

From: [Randall Myers](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Blattau Jim and Sue](#); [Denise Antolini](#); [Lauren Blickley](#); [chip hartman](#); [Karen Gallagher](#)
Subject: [EXTERNAL] 12/07-12/08 BLNR Agenda Item K.5
Date: Tuesday, December 5, 2023 4:45:21 PM

Aloha,

This testimony is directed to Agenda Item K.5 for the 12/07-12/08/2023 BLNR Meeting concerning illegal beachfront work by Joshua VanEmmerick at 59-147 and 59-147A Ke Nui Rd.along Sunset Beach. While Mr. VanEmmerick complied with a previous requirement to remove concrete fronting his homes by 10/31/2023, he proceeded to construct unpermitted structures on the public beach soon after the inspectors left, His attitude and behavior warrants the maximum fine recommended by OCCL, along with the requirement to dismantle the illegal structures.

Those of us who live in the area have been cleaning up the tarps, burritos, plastic sandbags, rocks, and rubble placed by Mr. VanEmmerick and other beachfront owners over the years. Enforcement with stiff fines will help deter the rogue culture that damages the public beach for selfish gain.

Randy Myers
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(808)295-8674

From: [KEILI MCEVILLY](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] BLNR Item K-1 and BLNR K-5 - Strongly Support Proposed Fines and Penalties for Shoreline Violations
Date: Tuesday, December 5, 2023 2:35:17 PM

To Whom it May Concern,

My name is Ke‘ili and I am a coastal advocate, surfer, and native Hawaiian. It breaks my heart to see people, who are lucky enough to live in and experience these coastal areas, be the very ones who destroy it.

As coastal erosion increases faster and faster. We, as Hawai‘i need to create unified, clear, and respected guidelines that ensure homeowners are accountable for their actions. It is not acceptable for homeowners on the North Shore to put such harmful materials into the marine ecosystems that should be preserved, protected and respected for the entire community. Bottom line: Homeowners should be held accountable for their actions and impacts on the public shoreline.

Sincerely,
Ke‘ili

From: [John Shockley](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Rita Shockley](#); [Lauren \(Surfrider\) Blickley](#); [Sen. Gil Riviere](#); [Kate Thompson](#)
Subject: [EXTERNAL] LIVE NOTE: Regarding agenda items K-1 and K-5
Date: Tuesday, December 5, 2023 10:29:57 AM

Aloha!

The Free Access Coalition favors fines and restrictions on the private home-owners who have encroached on public beaches to preserve their properties. These people have known for years the nature of the shoreline but chose to buy coastal land anyway. They cannot expect the public to pay for any losses they occur. There are risks to any real estate, be it cliff-side, coastal, tsunami tide, earthquake, or fire. Each member of the community needs to handle the risks on their own, especially if they bought the property knowing the hazards.

When the public beaches are blocked off by private structures, the free access to the shore is a major public concern. We need to keep our shorelines open to the public.

Mahalo for your time.

**John & Rita Shockley Free Access Coalition coordinators.
www.freeaccesscoalition.weebly.com
808 210-9433. (cell)**

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To: blnr.testimony@hawaii.gov

For BLNR Meeting on Dec. 7-8, 2023

Testimony on K-5: 5. Request for administrative fines and other penalties against Mr. **Joshua H. VanEmmerik** for Conservation District Enforcement Case OA 23-13 regarding construction of a shoreline erosion control device located Makai of 59-147 A Ke Nui Road, Tax Map Key: (1) 5-9-002:002, and makai of 59-147 Ke Nui Road, Tax Map Key: (1) 5-9-002:003

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

I am testifying **in support of** the OCCL enforcement submittal and swift action to bring this to the Board but **with strong reservations on the low proposed amount** of fines – only \$77,000 -- for the blatant, repeated, and continuing violations of state law by Mr. VanEmmerik and with **strong reservations about the extended period of time** (proposed as September 1, 2024 – 10 months from now) **for removal of the illegal burrito system.**

I urge that **additional** fines of **\$450,000** be imposed for the wilful violations (HRS 183C-7(b)); additional fines of **\$68,000** be imposed for failure to remove materials/encroachment (HRS 171-6(12)); and that continuing (future) fines of **\$450,000 a month** (wilful violations) and **\$1,000 daily** (encroachment) be imposed until the burrito system and all remnant material is removed. If the maximum daily fines are not imposed by the Board, then the deadline for complete (verified) removal should be only 30 days – January 8, 2024 – not one day more.

