

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
**Honolulu, Hawaii**

May 27, 2022

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REGARDING:** Request for a 120-day Time Extension to Comply with Condition No. 7 Regarding the Board of Land and Natural Resources' Decision Regarding Conservation District Enforcement Case OA 20-38 for the Unauthorized Modification to an Emergency Erosion Control Structure, Noncompliance with an Emergency Permit, and Encroachment Upon State Land Within the Conservation District Located Makai of 53-223 Kamehameha Highway, Punalu'u, Ko'olauloa, O'ahu Tax Map Key (TMK): (1) 5-3-002:035

*The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.*

**BY:** COZY AT PUNALUU LLC  
Douglas W Johnson and Marie E Kramer, Managers

**AGENT:** Jeff Overton, G70

**LOCATION:** Makai of 53-223 Kamehameha Highway, Punalu'u, Ko'olauloa, O'ahu Tax Map Key (TMK): (1) 5-3-002:035

**LANDOWNER:** State of Hawaii

**SUBZONE:** Resource in the State Land Use Conservation District

**BACKGROUND:**

On August 13, 2021, the Board of Land and Natural Resources (Board) amended the Staff Recommendations of agenda item K-1 and found that Douglas W Johnson and Marie E Kramer Managers of COZY AT PUNALUU LLC in violation

of HAR §13-5-24 and HRS §171-6 (12) due to noncompliance with Emergency CDUP OA 20-8 by performing unauthorized alterations to their temporary erosion control structure located makai of 53-223 Kamehameha Highway, Punalu'u, Ko'olaupia, O'ahu Tax Map Key (TMK): (1) 5-3-002:035 subject to eleven (11) conditions (**Exhibit 1**).<sup>1</sup>

**TIME EXTENSION REQUEST:**

Condition No. 7 of the Board's decision regarding ENF: OA 20-38 states "*That the landowners shall remove the unauthorized erosion control structure as well as its associated materials and complete the reconstruction of the emergency temporary erosion control structure by June 1<sup>st</sup>, 2022. If the landowners comply with the above actions and complete the reconstruction of the emergency temporary erosion control structure by June 1<sup>st</sup>, 2022, the landowners shall be credited with \$10,000.00 of all designated fines and administrative costs levied against them in condition #4.*"

By correspondence dated May 9, 2022, COZY AT PUNALUU LLC and their agent are requesting a 120-day time extension to October 1, 2022, to meet the approval and reconstruction completion deadline. It appears that the purpose of the time extension request is due to COZY AT PUNALUU LLC's failure to obtain the required approvals to meet the Board's June 1, 2022, removal and reconstruction deadline (**Exhibit 2**).

**AUTHORITY FOR GRANTING TIME EXTENSIONS:**

As part of its resolution in ENF: OA 20-38, the Board conditioned that the unauthorized erosion control structure seaward of the subject property be removed and reconstructed by June 1, 2022. As the Board mandated the June 1, 2022, deadline, it appears that the Board has the authority to modify the deadline and/or grant any extensions to the conditions and deadlines prescribed by the Board in ENF: OA 20-38. HAR §13-1-14.

**BASIS FOR TIME EXTENSIONS:**

A time extension may be sought when a permittee or landowner is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a permittee or landowner demonstrates some sort of hardship or delay in initiating work on a particular project. Moreover, the permittee or landowner should be able to demonstrate that the hardship or delay has not been

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<sup>1</sup> Agenda Item K-1 for the Board's August 13, 2021 meeting can be viewed at <https://dlnr.hawaii.gov/wp-content/uploads/2021/08/K-1.pdf> and the disposition of K-1 can be watched at <https://www.youtube.com/watch?v=HAIDDOBcHs4> at approximate time stamp 7:08:00.

self-imposed and that some good faith effort has been made to undertake the project.

**DISCUSSION:**

Staff notes that COZY AT PUNALUU LLC have paid a portion of all designated fines and administrative costs in accordance with Condition No. 4 in ENF: OA 20-38. COZY AT PUNALUU LLC also submitted a proposal for the removal and reconstruction of the temporary erosion control structure via email dated October 12, 2021, one (1) day before the Board imposed sixty (60) day deadline as outlined in Condition No. 6 in ENF: OA 20-38.

