

**STATE OF HAWAI'I
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 21-07 Regarding an Unauthorized Structure Located Along the Shoreline Within the Conservation District at Paumalū (Sunset Beach), O'ahu

BY: Zhungo LLC (Rodney Youman, Managing Member)
And
Rodney Youman "Individually"
1280 Fifth Ave, Apt 20D
New York, NY 10029

LOCATION: 59-149 Ke Nui Road, Sunset Beach, Hale'iwa, O'ahu

TAX MAP KEY: (1) 5-9-002:004 (Seaward)

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject area is located along the coastline of O'ahu's north shore west of Sunset Beach Park and seaward of TMK (1) 5-9-002:004 (**Figures 1-3**). Lot TMK: (1) 5-9-002:004 is a residential lot containing a single-family residence owned by Zhungo LLC whose managing member is Mr. Rodney Youman. There is another lot TMK: (1) 5-9-001:038, which is a beach area, located directly makai of the subject lot. 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.

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 '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 Site

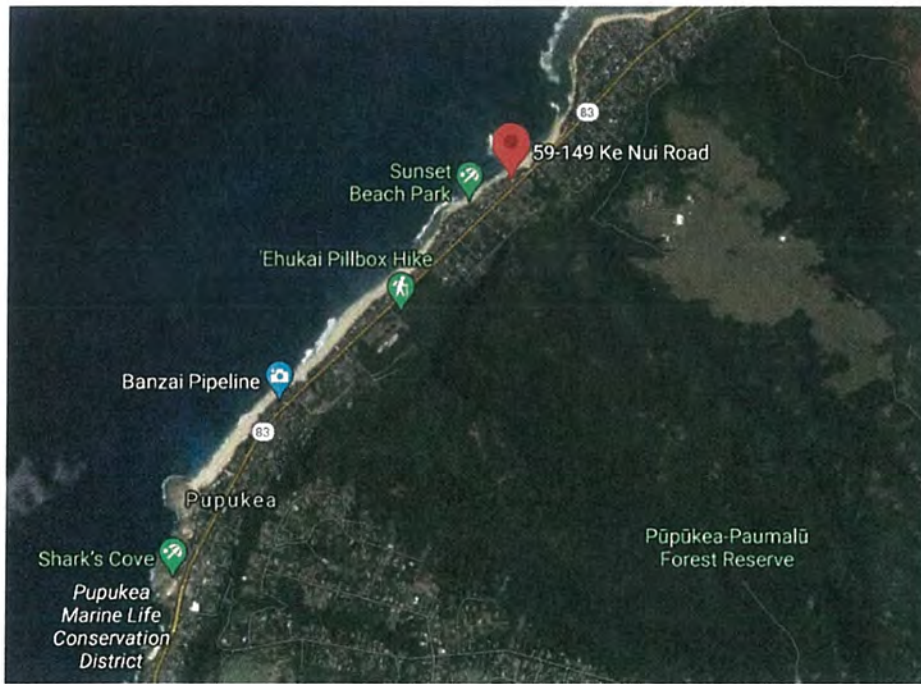


Figure 2: Map of North Shore, O'ahu Showing Site Location



Figure 3: Map Showing Property Location in Sunset Beach Area

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) (*see Figure 4*). 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.

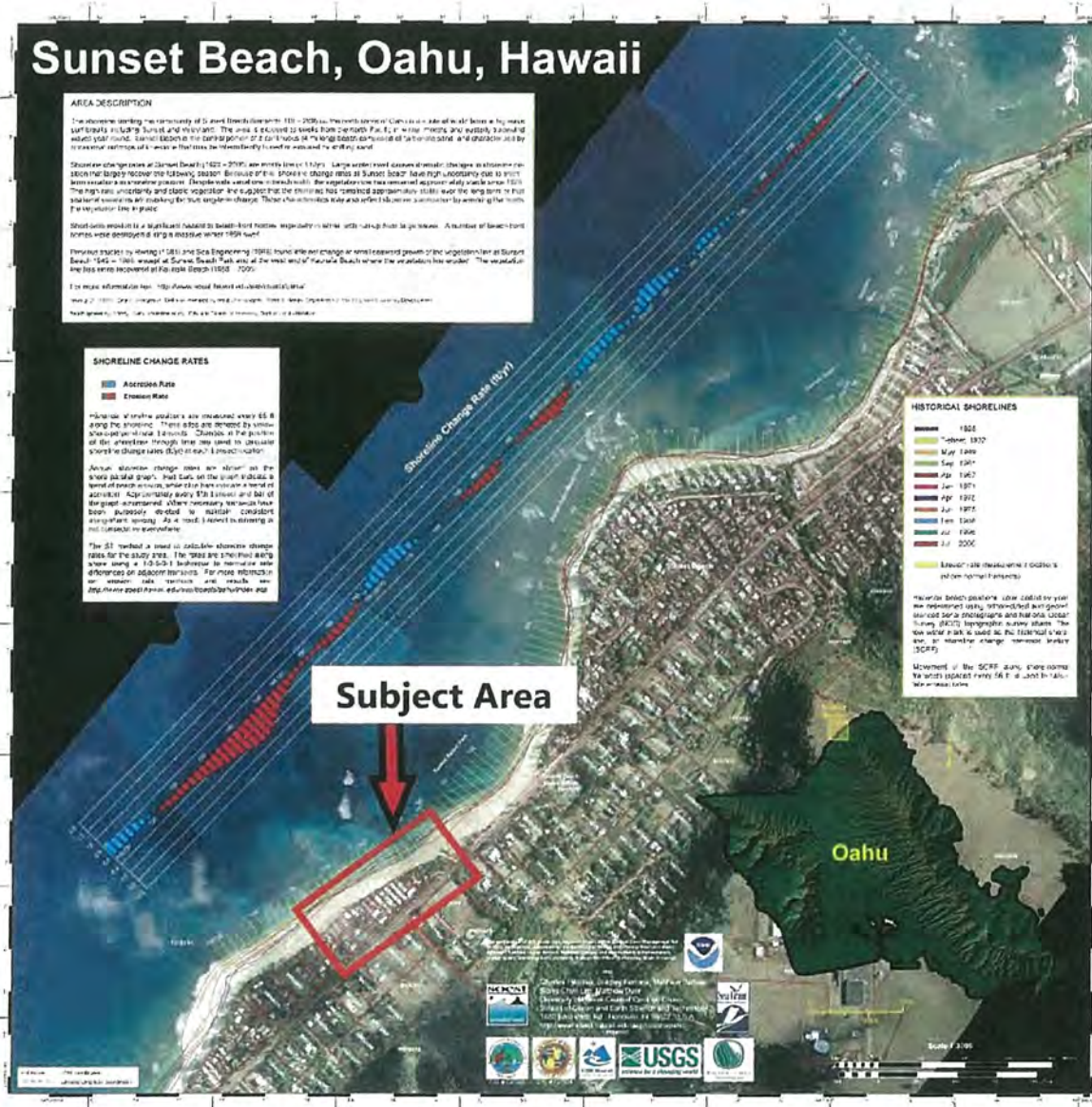


Figure 4: Map Showing Trend of Chronic Erosion in Sunset Beach Area
<http://www.soest.hawaii.edu/coasts/erosion/oahu/>

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

and 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: 2016 or Prior Zillow Photo Showing Subject Property & Shoreline Area

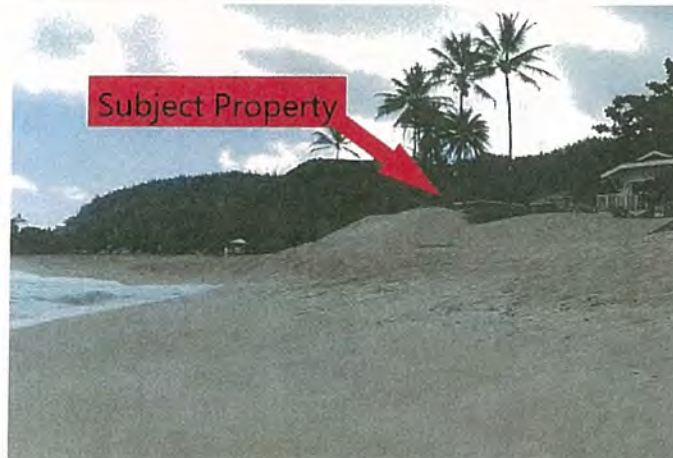


Figure 6: OCCL July 7, 2014 Photo Showing Subject Property & Shoreline Area with Evidence of Prior Sand Pushing



Figure 7: July 2018 Photo Showing Shoreline Area & Emergency Situation



Figure 8: September 17, 2018 Photo Showing Subject Property & Temporary Erosion Control



Figure 9: September 17, 2018 Photo Showing Damaged Temporary Erosion Control Structure with Rocks & Mortar Underneath Erosion Fabric



Figure 10: December 20, 2018 Photo Showing Subject Property & Shoreline Area Demonstrating Highly Dynamic Beach



Figure 11: October 15, 2019 Photo Showing Subject Property & Shoreline Area with Deflated Beach

PROPERTY HISTORY – OCCL MATTERS

July 2, 2014: The OCCL received a request from Mr. William Kernot, owner of a neighboring shoreline property, to perform a sand push and place a protective sand bank in front five (5) properties along the Sunset Beach area including the subject property. Erosion from seasonal waves along with a long-term trend of beach erosion had created a steep eroded bank that posed a threat to the single-family residences in the area (**see pages 1 to 19 in Exhibit B**).

July 8, 2014: The OCCL issued Emergency Cдуа OA 14-57 subject to twenty-four (24) conditions to Mr. William Kernot and his neighbors including the owner of the subject property. Emergency Cдуа OA 14-57 authorized the placement of a protective sand bank (dune) as temporary erosion control along approximately 200 feet of the shoreline fronting three (3) lots: 59-149, 59-151A, and 59-165D Ke Nui Road (**see pages 20 to 25 in Exhibit B**). Lots 59-165 B, 59-171C, and 59-171D have seawalls and therefore were excluded from the emergency preventative measure.

August 30, 2017: In response to continued erosion problems plaguing this stretch of coastal properties and another request to conduct preventative beach maintenance, the OCCL issued Correspondence OA 18-45 which authorized sand pushing to restore the backshore berm as temporary erosion control. The restoration of the backshore berm was authorized for four (4) lots including the subject property: 59-147, 59-147A, 59-149,

and 59-151A Ke Nui Road. The authorization letter notes that the DLNR authorized sand pushing projects in the area in October 2013; January, July, and November 2014; and October 2015 (*see Exhibit C*).

July 14, 2018: The OCCL received a request from the landowner, Mr. Rodney Youman, to utilize temporary emergency erosion control measures as an emergency response to shoreline erosion threatening the residential structure on the subject property (*see Figure 7 & Exhibit D*).

July 18, 2018: The OCCL issued the landowner, Mr. Rodney Youman, Emergency CDUA OA 19-01 for the installation of a temporary erosion control structure consisting of a heavyweight geotextile fabric blanket overlain with sand filled tubes (burritos) constructed of the same geotextile fabric. The geotextile blanket and tubes were to be staked in place with three (3) foot long wooded spikes. Sand was to be used from the beach fronting the subject property to fill the fabric tubes and to create an even slope behind the material. The emergency authorization also stated that the temporary erosion control structure was to be constructed by hand. Emergency CDUA OA 19-01 was issued for a period of three (3) years from the issuance date of the letter (July 18, 2018 to July 18, 2021) and subject to twenty-seven (27) conditions. On July 30th, 2018, the landowner, Mr. Rodney Youman, returned a signed copy of Emergency CDUA OA 19-01 concurring with the terms and conditions of the emergency authorization (*see Exhibit E*).

August 28, 2018: OCCL staff visited the Sunset Beach area and observed rocks and fresh mortar underneath the authorized temporary erosion control fabric (*see Figure 9*).

September 5, 2018: The OCCL issued the landowner, Mr. Rodney Youman, violation letter ENF: OA 19-08 for the alleged unauthorized rocks and fresh mortar underneath the authorized temporary erosion control fabric. On September 21st, 2018, violation letter ENF: OA 19-08 was received by the landowner or their authorized agent (*see Exhibit F*). OCCL staff believed that the rocks and mortar appeared to be a violation but did not pursue the matter at that time.

September 4, 2019: Due to the accumulation of derelict debris originating from the temporary erosion control structures on North Shore beaches and waters, OCCL sent all the landowners with these systems a letter reminding them of their responsibility to maintain their structures ahead of the 2019-2020 winter season. The letter asked that each permittee regularly monitor their structure and remove or re-secure any loose material. Additionally, the letter noted that any subsequent erosion control efforts that called for modification, other than routine maintenance of authorized structures, would require a new application, and that no new material was to be added to the structure without authorization from the DLNR and OCCL (*see Exhibit G*).

ALLEGED UNAUTHORIZED LAND USES:

On September 30th, 2020, OCCL staff again visited the Pūpūkea to Paumalū beach area to continue to monitor the erosion and structures ahead of the 2020-2021 winter season.

During this site visit, OCCL staff observed that a large quantity of rocks and boulders had been placed on the erosion scarp and sandy beach area fronting Mr. Rodney Youman's property, and there appeared to be work being conducted in the shoreline area (**see Figures 12, 13, & 14**). The rocks and boulders fronting Mr. Rodney Youman's property appeared to be in the form of a rock revetment.

In September 2018, OCCL staff highlighted the presence of rocks and mortar and notified Mr. Rodney of their presence (**see Figure 9 and Exhibit F**). On October 23rd, 2020, the OCCL sent a Notice of Alleged Violation & Order letter to Zhungo LLC and Mr. Rodney Youman regarding the subject unauthorized work and installation of rocks observed on September 30th, 2020 (**see Exhibit H**). It appears that the Notice of Alleged Violation & Order letter (ENF HA 21-07) was signed for on October 30th, 2020.

On December 10th, 2020, OCCL staff visited the Pūpūkea to Paumalū beach area to monitor the erosion and structures after a series of northwesterly swells impacted the north shore (**see Figures 15, 16, 17, 18, 19, & 20**). This series of swells appeared to have transported sand back to the area fronting the subject property. OCCL staff observed unauthorized work being conducted in the shoreline area fronting of Mr. Rodney Youman's property. The unauthorized appeared to consist of further burying or covering the previous failing erosion control structure and unauthorized rocks as well as the installation of a large sand-filled burrito. The large sand-filled burrito appeared to be placed at an extreme distance from the erosion scarp and out onto the public beach. Staff notes that no prior consultation was received, nor authorization was given to Zhungo LLC and Mr. Rodney Youman for this work.



