

**STATE OF HAWAI‘I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawai‘i**

September 26, 2025

**Board of Land and Natural Resources  
State of Hawai‘i  
Honolulu, Hawai‘i**

**REGARDING:** Request for Administrative Fines and Other Penalties Against Robin and Mami Glass for the Conservation District Enforcement Case OA 23-33 Regarding the Alleged Modifications to a Single-Family Residence, Erosion Control and Landscaping within the Conservation District Located at 3821 Tantalus Drive, Tax Map Key (TMK): (1) 2-5-012:015

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawai‘i 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:** Robin and Mami Glass (“the Glasses”)

**LOCATION:** 3821 Tantalus Drive, Tantalus, Honolulu, Island of O‘ahu, Tax Map Key (“TMK”): (1) 2-5-012:015 (“Parcel 015”)

**SUBZONE:** Resource

**EXHIBITS:**

1. Location and Subzone Maps (pages 13-14)
2. City and County of Honolulu Sketch – SFR (page 15)
3. Photos (pages 16-22)
4. COR: OA 23-19 (pages 23-43)
5. Glasses September 18, 2022, Email Response (pages 44-47)
6. CCH DDC Response to Glasses (pages 48-49)
7. REF: COR: OA 23-19 March 22, 2023 (pages 50-55)
8. Glasses March 25, 2023, Response (pages 56-61)
9. Notice of Alleged Violation ENF: OA 23-33 (pages 62-65)
10. Glasses November 21, 2024, Email (pages 66-77)
11. Glasses Deed for Parcel 015 (pages 78-86)
12. OCCL Penalty Schedule (pages 87-98)

## **Summary**

The Office of Conservation and Coastal Lands (OCCL) alleges that Robin and Mami Glass (“the Glasses”), landowners of 3821 Tantalus Drive, TMK: (1) 2-5-012:015 (“Parcel 015”), conducted unauthorized land uses on the subject property which lies in the Resource Subzone of the State Land Use Conservation District. The alleged violations include initiation work in June 2022 to construct an erosion control structure, landscaping, and accessory structures to Parcel 015’s single-family residence as well as major alterations to the dwelling without prior authorization(s).

The Glasses are requesting to keep alleged unauthorized alterations to the single-family residence and potential authorizations for projects initiated without prior approval(s).

OCCL’s position is that we are willing to entertain potential after-the-fact (ATF) applications or authorizations so long as proposed improvements comply with Hawaii Administrative Rules Chapter 13-5.

## **Description of Area**

The subject property is located off Tantalus Drive and lies within the Honolulu Watershed Forest Reserve on the Island of O’ahu. The surrounding properties appear to consist of a handful of single-family residences, and larger tracts of watershed and forest reserve state land. The subject property is located in the Resource Subzone of the State Land Use Conservation District. See **Exhibit 1**.

The approximately 13,112 sq. ft (0.301-acres) property sits at an elevation of about 2,000 ft above mean sea level on one of the ridges of the Tantalus Crater or Cinder Cone (Pu’u ‘Ualaka’a). Annual rainfall for the area and property is approximately 160 inches (or more) per year and roughly sits above the Kanealole Stream which eventually meets with the Makiki Stream. According to the City and County of Honolulu Real Property Assessment website, Parcel 015 contains an approximately 2-story 1,154 sq. ft single-family residence that was built in 1949. See **Exhibit 2**.

**Exhibit 3** contains photos of Parcel 015.

## **History – Conservation District**

### **Conservation District Use Permit (CDUP) OA-1135**

On September 14, 1979, the Board of Land and Natural Resources (BLNR) approved CDUP OA-1135 for resubdivision (involving the adjacent TMK: (1) 2-5-012:001) and relocation of the garage and accessory residential improvements on Parcel 015 subject to 14 conditions. According to OCCL files, the landowners of Parcel 015 alleged they never received the approval letter, and the approved land uses were never initiated nor completed and the authorization expired.

### **CDUP OA-1494**

On December 3, 1982, the BLNR approved CDUP OA-1494 for the consolidation and resubdivision of Parcel 015 and the adjacent Parcel 001 subject to 5 conditions. According to OCCL files, the approved consolidation and resubdivision was never initiated nor completed, and the authorization expired.

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

#### **Correspondence (COR): OA 23-19**

On September 6, 2022, the Department responded to the Glasses' request regarding a proposed erosion control project on Parcel 015. The letter explained that their project would require a Conservation District Use Application (CDUA) pursuant Conservation District rules (Hawaii Administrative Rules (HAR) § 13-5-22 P-13 LAND AND RESOURCE MANAGEMENT) but noted that conflicting information made it unclear whether the proposal needed departmental or board-level approval. The Department also requested a response from the Glasses after learning that the City and County of Honolulu had flagged possible grading without a permit and lack of erosion controls which appeared to have come to the County's attention in June 2022. No recent Conservation District applications or permits were found on file for the parcel. See **Exhibit 4**.

On September 18, 2022, the Glasses emailed a response to COR: OA 23-19. The emailed response alleged various State and County agencies were responsible for the alleged flooding and erosion issues affecting Parcel 015. The emailed response stated the Glasses belief that the alleged unauthorized work and project was being carried out in compliance with applicable regulations, and that they should be allowed to finish the project. See **Exhibit 5**.

Several follow-up letters and emails were exchanged between the Department, other agencies, and the Glasses in an effort to resolve the issue. The Department asked the Glasses to address the County's concerns about alleged unauthorized grading and to submit a complete CDUA. Meanwhile, the Glasses maintained that the flooding and erosion on Parcel 015 were caused by others—including neighbors and agencies—and continued to seek or request issuance of approval(s) for their proposed project.

On February 6, 2023, the Department received a copy of a letter addressed to Robin Glass from the County regarding the Glasses request for information related to the drainage and erosion near Parcel 015. Based on the County's investigation, the letter noted that the drainage/surface runoff pattern along Tantalus Drive appeared to be the result of existing topography, and that previous repaving or resurfacing work did not appear to alter drainage designs. The letter stated that the City is not responsible for any potential increased runoff into private properties. See **Exhibit 6**.

On March 3, 2023, staff conducted a site inspection to the area with the Glasses. The Glasses had requested that the Department investigate the construction of the driveway that serves the adjacent Parcel 001 as well as alleged the unauthorized work that had been conducted on Parcel 015. See pages 20 to 22 of **Exhibit 3**.

On March 22, 2023, the Department responded to the Glasses' request to investigate the construction of the driveway serving Parcel 001. Based on the March 3, 2023, site inspection

and OCCL records, staff found that the driveway appeared to have been built in accordance with issued permits.

Regarding Parcel 015, the letter noted apparent unauthorized modifications to the single-family residence, including the addition of a metal roof over a composite one and the enclosure of the first-floor or basement area to align with the second story. Aerial imagery suggested that some of these changes likely occurred between 2009 and 2011 and increased the total developed area of the single-family residence to 3,408 sq. ft.—appearing to exceed the allowable limit of 3,278 sq. ft. Staff characterized these as major modifications and requested a written response from the Glasses, along with as-built drawings of the current structure.

The letter also noted that the County's grading violation remained unresolved.<sup>1</sup> See **Exhibit 7**.

On March 25, 2023, the Glasses responded to the Department's letter. The letter and attached drawing of the existing single-family residence noted, in part, that the residence was approximately 1,898 sq. ft consisting of a first floor that was 907 sq. ft and a 991 sq. ft second floor. See **Exhibit 8**.

### **Enforcement (ENF): OA 23-33**

On June 17, 2023, the Department issued the Glasses a Notice of Alleged Violation (NOAV) (ref. ENF: OA 23-33) for alleged unauthorized modifications to the single-family residence on Parcel 015. See **Exhibit 9**.

Additional letters and emails were exchanged between the Department and the Glasses in continued efforts to resolve the outstanding issues.

On November 21, 2024, the Glasses emailed the Department their request to be allowed to keep and utilize the alleged unauthorized modifications to the single-family residence as various potential types of living spaces as their proposed resolution to the alleged unauthorized land uses on Parcel 015. See **Exhibit 10**.

At the Glasses 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.

---

<sup>1</sup> Cursory conversations with DPP indicate that on August 3, 2022, a Notice of Violation (2022/NOV-06-142) was issued to the Glasses for the alleged unauthorized grading on Parcel 015, and since the violation was not resolved and relevant authorization(s) obtained by the Glasses, a Notice of Order (2023/NOO-051) was issued on June 21, 2024. It appears the Glasses are currently appealing DPP's NOV and NOO.



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 required 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 Resource subzone of the Conservation District are governed by HAR § 13- 5-24.<sup>2</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 or Board review for such uses is required.

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

**Structures and land uses, existing/major alteration** is identified as a land use regulated under HAR § 13-5-22 ("Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original use or different from what was allowed under the original permit. When county permit(s) are required for the associated plan(s), the department's approval shall also be required"). Structures and land uses, existing/major alterations 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-8 (D-1).

"Major alteration" means work done to an existing structure, facility, or use that results in more than fifty per cent increase in the size of the structure, facility, or use. HAR § 13-5-2.

**Accessory structure(s)** is identified as a land use regulated under HAR § 13-5-22 ("Construction or placement of structures accessory to existing facilities or uses"). Accessory

---

<sup>2</sup> "[A]ll identified land uses and their associated permit or site plan approval requirements listed for the protective and limited subzones also apply to the resource subzone, unless otherwise noted." HAR § 13-5-24(a).

structure(s) in the Conservation District requires 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.

In the case of SFRs, accessory structures need to comply with HAR Chapter 13-5 Exhibit 4 Single Family Residential Standards and the Maximum Developable Area (MDA). MDA means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures. For lots up to 14,000 square feet such as the subject property (13,112 square feet), the MDA for a SFR is 25% of the total lot area, or an MDA of 3,278 square feet for Parcel 015. HAR Chapter 13-5 Exhibit 4 Single Family Residential Standards.

**Erosion Control** is identified as a land use regulated under HAR § 13-5-22 (“Erosion control, including replanting of trees and groundcover, placement of biodegradable or synthetic materials for slope stabilization, construction of minor swales and check dams, not to include shoreline erosion control structures” [emphasis added] or “Road construction and major erosion control projects”). Erosion control projects in the Conservation District requires a Departmental or Board permit approved by either the Chairperson or BLNR depending on the scope, materials, and location of the proposed project prior to any work being conducted. HAR §§ 13-5-22(b)(3) and (4), P-13 (C-2) and (D-2).

**Landscaping** is identified as a land use regulated under HAR § 13-5-23 (“Landscaping, defined as alteration (including clearing and tree removal) of plant cover, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance, in an area less than 2,000 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 projects in an area less than 2,000 square feet in the Conservation District requires Site Plan Approval approved by the Department prior to any work being conducted. HAR §§ 13-5-23(C)(2), L-2 (B-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>3</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

---

<sup>3</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).

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.

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.

## **Penalties relating to alterations to the existing structures**

### *Major Alterations of Existing Structure*

As noted above, the nonconforming single-family residence was approximately 1,154 square feet. According to the information submitted by the Glasses, the ground and second floors' of the single-family residence have been expanded to approximately 907 square feet and 991.3 square feet for a total developed area for the dwelling of approximately 1,898.3 square feet.<sup>4</sup> The approximately 744.3 square feet increase in the single-family residence's total developable area is an approximately 64% increase and "major alteration" to the 1,154 square feet single-family residence which 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.

According to the Glasses' Emergency CDUA, the Glasses were proposing to construct and began grading for an approximately 1,884 square feet multipurpose "walkway" around the single-family residence. The application notes that two of the purposes of the proposed walkway were to serve as a patio and deck for the single-family residence. The approximately 1,884 square feet proposed walkway around and accessory to the single-family residence would be an approximately 163% increase and "major alteration" to the 1,154 square feet dwelling and would have required the filing of a CDUA for a Board permit. The lack of obtaining

---

<sup>4</sup> "Maximum Developable Area (MDA): Means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures." HAR Chapter 13-5 Exhibit 4 Single Family Residential Standards: August 12, 2011.

Board approval prior to initiating any work constitutes major harm to the resource and the penalty range shall be \$10,000 - \$15,000.<sup>5</sup>

### **Penalties relating to the construction and placement of erosion control**

#### *Retaining Wall – Slope Stabilization Structure*

According to the Glasses' Emergency CDUA, the Glasses were proposing to construct and began grading for an approximately 4ft 11in tall by 7ft 11in wide by 47ft long retaining wall. The application notes that the purpose of the proposed retaining wall is to "stabilize the soil" and "decrease landslide probabilities". The retaining wall is a major erosion control project that would have required the filing of a 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.

#### *Multipurpose Walkway – Slope Stabilization Anchor Structure*

According to the Glasses' Emergency CDUA, the Glasses were proposing to construct and began grading for an approximately 1,884 square feet multipurpose "walkway" at the base and connected to the proposed retaining wall. The application notes that some of the purposes of the proposed walkway are apron, drainage system, reduce soil erosion from rainwater runoff, direct water away from the dwelling, and provide a lateral anchor support for the proposed retaining wall. The proposed walkway/slope stabilization anchor structure is a major erosion control project that have required the filing of a 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 the placement of landscaping**

#### *Landscaping*

According to the Glasses' Emergency CDUA, the Glasses were proposing to place landscaping in an approximately 942 square feet area. Landscaping in an area of 2,000 square feet or less would have required the filing of a 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.

