

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

September 27, 2024

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

**REGARDING:** Request for Administrative Fines and Other Penalties Against Val Sanjara for the Conservation District Enforcement Case KA 22-17 Regarding the Alleged Unauthorized Placement of a Shed, Accessory Structures, and Landscaping within the Conservation District Located on Wainiha Powerhouse Road, Tax Map Key (TMK): (4) 5-8-005:026

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

**LANDOWNER/  
AGAINST:**

Val Sanjara ("Mr. Sanjara")

**LOCATION:**

Wainiha Powerhouse Road, Wainiha, Hanalei, Island of Kaua'i, Tax Map Key ("TMK"): (4) 5-8-005:026 ("Parcel 026")

**SUBZONE:**

Limited

**EXHIBITS:**

1. Location and Conservation District Maps (page 14)
2. Topographic and Flood Zone Maps (page 15)
3. Photos (pages 16-22)
4. Notice of Alleged Violation ENF: KA 22-17 (pages 23-24)
5. Sanjara December 26, 2021, Response Letter (pages 25-26)
6. OCCL April 1, 2024, Letter (page 27-29)
7. Sanjara May 21, 2024, Response Letter (pages 30-31)
8. OCCL Penalty Schedule (pages 32-43)

## **Summary**

The Office of Conservation and Coastal Lands (OCCL) alleges that Mr. Sanjara, landowner of TMK: (4) 5-8-005:026 (“Parcel 026”) located on Wainiha Powerhouse Road, conducted unauthorized land uses on the subject property which lies in the Limited Subzone of the State Land Use Conservation District. This is the second incident of alleged unauthorized land uses on this parcel by Mr. Sanjara. The current alleged violations include the placement of a shed, construction and placement of a wooden platform that formerly supported a tent structure, construction and installation of accessory structures consisting of metal fences and gates and installation of a septic system, and landscaping on Parcel 026 without prior authorization.

As such, OCCL is requesting administrative fines and other penalties be part of a proposed resolution to Conservation District Enforcement Case KA 22-17.

## **Description of Area**

Parcel 026 is entirely located within the Limited Subzone of the State Land Use Conservation District. See Exhibit 1. The parcel is located approximately 1-mile mauka off Kuhio Highway on the west side of Wainiha Powerhouse Road and lies at an approximate elevation of 60ft above sea level along the slopes and western ridge of Wainiha Valley on the north side of Kaua’i. The property was undeveloped and heavily vegetated. Parcel 026 contains a grave site or sites.

The objective of the Limited Subzone is to limit uses where natural conditions suggest constraints on human activities.<sup>1</sup> The soils that underly Parcel 026 have characteristics that indicate they are prone to erosion and transmission of storm water runoff. The State of Hawai’i DLNR Flood Hazard Assessment Tool (<https://fhat.hawaii.gov/>) indicates that Parcel 026 lies in Flood Zone X which are areas determined to be outside the 0.2% annual chance floodplain. See Exhibit 2.

Upslope and partially surrounding Parcel 026 is privately owned TMK: (4) 5-8-005:002 which encompasses approximately 4,186-acres of the Wainiha Valley ridges and watershed, lies in the Protective, Limited, and Resource Subzones, and is a portion of the Halelea Forest Reserve. The Wainiha Hui Lands and lots within the Wainiha Valley and watershed lie in the State Land Use Rural District. The surrounding Wainiha Hui Lands and lots within the valley and its floor within the vicinity of Parcel 026 consists of residential and agricultural uses.

The Wainiha River and the watershed frequently experiences intense rainfall triggering swift increases in the river’s water level which has caused flooding. One of the more recent and notable flooding events to affect Wainiha was the 2018 large flood (“rainbomb”) event which

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<sup>1</sup> Hawai’i Administrative Rules (HAR) § 13-5-12 Limited (L) subzone.

damaged properties and caused landslides that isolated the valley and displaced residents and visitors for an extended period of time.

### **Site Photos**

**Exhibit 3** contains photos of Parcel 026.

### **History – Conservation District Enforcement Case and Contested Case**

#### **Conservation District Enforcement Case (ENF): KA 15-34 – Unauthorized Land Uses**

On May 26, 2017, staff presented Item K-2 to the Board regarding alleged unauthorized structures consisting of a wooden platform and tent, a large wooden fence/gate, a RV and tent/tarp placed on a level graveled area, a chain fence or gate, a portable shower, and solar panels on Parcel 026.<sup>2</sup> Following staff's presentation of K-2, Mr. Sanjara orally requested a contested case and followed up with a written petition.

#### **Contested Case (CC): KA 17-1 for ENF: KA 15-34**

On November 2, 2018, prior to the scheduled hearing, OCCL staff conducted a site inspection to the property. Staff observed that the RV and tent were not present on the parcel. Staff noted that a well-constructed shed structure, approximately 8-12ft in diameter, had been recently constructed on the parcel. Staff also noted that the wood roof of the shed structure contained solar panels and the placement of a plastic tool cabinet next to the shed.

On July 30, 2019, the Hearings Officer dismissed contested case KA 17-1 after OCCL's site inspection to the area had confirmed removal of the unauthorized RV and tent structures from the parcel and OCCL's determination to not proceed with the imposition of fines or other penalties for the RV and tent structures. Staff notes that the contested case file KA 17-1 and Conservation District enforcement case KA 15-34 were closed without addressing the alleged unauthorized well-constructed shed structure and other land uses being conducted or placed on Parcel 026.

Since the RV and the tent on the wooden platform, which were the primary unauthorized land uses of ENF: KA 15-34, were removed and replaced with the unauthorized shed, OCCL decided to pursue the new and other alleged unauthorized land uses being conducted on Parcel 026 under a new Conservation District enforcement case. Staff turnover, access to the area due to flooding and landslides caused by weather damage, and the COVID pandemic hindered further investigations into these alleged unauthorized land uses on Parcel 026.

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<sup>2</sup> K-2 for ENF: KA 15-34 can be viewed at <https://dlnr.hawaii.gov/wp-content/uploads/2017/05/K-2.pdf> .

## **Alleged Unauthorized Land Uses in the Conservation District**

### **Enforcement KA 22-17**

On November 19, 2021, the Department issued a Notice of Alleged Violation (NOAV – Ref. ENF: KA 22-17) to Mr. Sanjara for the alleged unauthorized commercial use (leasing) of Parcel 026, the unauthorized shed structure, and the water and septic system. These alleged land use violations returned to staff's attention after receiving inquiries regarding the property, reviewing the County of Kaua'i Real Property Assessment's website (<https://www.qpublic.net/hi/kauai/>), and OCCL's files for Parcel 026. See Exhibit 4.

