

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

January 10, 2019

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

- SUBJECT: REQUEST FOR APPROVAL TO ADOPT AMENDMENTS TO AND COMPILE HAWAI'I ADMINISTRATIVE RULES, TITLE 13, SUBTITLE 5, PART 1, CHAPTER 104, "RULES REGULATING ACTIVITIES WITHIN FOREST RESERVES" BY:
- A. ADDING SUBCHAPTER 4, "FEES AND CHARGES", THAT ESTABLISHES FEES AND CHARGES RELATING TO FOREST RESERVES;
 - B. MAKING OTHER SUBSTANTIVE AMENDMENTS, INCLUDING ADDING, AMENDING, AND REMOVING VARIOUS DEFINITIONS; AMENDING PENALTY, ABANDONED AND UNATTENDED PROPERTY, FIRE USE RESTRICTIONS, CLOSING OF AREAS, VEHICLES AND TRANSPORTATION, AND GENERAL, CAMPING, COLLECTING, COMMERCIAL, AND ACCESS PERMIT PROVISIONS; AND CONFORMING CERTAIN SECTIONS OF CHAPTER 13-104, HAR, TO OTHER ADMINISTRATIVE RULES PROMULGATED BY THE DIVISION OF FORESTRY AND WILDLIFE; AND
 - C. MAKING NON-SUBSTANTIVE AMENDMENTS TO NUMEROUS SECTIONS FOR THE PURPOSES OF CLARITY, CONSISTENCY, AND STYLE.

REQUEST FOR DELEGATION OF AUTHORITY FOR PERMITS AND OTHER ACTIONS UNDER HAWAI'I ADMINISTRATIVE RULES, TITLE 13, SUBTITLE 5, PART 1, CHAPTER 104, "RULES REGULATING ACTIVITIES WITHIN FOREST RESERVES", TO THE CHAIRPERSON, THE ADMINISTRATOR, AND DISTRICT MANAGERS OF THE DIVISION OF FORESTRY AND WILDLIFE.

LEGAL AUTHORITY:

Section 183-1.5, Hawai'i Revised Statutes (HRS), relating to the general duties of the Department of Land and Natural Resources (Department) regarding forests and forest reserves,

including the power to manage and regulate lands set aside as forest reserves

Section 183-2, HRS, relating to the authority to adopt, amend, and repeal administrative rules relating to forest reserves through Chapter 91, HRS, rulemaking

BACKGROUND:

Chapter 13-104, Hawai'i Administrative Rules (HAR), regulates activities within forest reserves established pursuant to Sections 183-11 and 183-15, HRS. Chapter 13-104, HAR, further clarifies how the statutes are carried out for the management and regulation of state forest reserves under Chapter 183, HRS. Subject to Chapter 91, HRS, the Department is mandated to adopt, amend, and repeal rules for and concerning the preservation, protection, regulation, extension, and utilization of the forest reserves as designated by the Department. Initial management regulations for the forest reserves date back to 1943; in 1981 Chapter 13-104, HAR, was adopted to continue those functions. The Chapter was last comprehensively amended and compiled in 1993, with a portion on commercial harvest permits most recently amended in 2005. The rules are presently in need of revision to clarify, update, and include the fees and charges relating to the forest reserves under the jurisdiction of the Division of Forestry and Wildlife (DOFAW).

Following the rulemaking procedures set forth in Chapter 91, HRS, DOFAW proposes amendments to Chapter 13-104, HAR, for the purpose of setting fees and charges through the rulemaking process. The proposed amendments establish a subchapter that sets fees and charges relating to forest reserves under the jurisdiction of DOFAW to offset the expenses of operating, maintaining, and managing facilities and services. Additionally, substantive amendments, including changes to provisions on penalty; abandoned and unattended property; fire use restrictions; closing of areas; vehicles and transportation; and general, camping, collecting, commercial, and access permits are proposed in this latest compilation. The following summarizes the major proposed amendments to Chapter 13-104, HAR.

Penalty - §13-104-3

The proposed amendment updates the penalty section to clarify that a violation of a forest reserve rule is currently subject to statutory general and administrative penalties in Chapter 183, HRS, including the possible imposition of per violation penalties and forfeiture in accordance with Chapter 199, HRS. Currently, the only provision for imposition of criminal penalties in state forest reserves are from timber trespass violations. Further, in accordance with statutory mandate, DOFAW recommends specifying that revenues generated from fines and penalties imposed pursuant to §13-104-3, HAR, shall be deposited into the Forest Stewardship Fund as detailed in Chapter 195F-4, HRS. Other proposed amendments provide clarification that restrictions and prohibitions imposed by this Chapter will not apply to state employees or their agents acting in the scope of their employment and that penalties imposed may take into account emergency situations where necessary to protect life or property.

Abandoned and Unattended Property - §13-104-5.5

A new section is added to address the increasing problem of personal property abandoned in forest reserves that are detrimental to natural resource management; dangerous to public

health, safety, or welfare; and a blight to aesthetic enjoyment of state forest reserves. The provision creates a process to address removal of found items, waste, abandoned vehicles, and dumped bulky items left in the forest reserves.

Fire Use Restrictions - §13-104-7

Currently, this section prohibits the use of any motor vehicle, motorized equipment, internal combustion engines, or electric motors unless equipped with efficiently operating fire or spark arresting equipment. DOFAW finds that the majority of passenger vehicles used in forest reserves, including state passenger vehicles, do not have spark arresters as part of the original factory equipment. Requiring passenger vehicles to be customized with spark arrestors would burden the State as well as other users of the forest reserves with additional costs. Other types of vehicles, such as ATVs sold in the United States, already come equipped with spark arresters as part of the original factory equipment.¹ Further, reducing wildland fire risk from parked vehicles is addressed by §13-104-11, HAR, which prohibits parking any vehicle, except in designated areas. For consistency with current practice and because mitigation measures are already in place, DOFAW recommends removing the prohibition relating to efficiently operating fire or spark arresting equipment.

Closing of Areas - §13-104-7.5

A new section is added clarifying how the Board of Land and Natural Resources (Board) or its authorized representative may close or restrict all or part of a forest reserve for reasons of public health, safety, or welfare and for management activities; as well as to protect any biological, geological, or cultural resources that may be affected.

Vehicles and Transportation - §13-104-11

Currently, Chapter 13-104, HAR, prohibits driving, operating, or using any aircraft under certain circumstances. DOFAW proposes amending this section to include unmanned aircraft systems (UAS) commonly known as “drones” in this prohibition in the areas and airspace left to state jurisdiction. In order to ensure that a UAS is operated or used with due caution for the rights or safety of others and in a manner that does not endanger any person or property, DOFAW recommends clarifying that a person operating a UAS in a forest reserve must do so with a permit issued from the Board or its authorized representative.

Camping - §13-104-16

The “Residence on forest reserve lands” section is changed to a camping section that will assist with management and enforcement needs related to unauthorized presence in the forest reserve inconsistent with conservation of forest reserve resources. Use of a camping regulation is a more appropriately named rule for the forest reserves and will provide clarity on allowed uses in the forest reserve.

General Permit Provisions - §13-104-18

Currently, Chapter 13-104, HAR, authorizes the Board or its authorized representative to waive permit charges under certain unspecified circumstances if in the public interest. Along these lines, DOFAW recommends allowing charges and fees to also be reduced by the Board

¹ Ralph H. Gonzales, “Off-Highway Vehicle Spark Arrestors: Spark Arrestors and the Prevention of Wildland Fires,” USFS Fire Management Tech Tips (2003), <http://www.fs.fed.us/eng/pubs/html/03511307/03511307.htm>.

or its authorized representative. An additional proposed amendment clarifies that the Board is authorized to set, approve, and update a forest product price list that reasonably reflects fair market value and specifies when charges may be assessed. Allowing the Board to set, approve, and update this price list will allow for flexibility in making adjustments based on current market and industry assessments. Also, DOFAW recommends adding a provision requiring permit applicants to provide identification for all persons included on a permit to the general provisions for permits section to ensure consistency that this requirement applies to all permits. Currently, this requirement only applies to certain permit sections within Chapter 13-104, HAR.

Camping, Collecting, Commercial, and Access Permits - §§13-104-19, -21, -22, & -23

Proposed amendments to these sections include removing the requirement that permits can only be obtained from DOFAW district offices. By removing this language other locations, such as the downtown DOFAW administration office or online services, can be authorized to process permit applications helping improve accessibility of services to the public seeking such permits.

Camping Permits - §13-104-19

The existing section specifies that no person, group, organization, or association is allowed to remain at a camping site for longer than seven days, and allows the Board or its authorized representative to extend the length of stay upon good cause, but no longer than a cumulative total of 14 days. The Division recommends removing the 14-day limitation to allow certain authorized persons camping for official business within forest reserves, such as for building fences or conducting research, to camp for longer period of time. Another proposed amendment specifies that upon emergencies, such as for reasons of public health, safety, and welfare, camping permits may be denied, cancelled, or terminated.

Collecting Permits - §13-104-21

There are currently no limitations to the number of collecting permits being issued to the same person or entity within a specified period of time as set forth in §13-104-21, HAR. The amendment to this section proposes to limit collecting permits to no more than one issued to the same person or persons, group, organization, or association listed on the permit for collecting the same forest products, in a given seven day period. The Division finds that permit issuance should be consistent with such limitations as currently specified for the issuance of camping permits and commercial harvest permits in Chapter 13-104, HAR. Additionally, DOFAW recommends for purposes of consistency with current commercial harvest permit provisions that collecting permit applications be considered on certain conditions.

Commercial Permits - §13-104-22

The Division is recommending amendments establishing and consolidating certain types of commercial permits, including for commercial use, commercial harvest, and commercial salvage. The addition of these different types of permits will provide clarity to the public on allowed commercial use of the forest reserves. Additionally, the proposed rule gives notice that commercial permits for tree harvesting must be done in accordance with a management plan as required by §183-16.5, HRS. Lastly, DOFAW finds that certain forest products are

harvested and directly resold with minimum processing involved. The Division therefore recommends removing the subsection (d) language against direct commercial resale of harvested material as there is little material benefit to maintain the current prohibition. This proposed amendment furthers DOFAW's mission by providing the public with sustainable forest product opportunities.

Access Permits - §13-104-23

To ensure the safety of forest reserve users, an amendment is proposed authorizing the Board or its authorized representative to require access permits to control the use of a forest reserve when any portion has been closed or restricted. This permit will also be required for people who are conducting scientific research activities otherwise prohibited by the chapter.

Additional substantive amendments are proposed to add, amend, and remove various definitions as well as conform certain sections of Chapter 13-104, HAR, to other administrative rules promulgated by DOFAW. Among other proposed amendments are non-substantive changes to numerous sections for the purposes of clarity, consistency, and style.

SUMMARY OF PROPOSED AMENDMENTS:

A compilation of the proposed amendments to Chapter 13-104, HAR, is provided as Exhibit 1 of this submittal. A summary of all of the proposed amendments follows:

Non-substantive amendments for the purposes of clarity, consistency, and style are made to:

- The title page, §13-104-1, §13-104-2, §13-104-3, §13-104-4, §13-104-5, §13-104-6, §13-104-7, §13-104-8, §13-104-9, §13-104-10, §13-104-11, §13-104-12, §13-104-13, §13-104-14, §13-104-15, §13-104-17, §13-104-18, §13-104-19, §13-104-20, §13-104-21, §13-104-22, §13-104-23, and §13-104-24.

Substantive amendments are made to:

- §13-104-2, "Definitions" by:
 - Adding definitions for "abandoned and unattended property", "commercial use", "forest product", "structure" and "tree harvesting";
 - Amending definitions for "camping", "commercial activity", and "compensation"; and
 - Removing definitions for "residing" and "spark arrester".
- §13-104-3, "Penalty" by:
 - Clarifying that violators of the rules shall be subject to penalty as established in statute rather than guilty of a misdemeanor;
 - Specifying that revenues generated from fines and penalties imposed pursuant to this section shall be deposited into the Forest Stewardship Fund;
 - Adding a seizure and forfeiture provision for certain items used or taken in violation of this Chapter;
 - Clarifying that restrictions and prohibitions imposed by this Chapter will not apply to state employees or their agents acting in the scope of their employment; and
 - Clarifying that any penalty imposed may take into account emergency situations.

