

STATE OF HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai‘i

November 8, 2019

**Board of Land and
Natural Resources
State of Hawai‘i
Honolulu, Hawai‘i**

REGARDING: Conservation District Enforcement File, Violation OA 20-16
Alleged Unauthorized Structures Located Along the Shoreline
Within the Conservation District

BY: Gary & Cynthia Stanley
59-181D Ke Nui Road
Haleiwa, HI 96712

LOCATION: Sunset Beach, Koolauloa, O‘ahu
TAX MAP KEY: (1) 5-9-002:034 (Seaward)

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject area is located on the North Shore of O‘ahu, west of Sunset Beach and seaward of TMK: (1) 5-9-002:034 (**Exhibit A**). Lands seaward of the where the shoreline would be determined, based on Hawai‘i Revised Statutes (HRS) §205A-1 and Hawai‘i Administrative Rules (HAR) §13-222 *Shoreline Certifications*, are located in the Conservation District Resource Subzone and would be considered State of Hawai‘i submerged land. The beach area is set aside to the City and County of Honolulu, Department of Parks and Recreation as the Pūpūkea to Paumalū (Sunset) Beach Park, under Governor’s Executive Order (EO) #2598. However, it appears that the EO area has eroded.

The area is exposed to extremely large swells from the north Pacific in the winter months and smaller easterly tradewind waves year-round. Owing to large seasonal swell events, the area is host to world-class big wave surfing during the winter season and highly attended international surf competitions (i.e., HIC PRO at Sunset Beach, Vans World Cup of Surfing, Sunset Open).

The beach is composed of coarse carbonate sand and characterized by occasional outcrops of limestone that are intermittently buried or exposed by shifting sand. Long-term shoreline change rates in the vicinity of the subject property have trended towards chronic recession (approximately 0.5 to 0.6 feet per year) (**Exhibit B**). Superimposed on the long-term erosional trends are large seasonal fluctuations in beach width generated by sediment exchange among the eastern and

western segments of the sediment cell. The subject sections of beach tend to narrow in summer when conditions are dominated by northeasterly trade wind waves and widen or accrete in winter upon the onset of more westerly swells. Northeast tradewind waves, predominant in summer, tend to drive sand from this area (erosion) and west to northwest swell, predominant in winter, tends to move sand into this area (accretion).

The combination of long-term chronic and episodic seasonal erosion is producing increasingly hazardous conditions for beach-front homes in the area owing to rapid sand loss and run-up by large waves. In addition, beach-front homes in the area are built atop backshore sand berms, which are geomorphic features characteristically formed during large wave events; this is evidenced by predominantly coarse-grained sand that suggests deposition by waves, not wind. Thus, the features can become transient during erosion events, which in-turn can threaten the integrity of overlying structures.

The OCCL has been aware of progressively damaging seasonal erosion issues along the greater Pūpūkea to Paumalū (Sunset) Beach area since the early 2000s. Residents have also remarked on similar erosion episodes dating back to the mid-1990s. Since 2007, OCCL has responded to erosion issues by authorizing preventative berm maintenance projects (sand pushing) upon request, which provide added protection (an “erodible buffer”) while conserving the natural characteristics of the public beach environment. OCCL has coordinated authorizations for such projects with private land owners in the area to restore seasonal and chronic erosion damage to the upper beach berm fronting more than 20 properties. In addition, OCCL has worked with City Parks to develop and authorize City-led sand pushing operations to mitigate seasonal erosion at Sunset Beach Park and many of the beach right-of-ways along the North Shore.

The OCCL has also provided temporary emergency authorizations for geotextile cloth erosion control measures fronting several homes in the subject area. The OCCL allows these “soft” erosion measures as temporary solutions so that longer-term options can be developed by subject landowners. When the structural integrity of an inhabited structure is deemed threatened, OCCL generally responds by asking the Chairperson of the DLNR to authorize the placement of temporary erosion control structures in the form of geotextile tarps and sand filled burritos. Such requests have become commonplace to the extent that multiple sand pushing projects are now completed annually and geotextile tarps line several sections of the shoreline along the greater Pūpūkea-Paumalu Beach stretch.

The OCCL notes that while, soft measures are currently mildly effective at protecting beachfront development, it is understood that sea level rise will render these temporary measures increasingly ineffective. For this reason, the OCCL encourages beachfront homeowners living on chronically eroding shorelines to take proactive measures, such as decreasing their building footprint and relocating structures to the extreme landward extent of their property boundaries.

CHRONOLOGY:

January 10, 2014 – OCCL grants emergency authorization for a sand push, consistent with obtaining a Right of Entry from City & County (**Exhibit C**)

March 11, 2015 – Request sent to OCCL from former homeowner Alice Lunt requesting a sand push for multiple properties in the Rocky Point area, including the subject property (**Exhibit D**)

March 19, 2015 – OCCL authorizes a sand push for six properties at Rocky Point (including subject property). Parcels 24, 25, 35, and 36 were excluded due to existing revetments (24 and 25) and NOV's for unauthorized sandbags (35 and 36) (**Exhibit E**)

March 19, 2015 – Email thread between former homeowner Alice Lunt and OCCL staff clarifying terms of authorization letter (**Exhibit F**)

July 12, 2016 – OCCL receives a request for a sand push for the subject area from former homeowner Alice Lunt (**Exhibit G**)

August 18, 2016 – The Department denied a request for sand pushing in the subject area due to the beach appearing to have maintained its natural character (**Exhibit H**)

November 28, 2017 – OCCL receives a request for a sand push for the area, including subject property, from former homeowner John Nichols, who at the time was the neighbor to the immediate east of the subject property (**Exhibit I**)

November 30, 2017 – OCCL authorizes a sand push for three properties at Rocky Point (including subject property) consistent with obtaining a Right of Entry from City & County (**Exhibit J**)

December 5, 2017 – Email sent from OCCL staff to former neighbor John Nichols stating to only use sand fronting the three properties approved for the sand push, as OCCL had received complaints from other neighbors about taking the sand fronting their properties (**Exhibit K**)

March 20, 2018 – Former neighbor John Nichols emails OCCL staff requesting another sand push for the Rocky Point area, including the subject property (**Exhibit L**)

March 29, 2018 – OCCL authorizes a sand push for the properties at Rocky Point (including subject property) consistent with obtaining a Right of Entry from City & County (**Exhibit M**)

April 4, 2018 – OCCL received signed authorization letter back from subject homeowners, acknowledging conditions of the authorization for the sand push (**Exhibit N**)

February 7, 2019 – Board of Land and Natural Resources Chairperson Suzanne Case authorizes temporary erosion control at the subject property in the form of one ballast tube and tarp; Chairperson Case raises concerns in approval email about potential flanking to adjacent unarmored property (**Exhibit O**)

September 14, 2019 – New homeowner of the subject property, Gary Stanley, sends email to BLNR Chairperson Suzanne Case regarding unauthorized work in the Conservation District. In the email, Mr. Stanley admits to performing work within the Conservation District without either confirming that the work was authorized or obtaining the proper authorization to do the work, which is a violation of Hawai'i Administrative Rules (HAR) 13-5-22, P-15 SHORELINE

EROSION CONTROL, “Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification. **(Exhibit P)**

September 16, 2019 – OCCL staff conducted a general site inspection of the area and observed the unauthorized structures **(Exhibit Q)**

September 18, 2019 – Letter sent to homeowner Stanley for alleged violation for alleged unauthorized structures in the Conservation District **(Exhibit R)**

September 24, 2019 – Sam Lemmo, OCCL Administrator, responds to Gary Stanley’s 9/14/19 email on behalf of Suzanne Case **(Exhibit S)**

September 24-25, 2019 – Gary Stanley responds to Sam Lemmo with inquiries regarding enforcement actions, ensuing e-mail correspondence **(Exhibit S)**

October 2, 2019 – OCCL staff conducted a site inspection of the area, noting that the structure remained but it appeared no additional work had been done **(Exhibit T)**

October 8, 2019 – OCCL staff conducted a site inspection of the area, noting that the structure remained but it appeared no additional work had been done **(Exhibit T)**

ALLEGED UNAUTHORIZED LAND USE IN THE CONSERVATION DISTRICT:

The Department and Board of Land and Natural Resources has jurisdiction over the land lying makai of the shoreline as evidenced by the upper reaches of the wash of the waves other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limits of debris left by the wash of the waves, pursuant to §205A-1, Hawai‘i Revised Statutes (HRS).

Staff believes the unauthorized land uses occurred within the Conservation District based upon the location of the work seaward of the Stanleys’ property. The OCCL believes there is sufficient cause to bring this matter to the Board since it is evident that the unauthorized land uses are within the Conservation District pursuant to the Hawai‘i Administrative Rules (HAR), §15-15-20 Standards for determining “C” conservation district boundaries:

It shall include lands having an elevation below the shoreline as stated by §205A-1, HRS, marine waters, fishponds, and tidepools of the State, and accreted portions of lands pursuant to §501-3, HRS, unless otherwise designated on the district maps. All offshore

and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps.

Chapter 13-5, HAR and Chapter 183C, HRS regulate land uses in the Conservation District by identifying a list of uses that may be allowed by a Conservation District Use Permit (CDUP). The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. HAR §13-5-2 defines “land use” as follows:

The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;

The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;

The work that was conducted at the subject property appeared to consist of grading/excavation and placement of materials in the Conservation District for use as an erosion control structure that were not in line with the stipulations made by the Chairperson when she authorized a modest erosion control structure on February 7, 2019 (**Exhibit O**).

DISCUSSION:

The beaches of the North Shore of O‘ahu, also referred to as the “Seven Mile Miracle”, are some of Hawai‘i’s most unique and valued natural resources. The North Shore is famous for world-class big wave surfing and hosts a series of top-level surfing contests each winter, attracting thousands of international contestants and spectators. Beaches are an essential natural resource and economic engine for the North Shore community. Most of the beaches along the “Seven Mile Miracle” are still healthy because of the abundance of sand, but some sandy areas are at risk due to chronic and seasonal erosion, shallow lot shoreline subdivisions and development built too close to erosion and inundation-prone shorelines. Ongoing sea level rise will increase risks to beaches and shore-front development over the coming decades.

Coastal erosion occurs as a result of the following phenomena: 1) Seasonal changes in waves and currents that move sand alongshore or across the shore, adjusting the beach profile; 2) Long-term (chronic) deficiencies in natural sand supply and/or fluctuations in meteorological or oceanographic processes such as storms and sea level rise; and 3) Human impacts to sand availability through sand impoundment and supply disruption from development and coastal engineering.

Development on beaches and dunes has contributed to narrowing and loss of beaches in Hawai‘i, degrading recreational areas, habitat and natural storm protection that “healthy” beaches and dunes can provide. Beach narrowing and loss fronting shoreline armoring (the construction of erosion control structures, vertical seawalls or sloping stone revetments along a shoreline to protect coastal lands from marine erosion) also severely restricts public access to State Conservation land and the

natural resources. Seawalls and similar erosion control structures impound natural sand supplies that would otherwise be available to nourish an eroding beach, increasing rates of beach narrowing and loss.

Unfortunately, many of Hawai‘i’s beaches have been degraded or lost from a combination of natural erosion and inappropriate coastal development including inappropriate shoreline armoring, shallow lot shoreline subdivisions and development built too close to the shoreline. According to a 2012 study by University of Hawai‘i and U.S. Geological Survey researchers, 70 percent of all beaches measured in the Hawaiian Islands indicated an erosion trend. More than 21 km or 9 percent of the total length of the beaches studied were lost to erosion. In nearly all cases of beach loss, the beaches were replaced with seawalls or other coastal armoring structures.

Over the past several years, the Department, through the OCCL, has worked with landowners in the subject area to manage severe erosion. Dozens of authorizations for temporary soft erosion abatement have been granted (more than 40) and sand pushing requests (to artificially re-create the storm berm) have become seasonally recurrent.

The temporary soft erosion measures that have been authorized are comprised mainly of black synthetic cloth and sandbag burritos. These structures appear to be affective (with regular maintenance), however they have the potential to exacerbate erosion on adjacent sides of the beach (flanking). Further, due to long-term chronic erosion in the area, many single-family homes have been threatened such that that large stretches of the subject beach are now lined by the black synthetic material and so-called burritos. Such structures, while providing some relief to landowners, exacerbate beach loss and flanking.

In addition to flanking effects, the structures have the potential to produce marine debris. Concerns have been raised by the public regarding near-shore areas being littered with materials liberated from the structures. The OCCL is also concerned about the possibility of these systems unraveling and littering the beach and marine area on a massive scale in the event of a large wave or surge event. In early September 2019 the OCCL sent letters to all of the landowners who have been issued emergency authorizations for soft erosion control structures to remind them that they will be held accountable for retrieving any debris that becomes liberated from their erosion control structure (**Exhibit U**).

To avoid continuation of flanking effects and resulting installation of additional erosion control structures on either side of the subject property, the previous landowner had been given authorization by OCCL to install specifically “one ballast tube at the base then a tarp wrapped up over the back and secured at the top”. The authorization did not allow for repairs or additions to be made to the structure. The authorization consisted of a February 7, 2019 e-mail from BLNR Chairperson Suzanne Case, which notes that a condition of the authorization for temporary erosion control was for OCCL to monitor flanking on either side of the system (e.g., building an erosion control structure on your property may result in an increased in erosion on your neighbor’s property) which may result in the temporary authorization being revoked, if necessary (**Exhibit O**). The concern regarding flanking was a primary reason that the authorization was for just one ballast tube as opposed to an entire burrito system. The OCCL was particularly concerned about

flanking to the west because as it represents an area currently free of erosion control systems¹. The current landowner did not abide by these conditions and installed large additions to the structure. These additions are deemed by OCCL staff to be potentially damaging to the beach and neighboring residences.

RECENT PURCHASE:

The Stanleys purchased the property in September 2019. According to a letter sent to BLNR Chairperson Suzanne Case, the Stanleys consulted with a structural engineer regarding the erosion issue. The consultant allegedly informed the Stanleys that the *“house was experiencing extreme erosion, was one of the worst he had seen, and that it was ‘falling into the ocean’”*. (**Exhibit P**). The information provided in the subject letter states that the family also spoke with the contractor who installed the erosion control system. The contractor informed the Stanleys that a permit existed for the erosion control structure and that the permit was valid for three years. Further, the contractor allegedly suggested that the Stanleys install additional sandbag burritos. The Stanley letter further states that they *“were told that this severe erosion issue had happened to both previous owners and that the most recent had received a permit to put in geotextile blanket and tubing. [They] were also told that the previous owner before that had to fix significant foundation issues regarding this erosion.”* Overall, the Stanleys purchased the property on September 6, 2019 with knowledge that the subject property had a history of being impacted by erosion, that the single-family home located on the property had been damaged by the erosion, that a temporary erosion control structure had been installed, and that further measures were recommended by the subject contractor.

Further, since such an authorization was not granted for the subject temporary erosion control structure, it appears that the Stanleys did not perform their due diligence in ensuring that the information they were given regarding permitting was correct. In their letter to Ms. Case (**Exhibit P**) it states that they became aware that they had performed unauthorized work when installing additional sandbag burritos atop the existing erosion control structure upon being asked for the permit by the installing contractor.

OCCL staff is particularly troubled by this case because the potential for “flanking effects” had clearly been specified when authorizing limited erosion control. This case exemplifies brazen disregard for Hawai‘i Administrative Rules, which are intended to promote proper stewardship of Hawai‘i’s natural resources. In recent years, such disregard has become increasingly prevalent along O‘ahu’s North Shore.²

¹ Coastal armoring can set in motion a beach killing game of dominoes. This is because shoreline armoring impacts properties on either side such that those property owners might seek erosion control and so on down the beach. This phenomenon is evident on already dead or dying beaches including Lanikai, parts of Mokeleia, and East O‘ahu.

² The Stanleys, according to their email in **Exhibit P**, were informed by the contractor who installed the burritos prior to their purchase of the property that they had a valid permit to perform the subject work. The Stanleys became aware of its non-existence only after the contractor subsequently asked for a copy after the initiation of the subject work.

CONCLUSION:

The OCCL is deeply concerned about ongoing coastal erosion along the Sunset Beach area of the North Shore and its resulting impacts on the coastal environment and public beach access. The OCCL is working to meet its primary goal of conserving the natural beach environment for future generations while also addressing public safety hazards. Further, the OCCL is highly concerned about potential negative impacts that additional coastal armoring (e.g., seawalls, revetments) could have on the beach environment at Sunset Beach and have worked with a range of stakeholders and private landowners to develop “soft,” solutions for erosion management.

Without coordination by OCCL in the form of authorization of sand pushing/shaping and soft erosion control measures, it is likely that many homes would have experienced acute structural failure. However, such authorization has prompted similar actions to occur on the part of concerned landowners that are not yet experiencing severe erosion that would warrant authorization of these actions. Thus, many homeowners have installed systems without OCCL consent. Further, landowners are actively being urged to install these structures by contractors profiting from their installation. It is our belief that this case exemplifies such unauthorized activity.

The evidence provided in the form of email correspondence between the Stanleys and DLNR staff shows that the Stanleys did not do their due diligence in ensuring that the information they received regarding their permit for work on the erosion control structure was accurate. Despite actions taken on the part of the Stanleys, they chose to both purchase the property despite the warnings of the structural engineer as well as following the contractor’s advice to pursue work on the erosion control structure in the Conservation District without ensuring its legality beforehand. Further, the OCCL is particularly concerned about armoring at this area as it can transfer the erosion effects along the shore (e.g. flanking).

The beaches of Hawai‘i are held in trust by the State for the benefit of present and future generations. The landowners of the subject property acted without authorization from the DLNR or the City and County of Honolulu. The State should be involved when individuals seek to construct any shoreline structure seaward of the shoreline; and there should be consequences when an individual unilaterally acts in such a way that endangers and potentially damages a public trust resource.

