

Testimony of Denise Antolini
59-463 Alapi‘o Road
Pūpūkea, HI 96712

BLNR Hearing October 27, 2023, OCCL, Item K-2
In support with conditions

Re: Request for Approval of Emergency Conservation District Use Application (Emerg. CDUA) OA 24-01 Related to the Settlement Agreement for Contested Case CC: OA 21-03 for ENF: OA 21-03 and the Removal of Concrete Shoreline Protection Structure (Unauthorized Seawall) and Installation of Temporary Shoreline Structure Located Makai of 59-175 C Ke Nui Road, Tax Map Key: (1) 5-9-002:026 (“McNamaras”)

Aloha Chair Chang and Members of the Board,

As you know from my prior testimony about shoreline erosion issues along “Kammies” beach (Sunset-Paumalū), I am personally familiar with this area because my family lived along this stretch of Ke Nui Road for several years and used this beach virtually every day. My family and I continue to use this beach often for recreation as we now live mauka, in Pūpūkea.

In August 2023, in response to community concerns about how numerous failed burritos and seawalls along this beach were creating impediments to public access and pollution of the beach and marine environment, I also helped to organize a community effort to clean up loose debris threatening public access, health, and beach safety. We hauled out four pickup-truck loads of “burrito” fabric over the course of three mornings, which is just one snapshot indication of the dire condition of the beach given the failed seawall and burrito systems along this shoreline.

I urge the Board to **approve** the proposed Emergency CDUA to require complete removal of the illegal failed seawall and all materials in the shoreline by December 31, 2023 but **with seven additional/amended conditions** that better protect the public trust resources that have been damaged by the illegal seawall and that will be “used” by the proposed temporary one-year burrito system.

Please note that, according to the Settlement Agreement (K-2, p. 15) the owners’ unauthorized “seawall repair” activity occurred in August 2020 after they purchased the property with the illegal seawall in 2019. Long-time residents of this area are very aware of the dynamic and highly eroded shoreline conditions, particularly in the past decade, occurring along the beachfront homes built on the Paumalū sand dune.

I recommend the following conditions be added to/amended in the proposed CDUA:

1. **Stipulated daily fine for failure to timely remove seawall/materials.** OCCL states that “Failure by the permittee to complete any work or construction to be done on the land by December 31st, 2023, *may lead to* further fines and enforcement actions in accordance with the BLNR’s approved settlement agreement in ENF: OA 21-03 on August 26th, 2022.” (Emphasis added.)

The Board should change the squishy “may” to “shall” and a clear stipulated fine – for example, \$1,000 a day for each day beyond December 31, 2023, and double the daily fine each month thereafter. A stipulated fine provides fairer notice to the landowner and provides a clearer, stronger incentive to get the work done on time, reducing the burden on everyone involved.

2. **Restoration of the public Right of Way (BROW 280A).** As a result of the illegal shoreline hardening and construction activity in the area, as well as from natural erosion, BROW 280A has been blocked off to the public and inaccessible for approximately three years (see photos K-2, pp. 32-34). The community is very upset about the blocked BROWs along this area.

The removal project – with the staging of a 45-ton crane and construction vehicles and activity, likely for weeks – will very likely further damage this BROW. “Access and staging” on and “temporary blockage” of public land should not be allowed without assurance of full restoration of public access to the beach.

This ROW should be fully restored by the landowner, in cooperation with the City, as a condition of this permit. “Safe public transit” (K-2, p. 4) should not only be lateral but also BROW access. If not now, then when? If not this project, then how?

3. **Compensation for the use of public trust lands and sand.** Both the illegal seawall and the proposed temporary burrito system used or will use and degrade public trust lands for private benefit. The diversion of the \$30k fine into the cost of the removal does nothing to compensate for the public trust losses during this period of time (at least three years). As OCCL states (K-2, p. 7): “temporary erosion control structures have led to obvious degradation of the public beach resource.”

In addition, the temporary burrito system will “take” and use for private benefit **175 cubic yards** of unique high quality beach sand (K-2, p. 5) – which is about **70 pickup trucks** of sand (assuming 2.5 CY average bed load) – all removed from this very special beach that is already experiencing sand loss. Removal of beach sand, even in small amounts, is now illegal in Hawai‘i. (HRS § 171-58.5 “Prohibitions. The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits seaward from the shoreline is prohibited with the following exceptions . . .”)

The use of the beach sand should either be prohibited or the Board should require compensation amount based on, e.g., “replacement cost” – the cost of bringing in sand of that unusually high quality, in that amount, to this location, for that one-year period of time (even assuming all sand is returned directly to the beach after one year).

4. **Notification to the public.** Only a brief mention is made in the recommendation about notification to the public of this project (K-2, p. 10: “a notification to the public informing them of the project.”).

I urge the Board to require: (a) **written monthly notification** to all homeowners along Ke Nui Road (by post or email); (b) **highly visible signs** (approved by OCCL) to be posted on the beach that clearly state the permit name, homeowner name, deadline for the project, and provide a QR code to the Board action and the OCCL submittal, as well as a number to call for questions/complaints; and (c) a letter from the homeowner to the **Sunset Beach Community Association** explaining the project nature, deadlines, approvals, and extend of community and signage notification, with **monthly updates**.

The community deserves accurate, timely, and easily accessible information about what is happening to this beach. Better notification will also benefit the landowner and DLNR by avoiding hassles and misunderstandings.

5. **Prohibit night work.** See K-2, p. 10, Para 10: please add that night work (e.g., dusk to dawn) should be prohibited – not just because of the noise, lights, and physical intrusion on the beach but due

to the inability to monitor and document nighttime work. Compliance with “noise ordinances” alone is not a sufficiently protective condition.

6. Temporary must mean temporary - no application beyond one year should be allowed.

The Settlement provides “The maximum amount of time that such temporary erosion control structures will be authorized to installed is one year.” But then – in contradictory terms – almost invites an extension application (K-2, p. 5: “*if the Petitioners would like to keep the temporary structures longer, . . .*”), even though as OCCL later states, the temporary measure (and an extension) is inconsistent with Act 16 (K-2, p. 6).

The Board should be clear that NO extension beyond one year will be allowed. As OCCL notes, “OCCL is not aware if these shoreline property owners have utilized this time to hire consultants and develop long-term plans” (K-2, p. 7). The proposed list of solutions provided by the landowner are, as OCCL states, no realistic or not likely legal: “these proposed long-term responses do not appear to comply with Act 16 SLH 2020.”

Inviting an extended period sends the wrong policy signal to this and all beachfront homeowners. As OCCL states: “Given these environmental conditions in this area, the known impacts of shoreline hardening structures on the State’s public trust resources, and the long history of permit non-compliance in the region, landowners should expect far more stringent conditions on work in the shoreline than what has been required in the past.” (K-2, p. 7).

Please state clearly as a condition of this CDUA that NO extension application will be considered.

Only by a strict, clear time condition will landowners have the correct incentive to reach a long-term solution, e.g., house modification, relocation, or sale to the government.

7. Removal bond. Requiring a removal bond is very important given the lack of compliance with removal orders for other landowners along this shoreline, which leaves the public and DLNR holding the bag.

The Board should set a **specific amount**, or at least a range or method for determining the amount instead of leaving the bond un-stated or open-ended. To provide greater certainty to DLNR, the landowner, and the public, this amount should be clear and reasonably cover all actual and administrative costs in the event DLNR has to step in to do the removal action in the future.

Thank you for considering my testimony.

Sincerely,



Denise Antolini



October 26, 2023

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

Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Petition for Additional Time to Perform Removal Until June 30, 2024
Related to the Settlement Agreement for Contested Case CC: OA 21-03
for ENF: OA 21-03 and the Removal of Concrete Shoreline Protection
Structure and Installation of Temporary Shoreline Structure Located
Makai of 59-175 C Ke Nui Road, Pupukea-Paumalu Beach Lots,
Koolauloa, Oahu, Tax Map Key (TMK): (1) 5-9-002:026 (seaward)

Dear Board of Land and Natural Resources:

I. Introduction

Our office represents SEAMAIDS LLC, LIAM MCNAMARA, and BRANDEE MCNAMARA (the “McNamaras”). We submitted detailed written testimony on October 25, 2023 with a number of enclosures. We are hopeful that the Board of Land and Natural Resources (“BLNR”) will review the written testimony previously submitted.

As previously stated in our October 25, 2023 written testimony, “[t]he McNamaras are fully committed to complying with the terms of the settlement agreed to by OCCL/DLNR and removing the seawall as quickly as possible.” We are respectfully writing to submit addendum testimony with respect to agenda item K-2 (“Agenda Item”).

It is important to note and reiterate that the Parties entered into a binding Settlement Agreement that was approved by the Board of Land and Natural Resources (“BLNR”) on August 26, 2022. Under the binding Settlement Agreement, the McNamaras were promised, among other things: (1) a permit to install a sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean; and (2) a land disposition to allow the McNamaras to remove the seawall and install the aforementioned temporary erosion control structures. The Hearing Officer’s Recommendation also explained that the if “circumstances arise which make removal by [December 31, 2023] impossible ... the [McNamaras] can ask the Board for additional time.” The Settlement Agreement memorialized this material condition with the following language:

If circumstances outside of the Petitioners’ control make it impossible to remove the Seawall or any unpermitted shoreline protection devices by December 31, 2023 (i.e. logistical issues outside of the Petitioners’ control, weather conditions, established

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inability to secure a contractor to perform the work notwithstanding documented efforts), then Petitioners may petition the Board for additional time.

The chart on pages 6-12 of our October 25, 2023 written testimony documents the numerous communications from the McNamaras to the State related to the CDUA, Removal Plan and land disposition submittals (approximately 29 separate communications directed to the State in the past year). As discussed below, however, these communications in large part have either been completely ignored or followed by long delays.¹ In our October 25, 2023 submittal, we petitioned the BLNR for additional time to remove with the following language **“[t]he McNamaras will make every effort to remove by December 31, 2023 (to the extent possible), but request that the deadline be extended to June 30, 2024 given the ... referenced delays.”** We respectfully petition BLNR to extend the December 31, 2023 deadline to June 24, 2023. The well-documented history of communications to both OCCL and land division document the need for more time to remove the seawall. Thank you very much.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL



Forest B. Jenkins

¹ Due to the long delays and non-responsiveness from DLNR, and particularly the land division, additional time to remove the seawall is also warranted. A detailed chart, which the McNamaras have records to support, documenting the McNamaras submittal and follow up history is outlined on pages 6-12 of our written testimony. Land division was non-responsive from March, 2023 through October, 2023 despite repeated communications from the McNamaras. **The McNamaras will make every effort to remove by December 31, 2023 (to the extent possible), but request that the deadline be extended to June 30, 2024 given the below referenced delays.**

October 26, 2023

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

Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Request for Approval of Emergency Conservation District Use Application (Emerg. CDUA) OA 24-01 Related to the Settlement Agreement for Contested Case CC: OA 21-03 for ENF: OA 21-03 and the Removal of Concrete Shoreline Protection Structure (Unauthorized Seawall) and Installation of Temporary Shoreline Structure Located Makai of 59-175 C Ke Nui Road, Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, Tax Map Key (TMK): (1) 5-9-002:026 (seaward)

Dear Board of Land and Natural Resources:

My name is Dennis Poma and I am the Principal and a Professional Engineer for Advanced Compliance Solutions, Inc. I previously submitted written testimony on October 25, 2023 related to Agenda Item K-2 on the October 27, 2023 BLNR Meeting Agenda. I am writing to provide a brief addendum to my prior testimony. The below images were acquired from the Bow Report, created for DLNR. The first image was apparently taken in January, 2022 after extreme weather and high surf. The second photograph was apparently taken in March, 2022. The first photograph depicts the materials in the seawall and the second provides an example of the consistent sand coverage that covers the face of the wall. At certain times the seawall is nearly entirely covered with sand.



The digging into the deep sand coverage required to remove the seawall without question requires an excavator. Furthermore, breaking down the materials that make up the seawall into small fragments with a jackhammer would create a significant amount of debris and is not a reasonable alternative to an excavator. The project would be much louder and extended for several months. It simply does not make sense from an engineering standpoint to not allow an excavator for the removal project.

Sincerely,

Dennis Poma
Dennis Poms, P.E.



October 25, 2023

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

Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Request for Approval of Emergency Conservation District Use Application (Emerg. CDUA) OA 24-01 Related to the Settlement Agreement for Contested Case CC: OA 21-03 for ENF: OA 21-03 and the Removal of Concrete Shoreline Protection Structure (Unauthorized Seawall) and Installation of Temporary Shoreline Structure Located Makai of 59-175 C Ke Nui Road, Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, Tax Map Key (TMK): (1) 5-9-002:026 (seaward)

Dear Board of Land and Natural Resources:

I. Introduction

Our office represents SEAMAIDS LLC, LIAM MCNAMARA, and BRANDEE MCNAMARA (the “**McNamaras**”). Seamaids LLC owns the residential property located on the North Shore of O‘ahu at 59-175C Ke Nui Road, Hale‘iwa, Hawai‘i, 96712, Tax Map Key No. (1) 5-9-002:026 (the “**Property**”). The McNamaras are long-time residents of the North Shore of Oahu. The McNamaras and the OFFICE OF CONSERVATION AND COASTAL LANDS (“**OCCL**”), of the DEPARTMENT OF LAND AND NATURAL RESOURCES (“**DLNR**”) were scheduled to proceed with a contested case in this matter on May 16, 2022. Dawn. N. S. Chang, Esq. presided over the contested case as hearing officer. The contested case related to emergency repairs to the McNamaras nonconforming seawall following damage caused by Hurricane Douglas. After cooperative, informal settlement discussions, the McNamaras and OCCL/DLNR (collectively, the “**Parties**”) were able to come to a set of mutually agreeable settlement terms prior to the contested case.

The McNamaras are fully committed to complying with the terms of the settlement agreed to by OCCL/DLNR and removing the seawall as quickly as possible. We are respectfully writing to submit testimony with respect to agenda item K-2 (“**Agenda Item**”). Specifically, the Agenda Item requests that the BLNR approve both the Emergency Conservation District Use Application (“**CDUA**”) and the Proposal for Removal of Concrete Shoreline Protection & Installation of Temporary Shoreline Structure (“**Removal Plan**”). We respectfully request that the BLNR approve the Agenda Item in its entirety, including the Removal Plan. The Removal Plan, which OCCL has had since December, 2022 and which we understand OCCL staff recommends that the BLNR approve, allows for the utilization of heavy machinery to remove the seawall fronting the McNamara property.

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In addition to writing to support the OCCL staff recommendation, we also respectfully request that the BLNR unequivocally approve the use of the heavy machinery specified in the Removal Plan and included in the Agenda Item. Indeed, the Removal Plan submitted to OCCL over ten month ago, and included as the Agenda Item, depends on the approval to use an excavator. As mentioned below, the State's own expert engineer — Bill Bow — has previously submitted an expert opinion that an excavator, and other heavy machinery, is absolutely necessary to construct and/or repair the seawall. It necessarily follows, therefore, that removing the seawall will also require the use of an excavator.

To put it simply, the seawall is massive with parts of it buried deep beneath the sand. There is no access from the Property to utilize machinery and it would not be feasible to manually break down the structure and remove the debris by hand. As outlined by the contractor and engineer for the project, using a jackhammer to break down such a large structure on the beach would create more of a nuisance and risks for the surrounding area and also be completely unfeasible. The only access point is a steep and dangerous public right of way. Based on the below referenced evidence, we respectfully request that the BLNR allow for the use of heavy machinery (with conditions outlined in the Agenda Item) as contemplated in the Removal Plan.

It is important to note and reiterate that the Parties entered into a binding Settlement Agreement that was approved by the Board of Land and Natural Resources (“BLNR”) on August 26, 2022. Under the Settlement Agreement, the McNamaras were promised, among other things: (1) a permit to install a sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean; and (2) a land disposition to allow the McNamaras to remove the seawall and install the aforementioned temporary erosion control structures. The McNamaras well-documented record of submittals and repeated follow up communications to OCCL and Land Division evidences their exhaustive efforts to meet the upcoming December 31, 2023 deadline.

The chart on pages 6-12 of this letter documents the numerous communications from the McNamaras to the State related to the CDUA, Removal Plan and land disposition submittals (approximately 29 separate communications directed to the State in the past year). As discussed below, however, these communications in large part have either been completely ignored or followed by long delays.¹ That fact notwithstanding, the McNamaras want to meet the December 31, 2023 deadline, to the extent possible at this point in time, and urge the BLNR to approve the Agenda Item in its entirety and authorize the McNamaras to use the necessary heavy machinery to remove the structure.

¹ Due to the long delays and non-responsiveness from DLNR, and particularly the land division, additional time to remove the seawall is also warranted. A detailed chart, which the McNamaras have records to support, documenting the McNamaras submittal and follow up history is outlined below. **The McNamaras will make every effort to remove by December 31, 2023 (to the extent possible), but request that the deadline be extended to June 30, 2024 given the below referenced delays.**

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II. Case Background

It is important to note that the McNamaras had legitimate legal defenses to the claims alleged against them in the previously scheduled contested case. Prior to the contested case, the McNamaras alleged, and submitted a significant amount of supporting evidence to advance their argument that the seawall was constructed prior to October 1, 1964 and legally “nonconforming” under *Hawaii Administrative Rules* (“HAR”) 183C-2. As expressed in the Hearing Officer’s Recommendation to Approve Proposed Settlement and Stipulation to Dismiss, for DLNR File No. OA-21-3 (“Hearing Officer’s Recommendation”):

Petitioners submitted sworn witness testimony from a witness who resided at a neighboring residence during the late 1960s to provide testimony in support of their argument that the Seawall predated the existence of the Conservation District in 1964. Petitioners also submitted a photograph with “1957” carved into the base of a neighboring seawall, building permits for that residence filed in the year 1957, witness testimony that the Seawall appeared identically designed and dated in comparison to the neighboring seawall in the late 1960’s, news publications indicating that seawalls were constructed near Sunset Beach in the year 1957, and also records of the Aleutian Tsunami which hit the North Shore of Oahu in March of 1957, to support their argument that the Seawall was a legal nonconforming structure.

See Hearing Officer’s Recommendation, at p. 2, n. 1. In fact, OCCL wrote a letter in 2004 stating that it could not prove the seawall did not exist before 1964 and therefore elected to treat it as nonconforming. If this matter had gone to contested case, the McNamaras would likely have proven the structure to be a legally nonconforming structure. Moreover, the repairs to the structure were — in the McNamaras’ expert’s opinion — well within the allowable repairs for such a nonconforming structure. Indeed, the State’s own expert found that the repairs were only forty four percent of the replacement value of the seawall absent additional costs for safety measures to increase the repair cost estimate.²

There is no question that the seawall was damaged on or around July 26, 2020. The McNamaras provided ample evidence — in the form of weather reports, testimony, and proclamations — that the damage was caused by Hurricane Douglas, which passed by the North Shore of O‘ahu during that time. A hurricane cannot adjust the conservation boundary and also creates a situation where emergency repairs are allowed. Following the hurricane damage, the McNamaras began to repair the wall — from inside their property boundary — with poured concrete. OCCL investigated the repairs as a potentially unauthorized use within the Conservation District.³

² HAR § 13-5-7(d) and (e) provide that a nonconforming structure, destroyed or damages, to an extent under fifty percent of its replacement cost at the time of destruction can be legally reconstructed.

³ The Parties negotiated in the Settlement Agreement that “**no factual findings or conclusions of law will be issued in connected with the Contested Case.**” This provision was specifically negotiated to

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The Parties exchanged numerous filings, conducted discovery, and worked up their respective cases effectively. The pre-hearing briefing, written testimony, and extensive exhibit submittals by the McNamaras and the State prove beyond question that *both* sides were well prepared to litigate this matter through a contested case and any appeals that may have followed. Ultimately, the Parties decided to settle the matter.

Rather than litigate, the Parties negotiated an arm's length Settlement Agreement with full recognition of the risks for either side should this matter have gone forward with the scheduled contested case. The only reason that the McNamaras gave up their legal defenses in the contested case, was because DLNR is legally bound to reasonably approve the CDUA, Removal Plan, and contemplated land disposition, to allow for the *timely* removal of the seawall and installation of a temporary burrito structure covering no less space than the size of the seawall. Significantly, during settlement discussions, counsel discussed the need for heavy machinery (i.e. an excavator) to perform the removal of the seawall. Indeed, the Hearing Officer's Recommendation recognized that:

Petitioners are understandably reluctant to remove the Seawall and leave their Property exposed. **They are also concerned with the difficulty of removing the wall and the possibility that removal may be delayed by factors outside of their control.** They will also want to obtain some protection for their Property through the temporary use of sand 'burritos' once the wall is removed. Nevertheless, the Petitioners have expressed that they want to work with and cooperate with OCCL in resolving this matter.

See Hearing Officer's Recommendation, at p. 7 (emphasis added). The Hearing Officer's Recommendation also explained that the if "**circumstances arise which make removal by [December 31, 2023] impossible ... the [McNamaras] can ask the Board for additional time.**"

The Hearing Officer's Recommendation aptly stated that:

While this contested case has caused a substantial amount of stress on Petitioners, the Petitioners have expressed their sincere desire to work with OCCL and the Board to resolve this matter.

Id. at p. 3. The Hearing Officer's Recommendation also recognized that if the McNamaras did not prevail at the contested case, then they had a right to appeal the matter which would have taken multiple years. *See* Hearing Officer's Recommendation, at p. 8. The McNamaras gave up the aforementioned defenses and appellate rights on the binding representation that DLNR would

ensure that there would be no formal findings regarding the conservation boundary based on the opinions provided by the State's expert.

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honor its obligations to reasonably approve the Removal Plan, CDUA and land disposition in a timely and reasonable manner.⁴

The Parties agreed to the following material terms in the Settlement Agreement:

- **A completed permit application will not be unreasonably denied and OCCL will provide its recommendation in favor of issuance of the permit to the Chairperson of the Board or the Deputy Director of the Department upon OCCL’s processing of a satisfactory completed application as discussed herein.**
- **OCCL will recommend that the Oahu District Land Division issue the land disposition.**
- **A satisfactory completed land disposition application will not be unreasonably denied.**
- **If circumstances outside of the Petitioners’ control make it impossible to remove the Seawall or any unpermitted shoreline protection devices by December 31, 2023 (i.e. logistical issues outside of the Petitioners’ control, weather conditions, established inability to secure a contractor to perform the work notwithstanding documented efforts), then Petitioners may petition the Board for additional time.**

⁴ It is a “well-settled rule that the law favors the resolution of controversies through compromise or settlement rather than by litigation.” *Dowsett v. Cashman*, 2 Haw. App. 77, 82-83, 625 P.2d 1064, 1068 (1981). Indeed, public policy in Hawaii dictates that settlement agreements “are binding without regard to which party gets the best of the bargain.” *Sylvester v. Animal Emergency Clinic of Oahu*, 72 Haw. 560, 566, 852 P.2d 1053, 1057 (1992) (citations omitted and emphasis added). Under Hawaii law, settlement agreements are “a species of contract” and are governed by principles of contract law. *Exotics Hawaii-Kona, Inc. v. E.I. du Pont de Nemours & Co.*, 116 Haw. 277, 172 P.3d 1021 (2007). The Settlement Agreement expressly states that any breach of contract action should be filed in Circuit Court. In Hawaii, contractual terms must be interpreted according to their plain, ordinary meaning and accepted use in common speech. *Amfac, Inc. v. Waikiki Beachcomber Inv. Corp.*, 74 Haw. 85, 108, 839 P.2d 10, 24, *reconsideration denied*, 74 Haw. 650, 843 P.2d 144 (1992). The Hawaii Supreme Court has long expressed its disapproval of interpreting a contract such that any provision be rendered meaningless. *Stanford Carr Dev. Corp. v. Unity House, Inc.*, 111 Haw. 286, 297, 141 P.3d 459, 470 (2006) (citing *Reed & Martin, Inc. v. City & County of Honolulu*, 50 Haw. 347, 349, 440 P.2d 526, 528 (1968)). Here, DLNR was obligated to timely process and approve the CDUA, Removal Plan, and land disposition, under a standard of reasonableness. This instilled an obligation for DLNR to avoid unreasonable delays and non-responsiveness. Naturally, the Removal Plan, submitted in December, 2022, and included on this Agenda Item, depends entirely upon the use of heavy machinery.

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III. The McNamara’s Well-Documented Efforts To Comply With The Terms of Settlement

On August 29, 2022, Rachel Beasley of OCCL emailed the parties the “Settlement Agreement signed by the Board of Land and Natural Resources.” Shortly after receiving the executed and approved Settlement Agreement, the McNamaras expeditiously retained a contractor to perform the construction work necessary to remove the seawall and to install the temporary erosion control device agreed to as a term of the Settlement Agreement. In point of fact, on November, 29 2022 our office emailed the former Deputy Attorney General assigned to this matter, Lauren Chun, Esq. and explained that the McNamaras had “retained a contractor, had several site visits, and [were] making strides to get everything prepared and submitted.” Ms. Chun explained that she was transitioning departments and put our office in touch with the new assigned attorney general for the State.

A status call took place on December 1, 2022 with new counsel to discuss the status of the project and the McNamara’s submittals. The following is a non-exhaustive list of the McNamara’s extensive submittal efforts for the CDUA, Removal Plan, and land disposition⁵:

December 21, 2022	Our law firm emailed the State and informed the attorney general that we had “a detailed demolition/removal plan from the contractor retained by the McNamara’s to do the work ... [and] an emergency permit per the settlement agreement to submit[.]” We were instructed that electronic submittals would be accepted by DLNR and sent a message that “[i]f you need hard copies just let me know and I will mail them.” See Enclosure “1”.
December 21, 2022	Significantly, when we inquired on how to submit the documents, the State confirmed “ no need for hard copies[.] ” <i>Id.</i> The McNamaras were therefore instructed to submit electronic submittals to DLNR through the attorney general.
December 22, 2022	The signed Emergency Conservation District Use Application (“CDUA”) and the signed Proposal for Removal of Concrete Shoreline Protection & Installation of Temporary Shoreline Structure (“Removal Plan”) were issued. See Enclosure “2”. Both of the aforementioned documents provided proof that

⁵ The land division was completely non-responsive from March, 2022 through October, 2023 on the issue.

	<p>Mark Ticconi had been retained as the contractor to perform the project. The submittals and proof of retention were accepted by the State. In our firm’s email to the State, we explained that “[a]s discussed, please find the McNamara’s submittals for DLNR prepared by the McNamara’s contractor.” Moreover, the Removal Plan emphasized that “[w]e look forward to moving ahead immediately with this work to meet the December 21, 2023 BLNR deadline.” OCCL would later admit that the “plans were to be submitted by 12/31/2022, [and] this was done and revisions were requested.” Thus, the McNamaras submitted the CDUA, Removal Plan, and proof of contractor retention.</p>
January 19, 2023	<p>OCCL accepted and reviewed the submittals and then a call took place with the State to discuss OCCL’s comments and revisions. <i>See</i> Enclosure “3”. This call took place in January 19, 2023 and revisions were requested by the State. Detailed notes were taken during this call to ensure that all issues by the OCCL planner were addressed in the re-submittal. OCCL would later inform our office that the original planner assigned to the case had resigned from OCCL. We were not notified when this resignation took place.</p>
March 29, 2023	<p>The CDUA and Removal Plan were again submitted to DLNR, through the attorney general, with revisions for all of the topics discussed during the January, 19, 2023 conference. <i>See</i> Enclosure “4”. Notably, under the Settlement Agreement, the McNamaras were not required to submit a long-term plan for erosion management until “one hundred and eighty (180) days of the removal of the Seawall.”</p>
March 29, 2023	<p>The land disposition was provided to DLNR, through the attorney general. The CDUA and Removal Plan were submitted as enclosures contemporaneously with the land disposition for land division’s review. <i>Id.</i></p>

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March 31, 2023	A separate email was sent directly to OCCL staff with the submittals (CDUA, Removal Plan and land disposition). <i>See</i> Enclosure “5”. Our office advised OCCL that “we previously provided these a few months back and had made requested revisions.” We also advised OCCL that we would “email Barry Cheung a copy of the land disposition[.]” <i>Id.</i>
March 31, 2023	Our office provided the land disposition request to land division, along with the Removal Plan and CDUA as accompanying enclosures to be considered as part of the land disposition. <i>See</i> Enclosure “6”. In our communications to Barry Cheung, we included the attorney general and OCCL staff and asked land division to “[p]lease let us know if [we] can provide more information.” <i>Id.</i>
March 31, 2023	OCCL responded and confirmed that that the “plan[s] were to be submitted by 12/31/2022, this was done and revisions were requested.” OCCL accepted the electronic submittal and advised our office that: <u>“We will review these plans next week.”</u> <i>See</i> Enclosure “7”.
April 7, 2023	An email was sent from our office to the attorney general re: the status of the submittals. Also, our firm sought to discuss recording issues at the Bureau of Conveyances re: the Settlement Agreement. We ended up working with a separate attorney general who specializes in recording documents with the Bureau of Conveyances. A specialist in recording documents at the Goodsill firm also assisted. After requesting a certified copy of the agreement from DLNR; attempting to record the Settlement Agreement multiple times in the Bureau of Conveyance; several meetings between the attorney general and the Bureau of Conveyances; and drafting multiple affidavits and other documents to assist with the recording, the McNamaras recorded the Settlement Agreement on title. Critically, the requirement in the Settlement Agreement for recording, on its face, was impossible and did not comply with the Bureau of Conveyance

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	<p>policies. The McNamaras exhausted extensive resources, time and money to get the document recorded. There was no deadline in the Settlement Agreement as to when the document had to be recorded and no pre-condition that this occur before the requisite DLNR approvals would be given.</p>
April 14, 2023	<p>Another status call took place with the State to discuss a few final questions raised by OCCL re: construction logistics. Various final clarifications were requested and given to allow for the approval process to go forward.</p>
July 10, 2023	<p>Our office emailed OCCL staff and the attorney general the following message to “follow up on the status of the permit/approvals for the emergency permit and removal plan related to the McNamara property so that the general contractor can get the project completed. I’ve attached the prior email with the revised materials after the initial December, 2022 submittal and revision process. I’ve also included the contractor in case he can assist in the process. Please let us know if you would like to schedule a meeting to discuss in greater detail.” <i>See</i> Enclosure “8”.</p>
July 10, 2023	<p>Our office emailed Barry Cheung, again, from land divisions, and wrote that we were “writing to follow up on the prior land disposition request in McNamara that was previously transmitted. I’ve included the contractor as well to assist with the process. Please let us know if you need anything else[.]” This email also included the attorney general — DLNR’s agent — assigned to the case. <i>See</i> Enclosure “9”. Notably, land division has accepted electronic submittals for other projects in the past.</p>
July 19, 2023	<p>Five hard copies of the executed land disposition were delivered directly to the Land Division for DLNR.</p>
July 19, 2023	<p>Five hard copies of both the revised CDUA and Removal Plan were delivered to OCCL via hand-delivery.</p>

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July 21, 2023	<p>On July 21, 2023, our office wrote the following message to OCCL and the attorney general:</p> <p>“We delivered hard copies of the previously submitted December 22, 2022, and subsequently revised, materials to DLNR earlier this week as requested. We initially submitted signed electronic submittals back in December as instructed. The submittals were received and reviewed by OCCL and revisions were made to address all of OCCL’s requested revisions/comments. We then provided revised copies and had a further discussion with the AG’s office on the revised submittals. In light of the fact that the submittals have been previously reviewed by OCCL and revised in accordance with OCCL’s prior requests, I am hopeful that they can be approved soon.” See Enclosure “10”.</p>
July 21, 2023	<p>A separate email was sent later in the day to the attorney general stating “I’m hopeful the folks at OCCL can process these materials.” See Enclosure “11”.</p>
August 11, 2023	<p>The following email was sent to land division staff:</p> <p>“The land disposition was provided on March 28, 2023. Follow up emails were sent on March 31, 2023 (which contained another copy of the land disposition submittal) and again on July 10, 2023. Hard copies have been delivered as well. Please <i>reasonably</i> process the land disposition.” See Enclosure “12”.</p>
August 11, 2023	<p>A detailed email was sent to OCCL and land division with an extremely detailed history of the prior submittal efforts; information pertaining to long-term mitigation plans for the Property (although this information was not due until the summer of 2024 per the Settlement Agreement) and information about the contractor’s experience with similar projects. The August 11, 2023 email outlined DLNR’s obligations — for OCCL and the land division — and demanded that all materials be immediately processed. <i>Id.</i></p>

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August 11, 2023	Additional hard copies of the Removal Plan and CDUA were delivered to DLNR.
August 16, 2023	OCCL emailed one final request for clarification on the submittals.
August 16, 2023	Within <i>one hour and fifteen minutes</i> our office contacted our contractor for clarification and provided a responsive email in an effort to encourage OCCL to move forward. <i>See</i> Enclosure “13”.
August 24, 2023	A follow up email was sent to OCCL staff, following another phone conference with the attorney general, asking for a status update and to follow up on the approval process. <i>See</i> Enclosure “14”.
August 24, 2023	OCCL emailed our office to assure us that “OCCL is moving forward with processing the subject matter.” <i>Id.</i>
During the week of September 11, 2023	Our office followed up with a phone call to land division on the land disposition.
September 28, 2023	A follow up email was sent to the attorney general and a status conference call was set for the following day. <i>See</i> Enclosure “15”.
October 10, 2023	A follow up email was sent to the attorney general and a call was scheduled for the following day. <i>See</i> Enclosure “16”.
October 10, 2023	Our office <i>again</i> called land division directly. We were informed that land division was targeting the October 27, 2023 BLNR meeting, but that there were no guarantees. We expressed the urgency that land division take action and why heavy machinery was necessary and included in the Removal Plan.
October 11, 2023	Our office provided land division staff with the State’s engineering report, submitted in the contested case, that specified an excavator as required equipment to construct the seawall and make repairs and also contained the State’s estimated quantities for the seawall. Digging down twenty to thirty feet into the sand to remove a massive seawall is not feasible by hand. Breaking down all of the large quantities on the beach would create much more of a nuisance; environmental concerns;

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	and frankly be impossible. <i>See</i> Enclosure “17”.
October 11, 2023	Our office emailed the attorney general discussing our interpretation of the settlement contemplating the use of heavy machinery as a material term of settlement. <i>See</i> Enclosure “18”.
October 12, 2023	Land division confirmed receipt of the Bow Engineering report. <i>See</i> Enclosure “43”
October 13, 2023	Our office transmitted a number of articles depicting approved heavy machinery on the beach for other projects. The attorney general confirmed that this information was forwarded to land division. <i>See</i> Enclosure “19”.
October 19, 2023	A phone call was made from Peter Young to Barry Cheung to urge land division to put the land disposition on the agenda for this upcoming meeting and outlining the need for heavy machinery. Mr. Young again stressed the upcoming deadline and urged land division to take action.

IV. The McNamara’s Request With Respect To The Agenda Item

The McNamaras are extremely motivated to meet the upcoming December 31, 2023 deadline and work towards complying with the terms and conditions of the Settlement Agreement. This fact is made abundantly clear by the well-documented history outlined above. The McNamaras are appreciative of OCCL’s staff recommendation that the BLNR “approve Emergency CDUP OA24-01 for the Removal of Concrete Shoreline Protection Structure (Unauthorized Seawall and erosion control materials) and Installation of Temporary Shoreline Structure.” The McNamaras respectfully request that the BLNR follow the staff recommendation and approve the Removal Plan and CDUA, including the use of the heavy machinery listed in Removal Plan and included on the Agenda Item.

As indicated in the testimony of the contractor and engineer engaged to for the project, the use of heavy machinery is the only feasible means to remove the seawall. Moreover, a prolonged (multiple months) jackhammering project to break down such a large structure into wheelbarrow size fragments would create the risk of more debris, nuisance, and potential concerns for the surrounding area.

