

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

October 10, 2025

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

**REGARDING:** Request for Administrative Fines and Other Penalties Against Kuaehu Condominium, including Unit Owners Leland V Wigington Jr and David W West, for the Conservation District Enforcement Case KA 21-12 Regarding the Alleged Permit Noncompliance, Construction of Shoreline Erosion Control Device, and Encroachment Upon State Land Located Makai of 4880 and 4888 Aliomanu Road, Tax Map Key (TMK): (4) 4-9-004:004

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:** Kuaehu Condominium and unit owners Leland V Wigington Jr (Unit 1) and David W West (Unit 2) (collectively, the "Kuaehu")

**LOCATION:** Makai of 4880 and 4888 Aliomanu Road, Molaa Hui Lands, Kawaihau, Kauai, Tax Map Key ("TMK"): (4) 4-9-004:004

**LANDOWNER:** State of Hawaii

**SUBZONE:** Resource

**EXHIBITS:**

1. Location Maps (pages 13-14)
2. Kuaehu Condo Declaration and Map (pages 15-38)
3. Site Photos (pages 39-49)
4. Emergency CDUP KA 06-04 (& 05-02) (pages 50-62)
5. 4th Amendment to Declaration of CPR of Kuaehu Condo (pages 63-68)
6. Notice of Alleged Violation & Order KA 21-12 (& 21-11) (pages 69-76)
7. Parcel 004 & Kuaehu Unit Owners (page 77)
8. OCCL February 6, 2025, Letter (pages 78-80)
9. OCCL March 31, 2025, Letter (pages 81-82)
10. Rules and Statutes regarding the Conservation District (pages 83-86)

## **Summary**

The Office of Conservation and Coastal Lands (OCCL) alleges that Kuaehu Condominium and unit owners Leland V Wigington Jr (Unit 1) and David W West (Unit 2) (collectively, the “Kuaehu”), landowners of 4880 and 4888 Aliomanu Road, TMK: (4) 4-9-004:004 (“Parcel 004”) conducted unauthorized land uses on State of Hawaii land in the Resource Subzone of the State Land Use Conservation District fronting the subject parcel. The alleged violations include the alleged noncompliance with the conditions of an Emergency Conservation District Use Permit (CDUP) for a temporary erosion control structure, including but not limited to failing to remove it from State land at the end of the authorization period and at the Department’s request, and the alleged unauthorized installation of erosion control measures or devices within the Conservation District on State land.

## **Description of Area**

### **Sand and Swell Patterns**

The subject area is near or at Kuaehu Point on the north end of Anahola Bay on the northeast shores of the island of Kauai (**Exhibit 1**). Kauai’s northeast and eastern shorelines is characterized by embayments and fringing reef systems. The shore is exposed to northeast tradewind waves year-round and large winter swells from a northerly or northeast direction. Streams and rivers, such as Anahola Stream, flow into the embayments that dot Kauai’s northeast and east coastlines, sometimes contributing to coastal flooding.

The beaches near Kuaehu Point are thin, sandy, and contain some rocks and boulders which continue to be further exposed as the area experiences a long-term trend of erosion. The shoreline area fronting the subject parcel erodes at an average rate of 1.59 feet per year.

### **Residential Development**

Parcel 004 and Kauehu Condominium appears to have been a residential lot that has been subject to a Condominium Property Regime (CPR) consisting of Unit 1 and Unit 2 (**Exhibit 2**). Parcel 004 and Kauehu Condominium contains two single-family residences. Unit 1 appears to be the two-story approximately 3,312 sq. ft single-family residence, and Unit 2 appears to be the one-story approximately 1,512 sq. ft single-family residence.

According to the Hawaii Cesspool Prioritization Tool, Parcel 004 contains two cesspools that have been identified by the Department of Health and the Cesspool Conversion Working Group in the Priority 2 zone, meaning that they rank behind Priority 1, but still pose a significant hazard to human well-being and the environment, and are recommended to be converted or decommissioned by 2050.

A cursory review of the website vrbo.com indicates that Parcel 004, including both units and associated dwellings, are being used as transient vacation rentals. According to the County of Kauai, both units have authorization to operate as transient vacation rentals.

## **Site Photos**

**Exhibit 3** contains a photo history of the subject area.

## **History**

### **Conservation District Enforcement Case KA 03-16**

On December 13, 2002, the Board of Land and Natural Resources (BLNR) found the landowner of Parcel 004 in violation of the provisions of Title 13-5 Hawaii Administrative Rules (HAR) and Chapter 183C, Hawaii Revised Statutes (HRS) for failing to obtain the appropriate approvals for the construction of a shoreline structure and placement of fill in the shoreline area fronting the subject property, subject to five terms and conditions. To resolve matters, the landowner of Parcel 004 was ordered to remove the fill material immediately and remove the boulder structure and restore the shoreline area to its previous condition within sixty-days of the date of the BLNR's action. Additionally, the BLNR ordered the landowner of Parcel 004 to expend \$4,000 in shoreline mitigation that protects the (Kuaehu) point and to provide copies of invoices within one year. It appears the fill and rocks that were placed in the shoreline area and against the erosion scarp may have been removed in a timely manner; however, the landowner of Parcel 004 and their counsel sought further clarification from the Department and BLNR regarding rocks or rock outcropping and the responsibility of removal. See pages 39 to 42 of **Exhibit 3**.

On February 28, 2003, the BLNR amended staff's recommendations and amended its December 13, 2002, action to require the landowner of Parcel 004 to remove all the boulders placed at the shoreline by August 1, 2003, and restore the shoreline area to its previous condition. The BLNR amended action also included the requirement of filing a Conservation District Use Application (CDUA) to determine the final disposition of boulders not installed by the landowner of Parcel 004 if they were not removed. If the boulders were removed by August 1, 2003 or a CDUA was not filed by August 1, 2003, fines of \$2,000 per day were to accrue until the landowner of Parcel 004 met this condition. According to OCCL files, it does not appear that the rocks placed in the shoreline area were removed in a timely manner and a CDUA was not filed in accordance with the BLNR's amended decision.

### **Conservation District Use Application (CDUA) KA-3165**

On October 23, 2003, the Department issued counsel for the landowner of Parcel 004 and the adjacent Parcels 005 and 023 a letter acknowledging receipt of their CDUA for a temporary sandbag revetment and periodic sand nourishment project. The letter noted that the Department was unable to accept and process the CDUA due to the unresolved violation and the failure to remove the rocks placed in the shoreline area fronting Parcel 004.

### **Emergency Permit KA 06-04 (and KA 05-02) (Exhibit 4)**

On December 4, 2003, the Department authorized a temporary erosion control structure fronting three properties (Parcels 004, 005, and 023) consisting of SEAbag sandbags that were

to be kept buried or covered with sand to the greatest extent possible. Sand from the Anahola river mouth was to be used to fill and cover the sandbag structure. The Department authorized the emergency temporary measures for a period of less than five years provided that the landowners of Parcels 004, 005, and 023 also agreed to cooperate in a long-term solution to the erosion problems.

Condition 8 of the Department's December 4, 2003, letter states: *The Department may order the removal of the bags at any time should it determine that they are having a significant impact to the beach or become [a] nuisance to the general public.*

On December 18, 2003, counsel notified the Department that only the landowner of Parcel 004 would be moving forward with construction and installation of the temporary erosion control structure authorized by the Department's December 4, 2003, letter.

On February 25, 2004 (Emergency CDUP KA 05-02), the Department authorized the removal of sand from the Anahola river mouth to fill and cover the sandbag structure subject to authorization from the Department of Hawaiian Home Lands (DHHL) and fourteen terms and conditions. This appears to have initiated the authorization period the temporary erosion control structure consisting of sandbags. Approximately four to five subsequent requests for additional work and modifications to the structure were reviewed and approved by the Department.

On June 2, 2006, the Department authorized work to complete the temporary erosion control structure subject to fifteen terms and conditions. Completion work consisted of completing the southern tern of structure by adding additional sandbags, the placement of approximately 500 cubic yards of sand from the Anahola river mouth on and fronting the structure, and the removal and redistribution of approximately twenty rocks so they are not in an unnatural wall formation. See page 42 of **Exhibit 3**.

Condition 4 of the June 2, 2006, Emergency CDUP KA 06-04 states: *The applicant shall submit annual reports to the DLNR every five (5) years describing the condition of the structure, what maintenance actions took place and include photographic evidence of the beach and structure condition.*

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

#### **Noncompliance with Emergency CDUP KA 06-04 (and KA 05-02)**

On February 25, 2009, Emergency CDUP KA 06-04 (and KA 05-02) expired, and the temporary emergency erosion control measures and devices were to be removed. OCCL files indicate that no required five-year reports or a proposed long-term solution to the erosion problems were submitted to the Department by the landowner of Parcel 004.

On November 27, 2012, OCCL issued the landowner of Parcel 004 a letter requesting an update regarding the required and overdue five-year summary report regarding the condition

of the temporary erosion control structure and an update regarding their plans for a long-term solution to the ongoing erosion problem.

On February 11, 2013, counsel for the landowner of Parcel 004 submitted their overdue five-year summary report. No update for their plans for a long-term solution to the ongoing erosion problem as requested was submitted.

On March 13, 2013, OCCL issued counsel a letter requesting documentation be provided regarding removal of displaced sandbags and any other loose material identified in their 5-year summary report as well as the missing update regarding their client's plans for a long-term solution. The letter noted that the removal documentation be submitted within sixty days and that the proposed plans for a long-term solution include a definitive timeframe for the removal of the temporary emergency erosion control measures and devices.

On October 26, 2015, OCCL issued the landowner of Parcel 004 another letter requesting documentation that displaced sandbags, and any other loose materials had been removed, and an update regarding their plans for a long-term solution to the ongoing erosion problem. The removal documentation was to be submitted within sixty days and their long-term plan update within ninety. No documentation or plan was received by OCCL within this timeframe.

On July 20, 2020, the landowners and unit owners of Kuaehu Condominium on Parcel 004 record the Fourth Amendment to Declaration of Condominium Property Regime of Kuaehu Condominium, Condominium Map No. 3495, at the Bureau of Conveyances (BOC – ref. Doc A-75060427). The recorded Fourth Amendment noted the eroding shoreline of Parcel 004, that the Declarants had obtained Emergency CDUP KA 06-04 to construct a temporary shoreline protection structure, and that the Kuaehu Condominium unit owners would work to develop a plan for long-term erosion control. See **Exhibit 5**.

On October 15, 2020, OCCL issued the landowners of Parcel 004 a letter noting that it had come OCCL's attention that the temporary erosion control structure fronting the property was not in compliance with the terms and conditions of the previous authorizations granted for the temporary structure. The letter noted that the structure appeared to be unmaintained and materials from the temporary erosion control structure have become liberated from the structure which were posing a nuisance and hazard to the nearshore environment. The letter requested that within thirty days, the landowner of Parcel 004 provide OCCL with a written response regarding the status of the structure and documentation of removal of liberated or displaced materials from the temporary erosion control structure. No response was received. Additionally, the letter requested that within sixty days, the landowner of Parcel 004 provide OCCL with a summary report regarding the status of the temporary erosion control structure and plans for long-term solution to the erosion problems. See page 44 of **Exhibit 3**.

#### **Enforcement KA 21-12 (and KA 21-11) (Exhibit 6)**

On November 23, 2020, the Department issued the landowners of Parcel 004 a Notice of Alleged Violation & Order (NOAVO) for the above-described noncompliance with issued emergency authorizations and the temporary erosion control structure, and it had come to OCCL's attention that boulders had been placed in the shoreline area in the form of a rock

revetment. The notice noted the lack of responses and requested information regarding the required five-year summary reports and plans for a long-term solution to the erosion problems. The notice requested that the landowners of Parcel 004 remove the unauthorized structures including the rock revetment within thirty days of receipt of the notice. See page 45 of **Exhibit 3**.

On December 4, 2020, OCCL received a letter from counsel for the owner of Unit 2 of Parcel 004 and Kuaehu Condominium regarding the NOAVO. The letter alleged that owners of Unit 1 placed the rocks in the shoreline area fronting Parcel 004. The letter noted that the owners of Unit 1 had been informed by the owner of Unit 2 that the rocks that had been placed in the shoreline area fronting Parcel 004 needed to be removed.

On December 30, 2020, OCCL issued a letter to the landowners of Parcel 004 and Kuaehu Condominium noting that a response to the November 23, 2020, NOAVO from one of the Unit/landowners (Unit 2), but not from the owners of Unit 1. Additionally, the letter stated that neither land or unit owner had addressed the issue of noncompliance raised in the notice. The letter requested a written response within thirty days.

On January 29, 2021, OCCL received a letter from counsel for the owners of Unit 1 of Kuaehu and Parcel 004. The letter stated that the rock revetment had been removed and that the issues of noncompliance with previous authorizations issued for the temporary erosion control structure should be attributed to the owner of Unit 2. The letter alleged that the structures dilapidated status was, in part, the cause of alleged vandalism, and that the owners of Unit 1 of Parcel 004 were interested in pursuing a Small-Scale Beach Nourishment (SSBN) project to potentially resolve matters. Staff notes no application for a proposed SSBN project fronting Parcel 004 was submitted, and Conservation District rules prevent the Department and Board from accepting and processing an application for proposed land uses on a parcel with unresolved Conservation District violations.

On August 4, 2021, OCCL conducted a site inspection to the subject area. Staff observed that it appeared the boulders and rock revetment that were, in part, the subject of the November 23, 2020, NOAVO were partially removed from the shoreline area fronting Parcel 004. Staff observed additional rocks were being utilized in or on the expired temporary erosion control structure. Additionally, staff observed that the expired temporary erosion control structure and measures still occupied the shoreline area fronting Parcel 004 and Kuaehu Condominium. See pages 45 to 47 of **Exhibit 3**.

Staff notes that the landowners of Parcel 004 and Units 1 and 2 of the Kuaehu Condominium changed following the above exchange and site inspection. Unit 1 changing from the Laura E. & Donal P. Beyer Family Trust and its trustees to the Manzccia (Maruccia) Family Trust and its trustees to Malden & Myrtle LLC to Leland Wigington, and Unit 2 changing from Joshua Simpson to David West. See **Exhibit 7**.

Several subsequent correspondence letters were sent between OCCL and the various land and unit owners of Kuaehu Condominium and Parcel 004, or their agents and counsel, in an attempt to resolve matters. OCCL notifying the land and unit owners that previous authorizations had expired, that the temporary erosion control structure and measures were an alleged unauthorized land use and an encroachment on State submerged lands, and that the structure and measures needed to be removed. The land and unit owners of Parcel 004

requesting to file applications to repair the temporary erosion control structure as well as for proposed land uses to potentially mitigate the erosion problem.

On February 3, 2025, OCCL conducted a site inspection to the subject area and observed that the expired and alleged unauthorized erosion control devices and structures still occupied the shoreline area fronting Parcel 004. Additionally, it appeared that these alleged unauthorized land use(s) in the Conservation District continued to encroach in the beach transit corridor. See page 48 of **Exhibit 3**.

On February 6, 2025, OCCL issued the unit owners of Kuaehu a letter following staff's February 3, 2025, site inspection and review of the files for ENF: KA 21-11 and KA 21-12. The letter requested a written response regarding the alleged permit noncompliance, unauthorized land uses in the Conservation District, and encroachments within the beach transit corridor within fourteen days of issuance of the letter. It also recommended that Kuaehu remove the erosion control structures, unauthorized materials, and encroachment located within the shoreline area within twenty-one days. The letter noted that OCCL would be combining the enforcement cases and investigations into one file, ENF: KA 21-12. See **Exhibit 8**.

