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Attorneys for Plaintiff  
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,  
  
Plaintiff,

vs.

JOSHUA VANEMMERIK, JOHN AND  
JANE DOES 1 – 10, DOE ENTITIES 1 –  
10,  
  
Defendants.

CIVIL NO. \_\_\_\_\_  
(Environmental Court)

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF; SUMMONS

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**I. JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to Hawaii Revised Statutes (“HRS”) §§ 603-21.5 and 603-23.

2. Venue is proper pursuant to HRS § 603-36(5).

**II. PARTIES**

3. Plaintiff, State of Hawai‘i, is the sovereign. The Department of Land and Natural Resources (“DLNR”) is a department of the State and the Office of Conservation and Coastal Lands (“OCCL”) is a division of DLNR.

4. The DLNR is an executive department of the State of Hawai‘i responsible for protection of Hawaii’s natural resources.

5. The OCCL is responsible for overseeing private and public lands that lie within the State Land Use Conservation District.

6. Upon information and belief that Defendant Joshua VanEmmerik (“VanEmmerik” or “Defendant”) owns the properties located at 59-147 Ke Nui Road, Haleiwa, Hawai‘i, 96712, in the City and County of Honolulu, also identified by Tax Map Key (1) 5-9-002:003 (“Subject Property 1”) and 59-147 A Ke Nui Road, Haleiwa, Hawai‘i 96712, in the City and County of Honolulu, also identified by Tax Map Key (1) 5-9-002:002 (“Subject Property 2”).

7. Upon information and belief that Defendant is a resident of Hawai‘i.

8. Defendants JOHN AND JANE DOES 1 – 10 and DOE ENTITIES 1 – 10 are persons or entities who have or may have leasehold rights, lien rights, or other claims, interests, or concerns in or liabilities arising in connection with the property which is the subject of this action. The State has reviewed its own records and files in a good faith effort to ascertain the true names and identities of these parties.

### **III. FACTUAL ALLEGATIONS**

9. All land seaward of the upper reaches of the wash of the waves belongs to the State. *County of Hawai‘i v. Sotomura, et al.*, 55 Haw. 176, 184, 517 P.2d 57, 63 (1973).

10. Subject Property 1 is a residential lot with a single-family residence.

11. Subject Property 2 is a residential lot with a single-family residence.
12. Both Subject Property 1 and Subject Property 2 abut other residential lots to the east, south, and west.
13. State land, comprising the Pūpūkea-Paumalū Beach Park and submerged lands out to the State’s jurisdiction, abuts the subject property to the north.
14. The subject property abuts, and is immediately mauka<sup>1</sup> of, the ownership line between the subject property and the State land.
15. The State owns the property makai<sup>2</sup> of the ownership line.
16. The Courts have defined the ownership line that delineates private shoreline property from state property as the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth, or by the line of debris left by the wash of the waves. *In re Application of Ashford*, 50 Haw. 314, 440 P.2d 76 (1968), *County of Hawaii v. Sotomura*, 55 Haw. 176, 517 P.2d 57 (1973).
17. The land makai of the ownership line is within the Conservation District, resource subzone.
18. “Conservation District” means those lands within the various counties of the State bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto. HRS § 183C-2.

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<sup>1</sup> “Mauka” refers to “[i]nland, upland, towards the mountain [.]” Mary Kawena Pukui & Samuel H. Elbert, *Hawaiian Dictionary* 242, 365 (Rev. ed.1986).

<sup>2</sup> “Makai” means “on the seaside, toward the sea, in the direction of the sea.” *Hawaiian Dictionary* 114 (Rev. ed.1986).

19. The Legislature intended to conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. HRS § 183C-1.

20. The DLNR regulates land uses within the Conservation District.

21. “Land use” means: (1) the placement or erection of any solid material on land; (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. HRS § 183C-2.

22. The presence of solid material that impedes the upper reaches of the wash of the waves does not impact the ownership line. The ownership line is where the upper reaches of the wash of the waves would extend but for any shoreline erosion control, unpermitted structure, or solid material. HRS § 205A-41.

23. Subject Property 1 contains a cesspool that has been identified by the Department of Health and the Cesspool Conversion Working Group to be in the Priority 1 zone, meaning that the cesspool is recommended to be converted or decommissioned by 2030.