Prior to the contested case and settlement, OCCL submitted a report from Bow Engineering & Development, Inc. (“Bow Report”). The Bow Report was dated April 16, 2022. Critically, the Bow Report had estimates for constructing the original seawall and alleged

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additional materials added to repair the nonconforming seawall. The Bow Report specified the equipment that would be necessary to construct and repair the seawall as well. In particular, the Bow Report specified the following necessary equipment for the project: “**Excavator + hammer, mini-exc., loader, forklift, misc. tools[.]**” See Enclosure “20”. For safety measures, the Bow Report recommended “**excavators [and] loader[.]**” Therefore, the State’s own expert engineer opined that heavy machinery would be necessary to both construct and repair the seawall. Given the foregoing, it is illogical and unreasonable for anyone from DLNR to now claim that heavy machinery is not necessary to safely deconstruct and remove the seawall.

In the Bow Report, the State’s expert also estimated the quantities and materials in the seawall. Importantly, Bow Engineering referenced the following as materials in the existing seawall:

- Cylindrical Concrete Footing (5 footings, 30’ Diameter x 6’ Depth)
- Concrete Footing (50’ L, 3 courses)
- 120 CMU Blocks (50’ L, 3 courses)
 - The Bow Report estimates three rows of CMU blocks (8’ x 8’ x 16”) stacked on the large footings that were 2.5 feet in diameter.
- Concrete Pillars (5 -12’ x 12’ x 60’ H)
- 10 Large Wood Pile (telephone pole)
- 300 Wood Planks (50’ L x 10’D, 6 rows high)
 - “Each exposed wood beam was extremely weathered and cracked, however the size was estimated to be approximately 10-in in diameter and likely ranged in lengths of 5-15 ft[.]”
- 40 cubic yards of estimated exposed concrete added to the original seawall. 25 cubic yards of concrete, CMU, and wood also specified as pre-existing in the structure. 65 cubic yards of construction material estimated in total and largely buried deep beneath the sand.

It is obvious from the Bow Report — a report that the State relied on to estimate the quantities and volume of the construction materials making up the structure and the heavy machinery necessary to repair the seawall — that heavy machinery is absolutely necessary to perform the removal. Requiring the McNamaras to remove the materials by hand — by jackhammering all of these materials into small pieces capable of fitting in a wheelbarrow and then manually transporting the materials across the beach and up the steep right of way — would render the project completely unfeasible. This is particularly true given the short timeframe remaining to effect the removal which has been made all the more impossible to accomplish given the unnecessarily long delay in getting this matter on calendar.

As emphasized in the written testimony from engineer Dennis Poma and contractor Mark Ticonni, using machinery for the project is the only feasible means to remove the shoreline structure. Crushing these materials down into small manageable fragments on the beach would

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create much more debris and nuisance in the area. It simply doesn't make sense, given the circumstances of this case and the legally binding understandings previously reached with DLNR upon which the McNamaras relied in deciding to settle this matter in the first place, to not allow them to use heavy machinery to perform the work.

In light of the above, we respectfully request that the BLNR approve both the Removal Plan with the use of heavy machinery as expressed in the Agenda Item and the CDUA. The McNamaras want nothing more than to remove the seawall by December 31, 2023, but the large periods of delay by DLNR and unresponsiveness by land division as established by the timeline above have created a situation where said removal may be impossible in the time remaining before the December 31, 2023 deadline. If this is the case, then the McNamaras will need additional time to remove the seawall (until June 30, 2024), and barring the granting of that request, will proceed with a Circuit Court action against DLNR for breach of the Settlement Agreement. We hope that will not be necessary.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL



Forest B. Jenkins

Enclosures

Cosgrove, Todd T.

From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Wednesday, December 21, 2022 3:56 PM
To: Jenkins, Forest B.
Subject: Re: McNamara

Caution: external email

No need for hard copies!

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Wednesday, December 21, 2022 3:24:14 PM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] RE: McNamara

Thanks Miranda. I think I'll send electronic copies if that works. Thanks for helping! If you need hard copies just let me know and I will mail them.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Wednesday, December 21, 2022 3:02 PM
To: Jenkins, Forest B. <fjenkins@goodsill.com>
Subject: RE: McNamara

Caution: external email

Hi Forest,

You can send me the signed documents and I'll send them to OCCL. Are you sending me hard copies or electronic? If you're sending hard copies, could you also send me an electronic copy? Thanks so much!

Happy Holidays!

Miranda C. Steed

Deputy Attorney General
Land Division

465 South King Street, Suite 300
Honolulu, Hawaii 96813
E Mail: miranda.c.steed@hawaii.gov

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Wednesday, December 21, 2022 9:19 AM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] McNamara

Hey Miranda:

I received a detailed demolition/removal plan from the contractor retained by the McNamara's to do the work. I also received an emergency permit per the settlement agreement to submit to you guys this week. What is the best method of submittal. Can I simply send you the signed documents? Have a great trip.

Forest B. Jenkins



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A Limited Liability Law Partnership LLP
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P. (808) 547-5765 | **F.** (808) 441-1221
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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Thursday, December 22, 2022 10:38 AM
To: Steed, Miranda C
Subject: Re: McNamara
Attachments: McNamara_Emergency-CDUA_12_13_22.pdf; McNamara_DLNR_Seawall Removal Plan_12_20_22.pdf; 11293893 - McNamara Settlement Agreement.pdf

Miranda:

I hope you're doing well. As discussed, please find the McNamara's submittals for DLNR prepared by the McNamara's contractor. Please let me know if you have any issues accessing the documents and materials. I've also attached the settlement agreement for reference. Have a wonderful time in California and we hope you and the folks at DLNR have a great holidays!

Forest B. Jenkins



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Cosgrove, Todd T.

From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Thursday, December 22, 2022 10:53 AM
To: Jenkins, Forest B.
Subject: Re: Re: McNamara

Caution: external email

Thanks so much, Forest! Happy Holidays!

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Thursday, December 22, 2022 10:38:24 AM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] Re: McNamara

Miranda:

I hope you're doing well. As discussed, please find the McNamara's submittals for DLNR prepared by the McNamara's contractor. Please let me know if you have any issues accessing the documents and materials. I've also attached the settlement agreement for reference. Have a wonderful time in California and we hope you and the folks at DLNR have a great holidays!

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Wednesday, March 29, 2023 9:32 AM
To: 'Steed, Miranda C'
Subject: McNamara Updated Submittals
Attachments: McNamara_Emergency-CDUA_2_27_23.pdf; McNamara_DLNR_Seawall Removal Plan_2_27_23.pdf; State of Hawaii_Revocable Permit Application_McNamara_3_7_23.docx

Hey Miranda:

Please find the updated McNamara submittals for your review. Please let us know if you have other requests or if they are acceptable. Thanks for your help on this one.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Friday, March 31, 2023 4:29 PM
To: Mills, Kimberly T
Cc: Steed, Miranda C
Subject: FW: McNamara Updated Submittals
Attachments: McNamara_Emergency-CDUA_2_27_23.pdf; McNamara_DLNR_Seawall Removal Plan_2_27_23.pdf; State of Hawaii_Revocable Permit Application_McNamara_3_7_23.docx

Hey Tiger:

Here are the documents that I provided to Miranda earlier in the week. For background, we previously provided these a few months back and had made requested revisions. Please let us know if OCCL requires further revisions or if we should set a meeting. I included Miranda to this email as well for convenience. I'll email Barry Cheung a copy of the land disposition word document as well. Thanks.

Forest B. Jenkins



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From: Jenkins, Forest B.
Sent: Wednesday, March 29, 2023 9:32 AM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: McNamara Updated Submittals

Hey Miranda:

Please find the updated McNamara submittals for your review. Please let us know if you have other requests or if they are acceptable. Thanks for your help on this one.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Friday, March 31, 2023 4:46 PM
To: Cheung, Barry W
Cc: Steed, Miranda C; Mills, Kimberly T
Subject: McNamara Land Disposition
Attachments: State of Hawaii_Revocable Permit Application_McNamara_3_7_23.docx; McNamara_Emergency-CDUA_2_27_23.pdf; McNamara_DLNR_Seawall Removal Plan_2_27_23.pdf

Hello Barry:

I'm in the process of getting the documents submitted/revised for the McNamara project. I've included a copy of the draft land disposition and other documents. These are currently under review with OCCL as well. I wanted to send a copy to the land division as well. Please let me know if I can provide more information. Thanks.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Mills, Kimberly T <kimberly.mills@hawaii.gov>
Sent: Friday, March 31, 2023 5:04 PM
To: Jenkins, Forest B.
Cc: Steed, Miranda C
Subject: RE: McNamara Updated Submittals

Caution: external email

Will review these plans next week.

Per the settlement agreement:

- (a) plans were to be submitted by 12/31/2022, this was done and revisions were requested
- (b) By March 31, 2023, proof that contractor has been retained. While I note Mark Ticconi of Gundaker Works, LLC is listed, no 'proof' of retention is presented. Can you provide 'proof' **NOW**?

Has this settlement agreement been recorded at the Bureau of Conveyances?

~Tiger

K. Tiger Mills, Staff Planner
State of Hawai`i
Department of Land and Natural Resources
Office of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai`i 96809
www.dlnr.hawaii.gov/occl



From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Friday, March 31, 2023 4:29 PM
To: Mills, Kimberly T <kimberly.mills@hawaii.gov>
Cc: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] FW: McNamara Updated Submittals

Hey Tiger:

Here are the documents that I provided to Miranda earlier in the week. For background, we previously provided these a few months back and had made requested revisions. Please let us know if OCCL requires further revisions or if we should set a meeting. I included Miranda to this email as well for convenience. I'll email Barry Cheung a copy of the land disposition word document as well. Thanks.

Forest B. Jenkins



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From: Jenkins, Forest B.

Sent: Wednesday, March 29, 2023 9:32 AM

To: Steed, Miranda C <miranda.c.steed@hawaii.gov>

Subject: McNamara Updated Submittals

Hey Miranda:

Please find the updated McNamara submittals for your review. Please let us know if you have other requests or if they are acceptable. Thanks for your help on this one.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Monday, July 10, 2023 4:43 PM
To: 'Mills, Kimberly T'
Cc: 'Mark Ticconi'; 'miranda.c.steed@hawaii.gov'
Subject: McNamara Submittals
Attachments: FW: McNamara Updated Submittals ; Re: McNamara ; RE: McNamara

Good afternoon:

I am writing to follow up on the status of the permit/approvals for the emergency permit and removal plan related to the McNamara property so that the general contractor can get the project completed. I've attached the prior email with the revised materials after the initial December, 2022 submittal and revision process. I've also included the contractor in case he can assist in the process.

Please let us know if you would like to schedule a meeting to discuss in greater detail. I appreciate your time on this matter. Thanks.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Monday, July 10, 2023 4:45 PM
To: 'Cheung, Barry W'
Cc: 'miranda.c.steed@hawaii.gov'; 'Mark Ticconi'
Subject: McNamara Land Disposition
Attachments: McNamara Land Disposition

Hello Barry:

I hope this email finds you well. I am writing to follow up on the prior land disposition request in McNamara that was previously transmitted. I've included the contractor as well to assist with the process. Please let us know if you need anything else and we appreciate your review and assistance in the process. Thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | **F.** (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Friday, July 21, 2023 4:47 PM
To: 'Mills, Kimberly T'; 'Cain, Michael'
Cc: 'Mark Ticconi'; 'Steed, Miranda C'
Subject: RE: McNamara Submittals
Attachments: Re_ McNamara.eml; McNamara Contract.pdf; Re: McNamara

Good afternoon:

We delivered hard copies of the previously submitted December 22, 2022, and subsequently revised, materials to DLNR earlier this week as requested. We initially submitted signed electronic submittals back in December as instructed. The submittals were received and reviewed by OCCL and revisions were made to address all of OCCL's requested revisions/comments. We then provided revised copies and had a further discussion with the AG's office on the revised submittals. In light of the fact that the submittals have been previously reviewed by OCCL and revised in accordance with OCCL's prior requests, I am hopeful that they can be approved soon. I've also included an executed signature page from the previously submitted proposal as requested. The McNamaras originally retained Gundaker Works, LLC as demonstrated on the December 22, 2022 submittals. As explained in my prior email, the McNamaras subsequently retained Mark's company to perform the work.

Please let us know if you need anything else from us. I have included Mark on this email thread in case you have questions that need to go through him. We appreciate your time and efforts. We are available to discuss anything in greater detail with you. Thank you for your efforts and have a nice weekend.

Forest B. Jenkins



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From: Jenkins, Forest B.
Sent: Monday, July 10, 2023 5:56 PM
To: 'Mills, Kimberly T' <kimberly.mills@hawaii.gov>
Cc: Mark Ticconi <markticconi.mdt@gmail.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>; Cain, Michael <michael.cain@hawaii.gov>
Subject: RE: McNamara Submittals

Hi Tiger:

We are of course fine providing hard copies of the previously submitted materials. That can and will be done this week. The McNamaras were initially using and retained Gundaker, but elected to use Mark with his new company to perform the work. He has been retained. We provided the new contract several months ago, but will address the issue presented in your email asap.

We've tried to record the settlement agreement several times with the Bureau and have requested a certified copy of the settlement agreement from DLNR so that the Bureau will record the document. A settlement agreement needs to be certified to be recorded at the Bureau. The Bureau bounced the prior recording attempts for this reason (needing a certified copy rather than a received stamped copy). We intend to record the document as soon as we get a version that the Bureau will accept and have tried to record the document multiple times.

Our goal has been to work with DLNR on this project. I'll get the hard copies sent over to Michael this week. Thanks for your response.

Forest B. Jenkins



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From: Mills, Kimberly T <kimberly.mills@hawaii.gov>
Sent: Monday, July 10, 2023 5:24 PM
To: Jenkins, Forest B. <fjenkins@goodsill.com>
Cc: Mark Ticconi <markticconi.mdt@gmail.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>; Cain, Michael <michael.cain@hawaii.gov>
Subject: RE: McNamara Submittals

Caution: external email

Forest,
Please send in **SIGNED** hard copy of what is being applied for.
Address matters to Michael Cain, Administrator Office of Conservation and Coastal Lands

As we each get over a hundred emails a day and matters could get overlooked per our website:
"Applications can be dropped off, or mailed to 1151 Punchbowl, Room 131, Honolulu, HI 96813.
Do not email applications.
We require hard copies for our files, and will no longer be printing them out for applicants."

In response to your 3/31/2023 email, I stated the below and did not get a response:

"Per the settlement agreement:

- (a) plans were to be submitted by 12/31/2022, this was done and revisions were requested

(b) By March 31, 2023, proof that contractor has been retained. While I note Mark Ticconi of Gundaker Works, LLC is listed, no 'proof' of retention is presented. Can you provide 'proof' **NOW**? Has this settlement agreement been recorded at the Bureau of Conveyances?"

Per your 5/7/2023 Email, to Miranda, it appears Mr Ticconi created a new entity and forwarded a incomplete agreement as the McNamarras have not signed the agreement so proof of retention is unclear. Please provide evidence of recordation with the signed hard copies of application

~Tiger

K. Tiger Mills, Staff Planner
State of Hawai`i
Department of Land and Natural Resources
Office of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai`i 96809
www.dlnr.hawaii.gov/occl



From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Monday, July 10, 2023 4:43 PM
To: Mills, Kimberly T <kimberly.mills@hawaii.gov>
Cc: Mark Ticconi <markticconi.mdt@gmail.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] McNamara Submittals

Good afternoon:

I am writing to follow up on the status of the permit/approvals for the emergency permit and removal plan related to the McNamara property so that the general contractor can get the project completed. I've attached the prior email with the revised materials after the initial December, 2022 submittal and revision process. I've also included the contractor in case he can assist in the process.

Please let us know if you would like to schedule a meeting to discuss in greater detail. I appreciate your time on this matter. Thanks.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Friday, July 21, 2023 4:51 PM
To: 'Steed, Miranda C'
Subject: FW: McNamara Submittals

I'm hopeful the folks at OCCL can process these materials

REDACTED

I had a meeting with Kenory for another case and she said that you had a big hearing today with Judge Tonaki. I hope that went well for you!

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Friday, August 11, 2023 10:52 AM
To: Fitzpatrick, Trevor J; Steed, Miranda C; Saffery, Edmund K.
Cc: Cain, Michael; Cheung, Barry W; Anderson, Rebecca L; Hirokawa, Ian C; Cosgrove, Todd T.
Subject: RE: McNamara Seawall Removal Plan & Emergency CDUA
Attachments: McNamara_Emergency-CDUA_2_27_23 updated 8.11.2023.pdf; McNamara_DLNR_Seawall Removal Plan_2_27_23 updated 8.11.2023.pdf; Re_ McNamara.eml; RE: McNamara Updated Submittals; IMG_0963.jpg; Re: McNamara ; FW: McNamara Updated Submittals

Trevor:

Thanks for your comments. Please find my responses in red below and the revised submittals attached. Hard copies will be delivered to your office as well. Each issue in your email was addressed in the revisions and comments below. Have a nice weekend.

EMERGENCY CDUA

The application is incomplete please include information regarding:

- Other proposed mitigation measures
- Future response plans (see below **Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure** as well)

After initially submitting the CDUA in December of 2022, we discussed OCCL's then requested revisions with the Deputy Attorney General ("AG") assigned to the case in January of 2023. A second submittal was made in March, 2023 (with the requested revisions) and another discussion took place in April regarding that submittal. A detailed synopsis of the submittal history, which is well documented, is below.

Significantly, the settlement agreement requires a "permit to install a sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean (or in other words **no less** protected space than that which was protected by the Seawall)" and under the settlement agreement OCCL cannot unreasonably deny the McNamara's permit request or land disposition. This term was a significant material term of the settlement between the parties. Therefore, the State has already contractually agreed to allow the McNamaras to install a structure that sufficient in size to protect "no less protected space than that which was protected by the Seawall[.]" This diminishes the applicability of the other proposed mitigation measures section. With respect to future response plans, the parties have expressly set the deadline for this information (long-term future response plan) to six months after the removal deadline. Prior discussions with the AG and revisions were completed to address previous comments on this issue.

With that having been said, we are more than happy to accommodate the new requests for supplementation and appreciate your comments. We hereby submit a revised CDUA and removal plan (which will be delivered to OCCL). In particular, content to address the information identified above has been added and was prepared by the Dennis Poma, P.E. (License No. PE-10776). Mr. Poma is a civil engineer who was retained by the McNamaras to assist with the long-term plan required in the summer of 2024. Mr. Poma has extensive experience with respect to coastal management projects. Mr. Poma has thirty years of environmental and civil engineer experience and twenty-four as the lead civil on key projects. We are hopeful that the revisions to the CDUA, prepared by Mr. Poma who was retained to address the required 2024 long-term plan, are sufficient for your department to reasonably process and approve the submittals.

SETTLEMENT AGREEMENT (CC OA 21-3, ENF: OA 21-3)

Please see attached settlement agreement with selected items highlighted. Noted dates/deadlines are summarized below.

- July 31, 2022:** Recommended to submit Emerg. CDUA to OCCL
- OCCL received *July 19, 2023*
- December 31, 2022:** Submit Removal and Demolition Plan
- OCCL Received *July 19, 2023*

The settlement agreement itself was not approved by the BLNR until August 26, 2022. Upon receiving confirmation that the BLNR approved the settlement agreement, the McNamaras quickly and diligently retained a contractor to assist them with the removal plan and CDUA. Our office submitted the CDUA and Removal Plan on December 22, 2022 to the AG assigned to the case who accepted service for OCCL. The aforementioned submittals were submitted electronically. Significantly, when I inquired to the AG on how to properly submit the aforementioned submittals to DLNR/OCCL and comply with the December 31, 2022 deadline, I received the following instruction: **“[y]ou can send me the signed documents and I’ll send them to OCCL[.]”** See Attached Email. When I followed up to inquiry if hard copies were required, I was instructed that there was **“[n]o need for hard copies[.]”** See Attached Email. There is no doubt that the McNamaras therefore submitted electronic copies as instructed by the State and well before the December, 31, 2022 deadline.

The AG then transmitted the submittals to OCCL in December, 2022 for review. OCCL accepted and reviewed the submittals and then a call took place at the request of the State to review the comments/revisions from OCCL. This call took place in January, 2023 and revisions were requested by the State. The McNamaras resubmitted the submittals in March to address the then requested revisions provided by the State. OCCL confirmed that this deadline was met in a March email that stated **“plans were to be submitted by 12/31/2022, this was done and revisions were requested[.]”** See Attached Email. In March, we learned for the first time that the planner who reviewed the initial submittals had apparently left OCCL.

During a call with OCCL staff in March, I was verbally instructed to email the submittals and then received confirmation that OCCL **“[w]ill review these plans next week[.]”** See Attached Email. Naturally, we waited for the promised and anticipated response.

A non-exclusive list of the issues previously addressed at OCCL’s request are below for your review. Another phone conference again took place in April, 2023 with the AG’s office to address a few minor remaining issues after this second submittal process took place. We provided the State with comments and feedback at that time.

In the March, 2023 revisions the McNamaras addressed a number of issues (at the request by the AG generated by OCCL), including, but not limited to the following:

- Adding the requested width to maintain safe public transit past the makai side of the property during construction activities to the removal plan (this was a specific request from OCCL and is not otherwise noted as a requirement in the settlement agreement or elsewhere);
- Referencing language re: necessary approval for the staging area from the City and County of Honolulu in the removal plan (notably in prior conversations with the AG’s office I have explained that we need to have the submittals approved by DLNR before obtaining county approval);
- Adding that the original structure and the “existing unauthorized structures” will be removed to add detail to confirm that the McNamaras were removing the other burritos, sand bags, etc. mentioned in the settlement agreement in the removal plan and this was also made clear in previous conversations with the AG’s office;
- The CDUA was updated to explain that we would work with a costal engineer and consultants to develop a long-term solution for sufficient shoreline management. It was explained that this should be sufficient to address the future response plan requirement in the CDUA as we would submit a long-term

plan in the summer of 2024. As explained below, the McNamaras have in fact retained a coastal engineer to assist with this process;

- We address comments in the CDUA related to the revetment design and construction to mention safe lateral transit at the request of the AG on behalf of OCCL;
- We previously provided an added definition in the CDUA to explain and define what the soil anchors are. In particular, we added a previously requested revision to explain that “soil anchors (comprised of galvanized and stainless steel to resist failure) driven into the property along the top of the bank. The soil anchors add a necessary level of reinforcement to ensure the system remains intact during its installation. Failure to install an anchoring system could result in the failure of the system and a very difficult recovery and removal task.”
- Revisions were added to the plans embodied in the removal plan and CDUA at the prior request of OCCL in January, 2023 after submitting the materials in December, 2022.

Now, we have worked expeditiously to address the new and most recent requested revisions with the hope that the CDUA and Removal Plan will be expeditiously and *reasonably* reviewed and approved to allow the McNamaras to move forward with the project.

Notably, the State and the McNamaras are legally bound to the terms and conditions set forth in the settlement agreement. The State has already contractually agreed that the McNamaras will be allowed to install a “sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean (or in other words no less protected space than that which was protected by the Seawall).” An express term of settlement agreement is that the permit application and land disposition will not be unreasonably denied by the State. The State is legally bound under contract to an objective reasonableness standard in its review and approval process. The McNamaras are simply attempting to remove the structure and comply with OCCL’s demands and the settlement agreement.

March 31, 2023: Submit proof that they have retained contractor. Recommended that McNamara’s obtain a land disposition by this date or earlier.

- OCCL received via email from Dept AG *May 19, 2023* (proof of contractor)

As explained above, the McNamaras submitted formal submittals on December 22, 2022 and receipt was confirmed by the State that same day. At that time, it was unequivocally clear that the McNamaras had retained a contractor because the contractor licensing information was listed and identified on both of the submittals. A licensed contractor in Hawaii prepared and submitted the materials. The proof of retention provision was in place for *if* the McNamaras had not retained a contractor to assist with the submittals (i.e. CDUA and removal plan). Notably, the pre-requisites set forth in the settlement agreement do not require that the removal plan actually name/identify a retained contractor. In this particular case, the McNamaras provided OCCL with the contractor’s licensing information and the contractor prepared the submittals in December, 2022.

There are no set specifications (i.e. guidelines/criteria for the what type of proof is required) for proof of retention in the settlement agreement. The settlement agreement itself was drafted by the State and this was a term specifically provided by the State. *See Yogi v. Hawaii Med. Serv. Ass’n*, 124 Haw. 172, 177, 238 P.3d 699, 704 (Ct. App. 2010) (in interpreting contracts, ambiguous terms are construed against the party who drafted the contract). If the State is taking the position that an actual proposal was required, then this should have been mentioned in the settlement agreement. That fact notwithstanding, in an effort to keep the project moving we previously provided an executed proposal to OCCL (with signatures from both parties (ie. contractor and the clients) and this should already be in the State’s file.

- Appears LAND received via email *March 31, 2023* (land disposition request)

The land disposition was provided on March 28, 2023. Follow up emails were sent on March 31, 2023 (which contained another copy of the land disposition submittal) and again on July 10, 2023. Hard copies have been delivered as well. Please *reasonably* process the land disposition.

December 31, 2023: Remove seawall and all other unpermitted shoreline protections devices (e.g. any sand bags, sand “burritos”, and sand blankets). Submit fine payment and/or proof that removal costs offset/exceed fines.

June 28, 2024: Submit long-term plan or solution for erosion management (180 days from removal of seawall)

In preparation to meet this deadline the McNamaras have already retained a civil engineer to develop a long-term plan or solution for erosion management. Mr. Poma has extensive experience with respect to coastal management projects. In point of fact, Mr. Poma has thirty years of environmental and civil engineer experience and twenty-four as the lead civil on key projects.

These dates were agreed to with the expectation that your clients would have obtained all the required authorizations and started the demo and removal work this summer, and not jeopardize meeting the December 31, 2023 deadline.

According to Section B. SETTLEMENT TERMS 7., a cursory review of the Bureau of Conveyance’s website indicates that the **settlement agreement has not been recorded at the BOC.**

With respect to the settlement agreement, we have attempted to record on multiple occasions. Notwithstanding the fact that OCCL requested this term for inclusion in the settlement agreement, satisfying the term (e.g. recording) has so far proven impossible. In fact, we’ve tried to record the settlement agreement on at least four prior occasions and utilized several different methods. We’ve been working with the State’s Attorney General Daniel Morris who specializes with recordings at the bureau of conveyances and land court, along with a paralegal in our law firm who also specializes in recording documents. We are still running into issues.

Notably, there is no deadline for recording the settlement agreement. Critically, there is absolutely no term in the settlement agreement that this needs to happen before OCCL approves the submittals. Rather, the critical standard in the settlement agreement is that the CUA and land disposition “will not be unreasonably denied and OCCL[.]” That fact notwithstanding, we are working with the attorney general who specializes in bureau recordings and still have not been able to get the settlement agreement recorded despite requesting a certified copy from DLNR and trying other methods. We are working on a plan that we think will prove fruitful that involves utilizing a notarized affidavit and certified copy of the settlement agreement. We expect to record within the next week or two if things go well. If not, then we will continue to work with the AG’s office to record the document at the bureau.

PROOF OF CONTRACTOR to carry out Removal and Demolition Plan

- It appears the submitted Proof of Contractor is **not signed by** the McNamara’s.

OCCL was previously provided the signed proposal by both parties. This has already been sent to OCCL and should be in the file. The McNamaras have also issued a check in the amount of ten thousand dollars as an initial payment for the work. A copy of the check is attached.

- Additionally, it appears that the contractor was involved in a number of installations of erosion control structures that are now the subject of enforcement investigations.

There are not many contractors on Oahu who have experience in constructing soft erosion control devices. Mr. Ticconi has worked in conjunction with DLNR on numerous other projects, involving removal and replacement, to corrective violations. See OA 20-38. Mr. Ticconi actually took on the design role for this project which involved removal and rebuilding of a shoreline structure. We would also point out that Mr. Ticconi is licensed in the State of Hawaii. A large

number of these projects are performed by unlicensed contractors. The McNamaras have engaged a license contractor and engineering firm as assist them with this project.

Mr. Ticconi substantial experience on building soft shore structures on the island. Notably, soft shoreline structures are a unique field and Mr. Ticconi has extensive experience in designing soft erosion control devices and has prior experience working with Sam Lemmo on other projects with DLNR. Notably, there is no term in the settlement agreement as to whom the McNamaras must retain for the project.

Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure (and Emergency Conservation District Use Application)

- The **SETTLEMENT AGREEMENT** Section B. **SETTLEMENT TERMS** 1. **Removal of shoreline structures**, states, in part: *The Petitioners shall remove the Seawall and all other unpermitted shoreline protection devices (e.g. any sand bags, sand “burritos”, and sand blankets) by December 31, 2023.*
 - The submitted Removal and Demolition Plan and Emerg. CDUA make no mention of removal of the other unpermitted shoreline protection devices installed in the shoreline area fronting the McNamara’s property. Address the removal of all other unpermitted shoreline protection devices (e.g. any sand bags, sand “burritos”, and sand blankets).

Prior revisions were made to address this issue and multiple discussions were had with the AG to confirm this in the past. This is a term of the settlement agreement and the McNamaras have to remove the burritos, sand bags and sand blankets. To add clarify further revisions will be made to make this crystal clear.

- OCCL has showed some leniency in not pursuing additional enforcement actions for the alleged unauthorized installation of shoreline protection devices with the understanding that they would be removed pursuant to the settlement agreement.

Under Hawaii law, these issues have been expressly negotiated by counsel and settled pursuant to a global good faith settlement agreement between the State and the McNamaras.

The settlement agreement is clear that “[t]his Agreement constitutes a global settlement between OCCL and the Petitioners as to all enforcement actions that OCCL has brought or could have brought against Petitioners in connection with the Property[.]” Pursuing additional enforcement measures would breach this material term of the settlement agreement.

A. Removal of the Existing Concrete and Timber Shoreline Installation

- The Demo and Removal Plan notes that your clients and their agents are proposing to use the public shoreline access Right-of-Way.
 - Have they consulted with DPP and DPR regarding using the ROW?
 - Cursory conversations with DPR indicate this ROW is closed.

The McNamaras need to secure the approvals from OCCL before the contractor can go to the county (Parks and Recreation) and request approval to use the right-of-way (“ROW”). Indeed, the ROW is closed for the public, but not for construction activities. The fact that it is closed for pedestrians currently does not prohibit its use for construction activities and is actually beneficial from a safety standpoint.

After resubmitting the December 2022 revised submittals this past March, I had conversation with the AG on the case in April and we discussed this issue. I explained that the contractor needs to get the submittals approved (CDUA) before going to the county. We discussed the ROW issue, and both recognized, that this is a county jurisdictional issue. Mr. Ticconi has dealt with this issue before and the county will ask if the State has issued its permit. During my discussion with the AG’s office in April, 2023, I mentioned that we needed to expedite the approvals from the State so that our contractor could go to the county. This is a county jurisdictional issue.

From Mr. Ticconi's past experience, approval from the county is relatively quick to obtain but is contingent on a permit or approved authorizations from the State. This was previously explained in the prior discussions outlined above.

- The plan notes an excavator with hoe ram and 45 ton-crane will be used for demolition.
 - How will they get the excavator on the beach?

The excavator that is necessary for the project can access the beach by navigating through the county ROW.

- Where will the 45 ton-crane be staged? Is 45 ton-crane proposed to be on the beach as well?

The crane will be situated in the ROW. This issue was discussed with the AG in April. The crane will not be on the beach and will instead be on the ROW.

- The plan notes that all demo'd and removed materials will be documented.
 - How?
 - See note regarding Proof of contractor. OCCL files indicate that the contractor appears to have failed in submitting required completion reports for most if not all structures they have installed.

As expressly stated in the removal plan previously submitted:

The demolition and removal activities will be documented by photographs taken each day during steps of the removal process. A daily log of activities will also be documented. As directed, the photos and progress updates will be provided to DLNR OCCL during the removal and reconstruction.

The demolition and removal activities will be documented with photographs and written explanations on what materials specifically were removed, the quantities of removal and to what location the removal/disposal activities took place. The contractor will take *daily* photographs to document the progress of removal and provide them to OCCL. These will be provided via email, or in any other method requested by OCCL.

If you think that it would be helpful to your department, then I would be happy to assist with providing the daily updates to OCCL. For other projects, I have provided weekly emails and mailed hard copy letters to OCCL. I understand that you are trying to help facilitate this project and would be more than happy to insert myself in this project to provide OCCL will daily email updates. Then, at the end of the week, I could send a letter with the weekly updates so that OCCL has hard copies of the updates.

As indicated in the previously submitted removal plan, concrete will be recycled with Samson a local concrete recycling company in Kapolei. Steel will be removed from the concrete and recycled at Schnitzer recycling in Kapolei. Timber will be disposed of in PVT landfill.

- The Materials and Locations for recycling and disposal section makes no mention of removal and disposal of unauthorized sandbags, burritos, and sand blankets even though this required under the settlement agreement.

The removal of the sandbags, burritos, and sand blankets will follow the same procedure as the removed seawall and will be deposited at PBT which is the private landfill utilized for commercial waste. PBT will properly separate and disposed of the waste associated with the project.

- See 7. When will the daily log of activities be provided to OCCL/the Department? Are your clients and their agents proposing to send us photos and updates daily during the removal and reconstruction activities?

Yes, a daily log of activities will be submitted with photo documentation and detailed explanations. Yes, we will transmit daily photographs with explanations to OCCL and cc' the Attorney General. Please refer to the previous answer which supplements this response.

After OCCL initially review the materials after the McNamaras submitted them on December 22, 2022, the AG's office set up a January, 2023 phone conference with our firm. We discussed the issue of whether the other structures (i.e. burritos) discussed in the settlement agreement would be removed. We confirmed that they would in fact be removed as contemplated and agreed to in the settlement agreement. Section 3 of the removal plan was modified to explain that the original installation would be "removed along with the existing unauthorized structure." This addition was to cover the burritos identified in the settlement agreement. To clarify, all sandbags, sand blankets, burritos, etc. will be removed.

As also indicated in the removal plan previously submitted:

The demolition and removal activities will be documented by photographs taken each day during steps of the removal process. A daily log of activities will also be documented. As directed, the photos and progress updates will be provided to DLNR OCCL during the removal and reconstruction.

B. Construction of the Approved Shoreline Protection Structure

Note: The third submittal to OCCL will address revisions to the plans to attempt to provide additional information per your comments below. Revisions were also made to the submittals to address your comments above.

- See Figure 2. It appears your client and their agents are proposing to locate the structure approximately 12ft from the dwelling.
 - OCCL photos indicate that the scarp/top of the berm/approximate location is at the dwelling (see attached "McNamara_Alleged Unauthorized Work in the Shoreline_2022 2023).
 - Structure appears to be 1600-ft² (50ft x 32ft) in area and 10-18-ft high on the public beach.

Yes. The settlement agreement expressly requires a "permit to install a sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean (or in other words no less protected space than that which was protected by the Seawall)." Therefore the State has already contractually agreed to allow the McNamaras to install a structure that sufficient in size to protect "no less protected space than that which was protected by the Seawall[.]" This is a contractual term of settlement that both the State and the McNamaras agreed to be contractually bound to comply with. This was a critical term of the settlement that was negotiated in good faith by counsel for both parties to resolve the contested case.

Significantly, during negotiations the concern was discussed that the State may attempt to use its expert findings against the McNamaras at a future date. The parties therefore expressly included a term that "[a]s the Contested Case is being resolved by settlement and stipulation, no factual findings or conclusions of law will be issued in connection with the Contested Case." This term was included to avoid the risk that OCCL would later attempt to use its expert report to set the boundary line and to protect the McNamara's interests.

- See 2. regarding a proposed 20ft wide trench. What is the purpose of the 20ft wide trench? How deep will the proposed trench be? Where is it located in the proposed plans?

