

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 Hawai'i
Honolulu, Hawai'i

REGARDING: Conservation District Enforcement Case OA 21-03, Regarding an Alleged Unauthorized Land Use Along the Shoreline on State Land Within the Conservation District

BY: Liam McNamara & Brandee McNamara
59-181A Ke Nui Road
Hale'iwa, HI 96712

LOCATION: 59-175C Ke Nui Road, Sunset Beach, Hale'iwa, O'ahu
TAX MAP KEY: (1) 5-9-002:026 (Seaward)

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject area is located on O'ahu's north shore, just west of Sunset Beach Park and seaward of TMK (1) 5-9-002:026 (*Figures 1-3*). 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."

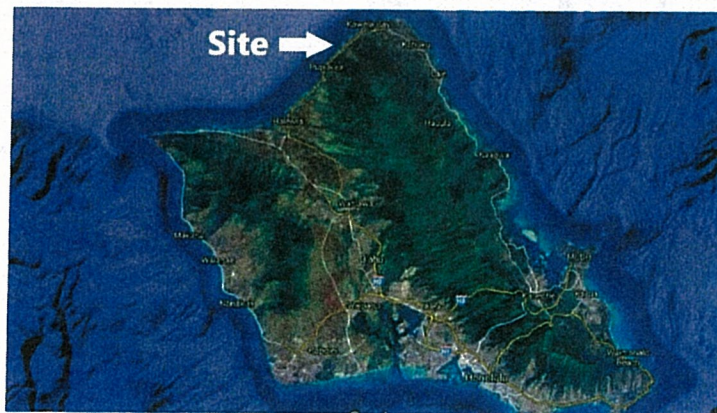


Figure 1 – Map of O'ahu Showing Area



Figure 2 – Map of North Shore, O'ahu Showing Site



Figure 3 – Map Showing Property Location in Sunset Beach Area

The subject property, which contains a single-family residence, is adjacent to a public beach access (Access No. 280A) which is located due southwest of the property. 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.

While O'ahu's north shore is known worldwide for its extremely large north Pacific swells during the winter, it is also subject to waves driven from northeasterly trade winds all year-round. Despite their individual differences, both summer and winter wave activities have a drastic effect on the beach itself within the subject area. 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 beach in the Pūpūkea to Paumalū area is composed of carbonate coarse sand with occasional outcrops of limestone that are intermittently buried or exposed by the shifting sand. The underlying sediments being largely composed of coarse-grained sand suggests deposition by waves (as opposed to wind), and thus the dune upon which the subject lot sits could be considered a high wave berm. These types of dunes are active components of the beach systems and are highly vulnerable to episodic erosion events, such as those that occur within the subject area on a seasonal basis.

Long-term shoreline change rates in the vicinity of the subject property have trended towards chronic erosion (approximately 0.5 to 0.6 feet per year) (*Figure 4, on next page*). In addition to the long-term erosional trends are large seasonal fluctuations in beach width and shoreline position generated by sediment exchange among the eastern and western segments of the sediment cell due to the seasonal variability in wave and wind patterns.

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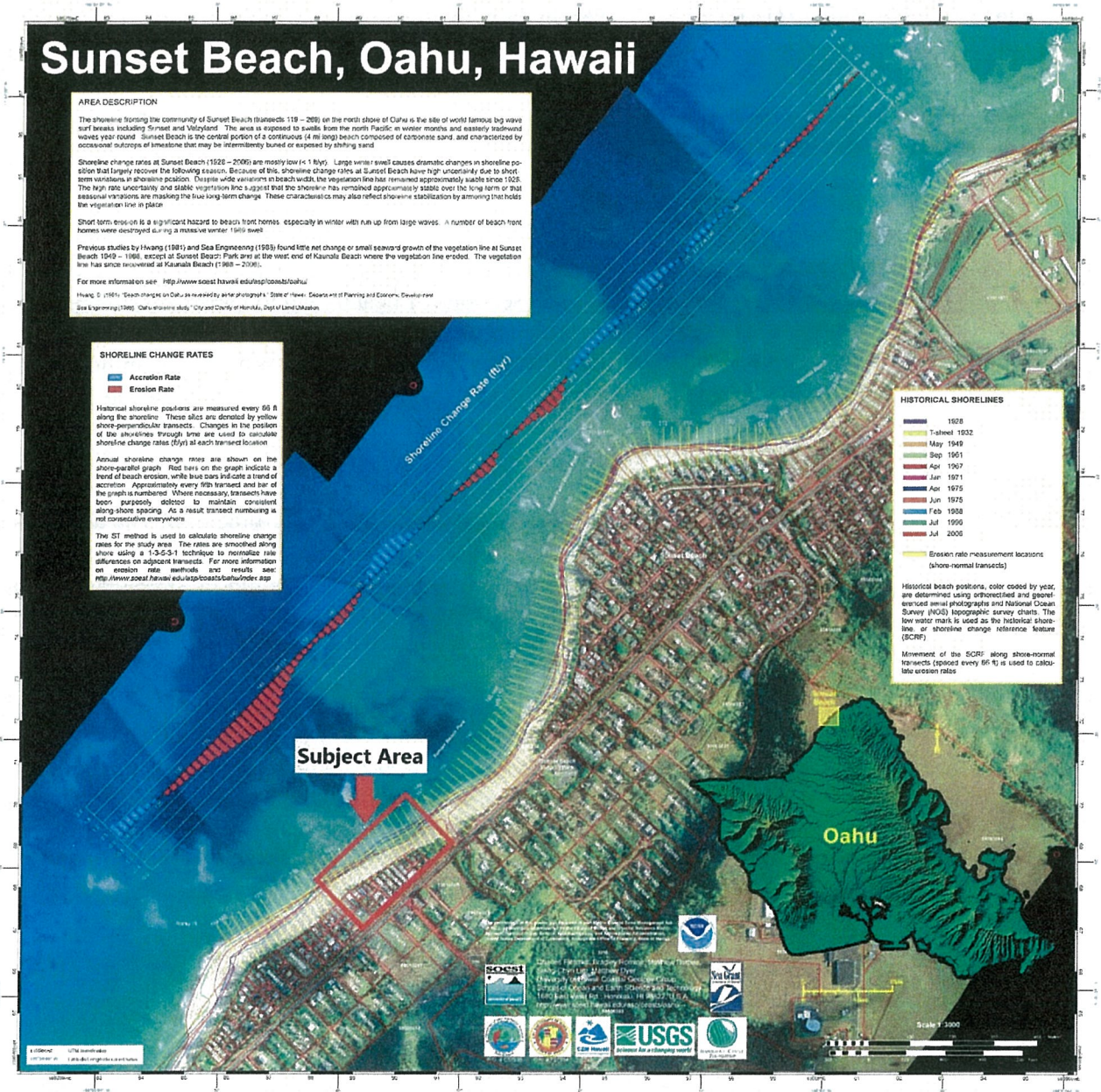


Figure 4 – Map Showing Trend of Chronic Erosion in Sunset Beach Area

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. The sand berms upon which the homes in the area are built are geomorphic features characteristically formed during large wave events, as evidenced by the predominantly coarse-grained sand that suggests deposition by waves, not wind. These sand berms are severely vulnerable to episodic erosion events, which in-turn can threaten the integrity of structures that sit

on top of them. Consequently, homes in the subject area – including the subject property - have a long history of problems with coastal erosion.

