

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Office of the Chairperson  
Honolulu, Hawai'i 96813

June 24, 2022

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

STATEWIDE

**REPORT TO THE BOARD OF LAND AND NATURAL RESOURCES ON  
STATUS OF FY2021 ADMINISTRATIVE ENFORCEMENT CASES**

The Office of the Chairperson hereby reports to the Board of Land and Natural Resources on the status of the Department's administrative enforcement cases that were processed in the Fiscal Year of 2021. See attached Attachment 1 for a summary of the cases.

This summary covers all administrative proceedings that were initiated in FY2021, from July 1, 2020 to June 30, 2021. It also includes those cases that were initiated before FY2021 and were not concluded at the present time. Certain cases that were initiated in FY2022 are also included in this report.

This summary does not include criminal resource enforcement cases that were initiated by the Division of Conservation and Resource Enforcement (DOCARE) and processed by the various county prosecutor offices through the Judiciary's environmental court system.

The Department's administrative enforcement cases fall into two categories – cases processed by the divisions through the administration of the Board and cases processed through the Civil Resource Violations System (CRVS). The former category is listed in Attachment 1 under the respective divisions of the Department. The latter one is listed therein separately under the CRVS accounting.

In general, the former category consists of major enforcement cases involving more serious violations; they are heard and decided by the Board in its meetings. Respondents in these cases may petition for contested case hearing under Chapter 91 of the Hawaii Revised Statutes before the Board makes the final decision.

The latter category normally involves minor enforcement cases managed by the Department's Administrative Proceedings Office (APO) through the CRVS. Violation notices are issued by the responsible divisions and the APO jointly pursuant to the administrative penalty schedules adopted by the Board. Respondents in these cases may choose to pay the fine imposed and comply with other corrective requirements in the notices, request mitigation of the fines, or contest the citation. Response to CRVS notices and payments can be made online, by mail and email, and by telephone.

## Major Enforcement Cases

In all, the following divisions issued major administrative enforcement cases in FY2021 and 2022:

- State Historic Preservation Division (SHPD) – 1 FY21 case;
- Division of Aquatic Resources (DAR) – 4 FY21 cases;
- Division of Boating and Ocean Recreation (DOBOR) – 0 FY21 cases, 2 FY22 cases, 1 FY17 case pending;
- LAND Division (LAND) – 3 FY21 cases, 1 FY12 case and 1 FY18 case pending;
- Office of Conservation and Coastal Land (OCCL) – 7 FY21 cases, 2 FY22 cases;
- Engineering Division (ENG) – 3 FY21 cases; and
- Division of Forestry and Wildlife (DOFAW) – 0 FY21 cases, 1 FY15 case and 1 FY18 case pending.

The following divisions reported no administrative enforcement cases during FY2021:

- Division of Conservation and Resource Enforcement (DOCARE), and
- State Parks (SP).

## The Civil Resource Violations System (CRVS)

The CRVS currently processes minor resource violations generated from the following divisions:

- Division of Aquatic Resources (DAR),
- Office of Conservation and Coastal Land (OCCL),
- Engineering Division (ENG), and
- Division of Boating and Ocean Recreation (DOBOR).

The categories of CRVS cases under each division and the accounting of the FY2021 CRVS cases are listed in Table H in Page 11 of Attachment 1.

In Fiscal Years 2022 and 23, the CRVS will start processing minor resource violations generated from the Division of Forestry and Wildlife (DOFAW) and the Division of Conservation and Resource Enforcement (DOCARE).

## Past Collection Efforts

The Department monitors its administrative fines at the staff level to ensure payment. When fines are delinquent, staff initiates efforts to contact the violator to follow up with payment of the fine. These fines pertain to the Department's administrative enforcement actions and contested cases only, and do not include other categories of delinquencies such as uncollectible lease payments and lease-related penalties.

The Department has in the past two years reinvigorated its collection action in certain delinquent fine cases by working with the delinquent parties. Such efforts have resulted in at least

two full payments and conclusion of those cases. One more case is in incremental payment plan as agreed by the parties.

Some fines prove difficult to collect, whether because the violator doesn't have resources to pay the fine, attempts to avoid it, or leaves the state. Aging delinquent accounts are more difficult to collect. A request for proposals (RFP) issued in 2012 seeking proposals from collection agencies received no responses. Significant delinquent accounts are referred to the Attorney General's Office for review. The Department does not currently have any positions dedicated to collection work.

