

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

May 26, 2017

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

REGARDING: Conservation District Enforcement KA 15-34 Alleged Unauthorized Land Uses Located in the Conservation District

LANDOWNER: Val Sanjara

LOCATION: Lot 207 Wainiha Hui Land, Wainiha Power House Road, Kaua'i

TAX MAP KEY: (4) 5-8-005:026

PARCEL SIZE: 0.962-acres

SUBZONE: Limited

DESCRIPTION OF AREA:

The subject parcel is located on Wainiha Power House Road on the island of Kaua'i and is further identified at Tax Map Key (TMK) (4) 5-8-005:026. The parcel is entirely located within the Limited Subzone of the State Land Use Conservation District (see **Exhibit 1**). The site currently consists of a large wooden fence/gate structure; a recreational vehicle (RV) under a tarp tent structure; a cleared leveled area with gravel; and two metal posts with a chain connecting the two.

ALLEGED UNAUTHORIZED LAND USES

A complaint was filed with the Office of Conservation and Coastal Lands regarding the potential of unauthorized residential structures (platform with residential enclosure, a shower, and a large gate) on the subject property that were being used for commercial purposes. A Notice of Alleged Violation (NOV) was sent to the landowner, Mr. Val Sanjara on May 28, 2015 (see **Exhibit 2**).

In response to the NOV, the landowner responded on June 10, 2015 that there is an RV on the lot and that a removable/portable shower and set of solar panels were also installed (see **Exhibit 3**). He further stated that the large gate was installed as a replacement for an old, broken gate to discourage unauthorized dumping on his land.

On February 23, 2016, Staff conducted their own site inspection to assess the situation (see **Exhibit 4**). During the site visit, Staff noticed several improvements on the subject property. Improvements consisting of a large wooden fence/gate structure; an RV under a tarp structure; a cleared, leveled area with gravel; and two (2) metal posts in the ground with a chain connecting them. Staff notes

that the removable/portable shower and set of solar panels that the landowner had noted in his June 10, 2015 letter to the Department were not visible from the road side at the time of the site visit.

Subsequent correspondences were sent between the Department and the Landowner (see Exhibits 5-9) in an attempt to settle this matter by requesting that the landowner remove the RV and associated improvements. However, the landowner was not amenable to removing the RV, hence the need for this matter to be brought before the Board.

Staff notes that a second site visit was conducted on February 7, 2017 in which it was observed that the RV and associated improvements were still present (see Exhibit 10).

DISCUSSION

Chapter 13-5, Hawai'i Administrative Rules (HAR) and Chapter 183C, Hawai'i Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit (CDUP). The chapters also provide for penalties, collection of administrative costs, costs associated with land and/or habitat restoration, and damages to state land for uses that are not allowed or for which no permit has been obtained.

Land use is defined in HAR §13-5-2(2) 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.*

The improvements on the subject parcel falls within this definition of land use as it involves the placement or erection of any solid material on land for more than thirty days.

ANALYSIS:

HRS, §183C-7 **Penalty for violation** notes (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter and (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 and additional fine of up to \$15,000 per day per violation for each day in which the violation persists.

The penalty range for the unauthorized land uses will be substantially determined based on the type of permit that would have been required, had the landowner applied to the DLNR to conduct the

identified land use(s). As there is no identified land use in this case, we have assessed that the closest identified land use for the RV and associated improvements would be found under HAR §13-5-23, L-3 SINGLE FAMILY RESIDENCE (D-1). Therefore, based on the *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources, Section 2.1, PENALTY CALCULATION* (see Exhibit 11), the closest identified land use would require a Board CDUP, therefore, the Penalty Range is from \$10,000.00 to \$15,000.00.

FINDINGS

The unauthorized placement of an RV and associated improvements on the property are in violation of Chapter 183C, HRS and Title 13-5, HAR. Based upon our investigation, OCCL finds that:

1. The location of the unauthorized land use, Tax Map Key: (4) 5-8-005:026, is in the State Land Use Conservation District *Limited* Subzone;
2. That these improvements were not authorized by the Department of Land and Natural Resources under HAR §13-5.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to HRS, §183C-7 and HAR, §13-5-6, the Board finds the landowner in violation of HAR, §13-5-23, and is subject to the following:

1. That the landowner is fined \$10,000 in one instance for violating the provisions of HRS §183C-7 and HAR §13-5-23 for the unauthorized placement of and RV and two tarp tent structures and failing to obtain the appropriate approvals within the Conservation District;
2. That the landowner is fined an additional \$1,000 for administrative costs associated with the subject violations;
3. That the landowner shall pay all designated fines and administrative costs (\$11,000) within ninety (90) days from the date of the Board's action;
4. That the landowner shall remove all unauthorized structures within ninety (90) days from the date of the Board's action and allow Staff to conduct a follow-up site inspection to ensure compliance;
5. That the landowner, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the landowner, its successors, assigns, officers, employees, contractors, and agents relating to or connected with this matter;
6. That the landowner shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments;
7. That in the event of failure of the landowner to comply with any order herein, the landowner shall be fined an additional \$15,000 per day until the order is complied with; and

8. That in the event of failure of the landowner to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs.
9. The above noted conditions of Enforcement file KA 15-34 shall be recorded with the deed instrument pursuant to HAR, §13-5-6(e).