PROPERTY HISTORY - PHOTOS:



Figure 5 – September 10, 1996 Photo Showing Wall's Existing Condition



Figure 6 – September 26, 2001 Photo Showing Wall's Existing Condition



Figure 7 – March 2, 2005 Photo Showing Wall's Existing Condition

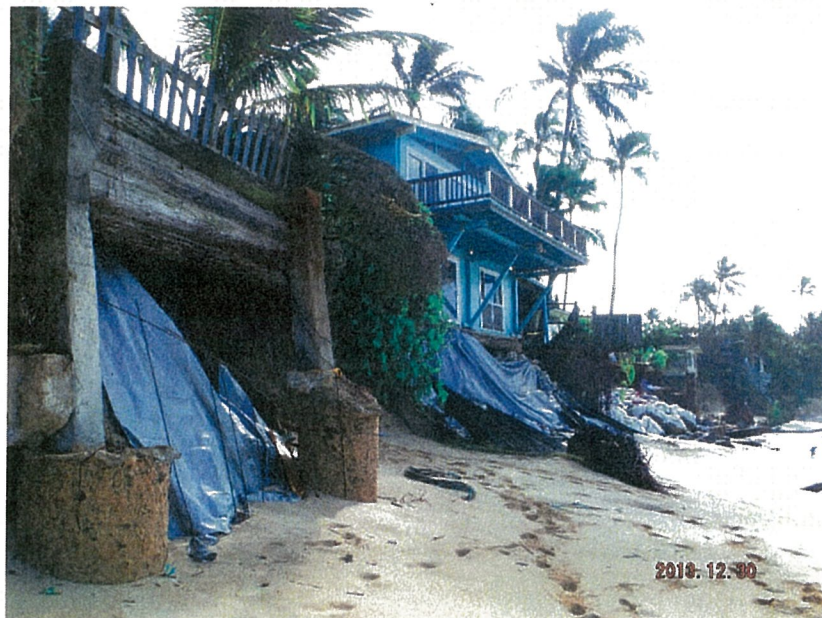


Figure 8 – December 30, 2013 Photo Showing Wall's Existing Condition Following an Erosion Event



Figure 9 – March 5, 2014 Photo Showing Wall's Existing Condition Following Sand Push

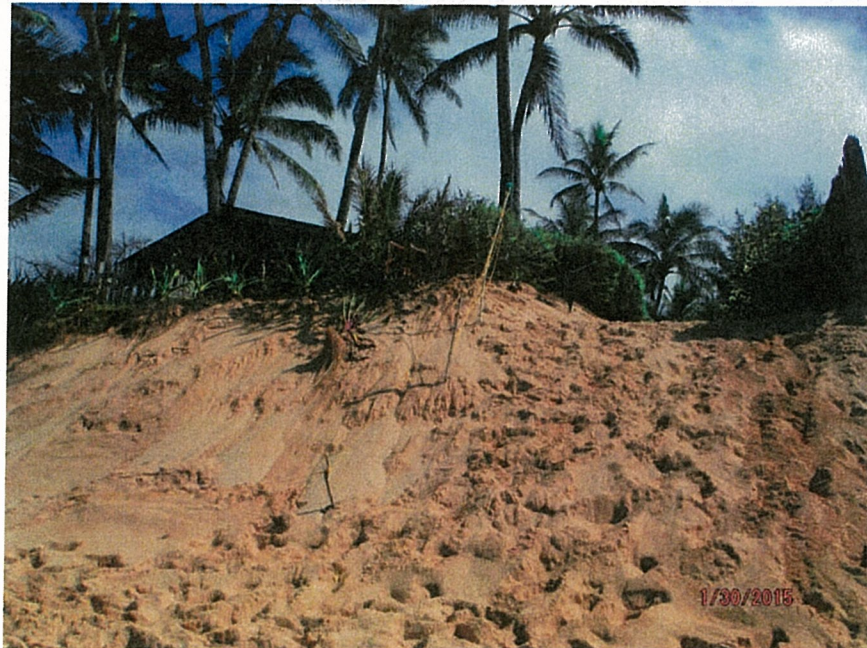


Figure 10 – January 30, 2015 Photo Showing Existing Condition



Figure 11 – September 17, 2018 Photo Showing Existing Condition Following an Erosion Event

PROPERTY HISTORY – OCCL MATTERS

January 2014: OCCL allows sand push by a variety of homeowners including John Nichols, former owner of subject property, Emergency CDUA OA 14-54; (*Exhibit B*)

March 2015: OCCL allows sand push by a variety of homeowners including John Nichols, former owner of subject property, Correspondence OA 15-142; (*Exhibit C*)

August 2016: OCCL **does not allow sand push** by homeowners Alice Lunt, Rubert Oberlohr, and John Nichols, former owner of subject property, Correspondence OA 17-5; *(Exhibit D)*

November 2017: OCCL **allows sand push** by homeowners Alice Lunt, Rubert Oberlohr, and John Nichols, former owner of subject property, Correspondence OA 18-110; *(Exhibit E)*

March 2018: OCCL **allows sand push** by homeowners Alice Lunt, Rubert Oberlohr, and John Nichols, former owner of subject property, Correspondence OA 18-190; *(Exhibit F)*

August 2018: Chairperson **denies request for emergency temporary erosion control** in the form of sandbags by former homeowner John Nichols, Emergency CDUA OA 19-3; *(Exhibit G)*

August 2019: OCCL send new owners of the subject property Liam & Brandee McNamara a letter regarding **alleged unauthorized land use within the Conservation District** in the form of two stairways, a wooden bench, and black fabric placed in the shoreline area, Violation OA 20-1; *(Exhibit H)*

June 2020: OCCL send landowners Liam & Brandee McNamara a letter regarding **alleged unauthorized land use within the Conservation District** in the form of a staircase placed in the shoreline area, Violation OA 20-31; *(Exhibit I)*

August 2020: Subject Violation. OCCL send landowners Liam & Brandee McNamara a letter regarding **alleged unauthorized land use within the Conservation District** in the form of alleged construction of a seawall in the shoreline area, Violation OA 21-03; *(Exhibit J)*

SUBJECT VIOLATION & IMMEDIATE BACKGROUND

On June 9, 2020, OCCL staff visited the McNamara property and met with Liam McNamara to discuss his removal of the alleged violation in a letter sent for the aforementioned OCCL Violation OA 20-31, consisting of a staircase built within the shoreline area. The subject violations appeared to have been removed, and the McNamaras were sent a compliance letter resolving these violation matters on June 15, 2020.

Seven weeks later, on July 28, 2020, a visit to the subject area by OCCL staff revealed that recent large wave and extreme high tide events had critically damaged the subject property's seawall (*Figure 12, on next page*).

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Figure 12 – July 28, 2020 Photo Showing Damaged Seawall

Approximately one week later, in early August 2020, OCCL received an anonymous complaint about construction occurring in the shoreline area fronting the subject residence. A Notice and Order letter was sent to the McNamaras on August 6, 2020 for the unauthorized placement of solid materials within the Conservation District (*Exhibit I*).

Despite this, construction appears to have continued on the structure in the shoreline area fronting the subject property. On Saturday, August 15, 2020, more than two weeks after the violation letter had been sent, a visit to the subject area by DOCARE officers revealed that there had been work done within the shoreline area in the form of cement seawall construction and placement of materials in the shoreline area (*Figures 13-16, on next pages*).

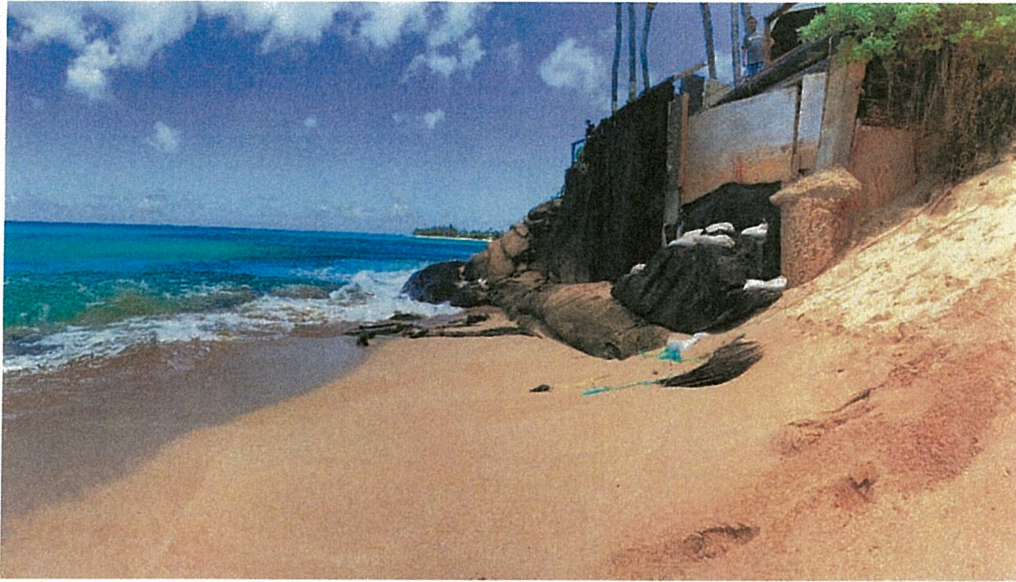


Figure 13 – August 15, 2020 Photo Showing Alleged Construction, Work concealed by black filter fabric and Plywood Forms



