

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

October 11, 2024

**Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i**

**REGARDING:** Request for Administrative Fines and Other Penalties Against Juan and Judith Silva for the Conservation District Enforcement Case HA 24-23 Regarding the Alleged Modifications to a Single-Family Residence and Placement of Accessory Structures within the Conservation District Located at 32-2455 Stone Road, Tax Map Key (TMK): (3) 3-2-004:044

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.

**LANDOWNER/  
AGAINST:**

Juan and Judith Silva

**LOCATION:**

32-2455 Stone Road, Pihā Homesteads, North Hilo, Island of Hawai'i, Tax Map Key ("TMK"): (3) 3-2-004:044 ("Parcel 044")

**SUBZONE:**

General

**EXHIBITS:**

1. Location and Subzone Map (pages 13-14)
2. Photos (pages 15-16)
3. County of Hawai'i Sketch – SFR (page 17)
4. Silva Deed for Parcel 044 (pages 18-25)
5. Parcel 044 redfin.com Advertisement (pages 26-34)
6. Notice of Alleged Violation ENF: HA 24-23 (pages 35-40)
7. Silva March 1, 2024, Response Letter (pages 41-55)
8. OCCL March 15, 2024, Letter (pages 56-58)
9. OCCL Penalty Schedule (pages 59-70)

## **Summary**

The Office of Conservation and Coastal Lands (OCCL) alleges that Juan and Judith Silva, landowners of 32-2455 Stone Road, TMK: (3) 3-2-004:044 ("Parcel 044"), conducted unauthorized land uses on the subject property which lies in the General Subzone of the State Land Use Conservation District. The alleged violations include constructing major and moderate alterations to Parcel 044's single-family residence and placing or constructing accessory structures to the dwelling on the property without prior authorization.

Juan and Judith Silva have admitted to conducting the unauthorized land uses on Parcel 044 within the Conservation District and are requesting to apply for After-the-Fact authorizations as part of a proposed resolution.

## **Description of Area**

The subject property is located on Stone and Aina Wai Road in the Pihā Homesteads of the North Hilo District on the Island of Hawai'i. The surrounding properties consist of several single-family residences and small-scale farms in a rural residential area of North Hilo. The subject property is located in the General Subzone of the State Land Use Conservation District. See **Exhibit 1**.

The approximately 11.18-acre property sits at an elevation of about 1,178 ft above mean sea level. Annual rainfall for the area and property is approximately 187 inches per year and it is roughly bordered by Waikaumalo Stream and its tributary Kalaeha Stream.

**Exhibit 2** contains photos of Parcel 044.

## **History – Conservation District**

### **Conservation District Use Permit (CDUP) HA-3030**

On August 24, 2001, the Board of Land and Natural Resources (BLNR) approved CDUP HA-3030 for the establishment of organic agricultural uses; construction of a work shed, shade house, water catchment system, and improvements, including extensions to the existing jeep roads on Parcel 044 and the adjacent (parcel 043) property subject to 18 conditions.

On October 8, 2004, the BLNR amended condition 5 of CDUP HA-3030 to provide that the permittee had until February 24, 2006, to complete approved improvements such as the approximately 960 sq. ft agricultural work shed, 6,000-gallon water catchment system, and shade house. According to OCCL files, no final construction plans were submitted nor signed by the Chair or their authorized representative pursuant to condition 4 of CDUP HA-3030.

### **Conservation District Enforcement Case HA 06-18 – Unauthorized Residence**

On August 29, 2005, staff conducted a site visit to the area and observed that an unauthorized single-family residence (SFR) was constructed on Parcel 044 (i.e., the approved 960 sq. ft agricultural work shed had been converted/constructed to be a SFR). The case was resolved

by the landowner paying a \$650 fine and filing an After-the-Fact (ATF) Conservation District Use Application (CDUA) for the proposed the conversion of the agricultural work shed to a SFR.

### **ATF CDUP HA-3311**

On September 8, 2006, the BLNR approved the ATF CDUA HA-3311 for the SFR on TMK: (3) 3-2-004:044 subject to 21 conditions. The BLNR approved SFR was to encompass 413 sq. ft of enclosed living area, 368 sq. ft of porch and patio, 286 sq. ft of carport for an approximate total developed area of 1,067 sq. ft.

On December 2, 2008, final construction plans for contemplated and approved modifications to the SFR were signed, and the construction completion deadline for ATF CDUP HA-3311 was September 8, 2009.

Staff notes that a cursory review of the County of Hawai'i Real Property Assessment website (<https://hawaiipropertytax.com/>) and aerial images indicates that contemplated and approved modifications to the SFR were not constructed in a timely manner and the total developed area of the SFR remained approximately 1,067 sq. ft. See **Exhibit 3**.

### **Site Plan Approval (SPA) HA 09-14**

On November 20, 2008, the Department authorized SPA: HA 09-14 for approximately 2,500 linear feet of hog wire fence to be installed on the parcel subject to 10 conditions. Three 14 feet wide ranch panel gates were also approved for installation.

## **Alleged Unauthorized Land Uses in the Conservation District**

### **Enforcement HA 24-23**

On September 9, 2020, the warranty deed for the Parcel 044 was recorded at the Bureau of Conveyances (BOC) granting the property to Juan and Judith Silva (ref. Doc No A75570105). The warranty deed notes ATF CDUP HA-3311 and its terms and provisions that was recorded with Parcel 044's deed instrument on November 24, 2006 (**Exhibit 4** – ref. Document No. 2007-017584).

From 2020 to 2023, a cursory review of aerial images for the subject property indicates that unauthorized modifications to the SFR were constructed and structures placed on Parcel 044. These images also indicated that a new access and driveway to residence was constructed and paved as well as a turnaround/parking area was constructed fronting the SFR. A portion of Aina Wai Road was also paved. See **Exhibit 2**.

On October 31, 2023, Parcel 044 appears to have been listed for sale according to the real estate website redfin.com. Photos of Parcel 044 and the "FLOORPLANSKETCH" contained in the redfin.com advertisement confirmed unauthorized modifications to the SFR, and other land uses on the property observed in aerial imagery. Soon after the marketing of Parcel 044 began, OCCL received inquiries from potential buyers of the parcel (**Exhibit 5**).

On February 5, 2024, the Department issued a Notice of Alleged Violation (NOAV) (ref. ENF: HA 24-23) for the above work and unauthorized land uses in the Conservation District on Parcel 044. The Notice noted that unauthorized major modifications were made to the SFR resulting in the total developable area of the residence increasing from an authorized ~1,067 sq. ft to an ~3,390 sq. ft dwelling. The Notice stated that there were possibly two potential resolutions, and that staff would need to conduct a site inspection of Parcel 044 (**Exhibit 6**).

On March 1, 2024, Juan and Judith Silva responded to the NOAV letter and provided a statement that they would like to pursue potential ATF authorizations for the unauthorized modifications to the SFR and accessory land uses. Attached to their letter were photos of construction activities, a description of the construction of the new driveway and turnaround/parking area, hand drawn plans for portions of unauthorized modifications to the SFR, and the "FLOORPLANSKETCH" from redfin.com. Submitted photos indicated that an unauthorized retaining wall had been constructed mauka (landward) of the SFR. No as-built plans for the dwelling were submitted (**Exhibit 7**).

On March 15, 2024, OCCL responded to Juan and Judith Silva's letter. The letter noted the following regarding the unauthorized modifications to Parcel 044's SFR and accessory structures:

- The 726.8 sq. ft "Family Room" is an alleged "major alteration" to the approximately 1,068 sq. ft SFR;
- The 588.1 sq. ft "Garage" is an alleged "major alteration" to the approximately 1,068 sq. ft SFR;
- The 400 sq. ft "Carport" is an alleged "moderate alteration" to the approximately 1,068 sq. ft SFR;
- The 361.2 sq. ft "Porch" is an alleged "moderate alteration" to the approximately 1,068 sq. ft SFR;
- The 296 sq. ft "Porch" is an alleged "moderate alteration" to the approximately 1,068 sq. ft SFR; and,
- The approximately 420 ft long dirt or gravel driveway has been extended by approximately 275 ft, paved, and an approximately 3,110 sq. ft paved parking and turnaround area constructed which are alleged "major alterations" to the approximately 420 ft long driveway.

The letter stated that the alleged unauthorized land uses that would have required a Board permit may incur a penalty in the range of \$10,000 to \$15,000, and alleged unauthorized land uses that would have required a Departmental permit may incur a penalty in the range of \$2,000 to \$10,000. The letter also requested a site inspection to Parcel 044 to confirm the structures and activities (**Exhibit 8**).

On April 17, 2024, a site inspection was conducted to Parcel 044 with Juan Silva. Staff confirmed the unauthorized modifications to the SFR and accessory structures. Additionally, staff observed that two additional water storage/catchment tanks and two storage sheds had

been placed near the house, and a portion of the County-owned and unmaintained Aina Wai Road had been paved.

### **Conservation District Rules and Statutes**

The Board has statutory authority to impose civil administrative fines for the above-discussed violations, as further discussed below.

Land uses in the Conservation District are regulated by Hawai'i Revised Statutes (HRS) Chapter 183C and the administrative rules promulgated thereunder, which are found in Hawai'i Administrative Rules (HAR) Chapter 13-5.

The Department and Board, through OCCL, regulates land use in the Conservation District by the issuance of permits and site plan approvals. HRS §183C-6. Permit(s) or approval(s) by the department or board for land use(s) in the Conservation District must be obtained *before* proceeding with any land use. HAR §13-5-6(d).

This Board and the Department are statutorily required to enforce land use regulations on Conservation District lands, including the collection of fines for violations of land use. HRS § 183C-3.

Land uses, and associated permit or site plan approvals required by the State, in the General subzone of the Conservation District are governed by HAR §13- 5-22.<sup>1</sup> Land use, for purposes of HAR Chapter 13-5, means:

- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land. HAR § 13-5-2.

In addition to the general definition of "land use," HAR Chapter 13-5 further describes specific land uses allowed within the Conservation District and what level of departmental review for such uses is required.

Staff has assessed the land uses in the Conservation District at the subject property and identified the unauthorized land uses to be as follows:

**Structures and land uses, existing/major alteration** is identified as a land use regulated under HAR §13-5-22 ("Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original use or different from what was

---

<sup>1</sup> "[A]ll identified land uses and their associated permit or site plan approval requirements listed for the protective, limited, and resource subzones also apply to the general subzone, unless otherwise noted." HAR § 13-5-25(a).

allowed under the original permit. When county permit(s) are required for the associated plan(s), the department's approval shall also be required"). Structures and land uses, existing/major alterations in the Conservation District requires a Board permit approved by the BLNR prior to any work being conducted. HAR §§13-5-22(b)(2), P-8 (D-1).

"Major alteration" means work done to an existing structure, facility, or use that results in more than fifty per cent increase in the size of the structure, facility, or use. HAR §13-5-2.

**Structures and land uses, existing/moderate alteration** is identified as a land use regulated under HAR §13-5-22 ("Moderate alteration of existing structures, facilities, uses, and equipment"). Structures and land uses, existing/moderate alterations in the Conservation District requires a Departmental permit approved by the Chair prior to any work being conducted. HAR §§13-5-22(b)(2), P-8 (C-1).

"Moderate alteration" means work done to an existing structure, facility, or use that results in more than a ten per cent increase, but no more than a fifty per cent increase, in the size of the structure, facility, or use. HAR §13-5-2.

**Accessory structure(s)** is identified as a land use regulated under HAR §13-5-22 ("Construction or placement of structures accessory to existing facilities or uses"). Accessory structure(s) in the Conservation District requires Site Plan Approval approved by the Department prior to any work being conducted. HAR §§13-5-22(b)(2), P-9 (B-1).

"Accessory use" means a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use. HAR §13-5-2.

In the case of SFRs, accessory structures need to comply with HAR Chapter 13-5 Exhibit 4 Single Family Residential Standards and the Maximum Developable Area (MDA). MDA means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures. For lots larger than 1-acre such as the subject property, the MDA for a SFR is 5,000 square feet. HAR Chapter 13-5 Exhibit 4 Single Family Residential Standards.

## **Penalties**

Any person, firm, government agency, or corporation violating any provision of the Conservation District statutes or rules is subject to the penalties prescribed in HRS § 183C-7.<sup>2</sup>

HRS 183C-7 provides that any person violating HRS Chapter 183C or HAR Chapter 13- 5 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.

---

<sup>2</sup> "Any person, firm, government agency, or corporation violating any of the provisions of this chapter or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS." HAR §13-5-6(a).

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 the environment and the cost of restoration or replacement. These remedies are cumulative and in addition to any other remedy allowed by law. HRS § 183C-7(b).

In December 2010, the Board adopted the Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources, to provide guidance in the assessment of administrative sanctions and promote consistency within the department. This violation penalty schedule applies to the instant matter.

OCCL staff treats each case individually when assessing penalties for violations of Conservation District laws using the Penalty Schedule Guideline and looks at factors that can allow for upward or downward adjustments. See HAR §13-1-70.

### Penalties relating to alterations to the existing structures

#### **Major Alterations of Existing Structure**

The authorized existing SFR approved by ATF CDUP HA-3311 was approximately 1,068 sq. ft. The 726.8 sq. ft “Family Room” is an approximately 68% increase and “major alteration” to the 1,068 sq. ft SFR which would have required the filing of a Conservation District Use Application (CDUA) for a Board permit. The lack of obtaining Board approval prior to initiating any work constitutes major harm to the resource and the penalty range shall be \$10,000 - \$15,000.

