Directors of the AOOU, I did not obtain authority to speak on behalf of the AOOU. Similarly, Mr. Garg has no such authority and he cannot claim to speak on behalf of our AOOU as he does in his May 6, 2024, written request for a contested case hearing.

I also wish to point out that in his written request for a contested case hearing, Mr. Garg generally refers to the OCCL enforcement action “OA 24-14”. It is my understanding that enforcement action “OA 24-14” encompasses not only Agenda Item K-1 (naming the AOOU and/or Makai Ranch LLC as alleged violators) but also includes Agenda Items C-5 and C-6, which are allegations against Mr. Garg (and his entities), Yue-Sai Kan (individually and as

Dawn N.S. Chang, Chair  
Board of Land and Natural Resources  
July 10, 2024  
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Trustee of the Yue -Sai Kan Trust) and Benjamin Lessary. Agenda Items C-5 and C-6 do not name the AOOU as an alleged violator. Mr. Garg has no right to attempt to invoke our AOOU in the disputes and allegations raised by the Board in Agenda Items C-5 and C-6. Our AOOU has no involvement in those matters and Mr. Garg should not try and drag our AOOU into those matters.

Mr. Garg is clearly trying to muddy the waters by not separating these three, very separate Agenda Items. The AOOU, through Mr. Gard, should not be advocating on behalf of individual unit owners who are alleged to have violated Federal/State/County laws, rules and/or regulations.

It appears that Mr. Morse has already requested a contested case hearing on behalf of Mr. Garg, his entities, and Mr. Lessary. There is no reason for Mr. Garg, in his capacity as President of the AOOU, to have included all the Agenda Items (i.e., C-5, C-6 and K-1) in his written request. By submitting his written request for a contested case hearing, Mr. Garg falsely represented that (1) he was authorized to speak on behalf of and for our AOOU, and (2) he was authorized, as President of the AOOU, to advocate on behalf of individual unit owners.


As I have personally submitted a written request for a contested case hearing for our AOOU for Agenda Item K-1. I have no issue with individual AOOU members also submitting requests for a contested case hearing as to Agenda Item K-1 until such time as the Board of our AOOU can hire an attorney (i.e., not Mr. Garg or his attorney) to properly represent our interests.

However, as a Board member of our AOOU and a Unit owner, I cannot allow our AOOU's President of our Board of Directors make false representations to the members of this Board.

The failure of the Board of Directors of the AOOU to properly follow the procedures necessary to submit a timely written request to the DLNR Board for a contested case hearing is not the fault of the individual AOOU members. In spite of the failure of the AOOU's Board of Directors to properly present legal counsel to act on its behalf, I, in my individual capacity, request and ask that the members of this Board allow a contested case hearing to move forward as to Agenda Item K-1 as to our AOOU and allow the individual members of the AOOU to make appearances and arguments in support of their defense against the allegations. We are hopefully our Board will soon retain legal counsel to advocate on our Association's behalf.

Mahalo for your time and commitment to the preservation of our sensitive ecosystems. I am hopeful that we, as members of the AOOU, can work with this Board to resolve the Agenda Item K-1 issue.

Dawn N.S. Chang, Chair  
Board of Land and Natural Resources  
July 10, 2024  
Page 4



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Wayne Hu  
Owner of Unit #11

Enclosures

Ref: Peter J. Lenhart, Esq.  
Tori R.K. Maeshiro, Esq.

**From:** [Angela Huntemer](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony for July 12, 2024 K3 second email of three with pictures  
**Date:** Thursday, July 11, 2024 8:58:53 AM

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Testimony for July 12, 2024 K3 second email of three  
Aloha Chairperson Chang and Board Members,

Here are pictures I took of the fence between the Marconi property at Kahuku and Turtle Bay Resort from March 15, 2022 shortly after the extension to the black plastic fence was completed to the shoreline. The first picture is taken from the Turtle Bay Resort side. The last picture shows some of the concrete used to fill the holes dug for the posts.