Figure 14 – August 15, 2020 Photo Showing Alleged Construction



Figure 15 – August 15, 2020 Photo Showing Alleged Construction

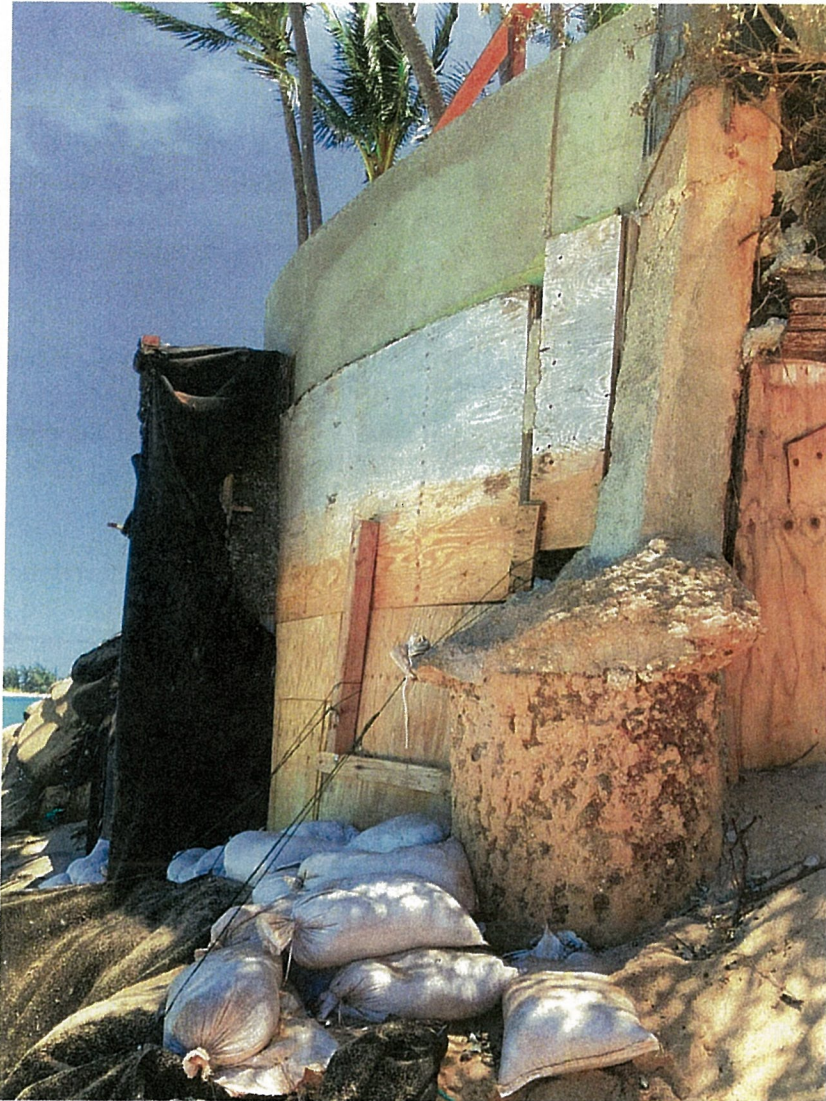


Figure 16 – September 4, 2020 Photo Showing Concrete Makeup of Main Components of the Construction

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

The work the was conducted at the subject property appeared to consist of the construction of an unauthorized seawall and placement of materials in the Conservation District for use as an erosion control structure that was not authorized under 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.

The OCCL firmly believes that the work done at the subject property violates the above referenced Administrative Rules. The 'Property History' section above shows the existing seawall as it was throughout time prior to the McNamara's purchase of the subject property. It is clear that the recent work done on the subject property does not consist of repairs or maintenance, but rather the construction of a new seawall in its entirety within the shoreline area, which is State-owned land.

As mentioned in the 'Property History' section of the report, this subject violation (OCCL Vio. OA 21-03) is not the first time that the McNamara's have placed solid materials on Conservation District land since their purchase of the subject property in February 2019. They were previously sent letters from OCCL for placing solid materials in Conservation District Lands in August 2019, as well as June 2020; these were filed under OCCL Violation numbers OA 20-1 and OA 20-31 and are listed in this report as *Exhibits H & I*. These correspondences, as well as the McNamara's compliance with them, shows that the McNamara's were aware of the rules regarding the

placement of solid materials, as well as doing work within, the Conservation District without State authorization.

DISCUSSION:

The beaches of Hawai'i are held in trust by the State for the benefit of present and future generations. The State should be involved when individuals need to temporarily use beach areas for construction purposes, and there should be consequences when an individual unilaterally and willfully acts in such a way that endangers a public trust resource.

The beaches of O'ahu's north shore are some of the state's most valued natural resources, as well as a key economic engine for the north shore community. Sunset Beach in particular is one of the more famous beaches in the area and is heavily exposed to foot traffic from the public at all times of the year. Many of the shorefront homes in the area, such as the subject property, are built on the frontal sand dune and thus vulnerable to the effects of both chronic and seasonal coastal erosion.

Coastal erosion occurs as a result of the following phenomena: (1) Seasonal changes in waves and currents that moves 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 seas level rise; and (3) Human impacts to sand availability through sand impoundment and supply disruption from development and coastal engineering.

Hawai'i is particularly vulnerable to coastal erosion because it is surrounded by water and is subject to storm waves on a regular basis. Development on beaches and dunes contributes to narrowing and loss of beaches, and the subject property is one of a stretch of homes built atop the frontal sand dune adjacent to Sunset Beach Park. Many of these homes are now fronted by erosion control structures, both authorized and unauthorized, in an attempt to mitigate the effects of the chronic coastal erosion experienced in the area. There have recently been unauthorized structures in the subject area that the OCCL had previously expressed concern about in regards to their potential to affect neighboring properties, largely due to potential flanking effects (e.g., building an erosion control structure on your property may result in an increased in erosion on your neighbor's property).

The beach in the subject area is subject to both long-term and episodic erosion, and many of the shorefront properties in the area, including the subject property, are at risk. During the last several years, beach erosion in this area appears to have intensified significantly. While such erosion could be attributed to decadal scale fluctuations in beach morphology (normal accretion and erosion cycles), it is more likely that the erosion has become chronic and permanent and as a result of acceleration in sea level rise this century. Thermal expansion of the oceans and melting glaciers and ice fields is causing sea level rise resulting in the landward migration of the active beach.

The OCCL has taken a number of measures throughout the past two decades to address the progressively damaging chronic and seasonal erosion concerns in the greater Pūpūkea to Paumalū (Sunset) Beach area. The OCCL has worked with City Parks to develop and authorize City-led sand pushing operations to mitigate seasonal erosion at Sunset Beach Park, as well as many of the beach rights-of-way along the north shore. The OCCL has also allowed preventative berm

maintenance projects (sand pushing) upon request with private landowners that meet relevant criteria, which provide added protection (an “erodible buffer”) while conserving the natural characteristics of the public beach environment.

Additionally, the OCCL has provided temporary emergency authorizations for geotextile cloth erosion control measures fronting several homes in the subject area. The Department 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. Requests such as those above 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-Paumalū Beach stretch.¹

The OCCL has been significantly challenged by the events on the north shore over the past several years. The office has been trying to balance the security needs of the homeowners with protection of the sand beach. Without intervention by this office with a combination authorizing sand pushing/shaping and soft erosion control measures, many homes would have already been gone. Yet, many homeowners have installed, and continue to install, systems without our consent or authorization forcing us to initiate enforcement proceedings.

Based on the information received for the most recent violation - the construction of the seawall - as well as the information compiled and retrieved from previous correspondences regarding the subject property, it is clear that a shoreline structure was built within the shoreline area without authorization from the Department. The former structure, depicted in historical photographs, failed and the shoreline moved (or was trying to move) landward as evidenced by the destruction at the site. A new foundation and wall were erected by the landowner to save his property from further loss, but this work occurred without permits and clearly within a location that is considered to be within state lands and the Conservation District (see AG Opinion 2017-1).

While the Hawai'i Administrative Rules governing the Conservation District allow for repairs and maintenance of structures, the provided definition pursuant to HAR 13-5-2 states that: "Repair, maintenance, operation means land uses and activities necessary and incidental for the continued conduct of a use, whether nonconforming or permitted, including repairs not exceeding fifty per cent of the replacement value of the structure or use." The property owner might argue that work involved a repair of less than 50 percent of the total replacement cost of the wall and that repairs are allowed under standard zoning laws. However, based on the evidence in this report its clear that the old wall collapsed, and a substantially new and better structure has been built in its place.

¹ 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.