Figure 12: September 30, 2020 OCCL Site Visit Photo Showing Unauthorized Work & Makeshift Rock Revetment



Figure 13: September 30, 2020 OCCL Site Visit Photo Showing Unauthorized Work & Makeshift Rock Revetment



Figure 14: September 30, 2020 OCCL Site Visit Photo Showing Unauthorized Work & Makeshift Rock Revetment



Figure 15: December 2, 2020 OCCL Site Visit Photo Showing Unauthorized Rock Revetment with Most of the Rocks Buried in the Sand

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Figure 16: December 7, 2020 Photo Showing Dynamic Beach and Partially Covered Unauthorized Rock Revetment and Erosion Control Materials



Figure 17: December 10, 2020 OCCL Site Visit Photo Showing Unauthorized Work and Installation of Large Sand-Filled Burrito



Figure 18: December 10, 2020 OCCL Site Visit Photo Showing Unauthorized Work and Installation of Large Sand-Filled Burrito



Figure 19: December 10, 2020 OCCL Site Visit Photo Showing Unauthorized Work and Installation of Large Sand-Filled Burrito



Figure 20: December 10, 2020 Photo Showing Unauthorized Work and Installation of Large Sand-Filled Burrito

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, Hawaii Revised Statutes (HRS).

Staff believes the unauthorized land uses occurred within the Conservation District based upon the location of the work seaward of Zhungo LLC and Mr. Rodney Youman's 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 Hawaii Administrative Rules (HAR), §15-15-20 Standards for determining "C" Conservation District boundaries:

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

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

- (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*

The work that was conducted at the subject property appears to consist of the construction of an unauthorized rock revetment, installation of a large sand-filled burrito, and placement of materials in the Conservation District for use as an erosion control structure. Placement of this structure was not authorized under Hawaii Administrative

Rules (HAR) §13-5-22, P-15 SHORELINE EROSION CONTROL (D-1) *Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters; provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification.*

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

The OCCL also notes that the work is in on state owned land. The State as landowner did not authorize the work.

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 Oahu'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 utilized by the public, both residents and visitors alike, 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.

Chronic coastal erosion is widespread across the Hawaiian Islands. Local studies have shown that 70% of beaches on Kaua'i, O'ahu, and Maui are chronically eroding such that shorelines are progressively receding landward¹. Coastal armoring can degrade and even destroy beaches by impounding natural sand resources thereby impacting the sediment budget of a beach. Shoreline armoring also increases wave turbulence, wave reflection, and wave refraction which can accelerate coastal erosion both fronting the coastal armoring and on neighboring properties adjacent or in close proximity to the armoring.

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. Over the past century, local tide gauges have measured approximately 0.5 ft of rise in sea levels among the islands such that it should be no surprise that resulting impacts are occurring.

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 conditionally approved 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 also provided temporary emergency authorizations for geotextile cloth erosion control measures fronting several homes in the subject area. The OCCL allows these "soft" erosion measures as temporary solutions so that long-term options can be developed by subject landowners. When the structural integrity of an inhabited structure is deemed threatened, the OCCL generally responds by asking the

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

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.² Staff admits that the situation is challenging for the homeowners, but the OCCL is also challenged by the lack of compliance and continued violations.

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 of 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.

CONCLUSION:

Based on the information compiled regarding the installation of the subject rock revetment and installation of the large sand-filled burrito, shoreline structures were built without authorization from the Department on at least two separate occasions. No State, County, or Federal permits were obtained or even applied for in order to perform the subject work. Additionally, it appears that the landowner has failed to comply with the terms and conditions of previous authorizations issued for the temporary erosion control structure fronting the subject property.

On July 18th, 2018, the landowner, Mr. Rodney Youman, was granted Emergency CDUA OA 19-01 in response to erosion threatening the residential structure on the subject property provided that he would comply with the terms and conditions of this emergency authorization. On July 30th, 2018, Mr. Rodney Youman returned a signed copy of Emergency CDUA OA 19-01 to the OCCL indicating that he understood these terms and conditions that allowed for the installation of the emergency temporary erosion control structure fronting his property. Although the landowner was granted emergency temporary erosion control measures, the landowner, Mr. Rodney Youman, appeared to install rocks and mortar underneath the structure without any authorization. The OCCL notified Mr. Rodney Youman of the alleged violation and informed to cease any further unauthorized work and land uses.

Despite being notified of the previous alleged violation and to cease any further unauthorized work, OCCL staff observed that a makeshift rock revetment had been constructed in the shoreline area fronting Mr. Rodney Youman's property during a site

² 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.

visit on September 30th, 2020. On October 23rd, 2020, the OCCL sent a Notice of Alleged Violation & Order letter to Zhungo LLC and Mr. Rodney Youman regarding the subject alleged unauthorized land use (**Exhibit H**). This notice was acknowledged on October 30th, 2020.

After being notified of this second alleged violation and being informed to cease any further unauthorized work, OCCL staff observed work being performed in the shoreline area fronting Mr. Rodney Youman's property on December 10th, 2020. This instance of unauthorized work appeared to consist of further burying or covering the previous failing erosion control structure and unauthorized rocks as well as the installation of a large sand-filled burrito. No State permits were obtained or applied for in order to perform any of the subject work. For these reasons, DLNR staff believe that enforcement action needs to be taken.

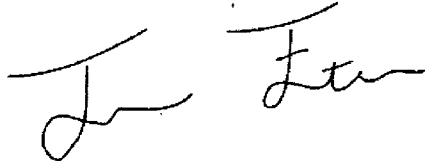
AS SUCH, STAFF RECOMMENDS:

That the Board find that the landowner of TMK: (1) 5-9-002:004, who is Rodney Youman, Managing member of Zhungo LLC, and Rodney Youman individually, constructed an unauthorized rock revetment located along the coastline of Paumalū (Sunset) Beach in the Hale'iwa area of O'ahu's north shore in violation of Chapter 183-7, HRS and Chapter 13-5-6, HAR, subject to the following:

1. The Landowner is fined \$15,000.00 for the placement/construction of an unauthorized rock revetment in the Conservation District pursuant to Chapter 183C-7, HRS;
2. That the Landowner is fined an additional \$15,000.00 for continuing work on at least one (1) day after receiving the Notice of Alleged Violation & Order;
3. The Landowner is fined an additional \$2,000.00 for administrative costs associated with the subject violation;
4. The Landowner shall pay all fines (total \$32,000.00) within sixty (60) days of the date of the Board's action;
5. The Landowner shall remove all geotextile cloths, burritos, and rocks in their entirety and return the beach area to a more natural state and the Department's satisfaction within ninety (90) days of the order of the Board;
6. That in the event of failure of the landowners to comply with any order herein, the landowner shall be fined an additional \$15,000.00 per day until the order is complied with;
7. That all fines and directions apply to Zhungo LLC and Rodney Youman individually, jointly and severally; and,

8. That in the event of failure of the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

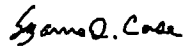
Respectfully submitted,



Trevor Fitzpatrick, Staff Planner
Office of Conservation and Coastal Lands

SL

Approved for submittal:



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.

"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.

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,

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.

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).

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

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

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).

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.

[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

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.

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

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.

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 takings 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

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

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

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

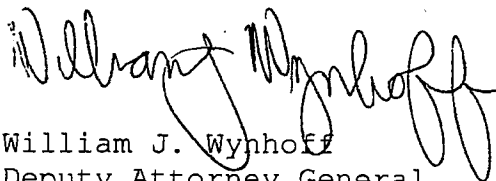
For these reasons, we conclude that the State owns additional public land resulting when the shoreline has migrated landward or mauka due to erosion or sea level rise, that this migration does not give rise to a constitutional claim by the former owner, that this result is not affected by laws relating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

APPROVED:



Douglas S. Chin
Attorney General

WJW:w

Exhibit B

Page 1 of 25

Sent: Tuesday, July 01, 2014 6:46 PM

To: 'bradley.M.Romine@hawaii.gov'

Cc: Federico Kernot; 'sam.J.Lemmo@hawaii.gov'; Hazama, Miles; Mayeda, Craig S.

Subject: Re: urgent sand push needed Sunset Beach

Hi Brad,

As requested please see below my official request for a sand push.

I have 5 confirmed neighbors(including myself) that want to participate in the sand push, please see the addresses below:

59-149 Ke Nui Road
59-151A Ke Nui Road
59-165B Ke Nui Road
59-171C Ke Nui Road
59-171D Ke Nui Road

I would expect that more will want to join in once the sand push is in progress as I'm yet to receive their replies

The proposed date to commence would be Monday, July 8 and it will last for 5 days.

The situation is a little different for each of our homes therefore I suggest that you come up with the general specifications (as per the last sand push) with regards to the amount of sand we can each relocate and the approximate dimensions of the newly placed sand pile (length, width, height)

I will ask the same company that's done the last 2 sand pushes to do this sand push.

Kind Regards
William kernot
59-151A Ke Nui road
808 638 4091

From: Bradley.M.Romine@hawaii.gov [<mailto:Bradley.M.Romine@hawaii.gov>]

Sent: Friday, June 27, 2014 05:11 AM

To: William Kernot

Cc: Federico Kernot; Sam.J.Lemmo@hawaii.gov <Sam.J.Lemmo@hawaii.gov>; mhazama@honolulu.gov <mhazama@honolulu.gov>; cmayeda@honolulu.gov <cmayeda@honolulu.gov>

Subject: Re: urgent sand push needed Sunset Beach

Hi William,

Sam forwarded your email to me and asked me to respond. I was at Sunset a couple weeks ago and saw that the seasonal erosion was starting up again fronting your house (pics from June 12 attached). From your email it sounds like its gotten worse since I was there. There appeared to be sufficient sand in the stream mouth to push sand in front of at least a few houses. You'll need approval and "right of entry" from Honolulu Parks Department, in addition to authorization from DLNR (same as last time). I copied Miles Hazama and Craig Mayeda from Parks on this email.

Exhibit B

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Please provide DLNR with a written request (via email is ok) with details on your plan for sand pushing.
Details we need:

When do you want to do the work, how long do you expect it to take?

You propose to borrow sand from the stream mouth - how much sand do you want to take (area, depth)?

What area do you want to place sand in, fronting which houses?

What will be the approximate dimensions of the newly placed sand pile (length, width, height)?

Who will do the work and what kind of equipment?

All work needs to be done above the water line, on dry beach. I'm happy to answer any further questions.

-Brad Romine

Bradley M. Romine, PhD
Coastal Geologist, Extension Faculty

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

Begin forwarded message:

From: "William Kernot" <william@cit.com.au>
Date: June 25, 2014 at 8:25:39 PM HST
To: "sam.J.Lemmo@hawaii.gov" <sam.J.Lemmo@hawaii.gov>
Cc: "Federico Kernot" <Federico@cit.com.au>
Subject: ****urgent sand push needed** Sunset Beach**

Hi Sam,

I hope all is well with you.

I'm actually not in Hawaii at the moment but I've just received a photo from my neighbor updating me on the sand situation at the front of our homes and it's bad, an urgent sand push is needed.

There's not enough sand in the front of my home to push so we will need to push from the stream.

Can you please let me know what additional information you require so we can make the sand push happen.

Thanks
William Kernot
59-151 Ke Nui Rd
808 638 4091

Message protected by Unitech Solutions: e-mail anti-virus, anti-spam and content filtering.
<http://www.unitech.com.au>

K-4

Exhibit B

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<http://www.unitech.com.au>

[Report this message as spam](#)

Emerg. OA-14-57

Exhibit B

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07/03/2014 04:34 PM



Re: urgent sand push needed Sunset Beach
Bradley M Romine to: William Kernot
Cc: "sam.J.Lemmo@hawaii.gov"

Hi William,

We took a closer look at the properties requesting sand push. We cannot authorize it for 59-165B (Sweat), 59-171C (Brandt), and 59-171D (O'Shea) at this time because those properties have sea walls. This is intended to be an emergency preventative measure and those properties already have substantial protection. In addition, we don't feel pushing sand in front of those houses would be a wise use of the limited sand resources from the stream mouth. Any sand placed in front of those houses is likely to be washed toward Rocky Point, away from the present erosion "hotspot" fronting your and Freeman's houses. We can authorize 59-149 (Freeman), you, and 59-165D (Wachtel) following your request and the properties between you and Wachtel, if they are interested. I was out there this morning. Picture attached.

-Brad



DSC_0697.JPG

Bradley M. Romine, PhD
Coastal Geologist, Extension Faculty

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

William Kernot

Hi Brad, Another one of my neighbors wants to p...

07/03/2014 08:24:24 AM

From: William Kernot <william@cit.com.au>
To: "bradley.M.Romine@hawaii.gov" <bradley.M.Romine@hawaii.gov>,
Cc: "sam.J.Lemmo@hawaii.gov" <sam.J.Lemmo@hawaii.gov>
Date: 07/03/2014 08:24 AM
Subject: Re: urgent sand push needed Sunset Beach

Hi Brad,

Another one of my neighbors wants to participate in the sand push, please add the address below to the list:

59-165 D Ke Nui road

Kind Regards
William

From: Bradley.M.Romine@hawaii.gov [mailto:Bradley.M.Romine@hawaii.gov]
Sent: Thursday, July 03, 2014 06:23 AM
To: Hazama, Miles <mhazama@honolulu.gov>
Cc: Mayeda, Craig S. <cmayeda@honolulu.gov>; Federico Kernot; 'sam.J.Lemmo@hawaii.gov'

Exhibit B

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<sam.J.Lemmo@hawaii.gov>; William Kernot
Subject: RE: urgent sand push needed Sunset Beach

Thanks Miles.

William, DLNR will put together an authorization letter for the properties you listed. We'll include guidelines and limits for the project. Our letter should be ready by early next week. Let me know if you want to add more properties in the mean time.

The time frame for your sand push (starting July 8) might be a little tight. We'll get our letter to you in the next few days but it will be up to you to get the Right-of-Entry from the City.

-Brad

Bradley M. Romine, PhD
Coastal Geologist, Extension Faculty

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

From: "Hazama, Miles" <mhazama@honolulu.gov>
To: 'William Kernot' <william@cit.com.au>, "bradley.M.Romine@hawaii.gov" <bradley.M.Romine@hawaii.gov>,
Cc: 'Federico Kernot' <Federico@cit.com.au>, "sam.J.Lemmo@hawaii.gov" <sam.J.Lemmo@hawaii.gov>, "Mayeda, Craig S." <cmayeda@honolulu.gov>
Date: 07/02/2014 09:18 AM
Subject: RE: urgent sand push needed Sunset Beach

All,

Once an authorization letter is issued by the State, the contractor will need to obtain an Right-of-Entry (ROE) permit from the City. Applications are available at the Fasi Municipal Building, 650 S. King St., Parks Permits Office, ground floor.

Mahalo.

*Miles Hazama
Department of Parks and Recreation
Windward District
(808) 233-7304*

From: William Kernot [<mailto:william@cit.com.au>]


K-4

Emerg. OA-14-57

Exhibit B

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Re: 
Bradley M Romine to: William Kernot
Cc: "doh808@gmail.com", "sam.J.Lemmo@hawaii.gov"

07/07/2014 08:59 AM

William,

I see what you're suggesting at the stream mouth. Its an idea worth exploring for the future but at this time we don't have enough information to know where that sand might go. There's no guarantee the sand would move toward your property where it is needed most. We feel that your resources will be best used placing sand directly in front of your property. In addition, we're prohibited from pushing/placing sand directly in the water without additional permits from the US Army Corps of Engineers and State Dept of Health. So when you do push sand, you must stay out of the water.

