

OCCL BLNR Item K-1 September 22, 2023

Request for Administrative Fines and Other Penalties Against 59-181 Ke-Nui LLC, including members Eric and Moniza Freeman, for Conservation District Enforcement Case OA 22-18 Regarding the Alleged Permit Noncompliance, Construction of Shoreline Erosion Control Device, and Encroachment Upon State Land Located Makai of 59-181 D Ke Nui Rd., Tax Map Key: (1) 5-9-002:034





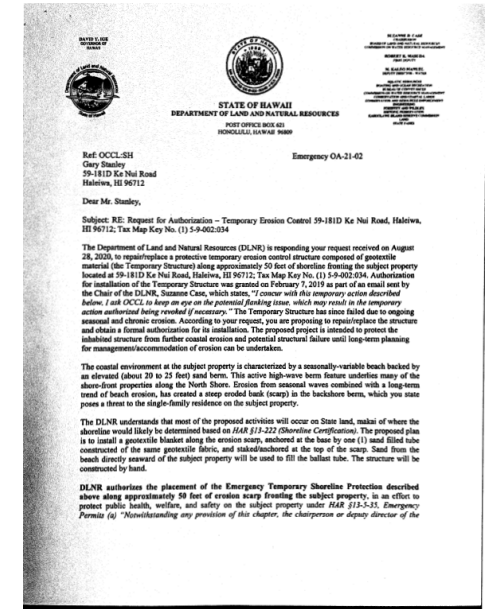
LOCATION:

- North Shore, Island of Oahu
- Pupukea-Paumalu Beach Lots
- 59-181 D Ke Nui Road or TMK: (1) 5-9-002:034



K-1: Emergency CDUP OA 21-02

- 1 sand-filled tube wrapped in a geotextile blanket
- Issued Sept 3, 2020
 - Signed by the permittee Sept 4, 2020
- Cond. 4: Obtain a Land Disposition
- Cond. 14: Failure by the applicants to retrieve/resecure material, upon request by the DLNR, will result in fines of up to \$15,000/day
- See **Exhibit 7**, pp.120-124



K-1: Alleged Unauthorized Land Use(s) & Work

- Jan 17, 2022, structure does not appear to be compliant, more than 1 burrito
 - See ***Exhibit 5***, p. 62
- Jan 27, 2022, modification of structure & construction of sandbag filled burrito(s)
 - Verbal Notification of Alleged Violation
 - See ***Exhibit 5***, p. 63



K-1: Alleged Unauthorized Land Use(s) & Work

- Jan 28, 2022:
 - Notice of Alleged Violation Mailed
 - *“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”*
 - See ***Exhibit 8***, pp. 125-134
 - OCCL receives of photo Continued Unauthorized Work
 - See ***Exhibit 5***, p. 65



K-1: Alleged Unauthorized Land Use(s) & Work

Alleged Unauthorized Work
Continued on:

- Jan 30, 2022 (pic. here)
- Jan 31, 2022
- Feb 2, 2022
- Feb 3, 2022 (pic. here)
 - See ***Exhibit 5***, pp. 66-71
- Feb 4, 2022, COR: OA 22-122 issued to several shoreline property owners regarding concerns about observed work & debris in shoreline
 - See ***Exhibit 9***, pp. 135-141





K-1: Alleged Unauthorized Land Use(s) & Work

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> 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. TF 		A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Address 	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Eric. & Moniza Freeman		Eric Freeman	2-7-2022
2. Article Number (Transfer from service label) 7020 2450 0000 0357 8337		D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:	
3. Service Type <input checked="" type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restr. Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery		Domestic Return Receipt	
PS Form 3811, July 2020 PSN 7530-02-000-9053			

- Feb 8, 2022, sand mined from the beach to cover and fill in portions of erosion control structure and recently installed devices
 - See **Exhibit 5**, p. 72

K-1: Alleged Unauthorized Land Use(s) & Work

Alleged Unauthorized Work
Continued on:

- Feb 11, 2022
- Feb 13, 2022 (pic. here)
- Feb 18, 2022
 - See ***Exhibit 5***, pp. 73-75



K-1: Alleged Unauthorized Land Use(s) & Work

- Feb 28, 2022, makai bottom level deck washes away/collapses & several erosion control devices exposed
 - Shoreline (scarp) attempting to move mauka
 - See ***Exhibit 5***, p. 76
- Structure on Parcel 045 falls in shoreline
 - See ***Exhibit 10***, p. 146



K-1: Alleged Unauthorized Land Use(s) & Work

- Mar 2, 2022, Freeman Response Letter
 - Request Meeting w/ OCCL & others
 - See ***Exhibit 10***, pp. 142-146
- Mar 7, 2022, photo of Continued Unauthorized Work of sand being mined from the beach to cover structure
 - See ***Exhibit 5***, p. 78
- Mar 16, 2022, Meeting held w/ Gov. Ige's Representative, Department staff & counsel, and the Freeman's neighbor
 - Does not appear the Freeman's attended



K-1: Alleged Unauthorized Land Use(s) & Work

Oct 14, 2022:

“...I’m coming to Hawaii next week & rented a home via Airbnb on the North Shore. I randomly found a news article about the beach erosion in this area & the home we are renting was identified as one with structural problems. I also saw that a home few doors down actually collapsed. Needless to say we are concerned about the safety of staying there. The owners assure us there are no problems, but I’m skeptical. The address of the home is 59-181 D Ke Nui Road. Any insight you have would be appreciated as we want to cancel our booking & stay elsewhere but the owners are refusing.”

