

**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 SUNSET OASIS LLC, including members William and Melinda Kernot, for the Conservation District Enforcement Case OA 21-18 Regarding the Alleged Permit Noncompliance, Construction of Shoreline Erosion Control Device, and Encroachment Upon State Land Located Makai of 59-151 A Ke Nui Road, Tax Map Key (TMK): (1) 5-9-002:005

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: SUNSET OASIS LLC and members William and Melinda Kernot (collectively, the "Kernots")

LOCATION: Makai of 59-151 A Ke Nui Road, Pūpūkea-Paumalū Beach Lots, Ko'olauloa, O'ahu, Tax Map Key ("TMK"): (1) 5-9-002:005 ("Parcel 005")

LANDOWNER: State of Hawai'i

SUBZONE: Resource

EXHIBITS:

1. Map
2. Emergency Permit OA 19-02 (July 18, 2018)
3. Enforcement OA 21-18 (January 12, 2021)
4. Notice of Alleged Noncompliance (August 18, 2021)
5. Photos
6. Rules and Statutes regarding the Conservation District

Summary

The Office of Conservation and Coastal Lands (OCCL) alleges that the Kernots, landowners of 59-151 A Ke Nui Road, Tax Map Key (TMK) parcel 5-9-002:005 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 alleged unauthorized installation of erosion control measures (sand filled burritos) and sand pushing (ENF: OA 21-18), 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.

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 005 is a residential lot with a single-family residence. According to the Hawai'i Cesspool Prioritization Tool, Parcel 005 contains a cesspool that has been identified by the Department of Health and the Cesspool Conversion Working Group in the Priority 1 zone, meaning that the

cesspool is recommended to be converted or decommissioned by 2030.¹ A cursory review of the website Airbnb.com indicates that Parcel 005, including its associated dwelling, is being used as a transient vacation rental.

Mitigation History

Sand Pushing

In October 2013 emergency authorization was given for sand pushing fronting seventeen properties, including Parcel 005. At least seven further authorizations were given for sand pushing efforts in the area through 2018 that were either initiated by the Kernots or included Parcel 005.

Emergency Permits

The erosion scarp eventually came within less than twenty feet from the residence on Parcel 005. On July 18, 2018, the Kernots obtained Emergency Conservation District Use Permit (CDUP) OA 19-02 for the installation of a heavyweight geotextile fabric blanket that would overlie four sand filled tubes of the same geotextile fabric (also known as “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 21-18 (Exhibit 3)

On December 10, 2020, OCCL staff observed that an alleged unauthorized sand-filled burrito had been placed on the public sandy beach fronting Parcel 005 and the adjacent Parcel 004.²

On January 11, 2021, the OCCL received a photo of further alleged unauthorized work in the subject area. The unauthorized work appeared to consist of an excavator on the beach pushing sand to cover or bury the recently installed sand-filled burrito(s).

On January 12, 2021, the Department issued a Notification of Alleged Violation (NOAV) (ref. ENF: OA 21-18) for the above work and unauthorized land uses within Conservation District and shoreline area fronting Parcel 005.

Non-Compliance with Emergency CDUP OA 19-02 (Exhibit 4)

On July 18, 2021, Emergency CDUP OA 19-02 expired. The temporary erosion control structure and associated materials were to be removed from the shoreline area fronting Parcel 005. OCCL

¹ See Hawai'i Cesspool Prioritization Tool, available at <https://seagrant.soest.hawaii.edu/app2/> (last visited Aug. 24, 2023).

² Staff notes that the alleged unauthorized installation of the sand-filled burrito(s) and other alleged unauthorized work in the shoreline area fronting Parcel 004 and its owner is the subject of an OCCL enforcement action (ref. ENF: OA 21-07).

staff conducted a site inspection shortly after and observed that the temporary erosion control structure remained on State land. It appeared that the erosion control structure was dilapidated and unmaintained with liberated materials posing a nuisance and hazard to the nearshore environment. Additionally, it appeared that approximately six to seven unauthorized burritos had been installed in the subject area over failed erosion control devices that had not been removed.

On August 18, 2021, the Department issued a Notification of Alleged Noncompliance letter for noncompliance with the conditions of Emergency CDUP OA 19-02. The notification also noted that ENF: OA 21-18 remained unresolved.

Additional Unauthorized Work (See Exhibit 5)

On October 18, 2021, OCCL staff observed that an alleged unauthorized erosion control device in the form of an erosion control blanket had been installed over the structure in the subject area. The unauthorized erosion control blanket appeared to also cover a portion of the shoreline area fronting the adjacent Parcel 004.