On December 26, 2021, Mr. Sanjara responded to the NOAV letter. Regarding the alleged commercial use of Parcel 026, the response letter stated that Mr. Sanjara and an individual signed a noncommercial lease agreement with an option to purchase a portion of the property. Regarding the shed structure, Mr. Sanjara stated that he believed the shed was allowed during the contested case hearing after the RV and tent were removed from Parcel 026. The letter noted that Mr. Sanjara believed that the water meter had been installed by the County of Kauai Department of Water on county land outside of the Conservation District and that the septic system was approved by the State of Hawai'i Department of Health. The letter concluded with Mr. Sanjara stating that he had plans to move Parcel 026 out of the Conservation District. See Exhibit 5.

Several subsequent correspondence letters, a Notice of Civil Resource Violation (CRV), and emails were sent between the Department and Mr. Sanjara in an attempt to resolve matters. The Department requesting that Mr. Sanjara remove all unauthorized land uses from Parcel 026, and Mr. Sanjara stating that he believed the shed structure, septic system, and other land uses being conducted had authorization or were done in compliance with Conservation District rules and regulations. Additionally, Mr. Sanjara continued to request that he be allowed to move forward with his plans (proposed rule amendment and subdivision) for Parcel 026.<sup>3</sup>

On March 20, 2024, staff conducted a site inspection of Parcel 026 with Mr. Sanjara. See pages 19-22 of Exhibit 3.

On April 1, 2024, the Department issued Mr. Sanjara a letter noting the following regarding alleged unauthorized land uses on Parcel 026 and the site visit:

- According to the County of Kauai Real Property Assessment website, it appears the leasing (or commercial use) of the property has ceased;
- A well-constructed shed structure has been placed on the property along with storage cabinets, tents/tarps, solar panels, and an outdoor shower;

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<sup>3</sup> HAR § 13-5-6 (c) states: *No permit [or application] shall be processed by the department or board until any violations pending against the subject parcel are resolved.* Emphasis added.

- The wooden platform that supported a second tarp tent structure (Ref. ENF: KA 15-34/CC: KA 17-01) has not been removed;
- The septic system does not have authorization from the Department or Board and there appears to be no approved land uses on the property that would require one;
- Vegetation has been cleared and the property has been landscaped;
- Gates and fencing have been placed along two portions or segments of the property that abut Wainiha Powerhouse Road; and,
- According to OCCL files, there are no applications or authorizations for these structures and land uses.

The letter reiterated the Department's request that Mr. Sanjara resolve matters by removing all unauthorized land uses from Parcel 026. The letter noted that the alternative was for staff to bring this matter to the Board for final disposition. See Exhibit 6.

On May 21, 2024, Mr. Sanjara sent a response letter to the Department reiterating his belief that the shed structure and other land uses being conducted had authorization or were carried out in compliance with HAR Chapter 13-5. He also reiterated his request to move forward with applications for a proposed rule amendment and subdivision of Parcel 026. See Exhibit 7.

At Mr. Sanjara's request, staff is bringing this enforcement matter before the Board.

### **Conservation District Rules and Statutes**

The Board has statutory authority to impose civil administrative fines for the above-discussed violations, as further discussed below.

Land uses in the Conservation District are regulated by Hawai'i Revised Statutes (HRS) Chapter 183C and the administrative rules promulgated thereunder, which are found in Hawai'i Administrative Rules (HAR) Chapter 13-5.

The Department and Board, through OCCL, regulates land use in the Conservation District by the issuance of permits and site plan approvals. HRS §183C-6. Permit(s) or approval(s) by the department or board for land use(s) in the Conservation District must be obtained *before* proceeding with any land use. HAR §13-5-6(d).

This Board and the Department are statutorily authorized to enforce land use regulations on Conservation District lands, including the collection of fines for violations of land use. HRS § 183C-3.

Land uses, and associated permit or site plan approvals required by the State, in the Limited subzone of the Conservation District are governed by HAR §13-5-23.<sup>4</sup> Land use, for purposes of HAR Chapter 13-5, means:

- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land. HAR § 13-5-2.

In addition to the general definition of “land use,” HAR Chapter 13-5 further describes specific land uses allowed within the Conservation District and what level of departmental review for such uses is required.

### **Analysis - Unauthorized Land Uses and Conservation District Rules**

Staff has assessed the land uses in the Conservation District at the subject property and identified the unauthorized land uses to be as follows:

**Cabin (well-constructed shed structure and wooden platform)** appears to be the closest identified land use as a “shed” is not considered an identified land use that could be applied for as previously stated (Ref. COR: KA 14-133). A cabin in the Conservation District requires a Board permit approved by the BLNR prior to any work being conducted. HAR §§13-5-22(b)(4), P-13 (D-1).

“Cabin” means a permanent structure not more than six hundred square feet under roof, intended for use in managing large or remote land areas or both; having access by existing foot trail or unimproved access roads. The cabin cannot be used as a principal residence, for rental, or any commercial purposes. HAR §13-5-2. As Parcel 026 is accessed via a paved county road and is not in a remote location, it does not appear to be an identified land use that could be applied for on Parcel 026.

**Fencing (and gates)** are identified as a land use regulated under HAR §13-5-22 (“Installation of a new fence or shelter”). The construction and installation of gates and fencing in the Conservation District requires a Departmental permit approved by the Chair prior to any work being conducted. HAR §§13-5-22(b)(3), P-13 (C-1).

**Accessory structure(s) (septic system, water meter and connection)** is identified as a land use regulated under HAR §13-5-22 (“Construction or placement of structures accessory to existing facilities or uses”). Accessory structure(s) in the Conservation District requires

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<sup>4</sup> “In addition to the land uses identified in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective subzone also apply to the limited subzone, unless otherwise noted” HAR § 13-5-23(a).

Site Plan Approval approved by the Department prior to any work being conducted. HAR §§13-5-22(b)(2), P-9 (B-1).

“Accessory use” means a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use. HAR §13-5-2. As there are no authorized land uses on Parcel 026, there is nothing the septic system and associated utilities like the water meter and infrastructure could be accessory to.

**Landscaping** is identified as a land use regulated under HAR §13-5-23 (“Landscaping (including clearing, grubbing, grading, and tree removal), including chemical and mechanical control methods, in accordance with state and federal laws and regulations, in an area of or more than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited”). Landscaping in an area of or more than 10,000 sq. ft in the Conservation District requires a Board permit approved by the BLNR prior to any work being conducted. HAR §§13-5-23(c)(4), L-2 (D-1).