On November 1, 2021, COZY AT PUNALUU LLC were issued a letter regarding their proposal stating that the OCCL was unable to entertain their proposal due to what appeared to be modifications to the unauthorized structure as well as new land uses being proposed. Additionally, Staff reminded COZY AT PUNALUU LLC of the need to obtain a land disposition from Land Division for the use and occupancy of State land. It appears that approximately four (4) months (November, December, January, and February) passed with no further submittals or communications from COZY AT PUNALUU LLC or their agents.

Condition No. 6 of the Board's decision regarding ENF: OA 20-38 states "*That the landowners shall submit a plan for the demolition and disposal of the unauthorized erosion control structure as well as a plan for the reconstruction of the emergency temporary erosion control structure within sixty (60) days*". It appears that the intent of Condition No. 6 was to ensure that COZY AT PUNALUU LLC submitted a timely proposal for OCCL review, and obtain the necessary approvals from the Department, Chair, and/or Board to ensure that COZY AT PUNALUU LLC could remove and reconstruct the emergency temporary erosion control structure on State owned submerged land by the Board-imposed June 1, 2022, deadline.

Regarding Condition No. 7 and the June 1, 2022, removal and reconstruction deadline, it appears that the Board and Department showed some level of leniency towards COZY AT PUNALUU LLC in instituting the deadline. According to statements made by COZY AT PUNALUU LLC and their agents at the August 13, 2021, Board meeting, April and May offered the ideal time to remove and reconstruct the emergency temporary erosion control structure.

Staff notes that the OCCL is processing COZY AT PUNALUU LLC and their agents' April 18, 2022, proposal, and has submitted it to the Chair for review at the time of writing this submittal. Additionally, it appears only recently (March and April of 2022) that COZY AT PUNALUU LLC and their agents have made a diligent effort to comply with ENF: OA 20-38 Condition No. 6 and No. 7. Based on the above, it appears that any hardship or delay in obtaining the necessary approvals and meeting the June 1, 2022, deadline for the removal and reconstruction of the

emergency temporary erosion control structure on State owned submerged land, at least in part, are self-imposed.

Despite the above, COZY AT PUNALUU LLC has made progress towards complying with the Board's decision regarding ENF: OA 20-38. Approval of the 120-day time extension to October 1, 2022, will hopefully provide the additional time needed for COZY AT PUNALUU LLC and their agents to obtain the necessary approvals and complete the removal and reconstruction of the emergency temporary erosion control structure on State owned submerged land fronting their property. In considering the request, Staff hopes the Board will consider, discuss, and offer guidance with regards to Condition Nos. 9 and 11 regarding ENF: OA 20-38.

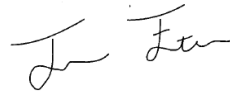
Staff, therefore, recommends with reservations the following:

**RECOMMENDATION:**

That the Board of Land and Natural Resources **APPROVE** an extension to comply with Condition No. 7 in ENF: OA 20-38 and obtain the necessary approvals for the removal and reconstruction emergency temporary erosion control structure on State owned submerged land fronting/makai of TMK: (1) 5-3-002:035, subject to the following conditions:

1. That Condition No. 7 of the Board's decision regarding ENF: OA 20-38 is amended to provide COZY AT PUNALUU LLC have until October 1, 2022, to obtain the necessary approvals for the removal and reconstruction emergency temporary erosion control structure on State owned submerged land fronting/makai of TMK: (1) 5-3-002:035; and
2. That all other conditions imposed by the Board under its August 13, 2021, decision regarding ENF: OA 20-38, as amended, shall remain in effect.