- §13-104-7, “Fire Use Restrictions” by removing the requirement that motor vehicles, motorized equipment, internal combustion engines, or electric motors used in a forest reserve be equipped with efficiently operating fire or spark arresting equipment.
- §13-104-11, “Vehicles and Transportation” by:
 - Clarifying that the act of driving, operating, or using any unmanned aircraft system is prohibited under certain circumstances; and
 - Clarifying that a permit is required to launch, land, or operate any unmanned aircraft systems.
- §13-104-16, “Residence on Forest Reserve Lands” by:
 - Changing the section heading from “Residence on Forest Reserve Lands” to “Camping”; and
 - Replacing the prohibition of residing within a forest reserve with prohibiting camping within forest reserves except with certain authorizations and as permitted by the Department rules.
- §13-104-18, “General Provisions for Permits” by:
 - Specifying that violators of permit conditions or the rules may be ordered to leave the forest reserve by the Department and may be denied future forest reserve permits or subject to the imposition of additional permit restrictions;
 - Specifying that fees and charges may be reduced by the Board or its authorized representative if the reduction is in the public interest;
 - Adding a provision that allows the Board to set, approve, and update a forest product price list that reasonably reflects fair market value and clarifying when charges may be assessed;
 - Adding a provision stipulating that by signing permits and entering into forest reserves, all persons included on the permits agree to comply with permit terms and conditions and applicable laws and regulations, and consents to present the permit to a duly authorized representative of the Department upon request; and
 - Adding a provision requiring permit applicants to provide identification for all persons included on the permit, which may include names, addresses, and telephone numbers.
- §13-104-19, “Camping Permits” by:
 - Removing language specifying that camping permits shall only be obtained from DOFAW district offices;
 - Removing language requiring permit applicants to provide identification for all persons included on a permit, as this is now a general condition of all permits;
 - Removing language specifying the maximum allowable extended length of stay; and
 - Specifying that for health, safety, and welfare reasons, camping permits may be denied, cancelled, or terminated.
- §13-104-20, “Special Use Permits” by:
 - Clarifying that the Board or authorized representative may waive the deadline for receiving applications upon showing of good cause; and
 - Specifying that special use permits shall be considered on certain conditions.
- §13-104-21, “Collecting Permits” by:
 - Removing language specifying that collecting permits shall only be obtained from DOFAW district offices;

- Removing language requiring permit applicants to provide identification for all persons included on a permit, as this is now a general condition of all permits;
- Specifying that collecting permit applications shall be considered on certain conditions; and
- Adding a provision limiting the number of collecting permits issued within a specified period of time under certain conditions.
- §13-104-22, “Commercial Harvest Permits” by:
 - Changing the section heading from “Commercial Harvest Permits” to “Commercial Permits”;
 - Authorizing the Board or its authorized representative to issue commercial use permits and specifying requirements for such permit applications and requests;
 - Removing language specifying that commercial harvest permits shall only be obtained from DOFAW district offices;
 - Specifying that commercial harvest permits shall be considered on certain conditions and that tree harvesting shall be done in accordance with a management plan as required by §183-16.5, HRS;
 - Removing language specifying that commercial harvest permits will not be issued for direct resale of harvested material; and
 - Authorizing the Board or its authorized representative to issue commercial salvage permits and specifying requirements for such permit applications and requests.
- §13-104-23, “Access Permits” by:
 - Removing language specifying that access permits shall only be obtained from DOFAW district offices;
 - Removing language requiring permit applicants to provide identification, as this is now a general condition of all permits;
 - Authorizing the Board or its authorized representative to require access permits for the purpose of controlling the use of a forest reserve when any portion has been closed or restricted; and
 - Authorizing the Board or its authorized representative to require access permits for scientific research activities otherwise prohibited by this Chapter.
- §13-104-5.5, “Abandoned and Unattended Property” is added, which:
 - Prohibits abandoning or leaving personal property unattended within a forest reserve;
 - Authorizes such property to be seized, impounded, or confiscated by the Board or any authorized representative; and
 - Provides towing, moving, storage, and disposal procedures for impounded or confiscated property and specifies statutory authority for these actions.
- §13-104-7.5, “Closing of Areas” is added, which authorizes the Board or its authorized representative to close or restrict the public use of all or any portion of a forest reserve in the event of an emergency or under certain circumstances by posting signs.

Subchapter 4, “Fees and Charges”, is added. Subchapter 4:

- §13-104-25, “General Statement”:
 - Provides purposes for collecting fees and charges relating to forest reserves;
 - Specifies that the collection of fees and charges are used to offset certain expenses;
 - Specifies that the fees and charges are fixed and set by categories; and
 - Specifies that accepting payment or billings shall not waive the nature of trespass or ratify or permit illegal camping.
- §13-104-26, “Payment”:
 - Describes the method of payment and where payment is accepted for fees and charges; and
 - Specifies that fees must be paid in advance of issuing certain permits.
- §13-104-27, “Camping and Cabin Rental Fees” sets these fees by a schedule included within this section.
- §13-104-28, “Commercial Use Permit Fees” sets these fees by a schedule included within this section.
- §13-104-29, “Kiln Fees”:
 - Sets these fees by a schedule included within this section; and
 - Specifies that these fees must be paid no later than 15 days after kiln services are rendered.
- §13-104-30, “Permit Processing Fees” sets the fee for processing an access permit for scientific research purposes and other permits.
- §13-104-31, “Parking and Entrance Fees” allows the fee for parking a vehicle to be assessed.
- §13-104-32, “Fee for Copies of Rules”:
 - Sets the fee for copies of this Chapter;
 - Specifies that this fee shall not apply to governmental agencies; and
 - Specifies that this fee may be waived under certain conditions.

SUMMARY OF PUBLIC HEARING PROCEEDINGS:

Approval to hold public hearings for the proposed administrative rules was obtained from the Board on April 13, 2017, and subsequently from Governor Ige through the Hawai‘i Administrative Rules Processing Site, which included the summary of our consultation with the Small Business Regulatory Review Board in March 21, 2018. Notice of these public hearings were published on March 18, 2018, in the Sunday editions of the Garden Island, Honolulu Star-Advertiser, Maui News, West Hawai‘i Today, and Hawai‘i Tribune-Herald newspapers. The notice of public hearing was published on March 21, 2018, in the Molokai Dispatch. In addition, notice of the public hearings were posted on all appropriate Departmental webpages and Facebook page. Printed copies of the proposed amendments were made available for viewing at all DOFAW offices statewide and were also available online.

In addition to statewide public hearings, DOFAW created a Forest Reserve Rule Change Guide booklet and a website (<https://dlnr.hawaii.gov/forestry/frs/rulechange/>) to compliment the official Ramseyer format of the proposed rule change and to increase transparency and facilitate public involvement. The booklet and the website provided explanations of the proposed rule change in a format that was more accessible to the general public. The guide and website also provided

additional information on the intent and reasoning behind each of the proposed rule changes, information on the rule making process, and a summary of all the ways the public could participate. Both were announced as available to the public via the press release announcing the public hearings and through social media.

Public hearings for the proposed forest reserve rule change were held on O‘ahu, Maui, Kaua‘i, Hawai‘i Island (Kona and Hilo), and Moloka‘i, in that respective order. An informational session (1½ hours each) was held before all public hearings with informational posters and stations manned by forestry management staff to answer any questions from members of the public. Informational sessions were well attended in most locations and allowed DOFAW to address general or specific questions about the proposed rules and the forest reserves in a more conducive format.

SUMMARY OF PUBLIC PARTICIPATION

A Hearing Officer’s Report for all public hearings can be found online at <https://dlnr.hawaii.gov/forestry/frs/rulechange/public-testimony/>

Oahu – April 18, 2018

Eleven members of the public attended the hearing, none of which provided oral or written testimony during the hearing.

Maui – April 19, 2018

Five members of the public attended the hearing. One individual provided oral testimony and one provided written testimony during the hearing.

Kauai – April 23, 2019

No one from the public attended the hearing.

Hawai‘i Island (Kona) – April 24, 2019

Five members of the public attended the hearing, none of which provided oral or written testimony during the hearing.

Hawai‘i Island (Hilo) – April 25, 2019

Ten members of the public attended the hearing. Four people provided oral testimony and six written testimony were submitted at the information session and/or hearing (three from individuals that did not attend the public hearing).

Molokai – April 26, 2019

Three members of the public attended the hearing, none of which provided oral or written testimony.

Written Testimony – Deadline: May 11, 2018

Twenty-six additional written testimonies were submitted to the Department during the public comment period. A copy of all written testimony received can be found online at <https://dlnr.hawaii.gov/forestry/frs/rulechange/public-testimony/>.

SUMMARY OF PUBLIC COMMENTS:

All of the comments received for the proposed forest reserve rule change and DOFAW's responses to these comments are summarized below. The DOFAW responses provide additional clarification on the intent of the proposed rule changes and how they are envisioned to be implemented. A copy of all of the DOFAW responses can be found online at <https://dlnr.hawaii.gov/forestry/frs/rulechange/public-testimony/>. If the same comment was submitted by multiple individuals, the number of individuals are indicated by the number in brackets next to each comment.

Definitions - §13-104-2, HAR

Public comment [7]

The camping definition states that if you are in the forest reserve before dawn or after dark you are defined as camping. If you go hunting and you're out before it's light, technically you're camping. Advisories from all outdoor safety classes and hunter education classes state that if you are lost, stay put until there is sufficient light or someone rescues you. Disoriented or lost visitors from off-island, those not realizing how quickly the sun sets, people having mechanical problems, the tow company called to assist, hikers, bikers, and photographers taking sunset and sunrise photos would all be cited under this rule change. DOFAW should consider revising the definition of camping.

DOFAW response

The proposed revision to the definition of camping was not intended to restrict the use of the forest reserve after daytime hours. The definition includes both physical presence and indicia of camping. Based on the numerous comments and recommendations received on this proposed change, it has been revised to ensure that indicia of camping are a more integral component of the definition of camping.

"Camping" or "to camp" means ~~[being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia,]~~ a person's physical presence any time [after] one hour after sundown until sunrise in a forest reserve [.] and indicia of camping which includes the use of a forest reserve one hour after sundown until sunrise for living accommodation purposes, including, but not limited to: sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping); storing personal belongings; making any fire; the presence or use of any tents, temporary shelters, unauthorized structures or vehicles; or digging or breaking ground without proper authorization.

Comment from the Office of Hawaiian Affairs (OHA)

OHA acknowledged that the nature of the proposed amendment to the definition of "camping" is to better control unauthorized camping in forest reserves to protect the integrity of Hawaii's forests. However, the proposed amendment could interfere with Native Hawaiian traditional and

customary practices that may require “a person’s physical presence any time one hour after sundown” in a forest reserve. Language should be included to explicitly recognizing Native Hawaiian rights to ensure that traditional and customary practices are not unnecessarily discouraged or burdened by unauthorized camping citations. OHA recommends that the proposed definition be amended to include, “provided that this definition shall not apply to a person present in a forest reserve for the purpose of exercising a Native Hawaiian traditional and customary practice.”

DOFAW response

The Department and DOFAW does not intend to curtail constitutionally-protected Native Hawaiian traditional and customary practices. Depending on the nature of the practice, we believe the breadth of the proposed rules allows for such authorization or permission to be obtained from the Department. Further the forest reserves chapter includes, §183-5(e), HRS, which recognizes that, “[n]o person shall be sanctioned ... for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7 of the Hawai‘i state constitution.” To the extent that an exemption is already present, we believe it is not necessary to reiterate the exemption in all regulations of forest reserve activities.

Public comment

The definition of commercial needs more clarification. If a private business takes 20 people into a forest reserve to look at birds that’s a commercial use. If one person takes someone into a forest to see birds and gets paid for it, is that still a commercial use? What is the determining factor? If someone shoots photography professionally that is clear, but if someone takes a picture on a casual trip and then happens to sell it, is that commercial?

DOFAW response

As commercial activity is defined in the proposed rules, all of the activities mentioned are considered commercial and would require an appropriate permit. DOFAW believes the proposed definition of commercial activity is adequate, as it would be very difficult to include every potential example in the rule.

Penalty - §13-104-3, HAR

Comment from DOCARE Officer [2]

Under the current rule, violations of the forestry rules are misdemeanors (criminal). Proposed amendments decriminalize violations of the forestry rules. Penalties for proposed forestry rules would come from Chapter 183, HRS, which does not include criminal penalties, only civil penalties are offered. Decriminalization of the forestry rules would significantly undermine DOCARE’s effectiveness in its law enforcement efforts.

DOFAW response

The appropriate place for a Department’s authority for criminal penalties is within the Hawai‘i Revised Statutes. We have been working with the Hawai‘i State Legislature since 2015 to have this authority inserted as an amendment to Chapter 183, HRS. As such, the proposed rule change states that anyone who violates the provisions of the forest reserve rules shall be subject to

penalty as provided by law.

Currently, §183-18, HRS, only applies criminal penalties for timber trespass offenses. The Department has determined that there are other types of offenses such as removing, injuring, or killing plant or animal life, or introducing plant or animal life, except as approved by the Board, that warrants the imposition of a stricter penalty. Establishing statutory authority for a criminal penalty to apply to any violation of part II of Chapter 183, HRS, or any rules adopted pursuant thereto would strengthen the Department's enforcement capabilities and allow for greater protection of the State's natural resources within its forest reserves.

Comment from DOCARE Officer [2]

Proposed language states, "All revenues generated from fines or penalties imposed pursuant to this section shall be deposited into the forest stewardship fund." Does the State have a mechanism in place to allow for fines to be deposited into the Forest Stewardship Fund? Because the District Courts do not have such a mechanism in place allowing for fine distribution, informers have never received payment as allowed under 183D-11, HRS, Informer's fee.

DOFAW response

The authority to deposit fines or penalties for violations of Chapters 195F, 183 and 185, HRS, or any rule adopted thereunder, into the Forest Stewardship Fund and to use them for forest management is codified in §195F-4, HRS. The informers fee is codified in §183D-11, HRS, and only applies to fines collected for violations of Chapter 183D and 195D, HRS. We have forwarded your concern over the lack of a mechanism to distribute those fines to DOFAW Wildlife administrative staff.