The 588.1 sq. ft “Garage” is an approximately 55% increase and “major alteration” to the 1,068 sq. ft SFR. This land use would have required the filing of a CDUA for a Board permit. The lack of obtaining Board approval prior to initiating any work constitutes major harm to the resource and the penalty range shall be \$10,000 - \$15,000.

A new approximately 569 linear feet driveway and an approximately 3,110 sq. ft parking/turn-around area are an approximately 800% increase and “major alteration” to the 420 linear feet of dirt or gravel driveway. This land use would have required the filing of a CDUA for a Board permit. The lack of obtaining Board approval prior to initiating any work constitutes major harm to the resource and the penalty range shall be \$10,000 - \$15,000.

#### **Moderate Alteration of Existing Structure**

The 400 sq. ft “Carport” is an approximately 37% increase and “moderate alteration” to the 1,068 sq. ft SFR. This land use would have required the filing of a CDUA for a Departmental permit. The lack of obtaining Departmental approval prior to initiating any work constitutes moderate harm to the resource and the penalty range shall be \$2,000 - \$10,000.

The 361.2 sq. ft “Porch” is an approximately 34% increase and “moderate alteration” to the 1,068 sq. ft SFR. This land use would have required the filing of a CDUA for a Departmental permit. The lack of obtaining Departmental approval prior to initiating any work constitutes moderate harm to the resource and the penalty range shall be \$2,000 - \$10,000.

The 296 sq. ft “Porch” is an approximately 28% increase and “moderate alteration” to the 1,068 sq. ft SFR. This land use would have required the filing of a CDUA for a Departmental permit. The lack of obtaining Departmental approval prior to initiating any work constitutes moderate harm to the resource and the penalty range shall be \$2,000 - \$10,000.

Penalties relating to the placement of accessory structures

**Water Catchment Tanks**

Two additional rainwater catchment tanks have been placed in areas adjacent to the SFR and are likely utilized as a source of water as the area is not serviced by County water. These land uses would have required the filing of Site Plan Approval application for Site Plan Approval. The lack of obtaining Site Plan Approval prior to placing each rainwater catchment tank or initiating any work constitutes minor harm to the resource and the penalty range shall be \$1,000 - \$2,000.

**Storage Sheds**

Two storage sheds have been placed on the property. These land uses would have required the filing of Site Plan Approval application for Site Plan Approval. The lack of obtaining Site Plan Approval prior to placing each storage shed or initiating any work constitutes minor harm to the resource and the penalty range shall be \$1,000 - \$2,000.

**Retaining Wall**

A retaining wall was constructed adjacent to the SFR and its garage. This land use would have required the filing of Site Plan Approval application for Site Plan Approval. The lack of obtaining Site Plan Approval prior to initiating any work constitutes minor harm to the resource and the penalty range shall be \$1,000 - \$2,000.

**Discussion**

The stated purpose of the Conservation District law is to protect and conserve natural resources. HAR § 13-5-1. Staff notes that the 1,068 sq. ft dwelling was a violation prior to being adjudicated and receiving ATF-authorization from the Board. According to Doc No(s) 2007-017584 recorded at the Bureau of Conveyances (BOC) on January 30, 2007, the ATF authorization for the SFR was recorded with the deed instrument in accordance with Condition 10 of ATF CDUP HA-3311.

OCCL files indicate that no correspondences or applications were submitted to the Department to review or respond to regarding potential land uses on the property and proposed modifications to the SFR prior or after the Silva's purchased Parcel 044. The landowners had no authorizations from the Department or Board prior to initiating any work and constructing major and moderate modifications to the SFR and placing accessory structures on the property.

Staff notes that modifications made to the SFR are not compliant with Exhibit 4 Single Family Residential Standards of HAR Chapter 13-5. The "Compatibility Provisions" of Exhibit 4 state in relevant part: "All structures connected, or best alternative". The unauthorized "Carport" is not connected to the SFR under one roof, and unauthorized modifications to the SFR included an approximately 588.1 sq. ft "Garage". Staff believes the 400 sq. ft "Carport" should be removed to bring the SFR into compliance with the Single Family Residential Standards contained in Exhibit 4 of HAR Chapter 13-5.

No disclosure or studies of resources that might be impacted were conducted and no agencies appear to have been consulted to mitigate potential impacts to resources for the most recent



unauthorized work. Photos of construction activities submitted by the landowners do not appear to indicate that best management practices or mitigation measures, such as erosion control, were implemented to protect resources such as, but not limited to, the Waikaumalo Stream and its tributary Kalaeha Stream.

All cesspool owners are required to upgrade, convert, or connect to sewer before 2050 pursuant to Act 125 Sessions Law of Hawai'i (2017). This is needed to protect above and below ground water resources, and human and ecosystem health. OCCL files and the Hawai'i Cesspool Prioritization Tool (<https://seagrant.soest.hawaii.edu/cesspools-tool/>) indicate that the property contains a cesspool. cursory conversations with the State of Hawai'i Department of Health Wastewater Branch note that the unauthorized improvements made to the SFR potentially would have triggered the need to convert or upgrade the dwelling's individual wastewater treatment system. It appears no applications or authorizations to upgrade the individual wastewater treatment system have been received or issued according to the Department of Health Wastewater Branch.

A review of the County of Hawai'i Real Property Assessment website and the deed recorded at the BOC indicates that the landowners purchased the property for approximately \$549,000 on August 31, 2020. After constructing the unauthorized modifications to the existing 1,068 sq. ft SFR and placement of accessory structures on the property, the property was being marketed on real estate websites for approximately \$1,249,000 giving the appearance that the landowners had purchased the parcel and constructed or placed the unauthorized improvements to the SFR and land as a potential investment.<sup>3</sup>

It has been OCCL's position to discourage speculative activities in the Conservation District. Speculation often leads to an increase in the intensity of land uses on the area or land, and these activities do not often align with the purpose of the Conservation District. Given the above information regarding unauthorized improvements made to Parcel 044, its SFR, and the parcel's potential valuation, staff has concerns about the message this may send to speculators and developers of Conservation District lands if the landowners are allowed to seek ATF authorizations for their unauthorized improvements.

Based on the present evidence, the landowners did not obtain authorizations for the unauthorized modifications to the SFR and placement of accessory structures on the property. Staff notes that the landowners stated as much in their March 1, 2024, response letter and during the April 17, 2024, site visit. Additionally, the landowners noted during this site visit and after being noticed for the alleged unauthorized land uses that they intend to keep the property.

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

## **Findings and Conclusions**

---

<sup>3</sup> Staff notes that the property and its SFR were originally listed for \$1,349,000 according to its redfin.com advertisement.

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

1. That Juan and Judith Silva did in fact authorize, cause, or allow the construction of unauthorized modifications to the SFR and placement of accessory structures to the SFR on Parcel 044 within the State Land Use Conservation District, General Subzone;
2. That there are no authorizations for the modifications to the SFR and placement of accessory structures on the property; and,
3. That the unauthorized land uses occurred upon land that lies within the State Land Use Conservation District, General Subzone.

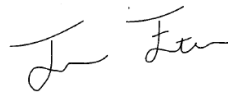
### **Staff Recommends**

1. That the Board adopt the findings and conclusions set forth above and impose the following administrative fines:
  - a. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$15,000 for violating the provisions of HAR § 13-5-25, for constructing the 726.8 sq. ft “Family Room” and major alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
  - b. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$15,000 for violating the provisions of HAR § 13-5-25, for constructing the 588.1 sq. ft “Garage” and major alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
  - c. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$15,000 for violating the provisions of HAR § 13-5-25, for constructing a new approximately 620ft driveway and 3,110 sq. ft paved parking and turnaround area that are major alterations to the existing 420ft dirt or gravel driveway on land within the Conservation District General Subzone;
  - d. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$10,000 for violating the provisions of HAR § 13-5-25, for constructing the 400 sq. ft “Carport” and moderate alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
  - e. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$10,000 for violating the provisions of HAR § 13-5-25, for constructing the 361.2 sq. ft “Porch” and moderate alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
  - f. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$10,000 for violating the provisions of HAR § 13-5-25, for constructing the 296 sq. ft “Porch” and moderate alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
  - g. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$4,000 for violating the provisions of HAR § 13-5-25, for the placement of two accessory structures

- consisting of rainwater catchment tanks on land within the Conservation District General Subzone;
- h. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$4,000 for violating the provisions of HAR § 13-5-25, for the placement of two accessory structures consisting of storage sheds on land within the Conservation District General Subzone;
  - i. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$2,000 for violating the provisions of HAR § 13-5-25, for the construction and placement of one accessory structure consisting of a retaining wall on land within the Conservation District General Subzone;
  - j. Therefore, that the total fines and administrative costs that may be levied against Juan and Judith Silva may be \$85,000, and that Juan and Judith Silva 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 044 at the Bureau of Conveyances pursuant to HRS §§ 171-6.4(c), 501-151, and 634-51;
3. That the Board authorize one of the following options (a. or b.):
- a. That Juan and Judith Silva or a future landowner shall remove all unauthorized modifications and accessory structures constructed or placed on Parcel 044 and return the SFR to 1,068 sq. ft within ninety days from the date of the Board's action;
    - i. The total fines and administrative costs (\$85,000) authorized by the Board above and levied against Juan and Judith Silva or a future landowner may be credited towards removal costs and returning the SFR to its approved 1,068 sq. ft based on supportive documentation submitted to the Department; or,
  - b. That Juan and Judith Silva or a future landowner shall submit to OCCL a complete and acceptable for processing After-the-Fact (ATF) Conservation District Use Application (CDUA) for the unauthorized modifications to the SFR and accessory structures placed on Parcel 044 in accordance with HAR Chapter 13-5 and all requested attachments, such as but not limited to architectural stamped plans for the SFR and a Management Plan consistent with HAR § 13-5-39, within 180 days from the date of the Board's action. The ATF CDUA and Management Plan(s) shall address, but not be limited to, the status and potential future plans for approved land uses such as the non-commercial fruit orchard, native forest restoration area, vegetable garden, dryland kalo patch, and small-scale timber farm under CDUP HA-3030 and CDUP HA-3311;
    - i. Unless otherwise authorized by the Board or Chair, Juan and Judith Silva or a future landowner shall obtain the appropriate ATF authorizations in accordance with HAR Chapter 13-5 for the modifications to the SFR and placement of accessory structures on Parcel 044 within 2 years from the date of the Board's action,

- ii. If ATF authorizations are not obtained within 2 years from the date of the Board's action or a later date approved by the Board, the unauthorized improvements and structures shall be removed, the SFR returned to the approved 1,068 sq. ft, and the area restored to a more natural state or to the Department's satisfaction within 180 days (i.e., within 2 ½ years from the date of the Board's action) by and at the expense of Juan and Judith Silva or a future landowner;
4. 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 Juan and Judith Silva or a future owner of Parcel 044 as to why an extension may be warranted. Any extension request regarding these deadlines shall be submitted to the Department prior to the deadline or any authorized extension thereof;
5. That in the event of failure of Juan and Judith Silva or a future owner of Parcel 044 to comply with any order imposed in connection with this enforcement action, they shall be fined an additional \$15,000 per day, pursuant to HRS § 183C-7, until the order is complied with;
6. That in the event of failure of Juan and Judith Silva or a future owner of Parcel 044 to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs;
7. 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
8. The above noted conditions of Enforcement file HA 24-23 shall be recorded with the deed instrument by Juan and Judith Silva at the Bureau of Conveyances pursuant to HAR § 13-5-6(e).