On February 14, 2025, OCCL received a response letter and photos of the shoreline area fronting Parcel 004 from the owner of Unit 1 of Kuaehu. The letter noted that the owner of Unit 1 believed that the expired and alleged unauthorized erosion control devices were removed prior to his purchase of the property. Staff notes that photos attached to this letter appeared to show erosion control devices and unauthorized materials in the shoreline area fronting Parcel 004.

Staff notes that OCCL's February 6, 2025, letter was returned undelivered, and no written response was received from owner of Unit 2 of Kuaehu in a timely manner.

On March 24, 2025, OCCL conducted a site inspection to the subject area and observed that the expired and alleged unauthorized erosion control devices had not been removed from the shoreline area fronting Parcel 004. See page 49 of **Exhibit 3**.

On March 31, 2025, OCCL issued the unit owners of Kuaehu a letter noting the response from the owner of Unit 1, lack of response from the owner of Unit 2, and that the expired and alleged unauthorized erosion control devices had not been removed from the shoreline area fronting Parcel 004. The letter stated that OCCL would be proceeding with further enforcement actions regarding these matters. See **Exhibit 9**.

On April 1, 2025, OCCL received a letter from owner of Unit 2 of Kuaehu. The letter noted that they were in receipt of OCCL's correspondences regarding this matter and that they were reviewing the letters.

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

**Exhibit 10** contains the relevant rules and statutes that will be cited in the recommendations.

### **Discussion**

The stated purpose of the Conservation District law is to protect and conserve natural resources. HAR section 13-5-1.

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 seek to temporarily use beach areas for construction. There should be consequences when an individual unilaterally and willfully acts in such a way that endangers a public trust resource.

The beaches of Kauai are some of the State's most valued natural resources. These beaches serve as an attraction which brings residents and visitors to the area who support community economic activities that are key for the north and east communities of Kauai. In particular, the stretch of beaches along Anahola and Aliomanu are utilized at all times of the year by the public, both residents and visitors alike, and often offer the public a less crowded alternative to more well-known beaches.

Many of the shorefront homes in the area are built on the sand berm and are thus vulnerable to the effects of both chronic and seasonal coastal erosion. Coastal erosion occurs as a result of the following phenomena:

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

During the last several years, beach erosion in this area appears to have intensified significantly. Although such erosion could be attributed to normal accretion and erosion cycles, it is more likely that the erosion has become a chronic and permanent result of acceleration in sea level rise this century. Over the past century, local tide gauges have measured approximately 0.5 ft of rise in sea levels among the islands such that it should be no surprise that resulting impacts are occurring.

Coastal armoring, such as seawalls and revetments, protect private land mauka of the armoring device while harming the public trust resources makai of the wall. Coastal armoring or shoreline hardening devices damage beaches by cutting the sand bank and impounding sand behind the structures; refracting waves creating a high-energy environment that impedes sand accumulation; creating flanking that can increase adjacent erosion and damage neighboring properties; and impacting lateral transport thereby damaging downdrift beaches.

The Department has taken measures throughout the past two decades to address the progressively damaging chronic and seasonal erosion concerns in the Aliomanu and Kuaehu Point area.

Sand pushing, or in this particular area sand bypassing in which sand from Anahola river mouth is excavated and placed on adjacent beach areas, could be an effective but short-term measure to protect property and infrastructure, provided that best management practices are followed, and provided that there is a sufficient supply of dry sand in the area. The County of Kauai Department of Public Works, for example, has engaged in at least one sand bypassing project

to help mitigate the effects of the recently constructed Aliomanu Road revetment and as an attempt to replenish the beach in the area.

Property owners along Kuaehu Point have expressed an interest to OCCL in carrying out a sand bypassing or beach nourishment project in the area potentially utilizing sand from the Anahola river mouth. Despite these representations made to OCCL, OCCL files for this area indicate no applications for a proposed sand bypassing or beach nourishment projects have been submitted for review. Further, Conservation District rules prohibit the Department and BLNR from accepting or processing an application for proposed land uses in the Conservation District until any pending violations are resolved. HAR sections 13-5-6(c) and 13-5-31(e).

Due to long term trends of chronic and seasonal erosion, wave action, and nearshore currents, sand pushing or bypassing may increasingly no longer be a short-term option to mitigate the effects of continued erosion and sea level rise in the subject area.

Conservation District rules allow the Chairperson to issue emergency permits when there is an imminent threat to public health, safety, or welfare. This has been an important tool for the Department when addressing emergencies from natural hazards. Between 2003 and 2020, the Department authorized approximately 4-5 temporary erosion control structures fronting approximately 3 properties and 500 feet of roadway in the Aliomanu and Kuaehu Point area on Kauai.

The emergency authorizations that were issued by the Department were designed to allow shoreline property owners time to develop long-term plans to address the impacts of coastal hazards and more specifically erosion on their property. Few permit holders complied with permit conditions. With the absence of any long-range plan to address the impacts of coastal erosion and sea level rise, and with requests to either reauthorize these structures or failure to remove the temporary erosion control measures in accordance with previously issued authorizations, OCCL has concluded that these “temporary” structures appear to violate State policy and Coastal Zone Management rules against private shoreline hardening structures, as well as the Department’s policy of not approving new private seawalls.

Staff admits that the situation is challenging for homeowners, but the Department is also confronted by the lack of compliance and continued violations. Various staff site inspections of the subject area indicate the continued unauthorized installation of erosion control devices, and the continued presence of the alleged unauthorized materials discussed in the report on State land.

Regarding the more recent change in the land or unit owners of Parcel 004 and Kuaehu Condominium and statements regarding their responsibility for compliance with the emergency authorization(s) issued for the expired temporary erosion control structure fronting their property, Hawaii Revised Statutes (HRS) section 508D-15 (b) states *When residential real property lies adjacent to the shoreline, the seller shall disclose all permitted and unpermitted erosion control structures on the parcel, expiration dates of any permitted structures, any notices of alleged violation associated with the parcel, and any fines for expired permits or unpermitted structures associated with the parcel.* Staff notes that the Department issued Notices of Alleged Violation to the owners of Parcel 004 in November 2020 and should have been disclosed in subsequent real estate transactions as a material fact regarding the property.

Further, according to the Fourth Amendment to the Declaration of Condominium Property Regime of Kuaehu Condominium recorded at the Bureau of Conveyances (BOC) on July 20, 2020 as Doc A-75060427, the Declaration was amended to add a paragraph regarding the eroding shoreline of Parcel 004 and that the landowners had obtained emergency permit KA 06-04 to construct a temporary erosion control structure in the shoreline area fronting the property. Additionally, the amendment states and binds responsibility to the landowners and their heirs, successors, and assigns. It is staff's opinion that the landowners of Parcel 004 and unit owners of Kuaehu Condominium had constructive notice of the need to comply with the terms and conditions of Emergency CDUP KA 06-04 including the need to develop a long-term plan for the erosion problems and to remove the temporary erosion control structure at the end of the authorization period and at the Department's request.

Based on the present evidence, the landowners of Parcel 004 and unit owners for Kuaehu Condominium are in noncompliance with the conditions of Emergency CDUP KA 06-04 (and 05-02) for a temporary erosion control structure, including but not limited to failing to remove it from State land at the end of the authorization period and at the Department's request, and did not obtain authorization for the placement of additional erosion control devices, including but not limited to rocks, in the expired structure. Based on previous shoreline and Conservation District enforcement actions, correspondences, the Declaration for Kuaehu Condominium, the landowners and unit owners of the Kuaehu Condominium are fully aware of the noncompliance, existing violation, and need to consult with the Department and obtain authorizations prior to conducting work in the shoreline area.

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

### **Findings and Conclusions**

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

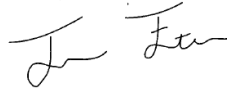
1. That the landowners of Parcel 004 and unit owners of the Kuaehu Condominium in fact, cause, or allow the installation of an unauthorized erosion control structure on public land within the State Land Use Conservation District, Resource Subzone;
2. There is no land disposition for the occupation of public land by the erosion control structures;
3. That the landowners of Parcel 004 and unit owners of the Kuaehu Condominium have failed to remove past erosion control structures and devices and debris fronting Parcel 004 despite receiving notices from the Department to do so; and,
4. That the unauthorized land uses, and unauthorized occupation of public land, occurred upon submerged public land that lies within the State Land Use Conservation District, Resource Subzone.

### **Staff Recommends**

1. That the Board adopt the findings and conclusions set forth above and impose the following administrative fines:
  - a. Pursuant to HRS section 183C-7, Kuaehu Condominium are fined \$15,000 for violating the provisions of HAR section 13-5-24, for installing an erosion control system consisting of sandbags and other erosion control devices (ENF: KA 21-12) on land within the Conservation District Resource Subzone;
  - b. Pursuant to HRS section 183C-7, Kuaehu Condominium are fined \$15,000 for violating the provisions of HAR section 13-5-24, by failing to abide by the terms and conditions of Emergency CDUP KA 06-04 and to remove the temporary erosion control structure and measures at the end of the authorization period and at the Department's request;
  - c. Pursuant to HRS section 171-6(12), Kuaehu Condominium 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 12, 2025, and therefore may total \$226,000;
  - d. Therefore, that the total fines and administrative costs that may be levied against Kuaehu Condominium may be \$256,000, and that Kuaehu Condominium 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 004 at the Bureau of Conveyances pursuant to HRS sections 171-6.4(c), 501-151, and 634-51;
3. That the Kuaehu Condominium or a future unit owner or landowner of Parcel 004 shall remove all unauthorized erosion control devices and materials and encroachments by October 1, 2025;
4. That in the event that the Kuaehu Condominium, or a future unit owner or landowner of Parcel 004, fail to restore the shoreline area to a more natural state and to the Department's satisfaction by October 1, 2025, the Kuaehu Condominium, or a future unit owner or landowner of Parcel 004, shall be liable for the costs of removal by the State or County ;
5. That in the event of failure of the Kuaehu Condominium, or a future unit owner or landowner of Parcel 004, to comply with any order imposed in connection with this enforcement action, they shall be fined an additional \$16,000 per day, pursuant to HRS section 171-6(2) and HRS section 183C-7, until the order is complied with;
6. That in the event of failure of the Kuaehu Condominium, or a future unit owner or landowner of Parcel 004, to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs;
7. That the Board delegate authority to the Chairperson to effectuate the above recommendations, subject to such conditions as may be prescribed by the Chairperson to best serve the interest of the State, without further consultation with the Board, subject to review and approval by the Department of the Attorney General; and

8. The above noted conditions of Enforcement file KA 21-12 shall be recorded with the deed instrument by the Kuaehu Condominium, or a future unit owner or landowner of Parcel 004, at the Bureau of Conveyances pursuant to HAR section 13-5-6(e).

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands

*TF*

Approved for submittal:



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



Exhibit 1 - Location Map



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3  
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R-338 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
OCT 14, 2002 08:02 AM  
Doc No(s) 2002-182405



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

23 1/2 Z2

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by Mail to:  
BELLES GRAHAM PROUDFOOT & WILSON (JC)  
4334 RICE STREET, SUITE 202  
LIHUE KAUAI HI 96766  
Telephone: (808) 245-4705

This document contains 23 pages

TYPE OF DOCUMENT:

**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
of  
KUA'EHU CONDOMINIUM**

CONDOMINIUM MAP NO. 3495

PARTIES TO DOCUMENT:

DECLARANT: Josh Simpson  
40 Fred Court  
Scotts Valley, California 95066

TAX MAP KEY FOR PROPERTY:

(4) 4-9-04:4

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
of  
KUA'EHU CONDOMINIUM**

CONDOMINIUM MAP NO. 3495

This Declaration Of Condominium Property Regime Of Kua'ehu Condominium is made this 30<sup>TH</sup> day of September, 2002, by Josh Simpson, whose mailing address is 40 Fred Court, Scotts Valley, California 95066 ("Declarant").

**A. DEFINITION OF CERTAIN TERMS.**

The terms defined below shall have the meaning set forth when used in this Declaration of Condominium Property Regime:

"Act" means the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes (1978) as amended to the date of this declaration.

"Agricultural Building" means a building or structure, other than a Condominium House, used in connection with agricultural activities within a unit or on the Property.

"Association of unit owners" and "association" means all owners of units in the project acting as a group in accordance with this declaration and the bylaws.

"Board of directors" and "board" means the board of directors of the association.

"Bureau of Conveyances" and "Bureau" means the Bureau of Conveyances of the State of Hawaii, the office in which conveyances of land located in Hawaii are recorded.

"Bylaws" means the bylaws of the association recorded in the Bureau of Conveyances concurrently with this declaration, as amended from time to time.

"Condominium House" and "Single Family Dwelling" shall have the same meaning as the term "Dwelling, Single Family Detached" as contained in the CZO. At present, this term means a building consisting of only one dwelling unit designed for or occupied exclusively by one family.

"Condominium Map" means the plans showing the layout, location, unit numbers, dimensions and elevation of the units in this project recorded in the Bureau of Conveyances as Condominium Map No. 3495, as amended from time to time.

"County" means the County of Kauai, a political subdivision of the State of Hawaii.

"CZO" and "Comprehensive Zoning Ordinance" means the Comprehensive Zoning Ordinance of the County of Kauai as codified in Chapter 8 of the Kauai County Code, 1987, as amended from time to time.

"Declarant" refers to Josh Simpson.

"Declaration" means this Declaration of Condominium Property Regime of "Kua'ehu Condominium", as amended from time to time.

"Drainage" and "Drainage Control" means the grading and grubbing of property, the creation of ditches or swales, and the installation of improvements in order to collect, direct, redirect, concentrate, and discharge surface water flows.

"Dwelling Unit" shall have the same meaning as contained in the CZO. At present, this term means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

"Farm Dwelling" shall have the same meaning as contained in H.R.S. Section 205-4.5(a)(4), as amended from time to time. At present, this term means a single family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

"Guest House" shall have the same meaning as contained in the CZO. At present, this term means a building used for dwelling purposes by guests with a floor area of no more than five hundred (500) square feet that contains no kitchen and is located on a parcel of at least nine thousand (9,000) square feet that contains one (1) or more dwelling units.

"H.R.S." means the Hawaii Revised Statutes, as amended from time to time.

"Hazardous Discharge" means any event involving the use, deposit, disposal, spill or release of any hazardous material on, within or under the project.

"Hazardous Material" means any hazardous or toxic substance, including those substances listed in the United States Department of Transportation Hazardous Materials Table (49 Code of Federal Regulations, Section 172.01) or by the Environmental Protection Agency as hazardous substances (40 Code of Federal Regulations, Section 302) as amended, and substances that are or become regulated under law; radioactive materials, petroleum and petroleum products, asbestos, organic compounds known as polychlorinated biphenyls, and chemicals known to cause cancer or reproductive toxicity.

"Hazardous Materials Claim" means:

(a) Any action instituted or threatened in respect of a unit or the project to any hazardous materials law, and

(b) Any and all claims or threatened by any third party against an owner or the association or any other person seeking damages, contribution, cost recovery, compensation, injunctive relief or similar relief resulting from a hazardous discharge or from the existence of any hazardous material on, within or under the project.

"Hazardous Materials Law" means any law now existing or hereafter enacted affecting the project relating to environmental conditions, industrial hygiene or hazardous materials.

"Landscaping" means trees, bushes, plants, flowers, hedges, or vegetation of any nature.

