

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

December 1, 2010

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

REGARDING: Adoption of the Office of Conservation and Coastal Lands Administrative Sanctions Schedule for the Processing of Minor Conservation District Civil Resource Violations

BACKGROUND:

Civil Natural Resource Violations Act

In 2004, the Legislature established the civil natural resource violations act law under Chapter 199D, Hawaii Revised Statutes (HRS). The purpose was to provide a mechanism to process violations of the Department's regulations for which administrative penalties have been authorized by legislative act or rules adopted that could be applied by all divisions of the Department.

Civil Resource Violations System

On February 27, 2009, the Hawaii Administrative Rules (HAR), Chapter 13-1, Subchapter 7, Civil Resource Violation System (CRVS) became effective. The purpose of the CRVS was to handle the Department's minor civil violation cases and to provide guidance to staff when issuing violation notices under §13-1-54, HAR. Some of the objectives of the Civil Resource Violations System are to provide a fair, fast and cost-effective enforcement measures and to expedite administrative processes that benefits the parties, the public and the department. Matters would be processed as a civil proceeding instead of a criminal proceeding with standard fines, no court date and no criminal record.

On March 13, 2009, the Board of Land and Natural Resources adopted the Administrative Sanctions Schedule for the Department to use as a guideline to resolve civil resource violations administratively under chapter 13-1, subchapter 7, HAR (**Exhibit 1**). The strategy for implementing the CRVS rules is for the Department of Land and Natural Resources agencies to develop an administrative Sanction Schedule that identifies minor civil resource violations that could be processed through the CRVS. The Board has recently approved administrative Sanction Schedules for the Divisions of Aquatic Resources and Boating and Ocean Recreation.

Conservation District Violation Penalties Schedule

Act 217 passed by the 24th State of Hawaii Legislature (effective July 7, 2008) amended Hawaii Revised Statutes (HRS) to increase the maximum penalty for a conservation violation from up to \$2,000.00 per violation to up to \$15,000.00 per violation in addition

to administrative costs, land and habitat restoration cost, damages to public land or natural resources or any combination thereof.

With the substantial increase in fines, the Office of Conservation and Coastal Lands staff (OCCL) developed an internal penalty guideline that seeks a logical and consistent means to assess penalties and guide the settlement of Conservation District enforcement cases. Attached as **Exhibit 2** is the *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land and Natural Resources (Guidelines and Assessments)* that is intended to provide Staff with a framework to systematically carry out its enforcement powers in the determination and adjudication of civil and administrative penalties. These guidelines are to be used for internal staff guidance, and should be periodically reviewed to determine their effectiveness, and whether refinements are needed.

For major conservation district violations, a recommendation would be reviewed by the Board at a public meeting, testimony from the parties and the public would be allowed to be presented and the Board would make a determination whether a fine is warranted and if so, the monetary amount. Should a violator wish to contest the Board findings, they may do so under Chapter 13-1, HAR and Chapter 91, HRS.

PROPOSED CONSERVATION DISTRICT SANCTION SCHEDULE

Within the developing *Guidelines and Assessments*, OCCL identified different degrees of conservation district land use violations and the recommended actions for resolution of violations. Violations that were ranked as minor and very minor harm to the resources are proposed to be processed administratively through the CRVS at a relatively low level maximum fine. Violations ranked as moderate or major would still be submitted to the Board for consideration.

The OCCL is seeking Board approval for a specific delegation of authority to the Chairperson to process minor to very minor violations as discussed in the attached penalty schedule **Exhibit 3**. This schedule would be applied by OCCL staff to assess minor violations of the Conservation District to be processed under the CRVS.

Unauthorized land uses that could be considered minor violations are:

- Identified land uses that could have been authorized under a Site Plan Approval (SPA) pursuant to 13-5, HAR;
- Non-identified land uses that are similar to an identified land use that would require a SPA;
- Vegetation removal or clearing of less than 2,000-ft² that does not include threatened, endangered, or commercially valuable flora;
- Permit non-compliance; and
- Shoreline vegetation encroachment within beach transit corridors.

In addition to the proposed monetary fines, resolution of minor violations may also include remediation of the impacted site, removal of the land use and/or obtaining an After the Fact Site Plan Approval. Noncompliance of a CRVS notice issued for a

Conservation District use violation may be forward to the Board to be vetted. Recommended penalties above \$2,000.00 shall also be forwarded to the Board.