Comment from DOCARE Officer [2]

Under the proposed forestry rules, the Board would take on additional responsibility of issuing fines and penalties for forestry rules violations. Violators would be required to travel to a Board hearing on O'ahu to remedy violations. This can be cost prohibitive for some and discourage compliance. What will compel violators to show up to a Board hearing when summoned? The Board does not have bench warrant issuance authority.

DOFAW response

For administrative fines issued by the Board, the accused does not need to be physically present at the Board meeting. They do have the option to submit written testimony for the agenda item pertaining to the violation. If they disagree with the decision made by the Board, they can submit a request for a contested case hearing, and if the petition is approved are subject to the procedures outlined in §13-1-28, HAR. To address the potential issue of overburdening the Board, we are exploring implementation of the Civil Resource Violations System as codified in §13-1-51, HAR.

Forfeiture - §13-104-3, HAR

Public comment

Forfeiture laws are going to apply with the rule change, and they are easy to abuse and have been

abused in other places and situations. There should be safeguards in the rules to prevent abuse.

DOFAW response

Forfeiture has been available and applied under both state and federal law. Limitations on applying forfeiture can be found in case law in Hawai'i and Federal courts, which says that a forfeiture cannot be grossly disproportional to the nature and gravity of the offense. Forfeiture actions are civil proceedings not meant to be so punitive so as to negate the legislative intent to establish a civil remedial mechanism. There is good reason to have forfeiture as an available tool for forest reserve management. For example, those committing acts involving the illicit taking of forest reserve resources should not be enriched at the cost of public forest reserve resources (e.g., either when resources are illegally taken by individuals for private, wasteful, or unjustifiable reasons; or after the illegally taken resources are transferred or sold). Additionally, any item or object in a forest reserve, if considered to be contraband under Hawai'i law, should be allowed to be seized and forfeited. The Forest Reserve System (FRS) is a resource subject to protections under the Public Trust and should have the appropriate protections to ensure that the Trust is upheld. Forfeiture is an important tool, used by many public natural resource agencies throughout the U.S. and world, to discourage illegal takings or activities.

Public comment - §13-104-3, HAR

The rule should be amended to restrict seizure/forfeiture to instances where the property being seized/forfeited is endangering the health and well-being of other users of the Forest Reserves or the integrity of the Forest Reserve itself.

DOFAW response

With Hawaii's valuable and unique natural resources, we believe "the integrity of the Forest Reserve System" as stated in your testimony, is to be very widely interpreted to include cultural, natural, aesthetic, recreational, scenic, economic and other beneficial uses. For example, those committing acts involving the illicit taking of forest reserve resources should not be enriched at a cost to public resources (e.g., when resources are illegally taken by individuals for private, wasteful, or unjustifiable reasons; or after they are transferred or sold) even if the health or well-being of others or the integrity of the forest reserve may not be implicated. Likewise, any item or object in the forest reserve, if considered to be contraband under Hawai'i law, should be allowed to be seized and subject to possible forfeiture regardless of whether the health or well-being of other users of the Forest Reserve is endangered. The Forest Reserve System is a resource subject to protections under the Public Trust and should not be lightly entered for purposes inconsistent with that Trust.

Abandoned and unattended property - §13-104-5.5, HAR

Public comment [2]

The proposed abandoned and unattended property rules seem to be so broadly written that any time you leave your vehicle in the forest reserve to go hiking, it would qualify as unattended property under the rule.

DOFAW response

A proposed definition of abandoned property has also been included in §13-104-2, HAR, in

conjunction with the proposed section for abandoned property §13-104-5.5, HAR. These rules define abandoned and unattended property to be any and all property left unattended on State controlled property for more than 48 hours without written permission from the Board or its authorized representative. As such, a car parked in a forest reserve for a day-hike would not be considered abandoned or unattended property. Further, as referenced above, overnight camping requires a permit, which includes identification of vehicular information ensuring the vehicle would not be considered abandoned. We believe that this proposed rule is reasonable when both sections are considered together.

Public comment

People who abandon vehicles in forest reserves would love for DOFAW to claim the vehicle. These cars are worthless except for maybe parts. By stating that the vehicle will be claimed, DOFAW is inadvertently encouraging people who are already breaking pertinent rules, to break them more fragrantly.

DOFAW response

The creation of a procedure that can be applied across the state to address abandoned property in the forest reserves is necessary to manage current conditions. It results in increased government transparency and provides a clear framework that keeps enforcement procedures in line with other established rules and regulations that we must follow. It also allows for immediate response when dealing with abandoned property that are deemed hazardous to public health and safety, which is not codified in the existing rules. Abandoning property within a forest reserve is a violation of said rules. If found guilty, violators would be subject to the penalties defined in §13-104-3, HAR.

Public comment

DOFAW may want to consider imposing a harsher penalty/fine on those who abandon their vehicles in a forest reserve. On O‘ahu, there are more and more abandoned vehicles everywhere, which is not only an eye sore, but also negatively affecting the wildlife and forests. Some form of deterrence is needed to prevent people from carelessly using forest reserves as a dumping ground.

DOFAW response

Abandoning property within a forest reserve is a violation of the rules. If found guilty, violators would be subject to the penalties defined in §13-104-3, HAR, and §183-5, HRS. For first time offenders, the Board can impose a fine of not more than \$2,500 per violation, with penalties progressively increasing with repeat offenses. Additionally, over the last four years DOFAW has introduced legislation for consideration that would improve the penalties codified in the forest reserve statutes and will do so again in the next legislative session. We appreciate your insight and recommendation and will continue to review the adequacy of the penalties associated with these rules.

Comment from OHA

It is common protocol for many Native Hawaiian traditional and customary practices to leave ho‘okupu (offerings) as a form of gratitude and respect and may be given in virtually any

location, including forest reserve areas. The purpose of ho'okupu is continuously served in the absence of the practitioner, until such time that the offering is claimed by nature or removed by the original practitioner in accordance with cultural protocol. Ho'okupu in any case should not be considered "abandoned" or "unattended" property, and premature removal of ho'okupu may be considered an act of cultural desecration. In order to best protect the integrity of the Native Hawaiian traditional and customary practices involving the offering of ho'okupu, OHA recommends that the proposed definition of "abandoned and unattended personal property" in proposed Hawai'i Administrative Rules (HAR) §13-104-2 be amended to include, "provided that this shall not apply to cultural resources placed on land in observance of a Native Hawaiian traditional and customary practice that does not endanger the health, safety, or welfare of the public, or undermines the health of a forest reserve."

Accordingly, OHA recommend that the first two sentences of proposed HAR §13-104-5.5 be amended to include the underlined, "No person shall abandon or leave personal property unattended within a forest reserve for any purpose not otherwise authorized or inconsistent with the purposes of the forest reserve. All such property may be seized, impounded, or otherwise confiscated by the Board or any authorized representative, except for cultural resources placed in observance of a Native Hawaiian traditional and customary practice that does not endanger the health, safety, or welfare of the public, or undermines the health of the forest reserve."

DOFAW response to OHA

The new definition and rule for abandoned and unattended property, proposed in §13-104-2 and §13-104-5.5, HAR, respectively, is intended to address the increasing problem of personal property and trash left in the forest reserves that are potentially detrimental to managing natural resources or dangerous to public health, safety, or welfare. Our primary concern is with removal of such manmade items including abandoned vehicles, bulky items, household trash, illegal camping equipment, and waste. Ho'okupu offerings, by practice, are not likely to be considered dangerous, noxious, hazardous, or considered as contraband under state law. Ho'okupu do not interfere with the safe or orderly management of the forest reserve nor are they intended for "storage" on public-managed lands. Further, we believe ho'okupu offerings and practices are consistent with the objectives for which the forest reserves were established.

The proposed rule was not intended to create a violation to be enforced against third parties that interfere with a Native Hawaiian traditional and customary practice, as that is beyond the jurisdiction of this chapter of rules governing the Forest Reserve, Water Development, and Zoning. Our intent in new rule §13-104-5.5, HAR, is to create both a classification system and procedure to be applied to more effectively manage abandoned property. The new rule allows for immediate response for abandoned property in the forest reserve, deemed hazardous to public health and safety, which is not codified in the existing rules, and increases government transparency in procedures for enforcement.

Further the forest reserves chapter includes §183-5(e), HRS, which recognizes that, "[n]o person shall be sanctioned ... for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7 of the Hawai'i state constitution." To the extent that an exemption is already present,

we believe it is not necessary to reiterate the exemption in all regulations of forest reserve activities.

Comment from DOCARE Officer [2]

Section 13-104-2, HAR, defines “Structure” to include memorials, hunting blinds, and tree stands, but nowhere in the proposed forestry rules does it directly regulate the use of memorials, hunting blinds, and tree stands in a forest reserve. We often receive inquiries from the public in regard to the legality of using hunting blinds and tree stands. The current rules inadequately address the legality of using these structures. This is the opportune time for DOFAW to provide clarity to and manage the use of these items by further amending the existing forestry rule to include, 1) No person shall install any monument, memorial, tablet, or other commemorative installation, except with the written permission of the Board or its authorized representative; and 2) To engage in any construction or improvement, which includes the permanent construction and/or abandoning of tree stands and/or hunting blinds, except as authorized by the Board.

DOFAW response

Temporary hunting blinds and tree stands can be used in a forest reserve if they are taken down immediately after use. Construction of memorials, hunting blinds, or tree stands that are left in a forest reserve for more than 48 hours without a special use permit is a violation of the current (§13-104-11b, HAR) and proposed forest reserve rules (§13-105-5.5, HAR). Anyone who is contemplating the construction of any structure in the forest reserve should contact the DOFAW District office on their respective island to explore the possibility of acquiring a special use permit for such purpose. Also, hunting is regulated by the Department’s Chapter 13-121, 13-122 and 13-123, HAR. Any changes to the regulations for hunting would require changes to these chapters and is not appropriate to be addressed within the context of the forest reserve rule change.

Closing of areas - §13-104-7.5, HAR

Public comment [2]

The arbitrary closure of an area of forest reserve such as Maunakea, could impact the rights of free speech, religious or cultural practice on land that is held in trust, violating constitutional protection. The reasons for closure in the rule (health, safety or welfare reasons) seem overly broad and could be used arbitrarily.

DOFAW response

The new proposed rule for the closure of a forest reserve or a portion of a forest reserve was intended to clarify how and why such a closure would be considered. The proposed rule is not intended to create a violation to be enforced against third parties that interfere with any constitutionally protected rights. The rule defines and provides a more structured, narrowed, and limited procedure for closing a forest reserve than what is currently in place. Rather than allowing “the board or its authorized representative” to close an area as permitted under the current rules, the proposed rule specifies that closures may only be authorized by the Board, or by its Chairperson. Additionally, the period of time a forest reserve is closed is further limited according to a graduated schedule. For example, the chairperson can authorize the closure of a

forest reserve for up to 90 days; Board approval would be required for any closure for a longer period as may be deemed necessary for an area.

While we have tried to enumerate particular bases for closure in the proposed rules, such as for emergency and threats to forest reserve resources, the rules do provide for certain flexibility as is necessary to deal with unforeseen situations that would warrant closure. DOFAW values and upholds the duties as imposed upon us by Hawai'i State Constitution, our governing statutes, and by the public trust to protect the natural and cultural resources of Hawai'i and to provide for the public use, enjoyment, and benefit of those resources. This may require closure of areas from time to time to ensure those values are upheld.

Firearms and other weapons - §13-104-9, HAR

Public comment

There is current activity on designating certain long-used "informal" shooting areas located in forest reserves as "Public Shooting Ranges". The use of firearms on department-approved ranges should be added as an exception to the firearms prohibition in §13-104-9, HAR, to facilitating this effort.

DOFAW response

Hawai'i Administrative Rule §13-104-9 states that firearms and other weapons are prohibited except as permitted by department hunting rules. The current hunting rules contain a provision allowing for public shooting ranges §13-121-6, HAR. This activity is also authorized by §183D-28, HRS. Based on the rules and statutes stated above, the suggested inclusion of language to §13-104-9, HAR, is not necessary at this time.

Public comment

Hawai'i is the only state that doesn't allow for target practice or the carrying of a firearm in a forest area. There should be a cogent reasoning for such a limitation other than hunting, which further puts restrictions on calibers, propellants, munitions, broadheads and target tips.

DOFAW comment

Firearms may be carried in a forest reserve as permitted by department administrative rules Chapters 13-121, 13-122 and 13-123, HAR. Any changes to restrictions on the type of firearms that are allowed would require changes to these chapters and cannot be addressed within the context of the forest reserve rule change. Regarding target shooting, Chapter 13-121, HAR contains a provision (§13-121-6) that allows for the establishment of public shooting ranges.

Vehicles and transportation - §13-104-11, HAR

Comment from DOCARE Officer [2]

The proposed forestry rule for §13-104-11(6), HAR, Vehicles and transportation states, "To drive, operate, or use any motorized land vehicle without a functioning street legal muffler, and without a valid vehicle license plate, registration and safety sticker if required by the appropriate respective county." Omit the "if required by the appropriate respective county" language. This

language is ambiguous and has undermine the successful prosecution of some forestry related citations.