Last I heard, there is still \$400,000 in the County budget to develop a beach management plan for the north shore. If it gets funded, this would be a good opportunity to explore other options for beach maintenance like the one you suggest at the stream mouth.

For now, I think the sand is best used in the area with the immediate erosion problem fronting you and your neighbors' houses.

-Brad

Bradley M. Romine, PhD
Coastal Geologist, Extension Faculty

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

William Kernot HI Brad, Ok I understand.

07/04/2014 02:42:44 PM

From: William Kernot <william@cit.com.au>
To: "bradley.M.Romine@hawaii.gov" <bradley.M.Romine@hawaii.gov>,
Cc: "sam.J.Lemmo@hawaii.gov" <sam.J.Lemmo@hawaii.gov>, "doh808@gmail.com" <doh808@gmail.com>
Date: 07/04/2014 02:42 PM
Subject:

Hi Brad,

Ok I understand.

Besides relocating the sand to restore the sand dune in front of the homes which have been approved, what do you think about also pushing some sand back out into the water directly in front of the stream? We (several neighbors) believe this would have a benefit to all the beachfront properties between Sunset Beach Park and Rocky Point not to mention that it would also benefit visiting tourists and local residents because in theory it should widen the beach which has almost become inaccessible. I really think we should also try this as well (especially while the machines are on location) because it could be the best method in sustaining an acceptable beach width between Rocky Point and Sunset Beach. I've also been informed by my neighbors that in the past when the stream mouth was open (prior to the stream water diversion occurring

K-4

Exhibit B

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upstream) there never seemed to be the level of erosion being experienced in these last few years

Look forward to your comments on the above

Kind Regards
William

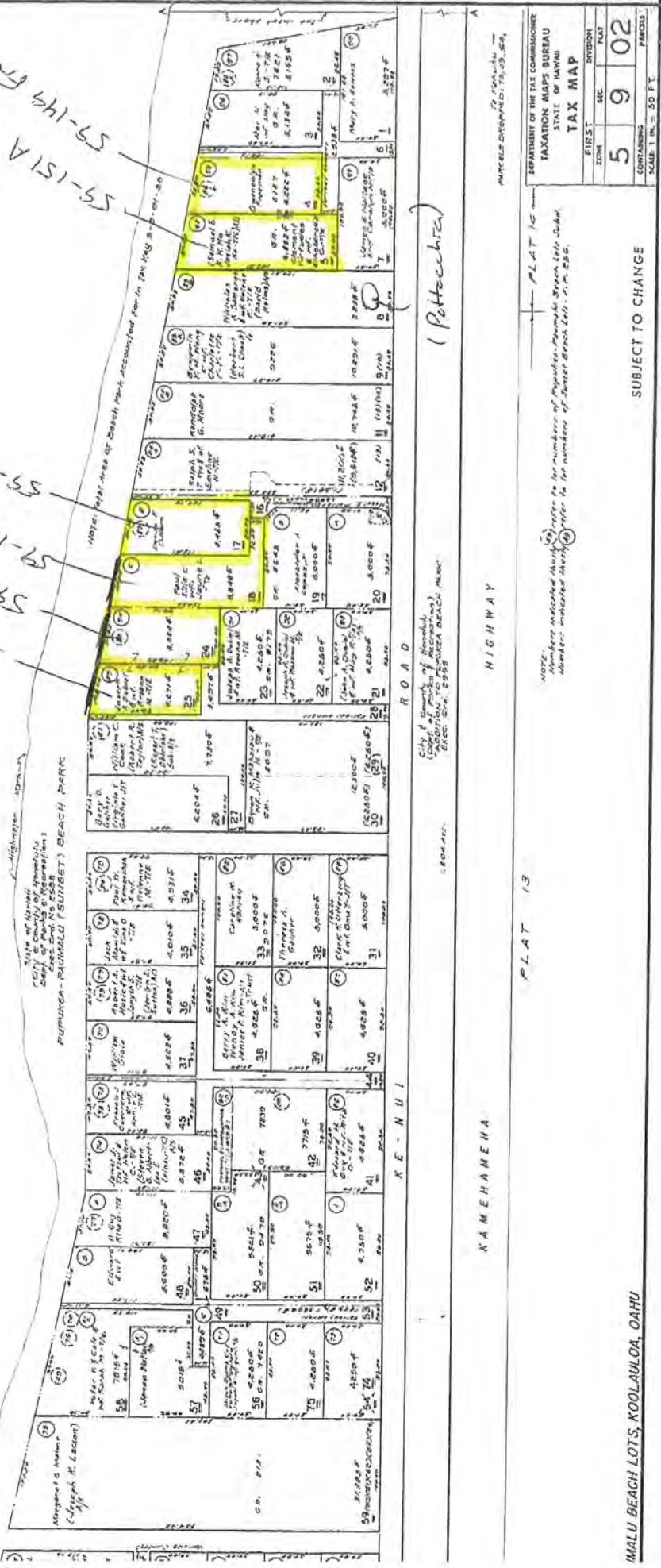
Exhibit B

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EMERG. CO. 14-5

59-171D O'Shea
59-171C Brent
59-1658 Sweet
59-165D Decker

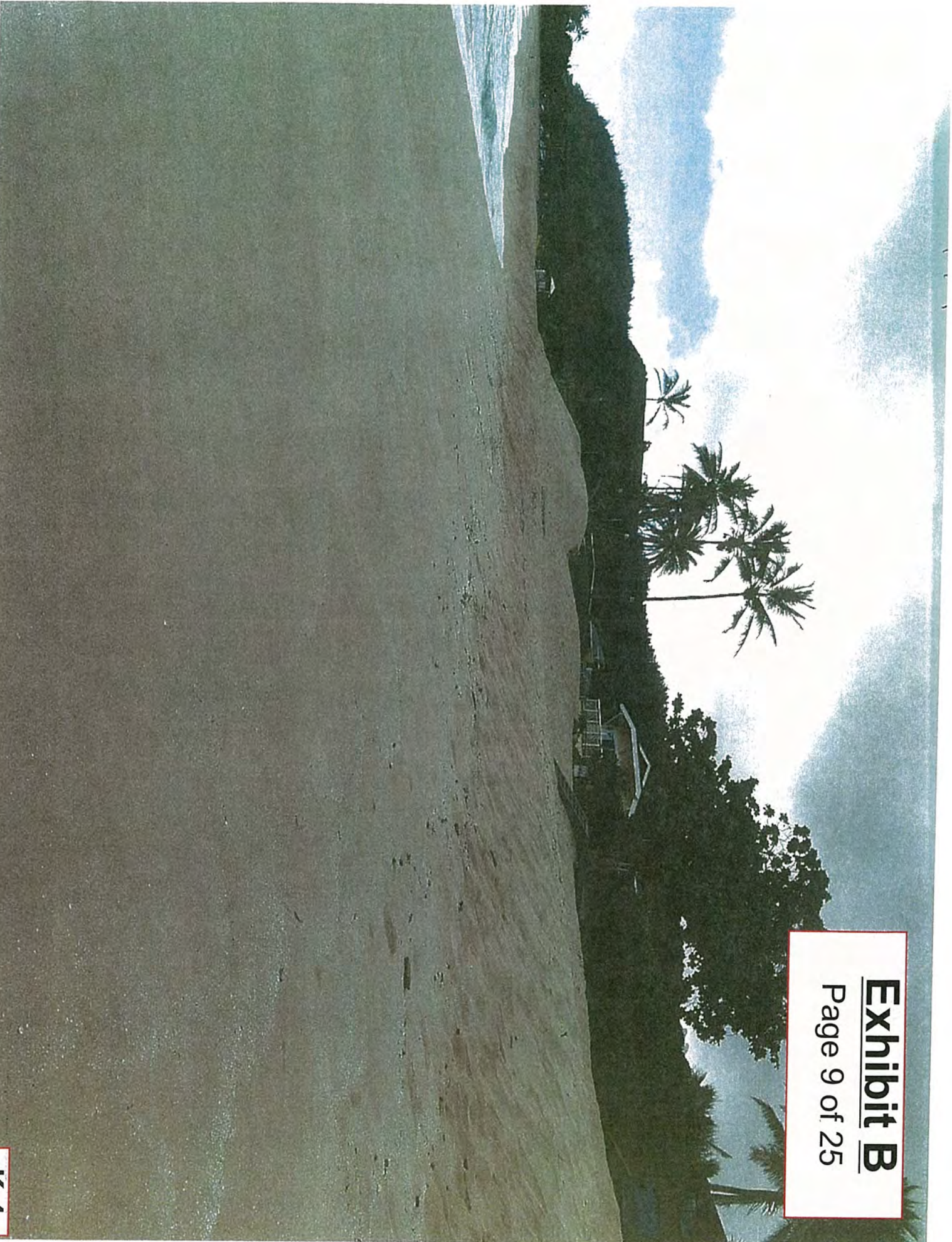
59-151A Kuroki
59-149 Freeman



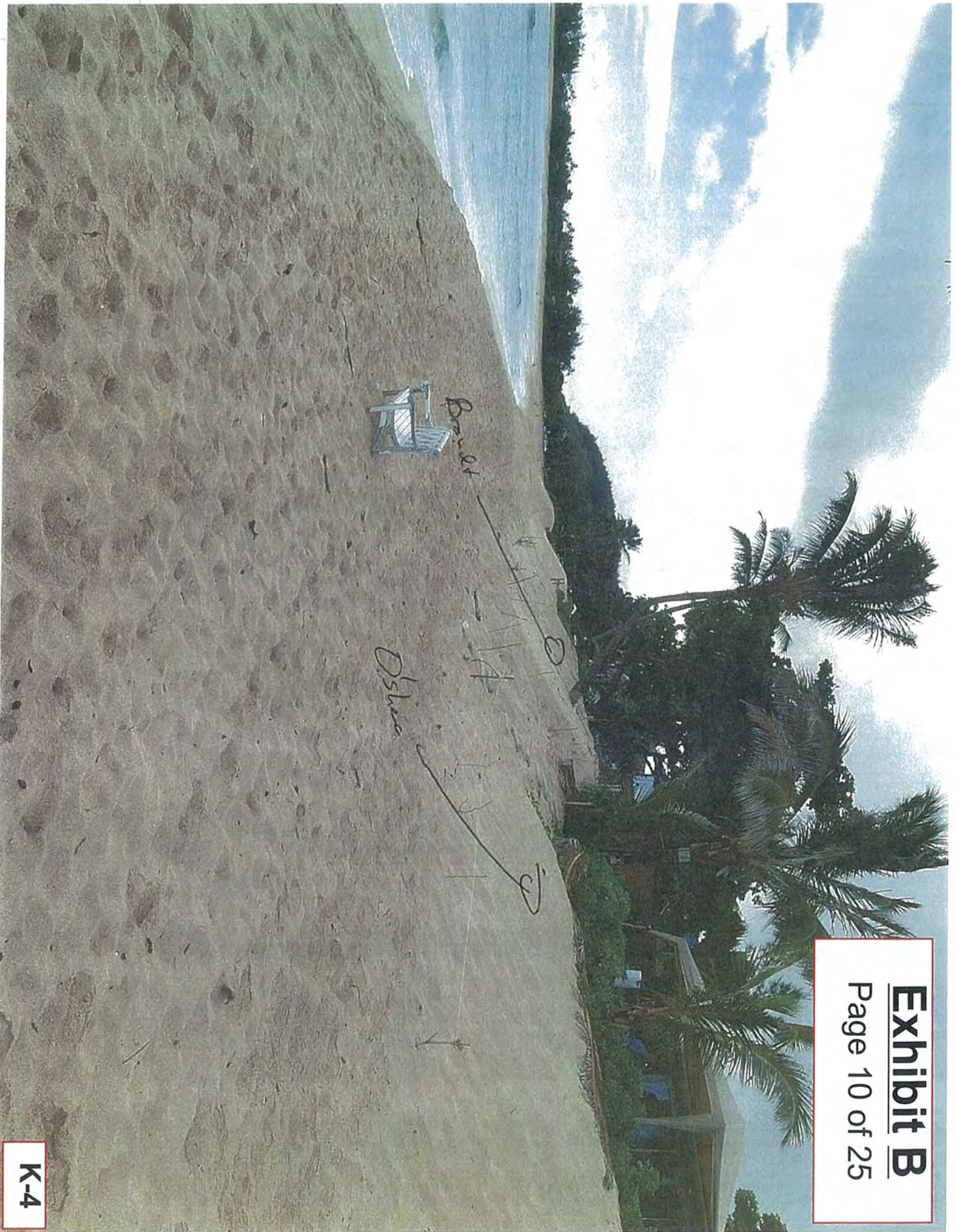
K-4

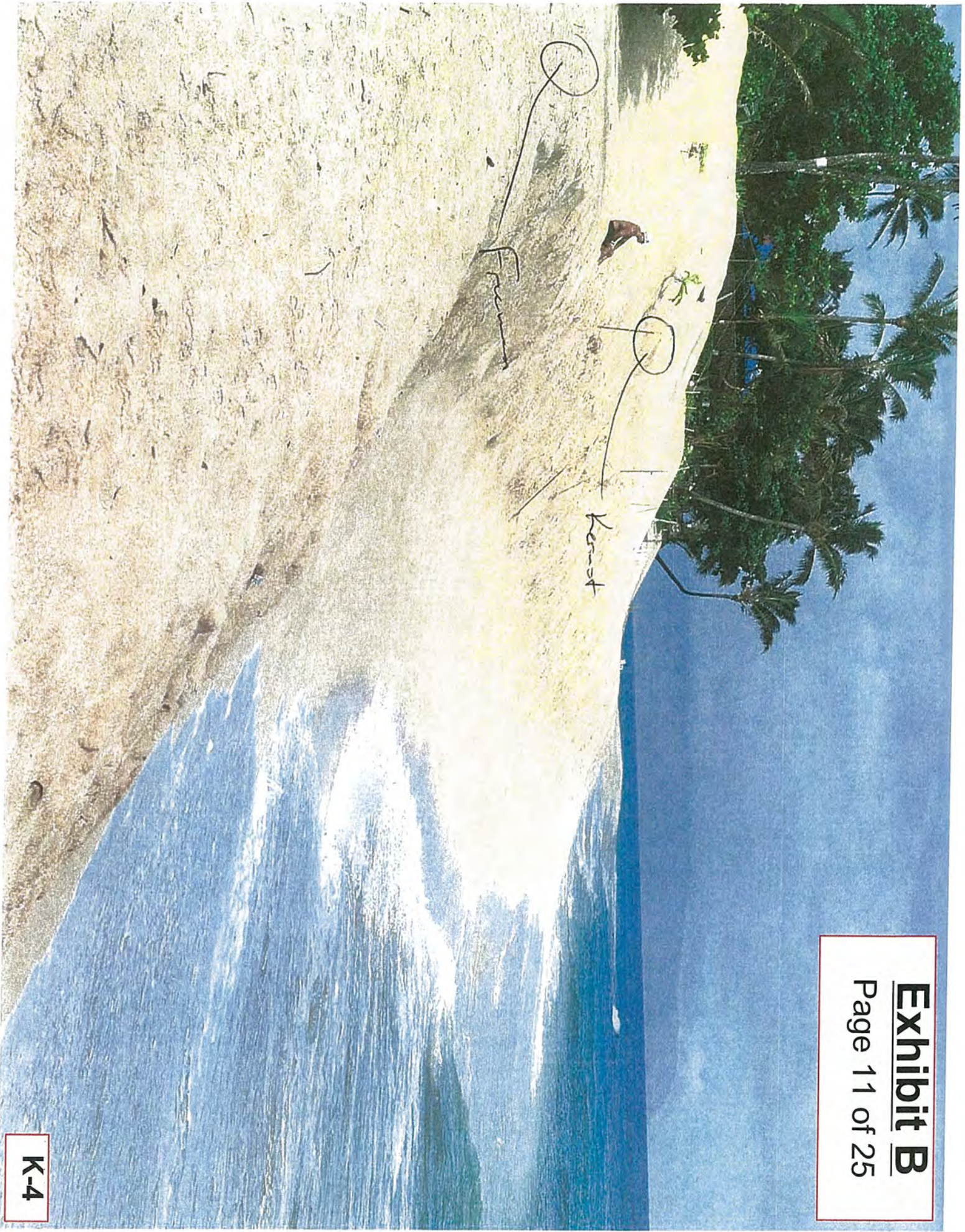
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K-4