There is a twenty-foot wide trench because the structure is triangular. For this structure to have appropriate and sufficient structural integrity it must be constructed at a 30-35 degree angle. The structure will naturally be exposed to wave action and a trench is necessary to support the integrity of this project. The trench is a temporary construction trench and was not originally added to the plans. However, we have added the temporary construction trench to the plans at your request. The trench will be excavated along the base of the slope to mean sea level depth.

- See 4. What is a scour apron and where is it in the plans? How will the system be stabilized at approximately every 5ft?

A scour apron is a device that covers the geotubes. A scour apron is useful in maintaining the structural integrity of a soft erosion control device by providing a buffer between the sand and the elements. In a soft erosion structure, there are geotubes. This is a common feature. The scour apron shields the top of the soft erosion control structure to avoid anything going into the ocean and also is installed to protect the integrity of the sand in the structure. This essentially is another layer of protection from natural wear and tear brought about by the ocean wave action and the elements in general. A scour apron helps hold the soft erosion control device together and therefore serves an important environmental protection purpose as well.

The scour apron is stabilized by the soil anchors as indicated on the plans.

- The Emerg. CDUA notes that the structure is proposed to be curved. Why? Has the contractor accounted for potential flanking issues that the proposed curved structure may cause?
- Figure 2 needs to clearly illustrate what is being proposed.

Yes, the contractor has accounted for potential flanking issues. The corners must be wrapped. If a swell comes from the northwest, then it will get behind the structure and pull it apart therefore a wrap design is necessary. The curvature structure itself is designed to avoid flanking issues. This is a design area and is actually geared to protect the ROW as well. The plan was revised pursuant to the new request from OCCL.

- See 5. What is a batter board? Where is it depicted in proposed plans? Top of bank appears to be at the roofed deck.

A batter board is a guideline and a term used in the construction and engineer industry. A batter board is a temporary framing device, set beyond the corners of the structure or in this case soft erosion control device at precise elevations and measurements. The battle boards are used to hold out layout lines (construction twine) to indicate limits (limits are defined as edges and corners of a structure). In the beginning of a construction project batter boards are constructed to map out the dimensions of a project and layout lines (construction twine) are put in place.

Significantly, the batter board is a temporary device and essentially three pieces of wood that you tie strings to and connect with strings to other batter boards aligned along the project. To put in into perspective, anytime you build a house, the first thing you do is set up batter boards. This is a visual representation of where a structure will be located for workers to follow and adhere to the design requirements.

In simple terms, a batter board is something that you use to run a string along to show adequate installation instructions in the field for the workers to follow. After the project is completed, the batter boards are removed as they are a temporary device to help ensure that construction is kept within the limits of the project.

Batter boards are not part of the structure. The plans therefore do not display batter boards because they are not part of the structure and rather a tool only used during construction of the device.

- See 6. and Materials summary. What are soil anchors and what do they consist of?

Soil anchors are used to stabilize the system under stress and consist of a cable with an anchor buried several feet away from the installation in the structure. A soil anchor is an important component of the soft erosion control device for several reasons. Obviously, this device helps maintain the structural integrity of the structure. The natural consequence of a sound structure is the avoidance of any environmental debris and protection from wave energy. The soil anchors are shown in the drawings. Soil anchors in the past have been approved by DLNR/OCCL for other soft erosion control structures. Mr. Ticconi used soil anchors in See OA 20-38. The alternative construction method would be to transition to polypropylene rope and 2 by 8-foot wood pieces.

Notably, we previously provided the following revision to address a prior request from OCCL:

[S]oil anchors (comprised of galvanized and stainless steel to resist failure) driven into the property along the top of the bank. The soil anchors add a necessary level of reinforcement to ensure the system remains intact during its installation. Failure to install an anchoring system could result in the failure of the system and a very difficult recovery and removal task.

Conclusion

- What long-term solutions are being pursued or contemplated at this time?
 - It appears approximately 2 years since this matter (ENF: OA 21-3) went to the BLNR, 1.5 years since the deck fronting the property collapsed due to erosion undermining the structure, and almost 1 year since the settlement agreement was approved. We expect that your clients have begun the process of engaging planning and coastal engineering experts regarding a long-term solution and have developed possible options.

According to your notation earlier in the email, a long-term plan is due on June 28, 2024. In an abundance of caution, the McNamaras have retained a licensed engineer to address this issue. This particular engineer is evaluating a multitude of options. The following is a non-exhaustive list of the options that the McNamaras are currently investigating:

- Soft armoring (e.g., natural or living shoreline, see diagram below) but would require cooperation and mitigation measures by both State and the property owner). This would include combination of some off-shore breakwater and living vegetation options.
- Stone rip rap bank face – this approach requires underlying soil to be stable (north shore shoreline not known for this most likely in sunset area). Further investigation of this approach will take place.
- Retreat – structural alterations to remove ocean side portion of house and landward improvements (e.g., add second story), may require variance from city to address zoning requirements for building envelope or height.
- Community members are attending meetings and looking for measures to help protect their property interests from erosion. A community approach naturally makes sense given the systemic problems along this particular stretch of coastline.
 - Revetments – consisting of stone, crushed concrete, stone/sand filled bags, or rock filled ganoin baskets. Notably, this approach is good for wave action. This particular approach would require cooperation from State to extend from private property into State jurisdiction shoreline area for proper armoring; would require adjacent properties to do same to prevent adjacent erosion. We recognize the there may be legal issues with this approach. Notably, this approach, and the proceeding two approaches would need to be community projects sanctioned by the State.
 - Groins – install groins perpendicular to shoreline to alter off shore current and sand movement; this would need to be a State mitigation project.
 - Break waters – state would need to install off shore to dissipate wave action before hitting shoreline. This would need to be a State mitigation project.



Figure 5.4.8. Nature-based solutions for shoreline stabilization via a “Living Shorelines” approach.
 (Source: Adapted from NOAA, 2016)

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
 A Limited Liability Law Partnership LLP
 999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
 P. (808) 547-5765 | F. (808) 441-1221
 E. fjenkins@goodsill.com | www.goodsill.com

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From: Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
Sent: Thursday, July 27, 2023 12:32 PM
To: Jenkins, Forest B. <fjenkins@goodsill.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>
Cc: Cain, Michael <michael.cain@hawaii.gov>; Cheung, Barry W <barry.w.cheung@hawaii.gov>; Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>; Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: McNamara Seawall Removal Plan & Emergency CDUA

Caution: external email

Good afternoon Mr. Jenkins –

Please see attached.

OCCL has received and reviewed your clients’ (McNamaras) Removal and Demolition Plan (dated December 20, 2022; received by OCCL July 19, 2023) and their Emergency CDUA application for a temporary emergency shoreline protection structure.

After reviewing your clients’ Removal and Demolition Plan and Emerg. CDUA, it does not appear what was submitted adheres to the settlement agreement. There appears to be missing and incorrect information contained in the submitted documents.

EMERGENCY CDUA

The application is incomplete please include information regarding:

- Other proposed mitigation measures
- Future response plans (see below **Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure** as well)

SETTLEMENT AGREEMENT (CC OA 21-3, ENF: OA 21-3)

Please see attached settlement agreement with selected items highlighted. Noted dates/deadlines are summarized below.

July 31, 2022: Recommended to submit Emerg. CDUA to OCCL

- OCCL received *July 19, 2023*

December 31, 2022: Submit Removal and Demolition Plan

- OCCL Received *July 19, 2023*

March 31, 2023: Submit proof that they have retained contractor. Recommended that McNamara's obtain a land disposition by this date or earlier.

- OCCL received via email from Dept AG *May 19, 2023* (proof of contractor)
- Appears LAND received via email *March 31, 2023* (land disposition request)

December 31, 2023: Remove seawall and all other unpermitted shoreline protections devices (e.g. any sand bags, sand "burritos", and sand blankets). Submit fine payment and/or proof that removal costs offset/exceed fines.

June 28, 2024: Submit long-term plan or solution for erosion management (180 days from removal of seawall)

These dates were agreed to with the expectation that your clients would have obtained all the required authorizations and started the demo and removal work this summer, and not jeopardize meeting the December 31, 2023 deadline.

According to Section B. SETTLEMENT TERMS 7., a cursory review of the Bureau of Conveyance's website indicates that the **settlement agreement has not been recorded at the BOC.**

PROOF OF CONTRACTOR to carry out Removal and Demolition Plan

- It appears the submitted Proof of Contractor is **not signed by** the McNamara's.
- Additionally, it appears that the contractor was involved in a number of installations of erosion control structures that are now the subject of enforcement investigations.

Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure (and Emergency Conservation District Use Application)

- The **SETTLEMENT AGREEMENT** Section B. SETTLEMENT TERMS 1. Removal of shoreline structures. states, in part: *The Petitioners shall remove the Seawall and all other unpermitted shoreline protection devices (e.g. any sand bags, sand "burritos", and sand blankets) by December 31, 2023.*
 - The submitted Removal and Demolition Plan and Emerg. CDUA make no mention of removal of the other unpermitted shoreline protection devices installed in the shoreline area fronting the McNamara's property. Address the removal of all other unpermitted shoreline protection devices (e.g. any sand bags, sand "burritos", and sand blankets).
 - OCCL has showed some leniency in not pursuing additional enforcement actions for the alleged unauthorized installation of shoreline protection devices with the understanding that they would be removed pursuant to the settlement agreement.

A. Removal of the Existing Concrete and Timber Shoreline Installation

- The Demo and Removal Plan notes that your clients and their agents are proposing to use the public shoreline access Right-of-Way.
 - Have they consulted with DPP and DPR regarding using the ROW?
 - Cursory conversations with DPR indicate this ROW is closed.
- The plan notes an excavator with hoe ram and 45 ton-crane will be used for demolition.
 - How will they get the excavator on the beach?

- Where will the 45 ton-crane be staged? Is 45 ton-crane proposed to be on the beach as well?
- The plan notes that all demo' d and removed materials will be documented.
 - How?
 - See note regarding Proof of contractor. OCCL files indicate that the contractor appears to have failed in submitting required completion reports for most if not all structures they have installed.
- The Materials and Locations for recycling and disposal section makes no mention of removal and disposal of unauthorized sandbags, burritos, and sand blankets even though this required under the settlement agreement.
- See 7. When will the daily log of activities be provided to OCCL/the Department? Are your clients and their agents proposing to send us photos and updates daily during the removal and reconstruction activities?

B. Construction of the Approved Shoreline Protection Structure

- See Figure 2. It appears your client and their agents are proposing to locate the structure approximately 12ft from the dwelling.
 - OCCL photos indicate that the scarp/top of the berm/approximate location is at the dwelling (see attached "McNamara_Alleged Unauthorized Work in the Shoreline_2022 2023).
 - Structure appears to be 1600-ft² (50ft x 32ft) in area and 10-18-ft high on the public beach.
- See 2. regarding a proposed 20ft wide trench. What is the purpose of the 20ft wide trench? How deep will the proposed trench be? Where is it located in the proposed plans?
- See 4. What is a scour apron and where is it in the plans? How will the system be stabilized at approximately every 5ft?
 - The Emerg. CDUA notes that the structure is proposed to be curved. Why? Has the contractor accounted for potential flanking issues that the proposed curved structure may cause?
 - Figure 2 needs to clearly illustrate what is being proposed.
- See 5. What is a batter board? Where is it depicted in proposed plans? Top of bank appears to be at the roofed deck.
- See 6. and Materials summary. What are soil anchors and what do they consist of?

Conclusion

- What long-term solutions are being pursued or contemplated at this time?
 - It appears approximately 2 years since this matter (ENF: OA 21-3) went to the BLNR, 1.5 years since the deck fronting the property collapsed due to erosion undermining the structure, and almost 1 year since the settlement agreement was approved. We expect that your clients have begun the process of engaging planning and coastal engineering experts regarding a long-term solution and have developed possible options.

Please provide the Department with the additional requested clarification and information to help staff finish processing your clients' requests.

Trevor Fitzpatrick
Staff Planner
State of Hawai`i
Department of Land and Natural Resources
Office of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai`i 96809
www.dlnr.hawaii.gov/occl



Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Wednesday, August 16, 2023 2:01 PM
To: Fitzpatrick, Trevor J; Steed, Miranda C; Saffery, Edmund K.
Cc: Cain, Michael; Cheung, Barry W; Anderson, Rebecca L; Hirokawa, Ian C; Cosgrove, Todd T.; Mills, Kimberly T
Subject: RE: McNamara Seawall Removal Plan & Emergency CDUA

Trevor:

Thank you for your follow up. I reached out to the contractor to clarify your comment below. No bags will be utilized. Rather, the geotubes will be filled with sand. Please let me know if you need further clarification or additional information. Thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | **F.** (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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From: Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
Sent: Wednesday, August 16, 2023 12:44 PM
To: Jenkins, Forest B. <fjenkins@goodsill.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>; Saffery, Edmund K. <esaffery@goodsill.com>
Cc: Cain, Michael <michael.cain@hawaii.gov>; Cheung, Barry W <barry.w.cheung@hawaii.gov>; Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>; Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>; Cosgrove, Todd T. <tcosgrove@goodsill.com>; Mills, Kimberly T <kimberly.mills@hawaii.gov>
Subject: RE: McNamara Seawall Removal Plan & Emergency CDUA

Caution: external email

Mr. Jenkins –

Thank you again for you and your clients' responses.

Please see attached and Section **B. Construction of the Approved Shoreline Protection Structure** and #4.

It states, in part: Six rows of **sandbag-filled** [emphasis added] geotubes will be installed along the base of the slope, as shown as Geotube A though F in Figure 3 Section View.

This section later states that the geotubes will be sand-filled.

Can you please clarify?

Thanks.

Trevor

Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Thursday, August 24, 2023 12:16 PM
To: Fitzpatrick, Trevor J; Steed, Miranda C
Subject: RE: McNamara Seawall Removal Plan & Emergency CDUA

Hey Trevor:

Miranda and I were just discussing this matter and I wanted to follow up. Thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | **F.** (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Thursday, September 28, 2023 2:21 PM
To: Steed, Miranda C
Subject: McNamara

Hey Miranda:

Can we touch base on the McNamara project before your trip? I just need to know where things are at. I appreciate it, thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
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P. (808) 547-5765 | **F.** (808) 441-1221
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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Tuesday, October 10, 2023 5:07 PM
To: Steed, Miranda C
Subject: McNamara

Hope you had a great trip. If you have a few minutes to discuss this matter this week that'd be great. I called over to land division and had a few questions. Thanks again and hope you're doing well.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | **F.** (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Wednesday, October 11, 2023 9:44 PM
To: rebecca.l.anderson@hawaii.gov
Cc: Fitzpatrick, Trevor J; Steed, Miranda C
Subject: Re: Bow Engineer Report
Attachments: 9266716_1 - 04 - McNamara - Bow Engineering Report.pdf

Rebecca:

Thanks for speaking with me yesterday. I've attached the State's engineering report submitted prior to the contested case with the State's prior position on the size/quantities of the structure prior to the contested case. To be clear, we do not make any representations whatsoever regarding the findings and/or conclusions in the attached report. However, I am passing the report along to you solely for your review in processing the land disposition because it details the State's prior position on the size of the structure. Thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | **F.** (808) 441-1221
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Cosgrove, Todd T.

From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Thursday, October 12, 2023 8:46 AM
To: Jenkins, Forest B.
Subject: RE: Land Disposition Issue

Caution: external email

Hi Forest,

Thanks for the background.

Miranda

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Wednesday, October 11, 2023 9:59 PM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] Land Disposition Issue

Hey Miranda:

I recall that there was discussion about the land disposition being required for the project during settlement and particularly for things like an excavator when Lauren and I resolved the matter.

Anyway, my interpretation was that we included the "OCCL will recommend that the Oahu District Land Division issue the land disposition. A satisfactory completed land disposition application will not be unreasonably denied" language to allow for this. I understand that land division has their usual stance against heavy machinery, but I feel as though this situation is somewhat unique and difference, based on the agreed upon terms in the settlement agreement. Moreover, given the position taken by the State in the Bow Engineering report, I think its hard to fathom how removal would have been contemplated without the use of machinery. This report was generated and submitted by the State shortly before Lauren and I settled the matter. There was certainly never any discussions back then that we would be required to manually remove the structure by hand.

I offer this as hopefully helpful information if you speak with land division and OCCL. We very much want to comply, meet our deadlines, and remove by the deadline in the settlement agreement. We would prefer this to not be adversarial and simply work towards a common goal. Thanks for taking the time to speak with me today.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
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E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Friday, October 13, 2023 1:29 PM
To: Jenkins, Forest B.
Subject: RE: Re: Materials Related to Prior Sand Pushing Projects

Caution: external email

Hi Forest,

Thanks for sending. I've forwarded to my client. Have a good weekend!

Miranda

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Friday, October 13, 2023 1:15 PM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] Re: Materials Related to Prior Sand Pushing Projects

Hello Miranda:

Here are some materials related to prior sand pushing projects involving the use of machinery provided by Peter Young for consideration. Thanks and have a good weekend.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

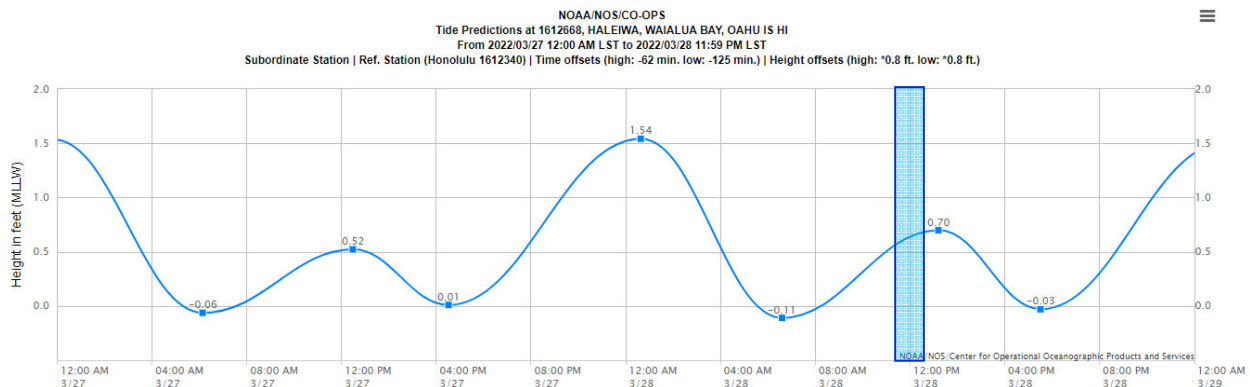
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FIELD INVESTIGATION SUMMARY

BACKGROUND AND SITE CONDITIONS

A site investigation was performed by William F. Bow (assisted by Skylor T.H. Tengan) outside the property located at 59-175 Ke Nui Road, Haleiwa, Hawaii 96712 (TMK 5-9-2:26) along the shoreline and seawall. Only a short section of the original seawall was exposed/visible on the north end of the property line; the rest of the seawall was either covered in plywood, fabric, or fronted by concrete structures that are presumed to be additional components added over several years. The tide was approximately 0.6 feet reaching a mid-day high of 0.70 feet during the investigation, which took place between 11:20 AM to 12:20 PM (shaded in blue in the tide chart below).



Measurements of various components of the seawall and existing features were taken. Sand had completely filled the site compared with the photograph taken in January 2022 (photomap on page 4). The approximate sand elevation is shown as a green dashed line. The wash of the waves reached approximately 18-20 ft from the face of the seawall.

EMBEDDED CONCRETE FOOTINGS

A 4-ft rebar was used to probe beneath the sand to determine approximate depths of submerged structural features of the seawall. Probing along the northern section of the face of the wall with the rebar consistently reached resistance (by a very hard material) between 1.5-2 ft below the sand. The rebar was unable to penetrate below the material extending out to approximately 3-ft from the face of the wall; this is shown as a red dashed line in the photomap. Digging down into the sand revealed a hardened concrete edge. The depth of this concrete footing could not be determined due to the elevation of the sand and presumed depth the concrete. It is estimated that this structure/footing is at least 4 feet lower than the depth of the hardened concrete edge that was discovered; this footing would be approximately 6-7 feet below grade at the time of the investigation.



EXPOSED (ABOVE GRADE) CONCRETE ADDITION

Addition of concrete from the face of the original seawall was visible and protruding approximately 3 feet out towards the ocean. This mass of concrete runs approximately 29-feet along the face of the seawall. This mass extended approximately 4 feet above the elevation of the sand at the time of the investigation. The full depth of this mass of concrete could not be determined due to the large amount of sand built up along the face of the seawall. However, the face seemed to slant out and away from the property line based on probing with rebar. Approximately 17-ft from the start of this mass was a large fissure observed with exposed rebar. The exposed rebar was large and estimated to be #5 or #6 bar. The concrete mass continued (approximately 12-ft) from this break to the other end of the property, decreasing in width to just over 2 feet. This additional mass of concrete is assumed to extend approximately 6-ft below the sand based on the photograph taken on January 31, 2022 shown on page 7.

ORIGINAL SEAWALL BUILDING MATERIALS

Only one section of the seawall near the property line of the neighboring property to the north seemed to provide evidence of the original seawall and materials used for its construction:

- There was a very large, irregularly shaped “cylindrical” concrete footing that was approximately 2.5-ft in diameter. The exact dimensions could not be measured due to its depth and obstructions surrounding it.
 - It is not known if this is a part of the original seawall or installed later.
 - It is not known if each vertical concrete post (described later) is supported by a similar large, irregularly shaped “cylindrical” concrete footing.
- Immediately above this footing were two separate adjoining footings that are presumed to support the length of the entire original seawall.
 - A 12-in wide, 18-in deep concrete footing was observed furthest into the property.
 - Three rows of CMU block (8”x8”x16”) were stacked on top of this footing, with the lowest course embedded approximately 3-4 inches deep.
 - Abutting this footing was another footing, which seemed like a separate concrete pour, although this cannot be confirmed due to severe degradation of material. This footing is approximately 18-in wide and 18-in deep.
 - A 12”x12”x60” rectangular concrete pile was positioned vertically on this footing abutting the stacked CMU wall. The rectangular pile appeared to serve as a “post” for horizontally stacked cylindrical wood beams laid above the CMU wall.
 - Each exposed wood beam was extremely weathered and cracked, however the size was estimated to be approximately 10-in in diameter and likely ranged in lengths of 5-15 ft (based on past photo records).
- No rebar was observed in the footings, CMU, or piles described.

The volumetric quantity of the materials (including concrete, CMU, and wood) used to construct the original seawall is approximately 25 cubic yards. The replacement cost (page 4) of the



original seawall is \$173,200 without the safety measures during construction and \$223,200 with the safety measures.

ADDITIONAL MATERIALS INSTALLED

Additions to the original seawall appear to be the combination of embedded concrete footings (identified through probing) and exposed (above grade) concrete additions. Concrete also appeared to be poured on top of the original seawall and potentially behind the property line; these masses could not be fully measured or verified (due to inaccessibility). Our estimate of the embedded and exposed concrete added to the original seawall is approximately 40 cubic yards and:

- does not include any concrete masses within the property line;
- does not include concrete poured on top of the existing seawall;
- may not account for the slope of the concrete masses below grade;
- assumes a maximum depth of 6-ft below the existing grade of sand at the time of the inspection.

The added concrete material (approximately 40 cubic yards) accounted for in this estimate is approximately 160% greater than the materials used to construct the original seawall (25 cubic yards). The cost (page 5) of the additional mass of concrete in front of the face of the original seawall is approximately \$76,700 which is 44% of the cost of the original seawall (without safety measures). If safety measures are put into place for the construction of the additional mass of concrete in front of the face of the original seawall, then the cost increases to \$126,600 which is 57% of the cost of the original seawall (with safety measures).



COST ESTIMATES

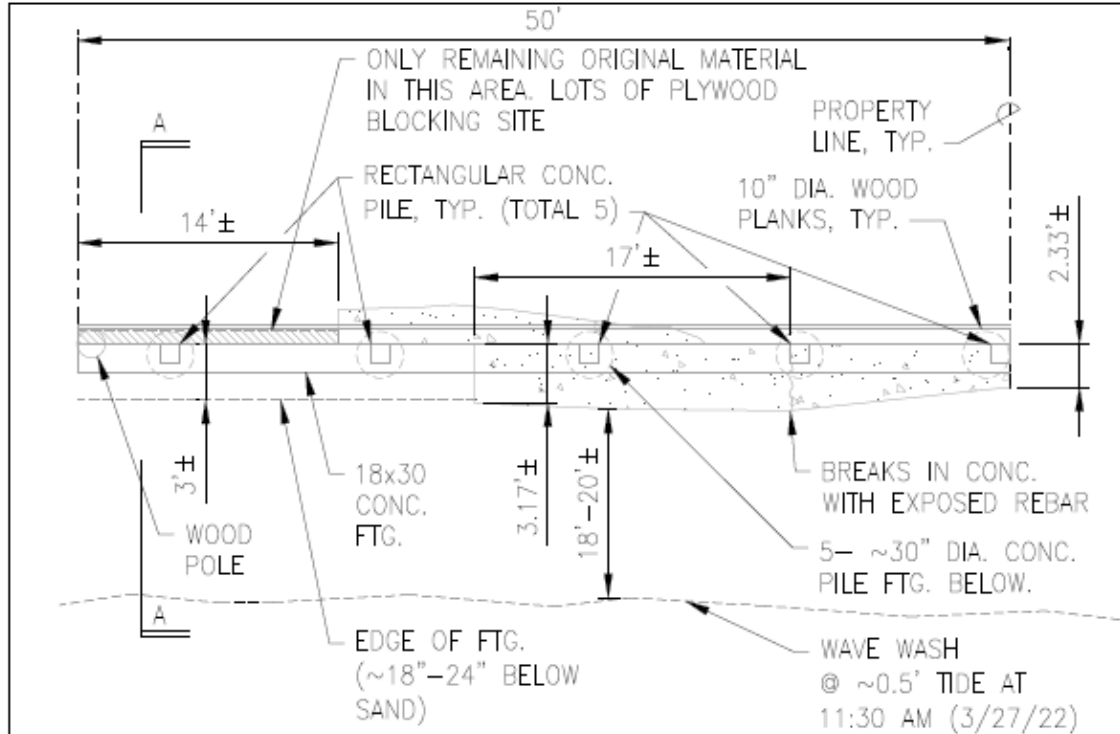
Date: April 15, 2022				
Construction Cost Estimate (Orginal Seawall)				
Item	Qty	Unit	Unit Price	Cost
Seawall Materials				
Cylindrical Concrete Footing (5 footings, 30" Diameter x 6' Depth)	5	CY	\$ 500.00	\$ 2,500.00
Concrete Footing (50' L x 30" W x 18" D)	8	CY	\$ 500.00	\$ 4,000.00
CMU Blocks (50' L, 3 courses)	120	Units	\$ 3.30	\$ 396.00
Grout fill for CMU Block	1.5	CY	\$ 500.00	\$ 750.00
Concrete Pillars (5 - 12" x 12" x 60" H)	1	CY	\$ 500.00	\$ 500.00
Large Wood Pile (telephone pole)	10	LF	\$ 200.00	\$ 2,000.00
Wood Planks (50' L x 10" D, 6 rows high)	300	LF	\$ 150.00	\$ 45,000.00
Subtotal Seawall Materials				\$ 55,146.00
Construction Labor / Equipment				
8-man crew (5 labor, 2 Safety, 1 supervisor)	10	Day	\$ 5,000.00	\$ 50,000.00
Equipment (excavator + hammer, mini-exc., loader, fork lift, misc. tools)	10	Day	\$ 2,600.00	\$ 26,000.00
Subtotal Construction Labor / Equipment				\$ 76,000.00
Mobilization / Demobilization				
(10% of above subtotals)	1	LS	\$ 13,110.00	\$ 13,110.00
Subtotal Mobilization and Demobilization				\$ 13,110.00
SUBTOTAL				\$ 144,256.00
Contingency 20%				\$ 28,851.20
SUBTOTAL & Contingency				\$ 173,107.20
BASE BID ROUND-OFF TOTAL				\$ 173,200.00
Optional Item: Safety Measures				
Shoring (materials, excavators, loader, 8 man-crew)	1	LS	\$ 50,000.00	\$ 50,000.00
Base Bid Round-off Total (from above)				\$ 173,200.00
BASE BID ROUND-OFF TOTAL (Including Safety Measures)				\$ 223,200.00



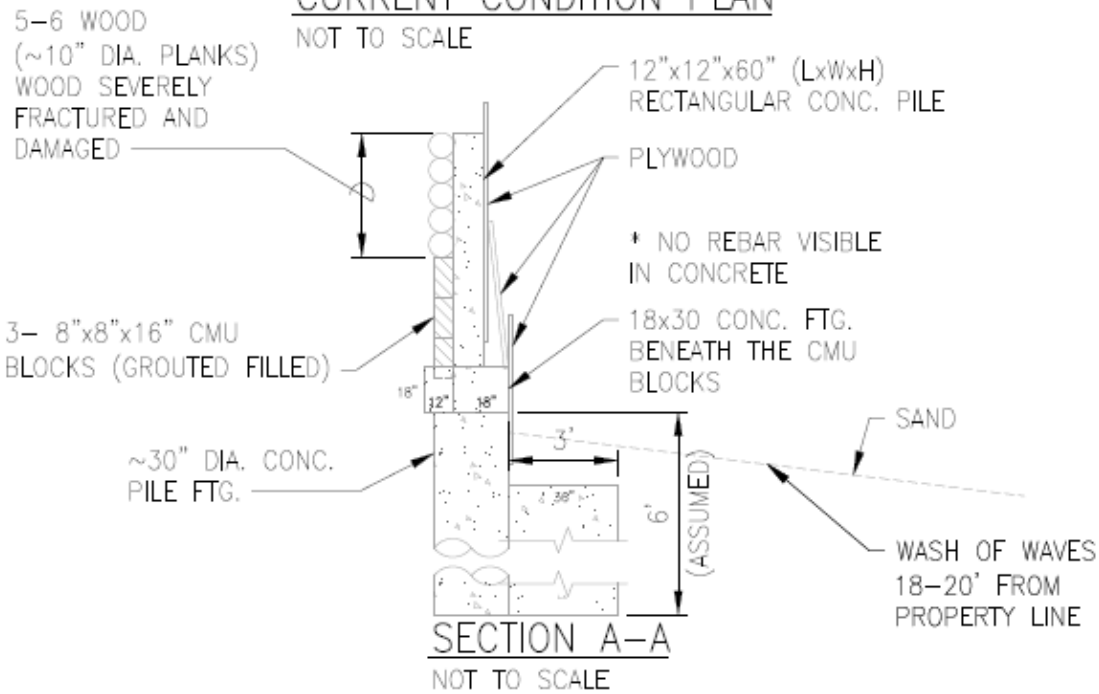
					Date: April 15, 2022
Construction Cost Estimate (Additional Material)					
Item	Qty	Unit	Unit Price	Cost	
Seawall Materials					
Concrete	40	CY	\$ 500.00	\$ 20,000.00	
Subtotal Seawall Materials				\$ 20,000.00	
Construction Labor / Equipment					
8-man crew (5 labor, 2 Safety, 1 supervisor)	5	Day	\$ 5,000.00	\$ 25,000.00	
Equipment (excavator + hammer, mini-exc., loader, fork lift, misc. tools)	5	Day	\$ 2,600.00	\$ 13,000.00	
Subtotal Construction Labor / Equipment				\$ 38,000.00	
Mobilization / Demobilization					
(10% of above subtotals)	1	LS	\$ 5,800.00	\$ 5,800.00	
Subtotal Mobilization and Demobilization				\$ 5,800.00	
SUBTOTAL				\$ 63,800.00	
Contingency 20%				\$ 12,760.00	
SUBTOTAL & Contingency				\$ 76,560.00	
BASE BID ROUND-OFF TOTAL				\$ 76,600.00	
Optional Item: Safety Measures					
Shoring (materials, excavators, loader, 8 man-crew)	1	LS	\$ 50,000.00	\$ 50,000.00	
Base Bid Round-off Total (from above)				\$ 76,600.00	
BASE BID ROUND-OFF TOTAL (Including Safety Measures)				\$ 126,600.00	



CURRENT CONDITION PLAN/ PROFILE

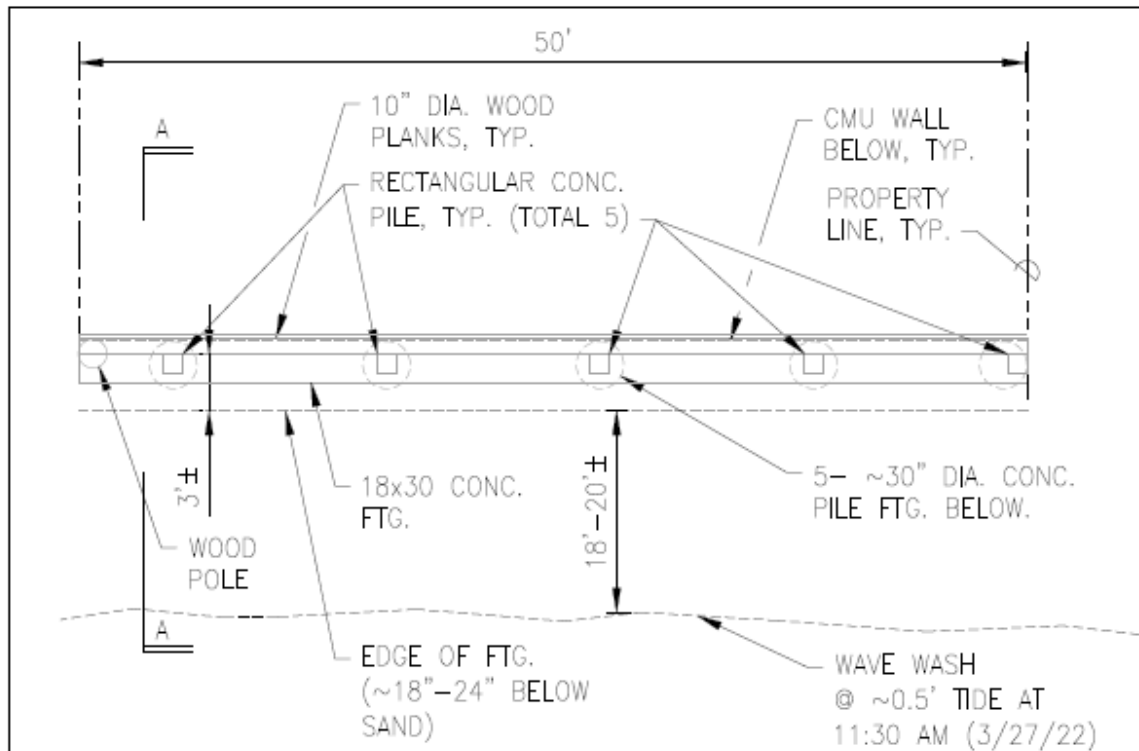


CURRENT CONDITION PLAN
NOT TO SCALE



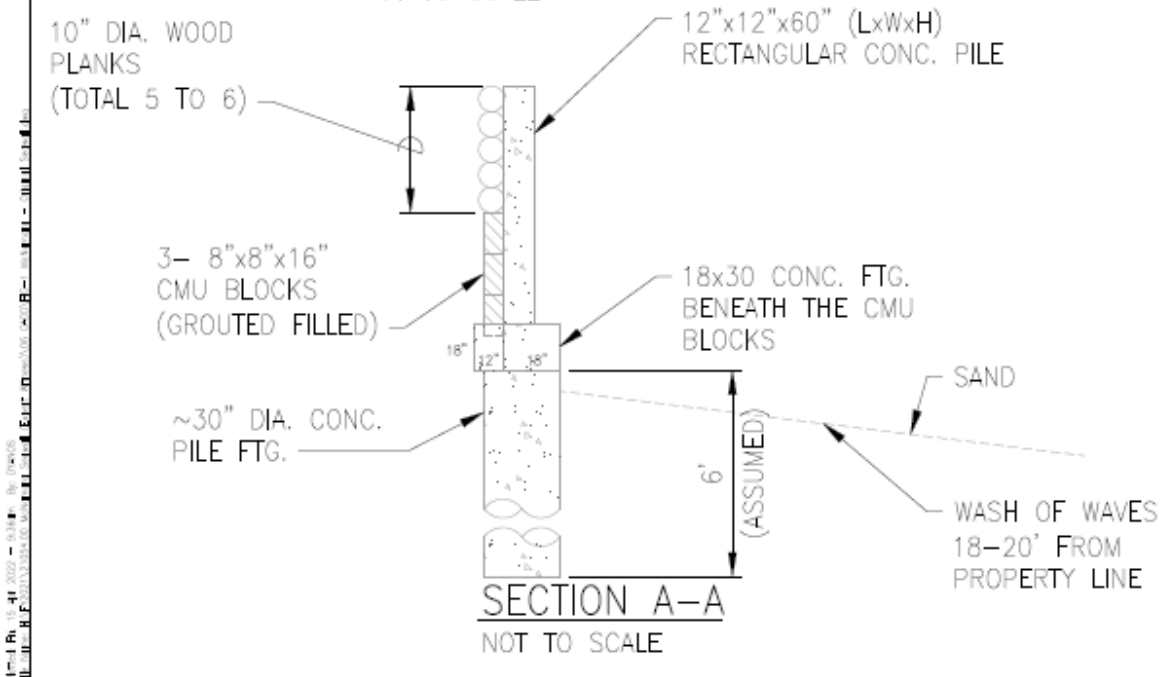


ORIGINAL SEAWALL PLAN/ PROFILE



ORIGINAL SEAWALL PLAN

NOT TO SCALE





PHOTOMAP



This photo was taken on January 31, 2022. The estimated sand elevation at the time of the investigation is shown in green. The edge of an embedded footing beneath the sand is shown in red. The picture numbers and direction of images are shown to correspond to the photolog in the following pages.