For minor conservation district violations under the CRVS, notice of the civil resource violation shall be issued and the respondent has 21 days to respond. The respondent may comply with the sanctions assessed; may request mitigation; or may contest the notice. Contested matters shall be processed under Chapter 13-1, HAR and Chapter 91, HRS.

DISCUSSION

About fifteen years ago, the Department had a major backlog of pending cases of alleged violations of the Conservation District. Although most of the alleged violations were minor under §183-41 and §183-43, HRS (Now 183C, HRS) the only way to resolve violations was to go to the Board. In an effort to streamline the process and reduce the backlog of cases, the Board approved a voluntary program whereby the alleged violator could opt out of appearing before the Board and either pay a fine or request a hearing from a hearings officer. This was known as the Hearing Officers Administrative Penalty System (HOAPS).

HOAPS had been a pilot program in the Department since 1994. Predecessor Offices of and the OCCL had been very successful in processing minor violations in addition to educating the public and deterring conservation district use violations. Over 300 minor violations have been processed under the HOAPS by the OCCL, therefore staff believes that the OCCL has collective and successful experience in utilizing the HOAPS.

The purpose of the CRVS is to give the Department authority to implement a system similar to the HOAPS as a mandatory department-wide program to efficiently process minor infractions of regulations that govern the use of our natural resources so that greater enforcement resources can be dedicated to more serious violations.

RECOMMENDATION

Staff recommends that the Board of Land and Natural Resources delegate to the Chairperson the administrative processing of minor civil resource violations under the Civil Resource Violation System in accordance with the attached Conservation District Sanction Schedule (**Exhibit 3**).

Respectfully submitted,



K. Tiger Mills, Staff Planner

Office of Conservation and Coastal Lands

Approved for submittal:



Laura H. Thiel, Chairperson
Board of Land and Natural Resources

State of Hawaii
Department of Land and Natural Resources
Civil Resource Violations System

ADMINISTRATIVE SANCTIONS SCHEDULE

Adopted on March 13, 2009

By the Board of Land and Natural Resources

The following Administrative Sanctions Schedule is adopted as a guideline for the Department of Land and Natural Resources to be used under the Civil Resource Violations System (CRVS).

PART 1. GENERAL PROVISIONS

Item 1-1. Objective

This Administrative Sanctions Schedule (“Schedule”) seeks to provide a Department-wide standard policy guideline for all divisions of the Department of Land and Natural Resources (DLNR or “Department”) in processing the civil resource violations so as to promote:

- Voluntary compliance of state law for the protection of Hawaii’s natural and cultural resources,
- Fair and cost-effective process for all parties involved, and
- Deterrence of violations.

Item 1-2. Legal Authority

This Schedule is adopted pursuant to §171-6 and Chapter 199D, Hawaii Revised Statutes (HRS), §13-1-70, Hawaii Administrative Rules (HAR), and other statutes and administrative rules of the Department.

Item 1-3. Applicability

The Department shall follow this Schedule when processing a civil resource violation under the CRVS pursuant to Chapter 13-1, Subchapter 7, HAR.

Item 1-4. Denial of Application for Cause

If a person is a respondent in a pending case with the CRVS, the Department may deny any application submitted by such person to the Department for any regulatory permit, license, or a renewal of such, or may issue one with additional conditions upon full payment of the CRVS fines assessed, subject to the review by a hearing officer and the Board or its delegate if the CRVS case is properly contested.

Item 1-5. Delegation of Power to Suspend Permits and Licenses Issued by the Department

- (a) Unless otherwise provided by law or in this Schedule, if a respondent has been issued a CRVS violation notice for any violation related to a particular DLNR permit or license issued to or held by the respondent and fails to comply with the notice within 21 days of the service of the notice, the Chairperson is authorized to suspend the permit or license until the respondent comes into full compliance with all sanctions and requirements imposed through the CRVS.
- (b) A suspension of a permit or license shall mean that the permittee or licensee is not entitled to conduct any activity pursuant to the permit or license until such time as the permit or license is reinstated. Suspension of a permit or license will not affect the expiration of the term of the permit or license.
- (c) The Chairperson may reinstate a suspended permit or license for good cause at any time upon petition of the respondent.
- (d) The Division Administrator shall reinstate a suspended permit or license upon a determination that the respondent has come into full compliance with the law and all violation notices previously issued.