"Land Coverage" shall have the same meaning as that term is defined in the CZO.

"Majority of Owners" (or other specified percentage of unit owners) means the owners of units to which are appurtenant more than fifty percent (50%) (or other specified percentage) of the common interests.

"Project" means the "Kua'ehu" Condominium project located on the land described in Exhibit "A".

"Project documents" means this Declaration, the Project Bylaws, the Restrictive Covenants (if any), and the Project Rules (if any).

"Property" means the land described in Exhibit "A".

"Recreational Facilities" means improvements for non-commercial recreational purposes, including but not limited to, swimming pools, hot tubs, picnic areas, polo fields, golf courses and tennis courts.

"Restrictive Covenants" means any rules or restrictions that may be adopted, and as maybe amended from time to time.

"Unit" means the structures and improvements described in this Declaration and Exhibit "B" of this Declaration, and shall include the appurtenant common interest, all appurtenant limited common elements, and all appurtenant easements.

"Unit owner", "unit owners", "owner" or "owners" means a person or persons, including the Developer, who owns, either individually or jointly or in common with others, a unit in the Project and the common interest appertaining thereto; provided that:

(a) To such extent provided by lease recorded in the Bureau of Conveyances, a lessee of a unit may be deemed to be a unit owner and may exercise such rights as provided in said lease;

(b) The purchaser of a unit pursuant to an agreement of sale recorded in the Bureau of Conveyances shall have all the rights of a unit owner; provided that the seller may retain the right to vote on "matters substantially affecting his security interest in the unit" as that term is used in the Act; and

(c) In the event that any interest in a unit is transferred to a trustee under a land title-holding trust under which substantially all powers of management, operation and control of the unit remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the owner or owners of the unit to the extent of their interest therein except insofar as the trustee notifies the association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of a unit owner when notice of such transfer is given to the association by the trustee. Unless and until such notice is given, the association shall not be required to recognize the transferee for any purposes, and the transferor may continue to be recognized by the association as the unit owner and shall have all of the rights and obligations of ownership.

"Utility" means improvements and services for: drainage control, sewer and wastewater disposal; gas; water (including potable water and/or irrigation water); and telephone, electric, cable television and other services employing electrical or electronic means of transmission.

"Yard Area" means that portion of the Property which is designated in Exhibit "B" and shown on the Condominium Map as a limited common element appurtenant to the individual units, and reserved for the exclusive use of the individual units.

**B. SUBMISSION TO THE CONDOMINIUM PROPERTY REGIME.**

The Declarant submits all of its right, title and interest in and to the land described in Exhibit "A" and all improvements now located or hereafter constructed on the land to a Condominium Property Regime as established by the Act. The Declarant declares that the land is owned and shall be owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in this declaration and in the bylaws, as they may hereafter be amended, which declarations, restrictions, covenants and conditions shall constitute equitable servitudes, liens and covenants running with the land and shall be binding on and shall inure to the benefit of the Declarant, all subsequent owners and lessees of units in the project, all subsequent owners and lessees of all or any part of the project and their respective heirs, successors, successors in trust, personal representatives and assigns. All of the provisions of this declaration are intended to create mutual servitudes upon each unit within the project and to create reciprocal rights among the unit owners.

**C. PROJECT NAME.**

The Condominium Project Regime established hereby shall be known as the "Kua'ehu" Condominium.

D. DESCRIPTION OF THE LAND, BUILDINGS AND UNITS.

1. Land. The land, in fee simple, submitted to the Condominium Property Regime is described in Exhibit "A" attached hereto.

2. Buildings and Units. The project consists of two (2) single family dwelling units (hereinafter referred to as "units") as more fully described in Exhibit "B" attached hereto. The units are separate structures designated and shown on the site plan as Units 1 and 2. The site plan is being concurrently recorded in the Bureau of Conveyances of the State of Hawaii as Condominium Map No. 2445, and shall hereinafter be referred to as the "Condominium Map". The Condominium Map contains a description of the floor plans and elevations of the units. If the descriptions and divisions set forth in this declaration conflict with the depictions and divisions shown on the Condominium Map, the latter shall control. The Condominium Map is intended only to show the layout, location, unit numbers, dimensions and elevations of the units and is not intended and shall not be deemed to contain or make any other representation or warranty.

3. Conversion Disclosure. This Project involves the conversion of the structures described in Exhibit "B" to condominium status. The project and said structures are in compliance with all applicable zoning and building laws, codes and ordinances of any governmental agency, including the County of Kauai and the State of Hawaii. No variances have been granted to the project to achieve such compliance. The project contains legal non-conforming uses or structures as a result of ordinances passed by the County of Kauai.

4. Limits of Units. Each unit includes, but is not limited to, all improvements (with the exception of Common Elements as defined herein) constructed within the area of the Limited Common Element appurtenant to such unit, together with the Limited Common Element appurtenant to the unit. Each unit shall not include any utilities, services or roads running through such unit which are utilized for or serve more than one unit, the same being deemed common elements as hereinafter provided.

5. Common Elements. The common elements include the land described in Exhibit "A" in fee simple and the limited common elements described below, and all other portions of the project, other than the units, including, specifically, but not limited to, the common elements mentioned in the Act that are actually constructed on the land, and all other portions of the project necessary or convenient to its existence, maintenance and safety or normally in common use and which are not included as part of a unit, including but not limited to those common elements described in Exhibit "B" and shown on the Condominium Map.

6. Limited Common Elements. Certain parts of the common elements, referred to as the "limited common elements", are hereby designated and set aside for the exclusive use of certain units, and such units shall have appurtenant, exclusive easements for the use of such limited common elements. The limited common elements, which are described in Exhibit "B" and shown on the Condominium Map, include the Yard Area limited common elements. The

Yard Area limited common elements are designated by dotted lines on the Condominium Map and are appurtenant to Units 1 and 2, respectively. Except as otherwise provided herein, the Yard Areas shall be subject to the exclusive possession, occupancy, use and control of the owner of the appurtenant unit, and may be used only for the purposes described in the Project Documents, and the following purposes: one Condominium House; one garage; fences; walls; landscaping; roads; walkways; recreational facilities; underground utilities; wells, parking areas; and patios. Provided that Unit 1 shall be entitled to construct one guest house as may be allowed by the Kauai County Comprehensive Zoning Ordinance. Provided further that all uses on all Units shall be further restricted by the provisions contained in the Restrictive Covenants and/or House Rules, if applicable.

E. OTHER EASEMENTS/RESTRICTIONS.

In addition, any other easements or restrictions, which may apply to the Property, the units shall also be subject to the following easements and/or restrictions:

1. Each unit shall have appurtenant nonexclusive easements in the common elements designed for such purposes as: ingress to or egress from such unit; utility services for such unit; the support, maintenance and/or repair of such unit; and for use of the other common elements according to their respective purposes. This provision shall be subject always to the exclusive use of the limited common elements as provided herein.

2. Each unit owner shall have an appurtenant easement to connect, use, maintain and repair all pipes, wires, ducts, cables, conduits and public utility lines, if any, and other common elements that provide utility and other services to such owner's unit and located in the other unit or within a limited common element appurtenant to the other unit. Each unit shall be subject to an easement for access to any common elements located in the unit or within any limited common element in favor of the owners of all other units served by such common elements.

3. If any part of the common elements now or hereafter encroaches upon a unit, or if a unit now or hereafter encroaches upon a portion of the common elements, an easement shall exist for such encroachment and its maintenance for so long as the encroachment continues, provided that such encroachment shall be either minor and unintentional or placed pursuant to the provisions of this declaration.

4. No building or structure (but not including roads, walkways, fences, walls or underground utilities) may be located within the Yard Area Limited Common Element appurtenant to each unit which is closer than fifteen (15) feet (measured from any portion of such building or structure) to the interior boundary lines separating and defining the respective Yard Area Limited Common Elements appurtenant to the respective units.

5. The Project and the Units shall be subject to the easements, common element easements, and limited common element easements described in Exhibit "C" attached hereto and incorporated herein.

F. COMMON INTEREST.

1. Allocation and Calculation of Undivided Common Interest. Unit 1 shall have appurtenant to it a .61 (61%) undivided interest in all common elements of the property. Unit 2 shall have appurtenant to it a .39 (39%) undivided interest in all common elements of the property. Unit 1 and Unit 2 shall have the same proportionate share in all common profits and common expenses of the property (except as may be otherwise provided herein or in the Bylaws) and for all other purposes, including voting.

2. Allocation of Profits and Expenses. The common profits of the Property shall be distributed among, and the common expenses shall be charged to, the Unit owners, including the developer, in proportion to the common interest appurtenant to their respective Units. Provided, however, that all limited common elements costs and expenses, and all costs and expenses associated with easements servicing less than all of the Units, including but not limited to, costs and expenses related to maintenance, repair, replacement, additions and improvements, shall be charged to the owner of the Unit to which the limited common element or easement is appurtenant as follows: if a limited common element or easement is appurtenant to only one Unit, then the owner of the Unit shall be solely liable for all such costs and expenses; and if a limited common element or easement is appurtenant to more than one Unit, then each Unit shall be liable for a fractional share of such costs and expenses, such fractional share being equal to a fraction whose numerator is the Unit's undivided interest, and whose denominator is the sum of the undivided interest of all Units to which the limited common element or easement is appurtenant.

3. Alterations and Transfers of Common Interest.

(a) Except as may be provided elsewhere in this declaration, the common interests, limited common interests, and easements appurtenant to each unit shall have a permanent character and shall not be altered except by an amendment to this declaration which contains the consent of all owners affected. The common interests and appurtenant limited common elements and easements shall not be encumbered with that unit even though such interest or easements are not expressly mentioned in the conveyance or other instrument. The common elements shall remain undivided and the right to partition or divide any part of the common elements shall not exist except as provided in the Act.

(b) Nothing herein shall prevent any unit owners from changing the size, location and/or configuration of any limited common elements or easements appurtenant only to such units. Provided, that in such case the consent of all of the unit owners affected by such change shall be necessary to change such limited common elements or easements. Provided further, that the affected unit owners shall be solely liable for doing all things (including the filing of an amendment to the Declaration and an amended Condominium Map) and paying all fees and expenses necessary to accomplish such change. The affected unit owners shall have the right without the consent or joinder of any other person to amend this declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the affected unit owners shall duly record such amendment to this declaration in the Bureau of Conveyances of the State of Hawaii, together with an amended

Condominium Map as so altered, certified by a registered architect or professional engineer to fully and accurately depict the altered portions of the Property. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, consent to all such alterations and agree to give, and shall be deemed to have given, the affected unit owners a power of attorney to execute an amendment to the declaration solely for the purpose of describing the alterations in the declaration so that the owner of the altered unit shall hereafter have a power of attorney from all the other unit owners to execute such amendment to the declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable.

G. PURPOSES AND USE.

1. Each Condominium House shall be occupied and used only for residential purposes in accordance with applicable laws and the Project Documents, and for no other purposes. The Yard Area limited common elements appurtenant to each Unit, together with any improvements located thereon, shall be occupied and used in accordance with applicable laws and the Project Documents, and for no other purposes.

2. The owners of the respective units shall have the absolute right to sell, lease, rent or otherwise transfer such units subject to all provisions of the Act and the Project Documents. Any lease or rental agreement of a unit shall provide that it shall be subject in all respects to the provisions of all applicable laws and the Project Documents and that the failure of the lessee or tenant to comply with the terms of these documents shall be a default under the lease or rental agreement.

3. A unit owner shall not use his or her unit for any purpose which will injure the reputation of the project or suffer anything to be done or kept in his or her unit or elsewhere in the project which will (a) jeopardize the soundness of any building in the project, (b) create a nuisance or interfere with or unreasonably disturb the rights of other owners and occupants, or (c) reduce the value of the project. Each unit owner shall be required to use his or her unit consistent with the terms, provisions, covenants, conditions and restrictions contained in the Project Documents.

4. Under the Project Documents, a total of two (2) Condominium Houses may be constructed on the Project. The right to construct one (1) Condominium House is reserved to each of the owners of Units 1 and 2, respectively. In the event the Project is ever entitled to construct a Guest House, then the right to construct said Guest House is reserved to the owner of Unit 1. Said right may be assigned by the owner of Unit 1 to any other unit owner within the Project at any time. All provisions of the Comprehensive Zoning Ordinance and any other laws, ordinances or regulations which are applicable shall be observed by the unit owner to which the right to build a Guest House applies.

H. USE OF HAZARDOUS MATERIAL.

1. Restriction on Use. A unit owner shall not cause or permit any hazardous material to be generated, used, transported, stored or disposed of upon, in or about his or her unit or the common elements except in a manner that complies with all applicable hazardous materials laws.

2. Notices. A unit owner shall give written notice to the board of directors within three (3) business days after the unit owner learns or first has reason to believe that (i) hazardous discharge has occurred, or (ii) a hazardous materials claim has been made by any governmental agency or third person, or (iii) any report, notice or complaint has been made to or filed with any governmental agency concerning the presence, use or disposal of any hazardous material at the project. The notice shall be accompanied by copies of (i) all permits, licenses, and proofs of disclosure to governmental agencies pertaining to the hazardous material that is the subject of the claim, (ii) copies of any material safety data sheets pertaining to such substances that are required by applicable law, and (iii) copies of any claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the unit owner. The association and any unit owner shall have the right to join and participate, as a party, if it so elects in any actions initiated in respect of any hazardous materials claims.

3. Indemnity. If the generation, use, transportation, storage, or disposal of hazardous materials by a unit owner results in contamination of a unit or the common elements, the unit owner shall hold harmless the association, the board of directors and all other unit owners from all damages, including foreseeable and unforeseeable consequential damages, diminution in value of a unit, losses and damages for the loss or restriction on use of a unit, any part of the common elements or of any amenity of the project and sums paid in settlement of claims, all reasonable expenses, including attorneys' fees, consultant fees and expert fees which arise as a result of any investigation by the association, the defense of hazardous materials claims (whether or not formal administrative or legal action is filed) by the association or any unit owner; and all costs incurred in connection with any investigation of site conditions or any clean-up remedial, removal, or restorative work required by any governmental agency because of a hazardous material present in the soil or ground water on or under the unit or yard appurtenant to the unit.

4. Cleanup.

(a) By an Owner. Without limiting the foregoing, if the presence of any hazardous material at a unit or the common elements caused or permitted by an owner results in any contamination of the Project, the owner shall promptly take all actions at his or her sole expense as are necessary to return the project to the condition existing prior to the hazardous discharge; provided that the Board's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project.

(b) By the Association. If the presence of any hazardous material on the common elements results in any contamination of the common element, the Association shall promptly take all actions as are necessary to clean up and restore the common elements in accordance with all hazardous materials laws, and all owners shall be severally liable for the cost of any such cleanup and restoration as a common expense to the extent such costs are not chargeable to the owners of one or more units, as provided in this Declaration, and are not reimbursed to the Association by those owners.

5. Survival. The obligations under this paragraph H shall survive the termination of the ownership of a unit in the project.

I. ADMINISTRATION OF PROJECT.

1. Administration. The administration of the project shall be governed by the Act, the project documents and the deed demising to each owner his interest in his unit and the common elements of the project, as the same may be amended from time to time. The right and duty to administer the project is vested in the association, consisting of all unit owners of the project, in accordance with this declaration and bylaws. Unit owners acting for any purpose in connection with the common elements for the government, operation or administration of the project and in accordance with the Act and the project documents shall be deemed to be acting as the association. Without limiting the generality of the foregoing, the association shall observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority applicable to the project.