10/11

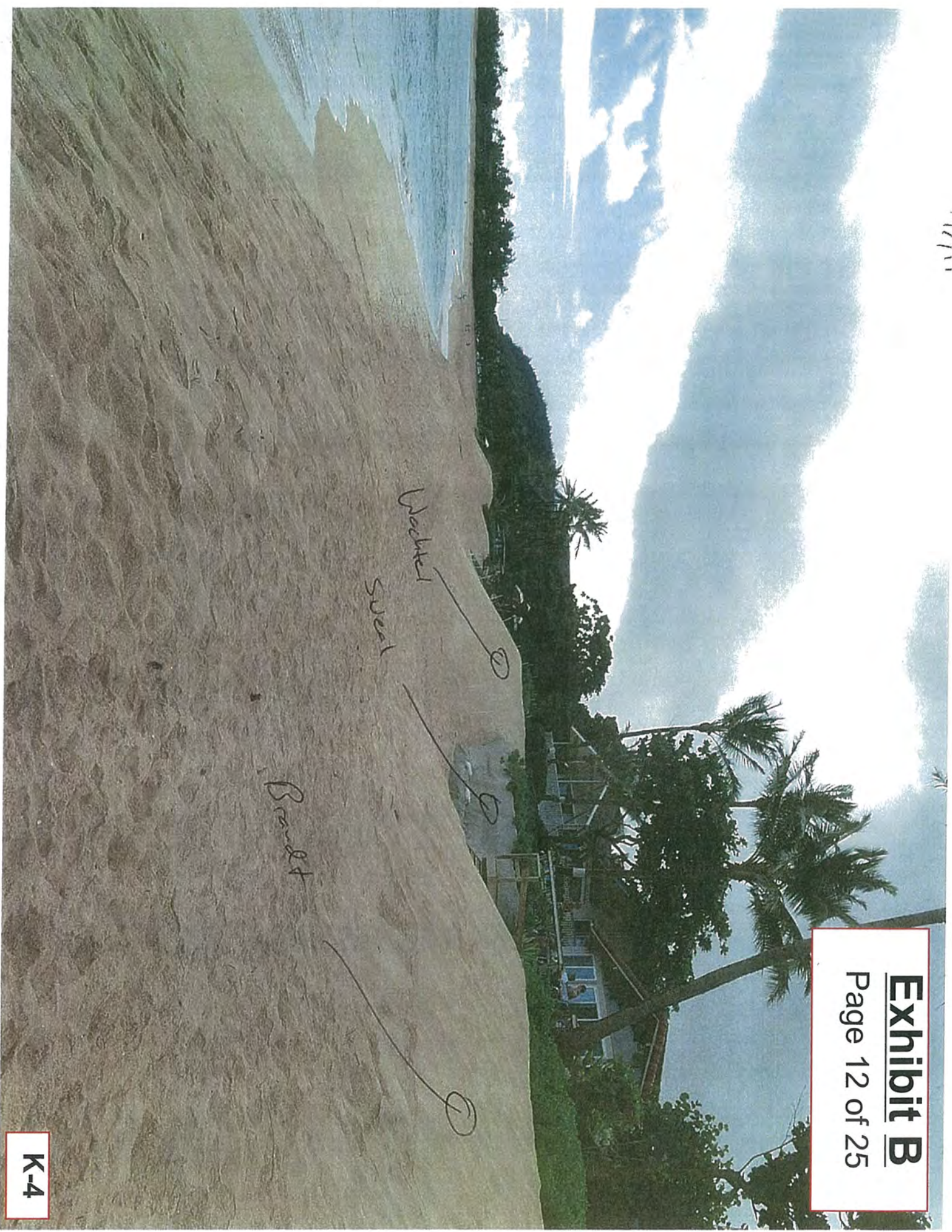
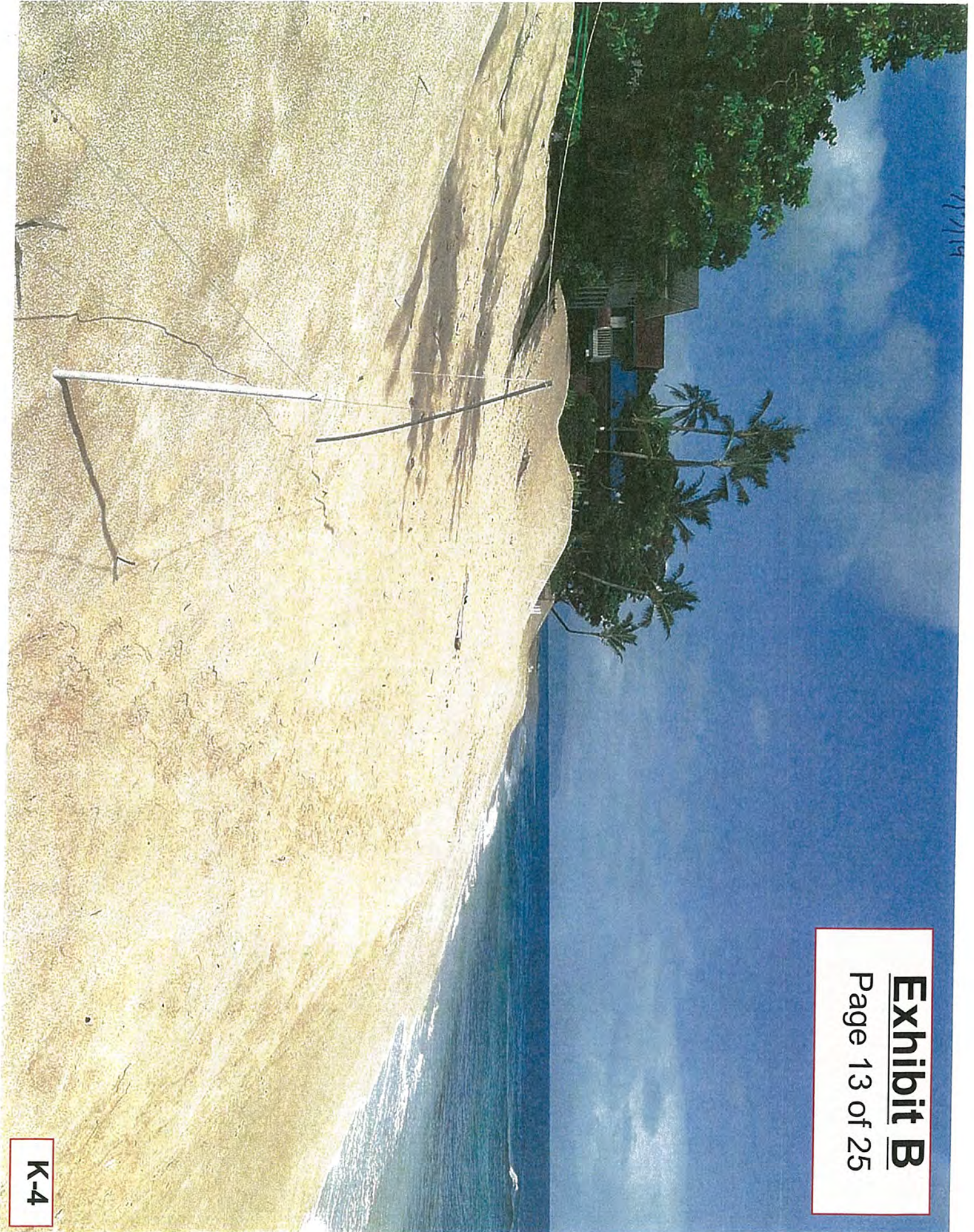
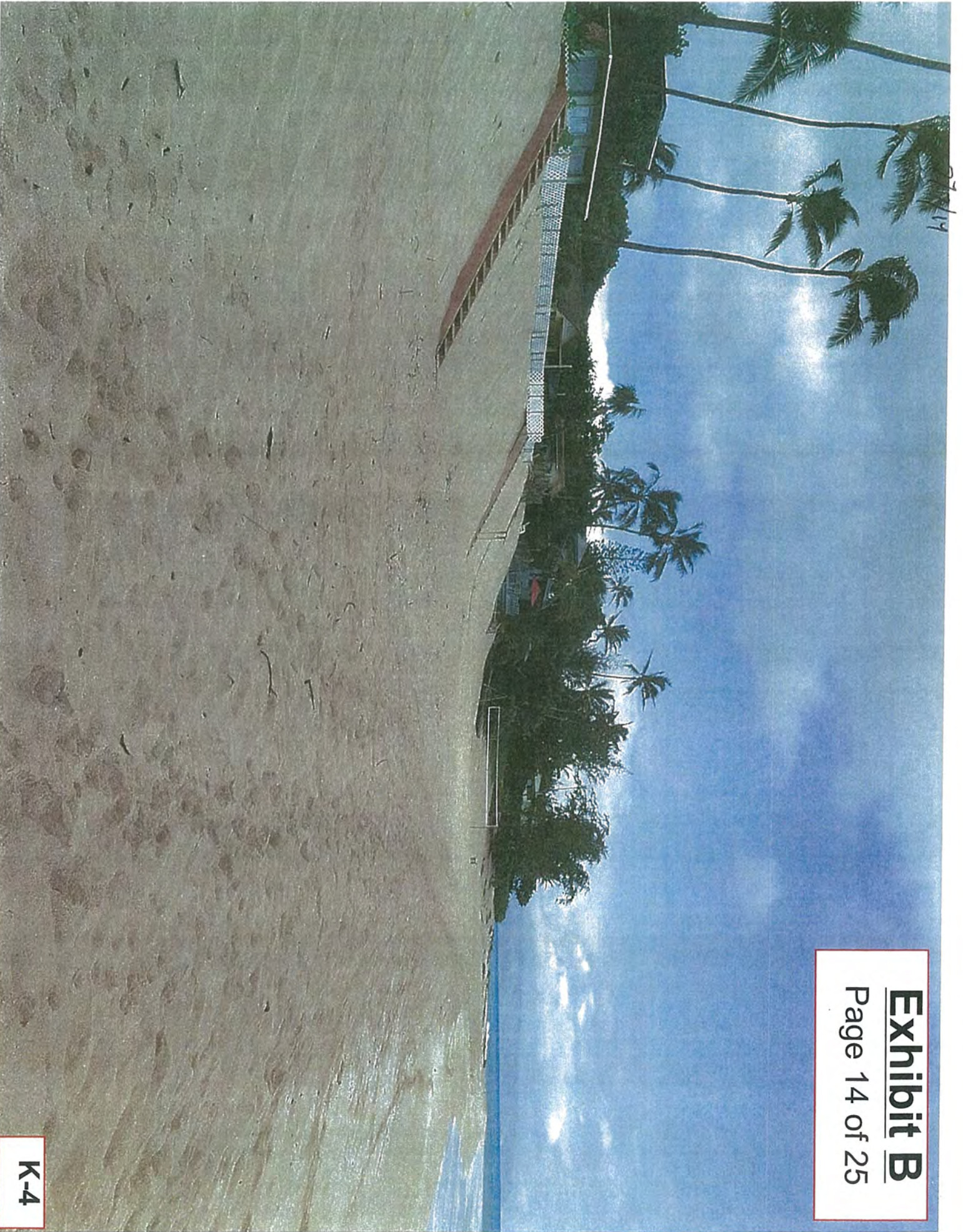


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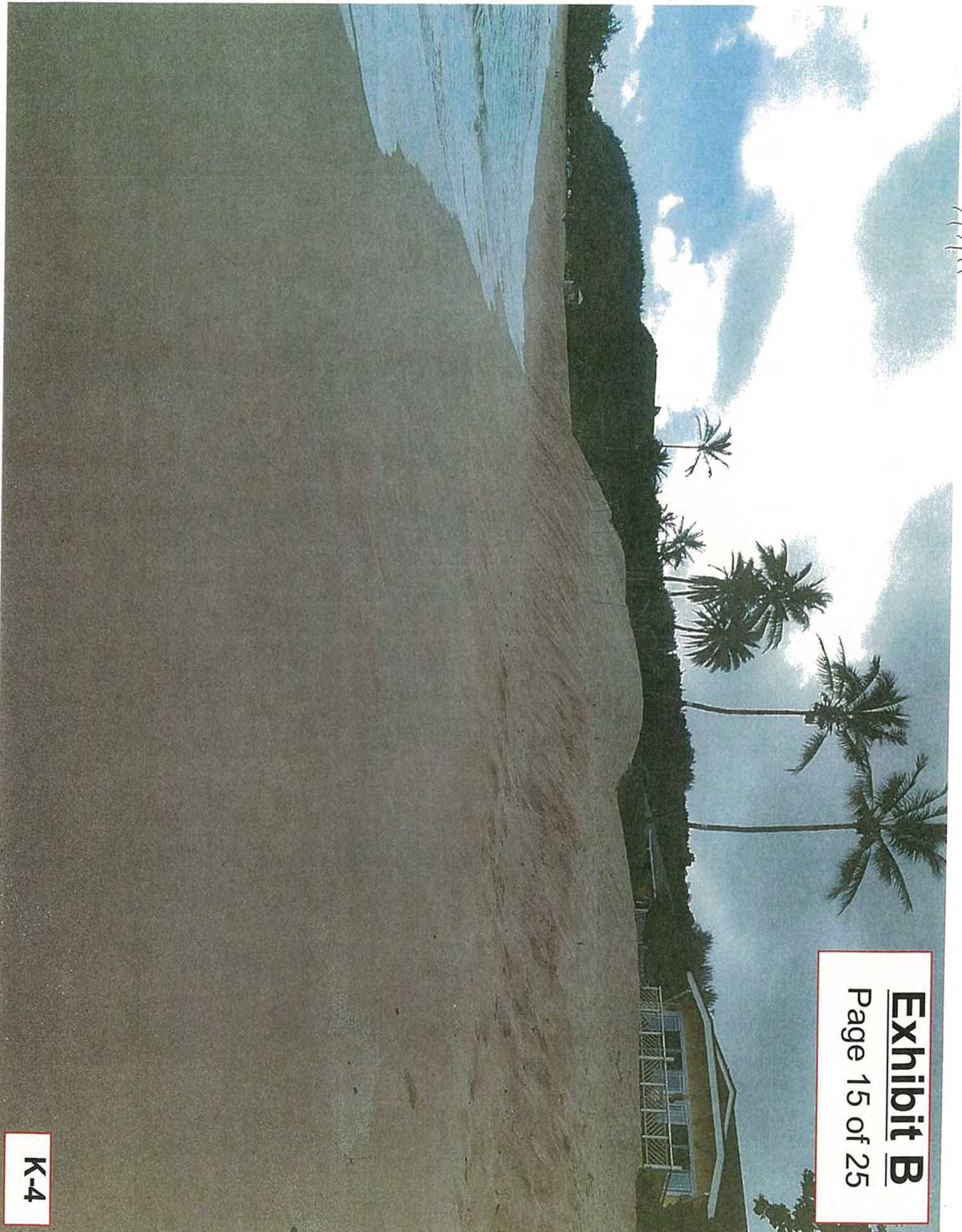