Item 1-6. Delegation of Power to Revoke Permits and Licenses Issued by the Department

- (a) Unless otherwise provided in this Schedule, if a respondent is found to have committed three offenses under this Schedule in the past twelve months for any violation of state law or the terms or conditions of a particular DLNR permit or license issued to or held by the respondent, the Chairperson is authorized to revoke the permit or license for a period not to exceed six months.
- (b) If a permit or license revoked under this Schedule expires before the end of the revocation period, the revocation shall continue to be enforced by denying any application for the renewal or new issuance of a permit or license until the revocation period is over.
- (c) For good cause, the Chairperson may withdraw a revocation of a permit or license.

- (d) After the revocation period, the Division Administrator may reissue a revoked permit or license upon the respondent's application for renewal and payment of the fee that the Department charges for the renewal of the permit or license.

Item 1-7. Interpretation of the Schedule

The Chairperson and a hearing officer appointed pursuant to §13-1-57, HAR, shall have the power to interpret this Schedule, subject to review by the Board.

Item 1-8. Standard Forms

- (a) The Chairperson may make minor modifications and corrections to a standard form adopted by the Board for use in the CRVS if deemed necessary.
- (b) The Department shall use the standard form of Notice of Civil Resource Violation(s), as attached in Appendix 1-A, when preparing a violation notice pursuant to §13-1-62, HAR.

Item 1-9. Effective Dates

This Schedule and its subsequent amendments shall be effective upon adoption by the Board.

Appendix 1-A. Standard Form – Notice of Civil Resource Violation(s)



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
NOTICE OF CIVIL RESOURCE VIOLATION(S)**



Notice No. CRVS – 09 –

Date:

TO RESPONDENT: Any administrative proceedings instituted pursuant to this Notice shall not preclude the State from pursuing separate criminal prosecution against you for an offense committed in the same course of conduct.

COMPLAINT: The undersigned official/officer of the Department of Land & Natural Resources (DLNR) states that the named respondent did commit the civil resource violation(s) noted below.

A. RESPONDENT INFORMATION				
Last Name / Company Name		First Name, M.I.		Sex <input type="checkbox"/> M <input type="checkbox"/> F
Street Address		City		State & ZIP (Country)
ID Type	Issued By	ID No.	Juvenile <input type="checkbox"/>	Phone

B. VEHICLE / VESSEL INFORMATION (If applicable)			
<input type="checkbox"/> Vehicle	License Plate No., VIN / Vessel Type, ID, Name		License State
<input type="checkbox"/> Vessel	Year / Make / Model / Color		

C. STATEMENT OF FACTS			
Date	Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Violation Site: Island / Location / TMK	
DESCRIPTION: (Specify any witness, evidence, damage, injury and seizure. Attach additional sheet if needed.)			

D. CITATION(S)			E. FINES ASSESSED	
No.	Authority	Civil Resource Violation	Comply in 21 days	After 21 days
1	§		\$	\$
2	§		\$	\$
3	§		\$	\$
TOTAL ADMINISTRATIVE FINE ASSESSED >>>			\$	\$

F. OTHER SANCTIONS AND REQUIREMENTS
TO RESPONDENT: In addition to any fines assessed in Section E, you must comply with the following sanctions and/or requirements within 21 days of the service of this Notice, unless a different period is provided in this section below:

G. ISSUANCE AND SERVICE		
F.I. & Last Name	Agency	Signature
Service: <input type="checkbox"/> In Person <input type="checkbox"/> Certified Mail		Issued by APO:
<input type="checkbox"/> Unoccupied vehicle/vessel		

H. ACKNOWLEDGEMENT
I acknowledge the receipt of this Notice. This is not an admission of responsibility.
Respondent Signature

>>> CONTINUE TO BACK PAGE >>>

I. SUMMONS TO RESPONDENT

Pursuant to §199D-1, HRS, and §13-1-63, HAR, you are hereby summoned and required to submit an answer to this Notice within twenty-one (21) days from the date of service of this Notice. Submit your answer, payment, statement and/or evidence to DLNR/APO, 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813, or at www.hawaii.gov/dlnr/apo. If you fail to answer within 21 days, a default decision for the relief demanded in this Notice will be entered against you, and you may be subject to additional actions without further notice to you.

