

Timeline flowchart

- **2021 flood/landslide** (City duty)
- **Emergency CDUA filed** (Aug 2022)
- **DPP NOV issued** (Aug 2022)
- **Investigation & appeal requests** (2023)
- **Variance request** (Nov 2024)
- **Staff fines recommended** (Sept 2025) — *before other matters resolved*
- **Trial scheduled** (Apr 2026)

BOARD OF LAND AND NATURAL RESOURCES – AGENDA ITEM K-2 (OA 23-33)
Summary Testimony of Robin C. Glass
TMK (1) 2-5-012:015 – 3821 Tantalus Drive

Key Points

- **Civil Case Dependency**
 - Circuit Court trial scheduled April 13, 2026 (1CCV-23-0000695, Dkt. 348).
 - My position: City’s failure to maintain drainage caused flooding/landslide that displaced soil.
 - My work: restorative – returning soil and stabilizing slope in emergency conditions.
 - **Emergency CDUA (HAR §13-5-35)**
 - Filed August 2, 2022 for slope stabilization, retaining wall repair, vegetation replanting.
 - Emergency CDUA remains unresolved.
 - **Variance Request (HAR §13-5-36)**
 - Filed November 20, 2024 to address square footage discrepancy.
 - Variance remains pending.
 - **Appeal (HAR §13-5-34(h))**
 - Filed June 23, 2023 regarding abutting driveway.
 - Appeal has not been docketed or acted upon.
 - **DPP NOV (2022/NOV-06-142)**
 - Remains in effect; prevents permits for demolition or square footage adjustment.
 - Compliance impossible until NOV lifted and permits processed.
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Legal Principles

- **HAR §13-5-4** – fines apply only to “unauthorized land uses.”
 - With emergency CDUA, variance, and appeal pending, status is not final.
 - **Due Process Authorities**
 - *Goldberg v. Kelly*, 397 U.S. 254 (1970): Hearing required before property deprivation.
 - *Rogers v. Toppenish*, 596 P.2d 1096 (Wash. Ct. App. 1979): Duty to answer accurately.
 - *Paulson v. City of Ventura*, 2010 (Iowa Ct. App.): Mandamus appropriate where enforcement duty ignored.
 - Haw. Const. art. I, §5: Due process protections.
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Request for Relief

1. Defer penalties until civil case, NOV, emergency CDUA, variance, and appeal are resolved.
2. Place June 2023 appeal on BLNR agenda.
3. Act on variance request before requiring stamped engineering plans.

Robin C. Glass

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**BEFORE THE BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII**

IN THE MATTER OF:

ENFORCEMENT CASE OA 23-33
REGARDING ALLEGED UNAUTHORIZED LAND USES AT
3821 TANTALUS DRIVE, HONOLULU, O‘AHU
TMK (1) 2-5-012:015

TESTIMONY OF ROBIN GLASS

REGARDING DUE PROCESS AND PREMATURITY OF ENFORCEMENT

I. Civil Case Dependency

Responsibility for soil movement and the requirement for any environmental assessment will be determined in pending civil litigation against the City and County of Honolulu, currently set for trial in **April 2026**. The Circuit Court’s Scheduling Order provides that “*Trial in this matter shall commence during the week of April 13, 2026*” (ICCV-23-0000695, Dkt. 348, SCOJT § B.2).

It is my documented position in that case that the City had a ministerial duty to maintain upstream drainage facilities. The City’s failure to perform that duty caused flooding and a landslide that displaced soil on my property. My work consisted of restoring the soil to its prior position and stabilizing the slope under emergency conditions.

On August 2, 2022, I filed an **Emergency Conservation District Use Application (CDUA)** with DLNR describing the imminent risk of slope collapse, flood-borne pathogens, and damage to public infrastructure including Tantalus Drive. That application proposed retaining wall stabilization, walkway replacement, and slope vegetation replanting, with an estimated duration of less than one year. The Emergency CDUA was submitted under **HAR §13-5-35**, which authorizes emergency permits for land uses essential to alleviate emergencies threatening public health, safety, welfare, or natural resources, including erosion control and slope stabilization. Whether that application should have been honored remains an open question directly relevant to the current enforcement proceeding.

Until the Circuit Court resolves responsibility for soil displacement and until DLNR addresses the Emergency CDUA filing, it cannot be determined whether the work was restorative, necessary emergency mitigation, or an enforceable violation.

II. DPP Notice of Violation and Permit Obstruction

The Department of Planning and Permitting’s Notice of Violation (2022/NOV-06-142) remains in effect. This prevents processing of permit applications for demolition, modification, or square footage adjustments. Until that NOV is lifted and pending permit applications are acted upon, corrective work cannot lawfully proceed.

III. Unresolved Request for Investigation and Appeal

On June 23, 2023, I submitted a written request to place two items on the BLNR agenda:

1. Appeal of DLNR's June 2023 determination regarding my January 25, 2023 request for investigation of the abutting driveway; and
2. Resolution of a 744 square foot building variance

That request was not docketed, and the appeal has not been heard. Under **HAR §13-5-34(h)**, appeals of OCCL staff determinations must be docketed for BLNR action, and BLNR may affirm, amend, or reverse the decision, or order a contested case hearing. Staff's conclusory response to the driveway investigation did not address the HAR provisions cited and therefore left the matter unresolved.