***** PHOTO LOG *****



Photo 1: South corner of property seawall facing North



Photo 2: South corner of property seawall facing mauka



***** PHOTO LOG *****



Photo 3: South side of property seawall facing mauka (showing broken concrete pieces)



Photo 4: South side of property seawall facing mauka (showing broken concrete pieces, zoomed)



***** PHOTO LOG *****



Photo 5: North side of property seawall (about mid-way) facing North



Photo 6: North side of property seawall (about mid-way) facing mauka



***** PHOTO LOG *****



Photo 7: South side of neighbor's property sandbags facing North



Photo 8: Length of property seawall taken from North facing South



***** PHOTO LOG *****



Photo 9: North corner of seawall facing Mauka



Photo 10: Probing North end of seawall for depth of footings and structures.



*** PHOTO LOG ***



Photo 11: Probing North end of seawall for depth of footings and structures.



Photo 12: Probing North end of seawall for depth of footings and structures.



Photo 13: Probing North end of seawall for depth of footings and structures.



***** PHOTO LOG *****



Photo 14: North corner of seawall (original materials investigation)



Photo 15: North corner of seawall (original materials investigation), zoomed



*** PHOTO LOG ***



Photo 16: North corner of seawall (original materials investigation), zoomed



Photo 17: North corner of seawall (original materials investigation), zoomed with measurement



Photo 18: North corner of seawall (original materials investigation), zoomed with measurement



Expiration Date: 04/30/22

THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION

FIELD INVESTIGATION AND REPORT WAS PREPARED BY
WILLIAM F. BOW, M.S., ENVIRONMENTAL DIRECTOR

William H.Q. Bow, P.E. **Principal Engineer & CEO**

QUALIFICATIONS: Forty-four (44) years of broad, successful experience in designing numerous civil engineering projects of different scales. Experience gained through responsible positions as owner of Bow Engineering & Development, Inc. and Bow Construction Management Service, Inc., Principal Engineer. Extensive experience in project management, planning, engineering design, consulting, operations and maintenance, real estate development and contracting, from roadway, parking, water, sewer and drainage system designs to real estate planning and implementation strategies for land development, subdivision and condominium projects. Projects include commercial, residential, recreational, industrial, agricultural, and military facilities.

Specialization: Hydraulic Design
Hydrologic Analysis
Subdivision Site Development Planning
Highway and Roadway Planning and Design
Utility Systems Design
Project Management
Housing Feasibility Studies
Sewage and Water System Master Planning

Education: Bachelor of Science, Civil Engineering
Hydraulic and Sanitary major
University of Hawai'i at Manoa, 1976

Registration: Civil Engineer, Hawaii, Certificate #4904 (1980)

Professional Affiliation: State of Hawaii -Disability Communications Access Board (DCAB)
(Past Chair in 2018-2019, Board Member 2016-2020)
American Council of Engineering Companies of Hawaii (ACECH)
(Hawaii Section Past President in 2014-2015, Current Member)
American Society of Civil Engineers
(Hawaii Section Past President in 1984-1985, Current Member)
University of Hawaii, Engineering Alumni Association
(Past President in 1989-1990, Current Member)
University of Hawaii Alumni Association
(Director in 1990-1992, Member)
Water Environment Federation (Member)
American Water Works Association (Member)
International Erosion Control Association (Member)

Community Affiliation: Pearl Harbor Rotary Club, Past-President
Starts Plaza AOA, Board Member



Bow Engineering & Development, Inc.
1953 South Beretania Street, PH-A • Honolulu, Hawai'i 96826-1342
Phone: (808) 941-8853 • Fax: (808) 945-9299
E-mail: bbow@bowengineering.com

Work Experience:

2021 - present	Bow Engineering & Development, Inc., Honolulu, Chief Strategic Officer
1997 - 2020	Bow Engineering & Development, Inc., Honolulu, President
2008 - 2014	Bow Construction Management Service, Inc., Kauai, President
1995 - 1998	SSFM Engineers, Inc., Honolulu, Principal/Project Manager
1991 - 1995	Savio Development Co., Inc., Honolulu, Project Director
1984 - 1991	M&E Pacific, Inc., Honolulu, Project Manager
1981 - 1984	Gray, Hong & Associates, Honolulu, Project Engineer
1976 - 1981	Belt, Collins & Associates, Honolulu, Project Engineer

Experience by Discipline:

Hydrology

- Drainage Study for Servco Mapunapuna (Oahu)
- Floodway Determination for Kawaihapai Subdivision (Oahu)
- Kawainui Marsh Levee Flood Hazard Abatement (Oahu)
- Drainage Study and Master Plan for the Hokuala Resort (Kauai)
- Drainage Study for Koaleo St. Residence (Oahu)
- Drainage Study for Prince Jonah Kuhio Kalaniana'ole (PJKK) Federal Building Courtyard Flooding (Oahu)
- Drainage Study for Marianist Center Master Plan (Oahu)
- Drainage Study and Drainage Improvements for Krauss Hall, University of Hawaii at Manoa, Honolulu (Oahu)
- Sueoka Store Flood Study, Koloa (Kauai)

Highways and Roads

- Kamokala Road Repairs at Pacific Missile Range Facility (Kauai)
- Nawiliwili Road Improvements (Kauai)
- Kamehameha Schools Kapalama Campus Roadway and Intersection (Oahu)
- Hawaii Belt Road Umauma Stream Bridge Rehabilitation (Big Island)
- Nohili Road Repaving at Pacific Missile Range Facility (Kauai)
- Rice Street-Kapule Intersection Improvements (Kauai)

Site Development Design and Studies

- Waimea Huakai and Habitat for Humanity Affordable Housing (Kauai)
- Hokuala Residences at Ninini Point (Kauai)
- Waiehu Golf Course Clubhouse Feasibility Study (Maui)
- Koae Workforce Housing (Kauai)
- Kahana Valley Environmental Assessment and Wastewater Study (Oahu)
- Rice Camp Affordable Housing (Kauai)
- Kolopua at Princeville Affordable Housing (Kauai)
- Kolo Place Apartment Residences (Oahu)
- Makaha Oceanview Estates Condominium Development (Oahu)
- Green Homes at Lualualei Affordable Housing (Oahu)
- Kalanipuu at Kauai Lagoons, Lihue (Kauai)
- Kiele Bypass Road and Fashion Landing, Lihue (Kauai)
- Marriott Vacation Club International, Lihue (Kauai)
- Kauai Lagoons Resort Subdivisions, Lihue (Kauai)



- Kamamalu Affordable Housing Phase I at Kauai Lagoons, Lihue (Kauai)
- Courtyards at Waipouli (Kauai)
- Waiialua Agricultural Subdivision, Haleiwa (Oahu)

Multidiscipline

- UH Walkways Restoration and Improvement Master Plan (Oahu)
- Lyon Arboretum Various Health and Safety Improvements (Oahu)
- Diamond Head State Monument Sewer Lift Station & Emergency Generator (Oahu)
- North Shore Gateway Starbucks and Commercial Building (Oahu)
- Gateway South Commercial Building at Mililani Mauka (Oahu)
- Gateway North Shopping Center at Mililani Mauka (Oahu)
- Princeville Center Commercial Expansion (Kauai)
- American Electric Warehouse Building (Oahu)
- Monsanto Agricultural and Research Processing Facility (Oahu)
- Tripler Army Medical Center Renovation (Oahu)
- Tripler Gym, Bldg. 300 (Oahu)
- Kamehameha Schools Repair and Maintenance, Honolulu (Oahu)
- Tot Lots for Public Works Center, U.S. Department of the Navy (Oahu)

CASES TESTIFIED AS EXPERT:

My career has concentrated on the design civil infrastructure for residential, commercial, agricultural and resort developments. Civil infrastructure is classed as site grading to prepare and shape the subject property, and to design the water, sewer and drainage systems to meet the function of the proposed development.

The following are cases that I have worked on with other law firms that resulted in an out of court settlement:

- a. FY2021 Alan Meacham etal v. Pryzm Consulting LLC - Construction Injury Claim (ongoing)
- b. FY2020 Westview AOA v. Seascape AOA - Water Dispute
- c. FY2019 SW Enterprises v. Fujiyama Construction/Construction Defect Claim
- d. FY2018 SCD Kahoma v. SSFM International - Design/Construction Defect Claim
- e. FY2012 Kamehameha Schools v. Vegas - Property Flood Damage Claim
- f. FY2012 Ko Olina Hillside Villas AOA v. Centex Homes - Property Flood Damage Claim
- g. FY 2010 Hieda v. USA (Tripler) Property Flood Damage Claim

I have provided civil engineering expert opinions to First Insurance Co. in cases related to storm water damage. The following are cases resulted in an out of court settlement:

- a. FY2009 Defendant: Honbushin International Center (Mililani)
Storm water damage of December 11, 2008 to adjacent properties
First Insurance Case No. 20089311



- b. FY2004 Defendant: Mililani Town Association
Storm water damage of December 7, 2003 to Tomiyasu property
First Insurance Case No. 20033031
- c. FY2004 Defendant: Perfecto Engineering
Storm water damage of January 27, 2004 to Fukunaga property
First Insurance Case No. 20041549
- d. FY2004 Defendant: Perfecto Engineering
Storm water damage of January 7, 2004 to Fujioka property
First Insurance Case No. 20041551



William F. Bow, M.S.
Environmental Director & Vice President

QUALIFICATIONS: Fifteen (15) years of combined experience working as a Chemist in the laboratory and in the field at Bow Engineering & Development, Inc. His representative projects include environmental permitting, water quality monitoring, and permit management for projects which fall under the jurisdiction of various agencies including the U.S. Army Corps of Engineers, Department of Health, Department of Land and Natural Resources, and County Offices. Projects include commercial, residential, recreational, educational, industrial, agricultural, and military facilities. His technical experience includes the application of standard laboratory techniques and field inspection and monitoring required by permits. As the Environmental Director, William Bow is responsible for overseeing all field managers and inspectors and works closely with engineers to make technical recommendations based on field observations and analytical data.

Specialization: Water Quality Monitoring & Reporting
Injection Well Monitoring & Reporting
Soil Monitoring & Reporting
Phase I Environmental Site Assessments
Environmental Assessments (Hawaii Environmental Policy Act)
Permit Application/Management
Section 10 (Rivers & Harbors Act); Clean Water Act (Section 401 – WQC, Section 402 – NDPES, Section 404); Conservation District Use Permits; Special Management Area Permits
Project Management

Education: Master of Science, Organic Chemistry
University of Hawai'i at Manoa, 2010
Bachelor of Science, Forensic Science
Chaminade University of Honolulu, 2006

Certification: *Techniques of Sampling and Field Analysis of Storm and Wastewater Effluent* (Environmental Protection Agency)

Professional Affiliation: American Chemical Society – Hawaii Section (Past-Chair 2021, Past-Treasurer 2019, Current Member)
Hawaii Association of Environmental Professionals (President 2022, Board Member since 2019, Current Member)
National Association of Environmental Professionals (Hawaii Chapter Representative 2021, Current Member)

Community Affiliation: Hawaii Chamber of Commerce, Young Professionals (Current Member)
Family Business Center of Hawaii (Current Member)



Work Experience:

- 2017 - present Bow Engineering & Development, Inc., Honolulu,
Environmental Director & Vice President
- 2015 - 2017 Bow Engineering & Development, Inc., Honolulu,
Lead Chemist & Executive Project Manager
- 2012 - 2015 Bow Engineering & Development, Inc., Honolulu,
Chemist & Field Inspector
- 2012 - 2015 Chaminade University, Honolulu,
Adjunct Lecturer
- 2010 - 2012 Maryknoll School, Honolulu,
High School Faculty
- 2007 - 2010 University of Hawai'i at Manoa, Honolulu,
Graduate Research Assistant

Experience by Discipline:

Inspection & Reporting

- Statewide Monitoring and Inspection of DOE School Underground Injection Control Wells (Statewide)

Environmental Assessments

- Kahana Valley State Park Sewer Improvements & Well Repair (Oahu)
- Pouhala Marsh Restoration (Oahu)
- Miloli'i Park Improvements (Big Island)
- Waimea Ford River Crossing (Kaua'i)
- Honu'apo Estuary Rehabilitation (Big Island)
- Hilo Skate Park (Big Island)

Permitting/Permit Compliance

- Hokuala Resorts (Kaua'i)
- Kainalu Seawall Repair (Oahu)
- Kewalo Basin Harbor Improvements (Oahu)
- Port Allen Small Boat Harbor Improvements (Kaua'i)
- Kaunakakai Boat Ramp Improvements (Moloka'i)
- Waikaea Boat Ramp Maintenance Dredging (Kaua'i)
- Waikaea Canal Navigational Aids Improvements (Kaua'i)
- Pearl Harbor Maintenance Dredging of Upper Middle Loch (Oahu)
- Kuhio Beach Groin (Oahu)
- Kawaihae Small Boat Harbor Wharf Repair (Big Island)
- Kaupuni Place Channel Flood Control Improvements (Oahu)
- Waikiki Beach Maintenance Project, Phase II (Oahu)
- Sand Island Wastewater Treatment Plant Outfall Shoreline Revetment Project (Oahu)
- Honolulu Harbor Maintenance Dredging (Oahu)
- Kapalama Container Terminal Wharf and Dredging (Oahu)



Cosgrove, Todd T.

From: Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>
Sent: Thursday, October 12, 2023 8:33 AM
To: Jenkins, Forest B.
Cc: Fitzpatrick, Trevor J; Steed, Miranda C
Subject: RE: Re: Bow Engineer Report

Caution: external email

Thanks, Forest.

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Wednesday, October 11, 2023 9:44 PM
To: Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>
Cc: Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>; Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] Re: Bow Engineer Report

Rebecca:

Thanks for speaking with me yesterday. I've attached the State's engineering report submitted prior to the contested case with the State's prior position on the size/quantities of the structure prior to the contested case. To be clear, we do not make any representations whatsoever regarding the findings and/or conclusions in the attached report. However, I am passing the report along to you solely for your review in processing the land disposition because it details the State's prior position on the size of the structure. Thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | **F.** (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Design Build

7130 Kukui St
Honolulu, HI 96825
markticconi.mdt@gmail.com
Phone: (808) 348-7192

October 24th, 2023

Land Board
Department of Land & Natural Resources

RE: Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure

Property: 59-175C Ke Nui Rd
Haleiwa, HI - Tax Map Key (TMK) (1) 5-9-002:026

It has been brought to my attention that there has been some question to the utilization of heavy equipment in the removal of the timber and concrete structure located in the front of property located at 59-175C Ke Nui Rd. Considering the site conditions:

- The home is located approximately 20ft above mean sea level
- The structure contains at minimum seventy five yards of concrete and several large timbers within the concrete formation
- The structure is located partially below mean sea level
- Shoreline wave conditions are aggressive in the period between September and April annually
- Structure is approximately 12ft to 16ft in height and width
- Shoreline width varies significantly and changes swiftly
- The structure is located in sand which is unstable when positioned at angles greater than 45 degrees

These conditions are not conducive to efficiently and effectively executing the work required without the utilization of heavy equipment. The area required to excavate to the base of the structure is approximately 200 yards of material which would need to be stable under construction. The ideal construction window for removal is only approximately 4 months in duration (May- August). Working with small machines (i.e. jackhammers) requires pieces to be fragmented into one sqft diameter or smaller. If the heavy machinery in the Removal Plan was not allowed, then the seawall would need to be fragmented into one sqft diameter pieces on the beach and then manually transported off the beach.

This is an excerpt from the removal plan submitted in December of 2022.

“A. Removal of the Existing Concrete and Timber Shoreline Installation

The existing concrete structure is approximately 50ft wide and consists of approximately 75 yards of concrete, several timber poles and steel rebar. This will all be removed along the makai shoreline boundary and disposed at a concrete recycling facility. To remove the structure access down the beach right of way will be required. Heavy equipment will be required to safely and efficiently remove the system. Below we will outline the demolition and removal plan.

1. Equipment to be used: To remove the material we will require an excavator with a hoe ram for demolition. A 45 ton-crane will be utilized for large pieces of debris removal from the shoreline. Flatbed trucking and roll-off dumpsters will be utilized to haul debris to the appropriate recycling facilities. Access will be required for staging along the beach access during heavy construction activities.

2. Staging area: The ocean side yard and beach area will be active construction and staging areas. The right of way will be temporarily blocked for the safe removal of the concrete and timber structure/. The figure below depicts the area required.



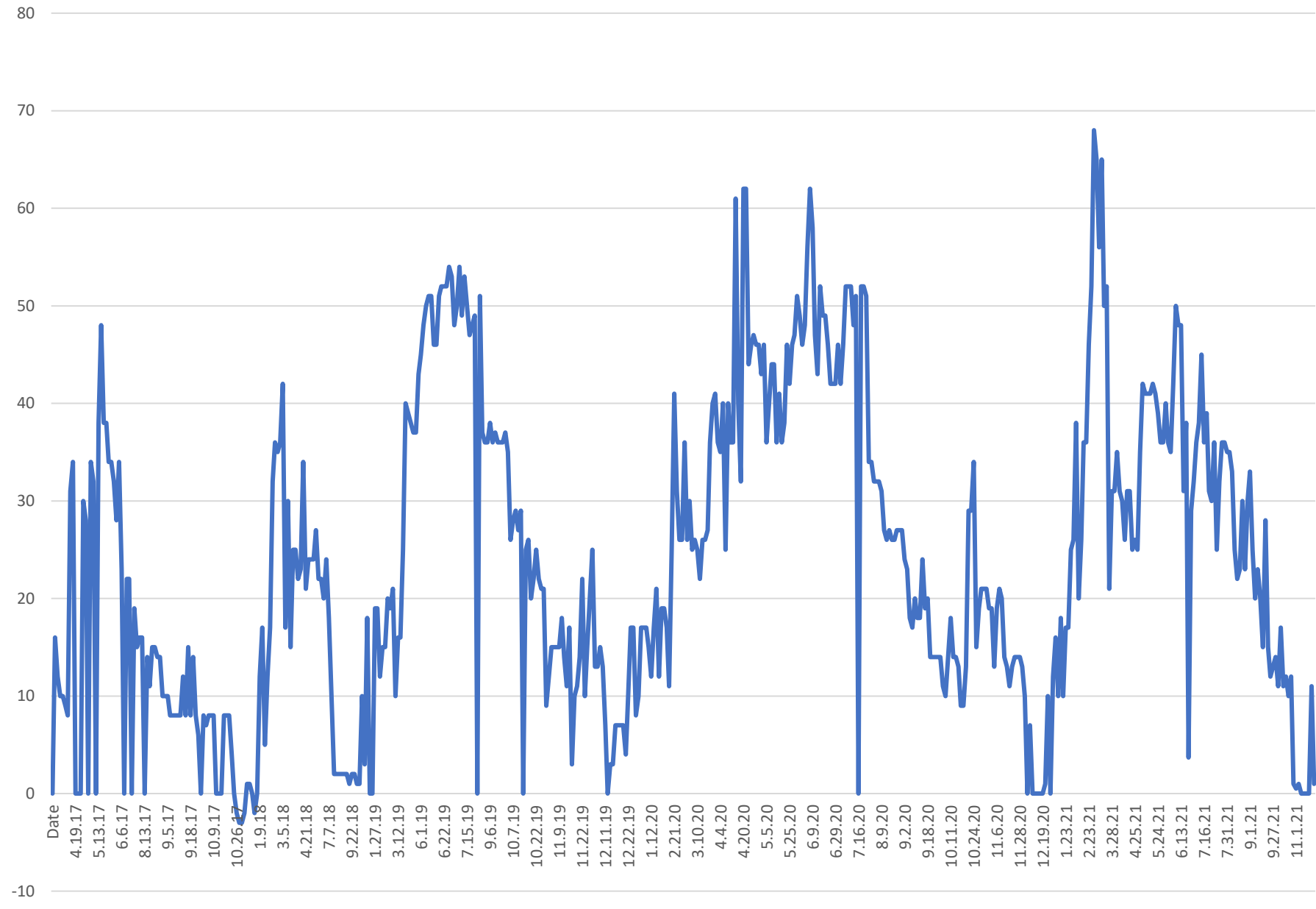
Figure 1

I would not advise anyone to attempt to execute the work required for the safety and success of the task without the use of the proper equipment. Please let me know if you have any further questions. Thank you for your time.

Sincerely,

Mark Ticconi
Director of Operations

Paces





October 25, 2023

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

Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Request for Approval of Emergency Conservation District Use Application (Emerg. CDUA) OA 24-01 Related to the Settlement Agreement for Contested Case CC: OA 21-03 for ENF: OA 21-03 and the Removal of Concrete Shoreline Protection Structure (Unauthorized Seawall) and Installation of Temporary Shoreline Structure Located Makai of 59-175 C Ke Nui Road, Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, Tax Map Key (TMK): (1) 5-9-002:026 (seaward)

Dear Board of Land and Natural Resources:

I. Introduction

Our office represents SEAMAIDS LLC, LIAM MCNAMARA, and BRANDEE MCNAMARA (the “**McNamaras**”). Seamaids LLC owns the residential property located on the North Shore of O‘ahu at 59-175C Ke Nui Road, Hale‘iwa, Hawai‘i, 96712, Tax Map Key No. (1) 5-9-002:026 (the “**Property**”). The McNamaras are long-time residents of the North Shore of Oahu. The McNamaras and the OFFICE OF CONSERVATION AND COASTAL LANDS (“**OCCL**”), of the DEPARTMENT OF LAND AND NATURAL RESOURCES (“**DLNR**”) were scheduled to proceed with a contested case in this matter on May 16, 2022. Dawn. N. S. Chang, Esq. presided over the contested case as hearing officer. The contested case related to emergency repairs to the McNamaras nonconforming seawall following damage caused by Hurricane Douglas. After cooperative, informal settlement discussions, the McNamaras and OCCL/DLNR (collectively, the “**Parties**”) were able to come to a set of mutually agreeable settlement terms prior to the contested case.

The McNamaras are fully committed to complying with the terms of the settlement agreed to by OCCL/DLNR and removing the seawall as quickly as possible. We are respectfully writing to submit testimony with respect to agenda item K-2 (“**Agenda Item**”). Specifically, the Agenda Item requests that the BLNR approve both the Emergency Conservation District Use Application (“**CDUA**”) and the Proposal for Removal of Concrete Shoreline Protection & Installation of Temporary Shoreline Structure (“**Removal Plan**”). We respectfully request that the BLNR approve the Agenda Item in its entirety, including the Removal Plan. The Removal Plan, which OCCL has had since December, 2022 and which we understand OCCL staff recommends that the BLNR approve, allows for the utilization of heavy machinery to remove the seawall fronting the McNamara property.

Board of Land and Natural Resources
October 25, 2023
Page 2

In addition to writing to support the OCCL staff recommendation, we also respectfully request that the BLNR unequivocally approve the use of the heavy machinery specified in the Removal Plan and included in the Agenda Item. Indeed, the Removal Plan submitted to OCCL over ten month ago, and included as the Agenda Item, depends on the approval to use an excavator. As mentioned below, the State's own expert engineer — Bill Bow — has previously submitted an expert opinion that an excavator, and other heavy machinery, is absolutely necessary to construct and/or repair the seawall. It necessarily follows, therefore, that removing the seawall will also require the use of an excavator.

To put it simply, the seawall is massive with parts of it buried deep beneath the sand. There is no access from the Property to utilize machinery and it would not be feasible to manually break down the structure and remove the debris by hand. As outlined by the contractor and engineer for the project, using a jackhammer to break down such a large structure on the beach would create more of a nuisance and risks for the surrounding area and also be completely unfeasible. The only access point is a steep and dangerous public right of way. Based on the below referenced evidence, we respectfully request that the BLNR allow for the use of heavy machinery (with conditions outlined in the Agenda Item) as contemplated in the Removal Plan.

It is important to note and reiterate that the Parties entered into a binding Settlement Agreement that was approved by the Board of Land and Natural Resources (“BLNR”) on August 26, 2022. Under the Settlement Agreement, the McNamaras were promised, among other things: (1) a permit to install a sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean; and (2) a land disposition to allow the McNamaras to remove the seawall and install the aforementioned temporary erosion control structures. The McNamaras well-documented record of submittals and repeated follow up communications to OCCL and Land Division evidences their exhaustive efforts to meet the upcoming December 31, 2023 deadline.

The chart on pages 6-12 of this letter documents the numerous communications from the McNamaras to the State related to the CDUA, Removal Plan and land disposition submittals (approximately 29 separate communications directed to the State in the past year). As discussed below, however, these communications in large part have either been completely ignored or followed by long delays.¹ That fact notwithstanding, the McNamaras want to meet the December 31, 2023 deadline, to the extent possible at this point in time, and urge the BLNR to approve the Agenda Item in its entirety and authorize the McNamaras to use the necessary heavy machinery to remove the structure.

¹ Due to the long delays and non-responsiveness from DLNR, and particularly the land division, additional time to remove the seawall is also warranted. A detailed chart, which the McNamaras have records to support, documenting the McNamaras submittal and follow up history is outlined below. **The McNamaras will make every effort to remove by December 31, 2023 (to the extent possible), but request that the deadline be extended to June 30, 2024 given the below referenced delays.**

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II. Case Background

It is important to note that the McNamaras had legitimate legal defenses to the claims alleged against them in the previously scheduled contested case. Prior to the contested case, the McNamaras alleged, and submitted a significant amount of supporting evidence to advance their argument that the seawall was constructed prior to October 1, 1964 and legally “nonconforming” under *Hawaii Administrative Rules* (“HAR”) 183C-2. As expressed in the Hearing Officer’s Recommendation to Approve Proposed Settlement and Stipulation to Dismiss, for DLNR File No. OA-21-3 (“Hearing Officer’s Recommendation”):

Petitioners submitted sworn witness testimony from a witness who resided at a neighboring residence during the late 1960s to provide testimony in support of their argument that the Seawall predated the existence of the Conservation District in 1964. Petitioners also submitted a photograph with “1957” carved into the base of a neighboring seawall, building permits for that residence filed in the year 1957, witness testimony that the Seawall appeared identically designed and dated in comparison to the neighboring seawall in the late 1960’s, news publications indicating that seawalls were constructed near Sunset Beach in the year 1957, and also records of the Aleutian Tsunami which hit the North Shore of Oahu in March of 1957, to support their argument that the Seawall was a legal nonconforming structure.

See Hearing Officer’s Recommendation, at p. 2, n. 1. In fact, OCCL wrote a letter in 2004 stating that it could not prove the seawall did not exist before 1964 and therefore elected to treat it as nonconforming. If this matter had gone to contested case, the McNamaras would likely have proven the structure to be a legally nonconforming structure. Moreover, the repairs to the structure were — in the McNamaras’ expert’s opinion — well within the allowable repairs for such a nonconforming structure. Indeed, the State’s own expert found that the repairs were only forty four percent of the replacement value of the seawall absent additional costs for safety measures to increase the repair cost estimate.²

There is no question that the seawall was damaged on or around July 26, 2020. The McNamaras provided ample evidence — in the form of weather reports, testimony, and proclamations — that the damage was caused by Hurricane Douglas, which passed by the North Shore of O’ahu during that time. A hurricane cannot adjust the conservation boundary and also creates a situation where emergency repairs are allowed. Following the hurricane damage, the McNamaras began to repair the wall — from inside their property boundary — with poured concrete. OCCL investigated the repairs as a potentially unauthorized use within the Conservation District.³

² HAR § 13-5-7(d) and (e) provide that a nonconforming structure, destroyed or damages, to an extent under fifty percent of its replacement cost at the time of destruction can be legally reconstructed.

³ The Parties negotiated in the Settlement Agreement that “**no factual findings or conclusions of law will be issued in connected with the Contested Case.**” This provision was specifically negotiated to

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The Parties exchanged numerous filings, conducted discovery, and worked up their respective cases effectively. The pre-hearing briefing, written testimony, and extensive exhibit submittals by the McNamaras and the State prove beyond question that *both* sides were well prepared to litigate this matter through a contested case and any appeals that may have followed. Ultimately, the Parties decided to settle the matter.

Rather than litigate, the Parties negotiated an arm's length Settlement Agreement with full recognition of the risks for either side should this matter have gone forward with the scheduled contested case. The only reason that the McNamaras gave up their legal defenses in the contested case, was because DLNR is legally bound to reasonably approve the CDUA, Removal Plan, and contemplated land disposition, to allow for the *timely* removal of the seawall and installation of a temporary burrito structure covering no less space than the size of the seawall. Significantly, during settlement discussions, counsel discussed the need for heavy machinery (i.e. an excavator) to perform the removal of the seawall. Indeed, the Hearing Officer's Recommendation recognized that:

Petitioners are understandably reluctant to remove the Seawall and leave their Property exposed. **They are also concerned with the difficulty of removing the wall and the possibility that removal may be delayed by factors outside of their control.** They will also want to obtain some protection for their Property through the temporary use of sand 'burritos' once the wall is removed. Nevertheless, the Petitioners have expressed that they want to work with and cooperate with OCCL in resolving this matter.

See Hearing Officer's Recommendation, at p. 7 (emphasis added). The Hearing Officer's Recommendation also explained that the if **"circumstances arise which make removal by [December 31, 2023] impossible ... the [McNamaras] can ask the Board for additional time."**

The Hearing Officer's Recommendation aptly stated that:

While this contested case has caused a substantial amount of stress on Petitioners, the Petitioners have expressed their sincere desire to work with OCCL and the Board to resolve this matter.

Id. at p. 3. The Hearing Officer's Recommendation also recognized that if the McNamaras did not prevail at the contested case, then they had a right to appeal the matter which would have taken multiple years. See Hearing Officer's Recommendation, at p. 8. The McNamaras gave up the aforementioned defenses and appellate rights on the binding representation that DLNR would

ensure that there would be no formal findings regarding the conservation boundary based on the opinions provided by the State's expert.

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honor its obligations to reasonably approve the Removal Plan, CDUA and land disposition in a timely and reasonable manner.⁴

The Parties agreed to the following material terms in the Settlement Agreement:

- **A completed permit application will not be unreasonably denied and OCCL will provide its recommendation in favor of issuance of the permit to the Chairperson of the Board or the Deputy Director of the Department upon OCCL’s processing of a satisfactory completed application as discussed herein.**
- **OCCL will recommend that the Oahu District Land Division issue the land disposition.**
- **A satisfactory completed land disposition application will not be unreasonably denied.**
- **If circumstances outside of the Petitioners’ control make it impossible to remove the Seawall or any unpermitted shoreline protection devices by December 31, 2023 (i.e. logistical issues outside of the Petitioners’ control, weather conditions, established inability to secure a contractor to perform the work notwithstanding documented efforts), then Petitioners may petition the Board for additional time.**

⁴ It is a “well-settled rule that the law favors the resolution of controversies through compromise or settlement rather than by litigation.” *Dowsett v. Cashman*, 2 Haw. App. 77, 82-83, 625 P.2d 1064, 1068 (1981). Indeed, public policy in Hawaii dictates that settlement agreements “are binding without regard to which party gets the best of the bargain.” *Sylvester v. Animal Emergency Clinic of Oahu*, 72 Haw. 560, 566, 852 P.2d 1053, 1057 (1992) (citations omitted and emphasis added). Under Hawaii law, settlement agreements are “a species of contract” and are governed by principles of contract law. *Exotics Hawaii-Kona, Inc. v. E.I. du Pont de Nemours & Co.*, 116 Haw. 277, 172 P.3d 1021 (2007). The Settlement Agreement expressly states that any breach of contract action should be filed in Circuit Court. In Hawaii, contractual terms must be interpreted according to their plain, ordinary meaning and accepted use in common speech. *Amfac, Inc. v. Waikiki Beachcomber Inv. Corp.*, 74 Haw. 85, 108, 839 P.2d 10, 24, *reconsideration denied*, 74 Haw. 650, 843 P.2d 144 (1992). The Hawaii Supreme Court has long expressed its disapproval of interpreting a contract such that any provision be rendered meaningless. *Stanford Carr Dev. Corp. v. Unity House, Inc.*, 111 Haw. 286, 297, 141 P.3d 459, 470 (2006) (citing *Reed & Martin, Inc. v. City & County of Honolulu*, 50 Haw. 347, 349, 440 P.2d 526, 528 (1968)). Here, DLNR was obligated to timely process and approve the CDUA, Removal Plan, and land disposition, under a standard of reasonableness. This instilled an obligation for DLNR to avoid unreasonable delays and non-responsiveness. Naturally, the Removal Plan, submitted in December, 2022, and included on this Agenda Item, depends entirely upon the use of heavy machinery.

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III. The McNamara’s Well-Documented Efforts To Comply With The Terms of Settlement

On August 29, 2022, Rachel Beasley of OCCL emailed the parties the “Settlement Agreement signed by the Board of Land and Natural Resources.” Shortly after receiving the executed and approved Settlement Agreement, the McNamaras expeditiously retained a contractor to perform the construction work necessary to remove the seawall and to install the temporary erosion control device agreed to as a term of the Settlement Agreement. In point of fact, on November, 29 2022 our office emailed the former Deputy Attorney General assigned to this matter, Lauren Chun, Esq. and explained that the McNamaras had “retained a contractor, had several site visits, and [were] making strides to get everything prepared and submitted.” Ms. Chun explained that she was transitioning departments and put our office in touch with the new assigned attorney general for the State.

A status call took place on December 1, 2022 with new counsel to discuss the status of the project and the McNamara’s submittals. The following is a non-exhaustive list of the McNamara’s extensive submittal efforts for the CDUA, Removal Plan, and land disposition⁵:

December 21, 2022	Our law firm emailed the State and informed the attorney general that we had “a detailed demolition/removal plan from the contractor retained by the McNamara’s to do the work ... [and] an emergency permit per the settlement agreement to submit[.]” We were instructed that electronic submittals would be accepted by DLNR and sent a message that “[i]f you need hard copies just let me know and I will mail them.” <i>See</i> Enclosure “1”.
December 21, 2022	Significantly, when we inquired on how to submit the documents, the State confirmed “ no need for hard copies[.] ” <i>Id.</i> The McNamaras were therefore instructed to submit electronic submittals to DLNR through the attorney general.
December 22, 2022	The signed Emergency Conservation District Use Application (“CDUA”) and the signed Proposal for Removal of Concrete Shoreline Protection & Installation of Temporary Shoreline Structure (“Removal Plan”) were issued. <i>See</i> Enclosure “2”. Both of the aforementioned documents provided proof that

⁵ The land division was completely non-responsive from March, 2022 through October, 2023 on the issue.