Respectfully submitted,

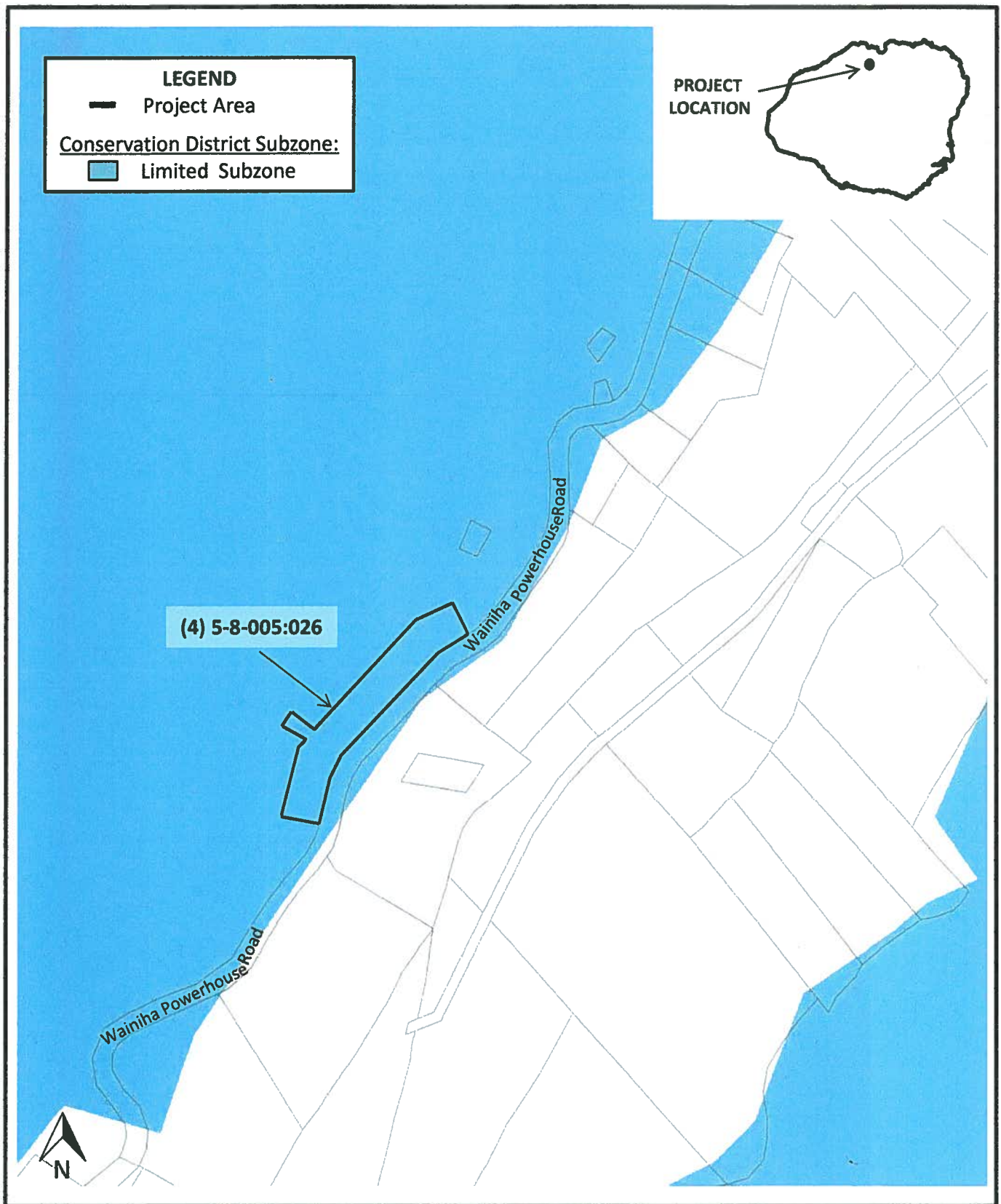


Lauren Yasaka, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

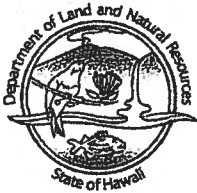


Suzanne D. Case, Chairperson
Board of Land and Natural Resources



CONSERVATION DISTRICT SUBZONE MAP/LOCATION MAP

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

KEKOA KALUHIWA
FIRST DEPUTY

W. ROY HARDY
ACTING 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:LY

ENF: KA 15-34

CERTIFIED MAIL/RETURN RECEIPT
7014 2120 0003 1908 1638

MAY 2 8 2015

Mr. Val Sanjara
P.O. Box 687
Kalāheo, HI 96741

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at Wainiha
Power House Road, Wainiha, Kaua'i, Hawai'i
Tax Map Key (TMK): (4) 5-8-005:026

Dear Mr. Sanjara:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands' (OCCL) attention that unauthorized land uses consisting of residential structures has/are being used for commercial purposes on your property.

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

The Department of Land and Natural Resources (DLNR) has determined that:

1. The location of the alleged unauthorized land uses is located on TMK (4) 5-8-005:026 and is located within the State Land Use Conservation District, Limited subzone;
2. The subject property has no record of non-conforming structures and/or uses nor are there any existing permits and/or approvals for any land uses within the Conservation District;
3. Photos from a craigslist link provided by a complainant revealed residential uses including a platform with a residential enclosure, a shower, and a large gate. In addition, the craigslist posting also revealed that the residential uses are being used for commercial purposes ongoing at the subject property;

EXHIBIT 2

4. Pursuant to §13-5-2, HAR, "Land use" means:

- (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; and

5. These land uses and activities were not authorized by the DLNR pursuant to Chapter 13-5, HAR.

Pursuant to 183C-7, 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. 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 for final disposition. You will be notified at that time concerning the time and place.

Should you have any questions, please contact Lauren Yasaka of the OCCL at (808) 587-0386.

Sincerely,



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

C: KDLO
DOCARE
CoK, Planning Dept.

STATE OF HAWAII
DEPARTMENT OF LAND
AND NATURAL RESOURCES
OFFICE OF CONSERVATION
AND COASTAL LANDS
PO BOX 621
HONOLULU, HI 96809

VAL SANJARA
RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
96714

2015 JUN 16 A 8:04

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

June 10, 2015

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at Power House
Road, Wainiha, Kaua'i, HI 96714. TMK: (4) 5-8-005:026

Dear Suzanne D. Case,

Thank you for your letter, which I received a few days ago. I had a chance to explain an alleged issue of unauthorized land use to your staff member, Lauren Yasaka, over the phone. I also would like for you to have my written response to your letter.

We finished clearing our lot from invasive species over a year ago. It was done in compliance with the rules and regulations of the DLNR. You may contact Alex J. Roy M.Sc. of the OCCL staff at 808 587 0316 for more information. After the entrance area to the lot was cleared and debris removed, people started to use for dumping. We had to remove from that area of our lot: one and a half car, with a number of old automotive parts, old bicycles, old building materials, like: carpet, broken glass doors, moldings, etc.. We replaced the old, broken gate in order to prevent the dumping in the future.

The dumping issue was solved, but the new issue has arisen. We brought an RV to the lot, placed removable/portable shower and the set of solar panels. No excavation or grading was done, and due to the size of the solar panel frame (11.5' x 10') and the shower (3' x 3'), the permit was not required. People started to walk around the gate and take things when we are not here, things like: gasoline in containers, propane gas in containers. Our car got broken in and the radio was pulled out, the gasoline was siphoned, even my shoes were taken.

We have been offered many times money to let other people camping on our lot, and we have been offered money to rent out RV when we are not here, but we refused. This is very big year for our family. Our son is going to be graduating high school and entering college this summer. I am planning to be away from Kaua'i for a couple of months. So, I decided to place an ad on Craigslist to let someone to camp on our lot while I am away. I had to come up with some cost for it for a couple of reasons. I would like to emphasize, that it does not mean, that we would take or keep the money. It was just a mere tactic to pre-qualify the person who would keep an eye on the property and enjoy camping here while I am away. We wanted to find someone off the island, who would appreciate an opportunity of staying on the beautiful north shore of Kaua'i. We would not like to advertise it as free camping to anybody. As the experience shows, it can raise another problematic issue. I took the ad off the Craigslist. I think, we will be able to solve this problem through a friend of our friends.

We appreciate your guidance in this matter, and we would like to assure you in our compliance with DLNR rules and regulations. Please contact me at 508 499 6625 if you have any questions.

Sincerely,

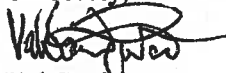
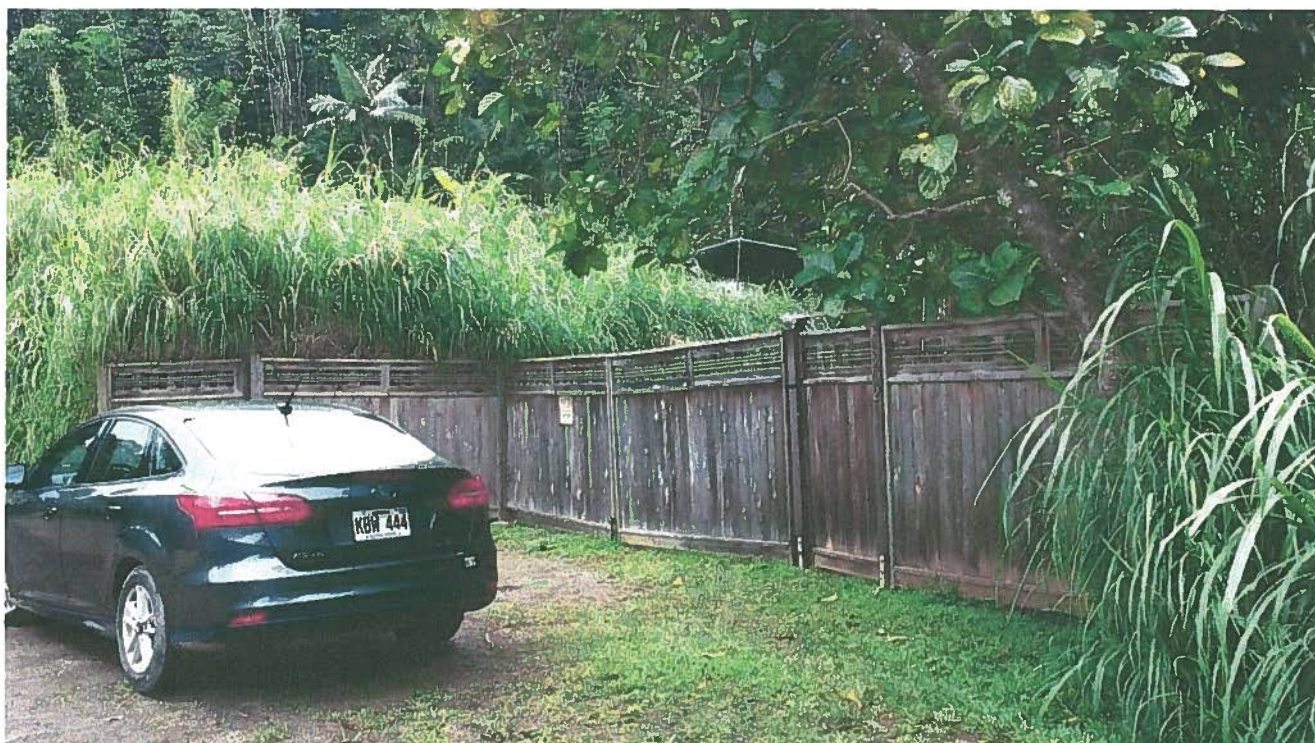

Val Sanjara.