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

#### *Driveway*

---

<sup>5</sup> Staff notes that as currently constructed, OCCL would not accept an application for a proposed 1,884 square feet "walkway" around the approximately 1,898.3 square feet single-family residence as, but not necessarily limited to, the proposed improvements would exceed Parcel 015's MDA (3,278 square feet).

According to the Glasses' Emergency CDUA, the Glasses were proposing to repair or reconstruct an existing damaged driveway and began grading work. According to OCCL files, there was no driveway on or to Parcel 015 and its dwelling. Access to the single-family residence appears to have been from a set of (possibly nonconforming) stairs that began and encroached on the adjacent Parcel 013. In either case, repair or reconstruction of an existing driveway or construction of a new driveway or walkway as indicated in the Glasses' Emergency CDUA, would have required the filing of a 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 above, Parcel 015 lies within the Resource Subzone and Honolulu Watershed Forest Reserve along a portion of the Pu'u 'Ualaka'a crater or cinder cone that feeds into the Kanealole Stream.

The deed recorded at the Bureau of Conveyances (BOC) on June 12, 2001, transferred the property to the Glasses and noted various encroachments on a survey that was produced prior to their purchase (**Exhibit 11**). According to the Multiple Listing Service (MLS) listing for Parcel 015 indicates that the alleged unauthorized modifications to the single-family residence were disclosed to the Glasses when the dwelling was being sold as the listing notes "Home is much larger then tax office shows!!" (see page 74 of **Exhibit 10**).

OCCL files indicate that the Glasses appeared to have made no attempts to bring the dwelling into compliance as no correspondences or applications were submitted in the past approximately 25 years that the Glasses have owned the property. Based on staff's site visits to Parcel 015, it appears the Glasses have also made various repairs to the dwelling. Based on the above, it is staff's opinion that the Glasses should be held accountable for the unauthorized modifications made to the single-family residence that resulted in an approximately 744.3 square feet or 64% increase to the dwelling's total developable area.

The Glasses assert that the home has some form of historic value or significance. Staff has reviewed OCCL files for the property and the State Historic Preservation Division's (SHPD) HICRIS website (<https://shpd.hawaii.gov/hicris/landing>), and there appear to be no determinations regarding the home's potential historical significance. Further, it appears any historical significance the dwelling may have had was lost when it was expanded without authorization and haphazard work was conducted as the structure now appears to consist of various modern building materials and the size of the dwelling no longer appears to be consistent with OCCL files or county tax records. Staff has concerns that the residence may not be structurally sound and should be inspected by a qualified or licensed engineer or architect at the homeowners' expense.

Staff notes that the Glasses have failed to submit as-built plans for the residence identifying its interior spaces. As such, it is unclear to staff that the single-family residence is compliant Exhibit 4 Single Family Residential Standards of HAR Chapter 13-5 and the requirement that the dwelling contain only one kitchen. The Glasses need to provide evidence that the single-

family residence is compliant with HAR Chapter 13-5 and Exhibit 4 Single Family Residential Standards through the submission of architectural stamped plans.

Regarding the proposed erosion control project, the Glasses were proposing to construct a retaining wall and multipurpose walkway into the setback (15 feet on all sides) and spanning the entire width of Parcel 015. The stated purpose of these proposed erosion control devices was to decrease the likelihood of landslides and reduce soil erosion on the property, and direct rainwater away from the residence; however, staff has concerns that this may cause additional land movement or erosion and rainwater runoff on adjacent and downslope properties. Any proposed erosion control project should be designed by a locally licensed engineer and in close consultation with the neighboring properties to address and mitigate potential impacts to adjacent lands and concerns.

The Glasses live on a property that lies on the slopes of Tantalus Crater or Pu'u 'Ualaka'a, and an area that receives an approximate annual rainfall of 160 inches or more as noted above. Based on OCCL files and site visits to the area, Parcel 015 itself contains areas comprised of steep slopes. It should come as no surprise to the Glasses that structures that were likely constructed in the late 1940's or 50's are appearing to fail after approximately 50-70 years of weathering and use.

It is the Department's position that it is the responsibility of the landowners (and their agents) to research what can and cannot be done while complying with zoning and land uses laws that encumber the property.

Based on the present evidence, the Glasses did not obtain authorizations for the unauthorized modifications to the SFR nor prior to initiation of grading for construction of a proposed erosion control structure on Parcel 015.

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 the Glasses did in fact authorize, cause, or allow the construction of unauthorized modifications to the SFR and initiation of grading for construction or placement of accessory structures to the SFR and erosion control devices on Parcel 015 within the State Land Use Conservation District, Resource Subzone;
2. That there are no authorizations for the modifications to the SFR, placement of accessory structures, and construction or installation of erosion control devices on the property; and,
3. That the unauthorized land uses occurred upon land that lies within the State Land Use Conservation District, Resource Subzone.

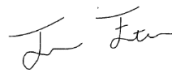
**Staff Recommends**

1. That the Board adopt the findings and conclusions set forth above and impose the following administrative fines:
  - a. Pursuant to HRS § 183C-7, the Glasses are fined \$15,000 for violating the provisions of HAR § 13-5-24, for constructing and allowance of an approximately 744.3 square feet increase in the single-family residence's total developable area and major alterations to the existing 1,154 square feet single-family residence on land within the Conservation District Resource Subzone;
  - b. Pursuant to HRS § 183C-7, the Glasses are fined \$15,000 for violating the provisions of HAR § 13-5-24, for initiating grading for construction of an erosion control device consisting of an approximately 47 feet long retaining wall and approximately 1,884 square feet of multipurpose walkway/slope stabilization anchor structure on land within the Conservation District Resource Subzone;
  - c. Pursuant to HRS § 183C-7, the Glasses are fined \$2,000 for violating the provisions of HAR § 13-5-24, for initiating and preparing approximately 942 square feet area for the placement of landscaping on land within the Conservation District Resource Subzone;
  - d. Pursuant to HRS § 183C-7, the Glasses are fined \$2,000 for violating the provisions of HAR § 13-5-24, for initiating grading for construction of a driveway or walkway on land within the Conservation District Resource Subzone;
  - e. Therefore, that the total fines and administrative costs that may be levied against the Glasses may be \$34,000, and that the Glasses shall pay all designated fines and administrative costs within ninety days from the date of the Board's action;
2. That in the event of failure of the Glasses or a future owner of Parcel 015 to comply with any order imposed in connection with this enforcement action, 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 015 at the Bureau of Conveyances pursuant to HRS §§ 171-6.4(c), 501-151, and 634-51;
3. That the Glasses or a future landowner shall retain at their own expense a licensed Geotechnical and Civil Engineers to assess the safety and structural stability of Parcel 015 and its single-family residence;
4. Any reports or proposed plans submitted to the Department regarding the Board's directions in ENF: OA 23-33 shall contain a seal or stamp of a licensed professional engineer;
5. That the Glasses or a future landowner shall submit a structural assessment report from a licensed engineer and/or architect and a plan to remove unauthorized modifications and return the single-family residence to 1,154 sq. ft within ninety days from the date of the Board's action;
6. That the Glasses or a future landowner shall return the single-family residence to 1,154 sq. ft within 180 days from the date of the Board's action;
7. That the Glasses or a future landowner shall submit a Conservation District Use Application (CDUA) and secure the appropriate authorization for an erosion control

project on Parcel 015 that complies with HAR Chapter 13-5 prior to commencing work. The CDUA shall contain evidence of consultation with the City and County of Honolulu and neighboring properties. The Board and Chair reserve their discretion to allow, modify, or deny the proposed land use;

8. That the Glasses or a future landowner shall submit monthly updates to the Department regarding their progress towards compliance with the Board's directions and steps towards resolution;
9. That in the event of failure of the Glasses or a future owner of Parcel 015 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;
10. That in the event of failure of the Glasses or a future owner of Parcel 015 to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs;
11. That any extension of these deadlines will require the concurrence of the Board or the Board's designee. Any request to extend these deadlines will require supportive information and documentation from the Glasses or a future owner of Parcel 015 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;
12. 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
13. The above noted conditions of Enforcement file OA 23-33 shall be recorded with the deed instrument by the Glasses at the Bureau of Conveyances pursuant to HAR § 13-5-6(e) within ninety days from the date of the Board's action.

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands

*mc*

Approved for submittal:



---

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



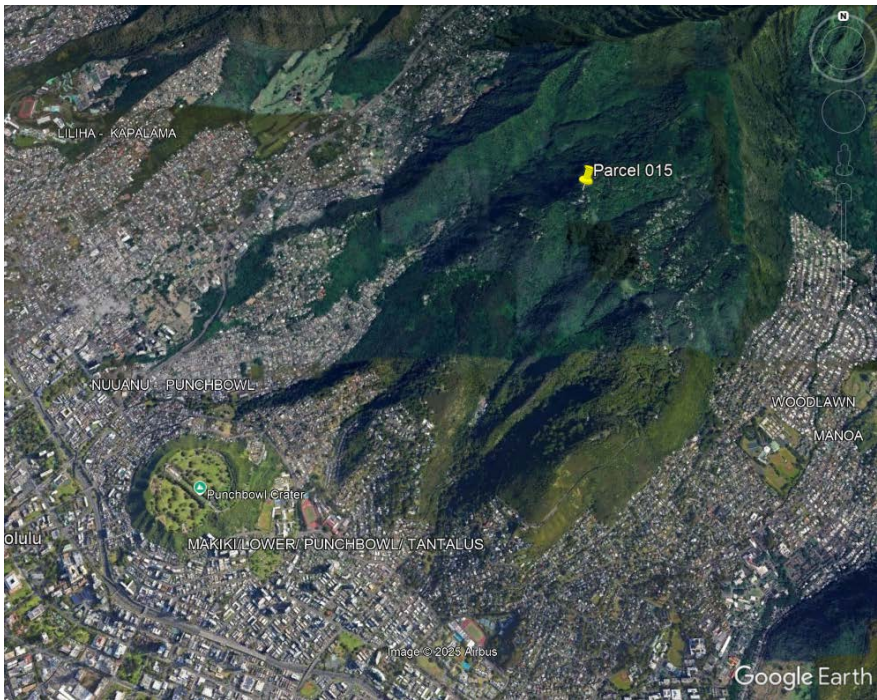
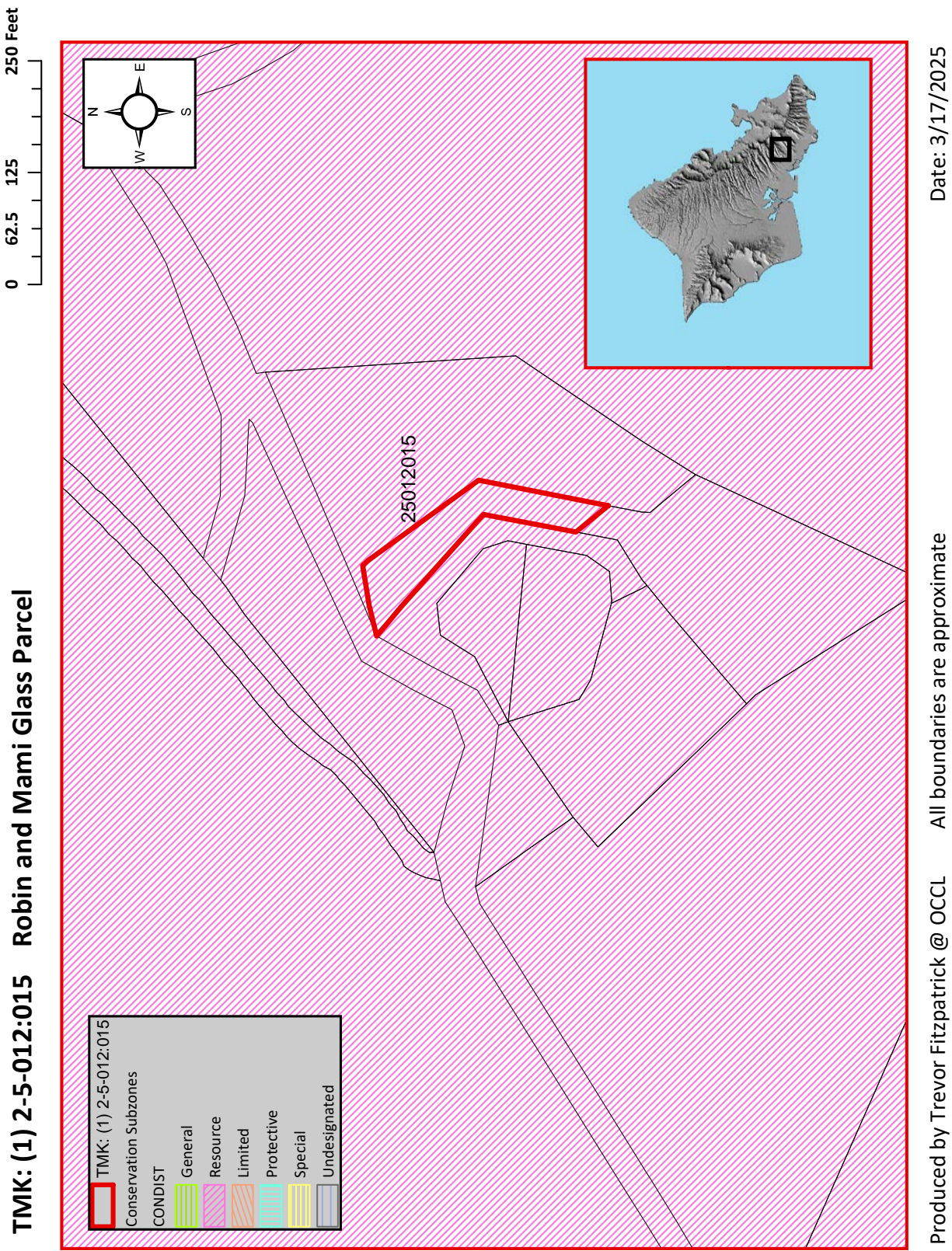
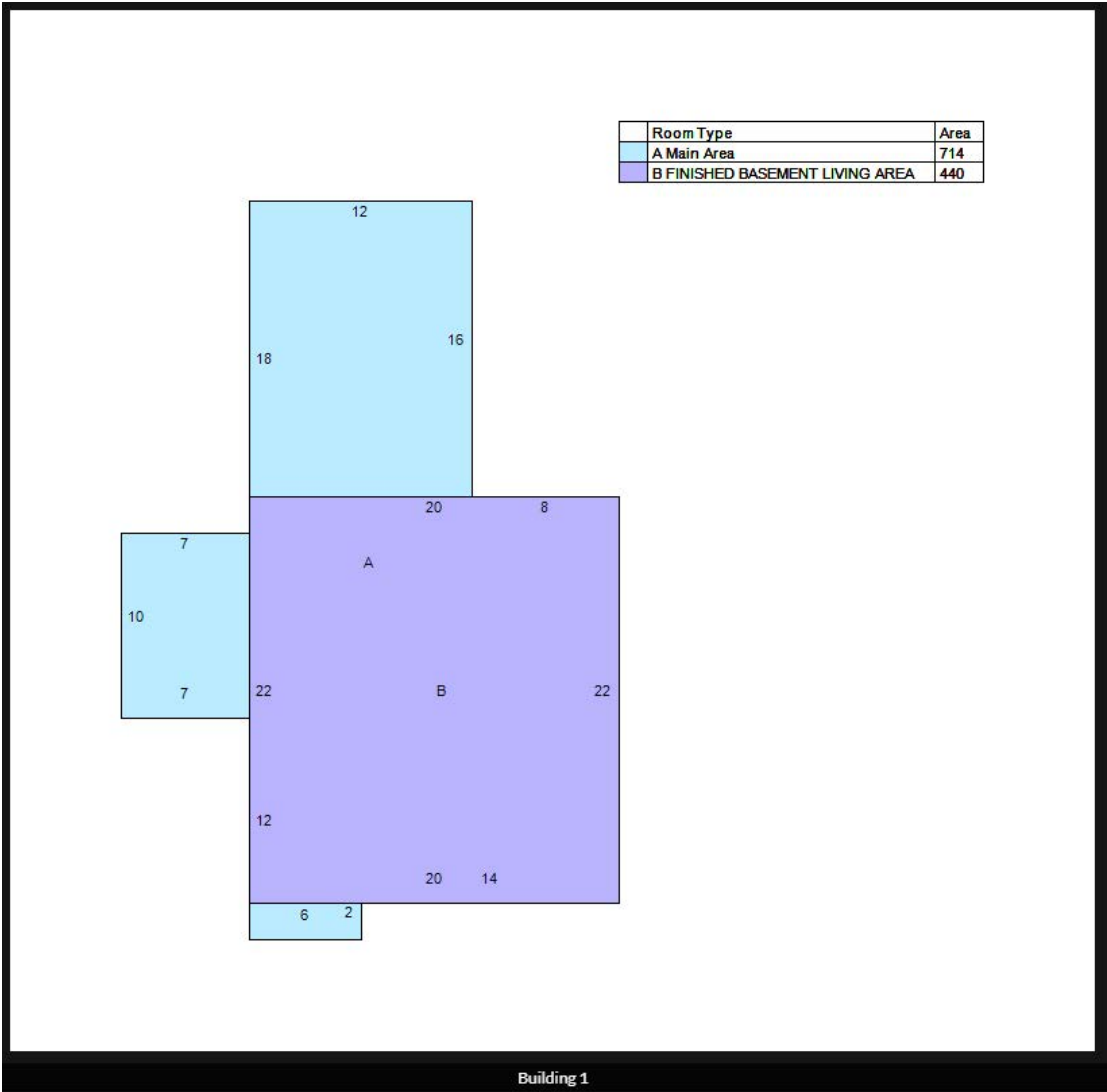


Exhibit 1 - Location and Subzone Maps



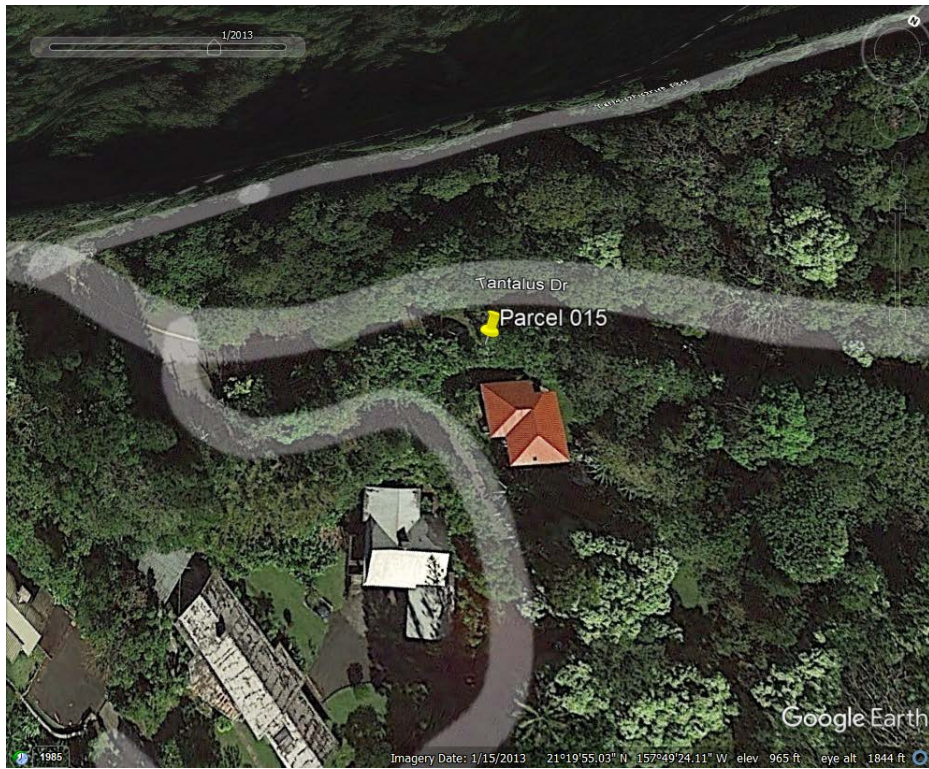


Source: <https://qpublic.schneidercorp.com/Application.aspx?AppID=1045&LayerID=23342&PageTypeID=4&PageID=9746&KeyValue=250120150000>





2009 Aerial Image of Parcel 015



2013 Aerial Image of Parcel 015





9/8/2022 OCCL Photo of Parcel 015





9/8/2022 OCCL Photo of Parcel 015





9/8/2022 OCCL Photo of Parcel 015





3/3/2023 OCCL Photo of Parcel 015 and alleged unauthorized area cut for proposed "driveway"/walkway



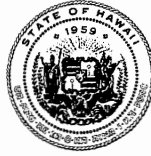


3/3/2023 OCCL Photo of Parcel 015 and its Single-Family Residence, alleged unauthorized modifications, and areas of alleged unauthorized grading for construction of proposed "walkway/patio/lateral wall anchor"



3/3/2023 OCCL Photo of Parcel 015 and area of alleged unauthorized cut and grading for construction of proposed "retaining wall", "multipurpose walkway/later wall anchor", and proposed landscaping

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

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: TF

COR: OA 23-19

Robin Glass  
3821 Tantalus Drive  
Honolulu, HI 96822

Sep 6, 2022

**SUBJECT:** Emergency Slope Stabilization DPP Application # A2022-06-1179.  
Located at 3821 Tantalus Drive  
Tantalus, Honolulu, Oahu  
Tax Map Key (TMK): (1) 2-5-012:015

Dear Robin Glass:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your letters and attachments regarding the subject matter. According to your letters and attachments, you are requesting emergency authorization for slope stabilization on the subject property. You state that the slope on the subject property has been weakened by municipal floodwater, adjacent road surcharge, crest of slope driveway and wall surcharge appear to be contributing to recent landslides and mudslides. You are proposing to conduct the following activities to address these issues:

- 1) Install retaining wall at the foot of the slope to stabilize the soil. Move sediment into rills and gullies.
- 2) Replace deteriorated walkway-apron-patio-deck around the house. You note that this will anchor retaining wall laterally and direct water away from the foundation.
- 3) Plant native and non-native plants on the slope to stabilize the soil.

You state that you have an emergency City and County of Honolulu Department of Planning and Permitting (DPP) permit (#A2022-06-1179) to proceed with the repairs. You have submitted an Emergency Conservation District Use Application (Emerg. CDUA) and request for the proposed work.

The OCCL regulates land uses in the State Land Use Conservation District through the issuance of Conservation District Use Permits (CDUPs) and Site Plan Approvals (SPAs) to help conserve, protect, and preserve important natural and cultural resources. The subject parcel lies in the Resource Subzone of the State Land Use Conservation District as well as in the Honolulu Watershed Forest Reserve.

REF: OCCL: TF  
Robin Glass

COR: OA 23-19

A cursory review of DPP's website regarding application number A2022-06-1179 indicates that a warning, advisory (2022/ADV-430), and double fee penalty has been created for "SD Grading without a permit with no BMP" on the subject parcel (see attached). According to OCCL files, there appears to be no authorizations for proposed work or projects on TMK: (1) 2-5-012:015. Please provide us with a written response regarding the alleged unauthorized work and DPP's advisory (2022/ADV-430). The burden of resolving any alleged unauthorized land use within Conservation District lies with the landowner.

You letter notes that the flooding, drainage, and erosion issues have been ongoing for the last 21 years and would appear to be an unmanaged hazardous condition/situation. Further, it appears you are proposing to implement a long-term solution; and therefore, the submission of an Emerg. CDUA would appear to not apply as these authorizations are intended for temporary actions to temporarily alleviate an immediate emergency while a long-term solution is pursued.<sup>1</sup>

Based on the information you have provided; it appears you are proposing an erosion control project on TMK: (1) 2-5-012:015. Erosion control is an identified land use in the Resource Subzone pursuant to Hawaii Administrative Rules (HAR) §13-5-22 P-13 LAND AND RESOURCES MANAGEMENT and will require the filing of a Conservation District Use Application (CDUA); however, staff is unable to determine if the project is moderate or major due to the conflicting information in your letters and attachments. The application shall contain, but not limited to, an Environmental Assessment (EA) in compliance with Hawaii Revised Statutes (HRS) Chapter 343 and HAR 11-200.1, a HRS 6E Intake form for historic preservation compliance, and the associated application/filing fees.

The OCCL is concerned about the possible impacts the proposed project may have to adjacent and downslope areas. The Draft EA should discuss and contain technical studies regarding drainage patterns and their proposed alterations as well as potential impacts to native flora and fauna in the area. You may want to consider consulting with a Geotechnical Engineer in developing the CDUA and its attachments. Submitted plans should contain a professional engineer (PE) stamp. Staff also notes that there appears to be encroachments (noted as Concrete Steps and Hollow Tile Wall, Water Tank, and Asphalt Road) on the subject parcel and indicated on the November 17, 2000, property survey. Please provide further information and clarification regarding these alleged encroachments.

Conservation District Use and Site Plan Approval applications can be found at <https://dlnr.hawaii.gov/occl/forms-2/>. Information on the Environmental Review Program and Hawaii's environmental review process (commonly known as HEPA) can be viewed at <https://planning.hawaii.gov/erp/>. CDUAs and Draft EAs can be submitted to OCCL via mail at 1151 Punchbowl Street, Room 131, Honolulu, HI 96813.

---

<sup>1</sup> Pursuant to Hawaii Administrative Rules (HAR) §13-5-2, emergency means *an imminently dangerous situation that poses a substantial threat to public health, safety, and welfare as declared by the chairperson, or deputy director of the department in the absence of the chairperson.*

REF: OCCL: TF  
Robin Glass

COR: OA 23-19

Regarding the alleged municipal flooding and drainage issues, it appears that this portion of Tantalus Drive is under the City and County of Honolulu's jurisdiction. We understand you have contacted the City and County of Honolulu Department of Facility Maintenance and the Department of Design and Construction. You may want to continue to consult with these agencies regarding the alleged flooding and drainage issues associated with this portion of Tantalus Drive.