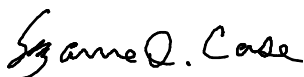
Respectfully submitted,



Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands

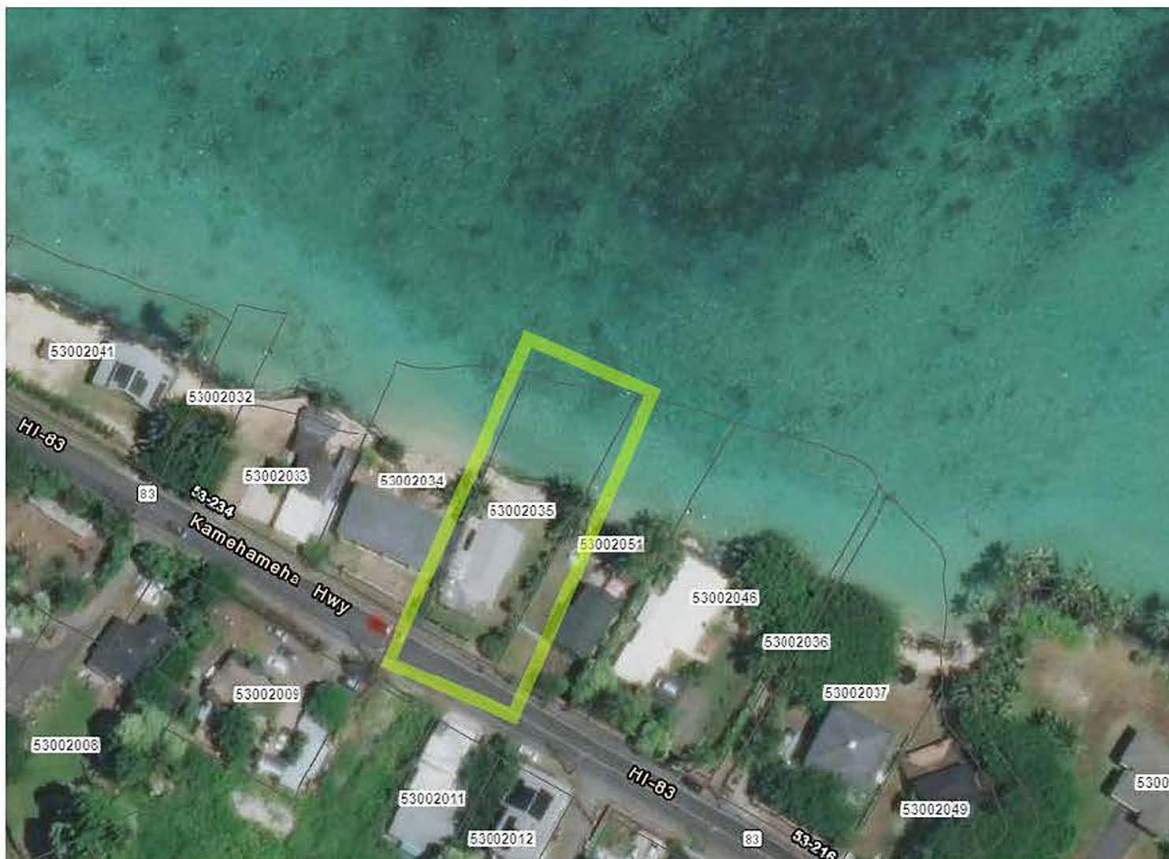


Approved for submittal:



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SUZANNE D. CASE., Chairperson  
Board of Land and Natural Resources