EXHIBIT 3



FEBRUARY 23, 2016 SITE VISIT PHOTOS



FEBRUARY 23, 2016 SITE VISIT PHOTOS

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

KEKOA KALUHIWA
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:LY

ENF: KA 15-34

CERTIFIED MAIL/RETURN RECEIPT

7015 1730 0001 5437 0327

Mr. Val Sanjara
P.O. Box 1713
Hanalei, HI 96741

MAR 14 2016

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at Wainiha
Power House Road, Wainiha, Kaua'i, Hawai'i
Tax Map Key (TMK): (4) 5-8-005:026

Dear Mr. Sanjara:

As a follow up to our original letter sent to you May 21, 2015 and your response letter to the Office of Conservation and Coastal Lands date June 10, 2015, Staff conducted a site visit in the subject area on February 23, 2016 and noticed several improvements on the subject property. Improvements included the following (see attached photos):

- A large wooden fence/gate structure;
- A recreational vehicle (RV) under a tarp tent structure;
- A cleared, leveled area with gravel;
- Two metal posts in the ground with a chain connecting them; and
- A white pipe in the ground.

According to our records, there is no authorization of the above listed uses/improvements.

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

The Department of Land and Natural Resources (DLNR) has determined that:

1. The location of the alleged unauthorized land uses is located on TMK (4) 5-8-005:026 and is located within the State Land Use Conservation District, Limited subzone;

EXHIBIT 5

2. The subject property has no record of non-conforming structures and/or uses nor are there any existing permits and/or approvals for any land uses within the Conservation District;
3. Pursuant to §13-5-2, HAR, "Land use" means:
 - (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; and
4. These land uses were not authorized by the DLNR pursuant to Chapter 13-5, HAR.

Pursuant to 183C-7, 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. 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 for final disposition. You will be notified at that time concerning the time and place.

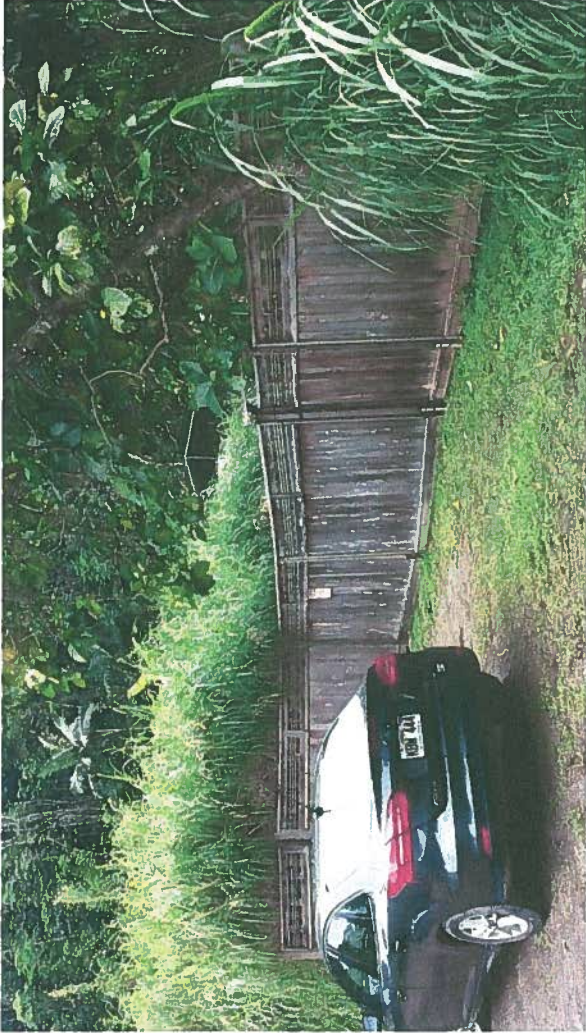
Should you have any questions, contact Lauren Yasaka of the OCCL at (808) 587-0386.

Sincerely,



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

C: KDLO
DOCARE
CoK, Planning Dept.



FEBRUARY 23, 2016 SITE VISIT PHOTOS



FEBRUARY 23, 2016 SITE VISIT PHOTOS

STATE OF HAWAII
DEPARTMENT OF LAND
AND NATURAL RESOURCES
OFFICE OF CONSERVATION
AND COSTAL LANDS
PO BOX 621
HONOLULU, HI 96809

RECEIVED

2016 MAR 22 AM 7:51

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

VAL SANJARA
PO BOX 1713
HANAIE, HI 96714

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

March 18, 2016

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at Wainiha Power House Road, Wainiha, Kaua'i, Hawai'i
Tax Map Key (TMK): (4) 5-8-005:026

RECEIVED
OFFICE OF CONSERVATION
AND COSTAL LANDS
2016 MAR 22 P 2:51
DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Dear Madam Suzanne D. Case:

Thank you for the follow up letter, dated March 14, 2016, regarding to the alleged unauthorized land uses in Conservation District. We would like to address all of the issues in the same sequence as they were raised in your letter.

1. **A large wooden fence/gate structure** was a partial replacement of the old, deteriorated, broken fence and gate, which came with the property. You may verify it with the seller's Real Estate agent, Kevin O'Shaughnessy, at 808 651-4918. We also included a couple of pictures of the old fence, which were taken at the time of the sale (Exhibits: 1-3). Some of the old fence is still here, on the west side of the lot (Exhibit 4).
2. **A recreational vehicle (RV) under a tarp tent structure** are not permanent structures, and brought here for storage of the required equipment and tools to conduct necessary maintenance of the property. The tent and RV are not here for the recreational purposes, and both can be removed in a matter of minutes, without any environmental damage. In our letter to the Department of Land and Natural Resources, dated March 23, 2012, we asked DLNR for help to remove all of the albizia trees (Exhibits: 5 & 6), but we did not receive any help from you, and we had to take care of it by ourselves. As you know, the albizia trees are very invasive, and the land requires regular maintenance in order to fight this specie down. A couple of years ago, one of the albizias fell down, leaving the north shore of the island without electricity for two days. The electric company sent us a claim for about \$ 100,000, but after the investigation, they found us not liable. Right after the accident, we managed to cut all albizias down, saving the county over a million dollars in maintenance.
Our request for construction of small (under 200 SF) shed/storage, dated February 27, 2014, was not approved by DLNR. We cannot leave our equipment or tools outside, and if we do, they get stolen, even things like: wheelbarrow, larger tools, and other things, I wrote you about in my previous letter. The storage and the fence is absolute necessity here, because we are not on the property all the time.
3. **A cleared leveled area with gravel** had originally, when we bought it, some gravel on it. You may verify it with Kevin O'Shaughnessy, the seller's agent. That is the area where the cut wood was placed before hauling it to the green waste facility. We started hauling the wood during the rainy season, and the trucks kept on getting stuck there, so we added a little gavel there, but we will scrape off what was added when we finish hauling the rest of the leftover

EXHIBIT 6

wood. This area, as I mentioned in my previous letter, was used in the past to dump things, or to enter the woods for illegal activities, such as unpermitted camping (Exhibits: 7-9), hunting, etc. About a year ago, before we replaced the gate someone entered through the property, and placed a pig's trap, right next to the property line (Exhibit 10).

4. **Two metal posts in the ground with chain connecting them** are the temporary replacement of the old broken fence/gate. People get through that point on the property to ride motorcycles and for other unwelcomed or illegal activities. Last year when I was away from Kaua'i, someone brought a horse, and left it on the property for two weeks without food or water, and our neighbors had to bring water to it (Exhibit 11).
5. **A white pipe in the ground** was already removed.

We are glad to find out, that your department has the residential use assessment and taxation records of the property. We are awaiting your response to our letter, dated February 24, 2016, regarding to the reason for the mentioned change and what is needed to change it back from conservation to residential use.

Should you have any questions, please contact me at 808 212 7939, e-mail: vsanjara@yahoo.com, or if you prefer to reply by mail, please send your letter to Val Sanjara, P.O. Box 1713, Hanalei, HI 96741.

Sincerely,



Val Sanjara.

