

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

October 27, 2017

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

REGARDING: Conservation District Enforcement HA 17-36 Alleged Unauthorized Land Uses Located in the Conservation District

BY: Simon Velaj

LANDOWNERS: SM Investment Partners
State of Hawai'i (submerged land)

**LOCATION/
Tax Map Key:** Punalu'u Wharf, Ka'u, island of Hawai'i
(3) 9-6-001:002

SUBZONE: Resource

DESCRIPTION OF AREA (Exhibits A, B & C)

The subject area is located along the shoreline where the remnants of the historic Punalu'u Wharf exists within the ahupua'a of Punalu'u in the district of Ka'u on the island of Hawai'i. The fast land and the submerged land where the alleged unauthorized activities took place lies within the Conservation District Resource subzone.

Punalu'u Beach Park is adjacent to the site. The near vicinity is utilized for camping, fishing, recreation and reflection. Nearby traditional natural and cultural features included trails, fishponds, freshwater springs, and the adjacent coastal Heiau(s)- Halelau and Mailekini [also known as Punalu'unui and Kane'ele'ele] of which the former Punalu'u Wharf encroaches upon.

ALLEGED UNAUTHORIZED LAND USES:

The following chronology discusses the alleged unauthorized land use and actions taken in regards to the matter:

June 23, 2017- The Division of Conservation and Resource Enforcement (DOCARE) was notified of alleged digging with a backhoe at the former Punalu'u Wharf. A site inspection was conducted on the same day by 2 DOCARE Officers. According to their observation, "There had been recent excavation of rocks, damage and destruction of the old wharf remains, along with some dirt that was spread over rocks." (Exhibits D, E & F)

Witness statement collected on that day indicated that the work was conducted on the afternoon of June 22, 2017 and the person that conducted the work said he would be returning the next morning at 7:00am. According to the DOCARE report, the alleged did return the next day, "without the excavator and was confronted by several locals and departed without doing any work."

The alleged suspect had been identified as Simon Velaj. A license agreement, made effective April 24, 2017, by and between landowner, S M Investment Partners and Velaj's Hang Loose Boat Tours, LLC was terminated on this day [6-23-17]. **(Exhibit G)**

June 26, 2017 Staff from the Historic Preservation Division conducted a site inspection of the site. According to their observation, there was "clear evidence that heavy equipment had...impacted portions of the remnants of the Punalu'u Wharf."

A community meeting was held regarding this matter at the Na'alehu Community Center, Ka'u, Hawai'i at 5:30pm. At the meeting, Mr. Velaj apologized to those in attendance and stated he made a mistake.

June 28, 2017 A Notice of Alleged Violation was issued to Mr. Velaj by the Department. **(Exhibit H)**

June 30, 2017

July 3&5, 2017 Correspondences between the Office of Conservation and Coastal Lands (OCCL) and the Landowner were exchanged in regards to mitigating the site to remove dirt and fill material very near the shoreline. **(Exhibit I)**

July 7, 2017 A DOCARE Officer interviewed Mr. Velaj after advising him of his rights. A written statement prepared by Mr. Velaj was submitted at this time. **(Exhibit J)** According to the DOCARE report, Mr. Velaj stated the following:

- He only did excavation on Thursday 06-22-2017 between the hours of 1400-1800
- He was only conducting clean-up activities
- All the dirt that was spread was from the same area, he pushed it seaward as he cleaned the area
- He had no intention to make a new boat ramp
- The back hoe was a rental and was transported to the area
- His intent was to make the area safer for the public and for his planned tours of the ocean areas of the national park and lava flow areas

Mr. Velaj also surrendered his Division of Boating and Ocean Recreation (DOBOR) Commercial Use-Operational Area Use Permit on this day **(Exhibit K)**.

July 19, 2017 A DOCARE Officer, County of Hawai'i Planning Staff and OCCL Staff were on site to monitor the removal of dirt and fill material near the shoreline by Mr.

Velaj and his associates. Staff inspected the area and noted two dirt piles, the pulverized remains of a former concrete feature on fast lands and the alteration of an existing structure in the water. Staff noted one particular turtle foraging near the concrete features on submerged land very near where the alleged activities took place. Staff did not observe any telling features to approximate the highest wash of the waves in this shoreline area.

Staff observed the launching and retrieving of boats at the private boat ramp located about 110-feet mauka of the affected area. Due to the small size [approximately 35' x 25'] and complexity to launch and retrieve boats, it is staff's opinion the launch ramp may be substandard to accommodate a 34-foot commercial passenger cabin motorboat with a 24 passenger capacity as was proposed and authorized for Mr. Velaj. (Exhibit L)

After 5 hours of shoveling and vacuuming the affected area where the dirt and fill material was introduced, the work was completed to OCCL's staff satisfaction. (Exhibit M&N)

RESOLUTION OF UNAUTHORIZED LAND USES:

Conservation District

The Hawai'i Revised Statutes (HRS), Chapter 183C, and the Hawai'i Administrative Rules (HAR), Chapter 13-5, regulate land uses in the Conservation District by identifying land uses that may be allowed by Conservation District Use Permit (CDUP). §13-5-2, HAR defines "land use" 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.

Site inspections conducted by Departmental staff of DOCARE, SHPD & OCCL and photographic evidence clearly concludes land and features that lies within the Conservation District had been severely disturbed.

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 an additional fine of up to \$15,000 per day per violation for each day in which the violation persists.

The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.

It is unclear why the use of heavy equipment was necessary to 'clean-up' the shoreline as Mr. Velaj has stated; why historic features immediately offshore and onshore were damaged and destroyed respectively in the process and why rocks and boulders put in place at that particular location to prevent ocean surge and water run up were disturbed. The boat ramp that Mr. Velaj was authorized to use is over 100-feet away from the area affected.

Staff has assessed the closest identified land use that the unauthorized action appears to be is under HAR, §13-5-24 R-5 Marine Construction (D-1) Dredging, filling, or construction on submerged lands, including construction of harbors, piers, marinas and artificial reefs.

Pursuant to HAR, §13-5-6 Penalty. (a) Any person, firm, government agency, or corporation violating any of the provision of Chapter 13-5 or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS; and (f) for the purposes of providing guidance in the assessment of administrative sanctions and promoting consistency within the department, there shall be adopted by the board an administrative sanctions schedule (**Exhibit O**).

Based on the **Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources** the unauthorized land use is considered a "Major" unauthorized land use since the closest identified land use appears to require a Board permit. This violation follows a penalty range of \$10,000 to \$15,000.

The unauthorized land use occurred in the Conservation District without approval and therefore allegedly violated the above referenced chapters and rules.

DISCUSSION

During the monitoring of the removal of the dirt and fill material on July 19, 2017, staff discussed matters with Mr. Velaj. It was apparent to staff that Mr. Velaj believed he had secured the proper authorizations by obtaining a lease with the landowner and obtaining a commercial permit for ocean recreation from DOBOR.

Mr. Velaj had stated that he wanted to clean the area and make it safe for the community and guests. His lease has been terminated by the landowner and he surrendered his DOBOR permit. At this time, it appears Mr. Velaj no longer desires to utilize the private Punalu'u boat launch ramp. Staff notes, Mr. Velaj was diligent and cooperative in removing the dirt and fill material. He has acknowledged that he made a mistake.

While this recommendation proposes resolution for unauthorized land uses within the Conservation District pursuant to HRS, Chapter 183C and HAR, Chapter 13-5, there are other Federal, State and Hawai'i County laws that may be applied to regulate and enforce upon the unauthorized activities that took place on the afternoon of June 22, 2017.