AS SUCH, STAFF RECOMMENDS:

That pursuant to Chapter 183C, HRS, the Board find the Landowner of TMK: (1) 5-9-002:034 at Sunset Beach, Koolauloa, O‘ahu, in violation of Chapter 183-7, HRS and Chapter 13-5-6, HAR, subject to the following:

1. The Landowner is fined \$2,000 for performing unauthorized work pursuant to Chapter 183C-7, HRS;
2. The Landowner is fined an additional \$1,000.00 for administrative costs associated with the subject violation;

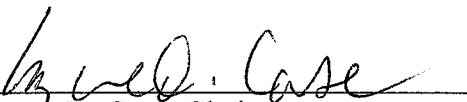
3. The Landowner shall pay all fines (total \$3,000) within thirty (30) days of the date of the Board's action;
4. The Landowner shall remove the shoreline protection structure in its entirety due to the potential for adverse flanking;
5. That in the event of failure of the landowners to comply with any order herein, the landowner shall be fined an additional \$15,000.00 per day until the order is complied with; and
6. That in the event of failure of the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



Salvatore Saluga, Coastal Lands Program Specialist
Office of Conservation and Coastal Lands

Approved for submittal:



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



Figure 1: Aerial image of area with subject property noted

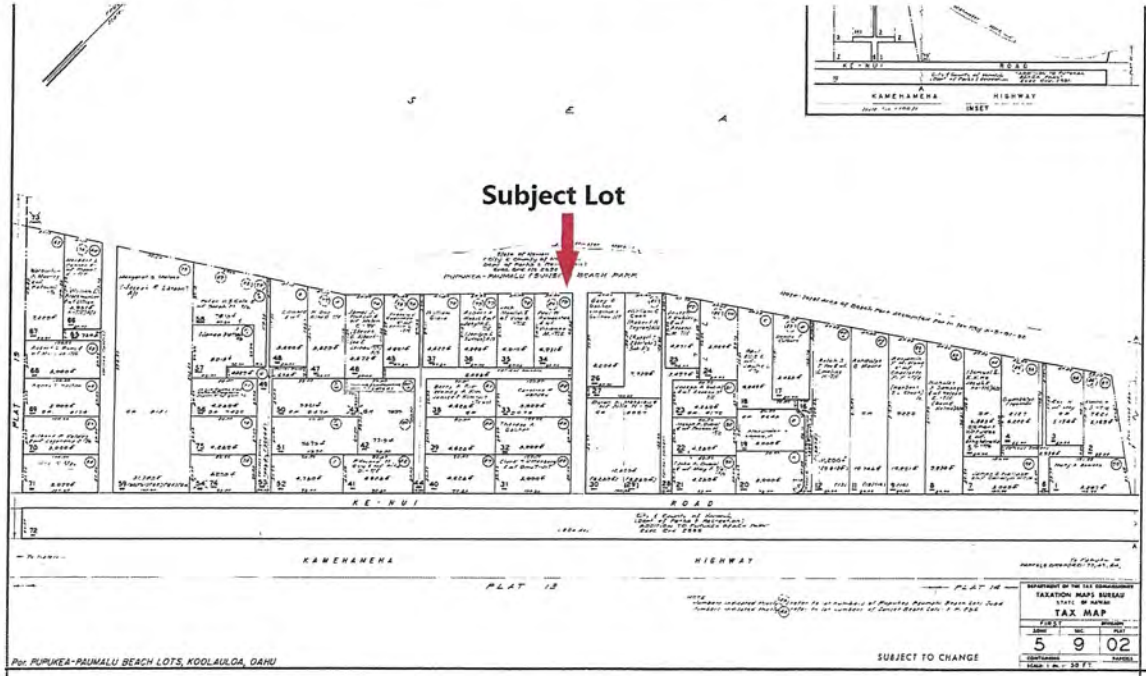


Figure 2: TMK Map of area with subject property noted

EXHIBIT A

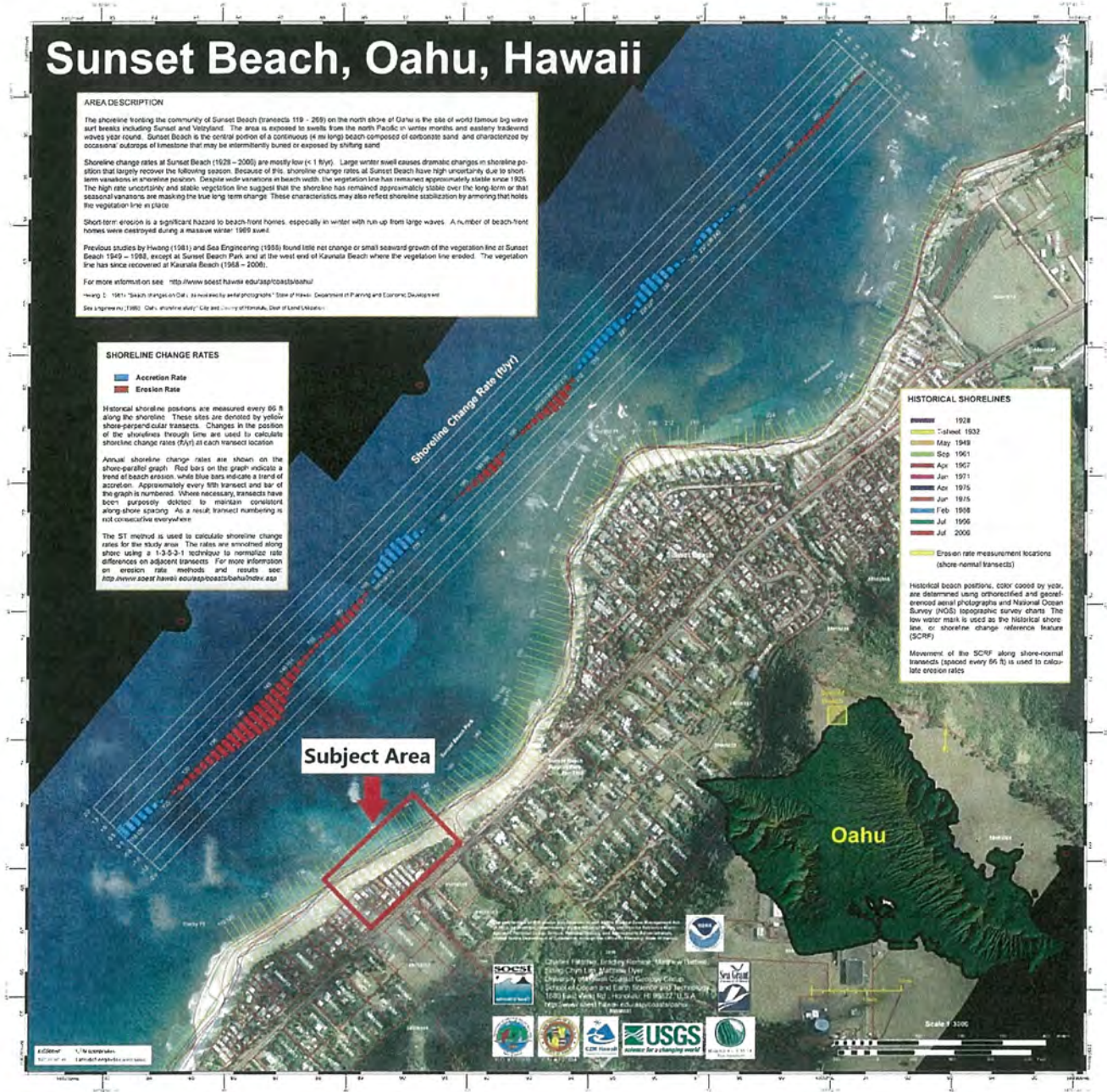


Figure 3: Shoreline Change Rate Map for Sunset Beach

EXHIBIT B

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FRED LUNT INC

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NEIL ARACROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:SL

Emergency OA-14-53

Alice Lunt
3665 Tantalus Drive
Honolulu, HI 96822

JAN 10 2014

Dear Mrs. Lunt,

SUBJECT: RE: Request for Emergency Temporary Shore Protection at 59-175 B and C and 59-181 D, E, F, G, H, and J Ke Nui Road, Haleiwa (Sunset Beach; TMKs (1) 5-9-002:026, 27, 34, 35, 36, 37, 45, and 46; Alice Lunt: owner 59-181 D)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your request at a January 9, 2014 meeting at OCCL to place a sand bank along approximately 400 feet of the shoreline at 59-175 B and C and 59-181 D, E, F, G, H, and J Ke Nui Road, Haleiwa (Sunset Beach, TMKs (1) 5-9-002:026, 27, 34, 35, 36, 37, 45, and 46) as temporary erosion control.

Recent erosion from seasonal waves, possibly combined with a long-term trend of beach erosion, has created an erosion scarp approximately 15 feet high, in some locations undermining the shorefront foundations of single-family residences on the subject properties.

The request is to place a sand berm (bank) fronting the existing erosion scarp using clean locally-sourced beach sand from an area of seasonal beach accretion fronting Paumalu Stream mouth and, if necessary, from the beach fronting the subject property. Sand will be scraped (removed) from the dry beach area fronting Pupukea Stream mouth to a maximum depth of 3 feet using heavy machinery (e.g., excavator or front loader) and transported along the beach to the subject properties. If needed, additional sand may be scraped from the beach fronting the subject properties to a maximum depth of 2 feet. No sand will be removed nor will any work be done below the high water line. The temporary sand berm will have similar dimensions to the one constructed fronting nearby properties in late October / early November with an approximately 1:1 slope and flat upper cap not more than 10 feet wide (maximum total footprint/base of about 25 feet).

DLNR authorizes the placement of a sand berm, fronting the subject property, as described above for temporary erosion protection. Additional authorization, including Right of Entry, is required from Honolulu City and County Department of Parks and Recreation before you may proceed.

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EXHIBIT C

DLNR authorizes the placement of a sand berm fronting the subject properties in an effort to protect public health, welfare, and safety on the subject property under Hawaii Administrative Rules §13-5-35, Emergency Permits (a) "Notwithstanding any provision of this chapter, the chairperson or deputy director of the department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department."

In addition, the proposed project is minor in scope and may be considered an exempt action under State environmental laws under Section 11-200-8(A)(1), Hawaii Administrative Rules (HAR) "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Terms and Conditions

The DLNR has no objections to the placement of a sand berm along the erosion scarp fronting the subject properties at TMKs (1) 5-9-002:026, 27, 34, 35, 36, 37, 45, and 46 as temporary erosion protection, provided that you adhere to the following terms and conditions:

1. That in issuing this letter, the Department and Board has relied on the information and data that the applicant has provided in connection with this letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, this letter may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
2. It is understood that the sand berm is a temporary response to prevent the loss of the existing residences, which are threatened by both chronic and seasonal wave run-up and erosion. Subsequent erosion control efforts will require a new application;
3. It is understood that the terms of this authorization may be modified by the Department prior to and during construction, if beach conditions change;
4. The applicant will notify the Department no less than 24 hours prior to beginning construction operations;
5. The Contractor shall perform the work in a manner that minimizes environmental pollution and damage as a result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of the construction period;
6. The applicants or their contractor will remove any dangerous debris from the erosion area prior to placing sand, including any loose construction debris and fallen trees. In

addition, the applicants or their contractor will remove any dangerous debris encountered while excavating and transporting sand;

7. At the conclusion of work, the area shall be cleaned of all construction material and the site shall be restored to a condition acceptable to the Chairperson;
8. The Applicant will prepare a completion report for the project. It will summarize the construction and detail any deviation from the proposed plans;
9. The activity/use shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
10. The activity/use shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
11. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of the activity/uses, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
12. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State Department of Land and Natural Resources that an individual activity/use or activities conducted under this letter is adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
13. Where any interference, nuisance, or harm may be caused, or hazard established by the authorized activities/uses, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
14. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses;
15. No motorized construction equipment is to be operated in the water at any time;
16. In the event there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
17. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its

successors, assigns, officers, employees, contractors, and agents under projects authorized under this letter;

18. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for authorized projects;
19. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop and the State Historic Preservation Division contacted at (808) 692-8015;
20. The applicant shall take measures to ensure that the public is adequately informed of the project activities/work once it is initiated and the need to avoid the project area during the operation;
21. Public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety;
22. All construction material including sand shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality; and
23. The applicant shall implement standard Best Management Practices (BMPs), such as daily inspection of equipment for conditions that could cause spills or leaks; cleaning of equipment prior to operation near the water; the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses; and implementation of adequate spill response procedures, stormy weather preparation plans, and the use of silt curtains and other containment devices. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCL staff shall be contacted immediately at 587-0381, to conduct a visual inspection and to provide appropriate guidance.

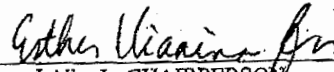
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FRED LUNT INC

PAGE 05/05

Should you have any questions, please contact OCCL Administrator, Sam Lemmo at 587-0377 or Samuel.L.Lemmo@hawaii.gov.

Sincerely,



William J Aila, Jr, CHAIRPERSON
Board of Land and Natural Resources

CC: DLNR Land (Bary Cheung)
Hon DPP
Hon Parks & Rec, Tom Robinson
ACOE, George Young

I concur with the conditions of this letter:



Applicant

Date 1/10/14

Corresp. OA-15-142



Sand Push
Alice Lunt

to:

sam.j.lemmo@hawaii.gov, bradley.m.romine@hawaii.gov

03/11/2015 09:44 AM

Hide Details

From: Alice Lunt <dsadl@hotmail.com>

To: "sam.j.lemmo@hawaii.gov" <sam.j.lemmo@hawaii.gov>,

"bradley.m.romine@hawaii.gov" <bradley.m.romine@hawaii.gov>,

History: This message has been replied to.

Aloha-

We would like to request a sand push to replenish the sand that was lost this winter. Our berms have been severely diminished as well as the public right of way.

The following addresses would like to do this-

59-181 D, E, F, G, H, J D: Lunt; E, F: Dombrowski; G: Gioia Tr; H: Guernsey Tr; J: Alder

59-171 C & D C: Braund (sewell); D: O'Shea

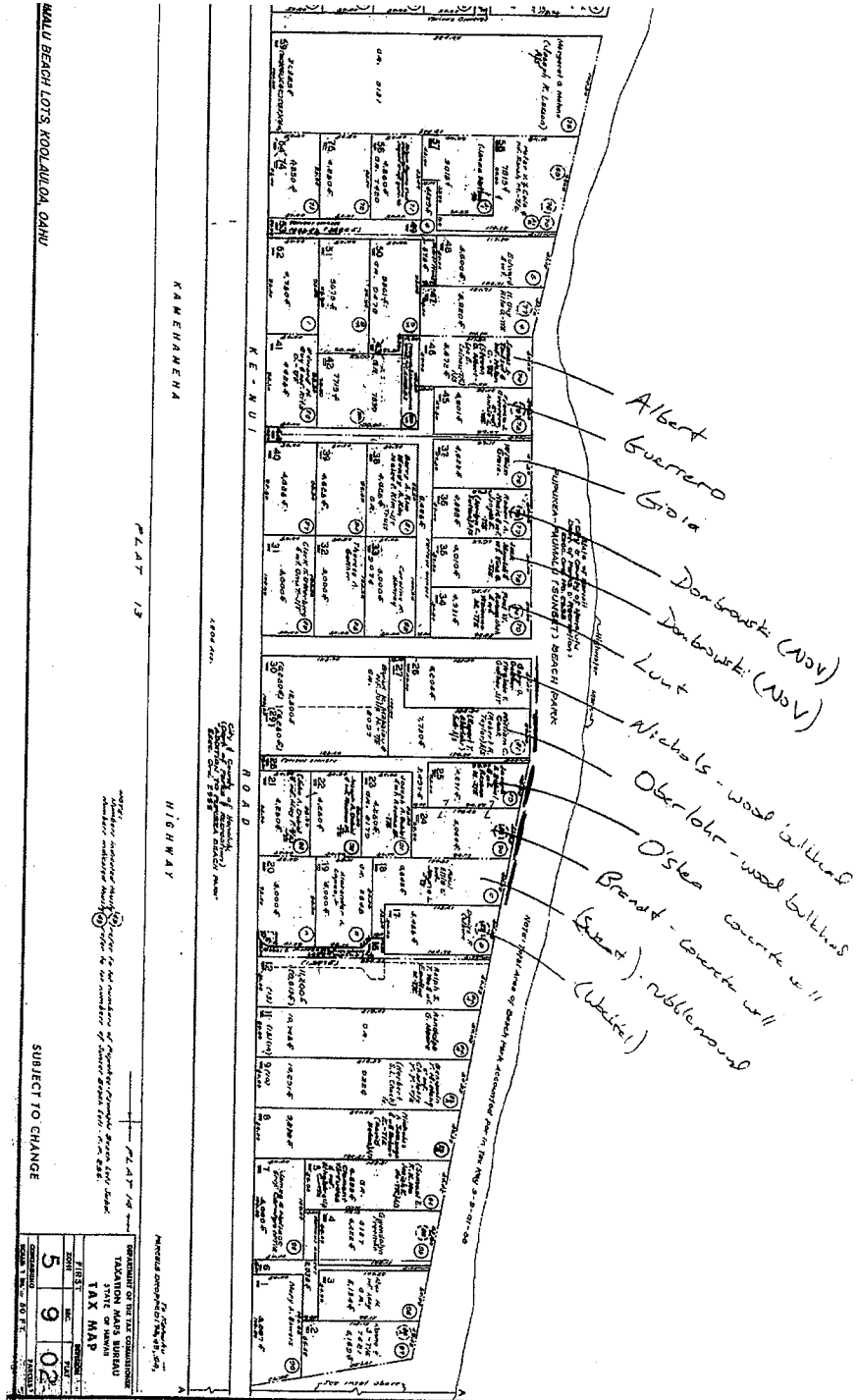
59-175 B & C B: Oberlander; C: Nichols

We have a good amount of sand to do this right now.

Mahalo for your consideration.

Alice Lunt

EXHIBIT D



DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:SL

Correspondence OA-15-142

Alice Lunt
3665 Tantalus Drive
Honolulu, HI 96822

MAR 19 2015

Dear Ms. Lunt,

SUBJECT: RE: Request for Temporary Preventative Dune Maintenance at 59-181 D, E, F, G, H, and J; 59-171 C and D; and 59-175 B and C Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:024, 25, 26, 27, 34, 35, 36, 37, 45, and 46)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your March 11, 2015 request to conduct preventative dune maintenance (sand pushing, dune restoration) as temporary erosion control along approximately 500 feet of the shoreline fronting 59-181 D, E, F, G, H, and J; 59-171 C and D; and 59-175 B and C Ke Nui Road, Sunset Beach (TMKs (1) 5-9-002:024, 25, 26, 27, 34, 35, 36, 37, 45, and 46).

Recent erosion from seasonal waves, possibly combined with a long-term trend of beach erosion, has created a steep eroded bank (scarp) in the dune fronting the subject properties. Continued erosion may pose a threat to single-family residences on the properties. The beach fronting the subject properties is characterized by beach narrowing and high wave run-up in winter months.

Beach and dune erosion culminated in December of 2013 with damage and land loss at the subject and neighboring properties. In response, sand pushing (sand scraping and movement by mechanical means) and dune restoration projects were authorized by DLNR and conducted by the property owners in January and February, 2014. OCCL has been monitoring the beach on a regular basis and finds that much of the sand from previous dune restorations at the subject properties has been lost to seasonal erosion over this winter. The lower beach fronting the eroded dune has recovered (widened) recently, as typically occurs following the winter high surf season.