J. ANSWER BY RESPONDENT (Required)

INSTRUCTIONS:

- 1. You have three options in answering this Notice. **CHOOSE ONLY ONE** and check the corresponding box below. Sign and date your answer and return it to the DLNR Administrative Proceedings Office (DLNR/APO) at the address listed above or answer at the website address listed above.
- 2. If you choose Option 1, include with your answer payment in the amount stated in the first column of Section E if you are answering within 21 days of receiving this Notice or in the amount stated in the second column if after 21 days. Make your check payable to State of Hawaii. For credit card payment, see attached envelope. You are also required to comply with all sanctions and requirements specified in Section F. Your case will be concluded.
- 3. If you choose Option 2, include with your answer a statement and evidence showing the mitigating circumstances. A hearing officer will review your request and render a decision without holding a hearing, and may adopt, modify or reverse any sanctions assessed in this Notice. This decision is final and may not be contested or appealed.
- 4. If you choose Option 3, include with your answer a statement and evidence showing the reasons of your contest. A Notice of Administrative Hearing will be mailed to you within 30 days of your answer.
- 5. If answer by mail, return this original page to DLNR/APO. Retain a copy of everything you submit for your records. For inquiries, contact DLNR/APO at (808) 587-1496, DLNR.CO.APO@hawaii.gov or www.hawaii.gov/dlnr/apo.

<input type="checkbox"/> Option 1: Comply	<input type="checkbox"/> Option 2: Request Mitigation	<input type="checkbox"/> Option 3: Contest
I <u>DO NOT</u> contest this Notice, and have complied with all sanctions assessed herein.	I <u>DO NOT</u> contest this Notice, but request mitigation in the assessed sanctions.	I <u>DO</u> contest this Notice, and request an administrative contested case hearing.

STATEMENT OF RESPONDENT: (Please type or write legibly. Use additional sheet if necessary.)

Print your name:	Signature:	Date:
Address:	E-Mail:	Phone:

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

September 2009

Relating to penalties for violations within the Conservation District

Act 217

APPENDIX A: GUIDELINE FRAMEWORK TABLES

APPENDIX B: DEFINITIONS

APPENDIX C: REFERENCES

APPENDIX D: DAMAGES EXAMPLES

APPENDIX E: PENALTY CALCULATION WORKSHEET

1 INTRODUCTION

Hawaii Revised Statutes (HRS) §183C-7 was amended on July 7, 2008 to increase the maximum penalty for a Conservation District violation to up to \$15,000 per violation, in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof.

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

2 CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES

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

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

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

2.1 PENALTY CALCULATION

The penalty range for these actions will be substantially determined based on the type of permit that would have been required if the individual(s) had applied to the Department of Land and Natural Resources (Department) or Board for pre-authorization to conduct the identified use, under Hawaii Administrative Rules (HAR) §13-5-22, 23, 24, 25. Assessing the penalties according to the Conservation District permit type accounts for the level of review or scrutiny the unauthorized use would have received by the Department or Board in order to avoid damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential "harm to the resource"¹ caused by the violation.

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

¹ "Harm to resource" is an actual or potential impact, whether direct or indirect, short or long term, impact on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration (See Appendix B: Definitions) Adapted from Florida Department of Environmental Protection 2000 Administrative Fines and Damage Liability, Ch. 62B-54.

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

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

The first two of the following sections explain the identified and non-identified land use framework. The next four sections: Tree Removal, Additional Considerations and Factors, Continuing Violations and Permit Non-Compliance, and In-Kind Penalties, provide guidance for the upward or downward adjustment of penalties based on the initial framework discussed in Section 2.1.1.1, Identified land use penalties.