FINDINGS

1. That Mr. Velaj did in fact cause:
 - The grading and disturbance of land;
 - The demolition and alteration of existing structures; and
 - A permanent change in the land.
2. That the unauthorized land uses occurred within the State Land Use Conservation District upon fast and submerged lands within the Resource Subzone.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to HRS, §183C-7, the Board of Land and Natural Resources finds Mr. Simon Velaj in violation of HAR, §13-5-24, and is subject to the following:

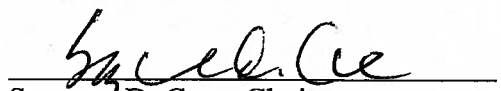
1. Mr. Velaj is fined \$15,000 for violating the provisions of HAR, §13-5-24 for the grading, disturbance of land, demolition and alteration of existing structures and causing a permanent change in land within the Conservation District, Resource subzone prior to obtaining the appropriate approvals within the Conservation District;
2. Mr. Velaj is fined an additional \$2,000.00 for administrative costs associated with the subject violations;
3. Mr. Velaj shall pay all designated fines and administrative costs that totals \$17,000 within 90 days of the date of this Board's action;
4. Mr. Velaj shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments;
5. That in the event of failure of Mr. Velaj to comply with any order herein, Mr. Velaj shall be fined an additional \$1,000 per day until the order is complied with; and
6. That in the event of failure of Mr. Velaj to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

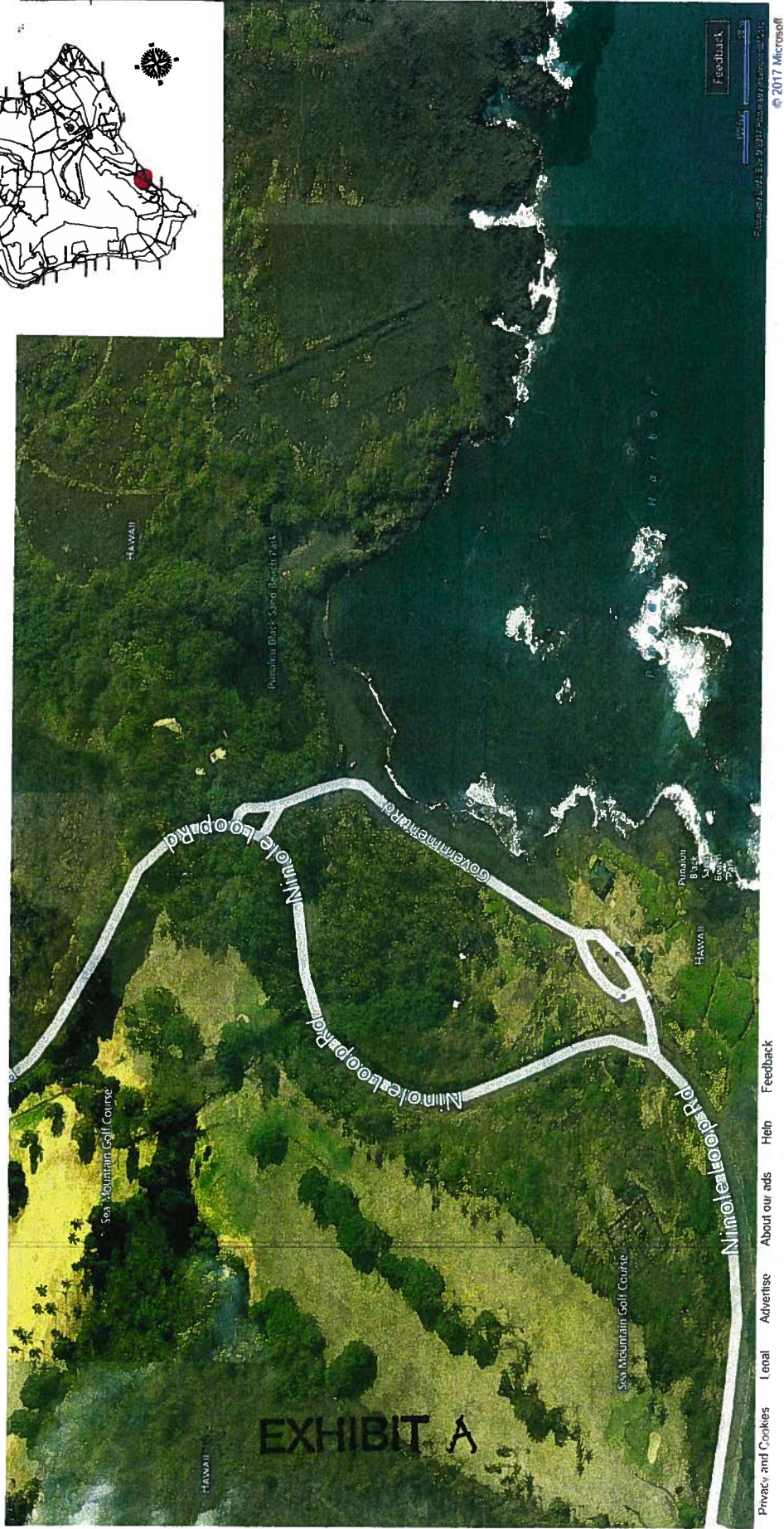
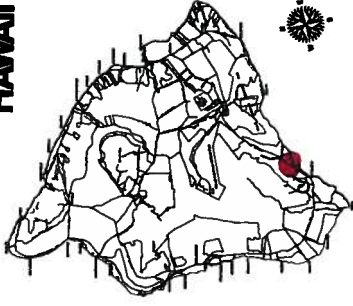
Approved for submittal:



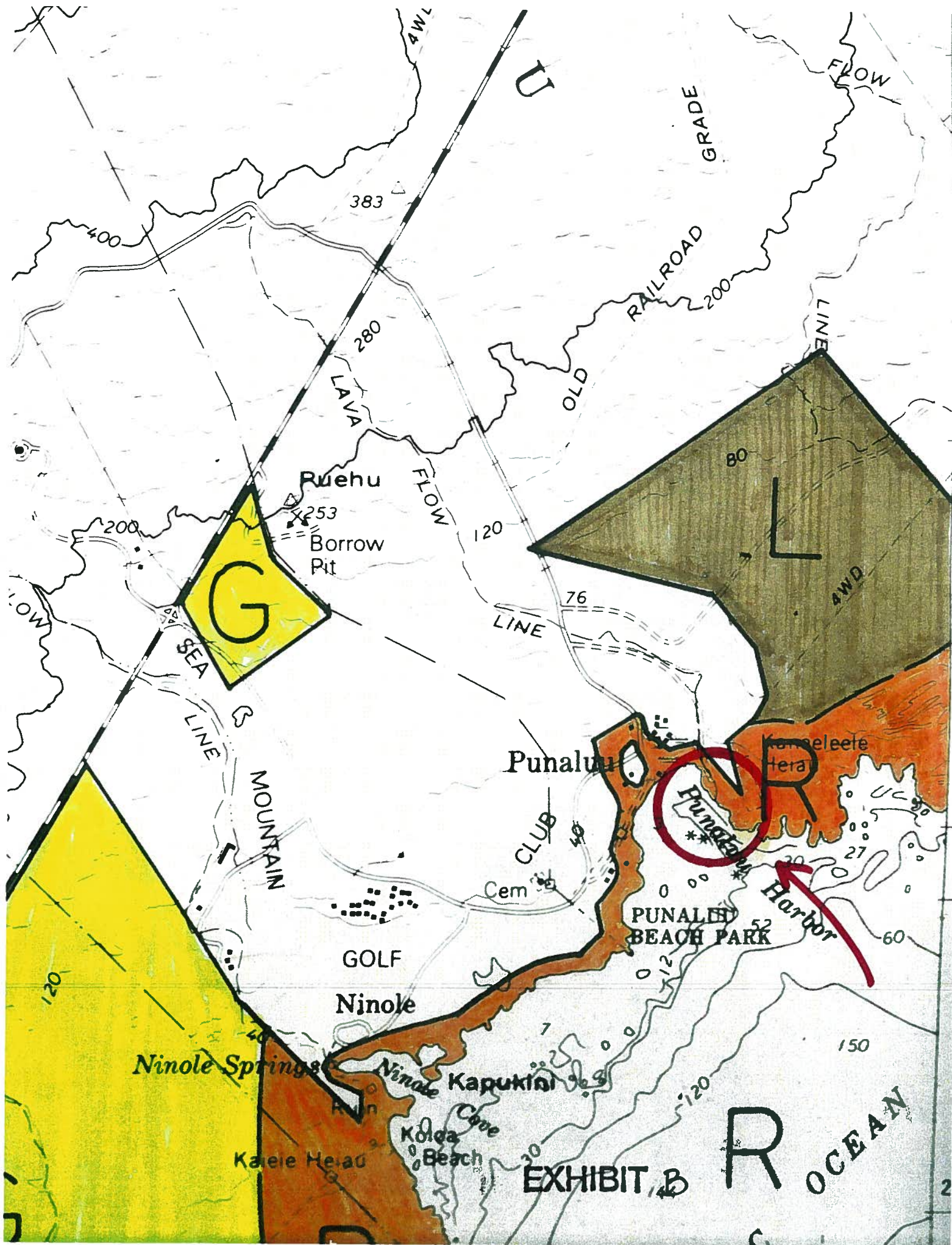
Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Punalu'u Beach Park

HAWAII



<https://www.bing.com/maps/>





Anonymous Photo received from DOCARE pre-June 22, 2017

EXHIBIT C



<http://www.bigislandvideonews.com>

Posted by The Ka'u Calendar at 12:21 AM

Links to this post



Tuesday, June 27, 2017

Ka`u News Briefs Tuesday, June 27, 2017



Gary Tomondon caught this image of the tour boat owner trying to create a bigger ramp for his Hang Loose lava boat operations at Punalu'u.

VIOLATIONS BY THE OWNERS OF THE PUNALU'U BOAT RAMP AND TOUR BOAT who planned lava

<http://kaunewsbriefs.blogspot.com/2017/06/>

EXHIBIT D



Overview of area upon Officer's arrival. All photos by Andrew Ford



3 remaining pillars. Left mauka pillar gone, left makai pillar badly damaged.



