

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

April 10, 2026

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

Regarding: Request for Approval of Proposed Settlement Agreement in Conservation District Contested Case OA 24-01, relating to 59-181 Ke-Nui LLC and Eric and Moniza Freeman and alleged violations on State land located makai of 59-181 D Ke Nui Road, Tax Map Key No. (1) 5-9-002:034.

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.

Attachment: Proposed Settlement Agreement

Appendix: Text Summary of Scanned Attachment

Background

On December 7, 2023, as agenda item K-1, the Department of Land and Natural Resources’ Office of Conservation and Coastal Lands (“OCCL”) requested that the Board of Land and Natural Resources (“Board”) impose administrative fines and other penalties against Eric and Moniza Freeman (“Petitioners”) for alleged permit noncompliance, construction of shoreline erosion control device, and encroachment upon state land located makai of 59-181 D Ke Nui Road, <https://dlnr.hawaii.gov/wp-content/uploads/2023/12/K-1.pdf>. After the Board voted on the agenda item, Petitioners Eric and Moniza Freeman verbally requested a contested case hearing. The Board granted that request for contested case hearing on December 7, 2023, <https://dlnr.hawaii.gov/wp-content/uploads/2024/07/Minutes-231207.pdf>.

OCCL and the Petitioners reached a proposed settlement agreement in lieu of the hearing and now this Board’s approval of the settlement agreement.

Recommendation

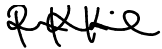
1. That the Board approve the proposed Settlement Agreement by and between State of Hawai'i, Department of Land and Natural Resources ("DLNR"), the Office of Conservation and Coastal Lands ("OCCL") and Petitioners Eric and Moniza Freeman (collectively, the "Freemans").

Respectfully submitted,

S Michael Cain

Michael Cain, Administrator
Office of Conservation and Coastal Lands

Approved for submittal:



Ryan K.P. Kanaka'ole, Acting Chairperson
Board of Land and Natural Resources

Attachment: Proposed Settlement Agreement

In accordance with accessibility requirements, a text summary of this document has been prepared and is provided in Appendix A.

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Agreement”) by and between the State of Hawai‘i, Department of Land and Natural Resources (“DLNR”), the Office of Conservation and Coastal Lands (“OCCL”) and 59-181 Ke-Nui LLC and Eric and Moniza Freeman (collectively, the “Freemans”) is made and entered as of this _____ day of August, 2025, but effective as of the last date on the signature page of this Agreement.

This Agreement is subject to the approval of the Board of Land and Natural Resources (“BLNR” or the “Board”) and if not so agreed by the Board, shall be deemed void.

From time to time this agreement may refer to the OCCL and the Freemans individually as a “Party” or collectively as “Parties.”

BACKGROUND

- A. OCCL has brought certain Enforcement Actions against the Freemans which relate to the property owned by the Freemans located at 59-181 D Ke Nui Road, Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, Tax Map Key (“TMK”): (1) 5-9-002:034 (the “Property”)
- B. The Enforcement Actions were brought before the BLNR on October 13, 2023;
- C. OCCL’s enforcement actions arise from events on or about January 17, 2022, January 27, 2022, January 28, 2022, January 30, 2022, January 31, 2022, February 2, 2022, February 3, 2022, February 4, 2022, February 8, 2022, February 11, 2022, February 13, 2022, February 18, 2022, February 28, 2022, March 2, 2022, March 7, 2022, March 9, 2022, March 16, 2022, April 11, 2022, October 14, 2022, January 27, 2023, January 29, 2023, January 30, 2023, February 1, 2023, February 4, 2023, February 5, 2023, February 6, 2023, February 8, 2023, February 27, 2023, May 25, 2023, May 26, 2023, and May 27, 2023 and are detailed in the September 22, 2023 State of Hawaii Department of Land and Natural Resources Office of Conservation and Coastal Lands submittal regarding the Request for Administrative Fines and Other Penalties Against 59-181 Ke-Nui LLC, including Eric and Moniza Freeman, for Conservation District Enforcement Case OA 22-18 Regarding the Alleged Permit Noncompliance, Construction of Shoreline Erosion Control Device, and Encroachment Upon State Land Located Makai of 59-181 D Ke Nui Rd., Tax Map Key: (1) 5-9-002:034 (the “Enforcement Actions”), attached as Exhibit “A” to this Agreement;
- D. Each of the enforcement actions relate to the Freemans’ trespass in State Lands, specifically the conservation area (i.e. the beach) fronting the Property;
- E. Based on the Enforcement Actions, the Freemans may be subject to up to \$937,000.00 in fines and administrative costs;
- F. At the December 7, 2023, meeting of the BLNR, the Freemans requested a contested case on the enforcement action, pursuant to Hawaii Revised Statutes Chapter 91 and

G. The Freemans and OCCL seek to settle this matter.

Accordingly, the Parties agree as follows:

AGREEMENT

1. Settlement Terms

- a. The Freemans shall obtain all the necessary permits for and move their house to the back of the lot, in compliance with all Federal, State, and County laws, no later than December 31, 2025, additionally, because execution of this Agreement by the Board is an order within the Board's police powers, it is understood that the Freemans may pursue removal work pursuant to this order and do not need to apply for any permits issued by the Board;
- b. The Freemans and OCCL shall work towards an agreed upon shoreline, but if no agreement can be found, the Freemans agree to a Shoreline Certification, to be performed and completed no later than December 31, 2025;
- c. The Freemans shall remove all debris, foundations, shoreline protections, and any other structures or objects from State lands and the area makai of the Property, in compliance with all Federal, State, and County laws, no later than December 31, 2025, if the Freemans have applied for all necessary Federal, State, and County permits by October 1, 2025, the Freemans may request a one-time extension of up to six months to complete removal work based on a showing that either: (1) they will not receive a required permit in time to complete work by December 31, 2025, or (2) despite reasonable efforts, they have been unable to safely complete removal work due to weather;
- d. The Freemans, in consultation with OCCL, shall place vegetation and conduct dune restoration activities in compliance with the 2022 Hawai'i Dune Restoration Manual (which can be found at <https://dlnr.hawaii.gov/occl/files/2024/08/Hawaii-Dune-Restoration-Manual-Final.pdf>) and in compliance with all Federal, State, and County laws, no later than December 31, 2025, additionally, because execution of this Agreement by the Board is an order within the Board's police powers, it is understood that the Freemans may pursue placement of vegetation and dune restoration activities (collectively, "Restoration Work") pursuant to this Agreement and do not need to apply for any permits issued by the Board, as long as the Restoration Work is done with the written approval of OCCL;
- e. The Freemans admit that they are in violation of the Administrative Rules and Statutes as detailed in the September 22, 2023, Request for Administrative Fines and Other Penalties Against 59-181 Ke-Nui LLC, including members Eris and Moniza Freeman, for Conservation District Enforcement Case OA 22-18

Regarding the Alleged Permit Noncompliance Construction of Shoreline Erosion Control Device, and Encroachment Upon State Land Located Makai of 59-181 D Ke Nui Rd. Tax Map Key: (1) 5-9-002:0034;

- f. The Freemans waive their right to a contested case regarding Enforcement Action OA 22-18;
 - g. The Freemans fines shall be reduced from Nine-Hundred and thirty seven thousand dollars (\$937,00.00) to Five-Hundred and ten thousand dollars (\$510,000.00), once they have complied with paragraphs 1(a)-1(f) above;
 - h. Fines shall also be reduced on a dollar-for-dollar basis, based on the amount the Freemans' can prove they reasonably spent on correcting the violations (e.g., for permits and reasonable architectural and design fees), however in no case shall the fines be less than \$10,000.00 and any spend on upgrades or remodels to the home shall not be included if they were spent for reasons other than compliance, monies spent on attorneys' fees, costs, or other fines (for example, any fines issued by the City and County of Honolulu, Department of Planning and Permitting) shall also not be included in this reduction;
 - i. DLNR shall forego additional enforcement actions regarding the current violations, until December 31, 2025;
 - j. The Freemans shall pay any fines which are due and owing by December 31, 2025;
 - k. Each side to bear their own attorneys' fees and costs;
 - l. If the Property and the Freemans are not in compliance with all Federal, State, and County laws by December 31, 2025, the full fine amount of nine-hundred and thirty-seven dollars (\$937,000.00), will become due and owing. Additionally, if it was not clear from paragraph f above, the Freemans have waived their right to a contested case or any other means to contest this fine.
2. Contested Case Proceedings. The Parties agree to execute this Agreement in lieu of chapter 91, HRS, contested case proceedings for the Enforcement Actions. The Freemans' request for a contested case hearing at the December 7, 2023, Board meeting and in a letter dated December 19, 2023, is deemed withdrawn. In the event that this Agreement is not effectuated, the contested case proceedings shall proceed as if this Agreement had not been made. In such an event, this Agreement shall not be presented as evidence by either party or considered by any tribunal in any current or future administrative or legal proceeding relating to this matter.

3. Agreement Not Binding Until Duly Approved. This Agreement shall not be binding on any Party unless and until it is approved by the Board. In the event the Agreement is not approved by the Board, this Agreement and all related discussions, communications, and documents exchanged shall be subject to Rule 408 of the Hawai'i Rules of Evidence. If this Agreement is not approved by the Board, then all admissions and statements herein are withdrawn, and they shall have no legal import and are not binding on the Parties.
4. No Admission of Fault, Liability, or Guilt. This Agreement shall not be construed or considered as an admission of any fact, event, circumstance, fault, liability, guilt, or obligation, unless and to the extent expressly provided in this Agreement.
5. Good faith Settlement. The Parties agree that the settlement, resolution, and other terms of this Agreement are reasonable and given in good faith, and that this Agreement and all of its covenants and provisions are and will be deemed a good-faith settlement under Hawai'i Revised Statutes § 663-15.5. Nothing in this Agreement requires either side to seek a good-faith determination from a court. But, if for any reason, such a determination becomes necessary, the Parties will cooperate with each other and support a determination of good-faith settlement by a court of competent jurisdiction.
6. No Reliance. The Parties represent and warrant that they have access to adequate information regarding the terms of this Agreement, the scope and effect of the releases set forth herein, and all other matters encompassed by this Agreement necessary to make an informed, knowledgeable, and independent decision regarding this Agreement. The Parties represent and warrant that they have had an opportunity to obtain legal advice from the attorney of their choice, that they have read the terms of this Agreement and that they fully understand the terms of this Agreement. The Parties further acknowledge and represent that they have not relied on the inducements, promises, representations, or statement of fact or opinion made by any party, person or entity.
7. Entire Agreement. This Agreement contains the entire agreement of the Parties about the subject matter hereof. Prior negotiations related to this agreement and drafts of this agreement will not be considered in interpreting this Agreement and are merged herein.
8. Amendments. This Agreement may not be altered, amended, modified, or otherwise changed, in any respect whatsoever, except by a writing duly executed by all the Parties to this Agreement. Each Party hereby acknowledges and agrees that it will make no claim at any time that this Agreement has been orally altered or modified in any respect whatsoever.
9. Binding on Successors and Related Entities. This Agreement will inure to the benefit of, and will be binding upon, each of the Parties for each, and all predecessors, successors, and assigns, and upon all persons or entities claiming by, through, or under any Party.

10. Cooperation. The Parties agree to fully cooperate with one another to carry out this Agreement, including executing any further documents or taking further steps that any other Party may reasonably request in connection with the same.
11. No Party Deemed Drafter. The Parties agree that no Party to this Agreement will be claimed or deemed to be the drafter of this Agreement should any dispute arise over its interpretation.
12. Authority. By signing this Agreement, the Parties warrant and represent that this Agreement has been validly authorized and constitutes a legally binding and enforceable obligation for them.
13. Electronic Signatures. This Agreement may be executed in counterparts. Duplicate, unexecuted pages may be discarded, and the remaining pages assembled as one instrument. Electronically transmitted signatures (*e.g.*, by email or facsimile) shall be effective for all purposes.
14. Severability. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions will not be affected thereby, and the illegal or invalid part, term, or provision will be deemed not to be a part of this Agreement.
15. Fees. Each Party shall bear its own costs related to this Agreement, including but not limited to attorney's fees, filing fees, realty fees, due diligence costs, and title reports. The Parties agree to not seek attorney's fees and costs arising from this Agreement.
16. Governing Law; Jurisdiction; Venue. This Agreement shall be construed in accordance with the laws of the State of Hawai'i. The Circuit Court of the First Circuit shall have jurisdiction over the Parties for the purpose of enforcing or interpreting the terms of this Agreement.
17. Headings. The headings in this Agreement are for convenience only and in no way limit, alter, or affect the matters in this Agreement or the paragraphs captioned.

To evidence the Parties' agreement to this Agreement, each Party has executed it and delivered it effective as of the date indicated under that Party's signature.

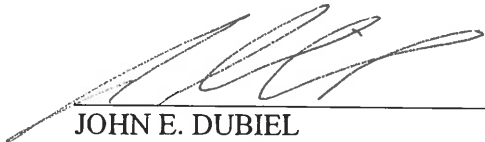
STATE OF HAWAII

Approved by the Board of Land and
Natural Resources at its meeting
held on _____, 2025.

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

APPROVED AS TO FORM:

Dated: _____



JOHN E. DUBIEL
Deputy Attorney General
Counsel for State of Hawai'i

Dated: 7/11/2025

By: _____
AIMEE KEALI'I BARNES
Member

Dated: _____

By: _____
DOREEN NĀPUA CANTO
Member

Dated: _____

By: _____

Member

Dated: _____

By: _____
RILEY SMITH
Member

Dated: _____

By: _____
WESLEY KAIWI NUI YOON
Member

Dated: _____

By: _____
KAREN ONO
Member

Dated: _____

**59-181 KE-NUI LLC AND ERIC AND
MONIZA FREEMAN**

Eric Freeman
Eric Freeman

Dated: 7/11/2025

Moniza Freeman
Moniza Freeman

Dated: 7/11/2025

Eric Freeman

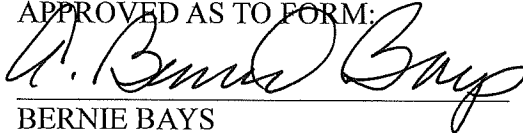
59-181 KE-NUI LLC

By Eric Freeman

Its Member

Dated: 7/11/2025

APPROVED AS TO FORM:



BERNIE BAYS

Counsel for Eric and Moniza Freeman

Dated: July 11, 2025

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

September 22, 2023

**Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Request for Administrative Fines and Other Penalties Against 59-181 Ke-Nui LLC, including members Eric and Moniza Freeman, for Conservation District Enforcement Case OA 22-18 Regarding the Alleged Permit Noncompliance, Construction of Shoreline Erosion Control Device, and Encroachment Upon State Land Located Makai of 59-181 D Ke Nui Rd., Tax Map Key: (1) 5-9-002:034

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

AGAINST: 59-181 Ke-Nui LLC and members Eric and Moniza Freeman (collectively, the "Freemans")

LOCATION: Makai of 59-181 D Ke Nui Rd. Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, Tax Map Key ("TMK"): (1) 5-9-002:034

LANDOWNER: State of Hawaii

SUBZONE: Resource

SUMMARY

This report concerns Office of Conservation and Coastal Lands ("OCCL") Conservation District Enforcement Case OA 22-18. On September 3, 2020, the landowners of 59-181 D Ke Nui Rd. Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, also identified as Tax Map Key (1) 5-9-002:034 ("PParcel 034") obtained Emergency Conservation District Use Permit ("Emergency CDUP") OA 21-2 (attached hereto as ***Exhibit 7***) for the repairs of the temporary erosion control structure consisting of one ballast tube and a tarp subject to

thirty-one conditions.¹ According to Condition #4 of the Emergency CDUP’s emergency authorization and a review of records held by the Department of Land and Natural Resources (“department”), the landowners of Parcel 034 were required—but failed—to obtain authorization for the utilization and occupancy of the area *makai* of Parcel 034, which is comprised of State public lands within the Conservation District.

On January 27, 2022, OCCL conducted a site inspection of the area and observed ongoing, unauthorized work being performed, including modifications to the temporary erosion control structure in the shoreline area fronting Parcel 034. The persons observed conducting the unauthorized work stated that they were working on behalf of the owners of Parcel 034, owned by Eric and Moniza Freeman.² As agents of Eric and Moniza Freeman, these individuals were verbally notified by OCCL staff verbally that work being conducted to the temporary erosion control structure appeared to be an unauthorized land use and a potential violation.

On January 28, 2022, Eric and Moniza Freeman were issued a Notice of Alleged Violation letter (ENF: OA 22-18, attached hereto as **Exhibit 8**) regarding the unauthorized work observed on the previous day. Specifically, the document notified the subject property’s landowner(s) that there were allegations of work being conducted to the temporary erosion control structure, due to which they might be found to be in violation of Emergency CDUP OA 21-2, and an unauthorized encroachment on State-owned land. On this same day, OCCL received a photo clearly showing that unauthorized work in the shoreline area fronting Parcel 034 was still on-going. See **Exhibit 5**, p.65.

Throughout the remainder of 2022 and in 2023, OCCL staff received and took photos appearing to show continued unauthorized work in the shoreline area fronting Parcel 034 after the Freemans and their agents had received verbal and written notice to cease such activities. OCCL’s photographic records show approximately twenty-two days on which unauthorized work continued (attached hereto as **Exhibit 5**). Documented unauthorized work included (but may not have been limited to) the installation of additional erosion control measures or structures in the shoreline area fronting Parcel 034.

Despite these notices and correspondences to the Freemans and their agents; the unauthorized measures, structures, and debris still litter the State-owned shoreline fronting Parcel 034. As a result, OCCL requests that the Board of Land and Natural Resources (“Board”) find and conclude that the Freemans engaged in the forementioned unauthorized activity, among other things, and impose administrative fines and penalties on the Freemans, all of which are further describe below.

DESCRIPTION OF AREA

¹ The thirty-one conditions appear in-full at **Exhibit 7**, pp. 120–124.

² **Exhibit 2**, which includes real property tax information from the City and County of Honolulu regarding Parcel 034, indicates that there was a “quitclaim” sale by Eric and Moniza Freeman on or about March 7, 2022 (the deed was recorded on or about March 30, 2022), presumably to the current owner, 59-181 Ke-Nui LLC, whose only two members appear to be Eric and Moniza Freeman.

Parcel 034 is located on the north shore of Oahu, makai of Pupukea-Paumalu Beach lots noted on the TMK map (**Exhibit 1**, p.21) on a shoreline that is experiencing coastal erosion likely to be affected by sea-level rise. The beach area fronting Parcel 034 also identified as TMK (1) 5-9-001:038 (the “subject area”), was set aside to the City and County of Honolulu Department of Park and Recreation as the *Pupukea to Paumalu (Sunset) Beach Park*, under Governor’s Executive Order (“EO”) #2598, appears to have eroded (**Exhibit 1**).

Parcel 034 is a residential lot with a single-family residence. According to the Hawaii Cesspool Prioritization Tool, Parcel 034 contains a cesspool that has been identified by the Department of Health and the Cesspool Conversion Working Group in the Priority 1 zone—which means the cesspool is recommended to be converted and/or decommissioned by 2030.³ The City and County of Honolulu’s Department of Planning and Permitting (“DPP”) list for Nonconforming Use Certificates shows Parcel 034 and dwelling are authorized to be used as a transient vacation unit. A cursory review of the websites vrbo.com and Airbnb.com indicates that Parcel 034, including its associated dwelling, is being used as a transient rental. A search of DPP’s website also indicates that an advisory (2023/ADV-668⁴) has recently been created for potential building violations on Parcel 034, including the unauthorized rebuilding of a makai side deck on the dwelling and possibly also a side-yard structure (**Exhibit 2**).

The most recent deeds for Parcel 034, recorded at the State of Hawaii Bureau of Conveyances as Doc No. A76760259 (Jan. 6, 2021) and Doc No. A-81240803 (Mar. 30, 2022), confirms that “[d]etermination of the seaward boundary of the [Parcel 034 is made] pursuant to the laws of the State of Hawaii.” See **Exhibit 2**, p. 42 and p. 47. In other words, the seaward boundary of the property may change over time and shall be determined by factors enshrined in Hawaii law. Most lands in Hawaii that are seaward of the shoreline are located in the Resource Subzone of the State Land Use Conservation District and are owned by the State.

The beach in the Pupukea-to-Paumalu area is composed of carbonate coarse sand with occasional outcrops of limestone that are intermittently buried or exposed by the shifting sand. The underlying sediments, being largely composed of coarse-grained sand, suggests deposition by waves (as opposed to wind), and thus the dune upon which Parcel 034 sits could be considered a “high wave berm.” These types of dunes are active components of the beach systems and are highly vulnerable to episodic erosion events, such as those that occur within the area immediately surrounding Parcel 034 on a seasonal basis.

The beaches of Oahu’s north shore are some of the state’s most valued natural resources as well as an attraction that brings residents and visitors to the north shore to support

³ See Hawaii Cesspool Prioritization Tool, available at, <https://seagrant.soest.hawaii.edu/app2/> (last visited Aug. 24, 2023) (**Exhibit 2** at p. 30); State of Hawai’i Dept. of Health in response to Act 170 Sess. Laws of 2019, Cesspool Conversion Working Group Final Report to the 2023 Regular Session Legislature (Nov. 2022), available at https://health.hawaii.gov/wastewater/files/2022/11/ccwg_final_report.pdf.

⁴ Available at, <https://dppweb.honolulu.gov/DPPWeb/Default.aspx?PossePresentation=TaxMapKey&PosseObjectId=282972>.

community economic activities key for the north shore. The Paumalu to Pupukea stretch of beach, in particular, is one of the more famous beaches in the area and is heavily utilized by the public, both residents and visitors alike, at all times of the year.

Long-term shoreline change rates in the vicinity of Parcel 034 have trended towards chronic erosion (approximately -0.5 ± 0.7 feet per year; see **Exhibit 3**). In addition to the long-term erosional trends, there are large seasonal fluctuations in beach width and shoreline position generated by sediment exchange among the eastern and western segments of the sediment cell due to the seasonal variability in wave and wind patterns.

BACKGROUND

Parcel 034 has historically been impacted by chronic and seasonal coastal erosion. The Freemans, like previous owner(s) of Parcel 034, have attempted to mitigate the seasonal erosion affecting this stretch of the shoreline. Previous landowners of Parcel 034 have participated in or initiated “sand pushes” with their neighbors to help manage the erosion. While these sand pushes were reviewed and authorized by the Department, it appears none of these efforts complied with the emergency authorization issued. Prior, documented efforts by the owner(s) of Parcel 034—both authorized and unauthorized—are summarized below. Specifically, see photographs and summary documentation in **Exhibit 4**, pp. 49–61, and in **Exhibit 5**, pp. 62–94, which documentation corresponds approximately with the noted dates in this staff report.

Sand Pushing

January 2014: Emergency authorization was given for sand pushing fronting eight properties, including Parcel 034. The authorization noted that sand should be used primarily from the nearby stream mouth, and that any “sand scraping” of the beach front should be minimized. However, the contractor hired to do the emergency work did not use sand from the stream mouth, as advised. Instead, all the sand was taken from the beach to create a new berm in the subject area. Sandbags, rocks, concrete rubble, and support beams from a failed structure were also not removed prior to the sand pushing; rather, this unauthorized debris was buried under the new berm. See **Exhibit 4**, pp. 49–53.

March 2015: Emergency authorization was given for sand pushing fronting six properties, including Parcel 034. Four other properties were excluded from this authorization due to either existing revetments or because of active (and known) land-use violations. See **Exhibit 4**, pp. 54–55.

August 2017: Emergency authorization was given for sand pushing fronting eight properties, including Parcel 034. Two other properties were excluded from the authorization due to existing shoreline hardening (seawalls). See **Exhibit 4**, pp. 57–58.

November 2017: Emergency authorization was given for sand pushing fronting three properties, including Parcel 034. The authorization noted that this effort was to supplement the previous sand push conducted in the summer/Fall, when the beach was not sufficiently wide to fully restore the berm fronting these properties.

March 2018: Emergency authorization was given for sand pushing fronting six properties, including Parcel 034. A follow-up site inspection by OCCL revealed that the pushing was not in compliance with the terms of the authorization, in part because it only allowed scraping up to 1-foot below the existing grade, but it appeared (obvious) to staff that the slope was raised over one-foot above the previous beach face and sand had also been scraped at greater depth than one-foot below the existing grade of the beach. See **Exhibit 4**, p. 59.

February 2021: Emergency authorization was given for sand pushing fronting four properties, including Parcel 034. A follow-up site inspection of the subject area by OCCL revealed that the amount of sand pushed far exceeded what was authorized. OCCL later consulted with the School of Ocean and Earth Science and Technology Sea Grant Extension Agents, who expressed concern that the amount and steepness of sand pushed could accelerate erosion fronting the neighboring properties. See **Exhibit 4**, p. 61.

Temporary Erosion Control

February 2019: The Chairperson of the Board authorized “temporary erosion control” fronting the subject property, which was to consist of one ballast tube (burrito) and one tarp. In the email authorization, the Chair noted their concerns about potential flanking the structure may cause to adjacent, unarmored properties. See **Exhibit 4**, p. 60.

Parcel 034 has been the subject of two previous enforcement actions by OCCL (ENF: OA 20-16 and ENF: OA 22-8), and one Contested Case (CC: OA 20-01) regarding unauthorized land uses in the Conservation District consisting of the installation of unauthorized erosion control materials:

- In ENF: OA 20-16, the Board initially deferred action on the alleged unauthorized installation of erosion control materials (four additional burritos) to the structure.⁵ After the Board deferred the matter, the landowners of Parcel 034 filed a petition for a Contested Case, resulting in CC: OA 20-01. See **Exhibit 4**, p. 61.
- In CC: OA 20-01, OCCL and the landowners of Parcel 034 settled the dispute before an evidentiary contested case hearing was held. The Board-approved

⁵ For details, see Staff Report for Item #K-3 on the Board’s November 2019 agenda (ENF: OA 20-16), available at, <https://dlnr.hawaii.gov/wp-content/uploads/2019/11/K-3.pdf>.

settlement required the landowners of Parcel 034 to remove the additional four burritos they had installed without permission while allowing them to keep the one burrito and tarp which were originally authorized and pay \$3,000 in fines and administrative costs. See **Exhibit 6**, pp. 95-119. On September 3, 2020; the landowners obtained “Emergency CDUP OA 21-2” for the repairs of the temporary erosion control structure consisting of one ballast tube and a tarp subject to thirty-one conditions. The expiration date of both Emergency CDUP OA 21-2 and also the temporary erosion control structure was September 3, 2023. See **Exhibit 6** and **Exhibit 7**.

- In ENF: OA 22-8, Eric and Moniza Freeman were issued a Civil Resource Violation System (“CRVS”) Notice for the placement of a fence in the shoreline area fronting Parcel 034 (subject area) without authorization. The Freemans were facing a \$1,000 fine if they failed to remove the fence after 21 days from receiving the CRVS Notice. The matter appears to have been resolved after the fence was removed and no fines were issued. See **Exhibit 4**, p. 61.

UNAUTHORIZED LAND USE IN THE CONSERVATION DISTRICT

On January 17, 2022, OCCL conducted a site inspection of the subject area. Staff observed that a series of seasonally large winter swells from a westerly direction appeared to have accelerated erosion along this stretch of the Paumalu shoreline affecting several shoreline properties, including Parcel 034. The combination of high waves, high tides, and accelerated erosion resulted in exposure of the erosion control structure and what appeared to be additional unauthorized modifications alleged herein, such as the installation of additional sandbags and burritos. Soon after the site visit, OCCL began receiving complaints and reports of (more) alleged unauthorized work along this stretch of Paumalu. As a result, OCCL began conducting semi-regular visits to the subject area in order to document conditions, including any alleged unauthorized activities. See **Exhibit 5**, p. 62.

On January 27, 2022, OCCL conducted one of these site inspections of the subject area. During the visit, OCCL staff observed ongoing work in the shoreline area fronting Parcel 034, consisting of the installation erosion control materials and sandbags without authorization. During this site visit, a man who identified himself as “Frank” and who stated he was conducting work on behalf of the landowners of Parcel 034 was given verbal notification that the alleged unauthorized activities in shoreline area appeared to be a land use violation in the Conservation District and therefore needed to stop immediately. See **Exhibit 5**, pp. 63–64.

