

STATE OF HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai‘i

January 12, 2024

Board of Land and Natural Resources
State of Hawai‘i
Honolulu, Hawai‘i

Regarding: Request for Administrative Fines and other Penalties against Zhungo LLC (Rodney Youman, Managing Member) and Rodney Youman “Individually” for the Conservation District Enforcement Cases OA 19-08 and OA 21-07 Regarding Unauthorized Structures Located Along the Shoreline Within the Conservation District Makai of 59-149 Ke Nui Road, Tax Map Key (TMK): (1) 5-9-002:004

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

Against: ZHUNGO LLC (Rodney Youman, Managing Member)
Rodney Youman “Individually” (collectively, “Mr. Youman”)

Location: Makai of 59-149 Ke Nui Road, Pūpūkea-Paumalū Beach Lots, Ko‘olauloa, O‘ahu, Tax Map Key (TMK): (1) 5-9-002:004 (“Parcel 004”)

Landowner: State of Hawai‘i

Subzone: Resource

Exhibits:

1. Map
2. Emergency Permit OA 19-01 (July 18, 2018)
3. Notice of Alleged Violation OA-19-08 (August 28, 2018)
4. Enforcement OA-21-07 (October 23, 2020)
5. Notice of Alleged Non-Compliance (August 18, 2021)
6. Notices of Alleged Unauthorized Work (September 22, 2022 & November 6, 2023)
7. Photos
8. Rules and Statutes regarding the Conservation District

Staff is bringing this matter back to the Board of Land and Natural Resources (the “Board”) after it was deferred by the Board on January 22, 2021.

Summary

The Office of Conservation and Coastal Lands (OCCL) alleges that Mr. Youman, the owner of 59-149 Ke Nui Road, Tax Map Key (TMK) parcel (1) 5-9-002:004 conducted unauthorized land uses on State of Hawai'i land in the Resource Subzone of the State Land Use Conservation District fronting the subject parcel. The alleged violations include the construction of an unauthorized seawall (ENF: OA 19-08), the construction of erosion control devices with the placement of rocks (revetment) and burritos in the shoreline area fronting Parcel 004 (ENF: OA 21-07), noncompliance with the conditions of an Emergency Conservation District Use Permit (CDUP) for a temporary erosion control structure, including but not limited to failing to remove it from State land at the end of the authorization period, and continuing to install erosion control devices within the Conservation District on State land after the Department of Land and Natural Resources (the "Department") issued Notices of Alleged Violation and Noncompliance.

OCCL presented enforcement action ENF: OA 21-07 to the Board on January 22, 2021. At that time, Mr. Youman stated that the structures (rocks) had been removed and the burritos that had allegedly been installed were a repair. OCCL found the photos he submitted as evidence inconclusive. As the beach area fronting his parcel was covered by sand that had been brought in by winter swells, OCCL staff were unable to confirm whether all of the rocks had been removed. Given this uncertainty, the Board deferred taking action on the enforcement. Subsequent erosion events and site visits to the area revealed that the structures remained and additional erosion control devices have been installed on State land within the Conservation District.

Description of Area

Sand and Swell Patterns

The subject area is on the North Shore of O'ahu. The beaches here are composed of carbonate coarse sand with occasional outcrops of limestone. The inland area is composed of fossiliferous limestone and unconsolidated sand. The beaches of the North Shore are highly dynamic. They are heavily influenced by a complex interplay of swells, wind, and tides transporting large amounts of sand both along the beach and on- and off-shore within a particular season (summer or winter) and over the course of the year. Even within a particular season or year, these coastal processes can more dramatically affect (by widening or narrowing/inflating or deflating) a particular stretch of beach along the North Shore.

Erosion hot spots in the region can vary from year to year, though over the long-term, the area fronting the subject parcel erodes at an average of 0.98 feet per year.

One significant coastal geological feature of the area is the large storm berm, which was built up during past high-wave events. Many single-family residences in this area have been built on top of this berm, including at the subject parcel. This "high wave berm" has been degraded over the years by a combination of coastal erosion and coastal development.

Sunset Beach Park

In 1971, portions of the Government (Crown) Land of Pūpūkea were set aside as the Pūpūkea-Paumalū (Sunset) Park (Executive Order 02598). The EO placed Sunset Park, noted as TMK: (1) 5-9-001:038, under the control and management of the City and County of Honolulu, Department of Parks and Recreation. Based on numerous site visits to the area, the beach reserve and park fronting the subject parcel appears to have eroded.

Residential Development

Parcel 004 is a residential lot with a single-family residence on it. The parcel contains a cesspool that the Department of Health has categorized as “priority level 1,” meaning that it has the greatest potential to impact human health and environmental quality. The Department of Health recommends that the cesspool be converted or decommissioned by 2030.¹ A review of the City and County of Honolulu Department of Permitting and Planning records indicate that Mr. Youman and Parcel 004, including its associated dwelling, has been the subject of notices for alleged unauthorized transient vacation rental as well as alleged unauthorized additions and alterations to the single-family residence.

Mitigation History

Sand Pushing

In January 2014, emergency authorization was given for sand pushing fronting eight private properties, including Parcel 004. At least three further authorizations were given for private sand pushing efforts through 2017.

Emergency Permits

The erosion scarp eventually came within less than twenty feet from the residence on Parcel 004. On July 18, 2018, Mr. Youman obtained Emergency Conservation District Use Permit (CDUP) OA 19-01 for the installation of a heavyweight geotextile fabric blanket that would overlie four sand-filled geotextile tubes (a.k.a. “burritos”). The Department authorized the structure for three years, during which time the permittee was to work on a long-term solution.

Alleged Unauthorized Land Uses in the Conservation District

Enforcement OA 19-08 (Exhibit 3)

On August 28, 2018, OCCL staff observed rocks and fresh mortar placed beneath the recently authorized erosion control fabric. It appeared to staff that an unauthorized seawall or shoreline hardening device was being constructed.

¹ See Hawai'i Cesspool Prioritization Tool, available at <https://seagrant.soest.Hawai'i.edu/cesspools-tool/> (last visited Oct. 5, 2023)

On September 5, 2018, the Department issued a Notification of Alleged Violation (NOAV) (ref. ENF: OA 19-08) for the above work.

Enforcement OA 21-07 (Exhibit 4)

On September 30, 2020, OCCL staff witnessed work being conducted in the subject area that included the placement of rocks in the form of an unauthorized rock revetment or erosion control structure.

On October 23, 2020, the Department issued an NOAV letter (ref. ENF: OA 21-07) for the above work.

On December 10, 2020, OCCL staff observed that unauthorized sand filled burritos had been placed in the subject area.

On January 11, 2021, OCCL staff observed workers pushing sand to cover the geotextile tubes. OCCL records indicate that no authorization for modifications to the erosion control structure or subsequent sand pushing efforts were obtained prior to work being conducted in the Conservation District and shoreline area.

January 22, 2021 Board Meeting

On January 22, 2021, the OCCL presented ENF: OA 21-07 to the Board. Mr. Youman submitted testimony and stated at the meeting that the subject rocks had been removed, and that the erosion control devices (burritos) that were installed had been a repair to the temporary erosion control structure. The Board deferred a decision on the matter, as it was not possible to confirm that the unauthorized rocks had been removed due to the high volume of sand fronting the parcel at that time.

On January 28, 2021, Mr. Youman emailed the OCCL with a request to place an additional three burritos at the top of the temporary erosion control structure.

On February 3, 2021, OCCL notified Mr. Youman that the Department was unable to entertain the request due to the unresolved enforcement action.

Non-Compliance with Emergency CDUP OA 19-01 (Exhibit 5)

On July 18, 2021, Emergency CDUP OA 19-01 expired and temporary erosion control structure and associated materials were to be removed from the shoreline area fronting Parcel 004. OCCL staff conducted a site inspection shortly after and observed that the temporary erosion control structure remained on State land. Additionally, it appeared that the erosion control structure was dilapidated and unmaintained with liberated materials posing a nuisance and hazard to the nearshore environment. Staff also observed that rocks and portions of what appeared to be a rock wall remained in the shoreline area fronting Parcel 004.

On August 18, 2021, the Department issued a Notification of Alleged Noncompliance letter for noncompliance with the conditions of Emergency CDUP OA 19-01. The notification also noted that ENF: OA 19-08 and OA 21-07 remained unresolved.

Additional Unauthorized Work (Exhibit 6)

On September 7, 2022, OCCL staff witnessed Mr. Youman and his agent(s) installing large sandbags in the subject area. Community reports indicate that the work began on September 2, 2022, and involved the mining of sand from Sunset Beach Park to fill the sandbags.

On September 27, 2022, the OCCL issued a letter to Mr. Youman noting the unauthorized placement of sandbags seaward of his parcel. The letter stated that it appeared that work had continued after the Department gave Mr. Youman notification to stop all work. OCCL alerted Mr. Youman that it would include the recent alleged unauthorized actions in any report re-submitted to the Board.