	<p>Mark Ticconi had been retained as the contractor to perform the project. The submittals and proof of retention were accepted by the State. In our firm’s email to the State, we explained that “[a]s discussed, please find the McNamara’s submittals for DLNR prepared by the McNamara’s contractor.” Moreover, the Removal Plan emphasized that “[w]e look forward to moving ahead immediately with this work to meet the December 21, 2023 BLNR deadline.” OCCL would later admit that the “plans were to be submitted by 12/31/2022, [and] this was done and revisions were requested.” Thus, the McNamaras submitted the CDUA, Removal Plan, and proof of contractor retention.</p>
<p>January 19, 2023</p>	<p>OCCL accepted and reviewed the submittals and then a call took place with the State to discuss OCCL’s comments and revisions. <i>See</i> Enclosure “3”. This call took place in January 19, 2023 and revisions were requested by the State. Detailed notes were taken during this call to ensure that all issues by the OCCL planner were addressed in the re-submittal. OCCL would later inform our office that the original planner assigned to the case had resigned from OCCL. We were not notified when this resignation took place.</p>
<p>March 29, 2023</p>	<p>The CDUA and Removal Plan were again submitted to DLNR, through the attorney general, with revisions for all of the topics discussed during the January, 19, 2023 conference. <i>See</i> Enclosure “4”. Notably, under the Settlement Agreement, the McNamaras were not required to submit a long-term plan for erosion management until “one hundred and eighty (180) days of the removal of the Seawall.”</p>
<p>March 29, 2023</p>	<p>The land disposition was provided to DLNR, through the attorney general. The CDUA and Removal Plan were submitted as enclosures contemporaneously with the land disposition for land division’s review. <i>Id.</i></p>

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March 31, 2023	A separate email was sent directly to OCCL staff with the submittals (CDUA, Removal Plan and land disposition). <i>See</i> Enclosure “5”. Our office advised OCCL that “we previously provided these a few months back and had made requested revisions.” We also advised OCCL that we would “email Barry Cheung a copy of the land disposition[.]” <i>Id.</i>
March 31, 2023	Our office provided the land disposition request to land division, along with the Removal Plan and CDUA as accompanying enclosures to be considered as part of the land disposition. <i>See</i> Enclosure “6”. In our communications to Barry Cheung, we included the attorney general and OCCL staff and asked land division to “[p]lease let us know if [we] can provide more information.” <i>Id.</i>
March 31, 2023	OCCL responded and confirmed that that the “plan[s] were to be submitted by 12/31/2022, this was done and revisions were requested.” OCCL accepted the electronic submittal and advised our office that: <u>“We will review these plans next week.”</u> <i>See</i> Enclosure “7”.
April 7, 2023	An email was sent from our office to the attorney general re: the status of the submittals. Also, our firm sought to discuss recording issues at the Bureau of Conveyances re: the Settlement Agreement. We ended up working with a separate attorney general who specializes in recording documents with the Bureau of Conveyances. A specialist in recording documents at the Goodsill firm also assisted. After requesting a certified copy of the agreement from DLNR; attempting to record the Settlement Agreement multiple times in the Bureau of Conveyance; several meetings between the attorney general and the Bureau of Conveyances; and drafting multiple affidavits and other documents to assist with the recording, the McNamaras recorded the Settlement Agreement on title. Critically, the requirement in the Settlement Agreement for recording, on its face, was impossible and did not comply with the Bureau of Conveyance

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	<p>policies. The McNamaras exhausted extensive resources, time and money to get the document recorded. There was no deadline in the Settlement Agreement as to when the document had to be recorded and no pre-condition that this occur before the requisite DLNR approvals would be given.</p>
April 14, 2023	<p>Another status call took place with the State to discuss a few final questions raised by OCCL re: construction logistics. Various final clarifications were requested and given to allow for the approval process to go forward.</p>
July 10, 2023	<p>Our office emailed OCCL staff and the attorney general the following message to “follow up on the status of the permit/approvals for the emergency permit and removal plan related to the McNamara property so that the general contractor can get the project completed. I’ve attached the prior email with the revised materials after the initial December, 2022 submittal and revision process. I’ve also included the contractor in case he can assist in the process. Please let us know if you would like to schedule a meeting to discuss in greater detail.” <i>See</i> Enclosure “8”.</p>
July 10, 2023	<p>Our office emailed Barry Cheung, again, from land divisions, and wrote that we were “writing to follow up on the prior land disposition request in McNamara that was previously transmitted. I’ve included the contractor as well to assist with the process. Please let us know if you need anything else[.]” This email also included the attorney general — DLNR’s agent — assigned to the case. <i>See</i> Enclosure “9”. Notably, land division has accepted electronic submittals for other projects in the past.</p>
July 19, 2023	<p>Five hard copies of the executed land disposition were delivered directly to the Land Division for DLNR.</p>
July 19, 2023	<p>Five hard copies of both the revised CDUA and Removal Plan were delivered to OCCL via hand-delivery.</p>

July 21, 2023	<p>On July 21, 2023, our office wrote the following message to OCCL and the attorney general:</p> <p>“We delivered hard copies of the previously submitted December 22, 2022, and subsequently revised, materials to DLNR earlier this week as requested. We initially submitted signed electronic submittals back in December as instructed. The submittals were received and reviewed by OCCL and revisions were made to address all of OCCL’s requested revisions/comments. We then provided revised copies and had a further discussion with the AG’s office on the revised submittals. In light of the fact that the submittals have been previously reviewed by OCCL and revised in accordance with OCCL’s prior requests, I am hopeful that they can be approved soon.” <i>See</i> Enclosure “10”.</p>
July 21, 2023	<p>A separate email was sent later in the day to the attorney general stating “I’m hopeful the folks at OCCL can process these materials.” <i>See</i> Enclosure “11”.</p>
August 11, 2023	<p>The following email was sent to land division staff:</p> <p>“The land disposition was provided on March 28, 2023. Follow up emails were sent on March 31, 2023 (which contained another copy of the land disposition submittal) and again on July 10, 2023. Hard copies have been delivered as well. Please <i>reasonably</i> process the land disposition.” <i>See</i> Enclosure “12”.</p>
August 11, 2023	<p>A detailed email was sent to OCCL and land division with an extremely detailed history of the prior submittal efforts; information pertaining to long-term mitigation plans for the Property (although this information was not due until the summer of 2024 per the Settlement Agreement) and information about the contractor’s experience with similar projects. The August 11, 2023 email outlined DLNR’s obligations — for OCCL and the land division — and demanded that all materials be immediately processed. <i>Id.</i></p>

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August 11, 2023	Additional hard copies of the Removal Plan and CDUA were delivered to DLNR.
August 16, 2023	OCCL emailed one final request for clarification on the submittals.
August 16, 2023	Within <i>one hour and fifteen minutes</i> our office contacted our contractor for clarification and provided a responsive email in an effort to encourage OCCL to move forward. <i>See</i> Enclosure “13”.
August 24, 2023	A follow up email was sent to OCCL staff, following another phone conference with the attorney general, asking for a status update and to follow up on the approval process. <i>See</i> Enclosure “14”.
August 24, 2023	OCCL emailed our office to assure us that “OCCL is moving forward with processing the subject matter.” <i>Id.</i>
During the week of September 11, 2023	Our office followed up with a phone call to land division on the land disposition.
September 28, 2023	A follow up email was sent to the attorney general and a status conference call was set for the following day. <i>See</i> Enclosure “15”.
October 10, 2023	A follow up email was sent to the attorney general and a call was scheduled for the following day. <i>See</i> Enclosure “16”.
October 10, 2023	Our office <i>again</i> called land division directly. We were informed that land division was targeting the October 27, 2023 BLNR meeting, but that there were no guarantees. We expressed the urgency that land division take action and why heavy machinery was necessary and included in the Removal Plan.
October 11, 2023	Our office provided land division staff with the State’s engineering report, submitted in the contested case, that specified an excavator as required equipment to construct the seawall and make repairs and also contained the State’s estimated quantities for the seawall. Digging down twenty to thirty feet into the sand to remove a massive seawall is not feasible by hand. Breaking down all of the large quantities on the beach would create much more of a nuisance; environmental concerns;

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	and frankly be impossible. <i>See</i> Enclosure “17”.
October 11, 2023	Our office emailed the attorney general discussing our interpretation of the settlement contemplating the use of heavy machinery as a material term of settlement. <i>See</i> Enclosure “18”.
October 12, 2023	Land division confirmed receipt of the Bow Engineering report. <i>See</i> Enclosure “43”
October 13, 2023	Our office transmitted a number of articles depicting approved heavy machinery on the beach for other projects. The attorney general confirmed that this information was forwarded to land division. <i>See</i> Enclosure “19”.
October 19, 2023	A phone call was made from Peter Young to Barry Cheung to urge land division to put the land disposition on the agenda for this upcoming meeting and outlining the need for heavy machinery. Mr. Young again stressed the upcoming deadline and urged land division to take action.

IV. The McNamara’s Request With Respect To The Agenda Item

The McNamaras are extremely motivated to meet the upcoming December 31, 2023 deadline and work towards complying with the terms and conditions of the Settlement Agreement. This fact is made abundantly clear by the well-documented history outlined above. The McNamaras are appreciative of OCCL’s staff recommendation that the BLNR “approve Emergency CDUP OA24-01 for the Removal of Concrete Shoreline Protection Structure (Unauthorized Seawall and erosion control materials) and Installation of Temporary Shoreline Structure.” The McNamaras respectfully request that the BLNR follow the staff recommendation and approve the Removal Plan and CDUA, including the use of the heavy machinery listed in Removal Plan and included on the Agenda Item.

As indicated in the testimony of the contractor and engineer engaged to for the project, the use of heavy machinery is the only feasible means to remove the seawall. Moreover, a prolonged (multiple months) jackhammering project to break down such a large structure into wheelbarrow size fragments would create the risk of more debris, nuisance, and potential concerns for the surrounding area.

Prior to the contested case and settlement, OCCL submitted a report from Bow Engineering & Development, Inc. (“Bow Report”). The Bow Report was dated April 16, 2022. Critically, the Bow Report had estimates for constructing the original seawall and alleged

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additional materials added to repair the nonconforming seawall. The Bow Report specified the equipment that would be necessary to construct and repair the seawall as well. In particular, the Bow Report specified the following necessary equipment for the project: “**Excavator + hammer, mini-exc., loader, forklift, misc. tools[.]**” See Enclosure “20”. For safety measures, the Bow Report recommended “**excavators [and] loader[.]**” Therefore, the State’s own expert engineer opined that heavy machinery would be necessary to both construct and repair the seawall. Given the foregoing, it is illogical and unreasonable for anyone from DLNR to now claim that heavy machinery is not necessary to safely deconstruct and remove the seawall.

In the Bow Report, the State’s expert also estimated the quantities and materials in the seawall. Importantly, Bow Engineering referenced the following as materials in the existing seawall:

- Cylindrical Concrete Footing (5 footings, 30’ Diameter x 6’ Depth)
- Concrete Footing (50’ L, 3 courses)
- 120 CMU Blocks (50’ L, 3 courses)
 - The Bow Report estimates three rows of CMU blocks (8’ x 8’ x 16”) stacked on the large footings that were 2.5 feet in diameter.
- Concrete Pillars (5 -12’ x 12’ x 60’ H)
- 10 Large Wood Pile (telephone pole)
- 300 Wood Planks (50’ L x 10’ D, 6 rows high)
 - “Each exposed wood beam was extremely weathered and cracked, however the size was estimated to be approximately 10-in in diameter and likely ranged in lengths of 5-15 ft[.]”
- 40 cubic yards of estimated exposed concrete added to the original seawall. 25 cubic yards of concrete, CMU, and wood also specified as pre-existing in the structure. 65 cubic yards of construction material estimated in total and largely buried deep beneath the sand.

It is obvious from the Bow Report — a report that the State relied on to estimate the quantities and volume of the construction materials making up the structure and the heavy machinery necessary to repair the seawall — that heavy machinery is absolutely necessary to perform the removal. Requiring the McNamaras to remove the materials by hand — by jackhammering all of these materials into small pieces capable of fitting in a wheelbarrow and then manually transporting the materials across the beach and up the steep right of way — would render the project completely unfeasible. This is particularly true given the short timeframe remaining to effect the removal which has been made all the more impossible to accomplish given the unnecessarily long delay in getting this matter on calendar.

As emphasized in the written testimony from engineer Dennis Poma and contractor Mark Ticonni, using machinery for the project is the only feasible means to remove the shoreline structure. Crushing these materials down into small manageable fragments on the beach would

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create much more debris and nuisance in the area. It simply doesn't make sense, given the circumstances of this case and the legally binding understandings previously reached with DLNR upon which the McNamaras relied in deciding to settle this matter in the first place, to not allow them to use heavy machinery to perform the work.

In light of the above, we respectfully request that the BLNR approve both the Removal Plan with the use of heavy machinery as expressed in the Agenda Item and the CDUA. The McNamaras want nothing more than to remove the seawall by December 31, 2023, but the large periods of delay by DLNR and unresponsiveness by land division as established by the timeline above have created a situation where said removal may be impossible in the time remaining before the December 31, 2023 deadline. If this is the case, then the McNamaras will need additional time to remove the seawall (until June 30, 2024), and barring the granting of that request, will proceed with a Circuit Court action against DLNR for breach of the Settlement Agreement. We hope that will not be necessary.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL



Forest B. Jenkins

Enclosures

Cosgrove, Todd T.

From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Wednesday, December 21, 2022 3:56 PM
To: Jenkins, Forest B.
Subject: Re: McNamara

Caution: external email

No need for hard copies!

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Wednesday, December 21, 2022 3:24:14 PM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] RE: McNamara

Thanks Miranda. I think I'll send electronic copies if that works. Thanks for helping! If you need hard copies just let me know and I will mail them.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Wednesday, December 21, 2022 3:02 PM
To: Jenkins, Forest B. <fjenkins@goodsill.com>
Subject: RE: McNamara

Caution: external email

Hi Forest,

You can send me the signed documents and I'll send them to OCCL. Are you sending me hard copies or electronic? If you're sending hard copies, could you also send me an electronic copy? Thanks so much!

Happy Holidays!

Miranda C. Steed

Deputy Attorney General
Land Division

465 South King Street, Suite 300
Honolulu, Hawaii 96813
E Mail: miranda.c.steed@hawaii.gov

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Wednesday, December 21, 2022 9:19 AM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] McNamara

Hey Miranda:

I received a detailed demolition/removal plan from the contractor retained by the McNamara's to do the work. I also received an emergency permit per the settlement agreement to submit to you guys this week. What is the best method of submittal. Can I simply send you the signed documents? Have a great trip.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Thursday, December 22, 2022 10:38 AM
To: Steed, Miranda C
Subject: Re: McNamara
Attachments: McNamara_Emergency-CDUA_12_13_22.pdf; McNamara_DLNR_Seawall Removal Plan_12_20_22.pdf; 11293893 - McNamara Settlement Agreement.pdf

Miranda:

I hope you're doing well. As discussed, please find the McNamara's submittals for DLNR prepared by the McNamara's contractor. Please let me know if you have any issues accessing the documents and materials. I've also attached the settlement agreement for reference. Have a wonderful time in California and we hope you and the folks at DLNR have a great holidays!

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Thursday, December 22, 2022 10:53 AM
To: Jenkins, Forest B.
Subject: Re: Re: McNamara

Caution: external email

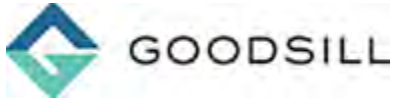
Thanks so much, Forest! Happy Holidays!

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Thursday, December 22, 2022 10:38:24 AM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] Re: McNamara

Miranda:

I hope you're doing well. As discussed, please find the McNamara's submittals for DLNR prepared by the McNamara's contractor. Please let me know if you have any issues accessing the documents and materials. I've also attached the settlement agreement for reference. Have a wonderful time in California and we hope you and the folks at DLNR have a great holidays!

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Wednesday, March 29, 2023 9:32 AM
To: 'Steed, Miranda C'
Subject: McNamara Updated Submittals
Attachments: McNamara_Emergency-CDUA_2_27_23.pdf; McNamara_DLNR_Seawall Removal Plan_2_27_23.pdf; State of Hawaii_Revocable Permit Application_McNamara_3_7_23.docx

Hey Miranda:

Please find the updated McNamara submittals for your review. Please let us know if you have other requests or if they are acceptable. Thanks for your help on this one.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Friday, March 31, 2023 4:29 PM
To: Mills, Kimberly T
Cc: Steed, Miranda C
Subject: FW: McNamara Updated Submittals
Attachments: McNamara_Emergency-CDUA_2_27_23.pdf; McNamara_DLNR_Seawall Removal Plan_2_27_23.pdf; State of Hawaii_Revocable Permit Application_McNamara_3_7_23.docx

Hey Tiger:

Here are the documents that I provided to Miranda earlier in the week. For background, we previously provided these a few months back and had made requested revisions. Please let us know if OCCL requires further revisions or if we should set a meeting. I included Miranda to this email as well for convenience. I'll email Barry Cheung a copy of the land disposition word document as well. Thanks.

Forest B. Jenkins



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From: Jenkins, Forest B.
Sent: Wednesday, March 29, 2023 9:32 AM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: McNamara Updated Submittals

Hey Miranda:

Please find the updated McNamara submittals for your review. Please let us know if you have other requests or if they are acceptable. Thanks for your help on this one.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Friday, March 31, 2023 4:46 PM
To: Cheung, Barry W
Cc: Steed, Miranda C; Mills, Kimberly T
Subject: McNamara Land Disposition
Attachments: State of Hawaii_Revocable Permit Application_McNamara_3_7_23.docx; McNamara_Emergency-CDUA_2_27_23.pdf; McNamara_DLNR_Seawall Removal Plan_2_27_23.pdf

Hello Barry:

I'm in the process of getting the documents submitted/revised for the McNamara project. I've included a copy of the draft land disposition and other documents. These are currently under review with OCCL as well. I wanted to send a copy to the land division as well. Please let me know if I can provide more information. Thanks.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Mills, Kimberly T <kimberly.mills@hawaii.gov>
Sent: Friday, March 31, 2023 5:04 PM
To: Jenkins, Forest B.
Cc: Steed, Miranda C
Subject: RE: McNamara Updated Submittals

Caution: external email

Will review these plans next week.

Per the settlement agreement:

- (a) plans were to be submitted by 12/31/2022, this was done and revisions were requested
- (b) By March 31, 2023, proof that contractor has been retained. While I note Mark Ticconi of Gundaker Works, LLC is listed, no 'proof' of retention is presented. Can you provide 'proof' **NOW**?

Has this settlement agreement been recorded at the Bureau of Conveyances?

~Tiger

K. Tiger Mills, Staff Planner
State of Hawai`i
Department of Land and Natural Resources
Office of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai`i 96809
www.dlnr.hawaii.gov/occl

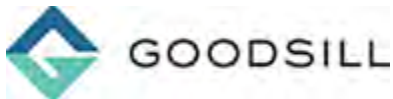


From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Friday, March 31, 2023 4:29 PM
To: Mills, Kimberly T <kimberly.mills@hawaii.gov>
Cc: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] FW: McNamara Updated Submittals

Hey Tiger:

Here are the documents that I provided to Miranda earlier in the week. For background, we previously provided these a few months back and had made requested revisions. Please let us know if OCCL requires further revisions or if we should set a meeting. I included Miranda to this email as well for convenience. I'll email Barry Cheung a copy of the land disposition word document as well. Thanks.

Forest B. Jenkins



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From: Jenkins, Forest B.

Sent: Wednesday, March 29, 2023 9:32 AM

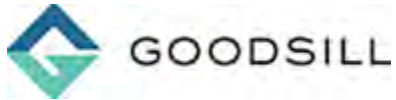
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>

Subject: McNamara Updated Submittals

Hey Miranda:

Please find the updated McNamara submittals for your review. Please let us know if you have other requests or if they are acceptable. Thanks for your help on this one.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Monday, July 10, 2023 4:43 PM
To: 'Mills, Kimberly T'
Cc: 'Mark Ticconi'; 'miranda.c.steed@hawaii.gov'
Subject: McNamara Submittals
Attachments: FW: McNamara Updated Submittals ; Re: McNamara ; RE: McNamara

Good afternoon:

I am writing to follow up on the status of the permit/approvals for the emergency permit and removal plan related to the McNamara property so that the general contractor can get the project completed. I've attached the prior email with the revised materials after the initial December, 2022 submittal and revision process. I've also included the contractor in case he can assist in the process.

Please let us know if you would like to schedule a meeting to discuss in greater detail. I appreciate your time on this matter. Thanks.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Monday, July 10, 2023 4:45 PM
To: 'Cheung, Barry W'
Cc: 'miranda.c.steed@hawaii.gov'; 'Mark Ticconi'
Subject: McNamara Land Disposition
Attachments: McNamara Land Disposition

Hello Barry:

I hope this email finds you well. I am writing to follow up on the prior land disposition request in McNamara that was previously transmitted. I've included the contractor as well to assist with the process. Please let us know if you need anything else and we appreciate your review and assistance in the process. Thanks.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Friday, July 21, 2023 4:47 PM
To: 'Mills, Kimberly T'; 'Cain, Michael'
Cc: 'Mark Ticconi'; 'Steed, Miranda C'
Subject: RE: McNamara Submittals
Attachments: Re_ McNamara.eml; McNamara Contract.pdf; Re: McNamara

Good afternoon:

We delivered hard copies of the previously submitted December 22, 2022, and subsequently revised, materials to DLNR earlier this week as requested. We initially submitted signed electronic submittals back in December as instructed. The submittals were received and reviewed by OCCL and revisions were made to address all of OCCL's requested revisions/comments. We then provided revised copies and had a further discussion with the AG's office on the revised submittals. In light of the fact that the submittals have been previously reviewed by OCCL and revised in accordance with OCCL's prior requests, I am hopeful that they can be approved soon. I've also included an executed signature page from the previously submitted proposal as requested. The McNamaras originally retained Gundaker Works, LLC as demonstrated on the December 22, 2022 submittals. As explained in my prior email, the McNamaras subsequently retained Mark's company to perform the work.

Please let us know if you need anything else from us. I have included Mark on this email thread in case you have questions that need to go through him. We appreciate your time and efforts. We are available to discuss anything in greater detail with you. Thank you for your efforts and have a nice weekend.

Forest B. Jenkins



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From: Jenkins, Forest B.
Sent: Monday, July 10, 2023 5:56 PM
To: 'Mills, Kimberly T' <kimberly.mills@hawaii.gov>
Cc: Mark Ticconi <markticconi.mdt@gmail.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>; Cain, Michael <michael.cain@hawaii.gov>
Subject: RE: McNamara Submittals

Hi Tiger:

We are of course fine providing hard copies of the previously submitted materials. That can and will be done this week. The McNamaras were initially using and retained Gundaker, but elected to use Mark with his new company to perform the work. He has been retained. We provided the new contract several months ago, but will address the issue presented in your email asap.

We've tried to record the settlement agreement several times with the Bureau and have requested a certified copy of the settlement agreement from DLNR so that the Bureau will record the document. A settlement agreement needs to be certified to be recorded at the Bureau. The Bureau bounced the prior recording attempts for this reason (needing a certified copy rather than a received stamped copy). We intend to record the document as soon as we get a version that the Bureau will accept and have tried to record the document multiple times.

Our goal has been to work with DLNR on this project. I'll get the hard copies sent over to Michael this week. Thanks for your response.

Forest B. Jenkins



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From: Mills, Kimberly T <kimberly.mills@hawaii.gov>
Sent: Monday, July 10, 2023 5:24 PM
To: Jenkins, Forest B. <fjenkins@goodsill.com>
Cc: Mark Ticconi <markticconi.mdt@gmail.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>; Cain, Michael <michael.cain@hawaii.gov>
Subject: RE: McNamara Submittals

Caution: external email

Forest,
Please send in **SIGNED** hard copy of what is being applied for.
Address matters to Michael Cain, Administrator Office of Conservation and Coastal Lands

As we each get over a hundred emails a day and matters could get overlooked per our website:
"Applications can be dropped off, or mailed to 1151 Punchbowl, Room 131, Honolulu, HI 96813.
Do not email applications.
We require hard copies for our files, and will no longer be printing them out for applicants."

In response to your 3/31/2023 email, I stated the below and did not get a response:

"Per the settlement agreement:

- (a) plans were to be submitted by 12/31/2022, this was done and revisions were requested

(b) By March 31, 2023, proof that contractor has been retained. While I note Mark Ticconi of Gundaker Works, LLC is listed, no 'proof' of retention is presented. Can you provide 'proof' **NOW**? Has this settlement agreement been recorded at the Bureau of Conveyances?"

Per your 5/7/2023 Email, to Miranda, it appears Mr Ticconi created a new entity and forwarded a incomplete agreement as the McNamarras have not signed the agreement so proof of retention is unclear. Please provide evidence of recordation with the signed hard copies of application

~Tiger

K. Tiger Mills, Staff Planner
State of Hawai`i
Department of Land and Natural Resources
Office of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai`i 96809
www.dlnr.hawaii.gov/occl



From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Monday, July 10, 2023 4:43 PM
To: Mills, Kimberly T <kimberly.mills@hawaii.gov>
Cc: Mark Ticconi <markticconi.mdt@gmail.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] McNamara Submittals

Good afternoon:

I am writing to follow up on the status of the permit/approvals for the emergency permit and removal plan related to the McNamara property so that the general contractor can get the project completed. I've attached the prior email with the revised materials after the initial December, 2022 submittal and revision process. I've also included the contractor in case he can assist in the process.

Please let us know if you would like to schedule a meeting to discuss in greater detail. I appreciate your time on this matter. Thanks.

Forest B. Jenkins



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Cosgrove, Todd T.

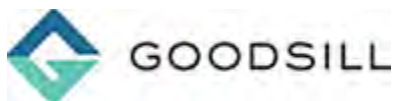
From: Jenkins, Forest B.
Sent: Friday, July 21, 2023 4:51 PM
To: 'Steed, Miranda C'
Subject: FW: McNamara Submittals

I'm hopeful the folks at OCCL can process these materials

REDACTED

I had a meeting with Kenory for another case and she said that you had a big hearing today with Judge Tonaki. I hope that went well for you!

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Friday, August 11, 2023 10:52 AM
To: Fitzpatrick, Trevor J; Steed, Miranda C; Saffery, Edmund K.
Cc: Cain, Michael; Cheung, Barry W; Anderson, Rebecca L; Hirokawa, Ian C; Cosgrove, Todd T.
Subject: RE: McNamara Seawall Removal Plan & Emergency CDUA
Attachments: McNamara_Emergency-CDUA_2_27_23 updated 8.11.2023.pdf; McNamara_DLNR_Seawall Removal Plan_2_27_23 updated 8.11.2023.pdf; Re_ McNamara.eml; RE: McNamara Updated Submittals; IMG_0963.jpg; Re: McNamara ; FW: McNamara Updated Submittals

Trevor:

Thanks for your comments. Please find my responses in red below and the revised submittals attached. Hard copies will be delivered to your office as well. Each issue in your email was addressed in the revisions and comments below. Have a nice weekend.

EMERGENCY CDUA

The application is incomplete please include information regarding:

- Other proposed mitigation measures
- Future response plans (see below **Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure** as well)

After initially submitting the CDUA in December of 2022, we discussed OCCL's then requested revisions with the Deputy Attorney General ("AG") assigned to the case in January of 2023. A second submittal was made in March, 2023 (with the requested revisions) and another discussion took place in April regarding that submittal. A detailed synopsis of the submittal history, which is well documented, is below.

Significantly, the settlement agreement requires a "permit to install a sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean (or in other words no less protected space than that which was protected by the Seawall)" and under the settlement agreement OCCL cannot unreasonably deny the McNamara's permit request or land disposition. This term was a significant material term of the settlement between the parties. Therefore, the State has already contractually agreed to allow the McNamaras to install a structure that sufficient in size to protect "no less protected space than that which was protected by the Seawall[.]" This diminishes the applicability of the other proposed mitigation measures section. With respect to future response plans, the parties have expressly set the deadline for this information (long-term future response plan) to six months after the removal deadline. Prior discussions with the AG and revisions were completed to address previous comments on this issue.

With that having been said, we are more than happy to accommodate the new requests for supplementation and appreciate your comments. We hereby submit a revised CDUA and removal plan (which will be delivered to OCCL). In particular, content to address the information identified above has been added and was prepared by the Dennis Poma, P.E. (License No. PE-10776). Mr. Poma is a civil engineer who was retained by the McNamaras to assist with the long-term plan required in the summer of 2024. Mr. Poma has extensive experience with respect to coastal management projects. Mr. Poma has thirty years of environmental and civil engineer experience and twenty-four as the lead civil on key projects. We are hopeful that the revisions to the CDUA, prepared by Mr. Poma who was retained to address the required 2024 long-term plan, are sufficient for your department to reasonably process and approve the submittals.

SETTLEMENT AGREEMENT (CC OA 21-3, ENF: OA 21-3)

Please see attached settlement agreement with selected items highlighted. Noted dates/deadlines are summarized below.

- July 31, 2022:** Recommended to submit Emerg. CDUA to OCCL
- OCCL received *July 19, 2023*
- December 31, 2022:** Submit Removal and Demolition Plan
- OCCL Received *July 19, 2023*

The settlement agreement itself was not approved by the BLNR until August 26, 2022. Upon receiving confirmation that the BLNR approved the settlement agreement, the McNamaras quickly and diligently retained a contractor to assist them with the removal plan and CDUA. Our office submitted the CDUA and Removal Plan on December 22, 2022 to the AG assigned to the case who accepted service for OCCL. The aforementioned submittals were submitted electronically. Significantly, when I inquired to the AG on how to properly submit the aforementioned submittals to DLNR/OCCL and comply with the December 31, 2022 deadline, I received the following instruction: **“[y]ou can send me the signed documents and I’ll send them to OCCL[.]”** See Attached Email. When I followed up to inquiry if hard copies were required, I was instructed that there was **“[n]o need for hard copies[.]”** See Attached Email. There is no doubt that the McNamaras therefore submitted electronic copies as instructed by the State and well before the December, 31, 2022 deadline.

The AG then transmitted the submittals to OCCL in December, 2022 for review. OCCL accepted and reviewed the submittals and then a call took place at the request of the State to review the comments/revisions from OCCL. This call took place in January, 2023 and revisions were requested by the State. The McNamaras resubmitted the submittals in March to address the then requested revisions provided by the State. OCCL confirmed that this deadline was met in a March email that stated **“plans were to be submitted by 12/31/2022, this was done and revisions were requested[.]”** See Attached Email. In March, we learned for the first time that the planner who reviewed the initial submittals had apparently left OCCL.

During a call with OCCL staff in March, I was verbally instructed to email the submittals and then received confirmation that OCCL **“[w]ill review these plans next week[.]”** See Attached Email. Naturally, we waited for the promised and anticipated response.

A non-exclusive list of the issues previously addressed at OCCL’s request are below for your review. Another phone conference again took place in April, 2023 with the AG’s office to address a few minor remaining issues after this second submittal process took place. We provided the State with comments and feedback at that time.

In the March, 2023 revisions the McNamaras addressed a number of issues (at the request by the AG generated by OCCL), including, but not limited to the following:

- Adding the requested width to maintain safe public transit past the makai side of the property during construction activities to the removal plan (this was a specific request from OCCL and is not otherwise noted as a requirement in the settlement agreement or elsewhere);
- Referencing language re: necessary approval for the staging area from the City and County of Honolulu in the removal plan (notably in prior conversations with the AG’s office I have explained that we need to have the submittals approved by DLNR before obtaining county approval);
- Adding that the original structure and the “existing unauthorized structures” will be removed to add detail to confirm that the McNamaras were removing the other burritos, sand bags, etc. mentioned in the settlement agreement in the removal plan and this was also made clear in previous conversations with the AG’s office;
- The CDUA was updated to explain that we would work with a costal engineer and consultants to develop a long-term solution for sufficient shoreline management. It was explained that this should be sufficient to address the future response plan requirement in the CDUA as we would submit a long-term

plan in the summer of 2024. As explained below, the McNamaras have in fact retained a coastal engineer to assist with this process;

- We address comments in the CDUA related to the revetment design and construction to mention safe lateral transit at the request of the AG on behalf of OCCL;
- We previously provided an added definition in the CDUA to explain and define what the soil anchors are. In particular, we added a previously requested revision to explain that “soil anchors (comprised of galvanized and stainless steel to resist failure) driven into the property along the top of the bank. The soil anchors add a necessary level of reinforcement to ensure the system remains intact during its installation. Failure to install an anchoring system could result in the failure of the system and a very difficult recovery and removal task.”
- Revisions were added to the plans embodied in the removal plan and CDUA at the prior request of OCCL in January, 2023 after submitting the materials in December, 2022.

Now, we have worked expeditiously to address the new and most recent requested revisions with the hope that the CDUA and Removal Plan will be expeditiously and *reasonably* reviewed and approved to allow the McNamaras to move forward with the project.

Notably, the State and the McNamaras are legally bound to the terms and conditions set forth in the settlement agreement. The State has already contractually agreed that the McNamaras will be allowed to install a “sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean (or in other words no less protected space than that which was protected by the Seawall).” An express term of settlement agreement is that the permit application and land disposition will not be unreasonably denied by the State. The State is legally bound under contract to an objective reasonableness standard in its review and approval process. The McNamaras are simply attempting to remove the structure and comply with OCCL’s demands and the settlement agreement.

March 31, 2023: Submit proof that they have retained contractor. Recommended that McNamara’s obtain a land disposition by this date or earlier.

- OCCL received via email from Dept AG *May 19, 2023* (proof of contractor)

As explained above, the McNamaras submitted formal submittals on December 22, 2022 and receipt was confirmed by the State that same day. At that time, it was unequivocally clear that the McNamaras had retained a contractor because the contractor licensing information was listed and identified on both of the submittals. A licensed contractor in Hawaii prepared and submitted the materials. The proof of retention provision was in place for *if* the McNamaras had not retained a contractor to assist with the submittals (i.e. CDUA and removal plan). Notably, the pre-requisites set forth in the settlement agreement do not require that the removal plan actually name/identify a retained contractor. In this particular case, the McNamaras provided OCCL with the contractor’s licensing information and the contractor prepared the submittals in December, 2022.

There are no set specifications (i.e. guidelines/criteria for the what type of proof is required) for proof of retention in the settlement agreement. The settlement agreement itself was drafted by the State and this was a term specifically provided by the State. *See Yogi v. Hawaii Med. Serv. Ass’n*, 124 Haw. 172, 177, 238 P.3d 699, 704 (Ct. App. 2010) (in interpreting contracts, ambiguous terms are construed against the party who drafted the contract). If the State is taking the position that an actual proposal was required, then this should have been mentioned in the settlement agreement. That fact notwithstanding, in an effort to keep the project moving we previously provided an executed proposal to OCCL (with signatures from both parties (ie. contractor and the clients) and this should already be in the State’s file.

- Appears LAND received via email *March 31, 2023* (land disposition request)

The land disposition was provided on March 28, 2023. Follow up emails were sent on March 31, 2023 (which contained another copy of the land disposition submittal) and again on July 10, 2023. Hard copies have been delivered as well. Please *reasonably* process the land disposition.

December 31, 2023: Remove seawall and all other unpermitted shoreline protections devices (e.g. any sand bags, sand “burritos”, and sand blankets). Submit fine payment and/or proof that removal costs offset/exceed fines.

June 28, 2024: Submit long-term plan or solution for erosion management (180 days from removal of seawall)

In preparation to meet this deadline the McNamaras have already retained a civil engineer to develop a long-term plan or solution for erosion management. Mr. Poma has extensive experience with respect to coastal management projects. In point of fact, Mr. Poma has thirty years of environmental and civil engineer experience and twenty-four as the lead civil on key projects.