On January 28, 2022, Eric and Moniza Freeman were also issued a written Notice of Alleged Violation for the unauthorized work documented on the previous day. The notice stated, in relevant part: “*Should you fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists. Failure to comply with any part of the letter mentioned above will result in the matter being forwarded to the Board for formal action*”. On this same day, OCCL received a photo

appearing to show unauthorized work was still being conducted in the shoreline area fronting Parcel 034 (the subject area). See **Exhibit 5**, p. 65; **Exhibit 8**.

On January 30, 2022, OCCL received a photograph appearing to show unauthorized work, including the preparation and installation of polypropylene sandbags, in the subject area. See **Exhibit 5**, p. 66.

On January 31, 2022, OCCL received a photograph appearing to show unauthorized work in the subject area, including of the use of a conveyor belt on the beach to transport sand. It appeared from the photograph that sand from the wet beach was being utilized to fill in and modify or reconstruct an erosion control structure fronting Parcel 034. Later the same day, OCCL conducted a site inspection to the subject area in order to further document the unauthorized work. See **Exhibit 5**, pp. 67–68.

On February 2, 2022, OCCL received a photograph appearing to show unauthorized work, including the preparation and installation of polypropylene sandbags in the subject area. Later the same day, OCCL conducted a site inspection to the subject area to further document the unauthorized work. OCCL staff observed that the polypropylene sandbags were apparently being stockpiled to be used to even further modify and construct additional (unauthorized) erosion control measures in the subject area. See **Exhibit 5**, pp. 69–70.

On February 3, 2022, OCCL received a photograph appearing to show unauthorized work, including the preparation and installation of polypropylene sandbags in the State-owned subject area. See **Exhibit 5**, p. 71.

On February 4, 2022, OCCL issued a letter to the landowner(s) of Parcel 034 (COR: OA 22-122) regarding potential unauthorized land uses within the Conservation District. The letter recounted OCCL site visits to the subject area and included photos showing the continued installation of alleged unauthorized erosion control materials and debris seaward of the subject property, in the subject area. See **Exhibit 9**.

On February 8, 2022, OCCL conducted a site inspection to the subject area and observed that sand had been placed on the unauthorized erosion control structure, apparently to cover it and polypropylene sandbags that had been installed. See **Exhibit 5**, p. 72.

On February 11, 2022, OCCL received a photograph of a conveyor belt on the beach in the subject area, which appeared to show that sand was being mined for use in or on the subject area's unauthorized erosion control structure. See **Exhibit 5**, p. 73.

On February 13, 2022, OCCL conducted a site inspection to the subject area and observed unauthorized work being conducted in the shoreline area fronting Parcel 034. This work appeared to consist of the mining of sand from the public beach property, and the use of the conveyor belt to construct and cover the erosion control structure fronting the subject property with the mined sand. See **Exhibit 5**, p. 74.

On February 18, 2022, OCCL conducted a site inspection to the subject area and observed what appeared to be geotextile blankets, which had been installed over the unauthorized erosion control structure in the subject area fronting Parcel 034. See **Exhibit 5**, p. 75.

On February 28, 2022, OCCL conducted a site inspection to the subject area and observed that the ground-level deck they had previously observed attached to the dwelling on Parcel 034 had collapsed and appeared to have washed away. Additionally, it appeared that much of the sand and beach in the immediate area had been washed away revealing an extensive erosion control structure fronting Parcel 034 in the subject area. See **Exhibit 5**, pp. 76–77.

On March 2, 2022, OCCL received an emailed letter dated February 28, 2022, from the landowner(s) of Parcel 034 in response to the Notice of Alleged Violation (ENF: OA 22-18). The letter requested a meeting with OCCL staff as well as with other representatives from other government agencies. See **Exhibit 10**.

On March 7, 2022, OCCL received a photograph of the conveyor belt on the beach, which was apparently being used to mine sand to be used in and to cover the unauthorized erosion control structure fronting the subject property in the subject area. See **Exhibit 5**, p. 78.

On March 9, 2022, OCCL conducted a site inspection to the subject area and observed that the unauthorized erosion control structure seaward of Parcel 034 had been partially covered with sand from the beach, and a crew was actively painting the reconstructed ground-level deck of the dwelling. See **Exhibit 5**, p. 79.

On March 16, 2022, a meeting was held with a representative from the former Governor's office, Department staff and counsel, and the Freeman's neighbor. A cursory review of OCCL files indicates that although they were notified and invited, neither Eric nor Moniza Freeman attended this meeting, which had been convened at their request.

On April 11, 2022, OCCL conducted a site inspection to the subject area and observed an excavator on the public beach, which was pushing large amounts of sand to construct a new, alleged unauthorized large sand berm/erosion control structure in front of several shoreline properties, including Parcel 034. Staff notes that this incident is the subject of a separate enforcement action (ENF: OA 22-22) and Contested Case Hearing (CC: OA 22-3) against the Freeman's neighbor. See **Exhibit 5**, p. 80.

On October 14, 2022, OCCL staff received a voicemail and text message from an individual who stated that they had booked an upcoming stay at the dwelling on Parcel 034 via Airbnb. In their text message, the individual noted that they had found a news article about beach erosion in the subject area and that the home on Parcel 034 was one that was identified as having potential structural issues. The individual stated that they had concerns regarding their stay in the dwelling and had reached out to the owner(s) of Parcel 034 to potentially cancel their stay but stated that the owners had refused to cancel the individual's stay. OCCL staff instructed the individual to contact the County of Honolulu regarding their concerns because the dwelling and its use as a transient vacation rental unit was authorized by DPP. See **Exhibit 11**.

On January 27, 2023, OCCL received a photograph appearing to show additional, unauthorized work occurring in the shoreline area fronting Parcel 034. The work appeared to consist of sand being mined from the beach for utilization in sandbags and

to cover the latest unauthorized erosion control structure in the subject area. See **Exhibit 5**, p. 81.

On January 29, 2023, OCCL received a photograph appearing to show additional unauthorized work occurring in the shoreline area fronting Parcel 034. The work appeared to consist of white polypropylene sandbags being prepared for placement to modify or further fortify the unauthorized erosion control structure in the subject area. See **Exhibit 5**, p. 82.

On January 30, 2023, OCCL received photographs appearing to show additional unauthorized work occurring in the shoreline area fronting Parcel 034. The work appeared to consist of the preparation of white polypropylene sandbags to be utilized in the construction of a new, unauthorized, sandbag-filled burrito placed on the existing unauthorized erosion control structure. See **Exhibit 5**, pp. 83–84.

On February 1, 2023, OCCL conducted a site inspection to the subject area and observed unauthorized work being conducted in the shoreline area fronting Parcel 034. The observed work appeared to consist of completion of the new, polypropylene sandbag-filled burrito. Again, agents who identified themselves as working for the Freemans were given a verbal notice by OCCL staff to stop unauthorized work in the shoreline area fronting Parcel 034. See **Exhibit 5**, pp. 85–86.

On February 4, 2023, OCCL received a photograph appearing to show unauthorized work occurring in the shoreline area fronting Parcel 034. The work consisted of the conveyor-belt set up, which was being used to mine sand from the beach to be placed and fill in the areas behind the newly constructed, unauthorized sandbag-filled burrito and erosion control structure in the subject area. See **Exhibit 5**, p. 87.

On February 5, 2023, OCCL received two photographs appearing to show continued unauthorized work in the subject area. The work consisted of the conveyor-belt set up, which was being used to mine sand from the beach for placement to cover the newly constructed, unauthorized sandbag-filled burrito and erosion control structure fronting Parcel 034. See **Exhibit 5**, pp. 88-89.

On February 6, 2023, OCCL received a photograph appearing to show continued unauthorized work in the shoreline area fronting Parcel 034. The unauthorized work consisted of the conveyor-belt set up and the mining of sand from the beach to cover the unauthorized erosion control structure. After receiving this photograph, OCCL issued the Freemans another notice letter (Ref. ENF: OA 22-18 dated February 6, 2023), this time regarding recently observed unauthorized work as well as past instances of unauthorized work in the subject area. The letter noted that ENF: OA 22-18 remained unresolved and requested that the Freeman's respond in writing within ten days regarding a proposed resolution. See **Exhibit 5**, p. 90; **Exhibit 12**.

On February 8, 2023, OCCL received a photograph appearing to show continued unauthorized work in the shoreline area fronting Parcel 034. The unauthorized work consisted of the conveyor-belt set up and sand being mined from the beach to cover the unauthorized erosion control structure in the subject area. See **Exhibit 5**, p. 91.

On February 27, 2023, OCCL received a response letter dated February 20, 2023, from Eric Freeman regarding ENF: OA 22-18 and continued unauthorized work in the shoreline area fronting Parcel 034. The response letter noted that the Freemans had purchased Parcel 034 in January of 2021 and felt they were misled and had no way of knowing how severe erosion plaguing the property would be. The letter also noted that they believed that if they did not protect the house, it would fall into the ocean. The letter stated that the Freemans had no intention of disrespecting or violating any of the laws of the State of Hawaii. The letter concluded with a request for another meeting. See **Exhibit 13**.

On May 25, 2023, OCCL received photographs appearing to show continued unauthorized work in the shoreline area fronting Parcel 034. The work appeared to consist of the conveyor belt and sand being mined from the beach to cover and/or bury the latest unauthorized erosion control structure(s). See **Exhibit 5**, p. 92.

On May 26, 2023, OCCL received a photograph appearing to show continued unauthorized work in the shoreline area fronting Parcel 034. The work consisted of the conveyor belt and sand being mined from the beach to cover and/or bury the latest unauthorized erosion control structure(s). See **Exhibit 5**, p. 93.

On May 27, 2023, OCCL received a photograph appearing to show continued unauthorized work in the shoreline area fronting Parcel 034. The work appeared to consist of the conveyor belt and sand being mined from the beach to cover and/or bury the unauthorized erosion control structure(s). Based on the photograph, it also appears that a sizeable hole has been created on the public beach fronting Parcel 034 and unauthorized erosion control structure, apparently from the unauthorized mining of sand by the Freemans and their agent(s). See **Exhibit 5**, p. 94.

CONSERVATION DISTRICT RULES AND STATUTES

Land uses in the Conservation District are regulated under Hawaii Revised Statutes (“HRS”) Chapter 183C, and Hawaii Administrative Rules (“HAR”), Chapter 13-5. Chapter 13-5, HAR, identifies land uses within the Conservation District that require OCCL and/or BLNR approval and/or a permit. Chapter 13-5, HAR, also contains the administrative rules relating to penalties, collection of administrative costs, and monetary damages that may be sought against persons responsible for unauthorized land uses within the Conservation District.

Section 13-5-6(d), HAR, provides that “[n]o land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.”

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

- (1) the placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) the grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;

- (3) the subdivision of land; or
- (4) the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

One of the allowed uses is for shoreline erosion control, pursuant to Section 13-5-22 P-15(D-1), HAR:

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

Section 183C-7, HRS, provides the statutory penalty for violations of Chapter 13-5, HAR, and provides, in relevant part:

- (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter.
- (b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, willful violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to \$15,000 per day per violation for each day in which the violation persists.

The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.

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

Chapter 205A-2(B), HRS, further provides that as a State policy, there is a prohibition on the construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.

ENCROACHMENT UPON STATE LAND

Section 115-9(a), HRS, prohibits individuals from obstructing access to public property by having installed a physical impediment, and intentionally prevents a member of the public from traversing a public right of way or beach transit corridor and thereby obstructs access to and along the sea or the shoreline. Section 115-9(b) specifically lists constructed barriers and rubbish. The right of access to Hawaii's shorelines includes the right of transit along the shorelines. Haw. Rev. Stat. § 115-4. Although the OCCL does not seek to impose criminal liability on the Freemans through Section 115-9(c) and (d) at this time, it is notable that such criminal liability may attach. At this time, OCCL staff seeks to impose administrative and civil fines upon the Freemans for their encroachments on State lands.

Section 171-6(12), HRS, states that the Board may “[b]ring such actions as may be necessary to remove or remedy encroachments upon public lands.” The statute further provides,

Any person causing an encroachment upon public land shall:

- (A) Be fined not more than \$1,000 a day for the first offense;
- (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
- (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
- (D) Assume such costs as may result from adverse effects from such restoration; and
- (E) Be liable for administrative costs incurred by the department and for payment of damages...”

Section 171-6(15), HRS, further allows the Board to assess the following fines for a violation of Chapter 171, HRS, or of any administrative rule adopted thereunder:

- (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:
 - (A) Fined no more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
 - (B) Fined no more than \$10,000 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;

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

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

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

Section 171-6.4, HRS, states, in relevant part:

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

DISCUSSION

The beaches of Hawaii are held in trust by the State for the benefit of present and future generations. The State should be consulted, and a land disposition obtained, when individuals feel the need to temporarily use beach areas for construction purposes, and there should be consequences when an individual unilaterally and willfully acts in such a way that endangers a such a significant public-trust resource.

The beaches of Oahu's north shore are some of the state's most valued natural resources as well as an attraction that attracts residents and visitors who support community economic activities key to the area. The Paumalu-to-Pupukea stretch of beach, in particular, is one of the more famous beaches in the area and is heavily utilized by the public, both residents and visitors alike, at all times of the year.

Many of the shorefront homes in the area, such as the dwelling on Parcel 034, are built on the frontal sand dune and thus vulnerable to the effects of both chronic and seasonal coastal erosion. Coastal erosion occurs as a result of the following phenomena:

- (1) Seasonal changes in waves and currents that moves sand alongshore or across the shore, adjusting the beach profile;
- (2) Long-term (chronic) deficiencies in natural sand supply and/or fluctuations in meteorological or oceanographic processes such as storms and seas level rise; and
- (3) Human impacts to sand availability through sand impoundment and supply disruption from development and coastal engineering.

During the last several years, beach erosion in this area appears to have intensified significantly. While such erosion could be attributed to decadal scale fluctuations in beach morphology (including normal accretion and erosion cycles), it is more likely that the erosion has become a chronic and permanent result of acceleration in sea-level rise this century. Thermal expansion of the oceans and melting glaciers and ice fields is causing sea level rise resulting in the landward migration of the active beach.⁶ Over the past century, local tide gauges have measured approximately 0.5 ft of rise in sea levels among the Hawaiian Islands such that it should be no surprise that resulting impacts are occurring.⁷

The Department has taken a number of measures throughout the past two decades to address the progressively damaging chronic- and seasonal-erosion concerns in the greater Paumalu-to-Pupukea (Sunset) Beach area. The Department has worked with the City and County of Honolulu's Parks Division to develop and authorize City-led sand pushing operations to mitigate seasonal erosion at Sunset Beach Park as well as many of the beach rights-of-way along the north shore. The Department has also conditionally approved preventative berm maintenance projects (sand pushing) upon request with private landowners, so long as those requests meet relevant criteria which provide added protection (an "erodible buffer") while conserving the natural characteristics of the public beach environment.

Prior to 2020 the Department sometimes provided temporary, emergency authorizations for geotextile cloth erosion control measures, commonly known as sandbag "burrito" revetments, fronting several homes surrounding Parcel 034. The Department authorized these erosion measures as **temporary** solutions so that long-term options could be developed by subject landowners. Requests such as those above have become commonplace to the extent that multiple sand pushing projects are now completed annually on the north shore, and geotextile tarps and sandbags line several sections of

⁶ Fletcher, C.H., Romine, B.M., Genz, A.S., Barbee, M.M., Dyer, M., Anderson, T.R., Lim, S.C., Vitousek, S., Bochicchio, C. and Richmond, B.M., 2012. National assessment of shoreline change: Historical shoreline change in the Hawaiian Islands: U.S. Geological Survey Open-File Report 2011-1051, *available at*, <http://pubs.usgs.gov/of/2011/1051>.

⁷ See, https://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?id=1612340.

the shoreline along the greater Paumalu-Pupukea beach stretch.⁸ Staff admits that the situation is challenging for the homeowners, but the Department is also confronted by the lack of compliance and continued violations.

In 2020 the Legislature passed, and on September 15, 2020 the Governor of the State of Hawai'i signed into law, Act 016, which amended HRS Chapter 205A-2 regarding Coastal Zone Management, in relevant part, to include the following:

(B) Prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.

As such, the Department has not renewed the temporary emergency authorizations previously issued for the existing sandbag/burrito revetments, nor has the Department issued new authorizations.

The administrative rules recognizes that the propriety of allowing shoreline erosion control measures for private applicants requires a balance between the applicant's reasonable use of the land or building without the permit, the effect on beach processes or lateral public access, and compensation to the State for the loss of beach processes or lateral public access. HAR § 13-5-22 P-15(D-1).

The OCCL has been significantly challenged by recent events on the north shore over the past several years. The office has been trying to balance the security of the landowners with protection of the sand beach. Without intervention by the Department of Land and Natural Resources with a combination of authorizing sand pushing/shaping and soft erosion control measures, many shoreline homes would already be lost. Yet many homeowners have also installed, and continue to install, unauthorized erosion control structures without Department consent or authorization. The reality of the situation is that the north shore's ocean surf is an unpredictable, massive force that may not be managed.

Based on the presented evidence, the documented unauthorized temporary erosion control structure(s) and unauthorized erosion control measures sit upon State-owned public land and constitute land use violations. The Freemans did have Emergency CDUP OA 21-2 for temporary erosion control measures consisting of one ballast tube (burrito) and a tarp fronting Parcel 034, but it is clear that the existing erosion control structure is no longer compliant with what was authorized. Versions of the unauthorized structure in the subject area fronting Parcel 034 have failed due to the combination of high waves and tides, which are common for this area. The unauthorized structure has been reconstructed and modified without prior consultation or obtaining the appropriate

⁸ While these measures are currently mildly effective at protecting beachfront development, it is understood that sea level rise will render these temporary measures increasingly ineffective. For this reason, the OCCL encourages beachfront homeowners living on chronically eroding shorelines to take proactive measures, such as decreasing their building footprint and relocating structures to the extreme landward extent of their property boundaries.

authorizations. The Freemans did not obtain authorization from OCCL or obtain a land disposition or permission from the Board to utilize and occupy State lands.⁹

Based on previous correspondence with the Freemans regarding this matter, they are fully aware of their noncompliance, violations, and the need to consult with the OCCL to obtain authorization(s) prior to conducting work in the shoreline area. Yet, the Freemans or their agents have willfully continued to engage in unauthorized activities by continuing to install erosion control measures in the shoreline area fronting Parcel 034 in the subject area. OCCL has received or documented approximately twenty-two instances (on separate days) of willful violation occurring after the Department issued its written and verbal notifications to the Freemans directing them to cease such activities.

OCCL staff recommends that the Board issue fines and penalties allowed under its authority, as further described below.

FINDINGS AND CONCLUSIONS

Based on the above-summarized information:

1. The Freemans did in fact, authorize and cause:
 - The modification and placement of additional unauthorized erosion control measures and the construction of unauthorized shoreline erosion structure(s) upon public land within the State Land Use Conservation District, Resource Subzone;
 - There has been no land disposition allowing the Freemans to occupy public land by the erosion control measure(s);
2. Despite receiving verbal and written notice of their unauthorized activities from the OCCL starting in January 2022, the Freemans have failed to remove debris and past unauthorized erosion control structures fronting Parcel 034, and they have willfully continued to allow unauthorized work within the Conservation District in the subject area on at least twenty-two separate days or occasions; and,
3. That the unauthorized occupation of public land by the Freemans and/or their agents occurred upon submerged public land that lies within the State Land Use Conservation District, Resource Subzone.

STAFF RECOMMENDS

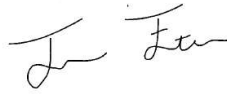
⁹ Because the emergency erosion control structure is installed in front of the portion of the property that is eroding, it is considered to be on the state submerged land. The Department requires an applicant for an emergency erosion control permit (such as to place sandbags on the beach) to apply for a Right of Entry or a Revocable Permit from the Board under HRS 171-55.

1. That the Board of Land and Natural Resources adopt the findings and conclusions set forth above and also impose the following administrative fines:
 - a. Pursuant to Section 183C-7, HRS, the Freemans may be fined up to \$15,000 for violating the provisions of Section 13-5-24, HAR, by failing to abide by the terms and conditions of Emergency CDUP OA 21-2 that required obtaining approval prior to performing modifications to the structure and/or installing new erosion control measures to construct a new erosion control structure on submerged land in the Conservation District Resource Subzone;
 - b. Pursuant to Section 183C-7, HRS, the Freemans may be fined up to \$15,000 per day per violation for each day in which the violation persist for violating the provisions of Section 13-5-24, HAR, by willfully violation these sections on twenty-two separate days and installing erosion control measures after receiving written and verbal notification from the Department to cease such activity on submerged land in the Conservation District Resource Subzone, and therefore may total \$330,000;
 - c. Pursuant to Section 171-6 (12), HRS, the Freemans may be fined up to \$1,000 per day for their failure to remove the encroachments upon public lands, accrual of such starting when they received notice on February 7, 2022, and therefore may total \$592,000;
 - d. Therefore, that the total fines and administrative costs that may be levied against the Freemans may be \$937,000, and that the Freemans shall pay all designated fines and administrative costs within ninety (90) days from the date of the Board's action;
2. That the Board of Land and Natural Resources authorizes the Department of the Attorney General to file a Notice of Pendency of Action with deed or deed instrument of Parcel 034 at the Bureau of Conveyances pursuant to Sections 171-6.4(c), 501-151, and 634-51, HRS;
3. That the Freemans, or a future owner of Parcel 034, shall remove all unauthorized erosion control materials and encroachments by July 1, 2024;
4. That the Freemans or a future owner of Parcel 034 shall remove or relocate the portions of the dwelling that are makai of the shoreline by July 1, 2024. That the Freemans or a future owner of Parcel 034 shall ensure that removal or relocation of the dwelling or portions of it that are makai of the shoreline comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
5. That the Freemans shall restore the subject area to a more natural state and the Department's satisfaction by July 1, 2024;
6. Regarding Recommendations 3 and 4, the Board authorizes the issuance of a right-of-entry permit to the Freemans or a future owner of Parcel 034 covering the subject area for removal of the shoreline erosion control device under the terms

and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - b. The right-of-entry shall expire on July 1, 2024 or upon the completion of the project, whichever is sooner; and,
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State;
7. That in the event the Freemans or a future owner of Parcel 034 fail to restore the shoreline area to a more natural state and to the Department's satisfaction by July 1, 2024, then the Freemans or a future owner of Parcel 034 shall be liable for all costs of removal incurred by the State or local government(s);
 8. That in the event of failure of the Freemans or a future owner of Parcel 034 to comply with any order imposed in connection with this enforcement action, they shall be fined an additional \$16,000 per day, pursuant to Sections 171-6(12) and 183C-7, HRS, until the order is complied with;
 9. That any extension of these deadlines will require the concurrence of the Board. Any request to extend these deadlines will require supportive information and documentation from the Freemans or a future owner of Parcel 034 as to why an extension may be warranted. Any extension request regarding these deadlines must be submitted to the Department *prior to* the deadline or any authorized extension thereof;
 10. That in the event of failure of Eric and Moniza Freeman or a future owner of Parcel 034 to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs;
 11. That the Board delegate authority to the Chairperson to effectuate the above recommendations, subject to such conditions as may be prescribed by the Chairperson to best serve the interest of the State, without further consultation with the Board, and subject to review and approval by the Department of the Attorney General; and
 12. The above noted conditions of Enforcement file OA 22-18 shall be recorded with the deed instrument by the Freemans at the Bureau of Conveyances (BOC – (808) 587-0147) pursuant to Section 13-5-6 (e), HAR.

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner
Office of Conservation and Coastal Lands

mc

Approved for submittal:



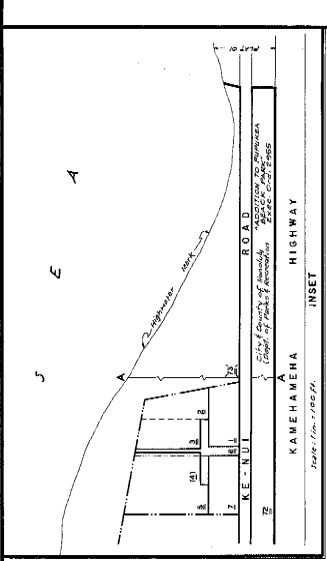
Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources

Exhibit List for K-1

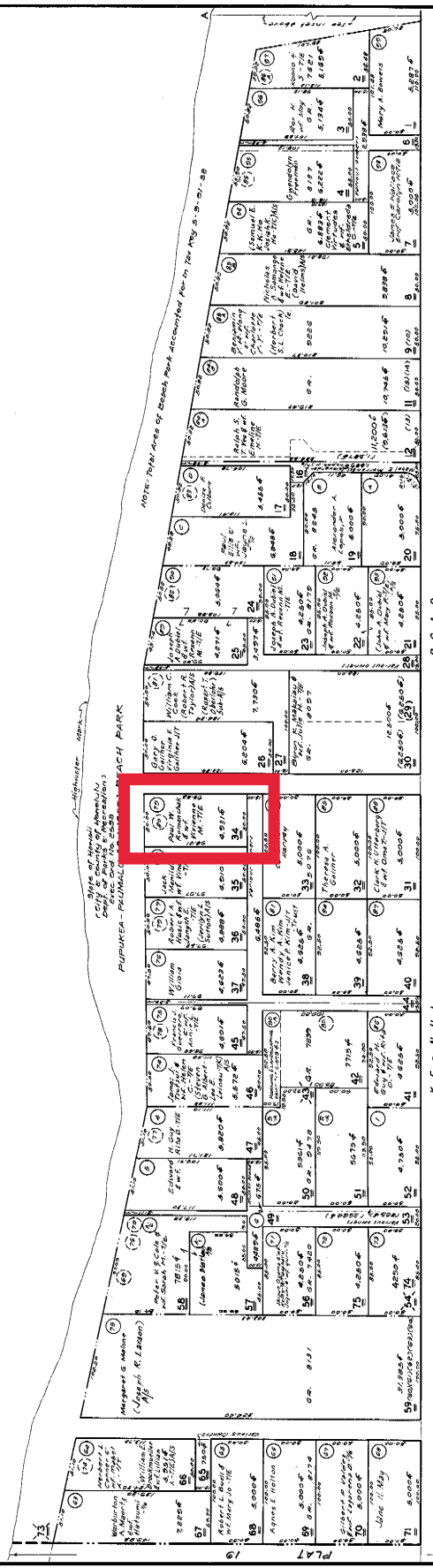
- Exhibit 1:** Location & Sea Level Rise Maps (pages 21-24)
- Exhibit 2:** C&CH Real Property Assessment Information, Hawai'i Cesspool Prioritization Tool Map, Airbnb.com add, and Freeman Deeds for Parcel 034 (pages 25-47)
- Exhibit 3:** UH Coastal Geology Group Erosion Rate Map (page 48)
- Exhibit 4:** Photographic History and Summary of Shoreline Area Fronting Parcel 034 from Approximately November 2013 to August 2021 (pages 49-61)
- Exhibit 5:** OCCL Photos of Shoreline Area Fronting Parcel 034 and Alleged Unauthorized Land Uses January 2022 to May 2023 (pages 62-94)
- Exhibit 6:** Settlement Agreement Contested Case OA 20-01 and ENF: OA 20-16 (pages 95-119)
- Exhibit 7:** Emergency Conservation District Use Permit (CDUP) OA 21-02 (pages 120-124)
- Exhibit 8:** Notification of Alleged Violation ENF: OA 22-18 Alleged Unauthorized Land Use Within the Conservation District seaward of Parcel 034 (pages 125-134)
- Exhibit 9:** Correspondence Letter COR: OA 22-122 Regarding Potential Unauthorized Land Uses within the Conservation District and Observed Continued Unauthorized Work (pages 135-141)
- Exhibit 10:** Freeman's Response to Notice of Alleged Violation ENF: OA 22-18 (pages 142-146)
- Exhibit 11:** Screenshot of Text Message Received from Individual Vacation Renting the Dwelling on Parcel 034 and Safety Concerns (pages 147-149)
- Exhibit 12:** February 6, 2023, OCCL Letter to the Freeman's Regarding ENF: OA 22-18 and Continued Unauthorized Land Uses and Work within the Conservation District (pages 150-183)
- Exhibit 13:** Freeman's February 27, 2023, Response Letter (page 184)