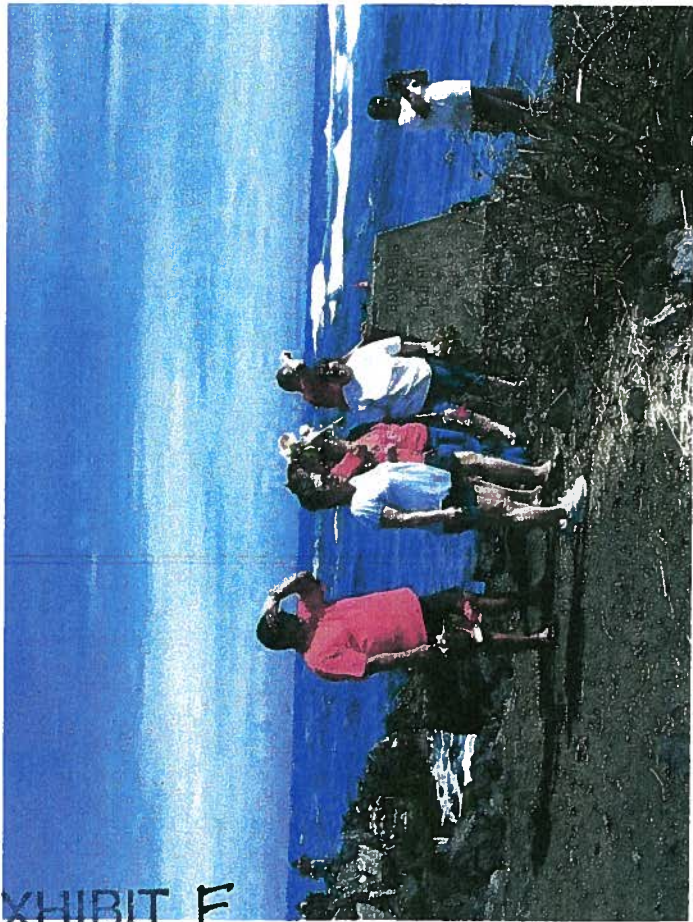
Remains of left mauka pillar



Dirt from unknown source spread on broken rocks.



Pre-June 2017 Photo by Anonymous. All photos obtained by Andrew Ford



Pre-June 2017 Photo by Anonymous



Pre-June 2017 Photo by Anonymous



Pre-June 2017 Photo by Anonymous

S M INVESTMENT PARTNERS
680 Iwilei Road, Suite 700
Honolulu, Hawaii 96817
Telephone (808) 523-7750 ¶ Facsimile (808) 522-7866

June 23, 2017

Mr. Simon Velaj
Hang Loose Boat Tours, LLC
75-5707 Alii Drive
Kailua-Kona, HI 96740

Re: **License Agreement**

Dear Simon:

This is to provide notice that the License Agreement between S M Investment Partners and Hang Loose Boat Tours, LLC dated April 26, 2017 is cancelled effective immediately.

Section 5 of the Agreement states in part that Licensee shall:

- Comply with all applicable federal, state, county and local laws, statutes, ordinances, regulations, Covenants, Conditions, Restrictions applicable to the Premises
- Be solely responsible for obtaining all necessary permits, licenses and authorizations required to undertake the Permitted Activities

We have received information from members of the community including a city council member that rocks at the shoreline have been moved and trees have also been removed. You stated that you were in the process of leveling some pillars at the boat ramp. These activities not only require Landlord approval, but require permits from the state and/or county government. We did not authorize you to conduct any activities as described above nor can we condone this type of unlawful behavior, thus we have no option but to cancel your License Agreement due to your non-compliance.

Very truly yours,


ROY PFUND

Cc: Maile David
Guy Enriquez

EXHIBIT G

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made effective this 24 day of April, 2017 (the "Effective Date") by and between S M Investment Partners, a Hawaii limited partnership ("Licensor"), and Hang Loose Boat Tours, LLC, a Hawaii limited liability company ("Licensee"). Licensor and Licensee may each be referred to in this Agreement as a "Party", or collectively as the "Parties".

RECITALS

WHEREAS, Licensor owns the real property and improvements thereon, including the golf course commonly known as Sea Mountain Golf Course (the "Golf Course"), located on the island of Hawaii and identified by TMK 9-6-01:02 (the "Parcel"); and

WHEREAS, Licensee desires to use a portion of the Parcel for the purposes of parking and launching Licensee's vessel used to conduct lava viewing ocean tours.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of License. Licensor hereby grants to Licensee a temporary, revocable license (the "Revocable License") to use a portion of the Parcel (the "Premises") as described below in subsections 1.A and 1.B, and further described in Exhibit A, as attached hereto and hereby incorporated by reference.

A. Parking Lot of approximately 10,873 square feet

B. Boat ramp, approximately 35' x 25'

2. Revocable License.

A. Use. Licensee shall use the Premises solely for the following purposes (the "Permitted Activities") and for no other purposes whatsoever without Licensor's prior written approval:

i. Parking: Parking for Licensee's customers, parking for Licensee's trailer and boat, and storage for Licensee's trailer and boat.

ii. Boat ramp: Use of the boat ramp for passengers to embark and disembark Licensee's vessel.

B. Non-Exclusive use. The Parties acknowledge and agree that the Revocable License is non-exclusive, and nothing herein shall be construed to grant Licensee exclusive access to the Premises or any portion thereof.

C. **No Tenancy Established.** The Parties acknowledge and agree that the Revocable License is not a lease, and nothing in this Agreement shall create a tenancy between Licensor and Licensee with regard to the Premises.

3. **Term.** The term of this Agreement (the "Term") shall commence as of May 22, 2017 (the "Commencement Date") and expire May 31, 2018 (the "Expiration Date") unless earlier revoked by Licensor. Notwithstanding the foregoing, in the event Licensee does not provide THIRTY (30) days written notice prior to the Expiration Date, the Term shall continue on a month-to-month basis. In the event Licensee shall fail to vacate the Premises by the Expiration Date without Licensor's prior written consent, Licensee acknowledges and agrees that it shall (i) lose its status as a licensee and become a trespasser subject to eviction, and (ii) defend, indemnify and hold harmless Licensor for any claim, loss, damage or other expense, including but not limited to loss of business revenue.

4. **License Fee.** Licensee shall pay Licensor the sum of THREE THOUSAND SEVEN HUNDRED DOLLARS (\$3,700) (the "License Fee") per month, plus Hawaii's General Excise Tax ("GET") for the Revocable License.

A. **Submission of Payments.** Licensee shall pay the License Fee to Licensor, without notice, on a monthly basis and pursuant to the below payee and location.

Checks are payable to:
At following address:

S M Investment Partners
680 Iwilei Road, Suite #700
Honolulu, HI 96817

B. **Payment Due Date/Late Payment.** The License Fee shall be due and payable before the FIRST (1st) calendar day of each month during the Term. In the event any License Fee is received by Licensor after the FIFTH (5th) calendar day of any month during the Term, the License Fee shall be subject to a late charge of \$50.00 plus interest at the rate of ONE AND ONE HALF PERCENT (1.5%) per month, or the highest rate permitted by law in the State of Hawaii.

C. **First Month's License Fee/Security Deposit.** Upon execution of this Agreement, Licensee shall pay Licensor the sum of SEVEN THOUSAND SEVEN HUNDRED EIGHT AND 36/100 DOLLARS (\$7,708.36), which represents the first month's License Fee, a security deposit (the "Deposit") equal to ONE (1) month of the License Fee and applicable GET. The Deposit shall be given to Licensor as security for the performance of Licensee's obligations under this Agreement. The Deposit shall not be used as payment for any monthly License Fee, including the last month of the Term. The Deposit shall not earn interest and Licensor shall retain the right to commingle the Deposit with other funds. Licensor may deduct any sums necessary (collectively, the "Deposit Deductions") from the Deposit for the cost of (i) uncured damages, repairs and cleaning to the Premises, (ii) fees and fines incurred and unpaid as a result of Licensee's use of the Premises, and (iii) any other costs associated with Licensee's use of the Premises. The Parties acknowledge and agree that any Deposit Deductions shall be calculated and implemented in Licensor's sole discretion, and shall not be offset against any insurance proceeds that Licensor collects. Any balance of the Deposit not required to cover the Deposit

Deductions shall be returned to Licensee within THIRTY (30) days following the later of the Expiration Date or Licensee's vacation of the Premises. In the event the Deposit is insufficient to cover the Deposit Deductions, Licensor shall send Licensee an invoice that shall be due and payable within TEN (10) days of dispatch. The Deposit shall be adjusted from time to time to equal the current monthly License Fee

5. **Licensee's Representations and Warranties.** As a material term to this Agreement, Licensee hereby represents and warrants the following to Licensor (collectively, "Licensee's Reps and Warranties"):

A. Licensee shall comply with all applicable federal, state, county and local laws, statutes, ordinances, regulations, and Covenants, Conditions and Restrictions applicable to the Premises (collectively, "Laws").