2. Managing Agent. The association may, but need not, delegate the management and operation of the project to a responsible managing agent duly registered with the Real Estate Commission of the State of Hawaii who shall be appointed by board of directors in accordance with the bylaws.

3. Service of Process. The managing agent, if any, is authorized to receive service of legal process in all cases provided in the Act. Until such time as a managing agent is designated, Robert Melnikoff, whose mailing address is c/o Coldwell Banker Bali Hai Realty, Inc., P.O. Box 930, Hanalei, Hawaii 96714 shall serve as agent for service of legal process.

J. RESTORATION AFTER CASUALTY.

1. In case a unit in the project is damaged or destroyed by any casualty, such unit shall be repaired and restored as provided in the bylaws unless the affected unit owner (the owner of the unit so damaged or destroyed) elects (with the prior written consent of all affected lien holders) not to repair or restore such unit. If such unit owners decides not to repair or restore a damaged or destroyed unit, then such owner, within a reasonable period of time (not to exceed six (6) months after such damage or destruction), shall remove all remains of improvements so damaged or destroyed and restore the site to good orderly condition and even grade.

2. Any restoration of the common elements shall be completed diligently by the association at its common expense; provided, however, that the unit owners shall be solely responsible for the restoration of their respective units and appurtenant limited common elements and easements, to the extent not covered by insurance maintained by the association.

K. ALTERATION OF PROJECT.

1. Provided that the unit owner satisfies the applicable terms and conditions of the Project Documents and obtains all of the necessary governmental permits, each unit owner shall have the right at his sole option at any time and from time to time, as hereinafter set forth, without the consent and/or approval of the owner of any other unit or any other persons or entity, to construct, reconstruct, repair, maintain, improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon or within the Yard Areas or other limited common elements or easements appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit owner who makes such alterations (hereinafter referred to as the "Altering Owner") shall have the right without the consent or joinder of any other person to amend this declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the Altering Owner shall duly record such amendment to this declaration in the Bureau of Conveyances, together with a complete set of the floor plans of such unit as so altered, certified by a registered architect or professional engineer to fully and accurately depict the altered portions of the property as built. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, consent to all such alterations and agree to give and shall be deemed to have given the owner of the Altering Owner a power of attorney to execute an amendment to the declaration solely for the purpose of describing the alterations to such unit in the declaration so that the Altering Owner shall hereafter have a power of attorney from all the other unit owners to execute such amendment to the declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable. If, despite the provisions of this paragraph, any governmental agency shall require some or all of the owners of units in the Project (other than the Altering Owner) to sign the necessary governmental permit application or related documents, then all of the other unit owners shall be required to sign any such permit applications or related documents (including authorizations allowing the Altering Owner to sign such governmental permits on behalf of such other owners) as may be necessary to allow a unit owner to obtain the governmental permit authorized by this paragraph. Any such unit owner who wrongfully refuses to sign such permits or provide the Altering Owner with the necessary authorizations: shall be liable to the Altering Owner for all such damages (including costs and attorneys' fees) incurred by the Altering Owner as a result of such refusal; and shall be subject to such other legal and/or equitable remedies as may be available to the Altering Owner.

2. Any alteration of a unit pursuant to this paragraph K shall be subject to the following conditions:

(a) All such alterations shall conform with all applicable governmental regulations, laws and ordinances.

(b) Such alterations may decrease or increase the size of the affected unit, provided that no alteration shall extend or place the unit outside of the limits of the Yard Area appurtenant to such unit.

(c) All such alterations shall be at the sole expense of the unit owner making the change and shall be made within one (1) year of the commencement thereof and in a manner that will not unreasonably interfere with the other unit owner's use of his unit or Yard Area.

(d) With the prior consent of the Board of Directors, the owner of the altered unit, at such owner's sole expense, shall have the right to: utilize, relocate, construct, reconstruct, realign and/or develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services; and when necessary, add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith. Provided, however, that no work done pursuant to this paragraph shall cause any unreasonable interruption in the service of such utilities to any other part of the Project, nor shall it unreasonably interfere with any other unit owner's use or enjoyment of his unit or Yard Area.

3. Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests, limited common elements, and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a unit shall reserve to all unit owners the rights set forth in this paragraph.

#### L. COMPLIANCE WITH PROJECT DOCUMENTS.

1. All unit owners, their tenants, families, employees and guests, and any other persons who may in any manner use any portion of the project, shall be bound by and comply strictly with the provisions of the Project Documents and all agreements and determinations of the association as lawfully made or amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages (including costs and attorneys' fees) or injunctive relief or both, maintainable by the managing agent on behalf of the association or by any aggrieved unit owner.

2. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association or an aggrieved unit owner for: (i) collecting any delinquent assessments against any owner's unit, (ii) foreclosing any lien thereon, (iii) enforcing any provision of the Project Documents or the Act, or (iv) complying with rules and regulations of the Real Estate Commission, shall be promptly paid on demand to the association or the aggrieved unit owner by the defaulting unit owner; provided, that if the claims upon which an aggrieved unit owner takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by the other unit owner as a result of the action of the aggrieved unit owner, shall be promptly paid on demand to the other unit owner by the aggrieved unit owner.

M. AMENDMENT OF THE DECLARATION.

1. Except as otherwise expressly provided in the Project documents, this Declaration may be amended by the affirmative vote of the owners holding seventy-five percent (75%) of the undivided common interests in the Project at a meeting of the association called for the purpose or by the written consent of the owners holding seventy-five percent (75%) of the undivided common interests in the Project. Any such amendment will be effective when a written instrument, duly executed either by an officer of the Board of Directors, or by the Owners who have affirmatively voted or consented to amend the Declaration, is recorded in the Bureau of Conveyances.

2. At any time prior to the first recording in the Bureau of Conveyances of a conveyance or transfer (other than for security) of a unit and its appurtenances to a party not a signatory hereto, the Declarant may amend this declaration and/or the Condominium Map in any manner without approval or consent of any unit purchaser. This paragraph shall not be deemed to limit or restrict the Declarant's right as a unit owner to amend the Declaration as provided herein.

N. MISCELLANEOUS.

1. Invalidity. If any provision of this Declaration shall be declared contrary to law or otherwise invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this declaration and all other provisions of this declaration shall continue in full force and effect as if the invalid provision had not been included.

2. Incorporation of Exhibits. All Exhibits attached to this declaration are incorporated herein by reference.

3. Incorporation of Condominium Map. Condominium Map No. 3495 is incorporated herein by reference.

4. Subordination. This Declaration is subordinate and subject to all provisions of the Hawaii Revised Statutes, Chapter 514A, as amended (the Hawaii Condominium Act), which shall control in case of any conflict. All terms herein (except as otherwise provided or where clearly repugnant to the context) shall have the same meaning as in said Act.

5. Other Terms. Terms which are used in this Declaration but are not otherwise defined shall have the meaning given to those terms by the Act, if defined therein.

6. Gender and Number. The use herein of the singular in reference to a party shall include the plural and the use of a pronoun of either gender shall include both genders.

7. Indemnity. Each Unit owner ("Releasing Unit Owner") agrees to release, hold harmless, and indemnify the other Unit owners ("Other Unit Owners"), the Association and the Board of Directors, and their employees, agents, trusts, trustees, attorneys, parent or subsidiary corporations, affiliates, partners, stockholders, officers, directors, members or other representatives (jointly referred to as "Representatives") from any loss, injury, death or damage to person or property, including the Releasing Unit Owner, the Releasing Unit Owner's Representatives, and the Releasing Unit Owner's property (jointly referred to as "Injured Person/Property"), caused by, resulting from, or in any way arising out of the Injured Person/Property's use of or presence on, or the condition of, any limited common element or easement appurtenant to the Releasing Unit Owner's Unit. Provided, however, that this release, hold harmless agreement, and indemnity shall not apply: to an Other Owner whose Unit has an appurtenant interest in the limited common element or easement which is the source of the injury or damage; to the Releasing Unit Owner or the Releasing Unit Owner's Representatives if the injury or damage was caused by, resulted from, or in any way arose out of the negligence or misconduct of the Releasing Unit Owner or the Releasing Unit Owner's Representatives; or to the Association or the Board of Directors, or their Representatives, if the injury or damage was caused by, resulted from, or in any way arose out of the negligence or misconduct of the Association or the Board of Directors, or their Representatives.

8. Easements.

(a) The Association, through its Board of Directors, shall have the right to grant easements over, under or on the common elements of the Project (but not including the limited common elements) to other persons or property for vehicular and pedestrian access, for utility purposes, and for such other uses as the Board shall decide. The President of the Association shall have the authority to execute any such easement documents on behalf of the Association.

(b) Any Unit owner shall have the right to grant easements over, under or on the limited common elements appurtenant to his or her unit to other persons or property as described below; provided, however, that if a limited common element is appurtenant to more than one unit, then all of the owners to which the limited common element is appurtenant must consent to such easement:

(i) A Unit Owner may grant easements for landscaping purposes and for underground utilities within the Owner's limited common element and in such cases shall not be required to obtain the consent of any other Unit Owner;

(ii) A Unit Owner may grant easements for vehicular or pedestrian areas, or for any other purpose, within the Owner's limited common element; provided, however, that if any such easement shall materially or adversely interfere with or affect the use and enjoyment of any other Unit, then the Owner of the affected Unit must also consent to the grant of easement.

(c) For purposes of this paragraph, and to the extent necessary for the grant of easement to be binding and enforceable against the Unit in question and the Property, each Unit owner, by his or her acquisition of ownership of a Unit in the Project, shall be deemed to have granted to each other Unit owner in the Project a limited, irrevocable power of attorney, coupled with an interest, for the purpose of executing, acknowledging, and delivering grant(s) of easement authorized in this paragraph.

9. Lot Coverage. The Project is located within the Open District under the County of Kauai Comprehensive Zoning Ordinance ("CZO"), as shown on the Condominium Map, and is therefore subject to certain land coverage restrictions as more fully detailed in the CZO. Under CZO provisions in effect at the time of recordation of this Declaration, land coverage within the Open District portion of the Project is limited to ten percent (10%) of the total size of the Open District area, provided that any parcel of record existing prior to or on September 1, 1972 is allowed 3,000 square feet of land coverage. "Land coverage" is defined under the CZO as

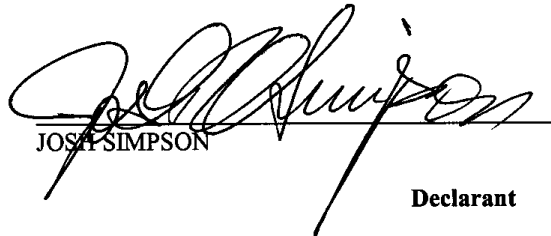
. . . a man-made structure, improvement or covering that prevents normal precipitation from directly reaching the surface of the land underlying the structure, improvement or covering. Structures, improvements and covering include roofs, surfaces that are paved with asphalt, stone, or the like such as roads, streets, sidewalks, driveways, parking lots, tennis courts, patios, and lands so used that the soil will be compacted so as to prevent substantial infiltration, such as parking of cars and heavy and repeated pedestrian traffic.

The Open District area within this Project is approximately .615 acre or 26,789 square feet, and the total allowable land coverage area within the Open District area is therefore approximately 2,679 square feet. The gross floor area of Unit 1 on the date of this Declaration is approximately 1,897 square feet and the gross floor area of Unit 2 on the date of this Declaration is approximately 1,531 square feet. With the edition of the land coverage for the concrete driveway which was permitted and constructed under an emergency permitted issued by the County's Office of Emergency Permitting following Hurricane Iniki, the land coverage could exceed the allowable limits under the CZO which could result in all the structures located within the Project to be deemed nonconforming structures. In the event the event any of the Units on the Project need to be rebuilt or reconstructed and the units are considered to be nonconforming structures under the CZO, the priority for land coverage shall be allocated first to the individual units and second to the concrete driveway. Between the individual units the allowable land coverage for the Project shall be allocated as follows: Unit 1 – 61%; Unit 2 – 39%. In the event the land coverage limitations as set forth in the CZO prevents or hinders the rebuilding or reconstruction of any unit in the Project, the owner of the unit being rebuilt or reconstructed is authorized to alter the land coverage of the concrete driveway at the rebuilt or reconstructed unit owner's expense to conform with the land coverage requirements of the CZO. The portions of the concrete driveway within Easement A-1 shall be altered first to

comply with the land coverage requirements of the CZO as authorized by this paragraph before the portions of the concrete driveway located in the yard area 1 are altered.

10. Signature in Counterparts. This Declaration of Condominium Property Regime of Kua'ehu Condominium may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the day and year first above written.

  
JOSH SIMPSON  
**Declarant**



**EXHIBIT "A"**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 10095 to Lyle A. Dickey, et al.) situate, lying and being at Aliomanu, Island and County of Kauai, State of Hawaii, being ALLOTMENT 55-A, of the "PARTITION OF THE MOLOAA HUI LAND", and thus bounded and described:

Beginning at a pipe at the west corner of this Allotment, being also the south corner of Allotment 54, and on the northeast side of Government Road thirty (30) feet wide, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 10,667.40 feet south and 4,922.60 feet east, and running by true azimuths from the above described initial point:

- |    |          |        |  |
|----|----------|--------|--|
| 1. | 235° 07' | 132.30 | feet along Allotment 54 to high-water mark at seashore, passing over a pipe at 102.00 feet; thence following along high-water mark at seashore for the next four (4) courses, the direct azimuths and distances being: |
| 2. | 321° 00' | 45.00  | feet;  |
| 3. | 333° 30' | 83.00  | feet;  |
| 4. | 339° 40' | 85.00  | feet;  |
| 5. | 357° 00' | 21.00  | feet;  |
| 6. | 77° 50'  | 121.82 | feet along the land of Anahola to a pipe, and passing over a pipe at 21.82 feet;   |

Thence on a curve to the left with a radius of 315.00 feet along the northeast side of Government Road thirty (30) feet wide, the direct azimuth and distance being:

- |    |              |        |   |
|----|--------------|--------|---|
| 7. | 155° 42' 30" | 117.06 | feet to a pipe;   |
| 8. | 145° 00'     | 65.00  | feet along the northeast side of Government Road thirty (30) feet wide, to the point of beginning and containing an area of 0.615 Acre, or thereabouts. |

Being the premises acquired by Warranty Deed by and between Marcus Doyle, also known as Marc Doyle, and Jamie D. Lotstein, Trustees of The Doyle-Lotstein Revocable Inter Vivos Trust also known as The Doyle-Lotstein Living Trust, dated January 9, 1997, as Grantor,

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and Josh Simpson, unmarried, as Grantee May 3, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 02-077127.

**EXHIBIT "B"**

KUA'EHU CONDOMINIUM

**DECLARATION OF BUILDINGS:**

The project consists of two (2) existing residential single-family dwellings built of principally wood construction, with a concrete and post on beam foundation and no basement. Each structure (herein called "unit") is shown on the Condominium Map.

**DESCRIPTION OF UNITS:**

Unit 1 contains a total of 3,133 square feet of living area (including the lanai and garage) and Unit 2 contains a total of 1,531 square feet of living area (including the lanai) as shown on the Condominium Map.

The approximate net floor areas of each unit as set forth above is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls.

NOTE: THE FLOOR AREAS SHOWN ARE APPROXIMATE ONLY. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR UNIT.

**UNIT LOCATION AND ACCESS TO COMMON ELEMENTS:**

Units 1 through 2 are located as shown on the Condominium Map. Each unit has direct access to the common elements of the project.