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands

mc

Approved for submittal:



---

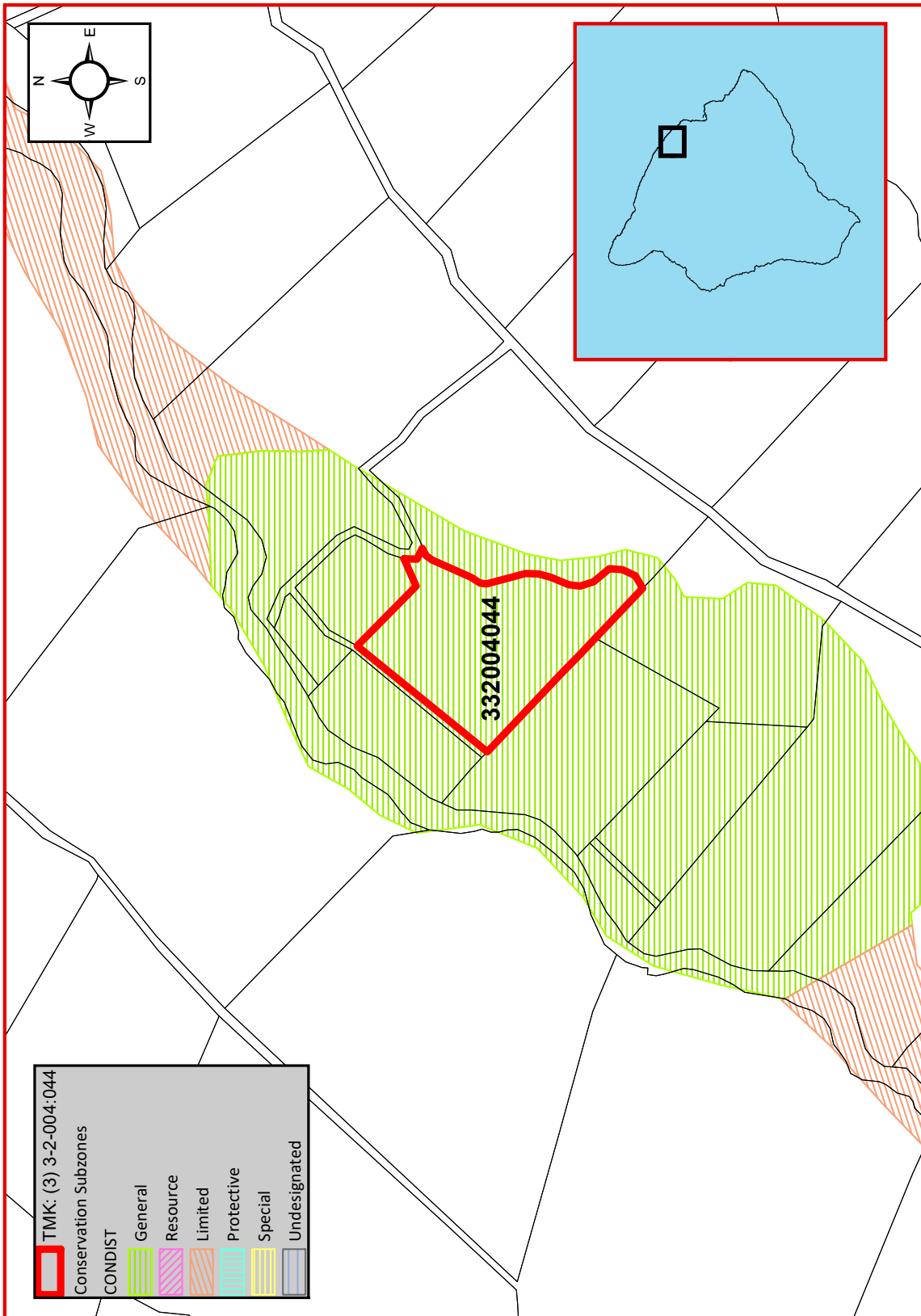
Dawn N. S. Chang, Chairperson  
Board of Land and Natural Resources



**Exhibit 1**

**TMK: (3) 3-2-004:044 Juan and Judith Silva Parcel**

0 250 500 1,000 Feet



Date: 6/19/2024

All boundaries are approximate

Produced by Trevor Fitzpatrick @ OCCL

**Exhibit 1**



4/16/2006 OCCL Photo of Unauthorized Single-Family Residence on Parcel 044

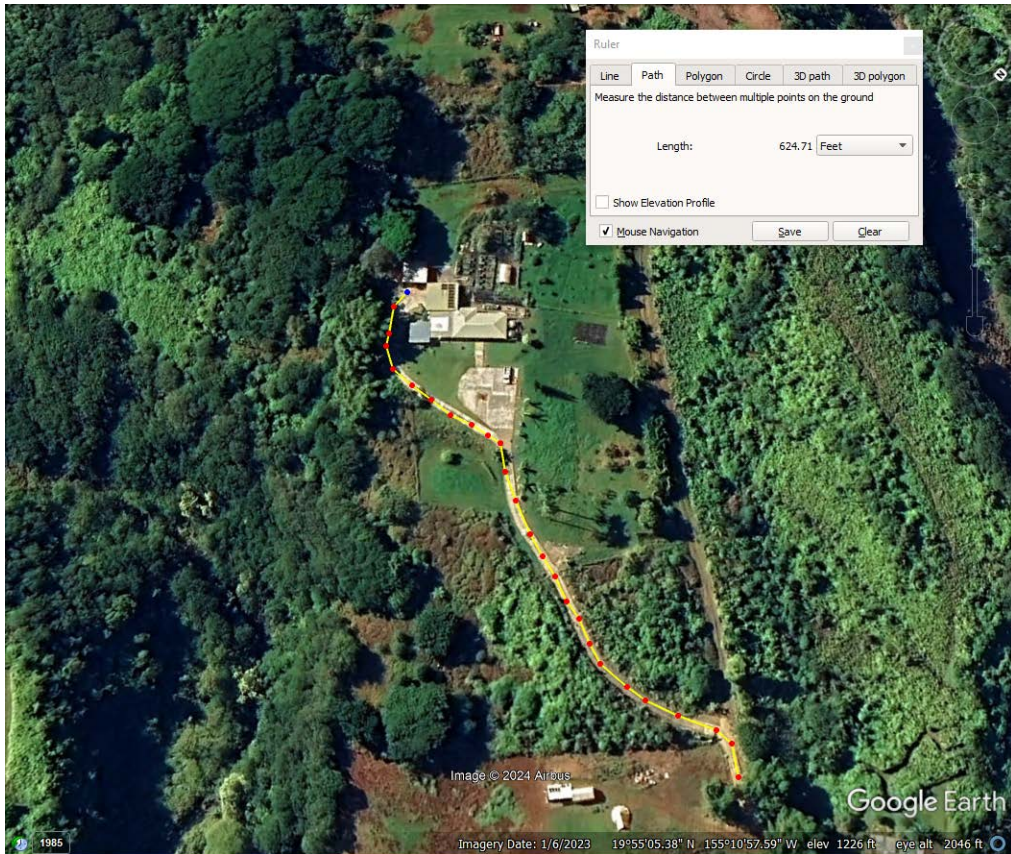


8/26/2019 Google Earth Photo of Parcel 044

**Exhibit 2**



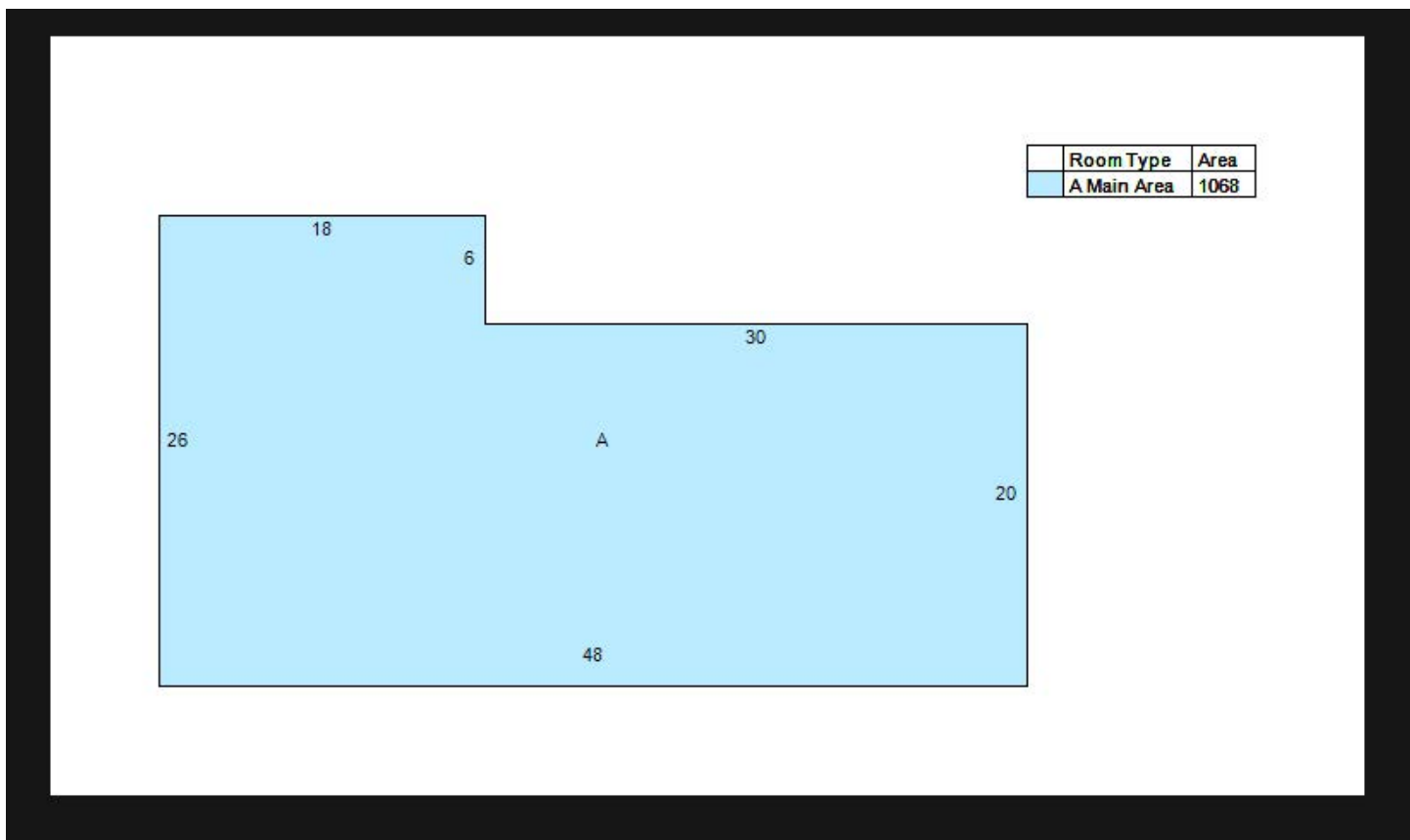
Redfin.com Photo of Parcel 044



1/6/2023 Google Earth Photo of Parcel 044 and Unauthorized Improvements

**Exhibit 2**





Source: <https://qpublic.schneidercorp.com/Application.aspx?AppID=1048&LayerID=23618&PageTypeID=4&PageID=9878&KeyValue=320040440000>

**Exhibit 3**



WITNESSETH:

That for TEN AND NO/100 DOLLARS (\$10.00), and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto Grantee, as **TENANTS BY THE ENTIRETY**, in fee simple, all of that certain real property described in Exhibit "A" attached hereto and made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seised of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The property is being conveyed in its existing "AS IS" condition. Grantor conveys the property without any representations or warranties relating to its condition. Grantee acknowledges and understands that the real property and personal property is sold "AS IS", without warranties or representations relating to its condition. Grantee affirms that Grantee has had the opportunity to inspect the property and accepts the same in its existing "AS IS" condition. The terms of this "AS-IS" paragraph shall survive closing.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, and the Grantee's heirs, personal representatives and assigns.

The term "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the Grantor and Grantee have caused these presents to be duly executed the day and year first written, on the Counterpart pages attached hereto, each of which is deemed an original. The parties agree that said Counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same Counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the Counterparts may be discarded and the remaining pages assembled as one document.

COUNTERPART PAGE EXECUTED BY GRANTOR STEVEN SHELDON RIDDLE:

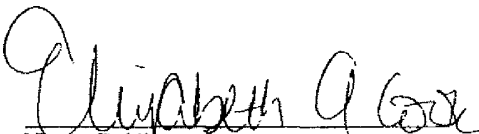
IN WITNESS WHEREOF, the Grantor has executed these presents on the day and year first above written.

  
STEVEN SHELDON RIDDLE

STATE OF MICHIGAN     )  
  ) SS.  
KENT COUNTY             )

On this 31<sup>st</sup> day of August, 2020, before me personally appeared STEVEN SHELDON RIDDLE, to me known to be the person (or who provided satisfactory evidence of identity) described in and who executed the foregoing **Warranty Deed** and, being duly sworn, did say that he/she is the person named in the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

ELIZABETH A. COOK  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF KENT  
MY COMMISSION EXPIRES Oct 24, 2025  
ACTING IN COUNTY OF Kent

  
Notary Public  
State of MICHIGAN  
Elizabeth A. Cook  
Printed or Typed Name of Notary  
My commission expires: 10/24/25

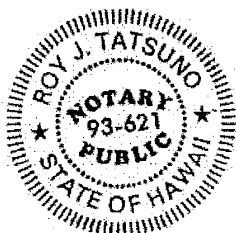
COUNTERPART PAGE EXECUTED BY GRANTOR ELISE LANAE MARTIN:

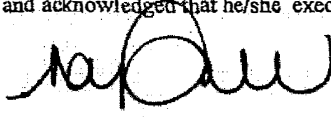
IN WITNESS WHEREOF, the Grantor has executed these presents on the day and year first above written.

  
ELISE LANAE MARTIN

STATE OF HAWAII )  
 ) SS.  
CITY & COUNTY OF HONOLULU )

On this SEP 02 2020 day of SEP 02 2020, 2020, before me personally appeared ELISE LANAE MARTIN, to me known to be the person (or who provided satisfactory evidence of identity) described in and who executed the foregoing Warranty Deed and, being duly sworn, did say that he/she is the person named in the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.





Notary Public  
State of Hawaii

Roy J. Tatsuno

Printed or Typed Name of Notary  
My commission expires: NOV 02 2021

NOTARY CERTIFICATION

Made pursuant to Chapter 456, Hawaii Revised Statutes and  
Hawaii Administrative Rules §5-11-8

Document Description:  
Document Date:  
Number of pages:  
Circuit of Notarial act:  
Printed name of Notary:

Warranty Deed Undated at Time of Notarization

(If undated, insert "undated")

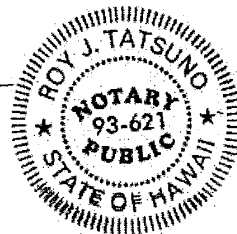
EIGHT  
FIRST Circuit  
Roy J. Tatsuno



Signature of Notary Public

(Seal or Stamp)

SEP 02 2020  
Date of Certification



Warranty Deed  
Riddle Martin Silva  
TMK 3-2-004-044

4

Exhibit 4

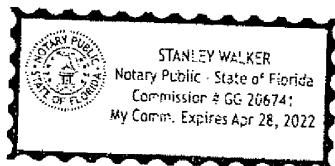
COUNTERPART PAGE EXECUTED BY GRANTEE JUAN SILVA:

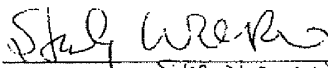
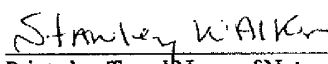
IN WITNESS WHEREOF, the Grantee has executed these presents on the day and year first above written.

