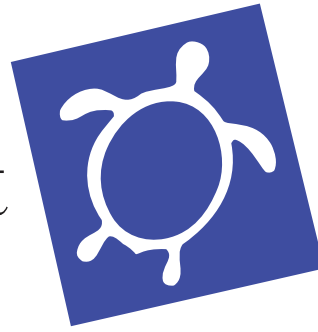


Environment



Hawai'i

a monthly newsletter

Cutting Losses

The contested case hearing over the destruction of strand habitat for endangered yellow-faced bees has almost come to an end, nearly three years after it occurred.

Landowner Sushil Garg has denied ever authorizing the work, yet he pre-paid for the rental of equipment used, praised — or was at least okay with — the work after it had begun, then, afterward, paid the clearing crew for their time and reimbursed his contractor for expenses.

The losses to the bees' habitat and the larger strand ecosystem cannot be measured in monetary terms. The Department of Land and Natural Resources' proposed fine of more than \$3 million is perhaps all the state can get, but it by no means makes the state whole.

Conflicting Testimony Offered in Contested Case Over Destruction of Habitat at Marconi Point

Facing fines of more than \$3.1 million, the landowner who paid for the unauthorized clearing of coastal vegetation — including endangered Hawaiian yellow-faced bee habitat — at Marconi Point in October 2023 has tried to shift the blame onto his contractor.

The Department of Land and Natural Resources has drafted a settlement agreement with the contractor, Ben Lessary, although this has not yet been brought to the Board of Land and Natural Resources for approval.

During a contested case hearing held earlier this year on violations stemming from the clearing work that occurred in the Conservation District fronting the Marconi Point Condominiums project, unit owner Sushil Garg claimed he never called for coastal vegetation to be cut, merely for tall grass further inland to be mowed and dead

brush to be removed, in part, to reduce what he saw as a fire risk.

Garg's attorney, Kalani Morse, asked if he ever gave Lessary explicit instructions to cut down plants near the beach. Garg said he had not. When asked what he told Lessary to do, Garg replied, "When we bought the [coastal] lots in July of 2023, I — again, we don't live here, so we visit here every so often. We visited in August, although we bought the lots in July. So we went to the property, and I looked at the lots, and the lots had this overgrown grass and, you know, weeds up to your knees all dried up. And this is about the time of the Maui fires, so I went out there and I said, 'Hey, Ben. Why is this all grown up? Why are you guys not taking care of it?' And he said, 'Because Jeremy [Henderson, the condo project developer] wasn't paying us, so we weren't taking care of his land,'

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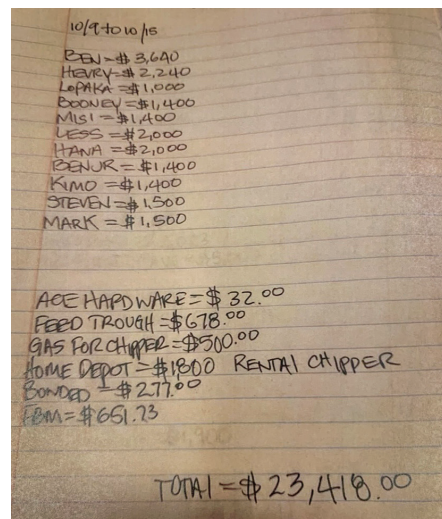
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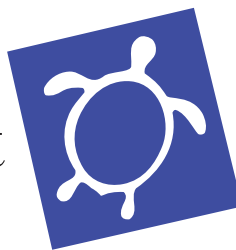


Account Statement		
BUSINESS ANALYZED CHECKING		
GREYSTONE HI INVESTMENTS LLC		Page 3 of 5
Statement Period: October 01, 2023 - October 31, 2023		Account Number: [REDACTED]
Account Activity		
Date	Description	Amount
Deposits and Credits (Continued)		
10/26	INTERNET TRANSFER FROM DOA [REDACTED] LOAN OR CAPITAL IN V TO SUBSIDIARY	\$7,500.00
10/26	INTERNET TRANSFER FROM DOA [REDACTED] LOAN	\$40,000.00
10/26	INTERNET TRANSFER FROM DOA [REDACTED] CAPITAL INV TO SUBSIDIARY	\$200,000.00
10/31	INTERNET TRANSFER FROM DOA [REDACTED] CAPITAL INV TO SUBSIDIARY	\$600,000.00
	Total Deposits and Credits	\$977,500.00
Withdrawals and Debits		
10/02	DOMESTIC ONLINE WIRE BOBS EQUIPMENT LLC N0A020338JVB65QP	\$95,000.00
10/05	DOMESTIC ONLINE WIRE BEN LESSARY N0A5E4134SGCMLN	\$32,535.00
10/10	ACH DEBIT CHASE CREDIT CRD AUTOPAY KING LORENE M 4760039224	\$36,529.76
10/13	DOMESTIC ONLINE WIRE BEN LESSARY N0ADE58310XDKMSQ	\$39,411.00
10/19	DOMESTIC ONLINE WIRE NOAH NUGENT N0AH59076BNCCL	\$21,452.00
10/19	DOMESTIC ONLINE WIRE BEN LESSARY N0AH59076BNCCL	\$23,418.00
10/23	ACH DEBIT BMWFINANCIAL SVS BMWFS PYMT GREYSTONE H400428 1222568977	\$1,679.75

A ledger kept by Ben Lessary showing the amount due for work done during the week in October 2023 when unauthorized clearing occurred in the Conservation District at Marconi Point (left) — \$23,418 — and a bank statement from Sushil Garg's Greystone HI Investments LLC, indicating Lessary was paid that amount on October 19, 2023 (right). CREDIT: CONTESTED CASE HEARING EXHIBITS.

Environment

Volume 36, No. 11



Hawai'i

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May 2026

NEW AND NOTEWORTHY

LUC Nominees: On April 22, Governor Josh Green informed the Senate that he was withdrawing the nomination of Nancy Carr Smith for a second term on the Land Use Commission. According to the LUC, she will serve through June 30.

Three weeks earlier, the governor withdrew the name of another nominee to the LUC, Ku'uleialoha Santos. Santos, who works in construction on Kaua'i, had been nominated to serve a term ending in June 30, 2030. She withdrew as a candidate for LUC following her appointment by Kaua'i Mayor Derek Kawakami to the Kaua'i County Planning Commission.

Just two of the governor's four LUC nominations went before the Senate Committee on Water, Land, Culture, and the Arts at its hearing on April 23. Both Myles Miyasato and Melvin Kahele, nominated for second terms, won the committee's recommendation that the full Sen-



The ADC-owned lot in Kea'au used rent-free by Pacific Biodiesel.

ate consent to their appointment. Miyasato's term will expire June 30, 2029, while Kahele's will end June 30, 2030.