**From:** [Angela Huntmer](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony for July 12, 2024 third email of three for pictures  
**Date:** Thursday, July 11, 2024 9:15:13 AM

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Testimony for July 12, 2024 third email of three for pictures.

Aloha Chair Chang and Board Members,

Here are pictures taken July 14, 2022 with a friend. The concrete used to fill the holes dug is visible. The wrought iron fence (background) looks to be incomplete at this time.

I stand on the testimony of the Aloha Marconi Alliance / Malama Marconi Coalition in asking for transparency regarding the Contested Case for this item.

Thank you very much for your time.

Angela Huntmer

Kahuku.







**From:** [Angela Huntemer](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony for July 12, 2024 item K3  
**Date:** Thursday, July 11, 2024 8:37:00 AM

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Testimony for July 12, 2024 item K3

Aloha Chair Chang and Board Members,

I am sending you pictures of the plastic fence at Marconi as the extension to the earlier fence was being constructed in February 2022 and shortly after its completion in March 2022, (separate email).

Being a resident on the Turtle Bay Resort Property affords me great opportunity to explore this fabulously diverse coastal wetland ecosystem.

The pictures speak for themselves but please do not hesitate to contact me if you have any questions.

Thank you for giving such diligent support to our precious wildlife and habitats.

Angela Huntemer,  
Kahuku, 808-224-3101

I will send two more emails with more pictures.











July 11, 2024

*Via Email ([blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)) and Hand-Delivery*

Board of Land and Natural Resources  
P.O. Box 621  
Honolulu, HI 96809  
Attention: Chairperson Dawn N. S. Chang

Re: Statement of Position

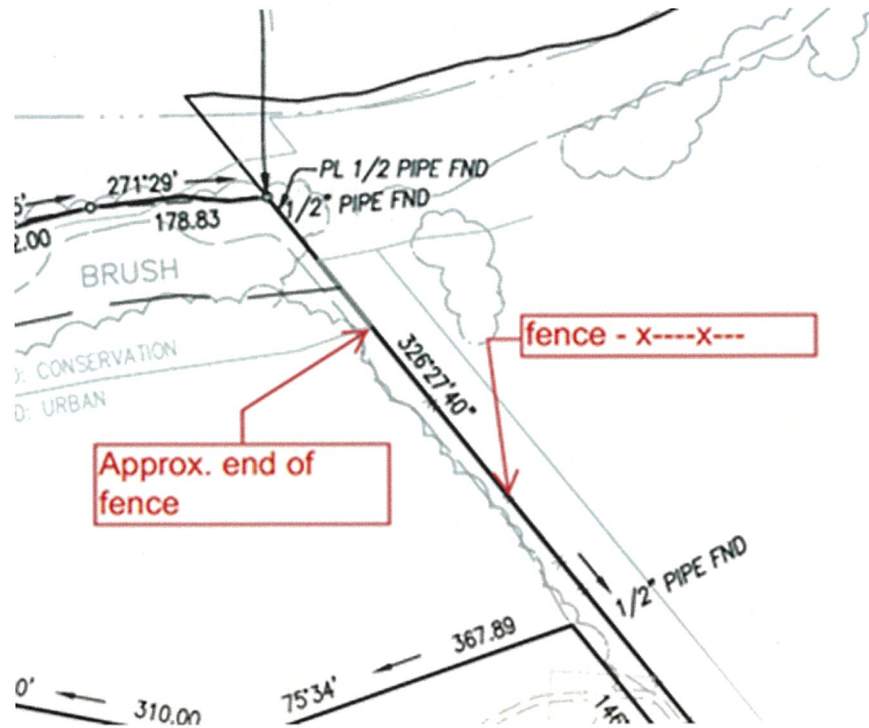
Hearing: July 12, 2024 at 9:00 a.m.