5 - 9 - 02 IST DIV



5 E A



PLAT 13

PLAT 12

PLAT 11

PLAT 10

PLAT 9

PLAT 8

PLAT 7

PLAT 6

PLAT 5

PLAT 4

PLAT 3

PLAT 2

PLAT 1

PLAT 19

PLAT 20

PLAT 21

PLAT 22

PLAT 23

PLAT 24

PLAT 25

PLAT 26

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PLAT 66

PLAT 67

PLAT 68

PLAT 69

PLAT 70

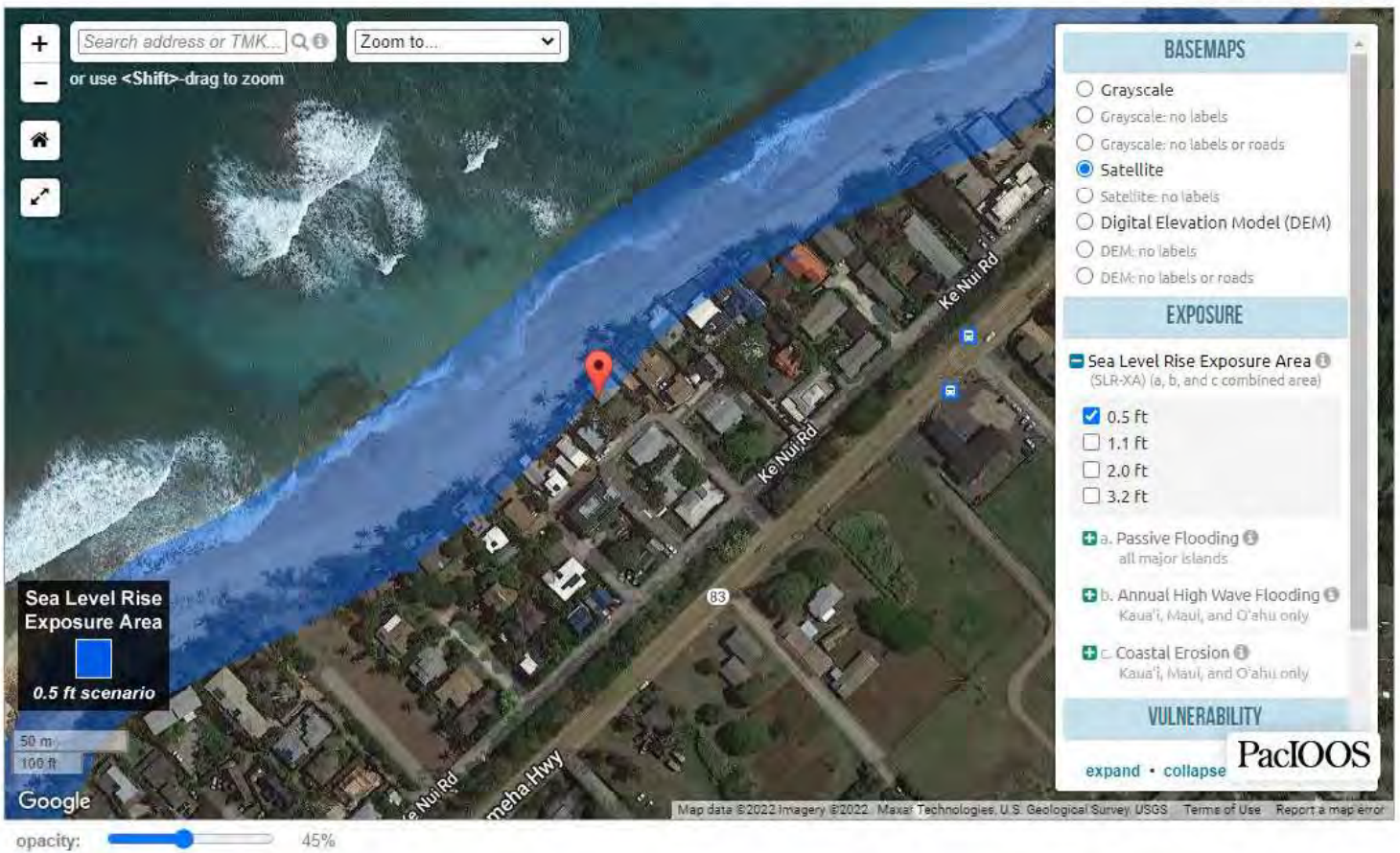
PLAT 71

PLAT 72

DEPARTMENT OF THE TALE COMMISSIONER	
TAXATION MAPS BUREAU	
STATE OF HAWAII	
TAX MAP	
FIRST	DIVISION
5	9
PLAT	02
CONTAINING	
SCALE 1" = 50 FT.	

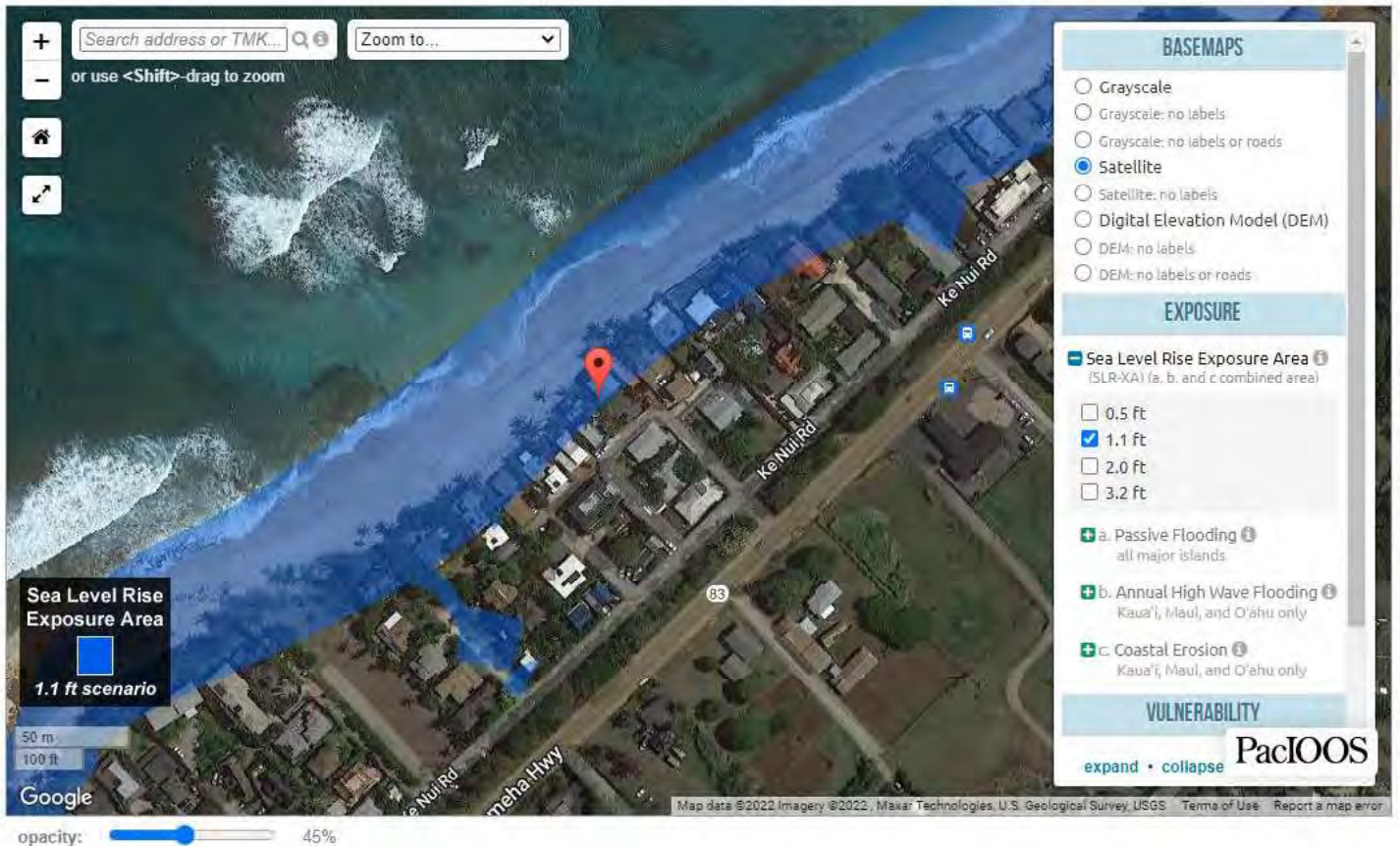
SUBJECT TO CHANGE

For PUPUEKA-PAUMALU BEACH LOTS, KOOLAULOA, OAHU.



Plat Area: (1) 5-9-002 TMK:
(1) 5-9-002:034 Marker

at 0.5-ft ≈ 2030 above
at 1.1-ft ≈ 2050 below



Sea Level Rise Projections For Modeling

Sea level rise exposure mapping in the 2017 Hawai'i Sea Level Rise Report is based on an upper-end projection of 3.2 feet of sea level rise by 2100 in the 5th Assessment Report (AR5) of the Intergovernmental Panel on Climate Change (IPCC)

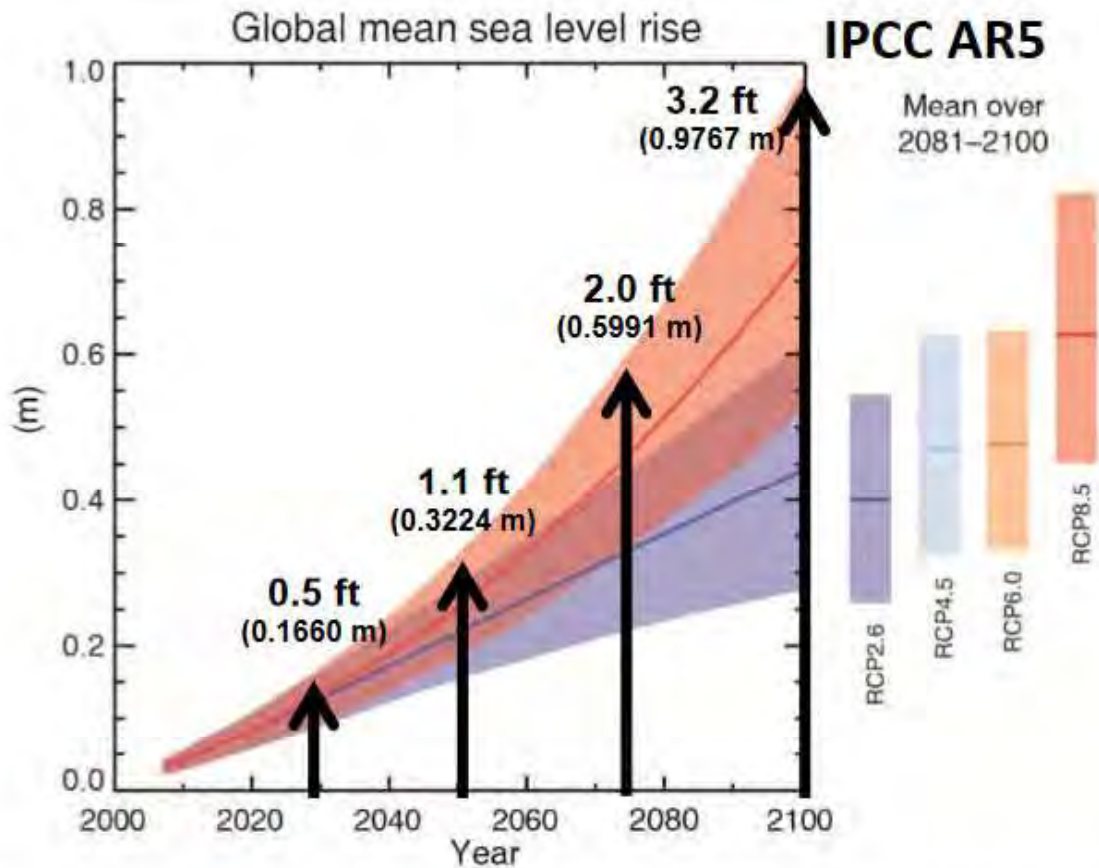


Figure 1. Projected GMSL rise under different greenhouse gas emissions scenarios from the IPCC AR5 Report.

As expected, the science on sea level rise observations and forecasts have continued to advance. Since completion of the 2017 Report, peer-reviewed scientific literature as well as government and multinational reports increasingly point to about 3 feet of sea level rise by 2100 as a mid-range, rather than high-end

Parcel Information

Parcel Number 590020340000
 Location Address 59-181 D KE NUI RD
 Project Name
 Legal Information LOT 79 "SUNSET BEACH LOTS" FP 256 4,931 SF UND 1/15 INT IN R-O-W OVER LOTS 74 TO 88, INCLUSIVE
 Property Class RESIDENTIAL A
 Land Area (approximate sq ft) 4,931
 Land Area (acres) 0.1132

[Plat Map PDF](#) [GIS Parcel Map](#)

Email us at bfsrmailbox@honolulu.gov regarding Supplemental Plat Map PDFs.

Owner Information

Owner Names
 59-181 KE-NUI LLC Fee Owner

Assessment Information

[Show Historical Assessments](#)

Assessment Year	Property Class	Assessed Land Value	Dedicated Use Value	Land Exemption	Net Taxable Land Value	Assessed Building Value	Building Exemption	Net Taxable Building Value	Total Property Assessed Value	Total Property Exemption	Total Net Taxable Value
2023	RESIDENTIAL A	\$2,122,100	\$0	\$0	\$2,122,100	\$750,400	\$0	\$750,400	\$2,872,500	\$0	\$2,872,500

2023 amended values not to be posted until new tax rates are processed on or after July 20.

[How to calculate real property taxes](#)

The Assessment Information section contains records for the last 10 years.
 For inquiries over 10 years and any other assessment data questions, please email the Real Property Assessment Division at bfsrmailbox@honolulu.gov

Appeal Information

Year	Appeal Type Value	Scheduled Hearing Date subject to change	Status
2016	TAX APPEAL COURT		Closed
2015	BOARD OF REVIEW	3/17/2015	Closed
2014	BOARD OF REVIEW	5/6/2015	Closed

Land Information

Land Classification	Square Footage	Acreage	Agricultural Use Indicator
RESIDENTIAL	4,431	0.1017	
RESIDENTIAL	500	0.0115	

[Department of Planning and Permitting \(DPP\)](#)

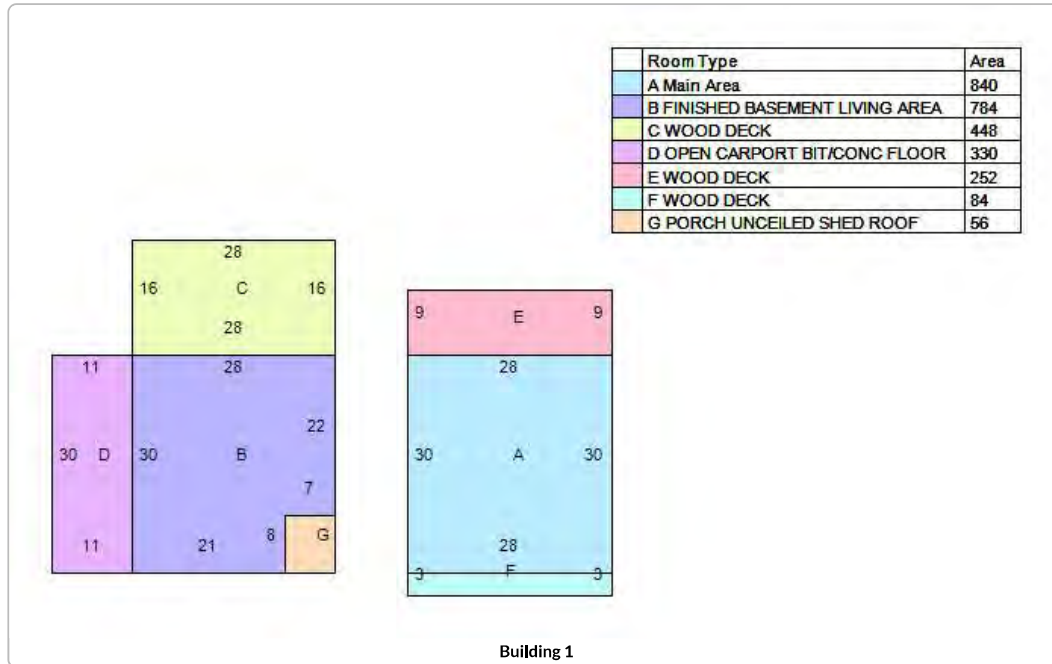
Residential Improvement Information

Building Number 1 Living Area 1,624
 Occupancy SINGLE-FAMILY Bedrooms 3
 Framing WOOD/SINGLE WALL Full Bath 2
 Year Built 1972 Half Bath 0
 Eff Year Built

Residential Additions

Card	Line	Lower	First	Second	Third	Area
1	0					840
1	1	FINISHED BASEMENT LIVING AREA				784
1	2	OPEN CARPORT BIT/CONC FLOOR				330
1	3	WOOD DECK				448
1	4		WOOD DECK			252
1	5		WOOD DECK			84
1	6	PORCH UNCEILED SHED ROOF				56

Sketches



Click on sketch to enlarge

Other Building and Yard Improvements

Description	Quantity	Year Built	Area
WOOD DECK RAILING	1	1972	80

Permit Information

Date	Permit Number	Reason	Permit Amount
1/15/2014	741232	REPAIR	\$25,000
9/4/2002	539046	OTHER WORK	\$750
5/7/1996	387858	REPAIR	\$650
7/16/1971	0104967		\$17,000

[Department of Planning and Permitting \(DPP\)](#)

Sales Information

Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Valid Sale	Date of Recording	Land Court		
							Document Number	Cert #	Book/Page
03/07/2022		A81240803	FEE CONVEYANCE	Quitclaim deed		03/30/2022			
12/26/2020	\$2,500,000	A76760259	FEE CONVEYANCE	Deed	Valid	01/06/2021			
08/29/2019	\$2,550,000	A71870082	FEE CONVEYANCE	Deed	Valid	09/05/2019			
02/14/2018	\$2,000,000	A-66260620	FEE CONVEYANCE	Deed	Valid	02/21/2018			
04/01/2008		2008-051163	FEE CONVEYANCE	Quitclaim deed		04/03/2008			
03/26/2008		2008-046816	FEE CONVEYANCE	Deed		03/27/2008			
03/20/2008	\$987,000	2008-047880	FEE CONVEYANCE	Deed		03/28/2008			
07/01/1992	\$10,100	93-050087	FEE CONVEYANCE	Deed		03/30/1993			
09/16/1987	\$295,000	8700144844	FEE CONVEYANCE		Valid	09/23/1987			21153/473

Recent Sales in Area

Sale date range:

From:

07/06/2020

To:

07/06/2023

Sales by Neighborhood

1500

Feet

Sales by Distance

Current Tax Bill Information

Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due
2023-1	Property Tax	08/21/2023	\$12,673.25	\$0.00	\$12,673.25	\$0.00	\$0.00	\$0.00	\$12,673.25
2023-2	Property Tax	02/20/2024	\$12,673.25	\$0.00	\$12,673.25	\$0.00	\$0.00	\$0.00	\$12,673.25
Tax Bill with Interest computed through 07/31/2023			\$25,346.50	\$0.00	\$25,346.50	\$0.00	\$0.00	\$0.00	\$25,346.50

[Treasury Division](#)

Pay online at www.rphnlpay.com

Other Payment Options [Click Here](#)

Please call Treasury Division at (808)768-3980 if you have questions on your balance.

Historical Tax Information

Year	Tax	Payments and Credits	Penalty	Interest	Other	Amount Due
2022	\$21,755.70	(\$21,755.70)	\$0.00	\$0.00	\$0.00	\$0.00
2021	\$15,277.20	(\$15,277.20)	\$0.00	\$0.00	\$0.00	\$0.00
2020	\$16,292.55	(\$16,292.55)	\$0.00	\$0.00	\$0.00	\$0.00
2019	\$17,963.10	(\$17,963.10)	\$0.00	\$0.00	\$0.00	\$0.00
2018	\$12,523.50	(\$12,523.50)	(\$375.71)	(\$132.75)	\$0.00	\$0.00
2017	\$10,003.50	(\$10,003.50)	(\$100.04)	\$0.00	\$0.00	\$0.00
2016	\$10,384.20	(\$10,384.20)	\$0.00	\$0.00	\$0.00	\$0.00
2015	\$9,733.20	(\$9,733.20)	\$0.00	\$0.00	\$0.00	\$0.00
2014	\$10,112.40	(\$10,112.40)	\$0.00	\$0.00	\$0.00	\$0.00

[Treasury Division](#)

[How to calculate real property taxes](#)

The Historical Tax Information section displays records for the last 10 years. For real property tax information inquiries over 10 years, please contact the Treasury division at bfstreasmailto@honolulu.gov or (808)768-3980.

Map



No data available for the following modules: Condominium/Apartment Unit Information, Agricultural Assessment Information, Commercial Improvement Information.

By using this website, you have read, understood, and agreed to the disclaimer, privacy statement, and policy.

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[Last Data Upload: 7/5/2023, 7:52:19 PM](#)

[Contact Us](#)



DCCA State of Hawaii

Downloaded on August 29, 2023.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

Business Information

MASTER NAME	59-181 KE-NUI LLC
BUSINESS TYPE	Domestic Limited Liability Company (LLC)
FILE NUMBER	246303 C5
STATUS	Active
ORGANIZED IN	Hawaii UNITED STATES
REGISTRATION DATE	Dec 2, 2020
MAILING ADDRESS	18302 IRVINE BLVD STE 300 TUSTIN, California 92780 UNITED STATES
TERM	AT-WILL
MANAGED BY	MEMBER(S)
AGENT NAME	UNITED STATES CORPORATION AGENTS, INC.
AGENT ADDRESS	1003 BISHOP ST STE 2700 HONOLULU, Hawaii 96813 UNITED STATES

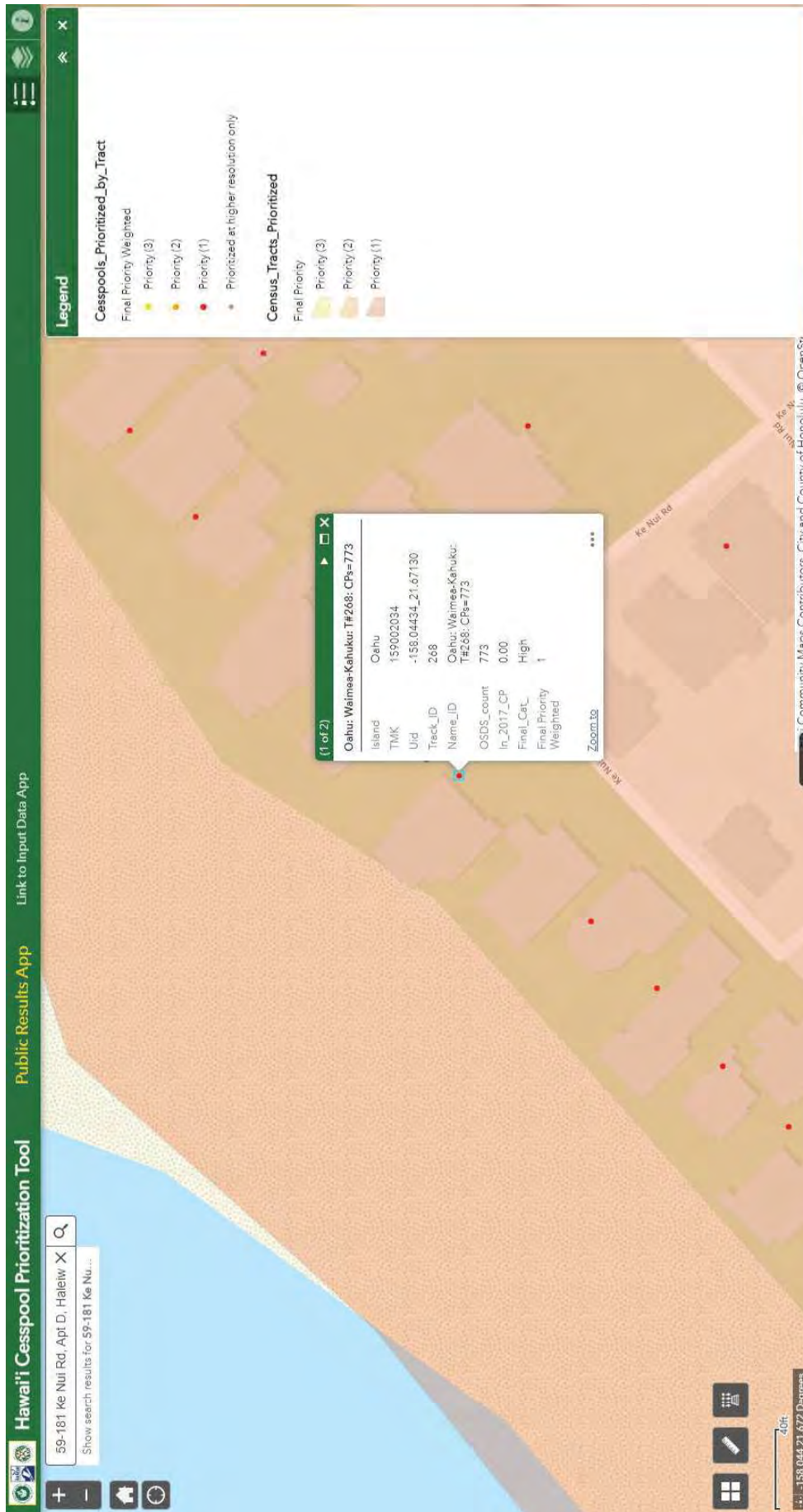
Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2022	Oct 10, 2022	Processed
2021	Nov 3, 2021	Processed

Officers

NAME	OFFICE	DATE
FREEMAN, MONIZA	MEM	Dec 2, 2020
FREEMAN, ERIC	MEM	Dec 2, 2020

Exhibit 2

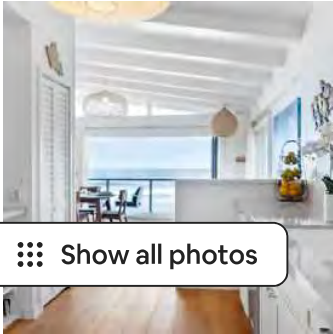


Source: <https://seagrant.soest.hawaii.edu/app/>

Ocean View Home steps to Sunset Beach

★ 5.0 · [4 reviews](#) · 🏠 Superhost · [Pupukea, Hawaii, United States](#)

[Share](#) [Save](#)



[Show all photos](#)

Entire home hosted by Gather Vacations



8 guests · 3 bedrooms · 7 beds · 2 baths



Dedicated workspace

A room with wifi that's well-suited for working.



Gather Vacations is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.



Free cancellation before Jul 31.

Welcome to Surfer's Paradise by Gather, the ultimate beachfront vacation rental on the North Shore of Oahu. With its clean, spacious, and uncluttered space, Surfer's Paradise is the perfect place to enjoy every second of your vacation.

...

[Show more >](#)

\$1,037 night

★ 5.0 · 4 reviews

CHECK-IN 8/30/2023	CHECKOUT 9/6/2023
GUESTS 1 guest ▼	

Reserve

You won't be charged yet

\$1,037 x 7 nights \$7,261

Cleaning fee \$845

Airbnb service fee \$1,144

Total before taxes \$9,250



[Report this listing](#)

Where you'll sleep













Bedroom 1
1 king bed



Bedroom 2
1 queen bed



What this place offers

-  Garden view
-  Ocean view
-  Public or shared beach access
-  Kitchen
-  Wifi
-  Dedicated workspace
-  Free street parking
-  60" HDTV
-  Free washer – In unit
-  ~~Carbon monoxide alarm~~

Show all 43 amenities

7 nights in Pupukea

Aug 30, 2023 - Sep 6, 2023



Su Mo Tu We Th Fr Sa Su Mo Tu

August 2023

See



★ 5.0 · 4 reviews

Cleanliness	5.0
Accuracy	4.8
Communication	5.0
Location	5.0
Check-in	5.0
Value	4.5

Cameron
June 2023

We had a wonderful time! Incredible location — will miss the sound of the waves. Can't wait to go back!

