



GOODSILL

Edmund K. Saffery
esaffery@goodsill.com | (808) 547-5736

May 12, 2021

VIA E-MAIL (blnr.testimony@hawaii.gov)

State of Hawai'i
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809

Re: Conservation District Enforcement Case, OA 21-25 Regarding
Alleged Unauthorized Structures Located Along the Shoreline
Within the Conservation District, and on State Land, by Wells
Trust and Maunalua Bay Beach Ohana, at 245 Portlock Road,
Island of Oahu, Tax Map Keys: (1) 3-9-002:003 and (1) 3-9-
002:029 (Seaward)

Dear Board of Land and Natural Resources:

Our law firm represents the Robert S. Wells Survivor's Trust (the "Trust") and Robert S. Wells individually and in his capacity as trustee of the Trust ("Wells"). As you are aware, the Trust is the legal owner of the property located at 245 Portlock Road, Honolulu, Hawaii 96825 (Tax Map Key: (1) 3-9-002:003) ("Wells Property"). The purpose of this letter is to provide written testimony with respect to agenda item K-1 in advance of the May 14, 2021 meeting before the State of Hawaii Board of Land and Natural Resources ("BLNR").

First and foremost, Mr. Wells commits to fully comply with OCCL Staff's recommendations, as set forth in its May 14, 2021 submittal, that the rocks fronting his property be removed. In furtherance of and as evidence of this commitment, Mr. Wells submits the enclosed declaration for the BLNR's consideration. *See* Enclosure 1. To be clear, Wells believes he may have meritorious defenses to the alleged violations noted in May 14, 2021 submittal. That said, rather than exhaust the resources necessary to litigate this matter through a contested case hearing and potential Circuit Court appeal, Mr. Wells is willing to commit to working with BLNR to resolve the alleged violations set forth in the May 14, 2021 submittal. In doing so, however, Mr. Wells would like the Board to consider several requests discussed in detail below.

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Summary of Mr. Wells' Position In Response to the May 14, 2021 Submittal

As the Board is aware, Mr. Wells and the owners of the properties adjacent to his, are the subjects of substantially similar alleged violation notices from DLNR. It is Mr. Wells' understanding that those owners, like himself, are willing to work cooperatively with DLNR to remove the rocks fronting their properties in order to address the alleged violations cited by OCCL. Significantly, based on recent communications with OCCL, Mr. Wells understands that a sand back-passing project for the beachfront parcel fronting his and his neighbors' properties is set to take place in the near future. Given the foregoing, Mr. Wells respectfully asks for the following two things.

First, Mr. Wells requests that the BLNR allow him to remove the rocks concurrently with the above-mentioned sand back-passing project. This will benefit all interests involved because timing the rock removal with the sand back-passing will help prevent unnecessary erosion to the beach. The oceanfront in front of the Wells Property is enjoyed daily by the public and coordinating the rock removal with the sand back-passing project will help preserve the beach from unnecessary erosion. Moreover, and as explained below, Sea Engineering, Inc., a contractor that Mr. Wells has contacted to perform the rock removal, has confirmed that performing the removal in the summer months would subject its crew to an unreasonable risk of harm.

Second, in light of Mr. Well's commitment to fully and timely work to address and resolve the alleged violation set forth in OCCL's May 14th submittal, , Mr. Wells requests that the \$20,000 in total fines and fees (\$15,000 for construction of an alleged unauthorized shoreline structure, pursuant to Chapter 183C-8, HRS and \$5,000 for administrative costs associated with the subject alleged violation) that OCCL staff requests be assessed against him be reduced to a total of \$5,000 and further, that the Board direct that payment of the fine can be satisfied if the \$5,000 is used to remove the rocks fronting Mr. Wells' property. Mr. Wells submits that such a reduction is fair, considering that: (1) he is foregoing his right to assert valid legal defenses in a contested case hearing in response to the alleged violations alleged in the May 14, 2021 submittal; and (2) neighboring properties with similar rock structures have not even received a notice of alleged violation.

If BLNR is agreeable to the foregoing, this matter could be placed on the calendar agenda in six months for a status conference to continue to monitor compliance or Mr. Wells could simply be ordered to remove all of the rocks concurrently with the sand back-passing project. Mr. Wells' signed declaration demonstrates his commitment to remove the rocks concurrently with the sand back-passing project. See Enclosure 1. If

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BLNR is willing to allow Mr. Wells to remove the rocks concurrent with the sand back-passing project and reduce the fines, then Mr. Wells will not ask for a contested case hearing under Hawaii Administrative Rules (“HAR”) § 13-1-29 at the end of the May 14, 2021 meeting.

Mr. Wells’ Detailed Response To The Alleged Violations

I. Mr. Wells Has Acted Proactively to Address OCCL’s Concerns Following His Receipt Of The April 15, 2021 Notice Letter

We would first like to point out that Mr. Wells has worked proactively in the past month to address the issues raised in the initial April 15, 2021 letter he received from OCCL.