The purpose of the March, 2015 requested project is to push sand from the seasonally-widened beach to restore the frontal sand dune as a preventative measure to provide added protection (an "erodible buffer") for the subject properties while conserving the natural characteristics of the public beach and dune environment. If sand pushing and dune restoration is to be used as a means of erosion control in this area, it will likely need to be repeated annually and should be conducted when the beach is sufficiently wide (as it is now) to limit impacts to the beach environment and alongshore public access.

EXHIBIT E

The request is to push (scrape) sand from the beach to restore the frontal dune as a preventative measure to improve seasonal erosion protection as follows:

- Clean locally-sourced beach sand will be scraped using heavy machinery (e.g., dozer and/or excavator) from the dry beach area fronting the subject properties, only.
- Sand will be excavated/scraped to a maximum depth of one (1) foot below existing grade of the beach.
- No sand will be removed nor will any work be done below the high water line.
- Sand will be placed against the eroded scarp to restore the frontal dune.
- The front of the restored dune will have an approximate 1:1 slope.
- The top of the dune will be no greater than ten (10) feet wide measured from the top of the existing eroded bank.
- The dune will be no higher than one (1) foot above existing grade of the seaward edge of the abutting subject property.
- Following completion of the work, the beach shall be smoothed or graded to remove any ruts or depressions from the project work.

DLNR has no objections to the dune maintenance project as described above fronting 59-181 D, G, H, and J and 59-175 B and C Ke Nui Road, Sunset Beach (TMKs (1) 5-9-002:026, 27, 34, 37, 45, and 46), with the exclusion of 59-171 C and D (existing hardened shoreline protection (seawalls)) and 59-181 E and F (pending DLNR enforcement action) (TMKs (1) 5-9-002:024, 25, 35, and 36 are excluded). Additional authorization, including Right of Entry, is required from Honolulu City and County Department of Parks and Recreation before you may proceed. You are prohibited from placing materials on the sand bank, including but not limited to tarps, sandbags or fencing and shall not induce, plant, or cultivate vegetation atop the protective sand bank. Additional Terms and Conditions are provided below. Please review them carefully.

The proposed project is minor in scope and may be considered an exempt action under State environmental laws under Section 11-200-8(A)(1), Hawaii Administrative Rules (HAR) "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Terms and Conditions

The DLNR has no objections to the temporary preventative dune maintenance (sand pushing, dune restoration) fronting the subject properties at TMKs (1) 5-9-002:026, 27, 34, 37, 45, and 46, (with the exclusion of TMKs (1) 5-9-002:024, 25, 35 and 36) as temporary erosion protection provided that you and all participating landowners adhere to the following Terms and Conditions:

1. That in issuing this letter, the Department and Board has relied on the information and data that the applicant has provided in connection with this letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, this letter may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

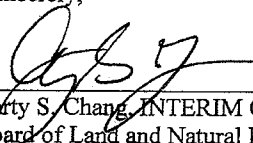
2. It is understood that the dune maintenance (sand pushing, dune restoration) is a temporary preventative measure to provide an erodible buffer for seasonal wave run-up and erosion. Subsequent erosion control efforts will require a new authorization;
3. It is understood that the terms of this authorization may be modified by the Department prior to and during construction, if beach conditions change;
4. The applicant will notify the Department no less than 24 hours prior to beginning construction operations;
5. The Contractor shall perform the work in a manner that minimizes environmental pollution and damage as a result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of the construction period;
6. The area for sand scraping (excavation) is limited to the beach fronting the subject properties within an area bounded by the lateral property lines and the high water line and to a depth no greater than one (1) foot;
7. The top of the restored dune shall not be greater than ten (10) feet wide, measured from the top of the existing eroded bank;
8. Sand shall not be placed (piled) higher than one (1) foot above existing grade (elevation) of the seaward edge of the subject property;
9. Work shall be conducted during daylight hours, only. No work shall be conducted at night;
10. No materials shall be placed on the sand bank, including but not limited to tarps, sandbags or fencing;
11. The applicants shall not induce, plant, or cultivate vegetation atop the protective sand bank;
12. At the conclusion of work, the area shall be cleaned of all construction material and the site shall be restored to a condition acceptable to the Chairperson, including smoothing the beach to remove any tracks or indentions from the work;
13. The Applicant will prepare and submit a completion report for the project to DLNR within 60 days of project completion. It will summarize the construction and detail any deviation from the proposed plans;
14. The activity/use shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;

15. The activity/use shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
16. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of the activity/uses, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
17. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State Department of Land and Natural Resources that an individual activity/use or activities conducted under this letter is adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
18. Where any interference, nuisance, or harm may be caused, or hazard established by the authorized activities/uses, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
19. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses;
20. No motorized construction equipment is to be operated in the water at any time;
21. In the event there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
22. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this letter;
23. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for authorized projects;
24. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop and the State Historic Preservation Division contacted at (808) 692-8015;
25. The applicant shall take measures to ensure that the public and neighboring property owners are adequately informed of the project activities/work and the need to avoid the project area during the operations;

- 26. Public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety;
- 27. All construction material including sand shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality; and
- 28. The applicant shall implement standard Best Management Practices (BMPs), such as daily inspection of equipment for conditions that could cause spills or leaks; cleaning of equipment prior to operation near the water; the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses; and implementation of adequate spill response procedures, stormy weather preparation plans, and the use of silt curtains and other containment devices. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCL staff shall be contacted immediately at 587-0381, to conduct a visual inspection and to provide appropriate guidance.

Please acknowledge receipt of this letter with a signature from each landowner in the spaces provided below. Sign two copies, retaining one and returning the other to DLNR. Should you have any questions, please contact Brad Romine, Sea Grant Extension Agent and Coastal Lands Program Coordinator at the OCCL, at (808) 587-0049 or Bradley.M.Romine@hawaii.gov.

Sincerely,


 Cary S. Chang, INTERIM CHAIRPERSON
 Board of Land and Natural Resources

I concur with the conditions of this letter:

<u>59-181 D</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-181 G</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-181 H</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date

<u>59-181 J</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-175 B</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-175 C</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date

CC: Hon Parks & Rec Director, Michelle Nekota
Hon Parks & Rec, Miles Hazama
DLNR Land, Barry Cheung
Hon DPP, Arthur Challacombe

Re: Sand Push
Sam J Lemmo to: Alice Lunt
Cc: "Bradley.M.Romine@hawaii.gov"

03/19/2015 01:52 PM

Its a guideline.

Samuel J. Lemmo, Administrator ><))>>
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
Phn (808) 587-0377
Fax (808) 587-0322
www.hawaii.gov/dlnr/occl

From: Alice Lunt <dsadl@hotmail.com>
To: "Bradley.M.Romine@hawaii.gov" <Bradley.M.Romine@hawaii.gov>,
Cc: "Sam.J.Lemmo@hawaii.gov" <Sam.J.Lemmo@hawaii.gov>
Date: 03/19/2015 12:54 PM
Subject: Re: Sand Push

Brad and Sam

I noticed that the depth of sand can only go to one foot. Last year it was 3 feet-is there a reason for the difference? One foot is hardly any sand.

Aloha
Alice

Sent from my iPad

On Mar 19, 2015, at 12:39 PM, Bradley.M.Romine@hawaii.gov wrote:

Hi Alice,

Attached is DLNR's letter authorizing sand pushing for you and your neighbors. I understand you spoke to Sam today and he explained why the Department is not authorizing all of the requested land owners to push sand.

Please review the terms and conditions carefully. Please return a copy of the letter to us signed by each authorized land owner prior to starting work. Just a reminder, you still need to get a Right of Entry Permit from County Parks. Please give us at least 24 hours notice prior to starting the work and share a copy of the letter with your contractor so they are aware of all the terms and conditions. Sam and/or I will probably be on site at some point during the project work.

EXHIBIT F

Thanks,
Brad

Bradley M. Romine, PhD
Extension Faculty
University of Hawaii Sea Grant College Program
Coastal Lands Program Coordinator
State of Hawaii Department of Land and Natural Resources,
Office of Conservation and Coastal Lands
Phone: (808) 587-0049 Bradley.M.Romine@hawaii.gov

From: Alice Lunt <dsadl@hotmail.com>
To: <Bradley.M.Romine@hawaii.gov>, <Sam.J.Lemmo@hawaii.gov>,
Cc: Steve Albert <stevengalbert@hotmail.com>, <sue.aloha@yahoo.com>, Rupert <oberlohr@msn.com>, kenneth krystle <onshvr@gmail.com>, James O'Shea <jcposhea@gmail.com>, Jimmy Maynard <jamesmanard@yahoo.com>, Victor Brandt <victor@brandts.com>
Date: 03/19/2015 09:20 AM
Subject: Fwd: Sand Push

Good morning
I would like to resubmit this sand push request. There was no significant sand loss over the weekend.
Aloha
Alice Lunt

Sent from my iPad

Begin forwarded message:

From: Alice Lunt <dsadl@hotmail.com>
Date: March 11, 2015 at 9:44:55 AM HST
To: "sam.j.lemmo@hawaii.gov" <sam.j.lemmo@hawaii.gov>, "bradley.m.romine@hawaii.gov" <bradley.m.romine@hawaii.gov>
Subject: Sand Push

Aloha-
We would like to request a sand push to replenish the sand that was lost this winter. Our berms have been severely diminished as well as the public right of way.
The following addresses would like to do this-
59-181 D, E, F, G, H, J
59-171 C & D

59-175 B & C
We have a good amount of sand to do this right now.
Mahalo for your consideration.
Alice Lunt
<Corr OA-15-142 Lunt Sand Pushing.pdf>

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 JUL 12 A 11:31

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Alice Lunt, Rupert Oberlohr and John Nichols
P. O. Box 31166
Honolulu, Hawaii 96820

Sam Lemmo and Brad Romine
Department of Land and Natural Resources
Kalanimoku Building Rm. 131
1151 Punchbowl St.
Honolulu, Hawaii 96813

7-6-16 REQUEST TO DLNR FOR AUTHORIZATION OF A 2016 ROCKY PT. SAND PUSH

EXHIBIT G

7-6-16 REQUEST TO DLNR FOR AUTHORIZATION OF A 2016 ROCKY PT. SAND PUSH

Aloha Sam and Brad,

We hope that this finds you both happy and well and we haven't seen you in person, on the beach, since last year's sand push on March 27, 2015.

(Please note that much of this text was written in April and May of 2016)

RECENT SAND PUSH HISTORY

First of all, we all would like to THANK YOU BOTH again for SAVING OUR ROCKY POINT NEIGHBORHOOD, by allowing us to push sand after the catastrophic waves of December 24th through December 29th of 2013. We will always be indebted to you for your compassion and your understanding of our dire need to protect our properties and houses from further damage.

Shortly after the first sand push, on January 14th and 15th of 2014, another giant swell, with estimated 50ft faces, hit our beach on January 23 of 2014 (see photos #1 & #2, dated 1-23-14). This swell's strong storm surge eroded almost all of the sand from that first push overnight and it continued eroding the beach throughout the next day. Without that first sand push, there is no doubt that many homes would have been lost and that the property damage would have been severe.

Again, you understood our situation and let us replace the sand lost from the first push, by giving us permission for the second sand push, which took place on February 10th and 12th of 2014. Thanks to your decision, this second push gave us a berm in front of our properties with the necessary amount of sand needed to protect us from the Fall of 2014 and Winter of 2015 big wave season.

But once again, the large waves of that Fall of 2014 and Winter of 2015 season greatly diminished our sand berms against our properties and you agreed that we would need protection for the upcoming Fall of 2015 and Winter of 2016. This resulted in the last sand push done, for our Rocky Point neighborhood, on March 27th and 28th of 2015.

FALL OF 2015 AND WINTER OF 2016 WAVE ACTIVITY

As you know, this past Fall of 2015 and Winter of 2016 season had an unusual quantity of extremely large swells that came in very close succession to each other. We had one very large swell in October 2015, with 40ft plus faces, that significantly eroded Rupert's front slope.

Then, it was relatively quite until the third week in January of 2016. Beginning at that time, very large swells, with faces of 20-40 feet, came in only days apart. In fact, from the third week in January till the end of February of 2016, there was only a five day period that no large swells were forecast to arrive. These swells continued to arrive through the third week in March, 2016.

2.

We remember at least three swells, in late February and early March of 2016, that were estimated to have faces of 45-55 feet, with at least one that was closer to 60 feet (the offshore buoy reading hit 31 feet—the largest that John remembers hearing, since beginning to monitor them in 1995).

Now, in April of 2016, we are still having 15ft to 18ft waves regularly and we have had two swells, with estimated faces of 25 feet, in the first two weeks.

SAND PUSH AUTHORIZATION

Because of all this large wave activity, over the past few years and especially this past season, we are deeply concerned about your recent decision that does not allow us to push sand at this time. We feel that this will prevent us from having the necessary amount of sand, in a berm or pile against our properties, that we will need to protect our properties and houses from the upcoming Fall of 2016 and Winter of 2017 large wave season.

Our concern is that NOW, in the Spring, we DO have the necessary amount of sand available to push and the time it takes to push it (time includes: the authorization, the permitting, the scheduling, and the work processes required to do a sand push).

But, if we wait until next Fall of 2016 or Winter of 2017 to try to do the sand push, when we may be in a real need of more sand against our properties, we may NOT have the time it takes for the sand to build up nor the time it takes for the sand push processes to be completed before the next large, damaging swell arrives.

SAND PUSH REQUIREMENTS RELATIVE TO TIME

As you are aware, to be able to do a sand push, you must have the following three things:

- #1. You must have enough sand to push
- #2. You must get the authorization and permits needed to allow a sand push
- #3. You must schedule the equipment and have the work done

To get all of these three things accomplished, it takes TIME!

- #1. it takes Time for the sand to build up—at least a week required with no erosive swells in the meantime; but in the Spring, the beach is at its peak level of sand with no worry of erosive swells
- #2. it takes Time to obtain the authorization and permits required—usually about two weeks

3.

#3. it takes Time to schedule the equipment and to have the work completed- usually anywhere from two weeks to two months

The Time that it takes, to meet all three of these requirements, may be as little as month, if you are fortunate, but might be as long as three months, if you are not so fortunate.

That is why the best Time to push sand, for our Rocky Pt. neighborhood, is now-Springtime. In the Spring, you have plenty of time to meet the requirements of a sand push, as opposed to the Fall or Winter, when you have to worry about when the next large swell might arrive.

Whether it may arrive tonight, tomorrow, or not for even two weeks from now, you still will almost certainly not have enough time to meet all three of those requirements. And if judging by this last season's frequency of extreme swells, you certainly will NOT have the time needed to do a sand push. And unfortunately, this will be at a time that it is the most critical to have it done.

EVALUATION OF OUR SAND PILE LEVEL

We understand that Brad came to evaluate the sand level of our beach on Sunday March 20, 2016 and then, after you both discussed the results, you decided that we don't need a sand push at this time.

If we understood correctly, your reasons for this decision, as stated in your e-mail responses, reflected your belief of the following:

That since the last sand push in March of 2015;

- #1. that we had NOT lost much sand from our piles or berms against our properties, with only a few feet of sand lost off the top and front of our piles
- #2. that the width or base of the beach was substantially inflated due to natural accretion ONLY, and that this width of the beach seen today is normally at a minimum this time of year

Also mentioned, was that pushing sand can have a negative impact on the beach's environment.

We respectively disagree but thank you for your objectivity, in allowing us to put forth the following data to support our beliefs, in the form of pictures, diagrams and text. Please review the accompanying pictures and diagrams relative to each of the following properties discussed.

4.

#1. SAND LOST FROM THE LAST SAND PUSH OF MARCH 2015

First of all, we DO see a significant sand loss to our sand pushed piles over this past season.

In photo #3, taken during the third and last sand push on March 27th of 2015, please notice the freshly pushed sand pile in front of Rupert's, John's, the Right of Way(although the Right of Way push had not yet been completed) and just the beginning of Alice's properties.

Now, please notice the smooth, un-pushed sand pile in front of Alice's, that is shown in the foreground of this photo. This smooth, un-pushed sand is the remaining sand and slope left over from the previous year's last sand push, done on February 10th & 12th of 2014. This was the last sand push that was done before the Fall of 2014 and the Winter of 2015 large wave season. And this is the sand pile that still remains after that season's large wave erosion.

And, please view photo #4. This was also taken during the March 27th, 2015 sand push and this shows Rupert's 2015 sand push in progress. The foreground of photo #4 also shows the smooth remaining sand pile, in front of Rupert's and John's, from the previous year's last sand push of February 10th & 12th of 2014.

Now, in these photos, please compare the differences in the thickness and in the height between the newly pushed piles, from the March 2015 sand push, versus the one year older remaining piles, from the February 2014 sand push. The newer, freshly pushed sand piles are about 15ft thicker and 6ft higher than are the one year older piles.

These older remaining slopes of sand, left over from the February 2014 sand push, closely resemble the remaining sand pile slopes that we have left now(photos #5 & #6)in March of 2016, which is also one year after the previous year's last sand push.

Although, photos #5 & #6 show a little more smooth remaining sand pile than seen in photos #3 & #4, the resemblance of the remaining sand piles in all four photos is relative to the amount of sand that was pushed that year, before each photo was taken. A greater volume of sand was pushed in the March 2015 push than was pushed in the February 2014 push.

We feel that these photos #3 through #6, illustrate the extent of the normal erosion that takes place each year to the pushed sand piles and that they also illustrate the need for a sand push to be done on an annual basis, therefore giving us property owners and the Public Right of Way the protection that we will need to survive each year's onslaught of large, damaging swells.

That is why we are now requesting the authorization to rebuild our sand piles to the March 2015 sand push levels and why we are confused and disappointed in your decision, to not let us do so NOW, when the factors of sand and time are each at their most bountiful point of the year.

5.

RUPERT'S PROPERTY

Since after the last sand push done on March 27th of 2015, (photos # 7 & # 8 taken during that push) Rupert's sand pile was eroded about 75% with just the first, large October swell of 2015. His berm continued to erode throughout the season to where it is today, at about a 95% loss of sand pile, compared to what he had after the push in March of 2015.

As you can see from the pictures, photos #9, #10, #11 & #12 compared to #7 & #8, today Rupert's berm is almost completely gone, with only a small amount of the original pushed berm remaining on the Rocky Pt. side of his property. This is a dramatic loss of sand pile, in thickness and in height, compared to the levels of the sand pile that were there after the sand push of March 2015.

Diagram #1 also illustrates the thickness and height of the pile after the 2015 sand push, as well as what it looks like now, one year later. This is a dramatic diminishment of his sand pile, shown to have taken place, in one years time. And, this is only one season of large waves.

Can he hope to be protected from another full season of large waves with only the remaining sand that he has left now? And what if next season, we don't have the unusual Northerly direction of swells that we saw this past Fall of 2014 and Winter of 2015 season? What if next season, we have a predominant number of Westerly swells, swells that are more commonly found here each year and are much more highly erosive to our Rocky Point neighborhood(as seen in the Fall 2013 and the Winter 2014 season), than the unusual predominance of Northerly swells that we experienced this past season?