  
\_\_\_\_\_  
JUAN SILVA

STATE OF FLORIDA                    )  
  ) SS.  
ESCAMBIA COUNTY                    )

On this 31 day of August, 2020, before me personally appeared JUAN SILVA, to me known to be the person (or who provided satisfactory evidence of identity) described in and who executed the foregoing Warranty Deed and, being duly sworn, did say that he/she is the person named in the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.



  
\_\_\_\_\_  
Notary Public Stanley Walker  
State of FLORIDA  
  
\_\_\_\_\_  
Printed or Typed Name of Notary  
My commission expires: 4-28-2022

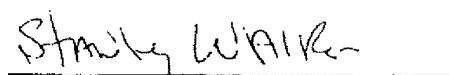
COUNTERPART PAGE EXECUTED BY GRANTEE JUDITH A. SILVA:

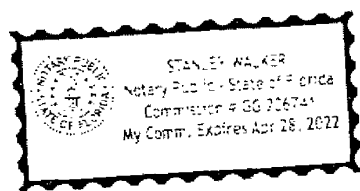
IN WITNESS WHEREOF, the Grantee has executed these presents on the day and year first above written.

  
\_\_\_\_\_  
JUDITH A. SILVA

STATE OF FLORIDA                    )  
  ) SS.  
ESCAMBIA COUNTY                    )

On this 31 day of August, 2020, before me personally appeared JUDITH A. SILVA, to me known to be the person (or who provided satisfactory evidence of identity) described in and who executed the foregoing Warranty Deed and, being duly sworn, did say that he/she is the person named in the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

  
\_\_\_\_\_  
Notary Public  
State of FLORIDA



Stanley Walker  
Printed or Typed Name of Notary  
My commission expires: 4-28-2022

Exhibit "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 6565 to Mathias Pedro) situate, lying and being at Piha, District of North Hilo, Island and County of Hawaii, State of Hawaii, being LOT 11-A, and thus bounded and described:

Beginning at the westerly corner of this parcel of land along the northeasterly side of Grant Number 6752 to Mariano Deniz, Jr., being also the southeasterly side of the Public Road (30.00 feet wide). The coordinates of said point of beginning referred to Government Survey Triangulation Station "HAIKU" being 4,906.30 feet south and 3,389.01 feet west, thence running by azimuths measured clockwise from true South:

1. 220° 49' 680.33 feet along the southeasterly side of the Public Road (30.00 feet wide);
2. 215° 19' 2.57 feet along the same;
3. 315° 30' 355.52 feet along the southeasterly side of Grant 6566 to Manuel Ignacio;
4. 248° 12' 125.15 feet along the same to the southerly side of a 30.00 foot road;
5. 15° 28' 44.41 feet along the southerly side of a 30.00 foot road;
6. 294° 59' 49.04 feet along the same;
7. 248° 21' 127.55 feet along same to the middle of the Kalaeha Stream;

Thence, along the Kalaeha Stream in all its windings, the direct azimuth and distance being:

8. 15° 49' 1,017.85 feet;
9. 135° 01' 30" 969.58 feet along the northeasterly side of Grant 6752, to the point of beginning and containing an area of 11.182 acres, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR: STEVEN SHELDON RIDDLE, unmarried  
GRANTEE: STEVEN SHELDON RIDDLE and ELISE LANAB MARTIN, both unmarried, as Joint Tenants  
DATED: August 2, 2017  
RECORDED: Document No. A-64250307

Tax Key: (3) 3-2-004-044

Subject, however, to the following:

1. Mineral and water rights of any nature.

Warranty Deed  
Riddle Martin Silva  
TMK 3<sup>d</sup> 3-2-004-044

7  
Exhibit 4



2. Free flowage of water within the Kalaeha Stream, as shown on the tax map.
3. Location of the boundary of Kalaeha Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
6. Terms and provisions contained in Letter dated September 12, 2006, from the State of Hawaii, Department of Land and Natural Resources, Office of Conservation and Coastal Lands, as set forth in instrument dated November 24, 2006, recorded as Document No. 2007-017584.

End of Exhibit "A"

1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

← Search



Maui businesses and Redfin service in Maui are back open with the exception of Lahaina. Some roads outside of Lahaina may still be impacted.



← Search

Overview

Property details

Sale & tax history

Schools

Climate

♡ Favorite

🗙 Hide

↗ Share

### Exhibit 5

1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

FOR SALE - ACTIVE

32-2455 Stone Rd, Ninole, HI 96780

**\$1,249,000**

Est. \$6,974/mo [Get pre-approved](#)

**3**

Beds

**1**

Bath

**1,745**

Sq Ft



### Thinking of buying?

FRIDAY <b>26</b> JAN	SATURDAY <b>27</b> JAN	SUNDAY <b>28</b> JAN	MONDAY <b>29</b> JAN
----------------------------	------------------------------	----------------------------	----------------------------

[Tour in person](#) [Tour via video chat](#)

[Schedule tour](#)

It's free, cancel anytime

OR

[Ask a question](#)

You'll hear from a local agent in about **15 minutes**

[Start an offer](#)

### About this home

Outstanding opportunity to live on the coveted Hamakua Coast, with over 11 acres and a 180 degree panoramic view of the ocean. It is hard to locate a property that has unobstructed ocean views this grand. Watch whales in the winter and rainbows all year round. Located in an

[Show more](#)

86 days on Redfin

Single-family

Built in 2008

11.18 acres

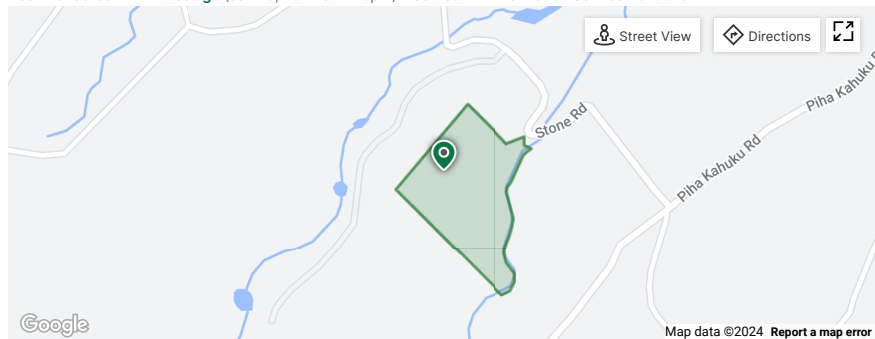
\$716 per sq ft

In-unit laundry (washer and dryer)

2.5% buyer's agent fee

Piha Homesteads

Listed by Bradley Letourneau • He'e Nalu Properties  
Redfin checked: **2 minutes ago** (Jan 25, 2024 at 2:40pm) • Source: HI Information Service #670979



[Add a commute](#)

### Ask Redfin Partner agent Natasha a question



**Natasha Tomas**

Ninole Redfin Partner Agent

eXp Realty LLC

Responds in about **15 minutes**

**Exhibit 5**

Write a message...

1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

**Recommended for you**

[I'd like more home details.](#)

[I'm interested in buying.](#)

[Is this home still available?](#)

Based on homes you've looked at.

VIDEO TOUR

Advertisement

[Report ad](#)

**\$2,595,000**

2 beds 2 baths 2,092 sq ft  
29-3794 Hawaii Belt Rd, Hakalau, HI 96710

**\$890,000**

3 beds 2.5 baths 2,048 sq ft  
28-288 Stable Camp Rd, Honomu, HI 96728

**\$850,000**

3 beds 1.5 baths 2,708 sq ft  
27-363 Government Rd, Papaikou, HI 96781

VIDEO TOUR

[Principal and interest](#)

[Property taxes](#)

[Homeowners insurance](#)

**\$1,200,000**

2 beds 3 baths 972 sq ft  
36-1069 Jardine Rd, Laupahoehoe, HI 96764

**\$2,230,000**

5 beds 2 baths 2,707 sq ft  
85 Kuikahi St, Hilo, HI 96720

**\$429,000**

2 beds 2 baths 816 sq ft  
27-328-A Government Rd, Papaikou, HI 96781

30-yr fixed, 7.19%

...

[View 7 more homes in your Feed](#)

**Nearby similar homes**

Down payment

Cash

\$249,800

20%



Have a home to sell?

[Add my home equity](#)

**\$629,000**

4 beds 2.5 baths 1,768 sq ft  
28-1121 Pua St, Honomu, HI 96728

**\$899,000**

3 beds 1 bath 1,109 sq ft  
2969 Kaiwika Rd, Hilo, HI 96720

**\$1,525,000**

2 beds 1.5 baths 1,639 sq ft  
28-3033 Beach Rd, Pepeekeo, HI 96783

**Exhibit 5**

3D WALKTHROUGH



**Down payment assistance**

View down payment assistance programs for this home.



1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

**Electricity and solar**  
View estimated energy costs and solar savings for this home

---

**\$1,495,000**  
3 beds 3.5 baths 2,692 sq ft  
380 Akolea Rd, Hilo, HI 96720

**\$1,750,000**  
5 beds 5 baths 3,775 sq ft  
36-415 Manowaiopae Homestead Rd, Laupahoehoe, HI 96764

**\$1,049,000**  
4 beds 4 baths 3,077 sq ft  
29-2261 Old Mamalahoa Hwy, Hakalau, HI 96710

Provided by Down Payment Resource, Wattbuy, and AllConnect

View more homes

**Additional services**

**Nearby recently sold homes**

Explore internet & TV plans nearby. Recently sold between \$115K to \$2M at an average of \$455 per square foot.

**SOLD OCT 3, 2023**  
[0% Down VA Home Loans: Get Quote](#)

---

**Tour on your schedule**

**\$115,000** Last Sold Price  
— beds — baths — sq ft  
28-1114 Oheala Rd, Pepekeo, HI 96783

**SOLD SEP 15, 2023**  
**\$415,000** Last Sold Price  
3 beds 1 bath 870 sq ft  
35-2137 Hokumahoehoe Rd, Laupahoehoe, HI 96764

**SOLD OCT 12, 2023**  
**\$1,625,000** Last Sold Price  
3 beds 2 baths 2,184 sq ft  
28-3026 Beach Rd, Pepekeo, HI 96783

View more recently sold homes

**Property details for 32-2455 Stone Rd**  
**More real estate resources**

**Parking**

**New Listings in 96773**

Cities

Counties

Popular Searches

Vehicle Storage/Parking: Covered, Detached

[32-413 Piha Kahuku Rd](#)

[34-1111 Hawaii Belt Rd](#)

[All 96773 New Listings](#)

**Interior Features**

Appliances: Refrigerator, Range/Oven

Fireplace Type: Gas

Washer/Dryer: Dryer, Individual

Floor Covering: Ceramic Tile

**What is 32-2455 Stone Rd?** ▼

**Bathroom Information**

**How many photos are available for this home?** ▼

**How much is this home worth?** ▼

**Exterior Features**

**How long has this home been listed on Redfin?** ▼

Fence/Wall: Wire

Pool: N

Roads: County

Roofed Areas (Total): 1,068

**When was this home built and last sold?** ▼

**What comparable homes are near this home?** ▼

**What's the full address of this home?** ▼

**Exhibit 5**

1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

**Property Information**

Property Type: Residential  
Subdivision: PIHA HOMESTEADS  
Subdivision Abbreviated Name: PIHA HOMESTEADS



View: Ocean

Year Built Minimum: 2008  
Year Built Maximum: 2008  
Design: Concrete, Double Wall  
# of Stories (Minimum): 1  
# of Stories (Maximum): 1

**Lot Information**

Frontage: Other (remarks)  
Easement: Other (remarks)  
Lot Description - Land: Other (remarks)  
Lot Number: 1  
Oceanfront Parcel N  
Structures: Has Structures  
Zoning: A-20A

**Land Information**

Fairly Level, Gentle Slope, Other (remarks)  
Lava Zone: 8  
Land Tenure: Fee Simple  
Land Area: 487088  
Flood Zone: X  
Agriculture Dedicated

**Financial**



**Tax Information**

Taxes (Annual): \$100  
Tax Year: 2023

**Assessment Information**

Assessed Value: \$624,100  
Assessment Year: 2023

**Utilities**

**Utility Information**

Internet Availability: Cable, Satellite, Wireless  
TV Availability: Antenna, Satellite, Cable  
Telephone Availability: Cable, Cell information.  
Heating/Cooling: Other (remarks)  
Power: Solar/Photovoltaic  
Solid Waste Disposal (Trash): Other (remarks)  
Wastewater: Septic  
Water: Catchment  
TREC: [Info About Brokerage Services, Consumer Protection Notice](#)

**Location**

**Building Information**  
REDFIN IS COMMITTED TO AND ABIDES BY THE FAIR HOUSING ACT AND EQUAL OPPORTUNITY ACT. READ REDFIN'S FAIR HOUSING POLICY AND THE NEW YORK STATE FAIR HOUSING NOTICE.