Mr. Wells was notified of the alleged violations described in the May 14, 2021 submittal when he received an April 15, 2021 letter from DLNR (“Notice Letter”). In an effort to promptly address the concerns raised in the Notice Letter, Mr. Wells authorized our office to send a response letter to DLNR on April 28, 2021. Following transmittal of that letter, we, along with our consultant, Peter Young, met with Sam Lemmo from the Office of Conservation and Coastal Lands and Bill Wynhoff, Linda Chow, and Lauren Chun from the state Attorney General’s office on April 29, 2021 to further discuss the concerns raised in the Notice Letter. Among other things, the above-described timing of the rock removal with the sand back-passing project as well as coordinating the rock removal efforts with the owners of the properties neighboring Mr. Wells’ property was discussed.

We originally asked DLNR to remove agenda item K-1 from the May 14, 2021 agenda to allow our client time to proactively remove the rocks at issue in this matter. While that request was refused, we did discuss other ways in which the parties could work cooperatively to address DLNR’s concerns. Among other things, the proposed removal schedule was considered as a middle ground between an order requiring Wells to remove the rocks within ninety days and going forward with a costly and time consuming contested case hearing. It appeared to our observation that this was something OCCL would consider.

In furtherance of his goal to comply with DLNR’s demands, Mr. Wells recently contacted Andy Bohlander of Sea Engineering, Inc. and requested an estimate for costs to remove the rocks fronting his property. In a recent response to Wells’ inquiry, Andy Bohlander responded, in part:

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Thank you for contacting Sea Engineering, Inc. We would be happy to assist with the removal of the rocks. We understand that the rocks are the subject of an enforcement action and that time is of the essence . . . Our Marine Construction Division would perform the removal. **Performing this type of work on the south shore during the summer months is dangerous for crews due to the seasonal swell and high tides.** Based on our current schedule, the earliest that we could perform the work would be Aug-Sep. However, our preference would be to wait until the winter months when ocean conditions are more favorable.

See Enclosure 4 (emphasis added). As expressed in his declaration, Mr. Wells is committed to diligently working with a contractor to ensure that the rocks can be removed on a timely basis. However, in light of the fact that performing the work during the summer is “dangerous for crews due to the seasonal swell and high tides” Mr. Wells would prefer to time the removal with the sand back-passing project if at all possible.

II. The Ohana Parcel in front of the Wells Property

It is important to note that the stretch of property in front of the Wells Property operates more or less like a public beach. This publicly used parcel—identified as Tax Map Key (1) 3-9-002:029—is owned by a Hawaii non-profit corporation known as Maunalua Bay Beach Ohana # 29 (hereinafter referred to as the “Ohana Parcel”). Although admittedly privately owned, the Ohana Parcel is frequented daily by large numbers of Hawai‘i residents and tourists alike. In fact, the parcel in front of the Wells Property is a particularly popular area of the Ohana Parcel. It provides a shady, grassy area close by the water favored for sunbathing, swimming, picnicking, sunset watching and boat launching with nearby parking on Portlock Road. *See* Enclosure 3 (photographs of the Ohana Parcel in front of the Wells Property). Significantly, the trees, grass and other plantings depicted in the photo were placed there by the Wells family and are maintained by them. Preserving the grassy area is critical to the public benefit and use.

That the Ohana Parcel has come into public use can be visually verified by observing the public residents and tourists who use the beach daily. *See id.* Additionally, the public use of the Ohana Parcel is well-documented in the Quitclaim Deed with Covenants; Agreement and Lien, recorded in the State of Hawaii Bureau of Conveyances as Document No. 2005-090885 on May 5, 2005 (“Quitclaim Deed”). In fact the Quitclaim Deed preserves the public’s right for access, customary beach activities and related recreational and community purposes in perpetuity with the following language:

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Grantee and its members acknowledge that Grantor’s intent in conveying the Property to Grantee includes **preserving the status quo regarding current public rights and uses of the Property, and therefore Grantee and its members hereby covenant that the Property which is currently being used by the public for access, customary beach activities and related recreational and community purposes, may continue to be used for such purposes in perpetuity (the “Permitted Uses”)**, but subject to reasonable rules established by Grantee and its members to ensure that the public does not unreasonably interfere with the use and enjoyment of the Property by Grantee’s members (“Rules”), as long as the Rules do not circumvent the Permitted Uses.

See Enclosure 2, p. 4 attached hereto (emphasis added); *compare with* Enclosure 3.