These dates were agreed to with the expectation that your clients would have obtained all the required authorizations and started the demo and removal work this summer, and not jeopardize meeting the December 31, 2023 deadline.

According to Section B. SETTLEMENT TERMS 7., a cursory review of the Bureau of Conveyance’s website indicates that the **settlement agreement has not been recorded at the BOC.**

With respect to the settlement agreement, we have attempted to record on multiple occasions. Notwithstanding the fact that OCCL requested this term for inclusion in the settlement agreement, satisfying the term (e.g. recording) has so far proven impossible. In fact, we’ve tried to record the settlement agreement on at least four prior occasions and utilized several different methods. We’ve been working with the State’s Attorney General Daniel Morris who specializes with recordings at the bureau of conveyances and land court, along with a paralegal in our law firm who also specializes in recording documents. We are still running into issues.

Notably, there is no deadline for recording the settlement agreement. Critically, there is absolutely no term in the settlement agreement that this needs to happen before OCCL approves the submittals. Rather, the critical standard in the settlement agreement is that the CUA and land disposition “will not be unreasonably denied and OCCL[.]” That fact notwithstanding, we are working with the attorney general who specializes in bureau recordings and still have not been able to get the settlement agreement recorded despite requesting a certified copy from DLNR and trying other methods. We are working on a plan that we think will prove fruitful that involves utilizing a notarized affidavit and certified copy of the settlement agreement. We expect to record within the next week or two if things go well. If not, then we will continue to work with the AG’s office to record the document at the bureau.

PROOF OF CONTRACTOR to carry out Removal and Demolition Plan

- It appears the submitted Proof of Contractor is **not signed by** the McNamara’s.

OCCL was previously provided the signed proposal by both parties. This has already been sent to OCCL and should be in the file. The McNamaras have also issued a check in the amount of ten thousand dollars as an initial payment for the work. A copy of the check is attached.

- Additionally, it appears that the contractor was involved in a number of installations of erosion control structures that are now the subject of enforcement investigations.

There are not many contractors on Oahu who have experience in constructing soft erosion control devices. Mr. Ticconi has worked in conjunction with DLNR on numerous other projects, involving removal and replacement, to corrective violations. See OA 20-38. Mr. Ticconi actually took on the design role for this project which involved removal and rebuilding of a shoreline structure. We would also point out that Mr. Ticconi is licensed in the State of Hawaii. A large

number of these projects are performed by unlicensed contractors. The McNamaras have engaged a license contractor and engineering firm as assist them with this project.

Mr. Ticconi substantial experience on building soft shore structures on the island. Notably, soft shoreline structures are a unique field and Mr. Ticconi has extensive experience in designing soft erosion control devices and has prior experience working with Sam Lemmo on other projects with DLNR. Notably, there is no term in the settlement agreement as to whom the McNamaras must retain for the project.

Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure (and Emergency Conservation District Use Application)

- The **SETTLEMENT AGREEMENT** Section B. **SETTLEMENT TERMS** 1. **Removal of shoreline structures**, states, in part: *The Petitioners shall remove the Seawall and all other unpermitted shoreline protection devices (e.g. any sand bags, sand “burritos”, and sand blankets) by December 31, 2023.*
 - The submitted Removal and Demolition Plan and Emerg. CDUA make no mention of removal of the other unpermitted shoreline protection devices installed in the shoreline area fronting the McNamara’s property. Address the removal of all other unpermitted shoreline protection devices (e.g. any sand bags, sand “burritos”, and sand blankets).

Prior revisions were made to address this issue and multiple discussions were had with the AG to confirm this in the past. This is a term of the settlement agreement and the McNamaras have to remove the burritos, sand bags and sand blankets. To add clarify further revisions will be made to make this crystal clear.

- OCCL has showed some leniency in not pursuing additional enforcement actions for the alleged unauthorized installation of shoreline protection devices with the understanding that they would be removed pursuant to the settlement agreement.

Under Hawaii law, these issues have been expressly negotiated by counsel and settled pursuant to a global good faith settlement agreement between the State and the McNamaras.

The settlement agreement is clear that “[t]his Agreement constitutes a global settlement between OCCL and the Petitioners as to all enforcement actions that OCCL has brought or could have brought against Petitioners in connection with the Property[.]” Pursuing additional enforcement measures would breach this material term of the settlement agreement.

A. Removal of the Existing Concrete and Timber Shoreline Installation

- The Demo and Removal Plan notes that your clients and their agents are proposing to use the public shoreline access Right-of-Way.
 - Have they consulted with DPP and DPR regarding using the ROW?
 - Cursory conversations with DPR indicate this ROW is closed.

The McNamaras need to secure the approvals from OCCL before the contractor can go to the county (Parks and Recreation) and request approval to use the right-of-way (“ROW”). Indeed, the ROW is closed for the public, but not for construction activities. The fact that it is closed for pedestrians currently does not prohibit its use for construction activities and is actually beneficial from a safety standpoint.

After resubmitting the December 2022 revised submittals this past March, I had conversation with the AG on the case in April and we discussed this issue. I explained that the contractor needs to get the submittals approved (CDUA) before going to the county. We discussed the ROW issue, and both recognized, that this is a county jurisdictional issue. Mr. Ticconi has dealt with this issue before and the county will ask if the State has issued its permit. During my discussion with the AG’s office in April, 2023, I mentioned that we needed to expedite the approvals from the State so that our contractor could go to the county. This is a county jurisdictional issue.

From Mr. Ticconi's past experience, approval from the county is relatively quick to obtain but is contingent on a permit or approved authorizations from the State. This was previously explained in the prior discussions outlined above.

- The plan notes an excavator with hoe ram and 45 ton-crane will be used for demolition.
 - How will they get the excavator on the beach?

The excavator that is necessary for the project can access the beach by navigating through the county ROW.

- Where will the 45 ton-crane be staged? Is 45 ton-crane proposed to be on the beach as well?

The crane will be situated in the ROW. This issue was discussed with the AG in April. The crane will not be on the beach and will instead be on the ROW.

- The plan notes that all demo'd and removed materials will be documented.
 - How?
 - See note regarding Proof of contractor. OCCL files indicate that the contractor appears to have failed in submitting required completion reports for most if not all structures they have installed.

As expressly stated in the removal plan previously submitted:

The demolition and removal activities will be documented by photographs taken each day during steps of the removal process. A daily log of activities will also be documented. As directed, the photos and progress updates will be provided to DLNR OCCL during the removal and reconstruction.

The demolition and removal activities will be documented with photographs and written explanations on what materials specifically were removed, the quantities of removal and to what location the removal/disposal activities took place. The contractor will take *daily* photographs to document the progress of removal and provide them to OCCL. These will be provided via email, or in any other method requested by OCCL.

If you think that it would be helpful to your department, then I would be happy to assist with providing the daily updates to OCCL. For other projects, I have provided weekly emails and mailed hard copy letters to OCCL. I understand that you are trying to help facilitate this project and would be more than happy to insert myself in this project to provide OCCL will daily email updates. Then, at the end of the week, I could send a letter with the weekly updates so that OCCL has hard copies of the updates.

As indicated in the previously submitted removal plan, concrete will be recycled with Samson a local concrete recycling company in Kapolei. Steel will be removed from the concrete and recycled at Schnitzer recycling in Kapolei. Timber will be disposed of in PVT landfill.

- The Materials and Locations for recycling and disposal section makes no mention of removal and disposal of unauthorized sandbags, burritos, and sand blankets even though this required under the settlement agreement.

The removal of the sandbags, burritos, and sand blankets will follow the same procedure as the removed seawall and will be deposited at PBT which is the private landfill utilized for commercial waste. PBT will properly separate and disposed of the waste associated with the project.

- See 7. When will the daily log of activities be provided to OCCL/the Department? Are your clients and their agents proposing to send us photos and updates daily during the removal and reconstruction activities?

Yes, a daily log of activities will be submitted with photo documentation and detailed explanations. Yes, we will transmit daily photographs with explanations to OCCL and cc' the Attorney General. Please refer to the previous answer which supplements this response.

After OCCL initially review the materials after the McNamaras submitted them on December 22, 2022, the AG's office set up a January, 2023 phone conference with our firm. We discussed the issue of whether the other structures (i.e. burritos) discussed in the settlement agreement would be removed. We confirmed that they would in fact be removed as contemplated and agreed to in the settlement agreement. Section 3 of the removal plan was modified to explain that the original installation would be "removed along with the existing unauthorized structure." This addition was to cover the burritos identified in the settlement agreement. To clarify, all sandbags, sand blankets, burritos, etc. will be removed.

As also indicated in the removal plan previously submitted:

The demolition and removal activities will be documented by photographs taken each day during steps of the removal process. A daily log of activities will also be documented. As directed, the photos and progress updates will be provided to DLNR OCCL during the removal and reconstruction.

B. Construction of the Approved Shoreline Protection Structure

Note: The third submittal to OCCL will address revisions to the plans to attempt to provide additional information per your comments below. Revisions were also made to the submittals to address your comments above.

- See Figure 2. It appears your client and their agents are proposing to locate the structure approximately 12ft from the dwelling.
 - OCCL photos indicate that the scarp/top of the berm/approximate location is at the dwelling (see attached "McNamara_Alleged Unauthorized Work in the Shoreline_2022 2023).
 - Structure appears to be 1600-ft² (50ft x 32ft) in area and 10-18-ft high on the public beach.

Yes. The settlement agreement expressly requires a "permit to install a sufficient number of temporary erosion control structures to cover/protect the entire stretch of Property facing the ocean (or in other words **no less** protected space than that which was protected by the Seawall)." Therefore the State has already contractually agreed to allow the McNamaras to install a structure that sufficient in size to protect "no less protected space than that which was protected by the Seawall[.]" This is a contractual term of settlement that both the State and the McNamaras agreed to be contractually bound to comply with. This was a critical term of the settlement that was negotiated in good faith by counsel for both parties to resolve the contested case.

Significantly, during negotiations the concern was discussed that the State may attempt to use its expert findings against the McNamaras at a future date. The parties therefore expressly included a term that "[a]s the Contested Case is being resolved by settlement and stipulation, no factual findings or conclusions of law will be issued in connection with the Contested Case." This term was included to avoid the risk that OCCL would later attempt to use its expert report to set the boundary line and to protect the McNamara's interests.

- See 2. regarding a proposed 20ft wide trench. What is the purpose of the 20ft wide trench? How deep will the proposed trench be? Where is it located in the proposed plans?

There is a twenty-foot wide trench because the structure is triangular. For this structure to have appropriate and sufficient structural integrity it must be constructed at a 30-35 degree angle. The structure will naturally be exposed to wave action and a trench is necessary to support the integrity of this project. The trench is a temporary construction trench and was not originally added to the plans. However, we have added the temporary construction trench to the plans at your request. The trench will be excavated along the base of the slope to mean sea level depth.

- See 4. What is a scour apron and where is it in the plans? How will the system be stabilized at approximately every 5ft?

A scour apron is a device that covers the geotubes. A scour apron is useful in maintaining the structural integrity of a soft erosion control device by providing a buffer between the sand and the elements. In a soft erosion structure, there are geotubes. This is a common feature. The scour apron shields the top of the soft erosion control structure to avoid anything going into the ocean and also is installed to protect the integrity of the sand in the structure. This essentially is another layer of protection from natural wear and tear brought about by the ocean wave action and the elements in general. A scour apron helps hold the soft erosion control device together and therefore serves an important environmental protection purpose as well.

The scour apron is stabilized by the soil anchors as indicated on the plans.

- The Emerg. CDUA notes that the structure is proposed to be curved. Why? Has the contractor accounted for potential flanking issues that the proposed curved structure may cause?
- Figure 2 needs to clearly illustrate what is being proposed.

Yes, the contractor has accounted for potential flanking issues. The corners must be wrapped. If a swell comes from the northwest, then it will get behind the structure and pull it apart therefore a wrap design is necessary. The curvature structure itself is designed to avoid flanking issues. This is a design area and is actually geared to protect the ROW as well. The plan was revised pursuant to the new request from OCCL.

- See 5. What is a batter board? Where is it depicted in proposed plans? Top of bank appears to be at the roofed deck.

A batter board is a guideline and a term used in the construction and engineer industry. A batter board is a temporary framing device, set beyond the corners of the structure or in this case soft erosion control device at precise elevations and measurements. The battle boards are used to hold out layout lines (construction twine) to indicate limits (limits are defined as edges and corners of a structure). In the beginning of a construction project batter boards are constructed to map out the dimensions of a project and layout lines (construction twine) are put in place.

Significantly, the batter board is a temporary device and essentially three pieces of wood that you tie strings to and connect with strings to other batter boards aligned along the project. To put in into perspective, anytime you build a house, the first thing you do is set up batter boards. This is a visual representation of where a structure will be located for workers to follow and adhere to the design requirements.

In simple terms, a batter board is something that you use to run a string along to show adequate installation instructions in the field for the workers to follow. After the project is completed, the batter boards are removed as they are a temporary device to help ensure that construction is kept within the limits of the project.

Batter boards are not part of the structure. The plans therefore do not display batter boards because they are not part of the structure and rather a tool only used during construction of the device.

- See 6. and Materials summary. What are soil anchors and what do they consist of?

Soil anchors are used to stabilize the system under stress and consist of a cable with an anchor buried several feet away from the installation in the structure. A soil anchor is an important component of the soft erosion control device for several reasons. Obviously, this device helps maintain the structural integrity of the structure. The natural consequence of a sound structure is the avoidance of any environmental debris and protection from wave energy. The soil anchors are shown in the drawings. Soil anchors in the past have been approved by DLNR/OCCL for other soft erosion control structures. Mr. Ticconi used soil anchors in See OA 20-38. The alternative construction method would be to transition to polypropylene rope and 2 by 8-foot wood pieces.

Notably, we previously provided the following revision to address a prior request from OCCL:

[S]oil anchors (comprised of galvanized and stainless steel to resist failure) driven into the property along the top of the bank. The soil anchors add a necessary level of reinforcement to ensure the system remains intact during its installation. Failure to install an anchoring system could result in the failure of the system and a very difficult recovery and removal task.

Conclusion

- What long-term solutions are being pursued or contemplated at this time?
 - It appears approximately 2 years since this matter (ENF: OA 21-3) went to the BLNR, 1.5 years since the deck fronting the property collapsed due to erosion undermining the structure, and almost 1 year since the settlement agreement was approved. We expect that your clients have begun the process of engaging planning and coastal engineering experts regarding a long-term solution and have developed possible options.

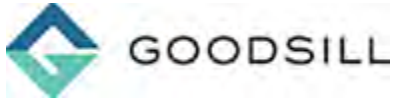
According to your notation earlier in the email, a long-term plan is due on June 28, 2024. In an abundance of caution, the McNamaras have retained a licensed engineer to address this issue. This particular engineer is evaluating a multitude of options. The following is a non-exhaustive list of the options that the McNamaras are currently investigating:

- Soft armoring (e.g., natural or living shoreline, see diagram below) but would require cooperation and mitigation measures by both State and the property owner). This would include combination of some off-shore breakwater and living vegetation options.
- Stone rip rap bank face – this approach requires underlying soil to be stable (north shore shoreline not known for this most likely in sunset area). Further investigation of this approach will take place.
- Retreat – structural alterations to remove ocean side portion of house and landward improvements (e.g., add second story), may require variance from city to address zoning requirements for building envelope or height.
- Community members are attending meetings and looking for measures to help protect their property interests from erosion. A community approach naturally makes sense given the systemic problems along this particular stretch of coastline.
 - Revetments – consisting of stone, crushed concrete, stone/sand filled bags, or rock filled ganoin baskets. Notably, this approach is good for wave action. This particular approach would require cooperation from State to extend from private property into State jurisdiction shoreline area for proper armoring; would require adjacent properties to do same to prevent adjacent erosion. We recognize the there may be legal issues with this approach. Notably, this approach, and the proceeding two approaches would need to be community projects sanctioned by the State.
 - Groins – install groins perpendicular to shoreline to alter off shore current and sand movement; this would need to be a State mitigation project.
 - Break waters – state would need to install off shore to dissipate wave action before hitting shoreline. This would need to be a State mitigation project.



Figure 5.4.8. Nature-based solutions for shoreline stabilization via a "Living Shorelines" approach.
 (Source: Adapted from NOAA, 2016)

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
 A Limited Liability Law Partnership LLP
 999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
 P. (808) 547-5765 | F. (808) 441-1221
 E. fjenkins@goodsill.com | www.goodsill.com

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From: Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
Sent: Thursday, July 27, 2023 12:32 PM
To: Jenkins, Forest B. <fjenkins@goodsill.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>
Cc: Cain, Michael <michael.cain@hawaii.gov>; Cheung, Barry W <barry.w.cheung@hawaii.gov>; Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>; Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>
Subject: McNamara Seawall Removal Plan & Emergency CDUA

Caution: external email

Good afternoon Mr. Jenkins –

Please see attached.

OCCL has received and reviewed your clients’ (McNamaras) Removal and Demolition Plan (dated December 20, 2022; received by OCCL July 19, 2023) and their Emergency CDUA application for a temporary emergency shoreline protection structure.

After reviewing your clients’ Removal and Demolition Plan and Emerg. CDUA, it does not appear what was submitted adheres to the settlement agreement. There appears to be missing and incorrect information contained in the submitted documents.

EMERGENCY CDUA

The application is incomplete please include information regarding:

- Other proposed mitigation measures
- Future response plans (see below **Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure** as well)

SETTLEMENT AGREEMENT (CC OA 21-3, ENF: OA 21-3)

Please see attached settlement agreement with selected items highlighted. Noted dates/deadlines are summarized below.

July 31, 2022: Recommended to submit Emerg. CDUA to OCCL

- OCCL received *July 19, 2023*

December 31, 2022: Submit Removal and Demolition Plan

- OCCL Received *July 19, 2023*

March 31, 2023: Submit proof that they have retained contractor. Recommended that McNamara's obtain a land disposition by this date or earlier.

- OCCL received via email from Dept AG *May 19, 2023* (proof of contractor)
- Appears LAND received via email *March 31, 2023* (land disposition request)

December 31, 2023: Remove seawall and all other unpermitted shoreline protections devices (e.g. any sand bags, sand "burritos", and sand blankets). Submit fine payment and/or proof that removal costs offset/exceed fines.

June 28, 2024: Submit long-term plan or solution for erosion management (180 days from removal of seawall)

These dates were agreed to with the expectation that your clients would have obtained all the required authorizations and started the demo and removal work this summer, and not jeopardize meeting the December 31, 2023 deadline.

According to Section B. SETTLEMENT TERMS 7., a cursory review of the Bureau of Conveyance's website indicates that the **settlement agreement has not been recorded at the BOC.**

PROOF OF CONTRACTOR to carry out Removal and Demolition Plan

- It appears the submitted Proof of Contractor is **not signed by** the McNamara's.
- Additionally, it appears that the contractor was involved in a number of installations of erosion control structures that are now the subject of enforcement investigations.

Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure (and Emergency Conservation District Use Application)

- The **SETTLEMENT AGREEMENT** Section B. SETTLEMENT TERMS 1. *Removal of shoreline structures.* states, in part: *The Petitioners shall remove the Seawall and all other unpermitted shoreline protection devices (e.g. any sand bags, sand "burritos", and sand blankets) by December 31, 2023.*
 - The submitted Removal and Demolition Plan and Emerg. CDUA make no mention of removal of the other unpermitted shoreline protection devices installed in the shoreline area fronting the McNamara's property. Address the removal of all other unpermitted shoreline protection devices (e.g. any sand bags, sand "burritos", and sand blankets).
 - OCCL has showed some leniency in not pursuing additional enforcement actions for the alleged unauthorized installation of shoreline protection devices with the understanding that they would be removed pursuant to the settlement agreement.

A. Removal of the Existing Concrete and Timber Shoreline Installation

- The Demo and Removal Plan notes that your clients and their agents are proposing to use the public shoreline access Right-of-Way.
 - Have they consulted with DPP and DPR regarding using the ROW?
 - Cursory conversations with DPR indicate this ROW is closed.
- The plan notes an excavator with hoe ram and 45 ton-crane will be used for demolition.
 - How will they get the excavator on the beach?

- Where will the 45 ton-crane be staged? Is 45 ton-crane proposed to be on the beach as well?
- The plan notes that all demo' d and removed materials will be documented.
 - How?
 - See note regarding Proof of contractor. OCCL files indicate that the contractor appears to have failed in submitting required completion reports for most if not all structures they have installed.
- The Materials and Locations for recycling and disposal section makes no mention of removal and disposal of unauthorized sandbags, burritos, and sand blankets even though this required under the settlement agreement.
- See 7. When will the daily log of activities be provided to OCCL/the Department? Are your clients and their agents proposing to send us photos and updates daily during the removal and reconstruction activities?

B. Construction of the Approved Shoreline Protection Structure

- See Figure 2. It appears your client and their agents are proposing to locate the structure approximately 12ft from the dwelling.
 - OCCL photos indicate that the scarp/top of the berm/approximate location is at the dwelling (see attached "McNamara_Alleged Unauthorized Work in the Shoreline_2022 2023).
 - Structure appears to be 1600-ft² (50ft x 32ft) in area and 10-18-ft high on the public beach.
- See 2. regarding a proposed 20ft wide trench. What is the purpose of the 20ft wide trench? How deep will the proposed trench be? Where is it located in the proposed plans?
- See 4. What is a scour apron and where is it in the plans? How will the system be stabilized at approximately every 5ft?
 - The Emerg. CDUA notes that the structure is proposed to be curved. Why? Has the contractor accounted for potential flanking issues that the proposed curved structure may cause?
 - Figure 2 needs to clearly illustrate what is being proposed.
- See 5. What is a batter board? Where is it depicted in proposed plans? Top of bank appears to be at the roofed deck.
- See 6. and Materials summary. What are soil anchors and what do they consist of?

Conclusion

- What long-term solutions are being pursued or contemplated at this time?
 - It appears approximately 2 years since this matter (ENF: OA 21-3) went to the BLNR, 1.5 years since the deck fronting the property collapsed due to erosion undermining the structure, and almost 1 year since the settlement agreement was approved. We expect that your clients have begun the process of engaging planning and coastal engineering experts regarding a long-term solution and have developed possible options.

Please provide the Department with the additional requested clarification and information to help staff finish processing your clients' requests.

Trevor Fitzpatrick
Staff Planner
State of Hawai`i
Department of Land and Natural Resources
Office of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai`i 96809
www.dlnr.hawaii.gov/occl



Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Wednesday, August 16, 2023 2:01 PM
To: Fitzpatrick, Trevor J; Steed, Miranda C; Saffery, Edmund K.
Cc: Cain, Michael; Cheung, Barry W; Anderson, Rebecca L; Hirokawa, Ian C; Cosgrove, Todd T.; Mills, Kimberly T
Subject: RE: McNamara Seawall Removal Plan & Emergency CDUA

Trevor:

Thank you for your follow up. I reached out to the contractor to clarify your comment below. No bags will be utilized. Rather, the geotubes will be filled with sand. Please let me know if you need further clarification or additional information. Thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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From: Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
Sent: Wednesday, August 16, 2023 12:44 PM
To: Jenkins, Forest B. <fjenkins@goodsill.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>; Saffery, Edmund K. <esaffery@goodsill.com>
Cc: Cain, Michael <michael.cain@hawaii.gov>; Cheung, Barry W <barry.w.cheung@hawaii.gov>; Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>; Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>; Cosgrove, Todd T. <tcosgrove@goodsill.com>; Mills, Kimberly T <kimberly.mills@hawaii.gov>
Subject: RE: McNamara Seawall Removal Plan & Emergency CDUA

Caution: external email

Mr. Jenkins –

Thank you again for you and your clients' responses.

Please see attached and Section **B. Construction of the Approved Shoreline Protection Structure** and #4.

It states, in part: Six rows of **sandbag-filled** [emphasis added] geotubes will be installed along the base of the slope, as shown as Geotube A though F in Figure 3 Section View.

This section later states that the geotubes will be sand-filled.

Can you please clarify?

Thanks.

Trevor

Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Thursday, August 24, 2023 12:16 PM
To: Fitzpatrick, Trevor J; Steed, Miranda C
Subject: RE: McNamara Seawall Removal Plan & Emergency CDUA

Hey Trevor:

Miranda and I were just discussing this matter and I wanted to follow up. Thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Thursday, September 28, 2023 2:21 PM
To: Steed, Miranda C
Subject: McNamara

Hey Miranda:

Can we touch base on the McNamara project before your trip? I just need to know where things are at. I appreciate it, thanks.

Forest B. Jenkins



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A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | **F.** (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Tuesday, October 10, 2023 5:07 PM
To: Steed, Miranda C
Subject: McNamara

Hope you had a great trip. If you have a few minutes to discuss this matter this week that'd be great. I called over to land division and had a few questions. Thanks again and hope you're doing well.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Jenkins, Forest B.
Sent: Wednesday, October 11, 2023 9:44 PM
To: rebecca.l.anderson@hawaii.gov
Cc: Fitzpatrick, Trevor J; Steed, Miranda C
Subject: Re: Bow Engineer Report
Attachments: 9266716_1 - 04 - McNamara - Bow Engineering Report.pdf

Rebecca:

Thanks for speaking with me yesterday. I've attached the State's engineering report submitted prior to the contested case with the State's prior position on the size/quantities of the structure prior to the contested case. To be clear, we do not make any representations whatsoever regarding the findings and/or conclusions in the attached report. However, I am passing the report along to you solely for your review in processing the land disposition because it details the State's prior position on the size of the structure. Thanks.

Forest B. Jenkins



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Cosgrove, Todd T.

From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Thursday, October 12, 2023 8:46 AM
To: Jenkins, Forest B.
Subject: RE: Land Disposition Issue

Caution: external email

Hi Forest,

Thanks for the background.

Miranda

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Wednesday, October 11, 2023 9:59 PM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] Land Disposition Issue

Hey Miranda:

I recall that there was discussion about the land disposition being required for the project during settlement and particularly for things like an excavator when Lauren and I resolved the matter.

Anyway, my interpretation was that we included the "OCCL will recommend that the Oahu District Land Division issue the land disposition. A satisfactory completed land disposition application will not be unreasonably denied" language to allow for this. I understand that land division has their usual stance against heavy machinery, but I feel as though this situation is somewhat unique and difference, based on the agreed upon terms in the settlement agreement. Moreover, given the position taken by the State in the Bow Engineering report, I think its hard to fathom how removal would have been contemplated without the use of machinery. This report was generated and submitted by the State shortly before Lauren and I settled the matter. There was certainly never any discussions back then that we would be required to manually remove the structure by hand.

I offer this as hopefully helpful information if you speak with land division and OCCL. We very much want to comply, meet our deadlines, and remove by the deadline in the settlement agreement. We would prefer this to not be adversarial and simply work towards a common goal. Thanks for taking the time to speak with me today.

Forest B. Jenkins



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A Limited Liability Law Partnership LLP
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Cosgrove, Todd T.

From: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Sent: Friday, October 13, 2023 1:29 PM
To: Jenkins, Forest B.
Subject: RE: Re: Materials Related to Prior Sand Pushing Projects

Caution: external email

Hi Forest,

Thanks for sending. I've forwarded to my client. Have a good weekend!

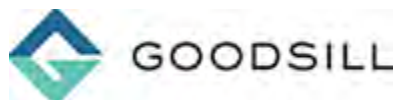
Miranda

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Friday, October 13, 2023 1:15 PM
To: Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] Re: Materials Related to Prior Sand Pushing Projects

Hello Miranda:

Here are some materials related to prior sand pushing projects involving the use of machinery provided by Peter Young for consideration. Thanks and have a good weekend.

Forest B. Jenkins



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A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

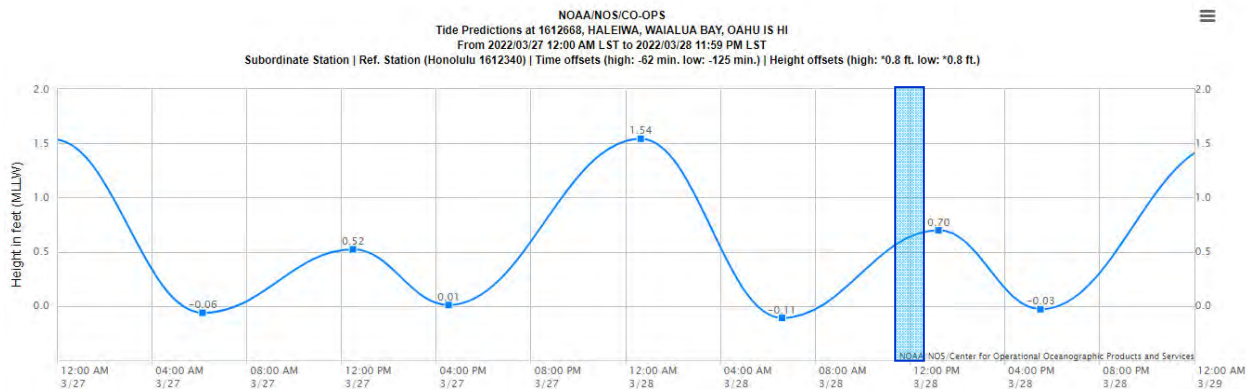
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FIELD INVESTIGATION SUMMARY

BACKGROUND AND SITE CONDITIONS

A site investigation was performed by William F. Bow (assisted by Skylor T.H. Tengan) outside the property located at 59-175 Ke Nui Road, Haleiwa, Hawaii 96712 (TMK 5-9-2:26) along the shoreline and seawall. Only a short section of the original seawall was exposed/visible on the north end of the property line; the rest of the seawall was either covered in plywood, fabric, or fronted by concrete structures that are presumed to be additional components added over several years. The tide was approximately 0.6 feet reaching a mid-day high of 0.70 feet during the investigation, which took place between 11:20 AM to 12:20 PM (shaded in blue in the tide chart below).



Measurements of various components of the seawall and existing features were taken. Sand had completely filled the site compared with the photograph taken in January 2022 (photomap on page 4). The approximate sand elevation is shown as a green dashed line. The wash of the waves reached approximately 18-20 ft from the face of the seawall.

EMBEDDED CONCRETE FOOTINGS

A 4-ft rebar was used to probe beneath the sand to determine approximate depths of submerged structural features of the seawall. Probing along the northern section of the face of the wall with the rebar consistently reached resistance (by a very hard material) between 1.5-2 ft below the sand. The rebar was unable to penetrate below the material extending out to approximately 3-ft from the face of the wall; this is shown as a red dashed line in the photomap. Digging down into the sand revealed a hardened concrete edge. The depth of this concrete footing could not be determined due to the elevation of the sand and presumed depth the concrete. It is estimated that this structure/footing is at least 4 feet lower than the depth of the hardened concrete edge that was discovered; this footing would be approximately 6-7 feet below grade at the time of the investigation.



EXPOSED (ABOVE GRADE) CONCRETE ADDITION

Addition of concrete from the face of the original seawall was visible and protruding approximately 3 feet out towards the ocean. This mass of concrete runs approximately 29-feet along the face of the seawall. This mass extended approximately 4 feet above the elevation of the sand at the time of the investigation. The full depth of this mass of concrete could not be determined due to the large amount of sand built up along the face of the seawall. However, the face seemed to slant out and away from the property line based on probing with rebar. Approximately 17-ft from the start of this mass was a large fissure observed with exposed rebar. The exposed rebar was large and estimated to be #5 or #6 bar. The concrete mass continued (approximately 12-ft) from this break to the other end of the property, decreasing in width to just over 2 feet. This additional mass of concrete is assumed to extend approximately 6-ft below the sand based on the photograph taken on January 31, 2022 shown on page 7.

ORIGINAL SEAWALL BUILDING MATERIALS

Only one section of the seawall near the property line of the neighboring property to the north seemed to provide evidence of the original seawall and materials used for its construction:

- There was a very large, irregularly shaped “cylindrical” concrete footing that was approximately 2.5-ft in diameter. The exact dimensions could not be measured due to its depth and obstructions surrounding it.
 - It is not known if this is a part of the original seawall or installed later.
 - It is not known if each vertical concrete post (described later) is supported by a similar large, irregularly shaped “cylindrical” concrete footing.
- Immediately above this footing were two separate adjoining footings that are presumed to support the length of the entire original seawall.
 - A 12-in wide, 18-in deep concrete footing was observed furthest into the property.
 - Three rows of CMU block (8”x8”x16”) were stacked on top of this footing, with the lowest course embedded approximately 3-4 inches deep.
 - Abutting this footing was another footing, which seemed like a separate concrete pour, although this cannot be confirmed due to severe degradation of material. This footing is approximately 18-in wide and 18-in deep.
 - A 12”x12”x60” rectangular concrete pile was positioned vertically on this footing abutting the stacked CMU wall. The rectangular pile appeared to serve as a “post” for horizontally stacked cylindrical wood beams laid above the CMU wall.
 - Each exposed wood beam was extremely weathered and cracked, however the size was estimated to be approximately 10-in in diameter and likely ranged in lengths of 5-15 ft (based on past photo records).
- No rebar was observed in the footings, CMU, or piles described.

The volumetric quantity of the materials (including concrete, CMU, and wood) used to construct the original seawall is approximately 25 cubic yards. The replacement cost (page 4) of the



original seawall is \$173,200 without the safety measures during construction and \$223,200 with the safety measures.

ADDITIONAL MATERIALS INSTALLED

Additions to the original seawall appear to be the combination of embedded concrete footings (identified through probing) and exposed (above grade) concrete additions. Concrete also appeared to be poured on top of the original seawall and potentially behind the property line; these masses could not be fully measured or verified (due to inaccessibility). Our estimate of the embedded and exposed concrete added to the original seawall is approximately 40 cubic yards and:

- does not include any concrete masses within the property line;
- does not include concrete poured on top of the existing seawall;
- may not account for the slope of the concrete masses below grade;
- assumes a maximum depth of 6-ft below the existing grade of sand at the time of the inspection.

The added concrete material (approximately 40 cubic yards) accounted for in this estimate is approximately 160% greater than the materials used to construct the original seawall (25 cubic yards). The cost (page 5) of the additional mass of concrete in front of the face of the original seawall is approximately \$76,700 which is 44% of the cost of the original seawall (without safety measures). If safety measures are put into place for the construction of the additional mass of concrete in front of the face of the original seawall, then the cost increases to \$126,600 which is 57% of the cost of the original seawall (with safety measures).