### **Penalties**

Any person, firm, government agency, or corporation violating any provision of the Conservation District statutes or rules is subject to the penalties prescribed in HRS § 183C-7.<sup>5</sup>

HRS 183C-7 provides that any person violating HRS Chapter 183C or HAR Chapter 13- 5 shall be fined not more than \$15,000 per violation, in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof.

The Board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and the environment and the cost of restoration or replacement. These remedies are cumulative and in addition to any other remedy allowed by law. HRS § 183C-7(b).

In December 2010, the Board adopted the Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources to provide guidance in the assessment of administrative sanctions and promote consistency within the department. This violation penalty schedule applies to the instant matter. See Exhibit 8.

OCCL staff treats each case individually when assessing penalties for violations of Conservation District laws using the Penalty Schedule Guideline and looks at factors that can allow for upward or downward adjustments. See HAR §13-1-70.

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<sup>5</sup> “Any person, firm, government agency, or corporation violating any of the provisions of this chapter or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS.” HAR §13-5-6(a).

## **Penalties relating to the well-constructed shed structure and wooden platform**

### *Shed and Wooden Platform*

A “shed” is not an identified land use in HAR Chapter 13-5; and therefore, is not a land use in the Conservation District that can be applied for. The shed structure has solar panels, storage cabinets, tents/tarps over a deck or lanai, an outdoor shower, stores power generating equipment, and contains windows and doors.

Based on the above, staff has assessed that the closest identified land use the “well-constructed shed structure” would be appears to be a cabin pursuant to HAR §13-5-22 P-13 LAND AND RESOURCE MANAGEMENT (D-1). Although a shed or cabin does not appear to be an identified land use that could be applied for on Parcel 026, constructing or placing a cabin in the Conservation District would have required the filing of a Conservation District Use Application (CDUA) for a Board permit. The lack of obtaining Board approval prior to initiating any work constitutes major harm to the resource and the penalty range shall be \$10,000 - \$15,000.

A “wooden platform” is not an identified land use in HAR Chapter 13-5; and therefore, is not a land use in the Conservation District that can be applied for. According to the file for ENF: KA 15-34, the wooden platform was being marketed as a “Camping Eco Dream Unit” that had wifi, micro-cell, electricity, water, and was being marketed for \$540 per month for an approximate timeframe of two months. See page 20 of **Exhibit 3**.

Staff has assessed that the closest identified land use the “wooden platform” could be appears to also be a cabin pursuant to HAR §13-5-22 P-13 LAND AND RESOURCE MANAGEMENT (D-1). Constructing or placing a cabin on Parcel 026 would have required the filing of a Conservation District Use Application (CDUA) for a Board permit. The lack of obtaining Board approval prior to initiating any work constitutes major harm to the resource and the penalty range shall be \$10,000 - \$15,000.

## **Penalties relating to landscaping**

### *Landscaping*

Parcel 026 is approximately 41,905 sq. ft. Landscaping in an area of or more than 10,000 sq. ft would have required the filing of a Conservation District Use Application (CDUA) for a Board permit. The lack of obtaining Board approval prior to initiating any work constitutes major harm to the resource and the penalty range shall be \$10,000 - \$15,000.

## **Penalties relating to fencing and gates**

### *Fencing and Gates*

According to the file for ENF: KA 15-34, Mr. Sanjara observed individuals trespassing on Parcel 026 and using the property as an alleged unauthorized dumping site after he had removed invasive species or trees and debris and cleared an entrance to the property. It appears he constructed the fencing and gates to prevent trespassing and dumping activities on Parcel 026.

New fences and gates on undeveloped parcels in the Conservation District are an identified land use that may be applied for as noted above. This land use would have required the filing of a CDUA for a Departmental permit. The lack of obtaining Departmental approval



prior to initiating any work constitutes moderate harm to the resource and the penalty range shall be \$2,000 - \$10,000.

### **Penalties relating to the construction or placement of accessory structures**

#### *Septic System*

There are no approved land uses on Parcel 026 that would necessitate the installation of an individual wastewater system such as a septic tank and leach field. In instances where there is an approved land use on a parcel that the septic system could be considered accessory to such as a single-family residence or comfort station for a park, a new septic system (septic tank and leach field) in the Conservation District is an identified land use that may be applied for.

This land use would have required the filing of Site Plan Approval application for Site Plan Approval. The lack of obtaining Site Plan Approval prior to initiating any work constitutes minor harm to the resource and the penalty range shall be \$1,000 - \$2,000.

#### *Water Meter and Connection*

There are no approved land uses on Parcel 026 that would necessitate the installation of a water meter and related connections or infrastructure. In instances where there is an approved land use on a parcel that the water meter and connection could be considered accessory to such as a single-family residence or comfort station for a park, utility connections such as a water meter and connection in the Conservation District is an identified land use that may be applied for.

This land use would have required the filing of Site Plan Approval application for Site Plan Approval. The lack of obtaining Site Plan Approval prior to initiating any work constitutes minor harm to the resource and the penalty range shall be \$1,000 - \$2,000.

### **Discussion**

The stated purpose of the Conservation District law is to protect and conserve natural resources. HAR § 13-5-1. As noted earlier, the objective of the Limited Subzone is to limit uses where natural conditions suggest constraints on human activities. HAR § 13-5-12.

Regarding contested case KA 17-01 for ENF: KA 15-34, staff would like to clarify that the unauthorized RV and tent structure that was constructed and placed on the wooden platform, which were the primary issues of those enforcement matters, were removed by Mr. Sanjara prior to the contested case hearing, and thus, the Department decided to not proceed with further enforcement actions regarding the unauthorized RV and tent. Based on Mr. Sanjara's removal of the RV and tent, the contested case was dismissed, and the enforcement file closed.

Mr. Sanjara alleges that he received authorization for the placement of the shed during the contested case proceedings. Staff has reviewed OCCL files for Parcel 026 including the files for CC: KA 17-01 and ENF: KA 15-34 and have not found any evidence that Mr. Sanjara applied or obtained authorization to place or replace the RV with the shed structure or any

other unauthorized land use on Parcel 026 which are the subject of this current and new enforcement action.

Based on the history presented above and OCCL files, Mr. Sanjara is well aware of the need to obtain authorization from the Department or Board prior to conducting land uses in the Conservation District. Department files indicate that no applications for proposed land uses on Parcel 026 have been submitted nor have any authorizations for land uses been issued for the property from the Department or Board.

Staff has reason to believe that Mr. Sanjara's vegetation clearing, and tree removal conducted in 2012 (ref. ENF: KA 12-26) created an attractive nuisance for the alleged trespassing and dumping activities he has attempted to prevent with unauthorized land uses (RV, shed, tents, and gates and fencing).<sup>6</sup> In 2014, staff noted that it appeared Mr. Sanjara was developing Parcel 026 in stages, and staff had requested that Mr. Sanjara provide the Department with a description of his intended future uses of the property and to submit applications for those uses if they could be applied for (ref. COR: KA 14-153). Mr. Sanjara has also stated in letters and emails to the Department that he would like to take Parcel 026 out of the Conservation District and have the property rezoned so that he can build on the land.