Site Photos

Exhibit 5 contains a photo history of the subject area.

Conservation District Rules and Statutes

Exhibit 6 contains the relevant rules and statutes that will be cited in the 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 most 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, the Kernots did not obtain authorization for the placement of an unauthorized sand-filled burrito (ENF: OA 21-18) and are 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 the Kernots, they are fully aware of the noncompliance, existing violation, 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 the Kernots did in fact authorize, cause, or allow the installation of an unauthorized sand filled burrito system 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 the Kernots continued to perform unauthorized work after being given notification by the Department to stop all work on at least three (3) separate occasions: January 14, 2021, July 23, 2021, and October 28, 2021; and
4. That the Kernots have failed to remove debris and past erosion control structures fronting Parcel 005 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, the Kernots are fined \$15,000 for violating the provisions of Section 13-5-24, HAR, for installing a sand filled burrito system (ENF: OA 21-18) on land within the Conservation District Resource Subzone;
 - b. Pursuant to Section 183C-7, HRS, the Kernots are fined \$15,000.00 for violating the provisions of Section 13-5-24, HAR, by failing to abide by the terms and

conditions of Emergency CDUP OA 19-02 and to remove the temporary erosion control measure at the end of the authorization period;

- c. Pursuant to Section 183C-7, HRS, the Kernots are fined a total of \$45,000 for a total of three days (January 14, 2021, July 23, 2021, and October 18, 2021) of willful violation of this chapter after having received notification from the Department to stop all work;
 - d. Pursuant to Section 171-6(12), HRS, the Kernots may be fined up to \$1,000 per day for their failure to remove the encroachments upon public lands, accrual of such starting when they received notice on July 18, 2021, when CDUP OA 19-02 expired, and therefore may total \$873,000;
 - e. Therefore, that the total fines and administrative costs that may be levied against the Kernots may be \$948,000, and that the Kernots 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 005 at the Bureau of Conveyances pursuant to Sections 171-6.4(c), 501-151, and 634-51, HRS;
 3. That the Kernots, or a future owner of Parcel 005, shall remove all unauthorized erosion control materials and encroachments by September 1, 2024;
 4. That in the event the Kernots, or a future owner of Parcel 005, fail to restore the shoreline area to a more natural state and to the Department's satisfaction by September 1, 2024, the Kernots shall be liable for the costs of removal by the State or City and County of Honolulu;
 5. That the Kernots, or a future owner of Parcel 005, shall remove or relocate the portions of the dwelling that are makai of the shoreline by September 1, 2024. That the Kernots, or a future owner of Parcel 005, shall ensure that removal or relocation of the dwelling or portions of it that are makai of the shoreline comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments;
 6. Regarding Recommendations 3-5, the Board authorizes the issuance of a right-of-entry permit to the Kernots, or a future owner of Parcel 005, 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.

7. That in the event of failure of the Kernots, or a future owner of Parcel 005, to comply with any order imposed in connection with this enforcement action, they shall be fined an additional \$16,000 per day, pursuant to Section 171-6(2) 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 the Kernots, or a future owner of Parcel 005, 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 the Kernots, or a future owner of Parcel 005, 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, subject to review and approval by the Department of the Attorney General; and
11. The above noted conditions of Enforcement file OA 21-18 shall be recorded with the deed instrument by the Kernots 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

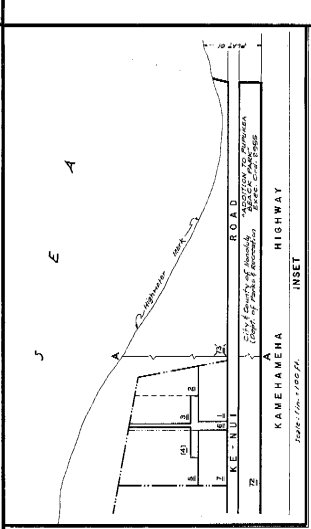
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Approved for submittal:



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





INSET

K E - N U I

K E - N U I

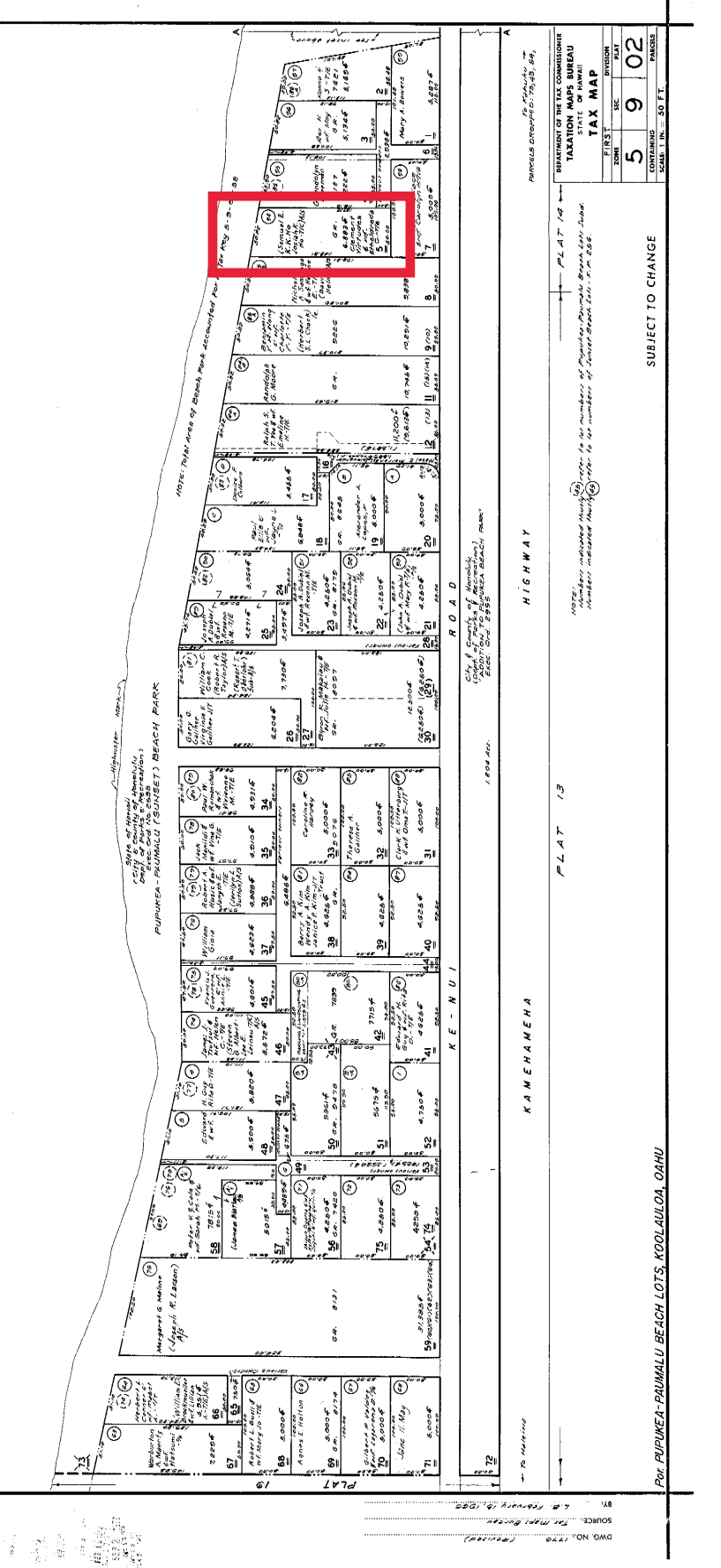
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City of Honolulu
 Department of Tax Commission
 TAX MAP
 CONTAINED
 SCALE: 1" = 50 FT.

PLAT 18

PLAT 13

KAMEHAMEHA HIGHWAY

K E - N U I

KAMEHAMEHA

K E - N U I

K E - N U I

K E - N U I

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ZONE	SEC.	DIVISION	FIRST	PLAT	INDEX
	5	9	02		

SUBJECT TO CHANGE

PLAT 18

PLAT 13

KAMEHAMEHA HIGHWAY

K E - N U I

KAMEHAMEHA

K E - N U I

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FOR PUPUIKEA-PALMALU BEACH LOTS, KOOLAULA, OAHU

DWG NO. 1770 (REVISED)
 SOURCE: THE MAPS BUREAU
 BY: 6/27 February 19, 1983

10

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-19-02

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)5-9-002:005

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 beach 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.

The DLNR is aware of several bags filled with sand and cobble that appear to have been installed in the past several years by the landowner, which are now strewn along the beach and nearshore. This authorization is contingent upon the landowner removing the bags and any other derelict structures or materials emanating from the property, and disposing of them.