COST ESTIMATES

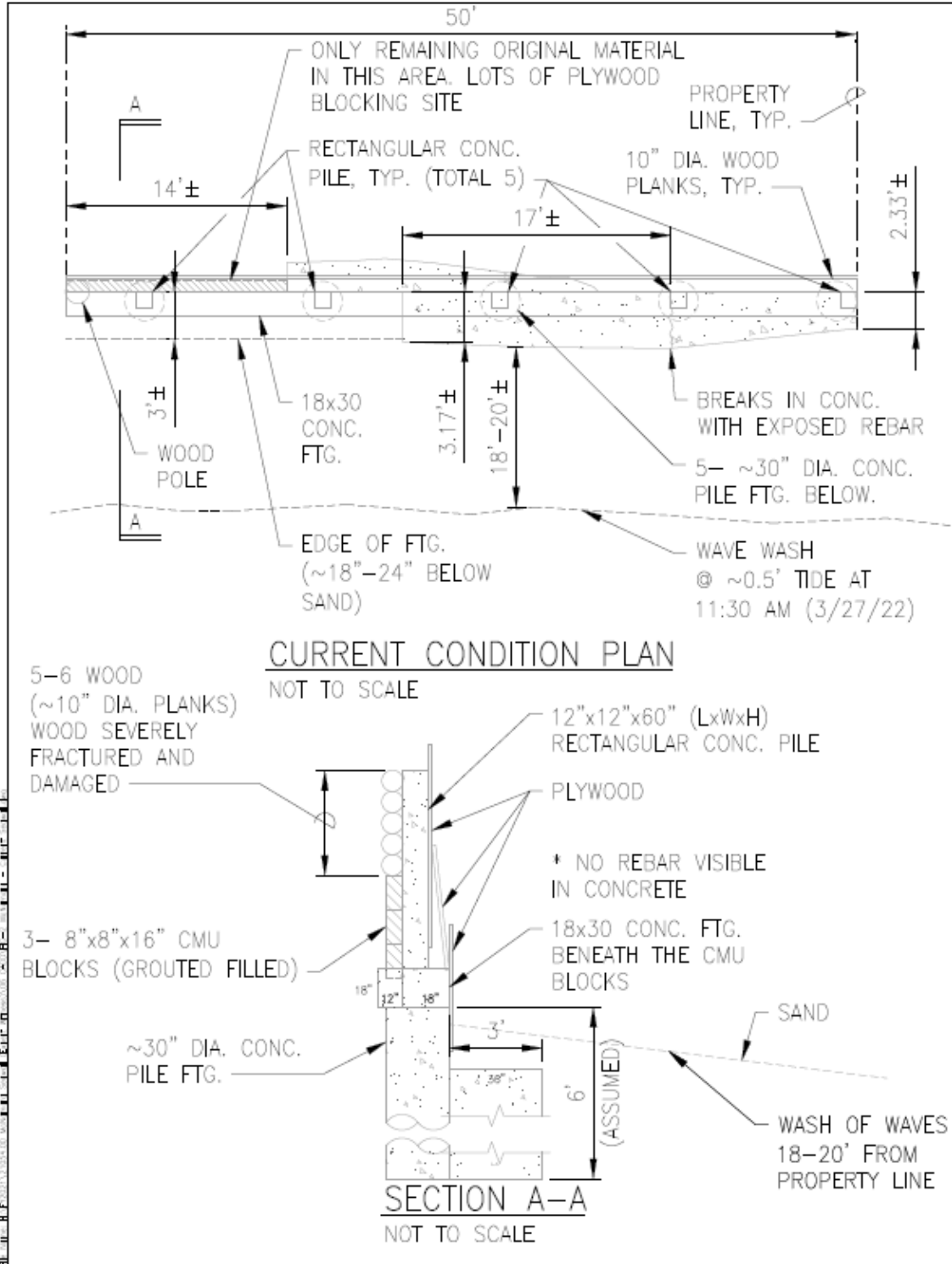
Date: April 15, 2022				
Construction Cost Estimate (Orginal Seawall)				
Item	Qty	Unit	Unit Price	Cost
Seawall Materials				
Cylindrical Concrete Footing (5 footings, 30" Diameter x 6' Depth)	5	CY	\$ 500.00	\$ 2,500.00
Concrete Footing (50' L x 30" W x 18" D)	8	CY	\$ 500.00	\$ 4,000.00
CMU Blocks (50' L, 3 courses)	120	Units	\$ 3.30	\$ 396.00
Grout fill for CMU Block	1.5	CY	\$ 500.00	\$ 750.00
Concrete Pillars (5 - 12" x 12" x 60" H)	1	CY	\$ 500.00	\$ 500.00
Large Wood Pile (telephone pole)	10	LF	\$ 200.00	\$ 2,000.00
Wood Planks (50' L x 10" D, 6 rows high)	300	LF	\$ 150.00	\$ 45,000.00
Subtotal Seawall Materials				\$ 55,146.00
Construction Labor / Equipment				
8-man crew (5 labor, 2 Safety, 1 supervisor)	10	Day	\$ 5,000.00	\$ 50,000.00
Equipment (excavator + hammer, mini-exc., loader, fork lift, misc. tools)	10	Day	\$ 2,600.00	\$ 26,000.00
Subtotal Construction Labor / Equipment				\$ 76,000.00
Mobilization / Demobilization				
(10% of above subtotals)	1	LS	\$ 13,110.00	\$ 13,110.00
Subtotal Mobilization and Demobilization				\$ 13,110.00
SUBTOTAL				\$ 144,256.00
Contingency 20%				\$ 28,851.20
SUBTOTAL & Contingency				\$ 173,107.20
BASEBID ROUND-OFF TOTAL				\$ 173,200.00
Optional Item: Safety Measures				
Shoring (materials, excavators, loader, 8 man-crew)	1	LS	\$ 50,000.00	\$ 50,000.00
Base Bid Round-off Total (from above)				\$ 173,200.00
BASEBID ROUND-OFF TOTAL (Including Safety Measures)				\$ 223,200.00



					Date: April 15, 2022
Construction Cost Estimate (Additional Material)					
Item	Qty	Unit	Unit Price	Cost	
Seawall Materials					
Concrete	40	CY	\$ 500.00	\$ 20,000.00	
Subtotal Seawall Materials				\$ 20,000.00	
Construction Labor / Equipment					
8-man crew (5 labor, 2 Safety, 1 supervisor)	5	Day	\$ 5,000.00	\$ 25,000.00	
Equipment (excavator + hammer, mini-exc., loader, fork lift, misc. tools)	5	Day	\$ 2,600.00	\$ 13,000.00	
Subtotal Construction Labor / Equipment				\$ 38,000.00	
Mobilization / Demobilization					
(10% of above subtotals)	1	LS	\$ 5,800.00	\$ 5,800.00	
Subtotal Mobilization and Demobilization				\$ 5,800.00	
SUBTOTAL				\$ 63,800.00	
Contingency 20%				\$ 12,760.00	
SUBTOTAL & Contingency				\$ 76,560.00	
BASE BID ROUND-OFF TOTAL				\$ 76,600.00	
Optional Item: Safety Measures					
Shoring (materials, excavators, loader, 8 man-crew)	1	LS	\$ 50,000.00	\$ 50,000.00	
Base Bid Round-off Total (from above)				\$ 76,600.00	
BASE BID ROUND-OFF TOTAL (Including Safety Measures)				\$ 126,600.00	

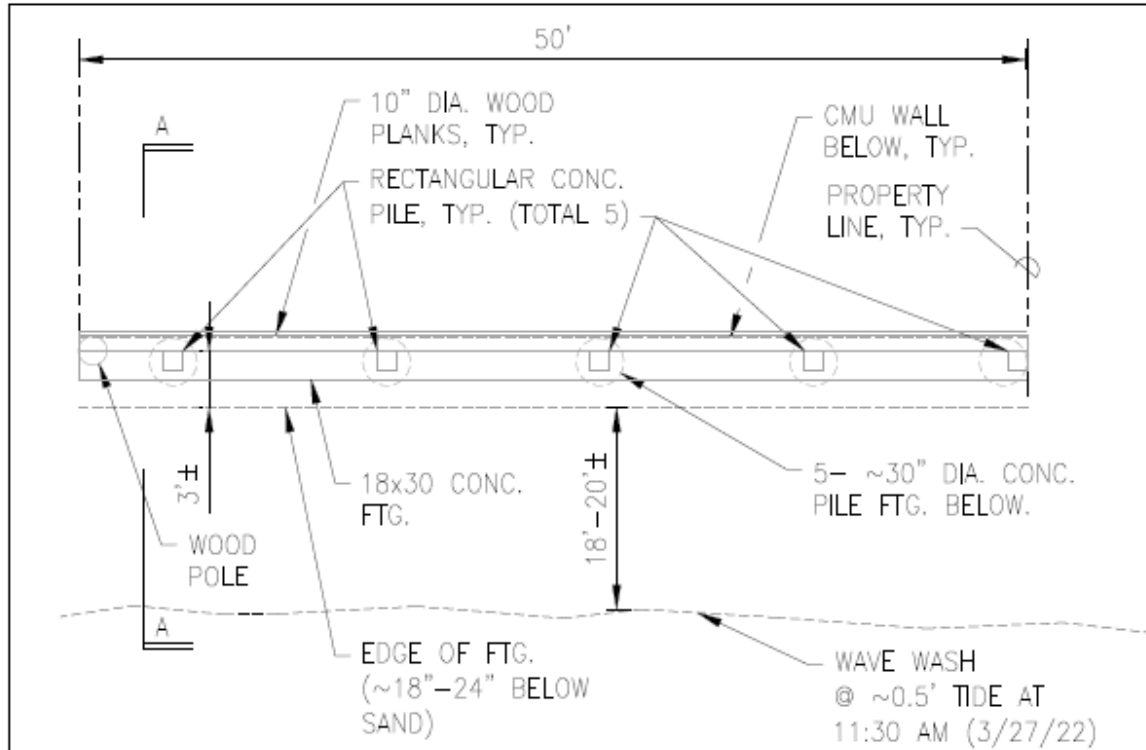


CURRENT CONDITION PLAN/ PROFILE

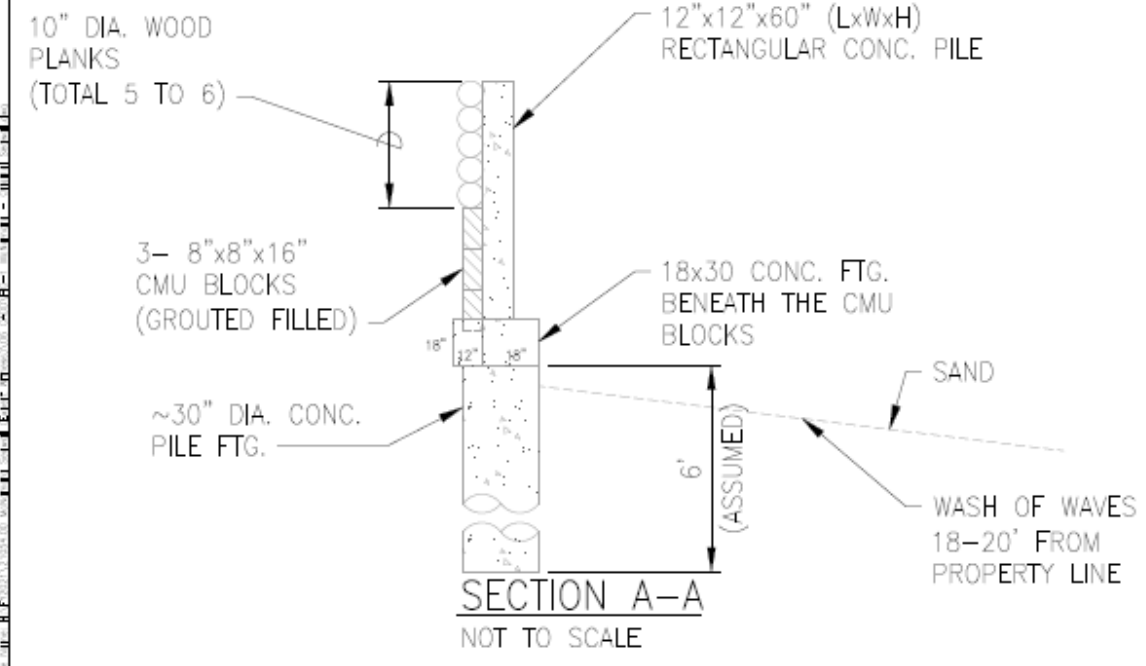




ORIGINAL SEAWALL PLAN/ PROFILE



ORIGINAL SEAWALL PLAN
 NOT TO SCALE





PHOTOMAP



This photo was taken on January 31, 2022. The estimated sand elevation at the time of the investigation is shown in green. The edge of an embedded footing beneath the sand is shown in red. The picture numbers and direction of images are shown to correspond to the photolog in the following pages.



***** PHOTO LOG *****



Photo 1: South corner of property seawall facing North



Photo 2: South corner of property seawall facing mauka



***** PHOTO LOG *****



Photo 3: South side of property seawall facing mauka (showing broken concrete pieces)

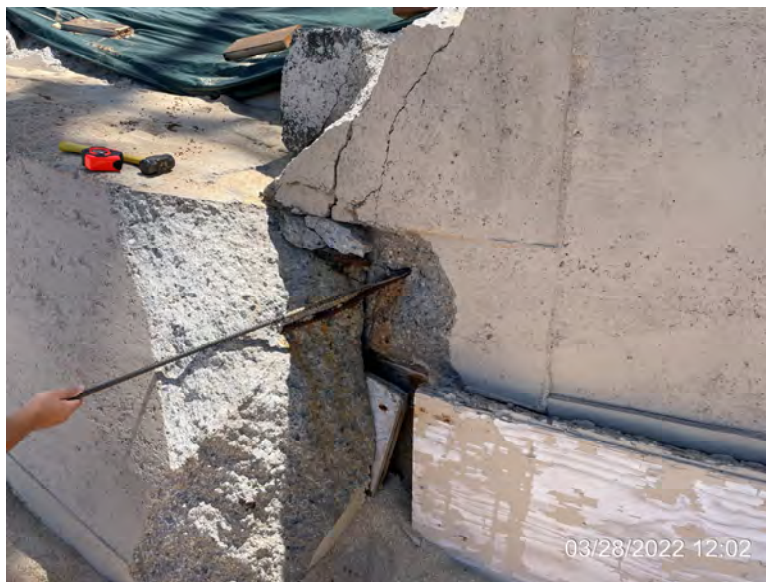


Photo 4: South side of property seawall facing mauka (showing broken concrete pieces, zoomed)



***** PHOTO LOG *****



Photo 5: North side of property seawall (about mid-way) facing North



Photo 6: North side of property seawall (about mid-way) facing mauka



***** PHOTO LOG *****



Photo 7: South side of neighbor's property sandbags facing North



Photo 8: Length of property seawall taken from North facing South



***** PHOTO LOG *****



Photo 9: North corner of seawall facing Mauka



Photo 10: Probing North end of seawall for depth of footings and structures.



*** PHOTO LOG ***



Photo 11: Probing North end of seawall for depth of footings and structures.



Photo 12: Probing North end of seawall for depth of footings and structures.



Photo 13: Probing North end of seawall for depth of footings and structures.



***** PHOTO LOG *****



Photo 14: North corner of seawall (original materials investigation)



Photo 15: North corner of seawall (original materials investigation), zoomed



***** PHOTO LOG *****



Photo 16: North corner of seawall (original materials investigation), zoomed



Photo 17: North corner of seawall (original materials investigation), zoomed with measurement



Photo 18: North corner of seawall (original materials investigation), zoomed with measurement



Expiration Date: 04/30/22

A handwritten signature in black ink that reads "William H. Q. Bow".

THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION

A handwritten signature in blue ink that reads "William F. Bow".

FIELD INVESTIGATION AND REPORT WAS PREPARED BY
WILLIAM F. BOW, M.S., ENVIRONMENTAL DIRECTOR

William H.Q. Bow, P.E. **Principal Engineer & CEO**

QUALIFICATIONS: Forty-four (44) years of broad, successful experience in designing numerous civil engineering projects of different scales. Experience gained through responsible positions as owner of Bow Engineering & Development, Inc. and Bow Construction Management Service, Inc., Principal Engineer. Extensive experience in project management, planning, engineering design, consulting, operations and maintenance, real estate development and contracting, from roadway, parking, water, sewer and drainage system designs to real estate planning and implementation strategies for land development, subdivision and condominium projects. Projects include commercial, residential, recreational, industrial, agricultural, and military facilities.

Specialization: Hydraulic Design
Hydrologic Analysis
Subdivision Site Development Planning
Highway and Roadway Planning and Design
Utility Systems Design
Project Management
Housing Feasibility Studies
Sewage and Water System Master Planning

Education: Bachelor of Science, Civil Engineering
Hydraulic and Sanitary major
University of Hawai'i at Manoa, 1976

Registration: Civil Engineer, Hawaii, Certificate #4904 (1980)

Professional Affiliation: State of Hawaii -Disability Communications Access Board (DCAB)
(Past Chair in 2018-2019, Board Member 2016-2020)
American Council of Engineering Companies of Hawaii (ACECH)
(Hawaii Section Past President in 2014-2015, Current Member)
American Society of Civil Engineers
(Hawaii Section Past President in 1984-1985, Current Member)
University of Hawaii, Engineering Alumni Association
(Past President in 1989-1990, Current Member)
University of Hawaii Alumni Association
(Director in 1990-1992, Member)
Water Environment Federation (Member)
American Water Works Association (Member)
International Erosion Control Association (Member)

Community Affiliation: Pearl Harbor Rotary Club, Past-President
Starts Plaza AOA, Board Member



Bow Engineering & Development, Inc.
1953 South Beretania Street, PH-A • Honolulu, Hawai'i 96826-1342
Phone: (808) 941-8853 • Fax: (808) 945-9299
E-mail: bbow@bowengineering.com

Work Experience:

2021 - present	Bow Engineering & Development, Inc., Honolulu, Chief Strategic Officer
1997 - 2020	Bow Engineering & Development, Inc., Honolulu, President
2008 - 2014	Bow Construction Management Service, Inc., Kauai, President
1995 - 1998	SSFM Engineers, Inc., Honolulu, Principal/Project Manager
1991 - 1995	Savio Development Co., Inc., Honolulu, Project Director
1984 - 1991	M&E Pacific, Inc., Honolulu, Project Manager
1981 - 1984	Gray, Hong & Associates, Honolulu, Project Engineer
1976 - 1981	Belt, Collins & Associates, Honolulu, Project Engineer

Experience by Discipline:

Hydrology

- Drainage Study for Servco Mapunapuna (Oahu)
- Floodway Determination for Kawaihapai Subdivision (Oahu)
- Kawainui Marsh Levee Flood Hazard Abatement (Oahu)
- Drainage Study and Master Plan for the Hokuala Resort (Kauai)
- Drainage Study for Koaleo St. Residence (Oahu)
- Drainage Study for Prince Jonah Kuhio Kalaniana'ole (PJKK) Federal Building Courtyard Flooding (Oahu)
- Drainage Study for Marianist Center Master Plan (Oahu)
- Drainage Study and Drainage Improvements for Krauss Hall, University of Hawaii at Manoa, Honolulu (Oahu)
- Sueoka Store Flood Study, Koloa (Kauai)

Highways and Roads

- Kamokala Road Repairs at Pacific Missile Range Facility (Kauai)
- Nawiliwili Road Improvements (Kauai)
- Kamehameha Schools Kapalama Campus Roadway and Intersection (Oahu)
- Hawaii Belt Road Umauma Stream Bridge Rehabilitation (Big Island)
- Nohili Road Repaving at Pacific Missile Range Facility (Kauai)
- Rice Street-Kapule Intersection Improvements (Kauai)

Site Development Design and Studies

- Waimea Huakai and Habitat for Humanity Affordable Housing (Kauai)
- Hokuala Residences at Ninini Point (Kauai)
- Waiehu Golf Course Clubhouse Feasibility Study (Maui)
- Koae Workforce Housing (Kauai)
- Kahana Valley Environmental Assessment and Wastewater Study (Oahu)
- Rice Camp Affordable Housing (Kauai)
- Kolopua at Princeville Affordable Housing (Kauai)
- Kolo Place Apartment Residences (Oahu)
- Makaha Oceanview Estates Condominium Development (Oahu)
- Green Homes at Lualualei Affordable Housing (Oahu)
- Kalanipuu at Kauai Lagoons, Lihue (Kauai)
- Kiele Bypass Road and Fashion Landing, Lihue (Kauai)
- Marriott Vacation Club International, Lihue (Kauai)
- Kauai Lagoons Resort Subdivisions, Lihue (Kauai)



- Kamamalu Affordable Housing Phase I at Kauai Lagoons, Lihue (Kauai)
- Courtyards at Waipouli (Kauai)
- Waiialua Agricultural Subdivision, Haleiwa (Oahu)

Multidiscipline

- UH Walkways Restoration and Improvement Master Plan (Oahu)
- Lyon Arboretum Various Health and Safety Improvements (Oahu)
- Diamond Head State Monument Sewer Lift Station & Emergency Generator (Oahu)
- North Shore Gateway Starbucks and Commercial Building (Oahu)
- Gateway South Commercial Building at Mililani Mauka (Oahu)
- Gateway North Shopping Center at Mililani Mauka (Oahu)
- Princeville Center Commercial Expansion (Kauai)
- American Electric Warehouse Building (Oahu)
- Monsanto Agricultural and Research Processing Facility (Oahu)
- Tripler Army Medical Center Renovation (Oahu)
- Tripler Gym, Bldg. 300 (Oahu)
- Kamehameha Schools Repair and Maintenance, Honolulu (Oahu)
- Tot Lots for Public Works Center, U.S. Department of the Navy (Oahu)

CASES TESTIFIED AS EXPERT:

My career has concentrated on the design civil infrastructure for residential, commercial, agricultural and resort developments. Civil infrastructure is classed as site grading to prepare and shape the subject property, and to design the water, sewer and drainage systems to meet the function of the proposed development.

The following are cases that I have worked on with other law firms that resulted in an out of court settlement:

- a. FY2021 Alan Meacham etal v. Pryzm Consulting LLC - Construction Injury Claim (ongoing)
- b. FY2020 Westview AOA v. Seascape AOA - Water Dispute
- c. FY2019 SW Enterprises v. Fujiyama Construction/Construction Defect Claim
- d. FY2018 SCD Kahoma v. SSFM International - Design/Construction Defect Claim
- e. FY2012 Kamehameha Schools v. Vegas - Property Flood Damage Claim
- f. FY2012 Ko Olina Hillside Villas AOA v. Centex Homes - Property Flood Damage Claim
- g. FY 2010 Hieda v. USA (Tripler) Property Flood Damage Claim

I have provided civil engineering expert opinions to First Insurance Co. in cases related to storm water damage. The following are cases resulted in an out of court settlement:

- a. FY2009 Defendant: Honbushin International Center (Mililani)
Storm water damage of December 11, 2008 to adjacent properties
First Insurance Case No. 20089311



- b. FY2004 Defendant: Mililani Town Association
Storm water damage of December 7, 2003 to Tomiyasu property
First Insurance Case No. 20033031
- c. FY2004 Defendant: Perfecto Engineering
Storm water damage of January 27, 2004 to Fukunaga property
First Insurance Case No. 20041549
- d. FY2004 Defendant: Perfecto Engineering
Storm water damage of January 7, 2004 to Fujioka property
First Insurance Case No. 20041551



William F. Bow, M.S.
Environmental Director & Vice President

QUALIFICATIONS: Fifteen (15) years of combined experience working as a Chemist in the laboratory and in the field at Bow Engineering & Development, Inc. His representative projects include environmental permitting, water quality monitoring, and permit management for projects which fall under the jurisdiction of various agencies including the U.S. Army Corps of Engineers, Department of Health, Department of Land and Natural Resources, and County Offices. Projects include commercial, residential, recreational, educational, industrial, agricultural, and military facilities. His technical experience includes the application of standard laboratory techniques and field inspection and monitoring required by permits. As the Environmental Director, William Bow is responsible for overseeing all field managers and inspectors and works closely with engineers to make technical recommendations based on field observations and analytical data.

Specialization: Water Quality Monitoring & Reporting
Injection Well Monitoring & Reporting
Soil Monitoring & Reporting
Phase I Environmental Site Assessments
Environmental Assessments (Hawaii Environmental Policy Act)
Permit Application/Management
Section 10 (Rivers & Harbors Act); Clean Water Act (Section 401 – WQC, Section 402 – NDPES, Section 404); Conservation District Use Permits; Special Management Area Permits
Project Management

Education: Master of Science, Organic Chemistry
University of Hawai'i at Manoa, 2010
Bachelor of Science, Forensic Science
Chaminade University of Honolulu, 2006

Certification: *Techniques of Sampling and Field Analysis of Storm and Wastewater Effluent* (Environmental Protection Agency)

Professional Affiliation: American Chemical Society – Hawaii Section (Past-Chair 2021, Past-Treasurer 2019, Current Member)
Hawaii Association of Environmental Professionals (President 2022, Board Member since 2019, Current Member)
National Association of Environmental Professionals (Hawaii Chapter Representative 2021, Current Member)

Community Affiliation: Hawaii Chamber of Commerce, Young Professionals (Current Member)
Family Business Center of Hawaii (Current Member)



Work Experience:

- 2017 - present Bow Engineering & Development, Inc., Honolulu,
Environmental Director & Vice President
- 2015 - 2017 Bow Engineering & Development, Inc., Honolulu,
Lead Chemist & Executive Project Manager
- 2012 - 2015 Bow Engineering & Development, Inc., Honolulu,
Chemist & Field Inspector
- 2012 - 2015 Chaminade University, Honolulu,
Adjunct Lecturer
- 2010 - 2012 Maryknoll School, Honolulu,
High School Faculty
- 2007 - 2010 University of Hawai'i at Manoa, Honolulu,
Graduate Research Assistant

Experience by Discipline:

Inspection & Reporting

- Statewide Monitoring and Inspection of DOE School Underground Injection Control Wells (Statewide)

Environmental Assessments

- Kahana Valley State Park Sewer Improvements & Well Repair (Oahu)
- Pouhala Marsh Restoration (Oahu)
- Miloli'i Park Improvements (Big Island)
- Waimea Ford River Crossing (Kaua'i)
- Honu'apo Estuary Rehabilitation (Big Island)
- Hilo Skate Park (Big Island)

Permitting/ Permit Compliance

- Hokuala Resorts (Kaua'i)
- Kainalu Seawall Repair (Oahu)
- Kewalo Basin Harbor Improvements (Oahu)
- Port Allen Small Boat Harbor Improvements (Kaua'i)
- Kaunakakai Boat Ramp Improvements (Moloka'i)
- Waikaea Boat Ramp Maintenance Dredging (Kaua'i)
- Waikaea Canal Navigational Aids Improvements (Kaua'i)
- Pearl Harbor Maintenance Dredging of Upper Middle Loch (Oahu)
- Kuhio Beach Groin (Oahu)
- Kawaihae Small Boat Harbor Wharf Repair (Big Island)
- Kaupuni Place Channel Flood Control Improvements (Oahu)
- Waikiki Beach Maintenance Project, Phase II (Oahu)
- Sand Island Wastewater Treatment Plant Outfall Shoreline Revetment Project (Oahu)
- Honolulu Harbor Maintenance Dredging (Oahu)
- Kapalama Container Terminal Wharf and Dredging (Oahu)



Cosgrove, Todd T.

From: Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>
Sent: Thursday, October 12, 2023 8:33 AM
To: Jenkins, Forest B.
Cc: Fitzpatrick, Trevor J; Steed, Miranda C
Subject: RE: Re: Bow Engineer Report

Caution: external email

Thanks, Forest.

From: Jenkins, Forest B. <fjenkins@goodsill.com>
Sent: Wednesday, October 11, 2023 9:44 PM
To: Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>
Cc: Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>; Steed, Miranda C <miranda.c.steed@hawaii.gov>
Subject: [EXTERNAL] Re: Bow Engineer Report

Rebecca:

Thanks for speaking with me yesterday. I've attached the State's engineering report submitted prior to the contested case with the State's prior position on the size/quantities of the structure prior to the contested case. To be clear, we do not make any representations whatsoever regarding the findings and/or conclusions in the attached report. However, I am passing the report along to you solely for your review in processing the land disposition because it details the State's prior position on the size of the structure. Thanks.

Forest B. Jenkins



Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813
P. (808) 547-5765 | F. (808) 441-1221
E. fjenkins@goodsill.com | www.goodsill.com

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Design Build

7130 Kukii St
Honolulu, HI 96825
markticconl.mdt@gmail.com
Phone: (808) 348-7192

October 24th, 2023

Land Board
Department of Land & Natural Resources

RE: Proposal for Removal of Concrete Shoreline protection & Installation of Temporary Shoreline Structure

Property: 59-175C Ke Nui Rd
Haleiwa, HI - Tax Map Key (TMK) (1) 5-9-002:026

It has been brought to my attention that there has been some question to the utilization of heavy equipment in the removal of the timber and concrete structure located in the front of property located at 59-175C Ke Nui Rd. Considering the site conditions:

- The home is located approximately 20ft above mean sea level
- The structure contains at minimum seventy five yards of concrete and several large timbers within the concrete formation
- The structure is located partially below mean sea level
- Shoreline wave conditions are aggressive in the period between September and April annually
- Structure is approximately 12ft to 16ft in height and width
- Shoreline width varies significantly and changes swiftly
- The structure is located in sand which is unstable when positioned at angles greater than 45 degrees

These conditions are not conducive to efficiently and effectively executing the work required without the utilization of heavy equipment. The area required to excavate to the base of the structure is approximately 200 yards of material which would need to be stable under construction. The ideal construction window for removal is only approximately 4 months in duration (May- August). Working with small machines (i.e. jackhammers) requires pieces to be fragmented into one sqft diameter or smaller. If the heavy machinery in the Removal Plan was not allowed, then the seawall would need to be fragmented into one sqft diameter pieces on the beach and then manually transported off the beach.

This is an excerpt from the removal plan submitted in December of 2022.

“A. Removal of the Existing Concrete and Timber Shoreline Installation

The existing concrete structure is approximately 50ft wide and consists of approximately 75 yards of concrete, several timber poles and steel rebar. This will all be removed along the makai shoreline boundary and disposed at a concrete recycling facility. To remove the structure access down the beach right of way will be required. Heavy equipment will be required to safely and efficiently remove the system. Below we will outline the demolition and removal plan.

1. Equipment to be used: To remove the material we will require an excavator with a hoe ram for demolition. A 45 ton-crane will be utilized for large pieces of debris removal from the shoreline. Flatbed trucking and roll-off dumpsters will be utilized to haul debris to the appropriate recycling facilities. Access will be required for staging along the beach access during heavy construction activities.

2. Staging area: The ocean side yard and beach area will be active construction and staging areas. The right of way will be temporarily blocked for the safe removal of the concrete and timber structure/. The figure below depicts the area required.



Figure 1

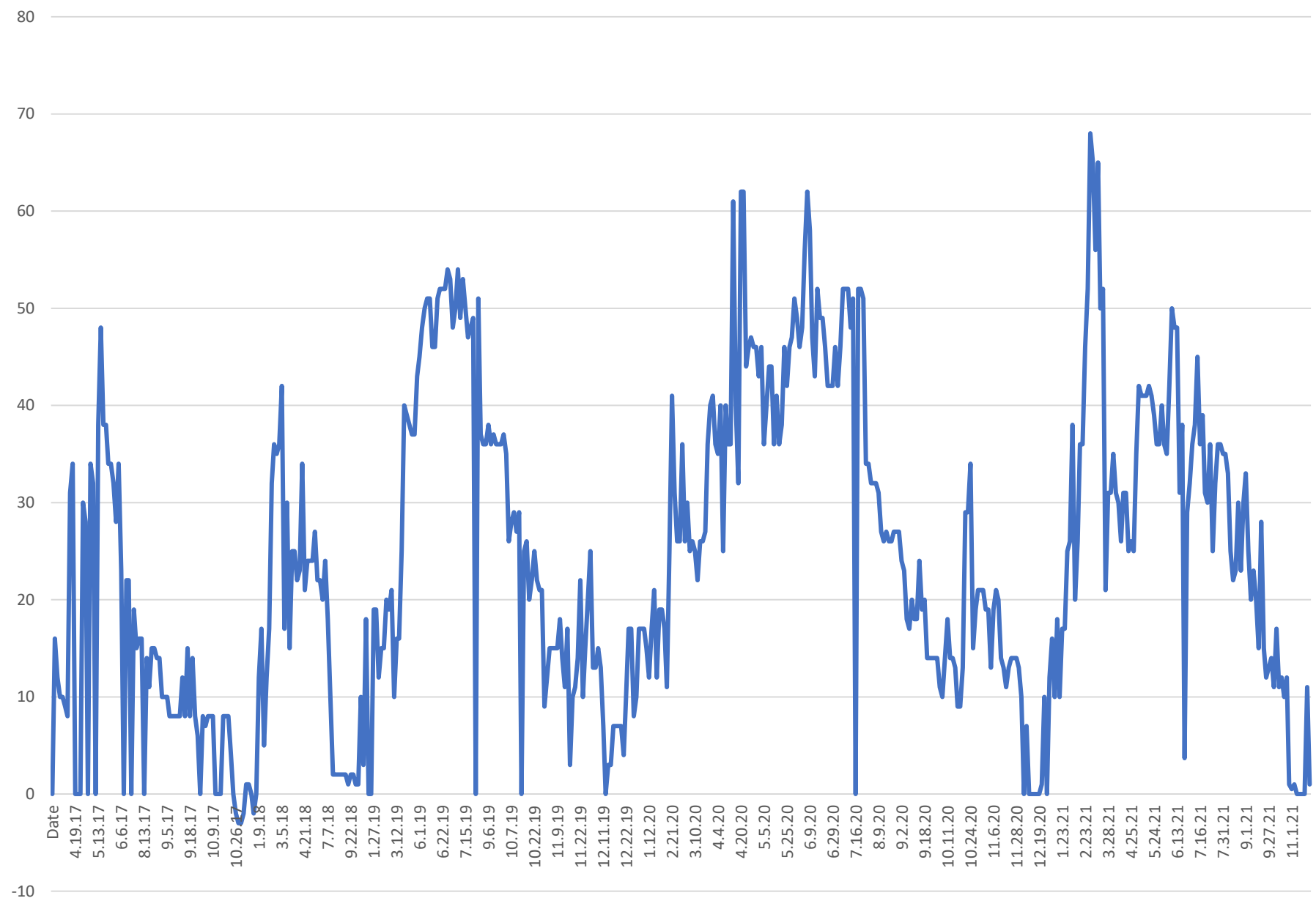
I would not advise anyone to attempt to execute the work required for the safety and success of the task without the use of the proper equipment. Please let me know if you have any further questions. Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Ticconi'.

Mark Ticconi
Director of Operations

Paces



October 25, 2023

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

Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Request for Approval of Emergency Conservation District Use Application (Emerg. CDUA) OA 24-01 Related to the Settlement Agreement for Contested Case CC: OA 21-03 for ENF: OA 21-03 and the Removal of Concrete Shoreline Protection Structure (Unauthorized Seawall) and Installation of Temporary Shoreline Structure Located Makai of 59-175 C Ke Nui Road, Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, Tax Map Key (TMK): (1) 5-9-002:026 (seaward)

Dear Board of Land and Natural Resources:

My name is Dennis Poma and I am the Principal and a Professional Engineer for Advanced Compliance Solutions, Inc. located at 95-103 Mahuli Pl, Mililani, HI 96789. I am a licensed Professional Engineer in Hawaii (License No. PE-10776) and have been licensed in Hawaii since 2002. I am writing to respectfully submit written testimony for Agenda Item K-2 on the October 27, 2023 Board of Land and Natural Resources (“BLNR”) Meeting.

I am personally familiar with the seawall at the property located at 59-175 C Ke Nui Road, Haleiwa, Hawaii 96712 (TMK No. (1) 5-9-002-026). The seawall itself was originally constructed with a lower base consisting of large diameter concrete piers (approximately 30 to 36-inches in diameter), or columns (plus or minus approximately six feet in length), which were connected through a concrete grade beam near the upper portion of the columns. These columns are buried deep beneath the sand, estimated approximately 8 ft below lowest sand levels during the year. The upper portion of the seawall contains rectangular shaped concrete columns attached to the top of the concrete pier or column and wooden logs (e.g., treated poles) that span between the upper columns. Additional materials are rebar, wood, CMU blocks, and potentially other materials. The upper wall is approximately 10 to 12 feet in height.

I’ve reviewed the Expert Report of Bill Bow and William F. Bow of Bow Engineering & Development, Inc., dated April 16, 2022 (“Bow Report”). I understand that this was the engineering report submitted by the Department of Land and Natural Resources (“DLNR”) prior to the May, 2022 contested case. I understand, without making any representations or concessions, that the Bow Report estimated the following quantities for the seawall:

- Cylindrical Concrete Footing (5 footings, 30’ Diameter x 6’ Depth)
- Concrete Footing (50’ L, 3 courses)
- 120 CMU Blocks (50’ L, 3 courses)
 - The Bow Report estimates three rows of CMU blocks (8’ x 8’ x 16”) stacked on the large footings that were 2.5 feet in diameter.
- Concrete Pillars (5 -12’ x 12’ x 60’ H)
- 10 Large Wood Pile (telephone pole)
- 300 Wood Planks (50’ L x 10’D, 6 rows high)
 - “Each exposed wood beam was extremely weathered and cracked, however the size was estimated to be approximately 10-in in diameter and likely ranged in lengths of 5-15 ft[.]”