That ADC Land: For the last two years, *Environment Hawai'i* has reported on the lot the Agribusiness Development Corporation owns in the Shipman Industrial Park, near Hilo. The lot has been used for years, rent-free, as a parking lot for trucks and tanks owned by Pacific Biodiesel, whose refinery is on an adjoining parcel.

Now, though, it seems the ADC may have identified a use for it: as a site for frozen and cold-storage of agricultural products. The agency's executive director, Wendy Gady, stated at an April ADC board meeting that this project was one of several that had been confirmed by the U.S. Department of Agricultural Rural Development agency as eligible for federal grant support. The range of estimated cost runs from \$1,187,500 on the low side (\$950,000 in grant funding, \$237,500 to be provided by the state) to \$2,333,333 on the high side (federal share

\$1,750,000; state share \$583,333).

Gady stated that grants would not be made until later in the federal fiscal year, ending September 30. ADC board members asked whether the state share would be available, since the current proposed 2026-27 budget does not include anything for this or any of the other federal grants ADC is seeking. Gady suggested that if the grants were awarded, the ADC would seek additional funding from the state.

Rudo Sentencing Delayed Again: Alan Rudo pleaded guilty in July 2022 to federal charges stemming from fraudulent acts while Rudo worked in the Hawai'i County Office of Housing and Community Development. Almost four years later, and after the trial and conviction of three men who conspired with him to cheat the county, Rudo still awaits sentencing.

Most recently, his sentencing, scheduled for April 23, was postponed until May 28. A sentencing statement and presentence investigation from the U.S. Attorney in early April prompted Rudo's attorney, Gary G. Singh, to seek the delay, granted by Judge Jill A. Otake.

Singh alleges that presentencing report "has multiple additions and deletions from the draft PSR," which, he adds, "appear to arise from information adduced at the co-defendants' trial," which occurred last spring. Those changes increase the offense levels, and thus also the sentence guidelines for Rudo's offenses from a range of 135 to 168 months to a range of 168 to 210 months, he told the court, adding: "In the Offense Level Computation section, the Final PSR increased the value from \$5,161,345.30 in the Draft to \$11,048,000.00."

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Quote of the Month

“He said there were some crybabies who were complaining about him cutting on the beach.”

— Sushil Garg

Longtime Land Administrator Alleges Discrimination in Complaint against DLNR

Russell Tsuji, until last year the longtime administrator of the Department of Land and Natural Resources' Land Division, is suing the DLNR and Dawn Chang, chair of the Board of Land and Natural Resources. His lawsuit, filed in 1st Circuit Court, alleges that Chang's behavior toward him amounted to violations of state law forbidding "disability discrimination, race discrimination, natural origin discrimination, gender discrimination, age discrimination, and retaliation."

The complaint notes that in December 2021, Tsuji "suffered a stroke, specifically a transient ischemic attack (TIA), which constitutes a disability." Afterward, he "worked diligently to manage his blood pressure and health, and he continued to perform all essential functions of his position as State Lands Administrator."

Soon after the appointment of Chang to head up the DLNR, Tsuji's complaint states, the behavior that forms the basis of his lawsuit began. "Beginning in or around January 2023, Defendant Chang engaged in a pattern of conduct intended to embarrass, harass, and create a hostile and intolerable work environment" for him, the complaint says.

Specifically, Chang said in front of other DLNR administrators and staff that certain persons, including the governor's chief of staff, state Senator Tim Richards, and James McCully, a lessee of state land, wanted Tsuji to be fired, the lawsuit states.

Chang excluded Tsuji from communications with his own staff, Tsuji alleges. Among other things, she "sent emails directly to Land Division staff on substantive land matters, including the Army land exchange and other projects, without copying Mr. Tsuji, thereby subverting his supervisory authority."

The complaint suggests other administrators were also disparaged by Chang, including former Water Deputy Kaleo Manuel and Land Deputy Laura Ka'akua. "Defendant Chang publicly announced in a weekly administrators' meeting that the Attorney General had ordered the removal of ... Manuel," who subsequently resigned, the complaint says. In addition, "Ka'akua was removed shortly after Mr. Manuel, and [her] secretary later told Mr. Tsuji that she could not stand to see Laura being treated poorly by Defendant Chang."

Tsuji filed a formal discrimination complaint in February 2024. According to the complaint, "the investigation confirmed that

Defendant Chang did engage in much of the reported conduct." Despite this, "the investigation concluded that there was 'insufficient evidence' that the conduct violated the [Department of Human Resources Development's] internal [Equal Employment Opportunity] policy."

A year later, Tsuji was approved for reasonable accommodation under the Americans with Disabilities Act. This, the complaint says, "included a hybrid telework schedule ... in light of Mr. Tsuji's disability resulting from his December 2021 stroke ... and the ongoing need to manage his blood pressure." He was also approved for intermittent leave under the Family and Medical Leave Act.

"A mere three days after Mr. Tsuji's reasonable accommodation was approved, on March 17, Defendant Chang issued a memorandum placing Mr. Tsuji on a 'special assignment,' the complaint says. That required Tsuji to personally conduct thorough site inspections of all 800-plus properties under state lease or revocable permit throughout the state.

At the same time, Tsuji was "relieved of all of his duties and responsibilities as State Lands Administrator."

"The special assignment was fundamentally inconsistent with Mr. Tsuji's approved reasonable accommodation and FMLA leave," the complaint continues, requiring extensive interisland travel "in direct contravention of his approved accommodations."

"By stripping Mr. Tsuji of his authority and responsibilities as the State Lands Administrator and assigning him work that fell within the job descriptions of land agents (a lower-level position), Defendant Chang imposed an adverse employment action without any due process or hearing," the complaint states.

"The pretextual nature of the special assignment is further demonstrated by the fact that no other DLNR administrator has ever been given a similar assignment, the assignment was outside Mr. Tsuji's job description, and the scope was so unreasonable that even multiple land agents working together over years could not have completed it," the complaint says.

A week later, Tsuji asked Chang to reconsider the special assignment. On March 31, she rejected the request. Tsuji submitted his departure notice on April 23, even though he had planned to continue working for the DLNR for five or six more years, according to the court filing. "The constructive discharge

forced him into early retirement, resulting in significant lost wages, lost benefits, and lost pension accrual," it states. His last day of employment with the DLNR was May 30, 2025.

On June 23, Tsuji filed a complaint with the Hawai'i Civil Rights Commission and the Equal Employment Opportunity Commission, alleging disability discrimination and retaliation. It took nearly a year for the Civil Rights Commission to issue its decision, granting Tsuji a "right to sue" letter on April 9. Five days later, his attorneys filed the complaint against Chang and the DLNR.

Loss of Continuity

Tsuji headed the Land Division for years and his departure meant a loss of institutional knowledge hard to replace. Exacerbating that loss, two other longtime Land Division staff have left. Ian Hirokawa was named acting Land Division administrator following Tsuji's departure, but he soon transferred to the state Department of Transportation. Kevin Moore, assistant state lands administrator, transferred to the Department of Agriculture and Bioscience, where he now manages that department's portfolio of agricultural leases.

