

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
**Honolulu, Hawai'i**

January 22, 2021

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

**REGARDING:** Conservation District Enforcement Case, OA 20-41  
**Regarding an** Alleged Unauthorized Structure Located Along the  
Shoreline Within the Conservation District at Portlock Beach  
Maunalua Bay, Oahu

**BY:** Wells Trust (Robert S. Wells, Trustee)  
245 Portlock Road  
Honolulu, HI 96825

And

Maunalua Bay Beach Ohana #29  
735 Bishop Street, Suite 433  
Honolulu, Hawaii 96813

**LOCATION:** Honolulu, Oahu  
**TAX MAP KEY:** (1) 3-9-002:003 (Wells Trust) and (1) 3-9-002:029 (Beach Ohana)

**SUBZONE:** Resource

**DESCRIPTION OF AREA:**

The subject area is located along the coastline of Maunalua Bay in the Portlock area of eastern Oahu, seaward of TMKs: (1) 3-9-002:003 and (1) 3-9-002:029 (*Figures 1-2*). Lot TMK: (1) 3-9-002:003 is a residential lot owned by the Wells Trust, while lot TMK: (1) 3-9-002:029 is a beach reserve lot, located directly Makai of the subject residential lot. The beach reserve lot is owned by a Hawaii non-profit corporation known as Maunalua Bay Beach Ohana #29, which includes Robert and Christa Wells of the Wells Trust and representatives of the subject residential lot. Lands seaward of the shoreline are located in the Conservation District, Resource subzone, and are considered public land. As stated within the formal advisory opinion of the Attorney General released on December 12, 2017 (*Exhibit A*), "*The State owns all lands makai of the 'the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the line of debris left by the wash of waves'*", and further that, "[b]y definition, if the shoreline moves landward, then the ownership line also moves mauka." beaches and shoreline features remain our common heritage as part of the public trust when the shoreline moves."



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*Figure 1 - Map of Oahu*



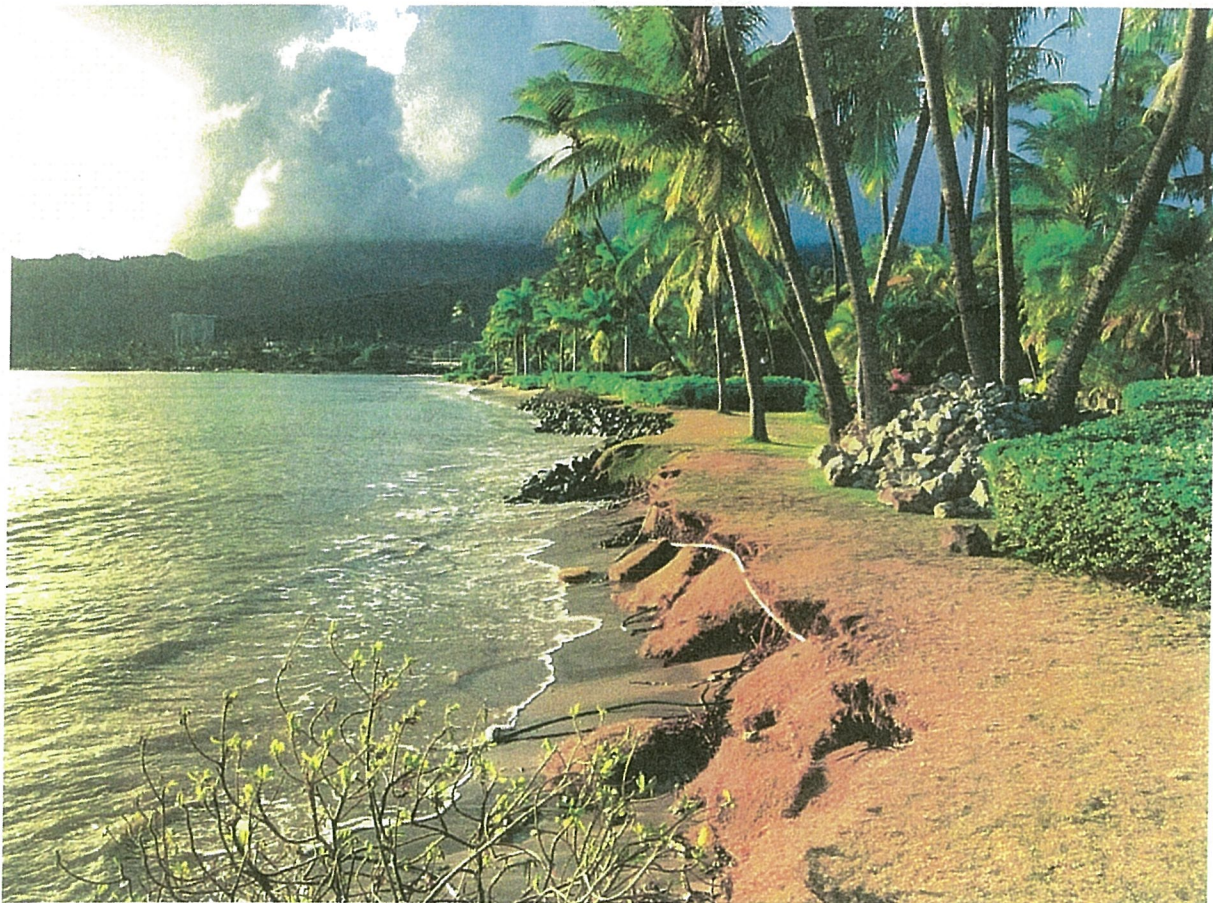
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*Figure 2 - East Oahu Map Showing Site Location*