B. Licensee shall comply with all rules, regulations and reasonable requests made by Licensor personnel of the Golf Course.

C. Licensee shall not store any property outside of the Premises.

D. Licensee shall not distribute any advertising, political or other handbills outside of the Premises.

E. Licensee shall provide prompt written notice to Licensor of any accident, injury or property damage occurring on or about the Premises.

F. Licensee shall prevent accumulation of refuse on or about the Premises, and ensure that refuse is placed in proper receptacles until collected.

G. Licensee shall maintain the Premises in a clean, orderly and sanitary condition at all times during the Term.

H. Licensee shall refrain from placing any signage on or about the Premises without Licensor's prior written consent.

I. Licensee shall be solely responsible for obtaining all necessary permits, licenses and authorizations required to undertake the Permitted Activities.

J. Licensee shall not undertake repair or maintenance activities on the Premises, but shall be under a continuing duty to: (i) immediately notify Licensor of any portion of the Premises which may require repair; and (ii) refrain from using any portion of the Premises which may require repair until Licensor has provided written consent. Notwithstanding, Licensee shall not be entitled to any offset or deduction of the License Fee, unless otherwise agreed by the Parties in writing.

Licensee's failure to comply with any of Licensee's Reps and Warranties shall be deemed an event of default, result in immediate revocation of the Revocable License, and Licensee shall forfeit all License Fees and the Deposit.

6. Limitation of Liability. LICENSEE EXPRESSLY ACCEPTS FULL RESPONSIBILITY FOR THE WELFARE OF ALL INDIVIDUALS AND PROPERTY, AND ALL CONSEQUENCES, FORESEEABLE OR UNFORESEEABLE, ASSOCIATED WITH ITS USE OF THE PREMISES, AND HEREBY ACCEPTS THE PREMISES IN IT'S "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION. LICENSEE HEREBY RELEASES LICENSOR FROM ALL LIABILITY WHATSOEVER, AND UNDERSTANDS AND AGREES THAT LICENSOR SHALL NOT BE LIABLE FOR INJURY TO ANY PERSON OR FOR THE LOSS OF, OR DAMAGE TO, ANY PROPERTY OCCURRING ON OR ABOUT THE PREMISES FROM ANY CAUSE WHATSOEVER, EXCEPT LICENSOR'S WILLFUL MISCONDUCT.

LICENSEE HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LICENSOR FROM ANY AND ALL CLAIMS, LOSSES, COSTS, KNOWN OR UNKNOWN HAZARDS, EXPENSES AND LIABILITY OF EVERY KIND OR NATURE WHATSOEVER, INCLUDING ATTORNEY'S FEES ARISING FROM ANY ACTIVITY PERMITTED OR SUFFERED ON OR ABOUT THE PREMISES.

LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE SAFETY OF THE PREMISES OR SUITABILITY OF THE PREMISES FOR LICENSEE'S INTENDED USE, IT BEING UNDERSTOOD THAT LICENSEE SHALL BE UNDER A DUTY TO INSPECT AND MAKE SAFE THE PREMISES PRIOR TO PERFORMING THE PERMITTED ACTIVITIES. IF LICENSOR MAKES EQUIPMENT OR MACHINERY AVAILABLE FOR LICENSEE, INCLUDING BUT NOT LIMITED TO ANY DOCKS, LICENSEE SHALL INSPECT AND BE UNDER A DUTY TO MAKE SAFE ALL SAID DOCKS, EQUIPMENT AND MACHINERY PRIOR TO USE.

THIS SECTION 5 SHALL SURVIVE ANY TERMINATION, REVOCATION OR EXPIRATION OF THIS AGREEMENT.

6. Insurance. Licensee shall, during the entire Term and any extension thereof, keep in full force and effect the below policies of insurance (collectively, the "Insurance Policies") with an insurance company or companies qualified to do business in the state of Hawaii and in forms satisfactory to Licensor. All Insurance Policies shall contain a provision in the policy and certificate of insurance specifically naming Licensor and its affiliated companies as additional insureds, and include an endorsement providing that the policies shall not be canceled, allowed to expire by non-renewal or modified without THIRTY (30) days written notice to Licensor prior to the effective date of the proposed cancellation, non-renewal or modification. Prior to the Commencement Date, Licensee shall deposit with Licensor current certificates of all Insurance Policies in a form and content acceptable to Licensor.

A. Commercial General Liability with minimum coverage of TWO MILLION DOLLARS (\$2,000,000) per occurrence for bodily injury and property damage, insuring against

all claims, demands or actions arising out of or in connection with occurrences within the whole of the Premises and adjacent exterior walkways or driveways, covering the use, occupancy or maintenance of the Premises and all operations of Licensee, the condition of the Premises, the acts or omissions of Licensee and its agents in the Premises, and for liabilities assumed under this Agreement.

B. Business Automobile Liability insurance with minimum coverage of TWO MILLION DOLLARS (\$2,000,000) for each occurrence, including owned and hired automobile coverage.

C. Worker's Compensation insurance offering statutory coverage and limits as required in the State of Hawaii for all of Licensee's employees and independent contractors.

D. Umbrella Insurance with minimum coverage of TWO MILLION DOLLARS (\$2,000,000) in the aggregate, or such other minimum limit as Licensor reasonably requires.

7. **Indemnification.** Licensee hereby agrees that it shall defend, indemnify and hold harmless Licensor and Licensor's affiliated entities, directors, officers, attorneys, accountants, agents, representatives, employees and their respective heirs, successors and assigns from and against any claim, demand, loss, expense (including attorney's fees), damage and other cost whatsoever resulting from: (i) any damage to property or person occurring on or about the Premises; (ii) any breach of, or failure to perform, any of Licensee's Reps and Warranties; and (iii) any breach of, or failure to perform, any covenant or obligation of Licensee contained in this Agreement.

8. **Licensor's Access to the Premises.** The Parties acknowledge and agree that Licensor and Licensor's authorized agents shall be permitted to enter the Premises at all times during the Term to inspect the Premises and ensure that Licensee is in compliance with the terms of this Agreement.

9. **Default and Remedies.** The occurrence of any of the following events shall constitute an event of default on the part of Licensee (collectively, the "Events of Default"):

- A. Failure to timely pay any amount due under this Agreement;
- B. Using the Premises for any activity other than the Permitted Activities;
- C. Engaging in any activity on the Premises or allowing any activity to occur on the Premises that is illegal, distasteful, or disruptive;
- D. Violating any Law;
- E. Failing to comply with any requests pertaining to the Premises made by Licensor and its authorized agents;
- F. Failure to comply with any of Licensee's Reps and Warranties; and

G. Failure to comply with any of the terms, conditions and covenants of this Agreement.

If Licensee shall engage in any Event of Default, Licensor shall have the option to immediately revoke the Revocable License, evict Licensee, retain all License Fees and the Deposit, and pursue any and all claims available at law and in equity.

10. **Return of Premises and Property.** Upon the expiration or termination of this Agreement, Licensee shall surrender the Premises to Licensor in the same condition when received by Licensee, reasonable wear and tear incident to proper use of such property excepted.

11. **No Transfer or Assignment.** This Revocable License is personal to Licensee and shall not be assigned in whole or in part, nor shall any rights or privileges granted in this Agreement be sold, transferred or assigned without the prior, express, and written consent of Licensor. For purposes of this Agreement, any merger, sale of majority stock ownership or other reorganization shall be deemed an "assignment" on the part of Licensee. Otherwise this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assigns.

12. **Governing Law.** It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Hawaii.

13. **Notices.** Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by email, certified or registered mail if sent to the respective address of each party as set as follows:

Licensor:
S M Investment Partners
680 Iwilei Road, #700
Honolulu, HI 96817
Tel: 808-539-9471

Licensee:
Hang Loose Boat Tours, LLC
75-5707 Alii Drive
Kailua-Kona, HI 96740
Tel: 808-345-4262

14. **No Waiver.** The failure of either party to this Agreement to insist upon the performance of any of its terms and conditions, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but they shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

15. **Entire Agreement.** This Agreement, together with any exhibits and the related written agreements specifically referred to herein, represents the only agreement among the Parties concerning the subject matter hereof and supersedes all prior agreements whether written or oral, relating thereto.

16. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in a writing signed by each Party or an authorized representative of each Party.

17. Counterparts. This Agreement may be executed in counterparts and by different Parties on different counterparts with the same effect as if the signatures thereto were on the same instrument. This Agreement shall be effective and binding upon all Parties hereto when all Parties have executed a counterpart of this Agreement.