Other DLNR divisions that have seen departures include that of State Parks administrator Curt Cottrell and Ed Underwood, administrator of the Division of Boating and Ocean Recreation.

Other Workplace Complaints

Dawn Chang has headed the DLNR since January 2023. Over the past year, the department has issued seven separate contracts for investigations of workplace misconduct and, in one case, alleged workplace violence.

Summaries of the contracts on the state HANDS website do not provide details. However, two of the complaints allege workplace misconduct at the Division of State Parks. One alleges professional misconduct and administrative violations at the State Historic Preservation Division. One contract in April was issued to investigate allegations of workplace violence and/or misconduct at the Division of Boating and Ocean Recreation. In all, the contracts were to investigate more than two dozen allegations of misconduct of one or another type.

So far, the contracts for workplace misconduct have cost the DLNR more than \$90,000 in the past 12 months.

— Patricia Tummons

Marconi Point *continued from page 1*

because I bought the lots from Jeremy ... I said, 'We have to take care of it. We have to cut this as soon as we can.' He said, 'We'll take care of it.'"

Garg's Greystone HI Investments, LLC, purchased four units in May 2022. Garg admitted that during a walk of his land near the beach that year, he had asked about maintaining the area and that Lessary and the nursery manager for the condo project, Henry Fong, had advised him that he could not cut the coastal vegetation within the Conservation District.

Garg had responded, "But the plants are on my property," he testified. Then he added that both Lessary and Fong advised him, "No, no, no. Your property is conservation land."

Garg testified that he never had another discussion with them about cutting the beachfront vegetation, "[b]ecause they already told me the first time, so what was the point?"

Garg said that on October 11, 2023, he and his wife, Lorene, visited the property. He said they were unaware of any vegetation trimming at the time.

"They were showing us some of the work they did on the [historic] buildings, primarily the hotel, which is a two-story building. We were on the second story of the building looking out, and Ben said, 'I wanted to surprise you guys. You'll see something.'"

And we looked out and we said, 'No.' We saw some birds. We thought he was talking about the albatross, and he said, 'No, no, no. Look at the beach.' And we looked at the beach and said, 'I hate to tell you this, but we don't really see what you're saying.' He goes, 'No, I cleaned it. The beach is much cleaner.' ...

"[W]e got into an ATV, I guess, and we drove down to the beach, and we walked around on the beach, and he showed me. ... He showed me what he was trimming, and I asked him, I said, 'I thought we couldn't do cutting on the beach,' and he said, 'No, we're not cutting. We're trimming it. This is what we have been doing since 2013, all these years, and we'd still be doing it if Jeremy was paying, and I wanted to give you a surprise, a pleasant surprise to see how we're cleaning up this.'"

Morse asked Garg, "And did you think anything of it at this time?"

"No. I just thought it was okay," Garg replied. He later testified that he had FaceTimed that day with the boyfriend of Yue-Sai Kan, who then owned condo unit 1.

"I showed him, 'We're on the property. It looks nice, pretty clean, and by the way, there was — Ben did some cleaning on the beach,' and I just kind of showed him on FaceTime what that looked like."

Garg said he next heard from Lessary on October 16, when he said that someone from

the U.S. Fish and Wildlife Service wanted permission to come onto the property.

"He said there were some crybabies who were complaining about him cutting on the beach," Garg said.

He admitted that he paid Lessary for the work he and his crew did along the coastline.

"It was part of a normal bill. He sent me a bill, and I paid him for it," Garg said.

Exhibits submitted in the contested case include Lessary's handwritten ledger detailing what Garg owed for labor and material or equipment costs incurred in a given week (such as rental of a wood chipper, gas for the chipper), as well as the time around which the clearing occurred. Also included were bank statements from Greystone HI Investments, indicating that on October 19, shortly after the clearing work was completed, it had paid Lessary the exact amount that the ledger said was owed.

Fong and Lessary's testimonies have contradicted some of Garg's account.

Fong testified in a written statement to the Land Board and during the contested case hearing that the Gargs had directed Lessary to cut the coastal vegetation and had discussed it on three occasions. Fong said he had warned them that the work would violate Conservation District rules. Even so, he testified that they ordered it anyway and were pleased with what they saw as the work was being done.

continued on bottom of page 5



This stretch of vegetation at Marconi Point was known to be a robust habitat for endangered Hawaiian yellow-faced bees. The top photo, taken in 2022, shows what it used to look like before unauthorized clearing occurred in October 2023. The bottom photo was taken in November 2023.

DLNR Proposes Settlement Agreement For Fence Violation at Marconi Point

On May 8, the Department of Land and Natural Resources' Office of Conservation and Coastal Lands will request that the Board of Land and Natural Resources approve a settlement agreement for a violation case brought on April 26, 2024, regarding unauthorized fence construction in the Conservation District at Marconi Point.

The OCCL had identified unauthorized fences in the Conservation District on Unit 1 of the Marconi Point Condominiums project, as well as along the boundary between the project and Turtle Bay Resort.

The OCCL noted in its report to the Land Board, "The fence lines are detrimental and interfere with the life cycle of the moli (Laysan albatross) creating separation, anxiety, and trauma to the protected bird. Fences block the adults when caring for their egg and young as they take turns watching over the nest. When the birds are ready to leave the nest, fences may block the flight path of the very important initial first flight."

The office initially proposed imposing a fine of \$15,000 against the Association of Unit Owners of Marconi Point Condominiums and/or the project's developer, Makai Ranch, LLC, and requiring the boundary fence's removal from the Conservation District.

The boundary fence was constructed long before the owners' association was created. Even so, because the easement containing the fence is a common element of the CPR, "the entire CPR is responsible for this violation," the OCCL's report stated. (The Unit 1 fences were later removed as part of a settlement agreement with the former owner of that lot.)



A 2022 photo of a portion of the unauthorized fence at Marconi Point in the Conservation District.

At the board's April 2024 meeting, counsel for the alleged violators asked for a contested case hearing. A contested case hearing on violations stemming from other unauthorized activities on the CPR's coastline by certain unit owners and their contractor was held earlier this year (see this month's cover story). The association of unit owners, however, chose to pursue a settlement agreement for the fence violation, rather than proceed with a contested case hearing.

Under the agreement, the association must remove the boundary fence portion that extends into the Conservation District in a manner that won't adversely affect Laysan albatross or other species, provide supporting documentation to the OCCL, work with the office to determine the district boundary's lo-

cation, and waive its right to a contested case hearing regarding the enforcement action.

The DLNR agrees to waive all fines sought against the association "and any other potentially liable parties, for the boundary fence violation," and close the enforcement action upon confirmation that the fence portion has been removed, the agreement states.