The Department recently looked into the possibility of reinstating an RFP or other process to retain a collection agency to assist with collections, however, one agency who had been retained in the past commented that the accounts were "not very collectible" in the sense that they were fines from violation of law or rules instead of contractual debt. The agency also did not favor the RFP process or the Department's contingency fee contract.

The Department also consulted with a member of the Collection bar in Honolulu who looked at a sampling of the Department's aging receivables primarily based on contractual debt (e.g., delinquent rents from permits or leases), who commented as follows:

Collection agency efforts would typically involve two to three demand letters and follow-ups, and perhaps lodging a negative credit report and pursuing the account to judgment in Small Claims Court, whose jurisdiction is limited to cases of \$5,000 or less.

It was suggested to divide the accounts into the following categories:<sup>1</sup>

- 1<sup>st</sup> tier--contractual debts of \$5,000 or less with recent delinquency.
- 2<sup>nd</sup> tier-- \$5,000-\$20,000. An attorney would typically be retained by the collection agency since it exceeds Small Claims jurisdiction.
- 3<sup>rd</sup> tier—For debts over \$20,000--referral to the Department of the Attorney General, Civil Recoveries Division, or possibly retaining outside counsel. The assumption is these kinds of debt would likely be contested and litigated in Circuit Court (as opposed to Small Claims/ District Court) with possible counterclaims and defenses.

### Prospective Collection Actions

Since most of the Department's accounts are derived from fines for violation of rules or law, which fall into the second and third tiers stated above, we do not believe it would be feasible and cost effective to retain a collection agency. Instead, for these larger fine delinquencies based on fines for violations, the Department intends to continue collection efforts internally and work with the Department of the Attorney General as appropriate.

Divisions and offices whose debts are primarily based on contract and characterized by shorter aging delinquencies of lesser amounts, which are more efficiently and effectively collected

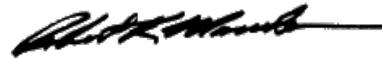
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<sup>1</sup> Consumer debt would need to be identified as certain consumer laws would apply, such as the stringent Fair Debt Collection Practices Act, etc.

via collection agency measures, may elect on a case-by-case basis to pursue retaining a collection agency to assist with their delinquent accounts.

The Department is also exploring an option to hire and appoint an outside attorney as a Special Deputy Attorney General to pursue the delinquent cases in appropriate legal actions. In such an action, the respective division or office responsible for the subject matter is expected to pay for the fees and costs incurred.

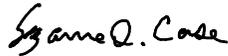
Respectfully Submitted,



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ROBERT K. MASUDA  
First Deputy

APPROVED FOR SUBMITTAL:



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

Attachment 1: FY2021-22 DLNR Enforcement Cases Status Report

Department of Land and Natural Resources

**Enforcement Cases Status Update**

**FY2021 (July 1, 2020 – June 30, 2021)**

Instructions:

1. Please include all enforcement cases that your division/office has filed with the Land Board since July 1, 2020.
2. Also include those enforcement cases that you filed with the Land Board prior to July 1, 2020 if they are not yet closed. A case is closed when it is withdrawn, settled, paid off, or otherwise decided by the Board.
3. Please include all enforcement cases that were filed with the Board, whether they were contested or not.
4. **Please highlight delinquent cases in the Case Status column.**

**A. Division/Office: State Historic Preservation Division (SHPD)**

Board Submittal Date	Item No.	Respondents /Violators	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
08/13/2020	I-1	Nichole Kanda, Cacilie Craft and Garcia and Associates	Unpermitted grading and violations of agreed-upon mitigation commitments	Total fines and fees of \$415,000 to be divided among respondents	Approved	No.	N/A	1. In January 2021, SHPD received fine payments totaling \$144K from Craft and Garcia and Associates as due ordered by the Board. 2. Nichole Kanda has not responded to the SHPD invoice for fines of \$5,205.00 sent by certified mail on 10/06/2021.	<b>Pending, delinquent</b>