Wainiha's exposure to natural hazards, Parcel 026 subzone designation, and the property's natural characteristics such as but not limited to its soils, indicate that there are likely challenges that need to be accounted for when contemplating proposed land uses on the land. Staff are concerned that the unauthorized shed structure, wooden platform, landscaping, fencing, gates, septic system, energy generation systems, and water utility connection may be plans for a larger development, such as a residence, on Parcel 026. A single-family residence is not an identified land use that can be applied for on the property because Parcel 026 lies in the Limited Subzone and is not in a flood zone or coastal high hazard area defined by the boundaries of the Federal Insurance Rate Maps (FIRM). HAR §13-5-23 L-3 (D-1).

Proposed land uses in the Conservation District are discretionary. The burden of proving the land can accommodate what is being proposed is on the applicant, so it is not a foregone conclusion that what Mr. Sanjara is proposing or planning to do with Parcel 026 may be a land use that can be applied for or authorized.

Staff has provided guidance regarding the rules and regulations of the Conservation District and directed him to applications for proposed land uses on Parcel 026. However, Mr. Sanjara's conduct maybe indicative of an unwillingness to abide by the law, follow required permit application processes, or obtain authorizations prior to conducting work in the Conservation District.

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<sup>6</sup> In February 2012, a Conservation District enforcement case was opened but subsequently closed based on the information that Mr. Sanjara provided which helped staff determine that tree removal (albizia and Java plum trees) and vegetation removal (vines, brush, and thorny cat's claw) on Parcel 026 was conducted in compliance with HAR §13-5-22 P-4 Removal of Invasive Species, P-11 Tree Removal, and P-13 Land and Resource Management under (A-1) of each section.

Based on the presented evidence, Mr. Sanjara was aware of the Conservation District rules and did not obtain Conservation District authorizations for the unauthorized shed, wooden platform, landscaping, fencing and gates, septic system, water meter and associated infrastructure on Parcel 026. Staff is recommending that the Board issue the following fines and penalties allowed under its authority.

### **Findings and Conclusions**

Based on the above-summarized information, OCCL staff have reached the following findings and conclusions regarding the alleged violation:

1. That Mr. Sanjara did in fact authorize, cause, or allow the construction or placement of an unauthorized shed, wooden platform, landscaping, fencing and gates, septic system, water meter and associated infrastructure on Parcel 026 within the State Land Use Conservation District, Limited Subzone;
2. That there are no authorizations for the shed, wooden platform, landscaping, fencing and gates, septic system, water meter and associated infrastructure on the property; and,
3. That the unauthorized land uses occurred upon land that lies within the State Land Use Conservation District, Limited Subzone.

### **Staff Recommends**

1. That the Board adopt the findings and conclusions set forth above and impose the following administrative fines:
  - a. Pursuant to HRS § 183C-7, Mr. Sanjara is fined \$15,000 for violating the provisions of HAR § 13-5-23, for placement of a shed on land within the Conservation District Limited Subzone;
  - b. Pursuant to HRS § 183C-7, Mr. Sanjara is fined \$15,000 for violating the provisions of HAR § 13-5-23, for constructing the wooden platform on land within the Conservation District Limited Subzone;
  - c. Pursuant to HRS § 183C-7, Mr. Sanjara is fined \$15,000 for violating the provisions of HAR § 13-5-23, for conducting landscaping in an area of 10,000 sq. ft or greater on land within the Conservation District Limited Subzone;
  - d. Pursuant to HRS § 183C-7, Mr. Sanjara is fined \$10,000 for violating the provisions of HAR § 13-5-23, for constructing and placement of fencing and gates on land within the Conservation District Limited Subzone;
  - e. Pursuant to HRS § 183C-7, Mr. Sanjara is fined \$2,000 for violating the provisions of HAR § 13-5-23, for placement of a septic system (tank and leach field) on land within the Conservation District Limited Subzone;
  - f. Pursuant to HRS § 183C-7, Mr. Sanjara is fined \$2,000 for violating the provisions of HAR § 13-5-23, for installation and placement of a water meter

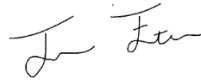
and related infrastructure on land within the Conservation District Limited Subzone;

- g. Therefore, that the total fines and administrative costs that may be levied against Mr. Sanjara may be \$59,000, and that Mr. Sanjara shall pay all designated fines and administrative costs within ninety days from the date of the Board's action;
2. That the Board authorize the Department of the Attorney General to file a Notice of Pendency of Action with the deed or deed instrument of Parcel 026 at the Bureau of Conveyances pursuant to HRS §§ 501-151 and 634-51;
3. That Mr. Sanjara or a future landowner shall remove the shed, wooden platform, septic system (tank and leach field), and water meter and associated infrastructure within 180 days from the date of the Board's action. Failure to remove the unauthorized shed, wooden platform, septic system (tank and leach field), and water meter and associated infrastructure within 180 days from the date of the Board's action may result in further enforcement actions;
4. That Mr. Sanjara or a future landowner shall submit a complete and acceptable for processing After-the-Fact (ATF) Conservation District Use Application (CDUA) for the unauthorized landscaping and fencing and gates on Parcel 026 with DLNR and OCCL in accordance with HAR Chapter 13-5 and all requested attachments, such as but not limited to a landscape plan within 180 days from the date of the Board's action. If ATF authorizations are not obtained in this time frame, the Department may proceed with further enforcement actions;
5. Unless otherwise authorized by the Board or Chair, Mr. Sanjara or a future landowner shall obtain the appropriate ATF authorizations in accordance with HAR Chapter 13-5 for the unauthorized landscaping and fencing and gates on Parcel 026 within 2 years from the date of the Board's action. If ATF authorizations are not obtained within this time frame, the Department may proceed with further enforcement actions;
6. That any extension of these deadlines will require the concurrence of the Board. Any request to extend these deadlines will require supportive information and documentation from Mr. Sanjara, or a future owner of Parcel 026, as to why an extension may be warranted. Any extension request regarding these deadlines shall be submitted to the Department prior to the deadline or any authorized extension thereof;
7. That in the event of failure of Mr. Sanjara, or a future landowner, to comply with any order imposed in connection with this enforcement action, they shall be fined an additional \$15,000 per day, pursuant to HRS § 183C-7, until the order is complied with;
8. That in the event of failure of Mr. Sanjara, or a future owner of Parcel 026, to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs;
9. That the Board delegate authority to the Chairperson to effectuate the above recommendations, subject to such conditions as may be prescribed by the Chairperson to best serve the interest of the State, without further consultation with

the Board, subject to review and approval by the Department of the Attorney General;  
and

10. The above noted conditions of Enforcement file KA 22-17 shall be recorded with the deed instrument at the Bureau of Conveyances pursuant to HAR § 13-5-6(e).