Keir
May 2023

Overall a great place in a beautiful spot. Nice beach out front and never crowded while we were there. We loved the location - it's pretty centrally located so that it didn't take too long to get to anything on the North Shore from the Polynesian Center to Haleiwa. The surrounding...

[Show more >](#)

Nicole
March 2023

We had a great stay. So relaxing. The deck and ocean view was incredible and we saw whales breaching every day! Falling asleep to the sound of the ocean was so nice. Hosts were super

https://www.airbnb.com/rooms/785222132346485053?adults=1&category_tag=Tag%3A7769&children=0&enable_m3_private_room=true&infants=0&... 4/9

7/7/23, 1:00 PM

Ocean View Home steps to Sunset Beach - Houses for Rent in Pupukea, Hawaii, United States - Airbnb

...waking every day, waking up to the sound of the ocean was so much more super

responsive and helpful! Would stay here again.

[Show more >](#)

Jordon

February 2023

AMAZING place. 10/10 on any scale.

Where you'll be

Pupukea, Hawaii, United States



Hosted by Gather Vacations

Joined in December 2016

★ 5,129 Reviews

✓ Identity verified

🏆 Superhost

Gather with us! Gather Vacation Rentals is the leading luxury property manager in the US. Gather

was founded in 2005 and our properties reflect our high standards of excellence. With over 100
https://www.airbnb.com/rooms/785222132346485053?adults=1&category_tag=Tag%3A7769&children=0&enable_m3_private_room=true&infants=0&...

7/7/23, 1:00 PM

Ocean View Home steps to Sunset Beach - Houses for Rent in Pupukea, Hawaii, United States - Airbnb

was founded in 2005 and our properties reflect our high standards of excellence. With over 400 professionally managed luxury homes available for vacation rentals, we are committed to making

sure that our vacation clients experience the very best in quality, delivery, and outstanding service. Our Vacation Rental Management Team reflects our high standards of excellence. With over 400 professionally managed luxury homes available for vacation rentals throughout the US, we are committed to ensuring our vacation clients experience the very best in quality, delivery, and outstanding service. Active Member of: - (VRMA) Vacation Rental Managers Association - (NAR) National Association of Realtors

Gather Vacations is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.

Policy number: 590020340000, TA-155-479-0912-01

Language: English

Response rate: 100%

Response time: within an hour

[Contact Host](#)

To protect your payment, never transfer money or communicate outside of the Airbnb website or app.



Things to know

House rules

Check-in after 4:00 PM

Checkout before 10:00 AM

8 guests maximum

[Show more >](#)

Safety & property

No carbon monoxide alarm

Smoke alarm

and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may herein specifically be set forth; 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.

For the valuable consideration as aforesaid, the Grantor has also sold, transferred, set over and delivered unto the Grantee, according to the tenancy herein set forth, the personal property described in Exhibit A, which personal property the Grantee shall have and hold, according to such tenancy, absolutely, the Grantor, in consideration of the premises, hereby covenanting with the Grantee that the Grantor is the lawful owner of such personal property; that the same is free and clear of and from all liens and encumbrances; that the Grantor has good right to sell and convey said personal property; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee, according to the tenancy herein set forth, against the lawful claims and demands of all persons.

The Grantee acknowledges the physical condition of the property and other improvements and the personal property (if any) constituting a part of the property described in Exhibit A and accepts same "AS IS" as of the date hereof, without any representations or warranties whatsoever, either express or implied, by the Grantor or any person on behalf of the Grantor, as to the condition, state of repair, operating order, safety, structural soundness or fitness thereof for any particular purpose. The AS IS covenants contained in this paragraph shall not run with the land.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, as **joint tenants**, their assigns, the survivor of them, their heirs, devisees, personal representatives and assigns.

The rights and obligations of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective heirs, devisees, personal representatives and assigns. All obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding 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.

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

[The remainder of this page is intentionally left blank - signature page(s) follow(s)]

[Signature]
GARY LEE STANLEY, JR.

[Signature]
CYNTHIA MONET SNOWDEN STANLEY

Grantor


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

On December 26, 2020, before me Karl J Davis, a notary public in the First Circuit of the State of Hawaii, personally appeared **GARY LEE STANLEY, JR. and CYNTHIA MONET SNOWDEN STANLEY**, proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person(s) executed the 5-page Warranty Deed dated December 26, 2020, as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: [Signature]
Print Name: Karl J Davis
Notary Public, State of Hawaii

My Commission Expires: May 20, 2022




ERIC FREEMAN


MONIZA FREEMAN

Grantee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____) SS.

On _____, before me, _____, a notary public, personally appeared **ERIC FREEMAN and MONIZA FREEMAN**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Signature 
(Seal)

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual(s) whose name(s) is/are subscribed to this certificate as attached, and not the truthfulness, accuracy, or validity of that statement.

State of California

County of Orange

Qualified in Los Angeles County

On December 28, 2020 before me, Michele Jefferson, notary public

personally appeared ERIC FREEMAN

Moniza Freeman

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



THE NOTARY COMMISSION EXTENDED PURSUANT TO EXECUTIVE ORDER N-71-20

OPTIONAL INFORMATION

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled for the purpose of Warranty Deed

containing 10 pages; and dated December 28, 2020

The signer(s) capacity or authority is/are as:

- Individual
 - Attorney-in-Fact
 - Corporate Officer(s)
 - Guardian/Conservator
 - Partner - Limited/General
 - Trustee(s)
 - Other
- representing _____

Method of Signer Identification

Proven to me on the basis of satisfactory evidence:

Personal identification Middle witnesses

Notarial event is preserved in video recording

Page # _____ Entry # _____

Other:

Additional Signer Signer(s) Representative

5

EXHIBIT A**Item I:****PARCEL FIRST:**

All of that certain parcel of land situate at Pupukea, Paumalu, District of Koolauloa, City and County of Honolulu, State of Hawaii, being Lot 79 of the "Sunset Beach Lots", as shown on File Plan Number 256, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 4,931 square feet, more or less.

PARCEL SECOND:

An undivided 1/15 interest in fee simple in and to all roads and right-of-way established by and designated upon said File Plan Number 256 in connection with Lots 74 to 88, inclusive, as shown on said File Plan Number 256; and together with a perpetual right-of-way over and right to use roads and rights-of-way in common with the owners of said Lot 74 to 88, inclusive.

Being all of the property described in Warranty Deed, dated August 29, 2019, recorded in said Bureau as Document No. A-71870082.

Subject, however, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. Shoreline setbacks: "Shoreline setbacks established pursuant to the laws of the State of Hawaii, or any political subdivision thereof, and any ordinances, rules or regulations adopted or promulgated by any governmental authority pursuant to such laws."
3. Seaward boundary: "Determination of the seaward boundary of the land described herein pursuant to the laws of the State of Hawaii."
4. As to SECOND, only: Rights of others who may own undivided interest(s), or have easement or access rights, in said parcel.
5. Any rights, interests or claims which may exist or arise by reason of the facts shown on a survey plat prepared by Arden J. Torcuato, Licensed Professional Land Surveyor, on January 30, 2018, Certificate No. 10257, as follows: A) Wood fence protrudes into subject parcel approximately 1.0 feet..

Item II:

All built-in furniture, attached existing fixtures, built-in appliances, electrical and/or gas and plumbing fixtures, attached carpeting, air conditioner - central, cable TV outlet, ceiling fan, dishwasher, dryer, existing window coverings, microwave, range w/oven, refrigerator, washer, water heater and all furniture and home goods, all located on and/or used in connection with the premises described in Item I above, and furnishings, as per inventory approved by the Grantee on November 28, 2020, referred to in Purchase Contract with a Reference Date of November 13, 2020, executed by and between the Grantor and the Grantee for the sale and purchase of the above described premises.

End of Exhibit A

0

lin



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

March 30, 2022 10:52 AM
Doc No(s) A - 81240803

/s/ LESLIE T KOBATA
REGISTRAR

Plg 11993558 CGG

Conveyance Tax \$0.00

Return by mail () pick-up ()

MIAMI SUEA LLC
1001 BISHOP ST. STE 2925
Hon. HI. 96813

Tax Map Key No.: (1) 5-9-2-34

Total Pages 5

QUITCLAIM DEED

THIS DEED, made this 7th day of March, 2022

by ERIC FREEMAN and MONIZA FREEMAN, husband and wife, [REDACTED]

[REDACTED] hereinafter collectively called the "Grantor", in favor of

59-181 KE-NUI LLC, a Hawaii Limited Liability Company, [REDACTED]

[REDACTED] hereinafter called the "Grantee;"

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 the Grantee, as **TENANT IN SEVERALTY, its successors and assigns, in fee simple:**

AND all of the estate, right, title and interest of the Grantor, both at law and in equity, therein thereto.


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 terms "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 taken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

THE PARTIES agree that this instrument may be executed in counterparts, each of which shall be deemed original and said counterparts shall together constitute one and the same agreement, binding all parties. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and acknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE(S) ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the Grantor has executed this instrument.

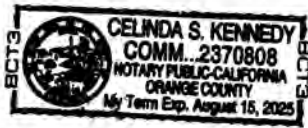

ERIC FREEMAN

Grantor

STATE OF CALIFORNIA)
COUNTY OF ORANGE)SS.

On this 7th day of March, 2022, before me personally appeared **ERIC FREEMAN**, to me known to be the person (or who provided satisfactory evidence of his/her identity) described in and who executed the foregoing **QUITCLAIM DEED** and being duly sworn, did say that such person is the person named in the foregoing instrument and acknowledged that such person executed the same as such person's free act and deed.





Print Name: Celinda S. Kennedy, Notary Public
Notary Public Aforementioned State
_____ Judicial Court

My commission expires: 8/15/25
Document Date: 3/7/22
Number of Pages: 5
Doc Description: Quitclaim Deed

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

EXHIBIT "A"

Item I:

PARCEL FIRST:

All of that certain parcel of land situate at Pupukea, Paumalu, District of Koolauloa, City and County of Honolulu, State of Hawaii, being Lot 79 of the "Sunset Beach Lots", as shown on File Plan Number 256, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 4,931 square feet, more or less.

PARCEL SECOND:

An undivided 1/15 interest in fee simple in and to all roads and right-of-way established by and designated upon said File Plan Number 256 in connection with Lots 74 to 88, inclusive, as shown on said File Plan Number 256; and together with a perpetual right-of-way over and right to use roads and rights-of-way in common with the owners of said Lot 74 to 88, inclusive.

Being all of the property described in Warranty Deed, dated December 26, 2020, recorded in said Bureau as Document No. A-76760259.

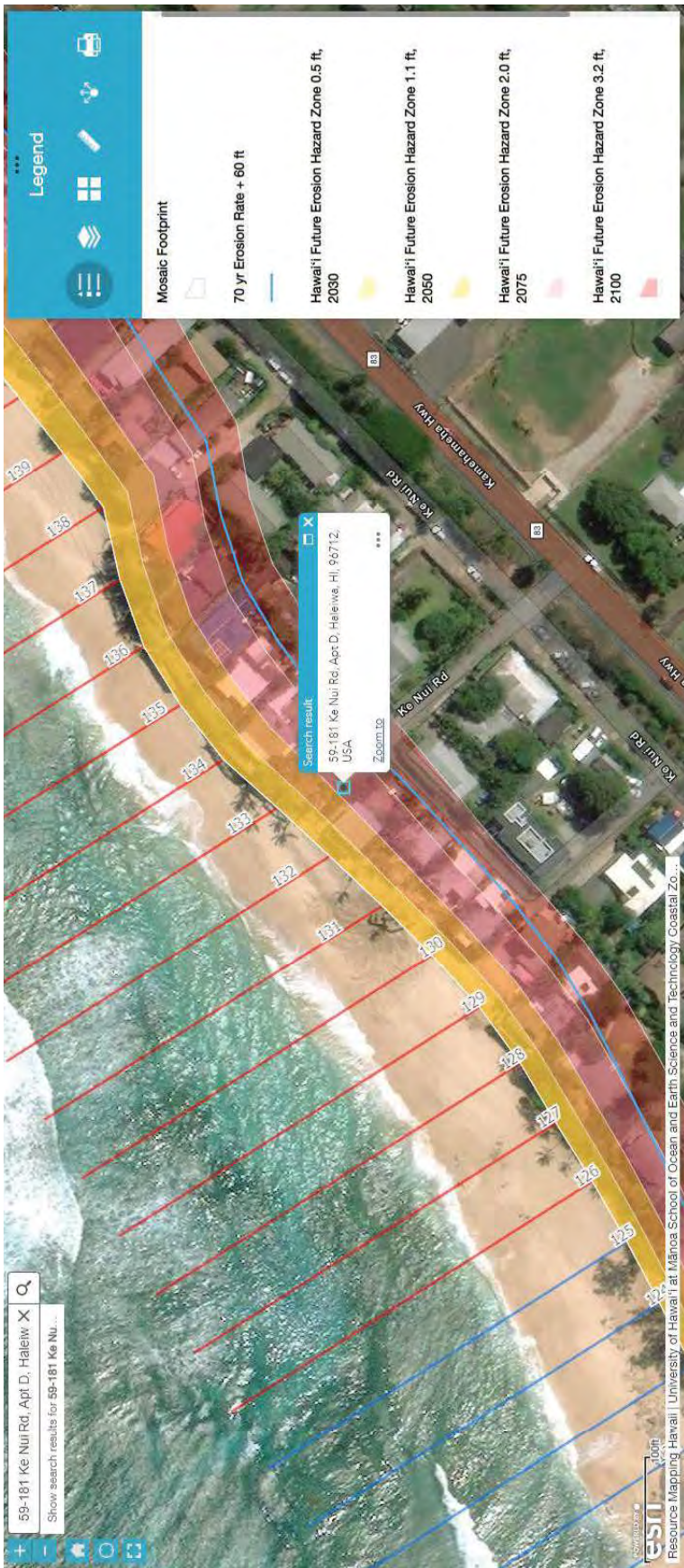
Item II:

All built-in furniture, attached existing fixtures, built-in appliances, electrical and/or gas and plumbing fixtures, attached carpeting, air conditioner - central, cable TV outlet, ceiling fan, dishwasher, dryer, existing window coverings, microwave, range w/oven, refrigerator, washer, water heater and all furniture and home goods, all located on and/or used in connection with the premises described in Item I above, and furnishings, as per inventory approved by the Grantee on November 28, 2020, referred to in Purchase Contract with a Reference Date of November 13, 2020, executed by and between the Grantor and the Grantee for the sale and purchase of the above described premises.

SUBJECT, HOWEVER, TO THE FOLLOWING:

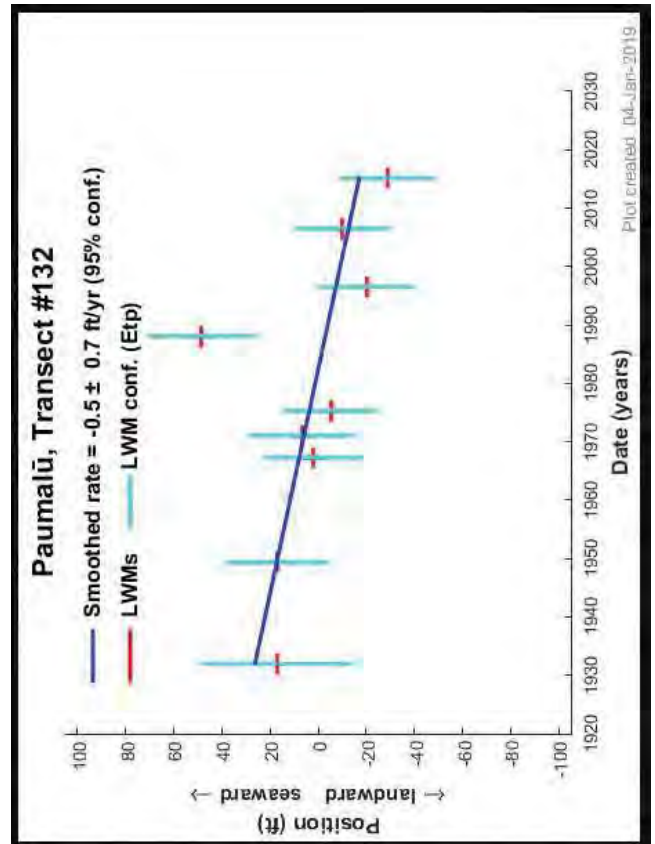
1. Title to all minerals, and metallic mines reserved to the State of Hawaii.
2. Shoreline setbacks: "Shoreline setbacks established pursuant to the laws of the State of Hawaii, or any political subdivision thereof, and any ordinances, rules or regulations adopted or promulgated by any governmental authority pursuant to such laws."
3. Seaward boundary: "Determination of the seaward boundary of the land described herein pursuant to the laws of the State of Hawaii."
4. As to SECOND, only: Rights of others who may own undivided interest(s), or have easement or access rights, in said parcel.
5. Any rights, interests or claims which may exist or arise by reason of the facts shown on a survey plat prepared by Arden J. Torcuato, Licensed Professional Land Surveyor, on January 30, 2018, Certificate No. 10257, as follows: A) Wood fence protrudes into subject parcel approximately 1.0 feet.

END OF EXHIBIT "A"



Source: <https://www.soest.hawaii.edu/crc/index.php/hawaii-shoreline-study-web-map/>

OCCL ENF: OA 22-18





11/14/2013 OCCL Photo of Shoreline Area Fronting the Subject Parcel



12/26/2013 OCCL Photo of Shoreline Area Fronting the Subject Parcel



12/28/2013 OCCL Photo of Shoreline Area Fronting the Subject Parcel



12/28/2013 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/14/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/14/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/22/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/22/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/10/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcel



4/10/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcel



10/23/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/26/2015 OCCL Photo of Shoreline Area Fronting the Subject Parcel



3/27/2015 OCCL Photo of Shoreline Area Fronting the Subject Parcel



9/10/2015 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/26/2016 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/26/2016 OCCL Photo of Shoreline Area Fronting the Subject Parcel



4/9/2017 OCCL Photo of Shoreline Area Fronting the Subject Parcel



4/9/2017 OCCL Photo of Shoreline Area Fronting the Subject Parcel



8/24/2017 OCCL Photo of Shoreline Area Fronting the Subject Parcel



10/6/2017 OCCL Photo of Shoreline Area Fronting the Subject Parcel



10/6/2017 OCCL Photo of Shoreline Area Fronting the Subject Parcel



3/19/2018 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/29/2019 OCCL Photo of Shoreline Area Fronting the Subject Parcel



3/21/2019 OCCL Photo of Shoreline Area Fronting the Subject Parcel



9/16/2019 OCCL Photo of Shoreline Area Fronting the Subject Parcel



8/18/2021 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/17/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/27/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/27/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/28/2022 Photo of Shoreline Area Fronting the Subject Parcel



1/30/2022 OCCL Photo of the Shoreline Area Fronting the Subject Parcel



1/31/2022 Photo of Shoreline Area Fronting the Subject Parcel



1/31/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/2/2022 Photo of Shoreline Area Fronting the Subject Parcel



2/2/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/3/2022 Photo of Shoreline Area Fronting the Subject Parcel



2/8/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/11/2022 Photo of Shoreline Area Fronting the Subject Parcel



2/13/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/18/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/28/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/28/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



3/7/2022 Photo of Shoreline Area Fronting the Subject Parcel



3/9/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



4/11/2022 OCCL Photo of Shoreline Area Fronting the Subject Parcel



1/27/2023 Photo of Shoreline Area Fronting the Subject Parcel



1/29/2023 Photo of Shoreline Area Fronting the Subject Parcel



1/30/2023 Photo of Shoreline Area Fronting the Subject Parcel



1/30/2023 Photo of Shoreline Area Fronting the Subject Parcel



2/1/2023 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/1/2023 OCCL Photo of Shoreline Area Fronting the Subject Parcel



2/4/2023 Photo of Shoreline Area Fronting the Subject Parcel



2/5/2023 Photo of Shoreline Area Fronting the Subject Parcel



2/5/2023 Photo of Shoreline Area Fronting the Subject Parcel



2/6/2023 Photo of Shoreline Area Fronting the Subject Parcel



2/8/2023 Photo of Shoreline Area Fronting the Subject Parcel



5/25/2023 Photos of Shoreline Area Fronting the Subject Parcel



5/26/2023 Photo of Shoreline Area Fronting the Subject Parcel



5/27/2023 Photo of Shoreline Area Fronting the Subject Parcel

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF	)	Case No. BLNR-CC-20-01
)	
A Contested Case Hearing Regarding Conservation	)	APPROVAL OF SETTLEMENT;
District Enforcement File Violation OA 20-16	)	CERTIFICATE OF SERVICE
For Alleged Unauthorized Structures Within)	
The Conservation District)	
By Gary and Cynthia Stanley)	
Located at Sunset Beach, Ko'olauloa,)	
County of Honolulu, Submerged Land Seaward of)	
Tax Map Key: (1) 5-9-002:034)	
_____)	

APPROVAL OF SETTLEMENT

Based on the record and files in this case, and upon the recommendation of the Hearing Officer dated April 30, 2020, the Board of Land and Natural Resources hereby approves the settlement of this case as proposed in the Motion for Review and Recommendation of Settlement Agreement and attached memorandum and exhibit, dated April 21, 2020.

DATED: May _____, 2020, Honolulu, Hawaii

Suzanne D. Case

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

 James A. Gomes, Member

 Thomas Oi, Member

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)
)
 A Contested Case Hearing Regarding Conservation)
 District Enforcement File Violation OA 20-16)
 For Alleged Unauthorized Structures Within)
 The Conservation District)
 By Gary and Cynthia Stanley)
 Located at Sunset Beach, Ko'olauloa,)
 County of Honolulu, Submerged Land Seaward of)
 Tax Map Key: (1) 5-9-002:034)
 _____)

Case No. BLNR-CC-20-01

APPROVAL OF SETTLEMENT;
CERTIFICATE OF SERVICE

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DATED: May _____, 2020, Honolulu, Hawai'i

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

James A. Gomes

James A. Gomes, Member

Thomas Oi, Member

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

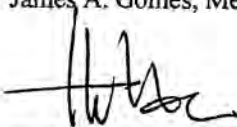
IN THE MATTER OF	)	Case No. BLNR-CC-20-01
)	
A Contested Case Hearing Regarding Conservation	)	APPROVAL OF SETTLEMENT;
District Enforcement File Violation OA 20-16	)	CERTIFICATE OF SERVICE
For Alleged Unauthorized Structures Within)	
The Conservation District)	
By Gary and Cynthia Stanley)	
Located at Sunset Beach, Ko'olauloa,)	
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Tax Map Key: (1) 5-9-002:034)	
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DATED: May _____, 2020, Honolulu, Hawai'i

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

James A. Gomes, Member


Thomas Oi, Member



Christopher J. Yuen, Member

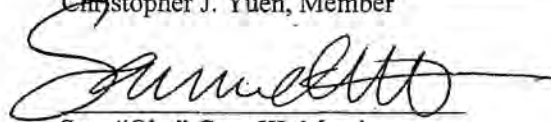
Sam "Olu" Gon, III, Member

Vernon Char, Member

Wesley "Kaiwi" Yoon, Member

Stanley Approval of Settlement

Christopher J. Yuen, Member



Sam "Ohu" Gon, III, Member

Vernon Char, Member

Wesley "Kaiwi" Yoon, Member

Stanley Approval of Settlement

Christopher J. Yuen, Member

Sam "Ohu" Gon, III, Member

Vernon Char

Vernon Char, Member

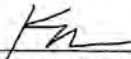
Wesley "Kaiwi" Yoon, Member

Stanley Approval of Settlement

Christopher J. Yuen, Member

Sam "Olu" Gon, III, Member

Vernon Char, Member


Wesley "Kaiwi" Yoon, Member

Stanley Approval of Settlement

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF	)	Case No. BLNR-CC-20-01
)	
A Contested Case Hearing Regarding Conservation	)	MINUTE ORDER NO. 6;
District Enforcement File Violation OA 20-16	)	CERTIFICATE OF SERVICE
For Alleged Unauthorized Structures Within)	
The Conservation District)	
By Gary and Cynthia Stanley)	
Located at Sunset Beach, Ko'olauloa,)	
County of Honolulu, Submerged Land Seaward of)	
Tax Map Key: (1) 5-9-002:034)	
_____)	

MINUTE ORDER NO. 6: HEARING OFFICER'S RESPONSE TO MOTION FOR REVIEW AND RECOMMENDATION OF HEARING OFFICER

On April 21, 2020, Counsel for the Department of Land and Natural Resources/Office of Conservation and Coastal Lands ("DLNR/OCCL") filed a Motion for Review and Recommendation of Settlement Agreement asking the Hearing Officer to review a proposed settlement of this contested case, and to recommend approval of the settlement agreement to the Board of Land and Natural Resources ("BLNR"). DLNR/OCCL attached a Memorandum in Support of Motion to its Motion for Review and Recommendation of Settlement Agreement, as well as the settlement offer from the Petitioners. On April 28, 2020, the Petitioners submitted a statement which supported DLNR/OCCL's Motion and the relief requested.

Before making a recommendation, the Hearing Officer would like to mention two points. First, he has not reviewed any evidence other than documents which have already been presented to the full Board. Hence, he cannot claim any special insight from his service as Hearing Officer. Second, he would normally be concerned about making a recommendation before formally hearing the evidence, because a recommendation typically involves assessing the merits of the case, which would be premature if the Board rejected the settlement. It seems, however, that both parties would like the Hearing Officer to make a recommendation at this time, and the

matter is fairly straightforward. Therefore, the Hearing Officer recommends approving the settlement agreement for the following reasons.

DLNR/OCCL had authorized the previous owner of this Sunset Beach property to place one sand-filled ballast tube and tarp as an emergency erosion control measure in February 2019. Shortly after purchasing the property, in September 2019, Petitioners installed an additional three ballast tubes, resulting in enforcement action by OCCL. Petitioners say their actions resulted from a misunderstanding of the prior owner's approval. When they discovered their work exceeded the prior approval, they reported it to DLNR and stopped work.

In the settlement agreement, Petitioners would remove the three additional ballast tubes, and pay the \$2,000 fine and \$1,000 in administrative costs requested by OCCL when it brought this matter to the Board at its November 8, 2019. The only difference between the proposed settlement and the request made by OCCL at that time is that the staff submittal, by asking for the removal of the erosion control structure "in its entirety," seemed to ask also for the removal of the one ballast tube and tarp originally authorized in February 2019. The emergency authorization had said it could be revoked if the ballast tube caused "flanking"—erosion to neighboring properties. The November 2019 staff submittal also said that the removal of the structure was requested because of the potential for flanking. It did not say that flanking had actually occurred.

The Hearing Officer believes that if the proposed settlement agreement is approved, and the one ballast tube remains: (1) DLNR could still revoke the emergency authorization if flanking occurs, and (2) Petitioners can apply for additional erosion control measures in the future like other landowners. This is the legal situation that existed before the unauthorized construction in September 2019.

The proposed settlement agreement is fair and reasonable, and the Hearing Officer recommends that the BLNR approve it.

DATED: Ninole, Hawai'i, April 30, 2020.

/s/ Christopher Yuen
CHRISTOPHER J. YUEN
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the matter of	)	BLNR Contested Case OA-20-01
)	
Contested Case Hearing Regarding	)	CERTIFICATE OF SERVICE
Conservation District Enforcement File)	
Violation OA 20-16 For Alleged)	
Unauthorized Structures Within The)	
Conservation District By Gary And Cynthia)	
Stanley Located At Sunset Beach,)	
Ko'olauloa, County of Honolulu,)	
Submerged Land Seaward of Tax Map Key:)	
(1) 5-9-002:034)	

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing document on the following persons by email on April 21, 2020:

Trevor J. Fitzpatrick
 The Office of Conservation and Coastal Lands (OCCL)
 1151 Punchbowl Street, Room 131
 Honolulu, Hawai'i 96813
 Email: trevor.j.fitzpatrick@hawaii.gov

Gregory W. Kugle
 Veronica A. Nordyke
 1003 Bishop Street, Suite 1600
 Honolulu, Hawai'i 96813
 Email: gwk@hawaiilawyer.com
 Email: van@hawaiilawver.com

Erin N. Lau
 Lili A. Young
 465 S. King Street, Third Floor
 Honolulu, Hawai'i 96813
 Email: erin.n.lau@hawaii.gov
 Email: lili.a.young@hawaii.gov

Christopher J. Yuen
Hearings Officer
[REDACTED]

DATED: Honolulu, Hawai'i, April 21, 2020.