**COMMON ELEMENTS:**

The common elements of the project shall specifically include, but are not limited to, the following:

1. The land described in Exhibit "A" attached to the Declaration in fee simple.
2. All central and appurtenant installations for common services, including power, light, water, telephone and sewer.

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3. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS:

Certain units shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

Yard Area 1: Yard Area 1 consists of the land area under and surrounding Unit 1, contains approximately .375 acre as designated on the Condominium Map and described in Exhibit 1 attached hereto and incorporated herein, and is reserved for the exclusive use of Unit 1 for the support of the building and other improvements comprising Unit 1, and for the purposes described in the Project Documents.

Yard Area 2: Yard Area 2 consists of the land area under and surrounding Unit 2, contains approximately .240 acre as designated on the Condominium Map and described in Exhibit 2 attached hereto and incorporated herein, and is reserved for the exclusive use of Unit 2 for the support of the building and other improvements comprising Unit 2, and for the purposes described in the Project Documents.

**EXHIBIT "C"**

1. Limited Common Element Easement S-1. Unit 1 shall be subject to Limited Common Element Easement S-1 as described in Exhibit "D", attached hereto and incorporated herein, which shall be a non-exclusive, perpetual easement in favor of Unit 2 for the following purposes: for underground sewage pipes, tanks, and other improvements for underground septic disposal purposes. Limited Common Element Easement S-1 is located as shown on the Condominium Map. The costs of constructing, reconstructing, improving, locating, maintaining or repairing permitted improvements within Limited Common Element Easement S-1 shall be allocated to Units 1 and 2 on the same pro-rata basis as described in Article F of the Declaration.

2. Limited Common Element Easement A-1. Unit 2 shall be subject to Limited Common Element Easement A-1 as described in Exhibit "E", attached hereto and incorporated herein, which shall be a non-exclusive, perpetual easement in favor of Unit 1 for the following purposes: for pedestrian and vehicular access and utility purposes. Limited Common Element Easement A-1 is located as shown on the Condominium Map. The costs of constructing, reconstructing, improving, locating, maintaining or repairing permitted improvements within Limited Common Element Easement A-1 shall be allocated to Units 1 and 2 on the same pro-rata basis as described in Article F of the Declaration.

3. Road Widening Reserve. Units 1 and 2 are subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Road Widening Reserve dated July 14, 1989 filed in the Bureau of Conveyances of the State of Hawaii in Liber 23524, Page 457.

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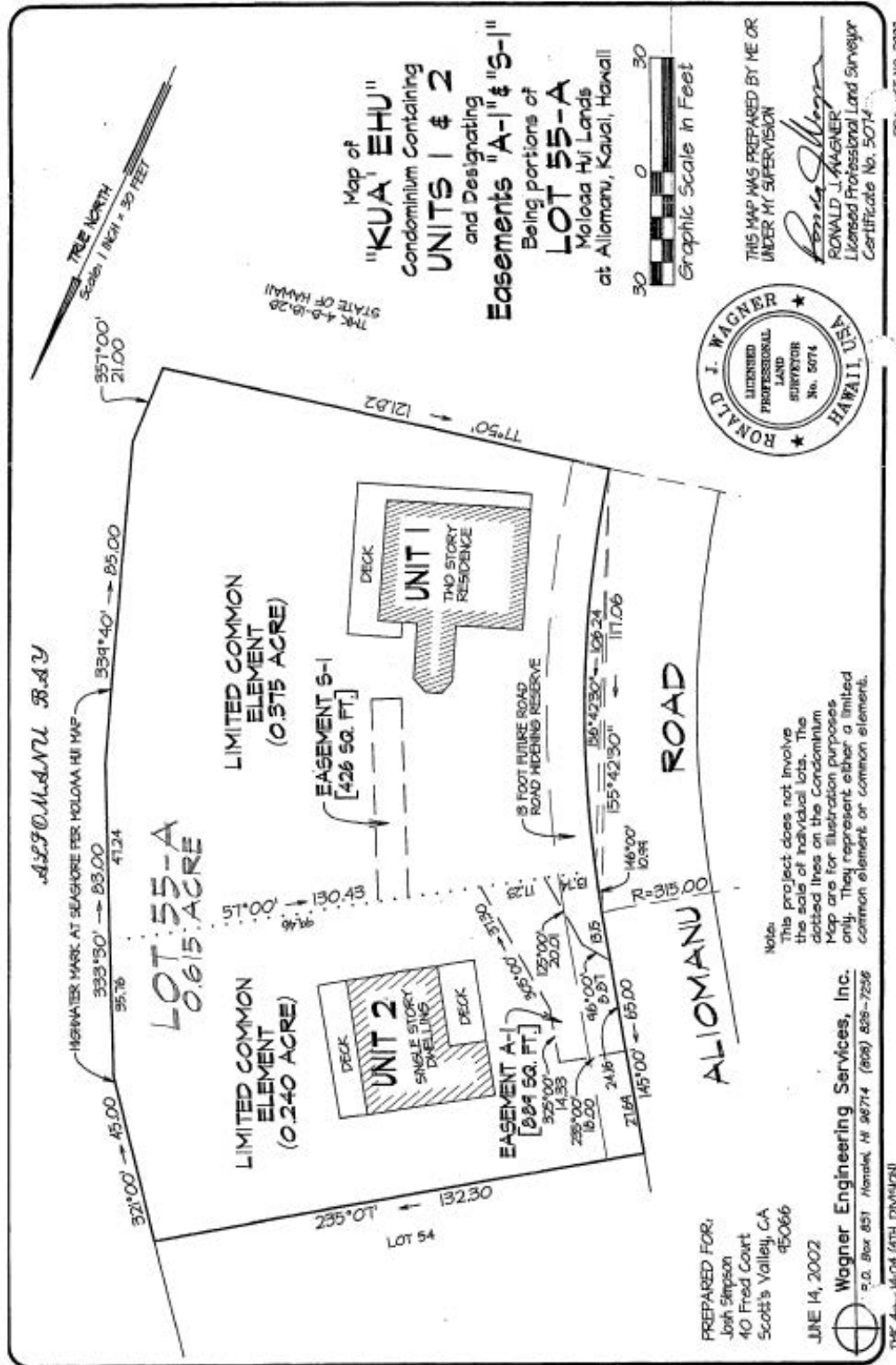


Exhibit 2 - Kuaehu CPR Declaration



10/30/2002 OCCL Photo of Shoreline Area fronting Parcel 004



10/30/2002 OCCL Photo of Shoreline Area fronting Parcel 004



11/26/2003 OCCL Photo of Shoreline Area fronting Parcel 004 (Unit 1)



11/26/2003 OCCL Photo of Shoreline Area fronting Parcel 004 (Unit 2)



6/23/2004 OCCL Photo of Shoreline Area fronting Parcel 004 (Unit 2)



6/23/2004 OCCL Photo of Shoreline Area fronting Parcel 004 (Unit 1)



7/1/2004 OCCL Photo of Shoreline Area fronting Parcel 004



5/3/2006 OCCL Photo of Shoreline Area fronting Parcel 004



8/5/2009 OCCL Photo of Shoreline Area fronting Parcel 004



8/5/2009 OCCL Photo of Shoreline Area fronting Parcel 004



9/3/2020 Photo of Shoreline Area fronting Parcel 004



10/7/2020 Photo of Shoreline Area fronting Parcel 004



11/16/2020 Photo of Shoreline Area fronting Parcel 004



8/4/2021 OCCL Photo of Shoreline Area fronting Parcel 004



8/4/2021 OCCL Photo of Shoreline Area fronting Parcel 004



8/4/2021 OCCL Photo of Shoreline Area fronting Parcel 004



2/3/2025 OCCL Photo of Shoreline Area fronting Parcel 004



2/3/2025 OCCL Photo of Shoreline Area fronting Parcel 004



3/24/2025 OCCL Photo of Shoreline Area fronting Parcel 004



3/24/2025 OCCL Photo of Shoreline Area fronting Parcel 004

LINĀA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU  
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:PB:SL

Ref.:CDUA-3165/Vio. KA-03-16 **DEC - 4 2003**

Mr. Jonathan Chun  
Belles Graham Proudfoot & Wilson  
Watumull Plaza  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766-1388

Dear Mr. Chun:

Subject: Request For Emergency Shore Protection at Aliomanu, Kauai

This acknowledges the receipt of your November 26<sup>th</sup>, 2003 letter regarding continuing shoreline erosion affecting three properties at Aliomanu, Kauai (TMKs: 4-9-4:,5, and 23), and your request on behalf of your client to install rocks or concrete barriers for emergency shore protection.

The Department will not authorize the use of rocks or concrete structures for emergency shore protection. The Department informed you that it would authorize the use of large sea bags for the Lemke's and Lizamas immediately. Based on the photographs recently submitted by you, which indicate a worsening shoreline erosion condition at the Simpson property, the Department can issue an authorization to place sea bags at the shorefront of that property as well.

There are numerous distributors and manufactures of these large sea bags located on the mainland. In a recent discussion with several of these distributors our staff was informed that high strength, 10'x5' tan polyester bags typical for use in erosion control were in stock and could be shipped immediately. We suggest that you advise your clients to place an order immediately in anticipation of this winter's surf. Our Office of Conservation and Coastal Lands (OCCL) will provide you with the necessary contact information when you call. We have also been informed that a local supplier has bags in stock.

Thus, the Department has no objections to the temporary installation of large sea bags at the shorefront of the three subject properties, subject to the following:

1. Where any interference, nuisance, or harm may be caused, or hazard established by the bags, the applicants shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
2. The applicants agree that these measures are temporary (intended for less than five years) and agrees to cooperate in a long-term solution to the erosion problems;

Emergency Authorization  
Sandbags

Simpson

3. The bags shall be kept buried or covered with sand to the greatest extent possible;
4. The applicants shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments;
5. The applicants shall obtain the appropriate land disposition from the Kauai District Land Office for the work;
6. The applicants understand and agree that this action does not convey any vested rights or exclusive privilege;
7. The applicants, their 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 or death arising out of any act or omission of the applicants, their successors, assigns, officers, employees, contractors and agents under this action or relating to or connected with this action;
8. The Department may order the removal of the bags at any time should it determine that they are having a significant impact to the beach or become an nuisance to the general public;

Please have all of the affected landowners sign in the space provided for same at the end of this letter and return a copy of this executed letter to this office within 30-days of the date of this letter.

Please contact Sam Lemmo of our Office of Conservation and Coastal Lands at 587-0381, or Dolan Eversole of the Hawaii Sea Grant Program at 587-0439 for further assistance.

Sincerely,

  
PETER T. YOUNG, Chairperson

\_\_\_\_\_  
Applicants

Dated: \_\_\_\_\_, 2003

cc: Kauai Board Member  
Kauai District Land Office  
County of Kauai, Planning Department

Emergency Authorization  
Sandbags

Simpson

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4. The applicants shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments;
5. The applicants shall obtain the appropriate land disposition from the Kauai District Land Office for the work;
6. The applicants understand and agree that this action does not convey any vested rights or exclusive privilege;
7. The applicants, their 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 or death arising out of any act or omission of the applicants, their successors, assigns, officers, employees, contractors and agents under this action or relating to or connected with this action;
8. The Department may order the removal of the bags at any time should it determine that they are having a significant impact to the beach or become an nuisance to the general public;

Please have all of the affected landowners sign in the space provided for same at the end of this letter and return a copy of this executed letter to this office within 30-days of the date of this letter.

Please contact Sam Lemmo of our Office of Conservation and Coastal Lands at 587-0381, or Dolan Eversole of the Hawaii Sea Grant Program at 587-0439 for further assistance.

Sincerely,

  
PETER T. YOUNG, Chairperson

  
Applicants

Dated: ~~NOV - 1 2006~~

cc: Kauai Board Member  
Kauai District Land Office  
County of Kauai, Planning Department

*ELDUP KA 05-02*

LINDA LINGLE  
GOVERNOR OF HAWAII



PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU  
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**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

Office of Conservation and Coastal Lands  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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:DE

Ref.: Vio.KA-03-16

February 25, 2004

Mr. Jonathan Chun  
Belles Graham Proudfoot & Wilson  
Watumull Plaza  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766-1388

Dear Mr. Chun:

Subject: Removal of Sand from Anahola River mouth.

The Department of Land and Natural Resources (the Department) is in receipt of your written request dated February 18, 2004 for the removal of sand from the Anahola River for emergency shore protection (Sand bags) at Aliomanu, Kauai (TMKs: 4-09-04:04 lot 55-A). The excavation work located at the Anahola River mouth fronting TMK 4-8-12:10 is subject to approval from the Department of Hawaiian Home Lands (DHHL). The project proposes to excavate up to 500 yd<sup>3</sup> of beach quality carbonate sand from the sand bar fronting the Anahola river mouth, truck and stockpile the material at the Simpson property in Aliomanu and placed in large S.E.A.bags for erosion control purposes.

The removal and relocation of carbonate sand from the Anahola river mouth to the subject parcel is not expected to cause any negative impacts to the immediate area. The area to the south is undeveloped land and seems to be stable at this time. It is understood that the dominant littoral processes transport sediment to the south down the coast and accumulate at the Anahola River. The relocation of sediment to the north at Aliomanu will essentially be a form of "recycling" sand from where it originated to begin with. It is understood that the placement of loose sand along the shoreline at Aliomanu will only provide a temporary solution to the exiting erosion problem. It is reasonable to assume the sand placed will eventually be transported south again to the Anahola River and will require occasional transportation again to retain a stable beach system at Aliomanu.

Removal of Sand from Anahola River, Kauai for Emergency Sand Bags

February 25, 2004

Page 2

In December, 2003, the Department authorized the temporary installation of large S.E.A bag for erosion control at TMKs: 4-09-04:4, 5, and 23. Pursuant to your request for emergency protection, the applicant was authorized to install sand filled geotextile bags (S.E.A.bags) along the eroding escarpment. The Department understands that the bags will be formed into a 2:1 sloping revetment design approximately 12 ft wide by 8 ft high to match the existing bank elevation. The project will also involve installation of a polypropylene woven fabric matting under the bags to prevent further erosion and scouring of the foundation material that may cause the entire structure to collapse. The Department understands the polypropylene fabric shall be anchored at the landward end and secured at the seaward base.

Your request to place up to 500 yd<sup>3</sup> of beach quality sand from the sand bar fronting the Anahola river mouth into S.E.A.bags on the beach at Aliomanu as identified in Exhibit A and 4 in your February 18, 2004 request letter is approved. This approval is conditional on meeting all the conditions set forth in your February 18, 2004 letter as well an authorization from DHHL for the removal of the sand. In addition, the placement of sand will be subject to all of the following terms and conditions:

1. Authorization of the sand use and placement is contingent upon review and approval of the sand by the Department. The Department requires two (2) test sand samples be taken at each proposed excavation site, one surface sample and one -2 ft below grade. Each sample will be placed in a large ziplock, labeled, and sent to the Department for review. Please include a photograph of the sample areas showing the location of where the samples were taken from. Upon review of the sand samples, the Department may impose additional conditions on the use of the sand including additional grain size analysis testing.
2. The sand to fill the bags shall meet the following State quality standards:
  - a) The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm).
  - b) The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm).
  - c) Compatibility of the existing native and proposed fill beach sands shall be demonstrated by the grain size distribution of the fill sand and shall fall within twenty (20) percent of the native sand, as measured by a percent finer than or percent coarser than value. For example, if the native sand has a 45% grain size finer than the #100 sieve, the proposed fill sand must contain between 25% and 65% grain size finer than the #100 sieve.
  - d) No more than 50 (fifty) % of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.