18. Relationship of the Parties. The execution and performance of this Agreement, and the exercise of any rights hereunder are not intended, and shall not be construed, to create a partnership or joint venture between the Parties.

19. Construction. Although this Agreement may have been drafted by counsel for one of the Parties hereto, this Agreement has been subject to negotiation and modification prior to final execution and, accordingly, is not to be construed for or against either Party but is to be construed as if mutually drawn according to the general tenor of the language. The Parties hereby acknowledge that each is represented by legal counsel in connection with the Agreement, or each has knowingly waived their right to do so.

20. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never constituted a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement a legal, valid and enforceable provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible.

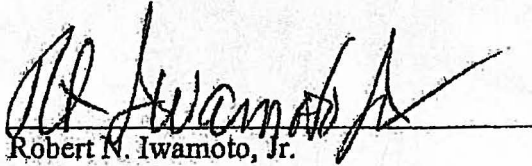
21. Singular/Plural. Any words or terms used herein in the singular shall be deemed to include the plural when applicable and vice versa.

[Signature page follows]

IN WITNESS WHEREOF the parties to this Agreement have executed same as of the date first above written.

Licensors:

S M INVESTMENT PARTNERS
D ba Sea Mountain Golf Course
By S M Investment, Inc.
Its General Partner


Robert N. Iwamoto, Jr.
Its President

Licensee:

HANG LOOSE BOAT TOURS, LLC

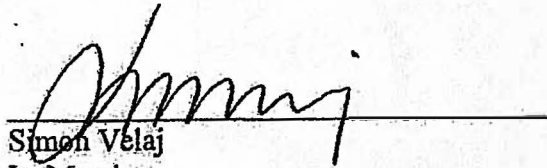

Simon Velaj
Its Member

EXHIBIT A

PUNALUPU BEACH RAMP

PUNALUPU BLACK SAND RESTAURANT

KALAHIA

WATERWORKS RECLAMATION PLANT

ADDER INSTITUTE

COLONY

WHOLE HOTEL

PUNALUPU HARBOR

THREAT AREA

PROJECT AREA

OLD GOVERNMENT ROAD

NEW GOVERNMENT ROAD

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☐ PROJECT BOUNDARY
☐ OTHER OWNERS

Punalu'u Resort

KA'U, ISLAND OF HAWAII

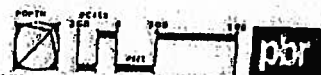


FIGURE 2

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE B. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER IN CHARGE 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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

ENF.: HA 17-36

NOTICE OF ALLEGED VIOLATION

JUN 28 2017

CERTIFIED MAIL RETURN RECEIPT

7014 2120 0003 1908 2345

Simon Velaj

Hang Loose Boat Tours, LLC

75-5707 Ali'i Drive

Kailua-Kona, HI 96740

SUBJECT: Alleged Unauthorized Alteration of Historic Properties and Unauthorized Land Use Within the Conservation District Located at Punalu'u Wharf, Ka'u, Hawai'i, TMK: (3) 9-6-001:002

Dear Mr. Velaj:

NOTICE IS HEREBY GIVEN you may be in violation of the Hawaii Revised Statutes (HRS), Chapter 6E, Historic Preservation and Hawaii Administrative Rules (HAR) 13-5, providing for land uses within the Conservation District, enacted pursuant to HRS, Chapter 183C.

A site inspection conducted on June 26, 2017, revealed remnants of the historic Punalu'u Wharf have been impacted allegedly with heavy equipment, and significant ground disturbance has occurred with the State Land Use Conservation District;

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

HISTORIC PRESERVATION

Pursuant to HRS, §6E-11(c) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which HRS, §6E-42 applies, without obtaining the required approvals.

Pursuant to HRS, 6E-11(f), Any person who violates this section shall be fined not more than \$10,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the court or an administrative adjudicative authority to be equivalent to the value

EXHIBIT H

of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

CONSERVATION DISTRICT

Pursuant to HAR, §13-5-6, no land use (s) shall be conducted in the Conservation District unless a permit or approval is first obtained from the Department of Board.

Pursuant to HAR, §13-5-2, "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;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land: and

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

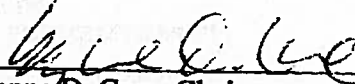
Pursuant to HRS, 183C-7, the Board of Land and Natural Resources may subject individuals to fines of up to \$15,000.00 per violation in addition to administrative costs. Should you fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

This notice is to inform you that the alleged alteration and destruction of historic properties, and permanent change in the land area within the Conservation District created by the land use was not reviewed nor authorized by the Department of Land and Natural Resources under HRS, 6E nor HAR, Chapter 13-5. The matter will be scheduled for a decision by the Board of Land and Natural Resources at a time and date to be announced. In the meantime, if you have received any authorizations for the alleged unauthorized work please inform the Department within 30-days so we can consider such information. Please note any information provided may be used in civil proceedings. Should you have any questions, contact Tiger Mills of the Office of Conservation and Coastal Lands at (808) 587-0382.

Simon Velaj
Hang Loose Boat Tours, LLC

ENF: HA 17-36

Sincerely,


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

C: SM Investment Partners
HDLO/DOCARE-East Hawai'i
County of Hawai'i-Planning Dept.

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

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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TM

ENF: HA 17-36

Roy Pfund
SM Investment Partners
600 Iwilei Road, Suite 700
Honolulu, HI 96813

JUN 30 2017

SUBJECT: Dirt and Fill Material Located Near the Shoreline Within the Conservation District Located at Punalu'u, Ka'u, Hawai'i, TMK: (3) 9-6-001:002

Dear Mr. Pfund:

As you are aware, alleged unauthorized land uses were conducted upon SM Investment Partners property at the subject location. There appears to be dirt and fill material near the shoreline that may affect ocean resources (**Exhibit 1 & 2**). At this time the Office of Conservation and Coastal Lands (OCCL) is requesting this material be removed from the Conservation District. While we are aware that the landowner did not conduct the alleged unauthorized work, it is our understanding that the alleged violator is no longer able to access your property to mitigate the area to protect our ocean resources.

Please inform the OCCL as to how the landowner will be handling this very important matter. Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at (808) 587-0382.

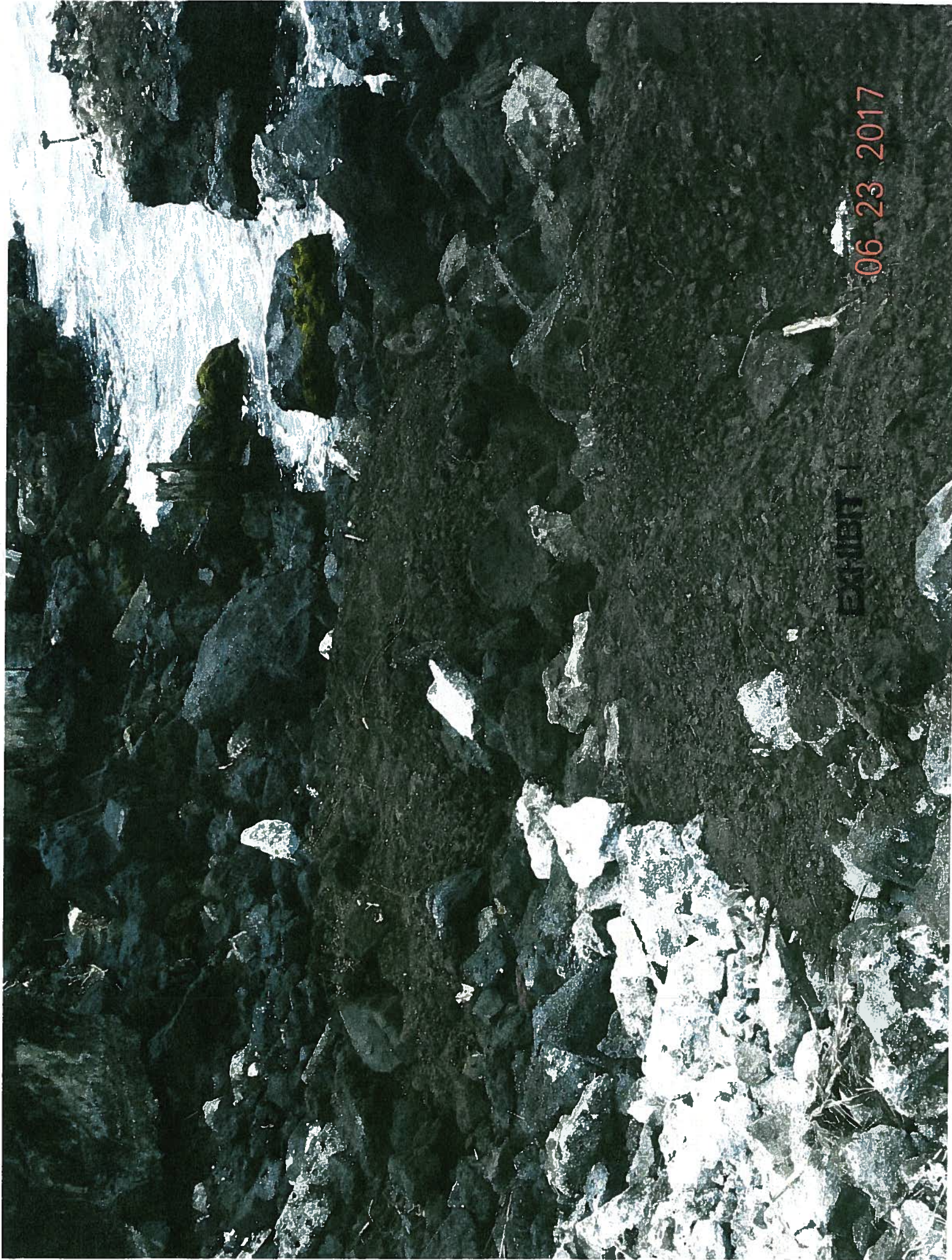
Sincerely,

A handwritten signature in black ink, appearing to read "Samuel J. Lemmo", is written over a large, stylized circular mark.