/s/ William J. Wynhoff
WILLIAM J. WYNHOFF
Deputy Attorney General
Attorney for Department of
Land and Natural Resources

CLARE E. CONNORS 7936
Attorney General of Hawai'i

WILLIAM J. WYNHOFF 2558
Deputy Attorney General
Department of the Attorney
General, State of Hawai'i
465 King Street, Suite 300
Honolulu, Hawaii 96813
Telephone: (808) 587-2995

Attorneys for Department of Land and
Natural Resources

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the matter of	)	BLNR Contested Case OA-20-01
)	
Contested Case Hearing Regarding	)	MOTION FOR REVIEW AND
Conservation District Enforcement File	)	RECOMMENDATION OF SETTLEMENT
Violation OA 20-16 For Alleged	)	AGREEMENT
Unauthorized Structures Within The)	
Conservation District By Gary And Cynthia	)	MEMORANDUM IN SUPPORT OF
Stanley Located At Sunset Beach,	)	MOTION
Ko'olauloa, County of Honolulu,)	
Submerged Land Seaward of Tax Map Key:	)	EXHIBIT 1
(1) 5-9-002:034)	
	)	CERTIFICATE OF SERVICE
)	
	)	HEARING OFFICER: CHRISTOPHER J.
	)	YUEN
)	
	)	HEARING DATE: JULY 23, 2020

MOTION FOR REVIEW AND RECOMMENDATION OF SETTLEMENT AGREEMENT

The Department of Land and Natural Resources, respectfully asks the hearing officer to review the parties' attached settlement agreement and to recommend approval to the Board of Land and Natural Resources.

DATED: Honolulu, Hawai'i, April 21, 2020.

/s/William J. Wynhoff
William J. Wynhoff
Deputy Attorney General
Attorney for Department of
Land and Natural Resources

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the matter of	)	BLNR Contested Case OA-20-01
)	
Contested Case Hearing Regarding	)	MEMORANDUM IN SUPPORT OF
Conservation District Enforcement File	)	MOTION
Violation OA 20-16 For Alleged)	
Unauthorized Structures Within The)	
Conservation District By Gary And Cynthia)	
Stanley Located At Sunset Beach,)	
Ko'olauloa, County of Honolulu,)	
Submerged Land Seaward of Tax Map Key:)	
(1) 5-9-002:034)	

MEMORANDUM IN SUPPORT OF MOTION

BACKGROUND

Gary and Cynthia Stanley own a home on oceanfront real property near Sunset Beach. The home is threatened by sea level rise, erosion, and wave action. The Stanleys purchased the property in September 2019. Previous owners had received permission for erosion measures in state owned conservation district land makai of the Stanley property. Most relevantly, a previous owner received permission in February 2019 for temporary erosion control in the form of one ballast tube and tarp.

The Stanleys believed that the previous owner had OCCL's permission to install additional erosion measures. They did the work. When they found out that permission did not exist, the Stanleys stopped the work and self reported the problem to OCCL. The unauthorized work appears to consist of three additional ballast tube and related material.

This was a serious problem in OCCL's view. As OCCL stated in its Board submittal:

The beaches of Hawai'i are held in trust by the State for the benefit of present and future generations. The landowners of the subject property acted without authorization from the DLNR or the City and County of Honolulu. The State should be involved when individuals seek to construct any shoreline structure seaward of the shoreline; and there should be consequences when an individual unilaterally acts in such a way that endangers and potentially damages a public trust resource.

Moreover, OCCL did not necessarily rely on the Stanleys' statement that they had acted in good faith.

The matter came to the Board at its sunshine meeting on November 8, 2019. Before the Board reached a decision, the Stanleys asked for a contested case.

Christopher Yuen was appointed as hearing officer. The matter is set for a hearing on July 23, 2020.

DISCUSSION

The parties have agreed to settle this matter. The terms of the settlement are stated in counsel's letter attached as Exhibit 1. In summary, the Stanleys agree to remove the three ballast tubes installed without permission. Removal will occur within 60 days of Board approval of the settlement or within 60 days of lifting of relevant portions of the City and State stay at home orders, whichever is later.

In addition, the Stanleys will pay a \$2,000 fine and \$1,000 administrative expense within 30 days of Board approval of the settlement.

The parties all agree that this is a fair settlement. OCCL especially notes that settlement and removal forward the State's strong policy interest in protecting beaches and shoreline in a uniform matter.

The hearing officer is charged with conducting the contesting case and making a recommendation to the Board. The parties respectfully request that hearing officer review the

proposed settlement and recommend its adoption and approval by the Board. The only caveat or addition is that neither party can be completely certain that no other work was previously done. This proposed settlement covers only the three ballast tubes and related work. In the unlikely event that other work is later found, all parties reserve all their rights.

The parties are happy to provide any additional information that may be helpful to the hearing officer.

CONCLUSION

The parties respectfully request that hearing officer review the proposed settlement and recommend its adoption and approval by the Board.

DATED: Honolulu, Hawai'i, April 21, 2020.

()
/s/ William J. Wynhoff
WILLIAM J. WYNHOFF
Deputy Attorney General
Attorney for Department of
Land and Natural Resources

hawaiilawyer.com®

DAMON KEY LEONG KUPCHAK HASTERT
A LAW CORPORATION

March 23, 2020

Attorneys at Law

1003 Bishop Street, Suite 1600
Honolulu, Hawaii 96813-6432

Telephone (808) 531-8031
Facsimile (808) 533-2242
E-Mail: info@hawaiilawyer.com
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- Matthew T. Evans
- Tred R. Eyerly
- Kayla M. Fajala
- Diane D. Haertel
- Miyumi Honami
- Christine A. Kuhaja
- Gregory W. Kuplo
- Kenneth R. Kupchak
- Na Lan
- Denis C.H. Leong
- Megan L.M. Lim*
- David P. McCaulley
- Aclan N. Miller
- Cassy T. Miyashiro
- Mark M. Murakami
- Veronica A. Nordyke
- Anna H. Oshiro
- Laurel E. Pepe
- Loren A. Seehase
- Douglas C. Smith
- Robert H. Thomas†
- Ross Uehara-Tilton
- Kelly Y. Urwain
- Michael A. Yoshida
- Madeline M.V. Young†
- Jeanne C. Zeigler

Of Counsel

- Jed Kurzbart
- Judith A. Schevchuk

- C.F. Damon, Jr.
(1926-2017)
- Charles W. Key
(1929-2008)

Inactive

- †Admitted in Hawaii and Washington
- ‡Admitted in Hawaii and California
- *Admitted in Hawaii and Florida



Providing business clients
worldwide access to
sophisticated legal advice
and exceptional service.

VIA E-MAIL: Bill.J.Wynhoff@hawaii.gov

William J. Wynhoff, Esq.
465 S. King Street, Room 300
Honolulu, Hawaii 96813

Re: Case No. OA-20-01

Dear Mr. Wynhoff:

As you are aware, we represent Gary and Cynthia Stanley (“the Stanleys”) in BLNR Contested Case No. OA-20-01, concerning the placement of three ballast tubes seaward of 59-181 Ke Nui Road, Sunset Beach. This correspondence concerns settlement and is inadmissible for any purpose pursuant to Haw. R. Evid. 408.

The Stanleys purchased the property at 59-181 Ke Nui Road on September 6, 2019. Prior to the purchase, the Stanleys were informed by the Seller’s agents that DLNR/OCCL had granted a 3-year permit for temporary emergency erosion control measures and they were specifically informed that the existing ballast tube and tarp was authorized. They were further informed that the DLNR/OCCL permit allowed for the installation of additional ballast tubes above the existing one.

Based on these representations, the Stanleys closed the sale. Based upon their belief that additional ballast tubes were authorized, they retained the same contractor that installed the original ballast tube and tarp, and he installed three additional ballast tubes above/landward of the original ballast tube, up the erosion scarp. At that time, the Stanleys’ contractor requested a copy of the permit to maintain on site. On Friday, September 13, 2019, the Stanleys’ realtor contacted the Sellers’ realtor and obtained a copy of the email from Chair Case and Mr. Lemmo which approved the temporary emergency measures (attached as Exhibit “A”). It was only at that time that the Stanleys realized that DLNR/OCCL had only authorized a single ballast tube and tarp installation.

The Stanleys immediately self-reported to Chair Case on Saturday, September 14, 2019 (attached as Exhibit “B”). They immediately ceased doing any additional work. At that point, they were issued the Notice of Violation which is the subject of this Contested Case.

EXHIBIT 1

hawaiilawyer.com

DAMON KEY LEONG KUPCHAK HASTERT

William J. Wynhoff, Esq.
March 23, 2020
Page 2

Rather than put the State and themselves through the expense and delay of a contested case hearing, the Stanleys propose to resolve this matter as follows. Within sixty (60) days of a documented agreement, the Stanleys will remove the three ballast tubes which were installed without permission. The timing of the removal may have to be extended to accommodate contractor and DLNR/OCCL staff availability in light of the recent COVID 19 emergency declarations. However, it is the Stanleys' intent to remove the ballast tubes as quickly as possible. There is no flanking occurring on either side of the existing ballast tubes, which can be confirmed with a site inspection by OCCL whenever conditions permit. The Stanleys would also agree to pay the \$2,000 fine and \$1,000 administrative expense sought by OCCL, within thirty (30) days of a documented agreement.

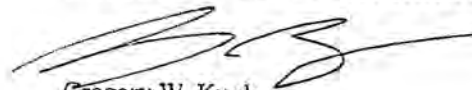
Such a settlement, if acceptable to the State, will result in the prompt removal of the unauthorized ballast tubes and return the area to the condition that existed before the tubes were added. It will also accomplish this result much quicker than may be accomplished through the contested case proceeding, and would return the situation to the status quo as authorized by DLNR/OCCL.

Thank you in advance for your consideration. This settlement offer will remain open for fourteen (14) days from the date of this letter. However, in recognition of the evolving state of affairs with respect to COVID 19, which is impacting the ability of both your office and DLNR/OCCL, if additional time is needed for consideration or approval, we will endeavor to accommodate the State.

Should you have any questions or comments, do not hesitate to contact the undersigned at 808-531-8031 or gwk@hawaiilawyer.com.

Very truly yours,

DAMON KEY LEONG KUPCHAK HASTERT



Gregory W. Kugle
Veronica A. Nordyke

GWK/VAN:rp
498298

Enclosures

cc: Gary and Cynthia Stanley

9/22/2019

Mail - The Stanleys - Outlook

Fwd: Fw: 59-181 Ke Nui Ballast Tube (burrito) Authorization from DLNR

Jerry Adamany [REDACTED]

Fri 9/13/2019 2:54 PM

To: The Stanleys [REDACTED]

Please review

----- Forwarded message -----

From: **scott langford** [REDACTED]

Date: Fri, Sep 13, 2019 at 9:53 AM

Subject: Fw: 59-181 Ke Nui Ballast Tube (burrito) Authorization from DLNR

To: Jerry Adamany [REDACTED]

Aloha Jerry,

Below is the email from Sam Lemmo, Administrator at DLNR, describing the ballast tube (burrito) and the tarp wrapped over and secured at the top, and asking for Suzanne Case (Chairperson) who he CC'd in the email, to concur and authorize with him on the installation of the ballast tube (burrito). The email above that is from Suzanne D. Case, the Chairperson of the DLNR, concurring with the action described by Sam for the ballast tube (burrito) to be installed.

Thanks,
Scott Langford
Fahrni Realty, Inc.
[REDACTED]

----- Forwarded message -----

From: **Case, Suzanne D**

Date: Thu, Feb 7, 2019 at 6:41 PM

Subject: RE: 59-181 Ke Nui

To: Lemmo, Sam J , Jillian Spaak

Cc: DLNR.CO.PublicDLNR <dlnr@hawaii.gov>, Habel, Shellie L

I concur with this temporary action described below.

I ask OCCL to keep an eye on the potential flanking issue, which may result in the temporary action authorized being revoked if necessary.

Suzanne D. Case

Chair, Dept. of Land & Natural Resources

State of Hawaii
1151 Punchbowl St. Room 130

EXHIBIT "A"

<https://outlook.live.com/mail/search/id/AQMkADAwATNiZmYAZC05ZTA0LTVMNGYtMDACLTAwCgBGAAADV2%2BJ8DFJ0kW%2BKxu7VgUa5gcAo2...> 1/3

9/22/2019

Mail - The Stanleys - Outlook

Honolulu, HI 96813

Ph: (808) 587-0401

suzanne.case@hawaii.gov

DLNR and State seals

From: Lemmo, Sam J
Sent: Thursday, February 7, 2019 3:59 PM
To: Jillian Spaak
Cc: DLNR.CO.PublicDLNR ; Habel, Shellie L ; Case, Suzanne D
Subject: RE: 59-181 Ke Nui

Flanking means that if you place anything at the shorefront erosion will be accelerated on either side of you – e.g., the erosion will focus on the property on either side of your and then your neighbor may also have an erosion problem.

I would like to know who is doing the work because we have had problems with the illegal installation of these systems.

If we authorize you, then all we are authorizing is one ballast tube at the base and then a tarp wrapped up over the back and secured at the top. If you proceed, you are proceeding at your own risk. We will come take a look after the swell and determine what happens next (e.g., removal/further permitting, etc.). If the material gets blown out, you will have to retrieve it promptly.

I am copying the Chair of the DLNR and she will need to concur with me.

Sam

<https://outlook.live.com/mail/search/id/AQMkADAwATNiZmYAZC05ZTA0LTVMNGYIMDAcLTAwCgBGAAADV2%2BJ8DFJ0kV%2BKxu7VgUa5gcAo2...> 2/3

9/22/2019

Mail - The Stanleys - Outlook

Jerry Adamany

Realtor® Associate , NAR, SRS, MRP

Aloha 'Aina Award Nominee 2018

Taniguchi & Associates of Keller Williams Honolulu RB 21303



A business card for Jerry Adamany. On the left is a black and white portrait of a man in a suit. To the right of the portrait, the text reads: **JERRY ADAMANY**, Realtor Associate, MRP, SRS (RS 79884), **TANIGUCHI & ASSOCIATES**. On the far right of the card is the Keller Williams logo with the word "Luxury" in a script font and "INTERNATIONAL" below it, with "RB 21303" at the bottom right.



Rochelle Panoke

From: The Stanleys [REDACTED]
Sent: Monday, November 04, 2019 5:10 PM
To: Gregory Kugle
Subject: STANLEY RESPONSE TO CEASE AND DESIST LETTER
Attachments: Attachment A.pdf; Attachment B.pdf; Attachment C.pdf; Attachment D.pdf

From: The Stanleys [REDACTED]
Sent: Tuesday, September 24, 2019 12:51 PM
To: salvatore.j.saluga@hawaii.gov <salvatore.j.saluga@hawaii.gov>
Cc: The Stanleys [REDACTED]
Subject: Fw: 59-181 D Ke Nui Ballast Tube

Mr. Saluga:

We are in receipt of Vio. OA-20-16 on 21 September from Ms. Suzanne Case as per a 16 September inspection of our property of 59-181 D Ke Nui Rd, Haleiwa, Hawaii.

I apologize firstly for beginning work as we had been told we had a proper 3 year permit to do so by the previous homeowner and person who put in the geotextile blanket and tubing. We immediately stopped once we found out we did not and we immediately (next day after discovering we did not have the permit) emailed Ms. Case (please see below) on 14 September to self-report the fixing and shoring up of the current approved geotextile blanket and tubing which was previously approved by Ms. Case with the prior homeowner (Attachment A).

I note that since this original approval, the severe erosion has continued and this has been exacerbated by an illegal tractor/bulldozer getting stuck in our geotextile blanket and tubing.

I believe the email below to Ms. Case explains the situation well but I would also like to add that we are requesting that we be allowed to put in additional ballasts up to a 45 degree angle to our back deck due to the severe seasonal erosion which, I believe would be allowed based on Hawaii Administrative Rules 13-5-2, as the erosion is within a distance of twenty feet or less (it is now 19 feet and appears to be advancing, please see Attachments B). The property is currently suffering from severe erosion consistent with other nearby houses that have been allowed such temporary measures and the property has seen:

1. A reduction of 12-15 feet of our back property so that the land erosion now goes all the way to our back deck
2. This erosion has also caused 7-9 feet of fencing to be washed away or to be removed
3. This erosion has also caused the properties stairs going to the beach to be washed away or to be removed
4. This erosion has in the past caused structural damage to the foundation which had to be corrected by putting in a 30 inch concrete support under the foundation slab on 3 sides and major support beams on both sides and the middle of the home

(please see Attachment C)

We respectfully request we be allowed these additional ballasts as a temporary control measure to combat this erosion as well as to reinforce the 20-25 foot scarp off our back deck.

Being the erosion is within 19 feet of our structure and is advancing, I believe under Hawaii Administrative Rules 13-5-35 this would allow for us to have an Emergency Permit to do the above and would respectfully and humbly ask that we be allowed to do so. I also note that many of our neighbors who were in similar circumstances (5-7 homes) have been allowed to do so and the approval of this temporary measure would be consistent with those previous authorizations (please see Attachment D)

We are standing by to meet with you and/or any inspectors as needed.

I very respectfully thank you for your time and look forward to working with you to resolve this matter.

Very Respectfully,

Gary and Cynthia Stanley

From: The Stanleys

Sent: Saturday, September 14, 2019 4:15 PM

To: suzanne.case@hawaii.gov <suzanne.case@hawaii.gov>

Cc: dlrr@hawaii.gov <dlrr@hawaii.gov>; Jerry Adamany [REDACTED]

Subject: 59-181 D Ke Nui Ballast Tube

Ms. Case:

I am writing you to apologize and to also ask for permission regarding a severe erosion issue to fix our current geotextile blanket and tubing and add tubing to a 45 degree angle to our deck which has a severe drop off.

My family and I just purchased on 9/6 the home of 59-181 D Ke Nui Rd, Haleiwa. The previous owner had received permission from you via email to put a geotextile blanket and tube to alleviate significant erosion issues which was damaging/imminently threatening to damage the foundation.

We were told that this severe erosion issue had happened to both previous owners and that the most recent had received a permit to put in geotextile blanket and tubing. We were also told that the previous owner before that had to fix significant foundation issues regarding this erosion.

We were also informed that our house is the same house where a tractor/bulldozer had illegally been pushing the sand next door on left if facing the ocean/nearby at the beach and got stuck and in the process damaging our geotextile blanket and tubing as we are the house next to the entrance where the bulldozer was trying to exit. We were told before buying this property that we had a 3 year permit regarding this geotextile blanket and tubing and that we could fix and add tubing to mitigate erosion concerns and the severe drop off on our back deck.

Before buying the property we had a structural engineer come out, Horst Brandes, who informed us that this house was experiencing extreme erosion, was one of the worst he had seen, and that it was "falling into the ocean". He also pointed out that most of our immediate neighbors had geotextile blanket and tubing or a seawall grandfathered in like our immediate next door neighbor (to the right if facing ocean).

However, we also spoke to before purchasing the property, the person who installed the geotextile blanket and tubing, Buddy Shepperd. He informed us that we had a permit that was good for 3 years regarding the geotextile blanket and tubes to mitigate any erosion issues and to fix the steep dropoff. He advised that the current system needed to be fixed and suggested adding additional tubes upon the failing current damaged system and to add tubes up to a 45 degree angle up to our deck where there is a steep dropoff. Based on this we bought the property.

Once we closed we began to try to mitigate this concern and added, using Buddy Shepperd, 3 additional tubes based on what we were told that we had a valid permit to do so.

We discovered last Friday, 9/13, when Buddy Shepperd, asked for our permit from the previous owner to have on site that we had installed tubes without a proper permit. We had begun the work based on the previous owner telling Mr. Shepperd to begin the work as "they had a permit" and thinking Mr. Shepperd already had a copy of this permit. It was not until we called our Real Estate Agent, Jeremy Adamany, cc'd, that we found out that we did not have the proper full permit.

We immediately ceased all work and do not intent to do more until we have the proper authorization.

We bought this property a week ago under the impression that we could fix/install our current geotextile blanket and tubing and that we could add additional tubing to shore up the current system and to alleviate the steep drop off right off our deck.

Honestly, we would not have bought this property knowing that we cannot fix our current system and install additional tubing to fix the drop off as there is already significant water erosion up to the deck, please see attached. This water erosion has also eroded/taken away part of our fence and plants, please also see attached. I note that that the current fence is now leaning due to the erosion and that this fence used to go out about 4-6 feet further but was destroyed due to erosion issues.

It came as quite a shock that we did not have the proper permit as it was represented. Knowing that we certainly would have not bought the property and most certainly would not have begun work without the proper permits.

Again we discovered this on Friday and are emailing on Saturday (next day) to humbly ask that we be allowed to complete the mitigation work to a 45 degree angle up to the deck or in the alternative keep the additional tubing that we have put in to fix the current geotextile blanket and tubing damaged by the bulldozer.

We have 6 children (kind of snuck up on us☺) and this is where we want to raise our children. We want this to be a safe place (severe drop off on deck) and also structurally sound. We thought we were doing the right and sensible thing for our family and our home.

I sincerely apologize for this issue. We thought that we were doing the right thing and that we were fully permitted. Once we found out, we wanted/want to do this correctly and humbly ask for your permission to complete this work. In the alternative, we would ask that we be permitted to keep the additional tubing that we did installed to fix the damaged geotextile blanket and tubing system.

We will and are standing by to do whatever is necessary to fix our error. Again we thought we were permitted and humbly apologize for this.

Can you please advise what our next step would be to proceed forward?

We have stopped all work immediately and will not proceed in any way until we have compliance/permission.

Very Respectfully,

Gary Stanley

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE B. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
ROBERT H. MASEDA
FIRST DEPUTY
N. SALFO MARTEL
DEPUTY DIRECTOR - WATER
AGRICULTURAL RESOURCES
WATER AND OCEAN RECREATION
BUREAU OF CONVEYANCE
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RECREATION DEPARTMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAROLINE BELAND ROBERTS
COMMISSIONER
LAND
STATE PARKS

Ref: OCCL:SH
Gary Stanley
59-181D Ke Nui Road
Haleiwa, HI 96712

Emergency OA-21-02

Dear Mr. Stanley,

Subject: RE: Request for Authorization – Temporary Erosion Control 59-181D Ke Nui Road, Haleiwa, HI 96712; Tax Map Key No. (1) 5-9-002:034

The Department of Land and Natural Resources (DLNR) is responding your request received on August 28, 2020, to repair/replace a protective temporary erosion control structure composed of geotextile material (the Temporary Structure) along approximately 50 feet of shoreline fronting the subject property located at 59-181D Ke Nui Road, Haleiwa, HI 96712; Tax Map Key No. (1) 5-9-002:034. Authorization for installation of the Temporary Structure was granted on February 7, 2019 as part of an email sent by the Chair of the DLNR, Suzanne Case, which states, *"I concur with this temporary action described below. I ask OCCL to keep an eye on the potential flanking issue, which may result in the temporary action authorized being revoked if necessary."* The Temporary Structure has since failed due to ongoing seasonal and chronic erosion. According to your request, you are proposing to repair/replace the structure and obtain a formal authorization for its installation. The proposed project is intended to protect the inhabited structure from further coastal erosion and potential structural failure until long-term planning for management/accommodation of erosion can be undertaken.

The coastal environment at the subject property is characterized by a seasonally-variable beach backed by an elevated (about 20 to 25 feet) sand berm. This active high-wave berm feature underlies many of the shore-front properties along the North Shore. Erosion from seasonal waves combined with a long-term trend of beach erosion, has created a steep eroded bank (scarp) in the backshore berm, which you state poses a threat to the single-family residence on the subject property.

The DLNR understands that most of the proposed activities will occur on State land, makai of where the shoreline would likely be determined based on *HAR §13-222 (Shoreline Certification)*. The proposed plan is to install a geotextile blanket along the erosion scarp, anchored at the base by one (1) sand filled tube constructed of the same geotextile fabric, and staked/anchored at the top of the scarp. Sand from the beach directly seaward of the subject property will be used to fill the ballast tube. The structure will be constructed by hand.

DLNR authorizes the placement of the Emergency Temporary Shoreline Protection described above along approximately 50 feet of erosion scarp fronting the subject property, in an effort to protect public health, welfare, and safety on the subject property under *HAR §13-5-35, Emergency Permits (a)* *"Notwithstanding any provision of this chapter, the chairperson or deputy director of the*

Emergency OA-21-02

department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department."

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

Prior to structure installation, you shall remove debris that have been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area. Subsequent erosion control efforts that call for modification, other than maintenance of the authorized structure will require a new application. No new material shall be added to the subject structure without additional authorization from DLNR OCCL. If flanking or exacerbated erosion occurs on neighboring properties subsequent to installation of the structure, the DLNR may require that the structure be removed in its entirety. We would also like to remind you that such structures are authorized to remain in place for a predetermined amount of time. The structure is considered a temporary means of controlling the shoreline erosion with the understanding that long-term planning for management/accommodation of erosion be undertaken within this authorization period.

Further, any materials that become liberated or slackened from the structure must be immediately removed from the beach or ocean. Prior to structure installation, the permittee shall remove any debris that has been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area.

Terms and Conditions

The DLNR has no objections to the placement of the Emergency Temporary Shoreline Protection described above along the erosion scarp fronting the subject property, at TMK (1) 5-9-002:034, provided that you adhere to the following Terms and Conditions:

1. It is understood that the Emergency Temporary Shoreline Protection is a temporary response to address a safety hazard to an existing single family home on the subject property, which is threatened by both chronic and seasonal beach erosion. The material is authorized as a temporary erosion control measure for three (3) years from the date of issuance of this letter. This authorization replaces the original authorization provided by the DLNR Chair in her Feb. 7, 2019 email. Subsequent erosion control efforts that call for modification, other than maintenance of the proposed structure will require a new application. At the end of 3 years the materials shall be removed;
2. If flanking or exacerbated erosion occurs on neighboring properties, the DLNR may require that the permittee remove the structure in its entirety.

Emergency OA-21-02

3. The permittee will submit a completion report for the project to DLNR Office of Conservation and Coastal Lands (OCCL) within ninety (90) days of completion of construction of the temporary structure. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of the beach conditions since installation. The report will also include a photo summary of the temporary structure and beach conditions with documentation of any alterations or repairs;
4. The permittee shall contact DLNR Land Division at (808) 587-0430 and secure a Right of Entry Permit incorporating the most current terms and conditions for the use of State lands, prior to entering onto State lands for this project. The permittee shall also contact the Oahu Department of Planning and Permitting at (808) 768-6743 to secure a Right of Entry Permit for use of the public access way;
5. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
6. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
7. The permittee shall comply with all applicable department of health administrative rules;
8. Unless otherwise authorized, any work or construction to be done on the land shall be completed within 180 days of the approval of such use. The permittee shall notify the department in writing at least 24 hours prior to initiating construction and when it is completed;
9. Work shall be conducted at low tide to the most practical extent possible and no work shall occur during high surf or ocean conditions that will create unsafe work or beach conditions;
11. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project. All barriers shall be removed once the project is complete to allow full public access laterally along the beach and alongshore walkway;
12. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and minimize silt in nearshore waters and clean up fuel; fluid or oil spills immediately for projects authorized by this letter. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance;
13. All placed material shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality;
14. Any materials that become liberated from the structure must be immediately removed from the beach or ocean. Failure by the applicants to retrieve/resecure material, upon request by the DLNR, will result in fines of up to \$15,000/day;

Emergency OA-21-02

15. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this letter;
16. Prior to structure installation, the permittee shall remove debris that has been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area;
17. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
18. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization;
19. In issuing the permit, the department and the Chairperson have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
20. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
21. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
22. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
23. The activity shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
24. The activity shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
25. No motorized construction equipment is to be operated in the water at any time;
26. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
27. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

Emergency OA-21-02

- 28. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 29. At the conclusion of work, the applicant shall clean and restore the site to a condition acceptable to the Chairperson;
- 30. The DLNR reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary;
- 31. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Should you have any questions pertaining to this letter, please contact Dr. Shellie Habel, Sea Grant Extension Agent and Coastal Lands Program Coordinator at DLNR OCCL, at (808) 587-0049 or Shellie.L.Habel@hawaii.gov.