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands

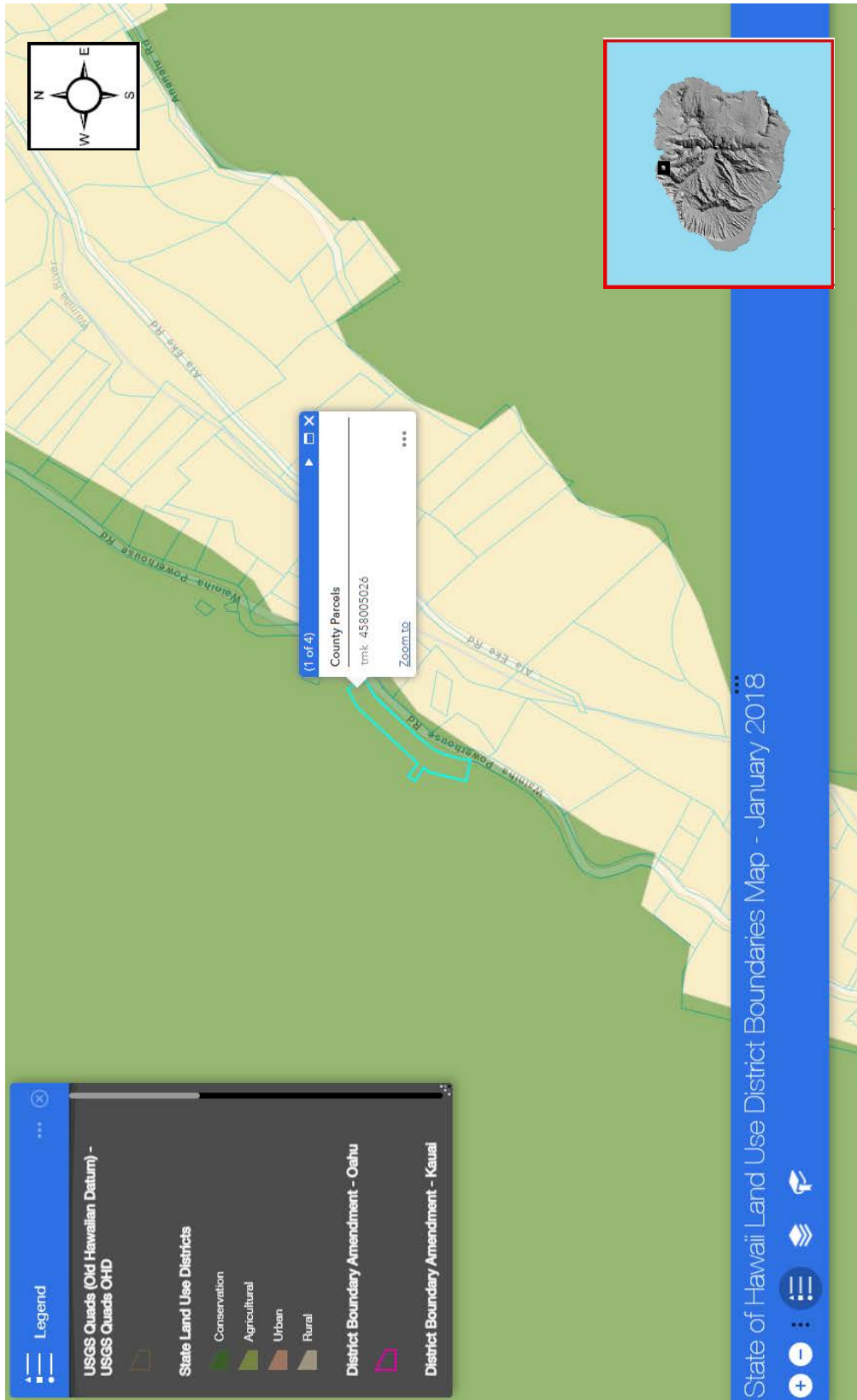
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Approved for submittal:



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Dawn N. S. Chang, Chairperson  
Board of Land and Natural Resources

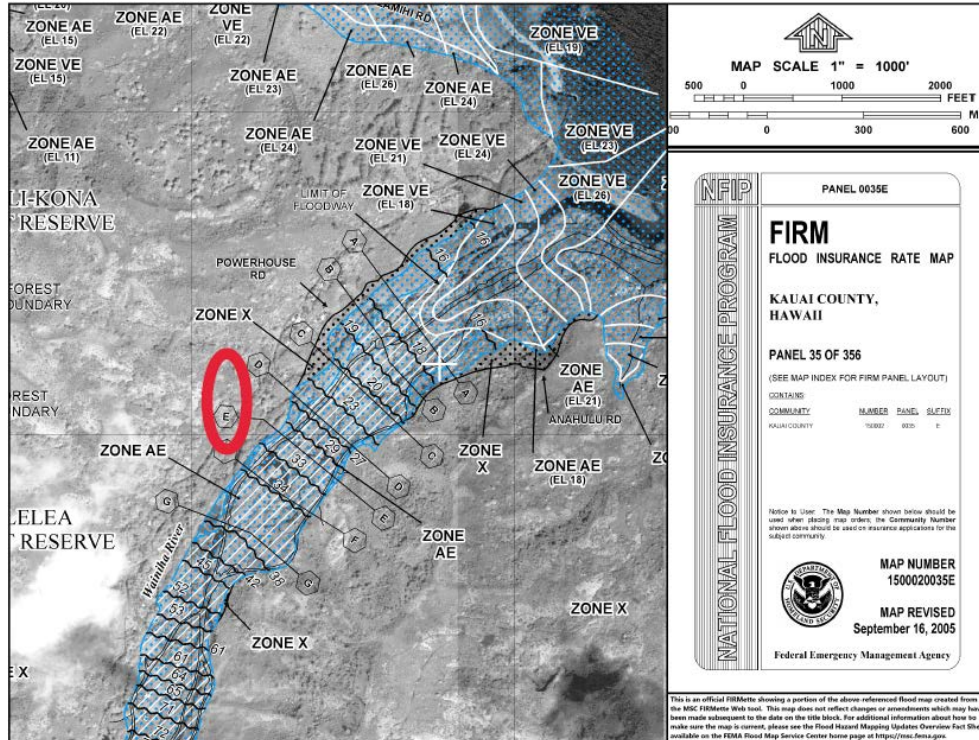


LUC Map showing Parcel 026 and entirely in the Conservation District and nearby Land Use Districts