DOFAW response

Issuance of license plates and vehicle registrations, and requirements for vehicle safety inspection is a function of the counties within the State of Hawai'i. To avoid conflicts between the forest reserve rules and county ordinance, the statements of "if required by the appropriate respective county" is necessary, as there are five counties with five evolving sets of regulations. After further review of the proposed rule, we do not feel that the language proposed in the rules is ambiguous that would lend to prosecutorial problems.

Public comment

The proposed rule change adding §13-104-11(6), HAR, will require permits for using drones in the forest reserve. He does not want this permit to require a FAA 107 certification for people to go out and fly. Teachers train their students to use drones. Forest reserves are one of the few big places that this learning can happen, where we can do science in our backyard, like mapping and GIS. Don't make it difficult for these types of activities to happen.

DOFAW response

With the rising popularity of recreational and commercial drone use, safety concerns regarding the management of the forest reserves have emerged. Helicopters are regularly used in the management of natural resources in Hawai'i and can be essential for accessing some management locations. They transport equipment and personnel to remote work sites, transport material for the construction of watershed protection fencing, support wildfire management operations, and provide a means to monitor the spread of Rapid 'Ōhi'a Death, to name a few. Unfortunately, there have been instances in which drone use in the vicinity of a working helicopter have created dangerous situations that put lives at risk.

DOFAW does not control the airspace above the forest reserves. To mitigate the potential hazard between helicopters and drones use, a rule change is proposed to prohibit the launching and landing of any unmanned aircraft system (UAS) without a permit. Drone use can still occur via permitting system that when followed will ensure airspace use conflicts do not occur. This is the only substantive rule change proposed that directly affects drones in the forest reserves. While DOFAW has no plans to introduced additional UAS regulations at this time, all applicable state and federal laws must be followed, which includes the Federal Aviation Administration's Small Unmanned Aircraft Rule Part 107.

Public comment

Helicopters in the forest reserve should be restricted. Helicopters create one of the greatest problems for watershed areas, by causing extreme air pollution, environmental pollution, safety concerns (from crashes), noise pollution (disrupts animal and bird habitat) and water pollution (from the fuel).

DOFAW response

DOFAW does not have jurisdiction over the airspace above the forest reserves and thus cannot regulate its use. However, we do regulate helicopter landing and launching from within forest

reserves, which is prohibited by the current rules (§13-104-11, HAR) unless a permit is issued for that purpose.

Animals - §13-104-12, HAR

Public comment

The definition of “pets” or “domesticated animals and birds” should be included in the rules. Is a horse, cat, pig, parrot, etc. considered as “pets”? Also, a reiteration of “Service Dogs” would reinforce the Department’s stand on the issue, separating it from Therapy Dogs and plain pets; versus the ADA definitions.

DOFAW response

The current rules under §13-104-12, HAR, allow dogs, cats and other animals within a forest reserve as long as they are in a crate, caged, or on a leash at all times, except for hunting dogs when permitted by Chapters 13-122 and 13-123, HAR (rules regulating game bird and mammal hunting in Hawai‘i respectively). Given the current regulation, for which no significant changes are proposed, we feel differentiating between a pet, service animal, and therapy animal is not necessary at this time. All are allowed within the forest reserves subject to the restrictions including, but not limited to, those mentioned above.

Camping - §13-104-16, HAR

Public comment

The proposed language prohibits the use of tents and tarpaulins. Prohibiting the use of any tent or tarpaulin may be too restrictive. Tents and tarpaulins can be used by users who are not camping overnight but just visiting just for the day.

DOFAW response

In response to the reasonable concerns raised regarding valid uses of tents and tarpaulins in the FRS, proposed language prohibiting their use included in §13-104-16, HAR, will be omitted. The proposed definition of camping included in §13-104-2, HAR, as revised, has a sufficient description of indicia of camping to meet the Department’s goal of improving the enforceability of prohibitions on camping without a permit.

§13-104-16 Camping. No person shall camp, ~~[erect any tent, tarpaulin, or other structure,]~~ or use recreational trailers or other camper units within any forest reserve, except with the prior written authorization of the board or its authorized representative and as permitted by the rules of the department.

Public comment

The camping rules should be amended to allow dispersed camping in forest reserves for the following reasons, 1) it would allow the public to experience solitude and connect to the ‘aina in a deeper manner than may be achieved by visiting only in the day; 2) Some trails and backcountry areas may not be reasonably accessed without staying overnight in a forest reserve; and 3) dispersed camping will help to disperse impacts to the forest reserve and avoid overuse

issues.

DOFAW response

The Forest Reserve Rules do not prohibit disperse camping in the forest reserve. DOFAW would be able to allow for that activity upon issuance of a camping permit for that purpose. While this does not pertain to the proposed forest reserve rule change, we encourage you to work with the Maui District DOFAW staff on the topic of disperse camping for the island of Maui.

Public comment [2]

The hunter education program, run by the Division of Conservation and Resource Enforcement (DOCARE), teaches survival and first aid. Survival requires, and we teach that you should have with you fire making material, shelter material and food and water for at least three days. Most hunters use some form of pack, sometimes two and these rules run afoul what we teach. There are already rules about camping.

DOFAW response

Neither the current or proposed forest reserve administrative rules prohibits the public from carrying survival and first aid equipment such as fire making material, shelter material, and food and water necessary for surviving three days. Further, the proposed rules do not prohibit the public from carrying packs in a forest reserve. However, camping without a permit and building a fire on the ground or in any structure not otherwise authorized by the administrative rules are already prohibited by the current rules. In unforeseen survival situations, while these acts might technically constitute a forest reserve rule violation, they do not always warrant punishment or prosecution. Mitigating circumstances and prosecutorial discretion are considered in these situations.

General provisions for permits - §13-104-18, HAR

Comment from DOCARE Officer [2]

Amend the proposed forestry rule for HAR, §13-104-18(b)(1) General provisions for permits to state, “Persons who have violated permit conditions or the rules may be ordered by the department, to include conservation enforcement officers, to leave the forest reserve.”

DOFAW response

It is not necessary to specifically name DOCARE as they would be included in the authorization to the “department”.

Camping permit - §13-104-19, HAR

Public comment

There is potential for abuse of the proposed provision that allows camping permits to be denied if there is a state of emergency, or reasons involving health, safety and welfare. Safeguards should be put in place to prevent abuse, such as preventing peaceful demonstrations like the one that took place on Maunakea.

DOFAW response

DOFAW is charged with protecting the resources of Hawai'i as well as the public. In emergency situations, such as an approaching hurricane, wildland fires, or high wind events, DOFAW has an obligation to cancel and deny camping permits in affected areas. While we have enumerated particular bases for permit denial and cancellation in the current rule, such as for emergency, site maintenance, and carrying capacity issues, certain flexibility is required to deal with the many potential situations that could occur. For example, when there was an outbreak of dengue fever in Waipio Valley on the Island of Hawai'i, to protect public health DOFAW cancelled and refunded all camping permits and closed the campsite until the outbreak had ended. We need to ensure that we have the appropriate authority to manage the forest reserves in light of these types of threats to health and safety. The proposed revision to the camping rules are intended to clarify and provide better transparency on how and for what purposes that permits may be denied or cancelled.

Commercial use permit - §13-104-22(a), HAR

Public comment [2] + Aha Kiole Council of Mana'e [36]

The "north, northeast district of Molokai" should be exempt from the proposed rule change to §13-104-22 commercial permits. This district and forest reserve contain significant religious and culturally significant sites. Sites for natives from this island to reconnect with their source of life known as their Ike Kupuna. This is a religious practice which brings a sense of well-being and peace to those that practice this form of rehabilitation and relief. There is deep concern that cultural sites and burials will not have adequate protection and that these rules will negatively impact subsistence and cultural practitioners who use these areas for gathering and practicing their rights. If the exemption is not granted, they oppose the proposed commercial permits rule change.

(Aha Kiole Council of Mana'e [36]) There is concern for the policies and procedures for how these permits will be issued. There is not procedure outlined that these permits will be vetted through native councils. There are no policies in place to protect areas from overuse. It was strongly suggested that the permit process be regulated by policies and procedures that protect native land and people.

DOFAW response

If there is a proposal for a commercial activity for any island, that would occur on a regular basis by multiple entities, DOFAW intends to develop a management plan that would detail what would be considered, how a commercial program would be implemented, establish limits, and if interest warrants will incorporate a competitive process. All plans would be vetted through a public process and would require Board approval. If finalized this plan would also require the completion of an environmental assessment in accordance to the Hawai'i Environmental Policy Act, which includes a requirement for a cultural impact assessment. Presently, there is no interest to develop commercial use activity on the island of Moloka'i.

For further clarification, the identification of a specific permit for commercial use in the forest reserve does not necessary mean that is an allowed and appropriate use in all places, especially given the unique and sensitive natural and cultural resources found within them. The Division evaluates all proposed commercial uses to ensure that the use does not negativity impact these

resources and the communities that rely on them. The Maui District DOFAW office has been forward the concerns about allowing commercial use activities on Moloka'i.

Public comment

How many times per year can an applicant apply for a commercial use permit at a specific reserve or any reserve? The only limits as currently written appear to be the monetary limit of \$10,000 per permit application and the time of entry limit of 30 days per permit. It may be wise to contemplate some type of commercial use permit annual limit per applicant, where if exceeded, would also trigger more of a competitive process and/or a more comprehensive agreement.

DOFAW response

There is no limit established in the proposed rule change for the number of permits each applicant can have per year. With the differing site carrying capacity, types of allowed activities, interest level for that activity, and potential impacts, it would be difficult to set a limit that would adequately manage and accommodate use across the forest reserves. If commercial activities are contemplated within a forest reserve that would result in occurrence on a regular basis by multiple entities, DOFAW intends to develop a management plan detailing the allowed uses. The plan will detail how the commercial use will be implemented, establishing limits, and if interest warrants, will incorporate a competitive process for applicants. All plans would be vetted through a public process and would require Board approval.

Public comment

Section 13-104-18(b)(8), HAR, states that "charges may be assessed when permits are granted for forest products." It may be problematic if this rule allows the Board to assess and charge a fee for collecting permits issued pursuant to §13-104-21, HAR. The "Reasoning" section on page 29 of the Forest Reserve Rule Change Guide states that collection permits are granted "at no charge." Therefore, I recommend changing to language of §13-104-21(a), HAR, to clearly reflect that statement and specify that collection permits will not be assessed a fee for collection of forest products. Furthermore, I would recommend that §13-104-18(b)(8), HAR, be amended to state exactly which permits will be assessed a fee for collection of forest products.

DOFAW response

The current and proposed rules both state in §13-104-21(a), HAR, persons wishing to collect forest items/products for personal use shall obtain a collecting permit, at no charge, authorizing the collection in a specific area. The forest product price list as described in the general provisions for permits, only applies to commercial harvest permits §13-104-22(b), HAR. As the rules clearly state that collection permits for personal use are issued at no charge, we feel that the edits you have proposed are not necessary at this time.

Legacy Land Conservation Program Staff comment

For forest reserve lands that were acquired with money from the Land Conservation Fund, please note possible concerns that, 1) "net proceeds or revenue from the operation, management, sale, lease, or other disposition of land or the improvements on the land acquired or constructed by the board under the provisions of this chapter shall also be deposited in or credited to the fund." §173A-5(c), HRS; and 2) The operation a commercial harvest or commercial salvage

activity/permit on forest reserve lands that were acquired with a grant, Department allocation, or legislative appropriation from the Land Conservation Fund would constitute a disposition of real property interests that were acquired via the Fund and would trigger requirements for Board approval and revenue sharing. Please note that revenue sharing from disposition is based on gross proceeds, not net proceeds §§173A-9 and -10, HRS. Therefore, the \$10,000 cap on the value of these activities indicates a potential for significant revenue for the Fund.

DOFAW response

The statutes specifically direct proceeds to different special funds in certain circumstances. Therefore, the statutes conflict, not just overlap. We therefore apply the principle of the specific over the general. The land conservation fund is more general. Moneys in that fund could, for example, be used to purchase land having value as a resource to the State for the forest reserves. Conversely, comparatively narrow special fund purposes mandated in the forest stewardship fund would not allow a disbursement or replenishment of funds to the land conservation fund. We therefore conclude that where state forest reserves have been purchased with Legacy Land funds, moneys generated from such lands should be credited to the forest stewardship special fund.

Commercial salvage permit - §13-104-22(c), HAR

Public comment

The new section on salvage permits is positive, but 30 days is too short a time period for that activity. DOFAW should reconsider that interval of time.

DOFAW response

Regarding your suggestion that we consider increasing the 30-day limit for commercial salvage permits, we are proposing a similar and consistent time duration for both the commercial salvage and harvest permits. Based on our experience, we feel this is a reasonable limit for most permits that are issued for these purposes. However, the Department may issue permits for longer periods of time as may be necessary per §13-104-22 (c)(3), HAR, of the proposed rules. Further, we recognize that depending on the project scale, additional time may be required for a more comprehensive review and approval process for permits to ensure that public trust resources are protected.

Access permit - §13-104-23, HAR

Public comment

Research permits need to be extended beyond 30 days.

DOFAW response

Access permits (including for research), do not have a 30-day limit at issuance.

Commercial use permit fees - §13-104-28, HAR

Public comment

The commercial use permit fees should be higher. Tourists pay a lot to come here and they can

pay more than what is being asked for in the rules. The Department claims to not have enough funding to take care of the forest and this is a potential solution to this problem.