EXHIBIT #1



EXHIBIT 6

EXHIBIT #2



EXHIBIT 6

EXHIBIT #3



EXHIBIT 6

EXHIBIT #4



EXHIBIT 6

EXHIBIT # 5



EXHIBIT 6

EXHIBIT #6



EXHIBIT 6

EXHIBIT # 7



EXHIBIT 6

EXHIBIT #8

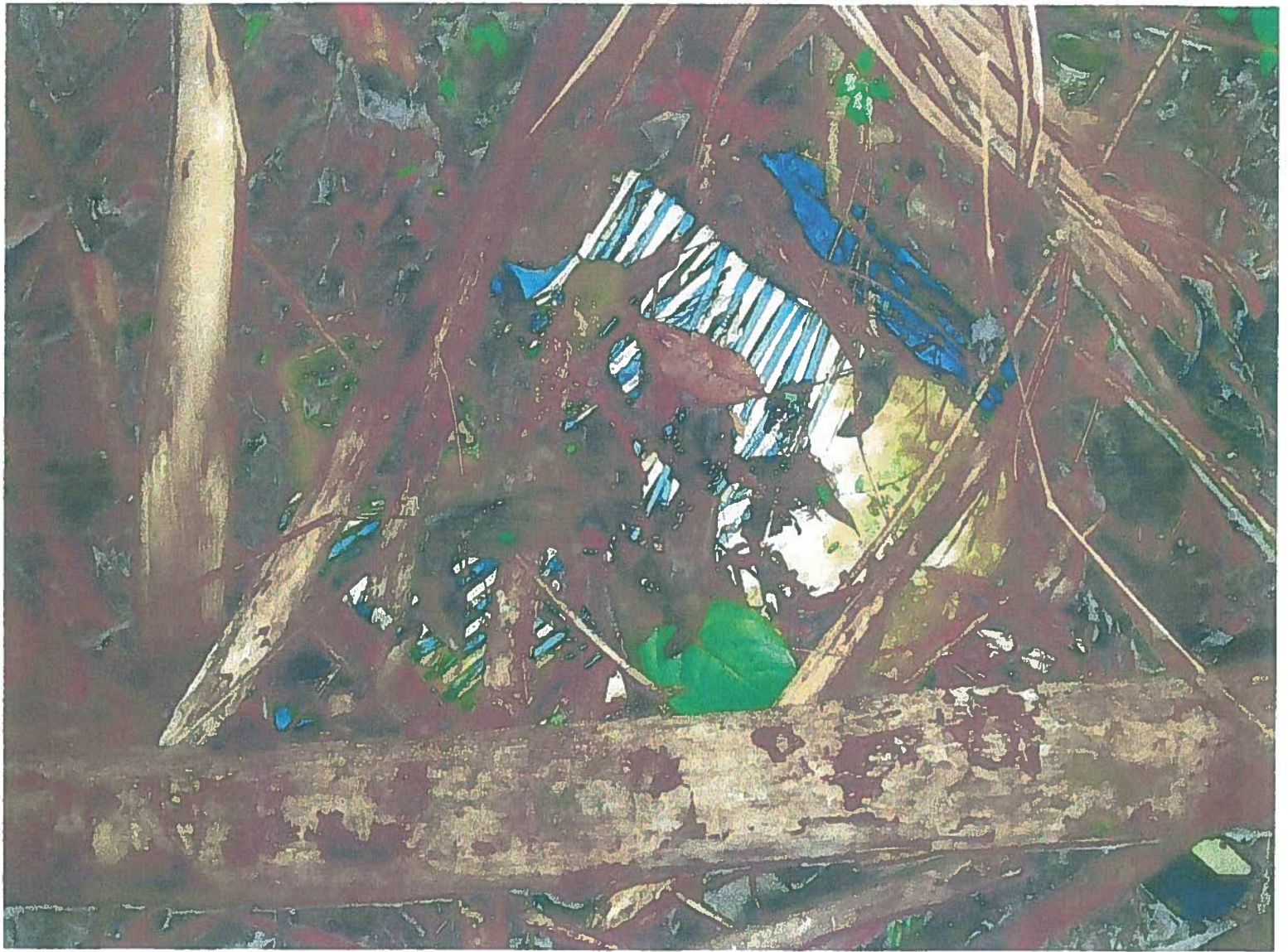


EXHIBIT 6

EXHIBIT #9



EXHIBIT 6

EXHIBIT # 10



EXHIBIT 6

EXHIBIT # 11



EXHIBIT 6

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

KEKOA KALUHIWA
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHO'OLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:LY

ENF: KA 15-34

CERTIFIED MAIL/RETURN RECEIPT

7015 1730 0001 5437 0006

APR 11 2016

Mr. Val Sanjara
P.O. Box 1713
Hanalei, HI 96741

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at Wainiha
Power House Road, Wainiha, Kaua'i, Hawai'i
Tax Map Key (TMK): (4) 5-8-005:026

Dear Mr. Sanjara:

The Department is in receipt of your response regarding the subject matter. Based on the discussion you have provided regarding alleged unauthorized land uses, the Department is willing to resolve this matter should you be agreeable to the following:

1. Removal of the recreational vehicle (RV) and the tent structure within 30 days of receipt of this letter;
2. Allow Staff to conduct a site visit at the subject property to confirm compliance at the end of the 30-day period;
3. A notification of compliance upon satisfactory completion shall be issued if compliance is observed. Otherwise, should you fail to remove the RV and tent structure within 30 days of receipt of this notice, pursuant to 183C-7, Hawai'i Revised Statutes (HRS), the Board of Land and Natural Resources may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs. 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.
4. You will comply with the rules and regulations for conducting any future land uses in the Conservation District pursuant to Hawai'i Administrative Rules (HAR) Chapter 13-5 as amended.

Should you be amendable to these conditions, please acknowledge receipt of this letter in the space provided below. Please sign two copies. Retain one and return the other within 30 days.

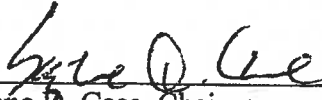
EXHIBIT 7

Mr. Val Sanjara

ENF: KA 15-34

Should you have any questions regarding this matter, contact Lauren Yasaka of our Office at (808) 587-0386.

Sincerely,



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

Receipt acknowledged:

Landowner's Signature

Date _____

c: Kaua'i Board Member
KDLO
CoK, Planning Dept.

LY
Re: Vb 15-34

STATE OF HAWAII
DEPARTMENT OF LAND
AND NATURAL RESOURCES
OFFICE OF CONSERVATION
AND COSTAL LANDS
PO BOX 621
HONOLULU, HI 96809

VAL SANJARA
PO BOX 1713
HANALEI, HI 96714

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 APR 27 P 12:12

April 25, 2016

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at Power House
Road, Wainiha, Kaua'i, Hawai'i.
Tax Map Key (TMK): (4) 5-8-005:026

Dear Madam Suzanne D. Case:

Thank you for your letter, dated April 11, 2016. I explained in my previous letters and over the phone to your staff member, Lauren Yasaka, that the area of the lot where the trailer (RV) is, there used to be a dump. We removed from there two cars, one of them was rusted through, a number of old automotive parts, chemicals, old automotive oil, rusted bicycles, old building materials, broken glass doors, moldings, etc. You may verify it with the seller's Real Estate agent, Kevin O'Shaungnessy, at 808 651-4918, or the towing company, Kenny's Towing, at 808 635 1215. No one complained about that, and nothing was in violation then.

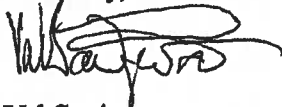
After the invasive species removal authorization from Alex J. Roy M.Sc. of the OCCL staff, the maintenance of the lot became ongoing effort. We need the tools and the storage on the property, the mobile trailer (RV) is the solution that we found for the permitted use provided in HAR Section 13-5-22, P-4 Removal of Invasive Species (A-1).

We are asking the Department of Land and Natural Resources to allow us to keep the trailer (RV) on the subject property, pursuant to 183 C-4 (c), Hawai'i Revised Statutes.

We are currently working with our attorney, Ian K. Jung, 808 245 2163, who is helping us with the application for a site plan approval by the DLNR given the following provision in HAR Section 13-5-22, P-9 (B-1).

We appreciate your help in this matter, and we would like to assure you in our compliance with DLNR rules and regulations. Please contact me at 808 212 7939 if you have any questions.

Sincerely,



Val Sanjara.

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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
KAIHO-OLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:LY

ENF: KA 15-34

CERTIFIED MAIL/RETURN RECEIPT
7015 1730 0001 5437 0044

MAY 18 2016

Mr. Val Sanjara
P.O. Box 687
Kalāheo, HI 96741

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at Wainiha
Power House Road, Wainiha, Kaua'i, Hawai'i
Tax Map Key (TMK): (4) 5-8-005:026

Dear Mr. Sanjara:

The Department of Land and Natural Resources (DLNR) is in receipt of your response to our letter to you dated April 11, 2016.

Based on the information provided in your current letter, you are requesting permission to retain the recreational vehicle (RV) on site as it acts as a storage shed for your tools that you use to aid in the removal of invasive species on your property.