Sincerely,

Suzanne D. Case

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

CC: LAND
DOCARE
DPP

I concur with the conditions of this letter:

E. J. M...

Applicant

Date 4 Sep 20

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
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: OA 22-18

Jan 28, 2022

NOTICE OF ALLEGED VIOLATION

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

7020 2450 0000 0357 8337

Eric Freeman
Moniza Freeman



SUBJECT: Alleged Unauthorized Land Use Within the Conservation District
Located at 59-181D Ke Nui Road
Por. Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:034 (seaward)

Dear Landowners:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL)'s attention that there has been work done within the Conservation District without our authorization. A site inspection conducted on 1/27/2022 revealed ongoing work in the shoreline area consisting of the installation of erosion control materials and sandbags without the DLNR's authorization. Photos of the alleged unauthorized work and installation of erosion control materials are attached as *Exhibit 1* and *Exhibit 2*.

According to OCCL files, the Chair of the Board of Land and Natural Resources approved Emergency CDUP OA 21-02 for the repair and replacement of temporary erosion control measures fronting the subject property. The permit allowed for the installation of a geotextile blanket along approximately 50 feet of erosion scarp fronting TMK: (1) 5-9-002:034, anchored at the base by one (1) sand filled tube constructed of the same geotextile fabric, and staked/anchored at the top of the scarp. Emergency CDUP OA 21-02 states *Subsequent erosion control measure efforts that call for modification, other than maintenance of the authorized structure will require a new application. No new material shall be added to the subject structure without additional authorization from DLNR OCCL.* Condition 14 of Emergency CDUP OA 21-02 states *Any materials that become liberated from the structure must be immediately removed from the beach or ocean. Failure by the applicants [permittees] to retrieve/resecure material, upon request by the DLNR, will result in fines of up to \$15,000/day.*

REF: OCCL: TF
Eric & Moniza Freeman

ENF: OA 22-18

Additionally, Condition 18 of Emergency CDUP OA 21-02 states *Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization.* A copy of Emergency CDUP OA 21-02 is attached as **Exhibit 3**.

According to OCCL files, there appears to be no authorizations for these land uses. Pursuant to Hawaii Administrative Rules (HAR) §13-5-2, "land use" is defined as (1) the placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs; (2) the grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land; (3) the subdivision of land; or (4) the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land. Additionally, pursuant to HAR §13-5-2, the "Shoreline" is defined as *the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, Hawaii Revised Statutes (HRS)*. Lands makai of the shoreline are under the jurisdiction of the State of Hawaii DLNR.

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

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

1. The construction of an erosion control structure has been placed seaward of TMK: (1) 5-9-002:0037 and located within the State Land Use Conservation District, Resource Subzone;
2. Pursuant to §13-5-22 P-15 (D-1), HAR, "Shoreline Erosion Control " is a regulated land use as stated below:
 - a. *Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification;*
3. These land uses were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR; and

REF: OCCL: TF
Eric & Moniza Freeman

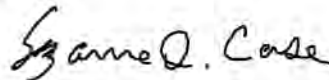
ENF: OA 22-18

4. The land uses have occurred on public land owned by the State without authorization or permission from the State as landowner.

We recommend that you stop all work and remove the erosion control structure and other unauthorized materials located within the shoreline area within 30 days of receipt of this order. Pursuant to HRS, 171-6, the Board of Land and Natural Resources may bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall: (a) Be fined not more than \$1,000 a day for the first offense; (b) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter; (c) If required by the board, restore the land to its original condition if altered and assume the costs thereof; (d) Assume such costs as may result from adverse effects from such restoration; and (e) Be liable for administrative costs incurred by the Department and for payment of damages. Additionally, with regards to alleged unauthorized land use(s) in the State Land Use Conservation District, pursuant to 183C-7(b), HRS, the Board of Land and Natural Resources (Board) may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs and costs associated with land or habitat restoration, or both, if required, and damages to state land. Should you fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists. Failure to comply with any part of the letter mentioned above will result in the matter being forwarded to the Board for formal action.

Please respond to this Notice in writing within thirty (30) days. Please note any information provided may be used in civil proceedings. If we do not receive a response within thirty (30) days, we will proceed with enforcement actions. Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at trevor.j.fitzpatrick@hawaii.gov.

Sincerely,



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

MC

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



Exhibit 1: Taken 1/27/2022



Exhibit 2: Taken 1/27/2022

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

Ref: OCCL:SH
Gary Stanley
59-181D Ke Nui Road
Haleiwa, HI 96712

Emergency OA-21-02

Dear Mr. Stanley,

Subject: RE: Request for Authorization – Temporary Erosion Control 59-181D Ke Nui Road, Haleiwa, HI 96712; Tax Map Key No. (1) 5-9-002:034

The Department of Land and Natural Resources (DLNR) is responding your request received on August 28, 2020, to repair/replace a protective temporary erosion control structure composed of geotextile material (the Temporary Structure) along approximately 50 feet of shoreline fronting the subject property located at 59-181D Ke Nui Road, Haleiwa, HI 96712; Tax Map Key No. (1) 5-9-002:034. Authorization for installation of the Temporary Structure was granted on February 7, 2019 as part of an email sent by the Chair of the DLNR, Suzanne Case, which states, *"I concur with this temporary action described below. I ask OCCL to keep an eye on the potential flanking issue, which may result in the temporary action authorized being revoked if necessary."* The Temporary Structure has since failed due to ongoing seasonal and chronic erosion. According to your request, you are proposing to repair/replace the structure and obtain a formal authorization for its installation. The proposed project is intended to protect the inhabited structure from further coastal erosion and potential structural failure until long-term planning for management/accommodation of erosion can be undertaken.

The coastal environment at the subject property is characterized by a seasonally-variable beach backed by an elevated (about 20 to 25 feet) sand berm. This active high-wave berm feature underlies many of the shore-front properties along the North Shore. Erosion from seasonal waves combined with a long-term trend of beach erosion, has created a steep eroded bank (scarp) in the backshore berm, which you state poses a threat to the single-family residence on the subject property.

The DLNR understands that most of the proposed activities will occur on State land, makai of where the shoreline would likely be determined based on *HAR §13-222 (Shoreline Certification)*. The proposed plan is to install a geotextile blanket along the erosion scarp, anchored at the base by one (1) sand filled tube constructed of the same geotextile fabric, and staked/anchored at the top of the scarp. Sand from the beach directly seaward of the subject property will be used to fill the ballast tube. The structure will be constructed by hand.

DLNR authorizes the placement of the Emergency Temporary Shoreline Protection described above along approximately 50 feet of erosion scarp fronting the subject property, in an effort to protect public health, welfare, and safety on the subject property under *HAR §13-5-35, Emergency Permits (a)* "Notwithstanding any provision of this chapter, the chairperson or deputy director of the

Exhibit 3: Emergency CDUP OA 21-02

Emergency OA-21-02

department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department."

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

Prior to structure installation, you shall remove debris that have been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area. Subsequent erosion control efforts that call for modification, other than maintenance of the authorized structure will require a new application. No new material shall be added to the subject structure without additional authorization from DLNR OCCL. If flanking or exacerbated erosion occurs on neighboring properties subsequent to installation of the structure, the DLNR may require that the structure be removed in its entirety. **We would also like to remind you that such structures are authorized to remain in place for a predetermined amount of time. The structure is considered a temporary means of controlling the shoreline erosion with the understanding that long-term planning for management/accommodation of erosion be undertaken within this authorization period.**

Further, any materials that become liberated or slackened from the structure must be immediately removed from the beach or ocean. Prior to structure installation, the permittee shall remove any debris that has been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area.

Terms and Conditions

The DLNR has no objections to the placement of the Emergency Temporary Shoreline Protection described above along the erosion scarp fronting the subject property, at TMK (1) 5-9-002:034, provided that you adhere to the following Terms and Conditions:

1. It is understood that the Emergency Temporary Shoreline Protection is a temporary response to address a safety hazard to an existing single family home on the subject property, which is threatened by both chronic and seasonal beach erosion. The material is **authorized as a temporary erosion control measure for three (3) years** from the date of issuance of this letter. This authorization replaces the original authorization provided by the DLNR Chair in her Feb. 7, 2019 email. Subsequent erosion control efforts that call for modification, other than maintenance of the proposed structure will require a new application. At the end of 3 years the materials shall be removed;
2. If flanking or exacerbated erosion occurs on neighboring properties, the DLNR may require that the permittee remove the structure in its entirety.

Exhibit 3: Emergency CDUP, OA 21-02

Emergency OA-21-02

3. The permittee will submit a completion report for the project to DLNR Office of Conservation and Coastal Lands (OCCL) within ninety (90) days of completion of construction of the temporary structure. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of the beach conditions since installation. The report will also include a photo summary of the temporary structure and beach conditions with documentation of any alterations or repairs;
4. The permittee shall contact DLNR Land Division at (808) 587-0430 and secure a Right of Entry Permit incorporating the most current terms and conditions for the use of State lands, prior to entering onto State lands for this project. The permittee shall also contact the Oahu Department of Planning and Permitting at (808) 768-6743 to secure a Right of Entry Permit for use of the public access way;
5. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
6. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
7. The permittee shall comply with all applicable department of health administrative rules;
8. Unless otherwise authorized, any work or construction to be done on the land shall be completed within 180 days of the approval of such use. The permittee shall notify the department in writing at least 24 hours prior to initiating construction and when it is completed;
9. Work shall be conducted at low tide to the most practical extent possible and no work shall occur during high surf or ocean conditions that will create unsafe work or beach conditions;
11. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project. All barriers shall be removed once the project is complete to allow full public access laterally along the beach and alongshore walkway;
12. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and minimize silt in nearshore waters and clean up fuel; fluid or oil spills immediately for projects authorized by this letter. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance;
13. All placed material shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality;
14. Any materials that become liberated from the structure must be immediately removed from the beach or ocean. Failure by the applicants to retrieve/resecure material, upon request by the DLNR, will result in fines of up to \$15,000/day;

Exhibit 3: Emergency CDUP OA 21-02

Emergency OA-21-02

15. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this letter;
16. Prior to structure installation, the permittee shall remove debris that has been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area;
17. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
18. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization;
19. In issuing the permit, the department and the Chairperson have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
20. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
21. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
22. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
23. The activity shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
24. The activity shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
25. No motorized construction equipment is to be operated in the water at any time;
26. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
27. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

Exhibit 3: Emergency CDUP OA 21-02

Emergency OA-21-02

- 28. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 29. At the conclusion of work, the applicant shall clean and restore the site to a condition acceptable to the Chairperson;
- 30. The DLNR reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary;
- 31. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Should you have any questions pertaining to this letter, please contact Dr. Shellie Habel, Sea Grant Extension Agent and Coastal Lands Program Coordinator at DLNR OCCL, at (808) 587-0049 or Shellie.L.Habel@hawaii.gov.

Sincerely,

Suzanne D. Case

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

CC: LAND
DOCARE
DPP

I concur with the conditions of this letter:

Applicant

Date

Exhibit 3: Emergency CDUP OA 21-02

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 821
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

REF: OCCL: TF

COR: OA 22-122

Eric & Moniza Freeman

Feb 4, 2022



Subject: Potential Unauthorized Land Uses within the Conservation District.
Located at 59-181D Ke Nui Road
Por. Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:034 (seaward)

Dear Landowners:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL)'s attention that there has been work done in the shoreline area fronting your property, within the State Land Use Conservation District. Site inspections on 1/27/2022, 1/31/2022, and 2/2/2022 has revealed the continued installation of alleged unauthorized erosion control materials and debris seaward of the subject property (see attached).

Please note that land uses in the Conservation District require approval pursuant to Hawaii Administrative Rules (HAR) Chapter 13-5. We do not have any record of approving the above uses, and these land uses may be in violation of HAR 13-5.

The DLNR has numerous concerns about the work being done. Shoreline structures can create downstream impacts that negatively impact your neighbors' properties and the health of the beach. Improperly installed structures create debris that pollutes the ocean. In the past temporary structures that have been granted on an emergency basis have not been removed.

The DLNR requests that you provide our office with a written statement regarding the alleged unauthorized activities that have been conducted in the Conservation District fronting your property, and how you intend to correct this situation. Please submit your response within thirty (30) days from the date of this letter.

Freeman

COR: OA 22-122

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

Sincerely,

S Michael Cain

Michael Cain, Acting Administrator
Office of Conservation and Coastal Lands

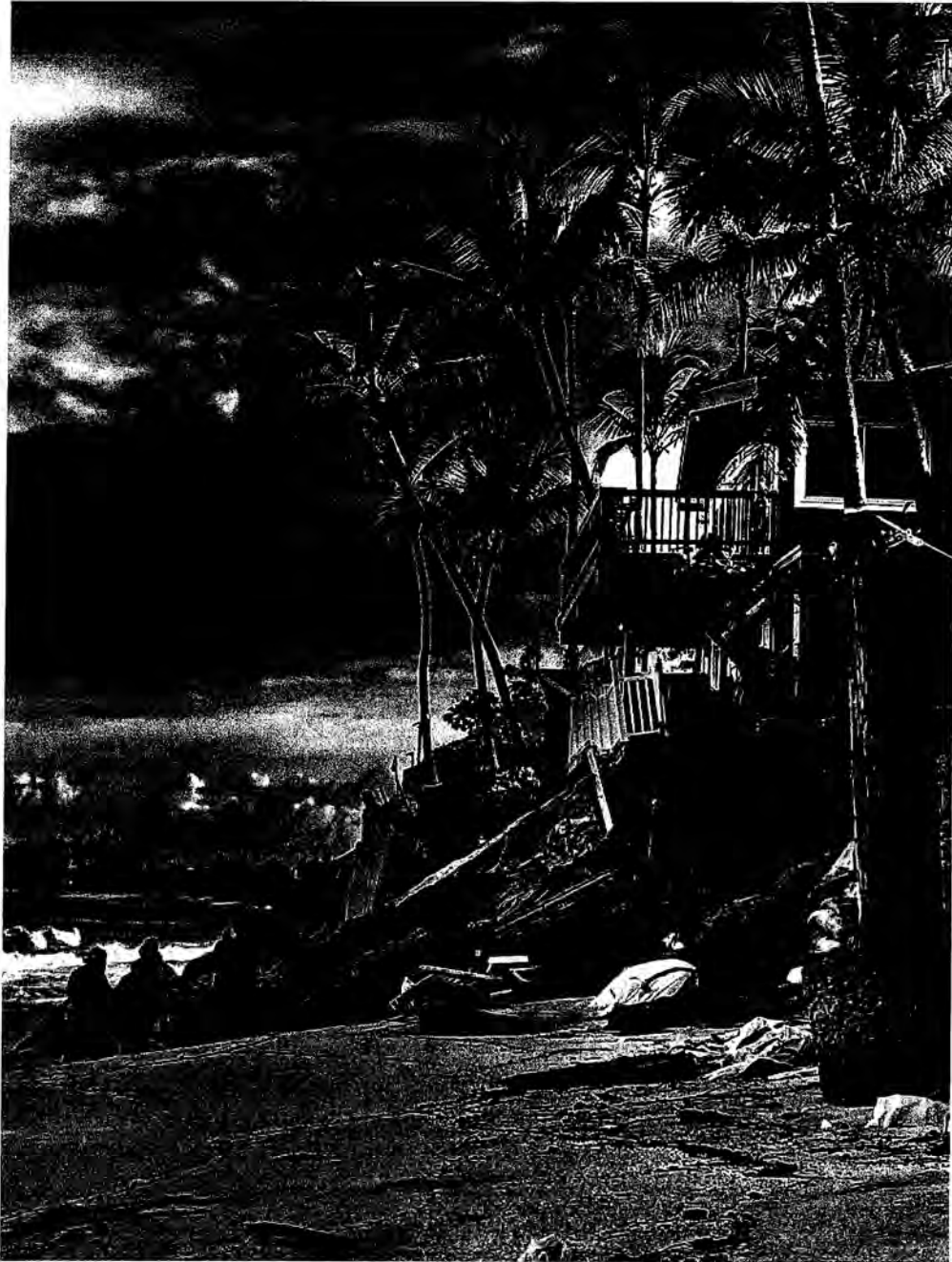
C: O'ahu Board Member
DOCARE
ODLO
DCCA
C&C Honolulu,
Dept. Planning & Permitting
Dept. Parks & Recreation



Taken 1/28/2022



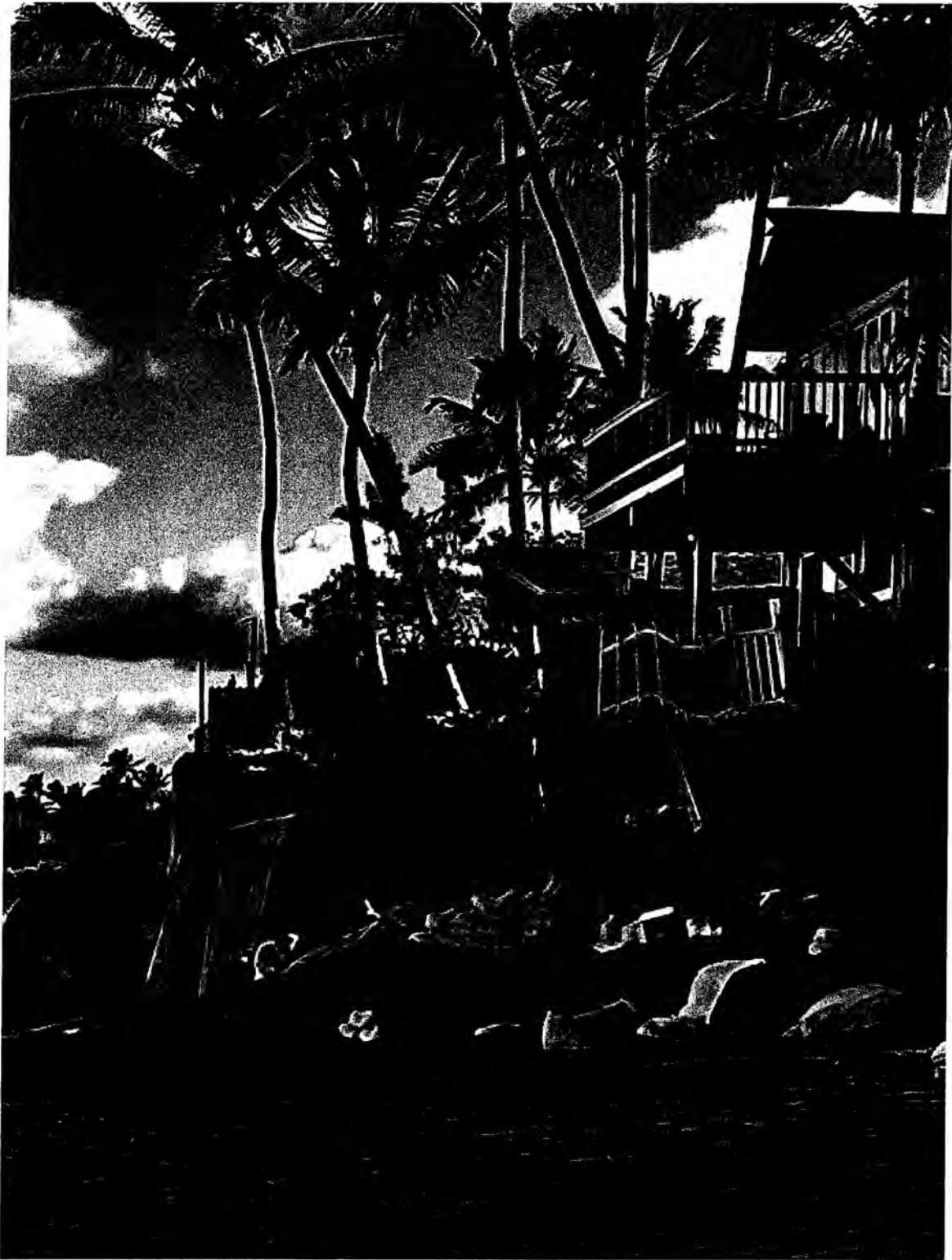
Taken 1/30/2022



Taken 1/31/2022



Taken 2/2/2022



Taken 2/3/2022

Fitzpatrick, Trevor J

From: Eric Freeman [REDACTED]
Sent: Wednesday, March 2, 2022 8:08 AM
To: Fitzpatrick, Trevor J
Cc: Moniza Freeman
Subject: [EXTERNAL] Response to allegation of violation
Attachments: Alleged Violation Response.pdf

Please see attached sent via Fedex on Monday.

Eric Freeman
[REDACTED]

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware by Mimecast.

February 28, 2022

Via U.S Mail

Suzanne D. Case
 Chairperson, Board of Land and Natural Resources
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813

Re: Notice of Alleged Violation – 59-181D Ke Nui Road

Dear Chairperson Case:

We are the owners of 59-181D Ke Nui Road and have received the Department of Land and Natural Resources, Office of Conservation and Coastal Lands' Notice of Alleged Violation dated January 28, 2022. We received the Notice by certified mail on February 7, 2022.

We want to take this opportunity to urgently request a meeting with representatives from the Office of Conservation and Coastal Lands, the City and County of Honolulu Department of Parks and Recreation and Department of Planning and Permitting, to address the imminent threat to the safety of both our property and the public directly resulting from the failure to maintain the public beach access alongside our property.

To provide some background, we purchased the property in January 2021 and due to the winter Covid-19 surge, we weren't able to fly to the island to view the property and the rocky point area prior to closing so were unfortunately unaware of the severe erosion issues facing the area. Over the last 13 months of ownership, we have obviously learned (the hard way) about the erosion challenges the area and specifically our house are facing. While there was some vague disclosure provided by the seller during the sale, we were misled by the sellers about the status of the sand burrito which has come to light over the last several weeks when we tried to get a shoreline survey done as the first step to completing plans to move the house back on the lot.

Fast forward to around the second week of January of this year, the Cami's beach area north of Rocky Point began to lose an extraordinary amount of sand due to a series of large swells coming from the West-Northwest. While it is typical in the winter to get large swells on the North Shore, they typically vary in direction which causes the sand to migrate in and out of the area. This year however, has seen an unprecedented number of back to back to back swells from the same direction removing all of the sand that was protecting our house at the beginning of the year and even through the first week of January. As a result, when the very large swell reached this area on the weekend of January 21-24, 2022, the Rocky Point area, and in particular the areas adjacent to and fronting our property, had no protection afforded by the sand that is typically there. This caused major damage to several properties, including our property.

On the morning of January 22, 2022, while we were back on the mainland we were notified that one of the posts holding up our upper deck had snapped due to the large swell. We

Suzanne D. Case
February 28, 2022
Page 2

were terrified that the deck and possibly the entire house were in danger of collapsing into the ocean so I booked a ticket and flew to the island first thing Sunday morning on January 23, 2022 to assess the damage.

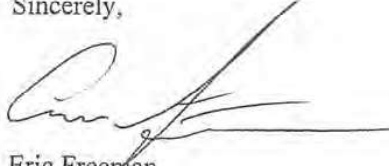
On the morning of January 24, 2022, two workers from the Department of Parks and Recreation came to our property to assess the damage after their supervisor saw it on the news over the weekend. We asked the workers what actions the Department of Parks and Recreation would take, as we believe that the reason the right front edge of our property had collapsed is because the City has failed to maintain the public access adjacent to our property, exacerbating erosion that is approximately 20 feet back from the shoreline and 15 feet below the top of the public accessway. The workers did not respond to our question about what actions the City will take, took some pictures, and then left. The public access was and is in a condition that is extremely dangerous with a 15-foot drop straight down onto rocks. The City's failure to maintain the public access has contributed to the support beneath the Property eroding and failing and has caused on an on-going threat to public safety.

We are extremely concerned with the safety of our property, as well as those who use the public access to the beach. Just last night (2/27) a house a few houses down from us collapsed into the ocean (picture attached). We have called the Department of Parks and Recreation supervisor several times with no response. We have also attempted to leave voicemails for the supervisor, but the supervisor's mailbox is full. We have also contacted the mayor's office, Representative Riviere, Representative Tsuneyoshi and its representative on the City Council, but have yet to receive a response as of the date of this letter other than a call back from Senator Riviere who was sympathetic but had no solution.

We have no intent to be in violation of Department of Land and Natural Resources' regulations or any other State or City laws. However, our pleas for help to ensure the safety of our property and the public have not been responded to. We therefore respectfully request a meeting with the Office of Conservation and Coastal Lands and both City departments so that all parties have the same understanding and we may properly address the safety concerns that have gone completely ignored to this point. We can be available for a meeting in person, or by telephone or Zoom. Thank you for your attention to this matter.

Suzanne D. Case
February 28, 2022
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Freeman", with a long horizontal flourish extending to the right.

Eric Freeman
Moniza Freeman

cc: Trevor Fitzpatrick, Office of Conservation and Coastal Lands (via email
trevor.j.fitzpatrick@hawaii.gov)
City & County of Honolulu, Department of Planning and Permitting
City & County of Honolulu, Department of Parks and Recreation
Mayor Blangiardi, City and County of Honolulu




Ref: ENF: OA 22-1
10/14/22^{TF}


Ref: OCCL ENF: OA 22-18

[REDACTED]

[REDACTED] My name is
[REDACTED]! just left
you a voice message
but thought text may be
better. I'm coming to
Hawaii next week &
rented a home via
Airbnb on the North
Shore. I randomly
found a news article
about the beach
erosion in this area &
the home we are
renting was identified
as one with structural
problems. I also saw
that a home a few doors



problems. I also saw that a home a few doors down actually collapsed. Needless to say we are concerned about the safety of staying there. The owners assure us there are no problems, but I'm skeptical. The address of the home is 59-181 D Ke Nui Road. Any insight you have would be appreciated as we want to cancel our booking & stay elsewhere but the



staying there. The owners assure us there are no problems, but I'm skeptical. The address of the home is 59-181 D Ke Nui Road. Any insight you have would be appreciated as we want to cancel our booking & stay elsewhere but the owners are refusing. Thank you!!

The sender is not in your contact list.

Report Junk

JOSH GREEN, M.D.
GOVERNOR | KE AIAĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE AIAĀINA



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
LAURA H.I. BAAKUA
FIRST DEPUTY
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCE
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TF

ENF: OA 22-18

59-181 KE NUI LLC
C/O: Eric & Moniza Freeman

Feb 6, 2023



SUBJECT: Alleged Unauthorized Land Use Within the Conservation District
Located at 59-181 D Ke Nui Road
Por. Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:034 (seaward)

Dear Landowners:

It has come to the Department of Land and Natural Resources' (DLNR) and its Office of Conservation and Coastal Lands' (OCCL) attention that work has continued within the Conservation District without authorization. From January 27, 2023 to January 30, 2023, the OCCL received reports and photos of alleged unauthorized work consisting of the installation of erosion control materials in the shoreline area fronting the subject property. On February 1, 2023, OCCL staff conducted a site visit to the area and observed your agents installing erosion control materials in the shoreline area fronting parcel 034. Your agents were given verbal notification by OCCL staff to stop all work.

Over the weekend (February 4 to February 6, 2023), OCCL received reports and photos that work has continued after you and your agents were given verbal and written notification to stop all work. Photos of the alleged unauthorized work in shoreline area fronting the subject parcel a from January 27, 2023, to February 6, 2023, are attached as **Exhibit 1**.

On January 27, 2022, your agent who identified himself as Frank and stated that he worked for the landowners of TMK: (1) 5-9-002:034 was given verbal notification to stop all work. On January 28, 2022, you were issued a Notice of Alleged Violation regarding this matter and recommended that you stop all work. The Notice states in part: "*Should you fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists. Failure to comply with any part of the letter mentioned above will result in the matter being forwarded to the Board for formal action*". See **Exhibit 2**.

REF: OCCL: TF

ENF: OA 22-18

On February 4, 2022, you were issued a letter (COR: OA 22-122) regarding continued installation of alleged unauthorized erosion control materials and debris seaward of the subject property. See **Exhibit 3**.

On March 2, 2022, OCCL received an email letter from you dated February 28, 2022, in response to the Notice of Alleged Violation (ENF: OA 22-18) and requested a meeting with OCCL staff as well as other representatives with other agencies. See **Exhibit 4**.