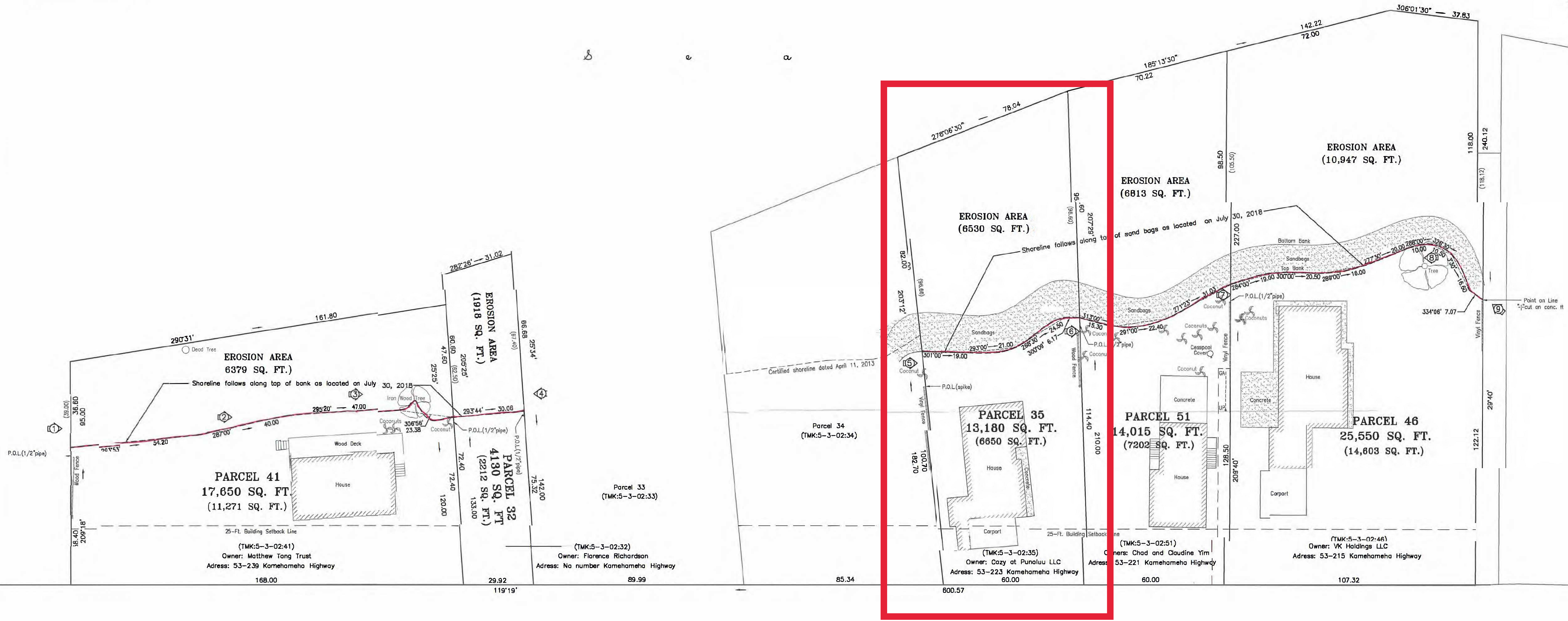


Location Map



11/11/2018

Scale: 1 inch = 20 feet  
TRUE NORTH



The shoreline as delineated in red is hereby certified as the shoreline as of  
OCT 03 2018  
Chairperson, Board of Land and Natural Resources

K A M E H A M E H A H I G H W A Y

NOTES:  
1. Only improvements shown were located.  
2. Denotes number and direction of photographs.

SHORELINE SURVEY MAP  
PARCELS 41, 32, 35, 51 AND 46  
Being portions of Royal Patent 7804,  
Land Commission Award 997, Apana 25 to W. P. Leleihoku  
Punaluu, Koolauloa, Oahu, Hawaii  
Tax Map Keys: 5-3-02: 41, 32, 35, 51 and 46  
Scale: 1 inch = 20 feet  
Date: August 20, 2018



This work was prepared by me or under my direct supervision.

SURVEY OFFICE COPY







DAVID Y. IGE  
GOVERNOR OF HAWAII



RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2021 AUG 31 A 10:52

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

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

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

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

REF: OCCL: TF

ENF: OA 20-38

Aug 23, 2021

COZY AT PUNALUU LLC  
C/O: Douglas W Johnson or Marie E Kramer, Managers  
1720 Paula Dr., Apt A  
Honolulu, HI 96816

SUBJECT: Conservation District Enforcement Case OA 20-38 Regarding the Alleged Unauthorized Modification to an Emergency Erosion Control Structure, Noncompliance with an Emergency Permit, and Encroachment Upon State Land Located Within the Conservation District.  
Seaward of 53-223 Kamehameha Highway  
Punalu'u, Ko'olauloa, O'ahu.  
Tax Map Key (TMK): (1) 5-3-002:035