Agenda Items C-5, C-6, and K-1 of BLNR Agenda dated April 26, 2024

Dear Chair Chang:

This firm represents BRE Turtle Bay Resort LLC, a Delaware limited liability company (“**BRE**”), which, together with its affiliates, owns and operates the Turtle Bay Resort (the “**Resort**”). BRE is in receipt of a courtesy copy of the petition for a contested case hearing submitted on behalf of Makai Ranch, LLC (“**Makai Ranch**”) regarding certain enforcement actions that were the subject of the Division of Forestry and Wildlife Agenda Items C-5 and C-6 and the Office of Conservation and Coastal Lands Agenda Items K-1 at the Board of Land and Natural Resources (the “**Board**”) meeting on April 26, 2024. Although BRE was not named as an alleged violator in the matter, Makai Ranch’s petition alleges that (i) BRE is responsible for constructing and installing a boundary fence along the common boundary between a portion of the Resort (identified by Tax Map Key No. (1) 5-6-003:054) and the Marconi Point Condominium property (identified by Tax Map Key No. (1) 5-6-003:53) and that (ii) such boundary fence is located entirely on BRE’s property.

Contrary to what Makai Ranch alleges in its petition, the attached ALTA survey of Turtle Bay Resort dated September 7, 2017, prepared by R.M. Towill Corporation, confirms that (i) the boundary fence was correctly installed directly on the common boundary between the Resort and Marconi Point Condominium property; and (ii) the boundary fence did not extend beyond the Urban land use district and encroach into the Conservation land use district. See excerpt of the ALTA survey shown below.



BRE affirms that it has no knowledge of who constructed and installed the unauthorized portion of the fence within the Conservation land use district, or when it was done, and respectfully request that the Board deny Makai Ranch's request that BRE be included as a party to the contested case proceedings for this matter. Please contact the undersigned if you have any questions or need any additional information to process the above request.

Sincerely,

McCORRISTON MILLER MUKAI MacKINNON LLP

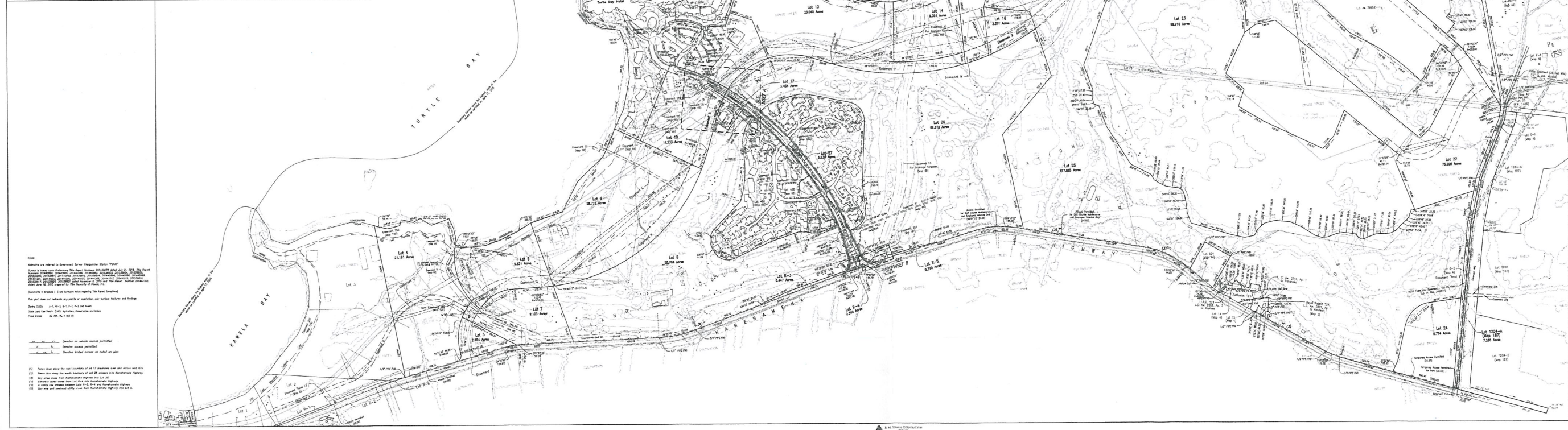
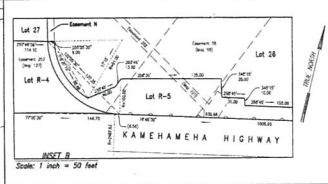
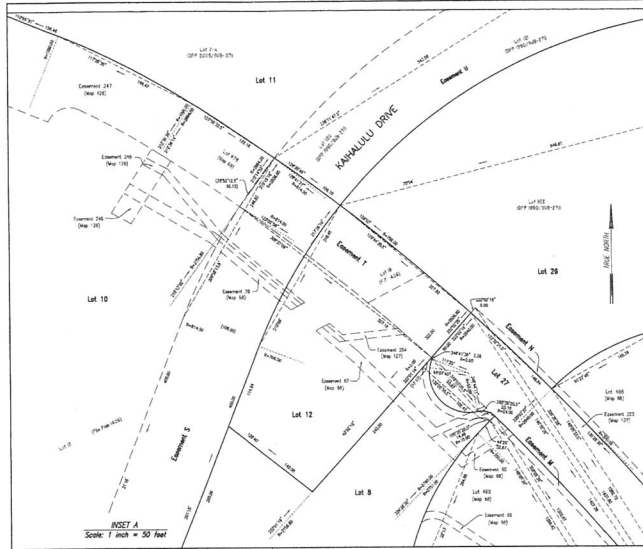
Randall F. Sakumoto  
Sae M. Lee