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

C: Chairperson
HDLO/DOCARE-Hawai'i
County of Hawai'i- Planning

EXHIBIT I



06 23 2017

EXHIBIT 1



06 23 2017

EXHIBIT 2

S M INVESTMENT PARTNERS

680 Iwilei Road, Suite 700
Honolulu, Hawaii 96817
Telephone (808) 523-7750 • Facsimile (808) 522-7866

July 3, 2017

Mr. Samuel J. Lemmo
Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: **DLNR Letter dated June 30, 2017 Ref: OCCL: TM**

Dear Mr. Lemmo:

I am responding to your letter referenced above in which you are requesting a response on how the landowner will address the fill near the shoreline. Our preliminary plan is as follows:

1. Contrary to your understanding, we will allow access to Mr. Simon Velaj of Hang Loose Boat Tours, LLC for the purposes of removing the fill material that he placed there.
2. Given the sensitive nature of any future work on the site, the DLNR will need to provide Mr. Velaj with approved guidelines for the work and communicate this to the community so he will be able to accomplish the removal safely. Who would be the appropriate person to contact on this for follow up?
3. Finally, since the Punalu'u boat ramp is primarily for local public use, would the DLNR be interested in taking over management of the ramp?

We look forward to your response. Please let me know if you have any questions.

Very truly yours,



ROY PFUND

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

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TM

ENF: HA 17-36

Roy Pfund
SM Investment Partners
600 Iwilei Road, Suite 700
Honolulu, HI 96813

JUL 05 2017

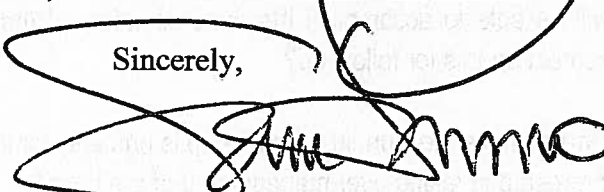
SUBJECT: Dirt and Fill Material Located Near the Shoreline Within the Conservation District Located at Punalu'u, Ka'u, Hawai'i, TMK: (3) 9-6-001:002

Dear Mr. Pfund:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your response to our request to remove the dirt and fill material near the shoreline on your property. Our letter seeks your assistance to conduct the work, not Mr. Velaj.

The goal is to be responsive to concerns and remove dirt and fill material away from the shoreline, out of the Conservation District, in a careful and respectful manner. We will try our best to notify the community and an OCCL representative can meet on site to accomplish this goal. Please contact Tiger Mills at (808) 587-0382 to coordinate this matter.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

C: Chairperson
HDLO/DOCARE-Hawai'i
County of Hawai'i- Planning

To whom it may concern:

On the day of June 23, 2017, I Simon Velaj, traveled to my property that was leased to me in Punaluu. I found over twenty people yelling and screaming at me after I had completed some cleaning of the parking lot. I knew that since I owned the lease to the property and had property insurance I was responsible for keeping the place safe and clean where I was going to conduct my business. Since I had my permit, lease and my insurance for the property I thought that working there would not disrespect anyone.

When I rented the place there were no signs indicating that there were any historical or sacred Hawaiian landmarks. All of a sudden, after the incident, almost everyone seems to suggest that this place has more historical value any officially marked historical Hawaiian landmarks. I personally did not mean to destroy anything that would have been sacred to anybody for the Hawaiian culture. The state of Hawaii and locals are trying to fine me with thousands of dollars of fines for a private land that was not officially marked as sacred or of historical value. If the DLNR and landlord informed me of any historical landmarks or sacred Hawaiian land, I would not have violated any officially marked historical landmarks or sacred sites.

When I started to clean the area up I moved a lot of trash that included broken glass, pampers, cigarettes, tampons and personal household trash that was dumped in the area. The area was used as a dump and not as a sacred landmark of this private property. No sacred rock was destroyed of which some have accused me of. On the old wharf the only thing I hammered out was old cleats that were rusted and sticking out of which I KNEW was VERY DANGEROUS. The reason I took them out was because I saw a tourist get hurt in that area and was bleeding in front of me. I felt responsible for the area under my responsibility and care I decided to remove the sharp metal object as they were seen as dangerous.

Simon Velaj
75-5707 Alii Drive
Kailua Kona, HI 96740

EXHIBIT J

Account Update - 00019016 - Beaches and Shores

Customer: VELAJ, SIMON

Client: HANG LOOSE BOAT TOURS, LLC

Activity Addresses Services Users Fees Billings Payments Vessels Documents

Gross Receipts Change History Transactions Deposits Ledger

Overview

Type	Status	Residency	Location	Berth
Commercial	Active	Resident ▼	Beaches and Shores	

Vessel Name	Since	Credit Balance	Payment Due	Amount Due
HANG LOOSE	08/01/2017	\$0.00	06/13/2017	\$0.00

Permits and Waitlists

Permit / Waitlist Type	P / W	Number	Issued On	Last Renewed	Expiration Date	Action
Commercial Use - Operational Area Use	P	CO033992	06/06/2017	--	05/31/2018	Cancelled

Applications

Application Type	Number	Submitted	Status	Action

Notices

Notice Type	Date	Delivery Method	Receipt Date	Due Date
Billing Statement	08/01/2017	Regular Mail		10/02/2017

Make Payment

Update

EXHIBIT K

DAVID Y. IGE
GOVERNOR OF HAWAII

DLNR-BOR-HHK

2017 JUL 10 AM 9:18



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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION**

HAWAII DISTRICT
74-380 KEALAKEHIE PARKWAY
KAILUA-KONA, HAWAII 96740
PHONE: (808) 327-3690 FACSIMILE: (808) 327-3693

07/07/2017

I, Simon Velaj with Hang Loose
Boat Tours, LLC. am resigning my
permit for Punalu Private Boat Ramp
due to recently losing my lease with
the land owners.

Sincerely,

Simon Velaj

Simon Velaj

Kailua Kona, HI 96740



DIVISION OF BOATING AND OCEAN RECREATION

Department of Land and Natural Resources, State of Hawaii

Hawaii District

74-380 Kealahou Parkway, Kailua-Kona, HI 96740

Phone: (808) 327-3690 • Fax: (808) 327-3675



Permit Number:

CO033992

Account Number:

00019016

COMMERCIAL USE

Beaches and Shores, Hawaii

Permittee: HANG LOOSE BOAT TOURS, LLC

Effective Date:

06/01/2017

Business Name: HANG LOOSE BOAT TOURS, LLC

Permit Expiration Date:

05/31/2018

Vessel Name: HANG LOOSE

Vessel Doc Type: Coast Guard Documentation

Vessel Doc #: 01251486

Vessel Type: Cabin Motorboat

Vessel Use Type: Commercial Passenger

Vessel Length Overall: 34 feet 0 inches

Passenger Capacity: 24

APPROVED:
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION



* Punalu'u launch ramp; private

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

COMMERCIAL USE PERMIT

Date: 06/01/2017 Permit No.: CO033992 Account No.: 00019016

This permit authorizes Hang Loose Boat Tours, LLC (hereinafter referred to as the Permittee) to conduct (describe commercial activities) Commercial Passenger on the ocean waters of the State of Hawaii located on the island of Hawaii in the Non-Designated Hawaii Ocean recreation management area or non-designated management area, to commence on 06/01/2017 and expires on 05/31/2018 unless terminated for cause.