Between November 4-5, 2023, the OCCL received evidence that unauthorized work continued in the shoreline area fronting Parcel 004. Unauthorized work consisted of the construction and installation of erosion control devices that involved workers mining beach sand to fill large geotextile tubes placed on State land fronting Parcel 004. OCCL noted that debris from other geotextile tubes remained on State land within the Conservation District fronting the parcel.

On November 6, 2023, the Department issued an NOAV letter for the above work.

Site Photos

Exhibit 7 contains a photo history of the subject area.

Conservation District Rules and Statutes

Exhibit 8 contains the relevant rules and statutes that will be cited in the discussion, findings, and recommendations.

Discussion

The beaches of Hawai'i are held in trust by the State for the benefit of present and future generations. The State should be consulted, and a land disposition obtained, when individuals seek to temporarily use beach areas for construction. There should be consequences when an individual unilaterally and willfully acts in such a way that endangers a public trust resource.

The beaches of O'ahu's north shore are some of the State's most valued natural resources. These beaches serve as an attraction which bring residents and visitors to the area who support community economic activities that are key for the north shore. The Paumalū to Pūpūkea stretch of beach is one of the more famous beaches in the area and is heavily utilized at all times of the year by the public, both residents and visitors alike.

Many of the shorefront homes in the area are built on the sand berm and are thus vulnerable to the effects of both chronic and seasonal coastal erosion. Coastal erosion occurs as a result of the following phenomena:

- (1) Seasonal changes in waves and currents that move sand alongshore or across the shore, adjusting the beach profile;

- (2) Long-term (chronic) deficiencies in natural sand supply and/or fluctuations in meteorological or oceanographic processes such as storms and sea level rise; and
- (3) Human impacts to sand availability through sand impoundment and supply disruption from development and coastal engineering.

During the last several years, beach erosion in this area appears to have intensified significantly. Although such erosion could be attributed to normal accretion and erosion cycles, it is more likely that the erosion has become a chronic and permanent result of acceleration in sea level rise this century. Over the past century, local tide gauges have measured approximately 0.5 ft of rise in sea levels among the islands such that it should be no surprise that resulting impacts are occurring.

Coastal armoring, such as seawalls and revetments, protect private land mauka of the armoring device while harming the public trust resources makai of the wall. Coastal armoring or shoreline hardening devices damage beaches by cutting the sand bank and impounding sand behind walls; refracting waves and creating a high-energy environment that impedes sand accumulation; creating flanking that can increase adjacent erosion and damage neighboring properties; and impacting lateral transport thereby damaging downdrift beaches.

The Department has taken measures throughout the past two decades to address the progressively damaging chronic and seasonal erosion concerns in the greater Paumalū to Pūpūkea (Sunset) Beach area.

Sand pushing can be an effective but short-term measure to protect a property or infrastructure, provided that best management practices are followed and provided that there is a sufficient supply of dry sand in the area. The County Parks Department, for example, currently engages in seasonal sand pushing to shore up the sand around beach rights-of-way and lifeguard towers.

Due to unauthorized erosion control materials and debris in the shoreline area and continued long term trends of chronic and seasonal erosion limiting the amount of available sand, sand pushing is increasingly no longer a short-term option to mitigate the effects of continued coastal erosion and impacts of sea level rise in the subject area.

Conservation District rules allow the Chairperson to issue emergency permits when there is an imminent threat to public health, safety, or welfare. This has been an important tool for the Department when addressing emergencies from natural hazards. Between 2017 and 2020, the Department authorized approximately 35 temporary erosion control structures fronting approximately 50 properties in the Ko'olauloa and Waialua Districts on O'ahu.

The emergency authorizations that were issued by the Department were designed to allow landowners time to develop long-term plans to address the impacts of coastal erosion on their property. Few permit holders complied with permit conditions. With the absence of any long-range plan to address the impacts of coastal erosion and sea level rise, and with the recent requests to reauthorize these structures, OCCL has concluded that these "temporary" structures appear to violate State policy and Coastal Zone Management rules against private shoreline hardening structures, as well as the Department's policy of not approving new private seawalls.

Staff admits that the situation is challenging for the homeowners, but the Department is also confronted by the lack of compliance and continued violations. Various OCCL staff site inspections of the subject area indicate the continued unauthorized installation of erosion control devices and the continued presence of the alleged unauthorized materials discussed in this report on State land.

Based on the present evidence, Mr. Youman did not obtain authorization for the construction of an unauthorized seawall (ENF: OA 19-08) or the construction of erosion control devices with the placement of rocks (revetment) and geotextile tubes in the shoreline area fronting Parcel 004 (ENF: OA 21-07). Mr. Youman is also in noncompliance with the conditions of an Emergency Conservation District Use Permit (CDUP) for a temporary erosion control structure, including but not limited to failing to remove it from State land at the end of the authorization period, and continuing to install erosion control devices within the Conservation District on State land after the Department issued Notices of Alleged Violation and Noncompliance. Based on previous correspondences with Mr. Youman, he is fully aware of the noncompliance, existing violations, and need to consult with the Department and obtain authorization(s) prior to conducting work in the shoreline area.

Staff is recommending that the Board issue the following fines and penalties allowed under its authority.

Findings and Conclusions

Based on the above-summarized information, OCCL staff have reached the following findings and conclusions regarding the alleged violation:

1. That Mr. Youman did in fact authorize, cause, or allow the construction of an unauthorized seawall, the unauthorized placement of rocks in the form of a revetment, and the installation of additional unauthorized burritos and sandbags on public land within the State Land Use Conservation District, Resource Subzone;
2. There is no land disposition for the occupation of public land by the erosion control structures;
3. That Mr. Youman continued to perform unauthorized work after being given notification by the Department to stop all work on at least four separate occasions: September 30, 2020, December 10, 2020, September 2, 2022, and September 7, 2022;
4. That Mr. Youman has failed to remove debris and past erosion control structures fronting Parcel 004 despite receiving notices from the Department to do so; and
5. That the unauthorized land uses, and unauthorized occupation of public land, occurred upon submerged public land that lies within the State Land Use Conservation District, Resource Subzone.

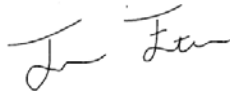
Staff Recommends

1. That the Board adopt the findings and conclusions set forth above and impose the following administrative fines:

- a. Pursuant to Section 183C-7, HRS, Mr. Youman is fined \$15,000 for violating the provisions of Section 13-5-24, HAR, for constructing a seawall/erosion control structure (ENF: OA 19-08) on submerged land within the Conservation District Resource Subzone;
 - b. Pursuant to Section 183C-7, HRS, Mr. Youman is fined \$15,000 for violating the provisions of Section 13-5-24, HAR, for the placement/construction of an unauthorized rock revetment (ENF: OA 21-07) on submerged land within the Conservation District Resource Subzone;
 - c. Pursuant to Section 183C-7, HRS, Mr. Youman is fined \$15,000 for violating the provisions of Section 13-5-24, HAR, by failing to abide by the terms and conditions of Emergency CDUP OA 19-01 and remove the temporary erosion control measure at the end of the authorization period;
 - d. Pursuant to Section 183C-7, HRS, Mr. Youman is fined a total of \$75,000 for a total of four days (September 30, 2020, December 10, 2020, September 2, 2022, September 7, 2022, and November 4, 2023) of willful violation of this chapter after having received notification from the Department to stop all work;
 - e. Pursuant to Section 171-6(12), HRS, Mr. Youman may be fined up to \$1,000 per day for Mr. Youman's failure to remove the encroachments upon public lands, accrual of such starting when Mr. Youman received notice on July 18, 2021, when CDUP OA 19-01 expired, and therefore may total \$873,000;
 - f. Therefore, that the total fines and administrative costs that may be levied against Mr. Youman may be \$993,000, and that Mr. Youman shall pay all designated fines and administrative costs within ninety days from the date of the Board's action;
2. That the Board authorize the Department of the Attorney General to file a Notice of Pendency of Action with the deed or deed instrument of Parcel 004 at the Bureau of Conveyances pursuant to Sections 171-6.4(c), 591-151, and 634-51, HRS.
 3. That Mr. Youman, or a future owner of Parcel 004, shall remove all unauthorized erosion control materials and encroachments by September 1, 2024;
 4. That Mr. Youman shall restore the subject area to a more natural state and the Department's satisfaction by September 1, 2024;
 5. Regarding Recommendations 3 and 4, the Board authorizes the issuance of a right-of-entry permit to Mr. Youman, or a future owner of Parcel 004, covering the subject area for removal of the shoreline erosion control device under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - b. The right-of-entry shall expire on September 1, 2024, or upon completion of the project, whichever is sooner; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

6. That in the event Mr. Youman, or a future owner of Parcel 004, fails to restore the subject area to a more natural state and the Department's satisfaction by September 1, 2024, then Mr. Youman, or a future owner of Parcel 004, shall be liable for all costs of removal incurred by the State or local government(s);
7. That in the event of failure of Mr. Youman, or a future owner of Parcel 004, to comply with any order imposed in connection with this enforcement action, Mr. Youman shall be fined an additional \$16,000 per day, pursuant to Sections 171-6(12) and 183C-7, HRS, until the order is complied with;
8. That any extension of these deadlines will require the concurrence of the Board. Any request to extend these deadlines will require supportive information and documentation from Mr. Youman, or a future owner of Parcel 004, as to why an extension may be warranted. Any extension request regarding these deadlines must be submitted to the Department prior to the deadline or any authorized extension thereof;
9. That in the event of failure of Mr. Youman, or a future owner of Parcel 004, to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs;
10. That the Board delegate authority to the Chairperson to effectuate the above recommendations, subject to such conditions as may be prescribed by the Chairperson to best serve the interest of the State, without further consultation with the Board, and subject to review and approval by the Department of the Attorney General; and
11. The above noted conditions of Enforcement files OA 19-08 and OA 21-07 shall be recorded with the deed instrument by Mr. Youman at the Bureau of Conveyances pursuant to Section 13-5-6(e), HAR.