Given the foregoing, it is clear that the Wells’ situation is different from a typical oceanfront lot. Indeed the actions BLNR takes in this case will directly impact the Ohana Parcel which is, in essence, a property where the public has a perpetual right of use. Given that erosion of the Ohana Parcel negatively impacts the public, the interests of DLNR and Mr. Wells in how this parcel is managed are in effect aligned. Mr. Wells submits, given this fact, that any action taken by DLNR as regards the alleged violations and recommended response discussed in the May 14, 2021 submittal should be assessed with that fact in mind.

III. The Adjacent Property Owners

The Wells Property is situated in between parcels owned by Robert and Shirley Jensen (TMK No. (1) 3-9-002:004) and a parcel owned by Gohana LLC (TMK No. (1) 3-9-002:002). The parcel owned by Gohana LLC is currently set as agenda item K-2 in the May 14, 2021 meeting. To our knowledge, the Jensens apparently hope to remove the rocks in conjunction with the sand back-passing project. Mr. Wells would like to remove the rocks together with the Jensens to avoid the risk of accelerated coastal erosion from one property removing the rocks prematurely.

The risk of accelerated erosion is not merely speculative. Indeed, OCCL Staff’s Submittal for the May 14, 2021 meeting recognizes that “[s]horeline armoring also increases wave turbulence, wave reflection, and wave refraction, which can accelerate coastal erosion both fronting the costal armoring and on neighboring properties adjacent to the armoring.” *See* BLNR submittal for Conservation District Enforcement Case, OA 21-25 (“BLNR Submittal”), p. 10. This is Mr. Wells’ concern as well.

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We would submit that ordering Wells to remove the rocks concurrently with the sand back-passing project is not only fair, but in the public interest. Removing the rocks before the back-passing — and during the high summer swells — will result in an unnecessary and permanent loss of a stretch of oceanfront that is enjoyed by the public on a daily basis. Removing the rocks concurrently with the sand back-passing is the best approach to preserve the Ohana Parcel. With that having been said, full compliance has always been Mr. Wells’ primary priority.

IV. The Sand Back-passing Project

As explained above, the sand back-passing project is planned to occur sometime in 2021. In fact, BLNR’s submittal regarding agenda item K-1 states that “[a]nother dredging/back-passing project is now being designed, which again includes sand back-passing to the subject section of beach.” *See* BLNR Submittal at pp. 7-8.

The staff recommendation in the May 14, 2021 Submittal is for an order of compliance within ninety days of the May 14, 2021 meeting. Upon information and belief, the sand back-passing project is scheduled to start soon and should be completed in the near future. Therefore, Mr. Wells’ preference and request that the rock removal be timed with the back-passing project is reasonable and not made for the purpose of delay. If the sand back-passing occurs sooner than ninety days, then the rocks could be removed sooner than the current staff recommendation.

Conclusion

DLNR has made it clear that it places a priority on preserving public beach access for the residents of Hawai‘i. Consistent with this goal, the May 14, 2021 Submittal explains that “[t]he beaches of Hawai‘i are held in trust by the State for the benefit of present and future generations.” *See* BLNR Submittal, p. 10 (emphasis added). As depicted in the enclosed photographs, many residents of Hawai‘i enjoy the Ohana Parcel and will continue to do so for as long as the beach remains. Indeed, the Quitclaim Deed ensures that as regards the Ohana Parcel, this right will be maintained in “perpetuity.”

Given all of the foregoing, it is clear that in this case, DLNR’s stated goals in the May 14, 2021 submittal (i.e. preserving public beach access for present and future generations) align squarely with our clients’ desire to avoid unnecessary erosion on the Ohana Parcel. Based on DLNR’s and our clients’ aligned interests, we hope that a cooperative resolution to the issues raised in this case is possible and request as follows:

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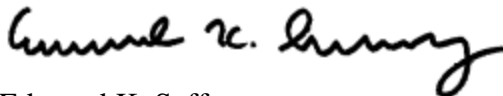
- That the proposed fines of \$15,000 for construction of an alleged unauthorized shoreline structure, pursuant to Chapter 183C-7, HRS and the additional administrative costs of \$5,000 be converted to a total of \$5,000 that can be satisfied if the \$5,000 is used to remove the rocks fronting Mr. Wells' property;
- That the timing of the removal of the rocks along the shoreline be concurrent with the planned sand back-passing project;
- That this matter be rescheduled in six months for a status conference in order to allow the BLNR to monitor Wells' compliance and ensure the timely removal of the shoreline protection structure, or alternatively that Mr. Wells simply be ordered to remove the rocks concurrently with the planned sand back-passing project.

Mr. Wells submits the enclosed declaration expressing both his commitment to remove the rocks and his preference that he be allowed to do so concurrent with the sand back-passing project. *See* Enclosure 1.

