

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

May 23, 2025

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

REGARDING: Request for More Time to Comply with the Board of Land and Natural Resources Decision in Conservation District Enforcement Case HA 24-23 Regarding the Removal of Unauthorized Modifications to a Single-Family Residence and Placement of Accessory Structures within the Conservation District Located at 32-2455 Stone Road, Piha Homesteads, North Hilo, Island of Hawaii

LANDOWNER: Juan and Judith Silva

LOCATION: 32-2455 Stone Road, Piha Homesteads, North Hilo, Island of Hawaii

TAX MAP KEY (TMK): (3) 3-2-004:044 (“Parcel 044”)

SUBZONE: General

EXHIBITS:

1. Location and Subzone Map
2. Board’s Decision in ENF: HA 24-23
3. Silva February 27, 2025, Request for More Time
4. Silva Monthly Updates (Oct 2024 – Feb 2025)
5. Silva Monthly Update March 2025

Summary

The question before the Board of Land and Natural Resources (Board) today is the amount of time to grant the landowners and Conservation District violators (Juan and Judith Silva) to make progress towards compliance with the Board’s decision in Conservation District Enforcement Case (ENF:) HA 24-23. Pursuant to #4 in the Board’s decision in ENF: HA 24-23, Juan and Judith Silva are requesting a 24-month (2-year) extension in time to comply.

Staff is recommending a 6-month extension of time. OCCL does not support the full 24-month extension request due to what appears to be a lack of substantial progress by the landowners towards compliance.

Background

On October 11, 2024, the Board amended the staff recommendations of agenda item K-1 and found Juan and Judith Silva in violation of Hawaii Revised Statutes (HRS) section 183C-7 and Hawaii Administrative Rules (HAR) section 13-5-25 for constructing unauthorized modifications to the existing ~1,068 sq. ft single-family residence and placement of accessory structures without prior approval within the State Land Use Conservation District located at 32-2455 Stone Road, Piha Homesteads, North Hilo, Island of Hawaii on TMK: (3) 3-2-004:044. See **Exhibit 1** and **Exhibit 2**. The Staff Report for K-1 submitted for the October 11, 2024, Board meeting can be reviewed at <https://dlnr.hawaii.gov/wp-content/uploads/2024/10/K-1.pdf>.

#3 of the Board's decision in ENF: HA 24-23 states: *That Juan and Judith Silva or a future landowner shall remove all unauthorized modifications and accessory structures constructed or placed on Parcel 044 and return the SFR to 1,068 sq. ft within ninety days from the date of the Board's action;*

- a. *The total fines and administrative costs (\$85,000) authorized by the Board above and levied against Juan and Judith Silva or a future landowner may be credited towards removal costs and returning the SFR to its approved 1,068 sq. ft based on supportive documentation submitted to the Department.*

Staff notes that the Board imposed deadline to remove the unauthorized improvements and return the SFR on Parcel 044 to its approved 1,068 sq. ft was **January 9, 2025**. Juan and Judith Silva have not submitted any evidence that any of the unauthorized modifications to the single-family residence and accessory structures constructed and placed on Parcel 044 have been removed.

#4 of the Board's decision in ENF: HA 24-23 states: *That any extension of these deadlines will require the concurrence of the Board. Any request to extend these deadlines will require supportive information and documentation from Juan and Judith Silva or a future owner of Parcel 044 as to why an extension may be warranted. Any extension request regarding these deadlines shall be submitted to the Department prior to the deadline or any authorized extension thereof.*

By letter dated February 27, 2025, Juan and Judith Silva and their counsel are requesting an extension of 24-months (2-years) of time pursuant to #4 of the Board's decision in ENF: HA 24-23 to comply with this decision (**Exhibit 3**). Staff notes that the Silva extension request was submitted approximately 2 months after the Board's January 9, 2025, removal deadline.

Silva Monthly Updates

#9 of the Board's decision in ENF: HA 24-23 states: *That Juan and Judith Silva or a future owner of Parcel 044 shall provide the Office of Conservation and Coastal Lands (OCCL)*

with monthly updates regarding their progress with compliance with BLNR's decision in ENF: HA 24-23 and the terms noted above.

On February 27, 2025, Juan and Judith Silva submitted their monthly updates for October 2024, November 2024, December 2024, January 2025, and February 2025.¹ See **Exhibit 4**.