As noted in this report, due to the previous violations in the short time since the McNamaras have owned the property OCCL had informed the landowners that they were not able to perform unauthorized construction or place unauthorized materials within the Conservation District without prior approval, which they appeared to understand. In addition to the previous violations, the landowners were informed of the subject violation in a letter dated August 6, 2020, listed as *Exhibit J*. Nonetheless, construction continued, and the newly constructed seawall remains in place today. 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 pursuant to Chapter 183C, HRS, the Board find the landowners of TMK: (1) 5-9-002:026 in Sunset Beach, Hale'iwa, O'ahu, who are Liam and Brandee McNamara, jointly and severally, in violation of Chapter 183-7, HRS and Chapter 13-5-6, HAR, for constructing an unauthorized seawall within the Conservation District subject to the following:

1. That the landowners, Liam and Brandee McNamara, are fined \$15,000 for construction of an unauthorized shoreline structure in the Conservation District and on State Submerged Land, pursuant to Chapter 183C-7, HRS;
2. That the landowners, Liam and Brandee McNamara, are fined an additional \$15,000 (\$15,000/per day per violation) for continuing to perform unauthorized work after receiving the Notice of Alleged Unauthorized Land Use in the Conservation District on at least one separate day pursuant to Chapter 183C-7, HRS;
3. The Landowners, Liam and Brandee McNamara, are fined an additional \$5,000.00 for administrative costs associated with the subject violation;
4. The Landowners, Liam and Brandee McNamara, shall pay all fines (total \$35,000) within sixty (60) days of the date of the Board's action;
5. The Landowners, Liam and Brandee McNamara shall remove the shoreline protection structure in its entirety within 90 days of the order of the Board; landowner is allowed to apply for temporary shoreline protection pursuant to Conservation District Rules upon removal of the subject structure;
6. That in the event of failure of the landowners, Liam and Brandee McNamara, to comply with any order herein, the landowners shall be fined an additional \$15,000.00 per day until the order is complied with;
7. That all fines and directions apply to Liam McNamara and Brandee McNamara, jointly and severally, and
8. That in the event of failure of the landowners, Liam and Brandee McNamara, 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

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

Approved for submittal:

Suzanne D. Case

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

DAVID Y. IGE
GOVERNOR



DOUGLAS S. CHIN
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, Hawaii 96813

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY
GENERAL

December 11, 2017

The Honorable Suzanne D. Case
Chairperson, Board of Land and Natural Resources
State of Hawai'i
1151 Punchbowl Street, Room 130
Honolulu, Hawai'i 96813

Dear Chairperson Case:

RE: Shoreline Encroachment Easements

INTRODUCTION

By memorandum dated August 10, 2017, you asked for our advice regarding the Board of Land and Natural Resource's practice of requiring private owners of coastal properties to obtain easements for structures that were originally constructed on private property but are now located on State-owned land due to the landward migration of the shoreline.

QUESTIONS AND SUMMARY ANSWERS¹

1. What is the dividing line between public and private property with respect to oceanfront property?

Short answer: 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." For convenience, we refer to this description as the

¹ The intent of your memorandum is clear even though it does not directly ask specific questions. We have taken the liberty of setting out questions we believe are raised.

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Exhibit A – Attorney General Opinion re: Shoreline Migration and Ownership, December 11, 2017

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"shoreline." This use of the term "shoreline" is closely related to but not exactly the same as the "certified shoreline" described in chapter 205A, Hawaii Revised Statutes (HRS). This line (the shoreline) is identical to -- and indeed defines -- the dividing line between public and private property (the ownership line).²

2. How is the ownership line affected when there is landward migration of the shoreline caused by erosion or sea level rise?

Short answer: By definition, if the shoreline moves landward, then the ownership line also moves mauka.³

3. What, if anything, is the effect of statutes that require the Board of Land and Natural Resources (Board) or the Attorney General to approve "acquisition" of real property?

Short answer: The State already owns an inchoate interest in land that might be gained through erosion or sea level rise. Ripening of this inchoate interest is not "acquisition" of land covered by these statutes. This result is fortified by the Supreme Court's decision in *Gold Coast Neighborhood Ass'n v. State*, 140 Haw. 437, 403 P.3d 214 (2017). The Court held that the statutes do not "imperatively require" abrogation of common law rules or "evinced an express legislative intent to do so."

4. Does this result violate private owners' due process rights or constitute a "taking" of private property?

Short answer: No. The Hawai'i Supreme Court has specifically considered and rejected such claims. As to federal

² The shoreline and ownership lines are the same where the shoreline is not affected by structures. No Hawai'i case or statute addresses the question of where the ownership line is when the shoreline is affected by a seawall or other man-made structure. We have not found it necessary to address that question in providing this advice.

³ The term "mauka" means "inland." *Leslie v. Bd. of Appeals of County of Hawai'i*, 109 Haw. 384, 386, 126 P.3d 1071, 1073, note 3 (2006). A "mauka" movement of the ownership line means toward the mountain or (equivalently) away from the sea.

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taking law, the State's inchoate rights in the property existed prior to private ownership. The interest lost was not part of private title to begin with and cannot be the basis of a taking claim.

5. Is the Attorney General required to give prior approval to State ownership of land by reason of erosion or sea level rise? Is the Attorney General required to approve as to legality and form documents relating to land owned by the State by reason of erosion or sea level rise?

Short answer: No. Ownership of land by erosion or sea level rise is not an acquisition of land and the State is not acquiring land within the meaning of those statutes. Therefore the statutes requiring that the Attorney General review and approve land acquisitions do not apply.

6. Can the Board require the former landowner to pay fair market value in order to obtain an easement or other interest in land now owned by the State?

Short answer: Yes, applicable statutes specifically provide for the payment of fair market value in most cases.

DISCUSSION

1. What is the dividing line between public and private property with respect to oceanfront property?

It is the uniform law of every coastal state that land below (seaward or "makai" of) the shoreline is owned by the State and held in public trust⁴ for the people of the State.⁵

⁴ The public trust doctrine is a common law doctrine, inherited from England and dating back to Roman law, dictating that all submerged lands are the property of the state and held in trust for the people. *Shively v. Bowlby*, 152 U.S. 1 (1894). The seminal United States case for the public trust doctrine is *Illinois Cent. R.R. Co. v. State of Illinois*, 146 U.S. 387 (1892). The seminal case in Hawai'i is *King v. Oahu Ry. & Land Co.*, 11 Haw. 717 (1899). In Hawai'i the public trust is also recognized in the Constitution, article XI, section 1.

⁵ The same issue can arise as to rivers, lakes, or other bodies of water. Indeed *Illinois Cent. R.R. Co.*, see *supra* note 4,

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Most states define the shoreline/ownership boundary as the mean high tide mark. *Purdie v. Attorney Gen.*, 143 N.H. 661, 666, 732 A.2d 442, 446-47 (1999):

The few States that reject the mean high tide mark as the public-private shoreland boundary do so on distinct histories not applicable to our State. See, e.g., *Application of Ashford*, 50 Haw. 314, 440 P.2d 76, 77 (1968) (Hawaii boundary based on Hawaiian King's issuance of royal patents in 1866); *Bell v. Town of Wells*, 557 A.2d 168, 171-72 (Me.1989) (Massachusetts and Maine adopted mean low water as boundary line based on 1647 Massachusetts ordinance); cf. *Opinion of the Justices (Public Use of Coastal Beaches)*, 139 N.H. at 88-89, 649 A.2d at 608 (refusing to adopt Massachusetts rule for New Hampshire).

See also Margaret E. Peloso & Margaret R. Caldwell, *Dynamic Property Rights: The Public Trust Doctrine and Takings in a Changing Climate*, 30 Stan. Envtl. L.J. 52, 57 (2011) ("In nearly all cases, the lines for defining the limits of private title and public access are the mean high water and mean low water marks.")

Purdie rightly identifies Hawai'i as a state with a unique approach to defining the shoreline. This approach was initiated and explained in three landmark cases, all authored by then Chief Justice William S. Richardson.

In *Application of Ashford*, 50 Haw. 314, 440 P.2d 76 (1968), the Court considered the ownership line in the context of a request to register land title in the land court:

Clinton R. Ashford and Joan B. S. Ashford, the appellees, petitioned the land court to register title to certain land situate on the Island of Molokai. The lands are the makai (seaward) portions of Royal Patent 3004 to Kamakaheki and Royal Patent 3005 to Kahiko, both issued on February 22, 1866.

concerned sale of land filled land reclaimed from Lake Michigan. Freshwater shorelines present some extraneous complications and are not further considered in this letter.