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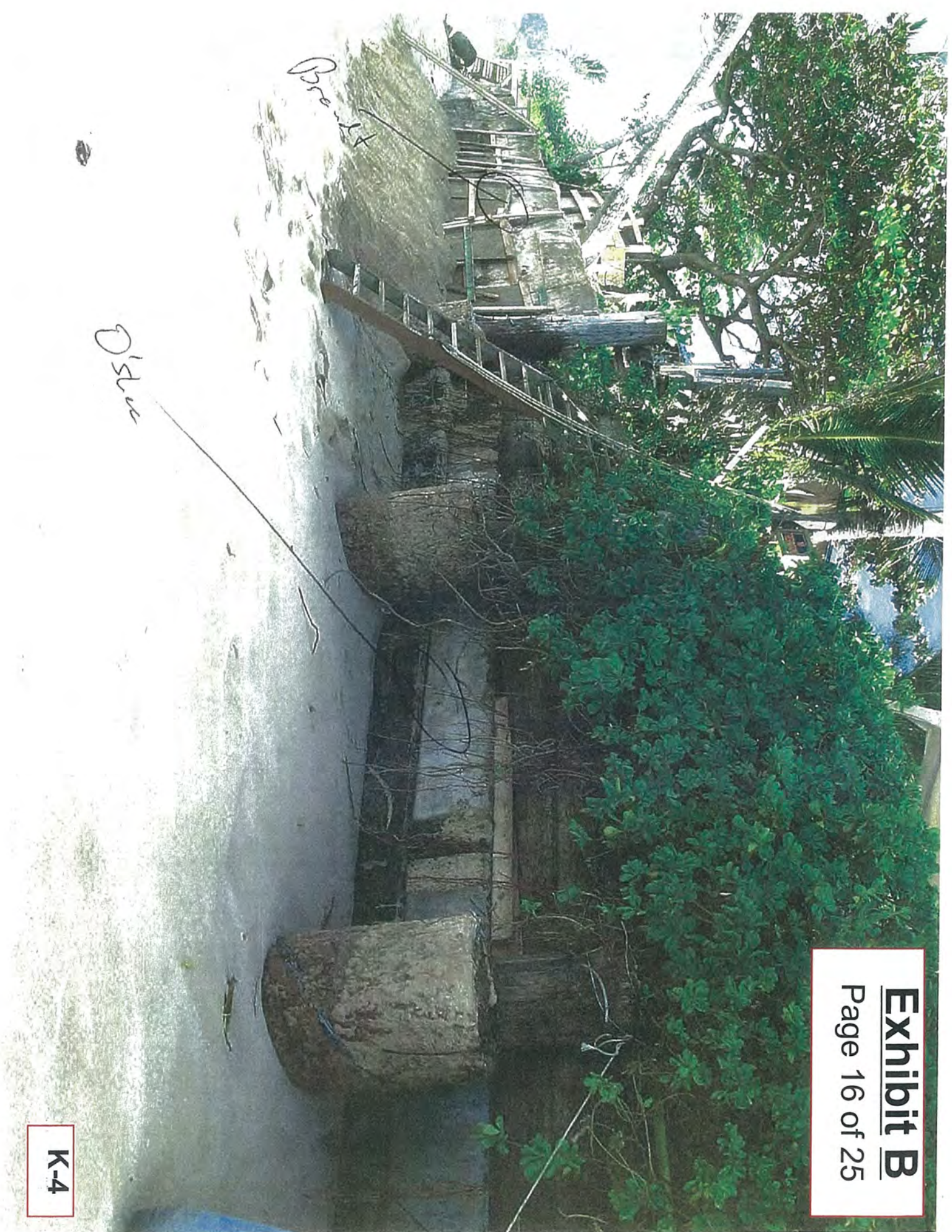


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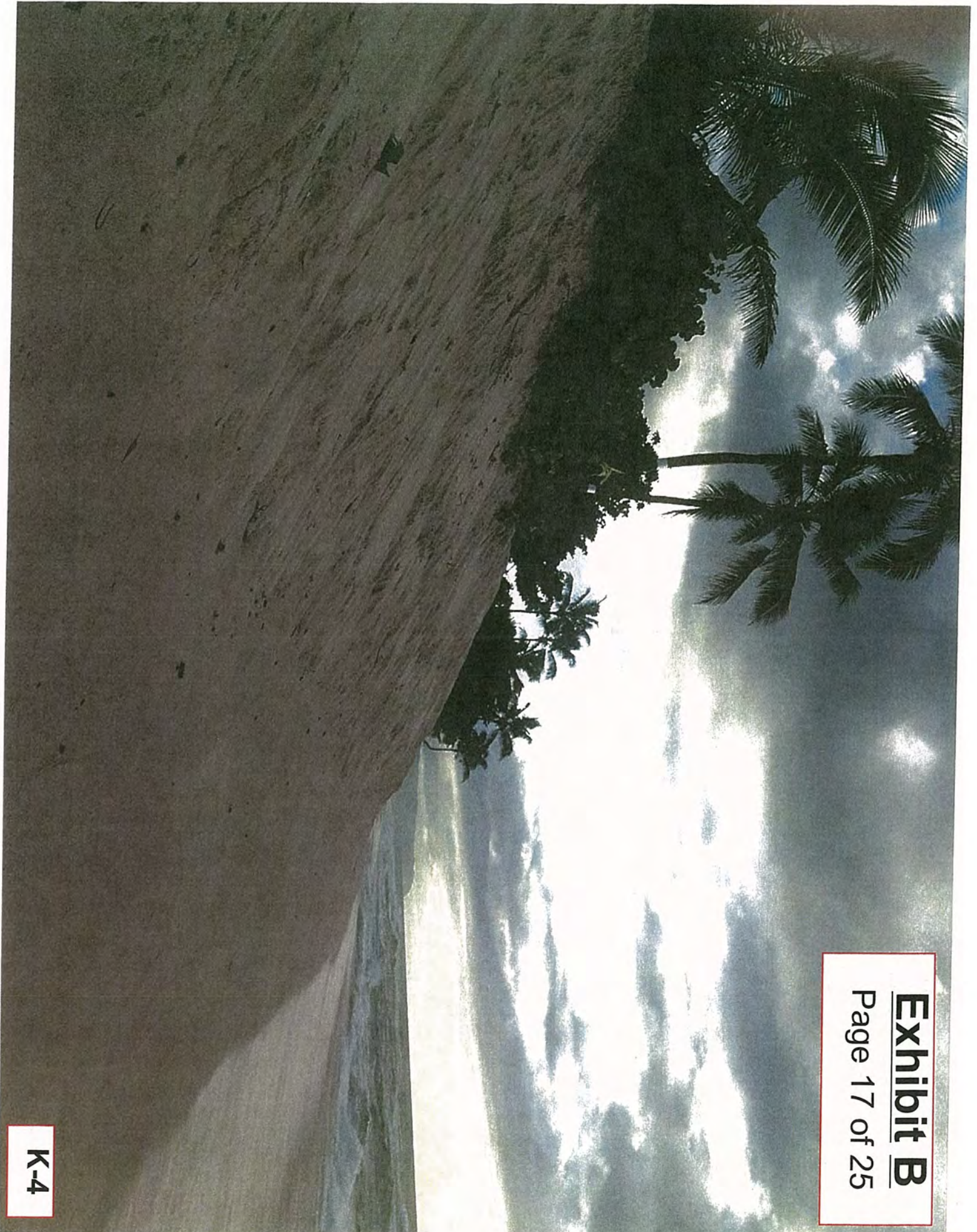
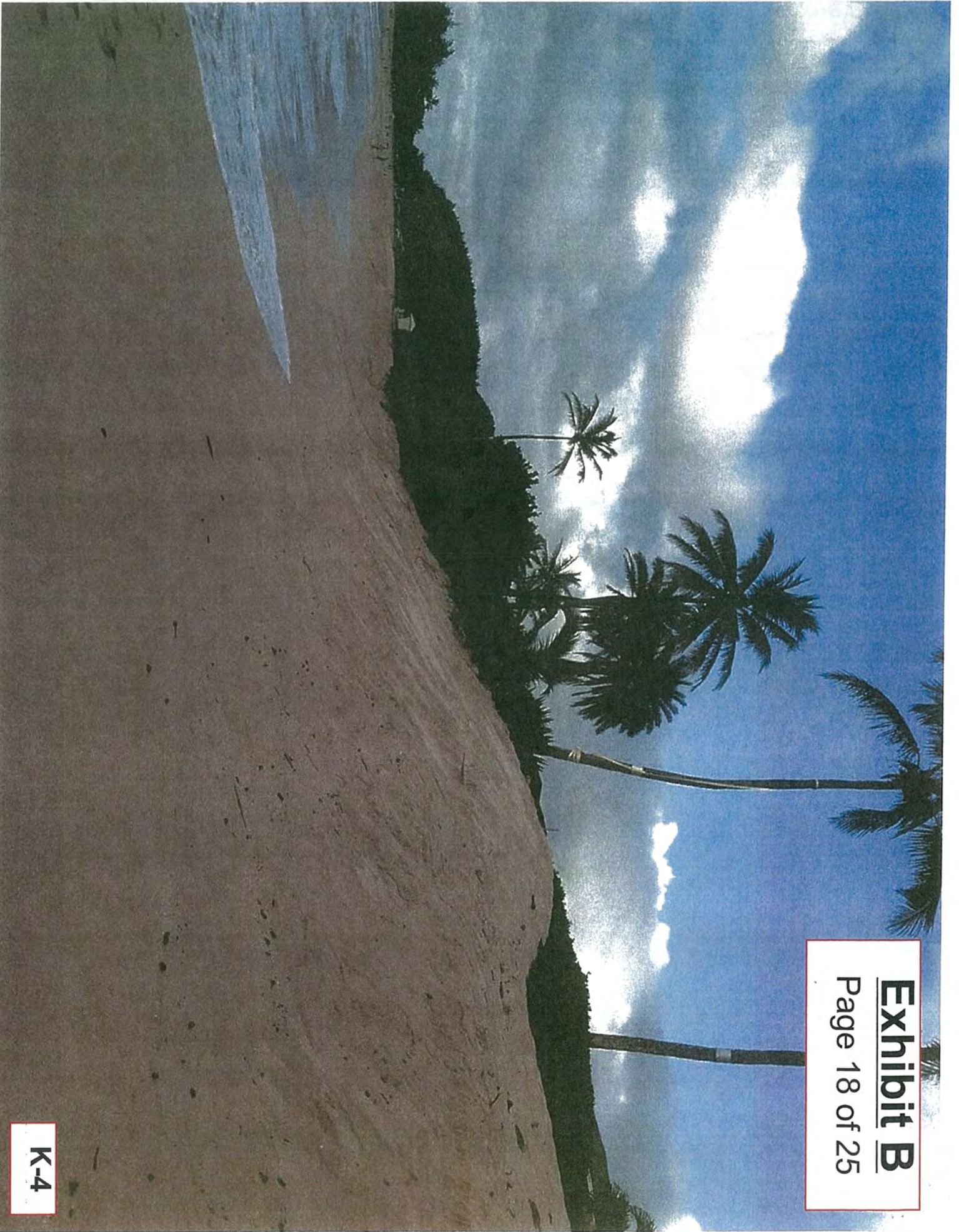


Exhibit B

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NEIL ABERCROMBIE
GOVERNOR OF HAWAII



Exhibit B
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

DLNR:OCCL:SL

Emergency OA-14-57

William Kernot
59-151A Ke Nui Road
Haleiwa, HI 96712

JUL - 8 2014

Dear Mr. Kernot,

SUBJECT: RE: Request for Emergency Temporary Shore Protection at 59-149, 59-151A, and 59-165D Ke Nui Road, Haleiwa (Sunset Beach; TMKs (1) 5-9-002:004, 005, and 017)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your July 2, 2014 request to place a protective sand bank (dune) as temporary erosion control along approximately 200 feet of the shoreline fronting 59-149, 59-151A, and 59-165D Ke Nui Road, Haleiwa, Oahu (Sunset Beach; TMKs (1) 5-9-002:004, 005, and 017).

Recent erosion from seasonal waves, possibly combined with a long-term trend of beach erosion, has created a steep eroded bank (scarp) that may pose a threat to single-family residences on the subject properties, if the erosion continues as likely through the summer and early fall. The present situation is similar to the beginning of the erosion problems which culminated in September – October of 2013 causing damage and land loss to the subject and neighboring properties. In response, sand pushing (sand scraping and movement by mechanical means) projects were given emergency authorization by DLNR and conducted by the property owners in October, 2013 and January, 2014. The purpose of the July, 2014 requested sand push is to provide added protection in anticipation of further beach erosion, which typically continues through the summer and into the early fall in this area.

The request is to push additional sand to supplement the existing protective sand banks to improve seasonal erosion protection using clean locally-sourced beach sand from an area of seasonal beach accretion fronting Paumalu Stream mouth. Sand will be scraped (excavated) from the dry beach area fronting Paumalu Stream mouth to a maximum depth of 4 feet (not below the grade of the existing channel, see Enclosure) using heavy machinery (e.g., excavator or front loader) and transported along the beach to the subject properties. Sand will be placed on the seaward side of the existing protective sand banks creating an approximate 1:1 slope. No sand will be removed nor will any work be done below the high water line.