Should you have any questions, 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: *Division of Forestry and Wildlife  
Oahu District Land Division Office  
City and County of Honolulu, Department of Planning and Permitting  
City and County of Honolulu, Department of Design and Construction  
City and County of Honolulu, Department of Facility Maintenance*

8/26/22, 3:19 PM

Honolulu Internet Permit System - Building Permit - Status: Start



CITY AND COUNTY OF HONOLULU  
Department of Planning and Permitting (DPP)

Aloha. We provide services and information on building permits, development projects, and planning activities for the City and County of Honolulu.

[Permitting](#) [Searching](#) [DPP Home](#) [Sign In](#)

## Building Permit - Status: Start

Details	Approvals	Applicant/Contractors	Plan Reviews	Inspections
<b>Building Permit</b>				
Application Number:	A2022-06-1179		Job Number:	102946842-002
Description:	[TMK: 25012015] 3821 Tantalus Dr. // Robin Glass - Emergency Repair work due to land and mud slides.			
Created Date:	Jun 24, 2022	Job Completed Date:		
Issued Date:		Date Construction Completed:	mmm dd, yyyy	
Status:	Start			
Specific Location:	3821 TANTALUS DR Honolulu / Makiki 96822			

### Tax Map Key

**Warnings** **Description**  
 TMK 2-5-012-015 [13112 sq ft.] 0.301 ac. POID= 108730 3821 TANTALUS DR Honolulu / Makiki 96822 01/01/1800 to Current TAXPIN = 108730

### Details

Staff Assignment:	(None)	Is this a City Project?:	No
		Job Address (if not primary):	
Estimated Value of Work:	\$5,000.00	Remarks:	
Accepted Value:			
Require Plan Review Fee?	<input checked="" type="checkbox"/>		
Occupancy Group Category:	U-2 Retaining Wall	Structure Code:	02 - WALL OR FENCE
Occupancy Group:	01 - Single Family	Require Affidavit:	(None)
Ownership:	01 - Private	Require Special Inspection:	Yes
Commercial/Residential:	Residential	Require Called Inspection:	(None)
Proposed Use:	SFD	Certificate of Occupancy must be issued before building is occupied:	<input type="checkbox"/>
Floor Level:		<b>FLOOD HAZARD DISTRICT</b>	
Types of Construction (Min):	(None)	Flood Hazard District:	N/A
Types of Construction (Actual):	(None)	<input type="checkbox"/> Complied	
Number of Existing Stories:		<input type="checkbox"/> Exempt	
Number of Final Stories:		<input type="checkbox"/> As-Built Elevation Certification	
Existing Floor Area:		<b>RESIDENTIAL UNITS CODE</b>	
New Floor Area:		Number Units - Added:	0
Total Floor Area:		Number Units - Deleted:	0
Building Inspection Required:	Yes	<b>HOTEL ROOM CODE</b>	
Electrical Inspection	No		

<https://dppweb.honolulu.gov/DPPWeb/Default.aspx?PossePresentation=BuildingPermit&PosseObjectId=102946852>

1/2

8/26/22, 3:19 PM

Honolulu Internet Permit System - Building Permit - Status: Start

Required:		Number of Rooms - Added:	0
Plumbing Inspection Required:	No	Number of Rooms - Deleted:	0
Plumbing Phases:	None	Location where Permit was created:	FMB
Electrical Phases:	None	Location where Permit was issued:	(None)

**Type of Work**

<input type="checkbox"/> New Building	<input type="checkbox"/> Electrical Work	<input type="checkbox"/> Electrical Vehicle Charger
<input type="checkbox"/> Foundation Only	<input type="checkbox"/> Electrical Meter Only	<input type="checkbox"/> Solar
<input type="checkbox"/> Shell Only	<input type="checkbox"/> Fire Alarm	<input type="checkbox"/> Solar Photovoltaic Installation
<input type="checkbox"/> Addition	<input type="checkbox"/> Plumbing Work	<input type="checkbox"/> Solar PV Installation W/ Battery Storage
<input type="checkbox"/> Alteration	<input type="checkbox"/> Fire Sprinkler	<input type="checkbox"/> Heat Pump
<input checked="" type="checkbox"/> Repair	<input type="checkbox"/> Air Conditioning	<input type="checkbox"/> Antenna
<input type="checkbox"/> Demolition	<input type="checkbox"/> Ohana	<input type="checkbox"/> Temporary
<input type="checkbox"/> Fence	<input type="checkbox"/> Accessory Dwelling Unit (ADU)	<input type="checkbox"/> Relocation To
<input checked="" type="checkbox"/> Retaining Wall	<input type="checkbox"/> Pool	<input type="checkbox"/> Relocation From
		Other: Emergency Repairs

**Driveway, Sewer, Retrofit**

**RIGHT-OF-WAY WORK**

Driveway: ☐ New ☒ Existing ☐ Private

Driveway Repair: ☐

Driveway Types: (None)

Linear Feet of Driveway: ☐

Sidewalk Repair: ☐

Sidewalk Types: (None)

Linear Feet of Sidewalk: ☐

Curbing Types: (None)

Linear Feet of Curbing: ☐

**RETROFIT**

No. of Showers to be replaced:

No. of Faucets to be replaced:

No. of Urinals to be replaced:

No. of Toilets to be replaced:

**MAJOR OCCUPANCY GROUP**

☐ Commercial

☐ Hotel

☐ Industrial

☐ Residential

**SEWAGE**

Sewer Connection Permit No.:

Sewage Disposal Type: ☐ Existing ☐ New ☒ (None)

Sewage Disposal Method: ☐ Aerobic Unit ☐ Private Sewage Treatment Plant ☐ Septic Tank

☐ Cesspool ☐ Public Sewer ☒ (None)

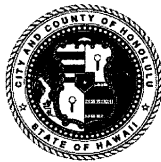
Cancel

City and County of Honolulu, Department of Planning & Permitting  
650 So. King St., Honolulu, HI 96813 \* Fax: (808) 768-6743  
email: [info@honoluluodpp.org](mailto:info@honoluluodpp.org)  
© Copyright Honolulu City & County. All Rights Reserved.

Screen ID: 713846

8/26/22, 3:18 PM

Honolulu Internet Permit System - Tax Map Key



CITY AND COUNTY OF HONOLULU  
Department of Planning and Permitting (DPP)  
Aloha. We provide services and information on building permits, development projects, and planning activities for the City and County of Honolulu.

[Permitting](#) [Searching](#) [DPP Home](#) [Sign In](#)

**Tax Map Key**

<a href="#">Details</a>	<a href="#">Warnings</a>	<a href="#">Building/Sign Permits</a>	<a href="#">Subdivision Permits</a>	<a href="#">Other Permits</a>	<a href="#">Closures</a>	<a href="#">History</a>	<a href="#">Assessments</a>	<a href="#">St. Seibach's</a>	<a href="#">Parcel Info</a>
<b>Description</b> 2022/ADV-430 (Advisory created) 2022-06-28 DOUBLE FEE PENALTY. SD Grading without a permit with no BMP.									
<a href="#">Submit</a> <a href="#">Cancel</a>									

City and County of Honolulu, Department of Planning & Permitting  
650 So. King St., Honolulu, HI 96813 \* Fax: (808) 768-6743  
email: [info@honolulu.dpp.org](mailto:info@honolulu.dpp.org)  
© Copyright Honolulu City & County. All Rights Reserved.

Screen ID: 713943



Robin Glass  
3821 Tantalus Drive  
Honolulu, Hawaii 96822

T. Cain, Dir.  
23-19  
RECEIVED  
OFFICE OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

2022 JUL 21 A 11:34

Ref: Emergency Slope Stabilization | 3821 Tantalus Drive | DPP Permit # A2022-06-1179

Mr. Michael Cain, Administrator  
Office of Conservation and Coastal Lands Kalanimoku Building  
1151 Punchbowl St., Room 131  
Honolulu, HI 96813

Ph: (808) 587-0377

Dear Mr. Cain,

Thank you.

Would it be possible for you to review this written summary and assign a Planner to review it and make a determination? I reviewed your website but did not find how to determine what level of permit to apply for.

I believe we urgently need

1. Municipal floodwater controls corrections on the stretch of Tantalus Drive above and by my land. This water needs to be correctly deposited in storm sewer(s) instead of being inadvertently routed across my land and subsequently my neighbors' parcels, effectively using them as a drainage basin, creating erosion, sedimentation, property damage and exposure to personal injury.
2. Examination of driveway and associated retaining wall for TMK 1-2-5-12-1 located adjacent to the subject property, addressed as 3825 Tantalus Drive. The subject driveway, traffic that passes over it and retaining walls appear to be unpermitted, poorly constructed and significant contributors to slope destabilization.
3. Installation of slope stabilization and restoration of eroded soil, original home site carve-out plinth grade and driveway access to my property at TMK 1-2-5-12-15. The old CMU stairs and hodgepodge driveway are eroded beyond their useful life.

As for the urgency, there appears to be "actual or imminent natural or human-caused occurrence that results or likely will result in substantial injury or harm to the population or substantial damage to or loss of property" : HRS §183C-4.

Recent landslides, mudslides, erosion and ephemeral streamlets and waterfalls containing water, sediment, chunks of debris and infectious organisms are thought imminently likely to cause personal

Page 1 of 4

injury, undermine & damage improvements, alter the grade, penetrate improvements on my property and others in the immediate neighborhood.

This harmful activity has been ongoing for the past 21 years since I purchased the property and possibly for the past 73 years since my house was built but recently the intensity, frequency and volume of it has arrived to an alarming level.

I have been taking emergency steps to prevent likely personal injury and property damage and it's recently come to my attention that there are statutory requirements for the Department of Land and Natural Resources to control some or all of the subject maintenance being undertaken. I've been moving sediment back to its original eroded locations and removed a section of wall that was undermined, leaning away from the slope, cracked and in the process of releasing chunks down the slope.

Prior to any work on the encroachment wall and slope, I suggested to my neighbor that he obtain any necessary permit(s) to repair the wall he contracted built, provide a copy of the permit for his driveway and remove the encroachment but it is my understanding he politely declined all of the above. Furthermore he opined that it was my responsibility to create or maintain a wall sufficient to support his surcharge loads and stress that his leaning walls, encroachments, driveway, automobiles, 66 thousand pound concrete mixing trucks and arborist commercial vehicles place on the slope.

Aloha,

*Robin C Glass*

---

From: Cain, Michael  
Sent: Monday, July 18, 2022 12:45 PM  
To: Robin Glass [REDACTED]  
Cc: Mills, Kimberly T <kimberly.mills@hawaii.gov>  
Subject: RE: [EXTERNAL] FW: Applicant Upload Task is Past Due for A2022-06-1179

Dear Robin Glass,

I have checked our records, and we do not have any applications for projects on this parcel. If this work is in the Conservation District it would require a Conservation District Use Permit (CDUP).

Page 2 of 4

Information on permitting requirements and applications can be found on our website at <https://dlnr.hawaii.gov/occl/>.

If you are unsure what level of permit to apply for you can send us a written summary of the work to our office [1151 Punchbowl, Room 131, Honolulu, HI 96813], and I will assign a Planner to review it and make a determination.

Thank you,  
Michael Cain

From: DLNR.CO.PublicDLNR <dlnr@hawaii.gov>  
Sent: Monday, July 18, 2022 10:26 AM  
To: Cain, Michael <michael.cain@hawaii.gov>; Mills, Kimberly T <kimberly.mills@hawaii.gov>  
Subject: FW: [EXTERNAL] FW: Applicant Upload Task is Past Due for A2022-06-1179

From: Robin Glass <[REDACTED]>  
Sent: Monday, July 18, 2022 8:16 AM  
To: DLNR.CO.PublicDLNR <dlnr@hawaii.gov>  
Cc: Cain, Michael <michael.cain@hawaii.gov>  
Subject: [EXTERNAL] FW: Applicant Upload Task is Past Due for A2022-06-1179

Chairperson  
Suzanne Case  
DLNR Main Office  
Kalanimoku Building  
1151 Punchbowl St.  
Honolulu, HI 96813  
Ph: (808) 587-0400  
dlnr@hawaii.gov

Dear Ms Case and Mr. Cain,

Is there a process we need to perform with DLNR in addition to the DPP permit in regards to 3821 Tantalus Drive, zoned P-1 ?

Although the subject is emergency slope stabilization due to land & mudslides, it recently came to my attention that we need to at least apprise DLNR of the situation and there may be DLNR paperwork we need to process.