Thank you very much for your time and attention regarding this matter.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL



Edmund K. Saffery
Forest B. Jenkins

Enclosures (4)

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS

Re: Wells Trust
245 Portlock Road
Honolulu, HI 96825

And

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

Conservation District Enforcement Case,
OA 21-25

DECLARATION OF ROBERT S. WELLS

DECLARATION OF ROBERT S. WELLS

I, ROBERT S. WELLS, declare as follows:

1. I own the property located at 245 Portlock Road, Honolulu, Hawaii 96825 (Tax Map Key: (1) 3-9-002:003) ("Wells Property") through the Robert S. Wells Survivor's Trust.
2. I submit this declaration in advance of the May 14, 2021 hearing regarding Conservation District Enforcement Case, OA 21-25 Regarding Alleged Unauthorized Structures Located Along the Shoreline Within the Conservation District, and on State Land, by Wells Trust and Maunalua Bay Beach Ohana, at 245 Portlock Road, Island of Oahu, Tax Map Keys: (1) 3-9-002:003 and (1) 3-9-002:029 (Seaward).
3. I received a letter dated April 15, 2021 letter from the State of Hawai'i

Department of Land and Natural Resources (“DLNR”) regarding an alleged unauthorized structure within the Conversation District on the parcel fronting my home.

4. In an effort to comply with DLNR’s demand to remove the rocks, I commit to remove the rocks in front of my home. For reasons described herein and in our written testimony, I prefer that the timing of the removal be concurrent with the planned sand back-passing project that is set to occur on the beach parcel identified as Tax Map Key (1) 3-9-002:029.

5. I have already contacted several contractors regarding the removal of the rocks. Most recently, I emailed Andy Bohlander of Sea Engineering, Inc. Mr. Bohlander responded via email saying, in part as follows:

Our Marine Construction Division would perform the removal. Performing this type of work on the south shore during the summer months is dangerous for crews due to the seasonal swell and high tides. Based on our current schedule, the earliest that we could perform the work would be Aug-Sep. However, our preference would be to wait until the winter months when ocean conditions are more favorable.

6. I will continue to work diligently to select a contractor to resolve any logistical issues associated with the rock removal so that I am ready to remove the rocks when it is required.

7. The Ohana Parcel located at Tax Map Key (1) 3-9-002:029 is not like typical oceanfront property. There are restrictive covenants in the Quitclaim Deed with Covenants; Agreement and Lien, recorded in the State of Hawaii Bureau of Conveyances as Document No. 2005-090885 on May 5, 2005 that preserves the public’s right for access, customary beach activities and related recreational and community purposes in

perpetuity.


8. My agreement to remove the rocks is made to avoid the costs and time of a contested case. For the reasons expressed herein and in our written testimony, I request that the timing of the removal be concurrent with the sand back-passing project.

9. I hereby expressly reserve my right to (1) request a contested case hearing; and (2) assert any defenses available under law and equity at any future contested case hearing or during proceedings before the Circuit Court of the First Circuit for the State of Hawai'i, pursuant to Chapter 91 of the Hawaii Revised Statutes. This declaration, the contents set forth herein, is sent for the purposes of settlement and under the purpose and intent contemplated in Rule 408, of the Hawaii Rules of Evidence and is not to be construed as an admission of liability in any way.

10. Thank you for your time and consideration.

I, ROBERT S. WELLS, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii May 12, 2021



ROBERT S. WELLS

**Exhibit B- Documentation of Land Acquisition Regarding
the Subject Beach Reserve TMK: (1) 3-9-002-029**



R-369 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAY 06, 2005 08:01 AM
Doc No(s) 2005-090885



1st CARL T. WATANABE
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$1.00

40 2/25 26

LAND COURT SYSTEM REGULAR SYSTEM
AFTER RECORDATION, RETURN BY MAIL[XX] PICKUP[] G:\Client
Files\Maunaloa Bay Beach Ohana\DEED MBBO 29 4-13-2005.wpd

Kamehameha Schools
P.O. Box 3466
Honolulu, Hawaii 96801

3543644
TGOH 280522051
TGES AS-101-1166
BARBARA PAULO

This Document contains 40 pages.

Tax Map Key No. (1) 3-9-002-029

**QUITCLAIM DEED WITH COVENANTS;
AGREEMENT AND LIEN**

KNOW BY ALL MEN THESE PRESENTS:

That DIANE JOYCE PLOTTS, ROBERT KALANI UICHI KIHUNE, JAMES DOUGLAS KEAHOE ING, CONSTANCE HEE LAU and CHARLES NAINOA THOMPSON, as Trustees of the Estate of Bernice Pauahi Bishop, whose post office address is 567 South King Street, Kawaiahao Plaza, Suite 200, Honolulu, Hawaii 96813 ("Grantor"), in consideration of TEN AND NO/100 UNITED STATES DOLLARS (U.S. \$10.00) and other valuable consideration paid by MAUNALO A BAY BEACH OHANA #29, a Hawaii non-profit corporation, having its address at 735 Bishop Street, Suite 433, Honolulu, Hawaii 96813 ("Grantee"), receipt whereof is hereby acknowledged, does hereby remise, release and forever quitclaim all of that certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all sea walls and other improvements located thereon

Jeffrey S. Grad
Attorney At Law
A Law Corporation

A 000825

EXHIBIT "G"

("Property"), unto Grantee, as Tenant in Severalty, in fee simple.