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The question before this court is the location of the makai boundaries of both parcels of land, which are described in the royal patents as running 'ma ke kai' (along the sea). The appellees contend that the phrase describes the boundaries at mean high water which is represented by the contour traced by the intersection of the shore and the horizontal plane of mean high water based on publications of the U. S. Coast and Geodetic Survey.

50 Haw. at 314-15, 440 P.2d at 76-77.

The Court held that the boundary (ownership line) was not the mean high water mark. Rather the boundary -- pursuant to Hawaiian custom as established by kama'aina⁶ testimony -- is further mauka, specifically:

along 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 that the trial court erred in finding that it is the intersection of the shore with the horizontal plane of mean high water.

50 Haw. at 14, 440 P.2d at 77 (1968). That landmark ruling was confirmed and elaborated on in *Hawaii County v. Sotomura*, 55 Haw. 176, 517 P.2d 57 (1973), and *Application of Sanborn*, 57 Haw. 585, 562 P.2d 771 (1977). See *Sotomura*, 55 Haw. at 182, 517 P.2d at 62:

We hold as a matter of law that where the wash of the waves is marked by both a debris line and a vegetation line lying further mauka, the presumption is that the upper reaches of the wash of the waves

⁶ "Kama'aina" is defined as "Native-born, one born in a place, host." Other relevant senses include "acquainted [with], familiar." M. Pukui & S. Elbert, *Hawaiian Dictionary* 9 (rev. ed. 1986).

Leslie v. Bd. of Appeals of County of Hawai'i, 109 Haw. 384, 386, 126 P.3d 1071, 1073 (2006), as amended (Feb. 28, 2006).

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over the course of a year lies along the line marking the edge of vegetation growth. The upper reaches of the wash of the waves at high tide during one season of the year may be further mauka than the upper reaches of the wash of the waves at high tide during the other seasons. Thus while the debris line may change from day to day or from season to season, the vegetation line is a more permanent monument, its growth limited by the year's highest wash of the waves.

See *Sanborn*, 57 Haw. at 182, 562 P.2d at 773 (1977):

The law of general application in Hawaii is that beachfront title lines run along the upper annual reaches of the waves, excluding storm and tidal waves.

2. How is the ownership line affected when the shoreline moves landward or mauka because of erosion or sea level rise?

These same cases address and resolve the issue of whether and how ownership changes when the shoreline moves landward or mauka due to erosion or rising sea levels.

Sotomura is particularly relevant. In that case, the private owner indisputably owned the land in the past. In fact, the private owner had registered the property in the land court. The land court had determined the seaward boundary of the property and described it by distances and azimuths. The shoreline moved mauka due to erosion. The Court framed the question as "whether title to land lost by erosion passes to the state." The Court noted that this was an issue of first impression in Hawai'i.

The Court held that the answer was "yes," making clear that the ownership was fluid and specifically that it changed with erosion:

We hold that registered ocean front property is subject to the same burdens and incidents as unregistered land, including erosion. HRS § 501-81. Thus the determination of the land court that the seaward boundary of Lot 3 is to be located along high water mark remains conclusive; however, the precise

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location of the high water mark on the ground is subject to change and may always be altered by erosion.

55 Haw. at 180, 517 P.2d at 61.

Even the previous determination of boundaries in land court was not binding where the actual shoreline was altered by erosion:

This court recently rejected the position that the state cannot subsequently challenge title to registered land where the state later discovered that the seaward boundary was located further mauka than shown on the maps, and a portion of the property had become submerged by erosion.

55 Haw. at 181, 517 P.2d at 61 (citing *In re Application of Castle*, 54 Haw. 276, 277, 506 P.2d 1, 3 (1973)).⁷

⁷ *Sotomura* has a complex and murky path after the Hawai'i Supreme Court decision. The United States Supreme Court rejected the owners' petition for certiorari. 419 U.S. 872 (1974). Landowners then sued the County and State officials in federal court. The federal district court judge was the Honorable Dick Yin Wong. Judge Wong was previously the state land court judge. It was his decision that the Hawai'i Supreme Court reversed in *Application of Sanborn*, 57 Haw. 585, 562 P.2d 771 (1977).

Judge Wong ruled in federal court that the Hawai'i Supreme Court deprived landowners of due process by deciding the case on a basis not presented by the parties or actually litigated. Judge Wong also held that the Hawai'i Supreme Court's decision "ignore[ed] vested property rights" and "was so radical a departure from prior state law as to constitute a taking of the Owners' property by the State of Hawaii without just compensation in violation of rights secured to them by the Fourteenth Amendment to the United States Constitution." *Sotomura v. Hawaii County*, 460 F. Supp. 473, 482-83 (D. Haw. 1978).

Although Judge Wong wrote the decision, it appears that Judge Samuel King entered the judgment. Defendants appealed but the

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Importantly, the Court based its ruling on the common law principle that loss of land by erosion is an inherent aspect of littoral property:

The loss of lands by the permanent encroachment of the waters is one of the hazards incident to littoral or riparian ownership. . . . [W]hen the sea, lake or navigable stream gradually and imperceptibly encroaches upon the land, the loss falls upon the owner, and the land thus lost by erosion returns to the ownership of the state. *In re City of Buffalo*, 206 N.Y. 319, 325, 99 N.E. 850, 852 (1912).

55 Haw. at 183, 517 P.2d at 62.

One reason for that common law rule (now abrogated in part by statute, section 171-2, HRS) is the tradeoff between accretion and erosion: "since the riparian owner may lose soil by the action of the water, he should have the benefit of any land gained by the same action." *Id.* (citing 65 C.J.S. *Navigable Waters* § 82(1), at 256 (1966) (footnotes omitted)). See *Application of Banning*, 73 Haw. 297, 303-04, 832 P.2d 724, 728 (1992), where the Court explained that accretion belongs to the littoral landowner.

Sotomura also relied on the public trust doctrine, citing to *King v. Oahu Ry. & Land Co.*, 11 Haw. at 723-24, for the proposition that:

The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.

55 Haw. at 184, 517 P.2d at 63. Public policy therefore "favors extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible." 55 Haw. at 182, 517 P.2d 61-62.

appeal was untimely. See *Sotomura v. Hawaii County*, 679 F.2d 152 (9th Cir. 1982).

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This public policy remains in effect as the Court has repeatedly ruled. *Application of Banning*, 73 Haw. 297, 309-10, 832 P.2d 724, 731 (1992); *Diamond v. Dobbin*, 132 Haw. 9, 26, 319 P.3d 1017, 1034 (2014); *Gold Coast Neighborhood Ass'n v. State*, 140 Haw. 437, 458, 403 P.3d 214, 235 (2017).

The Court reached the same result in *Application of Sanborn*, 57 Haw. 585, 562 P.2d 771 (1977). *Sanborn* also concerned property registered in the land court where the shoreline moved mauka from the land court boundary. The Court framed the issue as:

In addressing the issue of the Sanborns' beachfront title line, the primary question is whether the line is to be determined according to Hawaii's general law of ocean boundaries, or whether certain distances and azimuths contained in the Sanborns' 1951 land court decree of registration are to prevail.

57 Haw. at 588, 562 P.2d at 773.

The Court specifically held that the land court boundary was subject to change in the event of erosion:

We hold that, regardless of whether or not there has been permanent erosion, the Sanborns' beachfront title boundary is the upper reaches of the wash of waves. Although we find that the State is bound by the 1951 decree to the extent that the decree fixes the Sanborns' title line as being 'along the high water mark at seashore', we also find that the specific distances and azimuths given for high water mark in 1951 are not conclusive, but are merely prima facie descriptions of high water mark, presumed accurate until proved otherwise.

57 Haw. at 590, 562 P.2d at 774.

The Ninth Circuit Court of Appeals made the same ruling in *Napeahi v. Paty*, 921 F.2d 897 (9th Cir. 1990). The court there considered ownership of land that was mauka of the shoreline when ceded land was granted to the Territory in 1898. The land later became makai of the shoreline because of erosion. The court specifically held that the property moved from private to public ownership.

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[T]he holdings in *Sotomura* and *Zimring*⁸ require us to conclude that if the 1.75 acres became submerged land because of natural erosion after 1898 and before being altered by the actions of the property owner, then that property would be ceded lands subject to the terms of the trust.

Napeahi v. Paty, 921 F.2d 897, 903 (9th Cir. 1990).

For these reasons and based on the cases cited above, we advise that the law in Hawai'i is that when the shoreline boundary migrates landward or mauka because of erosion or sea level rise, the State owns the additional submerged land that results from the migration.

3. What, if anything, is the effect of statutes that require the Board of Land and Natural Resources (Board) or the Attorney General to approve "acquisition" of real property?