On April 1, 2025, Juan and Judith Silva submitted their monthly update for March 2025. See **Exhibit 5**.

Discussion

Juan and Judith Silva admitted, and the Board found them in violation of constructing or placing the unauthorized land uses on Parcel 044 in the Conservation District without prior approvals.

Based on the monthly updates that the Silva's have submitted, OCCL staff hoped that Juan and Judith Silva would have made substantially more progress towards compliance with Board's decision in ENF: HA 24-23 and removal of the unauthorized improvements constructed and placed on Parcel 044. The approximately 3-month deadline to remove these unauthorized improvements was tight but it is staff's opinion that this was intended to encourage Juan and Judith Silva to move swiftly to hire a contractor or contractors, obtain the necessary authorizations, and remove these unauthorized land uses in a timely manner.

At its October 11, 2024, meeting, the Board noted that Juan and Judith Silva would most likely encounter delays in obtaining necessary approvals from other agencies, including the County of Hawaii, for removal and demolition activities due to the unauthorized land uses constructed and placed on the property. According to Juan and Judith Silva's monthly updates, the Silva's and their counsel have had approximately 3 meetings with County of Hawaii agencies and officials. cursory conversations with the County of Hawaii Department of Public Works (DPW) indicate that an application and authorization will be required for removal and demolition activities due to the documented unauthorized improvements and that resolution will require partial demolition to return the dwelling on Parcel 044 to its approved 1,068 sq. ft.

Submitted correspondences from Juan and Judith Silva and their counsel appear to request that OCCL issue Site Plan Approval (SPA) for the demolition of the unauthorized improvements pursuant to HAR section 13-5-22 P-8 (B-1). OCCL is not requiring authorization for demolition and removal activities related to the Board's decision and resolution of ENF: HA 24-23.

¹ On December 16, 2024, staff had requested that Juan and Judith Silva provide OCCL with their monthly updates after OCCL had not received the Silva's updates for October 2024 and November 2024. No monthly updates were submitted until February 27, 2025.

Additionally, and in this case, the Board has ordered removal of the unauthorized modifications to the single-family residence and unauthorized placement of accessory structures on Parcel 044. An application for Conservation District authorization would create additional paperwork for all parties and likely cause additional delays for the removal of improvements that were not authorized in the first place.

Approximately 7 months have passed since the Board rendered its decision in Conservation District enforcement case ENF: HA 24-23. Until February 27, 2025, when Juan and Judith Silva and their counsel submitted their first series of monthly updates, the Silva's had been noncompliant with the Board's decision.

It is staff's opinion that Juan and Judith Silva could have demonstrated some good faith effort towards compliance by removing unauthorized improvements such as, but not necessarily limited to, storage shed(s), the second water tank, securing a contractor, filing an application with DPW, and recording the conditions of Enforcement file HA 24-23 with the deed instrument. See #8 of **Exhibit 2**. Based on the information submitted by Juan and Judith Silva, none of these actions towards compliance have been taken by the landowners of Parcel 044.

Pursuant to #4 of the Board's decision in ENF: HA 24-23, Juan and Judith Silva are requesting a 24-month (2-year) extension of time to comply with the Board's decision. Based on the above and the lack of progress towards compliance, OCCL does not believe that an extension of 2-years is warranted.

Staff would like to see Juan and Judith Silva comply with the Board's decision in ENF: HA 24-23; and thus, believe a 6-month extension of time is more appropriate. If more time is needed, then Juan and Judith Silva can submit another request for more time to comply along with supportive documentation and information pursuant to #4 of the Board's decision in ENF: HA 24-23. At which time, staff will schedule the matter for a Board meeting and the Silva's will need to demonstrate the actions they have taken towards compliance.

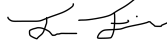
As such, Staff recommends as follows:

That, pursuant to HRS section 183C-7, HAR section 13-5-25 and #4 of ENF: HA 24-23, the Board of Land and Natural Resources amend #3 of the Board's decision in ENF: HA 24-23 and grant a 6-month time extension to comply with Conservation District Enforcement Case HA 24-23 located at 32-2455 Stone Road, Piha Homesteads, North Hilo, Island of Hawaii on TMK: (3) 3-2-004:044 subject to the following conditions:

1. That #3 of Conservation District Enforcement Case HA 24-23 is amended so that Juan and Judith Silva or a future landowner shall remove all unauthorized modifications and accessory structures constructed or placed on Parcel 044 and return the SFR to 1,068 sq. ft within 6-months from the date of the Board's action; and,

2. That all other conditions imposed by the Board under Conservation District Enforcement Case HA 24-23, as amended, shall remain in effect.