AND the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto Grantee, absolutely and forever, according to the tenancy set forth hereinabove, forever.

AND Grantee acknowledges and agrees that this conveyance is "AS IS, WHERE IS," and Grantor has not made and does not make any warranties or representations of any kind, expressed or implied, as to Grantor's title in or to the Property or any other property or rights quitclaimed hereby, as to the conditions, merchantability or state of repair of the Property or any other property or rights quitclaimed hereby, or fitness of the Property or any other property or rights quitclaimed hereby, for any particular purpose;

AND Grantee hereby acknowledges that Grantor is not responsible for any latent defects, hidden defects or defects which time may reveal with respect to said Property;

AND Grantee, Grantee's successors, assigns, agents and representatives, generally, fully completely and unconditionally, absolutely and irrevocably agree to indemnify, defend and hold harmless, and to release, acquit and forever discharge Grantor and its trustees, officers, directors, attorneys, agents, affiliates, employees, subsidiaries, divisions, representatives, successors and assigns, of and from any and all claims, demands, causes of actions, obligations, damages and liabilities of every kind and nature whatsoever, in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or matured, asserted or unasserted (collectively, "Claims"), which Grantee or any other person may have, arising out of or relating to (i) the Property or any other property or rights quitclaimed hereby, (ii) the use or improvement of the Property for any purpose inconsistent with land use or other laws, ordinances and regulations applicable to the Property, (iii) any breach of Grantee's covenant regarding public use of the Property, and (iv) any failure by Grantor to enforce any provisions of this Deed (but excluding any Claims which accrued prior to the recordation of this Deed);

AND Grantor hereby reserves easements in the Property for access, electrical, gas and other utility purposes and for sewer, drainage and water facilities over, under, along, across

and through such Property, together with the right to grant to the State of Hawaii, City and County of Honolulu, Board of Water Supply of the City and County of Honolulu or any other appropriate governmental agency or to any public utility or other corporation or to any entity or individual, easements for such purposes over, under, across, along and through the Property, provided, however, that (1) such easement rights must be exercised in such manner as not to interfere unreasonably with the use of such Property by the owners thereof and those claiming by, through or under such owners; and (2) in connection with the installation, maintenance or repair of any facilities pursuant to any of said easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the condition of the Property immediately prior to the exercise thereof;

AND the Grantee hereby agrees that the Property shall not, without Grantor's prior written consent, be further subdivided or consolidated and resubdivided so as to create any additional lots used for residential purposes; provided, however, that the Property or portions thereof may be consolidated with the residential lots and beach access lots immediately abutting the Property and which are listed in Exhibit "B" attached hereto and incorporated herein by this reference ("Abutting Lots"), and thereafter resubdivided to enlarge such Abutting Lots (Grantee hereby acknowledging that Grantor makes no representations, warranties or assurances with respect to such consolidation or resubdivision); and provided further, that the restrictions set forth herein shall not apply to any subdivision, consolidation, or resubdivision required to effect a public use or purpose, such as water or sewer line easements;

AND Grantee hereby acknowledges that its members and such members' respective predecessors-in-interest, exclusive of Grantor, have, upon acquisition of the Abutting Lots, been in continuous possession and made use of the Property described in Exhibit "A" and therefore: (1) Grantee is fully aware of any past or present conditions existing on the Property; (2) Grantee has conducted or has been allowed to conduct a full visual inspection of the Property, and has not been denied reasonable access to any portion of the Property; (3) Grantee has investigated to Grantee's own satisfaction the condition of the soil, water, groundwater and any structures on the Property, and any equipment or material stored on the Property; (4) Grantee's review and investigation of the condition of the Property has included consideration of the applicability and effect of all applicable laws, including hazardous materials laws; (5) Grantee acknowledges that Grantor has no liability or responsibility for any improvements currently located on the Property, including, but not limited to, any presently existing seawalls, and Grantor shall have no obligation for maintaining such seawalls or other improvements nor for making any repairs thereto; and (6) Grantee

accepts the Property in its current condition, but disclaims any obligation to maintain, repair or replace any existing seawalls comprising the Property.

AND Grantee hereby agrees that part of the consideration paid by Grantee to Grantor for the conveyance of the Property, includes the provisions of the Agreement and Lien attached hereto and made a part hereof as Exhibit "C", which are incorporated herein by reference as if fully set forth herein.