DOFAW response

The rates listed in the commercial use permit fee table are based on previously approved rates set by the Department's 2010 Recreational Renaissance Plan B. These rates are intended for one time permits that are issued for non-reoccurring activities. DOFAW acknowledges that it is time to reassess fees set in 2010 and are planning to conduct a commercial recreation analysis to update commercial use fees, which would be promulgated through the rule making process.

Public comment

Suggested the following revisions, "Price per motorized vehicle up to 15+ people", would probably be clearer if rephrased as "Price per motorized vehicle of more than 12 people" (p39).

DOFAW response

The proposed Commercial Use Permit Fees for price per motorized vehicles is graduated by vehicular passenger capacities. There are 12 and 15 passenger vans and larger vehicles that can carry more than 15 people. We agree that it does seem numerically unusual, but the intervals accurately reflect standard vehicle passenger capacities.

Public comment

In Schedule B, Commercial Use Permit Fees, many of the activities listed do not have any unit of time or occurrence associated with them (i.e. per day, per entrance, etc.). Given that the time of entry on a commercial permit could last up to 30 days, it seems as if there should be an associated unit of time or occurrence listed for these activities.

DOFAW response

The fee schedule is currently designed to allow for flexibility in assessing appropriate fees for a variety of potential commercial uses. For instance, a commercial hiking tour could be assessed a fee based on the number of people or the size of the vehicle that would be utilizing the forest reserve, whichever would be more appropriate. If the proposed commercial activity would extend for several days over the course of the permitted one month, the current fee schedule does not preclude DOFAW from assessing an appropriate fee per vehicle or person per day or per entry into the forest reserve; provided that the overall value of the commercial activity does not exceed \$10,000. Exceeding this threshold would require an additional procurement process under Chapter 103D, HRS, be completed to allow for competitive pricing for the proposed use as well as to consideration that the activity was not detrimental to the resources of the area and. DOFAW could also elicit to conduct a competitive process for any commercial activity or use considered in a forest reserve.

Permit processing fees - §13-104-30, HAR

Public comment

Charging for scientific research permits should be reconsidered as a lot of research activities are done in partnership with DOFAW. Instead of thinking that you're taking up our time so we're going to charge you for it, but rather we're working together collaborating on important research.

DOFAW response

The Department recognizes and appreciates the value of applied scientific research and often issues access permits gratis for research that supports the informed management of the forest reserves. Unfortunately, of all the permits that are issued, research permits take significantly more effort to process as they require extensive review. More often than not, this review process is exacerbated by submissions of incomplete permit applications, limited knowledge by the applicants of the environment and natural resources of Hawai'i, and/or the lack of a clearly defined logistical plan. In an effort to continue supporting valuable research and offset the cost to already limited public resources, as well as discourage submissions of incomplete applications, DOFAW believes the research permit fees are reasonable. The Department will retain the authority to consider waiving application fees for permit requests that are in the best interest to the State and the management of Hawaii's natural resources.

Public access

Public comment

The proposed rules fail to provide a meaningful mechanism for the public to access and use the forest reserves for recreational purposes. The forest reserves are part of the constitutionally-protected Public Trust of the State of Hawai'i. The State, because of its special legal relationship to Public Trust land, has a presumptive duty to devote Forest Reserves to actual public use. With this concern in mind, the following modifications are suggested:

§ 13-104-3.5 Public Use

(a) The public is generally free to enter Forest Reserves during daylight hours, unless otherwise restricted.

(b) Access permits may be required to control impacts to sensitive areas, prevent incompatible uses, regulate entry during periods of high fire danger, or authorize scientific collection of plants or animals.

Subchapter 3

Permits

13-104-23 Access permits.

(a) Permits for access to or entry into forest reserves may be required by the board or its authorized representative for the following purposes:

- 1) To comply with the requirements of private landowners or lessees who permit access to forest reserves through their land.

(a) When issuing or extending leases or otherwise disposing of public land adjacent or proximate to forest reserves, the board shall ensure that the right of the people to utilize the public forests and forest reserves shall be protected;

(b) Prior to issuing or extending leases or otherwise disposing of any public lands adjacent or proximate to forest reserves, the board shall lay out and establish over and across such lands a reasonable number of rights-of-way from established highways to the forest reserves.

...

(b) The board or its authorized representative may issue access permits.

(c) Applications for access permits shall be received at least fifteen working days in advance of the date the permit is due to be in effect;

(d) A request for an access permit shall be considered on its own merits; and

(e) Access permits are valid for ninety (90) days from date of issuance.

DOFAW response

The purpose of the current and newly proposed forest reserve administrative rules are to provide clarity to how DOFAW manages these areas as part of the public trust. We do also recognize that part of that public trust includes use for recreation as provided by the Hawai'i State Constitution. As the administrative rules are subservient to the Hawai'i State Constitution in addition to Chapter 183, HRS, we do not need to include language reaffirming our constitutionally protected rights within the rules. Additionally, the proposed and current administrative rules do not prohibit the public from entering forest reserves, unless it is designated as restricted watershed or has been closed for safety concerns, such as wildland fire threats.

DOFAW is also charged with managing the forest reserves for the variety of other public benefits they provide. The Hawai'i State Constitution Article 11 Section 1 states that "For the benefit of present and future generations, the state and its political subdivisions shall conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the state." All benefits to the public must be considered in the management of forest reserves and may result in temporary or closure of forest reserves from time to time.

Per your recommendations for including language on requiring public access to the forest reserves in Board approved leases or other land dispositions, as well as requiring the Board to establish public right-of-way over said lands, these recommendations fall outside of our authority under this Chapter. The HRS that gives the Department the authority to establish administrative rules, §183-2, states that "the department shall adopt, amend, and repeal rules for and concerning the preservation, protection, regulation, extension, and utilization of forest reserves designated by the department." Thus, the administrative rules for the forest reserves would not be an appropriate location for placing mandates for the Board; that function lies with the Hawai'i State Legislature. We do recognize there are numerous forest reserves that do not have designated public access and are considered landlocked. DOFAW is committed and dedicated to finding access routes to these areas for both management and public uses, including working with private landowners and leaseholders.

Public comments submitted in support

- Supports the rule change [5]
- By and large support the proposed rule change
- Support particular components or intent of the rule change:
 - Temporary closure of areas for emergencies, forest health, or fire - §13-104-7.5, HAR
 - Abandoned property - §13-104-5.5, HAR
 - Commercial use permit for ecotourism - §13-104-22(a), HAR
 - Commercial salvage permits - §13-104-22(c), HAR

- Clarification of the rules [2]
- Improve procedures, and increases efficiency and transparency
- Addresses new technology such as drones [2]
- Clear provisions/guidelines for permits
- Increases enforceability of the rules to protect natural and cultural resources
- 13-104-11 (3) Vehicles and Transportation, which provides clarity by stating, "including areas requiring four-wheel drive only" [2]
- 13-104-3 (b) Penalty, which offers the exemption to state employees by stating, "Restrictions and prohibitions imposed by this chapter shall not apply to state employees or their agents acting in the scope of their employment while within the forest reserve." This exemption would facilitate DOCARE's law enforcement efforts by allowing DOCARE's legal use of Unmanned Aerial Systems (Drones), All-Terrain Vehicles (ATV's); and to conduct other activities that would be otherwise unlawful in the execution of DOCARE's law enforcement responsibility within forest reserves. [2]

SUMMARY OF CHANGES TO THE PROPOSED RULE CHANGE POST PUBLIC HEARING

Proposed changes based on public input:

§13-104-2 Definitions. ...

"Camping" or "to camp" means ~~[being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia,]~~ a person's physical presence any time ~~[after]~~ one hour after sundown until sunrise in a forest reserve ~~[-]~~ and indicia of camping which includes the use of a forest reserve one hour after sundown until sunrise for living accommodation purposes, including, but not limited to: sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping); storing personal belongings; making any fire; the presence or use of any tents, temporary shelters, unauthorized structures or vehicles; or digging or breaking ground without proper authorization.

Reasoning: The proposed revision to the definition of camping was not intended restrict the use of the forest reserve after daytime hours. The definition includes both physical presence and indicia of camping. Based on the numerous comments and recommendations received on this proposed change, it has been revised to ensure that indicia of camping are a more integral component of the definition of camping.

§13-104-16 Camping. No person shall camp, ~~[erect any tent, tarpaulin, or other structure,]~~ or use recreational trailers or other camper units within any forest reserve, except with the prior written authorization of the board or its authorized representative and as permitted by the rules of the department.

Reasoning: In response to the reasonable concerns raised by several individuals regarding valid uses of tents and tarpaulins in the FRS, proposed language prohibiting their use included in §13-104-16, HAR, will be omitted. The proposed definition of camping included in §13-104-2, HAR, as revised, has a sufficient description of indicia of camping to meet the Department's goal of improving the enforceability of prohibitions on camping without a permit.

Proposed changes based on staff analysis:

~~[§13-104-33 Negotiable instruments; service charge. The service charge for any dishonored check, draft, certificate of deposit, or other negotiable instrument is \$10.] [Eff and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)]~~

Reasoning: Staff noticed that the service charge amount (\$10) listed in the proposed rule change was incorrect. DOFAW was advised that correcting the amount to \$50 would be a substantive edit that could trigger further public hearing requirements. To allow the majority of this comprehensive rule revision to move forward most efficiently, the decision was made to recommend that this section be omitted. When DOFAW completes the planned commercial recreation analysis to update commercial use fees, which would then be promulgated through the rule making process, the correct service charge of \$50 will be included at that time.

DISCUSSION:

Based on the public testimony received during this process, DOFAW recommends adoption of the proposed amendments to Title 13, Subtitle 5, Part 1, Chapter 104, "Rules Regulating Activities Within Forest Reserves", with the three changes summarized above. DOFAW, in consultation with the Department of Attorney General, believes that these changes adequately address concerns raised by the public, are non-substantive and do not trigger the need to conduct additional public hearings on the matter.

DELEGATION:

If the proposed revision to Chapter 13-104, HAR is adopted, DOFAW requests approval to delegate certain authorities under said chapter, from the Board to the Chairperson of the Board of Land and Natural Resources, to the DOFAW Administrator and District Managers, and in one instance to Department staff. The Division notes that the delegations of authorities to issue permits and execute actions as identified in Table 1 represents potential procedures that may be followed based on a case-by-case review. In some cases, however, such as those dealing with new or unforeseen circumstances, the delegated authority may conclude that review and decision making should be done by a higher authority and will forward as appropriate. As such, staff recommendations for delegations of authority are summarized in Table 1.

Table 1: Delegations of Authority for Permits and Other Actions Under Chapter 13-104, HAR.
(C = Chairperson, A = Administrator, DM = District Manager, DLNR = Department Staff)

Rule	Authority	Delegation
§13-104-4 (1)	§13-104-4 Preservation of public property and resources. The following activities are prohibited within a forest reserve: (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the board or authorized representative or as provided by the rules of the board;	C A DM
§13-104-4 (2)	(2) To remove, damage, or disturb any natural feature or resource (e.g., natural stream beds) except as authorized by the board or its authorized representative;	C
§13-104-4 (5)	(5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within [or on] a forest reserve except as authorized by the board or its representative;	C A DM
§13-104-5.5	§13-104-5.5 Abandoned and unattended property. No person shall abandon or leave personal property unattended within a forest reserve for any purpose not otherwise authorized or inconsistent with the purposes of the forest reserve. All such property may be seized, impounded, or otherwise confiscated by the board or any authorized representative.	C A DM
§13-104-5.5 (1)	(1) If unattended personal property, including but not limited to motor vehicles, interferes with the safe or orderly management of a forest reserve or is stored on the publicly-managed lands, the personal property may be seized or impounded by the board or its authorized representative. Any article or instrument that is dangerous, noxious, hazardous, or considered as contraband under the laws of the State of Hawaii, which could endanger the health, safety, or welfare of the public, or public property, may be immediately seized and disposed of by any authorized representative of the department if found abandoned or unattended in the forest reserve.	C A DM
§13-104-10	§13-104-10 Swimming and bathing. Swimming and bathing in all waters within a forest reserve are permitted at an individual's own risk except in waters and at times where the activities are prohibited by the board or its	C A DM

	authorized representative in the interest of public health and safety. The prohibited waters and times shall be designated by posted signs	
§13-104-11 (2)	<p>§13-104-11 Vehicles and transportation. The following acts are prohibited while under the jurisdiction of the state within a forest reserve:</p> <p>(2) To launch or land aircraft, gliders, helicopters, balloons, parachutes, or other similar means of transportation without a permit for that purpose from the board or its authorized representative; provided that landing is authorized without a permit in case of any emergency</p>	C A DM
§13-104-11 (7)	<p>(7) To launch, land, or operate any unmanned aircraft system without a permit for that purpose from the board or its authorized representative.</p>	C A DM
§13-104-16	<p>§13-104-16 Camping. No person shall camp, or use recreational trailers or other camper units within any forest reserve, except with the prior written authorization of the board or its authorized representative and as permitted by the rules of the department.</p>	C A DM
§13-104-18 (a)	<p>§13-104-18 General provisions for permits.</p> <p>(a) The board or its authorized representative may issue the following types of permits:</p> <p>(1) Camping;</p> <p>(2) Special use;</p> <p>(3) Collecting;</p> <p>(4) Commercial; and</p> <p>(5) Access.</p>	C A DM
§13-104-18 (b)(5)	<p>(b) All permits are subject to the following provisions:</p> <p>(5) The size of groups as well as the length of time any permit may be in effect may be limited by the board or its authorized representative</p>	C A DM
§13-104-18 (b)(6)	<p>(6) The board or its authorized representative may require the permittee, at the permittee's own cost, to provide police protection in the interest of the public safety and welfare and for the protection of property when the number of persons using the forest reserve is one hundred or more</p>	C A DM
§13-104-18 (b)(7)	<p>(7) Fees and charges as set by the board may be assessed when permits are granted for the exclusive use of areas or facilities, or when charges are necessary to defray the cost of special facilities, services, or supplies provided</p>	C A