Page 3 of 4

Plans

<https://hawaiihome.cc/A2022-06-1179.pdf>

Aloha, Robin Glass

[REDACTED]

3821 Tantalus Dr, Honolulu, HI 96822

Page 4 of 4



DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS

Emergency Conservation District Use Application

OFFICE OF CONSERVATION  
AND COASTAL LANDS

2022 AUG -5 P 12:53

**Location**

Address: 3821 Tantalus Drive, Honolulu HI 96822  
Tax Map Key (TMK) parcel: 1-2-5-12-15

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

**Applicant/responsible party**

Name: Robin Glass  
Address: 3821 Tantalus Drive, Honolulu HI 96822  
Phone: [REDACTED]  
Email: [REDACTED]

**Contractor**

Name: None. DIY-Owner-Builder-Plan maker  
Address: 3821 Tantalus Drive, Honolulu HI 96822  
[REDACTED]

License #: None. DIY-Owner-Builder-Plan maker

**Type of emergency**

Describe the threat that the proposal is addressing, and what resource or structure is at risk.  
3,241 ft<sup>2</sup> land with 83.3% slope on our property adjacent to Tantalus Drive is at a tipping point, in imminent risk of major landslide or collapse. The slope has been severely weakened by decades of municipal floodwater, adjacent road surcharge, crest of slope driveway & wall surcharge collectively precipitating recent landslides and mudslides. Our house has been struck by debris, penetrated by water, exposed to dry rot and wet wood attracting pest infestation. The level plinth-grade has been damaged with sedimentation and erosion. Our stairs, driveway & LPG service decommissioned and foundation may be undermined. Slope-side plants have been uprooted by land and mudslides. We are periodically exposed to flood borne pathogens from knee deep ephemeral streams and waterfalls which slam the house and wrap around the house. Our bodies have chronically manifest all of the known symptoms of floodwater disease. Our "downstream" neighbors are exposed to similar property damage and health risks. If the subject slope on our property further erodes or collapses it could decommission the subject driveway, destabilize Tantalus Drive and potentially isolate residents between 3821 Tantalus Dr and where 4120 Rountop Dr is closed. From a layman's point of view it seems the situation is a candidate for the DLNR definition of "Emergency" which means "...an imminently dangerous situation that poses a substantial threat to public health, safety, and welfare. We have an emergency DPP permit # A2022-06-1179 to proceed with repairs.

### **Emergency Conservation District Use Application**

For more information download <https://hawaiihome.cc/A2022-06-1179.pdf>

#### **Project proposal**

Please include dimensions and materials to be utilized. Attach a site plan and other relevant information. Note: The utilization of Elco-rock bags is prohibited in the shoreline.

1) Install retaining wall at the foot of the slope to stabilize the soil. Move sediment into rills and gullies. 2) Replace deteriorated walkway-apron-patio-deck around the house. This will anchor the retaining wall laterally and direct water away from the foundation. 3) Plant native and non-native plants on the slope to stabilize slope soil with roots, sequester, or remove, carbon from the air and provide shelter and food for wildlife. The native plants promote biodiversity and stewardship of our natural heritage. Non-native plants will complement the landscape and provide shade for native plants. Plants are beautiful and increase scenic values. See Attachment A for dimensions, materials and site plan and other relevant details.

#### **Estimated duration of the project (one year or less)**

Less than 1 year

#### **Contingencies for removal**

1) Municipal flood mitigation steps completion 2) Retaining wall installation completion 3) Walkways replacement completion 4) Planting completion

#### **Other proposed mitigation measures**

We will continue following up with Honolulu to alert or suggest the need to 1) divert storm flood water to a more suitable drainage basin 2) review road geotech and structural as it adds mechanical force-surge to subject adjacent steep 83.3% unsupported slope 3) determine whether or not the neighbor's (TMK 1-2-5-12-1) driveway and wall are in compliance with building code since periodically they add as much as 123 tons of surcharge weight to the most vulnerable crest of the subject slope and have contributed to land sliding.

Alternatively we will explore a civil action remedy as our neighbors who periodically put 123 tons of surcharges along the crest of the slope believe there is no need for them to perform any slope stabilization tasks.

#### **Future response plans**

Office of Conservation and Coastal Lands  
1151 Punchbowl St #131, Honolulu, HI 96813  
(808) 587-0377

**Emergency Conservation District Use Application**

1) Monitor municipal flood water mitigation effectiveness 2) Monitor hillside stability 3) Maintain healthy plants on subject slope 4) Monitor wall integrity and drainage system 5) Periodically obtain reports from neighbors in regards to municipal flood water status.

---

**For emergency shoreline protection: Public Trust Land Utilization**

Contact the appropriate State Land Division Office or encumbered government agency to initiate the process of obtaining a land disposition for the use of State Lands.

Hawai'i District Land Office: (808) 961-9599  
O'ahu Land District Office: (808) 587-0433

Maui District Land Office: (808) 984-8103  
Kaua'i District Land Office: (808) 274-3491

**I/we understand that the approval herein is only valid upon receipt of a land disposition from the Board of Land and Natural Resources.**

**Signature, Date:**

  
8/2/2022

---

**Certification**

I hereby certify that I have read this completed application and that, to the best of my knowledge, the information in this application and all attachments and exhibits is complete and correct. I understand that the failure to provide any requested information or misstatements submitted in support of the application shall be grounds for either refusing to accept this application, for denying the permit, or for suspending or revoking a permit issued on the basis of such misrepresentations, or for seeking of such further relief as may seem proper to the Land Board.

**Signature, Date:**

  
8/2/2022

Office of Conservation and Coastal Lands  
1151 Punchbowl St #131, Honolulu, HI 96813  
(808) 587-0377

Attachment A

Feet, Inches	Quantity	
		Retaining wall
		Purpose
		Decrease landslide probabilities. Retaining wall is most important at the foot of a slope
		Wall
		Dimensions
4' 11"		Height
1' 0"		Top width
2' 0"		Bottom width
47' 0"		Length
	353	Volume ft <sup>3</sup> concrete
		Materials to be utilized
	588	80# bags 4,000 PSI concrete
	441	gallons water
		Water drainage system
		Materials to be utilized
		Backfill
0' 0.5"		Gravel size
		Area:
4' 11"		Height
1' 0"		Width
47' 0"		Length
	235	Volume ft <sup>3</sup> gravel
		Weep holes
		Lined with PVC pipe
0' 0.3"		Diameter
1' 0"		Length
	6	Quantity
		Perforated drain pipe
47' 0"		Length
		Landscape matt
7' 11"		Width
47' 0"		Length
	372	Area ft <sup>2</sup>
		Walkway (Multipurpose as: Apron, Patio, Deck, Drainage system or Lateral Wall Anchor)
		Purpose
		Reduce soil erosion from rain water runoff. Direct water away from house foundation. Lateral anchor support for retaining wall. Facilitate safe rain gutter maintenance.
		Dimensions (complex shape with house at the heart)



Attachment A

55' 0"		Max width
60' 0"		Max length
	1,884	Area ft <sup>2</sup>
0' 0.3"		thickness
		Material:
	628	Volume ft <sup>3</sup> concrete
	785	gallons water
	1,884	Area ft <sup>2</sup> wire mesh
0' 0.25"		thickness gravel base
	1,884	Area ft <sup>2</sup>
	471	Volume ft <sup>3</sup> gravel base

		<b>Plants</b>
		Purpose
		Plant native and non-native plants on the slope to Stabilize slope soil with roots, sequester, or remove, carbon from the air and provide shelter and food for wildlife. The native plants promote biodiversity and stewardship of our natural heritage. Non-native plants will compliment the landscape and provide shade for native plants. Plants are beautiful and increase scenic values.
	942	ft <sup>2</sup> (area to cover)
		Material
		Species:
		Native:
		Kupukupu fern
		Palapalai
		Maile
		'Uki'uki
		Non-native which either help hold soil or reduce sunlight for plants needing shade:
		Prestoea tobagonis
		Areca Palm
		Bismarck Palm
		Monstera
		Heleconia
		Anthuriums
		Ti

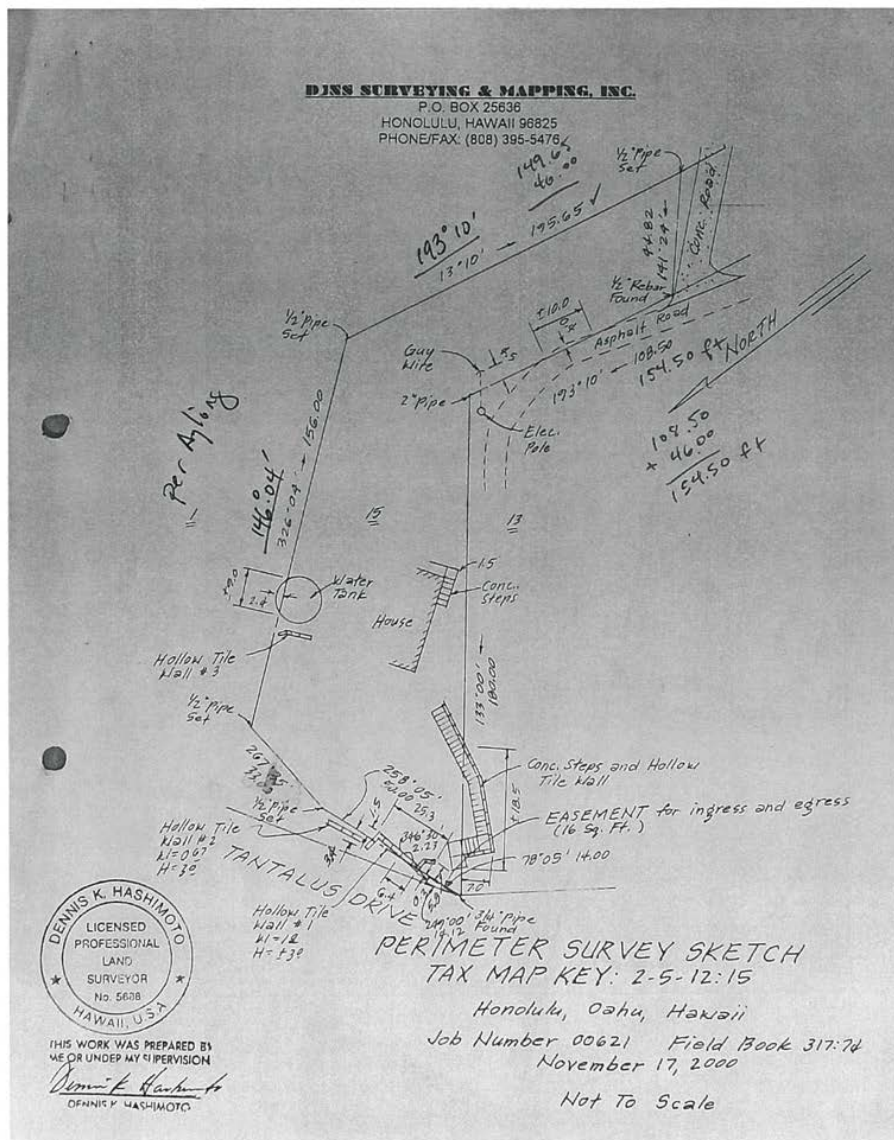
SPACE RESERVED FOR CITY & COUNTY  
OF HONOLULU ELECTRONIC APPROVAL  
STAMPS. 2H X 3W + 3/4" FROM TOP  
AND 1/8" FROM RIGHT EDGE

[illegible]

NEW RETAINING WALL FOR  
MR. & MRS. ROBIN & MAMI GLASS  
TAX MAP KEY: 1-2-5-12-15  
3821 TANTALUS DR, HONOLULU, HI

**SURVEY**  
V602 SCALE: 13.1" = 100.0'

1. THIS RECORD IS FOR OFFICIAL USE ONLY.  
2. HONOLULU ELECTRONIC AFFIDAVIT  
3. STAMP: THIS IS A "NEW TOP"  
4. SEE SHEET 1000

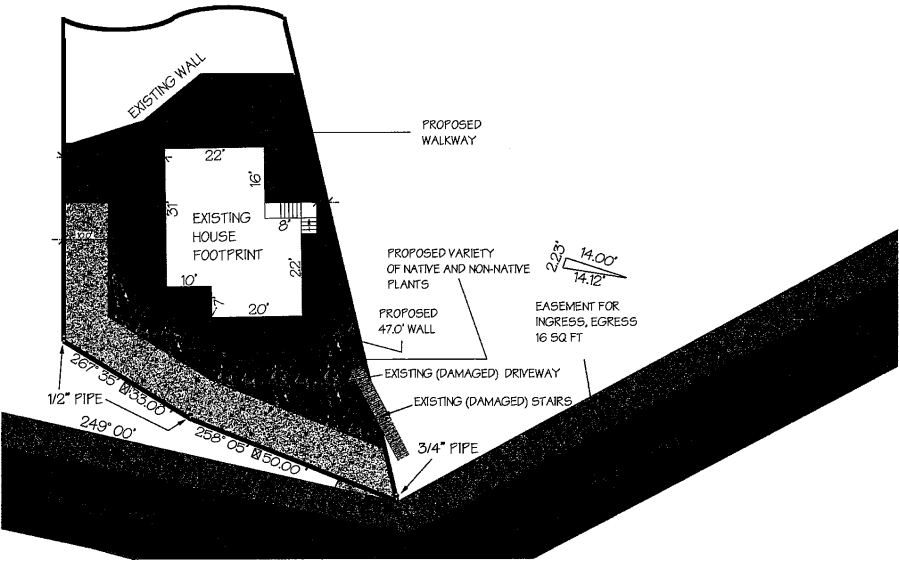






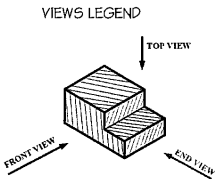
NEW RETAINING WALL, WALKWAY AND PLANTS  
MR. & MRS. ROBIN & MAMI GLASS  
TAX MAP KEY: 1-2-5-12-15  
3821 TANTALUS DR, HONOLULU, HI