2.1.1 Identified Land Use Penalties

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

Table 1. Penalty Guideline Framework

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

Major Harm to the Resource/ Board Permit (D)

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

Moderate Harm to the Resource/Departmental Permit (C)

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

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

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

Very Minor Harm to the Resource/(B) Permit

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

2.1.2 Non-Identified Land Use Penalties

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

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

2.1.3 Tree Removal

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

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

2.1.4 Vegetation Removal/Vegetation Clearing

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

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

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

Table 3. Vegetation Removal

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

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

2.1.5 Additional Considerations and Factors

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

2.1.6 Continuing Violations and Permit Non-Compliance

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

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

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

2.1.7 In-Kind Penalties

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

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

⁵ In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection. 2007. Program Directive 923. Settlement guidelines for civil and administrative penalties.

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

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

3 ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

2.1.8 Penalty Adjudication

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

Comparable Harm to Resource	Identified land use permit and Penalty Range	Penalty Adjudicator
Major	\$10,000-\$15,000	Board
Moderate	\$2,000-\$10,000	Board
Minor	\$1,000-\$2,000	Chairperson or Presiding Officer
Very Minor	up to \$1,000	Chairperson or Presiding Officer

Major and Moderate Harm to the Resource

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

Minor and Very Minor Harm to the Resource

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

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

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

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

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

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

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

3.1 PRIMARY RESTORATION DAMAGES

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

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

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

3.2 COMPENSATORY DAMAGE CALCULATION

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

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

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

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

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

3.3 ADJUDICATION OF DAMAGES

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

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

Table 2. Vegetation Removal

Action	Commensurable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft. of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ⁵

Note: According to Table 2, the clearing of vegetation may incur a penalty of up to \$17 sq. ft., as clearing 10,000 sq. ft. shall could assess a penalty of \$10,000. The clearing of threatened, endangered or commercially valuable plants, will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant.

APPENDIX A: GUIDELINE FRAMEWORK TABLES

Table 1. Penalty Guideline Framework

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

APPENDIX B: DEFINITIONS

Definitions:

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

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

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

(13) "Grossly negligent" violation means conscious and voluntary acts or omissions characterized by the failure to perform a manifest duty in reckless disregard of the consequences.⁸

(14) "Harm to resource" means an actual or potential impact, whether direct or indirect, short or long term, acting on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration as is defined as follows:

- (a) "Major Harm to resource" means a significant adverse impact(s), which can cause substantial adverse impact to existing natural resources within the surrounding area, community or region, or damage the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics
- (b) "Moderate Harm to Resource" means an adverse impact(s), which can degrade water resources, degrade native ecosystems and habitats, and/or reduce the structure or function of a terrestrial, littoral or marine system (but not to the extent of those previously defined as those in (a)).
- (c) "Minor Harm to Resource" means limited to short-term direct impacts from small scaled construction or shoreline or vegetation alteration activities.
- (d) "Very Minor Harm to Resource" means an action in which the impact on the water resource or terrestrial, littoral or marine ecosystem was insignificant, and was not of a substantial nature either individually or cumulatively.

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

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

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

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

APPENDIX C: REFERENCES

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

NOAA Coastal Services Center. [Habitat Equivalency Analysis](http://www.csc.noaa.gov/coastal/economics/habitatqu.htm).
www.csc.noaa.gov/coastal/economics/habitatqu.htm

Maine Land-Use Regulation Commission. 2007. [2008 Workshop Draft Comprehensive Land Use Plan](http://www.maine.gov/doc/lure/reference/cluprev/CLUP_PWDraft_pg5.shtml): for areas within the jurisdiction.
http://www.maine.gov/doc/lure/reference/cluprev/CLUP_PWDraft_pg5.shtml

APPENDIX D: DAMAGES EXAMPLES

Examples of Damage Assessments and Possible Remediation Efforts

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

Coral

Florida Department of Environmental Protection (Civil Damages):

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

Cesar et al 2002 (Ecosystem Service Valuation)

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

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

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

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

Thus damage to corals may be calculated as follows:

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

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

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

Seagrass beds (Compensatory Damage)

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

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

Sand Beaches (ex. Of Primary Restoration Costs)

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

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

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

APPENDIX E: PENALTY CALCULATION WORKSHEET

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

Part I- Penalties

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

Penalty Total: _____

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

- Actual environmental damage extent (onsite)
 Description: _____

- Actual environmental damage extent (offsite)
 Description: _____

- Does the violator's have a history of violations?

- Was the violation repetitious or of a long duration?