USGS Topographic Map of subject area and approximate location of Parcel 026 (red circle)



DLNR FHAT and FEMA FIRM map showing approximate location of Parcel 026 (red circle) in Flood Zone X





11/10/2008 County of Kauai aerial pictometry photo showing Parcel 026 vegetated



12/02/2020 County of Kauai aerial pictometry photo showing Parcel 026 landscaped with shed





02/23/2016 OCCL photo of Parcel 026 of unauthorized wooden fencing and gate



02/23/2016 OCCL photo of Parcel 026 and unauthorized RV



11/02/2018 OCCL photo of Parcel 026 and RV removed and replaced with well constructed shed



11/02/2018 OCCL photo of Parcel 026 and shed with solar panels and storage cabinet





03/20/2024 OCCL photo of shed, solar panel(s), storage cabinets, covered lanai/porch



03/20/2024 OCCL photo of shed, outdoor shower, and second covered lanai/porch



CAMPING ECO DREAM UNIT - GREAT VIEWS, PRIVACY,  
FREE WIFI, MICRO-CELL, ELECTRICITY & WATER AVAILABLE.  
MUST TAKE CARE OF YOUR WASTE! ONE PERSON ONLY.  
AVAILABLE FROM 06/15 TO 08/15 @ \$ 540 PER MONTH.

May 2015 Craig's List ad for "Camping Eco Dream Unit" tent structure on Parcel 026



03/20/2024 OCCL photo of wooden platform that supported tent structure and landscaped hillside on Parcel 026





03/20/2024 OCCL photo of metal gate and Panax hedge on Parcel 026 demarcating Mr. Sanjara's proposed subdivision



03/20/2024 OCCL photo of septic system on Parcel 026





03/20/2024 OCCL photo looking *makai* from Panax hedge and landscaped areas of Parcel 026



03/20/2024 OCCL photo looking *mauka* from Panax hedge and landscaped areas of Parcel 026

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
ROBERT K. MASUDA  
FIRST DEPUTY  
M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:RB

ENF: KA 22-17

**NOTICE OF ALLEGED VIOLATION**

**NOV 19 2021**

CERTIFIED MAIL/RETURN RECEIPT

7020 2450 0000 0357 8290

Mr. Val Sanjara  
PO Box 687  
Kalaheo, HI 96741

SUBJECT: Alleged Unauthorized Land Use Within the Conservation District Located at Wainiha, Kaua'i, TMK: (4) 5-8-005:026

Dear Mr.Sanjara:

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

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

1. The location of the alleged unauthorized land uses is located in the Conservation District, Limited Subzone;
2. According to the County of Hawaii Real Property Assessment Office it appears that the property is being leased. Pursuant to Hawaii Administrative Rules (HAR) §13-5 the Department of Land and Natural Resources (DLNR) must approve any commercial land use. Pursuant to the Hawaii Revised Statutes (HRS) §183C-6(c) the department shall hold a public hearing in every case involving the proposed use of land for commercial purposes, at which hearing interested persons shall be afforded a reasonable opportunity to be heard. **No commercial land use is on file with the DLNR, Office of Conservation and Coastal Lands (OCCL).** (EXHIBIT 1)
3. According to the County of Hawaii Real Property Assessment Office it appears that the property has a shed like structure. Additionally, the OCCL has been informed that there is an existing water and septic system in place. **No permit is on file with the DLNR, OCCL for both the shed and the water/septic system.** (EXHIBIT 2)

Val Sanjara

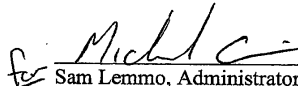
ENF: KA 22-17

4. Pursuant to §13-5-2, HAR, "Land use" means:
- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
  - (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land; and
5. These land uses were not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

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

We recommend that you contact our office regarding the activities on the subject parcel. Please respond to this notice within 15-days. Please work with the OCCL should you choose to remove the unauthorized improvements. Please note any information provided may be used in civil proceedings. Should you have any questions, contact Rachel Beasley of the Office of Conservation and Coastal Lands at (808) 798-6481.

Sincerely,

  
\_\_\_\_\_  
Sam Lemmo, Administrator  
Office of Conservation and Coastal Lands

C: KDLO  
County of Kaua'i – Planning  
DOCARE –Kaua'i



RB

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P.O. BOX 621  
HONOLULU, HI 96809

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2021 DEC 30 P 10:48

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

REF:OCCL:RB

December 26, 2021

SUBJECT: Alleged Unauthorized Land Use Within the Conservation District Located at  
Wainiha, Kaua'i, TMK: (4) 5-8-005:026

Dear Mr. Administrator,

Thank you for your letter, dated November 19, 2021, which was received on December 15, 2021. I would like to clarify the issue of the alleged violations raised in your letter.

1. On December 31, 2020 we signed and recorded at the Bureau of Conveyances, Doc A - 77050576, non-commercial lease agreement, with option to purchase. The purpose of this agreement is to sell the portion of the property after the monthly payments will reach the asked amount of the down-payment on the property. The buyer's name will be recorded on the property title when the down-payment is collected via monthly payments. The commercial use is not allowed in our agreement, while the property is in Conservation District.

2. The shed was allowed during the Contested Case Hearing, DLNR File No. KA-17-01, after the RV and tent were removed from the property. The OCCL staff visited the property on November 2, 2018 to confirm that everything was in compliance with the Contested Case Hearing. They were accompanied by Les Milnes of the County of Kauai enforcement division. Please see the copy of the Certificate of Service, dated November 30, 2018. (EXHIBIT 1)

3. The water meter was installed by the Water Department of the County of Kauai many years ago. It is located on the county land and not in the Conservation District. The septic system was approved by the State of Hawaii Department of Health in 2013. Please see the copy of the approval letter. (EXHIBIT 2) The Hydro Kai Engineering Company (Peter Waldau 808 828 0618 and Fred Reyes 808 635 4221) obtained the necessary permit from the Department of Health, and the licensed contractor, Ritas Waste Management Inc. (David Rita 808 332 8339) installed the septic system. The septic system is not being used, and there is no water system connected to it. No one is residing on the property, and the property is not being used commercially.