Removal of Sand from Anahola River, Kauai for Emergency Sand Bags

February 25, 2004

Page 3

- e) Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non carbonate sands are unacceptable.
3. 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.
4. Where any interference, nuisance, or harm may be caused, or hazard established by the proposed measures, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
5. The applicant shall obtain the appropriate land disposition approval for the work;
6. The applicant, 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 or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this action or relating to or connected with this action;
7. The S.E.A.bags will consist of 10' X 5' X 1.5' polypropylene geotextile bags placed perpendicular to the shoreline. Geotextile fabric will be placed under the bag revetment to prevent abrasion of the bags and to reduce scour of the foundation.
8. The S.E.A.bags will be placed in a revetment formation with a slope of no more than 2:1 (horizontal : vertical);
9. The S.E.A.bags will be secured in a manner that will prevent them from sliding down slope or falling over. The S.E.A.bags will be secured together and/or tied back to an anchoring structure as needed to ensure they remain stable under wave action;
10. At the conclusion of work, the applicant shall clean and restore the site to a condition acceptable to the Chairperson.
11. Any work or construction authorized under this authorization shall be initiated within six (6) months of the approval of such use, and shall be completed within one (1) year of the approval. The applicant shall notify the DLNR in writing 1 week before construction activity is initiated and when it is completed.
12. The applicant shall Implement Best Management Practices (BMP) and an appropriate monitoring and assessment plan, including the ability to contain and clean up fuel, fluid, or oil spills immediately for projects authorized under this

Removal of Sand from Anahola River, Kauai for Emergency Sand Bags

February 25, 2004

Page 4

authorization and immediately report any spill(s) or other contamination(s) that occurs at the project site to the CWB and the appropriate DOH.

13. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, barriers to keep people away from the construction site and a notification to the public informing them of the temporary emergency measure.

14. In granting this authorization, the department has relied upon information and data that the applicant and its agents and representatives have provided. If such information or data prove to be false, incomplete, or inaccurate, this authorization may be modified or revoked.

Should you have any questions on any of these conditions, please feel free to contact Sam Lemmo of our Planning Branch at 587-0381, or Dolan Eversole of the University of Hawaii Sea Grant Program at 587-0439.

Sincerely,



PETER T. YOUNG, Chairperson

cc: Kauai Board Member  
Kauai Land Agent  
DOCARE (Kauai)  
DAR  
DOH, Clean Water Branch  
ACOE, Honolulu Regulatory Branch

LINDA LINGLE  
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

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR - LAND

DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

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

Ref.:OCCL:DE

Ref.:Emergency CDUA-KA-06-04

June 1, 2006

JUN - 2 2006

Mr. Jonathan Chun  
Belles Graham Proudfoot & Wilson  
Watumull Plaza  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766-1388

Dear Mr. Chun:

Subject: Removal of Sand from Anahola River mouth and Removal of Unauthorized Rock Structure at TMK(4) 4-9-4:04, Simpson Property Aliomanu, Kauai.

The Department of Land and Natural Resources (DLNR) is in receipt of your written request dated April 20, 2006 for the additional removal of sand from the Anahola River for emergency shore protection (Sand bags) at Aliomanu, Kauai (TMKs: 4-09-04:04 lot 55-A). The excavation work located at the Anahola River mouth fronting TMK 4-8-12:10 is subject to approval from the Department of Hawaiian Home Lands (DHHL). A previous emergency authorization was issued by the DLNR on February 25, 2004 for the installation of S.E.A.bags and the removal of 500 yd<sup>3</sup> from the river mouth.

In February, 2004, the Department authorized the temporary installation of large S.E.A bag for erosion control at the subject property. Pursuant to this request for emergency protection, the applicant was authorized to install sand filled geotextile bags (S.E.A.bags) along the eroding escarpment. The Department understands that approximately 30 S.E.A.bags will be formed into a 2:1 sloping revetment design approximately 12 ft wide by 8 ft high to match the existing bank elevation. The remaining bags will be used as a tieback to close the southern end of the structure and will complete the approved emergency sand bag authorization (Figure 1).

The current request is for excavation of up to 500 yd<sup>3</sup> of beach quality carbonate sand from the sand bar fronting the Anahola river mouth. The sand will be trucked to the subject property in Aliomanu and placed atop the S.E.A.bags and along the shoreline as required by the February 25, 2004 authorization. As part of the requirement to cover the sand bags with sand the DLNR has imposed a requirement to remove basalt rocks from the shoreline that were placed without

Sand and Rock Removal, Aliomanu, Kauai

Emergency CDUA KA-06-04

June 1, 2006

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authorization along the shoreline fronting the property. Approval for the additional sand is contingent on the removal of the selected rocks. DLNR staff were onsite in May, 2006 and marked up to 20 rocks to be removed (Figure 2). In addition, the remaining rocks shall be redistributed to restore the condition of the shoreline and redistribute the rocks so they are not in an unnatural wall formation.

The removal and relocation of carbonate sand from the Anahola river mouth to the subject parcel is not expected to cause any negative impacts to the immediate area. The previous effort did not lead to any observed negative impact to coastal processes. It is understood that the dominant littoral processes transport sediment to the south down the coast and accumulate at the Anahola River. It is understood that the placement of loose sand along the shoreline at Aliomanu will only provide a temporary solution to the exiting erosion problem.

Your request to place up to 500 yd<sup>3</sup> of beach quality sand from the sand bar fronting the Anahola river mouth on top and fronting the S.E.A.bags at the subject property is approved. The removal (approximately 20) and redistribution of (approximately 25) basalt rocks is also approved. This approval is conditional on obtaining approval from all interested regulatory agencies. In addition, the placement of sand will be subject to all of the following terms and conditions:

1. The use of sandbags are considered a temporary emergency erosion control measure. A long-term erosion management plan may be required by the DLNR in the future as part of this temporary emergency authorization. As a temporary authorization, the DLNR reserves to the right to cancel this authorization as necessary or if the erosion threat dissipates.
2. The applicant shall submit an annual summary report to the DLNR every five (5) years describing the condition of the structure, what maintenance actions took place and include photographic evidence of the beach and structure condition.
3. Authorization of the sand use and placement is contingent upon review and approval of the sand by the Department. The Department requires sand samples be taken at the proposed excavation site, one surface sample and one -2 ft below grade. The samples will be placed in a large ziplock, labeled, and sent to the Department for review. Please include a photograph of the sample areas showing the location of where the samples were taken from. Upon review of the sand samples, the Department may impose additional conditions on the use of the sand including additional grain size analysis testing.
4. The sand to fill the bags shall meet the following State quality standards:
  - a) The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm).
  - b) The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm).

Sand and Rock Removal, Aliomanu, Kauai

Emergency CDUA KA-06-04

June 1, 2006

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- c) Compatibility of the existing native and proposed fill beach sands shall be demonstrated by the grain size distribution of the fill sand and shall fall within twenty (20) percent of the native sand, as measured by a percent finer than or percent coarser than value. For example, if the native sand has a 45% grain size finer than the #100 sieve, the proposed fill sand must contain between 25% and 65% grain size finer than the #100 sieve.
  - d) No more than 50 (fifty) % of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.
  - e) Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non carbonate sands are unacceptable.
5. 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.
  6. The sand shall be placed above the high water mark and efforts shall be made to maintain Best Management Practices (BMP's) to minimize dirt and silt from entering the ocean. At no time is direct placement of the sand allowed below the high water mark.
  7. The removal of the rocks shall be in conformance with the identified rocks as marked by DLNR staff. The redistribution of the remaining rocks shall be conducted to minimize disturbance to the marine environment and only to restore the condition of the shoreline to before the rocks were placed. This effort shall be subject to the review and satisfaction of the Chairperson of the DLNR.
  8. Where any interference, nuisance, or harm may be caused, or hazard established by the proposed measures, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
  9. The applicant shall obtain the appropriate land disposition approval for the work;
  10. The applicant, 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 or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this action or relating to or connected with this action;
  11. At the conclusion of work, the applicant shall clean and restore the site to a condition acceptable to the Chairperson.
  12. Any work or construction authorized under this authorization shall be initiated within six (6) months of the approval of such use, and shall be completed within one (1) year of the

Sand and Rock Removal, Aliomanu, Kauai

Emergency CDUA KA-06-04

June 1, 2006

Page 4

approval. The applicant shall notify the DLNR in writing 1 week before construction activity is initiated and when it is completed.

13. The applicant shall Implement Best Management Practices (BMP) and an appropriate monitoring and assessment plan, including the ability to contain and clean up fuel, fluid, or oil spills immediately for projects authorized under this authorization and immediately report any spill(s) or other contamination(s) that occurs at the project site to the CWB and the appropriate DOH.
14. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, barriers to keep people away from the construction site and a notification to the public informing them of the temporary emergency measure.
15. In granting this authorization, the department has relied upon information and data that the applicant and its agents and representatives have provided. If such information or data prove to be false, incomplete, or inaccurate, this authorization may be modified or revoked.

Should you have any questions on any of these conditions, please feel free to contact Dolan Eversole at 587-0321.

Sincerely,



PETER T. YOUNG, Chairperson

cc: Kauai Board Member  
Kauai Land Agent  
Ian Costa, Kauai County Planning Dept.  
DOCARE (Kauai)  
DAR  
DOH, Clean Water Branch  
ACOE, Honolulu Regulatory Branch

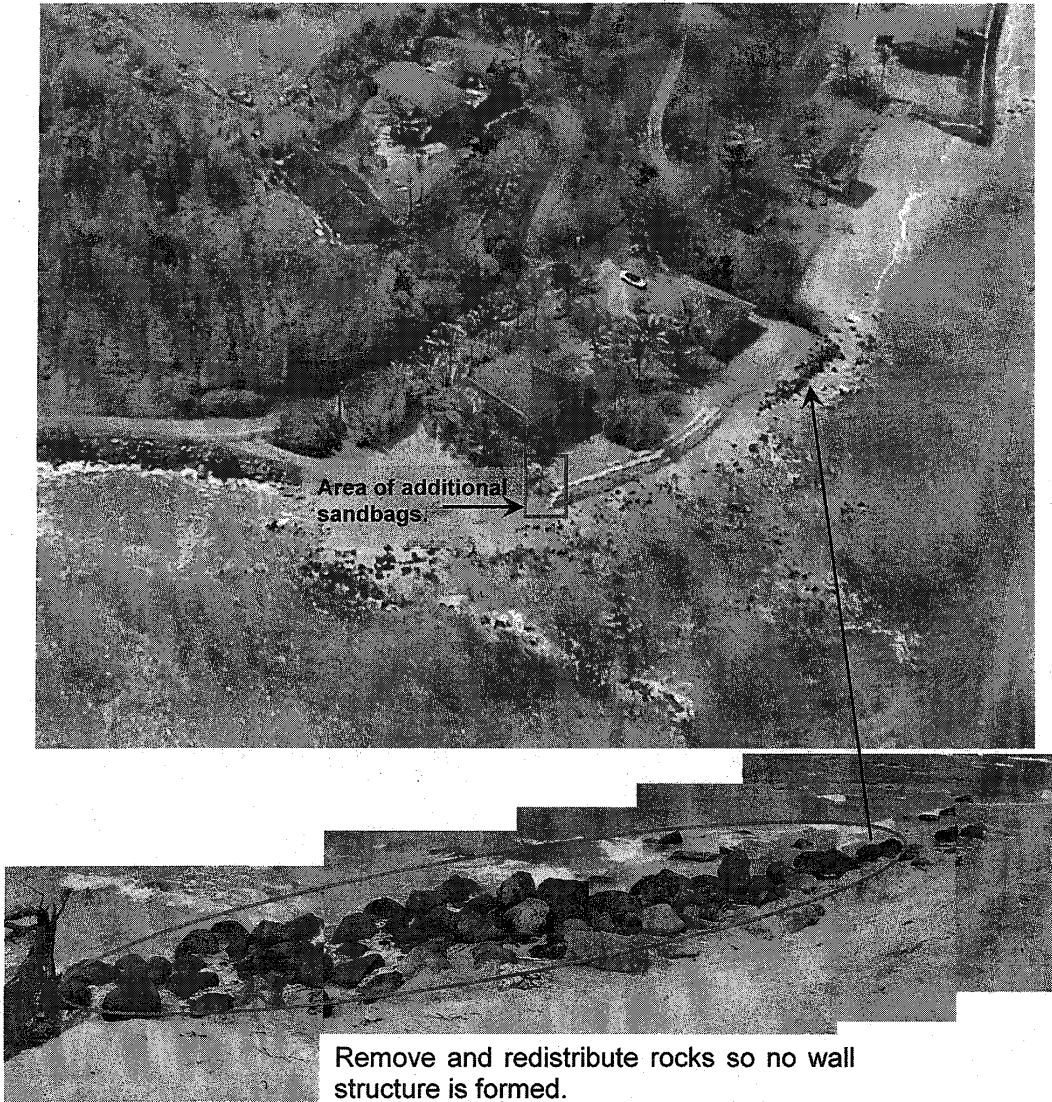
Sand and Rock Removal, Aliomanu, Kauai

Emergency CDUA KA-06-04

June 1, 2006

Page 5

**Figure 1. Subject Rocks and Sand Bags**



Sand and Rock Removal, Aliomanu, Kauai

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June 1, 2006

Page 6

**Figure 2.**  
**Remove rocks with orange X**





**FOURTH AMENDMENT TO DECLARATION OF  
CONDOMINIUM PROPERTY REGIME OF  
KUA'EHU CONDOMINIUM**

CONDOMINIUM MAP NO. 3495

WHEREAS, by Declaration of Condominium Property Regime of Kua'ehu Condominium (hereinafter called the "Declaration"), recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-182405, JOSH SIMPSON, also known as Joshua Raphael Simpson, hereinafter referred to as the "Declarant", submitted certain land and improvements, as described in the Declaration, to a condominium property regime (hereinafter referred to as the "Project"), with the plans therefore filed in the Bureau of Conveyances of the State of Hawaii as Condominium Map No. 3495 (hereinafter referred to as the "Condominium Map"); and

WHEREAS, the Declaration was amended by that certain Amendment To Declaration of Condominium Property Regime of Kua'ehu Condominium filed in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-036561, that certain Second Amendment To Declaration of Condominium Property Regime of Kua'ehu Condominium filed in said Bureau as Document No. 2003-048864; and that certain Third Amendment To Declaration of Condominium Property Regime of Kua'ehu Condominium filed in said Bureau as Document No. A-73400248 (hereinafter referred to as "Third Amendment"); and

WHEREAS, prior to the recording of the Third Amendment Unit 1 was conveyed to DONALD P. BEYER and LAURA ELLEN BEYER, Co-Trustees of the DONALD P. BEYER AND LAURA E. BEYER FAMILY TRUST OF 2015, dated May 21, 2015, (hereinafter referred to as "Unit 1 Owner"); and

WHEREAS, the Unit 1 Owner did not sign the Third Amendment; and

WHEREAS, the Unit 1 Owner agrees to and desires to be bound by the changes to the Declaration set forth in the Third Amendment; and

WHEREAS, the Declaration provides for amendment thereof by the vote or written consent of seventy-five (75%) of the undivided interests of all unit owners; and

WHEREAS, the Unit 1 Owner and the Declarant (hereinafter collectively referred to jointly as "Owners") collectively hold one hundred percent (100%) of the undivided interests of the Project; and

NOW, THEREFORE, the Owners hereby amend said Declaration to add a provision as follows:

1. A new Paragraph 11. Eroding of Shoreline. is added to Section N. MISCELLANEOUS as follows:

"11. Eroding of Shoreline. The shoreline fronting the property has been eroding for several years. The shoreline is approximately ten (10) feet from the Condominium Houses constituting Units 1 and 2. The Declarant obtained an emergency permit to construct a temporary shoreline protection structure from the State of Hawaii, Department of Land and Natural Resources, Office of Conservation and Coastal Lands ("OCCL") to protect Units 1 and 2 under KA-06-04. Purchasers must work with staff of the OCCL to develop a plan for a long-term erosion control measure. The Developer is not providing any warranty regarding KA-06-04 or the temporary shoreline protection structure. The Unit Owners shall be solely responsible to maintain the temporary shoreline protection structure fronting their respective unit as a limited common element appurtenant to their unit. In the event a sand bag within the temporary shoreline protection structure protect both Unit 1 and Unit 2 then that sand bag shall constitute a common element of the Project. The costs associated with the development of the long-term erosion control measure and the maintenance/repair of the temporary shoreline protection structure shall be borne by the Unit Owners."