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner
Office of Conservation and Coastal Lands

MC

Approved for submittal:



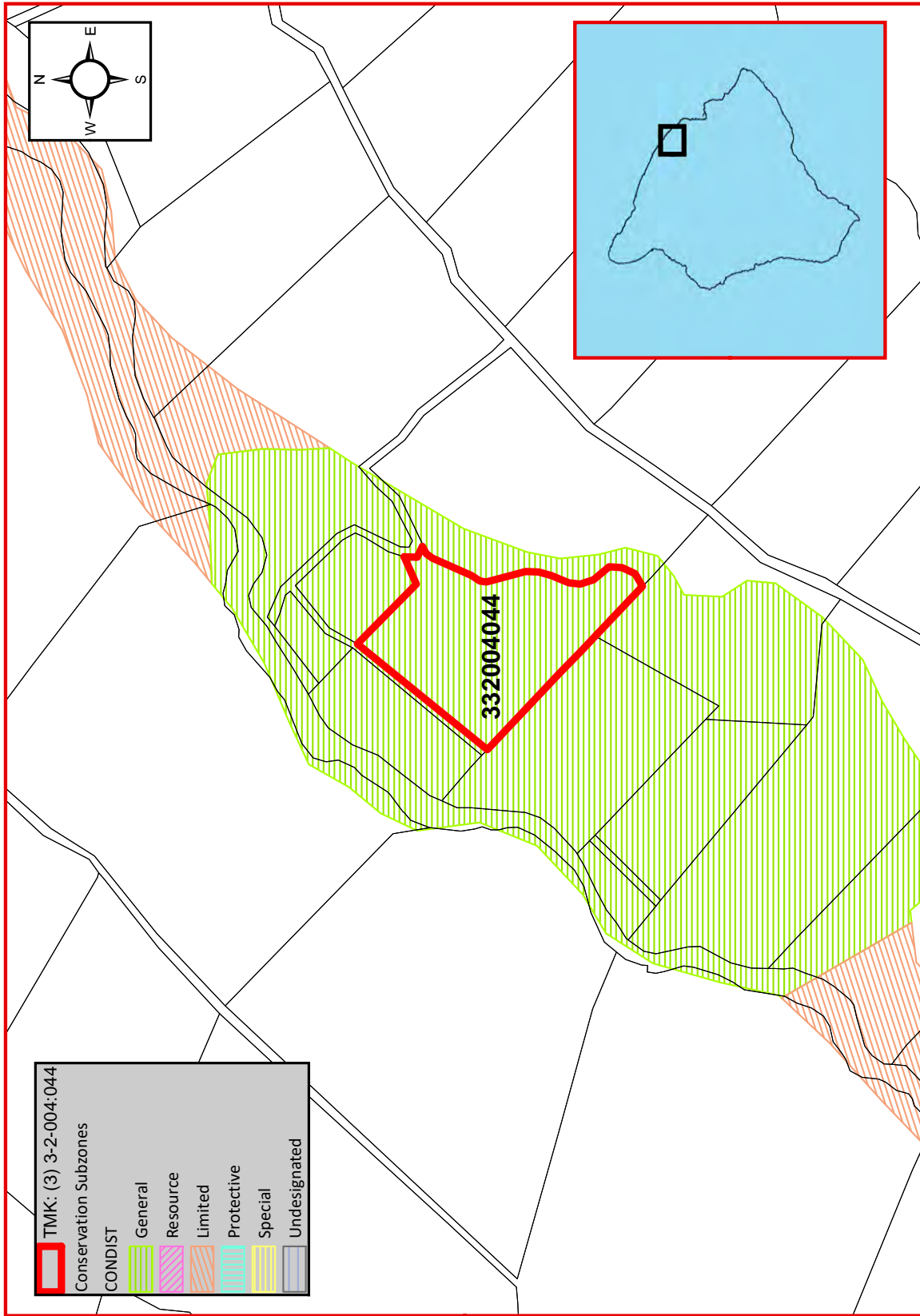
Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources



Exhibit 1 - Location & Subzone Maps

0 250 500 1,000 Feet

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



Date: 6/19/2024

All boundaries are approximate

Produced by Trevor Fitzpatrick @ OCCL

Exhibit 1 - Location & Subzone Maps

*Rec'd 10-21-24
by JH Silva*



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHANE
DEPUTY DIRECTOR - WATER

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

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

NOV 30 A 11:00
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

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
HOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TF

ENF: HA 24-23

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

Oct 17, 2024

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

Dear Juan and Judith Silva:

This is to inform you that on October 11, 2024, the Board of Land and Natural Resources (BLNR) amended the Staff Recommendations of agenda item K-1 and found Juan and Judith Silva in violation of HRS § 183C-7 and HAR § 13-5-25 for constructing unauthorized modifications to the single-family residence and placement of accessory structures without prior approval within the State Land Use Conservation District located at 32-2455 Stone Road, Piha Homesteads, North Hilo, Island of Hawaii, on TMK: (3) 3-2-004:044 subject to the following:

1. That the Board adopted the findings and conclusions set forth in K-1 and imposed the following administrative fines:
 - a. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$15,000 for violating the provisions of HAR § 13-5-25, for constructing the 726.8 sq. ft "Family Room" and major alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
 - b. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$15,000 for violating the provisions of HAR § 13-5-25, for constructing the 588.1 sq. ft "Garage" and major alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
 - c. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$15,000 for violating the provisions of HAR § 13-5-25, for constructing a new approximately 620ft driveway and 3,110 sq. ft paved parking and turnaround area that are major alterations to the existing 420ft dirt or gravel driveway on land within the Conservation District General Subzone;

REF: OCCL: TF

ENF: HA 24-23

- d. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$10,000 for violating the provisions of HAR § 13-5-25, for constructing the 400 sq. ft “Carport” and moderate alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
 - e. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$10,000 for violating the provisions of HAR § 13-5-25, for constructing the 361.2 sq. ft “Porch” and moderate alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
 - f. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$10,000 for violating the provisions of HAR § 13-5-25, for constructing the 296 sq. ft “Porch” and moderate alterations to the existing 1,068 sq. ft SFR on land within the Conservation District General Subzone;
 - g. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$4,000 for violating the provisions of HAR § 13-5-25, for the placement of two accessory structures consisting of rainwater catchment tanks on land within the Conservation District General Subzone;
 - h. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$4,000 for violating the provisions of HAR § 13-5-25, for the placement of two accessory structures consisting of storage sheds on land within the Conservation District General Subzone;
 - i. Pursuant to HRS § 183C-7, Juan and Judith Silva are fined \$2,000 for violating the provisions of HAR § 13-5-25, for the construction and placement of one accessory structure consisting of a retaining wall on land within the Conservation District General Subzone;
 - j. Therefore, that the total fines and administrative costs that were levied against Juan and Judith Silva is \$85,000, and that Juan and Judith Silva shall pay all designated fines and administrative costs within ninety days from the date of the Board’s action;
2. That the Board authorize the Department of the Attorney General to file a Notice of Pendency of Action with the deed or deed instrument of Parcel 044 at the Bureau of Conveyances pursuant to HRS §§ 171-6.4(c), 501-151, and 634-51;
 3. That Juan and Judith Silva or a future landowner shall remove all unauthorized modifications and accessory structures constructed or placed on Parcel 044 and return the SFR to 1,068 sq. ft within ninety days from the date of the Board’s action;
 - a. The total fines and administrative costs (\$85,000) authorized by the Board above and levied against Juan and Judith Silva or a future landowner may be credited towards removal costs and returning the SFR to its approved 1,068 sq. ft based on supportive documentation submitted to the Department;
 4. That any extension of these deadlines will require the concurrence of the Board. Any request to extend these deadlines will require supportive information and documentation from Juan and Judith Silva or a future owner of Parcel 044 as to why an extension may be warranted. Any extension request regarding these deadlines shall be submitted to the Department prior to the deadline or any authorized extension thereof;
 5. That in the event of failure of Juan and Judith Silva or a future owner of Parcel 044 to comply with any order imposed in connection with this enforcement action, they shall be fined an additional \$15,000 per day, pursuant to HRS § 183C-7, until the order is complied with;
 6. That in the event of failure of Juan and Judith Silva or a future owner of Parcel 044 to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs;