Dear Landowners:

This is to inform you that on August 13<sup>th</sup>, 2021, the Board of Land and Natural Resources (BLNR) amended the Staff Recommendations of agenda item K-1 and found that Douglas W Johnson and Marie E Kramer Managers of COZY AT PUNALUU LLC in violation of HAR, §13-5-24 and HRS, §171-6 (12) due to noncompliance with Emergency CDUA OA 20-8 by performing unauthorized alterations to their temporary erosion control structure located Seaward of 53-223 Kamehameha Highway, Punalu'u, Ko'olauloa, O'ahu, Tax Map Key (TMK): (1) 5-3-002:035 subject to the following:

1. That the landowners are fined \$15,000.00 for violating the provisions of HAR, §13-5-24 for performing major alterations/modifications to the temporary erosion control structure within the Conservation District, Resource Subzone prior to obtaining the appropriate approvals;
2. That the landowners are fined \$1,000.00 for violating the provisions of HRS, §171-6 (12) for an unauthorized encroachment on public lands;
3. That the landowners are fined an additional \$2,000.00 for administrative costs associated with the subject violations;

**Exhibit 1**



4. That the landowners shall be held responsible to pay all designated fines and administrative costs (\$18,000.00) contingent upon the landowners compliance with conditions #6 and #7;
5. That the landowners shall pay \$8,000.00 of the designated fines and administrative costs within sixty (60) days from the date of the Board's action;
6. That the landowners shall submit a plan for the demolition and disposal of the unauthorized erosion control structure as well as a plan for the reconstruction of the emergency temporary erosion control structure within sixty (60) days;
7. That the landowners shall remove the unauthorized erosion control structure as well as its associated materials and complete the reconstruction of the emergency temporary erosion control structure by June 1<sup>st</sup>, 2022. If the landowners comply with above actions and complete the reconstruction of the emergency temporary erosion control structure by June 1<sup>st</sup>, 2022, the landowners shall be credited with \$10,000.00 of all designated fines and administrative costs levied against them in condition #4;
8. The reconstructed emergency temporary erosion control structure shall be authorized for a period of three (3) years starting from the date of the Board's action (August 13<sup>th</sup>, 2021 to August 13<sup>th</sup>, 2024);
9. That in the event of failure of the landowners to comply with any order herein, the landowner shall be fined an additional \$16,000.00 per day (pursuant to HRS, §171-6 (15) and HRS, 183C-7) until the order is complied with;
10. That all fines and directions apply to COZY AT PUNALUU LLC, Douglas W Johnson, and Marie E Kramer individually, jointly and severally; and,
11. That in the event of failure of COZY AT PUNALUU LLC, Douglas W Johnson, and Marie E Kramer to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Please acknowledge receipt of this letter, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within 30 days. Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office at (808) 798-6660 or [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,



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

Receipt acknowledged:

  
Landowner's Signature

Date 8/27/21

CC: Chairperson  
Oahu Board Member  
Oahu Land Division Office  
City and County of Honolulu, Department of Planning and Permitting  
Jeff Overton, G70, 111 S. King St Suite 170, Honolulu, HI 96813  
Douglas Johnson, 1380 Lusitana St. Suite, 401, Honolulu, HI 96813



***Douglas W. Johnson & Marie E. Kramer  
1720 Paula Drive, Apt. A  
Honolulu, HI 96816***

May 9, 2022

Chairperson Suzanne D. Case  
State of Hawai'i Board of Land and Natural Resources  
P.O. Box 621  
Honolulu, HI 96809

Attention: OCCL: Michael Cain, Trevor Fitzpatrick, Kimberly Mills

**Subject: REQUEST FOR 120-DAY TIME EXTENSION  
Removal and Rebuilding of Shoreline Structure (Emergency CDUA)  
Douglas Johnson & Marie Kramer  
Seaward of 53-223 Kamehameha Highway  
Punalu'u, Ko'olaupua, O'ahu - Tax Map Key (TMK) (1) 5-3-002: 035**