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

- Does the Violator have a Financial Hardship?

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

- Other.
 Description: _____

Total Adjustment: up/down _____

Multi-day penalties

Number of days to multiply penalty: _____
 Reasoning: _____

Total multi-day: _____

CIVIL RESOURCE VIOLATION SYSTEM
The Conservation District
Sanction Schedule

These guidelines are to implement Hawaii Administrative Rules §13-1, Subchapter 7, Civil Resource Violation System (CRVS) for the Conservation District to be assessed by the Office of Conservation and Coastal Lands Staff (Staff) for minor and very minor harm to the resource for CRVS processing.

AUTHORITY

Chapter 183C, Hawaii Revised Statutes (HRS)

§183C-3, HRS identifies the Board and Department of Land and Natural Resources to establish and enforce land use regulation on conservation district lands including the collection of fines for violations of land use and terms and conditions of permits issued by the department.

§183C-7, HRS Penalty for violation identifies that: (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter and any zoning rule adopted in accordance therewith. (b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000.00 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof.

After written or verbal notification from the department, willful violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

Chapter 183C shall not be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices as authorized by law or as permitted by the department pursuant to Article XII, section 7 of the Hawaii constitution.

Chapter 13-5, Hawaii Administrative Rules (HAR)

Chapter 13-5, HAR is utilized to regulate land use in the conservation district. All proposed uses must be an identified land use as defined in 13-5, HAR. If a use is not identified within 13-5, HAR, then by definition the land use would not be allowed. The rules provide for a hierarchy of permit processes, where the level of review is scaled to the level of potential impact.

Chapter 115, HRS

This statute provides for public access to coastal area and has recently been amended to reaffirm public policy of extending public use and ownership of Hawaii's shoreline to ensure the public's lateral access along the shoreline, by requiring the removal of private landowners' induced or cultivated vegetation that interferes or encroaches seaward of the shoreline. As land seaward of the shoreline is designated Conservation, the Department shall enforce upon adjacent landowners to maintain access within beach transit corridors under chapter 183C.

PENALTY ASSESSMENT

Staff will treat each case individually when assigning conservation district penalties using the following framework and additional considerations and factors for upward or downward adjustments. Authorization requiring a Site Plan Approval under 13-5, HAR shall be the threshold for processing a conservation district land use violation under the CRVS. Staff will use these penalty schedule guidelines to issue civil resource violation notices for Conservation District penalties.

These guidelines presume that all cases in which a Conservation District violation has been assessed, the Department is allowed to recoup all administrative costs associated with the alleged violation pursuant to HRS §183C-7(b). Recommended penalties above \$2,000.00 shall be forwarded to the Board of Land and Natural Resources. Noncompliance of a CRVS notice issued for the Conservation District may also be forwarded to the Board.

I. Violations Pertaining to Identified Land Use Penalties (Authority §183C-7, HRS)

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

In instances in which a permit with the B prefix should have been sought to assure that “minor harm(s) to the resource” are minimized may incur a penalty of \$1,000-\$2,000 and could be actions causing limited to short-term direct impacts including, but not limited to, small-scaled construction, construction of accessory structures, encroachment and installation of temporary or minor shoreline activities or similar uses.

Very Minor Harm to the Resource/(B) Permit

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

In addition to a monetary penalty, other sanctions to resolve unauthorized identified land use penalties may include land remediation, removal of the unauthorized land use or the filing of an After the Fact Site Plan Approval (SPA).

Table 1-Conservation District Penalty Guideline Framework for Identified Land Uses

Harm to resource or potential for harm to resource	Identified land use permit beginning with the letter	Penalty Range
Minor	B (Site Plan)	\$1,001-\$2,000
Very Minor	B (Site Plan)	Up to\$1,000

II. Non- Identified Land Use Penalties (Authority §183C-7, HRS)

Regarding violations in which an unauthorized use is not identified in HAR §§13-5-22, -23, -24 and -25, staff may try to associate the action with the most similar identified land use in Chapter 13-5, or in accordance to the “harm to the resource” caused by the violation. Refer to the above section I. In addition to a monetary penalty, other sanctions to resolve unauthorized identified land use penalties shall require removal of the unauthorized land use and may include land remediation.