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner
Office of Conservation and Coastal Lands

MC

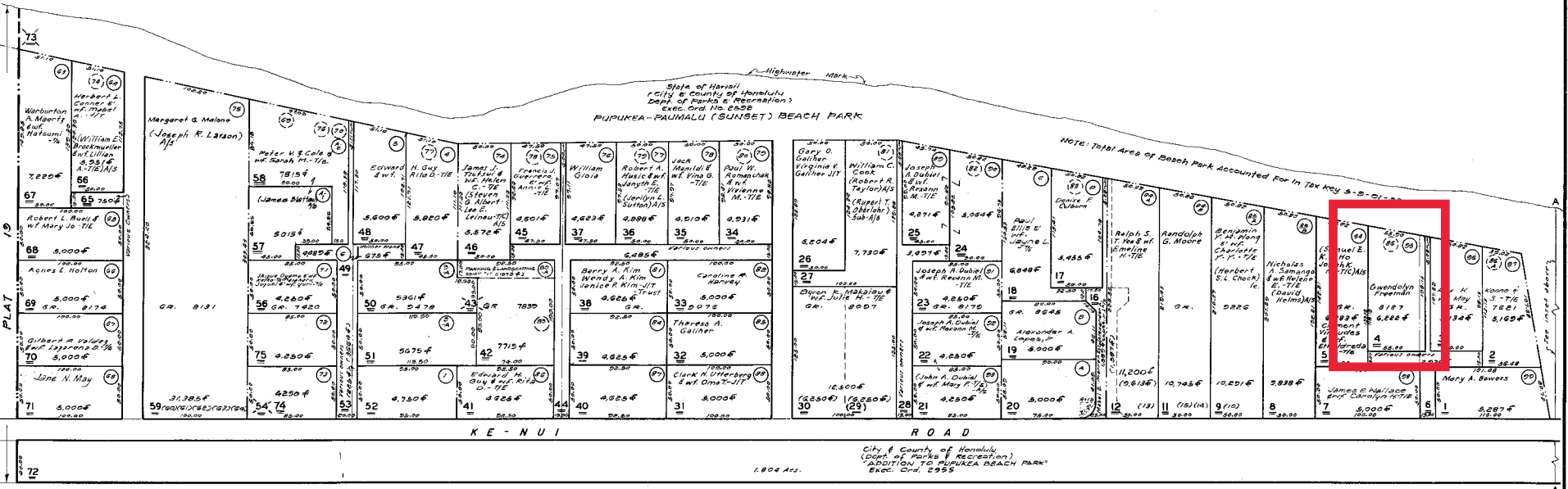
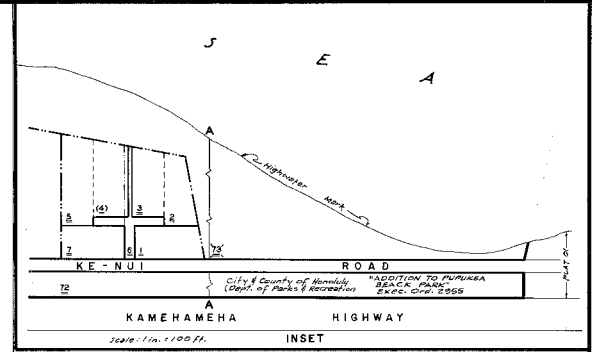
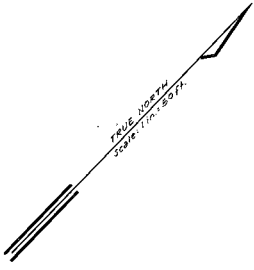
Approved for submittal:



Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources



Exhibit 1 - Location Map



DWG. NO. 1750 (REVISED)
 SOURCE: Tax Map Bureau
 BY: C. B. February, Jr., 12/85

KAMEHAMEHA HIGHWAY
 PLAT 13
 PLAT 14
 PARCELS DROPPED: 75, 43, 64,

Por. PUPUKEA-PAUMALU BEACH LOTS, KOOLAULO, OAHU

SUBJECT TO CHANGE

DEPARTMENT OF THE TAX COMMISSIONER		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
FIRST	SEC.	DIVISION
5	9	02
CONTAINING		PARCELS
SCALE: 1 IN. = 50 FT.		

Exhibit 1 - Location Map

DAVID Y. IGE
GOVERNOR OF
HAWAII



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 RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

DLNR:OCCL:SL

Emer.: OA-19-01

Mark Ticconi, Director of Operations
Gundaker Works, Inc.
931 University Avenue, Suite 304
Honolulu, HI 96826

JUL 18 2018

SUBJECT: Emergency Response to Shoreline Erosion Located at Sunset Beach, North Shore
of Oahu Tax Map Key :(1)5-9-002:004

Dear Dr. Ticconi,

The Department of Land and Natural Resources (DLNR) received your July 14, 2018 request to utilize temporary emergency erosion control measures (geotextile fabric erosion control blankets) along the shoreline at Sunset Beach, North Shore, Oahu.

Recent seasonal wave and current action has resulted in erosion of the shoreline fronting the subject property creating a safety hazard for a single family residence. The erosion appears to be within twenty feet or less from the residence and appears to be advancing.

The DLNR understands that the proposed work will occur on State land, seaward of where the shoreline would likely be determined based on HAR §13-5-222, Shoreline Certifications. A heavyweight geotextile fabric blanket will be installed fronting the subject property in response to the erosion. The blanket overlies sand filled tubes constructed of the same geotextile fabric. The blanket and tubes are staked in place with three-foot long wooded spikes. Sand will be used from the beach fronting the properties to fill the fabric tubes and to create an even slope behind the material. The structure will be constructed by hand.

The DLNR authorizes the temporary emergency erosion control measures as described above for three (3) years along the shorefront of the subject property in an effort to protect public health, welfare, and safety on the subject property under Hawaii Administrative Rules (HAR) §13-5-35, *Emergency Permits (a)* "Notwithstanding any provision of this chapter, 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 that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department."

In addition, the temporary structure may be considered an exempt action under State environmental laws under HAR §11-200-8 and as provided in the approved Exemption List for the DLNR, *Exemption Class 1: 1. Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources; and 2. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent damage from continuing to occur and to restore the topographical features and biological resources.* The Office of Conservation and Coastal Lands consulted with the Land Division, who has concurred with the EA exemption for the proposed project.

The temporary erosion control structure is intended to provide temporary mitigation of the erosion problem and reduce hazards to the subject property. If the subject structure results in adverse flanking of adjacent properties, the DLNR may require you to remove the structure immediately. Any materials that become liberated from the structure must be immediately removed from the beach or ocean. Further, it is critical that the property owners maintain lateral shoreline access through the area if the proposed work in any way interferes with lateral public shoreline access. Please review the following Terms and Conditions carefully.

Terms and Conditions

The DLNR authorizes the Emergency Temporary Shoreline Protection as described above fronting the subject property, at TMK (1) 5-9-002:004, provided that you adhere to the following Terms and Conditions:

1. It is understood that the Emergency Temporary Shoreline Protection is a temporary response to address a safety hazard to the existing residence on the subject property, which is threatened by both chronic and seasonal beach erosion. **The material is authorized as a temporary erosion control measure for three (3) years** from the date of issuance of this letter. Subsequent erosion control efforts that call for modification, other than maintenance of the proposed structure will require a new application. At the end of the authorization period, the materials shall be removed;
2. If the subject structure results in adverse flanking of adjacent properties, the DLNR may require you to remove the structure immediately. Any materials that become liberated from the structure must be immediately removed from the beach or ocean;
3. The permittee shall remove any derelict structures or materials emanating from the property, and dispose of them immediately;
4. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
5. The permittee shall contact the City and County of Honolulu, Department of Parks and Recreation to secure their authorization to work on the beach;
6. The permittee will submit a completion report for the project to the OCCL within ninety (90) days of completion of construction of the temporary structure. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of

the beach conditions since installation. The report will also include a photo summary of the temporary structure and beach conditions with documentation of any alterations or repairs;

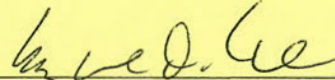
7. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
8. Unless otherwise authorized, any work or construction to be done on the land shall be completed within 180 days of the approval of such use. The permittee shall notify the department in writing at least 24 hours prior to initiating construction and when it is completed;
9. 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;
10. Authorization of the sand use and placement is contingent upon review and approval of the sand by the Department. The sand shall meet the following State quality standards:
 - a) The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm);
 - b) The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm) and shall be screened to remove any non-beach compatible material and rubble;
 - c) No more than 50 (fifty) percent of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh;
 - d) Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non-carbonate sands are unacceptable;
11. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project. All barriers shall be removed once the project is complete to allow full public access laterally along the beach and alongshore walkway;
12. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and minimize silt in nearshore waters and clean up fuel; fluid or oil spills immediately for projects authorized by this letter. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance;
13. All placed material shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality;

14. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
15. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization;
16. In issuing the permit, the Department and the Chairperson have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
17. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
18. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the Department;
19. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in Hawaii Revised Statutes (HRS) §205A-1;
20. The activity shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
21. The activity shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
22. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this letter;
23. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to HRS §205A-71. All exterior lighting shall be shielded to protect the night sky;
24. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
25. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
26. The DLNR reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary;

27. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the Chairperson or BLNR.