- 40 cubic yards of estimated exposed concrete added to the original seawall. 25 cubic yards of concrete, CMU, and wood also specified as pre-existing in the structure. 65 cubic yards of construction material estimated in total and largely buried deep beneath the sand.

From an engineering perspective, it is illogical to suggest that the above-listed quantities could be dug out from deep beneath the sand and removed by hand and jackhammer. It is my opinion, to a reasonable degree of engineering certainty, that an excavator is necessary to perform the removal project. Due to access limitations, the excavator would need to access the seawall from the beach. It is also my opinion that using heavy machinery, as specified in the removal plan, will be the most efficient method of removal and have the least impact to the beach area.

The Bow Report contained a Construction Cost Estimate for the original seawall and opined that an excavator, mini-excavator, loader, and forklift would be required to construct the original seawall. An excavator and loader were also recommended for safety measures for any construction work on the seawall. The Bow Report also contained a Construction Cost Estimate related to the alleged added construction materials to repair the seawall. In the Construction Cost Estimate, an excavator, mini-excavator, loader, and forklift were again listed as necessary construction equipment for repairs to the seawall. Again, an excavator was recommended for safety measures for any repair work on the seawall. I agree with the opinion contained in the Bow Report that an excavator is necessary to perform work on the seawall. An excavator is equally essentially to deconstruct and remove the seawall from the beach.

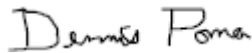
- The excavator with hammer attachment (hoe ram) will be more efficient in removing the large amount of concrete and other mass. This method will create larger pieces (e.g., 3 to 4 ft diameter or larger) making it more efficient than removing smaller and larger number of pieces. The excavator can also be converted to a conventional bucket with thumb that can be used to efficiently pick up larger pieces of concrete broken up by the hammer device and positioned such that a crane could then lift them from the beach to a flat bed truck or dump truck.
- Manual jackhammering would result in pieces of a much smaller diameter (e.g., 1-ft avg diameter) compared to the size that could be broken up by the excavator with hammer device (e.g., 3 to 4 ft diameter). This size difference will result in less pieces that need to be collected and removed from the beach area, thus resulting in a shorter amount of time and less impact noise nuisance would occur. Manual hammering methods would be very inefficient and would take considerably longer, at least 2 to 3 months more in my opinion, than if heavy equipment was used. Jackhammering the entire structure down to small fragments requires breaking the materials down on the beach itself rather than transporting large materials directly to the transport vehicles for proper disposal. The manual jackhammering process would create much more construction debris on the beach as the materials are crushed into small fragments.
- If manual methods were employed, considerable time would be lost daily trying to dig down to necessary depths. The sand's angle of repose is about 45 degrees and the amount of backslide material that would refill the hand excavation would defeat the purpose of hand digging and add considerable amount of time to the removal. Additionally, hand digging to a depth greater than 4-ft in sand material such as this is not feasible without heavy excavation equipment.
- I believe there is a considerable benefit to using heavy equipment to expediate the removal of the large amount of material present which would decrease the amount time and nuisance to the public and surrounding community. This would include the decreased

impact to local residents and public beach traffic along Ke Nui Road and the alley way during the day, which already is crowded and difficult.

- Due to the height of the existing structure, manual deconstruction methods would be difficult with jackhammers as sufficient footing for workers is not present. Scaffolding and fall protection devices would be necessary, creating additional hazard and impractical and inconvenient time consuming deconstruction methods.
- Heavy equipment is the more practical and safe means of removal than hand or manual methods. Using manual labor will have a higher degree of safety risk including back strain, slips, trips and falls from workers in debris area, and falling objects from upslope to downslope areas putting workers in danger.
- Protective measures can be put in place to keep public from harms way, including temporary barriers (e.g., cones and caution tape around the perimeter, or temporary staked orange fencing that can be assembled each day and around the excavator at night.
- Spill materials will be on hand should a hydraulic oil leak occur, whereby, any contaminated sand would be placed in containers for proper handling and disposal.

Removing the structure within the time between the October 27, 2023 meeting also presents difficulties due to the upcoming season of high surf and unfavorable conditions. I understand that there is a condition that work cannot be performed during high surf in the Agenda Item K-2. This will make removal by December 31, 2023 difficult and present time constraints for the McNamaras.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Poms".

Dennis Poms, P.E.

K-2 - Follow-up Testimony of Peter T Young on OA 21-03-Oct 27, 2023

I am not sure why we are here.

- The Settlement Agreement instructs the McNamaras to remove the existing seawall - which they plan to do, after they are given the necessary permission by DLNR to do so.
- The Settlement Agreement instructs the McNamaras to submit a Removal and Demolition Plan by December 31, 2022 – which they did. (That was 10-months ago, and the matter is only being addressed now.)
- The Settlement Agreement instructs the McNamaras to apply for an Emergency Permit for temporary erosion control structures – which they did.
 - As noted in the Settlement Agreement, “A completed permit application will not be unreasonably denied and OCCL will provide its recommendation in favor of issuance of the permit to the Chairperson of the Board or the Deputy Director of the Department upon OCCL's processing of a satisfactory completed application as discussed herein.”
 - Both the Settlement Agreement and the Conservation District Rules note that Emergency Permits “are processed by the department and approved by the chairperson”. (§13-5-30 (a)) Likewise, at §13-5-35 (a) the Rules state, “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”.
 - Instead of following the Settlement Agreement and its own Rules, DLNR is now seeking the Board’s approval. (The Board signed-off on the Settlement Agreement and, doing so, agreed to the permitting process stated in the Settlement Agreement.)
 - As an emergency and per the terms of the Settlement Agreement. the permit should have/could have been processed immediately.
 - As seen in the staff submittal before you, OCCL is recommending approval – so we know the McNamaras submitted a reasonable request. And, per the Settlement Agreement, that “permit application will not be unreasonably denied”. That permit should have been issued months ago.
- The Settlement Agreement instructs the McNamaras to “obtain a land disposition from the O’ahu District Land Division, to the extent required by law for the project, before installation of the temporary erosion control structures.” And, per the Settlement Agreement, a “satisfactory completed land disposition application will not be unreasonably denied.”
 - The McNamaras requested a land disposition in March 2023 (7 months ago).
 - In a discussion last week with a senior member of the O’ahu Land Division, it is not clear if or when a land disposition will be issued – note, again, the Settlement Agreement states that it “will not be unreasonably denied.” However, the lack of response is effectively a denial.

The McNamaras have fulfilled every commitment they made in the Settlement Agreement. The McNamaras have been seeking approval to move forward and remove the seawall, yet DLNR has neither been timely nor responsive and has significantly deviated from the terms of the Settlement Agreement.

The delay in issuing the land disposition has been effectively a denial of it (which is contrary to the provisions of the Settlement Agreement).

DLNR has further prejudiced the McNamaras by stating in the title of this submittal that this is about an “Unauthorized Seawall”. There has been no determination that the seawall is an “Unauthorized Seawall”.

In fact, since at least 2004 (for the past 19-years) OCCL has treated the McNamara seawall as a nonconforming use. The incorrect/misleading title to this action is a serious breach of Due Process and the terms of the Settlement Agreement and prejudices the McNamaras.

Even a casual observer can see that the McNamaras are not treated fairly and DLNR is setting them up to fail.

Again, I am not sure why we are here, the Settlement Agreement clearly laid out the process and that process kept DLNR decision-making at the Chair's level. The Settlement Agreement terms were intentional to conform with the Rules and allow for speedy responses; however, DLNR has been anything but timely and responsive.

Since we are here, here are the McNamaras' needs and requests:

1. Approve the Plan, issue an Emergency CDUP and issue a land disposition so the McNamaras are able to start this work.
2. Due to DLNR's delay and ongoing inaction, the McNamaras need additional time, likely through the coming summer, to allow for safe demolition work that accommodates lateral access along the beach.
 - o The Settlement Agreement acknowledges that now is the wrong time of year to work on the beach where it notes that the McNamaras "should remove the wall before the fall/winter 2023 swells make removal impractical." The McNamaras had hoped they could remove the wall in a timely manner; however, delays and inaction (effectively denials) by DLNR precluded that.
3. The McNamaras need the right to use an excavator with a hoe ram on the beach.
 - o The McNamara removal plan specifically notes that an excavator with a hoe ram is needed on the beach to break up the mass of concrete and then prepare it to be lifted to trucks above.
 - o DLNR's engineer estimates 65 cubic yards of material need to be removed. McNamaras' contractor estimates that there are 75 cubic yards of concrete, timber poles and steel rebar.
 - o It is estimated that a solid, unbroken slab of concrete (which much of the wall is) weighs about two tons (or 4,000 pounds) per cubic yard. There is a lot of concrete and material to remove. (Do the math – say it is 'only' 60-cubic yards of concrete, that is 120-tons of concrete that needs to be broken up and removed.) The amount of concrete is too massive to whittle it away with a jack hammer and wheelbarrow it up the hill to trucks.

Note that not all of the necessary approvals are included/recommended in the submittal before you; without all of these approvals the McNamaras cannot start demolition. So, approval of the submittal 'as is' is not enough to authorize or start removal.

We are at the 11th hour and facing a hard stop date of December 31, 2023 and, as you can see, while the McNamaras have fulfilled their commitments on time, DLNR has not followed the terms of the Settlement Agreement and remains nonresponsive.

The McNamaras have committed to remove the seawall, but DLNR's inaction has precluded them from doing so. As noted in the Settlement Agreement, "Any work that is done to the Seawall without prior authorization from the Department or the Board shall be a breach of this Agreement and shall be grounds for further enforcement actions and penalties."

DLNR's delay or deny of the reasonable requests made by the McNamaras are inconsistent with the commitments made by DLNR in the Settlement Agreement and are clearly DLNR's breach of that agreement.

When you go into Executive Session (as I am sure you will) to discuss "the Board's powers, duties, privileges, immunities, and liabilities" I ask that you honestly ask yourselves:

- Has DLNR fully lived up to the terms and DLNR's commitments in the Settlement Agreement?
- If DLNR denies the McNamaras from using an excavator, how does DLNR justify its and other government use of that equipment on the beach?
- Overarching all of these, has DLNR treated the McNamaras fairly in this process?

The resolution to this is simple, approve the Plan and CDUP, grant the land disposition and extend the hard stop date through summer 2024, and allow for the use of an excavator with a hoe ram on the beach.

K-2 – Testimony by Peter T Young related to Emergency CDUA for Seamails LLC - McNamara

- (1) The title of this matter is defective and in error. This is a serious technical problem (that unfairly prejudices the McNamara’s position in this action). The title states:

Request for Approval of Emergency Conservation District Use Application (Emerg. CDUA) OA 24-01 Related to the Settlement Agreement for Contested Case CC: OA 21-03 for ENF: OA 21-03 and the Removal of Concrete Shoreline Protection Structure (**Unauthorized Seawall**) and Installation of Temporary Shoreline Structure Located Makai of 59-175 C Ke Nui Road, Tax Map Key: (1) 5-9-002:026 [emphasis added]

- (a) In 2004, DLNR reviewed and concluded that the seawall was not in violation of conservation district rules and notified the then-landowner that an after-the-fact CDUA was not necessary:

(After the text & photographs of this testimony, the DLNR letter is identified as pages A0006- A00012)

The letter from Sam Lemmo states, “It is unknown whether the improvements were made after the establishment of the Conservation District in 1964. The OCCL will not pursue this matter as a Conservation District violation since it is not possible to determine whether the improvements were made within the Conservation District at the time of construction nor when they were made. ... As a consequence, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.” (emphasis added) (February 23, 2004 Letter from Sam Lemmo – attached at end of this testimony)

- (b) Later, in response to a request by the prior owner of the McNamara property requesting to place emergency erosion control measures along the ocean side of the property, Suzanne Case (Chair of DLNR) wrote an August 9, 2018 letter to John Nichols (prior owner of the McNamara property).

(After the text & photographs of this testimony, the DLNR letter is identified as Exhibit G)

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

“The DLNR is unable to authorize placement of a temporary sandbag structure along the shoreline fronting the subject properties. While erosion fronting the subject properties has become severe, existing hard surfaces constructed within the subsurface appear to be functional in reinforcing land on both properties. Thus, erosion control measures are not warranted and would likely not improve the situation.” (emphasis added)

- (c) Then, as recent as 2020, DLNR did not object to the existing McNamara seawall. In a letter dated August 1, 2019 referenced as Vio. OA-20-01 and an undated letter referenced as Vio. OA 20-31, DLNR alleged violations referred only to:

(After the text & photographs of this testimony, the DLNR letters are identified as Exhibits H&I.)

“Placement of the fabric and sandbag burritos, the permanent stairways, and the wood bench” (Exhibit H)

“work done in the shoreline area that includes a staircase, railings, and fencing” (Exhibit I)

In an associated submittal, DLNR stated, “The subject violations appeared to have been removed, and the McNamaras were sent a compliance letter resolving these violation matters on June 15, 2020.” However, note, that the existing seawall was not mentioned or a part of those alleged violations. (emphasis added)

The fact is that for at least the last 19-years OCCL has recognized and has treated the McNamara seawall as a nonconforming use.

There has been no determination that the seawall was an “Unauthorized Seawall”. This was made absolutely clear in Article 6 of the Settlement Agreement which states “[a]s the Contested Case is being resolved by settlement and stipulation, no factual findings or conclusions of law will be issued in connection with the Contested Case.” As such, the title of this action on the agenda is defective, in error, violates the Settlement Agreement and unfairly prejudices the McNamaras.

- (2) The McNamaras fulfilled all obligations of the Settlement Agreement, on time, in every way. However, DLNR has not been timely nor responsive with its commitments and obligations. As a result, there is not enough time for compliance with the settlement agreement and the hard compliance deadline needs to be reasonably extended.

Delay or denial by DLNR of reasonable proposals and requests by the McNamaras (to fulfill their commitments and obligations) is a breach of the Settlement Agreement by DLNR.

That agreement requires actions by both parties. Only the McNamaras have been timely and responsive in fulfilling the commitments and obligations of the parties to the settlement.

The McNamaras are responsible to remove the seawall by December 31, 2023. In order to comply with the settlement agreement, DLNR must take actions that allow the removal of the seawall and install the ‘burritos’. Likewise, the McNamaras need permission from the State to enter and work on State property to conduct those activities. A land disposition application will not be unreasonably denied per the material terms and conditions of the Settlement Agreement.

Non-responsiveness and delay amount to an unreasonable refusal to grant the requisite approvals in a timely and legally reasonable manner.

Due to delays by DLNR and unresponsiveness by DLNR, the timing issues related to the settlement agreement must be amended. Because of DLNR delays and unresponsiveness to repeated requests for action, the McNamara’s are put in a situation of not having adequate time to fulfill their responsibilities in the settlement agreement.

In December 2022 (one year before the hard compliance deadline of December 31, 2023), the McNamara attorney submitted to OCCL the removal plan of the existing wall and the installation plan for the temporary burritos.

In March 2023, the McNamara attorney requested a revocable permit from Land Division to access State lands to implement the removal of the existing seawall and installation of soft measures. The removal plan and installation plan for the temporary burritos were included in the submittal. The McNamara's attorney followed up at least five or six times, but was completely ignored by Land Division until October, 2023.

Now, months later, after repeated requests for actions/updates/status, DLNR recommends approval of the plan for the removal of seawall and installation of temporary protection measures. This recommended approval confirms that the McNamaras provided a reasonable plan.

However, permission to enter State property is not included in this submittal and it is not clear when that permission will be granted. Nonaction by the Land Division is effectively a denial, as the McNamaras may not enter State land to complete the removal of the seawall without the permission of DLNR.

This is a matter before the BLNR, who has jurisdiction over all divisions within DLNR. The submittal addressing the McNamara Settlement could have/should have included approval for all requests the McNamaras made to DLNR.

Due to the delays and effective denial of the land disposition, it is now clear that there is not adequate time for the McNamaras to remove the seawall.

The existing seawall is a significant structure. In preparation for the Contested Case, DLNR's expert (Bow Engineering) prepared a report that estimated that the original seawall has approximately 25-cubic yards of material and an additional 40 cubic yards of concrete were added.

Sixty-five cubic yards of concrete and other material is a significant volume (over 6 truckloads of cement). To remove the cement seawall, it must first be broken up, then lifted to containers/ trucks to haul away.

The seawall removal proposal notes that, "Equipment to be used: To remove the material we will require an excavator with a hoe ram for demolition. The excavator will access the beach by through the county right of way. A 45 ton-crane will be utilized for large pieces of debris removal from the shoreline. The crane will be situated on the county right of way. Flatbed trucking and roll-off dumpsters will be utilized to haul debris to the appropriate recycling facilities."

A condition by OCCL recommends, "10. 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". Likewise, "20. Obstruction of lateral shoreline access shall be avoided or minimized".

The present beach condition is consistent with the seasonal variation that is experienced with beach narrowing in the summer and widening in the winter. The submittal related to the prior alleged violation describes this as, "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).”

We are coming out of the summer season and the beach is still narrow; we have not yet seen the seasonal accretion that typically comes during the winter.

Likewise, winter is the typical season for high surf. That creates problems in having adequate (and dry) space to conduct the demolition work, as well as the impacts of the seasonal accretion that deposits sand in the work area.

There is not enough room (the beach is too narrow to safely remove the seawall).

- (3) It seems that an issue related to the removal of the seawall deals with whether DLNR Land Division will recommend approval of the McNamara’s removal plan (submitted over 7-months ago) and allow the use of heavy equipment (excavator and other equipment) on the beach.

In part, that proposed work plan states, “Equipment to be used: To remove the material we will require an excavator with a hoe ram for demolition. The excavator will access the beach by through the county right of way. A 45 ton-crane will be utilized for large pieces of debris removal from the shoreline. The crane will be situated on the county right of way.”

While no one at DLNR has told the McNamaras one way or the other, it appears that Land Division may not recommend and BLNR may not approve the use of an excavator on the beach.

In the present submittal, OCCL hid reference to heavy equipment in a footnote on page 3 that states, “The proposed use of heavy machinery on the public beach/State-owned submerged lands will be subject to Board review.”

Apparently, the issue concerning use of heavy equipment on the beach is being considered at the Land Division. In a call with a senior member of the Land Division, it is unclear what that recommendation will be and when it will be made.

Suggesting that an excavator may not be allowed on the beach is inconsistent with DLNR’s (and other government entities’) own actions when working in the shoreline area.

This looks like government may be imposing a double standard and “do as I say, don’t do as I do” statement from the government.

There is significant evidence that government, including DLNR, uses excavators in the shoreline area. If it is true that DLNR will not allow an excavator on the beach, it will be interesting to see how government gets its projects done in the future without excavators.

All beach replenishment projects had excavators, trucks and other heavy equipment on Waikiki Beach. Likewise, government clears streams at the shoreline using excavators.

A ‘model’ project involving repairs and maintenance at Sunset Beach Park had excavators on the beach. How can that model be followed if DLNR suddenly bans excavators on the beach?

The following images show the use of excavators on the beach by government (City, County and State.)



Excavator and Bulldozer doing 'Sand Pushing' on Sunset Beach (a couple houses away from McNamara)



Excavator (in the wash of the waves) doing repairs associated with Sunset Beach Park Improvements 2018



Excavator (in the wash of the waves) doing repairs associated with Sunset Beach Park Improvements 2018



Excavator and Bulldozer clearing Kaelepulu Stream at Kailua Beach Park



Excavator on Waimea Bay beach cutting channel to drain Waimea Valley River



Excavator on beach at Kauai for Wailua River Mouth clearing



Excavator on Waikiki Beach (Kuhio Beach Sand Replenishment Demonstration) 2006



Excavator and Trucks on Waikiki Beach (2012)



Excavator on Waikiki Beach (2012)



Excavator and Trucks on Waikiki Beach 2021



Bulldozer on Waikiki Beach 2021



Truck and truck route on Waikiki Beach 2021

LINDA LINGLE
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

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
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

REF:OCCL:DE

February 23, 2004

Encroachment: OA-04-15

Mr. William Byrns
Attorney at Law for Susan Wickard
1001 Bishop Street
Pacific Tower Suite 2650
Honolulu, Hawaii 96813

Dear Mr. Byrns:

Subject: Shoreline Encroachment (Seawall and stairs) at 59-175 C & D Ke Nui Rd. Haleiwa, Hawaii, TMK: (1) 5-9-2:26

Office of Conservation and Coastal Lands (OCCL) staff have reviewed the submitted documentation, historical aerial photos and conducted a site visit December 28, 2003 for the encroachment of the subject parcel. According to the documentation submitted, the encroachment in question is a wood pole-pile seawall with concrete reinforcement and a set of wood stairs to the beach, located Makai of the homeowner's property line. The seawall is composed of vertical wood pile supported by concrete pile all of which is encroaching on State land. The total area of the encroachment is approximately 200 square feet.

OCCL staff was unable to locate any construction permit or other land use authorizations for the subject improvements. As the agent for the applicant, you state that the applicant has no records of when the improvements were built as the wall and stairs were in place when the property was purchased in 1980. The Survey division has no records of any previous shoreline certifications for the subject property. Further inquiry with the City and County of Honolulu Department of planning and permitting, revealed there were no building permits on file for the subject seawall. Based on recent staff investigations along with the returned questionnaire, the improvements appear to have been built some time before the purchase of the home in 1980.

It is unknown whether the improvements were made after the establishment of the Conservation District in 1964. The OCCL will not pursue this matter as a

A00006

Conservation District violation since it is not possible to determine whether the improvements were made within the Conservation District at the time of construction nor when they were made. Historical aerial photographs do not adequately reveal the presence of the improvements and do not provide conclusive evidence of when the improvements were built. Additionally, it is clear the applicant and the agent have shown good faith in attempting to rectify the encroachment so they may certify their shoreline. As a consequence, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter. However, the OCCL is concerned about the potential long-term negative impact the encroachment poses to the surrounding coastal environment and offers the following recommendations regarding the subject encroachment.

Policy Statement:

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of OCCL staff. Following is a summary of the Department findings and recommendations relating to the subject encroachment.

Findings:

Surrounding Land Uses:

The surrounding uses are residential and state Conservation land.

Beach Resources:

The beach area is excellent, offering unique and superior quality recreational resources. Many north shore beaches provide an outstanding resource with exceptional social, recreational, cultural and economic value and shall be protected to the best ability of the State. The beach system is extremely dynamic in this area with exposure to large North Pacific swell in the winter. Seasonal

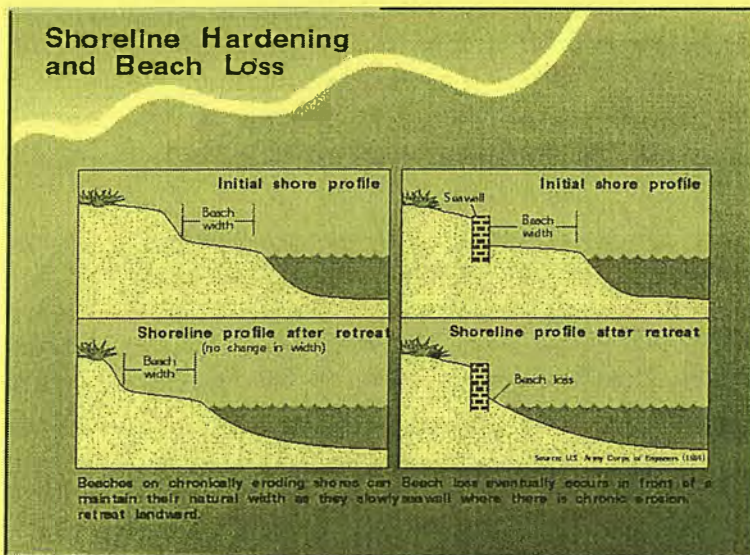
changes are dramatic with large variability based on swell direction. The erosion history is not well defined in this area but it is understood to be seasonally unstable with an erosion trend over the long-term. Additionally it is understood that the area plays a critical role in the longshore transport of sand and is often subject to significant changes in beach width. The entire region is dominated by wave-driven, bimodal, seasonal longshore sediment transport and the uninterrupted flow of sand alongshore is critical to the health of the littoral systems adjacent to the subject property.

Public Access:

There is public access to the beach adjacent to the subject property on the southern boundary. A portion of the subject improvement may extend to the adjacent beach access and remains buried under sand but has not been observed by OCCL staff.

Recommendations:

In order to proceed with a shoreline certification application the owner will need to rectify the shoreline encroachment before a shoreline certification can be processed. There is however concern that the subject improvements may pose a potential threat to the natural resources including the beach fronting the property. In order to protect the unique qualities of the coastal system fronting the subject property, the Department would like to work with the applicant to consider alternative shore protection strategies that may be less harmful to the littoral system than the existing seawall.



It has been well documented that seawalls on a chronically eroding shoreline can lead to beach loss or narrowing by restricting the natural movement of the shoreline landward. With a hard structure in place the beach may not maintain the original width as it retreats landward and instead narrows. The Department has tried to mitigate negative impacts to the coastal system from shore

protection structures by encouraging alternative erosion control measures in place of constructing seawall and revetments.

There are a variety of state-recommended alternative shoreline erosion control measures that can be taken to minimize the potential damage from erosion. Many of these measures reduce the potential impact to the beach resource while still offering protection to the property. Some of these include dune restoration/plantings, relocation of structures, beach nourishment, Geobags and sandbags. OCCL staff have considered available alternatives appropriate for this site and offer the following recommendations as alternatives to the existing seawall:

Relocation, Adaptation and Retreat

The most effective method of protecting property is to proactively plan and locate structures landward of where expected erosion is anticipated for the foreseeable future. The basic assumption with this strategy is that it is easier and cheaper to relocate rather than eternally wage war with the shoreline. Ideally, new structures will be situated to accommodate future erosion rates and the style and area of the structure should be appropriate for the hazards. Federal, State and County agencies generally attempt to prevent shorefront property owners from developing to close to the active shoreline by establishing shoreline setback regulations.

Currently Oahu has a standard shoreline setback of 40' from the certified shoreline, other counties are implementing variable setbacks based on the historical erosion rate. Adaptation involves first identifying hazard zones where erosion or other coastal hazards are most likely and establishing estimates of historical shoreline erosion rates for determining what structures are inappropriate and establishing a safe set back from the shoreline. In this case, the applicant may want to consider relocating the subject improvements further landward on the property. The TMK suggests there is room to carry out such a measure.

Adaptation may also involve engineering structures to accommodate hazards. Examples of this are piling supports that elevate the structure above a minimum elevation. The neighboring property to the south has taken this approach by putting their home up on pilings. The state Flood Insurance Rate Maps (FIRM) delineate minimum required heights for flood and wave inundation and require new structures to conform to these base elevations as is common for many newer structures in low lying areas.

Beach Nourishment

Beach nourishment consists of placing sand on an eroding shoreline to replace lost sand. The replaced sand may mitigate the effects of beach loss or act as a buffer for future storm damage as well as providing recreational benefits that may contribute to the local economy. This management strategy may involve nourishment, dune restoration, or sand bypassing around jetties. Because of the

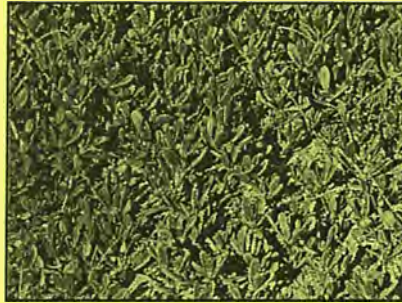
extreme wave energy and high potential for longshore transport of sand in this area beach nourishment is not recommended as a cost-effective alternative.

Coastal Dune Stabilization, Restoration and Vegetation

Sand dunes play an important part in the beach system. Vegetated dunes trap windblown sand, store excess sand reserves, serve as natural erosion buffers and create an elevated berm and dense root system that may protect against storm and high wave events. The dunes provide an emergency supply of sand to the beach when erosion occurs. It is advisable to plant species that are adapted to the physical and chemical characteristics of the site, maybe with some advice from a professional or nursery. Several species of native Hawaiian plants are adapted to the coastal environment and perform well for erosion control.



'Aki 'Aki



'Akulikuli



Naupaka



Pohuehue (Beach Morning Glory)



Sea Shore Paspalum Grass



Dune Walk Over

These salt-tolerant species of plants and grasses provide effective erosion control for Hawaii dune systems. Natural vegetation is important for stabilizing the dune system. These low-lying plants work well to cover the active dune and protect the backshore against temporary erosion by forming a dense mat that is resistant to wind and wave erosion. Seashore Paspalum grass is ideally suited for Hawaii in the area behind the frontal dune but still in the erosion zone. This salt tolerant grass can grow directly on the sand with little or no soil needed. It can withstand periodic flooding and can be

irrigated with brackish water. As with many of these species herbicides are not needed because salt water can be used to kill weeds.

Geobags



Geotextile bags in the form of a soft revetment.

Geotextile bags aka, Geobags and S.E.A.bags have been utilized with varying success in Hawaii. The larger size and more durable material of the newer synthetic fiber geotextile bags have proven to be more effective in the marine environment. While these bags are still susceptible to vandalism and abrasion they have a much longer life expectancy (2 to 5 years) that burlap or nylon bags. The larger bags (>10ft long) are generally more stable and are typically stacked into

the form of a "soft" revetment.

These larger bags can be used in conjunction with some form of geotextile fabric that is laid underneath and/or on top of the bags as a filter material to prevent scour and erosion of material underneath the bags. An empty bag is placed at the erosion scarp and pumped full of sand. A typical bag is 2 ft high, 5 ft wide and 10 ft long which yields a volume of 2.3 yd³ per bag. Additional sand is pumped into the bag as the liquid drains out of the permeable material.

Sand bags are considered a temporary emergency erosion control measure and are typically authorized only when there is imminent danger to a structure or property and are not regarded as preventative erosion control measure. Although a temporary structure, sand bags may affect the natural shore processes and must be monitored and regulated appropriately. Placement of any type of sand bag (considered a shoreline structure) is approved by the state and county regulatory agencies and must be authorized through your county and State agency. An attractive alternative might be to place a series of geobags that are buried under a nourished dune system. This might provide the protection of the sandbags and also offer vertical relief with the dune nourishment.

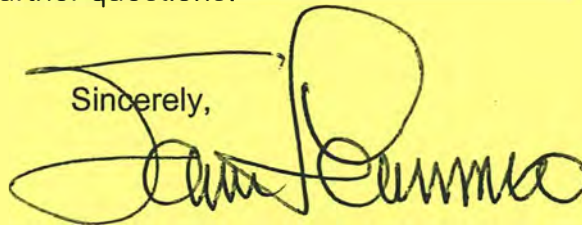
The department understands the distance from the encroachment to the existing dwelling is less than 20 feet and may warrant the use of emergency sand bags if the existing building is threatened by erosion if the seawall is removed.

Placement of hard erosion control structures such as seawalls and revetments is discouraged as it may have a detrimental impact on the beach resources over the long-term. Please contact OCCL staff for more information on the recommended alternatives.

For regulatory purposes, you should also contact the City and County of Honolulu Department of Planning and Permitting for any future improvement activities within the Shoreline Management Area (SMA).

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Sam Lemmo, of the Office of Conservation and Coastal Lands at 587-0381 or Dolan Eversole of the University of Hawaii Sea Grant Program if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Lemmo". The signature is written in a cursive style with a large, looping initial "S".

Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: Oahu Board Member
Oahu District Land Office
Chairperson's Office
City and County of Honolulu Planning and Permitting
Susan Wickard 59-175 Ke Nui Rd. Haleiwa, Hawaii 96712



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

SUZANNE B. CASE
COMMISSIONER
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
ROBERT K. MASUDA
DIRECTOR
JEFFREY T. PEARSON, P.E.
SPECIAL DIRECTOR - WATER
AGUATE RESOURCES
BOARD OF AGRICULTURE RELATIONS
BUREAU OF COMPLIANCE
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES DEVELOPMENT
PLANNING
QUALITY AND RISK
WATER PRESERVATION
KAWAII AND ISLAND RESERVE COMMISSION
STATE PARKS

DLNR:OCCL:SH

Emergency CDU AOA-1918

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

AUG - 9 2018

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

Dear Mr. Nichols,

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

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

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

Exhibit G - August 2018 Rejection Letter for Sand Push

Emergency CDUA CA-19-08

Should you have any questions on the matter, please feel free to contact Shellie Habel, Hawaii Sea Grant Extension Agent in the DNR Office of Conservation and Coastal Lands at (808) 581-0049 or via email at Shellie.L.Habel@Hawaii.gov.

Sincerely,


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

CC: LAND
C&C, DPP



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

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
ROBERT K. MAZUDA
FIRST DEPUTY
M. MALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
STATE AND OCEAN RECREATION
BUREAU OF FISHERIES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND COASTAL LANDS
DEPARTMENT OF LAND AND NATURAL RESOURCES
FORESTRY AND WILDLIFE
TERRESTRIAL PRESERVATION
KAOLOAUE BIOLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:SS

Vio. OA-20-01

NOTICE OF ALLEGED VIOLATION AND ORDER

AUG - 1 2019

CERTIFIED MAIL RETURN RECEIPT
7019 0700 0001 4006 6812

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

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

NOTICE IS HEREBY GIVEN that you may be in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District providing for land uses within the State Land Use Conservation District, enacted pursuant to the Hawaii Revised Statutes (HRS), Chapter 183C.

The Department of Land and Natural Resources (DLNR) has determined that:

1. The location of the alleged unauthorized land use is located seaward of the shoreline in the Conservation District, Resource Subzone;
2. A site inspection by the Department's Office of Conservation and Coastal Lands staff on 7/30/2019 revealed black fabric, two permanent stairways, and a wood bench on the beach fronting your property; [EXHIBIT A]
3. Pursuant to §13-5-2, HAR, the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land has been defined as a land use; and
4. Placement of the fabric and sandbag burritos, the permanent stairways, and the wood bench were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

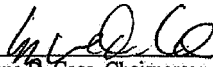
Exhibit H – August 2019 Violation Letter for Unauthorized Structures

Pursuant to 183-7, HRS, the Board of Land and Natural Resources may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs. Should you fail to cease such activity after written or verbal notification from the Department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

To resolve the matter, we recommend that you remove all unauthorized structures from the shoreline in their entirety. Otherwise, the matter will be referred to the Board of Land and Natural Resources.

Please respond to this Notice within thirty (30) days to discuss resolution of this matter. Should you have any questions, please feel free to contact Salvatore Saluga in the Office of Conservation and Coastal Lands at (808) 587-0399 or via email at Salvatore.J.Saluga@hawaii.gov.

Sincerely,



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

Cc: ODLO
DOCARE-Oahu
CCH - DPP



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:SS

Vio. OA 20-31

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

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

Dear Landowners:

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



Exhibit 1

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

Viol. OA 20-31

NOTICE IS HEREBY GIVEN that you may be in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District providing for land uses within the Conservation District, enacted pursuant to the Hawaii Revised Statutes (HRS), Chapter 183C.

The Department of Land and Natural Resources (DLNR) has determined that:

1. The improvements are located on the public sandy beach seaward of TMK: (1) 5-9-002:026, located within the State Land Use Conservation District, Resource Subzone;
2. Pursuant to §13-5-2, HAR, "Land use" means:
 - (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
 - (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
 - (3) The subdivision of land; or
 - (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.
3. This land use was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

Pursuant to 183C-7(b), HRS, the Board of Land and Natural Resources (Board) may subject you to fines of not more than \$15,000.00 per violation in addition to administrative costs and costs associated with land or habitat restoration, or both, if required, and damages to state land. Should you fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

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

Sincerely,

Signature: *Suzanne D. Case*

Email: suzanne.case@hawaii.gov

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

Vio. OA 20-31

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