How can Rupert hope to survive another season without damage, unless he is able to get an additional sand pile against his property for protection?

PUBLIC RIGHT OF WAY TO BEACH

(Please note that some of the following text was written before the City & County's recent sand push on 6-17-16 to repair the Right of Way).

The Right of Way has also had extreme erosion off its sand pile. Over this past season, it has seen its sand pile level diminish about 90% from the level that was achieved by the March 2015 sand push. Please see photos #13 & #14, taken during that push, and please compare them with photos #'s 15 through #22(taken in March and April of 2016, one year after that push).

A big part of this erosion was due to the ever increasing pedestrian traffic upon it, which has increased about threefold. This increase in pedestrian traffic has been measured in two ways:
 #1. visually counting the number of people coming up and down the road to the beach everyday(which has dramatically increased over the past couple of years)
 #2. the frequency of the need to clean off the sand, that covers up the NO PARKING sign, on the asphalt in front of John's driveway(which is now a weekly necessity versus a two to three week task needed only a couple of years ago).

The diagram, yellow tab diagram #2, shows the original height and contour of the Right of Way, after the sand push of March 2015. Please notice that the middle height of the pile was level with

6.

the top of Alice's fence and the top of the bushes on John's side. Sam, you may remember talking to John, standing atop this sand peak, the day of the push March 27th of 2015. In that conversation, you were thanking him for pushing sand on the Right of Way and he was thanking you for the permission to do so.

While standing there, John remembers being able to look down into his yard, as well as down into Alice's yard. Today, at that same point of reference, the sand level is about twelve feet lower. And if you both were to be talking now, only one year later, you and John would be looking, at a steep angle, up at Alice's fence and up at the bushes on John's side.

Today, only some of the side edges of the March 2015 sand push remain. Please see photos #15 through #22. And these edges have also been diminished greatly, over this past season, and are continuing to do so daily. Please note that the pictures also show the sign("Right of Way 280-A") that was placed there in August of 2015. When originally erected, the concrete foundation of this sign was buried about three feet under the sand.

This foundation has been continually undermined by daily foot traffic. And it has been necessary to rebury this foundation, under the remaining sand pile, three times since August of 2015. And you can see by the pictures taken recently, in March of 2016(before the latest reburying in April of 2016), photos #19 through #22, that this sign was again leaning precariously(a result of its foundation being undermined) and that it needed attention once again.

The short amount of time it has taken, for the this sign foundation to be repeatedly undermined, illustrates the speed at which the sand pile of the Right of Way is being constantly eroded by daily, pedestrian traffic.

The photos shot in early June of 2016(before the City & County's 6-17-16 repair sand push; photos #23, #24 & #25), further illustrate the speed at which the daily pedestrian traffic is eroding the Public Right of Way. They show a continual erosion of sand from the middle of the pathway, which also causes the remaining sides to further erode, as the sand slides down to fill in the middle's loss of sand.

Now, please review the latest photos of the Right of Way that were shot on:

1. 6-17-16 (the day of the City & County's sand push; photos #26 through #32)
2. 6-18-16 (one day after their sand push; photos #33 through #39)
3. 7-03-16 (two weeks after their sand push; photos #40 through #44).

As you can see from these latest photos, the heavy daily pedestrian traffic upon the Right of Way is quick to erode the freshly pushed sand pile in just one day. And, after only two weeks of this heavy foot traffic, the erosion seen to the sand pile is remarkably substantial.

We property owners are very grateful to the City and County for their latest repair work done to the Right of Way on 6-17-16. However, we feel that it is insufficient to protect the Right of Way from a full year's worth of pedestrian and large wave erosion. And that the work done, by just their bulldozer alone, cannot achieve the same results that were accomplished from using an excavator, to place the sand up in the pile, as was done in each of our last three sand pushes.

7.

The excavator is able to sit on the beach and drop the buckets of sand further back to the area where the land cliff drops off and the sand begins (photos #45 through #49). The bulldozer can only push the sand up to the front of the slope facing the water. This pile of sand left by the bulldozer is about 20ft forward from where it needs to be, to cover up the point where the land cliff meets the sand. Please see the photos #26 through #32 (taken on 6-17-16; the day of the City and County's repair sand push).

Also, the excavator, by dropping the sand in buckets, is able to pile the sand up higher and thicker without destroying the inclined plane formed by this action, since it sits on the beach well away from where its target drop is. This also results in a much greater volume of sand that can be deposited with the angle or rake of the incline being much flatter and more horizontal.

Conversely, the bulldozer must retrace its path back down the freshly pushed incline of sand. This action unfortunately takes a good percentage of its newly pushed sand back down with it, as the bulldozer's tracks dig deeply into the slope (photos #30 through #32). The resulting sand pile and inclined slope can never be as high or thick, nor can the slope be as gentle, as what can be accomplished by using an excavator (photos #57, #58 & #59).

Therefore, if we are granted permission to push sand in front of our properties this year, we would also request the authorization to allow us to include the Right of Way in our sand push, as was done in the previous three sand pushes, so that we may build the Right of Way back to the healthy level that was achieved in last year's sand push in March of 2015.

The Critical Need For a Healthy Right of Way

The functionality of the Right of Way, especially in an emergency situation, is of great importance and can not be overstated. The emergency responders, such as lifeguards, paramedics and firemen, etc. need a quick and easily accessible route to the beach.

If this pathway is not in good health and has any type of obstacles (as the ones seen in the photos #46 through #49; that show: #1. the ladder and steep incline; #2. the "Danger" sign and "Do Not Cross" yellow tape put up by the City & County- both which resulted from the Fall of 2013 and Winter of 2014 wave damage) the time and effort required for these people, to respond to an emergency, may be life threatening.

The health of The Public Right of Way's sand pile, measured in both its level and in its slope quality, directly affects its ability to be useful as an emergency access pathway there, a pathway needed to help save lives.

The sand level and health of the Right of Way can also directly affect the safety of Alice's and John's properties. If there is a gap of sand left there, between their properties (where the Right of Way is), this hole can result in waves easily eroding the adjoining sides of their properties and causing extreme damage, as was seen in the Fall of 2013 and the Winter of 2014. This damage causing hole is shown in the photos #46 through #49.

With all of this erosion damage done to the Right of Way, in just one years time since the last sand push of March 2015, how can it survive another season of this type of erosion? And, as mentioned before, what if we have a more typically normal season, one of predominantly West,

8.

highly erosive type swells? With the sand even at today's level, much less the level in eight months from now in December of 2016, how can we expect the Right of Way to survive undamaged?

And, if a sand push is NOT done over the next year and the Public Right of Way not only continues its daily erosion from pedestrian traffic but it becomes severely damaged by waves in this upcoming season, how many people's lives and properties may be affected?

And more importantly, how many lives may be put in danger by not having a useful pathway for the emergency responders to use?

JOHN'S PROPERTY

Over the past year, John's sand pile was eroded about 75%, compared to what was there just after the last sand push in March of 2015, mostly from wave action. Although some of the erosion, of the side edges adjoining the Public Right of Way, has come from the ever present pedestrian traffic upon the Right of Way.

The pictures of his sand pile, taken during the sand push last March of 2015 (photos #50 & #51) and the ones taken one year later in April and June of 2016 (photos #52 through #56), show the extent of this erosion. Also, Diagram #3 helps to illustrate that several feet of sand was eroded off the sand pile's top, as just after the sand push, the top level of sand was as high as John's picket fence but now is at least three feet lower there. However the majority of the erosion done, also illustrated by the photos and diagram, was to the pile's thickness and base.

The very large swells of this past Fall of 2015 and Winter of 2016 created waves that came up and down John's slope and he witnessed this erosion of his slope, wave by wave. Numerous times these large swells resulted in ocean water coming up, not only to the top of his slope, but also coming over his slope and into his yard. This ocean water came into his yard and under his house several times, leaving rubbish such as driftwood, pallets, coconuts and the like against his fence and sometimes deep into his yard.

John feels very fortunate that, before this past season started, a season of extremely large swells coming in close succession to each other, he was able to put a healthy sand pile high up against his property (a result of the March 2015 sand push) to cushion the extreme power of these swells and to protect his house and property from damage.

Without this protective berm of sand, placed there before this past season began, damage, to his house and property this season, may have been similar to what he experienced in the Fall of 2013 and the Winter of 2014.

ALICE'S PROPERTY

In one year's time, since the March 2015 sand push, Alice's sand pile has eroded approximately 60%. This erosion took place mainly on the front of the slope. But similar to John's erosion, she also saw dramatic sand loss of her pile, adjoining the Public Right of Way.

9.

The pictures taken during and after the March 2015 sand push (photos #57, #58 & #59), compared to the ones taken recently (photos #60, #61 & #62), show the difference of the sand pile's level and the extent to which its front and its Right of Way side has eroded in one year's time. The pictures also show the sand pile's tops, of both her front and Right of Way side of the slope, crumbling down the slope, dragging with them pieces of her foliage and yard.

Diagram #4 also helps to illustrate the loss of sand to her pushed pile, most evident in the loss to its base thickness and to its front height.

During this past season, Alice's property also saw extremely large waves wash up on top of her pile and into her yard. Several waves hit her sliding glass doors of her house, facing the ocean. She also experienced some extreme waves washing completely through her side carport, before stopping in her back yard.

Without this protective sand berm, placed up against her property by the sand push last March of 2015, would she have again experienced the trauma of severe property and home damage that she suffered through in the Fall of 2013 and the Winter of 2014? Would she again have had to come up with another small fortune to repair her property and home damage, as she was forced to do then?

It is a cruel emotional and financial heartache for anyone to endure. And it is a heartache that can be easily prevented by pushing a protective barrier of sand, high up against the property, before each large wave season.

The cost for each property owner's sand push, before any damage is experienced, is approximately one thousand dollars. Compare this to the cost of repairs spent after the damage, a cost that can easily exceed one hundred thousand dollars.

Obviously, we all would prefer to use our money wisely in the proactive protection of our homes and properties, by pushing sand ahead of any traumatic events!

#2. THE WIDTH OR BASE AND HEIGHT OF THE BEACH NOW IS DUE TO NATURAL ACCRETION (ONLY) AND IT IS NORMALLY AT ITS MINIMUM THIS TIME OF YEAR

First of all, we do agree that the numerous North and Northwest swells, over this past Fall of 2015 and Winter of 2016, have helped to contribute to the width and base of sand down near the ocean, as North swells, in the fall and winter months, usually bring the Rocky Pt. neighborhood sand down from the Sunset Pt. area.

And, we do agree that this 2015 and 2016 large wave season did not have the usual number of predominately West swells, as usually seen each fall and winter season, swells that are so highly erosive to our Rocky Pt. neighborhood beach. This West swell erosion was especially evident in the Fall of 2013 and the Winter of 2014. However, we do feel that the erosion then was so devastating, largely due to the fact that we had little or no sand pile or berm, against our properties, to start off that season.

10.

But, we believe that the width(base) and height of the beach that we see now, from the water's edge to the bottom of our pushed sand piles or berms, has substantially increased in the past two years MOSTLY due to the fact that almost everyone, from Paumalu Stream bed to Rocky Pt., was allowed to and therefore did push sand up to their properties, before the next large wave season arrived.

If a comparison were to be done now, between our beach(in width and height) to other like beaches, ones that did NOT push sand against their properties over the past two years, we think that this comparison would validate our belief by showing that these other beaches, that did not benefit from pushing sand, are now in much worse health(much narrower in width and much lower in height) than ours is now.

EXPLANATION OF OUR THEORY TO WHY THE BEACH HAS INCREASED SO SIGNIFICANTLY

As a result of these annual sand pushes, when the large waves came all the way up to the properties, climbing up the large pushed sand pile, they took the sand off the pile, wave by wave, back down the beach and into the water.

As we have witnessed and the pictures show, one by one, this wave action diminishes the pushed sand pile and results in a gradual inclined plane from the top of the pile to the water's edge. Please see photos #63, #64(taken one day after the first sand push of 2014) & #65.

As the waves begin to decline, this sand, that was at one time piled up high against our properties and is now residing in the ocean near the shore, begins to build up. This build up is first evident at the water's edge(photo #66). Then, wave by wave, the sand is noticeably building up more and more, filling in that inclined plane and flattening out that plane. Ultimately, this results in a widening and heightening of the whole beach. Please see photo #67.

But this wave action, resulting in a beach widening and a build up of the sand, happens only when the waves have dropped from the erosive large wave size to the small to medium wave size. And if no other large waves appear, this inclined slope, from the water's edge to the bottom of our pushed sand piles, can significantly be filled in and the whole beach can be widened, within a weeks time.

However, this building up of sand can only extend as far as the small to medium wave's leading edge(photo #65). So, this means that the sand, that was initially taken off our sand pushed piles by the large waves, will not be able to be naturally piled up as high again, through the small to medium wave action to the top of our pushed pile, as was achieved by using an excavator in our recent sand pushes.

With a mixture of swell directions, some from the North and some from the West, that is normally experienced in a large wave season, this sand build up can encompass the whole area from Paumalu Stream to Rocky Pt., as we have experienced over these past two years. Please see photos # 68 & #69.

11.

Today, this increase in the whole beach's width and height looks very impressive and it gives the impression that it would be a formidable obstacle to erosion during a large swell. But actually, it can only give, anywhere from one night's to possibly a few day's, protection from the powerful and elevated storm surge, produced by an extreme swell. Please refer to diagram #5 and see photos #70 through #73, taken on 1-23-14, one day after the first sand push. Please compare the whole ocean's water level and how high it is, in those 1-23-14 storm surge photos, versus the ocean's water level in the photos taken recently (in March of 2016, photos #74 through #77) of small to medium large surf.

Also, in those storm surge photos # 70 through #73 (taken on 1-23-14), please notice how high up the beach the ocean water is climbing. The whole ocean is almost completely covering up the lava of Rocky Pt. and is getting close to the ironwood trees at the top of the point.

You can see that any amount of sand encompassing the beach's base width and height, that might have been there before this swell's strong storm surge hit, would have been completely covered up by the whole ocean.

And, it was, this storm surge took away our first sand push's pile in one night (photo #73).

That is why we believe that our only real protection, from such extreme winter swells, comes from having sand piled up as high and as thick as possible, against our properties, as was done in our last sand push of March 2015. And that just having a nice, beautifully wide base of the beach, extending from the water's edge to the bottom of our sand pushed piles, does NOT give the necessary protection, against a whole season of large and damaging surf.

CONCLUSION OF OUR THEORY

So, we do agree, in part, that this substantially widening of the beach was due to natural accretion. But, we believe it was necessary to have a large volume of sand on the beach, already present there. This sand that we had pushed from the water's edge to up high against our properties, through our three sand pushes in the last two years, enabled this natural accretion process to take place, to the extent that it did recently.

If we want to continue to see this beach at such a healthy width and height each year, we believe that it is necessary to keep this volume of sand up high in a pile or berm against our properties through annual sand pushes. This pushed sand can then be redistributed, over the whole area from Paumalu Stream to Rocky Pt., through the large wave mechanical process that we have described earlier and that we have witnessed taking place there over the past two years.

ENVIRONMENTAL CONCERNS

We understand that some people have expressed environmental concerns about sand pushes. Apparently, they believe that these pushes damage the beach or affect other properties by taking sand away from them.

As you know, the Hawaiian Islands are just a mere speck of land in the middle of the largest ocean in the world. This whole ocean's floor is covered completely with sand. The sand, taken in

12.

a sand push, is near the water's edge and is filled in by the sand from the floor of the ocean. It does NOT come off the beach in front of anyone else's property.

The pushing of this sand, from the water's edge to up against the properties, leaves a rut or gouge in the beach. This rut is a couple of feet deep. As witnessed by us all, over the past three sand pushes at our Rocky Pt. neighborhood, these ruts are quickly filled in by the sand from the ocean's floor in a matter of hours. And within only days, these ruts become almost completely indiscernible to the naked eye. Please see photo #78.

Pushing sand each year dynamically creates a wide, high beach through the natural accretion process, that is a benefit to us all. This benefit includes the property owners, as well as any beach goers, tourists and locals alike. Having such a wide, beautifully expansive beach bodes well for tourism and reflects positively on the State of Hawaii. Please see photos #79 & #80.

We remember a wide beach, such as this one that we have now, as a normal occurrence in the early eighties up until the mid nineties. During this period, the property owners could obtain a permit from the city to push sand up against their properties and they did so regularly.

After the mid nineties, a moratorium was placed on sand pushing done by the property owners, leaving only the City & County the right to push sand. At that time, the City & County only pushed sand on the Right of Ways once a year, usually each spring to early fall. Unfortunately, the City & County stopped this regular mending of the Right of Ways about six years ago.

We believe that after the mid nineties, with this moratorium in place, our Rocky Pt. to Paumalu Stream beach began to gradually diminish each year, in both width and height, as a result of this termination of regular sand pushing by the property owners. And even in the summer months, when the beach used to be at its healthiest, we began to see an increasingly persistent narrowing of the beach. This narrowing of the beach began to increase each summer and was seen to be worse at the Paumalu Stream end, of this beach expanse.

We saw the most dramatic narrowing of the beach in the late Summer of 2013. The properties down near Paumalu Stream were undermined severely and sustained major damage. The beach in front of Rupert's and John's properties was almost non-existent, as the ocean water was up to their property lines. And all this occurred with the normal small to flat Summer swell action.

Because of this severely diminished Summer sand level, our beach and the un-maintained Right of Way would not have the protection that they would need to survive the huge Fall of 2013 and Winter of 2014 swells, swells that were to come and almost completely destroy our neighborhood and lives.

PLEASE GO TO NEXT PAGE FOR THE FINAL CONCLUSION AND SUMMARY

13.

FINAL CONCLUSION AND SUMMARY

It has been necessary to do three sand pushes to protect our homes and properties over the past two years from the damaging surf. We believe that our properties and homes have been protected from severe damage, over the past couple of years, because we have been allowed to protect them by doing sand pushes ahead of each upcoming big wave season.

This protection from possible damage, to our properties and to the public Right of Way, has cost the property owners only thousands of dollars each year, before the upcoming season, versus the tens of thousands it costs us after the fact, as it did in the Fall of 2013 and Winter of 2014 season.

This protection has come from having a good berm or pile of sand pushed up high against our properties before each big wave season and NOT just from having a wide base of beach, that extends from the water's edge to the bottom of our sand push pile, as we see today. In the past, this wide base has been easily covered up and has been completely washed away overnight by a large swell's strong storm surge, as seen in the photos taken one day after the first sand push in January of 2014.

This wide base of beach, as we see today, is a nice by-product from having a tall, thick pile of sand pushed against our properties each year. And this pushed pile is eroded each year from large wave action and it is then redistributed by medium to small wave action through natural accretion over the whole area, from Paumalu Stream to Rocky Pt., where the sand push had taken place.