	by the State, or as otherwise determined by the board or its authorized representative when necessary to carry out the provisions of chapter 183, Hawaii Revised Statutes. General provisions for permits. Fees and charges contained in this chapter may be waived or reduced by the board or its authorized representative if the waiver or reduction is in the public interest	
§13-104-18 (b)(9)	(9) All permittees, upon request, shall show the permit to any law enforcement officer, the board, or its authorized representative	DLNR
§13-104-18 (b)(11)	(11) Persons applying for a permit shall provide, if requested, identification for all persons included on a permit, satisfactory to the board or its authorized representative. The board or its authorized representative may require the names, addresses, and telephone numbers of all persons included on a permit.	C A
§13-104-19 (c)	§13-104-19 Camping permits (c) No person, group, organization, or association shall remain at any one specific camping site for longer than seven days; provided that the board or its authorized representative may extend the length of stay for good cause	C A DM
§13-104-19 (d)	(d) After issuance of a camping permit, a period of at least thirty days shall pass before another camping permit for the same designated area may be issued to any person listed on any previously valid or current camping permit. The board or its authorized representative may waive a portion of the thirty-day period for good cause.	C A DM
§13-104-19 (e)(1-4)	(e) Camping permits may be denied, canceled, or terminated for the following reasons: (1) When the size of the group will exceed or exceeds the capacity of the existing site or facilities; (2) When there are inadequate facilities to meet the immediate needs of the camper or campers; (3) When repairs or improvements are being made at the campsite; or (4) When a state of emergency is declared or for other reasons involving the health, safety, and welfare of the applicants or permittees; upon the declaration of the board or its authorized	C A DM

	representative.	
§13-104-20 (a)	§13-104-20 Special use permits. (a) Special use permits are only issued by the board or its authorized representative.	C A DM
§13-104-20 (b)	(b) Applications for special use permits shall be received by the board or its authorized representative at least fifteen working days in advance of the date the permit is to be in effect, however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.	C A DM
§13-104-21 (c)(4)	§13-104-21 Collecting permits. (c) Collecting permits shall specify: (4) Any other terms and conditions deemed necessary by the board or its authorized representative.	C A DM
§13-104-22 (a)	§13-104-22 Commercial permits. (a) Commercial use permits. The board or its authorized representative may issue commercial use permits.	C A DM
§13-104-22 (a)(1)	(1) Applications for commercial use permits shall be received by the board or its authorized representative at least thirty working days in advance of the date the permit is to be in effect; however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.	C A DM
§13-104-22 (a)(3)	(3) The value of the commercial activity shall be decided by the board or its authorized representative and shall not exceed \$10,000.	C A DM
§13-104-22 (a)(4)	(4) The time of entry for the commercial activity shall not exceed thirty days, except that the board or its authorized representative may extend this time for good cause.	C A
§13-104-22 (b)	(b) Commercial harvest permits. The board or its authorized representative may issue permits for the purpose of purchasing and harvesting forest products from a forest reserve	C A DM
§13-104-22 (b)(2)	(2) Collection permits. The value of the raw material to be harvested shall not exceed \$10,000. The quantity to be harvested shall be decided by the board or its authorized representative.	C A DM
§13-104-22 (b)(3)	(3) The time of entry for harvesting shall not exceed fourteen days for permits with designated raw material value not in excess of \$1,000, or thirty days for permits with designated raw	C A

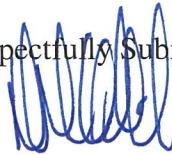
	material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause.	
§13-104-22 (b)(5)(F)	(5) Each permit shall specify: ... (F) Any other terms or conditions deemed necessary by the board or its authorized representative.	C A DM
§13-104-22 (c)	(c) Commercial salvage permits. The board or its authorized representative may issue commercial salvage permits for the purpose of purchasing and removing dead or hazardous trees.	C A DM
§13-104-22 (c)(2)	(2) The value of the raw material to be salvaged shall not exceed \$10,000. The quantity to be salvaged shall be decided by the board or its authorized representative.	C A DM
§13-104-22 (c)(3)	(3) The time of entry for salvaging shall not exceed fourteen days for permits with designated raw material value not in excess of \$1,000, or thirty days for permits with designated raw material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause.	C A
§13-104-23	§13-104-23 Access permits. Permits for access to or entry into forest reserves may be required by the board or its authorized representative for the following purposes:	C A DM
§13-104-24	§13-104-24 Commercial activities. No person shall engage in commercial activities of any kind in a forest reserve without a written permit from the board or its authorized representative.	C A DM

RECOMMENDATIONS:

That the Board of Land and Natural Resources:

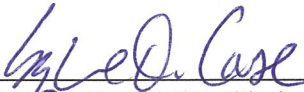
- (1) Approve to adopt and compile the proposed amendments to Hawai'i Administrative Rules, Title 13, Subtitle 5, Part 1, Chapter 104, "Rules Regulating Activities Within Forest Reserves"
- (2) Delegate the authority to issue permits under Hawai'i Administrative Rules Chapter 13-104, to the Chairperson, Administrator, and District Managers of the Division of Forestry and Wildlife as identified in Table 1.

Respectfully Submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Exhibit 1: Proposed Amendments to Chapter 13-104, HAR (Ramseyer)

Amendment and Compilation of Chapter 13-104
Hawaii Administrative Rules

(date)

1. Chapter 13-104, Hawaii Administrative Rules, entitled "Rules Regulating Activities Within Forest Reserves", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5 FORESTRY AND WILDLIFE

PART 1 FORESTRY

CHAPTER 104

RULES REGULATING ACTIVITIES WITHIN FOREST RESERVES

Subchapter 1 General Provisions

- §13-104-1 Purpose and applicability
- §13-104-2 Definitions
- §13-104-3 Penalty

Subchapter 2 Public Use

- §13-104-4 Preservation of public property and resources
- §13-104-5 Litter and sanitation
- §13-104-5.5 Abandoned and unattended property
- §13-104-6 Report of injury or damage
- §13-104-7 Fire use restrictions
- §13-104-7.5 Closing of areas
- §13-104-8 Hunting and fishing

- §13-104-9 Firearms or other weapons
- §13-104-10 Swimming and bathing
- §13-104-11 Vehicles and transportation
- §13-104-12 Animals
- §13-104-13 Audio devices and noise
- §13-104-14 Explosives
- §13-104-15 Disorderly conduct
- §13-104-16 Camping
- §13-104-17 Compliance with laws

Subchapter 3 Permits

- §13-104-18 General provisions for permits
- §13-104-19 Camping permits
- §13-104-20 Special use permits
- §13-104-21 Collecting permits
- §13-104-22 Commercial permits
- §13-104-23 Access permits
- §13-104-24 Commercial activities

Subchapter 4 Fees and Charges

- §13-104-25 General statement
- §13-104-26 Payment
- §13-104-27 Camping and cabin rental fees
- §13-104-28 Commercial use permit fees
- §13-104-29 Kiln fees
- §13-104-30 Permit processing fees
- §13-104-31 Parking and entrance fees
- §13-104-32 Fee for copies of rules

Historical Note: Chapter 104 of Title 13, Administrative Rules, is based substantially upon Regulation 1 [Eff. 12/9/43; am 8/12/76] and Regulation 10 [Eff. 12/12/59] of the Division of Forestry, Department of Land and Natural Resources [R 9/28/81].

SUBCHAPTER 1

GENERAL PROVISIONS

~~§13-104-1 Purpose and applicability.~~ **§13-104-1 Purpose and applicability.** (a) The purpose of ~~[these rules]~~ this chapter is to regulate activity within forest reserves established pursuant to sections 183-11 and 183-15, Hawaii Revised Statutes.

(b) These rules shall apply to all persons entering the boundaries and jurisdiction of a forest reserve. All persons shall observe and abide by officially posted signs within forest reserves. Everyone using the forest reserves should conduct themselves in a safe and courteous manner. Users of the forest reserves should be aware that there are ~~[certain]~~ certain inherent risks involved due to other users and the environment and should use caution at all times. [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §§183-1.5, 183-2)

~~§13-104-2 Definitions.~~ **§13-104-2 Definitions.** As used in ~~[these rules,]~~ this chapter, unless the context requires otherwise:

"Abandoned and unattended property" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels that have been left unattended on land owned or controlled by the State for a continuous period of more than forty-eight hours without the written permission of the board or its authorized representative.

"Administrator" means the administrator of the division of forestry and wildlife.

"Authorized representative" means the administrator, foresters, conservation enforcement officers, and other persons authorized by the board

~~[of land and natural resources]~~ to act for the board.

"Board" means the board of land and natural resources.

"Camping" or "to camp" means ~~[being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia,]~~ a person's physical presence any time [after] one hour after sundown until sunrise in a forest reserve[-] and indicia of camping includes the use of a forest reserve one hour after sundown until sunrise for living accommodation purposes, including, but not limited to: sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping); storing personal belongings; making any fire; the presence or use of any tents, temporary shelters, unauthorized structures or vehicles; or digging or breaking ground without proper authorization.

"Commercial activity" means the use of or activity in the forest reserve for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Soliciting, demanding, or requesting gifts, money, or services shall be considered commercial activity. Commercial activities include activities ~~[whose]~~ with base of operations [are] outside the boundaries of the forest reserve, display of merchandise, or activities which provide transportation to or from the forest reserve.

"Commercial use" is any type of commercial activity which is considered compatible with the functions and purposes of each individual area, facility, or unit within a forest reserve.

"Compensation" includes but is not limited to, monetary fees, donations, barter, or services in-kind.

~~["Division" means the division of forestry and wildlife.]~~

"Department" means the department of land and natural resources.

"Division" means the division of forestry and wildlife.

"Forest product" means any natural material from a forest reserve, including but not limited to timber, seedlings, seeds, fruits, greenery, tree fern, cinder, lava rock, ti leaves, and bamboo.

"Forest reserve" means those lands designated as forest reserves by the department pursuant to sections 183-11 and 183-15, Hawaii Revised Statutes, and other lands for plant sanctuaries, facilities, nurseries, and baseyards under the custody and control of the division.

"Motorized vehicle" means a vehicle of any shape or form that depends on a motor (gas, electric, or other fuels) for propulsion.

"Non-motorized vehicle" means a vehicle of any shape or form that depends on human, animal, wind, spring, and other non-motorized means for propulsion.

~~["Residing" means being in the same forest reserve for more than seven (7) continuous days.]~~

~~["Spark arrester" means a device constructed of nonflammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that is operated by hydrocarbon fuels.]~~

"Structure" means any object or improvement constructed, installed, or placed on state lands, including but not limited to buildings, sheds, lean-tos, picnic tables, memorials, hunting blinds, tree stands, mobile homes, campers, trailers; provided that tents, campers, vehicles, and other temporary objects related to authorized activities shall not be considered structures for the purposes of this definition; provided further that the objects are in compliance with rules and regulations governing those activities on state lands.

"Tree harvesting" means the removal of live trees from a forest reserve. [Eff 9/28/81; am and comp

10/15/93; am 12/9/02; am and comp]

(Auth: HRS §183-2) (Imp: HRS §183-2)

~~§13-104-3 Penalty.~~ **§13-104-3 Penalty.** (a) Any person violating any of the provisions of ~~[these rules]~~ this chapter shall be ~~[guilty of a misdemeanor and shall be penalized]~~ subject to penalty as provided by law. All revenues generated from fines or penalties imposed pursuant to this section shall be deposited into the forest stewardship fund. Any equipment, article, instrument, aircraft, vehicle, business record, or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by section 199-7, Hawaii Revised Statutes, and chapter 712A, Hawaii Revised Statutes.