Should you have any questions pertaining to this letter, please contact the Office of Conservation and Coastal Lands at (808) 587-0377.

Sincerely,



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

CC: City and County of Honolulu
Department of Planning and Permitting
Parks and Recreation
DOCARE (Oahu)

I concur with the conditions of this letter:

Applicant

Date _____

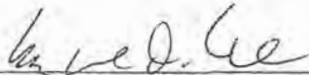
Youman

Emer. OA-19-01

27. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the Chairperson or BLNR.

Should you have any questions pertaining to this letter, please contact the Office of Conservation and Coastal Lands at (808) 587-0377.

Sincerely,



Suzanae D. Case, Chairperson
Board of Land and Natural Resources

CC: City and County of Honolulu
Department of Planning and Permitting
Parks and Recreation
DOCARE (Oahu)

I concur with the conditions of this letter:



Applicant

Date 7-30-18

DAVID Y. IGE
GOVERNOR OF
HAWAII



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 RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

DLNR:OCCL:SL
7C14 2120 0003 19088 2642
CERTIFIED MAIL/RETURN RECEIPT

ENF: OA 19-08

Dr. Rodney Youman
50-149 Ke Nui Road
Haleiwa, HI 96712

SEP - 5 2018

SUBJECT: Alleged Unauthorized Land Use within the Conservation District Located Makai
of 50-149 Ke Nui Road, Hale'iwa, Oahu
Tax Map Key :(1) 5-9-002: 004

Dear Dr. Youman:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands' (OCCL) attention that you or your agents have been working on an alleged unauthorized seawall in the shoreline area fronting the subject property.

The DLNR recently issued you an emergency authorization for a temporary erosion control structure. When staff of this office visited the site on August 28, 2018 we observed rocks and fresh mortar underneath the authorized erosion control fabric.

NOTICE IS HEREBY GIVEN 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 location of the alleged unauthorized land use is located makai of TMK (1) 5-9-002: 004 and is located within the State Land Use Conservation District, Resource Subzone;
2. The subject property has no records of non-conforming structures and/or uses nor are there any existing permits and/or approvals for any land uses within the Conservation District makai of the subject property.
3. 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;

Dr. Rodney Youman

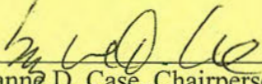
ENF. OA 19-08

- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land; and
4. This land use was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

Pursuant to 183C-7, HRS, the Board of Land and Natural Resources (Board) may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs. 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 on the structure. Please note any information provided may be used in civil proceedings. Should you have any questions pertaining to this letter, please contact the Office of Conservation and Coastal Lands at (808) 587-0377.

Sincerely,



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

c: City and County of Honolulu
Department of Planning and Permitting
Parks and Recreation
DOCARE (Oahu)
ODLO

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

REF: OCCL: TF

ENF: OA 21-07

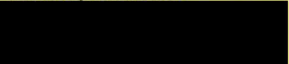
NOTICE OF ALLEGED VIOLATION & ORDER

OCT 23 2020

CERTIFIED MAIL/RETURN RECEIPT

7014 2870 0000 1652 9356

Zhungo LLC
Rodney Youman



SUBJECT: Alleged Unauthorized Land Use Within the Conservation District Located Makai (seaward) of 59-149 Ke Nui Road, Haleiwa, HI 96712
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key: (1) 5-9-002:004

Dear Zhungo LLC and Mr. Youman:

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 authorization. Staff visited the site on 09/30/20 and witnessed work being conducted in the shoreline area that included the placement of rocks in the form of an unauthorized rock revetment or erosion control structure as evidenced by *Exhibit 1 taken 09/30/2020*.



Exhibit 1

According to OCCL files, the landowner of the parcel with the TMK: (1) 5-9-002:004 was granted Emergency CDUA OA 19-01 to install a temporary erosion control structure composed of a heavyweight geotextile fabric blanket overlay with sand filled tubes constructed of the same geotextile fabric. On September 4th, 2019, Zhungo LLC was sent a reminder letter regarding the landowner's responsibility of complying with the conditions of Emergency CDUA OA 19-01 by maintaining and removing any liberated materials or debris from the structure ahead of the 2019-2020 winter season.

The OCCL notes that the alleged unauthorized work witnessed by staff which includes the placement of rocks in the form of a rock revetment or erosion control structure as shown in *Exhibit 1* appears to have been placed makai (seaward) of the shoreline. According to OCCL files, there appears to be no authorizations for these land uses. Pursuant to Hawaii Administrative Rules (HAR) §13-5-2, "land use" is defined as (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. Additionally, pursuant to HAR §13-5-2, the “*Shoreline*” is defined as *the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, Hawaii Revised Statutes (HRS)*”. Lands makai of the shoreline are under the jurisdiction of the State of Hawaii DLNR and its OCCL and are protected by common law rights for the public. Based on the above, it appears that a rock revetment on the lands makai of the shoreline of the parcel with the TMK: (1) 5-9-002:004 is being placed within the Resource Subzone of State Land Use Conservation District and on public property.

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 reason to believe that:

1. The placement of rocks in the form of a rock revetment has taken place on the public sandy beach seaward of TMK: (1) 5-9-002:004 located within the State Land Use Conservation District, Resource Subzone;
2. The landowner is not in compliance with the terms and conditions of Emergency CDUA OA 19-01;
3. Pursuant to §13-5-22 P-15 (D-1), HAR, "Shoreline Erosion Control " is a regulated land use as stated below:
 - a. *Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification;*
4. These land uses were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR; and
5. The land uses have occurred on public land owned by the State without authorization or permission from the State as landowner.

We recommend that you stop all work and remove the rock revetment located within the shoreline area within 30 days of receipt of this order. We also note that we did not authorize the stairs shown in the picture (**Exhibit 1**). Pursuant to 183C-7(b), HRS, the Board of Land and

Zhungo LLC
Mr. Rodney Youman

ENF: OA 21-07

Natural Resources (Board) may subject you to fines of up to \$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. Failure to comply with any part of the letter mentioned above will result in the matter being forwarded to the Board for formal action.

Should you have any questions regarding this matter, please contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at (808) 798-6660 or trevor.j.fitzpatrick@hawaii.gov.

Sincerely,

Suzanne D. Case

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

SC

CC: *Oahu Board Member*
DOCARE (Oahu)
ODLO
City & County of Honolulu, Department of Planning and Permitting

Fitzpatrick, Trevor J

From: Rodney Youman [REDACTED]
Sent: Thursday, January 14, 2021 10:12 AM
To: Lemmo, Sam J; Fitzpatrick, Trevor J
Subject: [EXTERNAL] Response to Conservation District Enforcement Letter dated January 22, 2021
Attachments: DLNR response 100520.docx; IMG_0352.JPG; IMG_0358.JPG; IMG_0472.JPG; IMG_3098.PNG; IMG_3099.PNG; IMG_3100.jpg

ZHUNGO, LLC
59-149 KE NUI ROAD
HALEIWA, HI 96712

January 14, 2020

State Of Hawaii

Department of Land and Natural Resources

Attn: Suzanne D. Case, Chairperson

Office of Conservation and Coastal Lands

Attn: Samuel J. Lemmo, Administrator

Trevor Fitzpatrick, Staff Planner

**SUBJECT: Alleged Unauthorized Land Use Within the Conservation District Located Makai
(seaward) of 59-149 Ke Nui Road, Haleiwa, HI 96712
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key: (1) 5-9-002-004**

Dear Ms. Case and Messrs. Lemmo and Fitzpatrick:

I write this letter in response to the recommendation letter [post dated] January 22, 2021 addressed to the Board of Land and Natural Resources, in which I am charged with, *inter alia*, unauthorized land use. The purpose is to clarify and explain those allegations, which have been made against Zhungo, LLC and me personally.