The Land Board was first scheduled to decide on whether to accept the agreement in March, but the meeting was cancelled due to bad weather. Community members had submitted written testimony opposing the proposal to waive the fines, arguing that the fences had caused harm to the albatross that nest in the area.

— Teresa Dawson

Marconi Point *continued from page 4*

"They came to the property. We rode on the red golf cart out to Yue-Sai's lot. They were happy the way it was looking. They said it looked terrific," he testified.

"Did they mention anything about fire?" asked deputy attorney general Danica Patel.

"No," Fong replied. He also testified that the discussions with the Gargs about clearing the coastal area occurred before the August 2023 fires on Maui, and, in any case, the coastal vegetation posed no fire risk.

"It was in perfect condition. ... I mean, there wasn't, like, dead branches falling all over the place," Fong said.

Fong also noted that some of the equipment used, including a wood chipper and skid-steer, were rentals that Garg had paid for before the work started.

Fong said after the work had been done, he told Lessary, "They're going to get fined because it was a violation. For one, they don't have a permit to even do the work on the shoreline, and they went below the vegetation of the high-water mark, so that is a big no-no already."

"So you didn't warn them?" asked Morse.

"Oh, I warned Sushil them," Fong

replied.

"Did you warn Ben?" Morse asked.

"Well, he was there, but, I mean, they got to take orders from their boss, and they took orders from their boss," Fong said. He added that had he refused Lorene Garg's request that he and another nursery worker cut the naupaka on the beach and that after the work was done anyway, he told that worker, "Lorene should never have even ordered that work to be done because it's against the rules and regulations."

Lessary testified that the discussions that led to the clearing done in October 2023

focused on getting the area cleaned.

"Did you think it was not clean?" Patel asked.

"Yeah," Lessary said, noting that the area had not "been touched since I got let go from Jeremy Henderson in 2019."

"What did he tell you — what did Mr. Garg tell you he wanted done?" Patel asked.

"Wanted to get it cleaned up," Lessary said.

He explained that he understood that this meant the kind of work he had done for Henderson about a decade ago, when they cleared invasive species from the property.

"So did you understand him [Garg] to want you to take all the vegetation out?" Patel asked.

Lessary said they were taking out all the dead debris.

"There were a lot of dead debris in the naupaka. ... So that's what the — all the other working employees were doing. I was on the skid-steer only. I didn't cut no trees," he said.

The skid-steer had a mulcher on the front of it and the crew would bring cut material over to a pile "and then I would just come right over and mulch it down," he said.

Patel asked how they discussed what the plan was.

"We just went out there and everybody just started to do their thing and say, just, 'We're all here to just cut out all the dead debris,' and that's what they did," he said.

"Okay. But it seems like a lot of live vegetation was cut too, right?" Patel said.

"I cannot say. I was inside the skid-steer," Lessary replied.

"My intention and everybody's intention was just to prune and rejuvenate the trees," he said.

None of the other owners of condo units along the coast instructed him to clear the vegetation. And, in fact, one of the unit owners did not want the vegetation fronting their property cleared, he added.

When Patel asked Lessary whether he remembered Fong saying that he told people about the Conservation District rules, Lessary replied, "I can't answer that."

She then asked what followed after the Department of Land and Natural Resources had issued a letter on October 19 to all of the landowners at Marconi Point Condominium about the unauthorized clearing and potential violations.

Morse immediately objected. "Lacks foundation. Speaking to an unspecified letter the witness hasn't seen."

Patel to Lessary: "Do you know what I'm talking about?"

Lessary said he remembered.

Patel asked, "Do you remember what happened after everybody got their letter?"

"Objection. Vague and ambiguous," Morse interjected.

After Hearing Officer Lou Chang overruled the objection, Lessary said that Garg called him.

"He said, 'You need to go and check your [e]mail.' ... and then I called him up and he said, 'Did you see what you saw in the mail?'"

"I said, 'yeah.'"

"So then he told me, 'Okay, I need you to go down to Kalani's office and go meet with him and I'll pay for your legal services,' and so that's where I went."

"Were you comfortable with that arrangement?" Patel asked.

"At first I was, but after — after a couple of days, I wasn't feeling right," Lessary replied.

"And is that when you got Mr. Rivera as your counsel?" Patel asked.

Yes, Lessary replied.

When Patel asked whether Garg ever told him why he wanted the vegetation cleared, Lessary said, "He wanted to build homes for his kids on the beachfront lots. ... We did talk about fire risk. ... That was some sort of reason because of the Maui fires. And then, you know, we walked the shoreline and we saw a lot of dead brush inside the naupaka."

"Did he ever tell you he wanted to see the ocean," Patel asked.

"Yes, he wants to see the ocean," Lessary replied, although he said he did not think it was a big reason why Garg wanted the vegetation gone.

When Patel asked whether Garg had ever asked him to check if he needed permits to do the work, Lessary said no.

"But I did discuss to him about if we don't have any permits and we do proceed with any work, we will get complaints," Lessary said.

"And is that what happened here?" Patel asked.

"Yeah. I believe on the first day we worked out there, I — the bird people was out there that day, and there were three of them, older man, older ladies, and I've been working with them prior when Jeremy Henderson who owned the property prior to Sushil Garg. And then they wasn't happy what they saw that day.

"So when they came, approached me, they asked, 'Hey, what's going on?'"

"I told 'em 'We just clean. We're pruning, we cleaning.' But I could see in their face that they wasn't happy. So they walked away, so I called Sushil and I told him, 'Be

ready for the first complaint.'"

Respondent Superior

In the pre-hearing brief for Garg and his companies, their attorneys argued that Lessary was not their employee, but merely an independent contractor.

"Sushil would typically outline the scope and end-goals ... and then rely on Ben's experience and judgment to organize and execute such projects. Sushil ... was not present enough to provide supervision, direction, or exert control over the manner in which Ben accomplished the work needed to complete each project," they stated. (Garg went so far as to suggest that Lessary and Fong were lying about their conversations and about the scope of work to be done at Marconi Point. "Maybe they're trying to put a blame on me instead of themselves," Garg testified.)

They wrote that after the Notices of Violation were sent out, a distraught Lessary sought advice and reassurance that everything would be fine.

"During that conversation, Ben sought clarity from Sushil regarding his role in managing and executing the maintenance, repair, and improvement projects at Marconi. Sushil clarified that Ben's work at Marconi, like the work Ben performed for others besides Sushil, was work that was completed as an independent contractor, not to be confused with a licensed general contractor," they continued.

Patel addressed this in her cross-examination.

She asked Garg whether he was aware that, under Hawai'i law, a worker is presumed to be an employee unless the hiring party can prove otherwise.

Garg said he was not.

In her pre-hearing brief, she explained that under the theory of respondeat superior, "an employer may be liable for the negligent acts of its employees that occur within the scope of their employment." (The term is Latin for "let the master answer.")