A concern has been raised as to a trio of statutes that require Board and Attorney General approval of acquisitions of real property or interests in real property. The statutes are sections 26-7, 107-10, and 171-30, HRS.⁹

⁸ *State by Kobayashi v. Zimring*, 58 Haw. 106, 566 P.2d 725 (1977). This case is discussed in more detail below.

⁹ Section 26-7, HRS provides in relevant part:

The department [of the attorney general] shall . . . approve as to legality and form all documents relating to the acquisition of any land or interest in lands by the State

Section 107-10, HRS, provides in relevant part:

No real property or any right, title, or interest therein shall be acquired by agreement, purchase, gift, devise, eminent domain, or otherwise, for any purpose, by the State or any department, agency, board, commission, or officer thereof, without the

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We advise that those statutes are not applicable to change in the ownership line caused by landward or mauka migration of the shoreline due to erosion or sea level rise. As we now show, the possibility of boundary changes due landward or mauka migration of the shoreline due to erosion and accretion is already part of the State's ownership of public trust land. That possibility already encumbers private littoral land. *Sotomura*, 55 Haw. at 183, 517 P.2d at 62. When the State comes into possession of land because of erosion or sea level rise, the State is not "acquiring" property within the meaning of the statutes.

State by Kobayashi v. Zimring, 58 Haw. 106, 566 P.2d. 725 (1977), is a key case supporting this proposition. *Zimring*

prior approval of the attorney general as to form, exceptions, and reservations.

Section 171-30, HRS, provides in relevant part:

- (a) The board of land and natural resources shall have the exclusive responsibility, except as provided herein, of acquiring, including by way of dedications:
- (1) All real property or any interest therein and the improvements thereon, if any, required by the State for public purposes, including real property together with improvements, if any, in excess of that needed for such public use in cases where small remnants would otherwise be left or where other justifiable cause necessitates the acquisition to protect and preserve the contemplated improvements, or public policy demands the acquisition in connection with such improvements.
 - (2) Encumbrances, in the form of leases, licenses, or otherwise on public lands, needed by any state department or agency for public purposes or for the disposition for houselots or for economic development.

The board shall upon the request of and with the funds from the state department or agency effectuate all acquisitions as provided under this section.

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addressed ownership of lands newly created by a 1955 lava flow that extended the shoreline and added 7.9 acres of land in the Puna area. One of the issues in that case was whether the lava extension was ceded land acquired by the State from the federal government. The State argued that the federal government transferred the lands to the State under section 5(b) of the Admission Act. The opponents countered that the only lands that passed to the State under section 5(b) were those lands ceded to the United States by the Republic of Hawaii in 1898. They argued that the lava extension did not exist in 1898, and could not have been ceded to the United States. The Hawaii Supreme Court disagreed with the opponents and sided with the State. The Court held that the term "property," as used in the Joint Resolution of Annexation, is "extremely broad," and includes "property which is real, personal and mixed, choate and inchoate, corporal or incorporeal." *Id.* at 122-23, 566 P. 2d at 736.

The lava land was an inchoate property right in 1898. When the lava land was later created, that circumstance resulted in the ripening of State ownership of ceded land even though the land did not exist in 1898.

Napeahi v. Paty, 921 F.2d 897 (9th Cir. 1990), is on point for the proposition that an inchoate property interest in the possibility of erosion was also "public property" under the Joint Resolution of Annexation. In that case, a native Hawaiian sued the State, alleging that the State had a trust duty under the Admission Act to claim ownership of 1.75 acres shorefront property Kona. It was undisputed that "at the time the public land was ceded by the Republic of Hawaii to the United States in 1898, it did not include the 1.75 acres in contention." 921 F.2d at 902. However, that did not "end the inquiry." Relying on *Zimring* and *Sotomura*, the Ninth Circuit ruled that the land passed from private to public ownership because of erosion -- automatically and as a matter of law:

There is no reason to distinguish the inchoate property interest in submerged land that could be acquired by the State as the result of erosion from that which could be acquired by a lava extension. Both were inchoate property interests which *Zimring* held to be property that was ceded to the United States and then returned to the State in 1959. Thus, the holdings in *Sotomura* and *Zimring* require us to

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conclude that if the 1.75 acres became submerged land because of natural erosion after 1898 and before being altered by the actions of the property owner, then that property would be ceded lands subject to the terms of the trust.

921 F.2d at 903.

We therefore conclude that under Hawai'i law, the State holds an inchoate right to land that may pass to it by erosion or sea level rise. This is an inherent aspect of the State's ownership of land, already owned by the State (and by the Territory before it). Ripening of that inchoate right is not "acquiring" or "acquisition" of real property under any of the statutes cited above.

This conclusion is bolstered by the Hawai'i Supreme Court's recent ruling in *Gold Coast Neighborhood Ass'n v. State*, 140 Haw. 437, 403 P.3d 214 (2017). The issue in that case was whether the State owned seawalls and land under the seawalls because the general public used the seawalls as a walkway. The State argued that under section 264-1, HRS, property could only be dedicated to the State by "deed of conveyance" accepted by the State. The State also cited to and relied on the other statutes cited above. The Court rejected this argument, holding that an "implied dedication" is not a "dedication" covered by section 264-1, HRS.

Instead implied dedication is a common law doctrine, not addressed or abrogated by section 264-1, HRS, or by the other statutes discussed above. The Court articulated a strict standard for statutory abrogation of common law rights:

The Hawaii Revised Statutes, and in particular, HRS §§ 264-1(c)(1), 171-30, 26-7, 107-10, and 520-7, do not "imperatively require" abrogation of common law implied dedication, nor do they evince an express legislative intent to do so. Minneapolis Fire & Marine Ins. v. Matson Nav. Co., 44 Haw. 59, 67-68, 352 P.2d 335, 340 (1960); Burns Int'l Sec. Servs., Inc. v. Dep't of Transp., 66 Haw. 607, 611, 671 P.2d 446, 449 (1983).

140 Haw. at 452, 403 P.3d at 229.

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We believe the Court would view the statutes in the same way with respect to land gained by erosion or sea level rise -- there is no express intention to abrogate common law principles to the effect that the State owns the land without the need for affirmative action by either the Land Board or the Attorney General.

This conclusion is consistent with case law from other jurisdictions which have generally viewed a state's interest in land that may come to the public trust in the future as either a vested or contingent future interest. For example in *Severance v. Patterson*, 370 S.W.3d 705, 718 (Tex. 2012), the Texas Supreme Court said:

A person purchasing beachfront property along the Texas coast does so with the risk that her property may eventually, or suddenly, recede into the ocean. When beachfront property recedes seaward and becomes part of the wet beach or submerged under the ocean, a private property owner loses that property to the public trust.

Similarly in *Nies v. Town of Emerald Isle*, 780 S.E.2d 187 (N.C. Ct. App. 2015), cert. denied, 2017 WL 1550808 (U.S. Oct. 2, 2017) the court ruled against a taking claim. Under North Carolina common law the dry sand portion of plaintiffs' property had always been encumbered by the public trust. Thus enforcement of that public trust did not interfere with or "take" any pre-existing right. See generally Margaret E. Peloso & Margaret R. Caldwell, *Dynamic Property Rights: The Public Trust Doctrine and Takings in A Changing Climate*, 30 Stan. Envtl. L.J. 51, 87 (2011).

4. Does this result violate private owners' due process rights or constitute a "taking" of private property?

In *Application of Sanborn*, 57 Haw. 585, 596, 562 P.2d 771, 777-78 (1977), the Sanborns argued that the Court's ruling raised constitutional issues, including a takings claim.

The Sanborns contend that both the Hawaii and federal constitutions would be violated if this court fixes the Sanborns' title line along the upper reaches of the wash of waves. It is contended that such an adjudication would be a taking of private property for

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public use without just compensation and also, by allegedly denying *res judicata* to the 1951 decree, would be a violation of due process *per se*.

The Court rejected these arguments, because its ruling was simply an application of existing Hawai'i law:

Under our interpretation of the 1951 decree, we see no constitutional infirmity. The 1951 decree recognized that the Sanbors' [sic] title extends to a line 'along high water mark'. We affirm the holding in *McCandless, supra*, that distances and azimuths in a land court decree are not conclusive in fixing a title line on a body of water, where the line is also described in general terms as running along the body of water.

Id. This ruling resolves the issue in state courts.