At the outset, I inform you that I am also attaching a response to the Notice of Alleged Violation and Order sent to me by the DLNR on October 23, 2020. Unfortunately, last year, besides all of us being affected by the terrible ongoing pandemic, the beach erosion in our area was particularly devastating, and continued, as never before, into the beginning of December. As the erosion berm came to within inches of the front of my property, I was forced to move my entire house back inland, as many feet as possible, pursuant to the permit I obtained to do so. This, along with the installation and maintenance of the sand burritos during the last three summers and falls, has cost me hundreds of thousands of dollars. However, as indicated previously, they have also saved my home on several occasions from literally falling into the Pacific Ocean. However, because I was so involved with the moving back of my home, I was not able to finalize and send you my response to the October 23, 2020 Notice.

Therefore, I will now explain what has happened since.

1. THE ROCK "REVETEMENT"

At no time have I placed a rock "revetement" over the stacked burritos in front of my property. Doing this would make no sense, and would only serve to tear open the geotextile, if anything.

As you can see clearly in the overhead photo on pages 12 & 13 of your January 22, 2021 letter to the Board, the rocks seen behind the burrito were initially INSIDE my property. It would have made no sense for me or anyone to place loose rocks OVER the burritos. They would simply be washed out to sea, offering no protection whatsoever to my property.

What was done, was the placement of rocks and then some soil obtained from inside my property, to backfill the gaping hole left by the palm tree that was partially uprooted during the hurricane of August 1, 2020. Unfortunately, the severe erosion continued well past August of 2020. The incredibly powerful waves during several XL swells last year, slowly undermined our burritos, causing them to eventually tear open and collapse downward. This in turn caused the top burrito to break outwards towards the sea, and then downwards (because of the collapsed burritos below it). In doing so, it caused the rocks that had been placed behind it, INSIDE my property, to spill outwards and over the burritos. In other words, the burrito "took" the rocks with it. This can be seen clearly in the aforementioned pages 12 & 13 of your Recommendation letter to the Board.

In your Notice of October 23, 2020, you instructed me to immediately remove the rocks. Doing so at the time, however, would have not only been a herculean and expensive task, but a dangerous one as well. As indicated, the large swells continued, and bringing up the rocks while standing on the burritos that were being pounded by extra large waves would not have been safe.

You allege that I then "covered" the rocks with sand. This is simply not true. Mother Nature covered the rocks with sand. And as you can see in the photos on pages 14 & 15 of your letter to the Board, at that point in time the beach was around 20 feet below my property line. To bring the rocks up to my property at that point (mid-November, 2020), would have required the use of an excavator and a crane. I did not have the resources or the permits for that.

In any event, beginning yesterday, January 13, 2021, and continuing today, January 14, 2021, I have used an excavator graciously lent to me by a neighbor, to bring up the rocks. I expect to have them all back on my property by the end of today. I am attaching pictures to attest to this.

Therefore, I respectfully request that: A) the recommendation to fine me \$15,000 in No. 1, on page 22 of the letter to the Board, be withdrawn, **as I never placed or constructed an unauthorized rock revetment in the Conservation District, and I have now recovered and brought back onto my property the rocks that spilled from inside my property;** B) that the recommendation to fine me an additional \$15,000 in No. 2 on page 22 of the letter to the Board be withdrawn, as at no time before or after receiving the Notice of Alleged Violation & Order did I do any such work; and C) that the additional fine of \$2,000 for administrative costs also be withdrawn, as at no time did I commit the violation(s) alleged in the Notice of Alleged Violation and Order.

2. THE "ADDITIONAL" BURRITOS

As you have noted yourselves in the Recommendation letter to the Board dated January 22, 2021, the sand "burritos," while having saved our properties many times from falling into the Ocean, are very much a temporary solution. Please see pp. 19, 20 & 21 of the letter to the Board: "Many of the shore front homes in the area, such as the subject property, are built on the frontal sand dune and thus vulnerable to the effects of both chronic and seasonal coastal erosion." P. 19. And on p. 20: "During the last several years, beach erosion in the area appears to have intensified significantly," and "The

OCCL allows these "soft" erosion measures as temporary solutions, so that long term-options can be developed by subject landowners." Id. (it would certainly be interesting to know what these long-term solutions might be, in the opinion of the OCCL or DLNR).

Unfortunately, the initial burritos, installed in 2018 by Gundaker, LLC, have all either ripped open, collapsed, withered over time, or simply washed away. Or all of the above. My neighbor, William Kernot, and I have had to deal with the removal of the resulting debris, as well as the repair, as much as humanly possible, of the existing burritos.

The permit allowing us to keep these burritos in place, graciously granted to us by DLNR & OCCL on July 18, 2018, (and which has undoubtedly saved our homes on several occasions since then), is valid for three years, until July 18, 2021. It is respectfully submitted that it is reasonable to assume that if a burrito collapses, we are allowed to repair it, in order to maintain the overall structure in place. Otherwise, the structure will eventually be completely absent, and there will be considerable debris in the area. My neighbor and I have therefore endeavored, as best as we could, to maintain the structure as it was initially installed by Gundaker. We have at no time placed any burritos or any other structures where there have been no such burritos before. We have not placed any "new" burritos, only repaired the existing ones. And we have engaged in this effort together, since the permit of July 18, 2018 was granted to both of us (and we are good neighbors).

The only thing we are doing, therefore, is the best we can to maintain this "soft" structure in place, while striving, always, at reaching a more long-term solution, as suggested in your letter to the Board.

Therefore, it is respectfully requested that recommendations No. 5, 6, 7 & on pp. 22 & 23 of the letter to the Board be withdrawn, as we are acting within the terms and conditions of the permission graciously granted by your Offices on July 18, 2018.

I wish to thank all of you for your time and kind consideration of my requests,

Sincerely,

[s./] Rodney R. Youman

Owner, ZHUNGO, LLC.

Below please find:

1. My response letter to your Notice of Alleged Violation and Order of October 23, 2020.
2. Three photos, taken on August 18 and 20, and then on October 1, 2020, showing how the rocks that were initially inside my property and covered with soil from my property, progressively collapsed downward along with the top burrito (that they were initially behind of).
3. The rocks that I have recovered and brought back onto my property on January 13 and 14, 2021.

ZHUNGO, LLC
59-149 KE NUI ROAD
HALEIWA, HI 96712

*Received via
email
January 14, 2021*

October 4, 2020

State Of Hawaii

Department of Land and Natural Resources

Attn: Suzanne D. Case, Chairperson

Trevor Fitzpatrick, Office of Conservation and Coastal Lands

**SUBJECT: Alleged Unauthorized Land Use Within the Conservation District Located Makai
(seaward) of 59-149 Ke Nui Road, Haleiwa, HI 96712
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key: (1) 5-9-002-004**

Dear Ms. Case and Mr. Fitzpatrick:

I am writing in response to your undated letter, which was delivered to our home address on October 3, 2020, regarding the above-captioned Subject.

First, allow me to provide you with a brief history of our property since we purchased it in 2016.

Commencing in 2017, we began to experience erosion in the front (seaward) land of our property. This erosion has become severe at times, particularly during the summer months (June, July, August and September, and usually stretching into October). During these months, the sea levels appear to rise, and the waves slam into the front of our property (and the fronts of many properties in the Sunset Beach Area). The resulting erosion has created a dangerous situation, where the Ocean waves have come to within feet of the front of our house.

Therefore, in 2017, we applied for and were graciously granted Emergency CDUA OA 19-01, which enabled us to install sand tubes ("burritos") made with heavyweight geotextile fabric. The sand tubes prevented further erosion to the front of our property, and in 2018, when the erosion became particularly severe, literally saved our property from falling into the Ocean.

On August 1, 2020, Hurricane Douglas "grazed" the North Shore of Oahu. It caused relatively little damage overall in Hawaii, but our property was not spared. It was one of the few properties that sustained considerable damage. We had a coconut palm tree that had been in front of our house for around 50 years. The waves from the hurricane undermined our sand burritos, causing several feet of our front yard to once again collapse downward. This caused the palm tree to become partially uprooted and it was left leaning downwards, at approximately a 45 degree angle towards the ocean. We were unfortunately forced to cut the palm tree, as it was likely to take more land with it if it fell into the Ocean. And this, of course, once again constituted a dangerous situation for our home. The erosion was literally at the foot of our house (especially on the East side).

The hurricane thus caused our seaward land to collapse and erode downward. Therefore, we were forced to replenish our sand burritos. At considerable expense, we were able to bring back the stacked burritos to the same level as what was left of our front yard. However, the area where the palm tree had been, left a considerable hole (indentation) in our land. We were forced to backfill the hole (the area behind the burritos INSIDE our land) with soil and rocks. It must be stressed that this soil and rocks were INSIDE our property, and NOT on top or over the stack of sand burritos. All of the work was done between August 1- 20, 2020, and NOT on September 30, 2020 (or at any time in September of 2020, for that matter).