2. The Limited Common Element section of Exhibit "B" to the Declaration is amended by adding the following paragraph:

"The temporary shoreline protection structure authorized by the State of Hawaii, Department of Land and Natural Resources, Office of Conservation and Coastal Lands ("OCCL") under KA-01-04 shall constitute a limited common element appurtenant to the unit to which it is immediately adjacent."


3. In all other respects, the Declaration is hereby ratified and confirmed and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. This Fourth Amendment may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Owners have executed this instrument this 30th day of June, 2020.

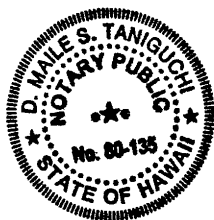
*(SIGNATURES CONTINUED ON NEXT PAGE)*

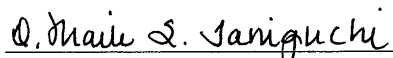
UNIT 1 OWNER:

  
DONALD P. BEYER, Co-Trustee of the DONALD  
P. BEYER AND LAURA E. BEYER FAMILY  
TRUST OF 2015, dated May 21, 2015

STATE OF HAWAII                    )  
  ) SS:  
COUNTY OF KAUAI                )


On this 29<sup>th</sup> day of June, 2020, before me appeared DONALD P. BEYER, Co-Trustee of the DONALD P. BEYER AND LAURA E. BEYER FAMILY TRUST OF 2015, dated May 21, 2015, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing FOURTH AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KUA'EHU CONDOMINIUM dated undated, 2020, which document consists of six (6) page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



  
Name of Notary: D. MAILE S. TANIGUCHI  
Notary Public, Fifth Judicial Circuit,  
State of Hawaii.

My commission expires: 02/18/2024

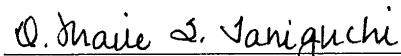
UNIT 1 OWNER:

  
LAURA ELLEN BEYER, Co-Trustee of the  
DONALD P. BEYER AND LAURA E. BEYER  
FAMILY TRUST OF 2015, dated May 21, 2015

STATE OF HAWAII                    )  
  ) SS:  
COUNTY OF KAUAI                )

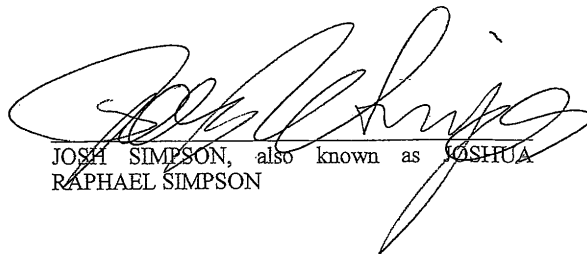
On this 29<sup>th</sup> day of June, 2020, before me appeared LAURA ELLEN BEYER, Co-Trustee of the DONALD P. BEYER AND LAURA E. BEYER FAMILY TRUST OF 2015, dated May 21, 2015, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing FOURTH AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KUA'EHU CONDOMINIUM dated undated, 2020, which document consists of six (6) page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



  
Name of Notary: D. MAILE S. TANIGUCHI  
Notary Public, Fifth Judicial Circuit,  
State of Hawaii.

My commission expires: 02/18/2024

UNIT 2 OWNER:

  
JOSH SIMPSON, also known as JOSHUA  
RAPHAEL SIMPSON

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.

ACKNOWLEDGMENT

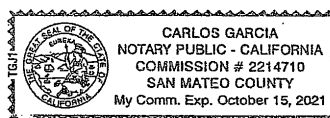
STATE OF CALIFORNIA )  
 )  
COUNTY OF San Mateo )ss

On June 30, 2020, before me, Carlos Garcia, a Notary Public, personally appeared JOSH SIMPSON, also known as JOSHUA RAPHAEL SIMPSON, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

  
Notary Public



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  
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: KA 21-12

NOTICE OF ALLEGED VIOLATION & ORDER

NOV 23 2020

CERTIFIED MAIL/RETURN RECEIPT

7014 2870 0000 1652 9370

Joshua R. Simpson  
P.O. Box 40  
El Granada, CA 94018

SUBJECT: Alleged Unauthorized Land Use(s) Within the Conservation District Located Along  
the Shoreline of 4880 Aliomanu Road, Anahola, HI 96703  
Molaa Hui Lands, Kawaihau, Kauai  
Tax Map Key: (4) 4-9-004:004

Dear Mr. Simpson:

It has come to the Office of Conservation and Coastal Lands' (OCCL) attention that the temporary erosion control structure fronting your property with the TMK: (4) 4-9-004:004 is not in compliance with the terms and conditions of the previous authorizations granted for the temporary structure. It appears that the structure has not been maintained and materials from the temporary erosion control structure have become liberated from the structure which are now posing a nuisance and hazard to the nearshore environment (see *Exhibit 1*). Additionally, it appears that boulders have been placed in the shoreline area in the form of a rock revetment (*Exhibit 2*).



Exhibit 1

Joshua R. Simpson

ENF: KA 21- 12



**Exhibit 2**

According to OCCL files, you were granted Emergency CDUA KA 05-02 by DLNR on February 24, 2004 for the removal of 500 yd<sup>3</sup> of sand from the nearby Anahola River mouth for use in placement of a geotextile sand bag revetment fronting the subject property at TMK: (4) 4-9-004:004, as a temporary measure in response to ongoing coastal erosion. On June 1, 2006, authorization was issued by DLNR (ref. Emergency CDUA KA 06-04) for removal of an additional 500 yd<sup>3</sup> of sand from the Anahola River mouth, placement of additional sandbags fronting the property, and required the removal of unauthorized rocks fronting the property. On October 15, 2020, OCCL sent you a correspondence letter (ref. COR: Emergency CDUA KA 05-02 & KA 06-04) regarding the need to address the dilapidated status of your temporary erosion control structure, compliance with the terms and conditions of Emergency CDUA KA 05-02 & KA 06-04, and requested a response from you within 30 days. No response has been received regarding this matter.

The OCCL notes that alleged unauthorized work and placement of the erosion control structure in the form of a rock revetment shown in *Exhibit 2* appears to have been placed makai (seaward) of the shoreline. 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

Joshua R. Simpson

ENF: KA 21- 12

*otherwise defined in section 205A-1, Hawaii Revised Statutes (HRS)*". Lands makai of the shoreline are under the jurisdiction of the State of Hawaii DLNR and its OCCL and are protected by common law rights for the public. In addition, the dilapidated status of the temporary erosion control structure fronting your property and the unauthorized rock revetment pose a public safety threat and will need to be removed and disposed of at an approved site or location.

Finally, we wish to bring to your attention the non-compliance with the conditions of the emergency authorizations (Emergency CDUA KA 05-02 & KA 06-04) that were issued to you approximately 14 years ago and run with the land. In addition to the alleged unauthorized rock revetment, the subject sandbags will need to be removed due to non-compliance with the terms and conditions of these emergency authorizations. The terms and conditions of the June 1, 2006 emergency authorization letter for the temporary erosion control structure included a requirement that *where any interference, nuisance, or harm may be caused, or hazard established by the proposed measures, the applicant [permittee] shall be required to take measures to minimize or eliminate the interferences, nuisance or hazard*. It appears that the temporary erosion control structure has not been maintained and materials from the structure have become liberated from the structure which are now posing a nuisance and hazard to the nearshore environment. In addition, large rocks have been positioned on top of the dilapidated structure. The terms and conditions of the June 1, 2006 emergency authorization letter for the temporary erosion control structure also included a requirement that *the applicant [permittee] shall submit a summary report to the DLNR every five (5) years describing the condition of the structure, what maintenance actions took place and include photographic evidence of the beach and structure condition*. The OCCL has not received a recent report in accordance with this condition of the emergency authorization. Additionally, the temporary authorizations (Emergency CDUA KA-05-02 and KA-06-04) for the sandbag revetment were authorized as a temporary means of controlling the shoreline erosion fronting the subject property, with the understanding that a long-term erosion control plan will be devised. The original authorization for the structure (Emergency CDUA KA-05-02) stated that "the applicants agree that these measures are temporary (intended for less than five years) and agrees to cooperate in a long-term solution to the erosion problems." The OCCL has received no correspondence detailing plans for a long-term solution to the erosion problems fronting the subject property.

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

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

1. The placement of a rock revetment has taken place on the public sandy beach along the shoreline and seaward of TMK: (4) 4-9-004:004 located within the State Land Use Conservation District, Resource Subzone;
2. Non-compliance with the terms and conditions of the Emergency CDUA KA 05-02 and KA 06-04;
3. Pursuant to §13-5-22 P-15 (D-1), HAR, "Shoreline Erosion Control " is a regulated land use as stated below:
  - a. *Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal*

Joshua R. Simpson

ENF: KA 21- 12

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

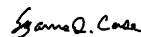
4. This land use was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR; and
5. The land use has occurred on public land owned by the State without authorization or permission from the State as landowner.

We recommend that you stop all work and remove the unauthorized structures that includes the unauthorized rock revetment located within the shoreline area within 30 days of receipt of this order. Pursuant to 183C-7(b), HRS, the Board of Land and Natural Resources (Board) may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs and costs associated with land or habitat restoration, or both, if required, and damages to state land. Should you fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

The OCCL intends to schedule this matter before the Board at our earliest convenience for final disposition. You will be notified of the time and place/forum for this Board meeting in the future.

Should you have any questions regarding this matter, please contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at (808) 798-6660 or [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,



---

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



CC: *Kauai Board Member*  
*DOCARE (Kauai)*  
*KDLO*  
*County of Kauai, Department of Planning*  
*Laura E & Donald P Beyer*  
*4419 Belair Drive, La Canada, CA 91011*  
*Joshua R. Simpson*  
*4888 Aliomanu Road Unit 2, Anahola, HI 96703*

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  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

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

REF: OCCL: TF

ENF: KA 21-11

NOV 23 2020

**NOTICE OF ALLEGED VIOLATION & ORDER**

CERTIFIED MAIL/RETURN RECEIPT  
7014 2870 0000 1652 9387

Laura E & Donald P Beyer Family Trust  
C/O Laura E & Donald P Beyer  
4419 Belair Drive  
La Canada, CA 91011

SUBJECT: Alleged Unauthorized Land Use(s) Within the Conservation District Located Along  
the Shoreline of 4880 Aliomanu Road, Anahola, HI 96703  
Molaa Hui Lands, Kawaihau, Kauai  
Tax Map Key: (4) 4-9-004:004

Dear Landowners:

It has come to the Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands' (OCCL) attention that you have conducted work in the shoreline area that includes placement of erosion control in the form of a rock revetment (*Exhibit 1*). In addition to this recent unauthorized action, we wish to bring to your attention that you are not in compliance with the terms and conditions of your emergency authorizations (Emergency CDUA KA 05-02 & KA 06-04). These authorizations run with the land, so although the permits were issued to Mr. Josh R. Simpson in the past, you are now the responsible party.

Laura E & Donald P Beyer Family Trust

ENF: KA 21- 11



**Exhibit 1**

According to OCCL files, the landowner of the parcel with the TMK: (4) 4-9-004:004 was granted Emergency CDUA KA 05-02 by DLNR on February 24, 2004 for the removal of 500 yd<sup>3</sup> of sand from the nearby Anahola River mouth for use in placement of a geotextile sand bag revetment fronting the subject property at TMK: (4) 4-9-004:004, as a temporary measure in response to ongoing coastal erosion. On June 1, 2006, authorization was issued by DLNR (ref. Emergency CDUA KA 06-04) for removal of an additional 500 yd<sup>3</sup> of sand from the Anahola River mouth, placement of additional sandbags fronting the property, and required the removal of unauthorized rocks fronting the property.

The OCCL notes that the alleged unauthorized work and placement of the erosion control structure in the form of a rock revetment shown in *Exhibit 1* appears to have been placed along the shoreline. According to OCCL files, there are 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 seaward of the shoreline are under the

Laura E & Donald P Beyer Family Trust

ENF: KA 21- 11

jurisdiction of the State of Hawaii DLNR and its OCCL and are protected by common law rights for the public. In addition, the dilapidated status of the temporary erosion control structure fronting your property and the unauthorized rock revetment pose a public safety threat and will need to be removed and disposed of at an approved site or location.

Finally, we wish to bring to your attention the non-compliance with the conditions of the emergency authorizations (Emergency CDUA KA 05-02 & KA 06-04) that were issued to Mr. Joshua R. Simpson approximately 14 years ago and run with the land. In addition to the alleged unauthorized rock revetment, the subject sandbags will need to be removed due to the landowners' non-compliance with the terms and conditions of these emergency authorizations. The terms and conditions of the June 1, 2006 emergency authorization letter for the temporary erosion control structure included a requirement that *where any interference, nuisance, or harm may be caused, or hazard established by the proposed measures, the applicant [permittee] shall be required to take measures to minimize or eliminate the interferences, nuisance or hazard.* It appears that the temporary erosion control structure has not been maintained and materials from the structure have become liberated from the structure which are now posing a nuisance and hazard to the nearshore environment. In addition, large rocks have been positioned on top of the dilapidated structure. The terms and conditions of the June 1, 2006 emergency authorization letter for the temporary erosion control structure also included a requirement that *the applicant [permittee] shall submit a summary report to the DLNR every five (5) years describing the condition of the structure, what maintenance actions took place and include photographic evidence of the beach and structure condition.* The OCCL has not received a recent report in accordance with this condition of the landowner's emergency authorization. Additionally, the temporary authorizations (Emergency CDUA KA-05-02 and KA-06-04) for the sandbag revetment were authorized as a temporary means of controlling the shoreline erosion fronting the subject property, with the understanding that a long-term erosion control plan will be devised. The original authorization for the structure (Emergency CDUA KA-05-02) stated that "the applicants agree that these measures are temporary (intended for less than five years) and agrees to cooperate in a long-term solution to the erosion problems." The OCCL has received no correspondence detailing plans for a long-term solution to the erosion problems fronting the subject property.

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

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

1. The placement of a rock revetment has taken place on the public sandy beach along the shoreline and seaward of TMK: (4) 4-9-004:004 located within the State Land Use Conservation District, Resource Subzone;
2. Non-compliance with the terms and conditions of the Emergency CDUA KA 05-02 and KA 06-04;
3. Pursuant to §13-5-22 P-15 (D-1), HAR, "Shoreline Erosion Control " is a regulated land use as stated below:
  - a. *Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal*

Board of Land and Natural Resources  
OCCL Enforcement KA 21-12

Laura E & Donald P Beyer Family Trust

ENF: KA 21- 11

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

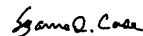
4. This land use was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR; and
5. The land use has occurred on public land owned by the State without authorization or permission from the State as landowner.