After review of your request, the Department has determined that we shall continue to stand by our original proposal regarding resolution of this case as presented to you in our letter dated April 11, 2016 (attached). Should you be amendable to those conditions, please acknowledge receipt of the April 11, 2016 letter by signing two (2) copies. Retain one and return the other within 30 days of receipt of this letter. Please note that if you are not amendable to the proposed conditions, we will schedule this matter before the Board of Land and Natural Resources for final disposition.

Pursuant to 183C-7, 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. 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.

Should you still feel that a storage shed is necessary, this is something that can be discussed with the Office of Conservation and Coastal Lands (OCCL) once any pending violations have been resolved.

EXHIBIT 9

Mr. Val Sanjara

ENF: KA 15-34

Should you have any questions, contact Lauren Yasaka of the OCCL at (808) 587-0386.

Sincerely,

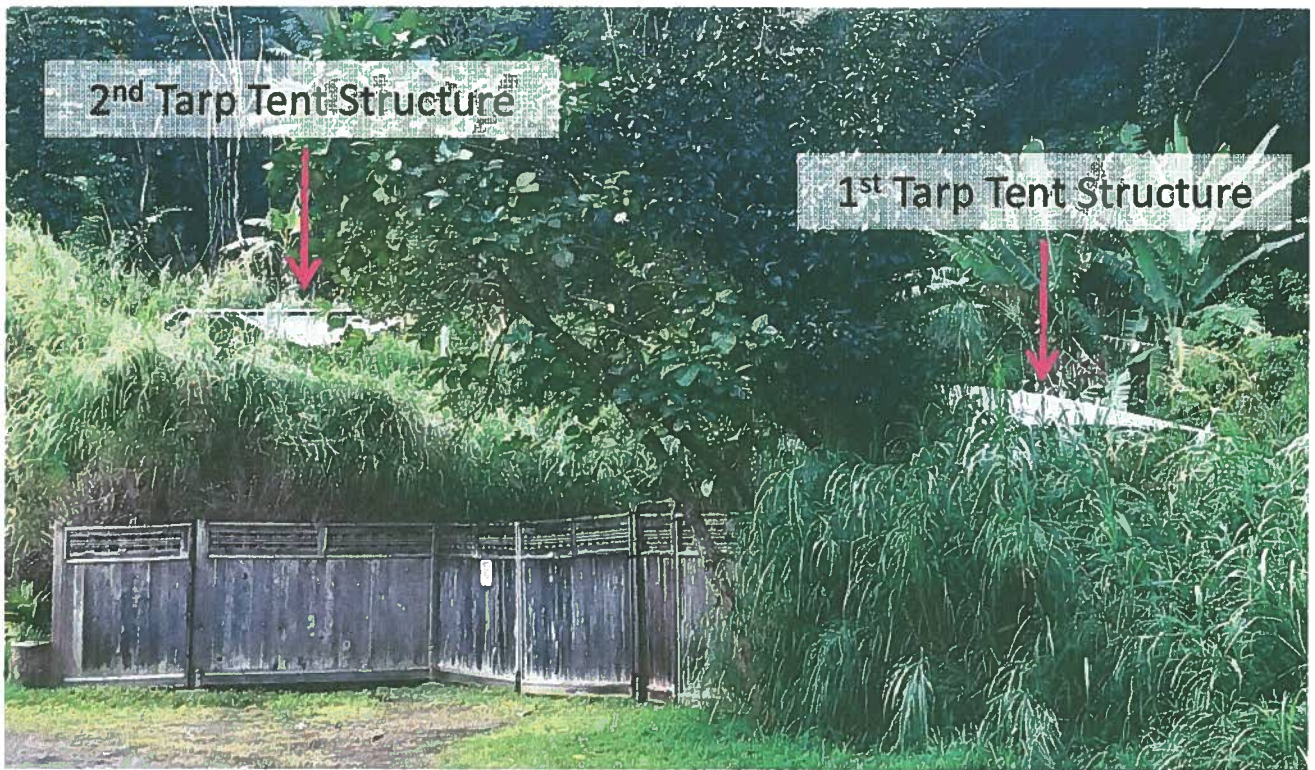
A handwritten signature in black ink, appearing to read "Suzanne D. Case", written over a horizontal line.

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

C: KDLO
DOCARE
CoK, Planning Dept.



FEBRUARY 7, 2017 SITE VISIT PHOTOS



FEBRUARY 7, 2017 SITE VISIT PHOTOS

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CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES AND ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

September 2009

Relating to penalties for violations within the Conservation District

Act 217

1 INTRODUCTION

Hawaii Revised Statutes (HRS) §183C-7 was amended on July 7, 2008 to increase the maximum penalty for a Conservation District violation to up to \$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.

This document, *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land and Natural Resources* is intended to provide the Office of Conservation and Coastal Lands (OCCL) with a framework to systematically carry out its enforcement powers, in the determination and adjudication of civil and administrative penalties. These guidelines are to be used for internal staff guidance, and should be periodically reviewed to determine their effectiveness, and whether refinements are needed. These guidelines are consistent with HRS §13-1, Subchapter 7, Civil Resource Violation System (CRVS).

2 CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES

The charging and collecting of penalties is an enforcement tool that may be used to ensure future compliance by the responsible party and others similarly situated. The penalty amount(s) shall be enough to ensure immediate compliance with HRS §13-5 and HRS §183C, and cessation of illegal activities. Penalties will be assessed for each action committed by an individual(s) that conducts an unauthorized land use and that impairs or destroys natural resources protected under Chapter §183C, HRS.

The Staff will treat each case individually when assigning conservation district penalties using the following framework, and additional considerations and factors for upward or downward adjustments. The staff of the OCCL (Staff) will use these penalty schedule guidelines to issue violation notices and to make recommendations to the Board of Land

and Natural Resources (Board), Chairperson of the Board of Land and Natural Resources (Chairperson), or Presiding Officer, whom may ultimately adjudicate the Conservation District penalties. These guidelines presume that all cases in which a violation has occurred, the Chairperson, Board, or Presiding Officer may also assess administrative costs, damages to public land or natural resources, and costs associated with land or habitat restoration.

2.1 PENALTY CALCULATION

The penalty range for these actions will be substantially determined based on the type of permit that would have been required if the individual(s) had applied to the Department of Land and Natural Resources (Department) or Board for pre-authorization to conduct the identified use, under Hawaii Administrative Rules (HAR) §13-5-22, 23, 24, 25. Assessing the penalties according to the Conservation District permit type accounts for the level of review or scrutiny the unauthorized use would have received by the Department or Board in order to avoid damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential "harm to the resource" caused by the violation.

Once the baseline for the penalty range has been established according to the required permit, the penalty may be adjusted appropriately upward or downward according to the "harm to resource" caused or potentially caused by the violator's action and additional considerations and factors (See 2.1.4),² within the assigned penalty range. Where Staff was unable to associate the unauthorized use with a typical land use identified in HAR §13-5, Staff may try to associate the action with the most similar identified land use in HAR §13-5, or according to the "harm to the resource" caused by the violation. Table 1

¹ "Harm to resource" is an actual or potential impact, whether direct or indirect, short or long term, impact on a natural, cultural or social resource, which is expected to occur as a result of unauthorized use of construction, alteration, or landscape alteration (See Appendix B: Definitions) Adapted from Florida Department of Environmental Protection 2009 Administrative Plan and Damage Liability, Ch. 62B-34.

² Penalty amounts may be adjusted up or down, based on additional considerations, such as the actual extent of the direct damage, significance of any other indirect impacts, environmental record of the violator, responsiveness of violator, etc. (See 2.1.4 Additional Considerations and Factors).

was created to demonstrate the penalty ranges for the type of required permit and "harm to resource" (See 2.1.1 or Appendix A).

The first two of the following sections explain the identified and non-identified land use framework. The next four sections: Tree Removal, Additional Considerations and Factors, Continuing Violations and Permit Non-Compliance, and In-Kind Penalties, provide guidance for the upward or downward adjustment of penalties based on the initial framework discussed in Section 2.1.1, Identified land use penalties.

2.1.1 Identified Land Use Penalties

The violation penalty range associated with each required permit will be assessed in accordance with the following harm to resource indices in this graduated framework.