Unit Description: Single Family Home, Single Level  
# of Bedrooms: 3  
# of Bathrooms (Total): 1  
# of Bathrooms (Full): 1  
Design: Concrete, Double Wall  
Interior Area: 1745

**Exhibit 5**

1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

Interior Area: 1743

- Kitchen Features: Eat in Nook
- Countertops: Granite Tile
- Fireplace Location: Living Room
- Heating/Cooling: Other (remarks)
- Exterior Finish: Masonry/Stucco
- Foundation: Concrete Slab
- Roof Design: Hip
- Roof Material: Corrugated Iron
- Roofed Area: 1068
- Age: 15
- Parking: Covered, Detached
- Driveway: Concrete
- Year Built: 2008

**Multi-Unit Information**

Single Family Home, Single Level

**School Information**

District: North Hilo

**Other**

**Listing Information**

Buyer's Agent Commission: 2.50

Details provided by HI Information Service and may not match the public record. [Learn more.](#)

Advertisement

[Report ad](#)

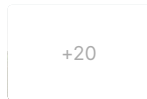
**Sale and tax history for 32-2455 Stone Rd**

**Sale History**

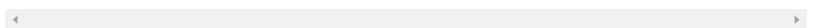
Tax History

**Today**

<p><b>Nov 14, 2023</b> Date</p>	<p><b>Price Changed</b> HiCentral MLS #202324630</p>	<p><b>\$1,249,000</b> Price</p>
<p><b>Oct 25, 2023</b> Date</p>	<p><b>Listed (Active)</b> HiCentral MLS #202324630</p>	<p><b>\$1,349,000</b> Price</p>



Listing provided courtesy of HiCentral MLS



Outstanding opportunity to live on the coveted Hamakua Coast, w/over 11 acres&180 degree panoramic view of the ocean.It is hard to find a property with unobstructed ocean views this grand located in an unspoiled rural community where a neighbor is available if

[Show more](#) ▾

**Exhibit 5**

**Nov, 2023**

1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

Nov 13, 2023 Date	Price Changed HI Information Service #670979	\$1,249,000 Price
Oct 31, 2023 Date	Listed (Active) HI Information Service #670979	\$1,349,000 Price

[See all property history](#) ▾

## Public facts and zoning for 32-2455 Stone Rd

Beds	1
Baths	1
Finished Sq. Ft.	1,068
Unfinished Sq. Ft.	—
Total Sq. Ft.	1,068
Stories	1
Lot Size	11.18 Acres
Style	Single Family Residential
Year Built	2005
Year Renovated	2005
County	Hawaii County
APN	3320040440000

Home facts updated by county records on Jan 24, 2024.

### Additional resources



#### Zoning

Working on getting current and accurate zoning information for this home. [Learn more](#)

## Schools

This home is within the [Hawaii Department of Education](#).

All 10

Assigned 1

Choice 9

### Exhibit 5

2/10 **Laupahoehoe High & Elementary School**  
Charter, PreK-12 • 5.2mi





1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

Provided by GreatSchools

## Around this home

[Redfin](#) > [Hawaii](#) > [Hawaii County](#) > [96773](#)

### Transportation near 32-2455 Stone Rd



0/100

#### Car-dependent

Walk Score®



#### Places

3 groceries, 15 restaurants, 12 parks



#### Transit

1, 1L, 23, 69, 80, 82, PH6



## Climate risks

### About climate risks

Most homes have some risk of natural disasters, and may be impacted by climate change due to rising temperatures and sea levels.

#### Risk Factor ⓘ



#### Flood Factor - Minimal

Unlikely to flood in next 30 years



#### Fire Factor

We're working on getting current and accurate fire risk information for this home.



#### Heat Factor

We're working on getting current and accurate heat risk information for this home.



#### Wind Factor

We're working on getting current and accurate wind risk information for this home.

[View full Risk Factor report](#)

Provided by First Street Foundation ⓘ

## Redfin Estimate for 32-2455 Stone Rd

### Exhibit 5

**\$1,196,733**

<https://www.redfin.com/HI/Ninole/32-2455-Stone-Rd-96773/home/88439742>

8/9

1/30/24, 1:48 PM

32-2455 Stone Rd, Ninole, HI 96780 | MLS# 670979 | Redfin

▼ **\$52K** under list price of \$1.25M

**Nearby comparable homes**

This home's Redfin Estimate uses 6 recent nearby sales, priced between \$470K to \$1.8M.



**\$470,000** Sold Price  
3 beds 2 baths 1,616 sq ft  
27-286-A Mill Rd, Papaikou, HI 96781  
— \$425/sq ft  
↓ smaller lot  
↓ 68 years older



**\$1,767,000** Sold Price  
5 beds 4 baths 3,620 sq ft  
29-681 Chin Chuck Rd, Hakalau, HI 96710  
— \$228/sq ft  
↑ larger lot  
↓ 1 year older

[View comparables on map](#)

**More resources**

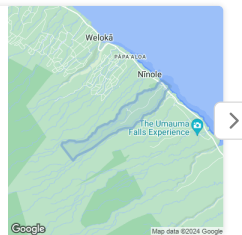
**Rental earnings**  
Est. \$1,792 per month, based on comparable rentals >

**Real estate market insights for 32-2455 Stone Rd**

**Single-Family Home sales (last 30 days)**

**Piha Ahupua`a** Neighborhood

<b>\$1.25M</b> Median list price	<b>66</b> Median days on mkt.	<b>1</b> # listed homes
<b>\$570</b> Median \$ / sq. ft.	<b>100.4%</b> Median sale-to-list	<b>1</b> # sold homes



**Exhibit 5**

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA  
SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA  
P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
RYAN K.P. KANAKA'OLE  
FIRST DEPUTY  
DEAN D. UYENO  
ACTING 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

9589 0710 5270 1436 9421 38  
REF: OCCL: TF

ENF: HA 24-23

**NOTICE OF ALLEGED VIOLATION**

CERTIFIED MAIL/RETURN RECEIPT

Feb 5, 2024

Juan and Judith A. Silva  
PO Box 23  
Ninole, HI 96773-0023

**SUBJECT:** Alleged Unauthorized Land Use(s) in the Conservation District  
Located at 32-2455 Stone Road  
Piha Homesteads, North Hilo, Island of Hawaii  
Tax Map Key (TMK): (3) 3-2-004:044

Dear Landowner(s):

It has come to the Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands' (OCCL) attention that there appears to be alleged unauthorized work and structures within the Conservation District on the subject property listed above.

On September 8, 2006, the Board of Land and Natural Resources (BLNR) approved the After-the-Fact (ATF) Conservation District Use Application (CDUA) HA-3311 for the Single-Family Residence (SFR) on TMK: (3) 3-2-004:044 subject to twenty-one conditions. The BLNR approved SFR was to encompass 413 sq. ft of enclosed living area, 368 sq. ft of porch and patio, 286 sq. ft of carport for an approximate total developed area of 1,067 sq. ft.

Condition #4 of CDUA HA-3311 states: *Before proceeding with any work on the structures authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies.* Condition #5 of CDUA HA-3311 provides: *Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department of Land and Natural Resources (Department), and unless otherwise authorized, shall be completed within three years of the approval.* The construction completion deadline for CDUP HA-3311 was September 8, 2009.

**Exhibit 6**

REF: OCCL: TF

ENF: HA 24-23

On December 2, 2008, final construction plans were signed. A cursory review of the County of Hawaii Real Property Assessment website and aerial images indicates that contemplated and approved modifications to the SFR were not constructed in a timely manner and the total developed area of the SFR remained approximately 1,067 sq. ft. See **Exhibit 1**.

**2019 to Present – Alleged Unauthorized Activity**

A cursory review of aerial images for the subject property indicates that alleged unauthorized modifications to the SFR have been constructed and structures have been placed on the property. It appears the driveway has been paved and a turn-around/parking area has been constructed fronting the SFR. Behind or mauka of the SFR, it appears there is land disturbing activities and structures being placed on the land. See **Exhibit 2**.

It has also come to the Department's attention that the property is being marketed on real estate websites, including but not limited to, redfin.com. According to the "Floor Plan" on redfin.com, the SFR on the subject parcel consists of a 400 sq. ft Carport, 588 sq. ft Garage, 296 sq. ft Porch, 361 sq. ft porch, 727 sq. ft First Floor Family area including of 2 bedrooms, and 1,018 sq. ft First Floor bedroom/bath/living room/kitchen/dining area. Based on the redfin.com real estate ad, it appears the total developed area for the SFR is approximately 3,390 sq. ft and has resulted in major modifications to the authorized 1,067 sq. ft SFR. See **Exhibit 3**.

According to OCCL files, there are no authorizations for the modifications to the SFR and 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, "major alteration" is defined as work done to an existing structure, facility, or use that results in more than fifty per cent increase in the size of the structure, facility, or use.

NOTICE IS HEREBY GIVEN that you may be in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District. HAR, §13-5 contains the rules and regulations as well as the identified land uses within the State Land Use Conservation District and was enacted pursuant to Hawaii Revised Statutes (HRS), Chapter 183C.

Based on the above, the Department of Land and Natural Resources (DLNR) has reason to believe that:

1. The location of the alleged unauthorized land use(s) is on TMK: (3) 3-2-004:044 and within the State Land Use Conservation District, General Subzone;
2. Based on aerial imagery of the parcel as well as photos from real estate websites that are advertising the property, it appears that alleged unauthorized modifications to the SFR and structures have been constructed and placed on TMK: (3) 3-2-004:044;

REF: OCCL: TF

ENF: HA 24-23

3. Pursuant to HAR § 13-5-22 P-8 (D-1), "Major alteration of existing structures or uses" is a regulated use as stated below:
  - a. *Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original use or different from what was allowed under the original permit. When county permit(s) are required for the associated plan(s), the department's approval shall also be required.*
4. Under HAR, §13-5-6, *no land use(s) shall be conducted in the Conservation District unless a permit or approval is first obtained from the Department or Board; and*
5. These land uses were not authorized by the Department or Board of Land and Natural Resources under HAR, Chapter 13-5.

We recommend that you cease any further activities within the Conservation District immediately. Pursuant to HRS §183C-7 and HAR §13-5-6, the Board of Land and Natural Resources may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs for a prohibited use in the Conservation District. 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.

At this time, it appears there are two possible paths forward to a potential resolution. First, you may want to consider removing the alleged unauthorized modifications and land uses to avoid further potential enforcement actions. Alternatively, you may wish to provide the Department with as-built plans for the structures on the property and a description of activities being conducted to help determine if they can obtain after-the-fact authorization(s) as well as possible fines. In either case, staff will have to conduct a site inspection of the property.

By this letter, we are providing you with an opportunity to address these allegations. The OCCL requests that you 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, contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,



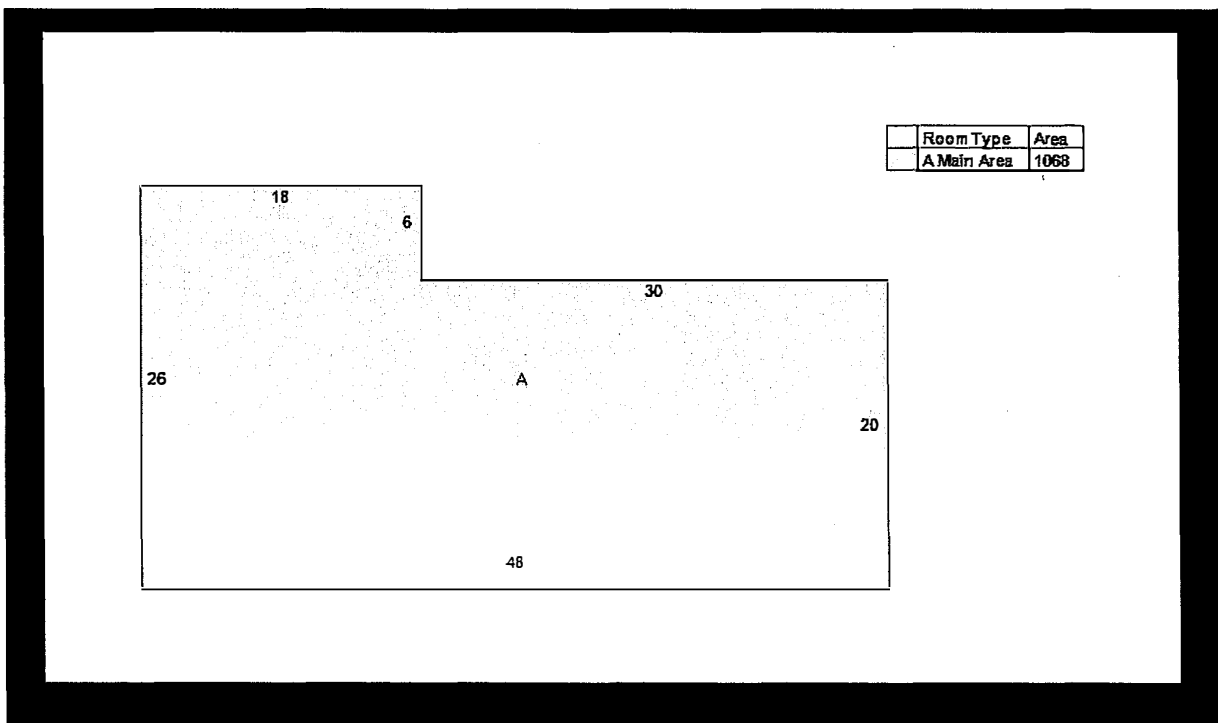
\_\_\_\_\_  
Dawn N.S. Chang, Chairperson  
Board of Land and Natural Resources

CC: Hawaii District Land Office  
DOCARE – Hawaii Island  
County of Hawaii Planning Department  
Hee Nalu Properties  
Attn: Bradley Letourneau – 1110 Nuuanu Ave #A1-325, Honolulu, HI 96817

MC

REF: OCCL: TF

ENF: HA 24-23



**Source:** <https://qpublic.schneidercorp.com/Application.aspx?AppID=1048&LayerID=23618&PageTypeID=4&PageID=9878&Q=1432721020&KeyValue=320040440000>

Exhibit 6  
Exhibit 1

REF: OCCL: TF

ENF: HA 24-23



**Exhibit 6**  
**Exhibit 2**





Juan and Judith Silva  
1910 Ala Moana Blvd.  
#15-D  
Honolulu, HI 96815

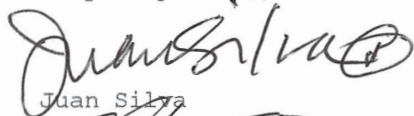
March 01, 2024

To Department of Land and Natural Resources (DLNR) Office of  
Conservation and Coastal Lands (OCCL):

In response to a certified letter received on February 9, 2024, we are responding in writing for alleged unauthorized land use(s) in the conservation district located at 32-2455 Stone Road, Ninole, Hawaii, Tax Map Key (TMK): (3) 3-2-004:004. As your letter stated, a potential resolution would be to "provide the department with as-built plans for the structures on the property and a description of activities being conducted to help determine if they can obtain after-the-fact authorization(s)". You will find these plans attached along with photographs of the construction, which was completed on January 14, 2022.