1. Fines should be up to \$15,000 daily for the wilful violations after written notice by OCCL.

The OCCL photos show a work crew on October 28, 2023 installing an illegal burrito system in front of Mr. Van Emmerik’s two houses. This is outrageous. Not only did he clearly know his actions were illegal (prior enforcement action, settlement agreement, BLNR hearing on September 22, 2023 regarding land Division ROE), but the work started only 25 days after the OCCL inspection of the partial removal of the prior illegally poured concrete!

OCCL issued a Notice of Alleged Unauthorized Work a few days later, on November 6, 2023 – putting Mr. Van Emmerik on written notice. Under HRS 183C-7(b), **additional fines after the first day should be up to \$15,000 daily and continue to accrue until the illegal system is removed.**

HRS 183C-7(b) “After **written or verbal notification from the department, wilful** violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of **up to \$15,000 per day per violation for each day** in which the violation persists.” (Emphasis added.)

If Day 1 was November 7, 2023 (presumed receipt of notice), then Day 2 (November 8, 2023) through December 7, 2023 (the day of the BLNR hearing) would total 30 days. $\$15,000 \times 30 = \$450,000$. That is the correct amount for just the first month. Those fines should **continue** until he removes the illegal burrito system – at a rate of \$15,000 daily or **\$450,000 per month.**

Under these circumstances, the Board has discretion to impose the maximum fine of \$15,000 a day.

2. Additional fines should be imposed for failure to remove ALL (concrete-related) materials by September 30, 2023.

Mr. Van Emmerik did NOT fully remove ALL materials as required by October 3, 2023, and therefore \$1,000 fines should be imposed and accrue daily until ALL are removed.

On September 23, 2023, this Board approved a Land Division Right of Entry to facilitate the work by Mr. VanEmmerik to remove – as provided under the terms of the settlement -- “**all**” of the massive concrete and materials that he had earlier deliberately placed, without authorization, in the shoreline,:

alleged unauthorized structures and encroachments by September 30, 2023, or any future violations.

IT IS UNDERSTOOD AND AGREED that failure to remove all of the alleged unauthorized structures and encroachments by September 30, 2023 and/or comply with this agreement will result in an OCCL staff recommendation to the Board of Land and Natural Resources to impose fines for ENF: OA 23-13 and mandate removal of any remaining alleged unauthorized structures and encroachments.

He did NOT remove ALL of the materials as required by the Settlement Agreement. As the OCCL submittal notes: “On October 2, 2023, OCCL staff observed that **most** material had been removed from the shoreline area fronting Parcels 002 and 003, although debris, remnant cement pieces and geotextile materials **were still found in the sand.**” (OCCL Enforcement OA 23-13, p. 2; emphasis added.). Most is not “all.” The clear terms of the Settlement and the public trust demand a strict interpretation of “all.”

Moreover, Mr. VanEmmerik’s attorney represented to this Board at the September 22, 2023¹ meeting that ALL materials had previously been removed, which was clearly false; a falsehood that Mr. VanEmmerik did not correct despite that he was on the Zoom and had the opportunity to do so.

(Video at 4:52:18) - His attorney said "Josh’s burritos are gone" and "the concrete is gone," which was obviously not true. As OCCL has documented, Mr. VanEmmerik had to engage numerous work crews and equipment (including jackhammers) for a solid week or more to remove the massive burritos and layers of concrete, working through the last few minutes of September 30 and even on October 1 after the ROE deadline given the imminent OCCL inspection on October 2; while the bulk of the surface concrete appears to have been removed after that intensive work, the community still disputes that all the material was removed. I personally observed deeply embedded burrito fabric in front of Mr. VanEmmerik’s houses that week. The OCCL photos in the submittal confirm that substantial “remnant” material remains embedded in the public shoreline.