(b) Restrictions and prohibitions imposed by this chapter shall not apply to state employees or their agents acting in the scope of their employment while within the forest reserve. Any penalty imposed may take into account emergency situations, such as fire or other disasters or where necessary to protect life or property. [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §§183-4, 183-5, 183-16, 195D-8, 199-7)

SUBCHAPTER 2

PUBLIC USE

~~§13-104-4 Preservation of public property and resources.~~ **§13-104-4 Preservation of public property and resources.** The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the ~~[Board]~~ board or authorized representative or as provided by the rules of the [Board,] board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g., natural stream beds) except as authorized by the board or its authorized

- representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
 - (4) To remove, damage, or disturb any notice, marker, or structure;
 - (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within ~~[or on]~~ a forest reserve except as authorized by the board or its representative;
 - (6) To engage in any construction or improvement except as authorized by the board~~[-]~~ ;
 - (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board~~[-]~~ ;
 - (8) To distribute or post handbills, circulars, or other notices~~[-]~~ ;
 - (9) To introduce any plant or animal except as approved by the ~~[Board-]~~ board; and
 - (10) To enter or remain within a forest ~~[reserves when]~~ reserve while under the influence of alcohol, narcotics, or drugs, to a degree that may ~~[endanger oneself or]~~ endanger or cause annoyance to other persons, or endanger oneself or property. The use or possession of narcotics, drugs, or alcohol within forest reserves is prohibited. [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §§183-2, 183-17)

~~§13-104-5 Litter and sanitation.~~ §13-104-5
Litter and sanitation. The following acts are prohibited within a forest reserve:

- (1) To drain, dump, or leave any litter, animal waste or remains, or any other material which pollutes or is likely to cause pollution in the forest reserve, including streams and other water sources;
- (2) To deposit any body waste in areas without

comfort stations, without digging a hole and covering all signs of the waste;

- (3) To deposit any body waste within 150 feet of a spring, stream, lake, or reservoir; and
- (4) To leave or abandon [~~a vehicle or~~] any [~~either~~] large refuse, such as refrigerators or stoves, household garbage or trash, or other forms of waste or debris. [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2)
(Imp: HRS §183-2)

§13-104-5.5 Abandoned and unattended property.

No person shall abandon or leave personal property unattended within a forest reserve for any purpose not otherwise authorized or inconsistent with the purposes of the forest reserve. All such property may be seized, impounded, or otherwise confiscated by the board or any authorized representative.

- (1) If unattended personal property, including but not limited to motor vehicles, interferes with the safe or orderly management of a forest reserve or is stored on the publicly-managed lands, the personal property may be seized or impounded by the board or its authorized representative. Any article or instrument that is dangerous, noxious, hazardous, or considered as contraband under the laws of the State of Hawaii, which could endanger the health, safety, or welfare of the public, or public property, may be immediately seized and disposed of by any authorized representative of the department if found abandoned or unattended in the forest reserve.
- (2) All impounded vehicles shall be towed to a place of storage. Owners of towed vehicles shall contact the division or the division of conservation and resource enforcement branch office for information on towed

vehicles. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, Hawaii Revised Statutes.

- (3) All impounded or confiscated property, other than vehicles, shall be moved to a place of storage, and the owner shall be assessed moving, storage, and other related costs. Additionally, the owner of this property shall bear the responsibility for the risk of any loss or damage to their property.
- (4) Abandoned vehicles may be sold at public auction pursuant to section 290-11, Hawaii Revised Statutes. All other impounded or confiscated property shall be disposed of pursuant to section 171-31.5, Hawaii Revised Statutes. [Eff and comp
(Auth: HRS §183-2) (Imp: HRS §§171-31.5, 183-2, 290-11)

~~[§13-104-6 Report of injury or damage.]~~ **§13-104-6 Report of injury or damage.** All incidents resulting in injury or death to persons or damage to property shall be reported by the person or persons involved as soon as possible to the board or its authorized representative. This report does not relieve persons from the responsibility of making any other accident reports which may be required under federal, state, or county statutes, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-7 Fire use restrictions.]~~ **§13-104-7 Fire use restrictions.** The following acts are prohibited within a forest reserve:

- (1) To build any fire on the ground or in any structure~~[+]~~ not otherwise authorized by this section;

- (2) To build any fire without using a portable stove or other self-contained unit;
- (3) To leave a fire unattended without extinguishing all traces of heat;
- (4) To deposit or discard any potential fire-producing material, such as embers, coals, or ashes that are too hot to touch;
- (5) To set on fire or cause to be set on fire any live or dead vegetation except for department fire control measures; and
- (6) To start a fire in windy conditions in a place or manner that is likely to cause live or dead vegetation to be set on fire[~~;~~ and
- ~~(7) To use any motor vehicle, motorized equipment, internal combustion engines, or electric motors unless equipped with efficiently operating fire or spark arresting equipment].~~ [Eff 9/28/81; am and comp 10/15/93; am and comp]
(Auth: HRS §183-2) (Imp: HRS §§183-2, 185-7)

§13-104-7.5 Closing of areas. (a) The board, or its chairperson, may close or restrict the public use of all or any portion of a forest reserve in the event of an emergency or when deemed necessary for:

- (1) The protection of the biological, geological, or cultural resources of the area;
- (2) Health, safety, or welfare reasons;
- (3) The protection of property; or
- (4) Management activities,

by the posting of appropriate signs indicating the duration, extent, and scope of closure.

(b) The chairperson is authorized to effect a given closure or restriction under subsection (a) for a period of not more than ninety days. The board is authorized to effect a closure or restriction for any period as deemed necessary to accommodate the condition or conditions indicated under subsection

(a). [Eff and comp] (Auth: HRS §183-2)
(Imp: HRS §§183-1.5, 183-2, 185-3)

~~[§13-104-8 Hunting and fishing.] §13-104-8~~
Hunting and fishing. The hunting, fishing, trapping, or disturbing of any fish, animal, or bird is prohibited except as permitted by department hunting or fishing rules. [Eff 9/28/81; comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-9 Firearms or other weapons.] §13-104-9~~
Firearms or other weapons. Firearms and other weapons, including those discharging projectiles by air or gas [operated,] operation; or bow and arrow, ~~[and other weapons]~~ are prohibited except as permitted by department hunting rules and are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-10 Swimming and bathing.] §13-104-10~~
Swimming and bathing. Swimming and bathing in all waters within a forest reserve are permitted at an individual's own risk except in waters and at times where the activities are prohibited by the board or its authorized representative in the interest of public health and safety. The ~~[excepted]~~ prohibited waters and times shall be designated by posted signs. [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~§13-104-11 Vehicles and transportation.~~ §13-104-11 Vehicles and transportation. ~~[(a)]~~ The following acts are prohibited while under the jurisdiction of the state within a forest reserve:

- (1) To drive, operate, or use any motorized or non-motorized land vehicle, glider, hang glider, aircraft, unmanned aircraft system, balloon, or parachute carelessly and without due caution for the rights or safety of others and in a manner that endangers any person or property;
- (2) To launch or land ~~[airplanes,]~~ aircraft, gliders, helicopters, balloons, parachutes, or other similar means of transportation without a ~~[special-use]~~ permit for that purpose from the board or its authorized representative; provided~~[-, however,]~~ that landing is authorized without a permit in case of any emergency;
- (3) To drive, operate, or use any motorized vehicle in any area or trails not designated for that purpose~~[+]~~, including areas requiring four-wheel drive only;
- (4) To park any motorized or non-motorized vehicle or trailer except in designated areas;
- (5) To drive, lead, or ride a horse, mule, other animal, or non-motorized land vehicle in areas and on roads or trails that are posted against such activity; ~~[and]~~
- (6) To drive, operate, or use any motorized ~~[ground]~~ land vehicle without a functioning street legal muffler, and without a valid vehicle license plate, registration and safety sticker if required by ~~[each]~~ the appropriate respective county[-]; and
- (7) To launch, land, or operate any unmanned aircraft system without a permit for that purpose from the board or its authorized representative.

~~[(b)] Any vehicle or property left unattended within a forest reserve for longer than forty-eight hours without prior written permission from the board~~

~~or its authorized representative shall be considered abandoned. Any abandoned vehicle or property may be impounded or towed away by the board or its authorized representative at the expense of the owner.] [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §§183-1.5, 183-2)~~

~~[§13-104-12 Animals.]~~ **§13-104-12 Animals.** (a) Dogs, cats, and other animals are prohibited within a forest reserve unless crated, caged, or on a leash, at all times except for hunting dogs when permitted by chapters ~~[122 and 123, Administrative Rules.]~~ **13-122 and 13-123.**

(b) All dogs used for hunting shall be crated, caged, or leashed or otherwise under restrictive control during transportation while in transit at all times, to and from hunting areas within the forest reserve.

(c) Dogs, cats, or other domestic animals, observed by an authorized representative of the board to be running at large or in the act of killing, injuring, or molesting humans, wildlife, or property, may be disposed of in the interest of public safety and the protection of the forest reserve. [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-13 Audio devices and noise.]~~ **§13-104-13 Audio devices and noise.** Creating noise or sound within a forest reserve, either vocally or otherwise (~~[i.e.]~~ e.g., public address systems, radios, television sets, musical instruments) or use of any noise producing devices (~~[i.e.]~~ e.g., electric generating plants or other equipment driven by motors or engines) in a manner and at times which creates a nuisance is prohibited. [Eff 9/28/81; comp 10/15/93;

am and comp] (Auth: HRS §183-2)
(Imp: HRS §183-2)

~~[§13-104-14 Explosives.]~~ **§13-104-14 Explosives.**
The use or possession of fireworks, firecrackers, or
explosive devices within a forest reserve is
prohibited. [Eff 9/28/81; comp 10/15/93; am and
comp] (Auth: HRS §183-2) (Imp: HRS
§183-2)

~~[§13-104-15 Disorderly conduct.]~~ **§13-104-15**
Disorderly conduct. Disorderly conduct, as defined in
section 711-1101, Hawaii Revised ~~[Statutes,]~~ Statutes,
is prohibited within a forest reserve. [Eff 9/28/81;
comp 10/15/93; am and comp] (Auth:
HRS §183-2) (Imp: HRS §§183-2, 711-1101)

~~[§13-104-16 Residence on forest reserve lands.~~
~~Residing within a forest reserve is prohibited except~~
~~with written permission from the board.]~~ **§13-104-16**
Camping. No person shall camp, or use recreational
trailers or other camper units within any forest
reserve, except with the prior written authorization
of the board or its authorized representative and as
permitted by the rules of the department. [Eff
9/28/81; comp 10/15/93; am and comp]
(Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-17 Compliance with laws.]~~ **§13-104-17**
Compliance with laws. All persons entering the
boundaries of a forest reserve shall comply with all
federal, state, and county laws, ordinances, and
rules. [Eff 9/28/81; comp 10/15/93; am and
comp] (Auth: HRS §183-2) (Imp: HRS
§183-2)

SUBCHAPTER 3

PERMITS

~~§13-104-18 General provisions for permits.~~

§13-104-18 General provisions for permits. (a) The board or its authorized representative may issue the following types of permits:

- (1) Camping;
- (2) Special use;
- (3) Collecting;
- (4) ~~[Commercial harvest,]~~ Commercial; and
- (5) Access.

(b) All permits are subject to the following provisions:

- (1) Permits are subject to denial, cancellation, or termination at any time by the board or its authorized representative upon violation of these rules or any conditions of the permit or any federal, state, or county statutes, ordinances, and rules or for danger to the public or because of natural causes. Persons who have violated permit conditions or the rules may be ordered by the department to leave the forest reserve. Permittees who have violated permit conditions or the rules may be denied future permits for forest reserves or subject to the imposition of additional permit restrictions;
- (2) Permits shall not be transferable~~[-]~~;
- (3) Persons or organizations to whom permits are issued shall be held responsible for all conditions ~~[stipulated]~~ on the permit~~[-]~~;
- (4) All persons eighteen years of age or older shall be eligible to secure a permit and all minors shall be allowed use of the premises; provided that they are under the direct supervision of one adult for every ten

- minors~~[-]~~;
- (5) The size of groups as well as the length of time any permit may be in effect may be limited by the board or its authorized representative~~[-]~~;
 - (6) The board or its authorized representative may require the permittee, at the permittee's own cost, to provide police protection in the interest of the public safety and welfare and for the protection of property when the number of persons using the forest reserve is one hundred or more~~[-]~~;
 - (7) Fees and charges as set by the board may be assessed when permits are granted for the exclusive use of areas or facilities, or when charges are necessary to defray the cost of special facilities, services, or supplies provided by the State, or as otherwise determined by the board or its authorized representative when necessary to carry out the provisions of chapter 183, Hawaii Revised Statutes. ~~[Charges]~~ Fees and charges contained in this chapter may be waived or reduced by the board or its authorized representative if the waiver or reduction is in the public interest~~[-]~~;
 - (8) The board may set and approve a forest product price list. Charges may be assessed when permits are granted for forest products. The forest product price list shall reasonably reflect fair market value and be periodically updated by the board;
 - (9) All permittees ~~[shall]~~, upon request, shall show the permit to any law enforcement officer, the board, or its authorized representative~~[-]~~;
 - (10) By signing the permit and entering into the forest reserve, all persons included on the permit agree to comply with all the terms and conditions of the permit, as well as applicable laws and regulations; and consent

to present the permit to a duly authorized representative of the department upon request; and

- (11) Persons applying for a permit shall provide, if requested, identification for all persons included on a permit, satisfactory to the board or its authorized representative. The board or its authorized representative may require the names, addresses, and telephone numbers of all persons included on a permit.
[Eff 9/28/81; comp 10/15/93; am and
comp] (Auth: HRS §183-2)
(Imp: HRS §§183-1.5, 183-2)

~~[§13-104-19 Camping permits.]~~ §13-104-19
Camping permits. (a) All persons, groups, organizations, or associations wishing to camp within a forest reserve shall obtain a camping permit authorizing the use of the specific area and facilities for camping purposes~~[-]~~ for the stated date or dates.