On March 16, 2022, a meeting was held with a representative from the Governor's office, Department staff and counsel, and your neighbor Todd Dunphy. A cursory review of OCCL files appear to indicate that you did not attend this requested meeting.

The OCCL notes that it appears that alleged unauthorized work consisting of the installation of erosion control materials and construction of an erosion control structure in the shoreline area fronting the subject property continues. According to OCCL files, no authorizations were issued for the alleged unauthorized work and/or construction or modifications of erosion control structures; and thus, ENF: OA 22-18 appears to be unresolved. To resolve matters, you may want to consider removing the alleged unauthorized erosion control materials and structures from the shoreline area as well as seek resolution with the County regarding pacifying threatened structures on the property.

Please respond to this letter in writing within ten (10) days regarding how you propose to resolve these matters. Please note any information provided may be used in civil proceedings. If we do not receive a response and you do not remove the unauthorized materials and encroachments within ten (10) days, we may bring this matter before the Board of Land and Natural Resources for final disposition.

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

Sincerely,

S Michael Cain

Michael Cain, Administrator
Office of Conservation and Coastal Lands

CC: *DOCARE (Oahu)*
ODLO
DCCA – Regulated Industries Complaints Office
City & County of Honolulu, Department of Planning and Permitting
City & County of Honolulu, Department of Parks and Recreation

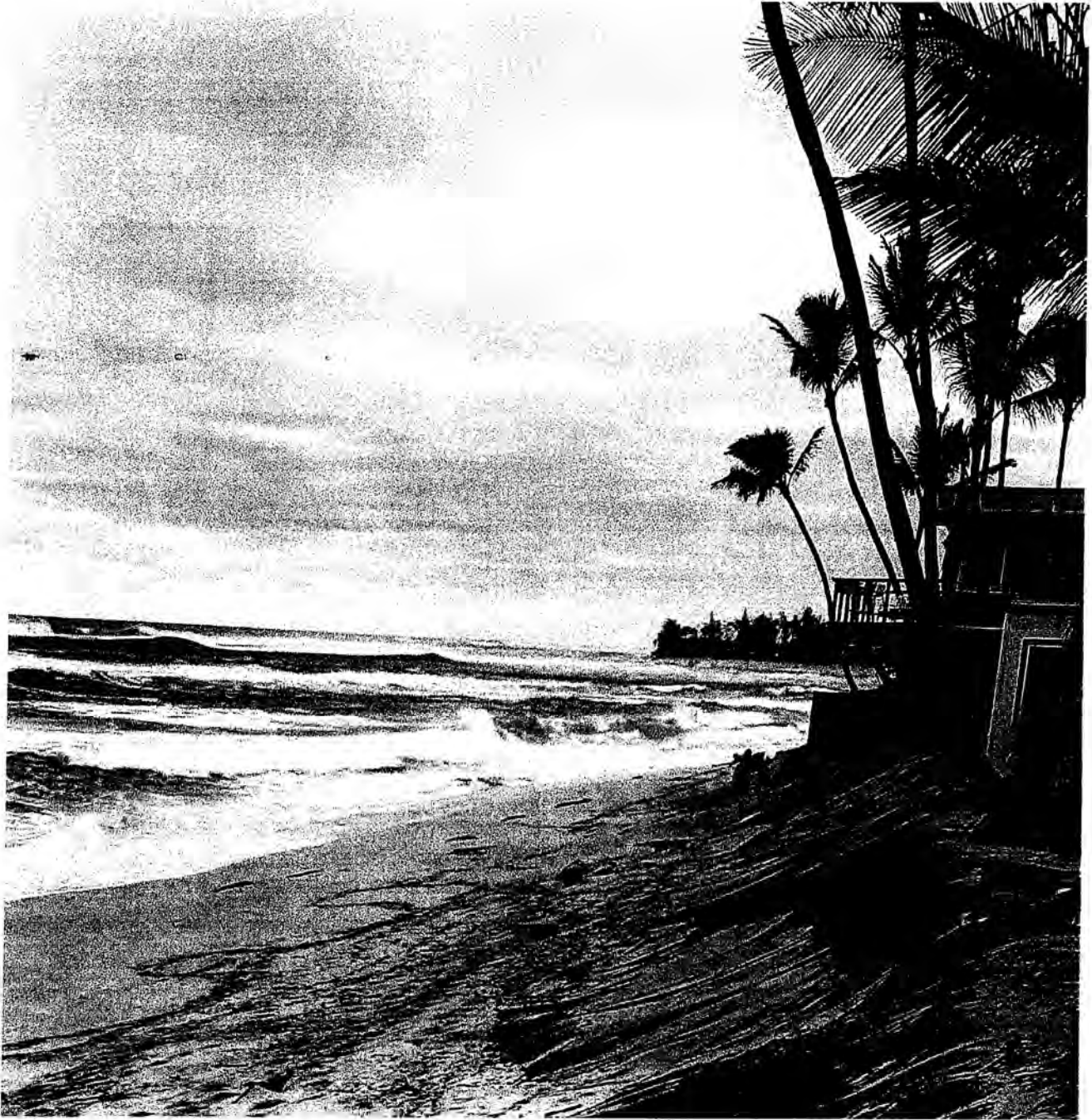


Exhibit 1: Taken 1/27/2023



Exhibit 1: Taken 1/29/2023



Exhibit 1: Taken 1/30/2023



Exhibit 1: Taken 1/30/2023

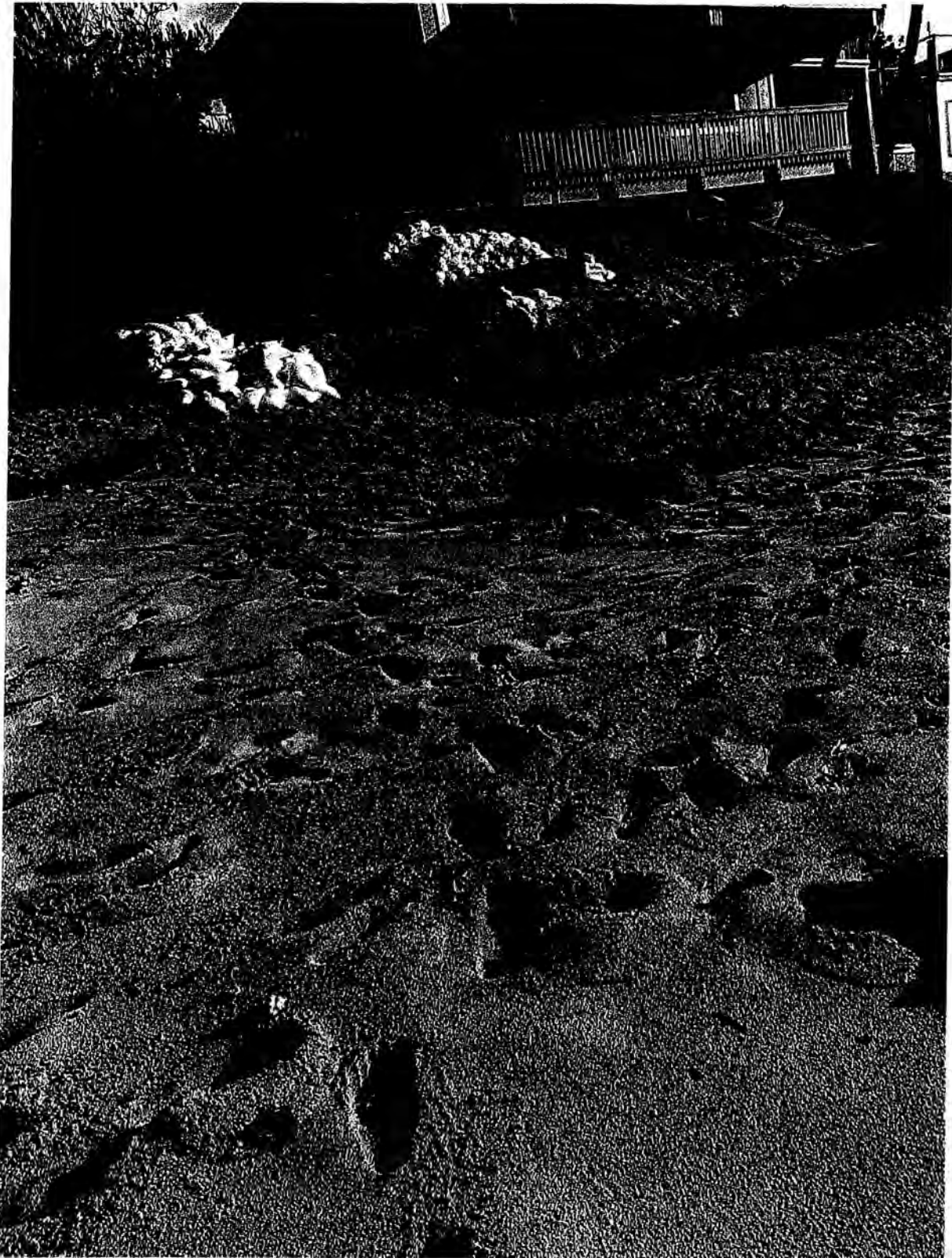


Exhibit 1: Taken 1/30/2023

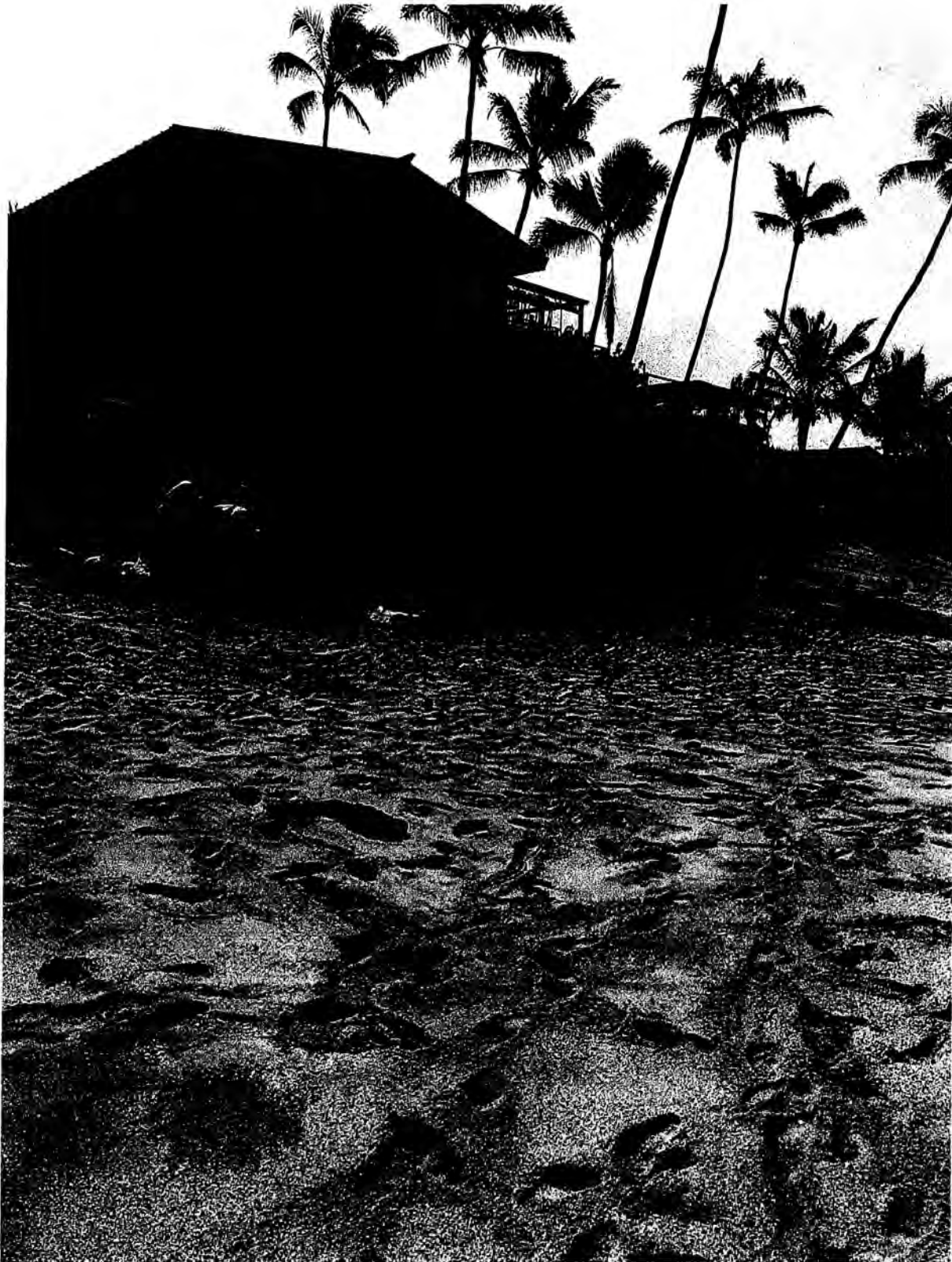


Exhibit 1: Taken 2/1/2023



Exhibit 1: Taken 2/4/2023



Exhibit 1: Taken 2/5/2023



Exhibit 1: Taken 2/5/2023



Exhibit 1: Taken 2/6/2023

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

REF: OCCL: TF

ENF: OA 22-18

Jan 28, 2022

NOTICE OF ALLEGED VIOLATION

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

7020 2450 0000 0357 8337

Eric Freeman
Moniza Freeman



SUBJECT: Alleged Unauthorized Land Use Within the Conservation District
Located at 59-181D Ke Nui Road
Por. Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:034 (seaward)

Dear Landowners:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL)'s attention that there has been work done within the Conservation District without our authorization. A site inspection conducted on 1/27/2022 revealed ongoing work in the shoreline area consisting of the installation of erosion control materials and sandbags without the DLNR's authorization. Photos of the alleged unauthorized work and installation of erosion control materials are attached as *Exhibit 1* and *Exhibit 2*.

According to OCCL files, the Chair of the Board of Land and Natural Resources approved Emergency CDUP OA 21-02 for the repair and replacement of temporary erosion control measures fronting the subject property. The permit allowed for the installation of a geotextile blanket along approximately 50 feet of erosion scarp fronting TMK: (1) 5-9-002:034, anchored at the base by one (1) sand filled tube constructed of the same geotextile fabric, and staked/anchored at the top of the scarp. Emergency CDUP OA 21-02 states *Subsequent erosion control measure efforts that call for modification, other than maintenance of the authorized structure will require a new application. No new material shall be added to the subject structure without additional authorization from DLNR OCCL.* Condition 14 of Emergency CDUP OA 21-02 states *Any materials that become liberated from the structure must be immediately removed from the beach or ocean. Failure by the applicants [permittees] to retrieve/resecure material, upon request by the DLNR, will result in fines of up to \$15,000/day.*

1

Exhibit 2

REF: OCCL: TF
Eric & Moniza Freeman

ENF: OA 22-18

Additionally, Condition 18 of Emergency CDUP OA 21-02 states *Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization. A copy of Emergency CDUP OA 21-02 is attached as Exhibit 3.*

According to OCCL files, there appears to be no authorizations for these land uses. Pursuant to Hawaii Administrative Rules (HAR) §13-5-2, "land use" is defined as (1) the placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs; (2) the grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land; (3) the subdivision of land; or (4) the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land. Additionally, pursuant to HAR §13-5-2, the "Shoreline" is defined as *the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, Hawaii Revised Statutes (HRS)*". Lands makai of the shoreline are under the jurisdiction of the State of Hawaii DLNR.

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

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

1. The construction of an erosion control structure has been placed seaward of TMK: (1) 5-9-002:0037 and located within the State Land Use Conservation District, Resource Subzone;
2. Pursuant to §13-5-22 P-15 (D-1), HAR, "Shoreline Erosion Control " is a regulated land use as stated below:
 - a. *Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification;*
3. These land uses were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR; and

REF: OCCL: TF
Eric & Moniza Freeman

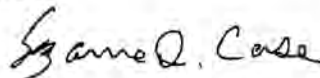
ENF: OA 22-18

4. The land uses have occurred on public land owned by the State without authorization or permission from the State as landowner.

We recommend that you stop all work and remove the erosion control structure and other unauthorized materials located within the shoreline area within 30 days of receipt of this order. Pursuant to HRS, 171-6, the Board of Land and Natural Resources may bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall: (a) Be fined not more than \$1,000 a day for the first offense; (b) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter; (c) If required by the board, restore the land to its original condition if altered and assume the costs thereof; (d) Assume such costs as may result from adverse effects from such restoration; and (e) Be liable for administrative costs incurred by the Department and for payment of damages. Additionally, with regards to alleged unauthorized land use(s) in the State Land Use Conservation District, pursuant to 183C-7(b), HRS, the Board of Land and Natural Resources (Board) may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs and costs associated with land or habitat restoration, or both, if required, and damages to state land. Should you fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists. Failure to comply with any part of the letter mentioned above will result in the matter being forwarded to the Board for formal action.

Please respond to this Notice in writing within thirty (30) days. Please note any information provided may be used in civil proceedings. If we do not receive a response within thirty (30) days, we will proceed with enforcement actions. Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at trevor.j.fitzpatrick@hawaii.gov.

Sincerely,



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

12

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

3

Exhibit 2



Exhibit 1: Taken 1/27/2022



Exhibit 2

Exhibit 2: Taken 1/27/2022



DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref: OCCL:SH
Gary Stanley
59-181D Ke Nui Road
Haleiwa, HI 96712

Emergency OA-21-02

Dear Mr. Stanley,

Subject: RE: Request for Authorization – Temporary Erosion Control 59-181D Ke Nui Road, Haleiwa, HI 96712; Tax Map Key No. (1) 5-9-002:034

The Department of Land and Natural Resources (DLNR) is responding your request received on August 28, 2020, to repair/replace a protective temporary erosion control structure composed of geotextile material (the Temporary Structure) along approximately 50 feet of shoreline fronting the subject property located at 59-181D Ke Nui Road, Haleiwa, HI 96712; Tax Map Key No. (1) 5-9-002:034. Authorization for installation of the Temporary Structure was granted on February 7, 2019 as part of an email sent by the Chair of the DLNR, Suzanne Case, which states, *"I concur with this temporary action described below. I ask OCCL to keep an eye on the potential flanking issue, which may result in the temporary action authorized being revoked if necessary."* The Temporary Structure has since failed due to ongoing seasonal and chronic erosion. According to your request, you are proposing to repair/replace the structure and obtain a formal authorization for its installation. The proposed project is intended to protect the inhabited structure from further coastal erosion and potential structural failure until long-term planning for management/accommodation of erosion can be undertaken.

The coastal environment at the subject property is characterized by a seasonally-variable beach backed by an elevated (about 20 to 25 feet) sand berm. This active high-wave berm feature underlies many of the shore-front properties along the North Shore. Erosion from seasonal waves combined with a long-term trend of beach erosion, has created a steep eroded bank (scarp) in the backshore berm, which you state poses a threat to the single-family residence on the subject property.

The DLNR understands that most of the proposed activities will occur on State land, makai of where the shoreline would likely be determined based on *HAR §13-222 (Shoreline Certification)*. The proposed plan is to install a geotextile blanket along the erosion scarp, anchored at the base by one (1) sand filled tube constructed of the same geotextile fabric, and staked/anchored at the top of the scarp. Sand from the beach directly seaward of the subject property will be used to fill the ballast tube. The structure will be constructed by hand.

DLNR authorizes the placement of the Emergency Temporary Shoreline Protection described above along approximately 50 feet of erosion scarp fronting the subject property, in an effort to protect public health, welfare, and safety on the subject property under *HAR §13-5-35, Emergency Permits (a)* *"Notwithstanding any provision of this chapter, the chairperson or deputy director of the*

Exhibit 3: Emergency CDUP OA 21-02
Exhibit 2

Emergency OA-21-02

department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department."

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

Prior to structure installation, you shall remove debris that have been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area. Subsequent erosion control efforts that call for modification, other than maintenance of the authorized structure will require a new application. No new material shall be added to the subject structure without additional authorization from DLNR OCCL. If flanking or exacerbated erosion occurs on neighboring properties subsequent to installation of the structure, the DLNR may require that the structure be removed in its entirety. **We would also like to remind you that such structures are authorized to remain in place for a predetermined amount of time. The structure is considered a temporary means of controlling the shoreline erosion with the understanding that long-term planning for management/accommodation of erosion be undertaken within this authorization period.**

Further, any materials that become liberated or slacked from the structure must be immediately removed from the beach or ocean. Prior to structure installation, the permittee shall remove any debris that has been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area.

Terms and Conditions

The DLNR has no objections to the placement of the Emergency Temporary Shoreline Protection described above along the erosion scarp fronting the subject property, at TMK (1) 5-9-002:034, provided that you adhere to the following Terms and Conditions:

1. It is understood that the Emergency Temporary Shoreline Protection is a temporary response to address a safety hazard to an existing single family home on the subject property, which is threatened by both chronic and seasonal beach erosion. The material is **authorized as a temporary erosion control measure for three (3) years** from the date of issuance of this letter. This authorization replaces the original authorization provided by the DLNR Chair in her Feb. 7, 2019 email. Subsequent erosion control efforts that call for modification, other than maintenance of the proposed structure will require a new application. At the end of 3 years the materials shall be removed:
2. If flanking or exacerbated erosion occurs on neighboring properties, the DLNR may require that the permittee remove the structure in its entirety.

Exhibit 2

Exhibit 3: Emergency CDUP.OA 21-02

Emergency OA-21-02

3. The permittee will submit a completion report for the project to DLNR Office of Conservation and Coastal Lands (OCCL) within ninety (90) days of completion of construction of the temporary structure. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of the beach conditions since installation. The report will also include a photo summary of the temporary structure and beach conditions with documentation of any alterations or repairs;
4. The permittee shall contact DLNR Land Division at (808) 587-0430 and secure a Right of Entry Permit incorporating the most current terms and conditions for the use of State lands, prior to entering onto State lands for this project. The permittee shall also contact the Oahu Department of Planning and Permitting at (808) 768-6743 to secure a Right of Entry Permit for use of the public access way;
5. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
6. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
7. The permittee shall comply with all applicable department of health administrative rules;
8. Unless otherwise authorized, any work or construction to be done on the land shall be completed within 180 days of the approval of such use. The permittee shall notify the department in writing at least 24 hours prior to initiating construction and when it is completed;
9. Work shall be conducted at low tide to the most practical extent possible and no work shall occur during high surf or ocean conditions that will create unsafe work or beach conditions;
11. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project. All barriers shall be removed once the project is complete to allow full public access laterally along the beach and alongshore walkway;
12. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and minimize silt in nearshore waters and clean up fuel; fluid or oil spills immediately for projects authorized by this letter. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance;
13. All placed material shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality;
14. Any materials that become liberated from the structure must be immediately removed from the beach or ocean. Failure by the applicants to retrieve/resecure material, upon request by the DLNR, will result in fines of up to \$15,000/day;

Exhibit 2
Exhibit 3: Emergency CDUP OA 21-02

Emergency OA-21-02

15. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this letter;
16. Prior to structure installation, the permittee shall remove debris that has been deposited on the beach and nearshore, and any other derelict structures or materials emanating from the beach area;
17. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
18. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization;
19. In issuing the permit, the department and the Chairperson have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
20. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
21. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
22. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
23. The activity shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
24. The activity shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
25. No motorized construction equipment is to be operated in the water at any time;
26. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
27. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

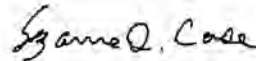
Exhibit 2**Exhibit 3: Emergency CDUP OA 21-02**

Emergency OA-21-02

- 28. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 29. At the conclusion of work, the applicant shall clean and restore the site to a condition acceptable to the Chairperson;
- 30. The DLNR reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary;
- 31. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Should you have any questions pertaining to this letter, please contact Dr. Shellie Habel, Sea Grant Extension Agent and Coastal Lands Program Coordinator at DLNR OCCL, at (808) 587-0049 or Shellie.L.Habel@hawaii.gov.

Sincerely,



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

CC: LAND
DOCARE
DPP

I concur with the conditions of this letter:

Applicant

Date

Exhibit 2

Exhibit 3: Emergency CDUP OA 21-02

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TF

COR: OA 22-122

Eric & Moniza Freeman

Feb 4, 2022



Subject: Potential Unauthorized Land Uses within the Conservation District.
Located at 59-181D Ke Nui Road
Por. Pupukeya-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:034 (seaward)

Dear Landowners:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL)'s attention that there has been work done in the shoreline area fronting your property, within the State Land Use Conservation District. Site inspections on 1/27/2022, 1/31/2022, and 2/2/2022 has revealed the continued installation of alleged unauthorized erosion control materials and debris seaward of the subject property (see attached).

Please note that land uses in the Conservation District require approval pursuant to Hawaii Administrative Rules (HAR) Chapter 13-5. We do not have any record of approving the above uses, and these land uses may be in violation of HAR 13-5.

The DLNR has numerous concerns about the work being done. Shoreline structures can create downstream impacts that negatively impact your neighbors' properties and the health of the beach. Improperly installed structures create debris that pollutes the ocean. In the past temporary structures that have been granted on an emergency basis have not been removed.

The DLNR requests that you provide our office with a written statement regarding the alleged unauthorized activities that have been conducted in the Conservation District fronting your property, and how you intend to correct this situation. Please submit your response within thirty (30) days from the date of this letter.