IV. Accuracy of Agency Responses

Agencies have a ministerial duty to provide accurate answers to regulatory questions. Written replies provided regarding HAR compliance were conclusory and did not address the cited provisions. Staff also indicated during a site visit that they were not required to enforce HAR, leaving the investigation incomplete. Courts have held that zoning and permitting administrators must respond accurately, and failure to do so can create liability (see **Rogers v. Toppenish**, 596 P.2d 1096 (Wash. Ct. App. 1979))

V. Variance Request

On November 20, 2024, I submitted a request for variance/retention of building square footage, including supporting documentation and proposed alternatives. That request remains pending. **HAR §13-5-36** authorizes variances under unique circumstances where necessary to protect health, safety, or economic use of property, and where no reasonable alternatives exist. It is appropriate that the Board resolve the variance question before requiring submission of stamped professional engineering plans, as this determination will establish whether such plans are necessary.

VI. Contingent Deadlines

Any deadlines for compliance should be contingent upon the resolution of:

1. The pending civil case regarding soil displacement and environmental assessment obligations;
2. The DPP NOV and related permit applications;
3. The unresolved June 2023 appeal regarding the abutting driveway; and
4. The pending variance request.

Deadlines or penalties that accrue while compliance remains legally or practically impossible due to government action or inaction would be premature and inconsistent with due process.

VII. Due Process Considerations

1. **HAR §13-5-4** authorizes fines only for “unauthorized land uses.” But under HAR §§13-5-35, 13-5-36, and 13-5-34(h), I have pending requests for an emergency CDUA, a variance, and an appeal. Until these are resolved, the status of the work is not final, and it cannot yet be deemed “unauthorized.”
2. **Goldberg v. Kelly, 397 U.S. 254 (1970)**: Due process requires a hearing before deprivation of property. Fines imposed before the resolution of pending applications and appeals deny procedural fairness.
3. **Paulson v. City of Ventura, 2010 (Iowa Ct. App.)**: Municipal failure to enforce zoning laws when mandatory created liability; mandamus was the appropriate remedy
4. **Haw. Const. art. I, §5**: Guarantees state due process protections.

Accordingly, imposing fines prior to resolving the pending applications and appeal would be “cart before the horse,” inconsistent with HAR, and contrary to constitutional due process.

VIII. Request for Relief

I respectfully request that the Board:

1. Defer enforcement penalties until the above contingencies are resolved;
2. Place the June 2023 appeal on the BLNR agenda for proper consideration; and
3. Act on the pending variance request before requiring stamped engineering plans.

VIII. Prematurity of Staff Recommendation

The staff report recommends fines and penalties totaling more than \$30,000. However, this recommendation is premature for the following reasons:

1. **HAR §13-5-4** authorizes penalties only for “unauthorized land uses.” At present, I have pending matters under **HAR §13-5-35 (Emergency CDUA)**, **HAR §13-5-36 (Variance Request)**, and **HAR §13-5-34(h) (Appeal of Staff Determination)**. Until these are adjudicated by BLNR, the status of my land use is not final and cannot yet be deemed “unauthorized.”
2. By recommending penalties before acting on pending applications and appeals, DLNR has reversed the proper sequence — punishing first and deciding later. This contravenes the principle of procedural fairness embedded in HAR and constitutional due process.
3. **Goldberg v. Kelly, 397 U.S. 254 (1970)**: Due process requires a hearing before deprivation of property rights.
4. **Rogers v. Toppenish, 596 P.2d 1096 (Wash. Ct. App. 1979)**: Zoning administrators must provide accurate answers to regulatory inquiries; conclusory or inaccurate responses can create liability.
5. **Paulson v. City of Ventura (Iowa Ct. App. 2010)**: Where a municipality failed to enforce zoning laws despite a nondiscretionary duty, mandamus was appropriate.
6. **Haw. Const. art. I, §5**: Guarantees due process protections under state law.

In light of these authorities, the staff recommendation of penalties before completing the pending Emergency CDUA, variance request, and appeal is inconsistent with HAR and constitutional due process.

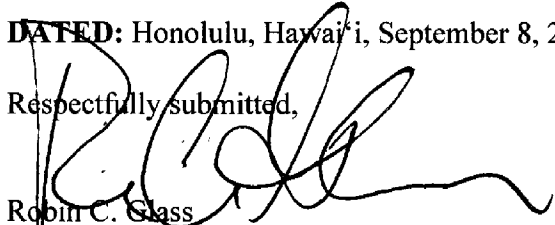
IX. Request for Relief

I respectfully request that the Board:

1. Defer enforcement penalties until the above contingencies are resolved;
2. Place the June 2023 appeal on the BLNR agenda for proper consideration; and
3. Act on the pending variance request before requiring stamped engineering plans.

DATED: Honolulu, Hawai'i, September 8, 2025

Respectfully submitted,



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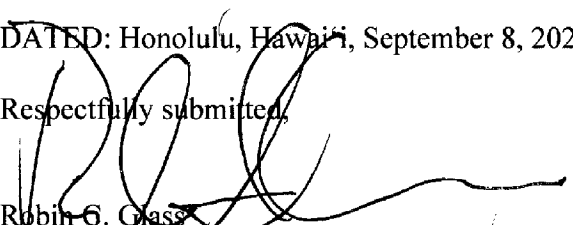
CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2025, a true and correct copy of the foregoing **Testimony of Robin Glass Regarding Due Process and Prematurity of Enforcement** was served upon the following by electronic mail and/or U.S. Mail, consistent with DLNR and BLNR filing procedures:

1. **Chairperson Dawn N. S. Chang**
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2. **Trevor J. Fitzpatrick, OCCL**
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DATED: Honolulu, Hawai'i, September 8, 2025

Respectfully submitted,



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