Table 1. Penalty Guideline Framework

Harm to resource or potential for harm to resource	Identified land use permit penalties with the letter	Penalty Ranges
Major	D (Board)	\$10,000-\$15,000
Moderate	C (Departmental)	\$2,000-\$10,000
Minor	B (Site Plan)	\$1,000-\$2,000
Very Minor	A (Site Plan)	Up to \$1,000

Major Harm to the Resource/ Board Permit (D)

Violations identified with the required permit prefix (D) may incur a penalty in the range of \$10,000 - \$15,000 as a Board permit would have been required to minimize the possibility of causing "major harm to the resource." Examples of "major harm(s) to the resource" may include actions that cause substantial adverse impact to existing natural resources within the surrounding area, community, ecosystem or region, or damage to the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics. Such actions may include, but are not limited to, unauthorized single-family residences or unauthorized structures, grading or alteration of topographic features, aquaculture, major marine construction or dredging, unauthorized shoreline structures, major projects of any kind, mining and extraction, etc.

Moderate Harm to the Resource/Departmental Permit (C)

Violations identified with the required permit prefix (C) may incur a penalty in the range of \$2,000-\$10,000, as a Departmental permit would have been required, due to the possibility of causing "moderate harm to the resource." Examples of "moderate harm(s) to the resource" may be adverse impacts that degrade water resources, degrade native ecosystems and habitats, and/or alter the structure or function of a terrestrial, littoral or marine ecosystem. Such actions may include, but are not limited to, unauthorized landscaping causing ground disturbance, unauthorized alteration, renovation or demolition of existing structures or facilities, such as buildings and shoreline structures, maintenance dredging, agriculture, and animal husbandry, etc.

Minor Harm to the Resource/Site Plan Approval (B) Permit

Violations identified with the required permit prefix (B) may incur penalties as a site plan approval would have been required to assure that "minor harm(s) to the resource" are minimized. "Minor harm(s) to the resource" may incur a penalty of \$1,000-\$2,000 and could be actions causing limited to short-term direct impacts including, but not limited to, small-scaled construction, construction of accessory structures, installation of temporary or minor shoreline activities or similar uses.

Very Minor Harm to the Resource/(B) Permit

In instances in which a permit with the B prefix should have been sought but are considered to have only caused "very minor harm(s) to resource" a penalty of up to \$1,000 may be incurred. These "very minor harm(s) to the resource" could be actions in which the impact on the water resource or terrestrial, littoral or marine ecosystem was temporary or insignificant, and was not of a substantial nature either individually or cumulatively.

2.1.2 Non- Identified Land Use Penalties

Violations in which an unauthorized use is not identified in HAR §13-5-22, 23, 24, 25, Staff may try to associate the action with the most similar identified land use in HAR

§13-5 or according to the "harm to the resource" caused by the violation. Refer to the above section, *Identified Land Use Penalties*, for the most similar required permit prefix. To categorize the violation as a "harm to resource" when no similar use is identified in HAR §13-5, Staff will refer to Table 1 and the definitions of the four violation types of "harm to resource" (See Appendix B: Definitions).

2.1.3 Tree Removal

Violation penalties for the removal of any federal or state listed threatened, endangered, or commercially valuable tree may incur a fine of up to \$15,000 per tree. Removal of any native tree may incur a fine of up to \$1,000 per tree. The removal of any invasive tree shall be considered as removal/clearing of vegetation.

The Board, Department, or Presiding Officer also has the option of considering the removal of more than one tree as a single violation, similar to the removal/clearing of vegetation.³ If violation is considered as one violation, a fine amount of up to \$15,000 may be incurred, utilizing the guidelines for Major, Moderate, Minor, and Very Minor outlined in this schedule. However, the removal of any federally or state listed threatened or endangered tree shall be considered on a one violation per tree basis, with a maximum penalty of up to \$15,000 per tree.

2.1.4 Vegetation Removal/Vegetation Clearing

Past Staff recommendations and Board decisions have treated some cases of tree or removal as one citation of vegetation clearing/vegetation removal, this practice may be continued in violations resulting in minor or very minor harm to the resource. In accordance with the identified land uses within HAR §13-5 the assessment of vegetation removal has been based on a single citation of removal/clearing determined by the square footage of vegetation removed (See Table 3 Vegetation Removal). However, the

³ While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-native, invasive, or poisonous trees as one citation of "clearing" with mandatory remediation plans.

Department may see fit to assess the removal/clearing of threatened, endangered, or commercially valuable plants similar to the modified tree removal framework and may be penalized on an individual plant basis of up to \$15,000 per plant.

Table 3. Vegetation Removal

Action	Damageable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft. of Vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. of Vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ⁴

Note: The clearing of threatened, endangered or commercially valuable plants will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant. According to Table 2, the clearing of vegetation may incur a penalty of up to \$1/eq. ft., so clearing 10,000 sq. ft. Staff could assess a penalty of \$10,000.

2.1.5 Additional Considerations and Factors

After Staff applies the Conservation District violation graduated penalty framework to identify the violation penalty range (1, 2, and 3 found above), the Staff may incorporate several considerations into the final assessed conservation district penalty including but not limited to, those factors identified in HAR §13-1-70 Administrative Sanctions Schedule; Factors to be Considered.

2.1.6 Continuing Violations and Permit Non-Compliance

Each day during which a party continues to work or otherwise continues to violate conservation district laws, and after the Department has informed the violator of the offense by verbal or written notification, the party may be penalized up to \$15,000 per day (penalties for every day illegal actions continue) by the Department for each separate offense.

⁴ Provided the harm to the resource and offsite damage were minimal.

Violation of existing approved Conservation District Use Permit (CDUP) conditions will be assessed on a case-by-case basis. Existing permit violations, in which deadlines are not met, may be individually assessed by the Staff as to prior violator conduct, knowledge, and compliance. Violation of permit conditions involving initiation and/or completion of project construction, notification of start and completion dates, failure to file legal documents, etc., may be considered very minor within the existing framework, although it should be noted that such actions may result in permit revocation. Failure to perform proper cultural, archeological, or environmental impact studies or failure to implement proper best management practices as identified in the standard permit conditions may be assessed more severely by Staff, as a moderate or major harm to the resource, due to the potential of greater adverse impacts to natural resources from the violator's failure to comply with the permit conditions, may have occurred.

2.1.7 In-Kind Penalties

Once the penalty amount has been established through the framework above, the Department may determine that the full payment or some portion of the penalty may be paid as an in-kind penalty project.⁹ This would not serve as a way to avoid payment but as a way to reduce the cash amount owed while allowing the Department to consistently enforce its rules. The in-kind penalty project is not designed to credit the violator for restoration or remediation efforts that may be already required, but to offset a portion of the cash penalty assessed. The in-kind penalty should be enough to ensure future compliance with HAR §13-5 and HRS §183C, by the violator and to deter other potential violators from non-compliance.

In-kind penalties will only be considered if (1) the responsible party is a government entity, such as a federal agency, state agency, county agency, city agency, university, or school board, or if (2) the responsible party is a private party proposing an environmental

⁹ In-Kind Penalty Framework has been adopted from Florida Department of Environmental Protection, 2007, Program Directive 923, Settlement guidelines for civil and administrative penalties.

restoration, enhancement, information, or education project. In-kind penalties are limited to the following specific options:

- a. **Material and/or labor support for environmental enhancement or restoration projects.** The Department will give preference to in-kind projects benefiting proposed government-sponsored environmental projects. For shoreline violations, this may include state beach nourishment projects and dune restoration projects.
- b. **Environmental Information and Environmental Education projects.** Any information or education project proposed must demonstrate how the information or education project will directly enhance the Department's, and preferably the OCCL's, mission to protect and conserve Hawaii's Conservation District Lands.
- c. **Capital or Facility Improvements.** Any capital or facility improvement project proposed must demonstrate how the improvement will directly enhance the Department's and/or public's use, access, or ecological value of the conservation property.
- d. **Property.** A responsible party may propose to donate land to the department as an in-kind penalty. Donations will be handled by the Department's Legacy Lands program or similar program.

3 ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

Penalties to recoup damages to public lands or natural resources for the purposes of enforcement and remediation may be assessed in addition to Conservation District violation penalties assessed by the aforementioned guidelines. The assessed total value of the initial and interim natural resource(s) damaged or lost (compensatory damages) and the cost of restoration or replacement of the damaged natural resource(s) (primary restoration cost) along with any other appropriate factors, including those named in HAR §13-1-70, may be adjudicated by the Board. The total value may be estimated on a per annum basis, and then may be used to calculate the net present value of the initial and interim loss of natural resource benefits, until the ecosystem structure, function, and/or services are restored.

The cost of a full-scale damage assessment by the Department would be an administrative cost, which could be recouped by the Board from the landowner or offender pursuant §HRS 183C-7. In some cases, the damage to public lands or natural resources may occur on more than one ecosystem or habitat type, (e.g., sandy beaches, seagrass beds, and coral reefs). In such instances, damages for all impacted systems will be handled cumulatively.