However, the leading edge of the medium to small waves cannot re-pile the sand back to the same needed protective level that was achieved by an excavator during the sand pushes.

This redistribution of the sand pushed piles benefits everyone and it results in a healthy, beautiful beach that reflects positively on the State and boosts tourism.

The sand that fills in the ruts, left by the excavator or bulldozer in a sand push, comes from the Pacific Ocean's floor and not from the beach in front of anyone else's property. And these ruts are filled in completely by the ocean's waves, within a weeks time.

Time is the most important factor in being able to do a sand push. You must have enough time for the sand to build up. And, you must have enough time to first obtain the necessary authorization from the State and then to obtain the required permits from the State and the City & County. You also must have enough time to get the work scheduled and then completed.

The time it takes to accomplish all of these required tasks, may be anywhere from one month (if you are very fortunate) to three months.

This past Fall of 2015 and Winter of 2016 season had a historical number of extremely large swells that hit within only days of each other. This pattern of swells continued all Winter long, with the longest time lapse between them being only five days.

14.

But now, in the Spring, we DO have the sand and the time required to complete a sand push without the time constraints applied by the next large swell arriving, as experienced in the Fall or Winter months.

Rupert and the Public Right of Way have lost almost all of their sand, that had been pushed in the March of 2015's sand push, due to erosion from this past season's large, relentless swells and surely they are in need of protection from another season of this kind of erosion.

Although, the Right of Way has been partially repaired by the City & County's 6-17-16 bulldozer sand push, we feel that a more substantial push(one that can only be accomplished from the use of an excavator) is needed to give the Right of Way the protection it requires to withstand a full year's erosion from the large swells and the pedestrian traffic that will come.

Not only property is in jeopardy, as in Rupert's case, but also lives are in jeopardy, as a healthy Right of Way is needed to provide an emergency pathway for responders.

John, Alice and the rest of the neighborhood have also lost a considerable amount of their pushed piles and it would be wise to protect their properties now, before the next season begins, rather than waiting until possible damage has occurred.

So, Sam and Brad, please reconsider our request and allow us to rebuild our sand piles now, against our properties and on the Right of Way, to the levels achieved from last year's sand push on March 27th of 2015.

MAHALO TO YOU BOTH for letting us submit this request to you and for you taking the time to review it. We really appreciate all that you have done for us over the past couple of years and we value your friendship, also!

Please feel free to contact us via email or phone and we would be more than willing to meet with you in person, at your convenience, either at your office or on the beach. We look forward to hearing from you.

Sincerely,

Alice Lunt (808) 754-0493 dsal@hotmail.com
Rupert Oberlohr (808) 228-3246 Oberlohr@msn.com
John Nichols (808) 554-7323 sue.aloha@yahoo.com

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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLEWAI ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:SL

Correspondence OA-17-5

Alice Lunt, Rupert Oberlohr, and John Nichols
P.O. Box 31166
Honolulu, Hawaii 96820

AUG 18 2016

Dear Ms. Lunt, Mr. Oberlohr, and Mr. Nichols

SUBJECT: RE: Request for Temporary Preventative Dune Maintenance at 59-175 B, 59-175 C and 59-181 D Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:026, 27, and 34)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your July 12, 2016 request to conduct preventative dune maintenance (sand pushing, dune restoration) as temporary erosion control along approximately 170 feet of the shoreline fronting 59-175 B, 59-175 C and 59-181 D Ke Nui Road, Sunset Beach (TMKs (1) 5-9-002:026, 27, and 34). Your request included an extensive description of sand pushing history, evaluation of sand loss from the restored dune, and a binder of photographs documenting erosion and beach maintenance events over the past two and a half years.

An approximately 500-foot section of beach between the subject properties and Rocky Point typically erodes during winter months when west and northwest swells drive sand toward Sunset Beach. The beach typically recovers in summer months when northeast tradewind waves move sand back toward Rocky Point. The beach is also prone to shorter-term fluctuations in width and height with changing wave conditions. Historical shoreline change studies from the University of Hawaii (UH) indicate a long-term trend of beach erosion fronting the subject properties (approximately 0.5 feet per year)¹. However, the UH study results are somewhat inclusive for this section of beach due to high seasonal variability in shoreline location.

Seasonal beach and dune erosion reached a maximum in December of 2013 resulting in damage and land loss at the subject and neighboring properties. In response, sand pushing (sand scraping and movement by mechanical means) and dune restoration projects were authorized by DLNR and conducted by the property owners in January and February 2014 and March 2015. In July 2016, the City and County of Honolulu conducted sand pushing at the beach right-of-way between the subject properties to replace sand that had been lost primarily to foot traffic over the past year.

¹ Hawaii Coastal Erosion Website: <http://www.soest.hawaii.edu/coasts/erosion/oahu/>


EXHIBIT H

OCCL has been monitoring the beach on an approximately monthly basis since 2013. On the most recent site visit on August 8, 2016 OCCL staff found that most of the sand from the March 2015 dune restoration remains fronting the subject properties. On the beach fronting the restored dune, the sand thickness (beach height) has increased substantially in comparison to the past few years as a result of natural (seasonal) accretion over the past winter. It appears that at most a few feet has been lost from the front of the restored dune from the photographs and description you provided and OCCL's collection of photos since the last dune restoration in March 2015. This is primarily evidenced by a 15 to 20 foot-wide lawn, fence, and vegetation placed on the sand pile fronting Ms. Lunt's property (59-181 D), which appears to have suffered little or no loss this winter. The Department notes that the previous authorization for dune maintenance at the subject properties (DLNR Ref. Correspondence OA-15-142) limits the restored bank to no greater than ten (10) feet wide, measured from the top of the former eroded bank and restricts placing materials or planting vegetation atop the protective sand bank.

The DLNR is unable to approve your request for temporary preventative dune maintenance fronting the subject properties at this time. The Department appreciates the extensive photograph collection and detailed description you have provided. The Department continues to support preventative dune maintenance (sand pushing, dune restoration) as the best short-term option to protect the subject and neighboring properties from seasonal beach erosion, while maintaining the natural character of the beach. However, as stated previously, it appears the restored dune and beach has fared well over the past winter. At most, a few feet of sand has been lost from the front of the restored dune. The beach between Rocky Point and Sunset appears to have gained a substantial amount of sand overall through the past winter. We do not see need for mobilizing heavy machinery on the beach for conducting sand pushing fronting the three subject properties at this time. OCCL staff will continue to monitor the condition of the beach and restored dune through the coming year.

Should you have any questions, please contact Sam Lemmo, OCCL Administrator, at (808) 587-0377 or Sam.J.Lemmo@hawaii.gov.

Sincerely,



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

Cc: Honolulu Parks, Attn: Miles Hazama

Corr OA-18-110.

Romine, Bradley M

From: sue.aloha <sue.aloha@yahoo.com>
Sent: Tuesday, November 28, 2017 10:52 AM
To: Romine, Bradley M
Cc: Lemmo, Sam J
Subject: 11-28-17 Request for Sand Push
Attachments: 20171128_090537.jpg

Good morning Brad and Sam,

Good talking to you yesterday, Brad! Here's some photos shot this morning, 11-28-17, of Rupert's, my place, Alice's, the right of way, and the beach in both directions, towards Sunset Point and Rocky Point.

As you can see, we have more sand now than we've had since the erosion at the end of March. This is the first chance that Rupert and I have had, with enough sand out in front of our properties, to do an adequate and hopefully a lasting push. We would like to push sand immediately, before we lose it to the big swells coming soon in December, as in past years.

We are only requesting authorization for myself, Rupert, Alice, and the right of way.

As I mentioned yesterday, All American is available next week to do the work, so with the time it takes to get the permits, a speedy reply would be greater appreciated!

My apologies for sending each photo individually, I still am inept at e-mailing with attachments, etc...

Many thanks to you Brad, Sam and Suzanne!

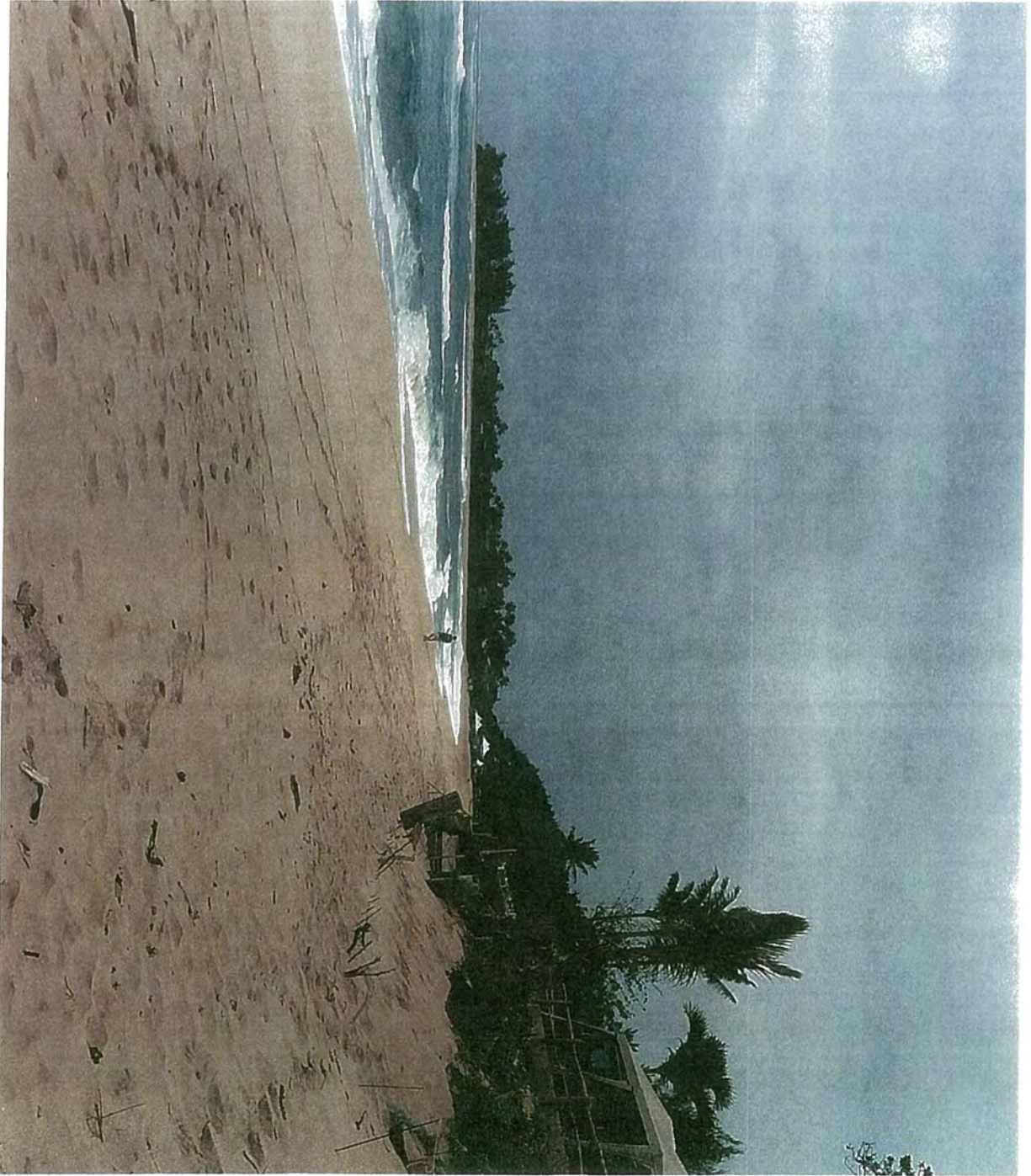
Have a good day,

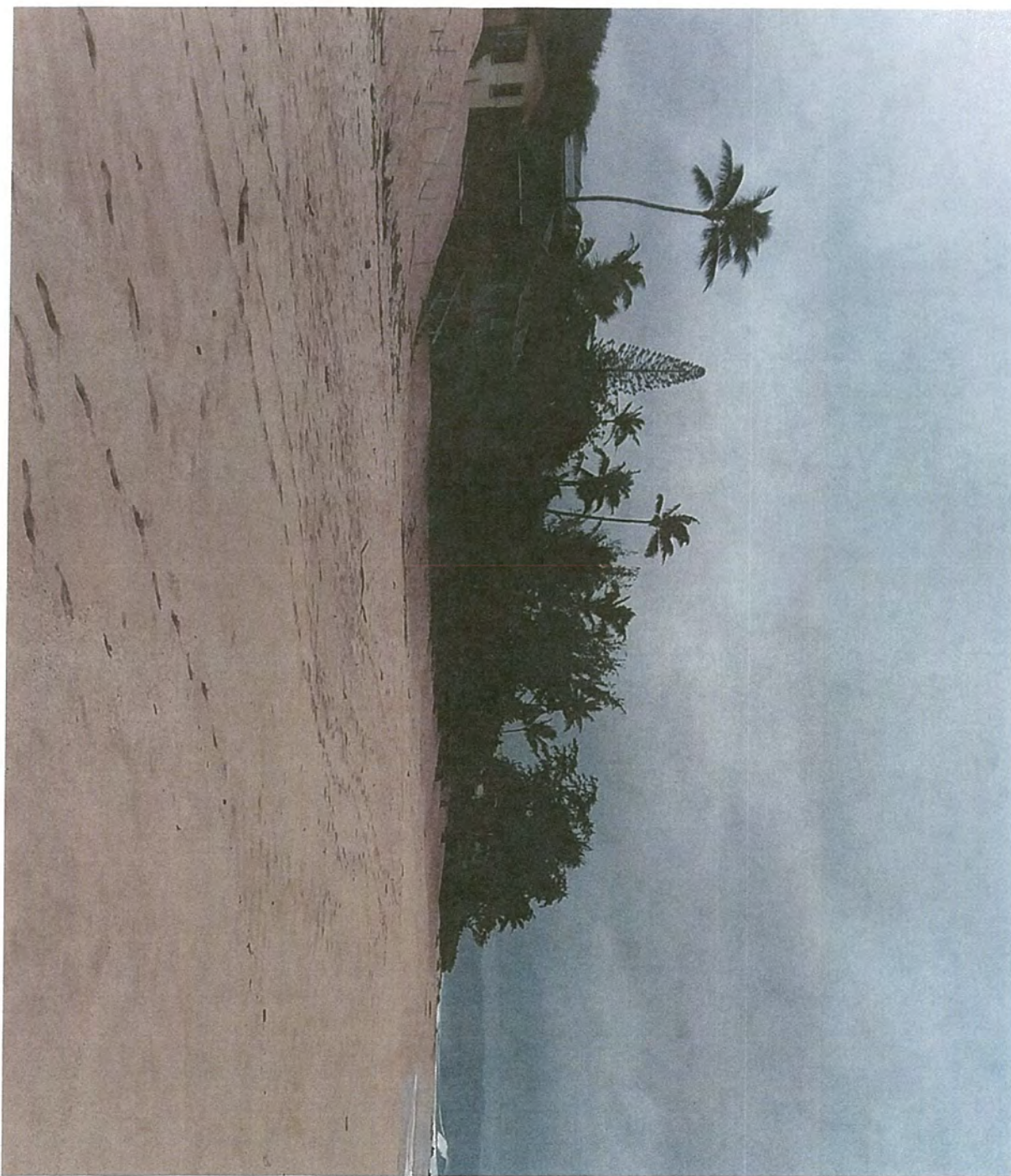
John

Sent from my Verizon, Samsung Galaxy smartphone

1

EXHIBIT I



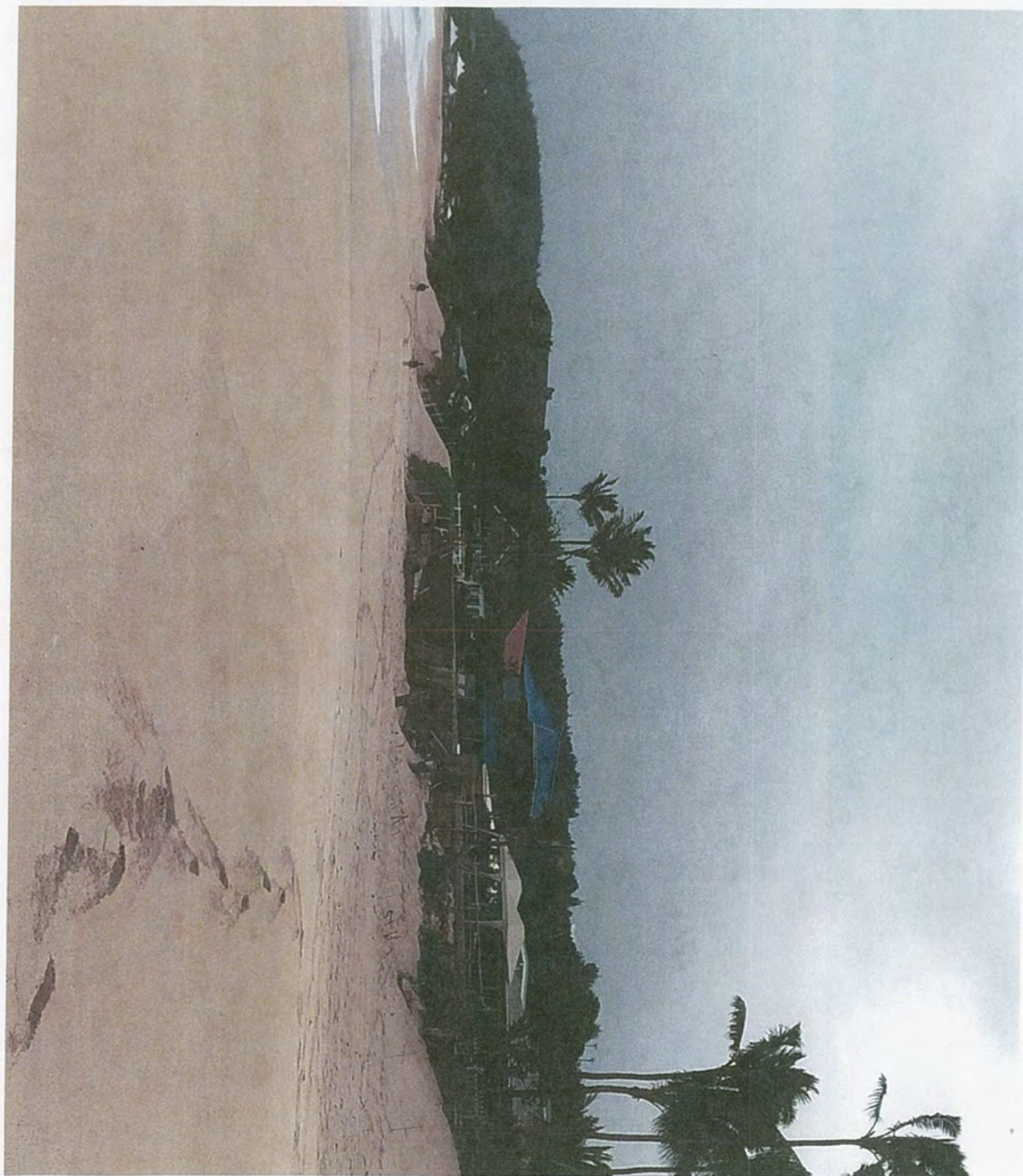












DAVID Y. IGE
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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:SL

Correspondence OA-18-110

John Nichols
59-175 C Ke Nui Road
Haleiwa, HI 96712

NOV 30 2017

Dear Mr. Nichols,

SUBJECT: RE: Request for Temporary Preventative Berm Maintenance at 59-175 B, 59-175 C, and 59-181 D Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:026, 27, and 34; owners: Nichols, Oberlohr, and Lunt)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your November 28, 2017 request to conduct preventative beach maintenance (sand pushing) to restore the backshore berm as temporary erosion control along approximately 180 feet of the shoreline fronting the properties listed above.