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**ALLEGED UNAUTHORIZED LAND USES:**

Staff from the Office of Conservation and Coastal Lands visited the subject property on multiple occasions, including on July 21, July 23, September 26, and October 12. On July 21, 2020 OCCL staff reported observing what appeared to be work done in the shoreline area that included the placement of a large quantity of rocks and boulders, as well as objects (i.e. PVC irrigation tubing) projecting out of the erosion scarp into the sandy beach area. *(Figure 3)*. On July 23, 2020 OCCL staff reported observing work actively being done to install a rock revetment along the erosion scarp using previously staged rocks and boulders *(Figure 4)*. On July 28, 2020 OCCL staff reported that all staged rocks had been installed along the scarp in the form of a completed rock revetment. *(Figure 5)*. On September 26, 2020 OCCL staff reported that rocks from the rock revetment had been removed and placed landward of the scarp and that a cement groin feature had been installed on the eastern end of the subject beach area *(Figure 6)*. On October 12, 2020 OCCL staff reported that rocks had been reinstalled along scarp to form a completed rock revetment *(Figure 7)*.



*Figure 3 - Staged Rocks Located on Subject Parcels, Facing Northwest*



*Figure 4 - Rocks Actively Being Placed Along Scarp Located Seaward of Residential Parcel and Located on and Seaward of Subject Beach Reserve Parcel, Facing Southeast*



*Figure 5 - Completed Revetment Placed Along Scarp Seaward of Residential Parcel and Located on and Seaward of Subject Beach Reserve Parcel, Facing Southeast*



*Figure 6-  
Rocks Removed and Placed Landward of Scarp, Groin Installed*



*Figure 7-  
Rocks Placed Along Scarp for the Second Time, Completing the  
Rock Revetment and Groin*

On July 14, following staging of the rocks and prior to installation of the rock revetment, the Office of Conservation and Coastal Lands (OCCL) sent a Notice of Alleged Unauthorized Land Use to the Wells Trust regarding the subject alleged unauthorized land use (*Exhibit B*). Mr. Wells

responded to the DLNR violation notice on July 14, 2020 (*Exhibit CJ*), in which the letter states the following:

*There is no work going on at this property or seaward thereto. The photos and descriptions attached to your Notice appear to relate to an adjacent property. Over the years we have periodically done maintenance on the loose rock that has historically been there to retard erosion as was noticed to the DLNR in previous correspondence in 2009. As a point of interest, the private land directly adjacent to the beach is owned by the Maunalua Bay Beach Ghana #29, a non-profit Hawaii Corporation. The land was acquired by the Ghana from Kamahaha Schools (Bishop Estate) in 2005.*

It appears that Mr. Wells' comments are somewhat misleading as the work conducted is in fact seaward of his property and likely located on the beach reserve lot which appears to have eroded and is now considered submerged land seaward of the erosion scarp.

**PROPERTY HISTORY:**

The subject residential lot TMK: (1) 3-9-002:003 is located immediately Mauka of beach reserve lot TMK: (1) 3-9-002:029. The subject beach reserve lot is owned by The Maunalua Bay Beach Ohana 29, a non-profit corporation formed by the owners of lots located directly Mauka of the beach reserve lot. This non-profit corporation, which includes Robert and Christa Wells of the Wells Trust and representatives of the subject residential lot, was formed for the specific and sole purpose of owning the beach reserve lot. The beach reserve lot was acquired via quitclaim deed from KS on May 6, 2005 (*Exhibit DJ*).

**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 stonn 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, Hawaii Revised Statutes (HRS).

Staff believes the unauthorized land uses occurred within the Conservation District based upon the location of the work seaward of Well Trust and Maunalua Bay Beach Ohana #29 properties. 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 Hawaii 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 work that was conducted at the subject property appears to consist of the placement of solid material in the form of a rock revetment within the Conservation District for use as an erosion control structure. Placement of this structure was not authorized under Hawaii 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.