She noted that according to the state Supreme Court, "Conduct of a servant is within the scope of employment if: It is of the kind he is employed to perform; it occurs substantially within authorized time and space limits [and] it is actuated, at least in part, by a purpose to serve the master."

To recover fines from Garg and his companies, the DLNR "must establish that the alleged violations were the negligent, at the very least, acts of petitioner Garg's employees and that the negligent acts were within the scope of petitioner Garg's employees."

"While the department finds that petitioner Lessary actually committed the al-

leged violations, the evidence will demonstrate that the alleged violations were only conducted pursuant to petitioner Garg's instruction in an employer-employee relationship. The department has no evidence that will show that petitioner Lessary and the other workers conducted the work for personal benefit, other than the money they received for doing work for petitioner Garg," she wrote.

Absence of evidence

In connection with the October 2023 clearing event, the DLNR's Division of Forestry and Wildlife is seeking \$1,482,500 in administrative fines for the destruction of 296 endangered *Hylaeus* bees. That's \$5,000 in administrative fines per bee plus \$2,500 for taking the bees.

The DLNR's Office of Conservation and Coastal Lands is seeking \$1,625,000 for the removal of 105 trees in the general subzone of the Conservation District, as well as clearing and spreading mulch over more than one acre, and damaging, killing or removing 40 trees on state-owned submerged land in the resource subzone.

In total, the agencies seek \$3,107,500.

Morse stated in his brief that Garg did not dispute "that the pruning and trimming occurred in the Conservation District without proper permits. The general instruction for Ben to clean up the property did not include specific requests or instructions to trim or prune any foliage on or near the shorefront at Marconi."

In any case, he continued, the unauthorized work "did not result in a loss or destruction of the shoreline foliage and habitat for the bees. Sushil of course regrets that a lack of clear information and miscommunication led to the misunderstanding which resulted in the trees and shrubs being trimmed without proper oversight, guidance, and permits. Nevertheless, these regrets and the lack of a permit for the work done does zero to establish the veracity or accuracy of the erroneous and overestimated fines calculated and levied against petitioners."

Although DLNR staff had used GPS to record the locations of trees cut, Garg's expert arborist Douglas Demoss stated in a January 23 declaration that after surveys he did of the entire beach strand at Marconi between December 2025 and January 2026, "I was unable to identify anything close to 105 dead tree stumps. I also scoured the beachfront area below the wash of the waves and was unable to identify all but a few dead tree stumps in that area, nowhere near 40, though I did find some that appeared to have been cut more than just a few years ago."

He stated the beach heliotrope across most portions of the beach strand appeared to be growing and thriving.

"I cannot agree with the statement that the foliage on the beach at Marconi was killed, lost, or destroyed," he stated, adding, "If the bees living in that foliage are using the heliotrope flowers for pollen and nectar, the shrub prunings appear to have multiplied the number of heliotrope branches and this significantly increased the number of flowers on the shrubs on the shorefront."

Garg's bee expert, biology professor Joseph Wilson from Utah State University, also prepared a report for the contested case hearing. Among other things, he stated that the available scientific knowledge and evidence was "far from sufficient to support the DLNR's claims that the October 2023 vegetation clearing at Marconi Point: a) killed a number of endangered Hawaiian yellow-faced bees and/or their nests/eggs/larvae, b) eliminated/decimated the bee population at Marconi, or c) resulted in any quantifiable take. Furthermore, the numerical estimates of bee mortality presented by DLNR cannot be independently verified and are not scientifically defensible given data currently available and the unsubstantiated and unsupportable assumptions utilized when calculating such estimates.

"First, there is no clear evidence to establish that any endangered bees were actually killed as a result of the trimming. No bee specimens, carcasses, destroyed nests, or other physical indicators actually verifying mortality were documented."

In contrast, Patel noted that shortly after the clearing was done, University of Hawai'i assistant researcher Paul Krushelnycky and entomologist Cynthia King assessed the damage to the bees, conducting standardized bee count surveys "to compare to the relative abundance of *Hylaeus* bees at that moment in time to other known sites where the species occur."

Bee monitoring plots were established near bee locations documented in 2020.

According to a November 2023 take statement by Dr. Sheldon Plentovich of the U.S. Fish and Wildlife Service, "The 'Marconi Station' area was a known hot spot with high densities of Hawaiian yellow-faced bees. I visited the area regularly to monitor Laysan Albatross chicks from November - July and made a point to stop and watch the bees on most visits because they are so rare."

Krushelnycky's final assessment included several photos of mostly naked trees where the bees had been known to occur. It also noted, "Many bees, both males and females, were observed congregating on and around

the cut tree heliotrope branches shown. The females may have been searching for nests in the downed branches."

Patel's brief argued that Krushelnycky "used the best available scientific techniques to estimate the number of *Hylaeus* bees, including their nest, eggs, and young, taken during the vegetation clearing event in October 2023.

"The 'absence' of exact evidence to establish the number of animals, including eggs, larvae, and nests, taken by petitioners' activities was caused by petitioners' actual destruction of all evidence. Dr. [Karl] Magnacca, Dr. Krushelnycky, Dr. Plentovich, and entomologist King agree that any and all *Hylaeus* bee adults, eggs, larvae, and nests would have been destroyed when processed through a mulcher, as their habitat was by petitioners. It would have been impossible to sort through the mulched vegetation to look for *Hylaeus* bee adults, eggs, larvae, and nests. The destruction of the vegetation was also the destruction of any evidence of the take of the *Hylaeus* bees," she wrote.

Henderson testified that he knew of the bees' presence, but Lessary and Garg testified that they didn't know until after the clearing. Patel pointed out that they might have known had they sought permits. Despite Garg's testimony to her that he never tried to develop vacant land before, he appeared to have done just that in California. She presented to him a 2020 survey, prepared as part of a permitting process, that discovered an endangered gnatcatcher on property he was trying to develop.

"They live in a specific plant, and we had a lot of plant on this property, so they [USFWS] wanted to make sure that there was no gnatcatcher there, and if there is, those gnatcatchers were — the plants were relocated so gnatcatchers can be fine," he said.

"So in California, it seems like you were aware that you needed to follow certain permitting procedures to accomplish your goals on that property, right?" Patel asked.

"Yes, and we followed them," Garg said.

"So what research did you do about Hawai'i permitting procedures to accomplish your goal on the Marconi Point Condominium units?"

"I didn't do any research here," Garg replied.

The evidentiary portion of the hearing concluded in April. The parties await recommendations from hearing officer Chang.

— Teresa Dawson

Emails, Contested Case Reveal Details About Renovation of Marconi Historic Site

On October 31, 2023, architect Tonia Moy emailed Jessica Puff and Mary Kodama of the State Historic Preservation Division's architecture branch, introducing them to Sushil Garg, the new owner of lands that included the historic Marconi Wireless Telegraph Station on O'ahu's North Shore.

The station was listed as an endangered site by the Historic Hawai'i Foundation and the former owner did not have the resources to fix it up, Moy wrote.