~~[(b) Camping permits shall be obtained from the district offices of the division during regular working hours of the department.~~

~~(c) Persons applying for a permit shall provide, if requested, identification for all persons included on a permit, satisfactory to the board or its authorized representative.~~

~~(d)]~~ (b) Each camping permit will reserve the use of a designated area for the stated date or dates of use. Camping is permitted only in designated areas or sites.

~~[(e)]~~ (c) No person, group, organization, or association shall remain at any one specific camping site for longer than seven days; provided that the board or its authorized representative may extend the length of stay for good cause~~[-]~~ provided further that the length of stay (including the extension as well as the permitted stay) shall not exceed fourteen days].

~~[(f)]~~ (d) After ~~[the expiration]~~ issuance of a camping permit, a period of at least thirty days shall

pass before another camping permit for the same designated area may be issued to ~~[the same person for the same designated area.]~~ any person listed on any previously valid or current camping permit. ~~[This restriction shall apply to all persons named on the expired permit.]~~ The board or its authorized representative may waive a portion of the thirty-day period for good cause.

~~[(g)]~~ (e) ~~[Permits]~~ Camping permits may be denied, canceled, or terminated for the following reasons:

- (1) When the size of the group will exceed or exceeds the capacity of the existing site or facilities;
- (2) When there are inadequate facilities to meet the immediate needs of the camper or campers;
- (3) When repairs or improvements are being made at the campsite; or
- (4) When a state of emergency is declared or for other reasons involving the health, safety, and welfare of the applicants or permittees; ~~[by the board or its authorized representative]~~

upon the declaration of the board or its authorized representative. [Eff 9/28/81; am and comp 10/15/93;

am and comp] (Auth: HRS §183-2)

(Imp: HRS §183-2)

~~[\$13-104-20 Special use permits.]~~ §13-104-20
Special use permits. (a) Special ~~[uses are permitted within a forest reserve only by a permit]~~ use permits are only issued by the board or its authorized representative. Special uses are ~~[all types of uses other than]~~ those provided for ~~[herein]~~ in this section and which are considered compatible with the functions and purposes of each individual area, facility, or unit within a forest reserve. Special uses include but are not limited to community activities, such as meetings, weddings, concerts, shows, and other community events; ~~[or activities]~~ and

the scientific collection of plants and animals.

(b) Applications for special use permits shall be received by the board or its authorized representative at least fifteen working days in advance of the date the permit is to be in effect, ~~[unless otherwise received and accepted by the board or its authorized representative.]~~ however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.

(c) A request for a special use permit shall be considered on its own merits, including its potential effect on [the premises, facilities,] forest reserve resources and the public's use and enjoyment of the forest reserve. [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2)
(Imp: HRS §183-2)

~~[§13-104-21 Collecting permits.]~~ §13-104-21 Collecting permits. (a) Persons wishing to collect forest ~~[items]~~ products ~~[(e.g. ti leaves, bamboo)]~~ for personal use and at no charge shall obtain a collecting permit authorizing the collection in a specific area.

~~[(b) Collecting permits shall be obtained from the district offices of the division during regular working hours of the department.]~~

~~[(c) Persons applying for a permit shall provide, their names and addresses and shall produce if requested, identification of all persons named on a permit, satisfactory to the board or its authorized representative.]~~

~~[(d)]~~ (b) Each application for a collecting permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.

(c) Collecting permits shall specify:

- (1) The date or dates of collection;
- (2) The quantities and ~~[items]~~ products to be collected;

- (3) The areas of collection; and
- (4) Any other terms and conditions deemed necessary by the board or its authorized representative.

~~[(e)]~~ (d) Permits shall not be issued for collecting ~~[items]~~ products for sale.

~~[(f)]~~ (e) No permits shall be issued for the collection of endangered or threatened wildlife or plants except as provided by chapter ~~[124,~~
~~Administrative Rules.]~~ 13-124.

(f) No more than one permit within a seven-day period may be issued to the same person or persons, group, organization, or association listed on the permit for collecting any of the same forest products.

[Eff 9/28/81; am and comp 10/15/93; am and comp
] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-22 Commercial harvest permits.]~~ §13-104-22 Commercial permits. (a) Commercial use permits. The board or its authorized representative may issue commercial use permits.

- (1) Applications for commercial use permits shall be received by the board or its authorized representative at least thirty working days in advance of the date the permit is to be in effect; however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.
- (2) A request for a commercial use permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.
- (3) The value of the commercial activity shall be decided by the board or its authorized representative and shall not exceed \$10,000.
- (4) The time of entry for the commercial activity shall not exceed thirty days,

except that the board or its authorized representative may extend this time for good cause.

~~[(a)]~~ (b) Commercial harvest permits. The board or its authorized representative may issue permits for the purpose of purchasing~~[-]~~ and harvesting~~[-and removing]~~ forest products from a forest reserve ~~[(e.g., timber, seedlings, greenery, tree fern, einder, and lava rock)]~~.

~~[(b)]~~ ~~Permits shall be obtained from the district offices of the division during regular working hours of the department.~~

~~[(c)]~~ (1) Each application for a commercial harvest permit shall be considered on its own merits, including its potential effect on ~~[the premises]~~ forest reserve resources and the public's use and enjoyment of the forest reserve~~[-]~~; provided further that tree harvesting shall be done in accordance with a management plan as required by section 183-16.5, Hawaii Revised Statutes.

~~[(d)]~~ ~~Permits will not be issued for harvesting material for direct resale.~~

~~[(e)]~~ (2) The value of the raw material to be harvested shall not exceed \$10,000. The quantity to be harvested shall be decided by the board or its authorized representative.

~~[(f)]~~ (3) The time of entry for harvesting shall not exceed ~~[14]~~ fourteen days for permits with designated raw material value not in excess of \$1,000, or ~~[30]~~ thirty days for permits with designated raw material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause.

~~[(g)]~~ (4) No more than one permit within a thirty day period or six permits within a calendar year may be issued to the same person, group, organization, or association for harvesting the same product.

~~[(h)]~~ (5) Each permit shall specify:

~~[(1)]~~ (A) The products to be harvested;
~~[(2)]~~ (B) The amount to be harvested;
~~[(3)]~~ (C) The dollar value of the products;
~~[(4)]~~ (D) The designated area to be harvested;
~~[(5)]~~ (E) The date or dates the harvesting may
take place;

and

~~[(6)]~~ (F) Any other terms or conditions deemed
necessary by
the board or its authorized
representative.

(c) Commercial salvage permits. The board or
its authorized representative may issue commercial
salvage permits for the purpose of purchasing and
removing dead or hazardous trees.

- (1) A request for a commercial salvage permit
shall be considered on its own merits,
including its potential effect on forest
reserve resources and the public's use and
enjoyment of the forest reserve.
- (2) The value of the raw material to be salvaged
shall not exceed \$10,000. The quantity to
be salvaged shall be decided by the board or
its authorized representative.
- (3) The time of entry for salvaging shall not
exceed fourteen days for permits with
designated raw material value not in excess
of \$1,000, or thirty days for permits with
designated raw material the value of which
exceeds \$1,000 but does not exceed \$10,000,
except that the board or its authorized
representative may extend this time for good
cause. [Eff 9/28/81; comp 10/15/93; am
10/4/05; am and comp] (Auth:
HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-23 Access permits.]~~ §13-104-23 Access
permits. ~~[(a)]~~ Permits for access to or entry into
forest reserves may be required by the board or its
authorized representative for the following ~~[purpose:]~~

purposes:

- (1) To comply with the requirements of private landowners or lessees who permit access to forest reserves through their land;
- (2) To control the number of people using a forest reserve or an area within a forest reserve in order to minimize ~~[the]~~ any impact upon environmentally sensitive ~~[area,]~~ areas;
- (3) To control the types of uses of a forest reserve or an area within a forest reserve in order to minimize the dangers of incompatible uses in the same area (e.g., horseback riding and motorcycle riding); ~~[and]~~
- (4) To control ~~[periods of use]~~ uses of a forest reserve, ~~[especially during periods when fire danger levels are high.]~~ or any portion thereof, which may be under closure or otherwise restricted; and
- (5) ~~[To collect plants or animals for scientific purposes.]~~ For scientific research activities that are otherwise prohibited by this chapter.

~~[(b) Access permits shall be obtained from the district offices of the division during regular working hours of the department.]~~

~~[(c) Persons applying for an access permit shall provide their names and addresses and shall produce identification satisfactory to the board or its authorized representative. The board or its authorized representative may require the names, addresses, and telephone numbers of all persons included on a permit.]~~ [Eff 9/28/81; am and comp 10/15/93; am and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[\$13-104-24 Commercial activities.]~~ **§13-104-24 Commercial activities.** No person shall engage in commercial activities of any kind in a forest reserve

without a written permit from the board or its authorized representative. [Eff 12/9/02; am and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

SUBCHAPTER 4

FEES AND CHARGES

§13-104-25 General statement. (a) This subchapter establishes user fees and charges for services, facilities, and activities for forestry and recreational purposes, where applicable under the jurisdiction of the division.

(b) The fees and charges are:

(1) Collected to offset the expenses of operating, maintaining, and managing the facilities and services;

(2) Fixed with due regard to the primary purposes of providing public outdoor recreational facilities and promoting an appreciation and connection with Hawaii's forests; and

(3) Set by categories.

(c) The acceptance of payment or billings shall not waive the nature of trespass or ratify or permit illegal camping. [Eff and comp]

(Auth: HRS §183-2) (Imp: HRS §183-2)

§13-104-26 Payment. (a) Method of payment of fees and charges shall be online by credit card or by business check, cashier's check, money order, or cash at division branch offices or the administration office.

(b) All fees shall be paid in advance of issuance of a permit, except as specified by chapter 13-104. [Eff and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

§13-104-27 Camping and cabin rental fees. The camping and cabin rental fees shall be set according to the amounts in Schedule A - Camping and Cabin Rental Fees - 12/28/16. [Eff and comp]
 (Auth: HRS §183-2) (Imp: HRS §183-2)

Schedule A Camping and Cabin Rental Fees 12/28/16				
	Maximum No. Campsites	Maximum No. Persons per campsite	Resident Fee (\$/night/ campsite)	Nonresident Fee (\$/night/ campsite)
Category 1	Up to 5	Up to 15	\$12*	\$18**
<i>Unimproved campsite or improved campsite with minimal amenities (i.e., trailside camping or a campsite with picnic table and shelter and privy toilet)</i>				
Category 2	1 Cabin	Up to 6	\$30/night per cabin ***	\$50/night per cabin ***
<i>Improved campsite or small cabin that houses no more than 6 persons</i>				
Category 3	1 Cabin	Up to 20	\$60/night per cabin ***	\$90/night per cabin ***
<i>Improved campsite or large cabin that houses 7 or more persons</i>				
* A resident camping permit for up to 6 persons is \$12. Additional persons will cost \$2 per person. ** A nonresident camping permit for up to 6 persons is \$18. Additional persons will cost \$3 per person. ***Fee reflects total cost for cabin rental regardless of number of persons staying overnight.				

§13-104-28 Commercial use permit fees.
Commercial use permit fees are listed in Schedule B - Commercial Use Permit Fees - 12/28/16 and shall apply depending on the applicable commercial activity or

activities; provided that the requested recreational facility is approved for commercial use by the forestry and wildlife manager. [Eff and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

Schedule B Commercial Use Permit Fees 12/28/16	
Base commercial use permit processing fee	\$10
Price per pedestrian	\$5
Price per non-motorized bicycle or horseback rider	\$7
Price per motorized vehicle up to 5 people	\$25
Price per motorized vehicle up to 8 people	\$50
Price per motorized vehicle up to 12 people	\$75
Price per motorized vehicle up to 15+ people	\$100
Price per operator and/or passenger of aerial craft launching from and/or landing in a forest reserve	\$5
Price per campsite, facility, or cabin per day	\$100
Price per commercial film permit	\$100
Price per item/activity (miscellaneous)	\$20

§13-104-29 Kiln fees. Kiln fees are listed in Schedule C - Kiln Fees - 12/28/16 and shall be paid no later than fifteen days after kiln services are rendered. [Eff and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

Schedule C Kiln Fees 12/28/16	
Unit	Unit Cost
1 - 900 Board Feet	\$0.70 each
901 - 1000 Board Feet	\$0.60 each
1001 - 1500 Board Feet	\$0.50 each
1501 and up Board Feet	\$0.40 each

§13-104-30 Permit processing fees. The fee for the processing of an access permit for scientific

research purposes shall be \$50. The fee for processing any other permit shall be \$10. [Eff and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

§13-104-31 Parking and entrance fees. The fee for parking a vehicle may be assessed at \$5 per vehicle, per day. [Eff and comp] (Auth: HRS §183-2) (Imp: HRS §183-2)

§13-104-32 Fee for copies of rules. The fee per copy of these rules shall be 10 cents per page. No fee shall be charged for copies furnished to federal, state, or local governmental agencies. The fee may be waived in other instances at the discretion of the administrator or the administrator's authorized representative when a waiver is in the public interest. [Eff and comp] (Auth: HRS §183-2) (Imp: HRS §§91-2.5, 183-2)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-104, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson, Board of
Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General