Enclosures  
cc w/ encls:  
BRE Turtle Bay Resort LLC

Appendix A

ALTA Survey

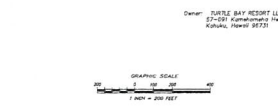
*(attached)*



Notes:  
 1. All areas are shown in accordance with the original survey data.  
 2. All areas are shown in accordance with the original survey data.  
 3. All areas are shown in accordance with the original survey data.  
 4. All areas are shown in accordance with the original survey data.  
 5. All areas are shown in accordance with the original survey data.  
 6. All areas are shown in accordance with the original survey data.  
 7. All areas are shown in accordance with the original survey data.  
 8. All areas are shown in accordance with the original survey data.  
 9. All areas are shown in accordance with the original survey data.  
 10. All areas are shown in accordance with the original survey data.

ALTA/NSPS LAND TITLE SURVEY  
 Lots 4 to 27, inclusive  
 and Lots 28 to 33, inclusive  
 of Turtle Bay Coastal Lots and  
 Lot 120A-A of Land Court Application 1995

The Map Key: (1) 1-6-81; 2-1-84; 3-1-86; 4-1-88; 5-1-90; 6-1-92; 7-1-94; 8-1-96; 9-1-98; 10-1-00; 11-1-02; 12-1-04; 13-1-06; 14-1-08; 15-1-10; 16-1-12; 17-1-14; 18-1-16; 19-1-18; 20-1-20; 21-1-22; 22-1-24; 23-1-26; 24-1-28; 25-1-30; 26-1-32; 27-1-34; 28-1-36; 29-1-38; 30-1-40; 31-1-42; 32-1-44; 33-1-46; 34-1-48; 35-1-50; 36-1-52; 37-1-54; 38-1-56; 39-1-58; 40-1-60; 41-1-62; 42-1-64; 43-1-66; 44-1-68; 45-1-70; 46-1-72; 47-1-74; 48-1-76; 49-1-78; 50-1-80; 51-1-82; 52-1-84; 53-1-86; 54-1-88; 55-1-90; 56-1-92; 57-1-94; 58-1-96; 59-1-98; 60-1-00; 61-1-02; 62-1-04; 63-1-06; 64-1-08; 65-1-10; 66-1-12; 67-1-14; 68-1-16; 69-1-18; 70-1-20; 71-1-22; 72-1-24; 73-1-26; 74-1-28; 75-1-30; 76-1-32; 77-1-34; 78-1-36; 79-1-38; 80-1-40; 81-1-42; 82-1-44; 83-1-46; 84-1-48; 85-1-50; 86-1-52; 87-1-54; 88-1-56; 89-1-58; 90-1-60; 91-1-62; 92-1-64; 93-1-66; 94-1-68; 95-1-70; 96-1-72; 97-1-74; 98-1-76; 99-1-78; 100-1-80.