AND Grantee and its members acknowledge that Grantor's intent in conveying the Property to Grantee includes preserving the status quo regarding current public rights and uses of the Property, and therefore Grantee and its members hereby covenant that the Property which is currently being used by the public for access, customary beach activities and related recreational and community purposes, may continue to be used for such purposes in perpetuity (the "Permitted Uses"), but subject to reasonable rules established by Grantee and its members to ensure that the public does not unreasonably interfere with the use and enjoyment of the Property by Grantee's members ("Rules"), as long as the Rules do not circumvent the Permitted Uses. Grantee is not required to permit any activities which alter the above-referenced status quo. Grantee understands that no improvements are required to be provided, modified or removed in order to satisfy the covenants contained in this paragraph.

Any dispute regarding the Rules which cannot be resolved by mutual agreement, shall be submitted to binding arbitration before one neutral arbitrator agreed to by the parties within thirty (30) days following notice from the party requesting arbitration of the dispute. If the parties are unable to agree upon an arbitrator, then the arbitrator shall be selected under the Arbitration Rules, Procedures and Protocols of Dispute Prevention & Resolution, Inc., or a similar organization in effect at the time ("DPR's Rules"). The decision of the arbitrator shall be final and binding on both parties, their respective legal representatives, successors and assigns, and judgment may be entered thereon in an appropriate court of law pursuant to Hawaii Revised Statutes Chapter 658A, as amended ("Chapter 658A"). The parties each shall pay one-half (2) of the arbitrator's fees, and the dispute resolution organization's charges. The parties agree that the arbitrator shall have the authority to award attorneys' fees and costs, and if the arbitrator decides not to award attorneys' fees and costs, the parties shall each bear its own expenses of arbitration, including their own attorneys' fees and costs. Notwithstanding any provision contain in DPR's Rules or Chapter 658A, the parties and the arbitrator shall be bound by the following: (a) the arbitrator shall not have the authority to determine an award of punitive damages or other exemplary relief and the parties waive any right to seek the same, or (b) the arbitrator shall not have

the authority to determine any dispute involving other parties, (c) the parties waive any right to discovery and each party agrees that it shall not request that the arbitrator issue a subpoena to compel a deposition or other discovery, and (d) the arbitrator shall issue its decision based on submissions by the parties without the need for a hearing. In furtherance of the foregoing, each party hereby voluntarily and knowingly waives and relinquishes any right to a trial by jury in any action, proceeding or counterclaim brought by any party against the other as to any dispute regarding the Rules.

AND this instrument has been approved or executed by the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligations under this instrument shall be imposed or assessed against said Trustees in their individual capacities;

AND the undersigned hereby agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The covenants of Grantee and its members contained herein shall run with the Property, shall be jointly and severally binding upon the person, or persons identified above as "Grantee" and Grantee's members, and their respective successors and assigns, and shall run in favor of and inure to the benefit of the person or persons identified above as "Grantor" and Grantor's successors in trust and assigns. The covenants of Grantee and its members regarding the Permitted Uses of the Property shall also run in favor of and inure to the benefit of the public, including without limitation, the Grantee, the Portlock Community Association, the City and County of Honolulu and the State of Hawaii. Notwithstanding the foregoing, (a) the covenants of Grantee contained herein shall terminate as to any portion of the Property that is conveyed in any condemnation action, provided that such conveyance shall not operate to release Grantee from any claims with respect thereto and which accrued prior to such conveyance, and further provided that such termination of Grantee's covenants shall not affect the remainder of the Property not so conveyed, and (b) upon any other conveyance of fee title to the Property, if the grantee expressly assumes Grantee's covenants hereunder, then the grantor shall be released of liability therefor (except for claims which accrued

prior to such conveyance), from and after the date of such conveyance.

The use herein of the singular in reference to a party shall include the plural and the use of a pronoun of any gender shall include all genders. The term "person" shall include an individual, partnership, association or corporation, as the context may require.

[The remainder of this page is intentionally left blank - signature page follows]

-6-

A 000830

IN WITNESS WHEREOF, the parties hereto have executed
these presents this ____ day of APR 22 2005, 2005.

TRUSTEES OF THE ESTATE OF
BERNICE PAUHI BISHOP, as
aforesaid

Approved as to Content,
Authority,
and Compliance with KS Policy:

Philip Nere
Manager
ATB, Edue
Vice President/Director

Approved as to Form:

US
Legal Group
K. P. M.
Retained Counsel

By *Louanne K. L. Kam*
Name: LOUANNE KAM, Director
Their Attorney-in-Fact

By *Dana Sato*
Name: DANA SATO, Sr. Counsel
Their Attorney-in-Fact

Grantor

MAUNALUA BAY BEACH OHANA #29, a
Hawaii non-profit corporation

By: Bruce R. [Signature]
Its Secretary

By: _____
Its _____

"Grantee"

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS.