His attorney acknowledged (video **4:53:05**) that **further enforcement action could occur "if we don’t get things out by Sept. 30."** Mr. VanEmmerik (and his attorney) signed the Settlement:

¹ https://www.youtube.com/watch?v=0MB8PuGARas&ab_channel=BoardofLandandNaturalResourcesDLNR

Dated: Honolulu, Hawaii, August 24, 2023

APPROVED AS TO FORM:


OREST B. JENKINS
Attorney for Mr. VanEmmerik


JOSEPH H. VANEMMERIK

DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

That settlement stated clearly:

IT IS UNDERSTOOD AND AGREED that this Agreement shall not exempt Mr. VanEmmerik from future fines or enforcement actions for his failure to remove the alleged unauthorized structures and encroachments by September 30, 2023, or any future violations.

IT IS UNDERSTOOD AND AGREED that failure to remove all of the alleged unauthorized structures and encroachments by September 30, 2023 and/or comply with this agreement will result in an OCCL staff recommendation to the Board of Land and Natural Resources to impose fines for ENF: OA 23-13 and mandate removal of any remaining alleged unauthorized structures and encroachments.

The continuing encroachment should be penalized at **\$1,000 per day** under HRS 171-6(12). Thus, since October 1, 2023 to the date of the BLNR hearing (December 7, 2023) is 68 days, the fines should currently be **\$68,000**, and those fines should **continue daily** until ALL material is removed.

3. Mr. Van Emmerik's wilful encroachment on state land should be referred for criminal enforcement.

The Board should refer Mr. Van Emmerik to the Attorney General for criminal prosecution. At minimum, his actions constitute **criminal trespass** on public lands. Under HRS 708-814.5 Criminal Trespass onto Public Parks and Recreational Grounds, "(1) A person commits the offense of criminal trespass onto public parks or recreational grounds if the person remains unlawfully . . . based on a violation of any term of use contained in, or the expiration of, any permit relating to the person's presence on the property." His intentional violations and false statements to DLNR may constitute other crimes as well.

Conclusion

Despite all of his obvious and wilful illegal activities that damage the public trust and shoreline, Mr. Van Emmerik has never paid any penalty for his unauthorized actions or the damage to public resources.

Please recall that at the last Board meeting when VanEmmerik appeared, Chair Chang asked Mr. Van Emmerik if he wanted to say anything to the Board - he then "apologized" to the Board and the public for his actions, stating: "The extent of this was never my intent, and uh, I just wanted to apologize for everything, you know, having to go in front of you guys is tough, [not] something I never personally ever thought would occur, and I just wanted to apologize for everything, it definitely was not my intent, especially in this respect, um, yeah, just miscommunication, yeah, happy to answer Qs." (Video 4:54:17 - :58)

Given his intentional actions -- after the Board meeting and after the OCCL inspection -- to reinstall a burrito system, without any authorization, his false apology is outrageous and a gross affront to Chair

Chang, the Board, and the public.

The community is really upset about the obvious untruths, blatant continuing illegal actions, and the "in your face" flouting of DLNR enforcement actions by Mr. VanEmmerik and his attorney. We strongly support OCCL's and Land Division's commendable and exhausting efforts to get Mr. Van Emmerik to follow the law.

I remind the Board that, after the vote approving the ROE (video 6:14:55), Chair Chang said to Mr. Van Emmerik: "I'm sure this isn't the last time we are going to see you." Unfortunately, her prediction was correct.

As I stated in my prior testimony regarding the ROE in September, there is no doubt that that Mr. Van Emmerik violated and flouted the law, and there is no doubt that he has not fulfilled his legal obligation to DLNR, the Board, and the public to remove all materials in a timely manner. And now there is no doubt that he is a REPEAT and WILFUL violator by installing an illegal burrito system. Strong civil and criminal enforcement action is warranted.

Mahalo.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denise Antolini".

Denise Antolini