We plan on moving the property out of the Conservation District

into the Agricultural Zoning of the County of Kauai in the nearest future Should  
you have any questions, please contact me at [REDACTED]

Sincerely,



Val Saniara  
[REDACTED]

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA  
SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA  
Office of Conservation and Coastal Lands  
P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
RYAN K.P. KANAKA'OLE  
FIRST DEPUTY  
DEAN D. UYENO  
ACTING DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
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CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF: OCCL: TF

ENF: KA 22-17

Val Sanjara  
PO Box 687  
Kalaheo, HI 96741

Apr 1, 2024

SUBJECT: Alleged Unauthorized Land Use(s) Within the Conservation District  
Located off Wainiha Powerhouse Road  
Wainiha, Hanalei, Kauai  
Tax Map Key (TMK): (4) 5-8-005:026

Dear Val Sanjara:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your letter dated February 8, 2024, regarding the subject matter. Additionally, OCCL staff conducted a site visit with you on March 20, 2024, to the property regarding the alleged unauthorized land uses.

According to your letter, you believe that the well-constructed shed structure was approved. Your letter also states that you obtained Department of Health approval for the septic system on the property and had it installed by a licensed contractor. You would like to know if this matter needs to go to the Board of Land and Natural Resources (Board) for resolution or if you can proceed with your request for a proposed rule amendment and subdivision of the property.

The OCCL regulates land uses in the State Land Use Conservation District through the issuance of Conservation District Use Permits and Site Plan Approvals to help conserve, protect, and preserve important natural and cultural resources. TMK: (4) 5-8-005:026 lies in the Limited Subzone of the State Land Use Conservation District.

According to OCCL files, you were issued a Notice of Alleged Violation regarding the alleged unauthorized commercial use of the property as well as the subject shed and water/septic system on November 19, 2021. After several letters and emails with you and your agents regarding these matters, OCCL conducted a site visit with you to the property on March 20, 2024.

OCCL notes the following regarding the alleged unauthorized land uses after the March 20, 2024, site visit:

REF: OCCL: TF

ENF: KA 22-17

- According to the County of Kauai Real Property Assessment website, it appears the leasing of the property has ceased;
- A well-constructed shed structure has been placed on the property along with storage cabinets, tents/tarps, solar panels, and an outdoor shower;
  - Staff notes that they had verbally requested to see the inside of the shed but were told that you had forgotten the keys;
  - See **Exhibit 1**;
- The wooden platform that supported a second tarp tent structure (Ref. ENF: KA 15-34/CC: KA 17-01) has not been removed;
  - See **Exhibit 2**;
- The septic system does not have authorization from the Department or Board and there appears to be no approved land uses on the property that would require one;
  - See **Exhibit 3**;
- Vegetation has been cleared and the property has been landscaped;
  - See **Exhibit 4**;
- Gates and fencing have been placed along two portions or segments of the property that abut Wainiha Powerhouse Road;
  - See **Exhibit 4**; and,
- According to OCCL files, there are no applications or authorizations for these structures and land uses.

Regarding your request for a proposed rule amendment, subdivision application, and staff's site visit to the property, Hawaii Administrative Rules (HAR) § 13-5-6 Penalty, states (c) *No permit shall be processed by the department or board until any violations pending against the subject parcel are resolved*; and (d) *No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board*.

Based on the above, the OCCL stands by our previous determinations regarding these matters. Until these alleged unauthorized land uses are resolved, the Department will not be entertaining any proposals for this property.

You may wish to resolve this matter by removing ALL unauthorized land uses. The alternative is for the OCCL to take this matter to the Board for resolution at a date and time to be determined.

REF: OCCL: TF

ENF: KA 22-17

Please note that alleged unauthorized land uses that would have required a Board permit may incur a penalty in the range of \$10,000 to \$15,000. Alleged unauthorized land uses that would have required a Departmental permit may incur a penalty in the range of \$2,000 to \$10,000. Alleged unauthorized land uses that would have required a Site Plan Approval may incur a penalty in the range of \$1,000 to \$2,000. Potential fines as well as other recommendations will likely be included in a Staff Report submitted to the Board for final disposition if you choose to go this route.

If you choose to remove all unauthorized land uses, staff will need to conduct another site visit to the property to confirm their removal.

Should you have any questions regarding this correspondence, feel free to contact Trevor Fitzpatrick of the Office of Conservation and Coastal Lands at [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,

*S Michael Cain*

Michael Cain, Administrator  
Office of Conservation and Coastal Lands

CC: *Kauai District Land Office  
County of Kauai Planning Department*

ENF KA-22-17

Mr. S. Michael Cain, Administrator  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
1151 Punchbowl Street, Room 131  
Honolulu, Hawaii 96813

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2024 MAY 23 A 10:46

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

May 21, 2024

SUBJECT: Alleged Unauthorized Land Uses(s), Proposed Rule Amendment and  
Subdivision of the Property Within Conservation District,  
Located off Wainiha Powerhouse Road  
Wainiha, Hanalei, Kauai  
Tax Map Key (TMK): (4) 5-8-005:026

Dear Mr. Cain,

Thank you for your letter, dated April 1, 2024, in which you raise an issue of  
alleged unauthorized land use within the subject property (TMK):(4)5-8-005:026,  
located within Conservation District, off Powerhouse road, Wainiha, Kauai.

First of all, I would like to express my gratitude to all four DLNR staff  
members whom I met with during the site visit to the property on March 20, 2024.  
Sir, it a blessing for you as Administrator and all of the tax payers to have  
such attentive, responsible and friendly DLNR staff.

I, also, would like to correct some of the statements made in your letter.  
Let's chronologically follow the events happened after the Prehearing  
Conference, which was held on October 25, 2018, pursuant to HAR Section 13-1-36,  
DLNR File No. KA-17-01. Please see Exhibit 1.

The site visit was conducted on November 2, 2018 by Sam Lemmo, Salvatore Saluga  
of DLNR OCCL staff and Les Milnes of County of Kauai enforcement division. The  
purpose of the site visit was to confirm that we were in compliance with what  
we all agreed on at the Prehearing Conference, DLNR File No. KA-17-01.  
Please see Exhibit 2.

The Contested Case, was scheduled for December 13, 2018, DLNR File No. KA-17-01,  
and it was dismissed by the Department of Land and Natural Resources on July 31,  
2019. Please see Exhibit 3.

Sir, the Alleged Unauthorized Land Uses in Conservation District case would not  
be dismissed if we were not in compliance. Please contact Daniel A. Morris,  
Deputy Attorney General of Land Transportation Division, Michael A. Chambrella,  
Deputy Attorney General of Administration Division, Kitty K. Kamaka, Attorney at  
Law, if you have any questions pertaining to our case.

The recent site visit, which was conducted by DLNR staff to the subject property on March 20, 2024, can prove that we have no other structures at the property, except the ones, which were agreed on in our contested case and documented by the first site visit, conducted on November 2, 2018. We still use the same wooden shed and leftover solar panels platform for the grass mower repairs and the tool maintenance, as it was approved, pursuant to HAR Sections 13-5-2 and 13-5-22. The wooden prefabricated sheds are offered in great variety from stores like The Home Depot, Costco, etc. Please see Exhibit 4.