24. Subject Property 2 also contains a cesspool that has been identified by the Department of Health and the Cesspool Conversion Working Group to be in the Priority 1 zone, meaning that the cesspool is recommended to be converted or decommissioned by 2030.

25. OCCL regularly conducts site visits to the beach area fronting the Subject Property and has photograph records of the shoreline fronting Subject Property 1 and Subject Property 2.

26. OCCL has issued VanEmmerik Notices of Alleged Violation concerning various unauthorized erosion control measures fronting Subject Property 1 and Subject Property 2 on October 28, 2021, September 30, 2022,

27. OCCL and VanEmmerik previously entered into a settlement agreement to resolve prior alleged unauthorized erosion control measures and structures that were on State land fronting Subject Property 1 and Subject Property 2. The result of the settlement agreement was that most of the alleged unauthorized erosion control measures that were the subject of previous Notices of Alleged Violations were removed by September 30, 2023. On October 2, 2023, OCCL staff observed that most of the unauthorized materials had been removed from the shoreline area fronting Subject Property 1 and Subject Property 2, but remnant cement pieces and geotextile tubes were still in the sand.

28. The City and County of Honolulu's Department of Planning and Permitting ("DPP") informed OCCL in October 2023 that the dwellings on Subject Property 1 and Subject Property 2 were at risk of failure.

29. On October 20, 2023, OCCL sent VanEmmerik a letter encouraging him to work quickly with DPP to relocate the two (2) dwellings to a safe location.

30. On October 23, 2023, VanEmmerik responded to OCCL's letter and indicated that he understood the urgency for finding a solution. VanEmmerik reiterated a request to place temporary erosion control measures on the State land fronting Subject Property 1 and Subject Property 2, while reassuring OCCL that he was actively working with multiple specialists to find alternative solutions and would work quickly to adhere to OCCL's advice.

31. Between October 28, 2023, and November 5, 2023, OCCL received information that workers dug a trench on the State land fronting Subject Property 1 and Subject Property 2,

placed geotextile tubes in the trench, mined sand to fill the tubes, and then covered the area with beach sand and a geotextile cloth.

32. On November 6, 2023, OCCL issued a Notice of Alleged Violation to VanEmmerik for the unauthorized placement of erosion control measures on the State land and alleged that the activities conducted in the shoreline by VanEmmerik or his agents fronting Subject Property 1 and Subject Property 2 constituted unauthorized lands uses in the Conservation District and warranted removal of all materials, as well as administrative fines.

33. The violations outlined in the November 6, 2023, Notice of Alleged Violation went before the Board of Land and Natural Resources for consideration on December 7, 2023.

34. VanEmmerik requested a contested case hearing in order to adjudicate the violations alleged to have occurred between October 28, 2023, and November 5, 2023.

35. The contested case hearing regarding the alleged violations between October 28, 2023, and November 5, 2023, are on-going and do not have a disposition at the time of this filing.

36. On or about September 24, 2024, OCCL received reports that the dwelling on Subject Property 2 was being undermined by several feet by the ocean swell and that there was solid material falling from Subject Property 2 onto the State land.

37. The DLNR's Division of Conservation and Resource Enforcement ("DOCARE") officers responded to the State land fronting Subject Property 1 and Subject Property 2.

38. The DOCARE officers observed the makai side of the residence on Subject Property 2 to have collapsed onto the State land, leaving large parts of the structure on State land and washed away into the ocean.

39. The DOCARE officers photographed their observations of Subject Property 1 and Subject Property 2.

40. On September 24, 2024, large pieces of cement, wood, glass, electrical components, rebar, geotextile fabric, and other unidentified solid materials cover the State land spanning between the property boundary line and the ocean.

41. On September 24, 2024, an unknown quantity of solid material from the dwelling on Subject Property 2 entered the ocean and were taken away from the location due to the ocean's natural processes.

42. The unknown quantity of solid material from the dwelling on Subject Property 2 that entered the ocean is either remaining in the ocean or will be pushed back to shore at an unknown location.