K-4

DLNR authorizes the sand pushing and placement of a protective sand bank, 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.

DLNR authorizes the placement of a sand bank 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 bank fronting the subject properties at TMKs (1) 5-9-002:004, 005, and 017 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 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 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;

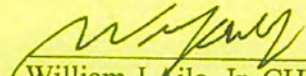
6. No materials shall be placed on the sand bank, including but not limited to tarps, sandbags or fencing, without prior authorization from DLNR;
7. The applicants shall not induce, plant, or cultivate vegetation atop the protective sand bank, without prior authorization from DLNR;
8. At the conclusion of work, the area shall be cleaned of all construction material and the site shall be restored to a condition acceptable to the Chairperson;
9. The Applicant will prepare a completion report for the project. It will summarize the construction and detail any deviation from the proposed plans;
10. 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;
11. 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;
12. 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;
13. 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;
14. 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;
15. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses;
16. No motorized construction equipment is to be operated in the water at any time;

17. In the event there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
18. 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;
19. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for authorized projects;
20. 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;
21. 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;
22. Public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety;
23. 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
24. 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.

Exhibit B
Page 24 of 25

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

Sincerely,



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

I concur with the conditions of this letter:

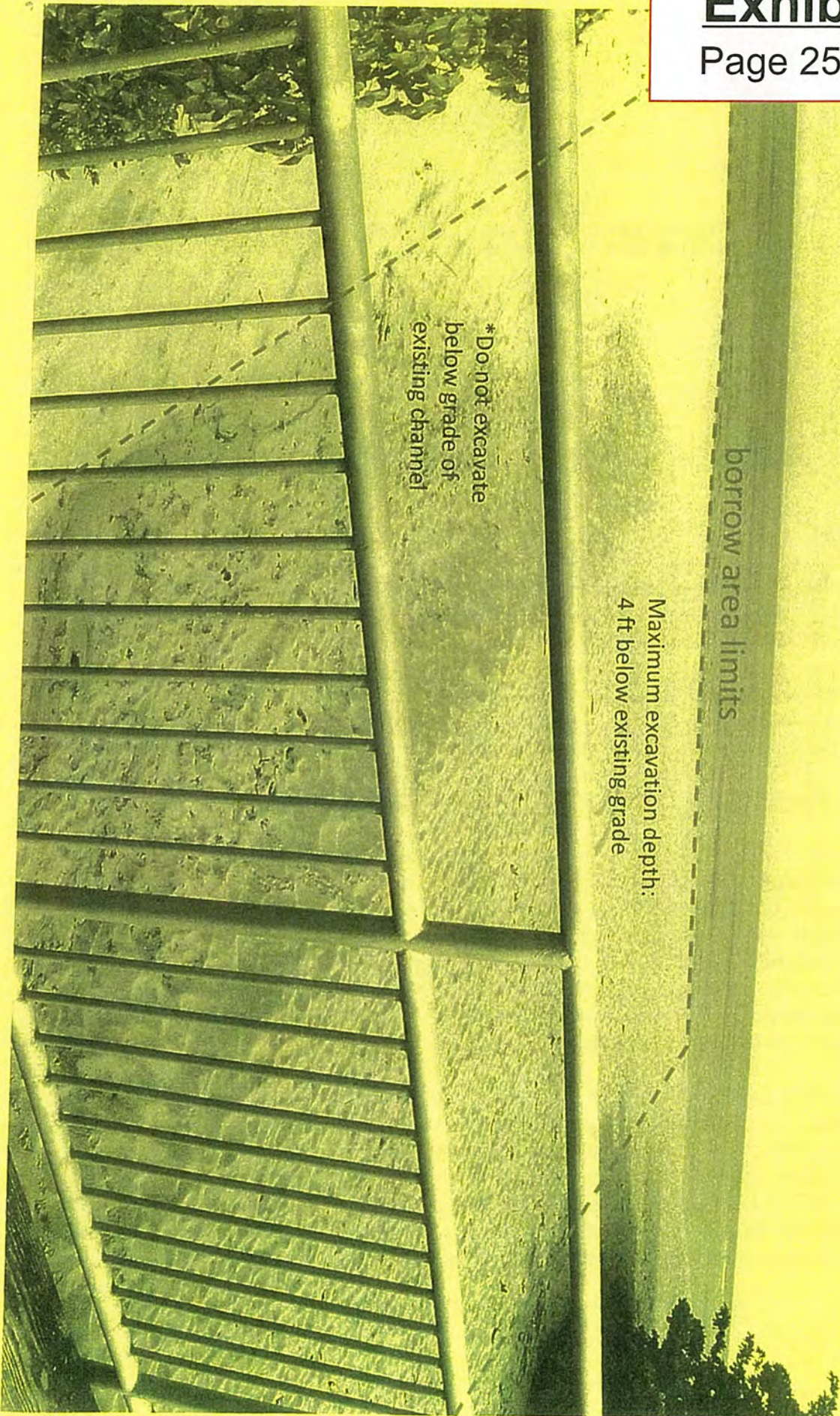
<hr/> Address (Ke Nui Rd)	<hr/> Permittee's Name (Print)	<hr/> Signature	<hr/> Date
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<hr/> Address (Ke Nui Rd)	<hr/> Permittee's Name (Print)	<hr/> Signature	<hr/> Date

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

Exhibit B

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OA-14-57 Emergency Authorization
Paumalu Stream Mouth, Sunset, Sand Borrow Area Limits (photo date 7/3/14, DLNR)



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

Exhibit C

Page 1 of 14

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

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

DLNR:OCCL:SL

Correspondence OA-18-45

William Kernot
59-151A Ke Nui Road
Haleiwa, HI 96712

AUG 30 2017

Dear Mr. Kernot,

SUBJECT: RE: Request for Temporary Preventative Berm Maintenance at 59-147, 59-147A, 59-149, and 59-151 A Ke Nui Road, Haleiwa (Sunset Beach; TMKs (1) 5-9-002:002, 003, 004, and 005)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your August 22, 2017 request to conduct preventative beach maintenance (sand pushing) to restore the backshore berm as temporary erosion control along approximately 220 feet of the shoreline fronting 59-147, 59-147A, 59-149, and 59-151 A Ke Nui Road, Haleiwa (Sunset Beach; TMKs (1) 5-9-002:002, 003, 004, and 005).

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

Beach and shoreline erosion culminated in October of 2013 with damage and land loss at the subject properties. In response, sand pushing (sand scraping and movement by mechanical means) and berm restoration projects were authorized by DLNR and conducted by the property owners and neighboring properties in October, 2013; January, July, and November 2014; and October 2015. OCCL has been monitoring the beach on a regular basis and finds that much of the sand from the previous berm restorations was lost to erosion over this summer to the point that the homes on the subject properties may be threatened if the erosion continues.

K-4

The request is to restore the backshore berm fronting the subject properties using clean locally-sourced beach sand from an area of seasonal beach accretion fronting Paumalu Stream mouth as follows:

- Clean locally-sourced beach sand will be scraped from the dry beach area fronting Paumalu Stream mouth, only, (see limits of excavation area in Attachment A) using heavy machinery (e.g., dozer and/or excavator), and transported along the beach to the subject properties.
- Sand will be excavated/scraped to a maximum depth of three (3) foot below existing grade of the beach at the stream mouth.
- No rocks or other materials within the stream mouth and stream bed will be disturbed.
- 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 top edge of the existing 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 59-147, 59-147A, 59-149, and 59-151 A Ke Nui Road, Haleiwa (Sunset Beach; TMKs (1) 5-9-002:002, 003, 004, and 005). 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) 5-9-002:002, 003, 004, and 005 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 Contractor will take precautions and preventative measures to ensure that the bike path and vegetation at Sunset Beach Park are not damaged when accessing the project area;
7. The area for sand scraping (excavation) is limited to the frontal berm of the seasonal beach accretion are fronting Paumalu Stream mouth (as depicted in Attachment A) and to a depth no greater than one (3) foot;
8. No rocks or other materials within the stream mouth and stream bed shall be disturbed;
9. Sand shall not be placed (piled) more than one (1) foot above existing grade (elevation) of the seaward edge of the subject properties;
10. The top of the restored berm shall not be greater than ten (10) feet wide, measured from top edge of the existing eroded scarp;
11. Work shall be conducted during daylight hours, only. No work shall be conducted at night;
12. No materials shall be placed on the sand bank, including but not limited to tarps, sandbags or fencing;
13. The applicants shall not induce, plant, or cultivate vegetation atop the protective sand berm;
14. 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;

15. 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;
16. 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;
17. 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;
18. 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;
19. 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;
20. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses;
21. No motorized construction equipment is to be operated in the water at any time;
22. In the event there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
23. 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;
24. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for authorized projects;
25. 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;

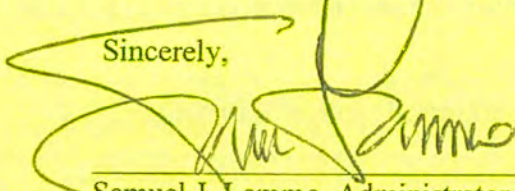
Exhibit C

Page 5 of 14

26. 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;
27. Public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety;
28. 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
29. 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

Exhibit C

Page 6 of 14

I concur with the conditions of this letter:

59-147, 59-147A, 59-149, and 59-151 A

<u>59-147</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-147 A</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-149</u> Address (Ke Nui Rd)	_____ Permittee's Name (Print)	_____ Signature	_____ Date
<u>59-151 A</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

Corr. OA-18-45

Attachment A



Exhibit C

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Paumalu Stream Mouth. Photo date August 24, 2017

Corr. OA-18-45

Attachment A

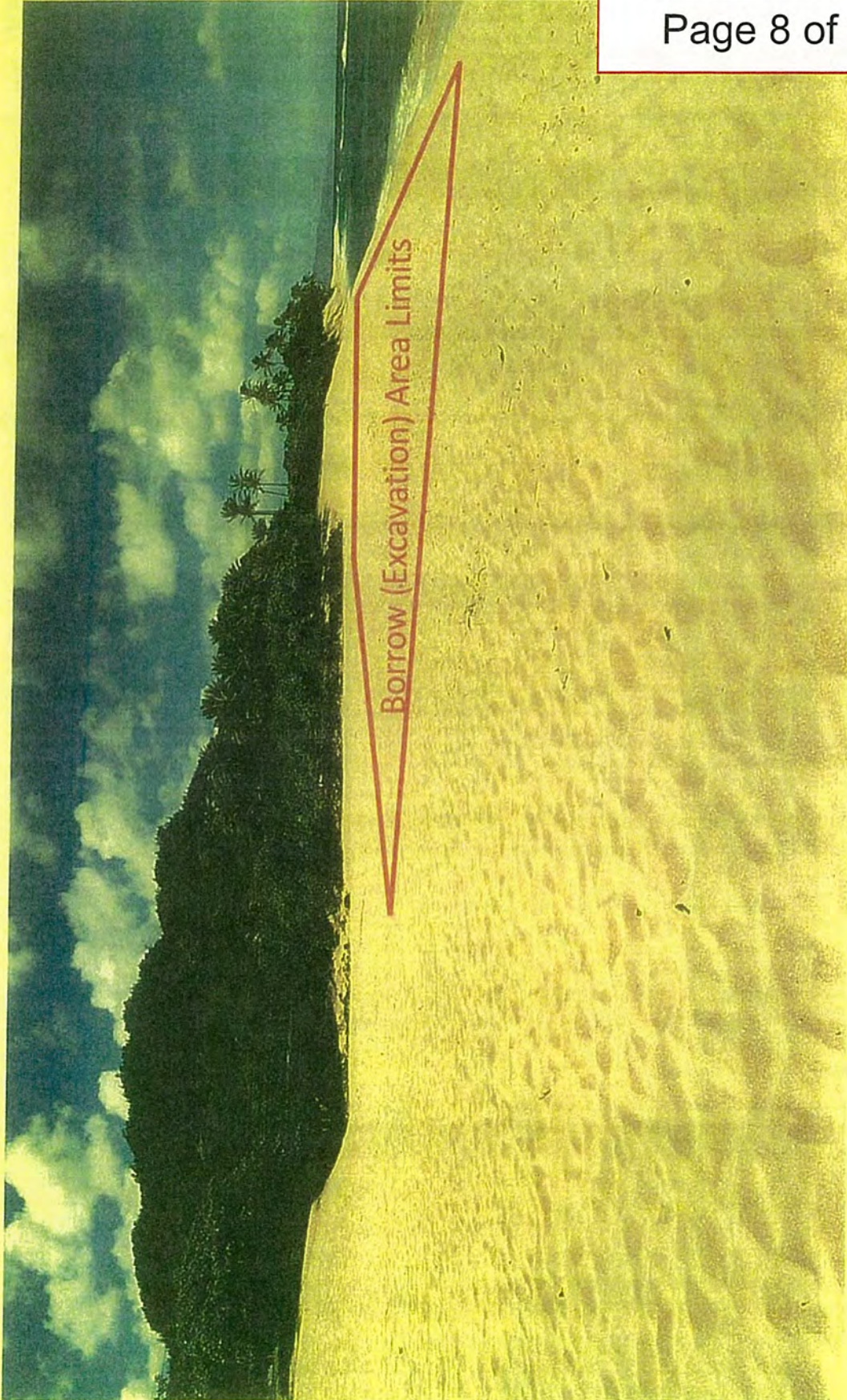


Exhibit C

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Paumalu Stream Mouth. Photo date August 24, 2017

Exhibit C

Page 9 of 14

Romine, Bradley M

From: william@kernotgroup.com
Sent: Thursday, September 21, 2017 4:13 PM
To: Glenn Wachtel
Cc: Lemmo, Sam J; Farinholt, Natalie A; Hazama, Miles; Romine, Bradley M
Subject: Re: status of sand pushing operation

Hi Glenn,

Please take note of the requests from Brad as the sand push has already finished at my home and as of today and as far as I know it's moved onto yours.

I'm not in Hawaii so you'll have to pass the message onto to the contractor once your sand push has been completed.

Mahalo
William

From: Romine, Bradley M
Sent: Thursday, September 21, 2017 18:56
To: William Kernot
Cc: Lemmo, Sam J; Farinholt, Natalie A; Hazama, Miles
Subject: RE: status of sand pushing operation

Thanks for the update. Please smooth any remaining ruts or depressions in the beach and continue to protect vegetation and the bike path when driving the machinery off of the beach.

-Brad

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

From: William Kernot [mailto:william@kernotgroup.com]
Sent: Thursday, September 21, 2017 12:21 PM
To: Romine, Bradley M
Subject: RE: status of sand pushing operation

Hi Brad,

This sand push was a complicated one as conditions weren't favorable and the 3 days that i needed the sand the most the surf was washing up against my property and therefore the excavator couldn't get to me.