TO THE QUANTITY OF 1000  
 SQUARE FEET  
 OF LAND  
 IN THE QUANTITY OF 1000  
 SQUARE FEET  
 OF LAND

A. W. TONG CORPORATION  
 2024 North King Street  
 Honolulu, Hawaii 96819  
 Date: December 28, 2019



**From:** [Henry Fong](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Cc:** [kalanbon@yahoo.com](mailto:kalanbon@yahoo.com)  
**Subject:** [EXTERNAL] Marconi Point Testimony  
**Date:** Thursday, July 11, 2024 1:03:03 PM

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My name is Kalani Schrader and I am the owner of the agricultural farm lot #15 that is part of the Marconi Point condominium project. I am writing this in testimony that I had no knowledge of or any involvement in the clearing of the naupaka and beach heliotrope in the conservation area. During my ownership of the lot, I myself have planted both naupaka and beach heliotrope with the hope of attracting and establishing a bee population on my lot. I am dedicated to the conservation and the protection of native plants and animals. I also would like to acknowledge my support of Ben Lessary. In my 7 years of owning the lot, I witnessed the many efforts made by Mr. Lessary in the conservation and protection of the Marconi lands for the albatross, alae lua and Ai'o.

Sincerely  
Kalani Schrader

Sent from my iPhone

**From:** [Christine Tarski](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] K3 Testimony  
**Date:** Thursday, July 11, 2024 8:14:57 AM

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I submitted testimony on K3 yesterday. I found some additional photos that I also would like to submit that show the fence being constructed by Ben Lassary. One photo is a screenshot of my phone showing a text message from a fellow albatross monitor who is talking about the older board fence that was up from the time we began monitoring in late 2017.

Thank you for all you do for our 'Aina and wildlife.