On this 26th day of April, 2005, before me personally
appeared Bruce R. [Signature] and _____
to me personally known, who, being by me duly sworn or affirmed,
did say that such person(s) executed the foregoing instrument as
the free act and deed of such person(s), and if applicable, in
the capacity shown, having been duly authorized to execute such
instrument in such capacity.



Nora M. Iba
_____, Notary Public
above mentioned State Nora M. Iba
My Commission expires: 10/12/07

-7a-

A 000832

9

MAUNALUA BAY BEACH OHANA #29, a
Hawaii non-profit corporation

By:

Mary Chin Dang

MARY CHIN DANG, as Trustee under
that unrecorded Mary Chin Dang 1998
Qualified Personal Residence Trust

"Owner of 7005 Kalaniana'ole Hwy."

ASSOCIATED HOLDINGS LIMITED, a
Turks & Caicos Islands corporation

By

Its

By

Its

"Owner of 7015 Kalaniana'ole Hwy."

JAMES T. LEAVITT, JR.

HAI LUEN C. LEAVITT

"Owners of 7017 Kalaniana'ole Hwy.
and 201 Portlock Rd."

PORTLOCK PROPERTIES LLC, a Nevada
company

By

Its

"Owner of 207 Portlock Rd."

-2-

A 000833

MAUNALUA BAY BEACH OHANA #29, a
Hawaii non-profit corporation

By:

MARY CHIN DANG, as Trustee under
that unrecorded Mary Chin Dang 1998
Qualified Personal Residence Trust

"Owner of 7005 Kalanianaʻole Hwy."

ASSOCIATED HOLDINGS LIMITED, a
Turks & Caicos Islands corporation

By *Gloria Gau*
Its *Vice President*

By _____
Its _____

"Owner of 7015 Kalanianaʻole Hwy."

James T. Leavitt, Jr.
JAMES T. LEAVITT, JR.

Hai Luen C. Leavitt
HAI LUEN C. LEAVITT

"Owners of 7017 Kalanianaʻole Hwy.
and 201 Portlock Rd."

PORTLOCK PROPERTIES LLC, a Nevada
company

By *SD*
Its *Member*

"Owner of 207 Portlock Rd."

-8-

A 000834

19

KOKO HEAD HOLDINGS, LLC, a Nevada
limited liability company

By Tracey R. [Signature]
Its Member

"Owner of 219 A Portlock Rd."

POP INTERNATIONAL CORPORATION, Co.
Ltd., a Japan corporation

By Takeshi Tanaka
Its PRESIDENT
TAKESHI TANAKA

By _____
Its _____

PI CO., LTD., a Japan corporation

By Takeshi Tanaka
Its PRESIDENT
TAKESHI - TANAKA

By _____
Its _____

GALERIE DE POP CO., LTD., a Japan corporation

By Tanaka
Its PRESIDENT
TAKEHI. TANAKA

By _____
Its _____

A 000835

POP CO., LTD., a Japan corporation

By Tanaka
Its PRESIDENT
TAKESHI. TANAKA

By _____
Its _____

~~POP GROUP CORPORATION CO., LTD., a~~
~~Japan corporation~~

By _____
Its _____

By _____
Its _____

U.P. COMPANY, CO., LTD., a Japan corporation

By Tanaka
Its PRESIDENT
TAKESHI. TANAKA

By _____
Its _____

"Owners of 227 A Portlock Rd. and
237 Portlock Rd."

ROBERT S. WELLS

CHRISTA B. WELLS

"Owners of 245 Portlock Rd."





