Unfortunately, our troubles did not end there. During the month of September 2020, we had several large Northeast swells, with large waves that once again undermined the stacked burritos. It appears that the bottom burritos actually opened up and/or collapsed, causing the top of our land to collapse downward as well, by about 9 feet. This in turn brought the soil and rocks that were inside our land downward. Currently, they are resting on top of the collapsed stack of burritos.

Since 2018, the burrito replenishment has cost us over \$120,000. At the same time, however, on several occasions, the burritos have undoubtedly saved our home, and kept us out of harm's way.

I will have to find a way to safely place the rocks back inside my property, as my intention is, of course, to remain compliant with the environmental laws of Hawaii at all times.

I also respectfully inform you that the wooden stairway you refer to, in Exhibit 1 of your letter, is NOT our stairway. You can clearly see in the picture that it is located NEXT to our property, on the East side of the boundary (fence). Upon information and belief, the stairway in question is under the dominion and control of one of our neighbors. Also upon information and belief, the stairway in question has recently been removed.

I hope this letter clarifies this incredibly difficult situation. At no time did I or anyone working on my behalf place rocks outside of my property. Rather, the ongoing erosion has caused said rocks to fall downward and outward along with the burritos, creating the impression that they were placed there as part of the stack of burritos. That is simply not the case.

I thank you for your kind consideration, as well as your understanding of the severe problem we and many of our neighbors continue to face.

Very truly yours,

Rodney R. Youman
PRESIDENT AND OWNER
ZHUNGO, LLC

DAVID Y. IGE
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

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

ROBERT K. MASUDA
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FORESTRY AND WILDLIFE
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KAHOOLAWE ISLANDS RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TF

ENF: OA 21-07

JAN 15 2021

Zhungo LLC
Rodney Youman
59-149 Ke Nui Road
Honolulu, HI 96712

SUBJECT: Alleged Unauthorized Land Use Within the Conservation District Located Makai (seaward)
of 59-149 Ke Nui Road, Haleiwa, HI 96712
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:004

Dear Zhungo LLC and Mr. Youman:

The Office of Conservation and Coastal Lands (OCCL) thanks you for your email and its attachments regarding the subject matter. The OCCL feels that this a matter that ultimately needs to go before the Board of Land and Natural Resources as scheduled on January 22, 2021 for final disposition. Please confirm with staff the person(s) and email address(es) of those who will attend this meeting so that they can be provided the Zoom link to take part.

Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office at (808) 798-6660 or trevor.j.fitzpatrick@hawaii.gov.

Sincerely,

SAM LEMMO

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

CC: Chairperson
Oahu Board Member
Oahu Land Division Office
City and County of Honolulu, Department of Planning and Permitting
City and County of Honolulu, Department of Parks and Recreation
ZHUNGO LLC [REDACTED]

Fitzpatrick, Trevor J

From: Rodney Youman [REDACTED]
Sent: Monday, January 18, 2021 3:37 PM
To: Fitzpatrick, Trevor J; Lemmo, Sam J
Subject: Re: [EXTERNAL] Response to Conservation District Enforcement Letter dated January 22, 2021

Dear Messrs. Trevor and Lemmo:

As you may have heard by now, the very next day after my last communication with you, that is, on Saturday, January 16th, 2020, an XXL swell hit the North Shore of Oahu. One particular set, with waves of almost 40 feet, caused a surge that washed up onto almost every single beachfront property.

Once again, I have suffered erosion. Also, when the surge went back down, it dragged some of the rocks that I had spent two days digging up for (to comply with the DLNR's order) back onto the beach.

I have once again had to hire someone to manually bring them back onto my property.

The rising sea levels and numerous massive swells in the last few months have caused us seemingly never-ending distress. Had I not had my entire home pulled back and raised (at tremendous financial expense), I am certain that my home would have been on the beach right now. As a matter of fact, the home to the west of mine, which has been there for many decades (as has mine), is beginning to collapse. Who knows how much longer it will last before it ends up on the beach/ocean.

I respectfully reiterate that I have complied with your orders. I have cured the defect. I have taken all the rocks back onto my property.

In four short years since I bought my home, I have lost a great amount of land. And yet, I am still being taxed by the City and County based on an Assessment that says that I still have the same amount of land I had when I purchased it! In truth, I have lost about one third of the land I had in 2016, when I bought it.

Rather than help us in this most dire situation, the State of Hawaii is penalizing us. We are living through a real emergency. We need help. We need a more permanent solution.

I am at my wit's end. And I am unable to afford your fines. The pandemic, which has practically ruined my practice, and now this constant erosion, have decimated my finances.

I implore you to withdraw the fines, as, again, I complied with the recommendation and order to remove the rocks. I did so as soon as it was safe to do so. It was NOT safe or practical in October, November and December of last year to bring them up.

I thank you again for your time and consideration.

Sincerely,

Rodney R. Youman

P.S. I will send you a video of the latest damage in a separate email.

Thank you.

On Friday, January 15, 2021, 09:20:48 PM EST, Rodney Youman [REDACTED] wrote:

Thank you Mr. Lemmo.

I just received your email, and I will send a more detailed response tomorrow.

For now, I just want to say that I am surprised that your Office wishes to continue with this matter. I had people work for two full days, at considerable expense, digging for and bringing up onto my property the rocks that spilled from inside my property last year.

I will send you one more picture of additional rocks (the last ones) that were pulled up yesterday. The rocks are all back on my property.

It would have been extremely difficult and dangerous to bring them back up in November and December of last year. I would say it was impossible.

I don't know or understand what else I am supposed to do at this point.

Sincerely,

Rodney R. Youman

Sent from Yahoo Mail for iPhone

On Friday, January 15, 2021, 4:30 PM, Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov> wrote:

Dear Zhungo LLC and Mr. Youman –

Please see attached and respond accordingly. A hard copy is being mailed to you.

Regards,

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

DAVID Y. IGE
GOVERNOR OF HAWAII



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 RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

REF: OCCL: TF

RE: Emergency CDUP OA 19-01

NOTIFICATION OF ALLEGED NONCOMPLIANCE

7014 2120 0003 1908 0334
CERTIFIED MAIL/RETURN RECEIPT

Aug 18, 2021

Zhungo LLC
C/O: Rodney Youman

SUBJECT: Alleged Noncompliance with Permit Conditions
Emergency Conservation District Use Permit (CDUP) OA 19-01 for
Temporary Erosion Control Measures.
Located at 59-149 Ke Nui Road
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:004 (seaward)

Dear Landowner:

NOTICE IS HEREBY GIVEN that your Emergency Conservation District Use Permit (CDUP) OA 19-01 no longer complies with its original terms and conditions.

1. On July 18, 2018 the Chair of the Board of Land and Natural Resources approved Emergency CDUP OA 19-01 for temporary erosion control measures fronting the subject property. The permit allowed for the placement of a heavyweight geotextile fabric blanket that overlaid geotextile fabric sand filled tubes composed of the same geotextile fabric with the blanket and sand filled tubes staked in place by three (3) foot long wooden spikes;
2. The temporary erosion control structure and associated materials extended seaward of the erosion scarp fronting the subject property, and were determined to be on State-owned submerged land;
3. Condition 1 of Emergency CDUP OA 19-01 states *It is understood that the Emergency Temporary Shoreline Protection is a temporary response to address a safety hazard to the existing residence on the subject property, which is threatened by both chronic and seasonal beach erosion. The material is authorized as a temporary erosion control measure for **three (3) years** from the date of issuance of this letter. Subsequent erosion control efforts that call*

for modification, other than maintenance of the proposed structure will require a new application. At the end of the authorization period, the materials shall be removed;

4. The Emergency CDUP OA 19-01 expired on July 18, 2021;
5. Condition 3 of Emergency CDUP OA 19-01 states *The permittee shall remove the unauthorized bags which are strewn along the beach and nearshore, and any other derelict structures or materials emanating from the property, and dispose of them immediately;*
6. OCCL staff conducted a site visit on July 23, 2021 and observed that the temporary erosion control structure remains on State Land. Additionally, it appears that the erosion control structure is dilapidated and unmaintained with liberated materials posing a nuisance and hazard to the nearshore environment. A photograph from the July 23, 2021 site visit can be found below as **Figure 1**;
7. Condition 5 of Emergency CDUP OA 19-01 states *The permittee shall contact the City & County of Honolulu, Department of Parks and Recreation to secure their authorization to work on the beach;*
8. Our office does not have record of a Right of Entry Permit or land disposition being obtained to perform the work that was approved by Emergency CDUP OA 19-01;
9. Condition 6 of Emergency CDUP OA 19-01 states *The permittee will submit a completion report for the project to the OCCL within ninety (90) days of the completion of construction of the temporary structure. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of the beach conditions since installation. The report will also include a photo summary of the temporary structure and beach conditions with documentation of any alterations or repairs;*
10. Our records indicate that no completion report was received for the work performed that was approved by Emergency CDUP OA 19-01;
11. Condition 27 of Emergency CDUP OA 19-01 states *Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the Chairperson or BLNR;*
12. On September 5, 2018, the landowner was issued a **NOTICE OF ALLEGED VIOLATION & ORDER** letter (ref. ENF: OA 19-08) for the alleged unauthorized land use observed by staff that consisted of rocks and fresh mortar underneath the erosion control fabric. No response from the landowner was received regarding the alleged unauthorized land use.
13. On October 8, 2020, the landowner was issued a **NOTICE OF ALLEGED VIOLATION & ORDER** letter (ref. ENF: OA 21-07) for the alleged unauthorized placement of rocks in the shoreline area fronting the subject property. Subsequently, staff observed that alleged unauthorized erosion control measures in the form of sand filled burritos had been placed in the shoreline area fronting TMK: (1) 5-9-002:004 on December 10, 2020. On January 11, 2021, further alleged unauthorized work consisting of a sand push to cover or

bury the alleged unauthorized sand filled burritos was observed. Our records indicate that no authorization for modifications to the temporary erosion control structure or subsequent sand pushing efforts were obtained prior to conducting the alleged unauthorized work.