**B. Division/Office: Division of Aquatic Resources (DAR)**

Board Submittal Date	Item No.	Respondent /Violator Name	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
2/26/21	F-1	Steven Howard	HAR §§13-60.4-4(3)(A, B & D), 13-60.4-4(4), 13-60.4-4(5)(b)(2), 13-60.4-6(a)(1), 13-60.4-6(a)(3)(B), 13-60.4-7(a), 13-60.4-7(b), 13-60.4-7(c)(1), 13-60.4-7(c)(2), 13-60.4-7(c)(3), 13-74-20(a), 13-241-10, 13-243-1(a), and 13-244-15.5(a)	Admin. fine of \$59,615	Adopt Staff recommendation and increase the fine to \$263,000.00 for Howard	No	N/A	N/A	<b>Respondents were unable to be located. Case delinquent.</b>
		Yukako Toriyama	HAR §§13-60.4-4(3)(A), 13-60.4-4(3)(B), 13-60.4-4(4), 13-60.4-4(5)(b)(2), 13-60.4-6(a)(1), 13-60.4-6(a)(3)(B), 13-60.4-7(a), 13-60.4-7(b), and 13-74-20(a)	Admin. fine of \$48,800	Adopt Staff recommendation and increase the fine to \$244,000 for Toriyama				
2/26/21	F-2	Jason Beevers	HAR §§ 13-60.4-4(3)(B), 13-60.4-4(3)(D), 13-60.4-4(4), 13-60.4-4(6), 13-60.4-6(a)(1), 13-60.4-6(a)(2), 13-60.4-6(a)(3)(B), 13-60.4-7(a), 13-60.4-7(c)(1), 13-60.4-7(c)(2), and 13-60.4-7(c)(3)	Administrative fine of \$69,800	None (CCH requested prior to meeting)	Yes	Hearing pending and expected to proceed soon.	pending	Criminal case is over. Beevers pled no contest under plea deal and was fined \$5,000.

Board Submittal Date	Item No.	Respondent /Violator Name	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
5/14/21	F-2	Wayne Keaulana Spatz	HAR § 13-75-7(a)(4)	Admin. fines and costs of \$633,840	\$633,840	No	N/A	N/A	<b>Respondent is homeless, unable to be located for service of the BLNR action. EPA was pursuing a bigger prawn poisoning ring involving Spatz and others. Case delinquent.</b>

(DAR, continued)

**C. Division/Office: Division of Boating and Ocean Recreation (DOBOR)**

Board Submittal Date	Item No.	Respondent /Violator Name	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
4/28/17	J-1	Henry Pomroy, Bill Fujimoto, Hookupu Fish Company	Illegal commercial ocean activity	Pomroy: \$60,000 fine Fujimoto: \$20,000 fine Hookupu: \$60,000	Adopt CCH Hearings Officer's FOF, COL, D&O	Yes	In favor of DOBOR; fine reduced to \$48,404.51 jointly & severally between all 3 parties. Appealed to circuit court; upheld.	\$48,404.51 jointly & severally: \$22,500 paid up front, with the remainder to be paid in monthly installments of \$500 at 10% annual interest	\$22,500 cashier's check + \$4,500 (9 installments) as of 1/5/22
10/8/21	J-2	Thomas Bellit	Illegal commercial ocean activity	\$360,000 fine	Pending CCH	Yes	Hearing Officer appointed, hearing pending	Pending	Pending
10/22/21	J-6	Robert Twogood	Illegal commercial ocean activity	\$25,000 fine & inability to obtain a DOBOR permit for 24 months	Approved	No	N/A	Respondent initially requested payment plan; \$25,000 fine has been paid off.	Closed

**D. Division/Office: LAND Division (LAND)**

Board Submittal Date	Item No.	Respondent /Violator Name	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
4/27/12	D-14	TLM Partners, Ltd.	171-6(12), HRS	Removal of encroachment and assess fines and admin costs of \$4,295.00.	Approved as submitted.	Yes, counsel orally requested contested case.	At its meeting of 5/25/12, the Board dismissed and/or permitted the withdrawal of the contested case filed by the counsel at the previous Board meeting.	At its meeting of 5/25/12, Item D-12, the Board rescinded its removal order dated 4/27/12 and informed both the applicant and staff continue the discussion of the easement document with the four (4) triggers for payment incorporated in the easement document.	Easement [GL5978] was signed on 6/1/2012 with mortgage and note also signed to secure the payment of \$135,135 by 6/1/22. LD is working on a letter to the counsel reminding the due date.
04/27/18	D-3	Paige DePonte	Unauthor. commer. activity; 171-6 (15), HRS; 13-221-35, HAR	Assess fines & admin. costs of \$7,543.72	No action due to request for contested case	Yes	AGs advised max fine is \$500 and recommended against pursuing matter	Unresolved	Unresolved.