(L104) SITE PLAN: WALL, WALKWAY & PLANTS  
SCALE: 28.8" = 125'

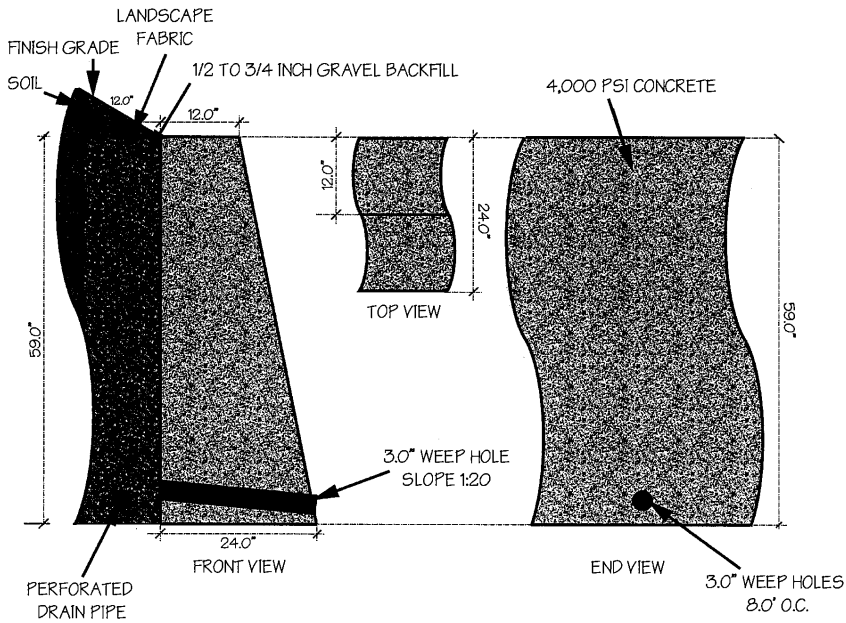
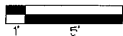


NEW RETAINING WALL, WALKWAY AND PLANTS  
MR. & MRS. ROBIN & MAMI GLASS  
TAX MAP KEY: 1-2-5-12-15  
3821 TANTALUS DR, HONOLULU, HI

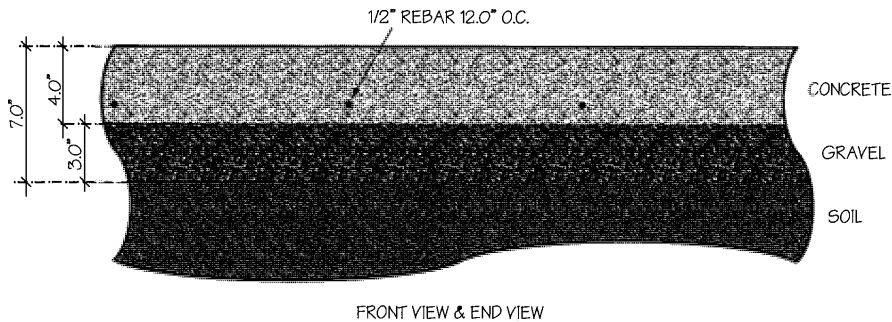
L103



SCALE: 1.0" = 1.0' RETAINING WALL



SCALE: 1.0" = 1.0' WALKWAY



TF

ref OA-23-19

Cain, Michael

**From:** Robin Glass <[REDACTED]>  
**Sent:** Sunday, September 18, 2022 4:27 PM  
**To:** tervor.j.fitzpatrick@hawaii.gov  
**Cc:** Cain, Michael  
**Subject:** [EXTERNAL] ICCL:TF COR:OA 23-19  
**Attachments:** dlnr0001.pdf

2022 SEP 25 P 10:43

Dear Michael Cain,

Thank you for your attached reply to our Emergency Slope Stabilization Request and for referring us to Mr. Fitzpatrick for any additional questions.

We appreciate you read our information so carefully.

We will strive to communicate more effectively in spite of the ongoing stress, threat to life, health and property created by disaster conditions previously described.

For example, last week I had to carry my wife down the slippery slope trail, which if DPP inspectors had their druthers, stated would not even exist. Without the infamous trail I would have had to lower her down 24.0' vertical to the house with some sort of rope sling. Just how humane is that? She was heavily sedated post endoscopy colonoscopy and surgery for gastroenteritis, possibly caused by municipal floodwater discharge pathogen. Life is extremely difficult at the bottom of this slope and the DPP NOV is effectively intent on extending our pain indefinitely and expenses astronomically. I alerted inspectors all of this. They could care less.

Regards, Robin and Mami Glass

Dear Trevor Fitzpatrick,

No questions but some comments:

Stan Katsura with DDC Civil says there exists an email dated Aug 8, 2022 supposedly sent to me which extends their response from July 10, to October 8, 2022. He also indicated it could take decades to re-route municipal flood water discharge from our lot which eventually flows across the lots below ours. He cited the complicated history of the road, workloads from the hogs back and 4120 and the general speed at which DDC Civil projects timelines run. ~ Week ago he promised to forward the email to me. I have not received it yet. I will continue to expedite a response on behalf of ourselves and affected community.

Although HRO Sec. 18-3.3 does not have language limiting repairs to those of "temporary nature", we've scaled back our plan to simply include a temporary measure for at least minimal protection of health, life and property. Our updated plan is limited to a less than 5 foot temporary retaining wall made without reinforced concrete which does not require an locally certified engineer's seal. Such a wall would at least reduce ongoing falling concrete materials from battering the side of the house and flying through our windows and help prevent additional landfall. This is what our current BP application and drawing is limited to. We may have to file suit to enforce our rights under HRO Sec. 18-3.3 or potentially die waiting indefinitely for permit approval if the NOV is not retracted. No government should require citizens in their domain to live indefinitely in a disaster area especially when the government had a strong hand in causing the disaster. We may apply for a 2<sup>nd</sup> permit for additional or replacement slope stabilization features.



Unfortunately, DPP NOV inspectors are now using your September 6, 2022 letter against us to support delaying indefinitely repairs of ANY adequate nature that would prevent loss of life, health and property. The NOV says stabilize the site, well that's what we were doing when they stopped us.

Although HRO Sec. **18-3.3 states "Emergency work may commence without a permit."** That was the work we were in the process of performing, in accordance with BMP – limited to protecting life, health and property from imminent danger, we were ordered to stop working until permit application is approved.

The stop working indefinitely order requiring BMP is actually inconsistent with Low Risk BMP:

1. Planning: One-step BMP clearing, grading, and stabilization. The stop work order adds an indefinite delay and exposure to erosion including the upcoming heavy rain flooding season. **Municipal Floodwater Discharge** stripped off tons of soil, creating gullies and **de facto initiated the BMP – slope stabilization project timeline. When ephemeral floodwater discharges finally caused the slope to fail that kick-started exponential damage exposure.** Once soil has been displaced BMP requires immediate mitigation not waiting indefinitely.
2. Planning: One stabilized site exit, comprised of rock pad – the inspectors were offended by us having any entrance or exit for earth moving equipment. They were also offended by us having any earth moving equipment path from the top of the slope to the bottom. They apparently expected us to climb up and down the steep unstable slope with ropes, carrying sacks of sediment and landfill on our backs.
3. Drainage management: Sheet flow only; no concentrated flows. The NOV prevents us from moving soil such that the slope has sheet flow only. The NOV leaves concentrated water flows as an attribute of unmodified rills and gullies.
4. Soil stabilization: No need for interim soil stabilization with one-step clearing / grading approach

[https://stormwater.pca.state.mn.us/index.php/Examples of BMP selection options for various construction site risk conditions](https://stormwater.pca.state.mn.us/index.php/Examples%20of%20BMP%20selection%20options%20for%20various%20construction%20site%20risk%20conditions)

DPP inspectors have talked about BMP as if it is comprised of:

1. Putting a net over the damage and waiting indefinitely for permits
2. Installing fiber rolls, logs to prevent sediment from going downhill
3. Hydroseeding directly over rills and gullies when hydroseeding BMP pre-requisites include filling rills and gullies, adding loam, re-grading, putting matt over smooth surface when this does not mitigate concentrated drainage flows which cause additional erosion during that indefinite period waiting for permit. They won't let us continue filling the rills and gullies with displaced soil and sediment.
4. They blame us for causing problems by performing minimal emergency work to protect life, health and property when in fact municipal flood water discharge caused landslides that we reacted to in the most practical way possible.

We believe we are victims of:

1. Municipal Floodwater Discharge
2. Neighbor's dangerous driveway and wall surcharge
3. Possibly Tantalus Drive Road Surcharge
4. **A troubled DPP with differences of opinion between [Mayor Rick Blangiardi] and ... DPP leaders.** The Mayor, DPP Acting Director, DPP Building Chief and preliminary legal review by Cades-Schutte all have confirmed support for HRO Sec. 18-3.3 **Emergency work may commence without a permit.** 2022/NOV-06-142 (SD) stop work order seems clearly, strongly to contradict the law and authoritative interpretations. **"Emergency work means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster."** <https://www.law.cornell.edu/>

We believe we are not responsible to pay massive sums to engineers to solve problems which are not within our control and for which we are not at fault. We don't have the money to contract 3<sup>rd</sup> parties to solve problems caused by 3<sup>rd</sup> parties. We remain willing to contribute a lot toward solution in a DIY Owner Builder format.

If our hands remain tied indefinitely, against the law and DDC Civil takes decades to re-route floodwater discharge and our neighbor does nothing to relocate their driveway sufficiently away from the crest of the slope:

1. 3821 Tantalus Drive could shortly become another 4120 Roundtop drive.
2. We will suffer further damage, loss of health, life and/or property
3. We could become homeless
4. Lawsuit such as Vincent E. RODRIGUES, Jr. and Adaline Rodrigues v. STATE of Hawaii, Supreme Court of Hawaii where the plaintiffs won a judgement against the State of Hawaii was found negligent for flood water discharge damage to private property

It's like our boat got torpedoed, there is a huge hole in the hull, water has come in and the next storm may sink the boat. The folks behind 2022/NOV-06-142 (SD) stop work order do not understand what is required to secure the slope. I am a civil engineer and a contractor who has designed and built dams, retaining walls and performed thousands of acres of farm land preservation grading. In my opinion 2022/NOV-06-142 (SD) conflicts with BMP, is impractical, arbitrarily extends risk indefinitely and is on track to exponentially increase project costs.

What people say and what they do are often 2 different things. A simple way looking at this is the State of Hawaii inadvertently has put us in a squeeze by causing health, life and property damage and ongoing threat while not offering any solution and preventing us from reasonable repairs to protect ourselves, under the law.

NOV inspectors are vague about making any specific suggestions other than putting a net over it and waiting indefinitely for permits or go talk with an engineer or contractor. I don't believe there is a law saying an owner who is an engineer or contractor needs to contract with 3<sup>rd</sup> parties.

We empathize with "...For months, DPP has been under fire from its customers for what they say are unprecedented delays in obtaining residential and commercial permits, and that frustration appears to have reached a boiling point..."

Director Of Honolulu's Troubled Permitting Office Resigns

<https://www.civilbeat.org/2022/09/director-of-honolulu-troubled-permitting-office-resigns/>

We expect the government, including DPP and DLNR to provide support for disaster reduction activities (not inhibit them), be able and willing to assume their roles and responsibilities in protecting rights, providing basic services, public services, and ensuring that public sector management is efficient and effective:

Economically, the government's primary responsibility is to strengthen resource assurance, including coordinating development and disaster reduction, and providing support for disaster reduction activities.

<https://link.springer.com/article/10.1007/s13753-012-0014-2>

Weak governance zones are investment environments in which public sector actors are unable or unwilling to assume their roles and responsibilities in protecting rights, providing basic services, public services, and ensuring that public sector management is efficient and effective. These "government failures" lead to broader failures in political, economic and civic institutions that are referred to as weak governance.