Please feel free to contact us if you have any concerns or questions. Thank you for your valuable time and interest.

Very respectful,



Juan Silva



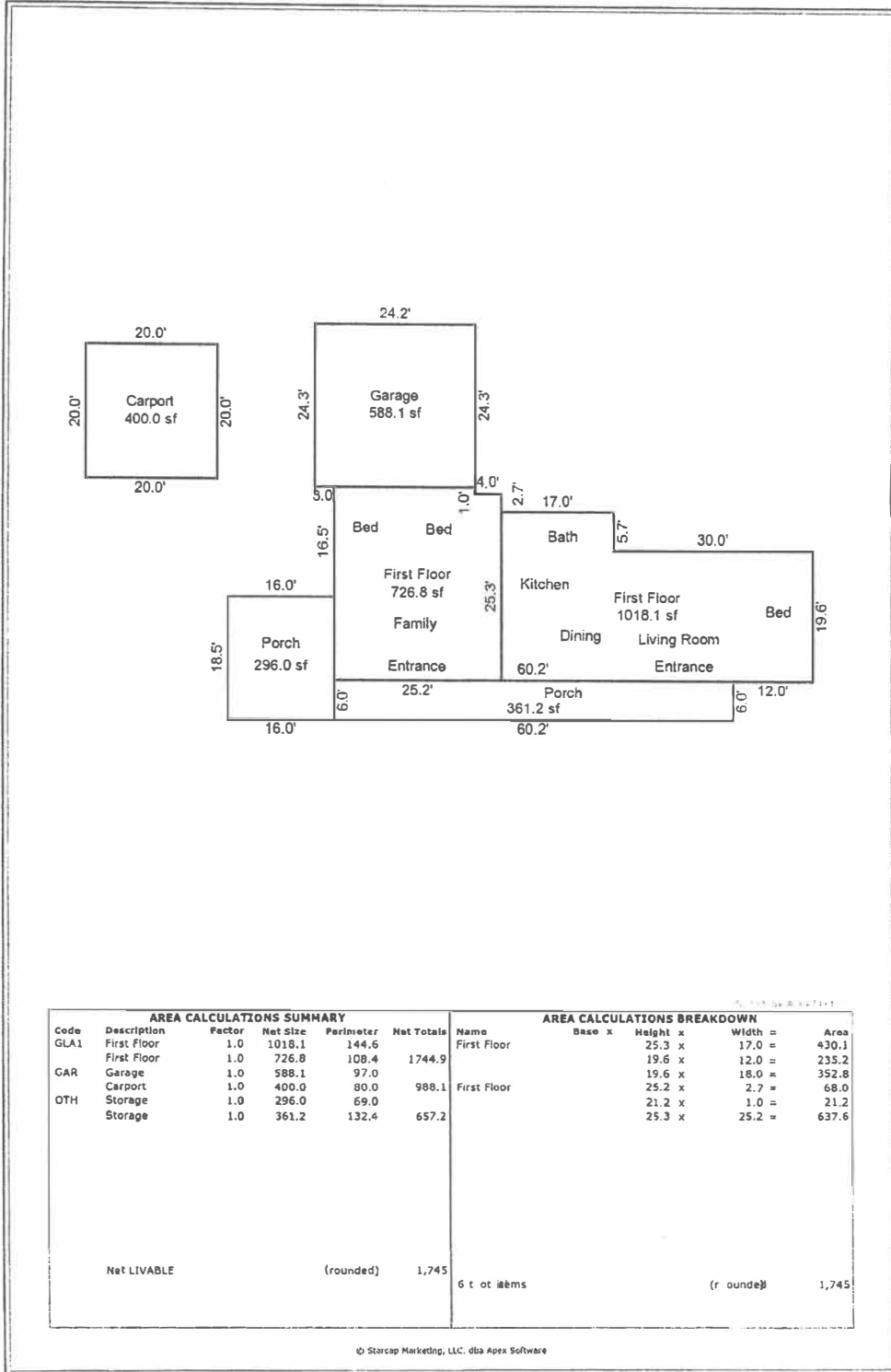
Judith Silva

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2024 MAR -1 A 11:56  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

Exhibit 7

FLOORPLAN SKETCH

Client:	File No.: Stone Road
Property Address:	Case No.:
City:	State: Zip:



AREA CALCULATIONS SUMMARY					AREA CALCULATIONS BREAKDOWN					
Code	Description	Factor	Net Size	Perimeter	Net Totals	Name	Base x	Height x	Width =	Area
GLA1	First Floor	1.0	1018.1	144.6		First Floor	25.3 x	17.0 x	=	430.1
	First Floor	1.0	726.8	108.4	1744.9		19.6 x	12.0 x	=	235.2
GAR	Garage	1.0	588.1	97.0			19.6 x	18.0 x	=	352.8
	Carport	1.0	400.0	80.0	988.1	First Floor	25.2 x	2.7 x	=	68.0
OTH	Storage	1.0	296.0	69.0			21.2 x	1.0 x	=	21.2
	Storage	1.0	361.2	132.4	657.2		25.3 x	25.2 x	=	637.6
Net LIVABLE			(rounded)	1,745	6 t o t a l s			(r o u n d e d)	1,745	

© Starcap Marketing, LLC, dba Apex Software

Exhibit 7

Note: There was no native materials removed off of property during the process stated below.

Bottom of Driveway is 6"inch thick 5,000psi mixed with fiber and reinforced with #4 rebar 12" inches on center grid.

The rest of the Driveway up to the house is 3,000psi mixed with fiber mesh

Foundation, 3,000psi poured onto 6.mil moisture barrier and reinforced with wire mesh and #5 rebar continues throughout footings with 5/8 anchor bolts embedded 48"inch on center with 3"inch×3"inch Washer's and HTT5 hold downs

Framing for the Build was 2×4 Studs at 16"inch on center, 2×6 fafters 24" on center with Hurricane Straps for

Exhibit 7

Coragated roofing with 2×4 Parlins  
24"inch on center. #16 penny nails was  
used throughout Framing

Exterior was rap with Tyvek moisture  
barrier and 5/8 thick 4'foot×8'foot sheets  
of Smart Sidings with trim, #8 penny nails  
with a nailing pattern of 6–8"inch on  
center on perimeter and 12"inch on center  
in the Feild. All painting materials was  
water based

Interior, 12–Gauge wire for electrical mold,  
walls was insulated and mold resistant  
drywall