The coastal environment at the subject properties is characterized by a seasonally-variable beach backed by an elevated (about 20 to 25 feet) sand berm. This high-wave berm feature underlies many of the shore-front properties along the North Shore. Recent erosion from seasonal waves, likely combined with a long-term trend of shoreline recession, has repeatedly created a steep eroded bank (scarp) in the backshore berm fronting the subject properties. Sand pushing was conducted in the Summer and Fall of 2017 (Ref: Correspondence OA-18-5). However, the beach was not sufficiently wide to fully restore the berm at the subject properties at that time. The beach width has since recovered and the landowners are requesting to supplement the partially-restored berms with more sand. Continued erosion could pose a threat to single-family residences on the properties.

The purpose of the requested project is to push sand from the beach fronting the subject properties to restore the backshore berm as a preventative measure to provide added protection (an "erodible buffer") for the properties while conserving the natural characteristics of the public beach environment. If sand pushing and berm restoration is to be used as a means of erosion control in this area, it should be conducted when the beach is sufficiently wide (as it is now) to limit impacts to the beach environment and alongshore public access.

EXHIBIT J

The request is to push (scrape) sand from the beach to restore the backshore berm as a preventative measure to improve seasonal erosion protection as follows:

- Clean locally-sourced beach sand will be scraped using heavy machinery (e.g., dozer and/or excavator) from the dry beach area fronting the subject properties, only.
- Sand will be excavated/scraped to a maximum depth of one (1) foot below existing grade of the beach.
- No sand will be removed nor will any work be done below the high water line.
- Sand will be placed against the eroded scarp to restore the backshore berm.
- The top of the restored berm will be no greater than ten (10) feet wide measured from the edge of the existing or formerly eroded scarp.
- The dune will be no higher than one (1) foot above existing grade at the seaward edge of the subject properties.
- Following completion of the work, the beach shall be smoothed or graded to remove any ruts or depressions from the project work.

DLNR has no objections to the beach maintenance (berm restoration) project as described above fronting 59-175 B, 59-175 C, and 59-181 D Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:026, 27, and 34). Additional authorization, including Right of Entry, is required from Honolulu City and County Department of Parks and Recreation before you may proceed. You are prohibited from placing materials on the sand bank, including but not limited to tarps, sandbags or fencing and shall not induce, plant, or cultivate vegetation atop the restored sand berm. Additional Terms and Conditions are provided below. Please review them carefully.

The proposed project is minor in scope and may be considered an exempt action under State environmental laws under Hawaii Administrative Rules §11-200-8 and as provided in the approved *Exemption List for the DLNR, Exemption Class 4: 20. Beach restoration, sand dune restoration, and sand pushing activities of less than 10,000 cubic yards of beach quality sand.* The DLNR Engineering Division has provided concurrence on this exemption.

Terms and Conditions

The DLNR has no objections to the temporary preventative beach maintenance (sand pushing, berm restoration) fronting the subject properties at TMKs (1) 5-9-002:026, 27, and 34 as temporary erosion protection provided that you and all participating landowners adhere to the following Terms and Conditions:

1. That in issuing this letter, the Department has relied on the information and data that the applicant has provided in connection with this letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, this letter may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
2. It is understood that the beach maintenance (sand pushing, berm restoration) is a temporary preventative measure to provide an erodible buffer for seasonal wave run-up and erosion. Subsequent erosion control efforts will require a new authorization;

3. It is understood that the terms of this authorization may be modified by the Department prior to and during construction, if beach conditions change;
4. The applicant will notify the Department no less than 24 hours prior to beginning construction operations;
5. The Contractor shall perform the work in a manner that minimizes environmental pollution and damage as a result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of the construction period;
6. The area for sand scraping (excavation) is limited to an area bounded by the lateral property lines of the subject properties and the high water line and to a depth no greater than one (1) foot;
7. Sand shall not be placed (piled) more than one (1) foot above existing grade (elevation) of the seaward edge of the subject properties;
8. The top of the restored berm shall not be greater than ten (10) feet wide, measured from top edge of the existing or formerly eroded scarp;
9. Work shall be conducted during daylight hours, only. No work shall be conducted at night;
10. No materials shall be placed on the sand bank, including but not limited to tarps, sandbags or fencing;
11. The applicants shall not induce, plant, or cultivate vegetation atop the protective sand berm;
12. At the conclusion of work, the area shall be cleaned of all construction material and the site shall be restored to a condition acceptable to the Chairperson, including smoothing the beach to remove any tracks or indentions from the work;
13. The activity/use shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
14. The activity/use shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
15. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of the activity/uses, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant

must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;

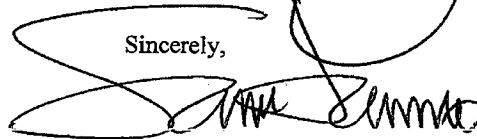
16. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State Department of Land and Natural Resources that an individual activity/use or activities conducted under this letter is adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
17. Where any interference, nuisance, or harm may be caused, or hazard established by the authorized activities/uses, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
18. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses;
19. No motorized construction equipment is to be operated in the water at any time;
20. In the event there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
21. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this letter;
22. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for authorized projects;
23. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop and the State Historic Preservation Division contacted at (808) 692-8015;
24. The applicant shall take measures to ensure that the public and neighboring property owners are adequately informed of the project activities/work and the need to avoid the project area during the operations;
25. Public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety;
26. All construction material including sand shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris,

grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality; and

27. The applicant shall implement standard Best Management Practices (BMPs), such as daily inspection of equipment for conditions that could cause spills or leaks; cleaning of equipment prior to operation near the water; the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses; and implementation of adequate spill response procedures, stormy weather preparation plans, and the use of silt curtains and other containment devices. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCL staff shall be contacted immediately at 587-0381, to conduct a visual inspection and to provide appropriate guidance.

Please sign two copies. Retain one copy and return the other copy to this office within thirty (30) days. Please notify the OCCL in advance of the anticipated construction dates and notify the OCCL immediately if any changes to the scope or schedule are anticipated. Should you have any questions, please contact Brad Romine, Sea Grant Extension Agent and Coastal Lands Program Coordinator at the OCCL, at (808) 587-0049 or Bradley.M.Romine@hawaii.gov.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

I concur with the conditions of this letter:

<u>59-175 B</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-175 C</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-181 D</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date

CC: Hon Parks & Rec Director, Michelle Nekota
Hon Parks & Rec, Miles Hazama
DLNR Land, Barry Cheung
DLNR SHPD, Regina Hilo
Hon DPP

Romine, Bradley M

From: Romine, Bradley M
Sent: Tuesday, December 05, 2017 11:43 AM
To: 'sue.aloha'
Cc: Lemmo, Sam J
Subject: RE: 11-28-17 Request for Sand Push

Hi John,

As a reminder, please only use sand from directly in front of the 3 authorized properties as noted in the Terms and Conditions of OCCL's letter. OCCL received a complaint from one of your neighbors.

Thanks,
Brad Romine

Bradley M. Romine, PhD
Coastal Lands Program Coordinator
University of Hawaii Sea Grant College Program,
Hawaii Department of Land and Natural Resources,
Office of Conservation and Coastal Lands
Ph: (808) 587-0049 Bradley.M.Romine@Hawaii.gov

From: sue.aloha [<mailto:sue.aloha@yahoo.com>]
Sent: Thursday, November 30, 2017 2:34 PM
To: Romine, Bradley M <bradley.m.romine@hawaii.gov>
Cc: Lemmo, Sam J <sam.j.lemmo@hawaii.gov>
Subject: RE: 11-28-17 Request for Sand Push

Aloha Brad and Sam,

Thanks so much for the reply and especially for the approval!!! We are so appreciative! We will keep in touch on our progress with the permitting and tentative work schedule.

Mahalo,
John

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Romine, Bradley M" <bradley.m.romine@hawaii.gov>
Date: 11/30/17 11:58 AM (GMT-10:00)
To: "sue.aloha" <sue.aloha@yahoo.com>
Cc: "Lemmo, Sam J" <sam.j.lemmo@hawaii.gov>, "Hazama, Miles" <mhazama@honolulu.gov>
Subject: RE: 11-28-17 Request for Sand Push

Hi John,

1

EXHIBIT K

Please find OCCL's response attached. A hard copy is on the way to your home address. As always, you will need right of entry from county parks before starting the work. I'm copying Miles, fyi.

Please also note the limits on the size of the restored berm, particularly for Alice's property which has a pretty substantial pile remaining at last check. Please review the rest of the Terms and Conditions carefully and return a copy signed by three landowners to OCCL.

Also, please keep us advised of your start date.

Thanks,

Brad

Bradley M. Romine, PhD

Coastal Lands Program Coordinator

University of Hawaii Sea Grant College Program,

Hawaii Department of Land and Natural Resources,

Office of Conservation and Coastal Lands

Ph: (808) 587-0049 Bradley.M.Romine@Hawaii.gov

From: sue.aloha [<mailto:sue.aloha@yahoo.com>]
Sent: Tuesday, November 28, 2017 10:52 AM
To: Romine, Bradley M <bradley.m.romine@hawaii.gov>
Cc: Lemmo, Sam J <sam.j.lemmo@hawaii.gov>
Subject: 11-28-17 Request for Sand Push

Good morning Brad and Sam,

Good talking to you yesterday, Brad! Here's some photos shot this morning, 11-28-17, of Rupert's, my place, Alice's, the right of way, and the beach in both directions, towards Sunset Point and Rocky Point.

As you can see, we have more sand now than we've had since the erosion at the end of March. This is the first chance that Rupert and I have had, with enough sand out in front of our properties, to do an adequate and hopefully a lasting push. We would like to push sand immediately, before we lose it to the big swells coming soon in December, as in past years.

We are only requesting authorization for myself, Rupert, Alice, and the right of way.

As I mentioned yesterday, All American is available next week to do the work, so with the time it takes to get the permits, a speedy reply would be greater appreciated!

My apologies for sending each photo individually, I still am inept at e-mailing with attachments, etc...

Many thanks to you Brad, Sam and Suzanne!

Have a good day,

John

Sent from my Verizon, Samsung Galaxy smartphone

Print

Corr OA-18-190

Page 2 of 3

3-20-18 Sand Push Request for the Spring of 2018 for: Rupert Oberlohr (59-175 B), John Nichols (59-175 C) and the Public Right of Way (280-A) + 59-180 D E F G H I J K L M N O P Q R S T U V W X Y Z AA AB AC AD AE AF AG AH AI AJ AK AL AM AN AO AP AQ AR AS AT AU AV AW AX AY AZ BA BB BC BD BE BF BG BH BI BJ BK BL BM BN BO BP BQ BR BS BT BU BV BW BX BY BZ CA CB CC CD CE CF CG CH CI CJ CK CL CM CN CO CP CQ CR CS CT CU CV CW CX CY CZ DA DB DC DE DF DG DH DI DJ DK DL DM DN DO DP DQ DR DS DT DU DV DW DX DY DZ EA EB EC ED EE EF EG EH EI EJ EK EL EM EN EO EP EQ ER ES ET EU EV EW EX EY EZ FA FB FC FD FE FF FG FH FI FJ FK FL FM FN FO FP FQ FR FS FT FU FV FW FX FY FZ GA GB GC GD GE GF GG GH GI GJ GK GL GM GN GO GP GQ GR GS GT GU GV GW GX GY GZ HA HB HC HD HE HF HG HH HI HJ HK HL HM HN HO HP HQ HR HS HT HU HV HW HX HY HZ IA IB IC ID IE IF IG IH II IJ IK IL IM IN IO IP IQ IR IS IT IU IV IW IX IY IZ JA JB JC JD JE JF JG JH JI JJ JK JL JM JN JO JP JQ JR JS JT JU JV JW JX JY JZ KA KB KC KD KE KF KG KH KI KJ KL KM KN KO KP KQ KR KS KT KU KV KW KX KY KZ LA LB LC LD LE LF LG LH LI LJ LK LL LM LN LO LP LQ LR LS LT LU LV LW LX LY LZ MA MB MC MD ME MF MG MH MI MJ MK ML MN MO MP MQ MR MS MT MU MV MW MX MY MZ NA NB NC ND NE NF NG NH NI NJ NK NL NO NP NQ NR NS NT NU NV NW NX NY NZ OA OB OC OD OE OF OG OH OI OJ OK OL OM ON OP OQ OR OS OT OU OV OW OX OY OZ PA PB PC PD PE PF PG PH PI PJ PK PL PM PN PO PP PQ PR PS PT PU PV PW PX PY PZ QA QB QC QD QE QF QG QH QI QJ QK QL QM QN QO QP QQ QR QS QT QU QV QW QX QY QZ RA RB RC RD RE RF RG RH RI RJ RK RL RM RN RO RP RQ RR RS RT RU RV RW RX RY RZ SA SB SC SD SE SF SG SH SI SJ SK SL SM SN SO SP SQ SR SS ST SU SV SW SX SY SZ TA TB TC TD TE TF TG TH TI TJ TK TL TM TN TO TP TQ TR TS TT TU TV TW TX TY TZ UA UB UC UD UE UF UG UH UI UJ UK UL UM UN UO UP UQ UR US UT UY UZ VA VB VC VD VE VF VG VH VI VJ VK VL VM VN VO VP VQ VR VS VT VY VZ WA WB WC WD WE WF WG WH WI WJ WK WL WM WN WO WP WQ WR WS WT WY WZ XA XB XC XD XE XF XG XH XI XJ XK XL XM XN XO XP XQ XR XS XT XU XV XW XX XY XZ YA YB YC YD YE YF YG YH YI YJ YK YL YM YN YO YP YQ YR YS YT YU YV YW YX YY YZ ZA ZB ZC ZD ZE ZF ZG ZH ZI ZJ ZK ZL ZM ZN ZO ZP ZQ ZR ZS ZT ZU ZV ZW ZX ZY ZZ

Aloha Suzanne, Sam and Brad,

We hope that you all are doing well! Because of the 2017 Fall and Winter 2017 ocean's erosion of our protective berms, created on the last sand push on December 6th, 2017 (which we THANK YOU SO MUCH FOR!!!), Rupert, John and the Right of Way are each in need of a restoration sand push.

We would like to push now while we have the sand to push. Up until last week, when a moderate North swell brought us some sand, our remaining berms, left over from the last sand push done on 12-6-17, were being constantly eroded by even the smallest of swells. Even with flat surf, the currents were undermining our sand piles and there was no ocean berm near the water which helps protect us from erosion. Our sand piles, from that last push, have been significantly diminished and need to be restored to help protect us from what transpired last summer.

As you may remember, last spring two moderate but very West swells hit late in March causing severe erosion to our Rocky Point neighborhood. After that erosion took place, we had requested a sand push last spring and were denied a push at that time, even though it had been 2 years since our last push (done March 27th & 28th 2015) and were told to wait and watch the beach in hopes that it would build up further throughout the summer.

As you know, unfortunately the sand did not build up but began to erode steadily throughout the spring and summer. This erosion reached a critical point by late June and so by late July, it had become a dangerous situation for us. Finally, in late July, we were given the authorization to push sand, but by that time our Sunset Beach entry point for the machines, near the stream, had also been eroded to the point that no machines could get through to us, or anyone else that resides from the stream to Rocky Point.

After much deliberation, in late August, we were given the right to bring the machines in at Rock Piles (way down on the Haleiwa side of Pipeline, about a 1/2 mile away). Unfortunately, while trying that option, the machine operators were met with resistance from some residents near Pipeline, who apparently had earlier been denied the right to push sand when they had asked for authorization. This became a heated situation, turning neighbor against neighbor and it was another stressful situation for those of us in a crisis.

Because this entry around Rocky Point was no longer an option, we were forced to try and use the Right of Way. And we THANK MILES SO MUCH for granting us that permission!!! But the Right of Way was also very eroded, which meant much time was spent making a ramp to allow the machines access to the beach. Also, because the Right of Way is narrow, only the smaller machines could be used, which was another large factor adding to the inefficiency of the operation.

And the worst complication was, that by that time, there was no remaining sand in front of our properties to push. So our only option was to try and relocate sand from the large ocean berm at the water's edge of Rocky Point to a position in front of our properties. Not only was this inefficient and costly (we 3 people collectively paid over 24 thousand dollars for 2 days of work), it was totally futile. Two days after the push, all of the relocated sand had returned to its original position at Rocky Point.

So, to make a very long and complicated request as short as possible, we are asking for authorization from you to push sand immediately, sometime this week for the machines and operator may not be available next week. And of course, we have no idea how long we will have available sand in front of our properties to push.

<https://mail.yahoo.com/>

3/29/2018

EXHIBIT L

Print

Page 3 of 3

We are hoping to be able to work this Thursday and Friday (the 22nd & 23rd of March). The All American operator last evening looked at the sand level of the beach in front of our houses as well as the entry point for the machines on the Kahuku side of the Paumalu Stream bridge. He has given the "all clear" on his end for the work to commence.

As in the past, we will follow all the guidelines set by the State and City and County and we will communicate our start time and give a full progress report as needed.

As of now, this operation of pushing sand is our only approved method of combatting this unpredictable ocean erosion to our properties. So we greatly appreciate your kindness and understanding of our situation! And because of the pressed timeline we are dealing with, we would also really appreciate a quick response to our request!

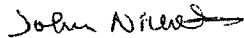
We are sorry that this request is so long and detailed, but we feel that the necessity of the present situation needs the explanation of the past problems that we have endured. We hope that pushing sand now will give us a better chance to prevent last year's crisis from returning.

We thank you all for your time and compassionate understanding towards our situation and towards us as individuals!