Nor are there viable federal claims, notwithstanding the suggestion to the contrary in *Sotomura v. Hawaii County*, 460 F. Supp. 473 (D. Haw. 1978). As explained in the previous section of this opinion, the possibility that private littoral land may pass into public ownership is an inherent part of the State's ownership of land. And conversely, the possibility that the seaward boundary may migrate inherently burdens private shoreline property.

This is important to the putative taking claim because the threshold question in any taking case is whether "private property" is being taken at all. As the Supreme Court put it in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992), compensation need not be paid "if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with."

Similarly, in *Esplanade Properties, LLC v. City of Seattle*, 307 F.3d 978, 985 (9th Cir. 2002), the Ninth Circuit denied a taking claim after determining as a threshold issue that "plaintiff's claimed property right never existed" in the first place. See also *Maritrans Inc. v. U.S.*, 342 F.3d 1344, 1351 (Fed. Cir. 2003) (In deciding whether governmental action constitutes a taking of private property without just compensation, "[f]irst, a court must evaluate whether the

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claimant has established a 'property interest' for purposes of the Fifth Amendment."); *Conti v. U.S.*, 291 F.3d 1334, 1339 (Fed. Cir. 2002) ("However, if a claimant fails to demonstrate that the interest allegedly taken constituted a property interest under the Fifth Amendment, a court need not even consider whether the government regulation was a taking."); *Raceway Park, Inc. v. Ohio*, 356 F.3d 677, 683 (6th Cir. 2004) ("[T]here is no taking if there is no private property in the first place.").

Property rights are protected by the federal and state constitutions. They are not, however, "created by the [federal] Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). Cf. *Stop the Beach Renourishment, Inc. v. Florida Dept. of Env'tl. Prot.*, 560 U.S. 702, 707 (2010) ("State law defines property interests.").

As noted above, the Hawai'i Supreme Court has definitively ruled:

The loss of lands by the permanent encroachment of the waters is one of the hazards incident to littoral or riparian ownership.

Sotomura, 55 Haw. at 183, 517 P.2d at 62.

It follows that "the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with." *Lucas*, 505 U.S. at 1027. Thus there is no taking.

5. **Is the Attorney General required to give prior approval to State ownership of land by reason of erosion or sea level rise? Is the Attorney General required to approve as to legality and form documents relating to land owned by the State by reason of erosion or sea level rise?**

As shown by the discussion of question 3, ownership of land by erosion or sea level rise occurs pursuant to the common law and is a ripening of a pre-existing inchoate right in the land. This ripening is not an acquisition of land and the State is not acquiring land within the meaning of those statutes. It follows

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that the Attorney General does not have to review the ownership change and does not have to review or approve "documents relating to" the ownership.

We note that all of the cases discussed above (*Ashford*, *Sotomura*, *Sanborn*, and *Napeahi*) were decided after enactment of the three laws. None of the cases imposed the additional requirement that the Attorney General or the Board approve State ownership. In light of those cases, we do not believe the Supreme Court would require Attorney General approval. See *Gold Coast*, 140 Haw. at 455, 403 P.3d at 232: "These provisions express no intent to abrogate common law implied dedication, nor have they ever been mentioned by our courts as having any relevance to the doctrine."

Conversely, we do not believe the Court would uphold a hypothetical refusal by the Attorney General to approve ownership by reason of change in the shoreline.

6. Can the Board require the former landowner to pay fair market value in order to obtain an easement or other interest in land now owned by the State?

Not only can the Board require a former landowner to pay fair market value, but it must do so under current law. Applicable statutes specifically require fair market value in most cases. See, e.g., section 171-13, HRS (requiring that easements be sold for fair market value determined pursuant to section 171-17(b), HRS).

This requirement could be changed by the Legislature. We understand that the Department has introduced appropriate legislation but has not been successful.

CONCLUSION

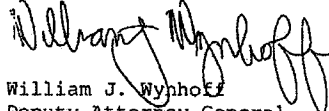
For these reasons, we conclude that the State owns additional public land resulting when the shoreline has migrated landward or mauka due to erosion or sea level rise, that this migration does not give rise to a constitutional claim by the former owner, that this result is not affected by laws relating to the acquisition of real property, that the Attorney General

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does not need to give prior approval in connection with such land, and that the Board can and should charge former owners fair market value in return for an easement interest in the land.

Very truly yours,



William J. Wyphoff
Deputy Attorney General

APPROVED:



Douglas S. Chin
Attorney General

WJW:w

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FRED LUNT INC

PAGE 01/05



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

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GOVERNOR
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COMMISSIONER OF WATER RESOURCE MANAGEMENT
ESTHER KAWAURA
FIRST DEPUTY
WILLIAM M. TAN
DEPUTY DIRECTOR - WATER
AGRICULTURE
HEALTH AND SENIOR PROTECTION
BUREAU OF CIVILIAN CONTROL
COMMISSIONER OF PUBLIC UTILITIES REGULATION
CONSERVATION AND COASTAL LANDS
COMMISSIONER AND DEPUTY COMMISSIONER
TERRITORY AND WILLIAMS
NATURAL RESOURCES
HAWAIIAN 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 B – January 2014 Approval Letter for Sand Push

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.


81/10/2014 15:09 0085316430

FRED LUNT INC

PAGE 05/05


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

Sincerely,


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

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

I concur with the conditions of this letter.



Applicant

Date 1/10/14



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

CARYN S. CHANG
 DEPUTY CHAIRPERSON
 BOARD OF LAND AND NATURAL RESOURCES
 COMMISSIONER OF WATER RESOURCES MANAGEMENT
 DANIEL E. QUINN
 DEPUTY CHIEF OF STAFF
 WENDY HARRY
 ACTING DEPUTY DIRECTOR - WATER
 AIGUIE ANDRZEJCZAK
 BOARDING AND DEBRIS RESTORATION
 BUREAU OF COMPLIANCE
 COMMISSIONER OF WATER RESOURCES MANAGEMENT
 CONSERVATION AND COASTAL LANDS
 CONSERVATION AND RESTORATION ENFORCEMENT
 ENGINEERING
 FORESTRY AND WILDLIFE
 HISTORIC PRESERVATION
 HAWAIIAN ISLAND RESERVE COMMISSION
 LAND

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, Haleliwa (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 C – March 2015 Approval Letter for Sand Push

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:

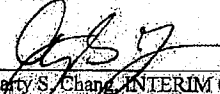
2. It is understood that the dune maintenance (sand pushing, dune restoration) is a temporary preventative measure to provide an erodible buffer for seasonal wave run-up and erosion. Subsequent erosion control efforts will require a new authorization;
3. It is understood that the terms of this authorization 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 DENR/OCCL staff shall be contacted immediately at 587-0281, 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 DENR. Should you have any questions, please contact Brad Romina, 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)	<u>Permittee's Name (Print)</u>	<u>Signature</u>	<u>Date</u>
<u>59-175 B</u> Address (Ke Nui Rd)	<u>Permittee's Name (Print)</u>	<u>Signature</u>	<u>Date</u>
<u>59-175 C</u> Address (Ke Nui Rd)	<u>Permittee's Name (Print)</u>	<u>Signature</u>	<u>Date</u>

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



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

NI'ZANNE D. CASE
DIRECTOR
OFFICE OF CONSERVATION AND COASTAL LANDS
KINDA KALAHINA
1801 KALANANĀ'ŪHĀ
JEFFREY T. PEARSON
DEPUTY DIRECTOR
OFFICE OF CONSERVATION AND COASTAL LANDS
1801 KALANANĀ'ŪHĀ
HONOLULU, HAWAII 96809
408-5311

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, Haliwa (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/ohai/>

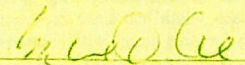
Exhibit D – August 2016 Rejection Letter for Sand Push

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



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 OF WATER RESOURCES MANAGEMENT
ROBERT K. MASUDA
FIRST DEPUTY
JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND FISH WILDLIFE
DEPARTMENT OF CONSERVATION
COMMISSION OF WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES DEPARTMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND AND NATURAL RESOURCES
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 E – November 2017 Approval Letter for Sand Push

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

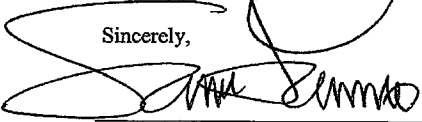
must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;

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



DAVID Y. ICE
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
BOATWASH AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCE DEVELOPMENT
DIVISION
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 F – March 2018 Approval Letter for Sand Push

- 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

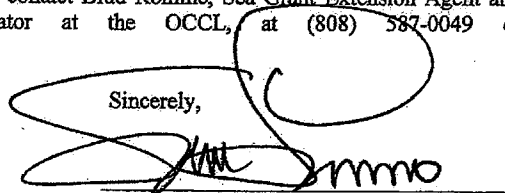
or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;

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 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
AGUATE RESOURCES
BOARD OF OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCE DEVELOPMENT
INTEGRATING
SCIENCE AND WILDLIFE
HISTORIC PRESERVATION
KAREOLANE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:SH

Emergency CDUA OA-19-03

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

AUG - 9 2018

SUBJECT: Request for a Temporary Emergency Shoreline Protection Structure Located Seaward of 59-175 B and C Ke Nui Road, Haleiwa, Oahu; Tax Map Key: (1) 5-9-002:026 and 027

Dear Mr. Nichols,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) has received your August 1, 2018 letter requesting to place emergency erosion control measures along approximately 100 feet of shoreline as temporary erosion control at TMK (1) 5-9-02:0026 and 027 on behalf of yourself and the adjacent property owner, Mr. Rupert Oberlohr.