14. On January 22, 2021, ENF: OA 21-07 was presented to the Board of Land and Natural Resources (Board) as Agenda Item K-4 and the Board deferred a decision on the matter. Pursuant to OCCL's letter (dated February 3, 2021), our office intends to reschedule this matter for a future Board meeting. To date, the OCCL has not received a proposed resolution to ENF: OA 21-07 from the landowner.

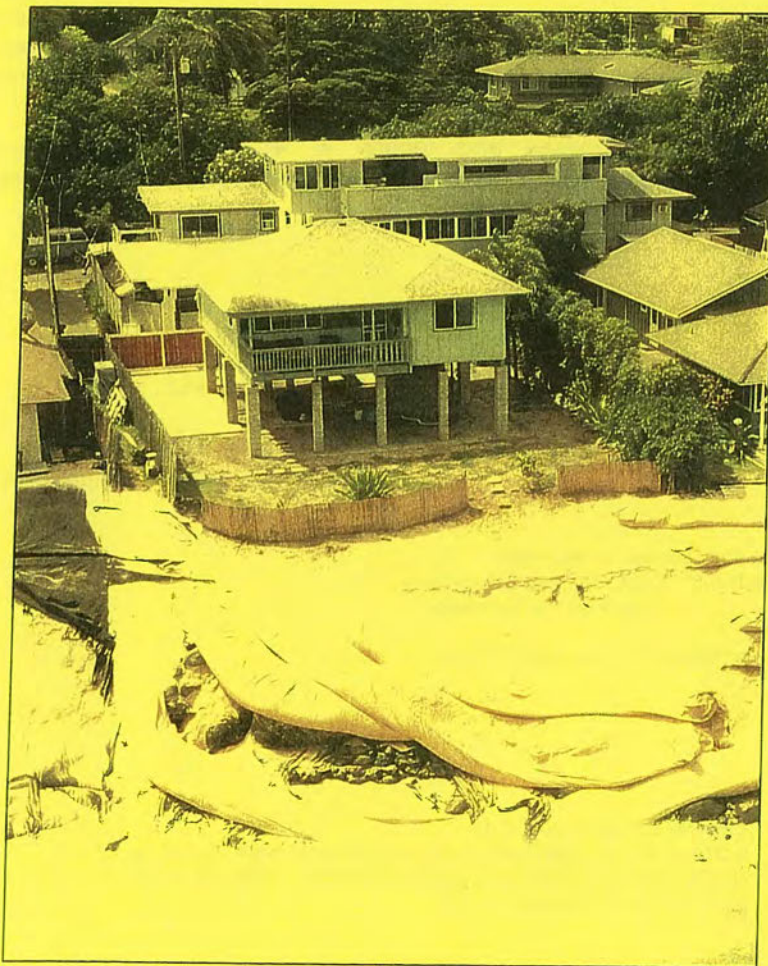


Figure 1: Aerial Image of Subject Property, Taken July 23, 2021

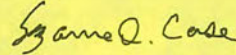
DISCUSSION

Based upon the above, it appears that the subject erosion control structure is not in compliance with the terms and conditions of Emergency CDUP OA 19-01. Further, Emergency CDUP OA 19-01 expired on July 18, 2021 and the temporary erosion control structure and all its associated materials were supposed to be removed. Based on OCCL's visits to the area, the temporary erosion control structure still occupies State-owned and County-managed lands without active authorization.

Additionally, the landowner, Zhungo LLC and Mr. Rodney Youman, are the subject of a current investigation and pending alleged violations regarding the unauthorized work and land uses outlined above. The OCCL reiterates that it intends to reschedule this matter for a future Board meeting. You will be notified of the date, time, and place/forum of this meeting. If you have a proposed resolution to this matter ahead of a future Board meeting, you may want to consider submitting your proposal in writing to our office for review. Please also describe the actions intended to be taken with the expiration (July 18, 2021) of Emergency CDUP OA 19-01.

Please submit all responses and reports in writing to Trevor Fitzpatrick at trevor.j.fitzpatrick@hawaii.gov. Please note that any information provided may be used in civil proceedings.

Sincerely,



SUZANNE D. CASE Chair
Board of Land and Natural Resources

KM

Copy: DLNR Land Division, O'ahu Office
C&C Honolulu: Dept. Planning & Permitting
Dept. Parks & Recreation
DOCARE
Gundaker Works, LLC, c/o Mark Ticconi

Attachment: Emergency CDUP OA 19-01
NOTICE OF ALLEGED VIOLATION & ORDER - ENF: OA 19-08
NOTICE OF ALLEGED VIOLATION & ORDER - ENF: OA 21-07
ENF: OA 21-07 February 3, 2021

DAVID Y. IGE
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

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

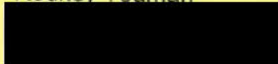
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE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

ENF: OA 21-07

SEP 27 2022

REF: OCCL: TF

Zhungo LLC
Rodney Youman



SUBJECT: Alleged Unauthorized Land Use(s) Within the Conservation District
Located Makai (seaward) of 59-149 Ke Nui Road
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key: (1) 5-9-002:004 (seaward)

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 authorization. Staff visited the area on September 7, 2022, and witnessed work being conducted in the shoreline area that included the placement of large sandbags seaward of the subject property as evidenced by *Exhibit 1*.

On September 5, 2018, you were issued enforcement letter ENF: OA 19-08 regarding work to an alleged unauthorized seawall in the shoreline area fronting the subject property. On October 8, 2020, you were issued a NOTICE OF ALLEGED VIOLATION & ORDER (ENF: OA 21-07) regarding work being conducted in the shoreline area that included the placement of rocks in the form of an unauthorized rock revetment or erosion control structure. Both letters noted "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".

On January 22, 2021, ENF: OA 21-07 was presented to the Board of Land and Natural Resources (BLNR) as Agenda Item K-4 and the BLNR deferred a decision on the matter. The OCCL reiterates that it intends to reschedule this matter for a future BLNR meeting. Additionally, the OCCL notes that it appears that portions of the alleged unauthorized seawall and rocks that are the subject of enforcement cases ENF: OA 19-08 and OA 21-07 still appear to be in the shoreline area fronting the subject property based on staff's visits to the area.

On August 18, 2021, you were issued a NOTIFICATION OF ALLEGED NONCOMPLIANCE regarding Emergency Conservation District Use Permit (CDUP) OA 19-01 for temporary erosion control measures. The OCCL notes that the expired temporary erosion control structure still occupies State-owned and County-managed lands without active authorization.

It appears that alleged unauthorized work has continued after you were notification to stop all work. The alleged unauthorized actions outlined above will be included as part of ENF: OA 21-07 (and OA 19-08) and noted in any Staff Report re-submitted to the BLNR when this matter is rescheduled for a future BLNR meeting. To limit any potential miscommunication that may

REF: OCCL: TF
Zhungo LLC/Rodney Youman

ENF: OA 21-07

occur and given that this is an alleged violation, the OCCL requests that all future communications shall be in writing.

Should you have any questions pertaining to this letter, contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at P.O. Box 621, Honolulu, HI 96809 or trevor.j.fitzpatrick@hawaii.gov.

Sincerely,

S Michael Cain

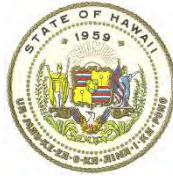
Michael Cain, Administrator
Office of Conservation and Coastal Lands

CC: *Chairperson*
DOCARE
ODLO
City and County of Honolulu, Department of Permitting and Planning



Exhibit 1

DAVID Y. IGE
GOVERNOR OF HAWAII



**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 RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TF

ENF: OA 21-07

Nov 6, 2023

NOTICE OF ALLEGED VIOLATION

CERTIFIED MAIL / RETURN RECEIPT

Zhungo LLC
Rodney Youman



SUBJECT: Alleged Unauthorized Land Use Within the Conservation District
Located makai of 59-149 Ke Nui Road
Por. Pūpūkea-Paumalū Beach Lots, Ko‘olauloa, O‘ahu
Tax Map Key (TMK): (1) 5-9-002:004 (seaward)

Dear Mr. Youman:

It has come to the attention of the Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands' (OCCL) attention that there appears to be unauthorized materials within the Conservation District fronting the location listed above.