Exhibit 7

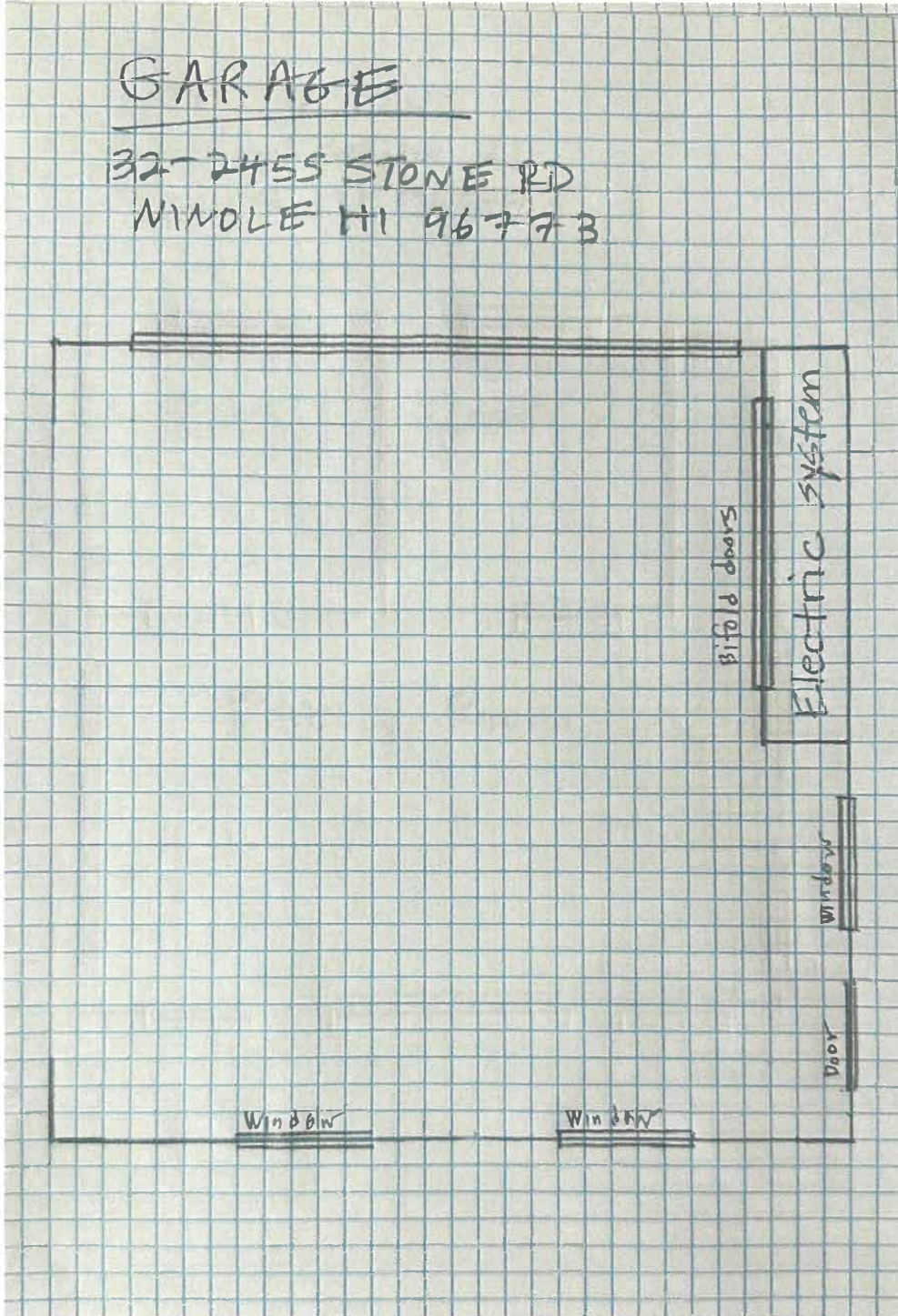


Exhibit 7

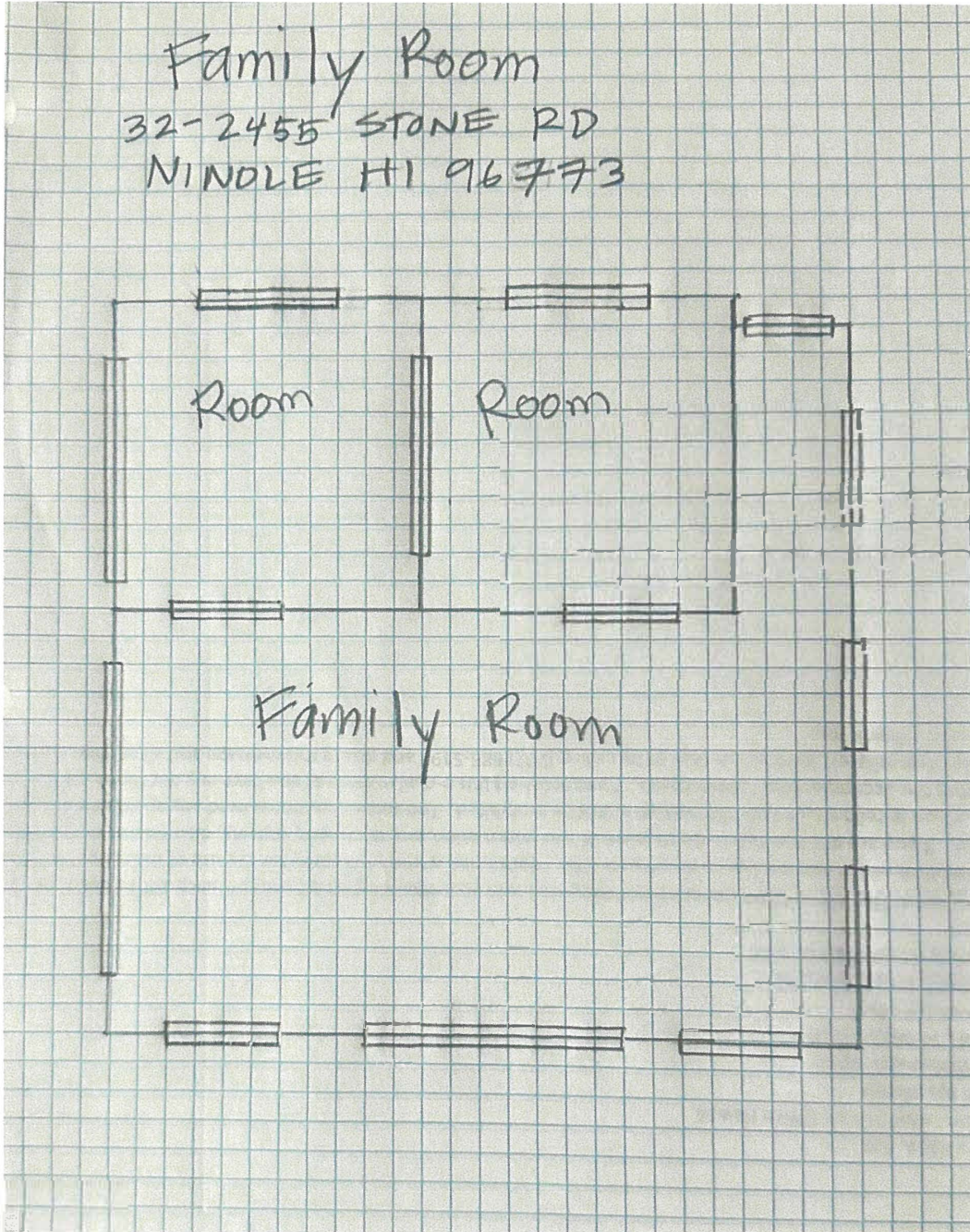


Exhibit 7



Exhibit 7



**Exhibit 7**





**Exhibit 7**



**Exhibit 7**



**Exhibit 7**



**Exhibit 7**



**Exhibit 7**



**Exhibit 7**



**Exhibit 7**

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA  
SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA  
Office of Conservation and Coastal Lands  
P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
RYAN K.P. KANAKA'OLE  
FIRST DEPUTY  
DEAN D. UYENO  
ACTING 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

ENF: HA 24-23

Juan and Judith Silva  
1910 Ala Moana, #15-D  
Honolulu, HI 96815

Mar 15, 2024

**SUBJECT:** Alleged Unauthorized Land Use(s) in the Conservation District  
Located at 32-2455 Stone Road  
Piha Homesteads, North Hilo, Island of Hawaii  
Tax Map Key (TMK): (3) 3-2-004:044

Dear Landowners:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your letter and attachments regarding the subject matter. Additionally, we thank you for a timely response to the Notice of Alleged Violation letter (dated February 5, 2024).

According to your letter dated March 1, 2024, you are seeking to obtain after-the-fact (ATF) authorization(s) for the alleged unauthorized modifications and structures as outlined in the Department's Notice of Alleged Violation to resolve matters. You attached to your letter the "FloorPlan Sketch" that was displayed on redfin.com, a description of construction activities for modifications to the single-family residence (SFR) and driveway, hand-drawn sketches of the garage and family room, and undated photos of the construction activities.

The OCCL regulates land uses in the State Land Use Conservation District through the issuance of Conservation District Use Permits and Site Plan Approvals to help conserve, protect, and preserve important natural and cultural resources. TMK: (3) 3-2-004:044 lies in the General Subzone of the State Land Use Conservation District.

Based on the information you have provided and staff's investigation regarding this matter, the OCCL notes the following regarding the alleged unauthorized land uses:

- The 726.8 sq. ft "Family Room" is an alleged "major alteration" to the approximately 1,068 sq. ft SFR;



REF: OCCL: TF

ENF: HA 24-23

- The 588.1 sq. ft “Garage” is an alleged “major alteration” to the approximately 1,068 sq. ft SFR;
- The 400 sq. ft “Carport” is an alleged “moderate alteration” to the approximately 1,068 sq. ft SFR;
- The 361.2 sq. ft “Porch” is an alleged “moderate alteration” to the approximately 1,068 sq. ft SFR;
- The 296 sq. ft “Porch” is an alleged “moderate alteration” to the approximately 1,068 sq. ft SFR; and,
- What appears to be the approximately 420 ft long dirt or gravel driveway has been extended by approximately 275 ft, paved, and an approximately 3,110 sq. ft paved parking and turnaround area constructed which are alleged “major alterations” to the approximately 420 ft long driveway.

Each of the major and moderate alterations to the SFR and associated structures could have been applied for pursuant to Hawaii Administrative Rules (HAR) § 13-5-22 P-8 STRUCTURES AND LAND USES, EXISTING (C-1) *Moderate alteration of existing structures, facilities, uses, and equipment*; and, (D-1) *Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original use or different from what was allowed under the original permit. When county permit(s) are required for the associated plan(s), the department's approval shall also be required.* Please note that the alleged unauthorized land uses that would have required a Board permit may incur a penalty in the range of \$10,000 to \$15,000. Alleged unauthorized land uses that would have required a Departmental permit may incur a penalty in the range of \$2,000 to \$10,000.

Please note the potential fines as well as other recommendations will likely be included in a Staff Report submitted to the Board of Land and Natural Resources (BLNR) for final disposition. Other recommendations may include, but not be limited to, the need to file a complete ATF Conservation District Use Application (CDUA) along with all the required attachments. If you have not done so already, you may want to review HAR Chapter 13-5. A copy can be obtained at <https://dlnr.hawaii.gov/occl/rules/>.

Staff would like to conduct a site inspection of the property ahead of drafting a Staff Report for ENF: HA 24-23 to confirm the structures and activities you have noted in your letter. Please let OCCL know if we have your permission to conduct a site inspection on the subject property and when would be convenient for the inspection to occur.

Based on aerial images of the property and area, it appears the paving of the driveway has allegedly extended onto a portion of Stone Road. The OCCL requests that you clarify if authorization was obtained to pave this portion of Stone Road from the agency who owns and manages it (likely County of Hawaii Department of Public Works). If so, please provide OCCL with a copy of this authorization.

REF: OCCL: TF

ENF: HA 24-23

Alternatively, the option remains to remove the alleged unauthorized modifications to the SFR and related land uses and return the dwelling to its approved 1,068 sq. ft to avoid further enforcement penalties and actions.

Should you have any questions, feel free to contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,

*S Michael Cain*

Michael Cain, Administrator  
Office of Conservation and Coastal Lands

CC: *Hawaii District Land Office*  
*DOCARE – Hawaii Island*  
*County of Hawaii Planning Department*  
*County of Hawaii Department of Public Works*

Guidelines and assessment of damages to public land or natural resources, relating to Act 217

### **Introduction**

Hawaii Revised Statutes (HRS) §183C-7 was amended on July 7, 2008 to increase the maximum penalty for a Conservation District violation to up to \$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.

This document is intended to provide the Office of Conservation and Coastal Lands (OCCL) with a framework to systematically carry out its enforcement powers, in the determination and adjudication of civil and administrative penalties. These guidelines are to be used for internal staff guidance, and should be periodically reviewed to determine their effectiveness, and whether refinements are needed. These guidelines are consistent with HAR §13-1, Subchapter 7, Civil Resource Violation System (CRVS).

### **Conservation District Violation Penalties Schedule**

The charging and collecting of penalties is an enforcement tool that may be used to ensure future compliance by the responsible party and others similarly situated. The penalty amount(s) shall be enough to ensure immediate compliance with HAR §13-5 and HRS §183C, and cessation of illegal activities. Penalties will be assessed for each action committed by an individual(s) that conducts an unauthorized land use and that impairs or destroys natural resources protected under Chapter §183C, HRS.

The Staff will treat each case individually when assigning conservation district penalties using the following framework, and additional considerations and factors for upward or downward adjustments. The staff of the OCCL (Staff) will use these penalty schedule guidelines to issue violation notices and to make recommendations to the Board of Land and Natural Resources (Board), Chairperson of the Board of Land and Natural Resources (Chairperson), or Presiding Officer, whom may ultimately adjudicate the Conservation District penalties. These guidelines presume that all cases in which a violation has occurred, the Chairperson, Board, or Presiding Officer may also assess administrative costs, damages to public land or natural resources, and costs associated with land or habitat restoration.

### **Penalty Calculation**

The penalty range for these actions will be substantially determined based on the type of permit that would have been required if the individual had applied to the Department of Land and Natural Resources (Department) or Board for pre-authorization to conduct the identified use, under Hawaii Administrative Rules

Chapter 13-5. Assessing the penalties according to the Conservation District permit type accounts for the level of review or scrutiny the unauthorized use would have received by the Department or Board in order to avoid damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential “harm to the resource” caused by the violation.

Once the baseline for the penalty range has been established the penalty may be adjusted appropriately upward or downward according to the “harm to resource” caused or potentially caused by the violator’s action and additional considerations and factors within the assigned penalty range. Where Staff was unable to associate the unauthorized use with a typical land use identified in Chapter 13-5, Staff may try to associate the action with the most similar identified land use in Chapter 13-5, or according to the “harm to the resource” caused by the violation. Table 1 was created to demonstrate the penalty ranges for the type of required permit and “harm to resource.”

The first two of the following sections explain the identified and non-identified land use framework. The next four sections: Tree Removal, Additional Considerations and Factors, Continuing Violations and Permit Non-Compliance, and In-Kind Penalties, provide guidance for the upward or downward adjustment of penalties based on the initial framework.

**Identified Land Use Penalties**

The violation penalty range associated with each required permit will be assessed in accordance with the following harm to resource indices:

**Table 1. Penalty Guideline Framework**

Harm to resource or potential for harm to resource	Identified land use permit	Penalty Range
Major	Board	\$10,000-\$15,000
Moderate	Departmental	\$2,000-\$10,000
Minor	Site Plan	\$1,000-\$2,000
Very Minor	Site Plan	Up to \$1,000

Major Harm to the Resource/ Board Permit

Violations may incur a penalty of \$10,000 to \$15,000 as a Board permit would have been required to minimize the possibility of causing “major harm to the resource.” Examples of “major harm(s) to the resource” may include actions that cause substantial adverse impact to existing natural resources within the surrounding area, community, ecosystem or region, or damage to the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics. Such actions may include, but are not limited to, unauthorized single-family residences or unauthorized structures, grading or

alteration of topographic features, aquaculture, major marine construction or dredging, unauthorized shoreline structures, major projects of any kind, mining and extraction, etc.

Moderate Harm to the Resource / Departmental Permit

Violations may incur a penalty of \$2,000 to \$10,000, as a Departmental permit would have been required, due to the possibility of causing “moderate harm to the resource.” Examples of “moderate harm(s) to the resource” may be adverse impacts that degrade water resources, degrade native ecosystems and habitats, and/or alter the structure or function of a terrestrial, littoral or marine ecosystem. Such actions may include, but are not limited to, unauthorized landscaping causing ground disturbance, unauthorized alteration, renovation or demolition of existing structures or facilities, such as buildings and shoreline structures, maintenance dredging, agriculture, and animal husbandry, etc.

Minor Harm to the Resource / Site Plan Approval

Violations may incur penalties as a site plan approval would have been required to assure that “minor harm(s) to the resource” are minimized. “Minor harm(s) to the resource” may incur a penalty of \$1,000 to \$2,000 and could be actions causing limited to short-term direct impacts including, but not limited to, small-scaled construction, construction of accessory structures, installation of temporary or minor shoreline activities or similar uses.

Minor Harm to the Resource / Site Plan Approval

In instances in which a Site Plan Approval should have been sought but are considered to have only caused “very minor harm to resource” a penalty of up to \$1,000 may be incurred. These “very minor harm(s) to the resource” could be actions in which the impact on the water resource or terrestrial, littoral or marine ecosystem was temporary or insignificant, and was not of a substantial nature either individually or cumulatively.

**Non-identified land uses**

Violations in which an unauthorized use is not identified in Chapter 13-5, staff may try to associate the action with the most similar identified land use in the chapter or according to the “harm to the resource” caused by the violation. Refer to the above section, *Identified Land Use Penalties*, for the most similar required permit prefix. To categorize the violation as a “harm to resource” when no similar use is identified in Chapter 13-5, staff will refer to Table 1 and the definitions of the four violation types of “harm to resource” (See Appendix B: Definitions).

**Tree Removal**

Violation penalties for the removal of any federal or state listed threatened, endangered, or commercially valuable tree may incur a fine of up to \$15,000 per tree. Removal of any native tree may incur a fine of up to \$1,000 per tree. The removal of any invasive tree shall be considered as removal/clearing of vegetation.

The Board, Department, or Presiding Officer also has the option of considering the removal of more than one tree as a single violation, similar to the removal/clearing of vegetation.<sup>1</sup> If violation is considered as one violation, a fine amount of up to \$15,000 may be incurred, utilizing the guidelines for Major, Moderate, Minor, and Very Minor outlined in this schedule. However, the removal of any federally or state listed threatened or endangered tree shall be considered on a one violation per tree basis, with a maximum penalty of up to \$15,000 per tree.