Copies of the following exhibits are submitted for review and the record (if applicable):

- ☒ General Excise Tax License
- ☒ Certificate of commercial insurance policy naming the State of Hawaii as an additional insured, containing sufficient coverage limits and meeting all other requirements as outlined in Hawaii Administrative Rules § 13-231-65
- ☒ Certificate of Good Standing from the Hawaii Department of Commerce and Consumer Affairs
- ☒ PUC for vehicle(s), if applicable
- ☒ Vessel Documentation and/or Vessel Registration, if applicable
- ☒ USCG Certificate of Inspection or approved marine inspection pursuant to HRS § 200-13, if applicable

1. The Permittee agrees to abide by all applicable Federal, State, and County laws and all boating and shore water rules promulgated by the Department of Land and Natural Resources (referred to as the Department). In addition to any fines or penalties a court of law may impose, any violation(s) of the provisions of the aforementioned laws or rules may cause this permit to be terminated by the Department of Land and Natural Resources Division of Boating and Ocean Recreation (the "Department") by written order of its Representative, and the vessel or operation shall immediately cease commercial activity.

**please note: if you cross county, state or private land, and/or conduct commercial activities therein, you may be required to obtain a permit from the landowner. Issuance of a commercial use permit from DOBOR does not grant you transit rights to access the shoreline or conduct commercial activities on shore.*

2. The Permittee agrees to operate the vessel or equipment described in this permit in accordance with all applicable rules and regulations regarding passenger-carrying capacity and commercial vessel activities.
3. When applicable, the Permittee agrees to present proof, upon request, of Coast Guard certification for the vessel(s) registered with the Department.
4. The fee for this commercial use permit will be as follows:
 - a. Commercial permittees operating from state land: The cost for a commercial use permit shall be \$200.00 per month or 3% of your gross receipts, whichever is greater.
 - b. Commercial permittees operating from a private or county facility or land and said operation does not involve the use of state fast land or land within a shoreline area: \$200.00 per month due and payable by the first day of each month.
 - c. Commercial permittees possessing a harbor commercial use permit and a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, who are paying 3 per cent of gross receipts per month

under the harbor commercial use permit, shall not be required to pay an additional 3 per cent of gross receipts per month under the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, provided that the payment made to the department is based on the total of gross receipts acquired under the harbor commercial use permit and the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate.

The foregoing fees are subject to change based upon amendments made to Hawaii Revised Statutes and/or Hawaii Administrative Rules.

5. The fees stated above are due and payable to DOBOR in advance of the first day of the month. Not later than 30 days following the end of the month, the Permittee shall submit to the Division a report of gross receipts for the month plus payment of any additional amount required by the percentage of the gross receipts specified in paragraph 4. Failure to submit the report of gross receipts as required shall be cause for termination of the commercial use permit.
 6. During scheduled events pursuant to a marine event permit or other official permission and authorized by the State or U.S. Coast Guard, vessel(s) or operations issued commercial use permits may be required to adjust their schedules or temporarily cease activity as directed by the Department.
 7. The Permittee agrees to notify the Department in writing of any changes concerning ownership, address, vessel inventory or operator(s) of a vessel(s) within 7 days of the date of change. Failure to promptly notify the Department of any changes may cause this permit to be terminated by the Department.
 8. The Permittee shall at all time use due care for public safety and shall defend, hold harmless and indemnify the State of Hawaii, its officers, agents and employees from and against all claims or demands, including claims for property damage, personal injury or death arising out of or incident to the operation of said vessel or operation.
 9. The permit charges are for the privilege of operating a commercial vessel or operation in state navigable waters in the manner stated above. Any other use of harbor/ramp facilities or services must be requested and approved separately.
 10. The duration of this commercial operating area use permit shall not exceed the period of 1 year from the date of commencement.
 11. The Department may immediately revoke a commercial use permit without a hearing for activity that endangers or may endanger the health or safety of passengers or the public, and may suspend or revoke a commercial use permit for violation of any rules of the Department, if the activity or offense is not corrected following seventy-two (72) hours notice by the Department of the violation. The permit holder shall have ten(10) days from receipt of the notice of suspension or revocation to request in writing an administrative hearing. The administrative hearing is solely for the purpose of allowing the permit holder to contest the basis for suspension or revocation of the permit.
-
12. This commercial use permit shall be kept in the immediate possession of the Permittee or its agent(s), or at a place of safekeeping in the immediate vicinity of the permitted activity at all times when operating under this commercial use permit and Permittee or its agent(s) shall display the same upon the demand of a Federal, State, or County Enforcement Officer, or representative of the Department.
 13. Gross Receipts Defined: Gross receipts shall include all receipts, whether by coin or currency, on account, by check or credit card, derived or received by the Permittee as a result of its operation herein granted and shall include the sales prices received or billed by the Permittee from the sale or rental of its equipment/or services of commercial passengers
lava viewing excursions. The Permittee shall not be credited with, nor allowed to have any reduction in the amount of the gross receipts, as hereinabove defined, which results from any arrangements for illegal rebates or kickbacks or hidden credits given or allowed to customers.
 14. Business Practices and Records: In connection with the obligations of the Permittee, the Permittee hereby agrees to:
 - a. Prepare and keep for a period of not less than three (3) years following the end of each permit year adequate records which shall show daily receipts from all sales and other transactions by the Permittee. The Permittee shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether for cash or credit. The Permittee shall issue to each customer a receipt or sales slip for each transaction, and must be recorded on

serially-numbered receipts or sales slips. The Permittee further agrees to keep in storage for at least one (1) year following the termination, suspension, or revocation of the permit, all pertinent original sales records, serially-numbered sales slips and such other sales records, as would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of the Permittee's sales and gross receipts.

- b. Submit to the Department on or before the 30th day of each and every month following each permit month (including the 30th day of the month following the end of the term) at the place fixed for payment of permit fees, a written statement using forms prescribed by the Chairperson of the Department of Land and Natural Resources to be certified as correct by the Permittee or by a person duly authorized by the Permittee to so certify showing in accurate detail, the amount of gross receipts for the preceding month and shall further submit to the Department on or before the 60th day following the end of each permit year at the place fixed for payment of fees, a written statement certified as correct by the Permittee or by a person duly authorized by the Permittee to so certify showing in accurate detail the amount of gross receipts during the preceding year duly verified by an independent Certified Public Accountant. The statements referred to herein shall be in such a form and style and contain such detail and breakdowns as the Department may require. Without any prejudice to any remedies herein provided for such default, if the Permittee shall fail to promptly furnish any such monthly report or Certified Public Accountants Annual Verification report, the Department may have such report prepared on the Permittee's behalf by an accountant to be selected by the Department, at the expense of the Permittee. The Permittee shall furnish to such accountant all records requested for the purpose of preparing such reports, and the Permittee shall pay to the Department all expenses incurred by the Permittee in securing such reports. Furthermore, the Department may make assessments upon the Permittee by recourse to such procedures selected by the Department which would produce reasonable gross receipts expectation upon which percentage charges may be computed.

In the event that records have not been prepared and kept in accordance with the provisions set forth herein, the Department shall, in addition to all other payments required herein, be entitled to demand and receive an additional payment of ten percent (10%) of the applicable fee if the Permittee is paying fees based on percentage for the period or periods involved. Permittee shall grant unto the Department at all reasonable times access to all books, accounts, records and reports, including gross income tax reports, showing daily sales and at any reasonable times on twenty-four (24) hours notice will permit a complete audit to be made by the Department's Account or by a Certified Public Accountant of the Permittee's entire business affairs and records relating to the business authorized by this permit for the term of this permit.

The Permittee will cooperate fully in the making of any inspection, examination or audit. Should such audit by the Department's Accountant or by a Certified Public Accountant disclose that rental has been underpaid by two percent (2%) or more for any period under examination, the Department shall, in addition to the remedies provided in the above, be entitled to reimbursement of the reasonable cost of any such audit in addition to the deficiency. If such audit by the Department's Accountant or by a Certified Public Account shall disclose that rent has been underpaid by five percent (5%) or more for the period under examination, the Department shall have the right, upon ten (10) days written notice to terminate this permit.

15. Time of Payment: The minimum monthly guaranteed fee required herein, shall be paid monthly, in advance, without notice, on the first day of each and every month of each and every year of the term hereof.
16. This permit does not grant any property rights or exclusive privileges.
17. The Department reserves the right to impose further restrictions.
18. Restrictions:

Commercial passenger activities from Punalu'u launch ramp on Hawaii island(see License Agreement on file). Operations to adhere with County, State and Federal rules(see USCG MSIB 17-002 Kamokuna Lava Delta Safety Zone). ORMA sticker #S02551.