Sincerely,

Rupert Oberlohr Oberlohr@msn.com

John Nichols sue.aloha@yahoo.com



DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
ROBERT K. MASUDA
FIRST DEPUTY
JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:SL

Correspondence OA-18-190

John Nichols
59-175 C Ke Nui Road
Haleiwa, HI 96712

MAR 29 2018

Dear Mr. Nichols,

SUBJECT: Request for Temporary Preventative Berm Maintenance at 59-175 B; 59-175 C; and 59-181 D, E, F, and G Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:026, 27, 34, 35, 36, and 37)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your March 29, 2018 request to conduct preventative beach maintenance (sand pushing) to restore the backshore berm as temporary erosion control along approximately 250 feet of the shoreline fronting the properties listed above.

The coastal environment at the subject properties is characterized by a seasonally-variable beach backed by an elevated (about 20 to 25 feet) sand berm. This high-wave berm feature underlies many of the shore-front properties along the North Shore. Recent erosion from seasonal waves, likely combined with a long-term trend of shoreline recession, has repeatedly created a steep eroded bank (scarp) in the backshore berm fronting the subject properties. Sand pushing was conducted in the Summer and Fall of 2017. Winter waves have since eroded away much of the sand piles. The beach width has since recovered and the landowners are requesting to supplement the partially-restored berms with more sand. Continued erosion could pose a threat to single-family residences on the properties.

The purpose of the requested project is to push sand from the beach fronting the subject properties to restore the backshore berm as a preventative measure to provide added protection (an "erodible buffer") for the properties while conserving the natural characteristics of the public beach environment. If sand pushing and berm restoration is to be used as a means of erosion control in this area, it should be conducted when the beach is sufficiently wide (as it is now) to limit impacts to the beach environment and alongshore public access.

The request is to push (scrape) sand from the beach to restore the backshore berm as a preventative measure to improve seasonal erosion protection as follows:

- Clean locally-sourced beach sand will be scraped using heavy machinery (e.g., dozer and/or excavator) from the dry beach area fronting the subject properties, only.
- Sand will be excavated/scraped to a maximum depth of one (1) foot below existing grade of the beach.

EXHIBIT M

- No sand will be removed nor will any work be done below the high water line.
- Sand will be placed against the eroded scarp to restore the backshore berm.
- The top of the restored berm will be no greater than ten (10) feet wide measured from the edge of the existing or formerly eroded scarp.
- The dune will be no higher than one (1) foot above existing grade at the seaward edge of the subject properties.
- Following completion of the work, the beach shall be smoothed or graded to remove any ruts or depressions from the project work.

DLNR has no objections to the beach maintenance (berm restoration) project as described above fronting 59-175 B; 59-175 C; and 59-181 D, E, F, and G Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:026, 27, 34, 35, 36, and 37). Additional authorization, including Right of Entry, is required from Honolulu City and County Department of Parks and Recreation before you may proceed. You are prohibited from placing materials on the sand bank, including but not limited to tarps, sandbags or fencing and shall not induce, plant, or cultivate vegetation atop the restored sand berm. Additional Terms and Conditions are provided below. Please review them carefully.

The proposed project is minor in scope and may be considered an exempt action under State environmental laws under Hawaii Administrative Rules §11-200-8 and as provided in the approved *Exemption List for the DLNR, Exemption Class 4: 20. Beach restoration, sand dune restoration, and sand pushing activities of less than 10,000 cubic yards of beach quality sand.* The DLNR Engineering Division has provided concurrence on this exemption.

Terms and Conditions

The DLNR has no objections to the temporary preventative beach maintenance (sand pushing, berm restoration) fronting the subject properties at TMKs (1) 5-9-002:026, 27, 34, 35, 36, and 37 as temporary erosion protection provided that you and all participating landowners adhere to the following Terms and Conditions:

1. That in issuing this letter, the Department has relied on the information and data that the applicant has provided in connection with this letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, this letter may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
2. It is understood that the beach maintenance (sand pushing, berm restoration) is a temporary preventative measure to provide an erodible buffer for seasonal wave run-up and erosion. Subsequent erosion control efforts will require a new authorization;
3. It is understood that the terms of this authorization may be modified by the Department prior to and during construction, if beach conditions change;
4. The applicant will notify the Department no less than 24 hours prior to beginning construction operations;

5. The Contractor shall perform the work in a manner that minimizes environmental pollution and damage as a result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of the construction period;
6. The area for sand scraping (excavation) is limited to an area bounded by the lateral property lines of the subject properties and the high water line and to a depth no greater than one (1) foot;
7. Sand shall not be placed (piled) more than one (1) foot above existing grade (elevation) of the seaward edge of the subject properties;
8. The top of the restored berm shall not be greater than ten (10) feet wide, measured from top edge of the existing or formerly eroded scarp;
9. Work shall be conducted during daylight hours, only. No work shall be conducted at night;
10. No materials shall be placed on the sand bank, including but not limited to tarps, sandbags or fencing;
11. The applicants shall not induce, plant, or cultivate vegetation atop the protective sand berm;
12. At the conclusion of work, the area shall be cleaned of all construction material and the site shall be restored to a condition acceptable to the Chairperson, including smoothing the beach to remove any tracks or indentions from the work;
13. The activity/use shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
14. The activity/use shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
15. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of the activity/uses, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
16. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State Department of Land and Natural Resources that an individual activity/use or activities conducted under this letter is adversely affecting fish

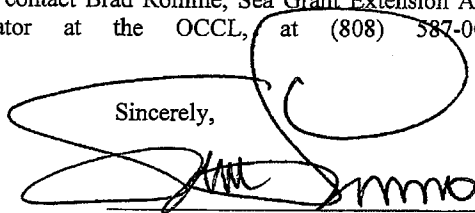
or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;

17. Where any interference, nuisance, or harm may be caused, or hazard established by the authorized activities/uses, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
18. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses;
19. No motorized construction equipment is to be operated in the water at any time;
20. In the event there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
21. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this letter;
22. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for authorized projects;
23. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop and the State Historic Preservation Division contacted at (808) 692-8015;
24. The applicant shall take measures to ensure that the public and neighboring property owners are adequately informed of the project activities/work and the need to avoid the project area during the operations;
25. Public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety;
26. All construction material including sand shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality; and
27. The applicant shall implement standard Best Management Practices (BMPs), such as daily inspection of equipment for conditions that could cause spills or leaks; cleaning of equipment prior to operation near the water; the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses; and implementation of adequate spill

response procedures, stormy weather preparation plans, and the use of silt curtains and other containment devices. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCL staff shall be contacted immediately at 587-0381, to conduct a visual inspection and to provide appropriate guidance.

Please sign two copies. Retain one copy and return the other copy to this office within thirty (30) days. Please notify the OCCL in advance of the anticipated construction dates and notify the OCCL immediately if any changes to the scope or schedule are anticipated. Should you have any questions, please contact Brad Romine, Sea Grant Extension Agent and Coastal Lands Program Coordinator at the OCCL, at (808) 587-0049 or Bradley.M.Romine@hawaii.gov.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

I concur with the conditions of this letter:

<u>59-175 B</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-175 C</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-181 D</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-181 E</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-181 F</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-181 G</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date

CC: Hon Parks & Rec Director, Michelle Nekota
Hon Parks & Rec, Miles Hazama
DLNR Land, Barry Cheung
DLNR SHPD, Regina Hilo
Hon DPP

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE B. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
FRESHWATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOLOAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

OFFICE OF CONSERVATION AND COASTAL LANDS

2018 APR -4 A HLE

DLNR:OCCL:SL

Correspondence OA-18-190

John Nichols
59-175 C Ke Nui Road
Haleiwa, HI 96712

MAR 29 2018

Dear Mr. Nichols,

SUBJECT: Request for Temporary Preventative Berm Maintenance at 59-175 B; 59-175 C; and 59-181 D, E, F, and G Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:026, 27, 34, 35, 36, and 37)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your March 29, 2018 request to conduct preventative beach maintenance (sand pushing) to restore the backshore berm as temporary erosion control along approximately 250 feet of the shoreline fronting the properties listed above.

The coastal environment at the subject properties is characterized by a seasonally-variable beach backed by an elevated (about 20 to 25 feet) sand berm. This high-wave berm feature underlies many of the shore-front properties along the North Shore. Recent erosion from seasonal waves, likely combined with a long-term trend of shoreline recession, has repeatedly created a steep eroded bank (scarp) in the backshore berm fronting the subject properties. Sand pushing was conducted in the Summer and Fall of 2017. Winter waves have since eroded away much of the sand piles. The beach width has since recovered and the landowners are requesting to supplement the partially-restored berms with more sand. Continued erosion could pose a threat to single-family residences on the properties.

The purpose of the requested project is to push sand from the beach fronting the subject properties to restore the backshore berm as a preventative measure to provide added protection (an "erodible buffer") for the properties while conserving the natural characteristics of the public beach environment. If sand pushing and berm restoration is to be used as a means of erosion control in this area, it should be conducted when the beach is sufficiently wide (as it is now) to limit impacts to the beach environment and alongshore public access.

The request is to push (scrape) sand from the beach to restore the backshore berm as a preventative measure to improve seasonal erosion protection as follows:

- Clean locally-sourced beach sand will be scraped using heavy machinery (e.g., dozer and/or excavator) from the dry beach area fronting the subject properties, only.
- Sand will be excavated/scraped to a maximum depth of one (1) foot below existing grade of the beach.

EXHIBIT N

- No sand will be removed nor will any work be done below the high water line.
- Sand will be placed against the eroded scarp to restore the backshore berm.
- The top of the restored berm will be no greater than ten (10) feet wide measured from the edge of the existing or formerly eroded scarp.
- The dune will be no higher than one (1) foot above existing grade at the seaward edge of the subject properties.
- Following completion of the work, the beach shall be smoothed or graded to remove any ruts or depressions from the project work.

DLNR has no objections to the beach maintenance (berm restoration) project as described above fronting 59-175 B; 59-175 C; and 59-181 D, E, F, and G Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:026, 27, 34, 35, 36, and 37). Additional authorization, including Right of Entry, is required from Honolulu City and County Department of Parks and Recreation before you may proceed. You are prohibited from placing materials on the sand bank, including but not limited to tarps, sandbags or fencing and shall not induce, plant, or cultivate vegetation atop the restored sand berm. Additional Terms and Conditions are provided below. Please review them carefully.

The proposed project is minor in scope and may be considered an exempt action under State environmental laws under Hawaii Administrative Rules §11-200-8 and as provided in the approved *Exemption List for the DLNR, Exemption Class 4: 20. Beach restoration, sand dune restoration, and sand pushing activities of less than 10,000 cubic yards of beach quality sand.* The DLNR Engineering Division has provided concurrence on this exemption.

Terms and Conditions

The DLNR has no objections to the temporary preventative beach maintenance (sand pushing, berm restoration) fronting the subject properties at TMKs (1) 5-9-002:026, 27, 34, 35, 36, and 37 as temporary erosion protection provided that you and all participating landowners adhere to the following Terms and Conditions:

1. That in issuing this letter, the Department has relied on the information and data that the applicant has provided in connection with this letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, this letter may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
2. It is understood that the beach maintenance (sand pushing, berm restoration) is a temporary preventative measure to provide an erodible buffer for seasonal wave run-up and erosion. Subsequent erosion control efforts will require a new authorization;
3. It is understood that the terms of this authorization may be modified by the Department prior to and during construction, if beach conditions change;
4. The applicant will notify the Department no less than 24 hours prior to beginning construction operations;

5. The Contractor shall perform the work in a manner that minimizes environmental pollution and damage as a result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of the construction period;
6. The area for sand scraping (excavation) is limited to an area bounded by the lateral property lines of the subject properties and the high water line and to a depth no greater than one (1) foot;
7. Sand shall not be placed (piled) more than one (1) foot above existing grade (elevation) of the seaward edge of the subject properties;
8. The top of the restored berm shall not be greater than ten (10) feet wide, measured from top edge of the existing or formerly eroded scarp;
9. Work shall be conducted during daylight hours, only. No work shall be conducted at night;
10. No materials shall be placed on the sand bank, including but not limited to tarps, sandbags or fencing;
11. The applicants shall not induce, plant, or cultivate vegetation atop the protective sand berm;
12. At the conclusion of work, the area shall be cleaned of all construction material and the site shall be restored to a condition acceptable to the Chairperson, including smoothing the beach to remove any tracks or indentions from the work;
13. The activity/use shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
14. The activity/use shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
15. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of the activity/uses, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
16. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State Department of Land and Natural Resources that an individual activity/use or activities conducted under this letter is adversely affecting fish

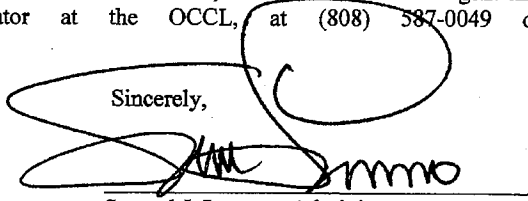
or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;

17. Where any interference, nuisance, or harm may be caused, or hazard established by the authorized activities/uses, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
18. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses;
19. No motorized construction equipment is to be operated in the water at any time;
20. In the event there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
21. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this letter;
22. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for authorized projects;
23. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop and the State Historic Preservation Division contacted at (808) 692-8015;
24. The applicant shall take measures to ensure that the public and neighboring property owners are adequately informed of the project activities/work and the need to avoid the project area during the operations;
25. Public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety;
26. All construction material including sand shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality; and
27. The applicant shall implement standard Best Management Practices (BMPs), such as daily inspection of equipment for conditions that could cause spills or leaks; cleaning of equipment prior to operation near the water; the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses; and implementation of adequate spill

response procedures, stormy weather preparation plans, and the use of silt curtains and other containment devices. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCL staff shall be contacted immediately at 587-0381, to conduct a visual inspection and to provide appropriate guidance.

Please sign two copies. Retain one copy and return the other copy to this office within thirty (30) days. Please notify the OCCL in advance of the anticipated construction dates and notify the OCCL immediately if any changes to the scope or schedule are anticipated. Should you have any questions, please contact Brad Romine, Sea Grant Extension Agent and Coastal Lands Program Coordinator at the OCCL, at (808) 587-0049 or Bradley.M.Romine@hawaii.gov.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

I concur with the conditions of this letter:

Address (Ke Nui Rd)	Permittee's Name (Print)	Signature	Date
<u>59-175 B</u>	<u>Rupert Oberlohr</u>	<u>Rupert Oberlohr</u>	<u>3-31-18</u>
<u>59-175 C</u>	<u>John Nichols</u>	<u>John Nichols</u>	<u>3-31-18</u>
<u>59-181 D</u>	<u>Gary Karnsi</u>	<u>Gary Karnsi</u>	<u>3-31-18</u>
<u>59-181 E</u>	<u>Todd Dunphy</u>	<u>Todd Dunphy</u>	<u>3/31/18</u>
<u>59-181 F</u>	<u>Todd Dunphy</u>	<u>Todd Dunphy</u>	<u>3/31/18</u>
<u>59-181 G</u>	<u>Tony Pinkert</u>	<u>Tony Pinkert</u>	<u>3-31-18</u>

CC: Hon Parks & Rec Director, Michelle Nekota
Hon Parks & Rec, Miles Hazama
DLNR Land, Barry Cheung
DLNR SHPD, Regina Hilo
Hon DPP

9/22/2019

Mail - The Stanleys - Outlook

Fwd: Fw: 59-181 Ke Nui Ballast Tube (burrito) Authorization from DLNR

Jerry Adamany <jerry@taniguchiassociates.com>

Fri 9/13/2019 2:54 PM

To: The Stanleys <stanleyfamily@live.com>

Please review

----- Forwarded message -----

From: **scott langford** <beachhousehawaii@hotmail.com>

Date: Fri, Sep 13, 2019 at 9:53 AM

Subject: Fw: 59-181 Ke Nui Ballast Tube (burrito) Authorization from DLNR

To: Jerry Adamany <jerry@taniguchiassociates.com>

Aloha Jerry,

Below is the email from Sam Lemmo, Administrator at DLNR, describing the ballast tube (burrito) and the tarp wrapped over and secured at the top, and asking for Suzanne Case (Chairperson) who he CC'd in the email, to concur and authorize with him on the installation of the ballast tube (burrito). The email above that is from Suzanne D. Case, the Chairperson of the DLNR, concurring with the action described by Sam for the ballast tube (burrito) to be installed.

Thanks,
Scott Langford
Fahrni Realty, Inc.
808-224-1250

----- Forwarded message -----

From: **Case, Suzanne D**

Date: Thu, Feb 7, 2019 at 6:41 PM

Subject: RE: 59-181 Ke Nui

To: Lemmo, Sam J , Jillian Spaak

Cc: DLNR.CO.PublicDLNR <dlnr@hawaii.gov>, Habel, Shellie L

I concur with this temporary action described below.

I ask OCCL to keep an eye on the potential flanking issue, which may result in the temporary action authorized being revoked if necessary.

Suzanne D. Case

Chair, Dept. of Land & Natural Resources

State of Hawai'i

1151 Punchbowl St. Room 130

<https://outlook.live.com/mail/search/d/AQMkADAwATNiZmYAZC05ZTA0LTVmNGYtMDACLTAwCgBGAAADV2%2BJ8DFJ0kW%2BKxu7VgUa5gcAo2..> 1/3

EXHIBIT O

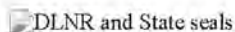
9/22/2019

Mail - The Stanleys - Outlook

[Honolulu, HI 96813](#)

[Ph: \(808\) 587-0401](#)

suzanne.case@hawaii.gov

DLNR and State seals

From: Lemmo, Sam J
Sent: Thursday, February 7, 2019 3:59 PM
To: Jillian Spaak
Cc: DLNR.CO.PublicDLNR ; Habel, Shellie L ; Case, Suzanne D
Subject: RE: 59-181 Ke Nui

Flanking means that if you place anything at the shorefront erosion will be accelerated on either side of you – e.g., the erosion will focus on the property on either side of your and then your neighbor may also have an erosion problem.

I would like to know who is doing the work because we have had problems with the illegal installation of these systems.

If we authorize you, then all we are authorizing is one ballast tube at the base and then a tarp wrapped up over the back and secured at the top. If you proceed, you are proceeding at your own risk. We will come take a look after the swell and determine what happens next (e.g., removal/further permitting, etc.). If the material gets blown out, you will have to retrieve it promptly.

I am copying the Chair of the DLNR and she will need to concur with me.