Exhibit 3

Freeman

COR: OA 22-122

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

Sincerely,

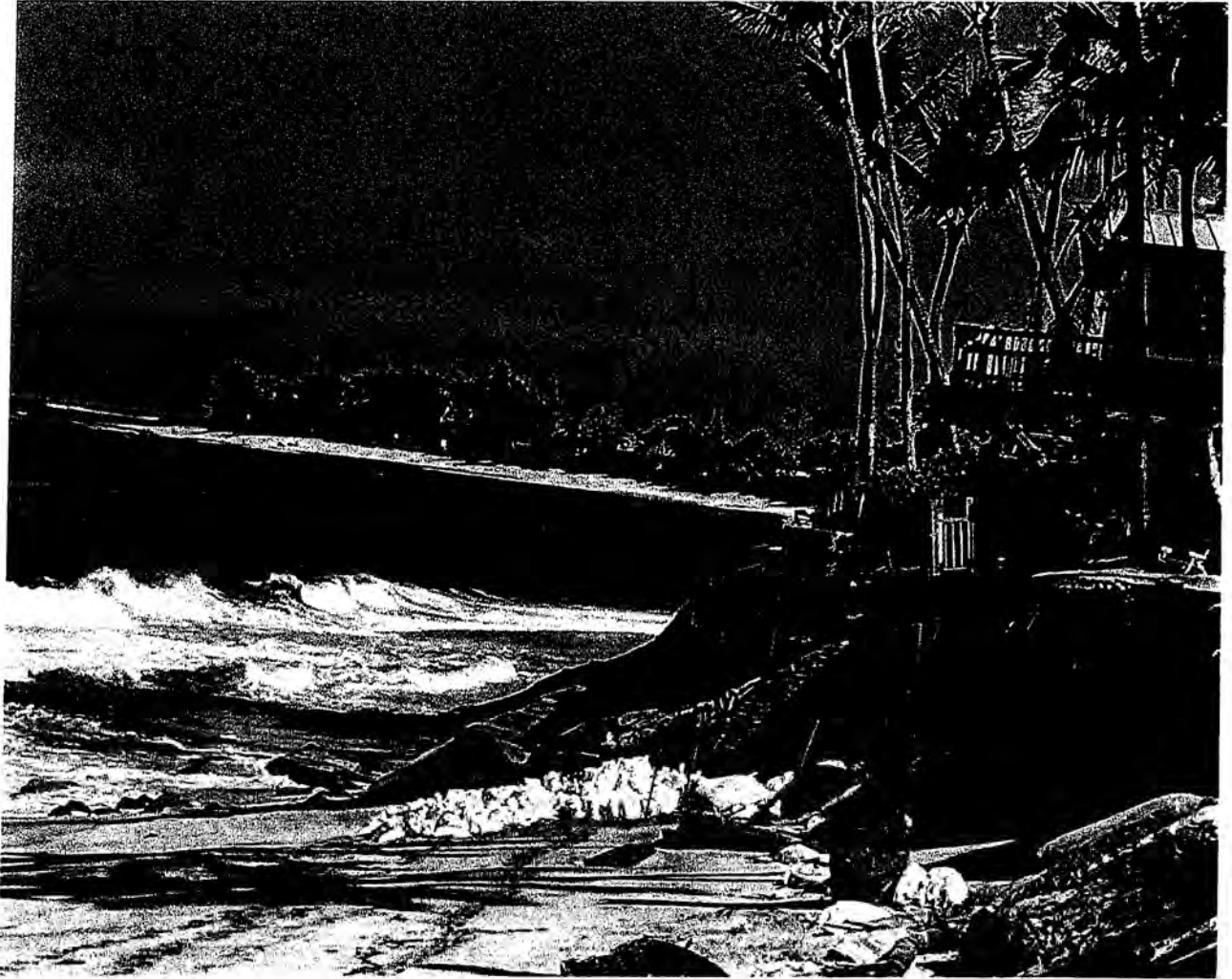
S Michael Cain

Michael Cain, Acting Administrator
Office of Conservation and Coastal Lands

C: O'ahu Board Member
DOCARE
ODLO
DCCA
C&C Honolulu,
Dept. Planning & Permitting
Dept. Parks & Recreation

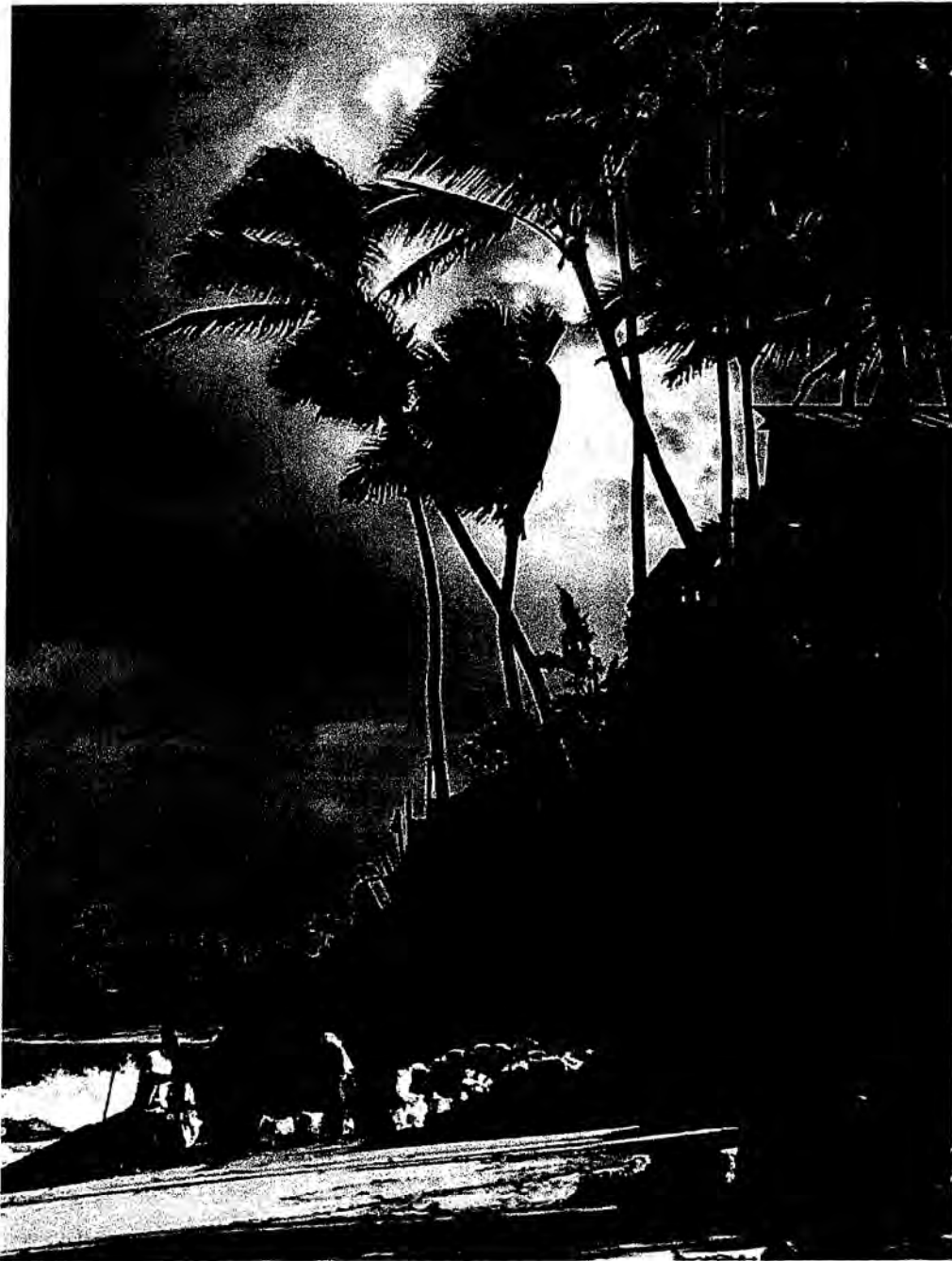
Exhibit 3

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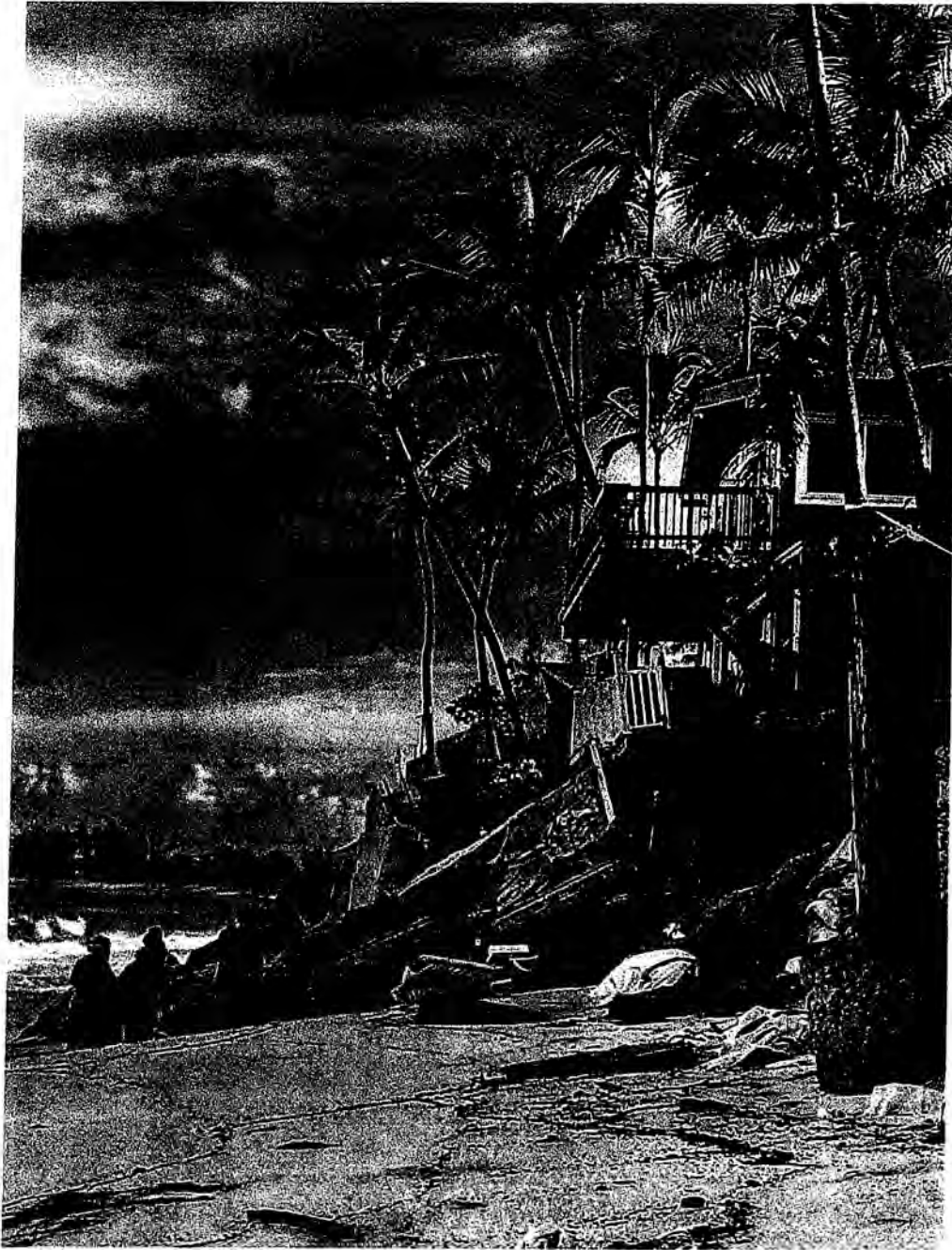
Taken 1/28/2022

Exhibit 3



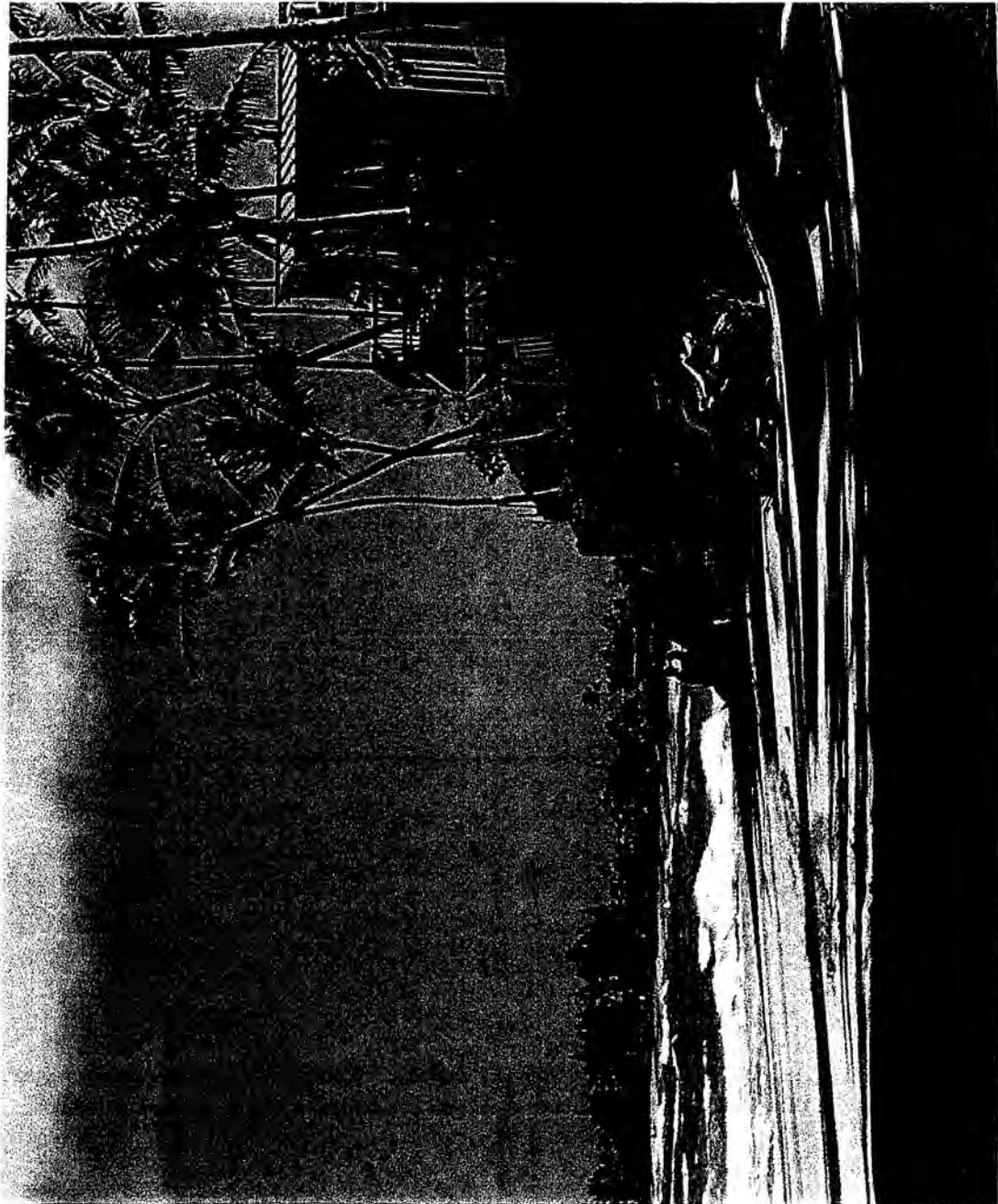
Taken 1/30/2022

Exhibit 3



Taken 1/31/2022

Exhibit 3



Taken 2/2/2022

Exhibit 3



Exhibit 3
Taken 2/3/2022

Fitzpatrick, Trevor J

From: Eric Freeman [REDACTED]
Sent: Wednesday, March 2, 2022 8:08 AM
To: Fitzpatrick, Trevor J
Cc: Moniza Freeman
Subject: [EXTERNAL] Response to allegation of violation
Attachments: Alleged Violation Response.pdf

Please see attached sent via Fedex on Monday.

Eric Freeman
[REDACTED]

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This email has been scanned for viruses and malware by Mimecast

Exhibit 4

February 28, 2022

Via U.S Mail

Suzanne D. Case
Chairperson, Board of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

Re: Notice of Alleged Violation – 59-181D Ke Nui Road

Dear Chairperson Case:

We are the owners of 59-181D Ke Nui Road and have received the Department of Land and Natural Resources, Office of Conservation and Coastal Lands' Notice of Alleged Violation dated January 28, 2022. We received the Notice by certified mail on February 7, 2022.

We want to take this opportunity to urgently request a meeting with representatives from the Office of Conservation and Coastal Lands, the City and County of Honolulu Department of Parks and Recreation and Department of Planning and Permitting, to address the imminent threat to the safety of both our property and the public directly resulting from the failure to maintain the public beach access alongside our property.

To provide some background, we purchased the property in January 2021 and due to the winter Covid-19 surge, we weren't able to fly to the island to view the property and the rocky point area prior to closing so we were unfortunately unaware of the severe erosion issues facing the area. Over the last 13 months of ownership, we have obviously learned (the hard way) about the erosion challenges the area and specifically our house are facing. While there was some vague disclosure provided by the seller during the sale, we were misled by the sellers about the status of the sand burrito which has come to light over the last several weeks when we tried to get a shoreline survey done as the first step to completing plans to move the house back on the lot.

Fast forward to around the second week of January of this year, the Cami's beach area north of Rocky Point began to lose an extraordinary amount of sand due to a series of large swells coming from the West-Northwest. While it is typical in the winter to get large swells on the North Shore, they typically vary in direction which causes the sand to migrate in and out of the area. This year however, has seen an unprecedented number of back to back to back swells from the same direction removing all of the sand that was protecting our house at the beginning of the year and even through the first week of January. As a result, when the very large swell reached this area on the weekend of January 21-24, 2022, the Rocky Point area, and in particular the areas adjacent to and fronting our property, had no protection afforded by the sand that is typically there. This caused major damage to several properties, including our property.

On the morning of January 22, 2022, while we were back on the mainland we were notified that one of the posts holding up our upper deck had snapped due to the large swell. We

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were terrified that the deck and possibly the entire house were in danger of collapsing into the ocean so I booked a ticket and flew to the island first thing Sunday morning on January 23, 2022 to assess the damage.

On the morning of January 24, 2022, two workers from the Department of Parks and Recreation came to our property to assess the damage after their supervisor saw it on the news over the weekend. We asked the workers what actions the Department of Parks and Recreation would take, as we believe that the reason the right front edge of our property had collapsed is because the City has failed to maintain the public access adjacent to our property, exacerbating erosion that is approximately 20 feet back from the shoreline and 15 feet below the top of the public accessway. The workers did not respond to our question about what actions the City will take, took some pictures, and then left. The public access was and is in a condition that is extremely dangerous with a 15-foot drop straight down onto rocks. The City's failure to maintain the public access has contributed to the support beneath the Property eroding and failing and has caused on an on-going threat to public safety.

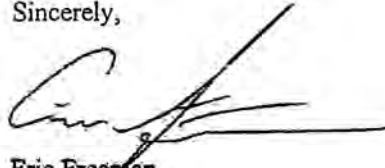
We are extremely concerned with the safety of our property, as well as those who use the public access to the beach. Just last night (2/27) a house a few houses down from us collapsed into the ocean (picture attached). We have called the Department of Parks and Recreation supervisor several times with no response. We have also attempted to leave voicemails for the supervisor, but the supervisor's mailbox is full. We have also contacted the mayor's office, Representative Riviere, Representative Tsuneyoshi and its representative on the City Council, but have yet to receive a response as of the date of this letter other than a call back from Senator Riviere who was sympathetic but had no solution.

We have no intent to be in violation of Department of Land and Natural Resources' regulations or any other State or City laws. However, our pleas for help to ensure the safety of our property and the public have not been responded to. We therefore respectfully request a meeting with the Office of Conservation and Coastal Lands and both City departments so that all parties have the same understanding and we may properly address the safety concerns that have gone completely ignored to this point. We can be available for a meeting in person, or by telephone or Zoom. Thank you for your attention to this matter.

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Sincerely,

A handwritten signature in black ink, appearing to read "Eric Freeman", with a long horizontal stroke extending to the right.

Eric Freeman
Moniza Freeman

cc: Trevor Fitzpatrick, Office of Conservation and Coastal Lands (via email
trevor.j.fitzpatrick@hawaii.gov)
City & County of Honolulu, Department of Planning and Permitting
City & County of Honolulu, Department of Parks and Recreation
Mayor Blangiardi, City and County of Honolulu

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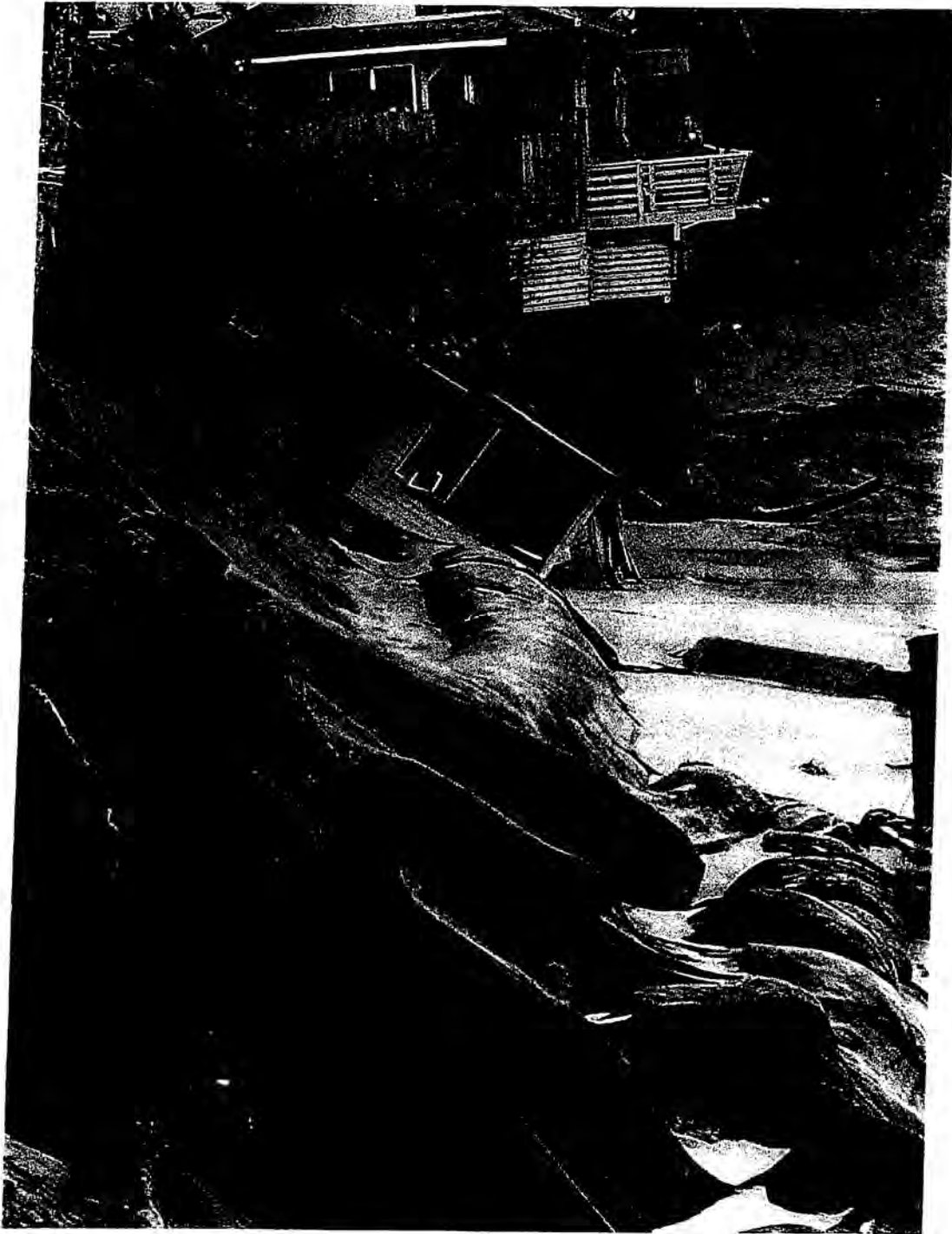


Exhibit 4

ENF: OA 22-18

February 20, 2023

Dear Mr. Fitzpatrick,

We received your notice dated February 6. As we are sure you are aware, the erosion issues facing the Kammies area of the North Shore have been nothing short of a disaster since we purchased the house in January of 2021. While there was some vague disclosure of the past and potential future issues made by the previous owners, we were definitely misled about the severity of the challenges and had no way of knowing just how bad things would get.

RECEIVED
OFFICE OF CONSERVATION
2023 FEB 27 10:15 AM
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

As you can probably imagine the last two years of ownership have been excruciatingly stressful, frustrating, and educational. We've learned more about the erosion issues facing the North Shore and all of Hawaii than we ever could have imagined and knowing what we know now, we never would have made the decision to purchase the house. Unfortunately, we can't undo that decision and while we're not the ones who built the house there or approved a house to be built there, we are the current owners with no realistic exit given what has transpired the last 2 years.

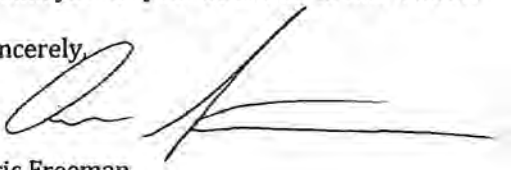
Hopefully you can understand that we are now in an absolutely impossible situation. If we don't protect the house, it will 100% fall into the ocean similar to the home that fell in four doors down from us last year. If we do protect it, you will come after us for trying to keep the house and the public safe. You talk a lot in the media and policy about "managed retreat" being the solution but when we tried to start the permitting process to move the house back on the lot last year, we were shut down from even receiving sign off on a shoreline survey which killed that option before we could start it. We are desperate to find a solution that works for everyone but it seems like the only one you are willing to accept is for us to do nothing and let the house fall into the ocean destroying the house, the beach and endangering lives. How is that the best solution for anyone? As bad as our neighbor's house falling in last year was, it would be so much worse if this house were to fall in because it's 2 stories and likely 4x the size and weight of the other one. That would be an absolute disaster for the area which we are desperately trying to avoid.

We realize the attitude from a lot of the public and the media is that we're just rich people who are getting what we deserve, but that is completely unfair and absolutely not the case here. We risked everything we had to start a business 6 years ago, were fortunate enough to take some money out in 2020 and used that as a down payment on this house and got a loan from a local Hawaiian bank for the rest. The house has a legal short term rental permit which we use to generate income to pay the mortgage, expenses and pay tens of thousands of dollars each year in taxes to the state which the public benefits from.

We have no intention or desire to disrespect the beautiful state of Hawaii and the North Shore or be in violation of any regulations or laws of the DLNR, OCCL or anyone else. It is truly our favorite place in the world which we hope to move to permanently if we're lucky enough to be able to afford to retire there some day. We want what is best for the area and just don't see how forcing this house to fall into the water is somehow in the area or the public's best interest.

As stated in our previous response last year, we humbly and respectfully request a meeting so that all parties have the same understanding and we may properly address the safety concerns that have gone completely ignored to this point. We can be available for a meeting in person, or by telephone or Zoom. Thank you for your attention to this matter.

Sincerely,



Eric Freeman

Acknowledgement:
Board of Land and Natural Resources' Consideration of Settlement Agreement

Petitioner 59-181 Ke-Nui LLC, Eric Freeman, and Moniza Freeman ("Petitioner") , by and through their undersigned counsel, acknowledges that: (a) approval of this Settlement Agreement requires consideration and action by the Board of Land and Natural Resources (Board); (b) if this Agreement is not approved, the Board shall adjudicate a contested case hearing pursuant to chapter 91, HRS and Subchapter 5 of Title 13 of the Hawaii Administrative Rules; and (c) the Board's review of this Settlement Agreement is a conducted pursuant to its role as the executive board of the Department of Land and Natural Resources.

If the Board considers this Settlement Agreement at its publicly noticed meeting, this Settlement Agreement shall be contained in a board packet distributed to the Board members before a meeting for use at that meeting. Materials in the board packet shall be made available for public inspection pursuant to HRS § 92-7.5.

Petitioner understands that if the Board does not accept this Settlement Agreement, Petitioner may proceed with a contested case hearing before the Board pursuant to HAR § 13-1-128. Petitioner understands the Board shall adjudicate the contested case hearing. The Board shall render its findings of fact, conclusions of law, and decision and order, which may sustain any allegations of violations and/or impose any penalties for the alleged violations.



Deputy Attorney General
Attorney for Department of Land
and Natural Resources

Dated: 01 APRIL 2025



Attorney for Petitioner 59-181
Ke-Nui LLC, Eric Freeman,
and Moniza Freeman

Dated: 26 March 2026

Appendix: Text Summary of Attachment

This text summary has been prepared solely for accessibility purposes to facilitate general understanding of the referenced document. It does not constitute the official record, is not intended to be a complete or verbatim reproduction, and may omit, condense, or paraphrase content. This summary has no legal force or effect and shall not be relied upon for legal, regulatory, or evidentiary purposes. In the event of any inconsistency or conflict, the original document, as maintained by the issuing authority, shall control and be deemed the authoritative source.

This document is a proposed settlement agreement between:

- DLNR (Department of Land and Natural Resources), through OCCL
- Eric and Moniza Freeman (59-181 Ke Nui LLC)

It resolves Conservation District Enforcement Case OA 22-18, involving unauthorized shoreline erosion control structures and encroachment onto State land at a North Shore property (Parcel 034).

Background

- OCCL initiated enforcement based on unauthorized shoreline work and permit violations
 - The Freemans:
 - Failed to comply with conditions of an Emergency CDUP
 - Conducted work on State-owned land (makai of the property) without authorization
 - The Freemans requested a contested case hearing, but the parties agreed to settle instead
-

Core Settlement Terms

1. Relocation of Structure

- The Freemans must:
 - Move their house mauka (to the back of the lot)
 - Complete this by December 31, 2025
 - Obtain all required permits (except DLNR permits, which are waived under the order)

2. Shoreline Determination

- The parties will attempt to agree on the shoreline location
- If not: The Freemans must obtain a formal shoreline certification by December 31, 2025

3. Removal of All Shoreline Encroachments

- The Freemans must:
 - Remove all debris, erosion control structures, and encroachments from State land
 - Deadline: December 31, 2025

- Possible one-time extension (up to 6 months) if:
 - Permits are delayed, or
 - Weather prevents safe completion

4. Restoration Requirements

- The Freemans must:
 - Conduct dune restoration and vegetation planting
 - Follow the Hawai'i Dune Restoration Manual
 - Complete by December 31, 2025
 - Coordinate with OCCL

5. Admission and Waiver

- The Freemans:
 - Admit they violated applicable laws and rules
 - Waive their right to a contested case hearing

Financial Penalties

Reduced Fine Structure

- Total potential fines: \$937,000
- Reduced to: \$510,000 upon compliance

Additional Reductions

- Fines may be further reduced dollar-for-dollar based on compliance costs (e.g., permits, design work)
- BUT:
 - Cannot drop below \$10,000 minimum
 - Excludes:
 - Legal fees
 - Non-compliance-related improvements

Payment Deadline

- All fines must be paid by December 31, 2025