Installation of the rock revetment was not authorized under Hawaii Administrative Rules (HAR) for Unencumbered Public Lands, in HAR 13-10-221. The work done violates HAR 13-221-23 , GEOLOGICAL FEATURES, "No person shall destroy, disturb, or mutilate any geological features or dig, or remove sand, earth, gravel, minerals, rocks, fossils, coral or any other substance on the premises . No person shall excavate or quarry any stone, or lay, set, or cause any blast or explosion, or assist in these acts within the premises, except as provided by law or with the written permission of the board or its authorized representative.", as well as HAR 13-221-28 (a), PUBLIC PROPERTY , "No person shall destroy, deface, or remove any natural feature or natural resource within the premises."

**DISCUSSION:**

Chronic coastal erosion is widespread across the Hawaiian Islands. Local studies, have shown that 70% of beaches on Kauai' i, O'ahu, and Maui are chronically eroding such that shorelines are progressively receding landward.<sup>1</sup> Coastal armoring can degrade and even destroy beaches by impounding natural sand resources, thereby impacting the sediment budget of a beach. Shoreline armoring also increases wave turbulence, wave reflection, and wave refraction, which can accelerate coastal erosion both fronting the coastal armoring and on neighboring properties adjacent to the armoring.

Based on the information compiled regarding installation of the subject rock revetment, a shoreline structure was built within the shoreline area without authorization from the Department. No State, County, or Federal permits were obtained or even applied for in order to perform the subject work.

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<sup>1</sup> Fletcher, C.H., Romine, B.M., Genz, A.S., Barbee, M.M., Dyer, Matthew, Anderson, T.R., Lim, S.C., Vitousek, Sean, Bochicchio, Christopher , and Richmond, B.M., 2012, National assessment of shoreline change: Historical shoreline change in the Hawaiian Islands: U.S. Geological Survey Open-File Report 2011- 1051, 55 p. (Also available at <http://pubs.usgs.gov/of/2011/1051>.)

The beaches of Hawaii are held in trust by the State for the benefit of present and future generations. There should be consequences when an individual unilaterally and willfully acts in such a way that endangers a public trust resource.

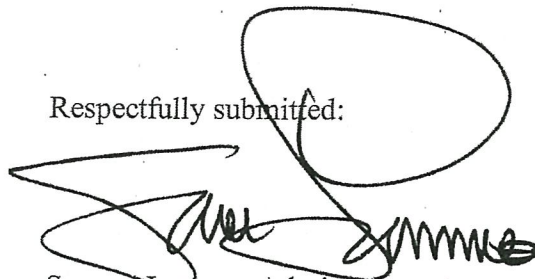
On July 14, 2020, following staging of the rocks and prior to installation of the rock revetment, the Office of Conservation and Coastal Lands (OCCL) sent a Notice of Alleged Unauthorized Land Use to the Wells Trust regarding the subject alleged unauthorized land use (See Exhibit B). The Notice was acknowledged on July 20, 2020 by Mr. Wells. Staff can attest to at least three (3) separate instances in which work occurred despite the Wells Trust receiving and acknowledging the Notice of Alleged Unauthorized Land Use. Despite being installed, removed, and then re-installed, the newly constructed seawall remains in place as of the writing of this staff report. No State permits were obtained or applied for in order to perform the subject work; for these reasons DLNR staff believes that enforcement action needs to be taken.

**AS SUCH, STAFF RECOMMENDS:**

That the Board find the landowner (Robert S. Wells, Trustee of the Wells Trust) of TMK: (1) 3-9-002:003, who is also partial Landowner of TMK: (1) 3-9-002:029 located along the coastline of Maunaloa Bay in the Portlock area of eastern Oahu in violation of Chapter 183-7, HRS and Chapter 13-5-6, HAR, subject to the following:

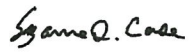
1. The Landowner of TMK: (1) 3-9-002:003 is fined \$15,000 for construction of an unauthorized shoreline structure, pursuant to Chapter 183C-7, HRS;
2. The Landowner is fined an additional \$45,000 for continuing work after receiving the Notice of Alleged Unauthorized Land Use on at least three (3) separate days;
3. The Landowner is fined an additional \$5,000.00 for administrative costs associated with the subject violation;
4. The Landowner shall pay all fines (total \$65,000) within thirty (60) days of the date of the Board's action;
5. The Landowner shall remove the shoreline protection structure in its entirety within 90 days of the order of the Board;
6. 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
7. 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:

A large, stylized handwritten signature in black ink, appearing to read 'Samuel Lemmo', is written over the text 'Respectfully submitted:'.

Samuel Lemmo, Administrator  
Office of Conservation and Coastal Lands

Approved for submittal:

A handwritten signature in black ink, appearing to read 'Suzanne D. Case', is written below the text 'Approved for submittal:'.

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