Anyway, they finished yesterday with the 3 homes and now they've moved to Glenn's

Regards
William

Exhibit C
Page 10 of 14

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

From: "Romine, Bradley M" <bradley.m.romine@hawaii.gov>

Date: 09/21/2017 9:08 AM (GMT-10:00)

To: william@kernotgroup.com

Cc: "Lemmo, Sam J" <sam.j.lemmo@hawaii.gov>, "Farinholt, Natalie A" <natalie.a.farinholt@hawaii.gov>, "Hazama, Miles" <mhazama@honolulu.gov>

Subject: status of sand pushing operation

William,

Please provide a status update on the sand pushing. I understand work continues.

Thanks,
Brad

Bradley M. Romine, PhD

Coastal Lands Program Coordinator

University of Hawaii Sea Grant College Program,

Hawaii Department of Land and Natural Resources,

Office of Conservation and Coastal Lands

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

Romine, Bradley M

From: william@kernotgroup.com
Sent: Wednesday, August 30, 2017 7:03 PM
To: Romine, Bradley M; Hazama, Miles
Cc: Lemmo, Sam J
Subject: Re: OCCL letter for sand pushing at Kammies-Sunset

Thank you.

From: Romine, Bradley M
Sent: Wednesday, August 30, 2017 19:37
To: Hazama, Miles
Cc: william@kernotgroup.com; Lemmo, Sam J
Subject: OCCL letter for sand pushing at Kammies-Sunset

Miles,
OCCL letter attached authorizing sand pushing for William Kernot and a couple of his neighbors at Kammies-Sunset. They will be coming in for a right of entry permit soon. Let me know if you have any questions or concerns. Someone from OCCL will be checking in on the project work.

William,
How do you plan to access the beach? From the south end of Sunset Beach Park between the lifeguard tower and bridge? City Parks is asking that you and your contractor take precautions not to damage the bike path and vegetation.

-Brad

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

Romine, Bradley M

From: Romine, Bradley M
Sent: Wednesday, August 30, 2017 4:27 PM
To: Lemmo, Sam J; william@kernotgroup.com
Cc: Rodney Youman; Glenn Wachtel; Juliana Simone
Subject: RE: Sand Push
Attachments: OA-18-45 Kernot Sand Pushing.pdf

William,

DLNR-OCCL authorization for sand pushing attached. A hard copy is on the way to your Sunset Beach address.

As always, a right of entry permit is required from the City before starting work. I'm sending a copy of the letter to Miles Hazama at City Parks in another email. Please notify us at least 24 hours prior to starting work. Someone from OCCL will likely be onsite.

The letter includes 59-147 and 59-147A if they would like to participate in the effort, since sand will be pushed in front of their lots to reach your property.

The authorization does not include Glenn Wachtel's property per Sam's previous email.

Please review the Terms and Conditions carefully and have the participating landowners sign and return it to DLNR before conducting the work.

Note, the letter includes an attachment with the extents of the borrow/excavation area at the seaward end of the stream mouth.

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

From: Lemmo, Sam J
Sent: Wednesday, August 30, 2017 11:20 AM
To: william@kernotgroup.com; Romine, Bradley M
Cc: Rodney Youman; Glenn Wachtel; Juliana Simone
Subject: RE: Sand Push

Brad is working on it. It seems that you folks need the sand. I am told that Glenn still has sand. I don't think there is enough sand to move up to Glenn's right now.

Mahalo
Sam Lemmo, Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
(808) 587-0377

From: william@kernotgroup.com [<mailto:william@kernotgroup.com>]
Sent: Wednesday, August 30, 2017 4:13 AM

To: Romine, Bradley M <bradley.m.romine@hawaii.gov>

Cc: Rodney Youman <ryouman007@yahoo.com>; Glenn Wachtel <gwachtel@hotmail.com>; Juliana Simone <julianasimone@mac.com>; Lemmo, Sam J <sam.j.lemmo@hawaii.gov>

Subject: Re: Sand Push

Exhibit C

Page 13 of 14

Hi Brad,

After chasing up my neighbors for their details it appears now that there's only 2 of us wanting to go ahead with the sand push although Glenn Wachtel called me on Monday to let me know he's also like to be included.

Here's the list below:

William Kernot: 59 151A Ke Nui Rd. Haleiwa

Rodney Yoman: 59 149 Ke Nui Rd. Haleiwa

Glenn Wachtel: address tba as I don't have it on me at the moment

Please advise when you will be issuing the Permit as both Rodney and I are desperate for sand!!!

Kind Regards

William

William,

Please confirm the owner names and addresses for the other two properties requesting the sand push.

Thanks,

Brad

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

From: william@kernotgroup.com [<mailto:william@kernotgroup.com>]

Sent: Friday, August 25, 2017 4:36 PM

To: Romine, Bradley M

Subject: Re: Sand Push

Ok thanks but please try for Monday as I'm very concerned for both my property and for the safety of it's occupants.

From: Romine, Bradley M

Sent: Friday, August 25, 2017 18:21

To: william@kernotgroup.com; Lemmo, Sam J

Subject: Re: Sand Push

William,

We'll get back to you early next week. Thanks for your patience.

Thanks,
Brad

Bradley M. Romine, PhD

Coastal Management Specialist
University of Hawaii Sea Grant College Program,
Center for Coastal and Climate Science and Resilience
and
Hawaii Department of Land and Natural Resources,
Office of Conservation and Coastal Lands
Ph: (808) 587-0049 romine@hawaii.edu

From: william@kernotgroup.com <william@kernotgroup.com>
Sent: Tuesday, August 22, 2017 1:25:20 PM
To: Lemmo, Sam J
Cc: Romine, Bradley M
Subject: Sand Push

Hi Sam and Brad,

I'm once again requesting for an urgent sand push as an Emergency Measure as the erosion situation has gotten worse and all my neighbors east of my home to Sunset Beach Park would like to participate as they're in a similar situation.

Kind Regards
William Kernot

EMERGENCY

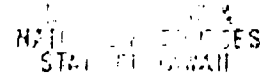
CA-19-1

Exhibit D

Page 1 of 5



2018 JUL 17 A 9:15



July 15, 2018, 2017

931 University Ave Suite #304 • Honolulu, HI 96826

Info@gundakerworks.com

Phone: (808) 268-6072

Fax: (808) 693-9931

Oahu, Maui, Kauai, & Hawaii

Samuel Lemmo

Administrator

Department of Land and Natural Resources

DLNR Office of Conservation and Coastal Lands (OCCL)

Rodney Youman
59-149 Ke Nui Rd
Haleiwa, HI 96712

Subject: Emergency Response to Erosion Control

Address: 59-149 Ke Nui Rd, Haleiwa, HI 96712

TMK: 5-9-00204: 0000

This letter is to inform the Department of Planning and Permitting, Land Use Approval Branch (LUAB), of the state of emergency for the properties from 59-151 A Ke Nui Road. On July 13, 2018, Rodney Youman contacted me because he was in need of an immediate erosion control solution. The erosion scarp is less than 20' from the home and is in need of immediate action. The erosion has removed earth to where the scarp is dangerously close to impacting the structural integrity of the property dwelling. Rodney is worried about losing his home on Sunset Beach.

Depicted in the images below, you can see the scarp and slope of erosion appears to be less than 10'



The first solution Rodney sought was to push sand to the erosion scarp. It's common for homeowners to push sand constantly to avoid losing their homes to erosion on the shoreline; however, the erosion is happening at a more alarming rate as you can see in the images below that the recently pushed sand has been removed by the force of the ocean and looks to continue its course of erosion.

The images below show Rodney's property and shoreline, view from the scarp edge on each side.



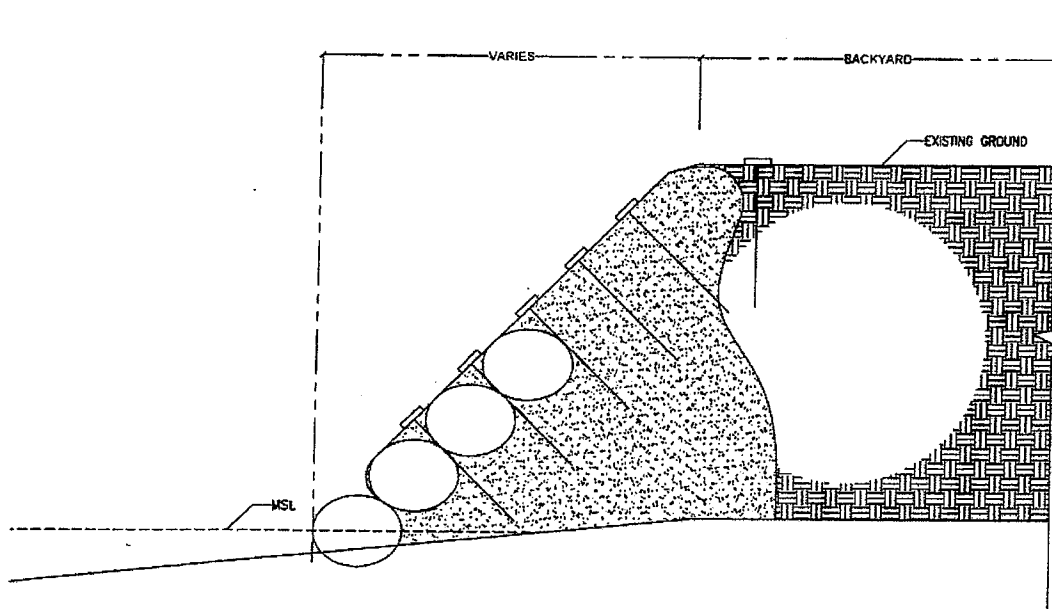
Erosion Control – 59-175 B Ke Nui Rd. – 59-175 C Ke Nui Rd.

Exhibit D

Page 4 of 5

Due to the emergency nature of this work, we contacted Little Environment for their expertise. DLNR approved Little Environment's plans for a Temporary Shoreline Erosion Control Structure (SPA OA-18-04) for our other clients in Waimanalo. We installed a similar solution to provide emergency Erosion Control by using a sand filled Heavy Weight Geotextile Fabric Tube Anchor set below a Heavy-Duty Geotextile Fabric and to prevent any further erosion due to wave action. The plans propose creating an anchor toe at the base of their sloped properties, to be filled with sand from the site, to act as a foundation footing. The Heavy Weight Geotextile Fabric Tube Anchor will be rolled and filled with sand, placed over the relocated sand fill. The same Geotextile material is then attached from the anchor toe up the eroded side of the property and secured at the top with 3' spikes driven into the earth as well as 4' long wooden spikes driven into the sloped land.

Please see the Section and detail prepared by Little Environment for Shoreline Erosion Control, approved by DLNR for TMK: 4-1-001: 009 (SPA OA-18-04).



In summary, due to the timing of our contact and the nature and concerns of the property owners, Gundaker Works, LLC. has advised the hui to move forward with the emergency work to be performed. We will be adding an anchor toe at the base of the property and a heavy

Erosion Control – 59-175 B Ke Nui Rd. – 59-175 C Ke Nui Rd.

weight Geotextile Fabric Burrito as well as Geotextile Fabric as an erosion control blanket along the length of their properties. All sand to be backfilled will come from the site; no sand will be imported. The work areas will be cleared of all tools and organized daily. A final work area restoration will begin upon completion.

Depicted in the image below is an example of one of the Soft Structures we have completed.



Please note, as this is a temporary solution, we have suggested that the homeowners file for a Shoreline Setback Variance to construct a Reinforced Concrete Seawall. This would prevent any loss of property or the endangerment of lives due structural erosion, thereby providing a long-term solution to the problem at hand. The homeowners effected would like to propose a sand push after this winter season, to occur sometime in Fall 2018, since this option has been implemented in the past.

If there is anything else we need to provide, please let us know.

Sincerely,



Mark Ticconi, Director of Operations

DAVID Y. IGE
GOVERNOR OF
HAWAII



Exhibit E

Page 1 of 6

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

DLNR:OCCL:SL

Emer.: OA-19-01

Mark Ticconi, Director of Operations
Gundaker Works, Inc.
931 University Avenue, Suite 304
Honolulu, HI 96826

JUL 18 2018

SUBJECT: Emergency Response to Shoreline Erosion Located at Sunset Beach, North Shore
of Oahu Tax Map Key :(1)5-9-002:004

Dear Dr. Ticconi,

The Department of Land and Natural Resources (DLNR) received your July 14, 2018 request to utilize temporary emergency erosion control measures (geotextile fabric erosion control blankets) along the shoreline at Sunset Beach, North Shore, Oahu.

Recent seasonal wave and current action has resulted in erosion of the shoreline fronting the subject property creating a safety hazard for a single family residence. The erosion appears to be within twenty feet or less from the residence and appears to be advancing.

The DLNR understands that the proposed work will occur on State land, seaward of where the shoreline would likely be determined based on HAR §13-5-222, Shoreline Certifications. A heavyweight geotextile fabric blanket will be installed fronting the subject property in response to the erosion. The blanket overlies sand filled tubes constructed of the same geotextile fabric. The blanket and tubes are staked in place with three-foot long wooded spikes. Sand will be used from the beach fronting the properties to fill the fabric tubes and to create an even slope behind the material. The structure will be constructed by hand.

The DLNR authorizes the temporary emergency erosion control measures as described above for three (3) years along the shorefront of the subject property in an effort to protect public health, welfare, and safety on the subject property under Hawaii Administrative Rules (HAR) §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 temporary structure may be considered an exempt action under State environmental laws under HAR §11-200-8 and as provided in the approved Exemption List for the DLNR, *Exemption Class 1: 1. Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources; and 2. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent damage from continuing to occur and to restore the topographical features and biological resources.* The Office of Conservation and Coastal Lands consulted with the Land Division, who has concurred with the EA exemption for the proposed project.

The temporary erosion control structure is intended to provide temporary mitigation of the erosion problem and reduce hazards to the subject property. If the subject structure results in adverse flanking of adjacent properties, the DLNR may require you to remove the structure immediately. Any materials that become liberated from the structure must be immediately removed from the beach or ocean. Further, it is critical that the property owners maintain lateral shoreline access through the area if the proposed work in any way interferes with lateral public shoreline access. Please review the following Terms and Conditions carefully.