Board Submittal Date	Item No.	Respondent /Violator Name	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
11/13/20	D-1	The Trash Man, LLC	171-6 (15), HRS; 13-221-2, 3, 30, HAR	To collect administrative costs, back rent, other costs, and fine for a total of \$27,467.51.	Board amended staff recommendation by assessing fine, reimbursement cost and administrative costs for a total amount of \$62,536.54.	Yes, when the case was heard by the Board on 10/9/20.	Request for contested case hearing was withdrawn before 11/13/20 Board meeting.	\$62,536.54 plus interest over a 36-month payment plan.	<b>\$1,500 was received on 10/15/21. Letter demanded all outstanding amounts plus interest was sent to counsel of Respondent in Dec. 2021. Delinquent.</b>
4/23/21	D-3	Corinne Hayashi, HTH DH Ventures LLC, sea Engineering, Inc.	171-6(12) and (15), HRS; 13-221-23, HAR.	To collect fines and administrative costs for a total of \$13,465.34.	Amended staff recommendation by reducing the fine to \$4,000; reimbursement of admin costs of \$465.34.	No	N/A	N/A	Case resolved. Fines and admin costs were paid. Encroachment was removed.
5/14/21	D-9	Chris Sanger and Duke's Lagoon LLC	171-6(12) and (15), HRS; 13-221-3 and 35, HAR.	To collect fines and administrative costs for a total of \$65,242.30.	Approved as submitted.	Yes	AG is working with the counsel of Respondent on a proposed settlement.	To be decided in the upcoming settlement.	AG is working on settlement. Original counsel for respondent is now a judge. Change of counsel is expected.

**E. Division/Office: Office of Conservation and Coastal Land (OCCL)**

Board Submittal Date	Item No.	Respondent /Violator Name	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
08/13/21	K-1	Cozy at Punaluu LLC, Douglas Johnson, Marie Kramer	Unauthorized Modification to Emergency Shoreline Erosion Control Structure/Noncompliance w/Emergency Permit	\$16,000 fines, \$2,000 costs, demolition and disposal	Approved	No	---	Paid	Need to submit demolition and disposal proposal
07/09/21	K-1	Dominis Anderson, Leni Knight	OA-21-54, Noncompliance with Board findings in OA-05-50 located at Palolo Hillside Lots, Palolo Valley, Oahu	\$500 fine, structure demolition	Approved	No	---	Paid	Structure dismantled, OCCL need to conduct site inspection
05/14/21	K-1	Wells Trust, Maunalua Bay Beach Ohana	Unauthorized Shoreline Structure	\$15,000 fines, removal of rocks	Approved	No		Paid, rocks removed	Closed
05/14/21	K-2	Gohana LLC, Maunalua Bay Beach Ohana	Unauthorized Shoreline Structure	\$15,000 fines, removal of rocks	Approved	No		Paid, rocks removed	Closed
04/23/21	K-1	David Pham, Jennifer Pham, Deandrea Pham	OA19-42, Unauthorized Land Use, Pier located in conservation district, Kaneohe, Oahu	\$15,000 fine, \$1,000 costs	Approved	No	---	Paid	BLNR gave 3 years to file CDUA; Non-compliant, using Pier per Google Earth, need to conduct site inspection.

Board Submittal Date	Item No.	Respondent /Violator Name	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
01/22/21	K-2	George Peabody, Susan Peabody	Unauthorized Shoreline Structure, MO 20-32, Molokai	\$75,000 fines, \$5,000 costs	Approved	Yes	Waiting for Deputy AG assignment for hearing		Ongoing
01/22/21	K-3	Liam McNamara, Brandee McNamara	Unauthorized Shoreline Structure, OA 21-03, Haleiwa, Oahu	\$30,000 fines, \$5,000 costs	Approved	Yes	Hearing process ongoing		Offensive structure failing into shoreline
01/22/21	K-4	Zhungo LLC, Rodney Youman	Unauthorized Shoreline Structure, OA 21-03, Haleiwa, Oahu	\$30,000 fines, \$2,000 costs	Deferred				Northshore violation continues
01/22/21	K-5	Zdenek "Don" Prchal	Unauthorized Shoreline Structure, OA 20-37, Punalu'u, Oahu	\$15,000 fines, \$2,000 costs	Approved	Yes	Hearing process ongoing		Ongoing
05/25/2007 (and subsequent Board and court actions)	K-1	Elizabeth Dailey and Michael Dailey	Unauthorized Repair and Reconstruction of a Boulder Retement at Mokulē'ia, District of Waialua, Island of O'ahu, TMK (1) 6-8-003:018.	\$8,000 fines, \$2,000 costs	Approved	Yes	Second hearing was held in October 2021		Decision and order was entered by the Board. Pending compliance. Not past due.

