

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 13, 2021

Mr. Larry Dill
State of Hawaii
Department of Transportation
Highways Division, Kauai District
1720 Haleukana Street
Lihue, HI 96766

Ref. No.: 21KD-082
Federal Aid Project No.: ER-24(004)

Subject: Issuance of Right-of-Entry Permit to the Department of Transportation, Highways Division to Mitigate Sand Erosion at Wailua Beach, Wailua House Lots, Kawaihau, Kauai, Tax Map Keys: (4) 4-1-004: Seaward of 001 and (4) 4-1-005: Seaward of 004.

Dear Mr. Dill:

By letter dated September 20, 2021, the Hawaii Department of Transportation, Highways Division (HDOT) requested a Right-of-Entry Permit to authorize emergency work upon Wailua Beach to mitigate sand erosion caused by flooding of the area.

Much of the sand at Wailua Beach eroded as a result of heavy rains and flooding from March 8 to March 12, 2021, impacting Kuhio Highway and the County of Kauai's Bike Path. Pursuant to Governor's Proclamations dated March 9, 2021, May 6, 2021, July 1, 2021, August 30, 2021 and October 29, 2021, the County of Kauai was proclaimed to be a disaster area as a result of the heavy rains and flooding from March 8 to March 12, 2021, that resulted in damage to public property impacting the County of Kauai, thereby endangering the health, safety, and welfare of the public. The proclamation authorizes the expenditure of State monies and warrants rehabilitative assistance from the State.

Pursuant to the authority granted the Chairperson of the Board of Land and Natural Resources at its meeting of December 10, 2021, Item D-3, the HDOT, its contractors, consultants, and/or persons acting for or on its behalf, is hereby granted a right-of-entry onto unencumbered State lands at Wailua House Lots, Wailua, Kawaihau, Kauai, identified as Tax Map Keys: (4) 4-1-004: seaward of 001 and (4) 4-1-005: Seaward of 004. The purpose of this right-of-entry is to allow HDOT to install a new patented beach nourishment

technology called Sandsaver in the vicinity of the Wailua Beach, to mitigate sand erosion caused by flooding of the area and to remove the existing revetment rock and sandbags and re-construct an un-grouted rock revetment along the existing bike path and sand parking area on the north end of the beach to protect this area, subject to the following conditions:

1. This right-of-entry shall be effective upon our receipt of a copy of this right-of-entry duly executed by an authorized representative of the HDOT, accepting the conditions herein, and shall expire one (1) year from the execution date;
2. The HDOT shall ensure that its consultants, contractors and/or persons acting for or on its behalf procure at their own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of HDOT, its consultants, contractors and/or persons acting for or on its behalf. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require HDOT, its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify HDOT, its consultants, contractors and/or persons acting for or on its behalf in writing of changes in the insurance requirements and HDOT, its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit HDOT, its consultants, contractors and/or persons acting for or on its behalf, liability under this right-of-entry nor to release or relieve HDOT, its consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, HDOT, its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full

and total amount of any damage, injury, or loss caused by HDOT, its consultants, contractors and/or persons acting for or on its behalf negligence or neglect connected with this right-of-entry.

3. At all times herein, HDOT, its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
4. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for cleaning and restoring the area to a condition satisfactory to the Department of Land and Natural Resources upon completion of the project. All trash shall be removed from the area or premises.
5. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.
6. HDOT shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of HDOT, its consultants, contractors and/or persons acting for or on its behalf relating to HDOT, its consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of HDOT, its consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in HDOT, its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of HDOT, its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of HDOT, its consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
7. All equipment shall be placed within the right-of-entry area or premises described on the attached map.
8. No alcoholic beverages will be served or permitted in the right-of-entry area or premises.
9. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. HDOT, its consultants, contractors and/or persons acting for or on

its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of business of the HDOT, its consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by HDOT, its consultants, contractors and/or persons acting for or on its behalf, then the HDOT its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, HDOT, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning HDOT, its consultants, contractors and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by HDOT, its consultants, contractors and/or persons acting for or on its behalf.

10. HDOT shall ensure that its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while HDOT, its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by HDOT, its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

11. HDOT, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
12. All costs associated with the construction within the right-of-entry area or premises shall be the sole responsibility of the HDOT, its consultants, contractors and/or persons acting for or on its behalf.

13. Best management practices shall be employed to avoid having silt or dirt enter the ocean.
14. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from HDOT, its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at HDOT, its consultants, contractors and/or persons acting for or on its behalf own cost and expense.
15. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered the HDOT, its consultants, contractors and/or persons acting for or on its behalf shall stop work and contact the State Historic Preservations Division in Kapolei at (808) 692-8015 immediately.
16. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the HDOT, its consultants, contractors, and/or persons acting for or on its behalf shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.
17. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
18. This right-of-entry is revocable and terminable at any-time for any reason in the sole and absolute discretion of the Chairperson.
19. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
20. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

Should you accept the above terms and conditions please sign in the space provided below and then fax a signed copy of this letter to the Hawaii District Land Office at (808) 241-3535.

If you have any questions, please contact Alison Neustein at the Kauai District Land Office at (808) 274-3491. Thank you.

Respectfully Submitted,

Suzanne D. Case

Suzanne D. Case *RT*
Chairperson

WE CONCUR:

State of Hawaii
Hawaii Department of Transportation, Highways Division

By _____
Its:

Date:

xc: Hawai'i Land Board Member
 Central File
 District File