REF: OCCL: TF

ENF: HA 24-23

7. That the Board delegate authority to the Chairperson to effectuate the above recommendations, subject to such conditions as may be prescribed by the Chairperson to best serve the interest of the State, without further consultation with the Board, subject to review and approval by the Department of the Attorney General;
8. The above noted conditions of Enforcement file HA 24-23 shall be recorded with the deed instrument by Juan and Judith Silva at the Bureau of Conveyances pursuant to HAR § 13-5-6(e); and
9. That Juan and Judith Silva or a future owner of Parcel 044 shall provide the Office of Conservation and Coastal Lands (OCCL) with monthly updates regarding their progress with compliance with BLNR's decision in ENF: HA 24-23 and the terms noted above.

Please acknowledge receipt of this letter, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within 30 days. Should you have any questions regarding this letter, contact Trevor Fitzpatrick of our Office at (808) 587-0378 or trevor.i.fitzpatrick@hawaii.gov.

Sincerely,

S Michael Cain


Michael Cain, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:



Landowner's Signature

Date 10/24/24



Landowner's Signature

Date 10-24-24

CC: HDLO
Department of Health Wastewater Branch
County of Hawaii Planning Department
County of Hawaii Department of Public Works

MARGARET WILLE & ASSOCIATES

A Limited Liability Law Company

Margaret Wille #8522
Timothy Vandever #11005
Winter Quinn #10976
tim@mwlawhawaii.com

February 27, 2025

VIA EMAIL ONLY:

Michael Cain, Administrator
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, Hawaii 96809
michael.cain@hawaii.gov

Dawn N.S. Chang, Chairperson
State of Hawaii Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl St.
Honolulu, HI 96813
dlnr@hawaii.gov

Danica L. Swenson, Deputy Attorney General
Department of the Attorney General, Land Division
425 Queen Street
Honolulu, Hawaii 96813
danica.l.swenson@hawaii.gov

Re: Juan and Judith Silva – Compliance in Conservation Enforcement Case HA 24-23 and Request for 24-Month Extension of Time

Aloha Mr. Cain-

Please find attached, Juan and Judith Silva's (the "Silvas") monthly update reports regarding their progress with compliance with the BLNR's decision (pursuant to section 9) in the above-mentioned enforcement case and let me know if you have any questions.


As you will see, in each month since the BLNR decision, the Silvas have complied with the Board's order. However, based on discussions with the County of Hawaii (the "County") and contractors, it also became clear that in order to stay in compliance with existing statutory and regulatory requirements, the Silvas were not able to complete the removal of unauthorized structures and modifications in the 90 days set out by the Board. This is due to numerous issues,

including road access and securing the necessary contractors and permits. In addition to the above, Hawaii Revised Statutes (HRS) § 183C-6(d) and Hawaii Administrative Rules (HAR) § 13-5-38 unequivocally mandate a Site Plan Approval (SPA) for demolition or alteration of structures on Conservation District land, including compliance with all federal, state, and county regulations, specifically County Building permits for partial demolition.

As several of the BLNR members acknowledged during the October 11, 2024 meeting of the Board and deliberation of OCCL staff recommendations, it would likely take far longer than 90 days for the Silvas to comply with any decision requiring removal and/or partial demolition (and we have since learned that the County currently has an 18-month backlog for permits of this nature). The Silvas also seek more information from the OCCL to clarify process and approaches toward compliance and possible resolution.

Therefore, the Silvas are seeking an extension of 24-month extension of time under section 4 of the amended Staff Recommendations as ordered by the Board with which to comply with the BLNR decision. Please advise if this 24-month extension is acceptable and let us know if you have any questions.