I AGREE TO THE TERMS, CONDITIONS AND CHARGES:

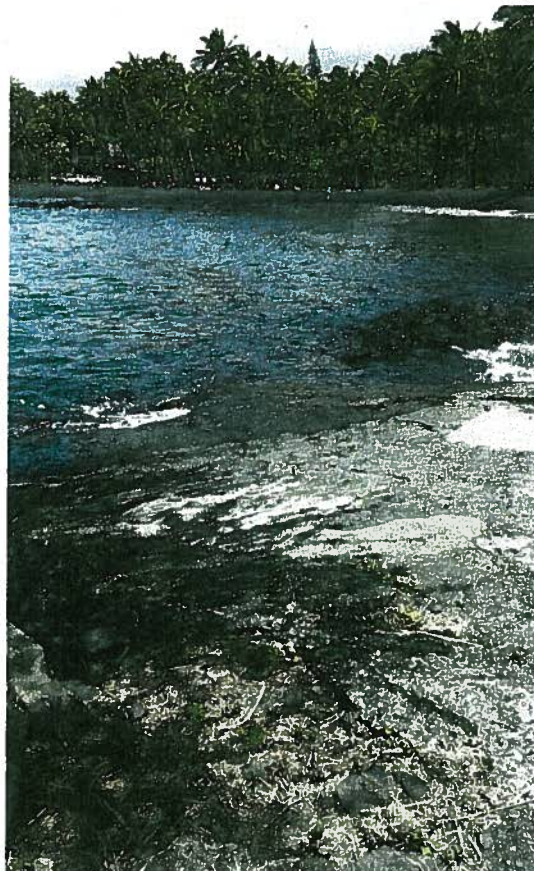
Vessel or Motor Powerboat Hang Loose Boat Tours, LLC
Address 7' Al Drive
City/State/Zip Maui, Hawaii 96740
Business Phone _____ Email Address hanglooseboat@gmail.com
Cellular Phone _____ Fax Number _____
Signed by (Authorized Representative) [Signature]
Print Name SIMON VELA Date Signed: JUNE 13 17

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

BY: [Signature]
DATE: 6/13/17



By Julia Neal at <http://kaunewsbriefs.blogspot.com>



July 19, 2017

Punalu'u Boat Ramp

EXHIBIT L

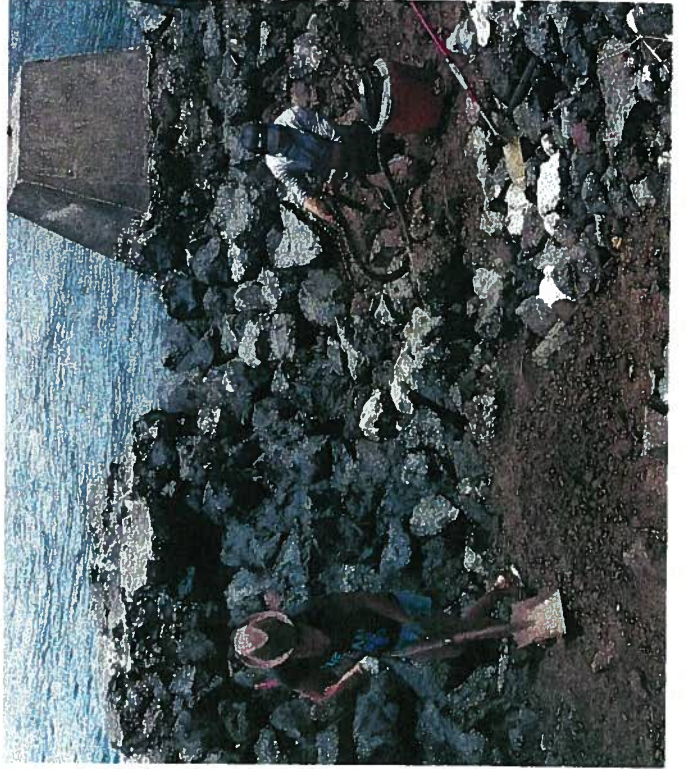
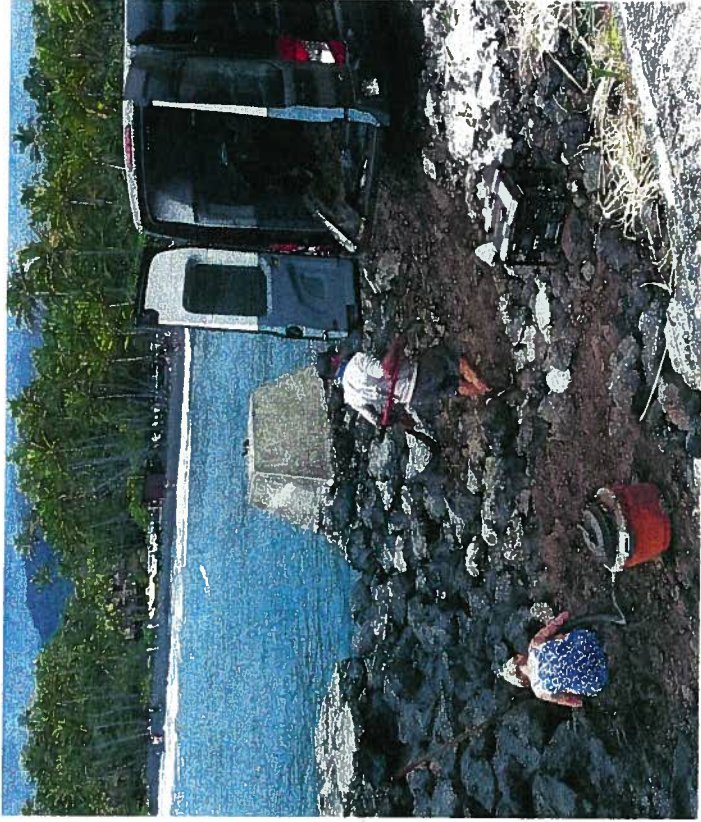
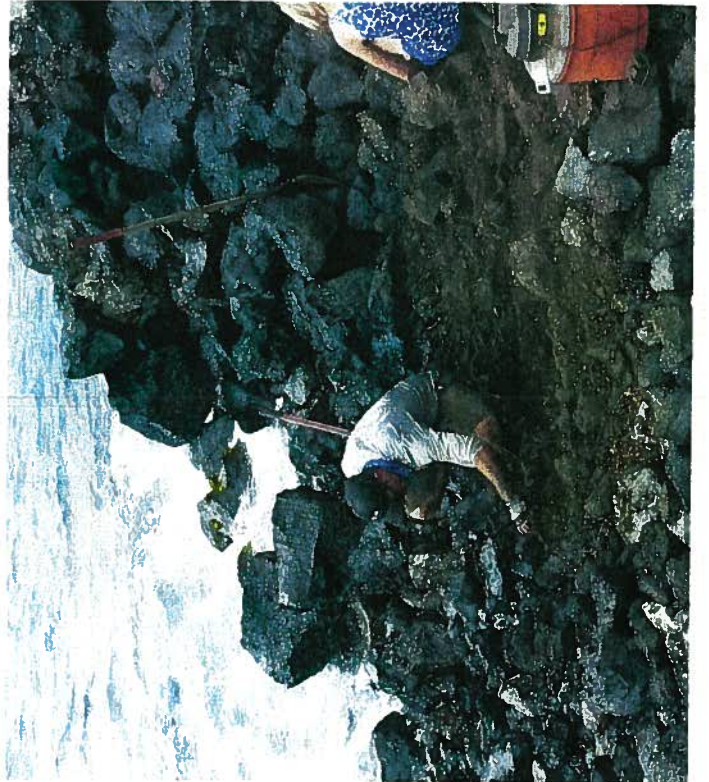


EXHIBIT M





BEFORE July 19, 2017 923am



AFTER

EXHIBIT N.

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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 Districts

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 HAR §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 HAR §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 a void damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential "harm to the resource"¹ caused by the violation.

Once the baseline for the penalty range has been established according 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 conservation, shoreline alteration, or landscape alteration (See Appendix B: Definitions) Adapted from Florida Department of Environmental Protection 2000 Administrative Fines and Damage Liability, Ch. 62B-54.

² Penalty amount may be adjusted up or down, based on additional considerations, such as the actual extent of the direct damages, significance of any off-site 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 beginning 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

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-03-40 and HA-05-08 have treated the removal of non-native, invasive, or noxious 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	Comparable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation of 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 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/ sq. ft., as 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.⁵ 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

⁵ 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.

Comparable Harm to Resource	Identified land use permit and Penalty Range	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.⁶ 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 resource	Identified land use permit beginning 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 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. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ^d

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) "OCCL 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., Pintz, S., Dierking 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.
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- 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.
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- Florida Department of Environmental Protection. 2007. Program Directive 923. Settlement guidelines for civil and administrative penalties. www.dep.state.fl.us/admin/depdirs/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 (SCREEN) 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 Hanauma Bay to be \$37.57 million (\$2,568/m²), of the coral reefs in Kihui 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/yd² of damage to seagrass beds for the first yd² damaged and \$75/yd² 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 Pilaa, \$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)	Harm to Resource (actual & 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 of 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: _____