**Vegetation removal / vegetation clearing**

Past Staff recommendations and Board decisions have treated some cases of tree or removal as one citation of vegetation clearing/vegetation removal, this practice may be continued in violations resulting in minor or very minor harm to the resource. In accordance with the identified land uses within Chapter 13-5 the assessment of vegetation removal has been based on a single citation of removal/clearing determined by the square footage of vegetation removed (See Table 3 Vegetation Removal). However, the Department may see fit to assess the removal/clearing of threatened, endangered, or commercially valuable plants similar to the modified tree removal framework and may be penalized on an individual plant basis of up to \$15,000 per plant.

**Table 3. Vegetation Removal**

Action	Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 <sup>2</sup>

Note: The clearing of threatened, endangered or commercially valuable plants will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant. According to Table 2, the clearing of vegetation may incur a penalty of up to \$1/sq.ft., as clearing 10,000 sq.ft. Staff could assess a penalty of \$10,000.

**Additional Considerations and Factors**

<sup>1</sup> While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-native, invasive, or noxious trees as one citation of "clearing" with mandatory remediation plans.

<sup>2</sup> Provided the harm to the resource and offsite damage were minimal.

After Staff applies the Conservation District violation graduated penalty framework to identify the violation penalty range (1, 2, and 3 found above), the Staff may incorporate several considerations into the final assessed conservation district penalty including but not limited to, those factors identified in HAR §13-1-70 Administrative Sanctions Schedule; Factors to be Considered.

### **Continuing Violations and Permit Non-Compliance**

Each day during which a party continues to work or otherwise continues to violate conservation district laws, and after the Department has informed the violator of the offense by verbal or written notification, the party may be penalized up to \$15,000 per day (penalties for every day illegal actions continue) by the Department for each separate offense.

Violation of existing approved Conservation District Use Permit (CDUP) conditions will be assessed on a case-by-case basis. Existing permit violations, in which deadlines are not met, may be individually assessed by the Staff as to prior violator conduct, knowledge, and compliance. Violation of permit conditions involving initiation and/or completion of project construction, notification of start and completion dates, failure to file legal documents, etc., may be considered very minor within the existing framework, although it should be noted that such actions may result in permit revocation. Failure to perform proper cultural, archeological, or environmental impact studies or failure to implement proper best management practices as identified in the standard permit conditions may be assessed more severely by Staff, as a moderate or major harm to the resource, due to the potential of greater adverse impacts to natural resources from the violator's failure to comply with the permit conditions, may have occurred.

### **In-Kind Penalties**

Once the penalty amount has been established through the framework above, the Department may determine that the full payment or some portion of the penalty may be paid as an in-kind penalty project.<sup>3</sup> This would not serve as a way to avoid payment but as a way to reduce the cash amount owed while allowing the Department to consistently enforce its rules. The in-kind penalty project is not designed to credit the violator for restoration or remediation efforts that may be already required, but to offset a portion of the cash penalty assessed. The in-kind penalty should be enough to ensure future compliance with HAR §13-5 and HRS §183C, by the violator and to deter other potential violators from non-compliance.

In-kind penalties will only be considered if the responsible party is a government entity, such as a federal agency, state agency, county agency, city agency,

<sup>3</sup> In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection. 2007. Program Directive 923, Settlement guidelines for civil and administrative penalties.

university, or school board, or if the responsible party is a private party proposing an environmental restoration, enhancement, information, or education project. In-kind penalties are limited to the following specific options:

- a. **Material and/or labor support for environmental enhancement or restoration projects.** The Department will give preference to in-kind projects benefiting proposed government-sponsored environmental projects. For shoreline violations, this may include state beach nourishment projects and dune restoration projects.
- b. **Environmental Information and Environmental Education projects.** Any information or education project proposed must demonstrate how the information or education project will directly enhance the Department's, and preferably the OCCL's, mission to protect and conserve Hawaii's Conservation District Lands.
- c. **Capital or Facility improvements.** Any capital or facility improvement project proposed must demonstrate how the improvement will directly enhance the Department's and/or public's use, access, or ecological value of the conservation property.
- d. **Property.** A responsible party may propose to donate land to the department as an in-kind penalty. Donations will be handled by the Department's Legacy Lands program or similar program.



**Penalty Adjudication**

Violation penalties may be adjudicated similarly to the harm to resource indices in the penalty guideline framework.

Harm to Resource	Penalty Range	Penalty Adjudicator
Major	\$10,000-\$15,000	Board
Moderate	\$2,000-\$10,000	Board
Minor	\$1,000-\$2,000	Chair or Presiding Officer
Very Minor	up to \$1,000	Chair or Presiding Officer

**Major and Moderate Harm to the Resource**

The Board may adjudicate penalties to violations categorized as causing or potentially causing major or moderate harm(s) to the resource. The Board may also adjudicate cases in which repeat violations, repeat violators, or egregious behavior were involved, or moderate to significant actual harm to the resource occurred. The Board may also adjudicate the payment of part or all, of the penalty as part of an In-kind penalty.

**Minor and Very Minor Harm to the Resource**

The Board may delegate to the Chairperson or a Presiding Officer the power to render a final decision in minor and very minor conservation district violations in order to provide expeditious processing and cost-effective resolution. The Chairperson or appointed Presiding Officer may adjudicate penalties to minor and very minor violations characterized by inadvertent or unintentional violations and those violations which caused minor or very minor harm to the resource.

**Assessment of Damages to Public Land or Natural Resources**

Penalties to recoup damages to public lands or natural resources for the purposes of enforcement and remediation may be assessed in addition to Conservation District violation penalties assessed by the aforementioned guidelines. The assessed total value of the initial and interim natural resource(s) damaged or lost (compensatory damages) and the cost of restoration or replacement of the damaged natural resource(s) (primary restoration cost) along with any other appropriate factors, including those named in HAR §13-1-70, may be adjudicated by the Board. The total value may be estimated on a per annum basis, and then may be used to calculate the net present value of the initial and interim loss of natural resource benefits, until the ecosystem structure, function, and/or services are restored.

The cost of a full-scale damage assessment by the Department would be an administrative cost, which could be recouped by the Board from the landowner or

offender pursuant §HRS 183C-7. In some cases, the damage to public lands or natural resources may occur on more than one ecosystem or habitat type, (e.g., sandy beaches, seagrass beds, and coral reefs). In such instances, damages for all impacted systems will be handled cumulatively.

Since all the ecosystem services provided by the ecosystem in question cannot be quantified (e.g., the aesthetic value), the values obtained are lower bound estimates, and may be applied to systems similar to the referenced ecosystem using the benefit transfer method. These valuations, to account for the loss of ecosystem services and the cost to restore them, may be applied to Hawaiian ecosystems on public lands: such as Koa and Ohia forests, coral reefs, seagrass beds, wetlands, dune and beach ecosystems, and other important Hawaiian ecosystems.

While each case is unique and individual in nature, the Department may not be able to conduct detailed damage assessments in each case, and may refer to past precedent, economic ecosystem valuations, and other published environmental valuations to estimate and assess damages on smaller scales (for valuations and publication examples see Appendix C: References and Appendix D: Damages Examples). Using the benefit transfer method to apply past precedents and published valuations in some situations would allow the Department to focus its administrative duties and time on remediation and restoration efforts. However, as ecological valuation and research continue, more comprehensive estimates may be produced and utilized.

The Board may allow restoration activities and damage penalties to be conducted and/or applied to a site different from the location of the damaged area where similar physical, biological and /or cultural functions exist. These assessed damages are independent of other, city, county, state and federal regulatory decisions and adjudications. Thus, the monetary remedies provided in HRS §183C-7 are cumulative and in addition to any other remedies allowed by law.

### **Primary Restoration Damages**

The cost of land or habitat restoration or replacement, the cost of site monitoring, and site management may be assessed and charged as primary restoration damages. Restoration efforts will aim to return the damaged ecosystem to a similar ecological structure and function that existed prior to the violation. In cases in which the damaged ecosystem was predominately composed of non-native species, restoration efforts must re-vegetate Conservation District land and public lands with non-invasive species, preferably native and endemic species when possible. The use of native and endemic species may thus result in the restoration of ecological structure and function critical for the survival of endemic Hawaiian species.

Returning the damaged and or severely degraded site to a condition similar to or better than its previous ecological structure and function (e.g., a terrestrial

system such as a koa (*Acacia koa*) forest) would include: (1) calculating the level of ecosystem services to be restored from carbon sequestration, climate regulation, nutrient cycling, air and water purification, erosion control, plant and/or wildlife habitat, and any other services which may be valued; (2) purchase, production and out-planting of koa seedlings; and (3) monitoring, maintenance, and management for the time period of mature growth of ~40-60 years, to achieve mature canopy structure, native under-story, and an acceptable level of lost ecosystem structure, function and/or services restored.

### **Compensatory Damage Calculation**

Compensatory damages to public lands or natural resources may be assessed and charged to the violator to compensate for ecosystem damage and lost initial and interim ecosystem services to the public. All Divisions of the Department may coordinate their resources and efforts along with existing ecosystem valuations and publications (See Appendix C and D for examples) to derive the estimated total value of the natural resource damaged until the ecosystem structure, function, and services are estimated to be recovered.

The total value of the natural resource that is lost or damaged may include the initial and interim values of the ecosystem services provided by the natural resource or habitat, and the social-economic value of the degraded site, until the ecosystem structure, function, and/or services are restored. Assessing the damages to the resource could include: estimating the loss of ecosystem services of carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

These natural resource damages may be assessed using economic valuation techniques to estimate the total value of the natural resource(s) damaged on a per area basis, including: total ecosystem service value, total annual benefits, the market value of the natural resource, or any other factor deemed appropriate. The total value of the present and interim natural resource damage may be estimated by calculating the net present value of these lost benefits, values and services. The net present value may be calculated using a discount rate to scale the present and future costs to the public, of the interim losses of ecosystem services over the restoration time. The restoration time may be estimated as the number of years for the damaged natural resource or ecosystem to reach maturity and/or the ecosystem structure and function to be restored similar to the pre-violation state. The discount of future losses and accrued benefits may be used in the valuation of mitigation efforts performed by the violator. For example the restoration conducted immediately after damage occurred may be calculated to have a higher present benefit worth than the benefit of restoration activities undertaken a year or two later.

In other instances, a habitat equivalency analysis (HEA) or a resource equivalency analysis (REA) may be used to scale equivalent habitat or wildlife losses for estimating both ecosystem damage penalties and restoration efforts.

**Adjudication of Damages**

The adjudication of primary restoration damages and compensatory damages will be adjudicated by the Board due to the complexity of the assessment process and to assure proper checks and balances, including adequate public notice and a public hearing.

In addition to the damages and penalty violations assessed, the Department is allowed to recoup all administrative costs associated with the alleged violation pursuant to HRS §183C-7(b). All penalties assessed will be in compliance with HRS §183C-7(c) and will not prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices.

## Definitions

“Baseline” means the original level of services provided by the damaged resource.

“Benefit Transfer Method” estimates economic values by transferring existing benefit estimates from studies already completed for another location or issue.

“Board” means the Board of Land and Natural Resources.

“Board Permit” means a permit approved by the Board of Land and Natural Resources.

“Chairperson” means the chairperson of the board of land and natural resources

“Civil Resource Violations System” or “CRVS” means a system of administrative law proceedings as authorized under chapter 199D, HRS, and further prescribed in Subchapter 7, 13-1, HAR, for the purpose of processing civil resource violations.

“Compensatory Damages” means damages for compensation for the interim loss of ecosystem services to the public prior to full recovery.

“Contested Case” means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.

“Department” means the Department of Land and Natural Resources.

“Departmental Permit” means a permit approved by the Chairperson.

“Discounting” means an economic procedure that weights past and future benefits or costs such that they are comparable with present benefits and costs.

“Ecosystem Services” means natural resources and ecosystem processes, which may be valued according to their benefits to humankind.

“Grossly negligent” violation means conscious and voluntary acts or omissions characterized by the failure to perform a manifest duty in reckless disregard of the consequences.

“Harm to resource” means an actual or potential impact, whether direct or indirect, short or long term, acting on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration as is defined as follows:

“Major Harm to resource” means a significant adverse impact, which can cause substantial adverse impact to existing natural resources within the surrounding area, community or region, or damage the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics

“Moderate Harm to Resource” means an adverse impact which can degrade water resources, degrade native ecosystems and habitats, and/or reduce the

structure or function of a terrestrial, littoral or marine system (but not to the extent of those previously defined as those in (a)).

“Minor Harm to Resource” means limited to short-term direct impacts from small scale construction or vegetation alteration activities.

“Very Minor Harm to Resource” means an action in which the impact on the water resource or terrestrial, littoral or marine ecosystem was insignificant, and was not of a substantial nature either individually or cumulatively.

“Knowing” violation means an act or omission done with awareness of the nature of the conduct.

“Net Present Value” means the total present value (PV) of a time series of cash flows.

“OCCL Administrator” means the Administrator of the Office of Conservation and Coastal Lands.

“Party” means each person or agency named or admitted as a party.

“Person” means an appropriate individuals, partnership, corporation, association, or public or private organization of any character other than agencies.

“Presiding Officer” means the person conducting the hearing, which shall be the chairperson, or the chairperson’s designated representative.

“Primary Restoration Damages” means the costs to restore the damaged site to its prior baseline state.

“Site Plan” means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.

“Willful violation” means an act or omission which is voluntary, intentional and with the specific intent to do something the law forbids, or fail to do something the law requires to be done.