Terms and Conditions

The DLNR authorizes the Emergency Temporary Shoreline Protection as described above fronting the subject property, at TMK (1) 5-9-002:005 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 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;
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;

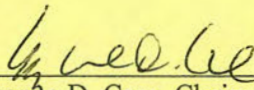
5. The permittee shall contact the City and County of Honolulu, Department of Parks and Recreation to secure their authorization to work on the beach;
6. The permittee will submit a completion report for the project to the OCCL within ninety (90) days of completion of construction of the temporary structure. 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, except that the permittee shall call the OCCL (587-0377) and arrange for a site inspection when work is initiated;
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:

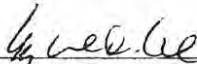
 Applicant

Date _____

- 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.

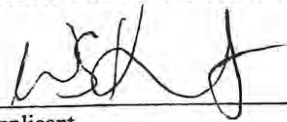
Sincerely,



 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 7-27-2018



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

NOTICE OF ALLEGED VIOLATION & ORDER

ENF: OA 21-18

JAN 13 2021

CERTIFIED MAIL/RETURN RECEIPT
7014 2870 0000 1654 5219

Sunset Oasis LLC
C/O William Kernot

SUBJECT: Alleged Unauthorized Land Use(s) Within the Conservation District Located Makai (seaward) of 59-191A Ke Nui Road, Haleiwa, HI 96712
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key: (1) 5-9-002:005

Dear Landowner:

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. OCCL Staff visited the site on 12/10/20 and observed that an alleged unauthorized sand-filled burrito had been placed on the public sandy beach fronting the property with the TMK: (1) 5-9-002:005 as evidenced by *Exhibit 1*. More recently, it appears that further alleged unauthorized work consisting of a sand push to further cover or bury the burrito(s) has taken place in the shoreline area fronting the property with the TMK: (1) 5-9-002:005 as evidenced by *Exhibit 2* taken on 1/11/21.



Exhibit 1



Exhibit 2

According to OCCL files, the landowner of the parcel with the TMK: (1) 5-9-002:005 was granted Emergency CDUA OA 19-02 on July 18, 2018 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. Condition 1 of Emergency CDUA OA 19-02 stated that "Subsequent erosion control efforts that call for modification, other than maintenance of the proposed structure will require a new application". Additionally, Condition 8 of Emergency CDUA OA 19-02 stated that "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 OCCL notes that the alleged unauthorized work and land uses observed by staff includes the placement of sand-filled burritos and pushing of sand for use as an erosion control structure as shown in *Exhibit 1* and *Exhibit 2*, and the structure appears to have been placed well makai (seaward) of the shoreline onto the public sandy beach. 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 an erosion control structure consisting of sand-filled burritos has been placed within the Resource Subzone of the 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 sand-filled burrito(s) in the form of an erosion control structure has taken place on the public sandy beach seaward of TMK: (1) 5-9-002:005 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 19-02;
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 seawall and other unauthorized materials located within the shoreline area within 30 days of receipt of this order. 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. Failure to comply with any part of the letter mentioned above will result in the matter being forwarded to the Board for formal action.

Please respond to this Notice in writing within thirty (30) days. Please note any information provided may be used in civil proceedings. If we do not receive a response within thirty (30) days, we will proceed with enforcement actions. 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

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
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HISTORIC PRESERVATION
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LAND
STATE PARKS

REF: OCCL: TF

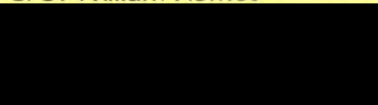
RE: Emergency CDUP OA 19-02

NOTIFICATION OF ALLEGED NONCOMPLIANCE

7014 2120 0003 1908 0310
CERTIFIED MAIL/RETURN RECEIPT

Aug 18, 2021

Sunset Oasis LLC
C/O: William Kernot



SUBJECT: Alleged Noncompliance with Permit Conditions
Emergency Conservation District Use Permit (CDUP) OA 19-02 for
Temporary Erosion Control Measures.
Located at 59-151A Ke Nui Road
Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:005 (seaward)

Dear Landowner:

NOTICE IS HEREBY GIVEN that your Emergency Conservation District Use Permit (CDUP) OA 19-02 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 19-02 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 19-02 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. Condition 3 of Emergency CDUP OA 19-02 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;*
5. The Emergency CDUP OA 19-02 expired on July 18, 2021;
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 19-02 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 19-02;
9. Condition 6 of Emergency CDUP OA 19-02 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 19-02;
11. Condition 27 of Emergency CDUP OA 19-02 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 January 13, 2021, the landowner was issued A **NOTICE OF ALLEGED VIOLATION & ORDER** letter (ref. ENF: OA 21-18) for the alleged unauthorized installation of erosion control measures (sand filled burritos) and sand pushing;
13. 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. To date, the OCCL has not received a proposed resolution to ENF: OA 21-18 or a long-term plan 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 no longer complies with the terms and conditions of Emergency CDUP OA 19-02 and is the subject of an alleged enforcement action ENF: OA 21-18. Additionally, the Emergency CDUP OA 19-02 expired on July 18, 2021 and the temporary erosion control structure and all its associated materials were supposed to be removed.

Further, the emergency situation for which the structure was originally authorized has existed over an extended period of time and appears likely to continue over an indefinite timeframe such that we now consider the situation an unmanaged hazardous condition. If you apply for a new emergency authorization, you will be required to demonstrate that a concerted effort is being undertaken to develop and implement a long-term solution which will enable removal of the temporary erosion control measures.

For the purposes of such a requirement, "concerted effort" shall mean a bona fide planning effort involving the employment of professional planners, engineers, or consultants to develop and implement a long-term solution whether it involves relocation or abandonment, beach restoration, or some other form of shoreline management. A surety bond or other legal or financial assurance may also be required as part of any potential authorizations for a time extension to guarantee removal of temporary uses at the expiration of any permitted time extension that may be authorized.

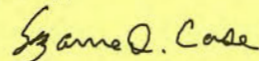
To summarize, Emergency CDUP OA 19-02 has expired, and the temporary erosion control structure approved by the emergency authorization is not in compliance nor has active authorization to sit upon State-owned and County-managed lands. Additionally, any subsequent requests for emergency erosion control measures fronting the subject property are contingent upon the landowner resolving ENF: OA 21-18.

Please provide this office with a written report which describes how you intend to correct the situation. The report should be submitted to DLNR's Office of Conservation and Coastal Lands (OCCL) within sixty (60) days of the date of this letter. The report shall describe the steps that will be taken moving forward to bring the subject structure into compliance, namely regarding the lack of proof for authorization to work in and place a structure within State-owned lands. Please also describe the actions intended to be taken with the passing of the expiration date of Emergency CDUP OA 19-02 on July 18, 2021.

Failure to act promptly on these matters may result in this matter being forwarded to the Board of Land and Natural Resources for formal enforcement action.

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

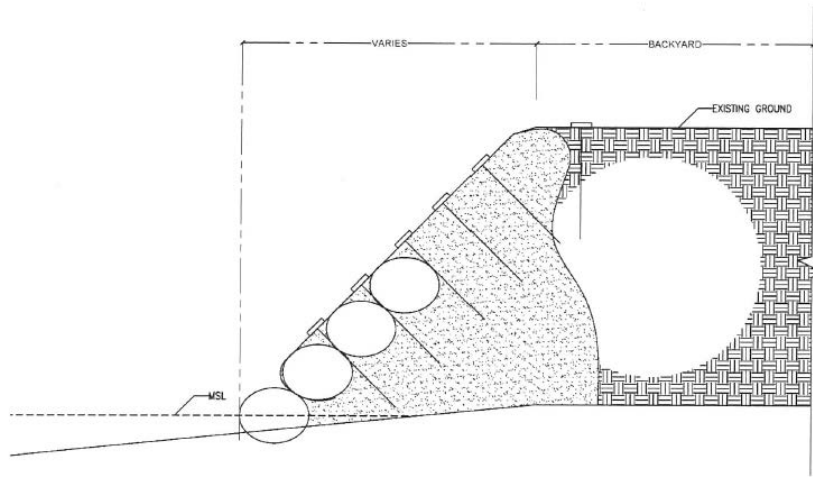
Attachment: Emergency CDUP OA 19-02
NOTICE OF ALLEGED VIOLATION & ORDER – ENF: OA 21-18



8/4/2006 OCCL Photo of Shoreline Area Fronting the Subject Parcel



12/21/2017 OCCL Photo of Shoreline Area Fronting the Subject Parcel



7/13/2018 Drawing of Approved Temporary Erosion Control Structure Emergency CDUP OA 19-02



8/14/2018 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



10/18/2021 Additional Unauthorized Work in the Form of an Erosion Control Blanket



9/7/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



9/12/2023 OCCL Photo of Shoreline Area Fronting the 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. Dobbins, 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.*