Terms and Conditions

The DLNR authorizes the Emergency Temporary Shoreline Protection as described above fronting the subject property, at TMK (1) 5-9-002:004, provided that you adhere to the following Terms and Conditions:

1. It is understood that the Emergency Temporary Shoreline Protection is a temporary response to address a safety hazard to the existing residence on the subject property, which is threatened by both chronic and seasonal beach erosion. **The material is authorized as a temporary erosion control measure for three (3) years** from the date of issuance of this letter. Subsequent erosion control efforts that call for modification, other than maintenance of the proposed structure will require a new application. At the end of the authorization period, the materials shall be removed;
2. If the subject structure results in adverse flanking of adjacent properties, the DLNR may require you to remove the structure immediately. Any materials that become liberated from the structure must be immediately removed from the beach or ocean;
3. The permittee shall remove any derelict structures or materials emanating from the property, and dispose of them immediately;
4. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
5. The permittee shall contact the City and County of Honolulu, Department of Parks and Recreation to secure their authorization to work on the beach;
6. The permittee will submit a completion report for the project to the OCCL within ninety (90) days of completion of construction of the temporary structure. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of

- the beach conditions since installation. The report will also include a photo summary of the temporary structure and beach conditions with documentation of any alterations or repairs;
7. The permittee, 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 this permit or relating to or connected with the granting of this permit;
 8. Unless otherwise authorized, any work or construction to be done on the land shall be completed within 180 days of the approval of such use. The permittee shall notify the department in writing at least 24 hours prior to initiating construction and when it is completed;
 9. Work shall be conducted at low tide to the most practical extent possible and no work shall occur during high surf or ocean conditions that will create unsafe work or beach conditions;
 10. Authorization of the sand use and placement is contingent upon review and approval of the sand by the Department. The sand shall meet the following State quality standards:
 - a) The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm);
 - b) The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm) and shall be screened to remove any non-beach compatible material and rubble;
 - c) No more than 50 (fifty) percent of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh;
 - d) Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non-carbonate sands are unacceptable;
 11. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project. All barriers shall be removed once the project is complete to allow full public access laterally along the beach and alongshore walkway;
 12. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and minimize silt in nearshore waters and clean up fuel; fluid or oil spills immediately for projects authorized by this letter. 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;
 13. All placed material 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;

14. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
15. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization;
16. In issuing the permit, the Department and the Chairperson have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
17. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
18. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the Department;
19. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in Hawaii Revised Statutes (HRS) §205A-1;
20. The activity 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;
21. The activity 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;
22. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this letter;
23. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to HRS §205A-71. All exterior lighting shall be shielded to protect the night sky;
24. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
25. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
26. The DLNR reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary;

Exhibit E

Page 5 of 6

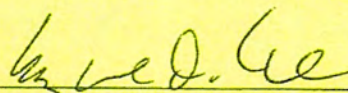
Youman

Emer. OA-19-01

27. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the Chairperson or BLNR.

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

CC: City and County of Honolulu
Department of Planning and Permitting
Parks and Recreation
DOCARE (Oahu)

I concur with the conditions of this letter:

Applicant

Date _____

Exhibit E

Page 6 of 6

Youman

Emer. OA-19-01

27. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the Chairperson or BLNR.

Should you have any questions pertaining to this letter, please contact the Office of Conservation and Coastal Lands at (808) 587-0377.

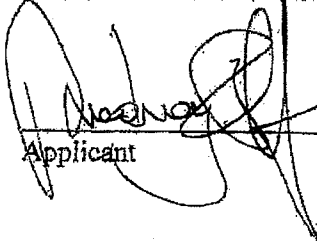
Sincerely,



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

CC: City and County of Honolulu
Department of Planning and Permitting
Parks and Recreation
DOCARE (Oahu)

I concur with the conditions of this letter:



Applicant

Date

7-30-18

DAVID Y. IGE
GOVERNOR OF
HAWAII



Exhibit F

Page 1 of 3

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

DLNR:OCCL:SL
7014 2120 0003 19088 2642
CERTIFIED MAIL/RETURN RECEIPT

ENF: OA 19-08

Dr. Rodney Youman
50-149 Ke Nui Road
Haleiwa, HI 96712

SEP - 5 2018

SUBJECT: Alleged Unauthorized Land Use within the Conservation District Located Makai of 50-149 Ke Nui Road, Hale'iwa, Oahu
Tax Map Key :(1) 5-9-002: 004

Dear Dr. Youman:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands' (OCCL) attention that you or your agents have been working on an alleged unauthorized seawall in the shoreline area fronting the subject property.

The DLNR recently issued you an emergency authorization for a temporary erosion control structure. When staff of this office visited the site on August 28, 2018 we observed rocks and fresh mortar underneath the authorized erosion control fabric.

NOTICE IS HEREBY GIVEN 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 location of the alleged unauthorized land use is located makai of TMK (1) 5-9-002: 004 and is located within the State Land Use Conservation District, Resource Subzone;
2. The subject property has no records of non-conforming structures and/or uses nor are there any existing permits and/or approvals for any land uses within the Conservation District makai of the subject property.
3. 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;

Dr. Rodney Youman

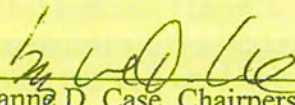
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land; and

- 4. This land use was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

Pursuant to 183C-7, HRS, the Board of Land and Natural Resources (Board) may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs. 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 on the structure. Please note any information provided may be used in civil proceedings. 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 and County of Honolulu
Department of Planning and Permitting
Parks and Recreation
DOCARE (Oahu)
ODLO

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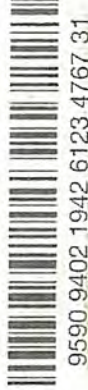
Dr. Robert Youman
50-149 Ke Nui Rd.
Haleiwa, HI. 96712

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Dr. Robert Youman
50-149 Ke Nui Rd.
Haleiwa, HI. 96712

ENF.: OA 19-08



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PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature Agent
Robert Youman

B. Received by (Printed Name) Addressee
Robert Youman

C. Date of Delivery Yes No
SEP 5 2018

D. Is delivery address different from item 1? Yes No
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GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

DLNR:OCCL:SH

Re: Emer CDUA OA-19-01

ZHUNGO LLC
59-149 Ke Nui Rd.
Honolulu, HI 96712

SEP - 4 2019

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

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

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

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

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

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

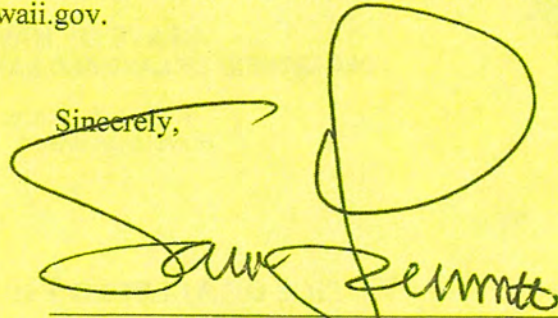
Exhibit G

Page 2 of 2

Re: Emer CDUA OA-19-01

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

Sincerely,

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

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

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

DAVID Y. IGE
GOVERNOR OF HAWAII



Exhibit H

Page 1 of 7

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

REF: OCCL: TF

ENF: OA 21-07

NOTICE OF ALLEGED VIOLATION & ORDER

OCT 23 2020

CERTIFIED MAIL/RETURN RECEIPT

7014 2870 0000 1652 9356

Zhungo LLC
Rodney Youman
1280 Fifth Ave, Apt 20D
New York, NY 10029

SUBJECT: Alleged Unauthorized Land Use Within the Conservation District Located Makai (seaward) of 59-149 Ke Nui Road, Haleiwa, HI 96712
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key: (1) 5-9-002:004

Dear Zhungo LLC and Mr. Youman:

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 authorization. Staff visited the site on 09/30/20 and witnessed work being conducted in the shoreline area that included the placement of rocks in the form of an unauthorized rock revetment or erosion control structure as evidenced by *Exhibit 1 taken 09/30/2020*.

K-4

Exhibit H

Page 2 of 7

Zhungo LLC
Mr. Rodney Youman

ENF: OA 21-07



Exhibit 1

According to OCCL files, the landowner of the parcel with the TMK: (1) 5-9-002:004 was granted Emergency CDUA OA 19-01 to install a temporary erosion control structure composed of a heavyweight geotextile fabric blanket overlay with sand filled tubes constructed of the same geotextile fabric. On September 4th, 2019, Zhungo LLC was sent a reminder letter regarding the landowner's responsibility of complying with the conditions of Emergency CDUA OA 19-01 by maintaining and removing any liberated materials or debris from the structure ahead of the 2019-2020 winter season.

The OCCL notes that the alleged unauthorized work witnessed by staff which includes the placement of rocks in the form of a rock revetment or erosion control structure as shown in *Exhibit 1* appears to have been placed makai (seaward) of the shoreline. According to OCCL files, there appears to be no authorizations for these land uses. Pursuant to Hawaii Administrative Rules (HAR) §13-5-2, "land use" is defined as (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

Exhibit H

Page 3 of 7

Zhungo LLC
Mr. Rodney Youman

ENF: OA 21-07

structure, building, or facility on land. Additionally, pursuant to HAR §13-5-2, the "Shoreline" is defined as *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 limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, Hawaii Revised Statutes (HRS)*". Lands makai of the shoreline are under the jurisdiction of the State of Hawaii DLNR and its OCCL and are protected by common law rights for the public. Based on the above, it appears that a rock revetment on the lands makai of the shoreline of the parcel with the TMK: (1) 5-9-002:004 is being placed within the Resource Subzone of State Land Use Conservation District and on public property.

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 reason to believe that:

1. The placement of rocks in the form of a rock revetment has taken place on the public sandy beach seaward of TMK: (1) 5-9-002:004 located within the State Land Use Conservation District, Resource Subzone;
2. The landowner is not in compliance with the terms and conditions of Emergency CDUA OA 19-01;
3. Pursuant to §13-5-22 P-15 (D-1), HAR, "Shoreline Erosion Control " is a regulated land use as stated below:
 - a. *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;*
4. These land uses were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR; and
5. The land uses have occurred on public land owned by the State without authorization or permission from the State as landowner.

We recommend that you stop all work and remove the rock revetment located within the shoreline area within 30 days of receipt of this order. We also note that we did not authorize the stairs shown in the picture (Exhibit 1). Pursuant to 183C-7(b), HRS, the Board of Land and

Exhibit H

Page 4 of 7

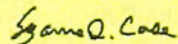
ENF: OA 21-07

Zhungo LLC
Mr. Rodney Youman

Natural Resources (Board) may subject you to fines of up to \$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. Failure to comply with any part of the letter mentioned above will result in the matter being forwarded to the Board for formal action.

Should you have any questions regarding this matter, please contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at (808) 798-6660 or trevor.j.fitzpatrick@hawaii.gov.

Sincerely,



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



CC: *Oahu Board Member*
DOCARE (Oahu)
ODLO
City & County of Honolulu, Department of Planning and Permitting

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ZHUNGO LLC

Street & Apt. No.
or PO Box No.

Rodney Youman

City, State, ZIP+4

1280 Fifth Ave., Apt. 20D

New York, NY 10029

PS Form 3800

Exhibit H

Page 5 of 7

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Tracking History



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NEW YORK, NY 10029

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October 30, 2020
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October 26, 2020, 3:18 pm
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Exhibit H

Page 7 of 7

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FAQs

Sunset Beach, Oahu, Hawaii

AREA DESCRIPTION

The shoreline fronting the community of Sunset Beach (transects 119 – 269) on the north shore of Oahu is the site of world famous big wave surf breaks including Sunset and Vetsland. The area is exposed to swells from the north Pacific in winter months and easterly tradewind waves year-round. Sunset Beach is the central portion of a continuous (4 mi long) beach composed of carbonate sand, and characterized by occasional outcrops of limestone that may be intermittently buried or exposed by shifting sand.

Shoreline change rates at Sunset Beach (1928 – 2006) are mostly low (< 1 ft/yr). Large winter swell causes dramatic changes in shoreline position that largely recover the following season. Because of this, shoreline change rates at Sunset Beach have high uncertainty due to short-term variations in shoreline position. Despite wide variations in beach width, the vegetation line has remained approximately stable since 1928. The high rate uncertainty and stable vegetation line suggests that the shoreline has remained approximately stable over the long-term or that seasonal variations are masking the true long-term change. These characteristics may also reflect shoreline stabilization by armoring that holds the vegetation line in place.

Short-term erosion is a significant hazard to beach-front homes, especially in winter with run-up from large waves. A number of beach-front homes were destroyed during a massive winter 1969 swell.

Previous studies by Hwang (1961) and Sea Engineering (1968) found little net change or small seaward growth of the vegetation line at Sunset Beach 1949 – 1968, except at Sunset Beach Park and at the west end of Kaunala Beach where the vegetation line eroded. The vegetation line has since recovered at Kaunala Beach (1968 – 2006).

For more information see: <http://www.soest.hawaii.edu/aspc/coasts/oahu/>

Hwang, D. (1961). "Beach changes on Oahu as revealed by aerial photographs." State of Hawaii, Department of Planning and Economic Development.
Sea Engineering (1968). "Oahu shoreline study." City and County of Honolulu, Dept. of Land Utilization.

SHORELINE CHANGE RATES

- █ Accretion Rate
- █ Erosion Rate

Historical shoreline positions are measured every 66 ft along the shoreline. These sites are denoted by yellow shore-perpendicular transects. Changes in the position of the shorelines through time are used to calculate shoreline change rates (ft/yr) at each transect location.

Annual shoreline change rates are shown on the shore-parallel graph. Red bars on the graph indicate a trend of beach erosion, while blue bars indicate a trend of accretion. Approximately every fifth transect and bar of the graph is numbered. Where necessary, transects have been purposely deleted to maintain consistent along-shore spacing. As a result transect numbering is not consecutive everywhere.

The ST method is used to calculate shoreline change rates for the study area. The rates are smoothed along shore using a 1-0.5-0.1 technique to normalize rate differences on adjacent transects. For more information on erosion rate methods and results see <http://www.soest.hawaii.edu/aspc/coasts/oahu/index.asp>

HISTORICAL SHORELINES

- █ 1928
- █ T-sheet 1932
- █ May 1949
- █ Sep 1961
- █ Apr 1967
- █ Jan 1971
- █ Apr 1975
- █ Jun 1975
- █ Feb 1988
- █ Jul 1996
- █ Jul 2006

█ Erosion rate measurement locations (shore-normal transects)

Historical beach positions, color coded by year, are determined using orthorectified and georeferenced aerial photographs and National Ocean Survey (NOS) topographic survey charts. The low water mark is used as the historical shoreline, or shoreline change reference feature (SCRF).

Movement of the SCRF along shore-normal transects (spaced every 66 ft) is used to calculate erosion rates.

Subject Area

Oahu

Project supported by the State and Federal Oceanic Survey, Coastal Zone Management Act (CZMA) and National Oceanic and Atmospheric Administration (NOAA) through the University of Hawaii Sea Grant Program, School of Ocean and Earth Science and Technology, 1680 East West Rd., Honolulu, HI 96822, U.S.A.
<http://www.soest.hawaii.edu/aspc/coasts/oahu/>

Chia-Hsiang Fielding, Bradley Roman, Man-Pear So, Bao-Shiang Chen, Lynn Wambach, Dyer
University of Hawaii Coastal Geology Group
School of Ocean and Earth Science and Technology
1680 East West Rd., Honolulu, HI 96822, U.S.A.
<http://www.soest.hawaii.edu/aspc/coasts/oahu/>



819964e UTM coordinates
137.8914° W Latitude/longitude coordinates