Christine Tarski

7:55



Photo 

Done





7:54



Photo 

Done









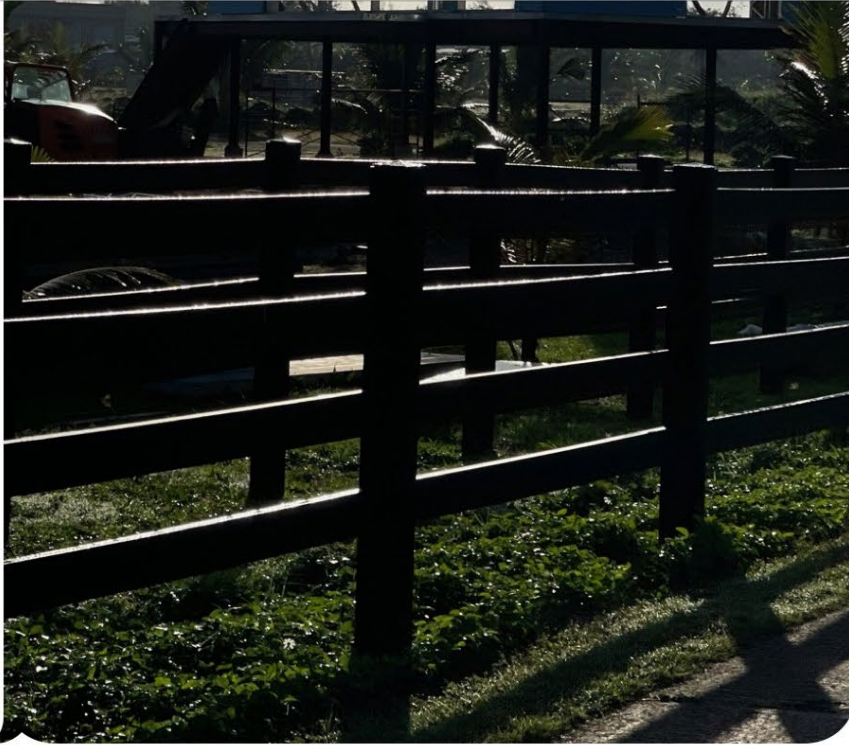
7:42

Cellular signal strength indicator, Wi-Fi signal strength indicator, and a battery level indicator showing 98%.

A row of circular icons for social media or messaging, including a globe, a person's profile picture, and a blue circle with the letters 'LZ'.



Moli Mamas >



**While they were working on the house, I remember Ben and crew were digging huge holes to set poles for older fence. He rigged very deep and set the poles.**





**Subject**

+

**Text Message**



and his work crew.

**From:** [Christine Tarski](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] K3 Agenda Item  
**Date:** Wednesday, July 10, 2024 6:40:28 PM  
**Attachments:** [03232021-2.png](#)  
[2020 chick exercise.png](#)

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My name is Christine Tarski and am a volunteer that has monitored the albatross at Turtle Bay and Marconi since the beginning of the program. This is our 6th year monitoring these awesome seabirds and watching over the chicks until they fledge. I also maintain the database of the band numbers, dates and locations seen as well as other information about this new colony of LAAL.

I am attaching photographs and a video of my personal observations. A brown PVC fence runs along the property line between Turtle Bay and Marconi. I have been told it was built around 2015. It was in place when I started monitoring in 2017, began inland from the dunes and shore, and extended past the 14th tee boxes on the Palmer golf course at Turtle Bay. I am attaching personal photos and a video clearly showing where the fence was. It did NOT extend to the top of the dunes at that time.

Ben Lassary and a work crew extended the brown PVC boundary fence to the edge of the dune in 2022.

I was monitoring the albatross in 2022 on one of the days that Ben Lassary and a work crew were drilling fence post holes, erecting Yue-Sai Kan's fence, and extending the brown PVC boundary fence all the way to the edge of the dunes. I do not have personal photos of the event, but I will swear under oath about the incident.

In addition to erecting and extending fences, multiple large boulders were placed in two places along the extension of the brown PVC illegal extension to further discourage anyone from walking from Turtle Bay onto Marconi Point land. One area is where our albatross adults and chicks would walk to gain access to an open area to take flight or, in the chicks' case, learn to fly. Another large concrete block that I believe was from WWII was moved from the Marconi land onto Turtle Bay at the very top of the dune.

Once the brown fence was extended illegally to the dune's edge, hikers and fishers began walking down the dune at the point of the fence, causing multiple erosion places.

The picture titled: 2020 chick exercise is a photo extracted from a video (not allowed by your email system) that shows a LAAL chick on Marconi property returning to Turtle Bay, where its nest was located. You can clearly see the edge of the brown PVC fence where it ended in 2020—obviously not at the dune's edge.

Photo titled: Marconi2020a shows a view from Turtle Bay. This is what it looked like before the illegal brown PVC board fence was erected. I believe the stake you see is (zoom in) where the brown fence currently exists. If you look at the right side of the photo, you can see the "posted-keep out" sign that still exists. The concrete block, a bit further back from the stake, was moved to the Turtle Bay side of the property line. I have been told it's something historical from WWII.

Photo titled: 03232021-2 is another photo extracted from a video again showing that the fence in question was not there in March, 2021.

If I can provide more information or photos, please contact me. I want the true facts to be known and have a safe place for the wildlife.

Christine Tarski  
[ctarski@gmail.com](mailto:ctarski@gmail.com)