III. Vegetation Removal/Vegetation Clearing (Authority §183C-7, HRS)

In minor or very minor harm to the resource, in accordance with the identified land uses within HAR, §13-5 the assessment of vegetation removal is based on a single citation of removal/clearing determined by the square footage of vegetation removed (See Table 2 Vegetation Removal). However, the Department may see fit to assess the removal/clearing of threatened, endangered, or commercially valuable plants on an individual plant basis of up to \$15,000 per plant that would be forwarded to the Board of Land and Natural Resources.

In addition to a monetary penalty, other sanctions to resolve unauthorized clearing may include land remediation and/or the filing of an After the Fact Site Plan Approval (SPA).

Table 2-Vegetation Removal

Action	Comparable Harm to Resource	Penalty Range
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,001-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ¹

Note: The clearing of threatened, endangered or commercially valuable plants may incur a penalty of up to \$15,000 per plant as determined by the Board of Land and Natural Resources. Vegetation clearing may incur a penalty of up to \$1 per square foot.

IV. Permit Non-Compliance (Authority §183C-7, HRS)

Violation of existing approved Conservation District Use Permit (CDUP) conditions involving initiation and/or completion of project construction, notification of start and completion dates, failure to file legal documents, etc., may be considered very minor within the existing framework, although it should be noted that such actions could result in a recommendation to the Board of Land and Natural Resources for permit revocation.

V. Shoreline Vegetation Encroachment (Authority §183C-7, HRS & §115, HRS)

Coastal property owners must ensure that beach transit corridors abutting their land be kept passable and free from human-induced, enhance, or unmaintained vegetation that interferes or encroaches upon beach transit corridors. The department shall maintain access within beach transit corridors by requiring private property owners to ensure that

¹ Provided the harm to the resource and offsite damage were minimal.

beach transit corridors abutting their lands shall be kept passable and free from the landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach transit corridors.

If any landowner fails to remove the induced, enhanced, or unmaintained vegetation within twenty-one days of notice being issued, the department shall take any action authorized under §183C-7, HRS as necessary to maintain access within beach transit corridors; provided that if the landowner contests the basis upon which the notice was issued prior to the expiration of the notice period, the department's enforcement actions under §183C-7, HRS shall be tolled until the final resolution of the contested matter.

The Department shall issue the first notice requesting removal of the encroaching vegetation. If there is no compliance within 21-days, the Department shall issue a second notice with a recommended monetary penalty of no less than \$1,000.00.

Additional Considerations and Factors

After Staff applies the Conservation District violation graduated penalty framework for minor or very minor harm to the resources, staff may incorporate several considerations into the final assessed conservation district penalty including but not limited to, factors identified in HAR, §13-1-70 Administrative Sanctions Schedule; Factors to be considered.

**Conservation District
Administrative Sanctions Table**

Item	Authority	Violation	Notice	Fine		Other Sanctions*
				Very Minor	Minor	
I	§183C-7, HRS	Identified Land Use	1st	Up to \$1,000	\$1001 to \$2,000	<ul style="list-style-type: none"> • Remediation • Removal • After the Fact SPA
II		Non-Identified Land Use	1st	Up to \$1,000	\$1001 to \$2,000	<ul style="list-style-type: none"> • Remediation • Removal
III		Vegetation Removal	1st	Up to \$1,000	\$1001 to \$2,000	<ul style="list-style-type: none"> • Remediation • After the Fact SPA • Board Determination
IV		Permit Noncompliance	1st	Up to \$1,000		<ul style="list-style-type: none"> • Board Determination

*No permit application shall be processed by the Department until any violations pending against the subject parcel are resolved.

Item	Authority	Violation	Notice	Fine	Other Sanctions*
V	§115, HRS***	Encroaching Vegetation Within Beach Transit Corridors	1st	\$0	<ul style="list-style-type: none"> • Removal
			2nd	\$1,000	<ul style="list-style-type: none"> • Removal
	§183C-7, HRS		3rd	\$2,000	<ul style="list-style-type: none"> • Removal
			4th		<ul style="list-style-type: none"> • Board Determination

*No permit application shall be processed by the Department until any violations pending against the subject parcel are resolved.

***This statute will be repealed July 1, 2013. Violations shall be processed under §183C-7, HRS.