Sincerely,



Timothy Vandever, Esq.
Margaret Wille & Associates LLLC

Attached:

- Juan and Judy Silva's Monthly Updates for October 2024 – February 2025

SILVA/DNLR MONTHLY UPDATES
Conservation Enforcement Case HA 24-23

October

10-11-24 DLNR Board meeting; hearing and directives
10-14-24 Hired building and site plan consultant
10-17-24 Obtained original blueprints/surveys
10-22-24 Reviewed and copied pertinent documents at OCCL office
10-23-24 Obtained real estate documents of original sale
10-24-24 Certified letter and email to DLNR requesting ATF from Chair Chang
10-28-24 Obtained storm water quality report

November

11-11-24 Obtained Paralegal assistance organizing and toward legal engagement
11-19-24 Home insurance policy reviewed
11-25-24 Consulted Hilo Fire Department regarding water tanks
11-28-24 Consulted Hawaii County Planning Department regarding permits

December

12-02-24 Obtained Attorney
12-19-24 Consulted Hawaii Department of Transportation regarding access re 6-ton bridge

January

01-07-25 Attorneys Tim Vandever and Margaret Wille met with Shaun Perry at Hawaii County
Planning Dept. re permits for demolition
01-14-25 Set criteria and interviewed several demolition contractors and electricians

February

02-14-25 Attorney General letter response regarding ATF
02-28-25 Big Island Land Clearing, LLC and Isaiah Electrician scheduled for site visit to assess
property and cost of demolition

Monthly Compliance Progress Report - March 2025

April 1, 2025

Re: ENF: HA 24-23 - Hawaii County Property: TMK 3-2-004-004

Dear OCCL Administrator and Staff,

This letter serves as our formal compliance progress update for March 2025 regarding enforcement case ENF: HA 24-23. We remain committed to full compliance with both the enforcement order and HAR 13-5-42(1).

Actions Taken During March 2025

March was a productive month during which we took substantive steps to understand and address our compliance requirements:

Permit Requirements Research

Juan traveled to the Big Island and met directly with Hawaii County Building Department Officials to clarify permit requirements for the partial demolition of the unapproved structure(s) referenced in the enforcement action. The officials advised that due to the scope and complexity of a "partial demolition," we would need to submit:

1. A complete set of plans suitable for necessary approvals
2. Plans stamped by a licensed structural engineer or architect
3. Approval from OCCL before submission of those plans (please advise us as to what that "approval from OCCL specifically entails)

The Building Department indicated that once properly submitted, the processing time for these permits would likely range from 6-12 months.

Contractor Consultations

We also consulted with potential service providers, including:

- A demolition contractor
- An electrical contractor

Both provided estimates and professional feedback on the project. We noted some discrepancies between the contractors' advice and Building Department guidance regarding remediation procedures for unapproved structures⁴.

Additional Compliance Investigations

To ensure comprehensive compliance, we have initiated inquiries regarding:

- Cesspool upgrade requirements
- Road maintenance obligations
- Status of 6-ton bridge limits for demolition debris hauling
- Solid Waste Landfill compliance protocols
- Best Management Practice requirements at the county level
- Dust monitoring and abatement requirements at the county level
 - The Neighbor's parcel is up for sale and they expressed significant concern about the possible "silica dust" intrusion onto their lands during concrete demolition.
- School bus schedules to not conflict with hauling of Construction Debris
- Endangered Species in the area (working on that list)
- Recycling and Reuse options in alignment with County General Plan directives of zero waste
- Possible hazardous wastes coming from the Construction Demolition waste stream (ongoing research and eventually testing)

We are documenting all communications with relevant agencies and will forward formal responses upon receipt/replies.

Request for Clarification

If your office possesses any information that differs from what we've gathered regarding permit requirements, processing timeframes, or procedural requirements, we would greatly appreciate your sharing this insight. Aligned understanding will facilitate more efficient progress toward full compliance¹.

Compliance Guidance Request

HAR 13-5-42(1) presents complex compliance requirements across multiple regulatory domains⁴. To ensure we address all applicable requirements, we respectfully request:

1. Confirmation of whether our current approach aligns with your expectations
2. Any available guidance documents specific to our enforcement case

3. A comprehensive checklist of agencies we should contact regarding the ENF 24-23 decision and order

We appreciate your patience as we pursue this methodical, conservation-minded approach. Our commitment is to achieve full compliance with all applicable regulations in a thorough and responsible manner.

Respectfully submitted,

Judy and Juan Silva
1910 Ala Moana Boulevard,
Unit 15-D
Honolulu HI 96815