"Current owner would like to meet with you guys to discuss what to do (repair!!! And maybe add some other buildings on site) before proceeding much further. He is very interested in maintaining its historic character and is not a developer trying to make a lot of money off of the site.

"Thought he should start off talking with you guys!" Moy wrote.

The next day, Garg sent his own email to Puff and Kodama, asking if they could meet with him the following day. "Looking forward to meeting and getting to share our vision and your guidance on what is possible for this great property," he wrote.

They agreed to meet via Zoom on November 28, but Garg cancelled at the last minute, stating in an email to Kodama that he had gotten terribly sick from traveling abroad. He suggested rescheduling once he felt better, but asked Kodama to send him information regarding an upcoming training program regarding tax credits for the rehabilitation of historic buildings.

Their next email exchange came on December 8. Kodama asked Garg for his phone number, which she had misplaced, and for him to call her.

"I received some inquiries regarding work being done on the property and I wanted to get more information from you," she wrote.

It turned out that Garg had been renovating the historic buildings long before contacting SHPD and the roof of the largest and most fragile building — the power house — had collapsed, taking with it some of the walls.

On December 11, Garg emailed Kodama photos of the damaged building that he said had caved in the week prior. He stated that he would be visiting the site with a structural engineer to help with a plan to shore up the remaining walls.

He asked Kodama to advise him on what help he could get with planning and restoring

the building. The critical task at hand was to shore up the walls to minimize any further damage, he wrote, adding that he would prefer to restore the structure rather than rebuild it.

"Also, I assume any expense we incur during the process would qualify for Tax



The historic buildings at Marconi Point being renovated a few years ago.

Credits," he wrote.

Kodama's reply included a Memorandum of Agreement between federal and state agencies, a lender (North Avenue Capital), and the former owners of the lands containing the historic features. The agreement, signed in 2021 as part of the former landowners' efforts to obtain a USDA-backed loan to construct several agricultural warehouses on adjacent lands, prescribed a planning and review process intended to protect the historic features. (Garg should have already had a copy. In May 2022, when Garg's Greystone HI Investments purchased the condominium units that encompassed the historic buildings and features, he signed a partial assignment and assumption of developer's rights that included the rights and obligations to comply with the MOA.)

Kodama also instructed Garg to submit information to SHPD regarding his proposed emergency work, including a letter stating what happened, what he proposed to address it, site photographs, information or reports from his structural engineer, plans or drawings, and a permit application, if applicable. She also suggested that he also include any planned future work.

Kodama visited the site with Garg on December 13 and in an email a few days later instructed him to cordon off the area and post signs indicating that the area is a safety hazard.

Garg never did provide Kodama with the information she had asked for. His last emails to her were in late December, thanking her for advising him that he could re-

move tangled rusted iron materials from the collapsed building that had already fallen or been taken down, and also introducing her to Christopher Decker of the state Department of Health, which had also responded to a complaint about the work being done on the historic buildings.

The DLNR Communications office informed *Environment Hawai'i* earlier this year that SHPD staff had stated that they had not been contacted by Garg since December 2023.

Garg's attorney, Kalani Morse, stated in a November 2024 email to *Environment Hawai'i* that with respect to the MOA, Greystone's team had been working with SHPD "to determine how to best memorialize the historic restoration work on the structures and finalize approvals for the restoration work in progress."

Morse also noted that Greystone and Garg are committed to restoring the site to its former glory, "in accordance with all applicable standards and in consultation with all the relevant agencies and organizations that were parties to the MOA."

In August of last year, the DLNR indicated that SHPD had reached out to the USDA and the federal Advisory Council on Historic Preservation to "do something with the existing MOA," but had not heard anything from them. SHPD stated in a January email to *Environment Hawai'i* that it would try to reach out to USDA again and relay any response. None was received by press time.

Contested Case

While the MOA established timelines for the submission of an interim stabilization plan (ISP) and a historic preservation and treatment plan to SHPD for review and approval, the agreement lacked enforcement provisions, except for a requirement that the ISP be completed before the City & County of

Honolulu issued certificates of occupancy for the agricultural warehouses.

Those deadlines passed well before Greystone purchased the historic properties.

However, on October 27, 2023 — a few days before Moy's introductory email to SHPD — Makai Ranch vice president Michael Danhour did provide SHPD with a September 2021 historic structure report and a January 2022 engineering report that had been prepared in an effort to comply with the MOA. The latter report warned that the already damaged power house walls were at risk because of their connection to the partially collapsed roof framing.

"If the collapse were to progress, the walls connected to the framing could be further damaged as they are 'dragged' down by the weight of the framing," it stated.

SHPD indicated in late 2024 that it was investigating potential violations stemming from unauthorized work done on the historic site but did not respond by press time to questions about the status of that investigation.

In the meantime, Garg and his companies that own land at Maconi Point have been embroiled in a contested case hearing over violations stemming from the unauthorized clearing of coastal vegetation in the Conservation District in October 2023, habitat for the endangered Hawaiian yellow-faced bee.

The DLNR's Office of Conservation and Coastal Lands and its Division of Forestry and Wildlife are seeking a total of more than \$3.1 million in fines.

In his direct testimony at one of the hearing days in March, Garg explained why he bought lands at Marconi Point.

"We wanted something that's more in the peaceful and quiet. ... I maintained second homes here, mostly condos in Waikiki and Makiki, and just, I guess, a little crazy over there, so we wanted something more peaceful. We wanted someplace with a little bit of land, because Lorene, my wife, she likes gardening, and she likes nature, so we felt that that was someplace that we wanted to have, which has some land we can do some gardening, some nature, maybe some horses some day. So that was the main purpose," he said.

When asked by Morse whether he had any goals in mind when he bought the Marconi units, Garg replied, "No. When we first discovered it, it was a little scary because it was old buildings, historic buildings. I did not know much about historic buildings and what's involved with them. I tried to get myself educated when I realized we have to restore them, and since it was part of the historic registration, we had to restore them to the original standards, which could be challeng-



Photos sent to SHPD by Sushil Garg of damaged historic Marconi Wireless Telegraphy Station building after roof collapse.

ing. So we knew it was a challenge, but then it was an opportunity. The land was beautiful. I think the buildings restored would be beautiful, so we felt this could be an interesting challenge, but eventually it could be a bloody good place for our retirement."

Garg said he started repairing the historic buildings "probably May or June of 2022."

He said that Jeremy Henderson, the developer of the Marconi Point Condominiums, had introduced him to Ben Lessary that year. Lessary had done work for Henderson around the project and was eventually hired by Garg, who ended up purchasing several units within the project.

"I was introduced to Ben and Henry [Fong] by Jeremy when I asked him, 'Hey, I bought this place, but how do I take care of it, maintain the landscaping? And then if I start restoring the building, who do I go to? I don't know anybody in this area.' So he said these guys were taking care of it. Henry was doing some of the landscaping work for me, and Ben was doing some of the building repairs, so I went to the property. I met with them. ... So I said, 'Okay. Let me start you with a couple of small projects and see how that works, and if that works, maybe we'll give you a bigger project,'" Garg said.