<https://www.preventionweb.net/understanding-disaster-risk/risk-drivers/weak-governance>

Examples of BMP selection options for various construction site risk conditions

[https://stormwater.pca.state.mn.us/index.php/Examples\\_of\\_BMP\\_selection\\_options\\_for\\_various\\_construction\\_site\\_risk\\_conditions](https://stormwater.pca.state.mn.us/index.php/Examples_of_BMP_selection_options_for_various_construction_site_risk_conditions)

Aloha,

Robin Charles Glass (R), MBA

Hawaii Home + Commercial LLC | Real Estate Brokerage | Owner, Principal Broker | [tapoffer.net](http://tapoffer.net)

- Glass Commercial Properties Inc | Land and Building Leases | Owner, Director, President | [glasstrust.co](http://glasstrust.co)  
Global Electronic Commerce LLC | E-Commerce Web Development & Hosting | Owner, Lead Engineer | [gec.ai](http://gec.ai)  
Civil Engineer certified in France and Polynésie française  
[REDACTED]  
Fortune 1000, NYSE, DJIA & ASX-AU Clientele  
Stanford University Alumni  
Better Business Bureau Accredited  
A+ Rating, Reviews ☆☆☆☆☆

Ref. COR: OA 23-19

DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET, 11<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813  
Phone: (808) 768-8480 • Fax: (808) 768-4567  
Web site: www.honolulu.gov

RICK BLANGIARDI  
MAYOR



HAKU MILLES, P.E.  
DIRECTOR DESIGNATE

BRYAN GALLAGHER, P.E.  
DEPUTY DIRECTOR

CDD-A 23-896401

February 6, 2023

SENT VIA EMAIL

Mr. Robin Glass  
[REDACTED]

Dear Mr. Glass:

Thank you for your emails to the Department of Design and Construction (DDC) regarding the drainage and erosion near your property at 3821 Tantalus Drive and your requests for information about the City's project near 4120 Round Top Drive.

Your July 20, 2022 email requesting review of the municipal rain water and/or flood water controls at and above 3821, 3825, and 3830 Tantalus Drive was forwarded by the Department of Facility Maintenance to our department. Contrary to your November 1, 2022 email, an "analysis of Municipal Floodwater" was not going to be provided by DDC to you on 7/31/22, 10/4/22, or 10/25/22, as such a report was neither offered nor promised.

Tantalus Drive is a road with surface runoff that generally flows down the mountain, across the roadway, and continues downhill generally in the Makai direction. Based on our investigation, the drainage/surface runoff pattern along Tantalus Drive appears to be the result of existing topography. The existing road drainage design does not appear to have been altered through past City road repaving/resurfacing work. The City is not responsible for increased runoff into private properties.

The deteriorated berm fronting 3821 Tantalus Drive appears to have been privately constructed as DDC has no records to indicate that it was installed by the City. The berm may have helped divert surface water from the property in the past. However, reconstructing the berm will alter the existing drainage pattern and could possibly impact neighboring properties, as there is no existing drainage system nearby to capture the flow.

Mr. Robin Glass  
February 6, 2023  
Page 2

The City is responsible for maintaining the area within the public right-of-way. Based on DDC's site visits and the photos and videos that have been provided, the erosion and drainage issues appear to be occurring on private property, outside of the City's jurisdiction. Although slight deterioration of the pavement itself was evident near 3281 Tantalus Drive, no shoulder or slope erosion or undermining of the road was observed within the public right-of-way.

DDC is the primary agency responsible for the implementation of the City's Capital Improvement Program. DDC's project in the vicinity of 4120 Round Top Drive involves road stabilization improvements and reconstructing the road pavement at 4120 Round Top Drive. The failure of the road and wall was due to the Kona Low Storm in December 2021. The requested project cost will be provided to you once the entire project design is complete and the cost is negotiated with the contractor.

Should you have any questions, please contact me at (808) 768-8480.

Sincerely,

  
For: Brian Guller, P.E., LEED AP  
Director Designate

KC:pto (885189)

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  
  
LAURA H.E. KAKUA  
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: TF

REF: COR: OA 23-19

Robin Glass  
3821 Tantalus Drive  
Honolulu, HI 96822

Mar 22, 2023

SUBJECT: Request for Investigation: Driveway Segment  
Located at 3825 Tantalus Drive  
Tantalus, Honolulu, Oahu  
Tax Map Keys (TMKs): (1) 2-5-012:001 [and (1) 2-5-012:015]

Dear Mr. Glass:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your letter and request regarding the subject matter. The OCCL also thanks you for hosting staff for a site visit regarding the subject matter on March 3, 2023. According to the information in your letter, you are requesting staff investigate the construction of the driveway that serves 3825 Tantalus Drive also noted as TMK: (1) 2-5-012:001. You believe that the driveway was constructed after Conservation District Use Permit (CDUP) OA-280 expired.

According to OCCL files, it does not appear that the permit expired. CDUP OA-280 was issued on July 14, 1972, under Regulation No. 4 and subject to Regulation No. 4 Sections 2C and 2F.<sup>1</sup> On August 8, 1972, the Chairperson of the Board of Land and Natural Resources (BLNR) notified the landowners that they may proceed with the construction of the single-family residence and driveway as proposed in accordance with Sections 2C and 2F of Regulation No. 4 (**Exhibit 1**). Construction plans for the single-family residence and driveway were signed by the Chairperson on October 1, 1973.

The OCCL notes that CDUP OA-280 does not contain a construction initiation and completion deadline condition. According to subsequent CDUAs (OA-1135 and OA-1494) filed by the landowners of parcels 001 and 015 for proposed land uses, the driveway to the residence on parcel 001 was constructed. Photos from staff site visits to the area also indicate that the driveway was constructed and appeared to be in accordance with approved plans.

<sup>1</sup> Regulation No. 4 were the initial rules and regulations of the State Land Use Conservation District. The rules and regulations of the Conservation District have been overhauled and amended in 1981, 1992, 1994, and 2011. The current rules and regulations of the Conservation District noted as Hawaii Administrative Rules (HAR) Chapter 13-5 (in place as of August 12, 2011) as well as proposed amendments can be found at <https://dlnr.hawaii.gov/occl/rules/>.

REF: OCCL: TF

REF: COR: OA 23-19

-----

Regarding alleged violations within the Conservation District, we would like to bring to your attention the single-family residence on TMK: (1) 2-5-012:015. Based on sites visits to the area conducted on September 8, 2022, and March 3, 2023; we have reason to believe that alleged unauthorized modifications have been made to the residence on parcel 015 due to the inconsistent materials being utilized in the structure. OCCL notes that a metal roof appears to have been constructed over the composite roof of the residence and may have been constructed between approximately 2009 to 2011 according to aerial images reviewed. It is unclear to OCCL if this second roof is compliant with City and County building codes. Additionally, it appears that the first floor or basement area has been modified and enclosed to approximately match the second story of the dwelling (*Exhibit 2*).

Further review of aerial imagery for the single-family residence appears to indicate that the dwelling occupies an approximate footprint of 1,704 sq. ft with an approximate total floor area for the first and second story of the residence being 3,408 sq. ft (*Exhibit 3*). Alleged unauthorized improvements and modifications to the single-family residence appear to have resulted in major modifications to the structure. Based on these approximate calculations, the OCCL notes that the single-family residence currently found on parcel 015 appears to exceed the maximum developable area (MDA) for parcel 015 (3,278 sq. ft). This appears to be an alleged violation in the Conservation District.

The OCCL also notes that it appears that you have not resolved the alleged violation with the City and County of Honolulu Department of Planning and Permitting (DPP) for unauthorized grading. The OCCL reiterates that the burden of resolving any alleged unauthorized land use within the Conservation District lies with the landowner.

By this letter, we are providing you with an opportunity to address these alleged violations and submit a proposed resolution. We request that you respond, in writing, to this correspondence within thirty (30) days. The OCCL requests that your written response includes as-built drawings of the existing single-family residence drawn to scale. However, please note that any information provided may be used in civil proceedings.

Should you have any questions, 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: *Chairperson*  
*DAGS – Risk Management Office*  
*Oahu Division Land Office*  
*City and County of Honolulu, Department of Planning and Permitting*  
*City and County of Honolulu, Department of Facilities and Maintenance*  
*City and County of Honolulu, Department of Design and Construction*  
*City and County of Honolulu, Department of Corporation Counsel*

REF: OCCL: TF

REF: COR: OA 23-19

July 14, 1972

Mr. James K. Ayling  
3525 Puukuhauka  
Honolulu, Hawaii 96818

Dear Mr. Ayling:

This is in response to your May 23, 1972 letter representing that the 1.433 acre parcel (Oahu TME 2-5-12.1) in the Tantalus Conservation District is non-conforming under the provisions of Section 193-41, Hawaii Revised Statutes.

From real property tax records submitted with your letter, we find that as of January 3, 1957, a parcel of 1.83 acres existed and that the 1.433-acre parcel was not established until about 1961.

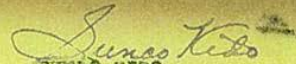
From the cancelled tax map you submitted to us on June 14, 1972, however, we find confirmation that the 1.83-acre parcel contained a fractional leasehold interest of about 0.338 acres.

Accordingly, we find that the 1.43 parcel (Oahu TME 2-5-12.1) is a non-conforming parcel and that construction of a single residence on that parcel is permitted, subject to Section 193-41 HRS, and Sections 20 and 2F of Regulation No. 4.

The application for a driveway on this parcel is still pending with us.

Very truly yours,

BOARD OF LAND AND NATURAL RESOURCES

  
SUMAO KIDO  
Chairman and Member

GS:ts

cc: E. Akita  
Div. of Forestry  
C&C Building Department  
C&C Planning Department

Exhibit 1



REF: OCCL: TF

REF: COR: OA 23-19

230

August 8, 1972

Mr. James K. Ayling  
3525 Puuku Mauka  
Honolulu, Hawaii 96818

Dear Mr. Ayling:

Conservation District Use Application for  
Residential Driveway Use at Tantalus, Oahu,  
Parcel Identified by TMK: 2-5-12:1

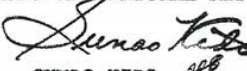
This is in response to your request for a clarification  
of the status of the subject application.

Our letter of July 14, 1972, was to notify you that this  
department had determined that the subject parcel was a non-  
conforming parcel, and that construction of a residence,  
together with a driveway is permitted.

You may proceed with the construction of the driveway  
as proposed in accordance with Sections 2C and 2F of  
Regulation No. 4.

Very truly yours,

BOARD OF LAND AND NATURAL RESOURCES

  
SUNAO KIDO  
Chairman and Member

bcc: Divisions

JCC:EU:ts

Exhibit 1

REF: OCCL: TF

REF: COR: OA 23-19



9/8/2022 OCCL Photo



3/3/2023 OCCL Photo

*Exhibit 2*



REF: OCCL: TF

REF: COR: OA 23-19

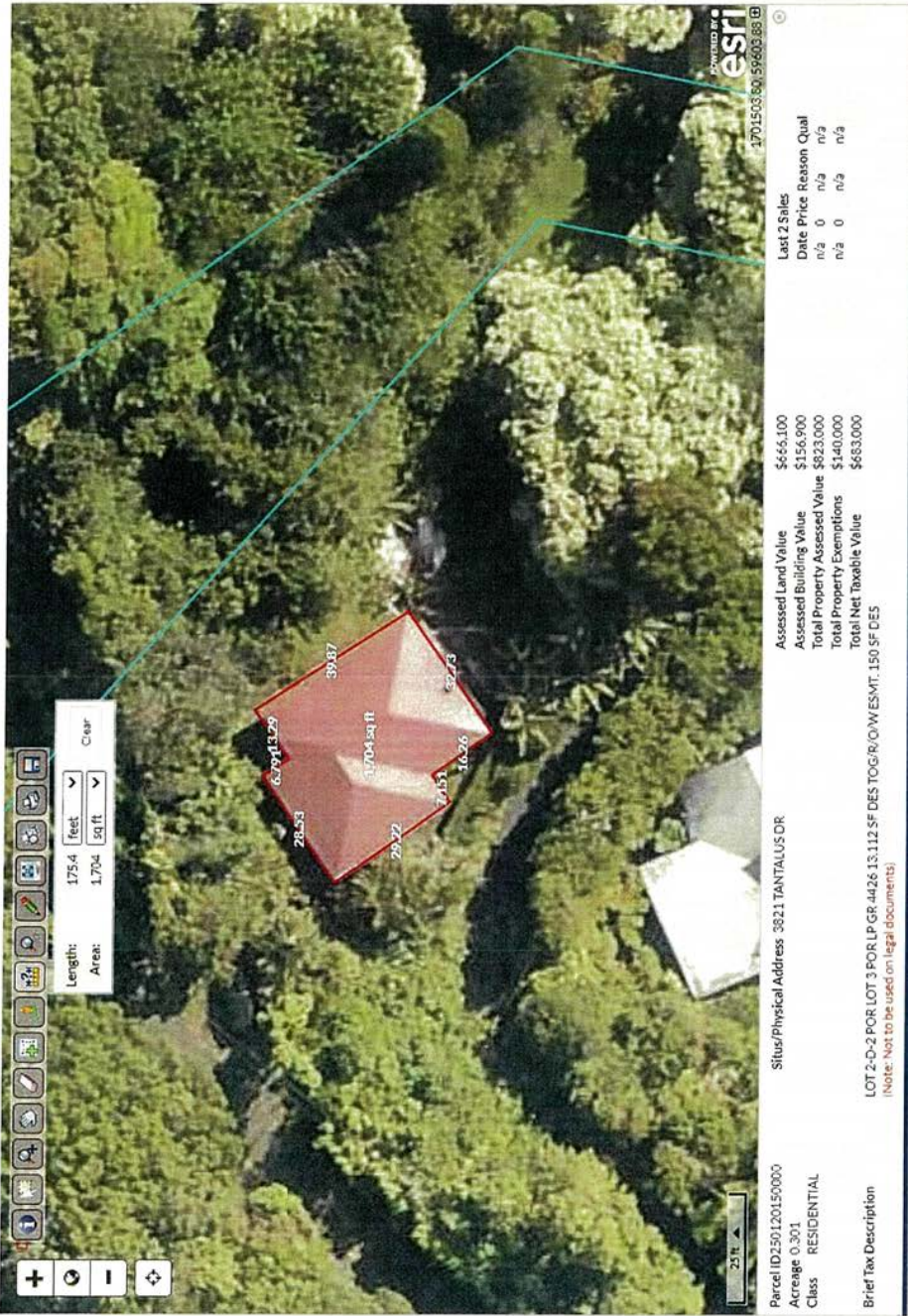


Exhibit 3

RE: COR OA23-19

Robin Glass  
3821 Tantalus Dr  
Honolulu, HI 96822

RECEIVED  
OFFICE OF CONSERVATION  
& COASTAL LANDS

2023 MAR 28 A 8:30

Saturday, March 25, 2023

Mr. Michael Cain  
State of Hawaii, Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
PO Box 621  
Honolulu, HI 96809

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Ref: COR: OA 23-19 | Transmitted by USPS and Email [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov)

Dear Mr. Cain,

Thank you for your quick reply.