According to your letter, seasonal beach erosion has produced a steepened beach face fronting the subject properties. You are requesting the DLNR to approve the placement of a temporary sandbag structure consisting of an unspecified number of sand bags, tarps and GeoTech fiber to reinforce the existing berm.

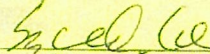
The DLNR is unable to authorize placement of a temporary sandbag structure along the shoreline fronting the subject properties. While erosion fronting the subject properties has become severe, existing hard structures constructed within the subsurface appear to be functional in reinforcing land on both properties. Thus, emergency erosion control measures are not warranted and would likely not improve the situation. Further, the subject properties are located along Sunset Beach Park, an area renowned for its natural environment, public beach and surfing resources. The beach in this area is used by thousands of residents and visitors each year. The temporary sandbag structure proposed would extend into the State Conservation District and the City and County of Honolulu managed beach park. During seasonal erosion (summer until early fall), alongshore public beach access is restricted by the narrowed beach width and the coastal armoring on the neighboring properties to the west. The DLNR is concerned that the proposed temporary sandbag structure could further limit alongshore public access in this area.

Exhibit G - August 2018 Rejection Letter for Sand Push

Emergency CDUA OA-19-03

Should you have any questions on the matter, please feel free to contact Shellie Habel, Hawaii Sea Grant Extension Agent in the DLNR Office of Conservation and Coastal Lands at (808) 587-0049 or via email at Shellie.L.Habel@Hawaii.gov.

Sincerely,



SUZANNE D. CASE, CHAIRPERSON
DEPARTMENT OF LAND AND NATURAL RESOURCES

CC: LAND
C&C, DPP



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 OF WATER RESOURCE MANAGEMENT
ROBERT K. MASUDA
TREASURER
M. KALIBO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION OF WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND COASTAL LANDS
CONSERVATION AND COASTAL LANDS
CONSERVATION AND COASTAL LANDS
FOREST AND WILDLIFE
HISTORICAL PRESERVATION
KABOOLAHU BEACH RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:SS

Vio. OA-20-01

7019 0700 0001 4006 6812

NOTICE OF ALLEGED VIOLATION AND ORDER

AUG -1 2019

CERTIFIED MAIL RETURN RECEIPT
7019 0700 0001 4006 6812

Current Landowner
59-175 C Ke Nui Rd.
Haleiwa, HI 96712

SUBJECT: Alleged Unauthorized Structures Located Along the Shoreline of 59-175 Ke Nui Rd., Haleiwa, Oahu, Tax Map Key: (1) 5-9-002:026

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 7/30/2019 revealed black fabric, two permanent stairways, and a wood bench on the beach fronting your property; [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, the permanent stairways, and the wood bench were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

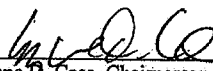
***Exhibit H – August 2019 Violation
Letter for Unauthorized Structures***

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



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

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

Vio. OA 20-31

REF:OCCL:SS

Seamids, LLC
c/o Liam & Brandee McNamara
59-181A Ke Nui Road
Haleiwa, HI 96712

SUBJECT: NOTICE of Alleged Unauthorized Land Use Within the Conservation District Located Makai of 59-175C Ke Nui Road, Haleiwa, Oahu, HI 96712; Tax Map Key: (1) 5-9-002:026

Dear Landowners:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands' (OCCL) attention that there has been work done within the Conservation District without our authorization. It appears that there has been work done in the shoreline area that includes a staircase, railings, and fencing (*Exhibit 1, taken 05/06/2020*).

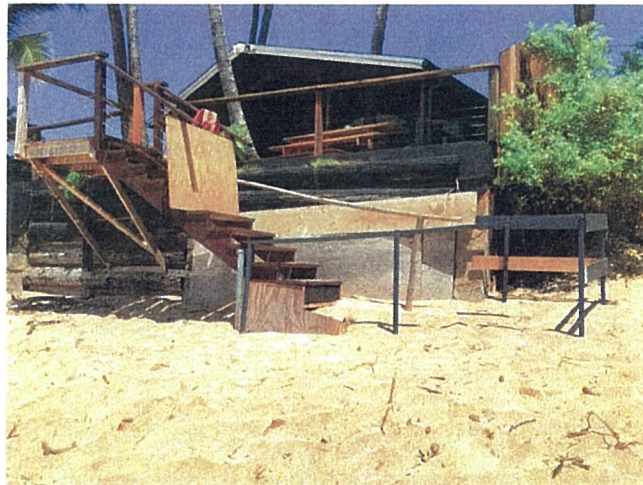


Exhibit 1

***Exhibit I – June 2020 Violation
Letter for Unauthorized Structures***

Vio. OA 20-31

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 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 improvements are located on the public sandy beach seaward of TMK: (1) 5-9-002:026, located within the State Land Use Conservation District, Resource Subzone;
2. Pursuant to §13-5-2, HAR, "Land use" means:
 - (1) 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;
 - (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
 - (3) The subdivision of land; or
 - (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.
3. This land use was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

Pursuant to 183C-7(b), HRS, the Board of Land and Natural Resources (Board) may subject you to fines of not more than \$15,000.00 per violation in addition to administrative costs and costs associated with land or habitat restoration, or both, if required, and damages to state land. Should you fail to immediately 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.

We recommend that you stop all work and remove the staircase, railings, and other structures within the shoreline area within 30 days of receipt of this order. Failure to do so will result in the matter being forwarded to the Board for formal action. Should you have any questions pertaining to this letter, please contact the Office of Conservation and Coastal Lands at (808) 587-0377.

Sincerely,

Signature: *Suzanne D. Case*

Email: suzanne.case@hawaii.gov

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

Vio. OA 20-31

c: City & County of Honolulu
Department of Planning and Permitting
DOCARE (Oahu)
ODLO



DAVID Y. ISE
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

N. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

REF:OCCL:

Vio. OA-21-03

AUG - 6 2020

Seamaids, LLC
c/o Liam & Brandee McNamara
59-181A Ke Nui Road
Haleiwa, HI 96712

SUBJECT: NOTICE of Alleged Unauthorized Land Use Within the Conservation District Located Makai of 59-175C Ke Nui Road, Haleiwa, Oahu, HI 96712; Tax Map Key: (1) 5-9-002:026

Dear Mr. and Mrs. McNamara:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands' (OCCL) attention that there has been work done within the Conservation District without our authorization. It appears that there has been work done in the shoreline area that includes the construction of a seawall without departmental approval.

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 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 improvements are located on the public sandy beach seaward of TMK: (1) 5-9-002:026, located within the State Land Use Conservation District, Resource Subzone;
2. Pursuant to §13-5-2, HAR, "Land use" means:
 - (1) 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;
 - (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
 - (3) The subdivision of land; or

***Exhibit J – August 2020 Violation
Letter for Unauthorized Structures***


Vio. OA 21-03

- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.
3. This land use was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.
4. The land use has occurred on public land owned by the State without authorization or permission from the State as landowner

Pursuant to 183C-7(b), HRS, the Board of Land and Natural Resources (Board) may subject you to fines of not more than \$15,000.00 per violation in addition to administrative costs and costs associated with land or habitat restoration, or both, if required, and damages to state land. Should you fail to immediately 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.

We recommend that you stop all work and contact our office to remedy the situation within 30 days of receipt of this order. Failure to do so will result in the matter being forwarded to the Board for formal action. Should you have any questions pertaining to this letter, please contact the Office of Conservation and Coastal Lands at (808) 587-0377.

Sincerely,


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

c: City & County of Honolulu
Department of Planning and Permitting
DOCARE (Oahu)
ODLO