Morse asked Garg, "Did you learn anything about Ben's contacts and resources that made you want to hire him to repair the historic buildings at Marconi?"

"Yeah, because in order to repair those buildings, you need different trades. You need plumbing, electrician. So I wanted to make sure that Ben had those contacts to bring those people, and when needed, and Ben assured and then told me about different people he can bring on board as and when we need them. ... During the course of the project, he did," Garg said.

He added that he had agreed that Lessary would bill him once a week, "and based upon the billing, I would know what people showed up and what work was done."

Garg said he spoke to Lessary sporadically as building repairs proceeded through 2022 and 2023, most of the time discussing whether Garg had to order materials that Lessary didn't want to pay for directly. "He'd ask me to order that, also rental equipment," Garg said.

Garg testified that Greystone HI Investments, LLC, paid Lessary (who then distributed payments to various workers) more than \$2.6 million for work done between May 2022 and April 2024. "It was a time-and-materials basis. Not all the materials was in there because some materials we paid for directly," Garg said.

Garg said that Lessary's repairs to the buildings stopped after he received a stop-work order. In early January 2024, the Honolulu Department of Planning and Permitting issued two notices of violation that included stop-work orders, one for partial demolition of a historical building and doing electrical and plumbing work without a building permit, and another for renovations and repairs to historical buildings without a building permit.

The notices threatened a triple fee penalty for work started without a building permit. According to the DPP's website, the compliance deadline was May 14, 2025, but the violations have yet to be corrected. No building permits have yet been applied for.

Morse, Garg's attorney, did file an application last year with the DPP for a verification of development standards and confirmation of legality, which was approved. Morse also applied for a Special Management Area determination for "minor repair/replacement work (windows, doors, painting, flooring, safety fences)," which was also approved.

— Teresa Dawson

BOARD TALK

Board Blesses Condemnation Proceedings
For Problematic Property Near Lake Wilson

The state is one step closer to turning a parcel in Wahiawā that has long been a public health and safety concern into a new substation for the Department of Land and Natural Resources' Division of Conservation and Resources Enforcement.

On April 24, the Board of Land and Natural Resources unanimously approved a recommendation from the department's Land Division to condemn a 9,288-square-foot commercial-residential lot on Avocado Street owned by Angelo's Auto Body & Detailing, LLC.

The business, owned by Angelo John, was administratively terminated by the Department of Commerce and Consumer Affairs in December 2020. By then, the Honolulu Department of Planning and Permitting had issued a Notice of Violation for prohibited signs (2016) and for unpermitted building alterations (2018).

The property sits at the edge of the Wahiawā reservoir (also known as Lake Wilson), which the Land Board and the board of the Agribusiness Development Corporation recently voted to acquire.

"Because of the property's location in Wahiawā and proximity to the North Shore, the department believes that it is a suitable, central location for a DOCARE substation. Currently, DOCARE officers servicing Wahiawā and the North Shore operate out of their main station located in Pearl City," a Land Division report to the board states.

It notes that the department sent a letter to John on November 22, 2024, indicating its interest in acquiring his lot, while acknowledging that it was aware he was not interested in voluntarily selling it. By this time, the DPP had issued three more notices of violation: two for occupation by homeless and one for demolition and alterations without a building permit.

John did not respond to the DLNR's letter. Even so, on February 14 of last year, the Land Board approved a memorandum of agreement with the University of Hawai'i for preliminary planning for a DOCARE base at the property.

In the meantime, the city was taking steps to address the growing community concerns surrounding the property.

On August 20, the Honolulu City Council's Committee on International and Legal Affairs passed out a resolution authorizing legal action to demolish the unsafe structures on the property.



The property on Avocado Street in Wahiawā that the state is seeking to condemn.

CREDIT: ENVIRONMENTAL ASSESSMENT.

Then on August 24, "a homeless man was mauled by a pack of dogs on the property and later succumbed to his injuries. This attack further prompted the need for action by both the city and the state," the Land Division report states.

The following day, Matt Weyer, City Council member representing Wahiawā, introduced a resolution to have the city take steps to acquire the property, including, if necessary, initiating eminent domain proceedings. The resolution stated that the property, apparently abandoned, had "attracted squatters and unsheltered individuals, been vandalized with graffiti, and been the location of alleged criminal or illegal activities."

"[T]he City Council believes that the city's acquisition of the property would resolve ongoing public health and safety issues exacerbated by the property's continuing state of disrepair and further deterioration due to its seemingly abandoned nature and the owner's failure to maintain the property," it stated.

Ultimately, however, "it was determined that the state would move forward with the condemnation process, while the city would move forward with emergency demolition of one of the structures deemed to be a public safety hazard," the Land Division report states.

The DLNR sent John another letter on October 3 again indicating its interest in acquiring his property, this time noting the city's resolution and the public health and safety concerns. The letter indicated that the state would pay John up to the estimated appraised market value of \$720,000 and initiate

condemnation proceedings if John refused to sell voluntarily.

John's reply on October 8 asked the DLNR to cease its efforts to acquire and access his property, arguing that he had complied with all orders from DPP and other agencies. He also noted that he had demolished unsafe structures, improved the property, eliminated illegal activities, and was providing ongoing security.

Even so, the DLNR pressed forward, "in the best interest of the public," the Land Division states.

A Phase 1 environmental site assessment and hazardous materials assessment of the property had already been done in August of last year. According to the Land Division report, those assessments identified several concerning environmental conditions:

In addition to the environmental risks posed by the observed "vagrant activities," the ESA noted that the property's multiple outfalls and drainage systems posed a risk by "discharging runoff over solid waste, potentially contaminating nearby water bodies, including Kaukonahua Stream, which flows into the Wahiawā Reservoir."

Also, the facts that the property had been used as an auto repair facility and used car lot, and that the adjacent Island Power lot also has a long history of unauthorized industrial uses (i.e. storage of generators), raised concerns about potentially contaminated soil, surface water, and groundwater.

Because the buildings on the site were built in the 1940s and 50s, there were also concerns about the presence of asbestos, cancer, lead paint, and PCBs from fluorescent

light fixtures.

In January, acting DLNR director Ryan Kanaka'ole accepted a final environmental assessment for the acquisition and new DO-CARE substation prepared by G70.

The EA noted that a Phase II ESA will be conducted once the state acquires the property. The Phase II assessment will include geophysical and underground surveys.

"Due to the likely presence of hazardous materials associated with the former commercial auto shop business, trained technicians will remove hazardous material in accordance with the Occupational Safety and Health Administration standards for asbestos, cancer, lead, and fluorescent lighting containing PCBs and mercury. The Indoor and Radiological Health Branch will be consulted, as necessary for the handling of asbestos and lead containing material," it stated.