We don't live at the subject property and I don't carry the keys all the time with me for the gate or the shed. According to DLNR staff e-mail, received on March 15, 2024, my presence was not required at the property during the site visit. Please see Exhibit 5.

Although we keep everything locked, some people keep on trespassing, stealing, riding motorcycles, leaving horses for weeks without food or water, hunting and damaging our property. I have seen people walking on our property with fire arms several times. Exhibit 6.

I am glad, that DLNR staff members were able to see that our land parcel was placed in wrong Subzone. We are asking DLNR to correct this mistake. This is our forth request for a rule amendment and subdivision of the property, pursuant to HAR, Section 13-5-22, P-10 SUBDIVISION OF PROPERTY.

Thank you for your time and effort to address these issues. Please call me at [REDACTED] if you have any questions or require additional information. We appreciate your support in creating of safe and responsible community on the north shore of Kauai.

Sincerely,



Val Sanjara  
[REDACTED]

Conservation District Violation Penalties Schedule: October 14, 2022

Guidelines and assessment of damages to public land or natural resources, relating to Act 217

**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 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).

**Conservation District Violation Penalties Schedule**

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

The Staff will treat each case individually when assigning conservation district penalties using the following framework, and additional considerations and factors for upward or downward adjustments. The staff of the OCCL (Staff) will use these penalty schedule guidelines to issue violation notices and to make recommendations to the Board of Land and Natural Resources (Board), Chairperson of the Board of Land and Natural Resources (Chairperson), or Presiding Officer, whom may ultimately adjudicate the Conservation District penalties. These guidelines presume that all cases in which a violation has occurred, the Chairperson, Board, or Presiding Officer may also assess administrative costs, damages to public land or natural resources, and costs associated with land or habitat restoration.

**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 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



Chapter 13-5. Assessing the penalties according to the Conservation District permit type accounts for the level of review or scrutiny the unauthorized use would have received by the Department or Board in order to avoid damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential “harm to the resource” caused by the violation.

Once the baseline for the penalty range has been established 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 within the assigned penalty range. Where Staff was unable to associate the unauthorized use with a typical land use identified in Chapter 13-5, Staff may try to associate the action with the most similar identified land use in Chapter 13-5, or according to the “harm to the resource” caused by the violation. Table 1 was created to demonstrate the penalty ranges for the type of required permit and “harm to resource.”

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.

**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:

**Table 1. Penalty Guideline Framework**

<b>Harm to resource or potential for harm to resource</b>	<b>Identified land use permit</b>	<b>Penalty Range</b>
Major	Board	\$10,000-\$15,000
Moderate	Departmental	\$2,000-\$10,000
Minor	Site Plan	\$1,000-\$2,000
Very Minor	Site Plan	Up to \$1,000

Major Harm to the Resource/ Board Permit

Violations may incur a penalty of \$10,000 to \$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

Violations may incur a penalty of \$2,000 to \$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

Violations 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 to \$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.

Minor Harm to the Resource / Site Plan Approval

In instances in which a Site Plan Approval should have been sought but are considered to have only caused “very minor harm 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.

**Non-identified land uses**

Violations in which an unauthorized use is not identified in Chapter 13-5, staff may try to associate the action with the most similar identified land use in the chapter 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 Chapter 13-5, staff will refer to Table 1 and the definitions of the four violation types of “harm to resource” (See Appendix B: Definitions).

**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.<sup>1</sup> 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.

**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 Chapter 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 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	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 <sup>2</sup>

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.

**Additional Considerations and Factors**

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<sup>1</sup> While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-native, invasive, or noxious trees as one citation of "clearing" with mandatory remediation plans.

<sup>2</sup> Provided the harm to the resource and offsite damage were minimal.

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.

### **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.

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.

### **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.<sup>3</sup> 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 the responsible party is a government entity, such as a federal agency, state agency, county agency, city agency,

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<sup>3</sup> In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection. 2007. Program Directive 923, Settlement guidelines for civil and administrative penalties.

university, or school board, or if the responsible party is a private party proposing an environmental 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.

**Penalty Adjudication**

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

Harm to Resource	Penalty Range	Penalty Adjudicator
Major	\$10,000-\$15,000	Board
Moderate	\$2,000-\$10,000	Board
Minor	\$1,000-\$2,000	Chair or Presiding Officer
Very Minor	up to \$1,000	Chair 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.

**Assessment of Damages to Public Land or Natural Resources**

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

The cost of a full-scale damage assessment by the Department would be an administrative cost, which could be recouped by the Board from the landowner or

offender pursuant §HRS 183C-7. In some cases, the damage to public lands or natural resources may occur on more than one ecosystem or habitat type, (e.g., sandy beaches, seagrass beds, and coral reefs). In such instances, damages for all impacted systems will be handled cumulatively.

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

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

### **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.

### **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 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.

**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.

## Definitions

“Baseline” means the original level of services provided by the damaged resource.

“Benefit Transfer Method” estimates economic values by transferring existing benefit estimates from studies already completed for another location or issue.

“Board” means the Board of Land and Natural Resources.

“Board Permit” means a permit approved by the Board of Land and Natural Resources.

“Chairperson” means the chairperson of the board of land and natural resources

“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.

“Compensatory Damages” means damages for compensation for the interim loss of ecosystem services to the public prior to full recovery.

“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.

“Department” means the Department of Land and Natural Resources.

“Departmental Permit” means a permit approved by the Chairperson.

“Discounting” means an economic procedure that weights past and future benefits or costs such that they are comparable with present benefits and costs.

“Ecosystem Services” means natural resources and ecosystem processes, which may be valued according to their benefits to humankind.

“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.

“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:

“Major Harm to resource” means a significant adverse impact, 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

“Moderate Harm to Resource” means an adverse impact 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)).

“Minor Harm to Resource” means limited to short-term direct impacts from small scale construction or vegetation alteration activities.

“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.

“Knowing” violation means an act or omission done with awareness of the nature of the conduct.

“Net Present Value” means the total present value (PV) of a time series of cash flows.

“OCCL Administrator” means the Administrator of the Office of Conservation and Coastal Lands.

“Party” means each person or agency named or admitted as a party.

“Person” means an appropriate individuals, partnership, corporation, association, or public or private organization of any character other than agencies.

“Presiding Officer” means the person conducting the hearing, which shall be the chairperson, or the chairperson’s designated representative.

“Primary Restoration Damages” means the costs to restore the damaged site to its prior baseline state.

“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.

“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.