**Locals enjoying the grass.
They prefer this area.**

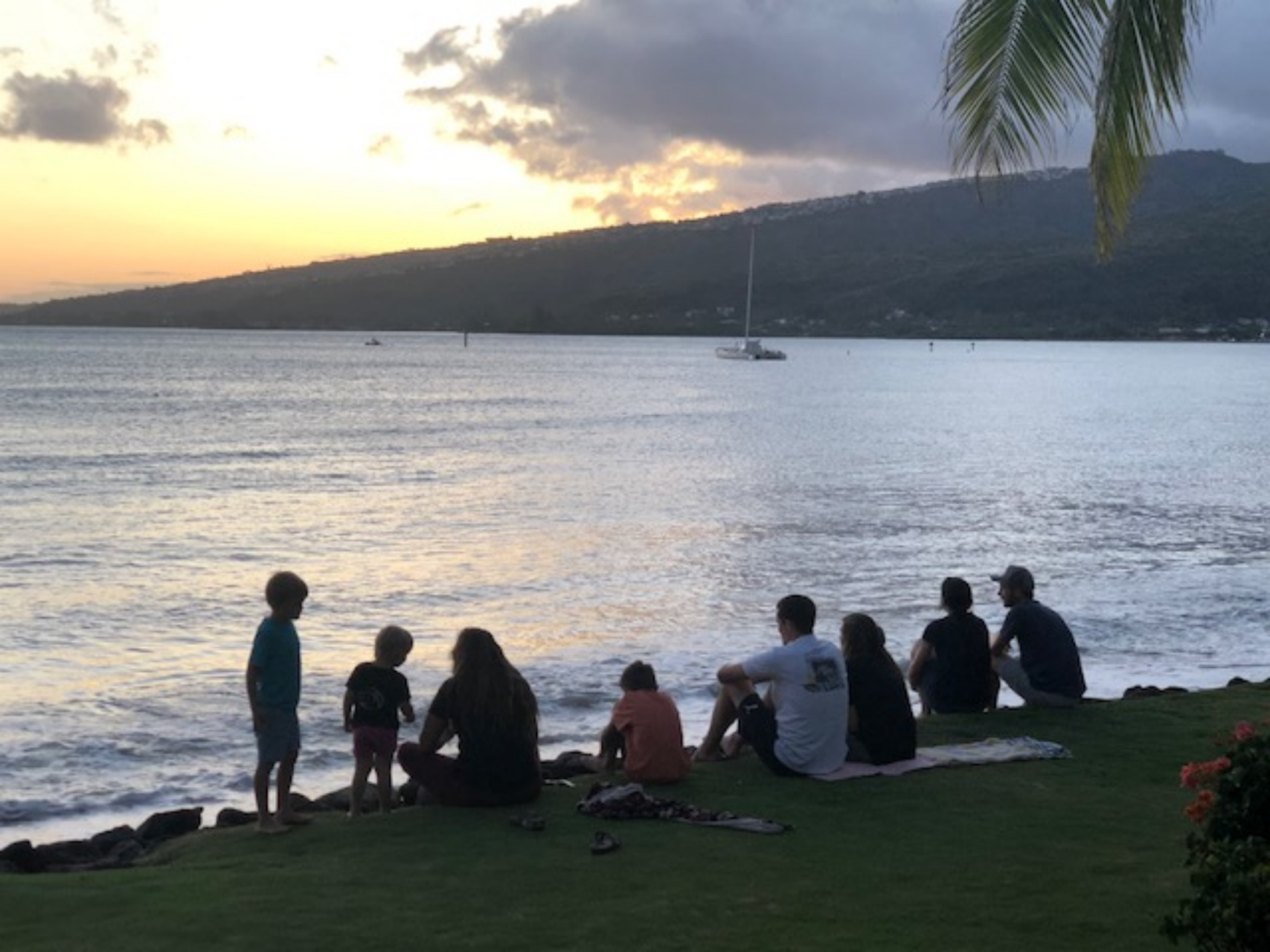
















From: [Andy Bohlander](#)
To: [Robert Wells](#)
Cc: [Peter T. Young](#); [Jenkins, Forest B.](#)
Subject: RE: Shore Rock Removal
Date: Wednesday, May 12, 2021 10:29:45 AM

Caution: external email

Hi Bob,

Thank you for contacting Sea Engineering, Inc. We would be happy to assist with the removal of the rocks. We understand that the rocks are the subject of an enforcement action and that time is of the essence.

Our Engineering Division would need to obtain a Right of Entry Permit (ROE) from the Hawaii Department of Land and Natural Resources. An ROE is required for any work seaward of the shoreline in the Conservation District. We would need to provide a detailed work plan and a Certificate of Insurance listing the State of Hawaii as additional insured.

Our Marine Construction Division would perform the removal. Performing this type of work on the south shore during the summer months is dangerous for crews due to the seasonal swell and high tides. Based on our current schedule, the earliest that we could perform the work would be Aug-Sep. However, our preference would be to wait until the winter months when ocean conditions are more favorable.

Please let me know if you have any questions or need any additional information.

Aloha,
Andy

From: Robert Wells <wellshq@yahoo.com>
Sent: Tuesday, May 11, 2021 6:25 PM
To: Andy Bohlander <abohlander@seaengineering.com>
Cc: Peter T. Young <peteryoung@hookuleana.com>; Forest B. Jenkins <fjenkins@goodsill.com>
Subject: Shore Rock Removal

Andy, recapping our conversation today, I confirm that I wish to pursue the planned rock removal in coordination with our neighbors the Jensens and the Gohana LLC. I understand that you will have an estimator out soon to examine the parcels in order to provide cost estimates and scope of work for subsequent contract preparation.

Please let me know when he is coming so I can meet with him.

Based on our discussion, I understand that it is unlikely that you could schedule the work before August, and that, in fact, it would be better to defer as sea conditions during the summer months will make the work more difficult and possibly require delays.

Please confirm these understanding and, of course, clarify as needed.
Thanks,

Bob Wells