In its April 10 report to the Land Board, the Land Division noted that a new appraisal had been commissioned to account for the changes to the site that occurred since the last appraisal. That appraisal will be finalized once access to the property is obtained.

At the board's meeting, John and one of his sons pleaded with the board to hold off on condemnation, insisting that they just wanted to restart their business. They argued that permitting delays at the DPP were partially to blame for the lack of improvements over the years.

"Why can't we all come together? ... If we can all come to an agreement, I'm just looking to fix my place," John said.

To their concerns that the state's initial offer was too low for a commercial-residential property, Hawai'i island board member Riley

Smith reminded them that the government has the authority to condemn property to serve the best interests of the state and assured them that the new appraisal will take into account the recent improvements the Johns said they have made.

"That all is calculated into how much they would offer you to take over the property ... I understand there's some other government properties nearby, that this is part of a larger acquisition to provide government facilities. So it's sort of like the last property," Smith said.

He added, "As much as I think we all sympathize without your situation, the process has sort of started and this is the last process. I don't see a public reason why we wouldn't approve this. I think the benefit to you is that everything that you've done will be reflected in the value."

Kanaka'ole noted that while John's counsel had requested a continuance of the board's decision, the matter was kept on the board's agenda because the state has its own timelines to acquire the property.

The board then approved a motion by board member Denise Iseri-Matsubara to approve the Land Division's recommendation to authorize condemnation proceedings, to delegate to the chair the authority to resolve litigation decisions raised by the Attorney General, and to approve other terms and conditions prescribed by the chair to best serve the state's interests.

Although no other members of the public testified at the board meeting, Wahiawā residents Keoni and Nahoku Ahlo stated in



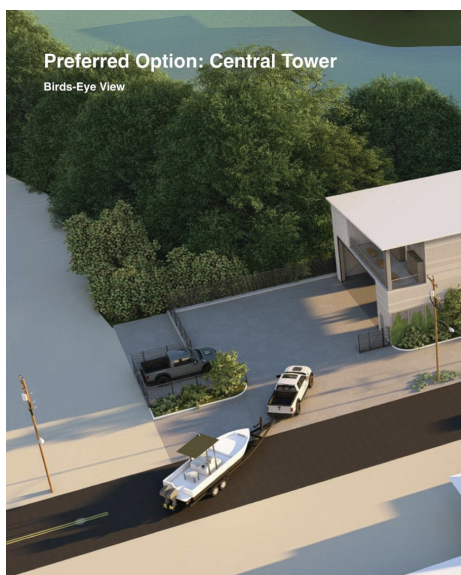
The property to be condemned.

CREDIT: ENVIRONMENTAL ASSESSMENT.

comments on the draft environmental assessment for the condemnation, "This property has been a longstanding issue in our community for more than a decade. Despite countless attempts by residents to reach the owner and seek resolution, the site has remained abandoned, poorly managed and increasingly unsafe. It has become a dumping ground and a location occupied by informal residents, raising ongoing concerns about health, safety, and the general well-being of Wahiawā. ...

"Transferring the property to DLNR DOCARE for the Wahiawā substation will not only eliminate the current nuisance conditions but will also bring much-needed enforcement presence and the stability to the area. Properly managed facilities at this location would serve the community far better than the neglected state we have endured for too long."

— Teresa Dawson



An artist's rendering of the proposed new substation for the DLNR's Division of Conservation and Resources Enforcement. CREDIT: ENVIRONMENTAL ASSESSMENT.



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Appellate Court Remands TVR Case To Hawai'i County Board of Appeals

Whether short-term vacation rentals can exist on land in the state Agricultural District seemed for a while a question that the Supreme Court had decided once and for all back in September 2024. That month, the high court issued a decision in *Rosehill v. Land Use Commission* that affirmed Hawai'i County's statute forbidding such uses on Agricultural lots that were established after June 4, 1976, when a state law governing certain uses in the district took effect.

And yet, in Hawai'i County, a dispute involving owners of a property in the Ag District that had been rented to vacationers continues to wind its way through the courts. Most recently, the dispute over whether Zendo Kern, former planning director for the county, properly allowed homeowners Ryan Neal and Beata Zanone to operate what neighbors saw as a short-term rental business on their property without a permit.

In July 2021, the neighbors – Lawrence Ford, John Koontz, Don Davis, Phillip Koszarek, and William and Rebecca Gage – had complained that this business ran afoul of state law and county statutes. Kern dismissed their complaints. The neighbors then brought their complaints before the county Board of Appeals.

The BOA upheld Kern's decision in December 2022. The neighbors then took their appeal to the 3rd Circuit Court, with Judge Wendy DeWeese presiding. Before DeWeese could render a decision in that case, the Supreme Court issued its decision in the *Rosehill* case – directly overturning DeWeese's own findings in *Rosehill* back in May 2022.

In light of the high court's action, a humbled DeWeese, in November 2024, found that the Board of Appeals' upholding of Kern's decision was erroneous. She ordered the BOA to reverse its previous decision, which it finally did on July 11, 2025.



A vacation rental on agriculture land on Hawai'i island. CREDIT: VRBO.COM.

In the meantime, in January 2025, both the county and Neal and Zanone had filed, separately, appeals of DeWeese's decision (later combined by the Intermediate Court of Appeals).

On March 30, the ICA published its opinion in the case – an opinion that altogether skirted the question of whether short-term vacation rentals belong in the Ag District. Instead, the ICA held that, contrary to the neighbors' claims, the county Board of Appeals was indeed allowed to consider motions for summary judgment and other dispositive motions. However, "the Board's orders granting homeowners' motions for summary judgment did not contain statements of undisputed material fact or conclusions of law as required" by Chapter 91-12 of Hawai'i Revised Statutes.

The neighbors argued that, since the BOA had already reversed its original finding, consistent with DeWeese's 2024 ruling, the case before the Intermediate Court of Appeals was moot.

The ICA rejected this: "Even if these appeals were moot (they're not), county and state regulation of short-term vacation rentals

affects the public; the Board of Appeals could be guided by resolution of the procedural issue presented by its summary adjudication of neighbors' appeals; and these issues are likely to recur."

"Without a statement of *undisputed* facts or conclusions of law," the ICA found, "we cannot determine what facts the Board of Appeals considered material, whether those facts are shown by substantial evidence in the record before the board ... or whether the board's conclusions of law were right or wrong. ...

"Accordingly, we reverse the judgment on appeal" – i.e., DeWeese's November 2024 decision – "and remand to the Board of Appeals for entry of amended orders."

As of press time, the BOA had not scheduled any hearing on this matter.

— Patricia Tummons

For Further Reading

A more comprehensive discussion of this issue may be found in the October 2024 edition of *Environment Hawai'i*: "Hawai'i County Presses ICA to Allow Vacation Rentals on Ag Land."