Since all the ecosystem services provided by the ecosystem in question cannot be quantified (e.g., the aesthetic value), the values obtained are lower bound estimates, and may be applied to systems similar to the referenced ecosystem using the benefit transfer method. These valuations, to account for the loss of ecosystem services and the cost to restore them, may be applied to Hawaiian ecosystems on public lands: such as Koa and Ohia forests, coral reefs, seagrass beds, wetlands, dune and beach ecosystems, and other important Hawaiian ecosystems.

While each case is unique and individual in nature, the Department may not be able to conduct detailed damage assessments in each case, and may refer to past precedent,

2.1.8 Penalty Adjudication

Violation penalties may be adjudicated similarly to the harm to resource indices in the penalty guideline framework.

Contribution to Harm to Resource	Identified Harm to Resource	Penalty Adjudicator
Major	\$10,000-\$15,000	Board
Moderate	\$2,000-\$10,000	Board
Minor	\$1,000-\$2,000	Chairperson or Presiding Officer
Very Minor	up to \$1,000	Chairperson or Presiding Officer

Major and Moderate Harm to the Resource

The Board may adjudicate penalties to violations categorized as causing or potentially causing major or moderate harm(s) to the resource. The Board may also adjudicate cases in which repeat violations, repeat violators, or egregious behavior were involved, or moderate to significant actual harm to the resource occurred. The Board may also adjudicate the payment of part or all, of the penalty as part of an in-kind penalty.

Minor and Very Minor Harm to the Resource

The Board may delegate to the Chairperson or a Presiding Officer the power to render a final decision in minor and very minor conservation district violations in order to provide expeditious processing and cost effective resolution. The Chairperson or appointed Presiding Officer may adjudicate penalties to minor and very minor violations characterized by inadvertent or unintentional violations and those violations which caused minor or very minor harm to the resource.

economic ecosystem valuations, and other published environmental valuations to estimate and assess damages on smaller scales (for valuations and publication examples see Appendix C: References and Appendix D: Damages Examples). Using the benefit transfer method to apply past precedents and published valuations in some situations would allow the Department to focus its administrative duties and time on remediation and restoration efforts. However, as ecological valuation and research continue, more comprehensive estimates may be produced and utilized.

The Board may allow restoration activities and damage penalties to be conducted and/or applied to a site different from the location of the damaged area where similar physical, biological and/or cultural functions exist. These assessed damages are independent of other, city, county, state and federal regulatory decisions and adjudications. Thus, the monetary remedies provided in HRS §183C-7 are cumulative and in addition to any other remedies allowed by law.

3.1 PRIMARY RESTORATION DAMAGES

The cost of land or habitat restoration or replacement, the cost of site monitoring, and site management may be assessed and charged as primary restoration damages. Restoration efforts will aim to return the damaged ecosystem to a similar ecological structure and function that existed prior to the violation. In cases in which the damaged ecosystem was predominately composed of non-native species, restoration efforts must re-vegetate Conservation District land and public lands with non-invasive species, preferably native and endemic species when possible. The use of native and endemic species may thus result in the restoration of ecological structure and function critical for the survival of endemic Hawaiian species.

Returning the damaged and or severely degraded site to a condition similar to or better than its previous ecological structure and function (e.g., a terrestrial system such as a Koa (*Acacia koa*) forest) would include: (1) calculating the level of ecosystem services to be restored from carbon sequestration, climate regulation, nutrient cycling, air and water purification, erosion control, plant and/or wildlife habitat, and any other services which

may be valued; (2) purchase, production and out-planting of Koa seedlings; and (3) monitoring, maintenance, and management for the time period of mature growth of ~40-60 years, to achieve mature canopy structure, native under-story, and an acceptable level of lost ecosystem structure, function and/or services restored.

3.2 COMPENSATORY DAMAGE CALCULATION

Compensatory damages to public lands or natural resources may be assessed and charged to the violator to compensate for ecosystem damage and lost initial and interim ecosystem services to the public. All Divisions of the Department may coordinate their resources and efforts along with existing ecosystem valuations and publications (See Appendix C and D for examples) to derive the estimated total value of the natural resource damaged until the ecosystem structure, function, and services are estimated to be recovered.

The total value of the natural resource that is lost or damaged may include the initial and interim values of the ecosystem services provided by the natural resource or habitat, and the social-economic value of the degraded site, until the ecosystem structure, function, and/or services are restored. Assessing the damages to the resource could include: estimating the loss of ecosystem services of carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

These natural resource damages may be assessed using economic valuation techniques to estimate the total value(s) of the natural resource(s) damaged on a per area basis, including: total ecosystem service value, total annual benefits, the market value of the natural resource, or any other factor deemed appropriate. The total value of the present and interim natural resource damage may be estimated by calculating the net present value of these lost benefits, values and services. The net present value may be calculated using a discount rate to scale the present and future costs to the public, of the interim losses of ecosystem services over the restoration time. The restoration time may be

estimated as the number of years for the damaged natural resource or ecosystem to reach maturity and/or the ecosystem structure and function to be restored similar to the pre-violation state. The discount of future losses and accrued benefits may be used in the valuation of mitigation efforts performed by the violator. For example the restoration conducted immediately after damage occurred may be calculated to have a higher present benefit worth than the benefit of restoration activities undertaken a year or two later.

In other instances, a habitat equivalency analysis (HEA) or a resource equivalency analysis (REA) may be used to scale equivalent habitat or wildlife losses for estimating both ecosystem damage penalties and restoration efforts.

3.3 ADJUDICATION OF DAMAGES

The adjudication of primary restoration damages and compensatory damages will be adjudicated by the Board due to the complexity of the assessment process and to assure proper checks and balances, including adequate public notice and a public hearing.

In addition to the damages and penalty violations assessed, the Department is allowed to recoup all administrative costs associated with the alleged violation pursuant to HRS §183C-7(b). All penalties assessed will be in compliance with HRS §183C-7(c) and will not prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices.

APPENDIX A: GUIDELINE FRAMEWORK TABLES

Table 1. Penalty Guideline Framework

Harm to resource or potential for harm to resources	Identified land use permit violator with the letter	Penalty Range
Major	D (Board)	\$10,000-\$15,000
Moderate	C (Departmental)	\$2,000-\$10,000
Minor	B (Site Plan)	\$1,000-\$2,000
Very Minor	(B) (Site Plan)	Up to \$1,000

Table 2. Vegetation Removal

Action	Comparable Harm to Resources	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000*

Note: According to Table 2, the clearing of vegetation may incur a penalty of up to \$1/ sq. ft., as clearing 10,000 sq. ft. Staff could assess a penalty of \$10,000. The clearing of threatened, endangered or commercially valuable plants, will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant.

APPENDIX B: DEFINITIONS

Definitions:

- (1) "Baseline" means the original level of services provided by the damaged resource.
- (2) "Benefit Transfer Method" estimates economic values by transferring existing benefit estimates from studies already completed for another location or issue.⁷
- (3) "Board" means the Board of Land and Natural Resources.
- (4) "Board Permit" means a permit approved by the Board of Land and Natural Resources.
- (5) "Chairperson" means the chairperson of the board of land and natural resources
- (6) "Civil Resource Violations System" or "CRVS" means a system of administrative law proceedings as authorized under chapter 199D, HRS, and further prescribed in Subchapter 7, 13-1, HAR, for the purpose of processing civil resource violations.
- (7) "Compensatory Damages" means damages for compensation for the interim loss of ecosystem services to the public prior to full recovery.
- (8) "Contested Case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.
- (9) "Department" means the Department of Land and Natural Resources.
- (10) "Departmental Permit" means a permit approved by the Chairperson.
- (11) "Discounting" means an economic procedure that weights past and future benefits or costs such that they are comparable with present benefits and costs.
- (12) "Ecosystem Services" means natural resources and ecosystem processes, which may be valued according to their benefits to humankind.

For example: carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism.

