State of Hawai‘i

DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Forestry and Wildlife Honolulu, Hawaii 96813

August 22, 2019

Chairperson and Members

Natural Area Reserves System Commission State of Hawaii

Honolulu, Hawaii Commission Members:

SUBJECT: RECOMMENDATION TO THE BOARD OF LAND AND NATURAL RESOURCES FOR APPROVAL OF A CIVIL RESOURCE VIOLATION FEE SCHEDULE FOR CHAPTER 209, HAWAI‘I ADMINISTRATIVE RULES, RULES REGULATING ACTIVITIES IN NATURAL AREA RESERVES

BACKGROUND:

A Civil Resource Violation Fee Schedule (CRVS) provides an alternative process for penalizing rule violations.

Violations of DOFAW’s statutes and administrative rules may have criminal or administrative penalties.  The type of penalty issued to a suspected violator could depend what penalty is authorized by the applicable penalty statute and DLNR policies.  If DOCARE issues a criminal citation to someone suspected of violating one of DOFAW’s statutes or administrative rules, that case is typically heard by the district court on the island where the violation occurred.  Many of

these cases are now heard in specialty courts as part of the Environmental Court.  As a penalty, a district court judge may issue a fine, a misdemeanor conviction, and/or community service.

By board action, the department can bring administrative penalties against suspected violator for certain violations.  In a board action, the violation is heard and decided by the Board of Land and Natural Resources (“Board”).  DLNR may issue a notice to someone suspected of violating one of DOFAW’s statutes or administrative rules that they committed a violation and need to pay a fine.  The suspected violator may choose to pay the fine described in the notice to the Administrative Proceedings Office, or appear before the Board in a Land Board meeting.  The Board may issue a fine as a penalty if that person is found to have committed a violation.  The Board had discretion to change the recommended fine but cannot go beyond the limits provided by statute.

For some violations, finding the suspected violator or gathering enough evidence to tie a suspected violator to a violation can be difficult.  For violations with criminal penalties, the burden of proof for the prosecution can be quite high.

Some other enforcement issues can depend on the circumstances surrounding the violation.  For example, a tourist may unknowingly commit a violation and an officer may decide not to issue a citation knowing the tourist will probably not come to court.  District court judges not familiar with natural resource cases may not fully understand the egregiousness of a violation and choose to issue a smaller fine, when a higher fine would serve as a future deterrent.  Additionally, the prosecutor’s office may choose not to prosecute a violation due to heavy workloads with other types of cases.

The Civil Resource Violation System implements Chapter 199D, Hawai’i Revised Statutes, and enables the department to process violations of division regulations authorized by law or administrative rule to be subject to administrative penalty.

DLNR’s CRVS is different from a board action.  To participate in DLNR’s CRVS, each division must submit an administrative sanctions schedule that outlines recommended fines for a division’s statutes and administrative rules.  This administrative sanctions schedule must be approved by the Board before it takes effect.  Thus, the administrative sanctions schedule becomes part of DLNR’s public record and functions as guidance for the assessment of administrative sanctions that is transparent and consistent.

DLNR’s CRVS was established by Act 142 in 2004.  DLNR promulgated administrative rules,

§§ 13-1-51 to 72, Hawai’i Administrative Rules, that guide the department in effectuating DLNR’s CRVS.

ANALYSIS:

The CRVS could be used as an alternative penalty to the criminal citations currently issued.  The criminal and administrative penalties are useful as different types of deterrents for a spectrum of violations, so it’s useful for the department to have both tools available.

DOFAW’s Native Ecosystem Protection and Management Section’s staff have provided a first draft of a potential fee schedule for violations, based on the potential severity of the violation.

After Commission review, the schedule will be reviewed by DOFAW leadership to provide consistency with other administrative rules, then be submitted to the Board of Land and Natural Resources for approval.

RECOMMENDATION:

That the NARS Commission recommends to the Board of Land and Natural Resources approval of a civil resource violation fee schedule for Chapter 209, Hawai‘i Administrative Rules, Rules Regulating Activities In Natural Area Reserves.

Respectfully Submitted,



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Attachment

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