43. The unknown quantity of solid material from the dwelling on Subject Property 2 is likely to cause public safety hazards in the area for an unknown amount of time.

44. There are high tides expected on September 24, 2024, and September 25, 2024.

45. Waves around four to six feet are expected on September 24, 2024, and September 25, 2024.

46. The high tides and waves over the next two days are anticipated to increase the erosion rate of Subject Property 1 and Subject Property 2.

47. Defendant, or agents acting on behalf of Defendant, did not make any apparent attempts to remove the solid material falling from Subject Property 2 onto the State land at any time known to the State on September 24, 2024.

48. DLNR did not authorize Defendant to place, or cause to be placed, any solid materials on State land.

49. The unauthorized solid materials are makai of the ownership line.
50. The unauthorized solid materials span across the ownership line and onto the sandy beach.
51. Defendants' unauthorized solid materials extend into the ocean and block lateral access of the shoreline.
52. The unauthorized solid materials fronting Subject Property 1 and Subject Property 2 do not affect the ownership line. But for the existence of the unauthorized solid materials, the highest wash of the waves would be mauka of the unauthorized solid materials.
53. The State owns all land makai of where the highest wash waves would be but for the unauthorized solid materials.
54. The unauthorized solid materials are located on, and constitute a trespass or encroachment upon, State land.
55. Any debris from construction or solid material from Subject Property 1 or Subject Property 2 that is located on State land constitutes a trespass or encroachment on State land without permission or authority.
56. The unauthorized solid materials fronting Subject Property 1 and Subject Property 2 are located within the conservation district over which OCCL has regulatory responsibility.
57. The unauthorized solid materials fronting Subject Property 1 and Subject Property 2 threaten the public's health, safety, and welfare by creating a hazardous environment for beach goers, ocean recreation, and the natural environment.
58. The unauthorized solid materials fronting Subject Property 1 and Subject Property 2 threaten the public's health, safety, and welfare and the natural resources for which the DLNR and OCCL are responsible.



59. Pursuant to HRS § 183C-6, the DLNR, through OCCL, regulates land use in the conservation district by the issuance of permits.

60. Pursuant to Hawaii Administrative Rules (“HAR”) § 13-5-30, DLNR regulates land uses in the conservation district by the issuance of departmental, board or emergency permits, temporary variances, site plan approvals or management plan or comprehensive management plan approvals.

61. The permit process is critical to DLNR and OCCL’s duty to protect and preserve the natural resources.

62. The Defendant failed to obtain necessary permits to occupy State land with erosion control devices fronting the Subject Property 1 and Subject Property 2.

63. Defendant attempted to request emergency permits from the State to install erosion control measures, but the State is unable to authorize such emergency permits when there is an outstanding violation.

64. Defendant failed to ensure that his property did not cross the boundary line between the State land and his private property.

65. Defendant’s failure to control his property and act prudently when faced with notices of alleged violations has resulted in the dwelling upon Subject Property 2 falling into the ocean.

66. The State seeks injunctive relief to have all unauthorized solid materials, including any that are currently beneath the sand, and any other solid material, unauthorized erosion control device, or debris from Subject Property 1 and Subject Property 2 removed from the State land.

67. A permanent injunction is proper because there are no adequate legal remedies.

68. The State is entitled to a preliminary and permanent injunction because it will prevail on the merits, the balance of irreparable damage favors the issuance of a permanent injunction and the public interest supports granting a permanent injunction.

COUNT 1-  
HRS § 669-1 QUIET TITLE/DECLARATORY JUDGMENT

69. Plaintiff realleges and incorporates by reference paragraphs 1 - 68 as though set out fully herein.

70. The State owns the State land in fee simple as a public trust unencumbered by any other claim or interest.

71. Defendant's illegal, unauthorized solid materials and debris are located on the State land.

72. Defendant claims or may claim that they own or have an interest in the State land. The State denies any such ownership, interest or claim.

73. The State brings this action pursuant to HRS § 669-1(a) for the purpose of determining Defendant's adverse claim.

74. The State seeks a declaration pursuant to HRS § 669-1(a) that it is the owner of the land that is under the unauthorized solid materials.