Aloha Chairperson Case:

Mahalo to you and your staff at the DLNR Office of Conservation and Coastal Lands (OCCL) for assisting the landowner and agent in compliance with State regulatory requirements, and guidance for the removal and rebuilding of a temporary shoreline protection structure for our home in Punalu'u. We absolutely understand the burden the State DLNR faces in addressing the numerous shoreline property concerns around the State. We have been extremely diligent in compliance with BLNR conditions, and are prepared to begin the work. However, due to delays in the permit approval process we cannot meet the State's June 1, 2022 completion deadline. Our request is for a 120-day time extension to October 1, 2022.

Recent History.

The Board of Land and Natural Resources (BLNR) permitting for the structure was most recently issued under Emergency CDUA OA-20-8 (expired) with subsequent enforcement action ENF: OA 20-38. action to remove and rebuild this structure requires: 1) OCCL approval for the temporary structure removal and reconstruction plan, and 2) Land Division and BLNR approval of a Revocable Permit including a bond for structure removal. We have been taking diligent action to advance this matter since the August 13, 2021 BLNR decision to remove and reconstruct as directed. A summary timeline of actions below.

Completed Actions for Compliance – Application for New Emergency Authorization:

1. BLNR decision (August 13, 2021)
2. Contractor plan preparation (Sep-Oct 2021) submittal to OCCL (October 12, 2021)
3. Review by DLNR OCCL and denial issued (received November 5, 2021)
4. Revision of Contractor Plans (Dec-Feb 2022)
5. OCCL Site Visit to review plans for removal and reconstruction (March 9, 2022)
6. Per Advisory from OCCL to consult with Land Division on Revocable Permit process (March 18, 2022). Land Division advisory that the RP process cannot start without Emergency Authorization.
7. Resubmit Plan for Removal and Reconstruction (March 21, 2022)
8. OCCL Review of Revised Proposal with Active Engagement to Refine Proposal (March-April 2022)
9. Owner Submits Revised Proposal to OCCL (April 18, 2022)
10. Anticipated Emergency Authorization to be issued by OCCL (pending as of May 9, 2022)

***Exhibit 2***

With support from our consultant and contractor, we have made numerous submittals since the August 2021 Board decision, and we have addressed each of the staff comments to seek final plan approval. With the approval of Emergency Authorization now imminent, we are preparing to complete the next step.

#### Revocable Permit process with Land Division

We have requested several times to apply for the revocable permit at the same time, however, Land Division requires the Emergency Authorization. Our ability to move ahead on the required performance schedule has been hampered by the delays in the sequential permit review and approval process. We absolutely understand the burden the State DLNR faces in addressing the numerous shoreline property concerns around the State.

The applicant will file a letter request to the Land Division for Revocable Permit, pending the Emergency Authorization issuance. In the interim, the owners have compiled supporting information required by the Land Division, including the Certificate of Insurance, Removal Cost Estimate, and tentative Removal Bond. We understand the RP requires Land Division assembly, review and approval. Once this step is complete it will be brought to the BLNR for approval at a future meeting. Based on our discussions with Land Division, this process will take an unknown period of time.

#### Conclusion

As you can see from the narrative above: 1. Owners have been diligent in their efforts to comply with DLNR requirements; 2. Owners are prepared to move expeditiously to complete the permit process and begin removal and construction; and 3. The approval uncertainty now places the summer season construction window in jeopardy. We respectfully request a 120-day extension to October 1, 2022 to allow for completion of your pre-construction permitting requirements moving ahead with the removal and reconstruction.

Please contact our consultant Jeff Overton G70 (808-351-4200; [jeff@g70.design](mailto:jeff@g70.design)) or me (808-342-6002; [dwj808@gmail.com](mailto:dwj808@gmail.com)) if you have questions or require additional information.

Sincerely,



Douglas W. Johnson & Marie E. Kramer

cc:

G70 - Jeff Overton

Mark Ticconi - Gundaker Works