⁷ Ecosystem Valuations http://www.ecosystemvaluation.org/benefit_transfer.htm

recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

- (13) "Grossly negligent" violation means conscious and voluntary acts or omissions characterized by the failure to perform a manifest duty in reckless disregard of the consequences.⁸
- (14) "Harm to resource" means an actual or potential impact, whether direct or indirect, short or long term, acting on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration as is defined as follows:
 - (a) "Major Harm to resource" means a significant adverse impact(s), which can cause substantial adverse impact to existing natural resources within the surrounding area, community or region, or damage the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics
 - (b) "Moderate Harm to Resource" means an adverse impact(s), which can degrade water resources, degrade native ecosystems and habitats, and/or reduce the structure or function of a terrestrial, littoral or marine system (but not to the extent of those previously defined as those in (a)).
 - (c) "Minor Harm to Resource" means limited to short-term direct impacts from small scaled construction or shoreline or vegetation alteration activities.
 - (d) "Very Minor Harm to Resource" means an action in which the impact on the water resource or terrestrial, littoral or marine ecosystem was insignificant, and was not of a substantial nature either individually or cumulatively.

For example, "major harm to the resource(s)" would be associated with a major land use violation that would have likely required a Board Permit, such as building a house, while a "minor harm to the resource(s)" may be

⁸ Definition adapted from Florida Department of Environmental Protection, 2000 Administrative Fines and Damages Liability, Ch. 62B-54.

associated with minor land uses requiring an administrative Site Plan Approval, for building a small accessory structure.

- (15) "Knowing" violation means an act or omission done with awareness of the nature of the conduct.
- (16) "Net Present Value" means the total present value (PV) of a time series of cash flows.
- (17) "OCCCL Administrator" means the Administrator of the Office of Conservation and Coastal Lands.
- (18) "Party" means each person or agency named or admitted as a party.
- (19) "Person" means an appropriate individuals, partnership, corporation, association, or public or private organization of any character other than agencies.
- (20) "Presiding Officer" means the person conducting the hearing, which shall be the chairperson, or the chairperson's designated representative.
- (21) "Primary Restoration Damages" means the costs to restore the damaged site to its prior baseline state.
- (22) "Site Plan" means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.
- (23) "Willful violation" means an act or omission which is voluntary, intentional and with the specific intent to do something the law forbids, or fail to do something the law requires to be done.

APPENDIX C: REFERENCES

- Cesar, H., van Beukering, P., Piniz, S., Diecking J. 2002. Economic valuation of the coral reefs of Hawaii. NOAA Final Report NA 160A1449.
- Conservation International. 2008. Economic Values of Coral Reefs, Mangroves, and Seagrasses: A global Compilation. Center for Applied Biodiversity Science, Conservation International, Arlington VA, USA.
- Costanza, R. and Farley J. 2007. Ecological economics of coastal disasters: Introduction to the special issue. Ecological Economics 63 p. 249-253.
- Costanza, R., d'Arge, R., de Groot, R., Farber, S., Grasso, M., Hannon, B., Limburg, K., Naeem, S., O'Neill, R.V., Paruelo, J., Raskin, R.G., Sutton, P., van den Belt, M. 1997. The Value of the World's Ecosystem Services and Natural Capital. Nature 387 p. 253-260.
- Florida Department of Environmental Protection. Damage Costs in Seagrass Habitats. http://www.dep.state.fl.us/coastal/habitats/seagrass/awareness/damage_costs.htm
- Florida Department of Environmental Protection. 2000 Administrative Fines and Damage Liability. Ch. 62B-54. <http://www.dep.state.fl.us/legal/Rules/beach/62b-54.doc>
- Florida Department of Environmental Protection. 2007. Program Directive 923. Settlement guidelines for civil and administrative penalties. www.dep.state.fl.us/admin/depdira/pdf/923.pdf
- Florida Department of Environmental Protection. 2000. Rules and procedures for application for coastal construction permits. Ch. 62B-41. <http://www.dep.state.fl.us/beaches/publications/pdf/62b-41.pdf>

APPENDIX D: DAMAGES EXAMPLES

Examples of Damage Assessments and Possible Remediation Efforts

The following are only brief past estimates used in Hawaii and other states; they are by no means comprehensive or limiting. These are intended to be examples for possible assessments and remediation efforts not as templates. As previously stated each case will be handled individually to account for unique ecological, economic and cultural impacts.

The following are organized by habitat type.

Coral

Florida Department of Environmental Protection (Civil Damages):

The DEP can impose fines of up to \$1,000/m² of reef damaged and is dependent on the absence of extenuating circumstances such as weather conditions, disregard of safe boating practices, navigational error, whether the vessel operator was under the influence of drugs or alcohol etc.

Cesar et al 2002 (Ecosystem Service Valuation)

Cesar et al. used a Simple Coral Reef Ecological Economic Model (SCREEM) to assess Hawaiian coral reefs based on the annual benefits of the coral reefs to recreation/tourism, property amenities, biodiversity, fisheries and education. The annual benefits and total economic value could then be expressed on a 'per area' basis. This study found the total annual benefits of the coral reefs of Hanalei Bay to be \$37.57 million (\$2,568/m²), of the coral reefs in Kihati to be \$28.09 million (\$65/m²) and the coral reefs on the Kona coast to be \$17.68 million (\$19/m²).

Pilaa enforcement (KA-02-10) (Primary Restoration Cost)

Damage to Coral reef ecosystems was assessed for restoration activities according to Florida guidelines, as \$5,830,000 for 5,380 m² of coral reef damage. This calculation

was similar to the estimated cost of remediation efforts \$390,000 to clean 5,000 yd³ of beach sand. However between 30,000-50,000 yd³ was estimated to be impacted, totaling \$2,300,000-\$3,900,000. While cleaning the sediment from the reef was estimated to cost approximately \$845,000 (for the 13 acres, or \$65,000 for 10m²). This totaled between \$3,100,000 and \$4,700,000, and did not include coral colony re-establishment. An additional \$630,000 was estimated for the 10-year monitoring period, (however studies by Cesar et al. 2003 estimated a 25 year period for recovery of ecological impacts).

Thus damage to corals may be calculated as follows:

Number of square meters of coral damaged
X Multiplied by \$1,000 (or estimated value of coral on per/area basis)
(#m² x \$1000)

Plus the estimated net present value of ecosystem services lost until recovery. (This may be more if damage to an area such as Hanauma Bay with increased recreational economic revenue.)

- +Plus cost of Remediation
- +Plus Cost of cleaning sediment from reef
- +Plus Cost of cleaning sediment/mud from beach sand
- +Plus Cost of coral reestablishment
- +Plus Cost of Monitoring
- +Plus Cost of Management

Seagrass beds (Compensatory Damage)

The Florida DEP fines offenders \$100/yard² of damage to seagrass beds for the first yd² damaged and \$75/yard² per each additional yd² damaged.

- \$100 for the first yard damaged
- +\$75 per each additional yard
- or net present total value of ecosystem services lost until recovery
- +vegetation planting
- +monitoring

Sand Beaches (ex. Of Primary Restoration Costs)

Minimum penalty cost of restoration and potential negative ecological, social and environmental impacts should be included in the assessment of damaged, degraded or lost sandy beaches. As one of Hawaii's greatest natural resources the following should be included in the minimum penalty assessment, however, as ecological valuation and research continue, more comprehensive estimates may be produced. In KA-02-10 P1aa, \$390,000 fine was estimated to clean 5,000 yd³ of beach.

- +Cost of lost revenue due to altered Beach resources (compensatory)
- +primary restoration costs
- +Plus cost of cleaning of sediment/mud from beach area (if necessary)
- +Plus cost of beach nourishment (sand replacement)
- +Plus cost of native dune vegetation

(In some circumstances the loss of beach resources may be assessed in conjunction with other ecological impacts listed above, such as coral reefs and sea grass beds.)

APPENDIX E: PENALTY CALCULATION WORKSHEET

Violator's Name(s): _____
 TMK: _____
 OCCL Staff Member: _____
 Date: _____

Part 1 - Penalties

Violation Type	Permit Prefix (D.C. B)(actual & potential)	Harm to Resource (potential)	Tree or Vegetation Status	Penalty Range	Adjustments (Mark Adj. Choice #1-8)	Multi-day (# days)	Total
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

Penalty Total:

Penalty Adjustments and Descriptions (please attach additional adjustments and descriptions, including but not limited to those listed in §13-1-70)

1. Actual environmental damage extent (onsite)

Description: _____

2. Actual environmental damage extent (offsite)

Description: _____

3. Does the violator's have a history of violations?

4. Was the violation repetitious or of a long duration?

5. Was the violator Responsive and exhibit a level of cooperation with the Department and/or Staff?

6. Does the Violator have a Financial Hardship?

7. Did the violator receive Economic or commercial gain through non-compliance?

8. Other.

Description: _____

Total Adjustment: up/down _____

Multi-day penalties

Number of days to multiply penalty: _____

Reasoning: _____

Total multi-day: _____