Sam

9/22/2019

Mail - The Stanleys - Outlook

--

Jerry Adamany

Realtor® Associate, NAR, SRS, MRP

Aloha 'Aina Award Nominee 2018

Taniguchi & Associates of Keller Williams Honolulu RB 21303

(808)208-5065 (mobile)

(808)596-2888 (office)

www.JerrySellsHawaii.com

www.JerrySellsKentucky.com

JERRY ADAMANY
Realtor Associate, MRP, SRS (RS 79884)
TANIGUCHI & ASSOCIATES
HAWAII REAL ESTATE

KELLER WILLIAMS
Luxury
INTERNATIONAL
RB-21303

cell: 808.208.5065 | jerry@taniguchiassociates.com | taniguchiassociates.com

Hawaii Lic. #RS79884 Kentucky Lic. #221484

From: The Stanleys
Sent: Saturday, September 14, 2019 4:15 PM
To: suzanne.case@hawaii.gov <suzanne.case@hawaii.gov>
Cc: dlrr@hawaii.gov <dlrr@hawaii.gov>; Jerry Adamany <jerry@taniguchiassociates.com>
Subject: 59-181 D Ke Nui Ballast Tube

Ms. Case:

I am writing you to apologize and to also ask for permission regarding a severe erosion issue to fix our current geotextile blanket and tubing and add tubing to a 45 degree angle to our deck which has a severe drop off.

My family and I just purchased on 9/6 the home of 59-181 D Ke Nui Rd, Haleiwa. The previous owner had received permission from you via email to put a geotextile blanket and tube to alleviate significant erosion issues which was damaging/imminently threatening to damage the foundation.

We were told that this severe erosion issue had happened to both previous owners and that the most recent had received a permit to put in geotextile blanket and tubing. We were also told that the previous owner before that had to fix significant foundation issues regarding this erosion.

We were also informed that our house is the same house where a tractor/bulldozer had illegally been pushing the sand next door on left if facing the ocean/nearby at the beach and got stuck and in the process damaging our geotextile blanket and tubing as we are the house next to the entrance where the bulldozer was trying to exit. We were told before buying this property that we had a 3 year permit regarding this geotextile blanket and tubing and that we could fix and add tubing to mitigate erosion concerns and the severe drop off on our back deck.

Before buying the property we had a structural engineer come out, Horst Brandes, who informed us that this house was experiencing extreme erosion, was one of the worst he had seen, and that it was "falling into the ocean". He also pointed out that most of our immediate neighbors had geotextile blanket and tubing or a seawall grandfathered in like our immediate next door neighbor (to the right if facing ocean).

However, we also spoke to before purchasing the property, the person who installed the geotextile blanket and tubing, Buddy Shepperd. He informed us that we had a permit that was good for 3 years regarding the geotextile blanket and tubes to mitigate any erosion issues and to fix the steep dropoff. He advised that the current system needed to be fixed and suggested adding additional tubes upon the failing current damaged system and to add tubes up to a 45 degree angle up to our deck where there is a steep dropoff. Based on this we bought the property.

Once we closed we began to try to mitigate this concern and added, using Buddy Shepperd, 3 additional tubes based on what we were told that we had a valid permit to do so.

We discovered last Friday, 9/13, when Buddy Shepperd, asked for our permit from the previous

EXHIBIT P

owner to have on site that we had installed tubes without a proper permit. We had begun the work based on the previous owner telling Mr. Shepperd to begin the work as "they had a permit" and thinking Mr. Shepperd already had a copy of this permit. It was not until we called our Real Estate Agent, Jeremy Adamany, cc'd, that we found out that we did not have the proper full permit.

We immediately ceased all work and do not intent to do more until we have the proper authorization.

We bought this property a week ago under the impression that we could fix/install our current geotextile blanket and tubing and that we could add additional tubing to shore up the current system and to alleviate the steep drop off right off our deck.

Honestly, we would not have bought this property knowing that we cannot fix our current system and install additional tubing to fix the drop off as there is already significant water erosion up to the deck, please see attached. This water erosion has also eroded/taken away part of our fence and plants, please also see attached. I note that that the current fence is now leaning due to the erosion and that this fence used to go out about 4-6 feet further but was destroyed due to erosion issues.

It came as quite a shock that we did not have the proper permit as it was represented. Knowing that we certainly would have not bought the property and most certainly would not have begun work without the proper permits.

Again we discovered this on Friday and are emailing on Saturday (next day) to humbly ask that we be allowed to complete the mitigation work to a 45 degree angle up to the deck or in the alternative keep the additional tubing that we have put in to fix the current geotextile blanket and tubing damaged by the bulldozer.

We have 6 children (kind of snuck up on us ☺) and this is where we want to raise our children. We want this to be a safe place (severe drop off on deck) and also structurally sound. We thought we were doing the right and sensible thing for our family and our home.

I sincerely apologize for this issue. We thought that we were doing the right thing and that we were fully permitted. Once we found out, we wanted/want to do this correctly and humbly ask for your permission to complete this work. In the alternative, we would ask that we be permitted to keep the additional tubing that we did installed to fix the damaged geotextile blanket and tubing system.

We will and are standing by to do whatever is necessary to fix our error. Again we thought we were permitted and humbly apologize for this.

Can you please advise what our next step would be to proceed forward?

We have stopped all work immediately and will not proceed in any way until we have compliance/permission.

Very Respectfully,

Gary Stanley

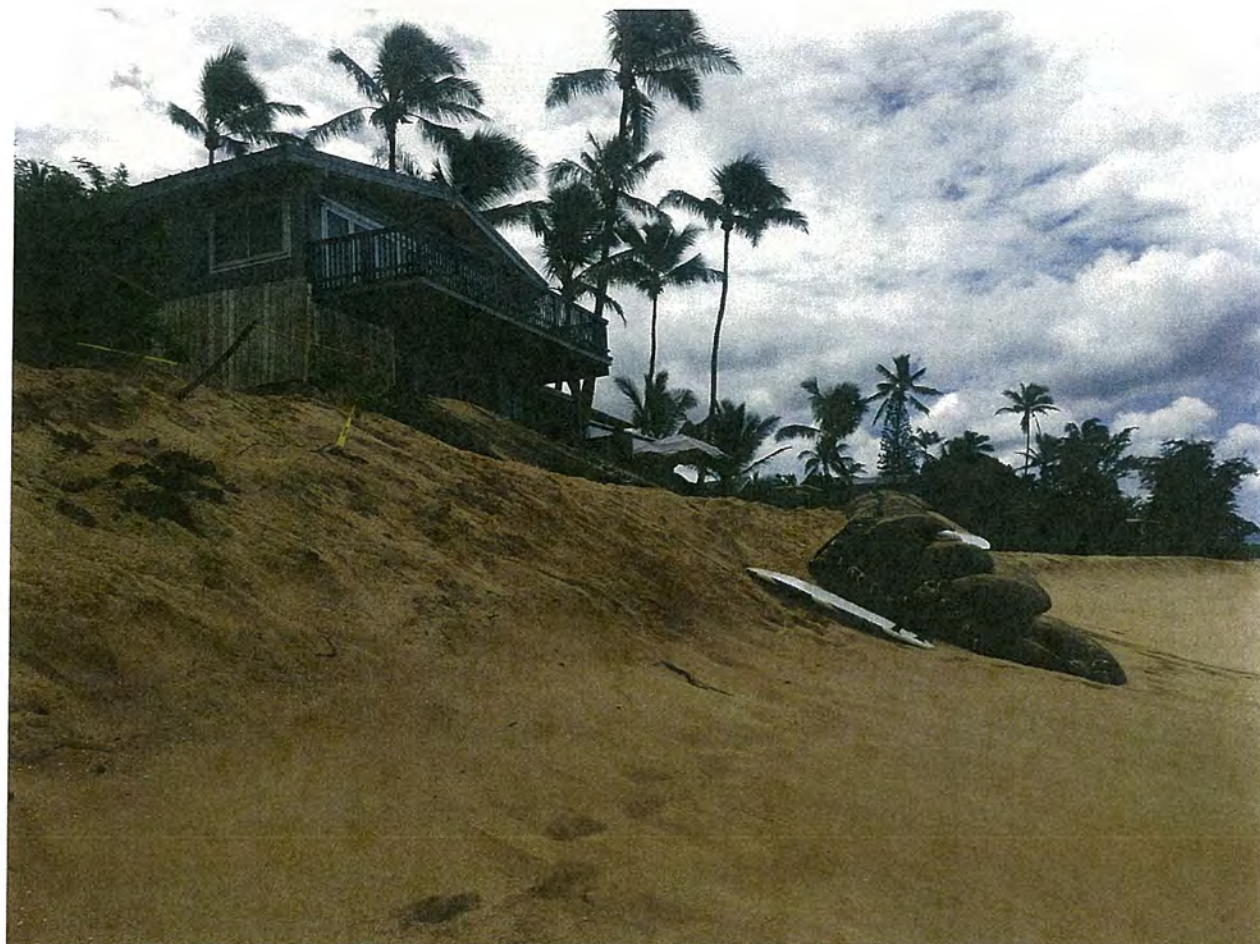


EXHIBIT Q



DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:SS

Vio. OA-20-16

NOTICE OF ALLEGED VIOLATION AND ORDER

SEP 18 2019

CERTIFIED MAIL RETURN RECEIPT

7019 0700 0001 4006 6850

Current Landowner
59-181 D Ke Nui Rd.
Haleiwa, HI 96712

SUBJECT: Alleged Unauthorized Structures Located Along the Shoreline of 59-181 D Ke Nui Rd., Haleiwa, Oahu, Tax Map Key: (1) 5-9-002:034

NOTICE IS HEREBY GIVEN that you may be in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District providing for land uses within the State Land Use Conservation District, enacted pursuant to the Hawaii Revised Statutes (HRS), Chapter 183C.

The Department of Land and Natural Resources (DLNR) has determined that:

1. The location of the alleged unauthorized land use is located seaward of the shoreline in the Conservation District, Resource Subzone;
2. A site inspection by the Department's Office of Conservation and Coastal Lands staff on 9/16/2019 revealed black fabric and sandbag burrito structures constructed of the same black fabric; [EXHIBIT A]
3. Pursuant to §13-5-2, HAR, the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land has been defined as a land use; and
4. Placement of the fabric and sandbag burritos were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

EXHIBIT R

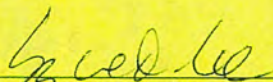
VIO. : OA 20-16

Pursuant to 183-7, HRS, the Board of Land and Natural Resources may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs. Should you fail to cease such activity after written or verbal notification from the Department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

To resolve the matter, we recommend that you remove all unauthorized structures from the shoreline in their entirety. Otherwise, the matter will be referred to the Board of Land and Natural Resources.

Please respond to this Notice within thirty (30) days to discuss resolution of this matter. Should you have any questions, please feel free to contact Salvatore Saluga in the Office of Conservation and Coastal Lands at (808) 587-0399 or via email at Salvatore.J.Saluga@hawaii.gov.

Sincerely,



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

Cc: ODLO
DOCARE-Oahu
CCH - DPP

Gary Karrass Trust
8370 Wilshire Boulevard #315
Beverly Hills, CA 90211



EXHIBIT A

From: Lemmo, Sam J
To: Saluga, Salvatore J
Subject: FW: 59-181 D Ke Nui Ballast Tube
Date: Wednesday, September 25, 2019 9:52:54 AM

From: The Stanleys <stanleyfamily@live.com>
Sent: Wednesday, September 25, 2019 9:50 AM
To: Lemmo, Sam J <sam.j.lemmo@hawaii.gov>
Subject: Re: 59-181 D Ke Nui Ballast Tube

Mr Lemmo

Absolutely. We immediately ceased work and have no intention of doing anything else.

Again, we apologize and will be standing by for your guidance. We just wanted to make sure we didn't need to do anything until the board decides.

Thank you

Gary

Sent from my iPhone

On Sep 25, 2019, at 9:36 AM, Lemmo, Sam J <sam.j.lemmo@hawaii.gov> wrote:

Yes, any additional work can result in daily fines of up to \$15,000/day.

From: The Stanleys <stanleyfamily@live.com>
Sent: Wednesday, September 25, 2019 9:10 AM
To: Lemmo, Sam J <sam.j.lemmo@hawaii.gov>
Subject: Re: 59-181 D Ke Nui Ballast Tube

Mr Lemmo

Regarding this, is it something where we just not do anything until specified/required? We just want to make sure we are doing the right thing.

Thank you,

Gary

Sent from my iPhone

EXHIBIT S

On Sep 25, 2019, at 9:00 AM, Lemmo, Sam J <sam.j.lemmo@hawaii.gov> wrote:

Thank you Mr. Stanley. We will be preparing a report and will provide you with a copy. It will be scheduled for a regular meeting of the Board of Land and Natural Resources for decision making. I don't know what the recommendation will be at this time. We have to go through the analysis first. I anticipate there will be a fine. It is your responsibility to make sure you have proper entitlements before working on state conservation lands. I suggest you go back to your contractor and sort this out.
Regards Sam

From: The Stanleys <stanleyfamily@live.com>
Sent: Tuesday, September 24, 2019 4:54 PM
To: Lemmo, Sam J <sam.j.lemmo@hawaii.gov>
Cc: Case, Suzanne D <suzanne.case@hawaii.gov>; Saluga, Salvatore J <salvatore.j.saluga@hawaii.gov>
Subject: Re: 59-181 D Ke Nui Ballast Tube

Mr. Lemmo

Thank you for your reply.

Regarding enforcement action does that mean the property will be evaluated to see if the ballast is needed/warranted.

Can you explain what the enforcement action would look like?

Again I apologize for this. We were told we had a valid 3 year permit and certainly did not want to do anything without permission.

Thank you in advance.

Very Respectfully,

Gary

Sent from my iPhone

On Sep 24, 2019, at 4:30 PM, Lemmo, Sam J <sam.j.lemmo@hawaii.gov> wrote:

Dear Mr. Stanley, I am responding to your e-mail on behalf of the Chairperson. I know this property very well. If you look at the February email from the Chairperson it says "I ask OCCL to keep an eye on the flanking issue, which may result

in the temporary authorization being revoked if necessary.”
The reason for this is that the properties to your immediate west could be impacted from the installation of shoreline armoring at this location due to “flanking”. Thus, we were alarmed when we found that full burrito system had been installed. Me and my staff will be assessing the situation over the next few weeks and will decide what type of an enforcement action to pursue.

Regards, Sam
Administrator, Office of Conservation and Coastal Lands
808-781-4468

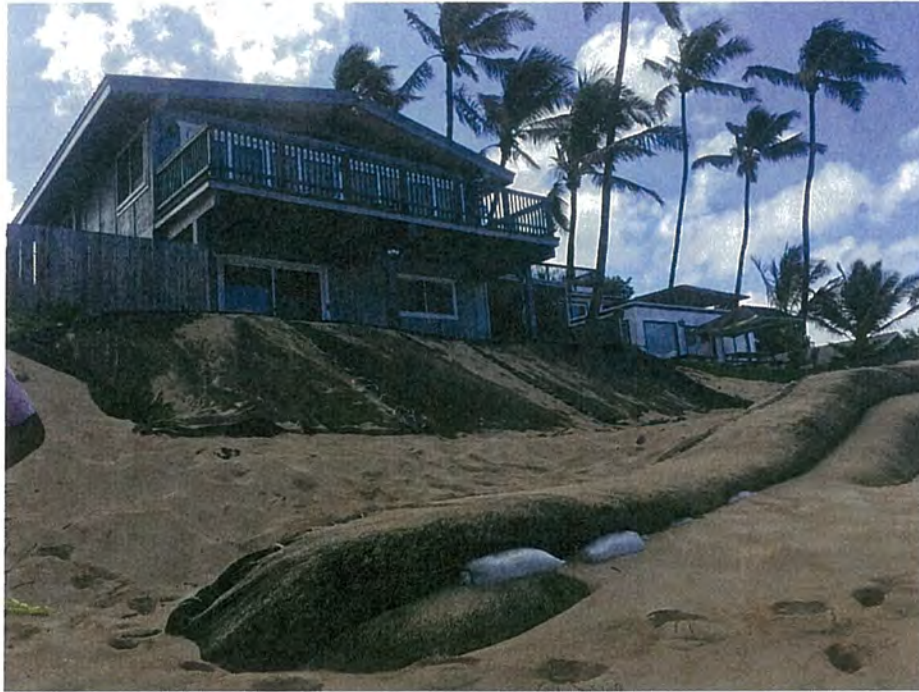


Figure 4: Stanley residence on October 2, 2019



Figure 5: Stanley residence on October 8, 2019

EXHIBIT T



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
ROBERT K. MASUDA
FIRST DEPUTY
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR-OCCL:SH

Re: Emer CDUA OA-19-05

Glenn and Catherine Wachtel
59-165 D Ke Nui Rd.
Honolulu, HI 96712

SEP - 4 2019

SUBJECT: Reminder of Landowner(s) Responsibility to Maintain DLNR Authorized Temporary Erosion Control Structures

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is sending this letter to property owners that have received emergency authorizations for temporary erosion control structures on the North Shore. This is being done as a precautionary measure in anticipation of the 2019-2020 winter season.

We are reminding recipients of Emergency Authorizations of their responsibility to maintain their temporary erosion control structures. Due to the rapid shifting of sand along North Shore beaches and potential exposure to large swell, property may become exposed to erosion at any time. Not only will this result in property damage but will result in geotextile and other material being released into nearshore waters. To mitigate beach and ocean fouling we ask that you regularly monitor these structures and remove or re-secure any loose material.

The terms and conditions of permitting for subject structures state that, "[a]ny materials that become liberated from the structure must be immediately removed from the beach or ocean", and further that, "[n]o contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this letter". Thus, we ask that you remain vigilant in abiding by these conditions for the health of the nearshore environment, as well as for your safety and the safety of the public.

Subsequent erosion control efforts that call for modification, other than routine maintenance of authorized structures will require a new application. No new material shall be added to the subject structures without additional authorization from DLNR OCCL.

The OCCL will be as responsive as possible during this winter season to help homeowners manage any severe erosion events by quickly responding to requests to repair soft structures. However, we fully expect homeowners to retrieve derelict material originating from their property to prevent it from fouling our beach and marine systems.

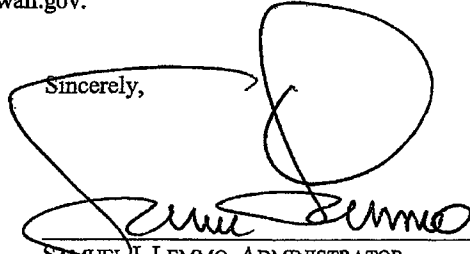
Figure 6: Example of letter sent to homeowners regarding debris from temporary erosion control structures

EXHIBIT U

Re: Emer CDUA OA-19-05

Should you have any questions pertaining to this letter, please contact Shellie Habel, University of Hawaii Sea Grant Extension Agent in the DLNR Office of Conservation and Coastal Lands at (808) 587-0049 or Shellie.L.Habel@Hawaii.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', written over a horizontal line.

SAMUEL J. LEMMO, ADMINISTRATOR
OFFICE OF CONSERVATION AND COASTAL LANDS

CC: Chair
Honolulu C&C Parks and Rec.
Honolulu C&C Planning Department