OCCL has evidence that, on the weekend of November 4-5, 2023 workers mined beach sand to fill large geotextile tubes and placed them on State land fronting your property. We note that debris from other geotextile tubes remains on State land fronting your property. Photos of the alleged unauthorized materials and encroachments are attached.

According to OCCL files, there are no authorizations for these land uses. Pursuant to Hawai'i Administrative Rules (HAR) §13-5-2, "land use" is defined as (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. Additionally, pursuant to HAR §13-5-2, the "Shoreline" is defined as the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, Hawaii Revised Statutes (HRS)". Lands makai of the shoreline are under the jurisdiction of the State of Hawai'i DLNR.

NOTICE IS HEREBY GIVEN that you may be in violation of Hawai'i Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District providing for land uses within the Conservation District, enacted pursuant to the Hawai'i Revised Statutes (HRS), Chapter 183C.

The Department of Land and Natural Resources (DLNR) has reason to believe that:

1. The geotextile tubes have been placed seaward of TMK: (1) 5-9-002:004 and located within the State Land Use Conservation District, Resource Subzone;
2. Pursuant to §13-5-22 P-15 (D-1), HAR, "Shoreline Erosion Control " is a regulated land use as stated below:
 - a. *Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification;*
3. These land uses were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR; and
4. The land uses have occurred on public land owned by the State without authorization or permission from the State as landowner.

Pursuant to HRS, 171-6, the Board of Land and Natural Resources may bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall: (a) Be fined not more than \$1,000 a day for the first offense; (b) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter; (c) If required by the board, restore the land to its original condition if altered and assume the costs thereof; (d) Assume such costs as may result from adverse effects from such restoration; and (e) Be liable for administrative costs incurred by the Department and for payment of damages.

Additionally, with regards to alleged unauthorized land use(s) in the State Land Use Conservation District, pursuant to 183C-7(b), HRS, the Board of Land and Natural Resources (Board) may subject you to fines of up to \$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. In addition, criminal penalties may also be assessed.

OCCL intends to bring this enforcement action to the Board of Land and Natural Resources for disposition. We will notify you when the hearing is scheduled.

Written responses to this notice can be submitted to the Office of Conservation and Coastal Lands, 1151 Punchbowl, Room 131, Honolulu, Hawai'i, 96813 .

Sincerely,



Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources

Admin Review: Michael Cain, Administrator, Office of Conservation and Coastal Lands

S Michael Cain

copy: O'ahu Board Member
DOCARE (O'ahu)
O'ahu District Land Office
DCCA – Regulated Industries Complaints Office
City & County of Honolulu, Department of Planning and Permitting
City & County of Honolulu, Department of Parks and Recreation



Figure 1 Conditions on November 4, 2023



Figure 2 Conditions on November 5, 2023



11/13/2013 OCCL Photo of Shoreline Area Fronting Subject Parcel



1/11/2014 OCCL Photo of Shoreline Area Fronting Subject Parcel



8/14/2018 OCCL Photo of Shoreline Area Fronting the Subject Parcel (Emergency CDUP OA 19-01)



8/14/2018 OCCL Photo of Shoreline Area Fronting the Subject Parcel (Emergency CDUP OA 19-01); Debris/Unauthorized Materials (Failed Cement Wall) Being Utilized in the Temporary Erosion Control Structure



9/30/2020 OCCL Photo of Shoreline Area Fronting the Subject Parcel



12/10/2020 OCCL Photo of Shoreline Area Fronting the Subject Parcel



7/23/2021 OCCL Photo of Shoreline Area Fronting the Subject Parcel



9/7/2022 OCCL-Photo of Mr. Youman and his Agent Installing Unauthorized Sandbags in the Expired and Unauthorized Erosion Control Structure in the Shoreline Area Fronting the Subject Parcel



November 5, 2023: Photo of shoreline area fronting subject parcel



November 4, 2023: Photo of shoreline area fronting subject parcel

Conservation District Rules and Statutes

Shorelines and Public Lands

In Hawai'i, the shoreline is defined, pursuant to HRS §205A-1, as *the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.* Most lands in the State of Hawai'i that are seaward of the shoreline are in the Resource Subzone of the State Land Use Conservation District, and are owned by the State.

It is the uniform law of every coastal state that land below, or makai, of the shoreline is owned by the State and is held in public trust for the people of the State.¹ In Hawai'i County v. Sotomura, 55 Haw. 176, 517 P.2d 57 (1973), the Court made clear that the dividing line between public and private property with respect to oceanfront property is fluid and, specifically, that it changes with erosion.²

The Court based its ruling on the common law principle that loss of land by erosion is an inherent aspect of littoral property:

*The loss of lands by the permanent encroachment of waters is one of the hazards incident to littoral or riparian ownership... (W)hen the sea, lake or navigable stream gradually and imperceptibly encroaches upon the land, the loss falls upon the owner, and the land thus lost by erosion returns to the ownership of the state.*³

In determining that the dividing line between public and private property with respect to oceanfront property may change with erosion, the Court also based its ruling on the public trust doctrine, citing to King v. O'ahu Ry. And Land Co., 11 Haw. 717, 723-24 (1899), for the proposition that:

*The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.*⁴

Therefore, public policy “favors extending to public use and ownership as much of Hawai'i's shoreline as is reasonably possible.”⁵

¹ See Margaret E. Peloso and Margaret R. Caldwell, Dynamic Property Rights: The Public Trust Doctrine and Takings in a Changing Climate, 30 Stan. Envtl. L.J. 52, 57 (2011) (“In nearly all cases, the lines for defining the limits of private title and public access are the mean high water and mean low water marks.”).

² 55 Haw. At 180, 517 P.2d at 61.

³ In re City of Buffalo, 206 N.Y. 319, 325, 99 N.E. 850, 852 (1912).

⁴ Hawai'i County v. Sotomura, 55 Haw. At 184, 517 P.2d at 63.

⁵ Hawai'i County v. Sotomura, 55 Haw. At 182, 517 P.2d 61-62; see Application of Banning, 73 Haw. 297, 309-10, 832 P.2d 724, 731 (1992); Diamond v. Dobbin, 132 Haw. 9, 26, 319 P.3d 1017, 1034 (2014); Gold Coast Neighborhood Ass'n. v. State, 140 Haw. 437, 458, 403 P.3d 214, 235 (2017).

Hawai'i Administrative Rules (HAR) Chapter 13-5: Conservation District

Land uses in the Conservation District are regulated under HAR Chapter 13-5, which identifies land uses that may be applied for within the Conservation. Chapter 13-5 also contains the administrative rules relating to penalties, collection of administrative costs, and monetary damages that may be sought against persons responsible for unauthorized land uses within the Conservation District.

HAR § 13-5-2, defines “land use” as follows:

- (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.

Pursuant to HAR §13-5-6 Penalty, any person, firm, government agency, or corporation violating any of the provisions of chapter 13-5, or permits issued pursuant thereto, shall be punished as provided in chapter 183C, HRS.

HAR § 13-5-6(d) provides that “no land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.”

One of the allowed uses is for shoreline erosion control. HAR § 13-5-22 P-15(D-1) allows for a:

Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit;(2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification.

HAR § 13-5-35 Emergency permits (d) provides that “Repair and reconstruction of any structure or land use being investigated for possible violation of this chapter, or in situations in which fines for a violation have not been collected, shall not be processed until the violation is resolved.”

Hawai'i Revised Statutes Chapter 183C Conservation District

HRS §183C-7 (Penalty for violation) provides the statutory penalty for violations of Chapter 13-5, HAR, and provides, in relevant part:

- (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter.
- (b) Any person violating this chapter, or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, willful 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.
- (c) The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.

Hawai'i Revised Statutes Chapter 171: Management and Disposition of Public Lands

Pursuant to HRS §171-6 the Board may:

- (12) Bring actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:
 - (A) Be fined not more than \$1,000 a day for the first offense;
 - (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
 - (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
 - (D) Assume such costs as may result from adverse effects from such restoration; and
 - (E) Be liable for administrative costs incurred by the department and for payment of damages..."

HRS §171-6 further allows the Board to assess the following fines for a violation on Chapter 171 or any rule adopted thereunder:

- (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined no more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
- (B) Fined no more than \$10,000 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
- (C) Fined no more than \$20,000 per violation for a third or subsequent violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawai'i state constitution.

HRS § 171-6.4 states, in relevant part:

- (c) Noncompliance with administrative enforcement against a landowner for a land use, as defined in section 183C-2, that violates the law or for a currently unauthorized structure encroaching on public lands, including but not limited to submerged lands or lands within the shoreline, that falls, slides, or comes onto public land, or arises from or benefits an adjoining or abutting private land shall affect title pursuant to section 501-151 and result in a lien attaching to the adjoining or abutting private land.

Hawai'i Revised Statutes Chapter 205A: Coastal Zone Management

Pursuant to Chapter 205A-2 Coastal Zone Management Program, (c) (9) Beaches Protection, it is State policy to (A) *Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion*, and (B) *Prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.*