COUNT II-  
TRESPASS

75. Plaintiff realleges and incorporates by reference paragraphs 1 - 74 as though set out fully herein.

76. The Defendants' unauthorized solid materials are located on State land.

77. Defendants intentionally or negligently trespassed onto State land by entering the State land with the unauthorized solid materials.

78. Defendants intentionally trespassed, and continue to trespass, onto State land by leaving the unauthorized solid materials, and any other debris, on the State land that is makai of the subject property without authority or permission from the State.

79. It was foreseeable that Defendant's actions, including the failure to act, would interfere with the State's land use and public use of the beach.

80. Defendant's trespass with the unauthorized solid materials continue to cause actual and substantial damages. The trespass prevents the State's and the public's right to use the land and creates a safety hazard to the public.

81. Injunctive relief is needed to order the Defendant to remove the unauthorized erosion control measures and restore the beach to its natural condition for the public's use and enjoyment and to protect public-trust resources.

COUNT III-  
ENCROACHMENT

82. Plaintiff realleges and incorporates by reference paragraphs 1 - 81 as though set out fully herein.

83. The State owns the land on which the Defendant's unauthorized solid materials lay upon.

84. The unauthorized solid materials encroach onto State land.

85. Injunctive relief is needed to order the Defendant to remove all solid materials and any other debris from Subject Property 1 and Subject Property 2 from the State land fronting Subject Property 1 and Subject Property 2 and return the beach to its natural condition for the public's use and enjoyment and to protect public-trust resources.

**WHEREFORE**, Plaintiff requests the following relief:

- A. An order from the Court pursuant to HRS § 669-1(a) that the State owns the State land in fee simple free and clear of any interest or claim by Defendant or any of them;
- B. That the Court enter a permanent injunction order:
- (1) Enjoining Defendant from allowing any structures, solid materials, or debris of any kind from Subject Property 1 and Subject Property 2 on State property;
  - (2) Enjoining Defendant from maintaining any erosion control measures or materials on State property; and
  - (3) Ordering that all solid materials on State land be removed in accordance with all State requirements;
- C. Awarding damages to the State for repairing the natural resources affected by Defendant's illegal actions including, but not limited to, the removal of all unauthorized solid material and other debris fronting Subject Property 1 and Subject Property 2; and
- D. Granting Plaintiff such other relief as this Court may deem appropriate and just under the premises.

DATED: Honolulu, Hawai'i, September 24, 2024.

/s/ Danica L. Swenson  
JULIE H. CHINA  
DANICA L. SWENSON  
Deputy Attorneys General

Attorneys for Plaintiff  
STATE OF HAWAI'I

**STATE OF HAWAI'I  
CIRCUIT COURT OF THE  
FIRST CIRCUIT**

**SUMMONS  
TO ANSWER CIVIL COMPLAINT /**

CASE NUMBER

PLAINTIFF'S NAME & ADDRESS, TEL. NO.

State of Hawai'i  
Danica L. Swenson  
Deputy Attorney General  
465 S. King Street, Rm. 300  
Honolulu, HI 96813  
808-587-2992

PLAINTIFF

State of Hawai'i

VS.

DEFENDANT(S)

Joshua VanEmmerik  
59-174 Ke Nui Road  
Haleiwa, Hawaii  
and  
59-174 A Ke Nui Road  
Haleiwa, Hawaii

John and Jane Does 1-10, Doe Entities 1-10.

**TO THE ABOVE-NAMED DEFENDANT(S)**

You are hereby summoned and required to filed with the court and serve upon:

Danica L. Swenson  
Deputy Attorney General  
465 S. King Street, Rm. 300  
Honolulu, HI 96813

plaintiff, as indicated above/whose address is stated above, an Answer to the Complaint /

, which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

**THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.**

**A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.**

The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: <http://www.courts.state.hi.us>

Effective Date of 1-DEC-2021  
Signed by: /s/ Patsy Nakamoto  
Clerk, 1st Circuit, State of Hawai'i



If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator of the XX Circuit as soon as possible to allow the court time to provide an accommodation. Phone No. 808-539-4400, TTY 808-539-4853, FAX 808-539-4402 or Send an e-mail to: [adarequest@courts.hawaii.gov](mailto:adarequest@courts.hawaii.gov). The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.