- ***Exhibit 11***, pp. 147-149



K-1: Alleged Unauthorized Land Use(s) & Work

Alleged Unauthorized Work
Continued on:

- Jan 27, 2023
- Jan 29, 2023 (pic. here)
- Jan 30, 2023 (pic. here)
 - See ***Exhibit 5***, pp. 81-84



K-1: Alleged Unauthorized Land Use(s) & Work



- Feb 1, 2023, OCCL Site Visit
 - Construction of sandbag filled burrito/erosion control device
 - Verbal notification again given to “Frank” (or Al)
 - See **Exhibit 5**, pp. 85-86

Exhibit 5: Alleged Unauthorized Land Use(s)

Alleged Unauthorized Work
Continued on:

- Feb 4, 2023 (pic. here)
- Feb 5, 2023 (pic. here)
- Feb 6, 2023
 - See ***Exhibit 5***, pp. 87-90
- Feb 6, 2023, Ref. ENF: OA 22-18 letter regarding recent & past observed work
 - See ***Exhibit 12***, pp. 150-178



Exhibit 5: Alleged Unauthorized Land Use(s)

- Feb 8, 2023, conveyor belt on beach to mine sand from the beach to construct & cover erosion control structure
 - See ***Exhibit 5***, pp. 91
- Feb 27, 2023, OCCL receives Freeman response letter (Ref. ENF: OA 22-18 dated Feb 6, 2023)
 - Purchased Parcel 034 Jan 2021
 - Felt they were misled about erosion
 - No intention of violating laws of Hawaii
 - Requested another meeting
 - See ***Exhibit 13***, pp. 184



Exhibit 5: Alleged Unauthorized Land Use(s)

Alleged Unauthorized Work
Continued on:

- May 25, 2023 (pic. here)
- May 26, 2023
- May 27, 2023 (pic. here)
 - See ***Exhibit 5***, pp. 92-94



Exhibit 5: Alleged Unauthorized Land Use(s)

- Emergency CDUP OA 21-02
 - Expired Sept 3, 2023
 - Temp. erosion control structure removed
- Sept 12, 2023, OCCL conducts site visit
 - Temp. erosion control structure not removed
 - New erosion control blankets
- County beach ROW 280A & maintenance
 - Closed for ~2yrs



K-1 & Exhibit 5: 22 Separate Days* of Willful Violation

- Jan 28, 2022, ***Exhibit 5***, p. 65
- Jan 30, 2022, ***Exhibit 5***, p. 66
- Jan 31, 2022, ***Exhibit 5***, pp. 67-68
- Feb 2, 2022, ***Exhibit 5***, pp. 69-70
- Feb 3, 2022, ***Exhibit 5***, p. 71
- Feb 8, 2022, ***Exhibit 5***, p. 72
- Feb 11, 2022, ***Exhibit 5***, p. 73
- Feb 13, 2022, ***Exhibit 5***, p. 74
- Feb 18, 2022, ***Exhibit 5***, p. 75
- Mar 7, 2022, ***Exhibit 5***, p. 78
- Mar 9, 2022, ***Exhibit 5***, p. 79
- Apr 8-11, 2022, ***Exhibit 5***, p. 80*
- Jan 27, 2023, ***Exhibit 5***, p. 81
- Jan 29, 2023, ***Exhibit 5***, p. 82
- Jan 30, 2023, ***Exhibit 5***, pp. 83-84
- Feb 1, 2023, ***Exhibit 5***, pp. 85-86
- Feb 4, 2023, ***Exhibit 5***, p. 87
- Feb 5, 2023, ***Exhibit 5***, pp. 88-89
- Feb 6, 2023, ***Exhibit 5***, p. 90
- Feb 8, 2023, ***Exhibit 5***, p. 91
- May 25, 2023, ***Exhibit 5***, p. 92
- May 26, 2023, ***Exhibit 5***, p. 93
- May 27, 2023, ***Exhibit 5***, p. 94
- ***Sept 12, 2023****

K-1 : Staff Recommends (pp. 17-18)

1. That the Board of Land and Natural Resources adopt the findings and conclusions set forth above and also impose the following administrative fines:
 - a. Pursuant to Section 183C-7, HRS, the Freemans may be fined up to \$15,000 for violating the provisions of Section 13-5-24, HAR, by failing to abide by the terms and conditions of Emergency CDUP OA 21-2 that required obtaining approval prior to performing modifications to the structure and/or installing new erosion control measures to construct a new erosion control structure on submerged land in the Conservation District Resource Subzone;
 - b. Pursuant to Section 183C-7, HRS, the Freemans may be fined up to \$15,000 per day per violation for each day in which the violation persist for violating the provisions of Section 13-5-24, HAR, by willfully violation these sections on twenty-two separate days and installing erosion control measures after receiving written and verbal notification from the Department to cease such activity on submerged land in the Conservation District Resource Subzone, and therefore may total \$330,000;
 - c. Pursuant to Section 171-6 (12), HRS, the Freemans may be fined up to \$1,000 per day for their failure to remove the encroachments upon public lands, accrual of such starting when they received notice on February 7, 2022, and therefore may total \$592,000;
 - d. Therefore, that the total fines and administrative costs that may be levied against the Freemans may be \$937,000, and that the Freemans shall pay all designated fines and administrative costs within ninety (90) days from the date of the Board's action;

K-1 : Staff Recommends (pp. 17-18)

2. That the Board of Land and Natural Resources authorizes the Department of the Attorney General to file a Notice of Pendency of Action with deed or deed instrument of Parcel 034 at the Bureau of Conveyances pursuant to Sections 171-6.4(c), 501-151, and 634-51, HRS;
 - *Act 236 (2023): Authorizes the Board of Land and Natural Resources to place a lien on property for noncompliance with certain administrative enforcement actions related to land use violations and certain unauthorized structures encroaching on public lands*



K-1 : Questions ?