(OCCL, continued)

**F. Division/Office: Engineering Division (ENG)**

Board Submittal Date	Item No.	Respondents /Violators	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
04/09/21	L-1	Olson Trust (HA-0049, Keaiwa Reservoir)	Assess Penalty per HRS 179D for Failure to retain consultant; Failure to install monitoring gage; Failure to submit required studies for dam remediation.	\$15,000 fines	Approved, fines \$7,500	No	---	Paid (04/28/21)	Closed
04/09/21	L-3	Dole Food Company Hawaii; Sustainable Hawaii Inc. (OA-0017, Wahiawa Dam)	Assess Penalty per HRS 179D for Failure to submit a Dam Safety Permit application to address the safety deficiencies with the spillway.	\$20,000 fines	Approved	No	---	Paid (05/06/21)	Closed
05/14/21	L-1	West Maui Investors, LLC; Faraz Daneshgar (MA-0140, Ukumehame Reservoirs)	Assess Penalty per HRS 179D for Failure to install a water level monitoring system and failure to submit monthly monitoring reports.	\$10,000 fines	Approved	No	---	Paid (05/19/21)	Closed

**G. Division/Office: Division of Forestry and Wildlife (DOFAW)**

Board Submittal Date	Item No.	Respondents /Violators	Violations Charged	Staff Recommendation	Board Meeting Decision	Contested or Not?	Contested Case Proceeding Summary	Disposition and Compliance	Case Status
06/26/15	C-1	Ahiu Hawaii LLC	HAR, §§13-104-24, 13-209-4, unauthorized entry and commercial activities at Kahaualea Natural Area Reserve	\$5,000 fines, \$4,100.75 costs	Approved	Yes	Contested case hearing concluded. The Board affirmed the total charge of \$9,100.75.	No payment received; collection attempted with no result; case sent to Attorney General's civil recovery division	<b>Pending and delinquent.</b>
01/26/18	C-1	Feng Yi Guo	§13-104-24, HAR; unauthorized commercial activities at Mauna Kea Forest Reserve	\$2,500 fines	Approved	No	---	No payment received; collection attempted with no result; case sent to Attorney General's civil recovery division	<b>Pending and delinquent.</b>

**H. The Civil Resource Violations System (CRVS)**

Case Category	Cases Issued	Answers Received	Complied & Paid	Mitigation Requests (MR)	Contested Cases (CC)	MR and CC Disposed Off	Fines Collected
DAR Commercial Fishing Catch Report Delinquencies	2,805	2,155	1,719	427	9	435 (1 pending)	\$52,360
DAR Bottom Fishing Catch Report Delinquencies	159	151	125	26	0	26	\$1,950
DAR Commercial Fish Dealer Report Delinquencies	430	123	82	41	0	41	\$2,145
DAR Coral Colony Damage Violations	2	2	2	0	0	0	\$1,800
OCCL Conservation District Violations	17	17	14	3*	0	1	\$10,500
Engineering Division Dam Safety Program Violations	5	5	4	1	0	1 (Fine waived)	\$2,000
DOBOR Harbor Parking Violation/Post-Tow Cases	2	2	0	0	2	2**	\$0
Total	3,420	2,455	1,946	498	11	506	\$70,255

\* Of the three OCCL cases in which mitigation was requested, two have been concluded with payment of the mitigated fine, one is pending remedial action, final inspection and decision making.

\*\* The number of DOBOR Post Tow hearing cases was significantly less than the previous fiscal years due to improved harbor parking management and the COVID-19 impacts on harbors activities. Of the two cases, one was settled before hearing, the other was decided after hearing and ordered refund of tow fees.