We recommend that you stop all work and remove the unauthorized structures that includes the unauthorized rock revetment located within the shoreline area within 30 days of receipt of this order. Pursuant to 183C-7(b), HRS, the Board of Land and Natural Resources (Board) may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs and costs associated with land or habitat restoration, or both, if required, and damages to state land. Should you fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

The OCCL intends to schedule this matter before the Board at our earliest convenience for final disposition. You will be notified of the time and place/forum for this Board meeting in the future.

Should you have any questions regarding this matter, please contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at (808) 798-6660 or [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,



---

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



CC: *Kauai Board Member*  
*DOCARE (Kauai)*  
*KDLO*  
*County of Kauai, Department of Planning*  
*Joshua R. Simpson*  
*P.O Box 40, El Granada, CA 94018*  
*Laura E & Donald P Beyer*  
*4880 Aliomanu Road Unit 1, Anahola, HI 96703*

**Parcel 004 and Kuaehu Condo Unit Owners as they relate to Shoreline Matters**

May 3, 2002 - Doc No(s) 2002-077127:

- The Doyle-Lotstein Living Trust to Joshua Simpson

October 14, 2002 - Doc No(s) 2002-182405:

- Declaration of Condominium Property Regime of Kuaehu Condominium, Condominium Map No. 3495

October 14, 2002 - Doc No(s) 2002-182406:

- Bylaws of the Association of Unit Owners of Kuaehu Condominium, Condominium Map No. 3495

**Unit 1 of Kuaehu Condo on Parcel 004**

January 17, 2020 - Doc No A73210195:

- Josh Simpson to Donald P. Beyer and Laura Ellen Beyer, Co-Trustees of the Donald P. Beyer and Laura E. Beyer Family Trust

April 6, 2021 - Doc No(s) A-77660855:

- Donald P. Beyer and Laura Ellen Beyer, Co-Trustees of the Donald P. Beyer and Laura E. Beyer Family Trust to Matthew Maruccia and Kelli Maruccia, as Trustees of the Maruccia Family Trust

July 30, 2024 - Doc No(s) A-89770127:

- Matthew Maruccia and Kelli Maruccia, as Trustees of the Maruccia Family Trust to Malden & Myrtle LLC

November 4, 2024 - Doc No(s) A-9074000283:

- Malden & Myrtle LLC to Leland V. Wigington, Jr.

**Unit 2 of Kuaehu Condo on Parcel 004**

July 14, 2021 - Doc No(s) A-78650399:

- Joshua Raphael Simpson to David Wilford West

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

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA  
OFFICE OF CONSERVATION AND COASTAL LANDS  
P.O. BOX 621  
HONOLULU, HAWAII 96809

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

RYAN K.P. KANAKA'OLE  
FIRST DEPUTY

CIARA W.K. KAHANE  
DEPUTY DIRECTOR - WATER

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

REF: OCCL: TF

ENF: KA 21-12

Feb 6, 2025

CERTIFIED MAIL/RETURN RECEIPT

9589 0710 5270 1436 9421 90

Kuaehu Condominium  
Leland V Wigington Jr  
3270 Sumac Ridge Road  
Malibu, CA 90625

And.

9589 0710 5270 0920 0611 64

David W West  
PO Box 481  
Anahola, HI 96703

SUBJECT: Expired Emergency Conservation District Use Permits (CDUP) KA 05-02 and KA 06-04, Noncompliance with the Permit Conditions, and Alleged Unauthorized Land Use(s) and Encroachments within the Beach Transit Corridor and Conservation District  
Located at and makai (seaward) of 4880 and 4888 Aliomanu Road  
Moloaa Hui Lands, Kawaihau, Kauai  
Tax Map Key (TMK): (4) 4-9-004:004 (seaward)

Dear Landowners:

The Office of Conservation and Coastal Lands (OCCL) has reviewed the files for ENF: KA 21-11 and KA 21-12 regarding the subject matter. On February 3, 2025, OCCL conducted a site inspection to the area and observed that the expired and alleged unauthorized erosion control devices and structures still occupy the shoreline area fronting the subject property. Additionally, these alleged unauthorized land use(s) in the Conservation District continue to encroach in the beach transit corridor. Photos from the February 3, 2025, site visit and the alleged unauthorized erosion control devices and encroachments are attached as **Exhibit 1**.

According to OCCL files, we have sent the landowners of TMK: (4) 4-9-004:004 and their agents several letters regarding these matters and requesting that the expired and alleged

REF: OCCL: TF

ENF: KA 21-12

unauthorized erosion control devices be removed. Emergency CDUPs KA 05-02 and 06-04 and those letters are noted below and attached.

In addition to the statutes and rules cited in the Notice of Alleged Violation & Order issued on November 23, 2020, please note that Hawaii Revised Statutes (HRS) **§115-5 Beach transit corridor defined.** states, in relevant parts, *"The right of transit shall exist seaward of the shoreline and this area shall be defined as a beach transit corridor. For purposes of this section, "shoreline" shall have the same meaning as in section 205A-1"*; and HRS **§115-9 Obstructing access to public property, penalty.** states, in relevant parts, *"A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing: (4) A beach transit corridor; and thereby obstructs access to and along the sea, the shoreline, or any inland public recreational area. (b) Physical impediments that may prevent traversing include but are not limited to the following: (1) Gates; (2) Fences; (3) Walls; (4) Constructed barriers; (8) A landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches within beach transit corridors", and "(c) Obstructing access to public property is a misdemeanor."*

Obstructing access to public property is a potential misdemeanor and should you fail to remove the encroachments within 21-days of this notice being issued, you may be subject to fines for violation under HRS §115-9, as follows: a minimum of \$1,000 for a second conviction and a minimum of \$2,000 for any conviction after a second conviction.

Additionally, 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.

It appears that the property has changed landowners approximately three times since the Notice of Alleged Violation & Order was issued on November 23, 2020. A cursory review of the State of Hawaii Sea Level Rise Viewer (<https://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>) indicates that TMK: (4) 4-9-004:004 lies in the Sea Level Rise Exposure Area (SLR-XA – Exhibit 2).

Climate change and resultant sea level rise threats are well known. The public is generally aware of risks associated with the purchasing and inhabitation of coastal and more specifically shoreline properties. Buyers of shoreline and coastal property are responsible for vetting their purchases prior to making any commitments. We also expect that the mandatory seller disclosure statement for properties in the SLR-XA was disclosed to you as required by HRS § 508D-15.

**We recommend that you remove the erosion control structures, unauthorized materials and encroachments located within the shoreline area within 21 days of receipt of this**

REF: OCCL: TF

ENF: KA 21-12

**letter.** Please submit evidence of their removal and note that OCCL will have to conduct a site inspection to confirm removal.

Please respond to this letter in writing within fourteen (14) days of issuance of this letter. Please note any information provided may be used in civil proceedings. Your response can either be mailed or hand delivered to OCCL at 1151 Punchbowl Street Room 131, Honolulu, HI 96813. If we do not receive a response within fourteen (14) days and the alleged unauthorized erosion control devices and structures and encroachments in the beach transit corridor are not removed within twenty-one (21) days, we will most likely proceed with enforcement actions.

After reviewing the files for ENF: KA 21-11 and KA 21-12, we are combining the enforcement cases and investigations into one file, ENF: KA 21-12.

Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office at [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,

*S Michael Cain*

Michael Cain, Administrator  
Office of Conservation and Coastal Lands

Attachments:

Emergency CDUP KA 05-02,  
Ref.: Vio. KA 03-16,  
Emergency CDUP KA 06-04,  
Notice of Alleged Violation & Order ENF: KA 21-11 & KA 21-12,  
ENF: KA 21-11 & 12 dated Dec 30, 2020,  
RE: Emergency CDUP KA 05-02, Emergency CDUP KA 06-04, ENF: KA 21-11 & 21-12 dated Jan 12, 2022, and,  
RE: Emergency CDUP KA 05-02, Emergency CDUP KA 06-04, ENF: KA 21-11 & 21-12 dated Oct 21, 2022

CC: *Kauai District Land Office*  
*County of Kauai Planning Department*

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

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA  
OFFICE OF CONSERVATION AND COASTAL LANDS  
P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
RYAN K.P. KANAKA'OLE  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF: OCCL: TF

ENF: KA 21-12

Mar 31, 2025

Kuaehu Condominium  
C/O:

Leland V Wigington Jr  
3270 Sumac Ridge Road  
Malibu, CA 90625

And,

David W West  
PO Box 223855  
Princeville, HI 96722

SUBJECT: Expired Emergency Conservation District Use Permits (CDUP) KA 05-02 and KA 06-04, Noncompliance with the Permit Conditions, and Alleged Unauthorized Land Use(s) and Encroachments within the Beach Transit Corridor and Conservation District  
Located at and makai (seaward) of 4880 and 4888 Aliomanu Road  
Moloaa Hui Lands, Kawaihau, Kauai  
Tax Map Key (TMK): (4) 4-9-004:004 (seaward)

Dear Landowners:

The Office of Conservation and Coastal Lands (OCCL) has reviewed Mr. Wiginton's letter dated February 14, 2025, and attachments regarding the subject matter. To date, we have not received a written response from Mr. West as requested.

According to Mr. Wiginton's letter, he believes that the expired and alleged unauthorized erosion control devices in the shoreline area fronting the structure on TMK: (4) 4-9-004:004 that he appears to own were removed prior to his purchasing of the property. OCCL notes that photos attached to his February 14, 2025, letter appear to still show erosion control devices and debris fronting the structure he appears to own as well as along the entire shoreline area of parcel 004.

REF: OCCL: TF

ENF: KA 21-12

On February 6, 2025, you were issued a letter requesting, in part, that you remove the erosion control structures, unauthorized materials, and encroachments located within the shoreline area within 21 days of receipt of that letter. The letter also noted that if the alleged unauthorized erosion control devices and structures and encroachments in the beach transit corridor were not removed within 21 days, OCCL would most likely proceed with further enforcement actions.

On March 24, 2025, OCCL conducted a site inspection to the area and observed the expired and alleged unauthorized erosion control devices in the shoreline area fronting parcel 004. Photos from OCCL's March 24, 2025, site visit to the area are attached as **Exhibit 1**.

As the alleged unauthorized erosion control devices and structures have not been removed in a timely manner, we will be proceeding with further enforcement actions. You will be notified in the future of these matters.

Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office at [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,

*S Michael Cain*

Michael Cain, Administrator  
Office of Conservation and Coastal Lands

CC: *Kauai District Land Office  
County of Kauai Planning Department*

## **Conservation District Rules and Statutes**

### **Shorelines and Public Lands**

In Hawai'i, the shoreline is defined, pursuant to HRS §205A-1, as *the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.* Most lands in the State of Hawai'i that are seaward of the shoreline are in the Resource Subzone of the State Land Use Conservation District, and are owned by the State.

It is the uniform law of every coastal state that land below, or makai, of the shoreline is owned by the State and is held in public trust for the people of the State.<sup>1</sup> In Hawai'i County v. Sotomura, 55 Haw. 176, 517 P.2d 57 (1973), the Court made clear that the dividing line between public and private property with respect to oceanfront property is fluid and, specifically, that it changes with erosion.<sup>2</sup>

The Court based its ruling on the common law principle that loss of land by erosion is an inherent aspect of littoral property:

*The loss of lands by the permanent encroachment of waters is one of the hazards incident to littoral or riparian ownership... (W)hen the sea, lake or navigable stream gradually and imperceptibly encroaches upon the land, the loss falls upon the owner, and the land thus lost by erosion returns to the ownership of the state.*<sup>3</sup>

In determining that the dividing line between public and private property with respect to oceanfront property may change with erosion, the Court also based its ruling on the public trust doctrine, citing to King v. O'ahu Ry. And Land Co., 11 Haw. 717, 723-24 (1899), for the proposition that:

*The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.*<sup>4</sup>

Therefore, public policy "favors extending to public use and ownership as much of Hawai'i's shoreline as is reasonably possible."<sup>5</sup>

<sup>1</sup> See Margaret E. Peloso and Margaret R. Caldwell, Dynamic Property Rights: The Public Trust Doctrine and Takings in a Changing Climate, 30 Stan. Envtl. L.J. 52, 57 (2011) ("In nearly all cases, the lines for defining the limits of private title and public access are the mean high water and mean low water marks.").

<sup>2</sup> 55 Haw. At 180, 517 P.2d at 61.

<sup>3</sup> In re City of Buffalo, 206 N.Y. 319, 325, 99 N.E. 850, 852 (1912).

<sup>4</sup> Hawai'i County v. Sotomura, 55 Haw. At 184, 517 P.2d at 63.

<sup>5</sup> Hawai'i County v. Sotomura, 55. Haw. At 182, 517 P.2d 61-62; see Application of Banning, 73 Haw. 297, 309-10, 832 P.2d 724, 731 (1992); Diamond v. Dobbins, 132 Haw. 9, 26, 319 P.3d 1017, 1034 (2014); Gold Coast Neighborhood Ass'n. v. State, 140 Haw. 437, 458, 403 P.3d 214, 235 (2017).

### **Hawai'i Administrative Rules (HAR) Chapter 13-5: Conservation District**

Land uses in the Conservation District are regulated under HAR Chapter 13-5, which identifies land uses that may be applied for within the Conservation. Chapter 13-5 also contains the administrative rules relating to penalties, collection of administrative costs, and monetary damages that may be sought against persons responsible for unauthorized land uses within the Conservation District.

HAR § 13-5-2, defines "land use" as follows:

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

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

HAR § 13-5-6(d) provides that "no land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board."

One of the allowed uses is for shoreline erosion control. HAR § 13-5-22 P-15(D-1) allows for a:

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

HAR § 13-5-35 Emergency permits (d) provides that "Repair and reconstruction of any structure or land use being investigated for possible violation of this chapter, or in situations in which fines for a violation have not been collected, shall not be processed until the violation is resolved."

**Hawai'i Revised Statutes Chapter 183C Conservation District**

HRS §183C-7 (Penalty for violation) provides the statutory penalty for violations of Chapter 13-5, HAR, and provides, in relevant part:

- (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter.
- (b) Any person violating this chapter, or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, willful violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to \$15,000 per day per violation for each day in which the violation persists.
- (c) The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.

**Hawai'i Revised Statutes Chapter 171: Management and Disposition of Public Lands**

Pursuant to HRS §171-6 the Board may:

- (12) Bring actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:
  - (A) Be fined not more than \$1,000 a day for the first offense;
  - (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
  - (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
  - (D) Assume such costs as may result from adverse effects from such restoration; and
  - (E) Be liable for administrative costs incurred by the department and for payment of damages..."

HRS §171-6 further allows the Board to assess the following fines for a violation on Chapter 171 or any rule adopted thereunder:

- (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined no more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
- (B) Fined no more than \$10,000 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
- (C) Fined no more than \$20,000 per violation for a third or subsequent violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

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

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

HRS § 171-6.4 states, in relevant part:

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

#### **Hawai'i Revised Statutes Chapter 205A: Coastal Zone Management**

Pursuant to Chapter 205A-2 Coastal Zone Management Program, (c) (9) Beaches Protection, it is State policy to (A) *Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion*, and (B) *Prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.*