As mentioned, I've provided evidence the subject 3825 Tantalus driveway, impermeable unpermitted encroachment retaining wall, construction debris fill and levee destruction directly contributed to flooding, erosion, mudslide, bomb threat and continue to pose significant threats to life, health, property, welfare or natural resources.

Would it be possible for you to respond to unanswered Request for Investigation HAR violation allegations 1 to 6 in the spirit of *Rogers v. Toppenish*<sup>1</sup> and *Paulson v. City of Ventura*<sup>4</sup>?

I provided you with evidence and applicable law for six rule violations. Please reply back to me with information the public can rely on to make important decisions. For example, I provided you with the permit date, irrefutable topographic map<sup>3</sup> evidence illustrating the driveway did not exist prior to January 17, 1977 and applicable law; HAR §13-5-42 (a) (8) & HAR §13-5-43 (a) proving the permit expired at least 3.4 years before the trees were cut and driveway-retaining wall-fill-gravel-pavement was constructed. How would the information you provided over-ride?

TMK 1-2-5-12-15 house residence is 1,898 sq ft, 907 ground and 991 second floor, which is 58% of the MDA, isn't it? Plan enclosed.

§13-5-31 Permit applications. (8) (e) indicates roof code compliance certification cannot be obtained until DPP terminates DPP 2022/NOV-06-142. DPP has an internal permit application procedure that they won't review permit applications without DLNR approval. And DLNR won't review DLNR applications as long as there is an unresolved DPP NOV. Although DPP essentially canceled the grading permit requirement on September 20, 2022 and I fulfilled their work order requirement by November 14, 2022 the violation should be cured however, multiple Administrators have proven unresponsive to my request for violation status evaluation or resolution. See attached emails.

I cannot explain the "logic" behind those rules, policies or administrative over-sights especially as it relates to emergencies such as ours, where C&C negligence rendered our home uninhabitable on 12/6/2021 and DPP & DLNR hasn't allowed us to perform any emergency repairs in accordance with the

Page 1 of 3

Mayor's Disaster Declarations and related HRS, HAR, ROH, FEMA<sup>5</sup>, 4<sup>th</sup> amendment, FBI; emergency, disaster, flooding and health care access rules and enforcements.

For your information on a related topic, C&C indicated it will respond to my flood, landslide, and mudslide claim by April 10, 2023. Although I've provided an overwhelming amount of evidence and comparable case rulings<sup>2</sup> DDC has denied their ministerial, non-discretionary duty in writing and C&C Corp Council indicates they will respond by 4/10/2023. If we don't settle, I'll have between 4/10/2023 and the 12/5/2023 statute of limitations expiration to file suit.

Let me know if you have any questions or concerns.

Robin Glass



<sup>1</sup>Rogers v. Toppenish, 596 P. 2d 1096 - Wash: Court of Appeals, 3rd Div. 1979

The court held that the municipality owed a duty to answer questions accurately, and when this duty was breached both the city and the building inspector could be held liable.

<sup>2</sup>Rodrigues v. State, 472 P. 2d 509 - Haw: Supreme Court 1970

<sup>2</sup>F. Koehnen, Ltd. v. County of Hawaii, 388 P. 2d 214 - Haw: Supreme Court 1963

<sup>2</sup>Valley Cattle Company v. United States, 258 F. Supp. 12 - Dist. Court, D. Hawaii 1966

These courts held that the government is liable for damages when a clogged or blocked adequately designed culvert is the proximate cause of damage. Keeping culverts clear is a non-discretionary, ministerial duty under Hawaii Tort Law.

On 12/6/2021, the subject culvert was 10 times larger than needed to be to drain roadway surface water into C&C and State Land instead of draining into our homelot but because the culvert was blocked with soil, sediment, roots, asphalt and debris it re-routed 1.3 million gallons of water into our homelot during a 4 hour period from an 11 acre watershed source.

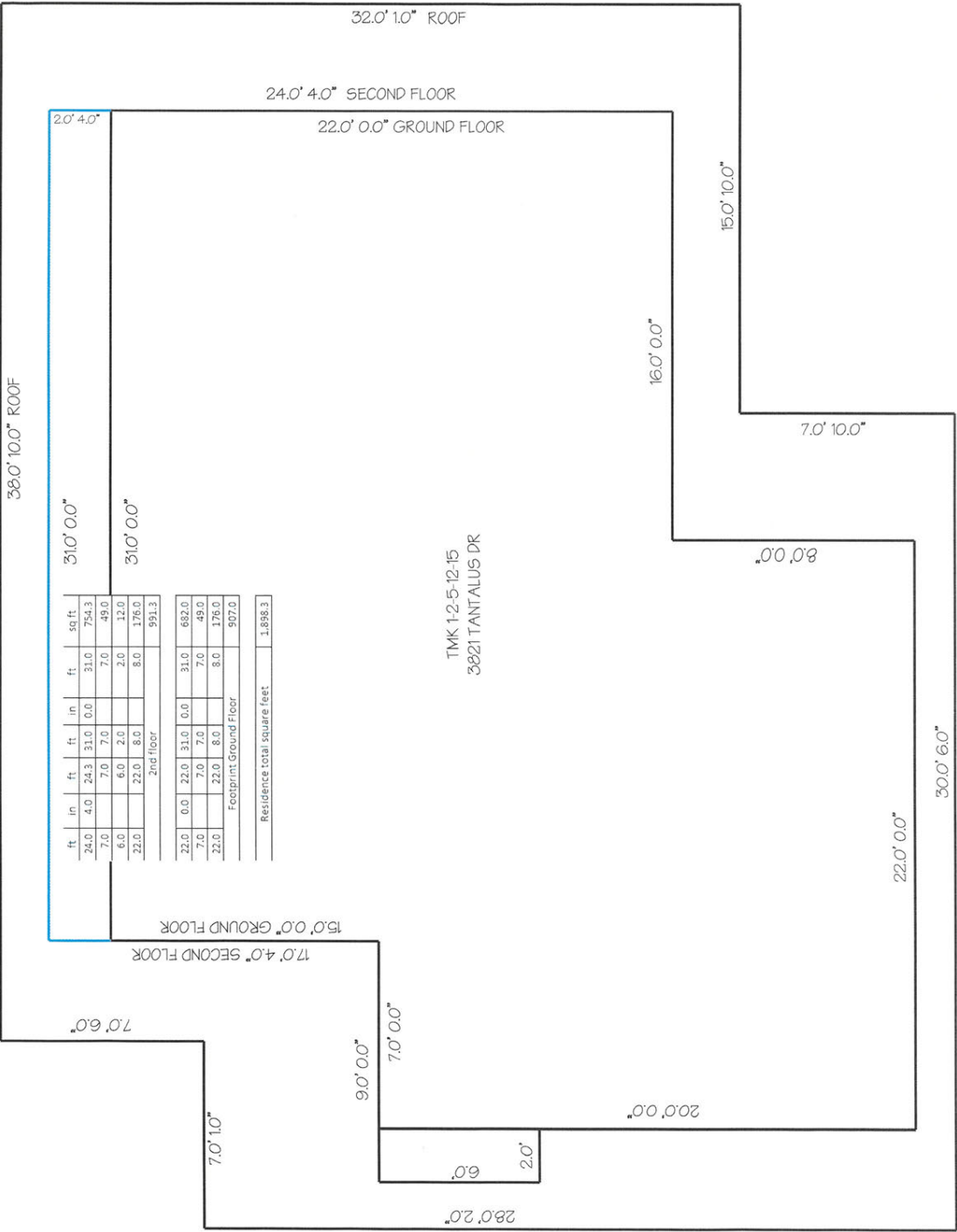
<sup>3</sup>A topographic map is a detailed and accurate illustration of man-made and natural features on the ground such as roads, railways, power transmission lines, contours, elevations, rivers, lakes, and geographical names.

<https://study.com/learn/lesson/topography-topographic-maps.html>

<sup>4</sup>Paulson v. CITY OF VENTURA, Iowa: Court of Appeals 2010

Court of Appeals concluded that it need not determine whether the enforcement of the zoning code is ministerial, because mandamus is also proper if the city "acted arbitrarily or capriciously in denying the request" for enforcement of its zoning code, and the city council's decision to take no action was an abuse of discretion and arbitrary and capricious and that the use of the subject lot was harming plaintiffs now.

<sup>5</sup>According to ROH §21A & FEMA, once the area has been “mapped” and a similar flood occurs, the Director of Planning and Permitting will be responsible for Oahu FEMA certification suspension, which would hold up all real estate transactions depending on FEMA Flood Insurance.  
<https://codelibrary.amlegal.com/codes/honolulu/latest/honolulu/0-0-0-23343>





**Robin Glass**

---

**Subject:** FW: 2022/NOV-06-142 continues to block any and all DPP and DLNR permit applications

**From:** Robin Glass  
**Sent:** Saturday, March 25, 2023 9:41 PM  
**To:** 'Domingo, Charles' <cdomingo1@honolulu.gov>  
**Cc:** 'Tamayo, Perry' <ptamayo@honolulu.gov>; 'Yugawa, Dannis' <dyugawa@honolulu.gov>  
**Subject:** 2022/NOV-06-142 continues to block any and all DPP and DLNR permit applications

Hi Charles,

Would it be possible for you to let me know what else needs to be done to remove 2022/NOV-06-142?

As previously mentioned, DLNR will not review any building permit plans as long as the NOV is unresolved.

1. I left you a voice mail on November 14, 2022 stating the NOV tasks were completed, please come and inspect.



2. Dennis Toyama, 9/20/2022 wrote (below) a grading permit was not required and I haven't moved any soil since the NOV and I don't plan on moving any more soil

So, as far as I know, all NOV issues were resolved as of November 14, 2022.

On Feb 19, 2023 I asked you during your inspection when will the NOV be removed.

I need to submit some new DPP building permit applications and DLNR reminds me that it's pointless to do so as long as the NOV exists.

"DEPARTMENT OF LAND AND NATURAL RESOURCES, Adoption of Chapter 13-5, Hawaii Administrative Rules, August 12, 2011

§13-5-31 Permit applications. (8) (e) No permit application shall be processed by the department or board until any violations pending against the subject parcel are resolved."

When I asked Dannis Yagawa this question (below), his answer didn't resolve the NOV so DLNR can review the DLNR application.

Regards, Robin

**From:** Robin Glass  
**Sent:** Thursday, February 9, 2023 1:07 PM  
**To:** 'Domingo, Charles' <cdomingo1@honolulu.gov>  
**Subject:** Resubmission A2022-06-1179

Hi Charles,



Thanks for the re-inspection.

...

"DLNR won't process our application until the NOV is removed. DPP won't process our application (according to the online submission rules) until a DLNR approval has been uploaded. "

**From:** Yugawa, Dannis  
**Sent:** Thursday, January 19, 2023 9:50 AM  
**To:** 'Robin Glass' [REDACTED]; Fang, Xijing <[xijing.fang@honolulu.gov](mailto:xijing.fang@honolulu.gov)>  
**Subject:** RE: remove sheets :A2022-06-1179 | Please delete these 9 files

Once the e-plans application passes the pre-screening process, the e-plans will go directly to the assigned examiner so the plans itself will not be rejected unless the examiner rejects the plans.

**From:** Robin Glass [REDACTED]  
**Sent:** Thursday, January 19, 2023 8:48 AM  
**To:** Yugawa, Dannis <[dyugawa@honolulu.gov](mailto:dyugawa@honolulu.gov)>; Fang, Xijing <[xijing.fang@honolulu.gov](mailto:xijing.fang@honolulu.gov)>  
**Subject:** RE: remove sheets :A2022-06-1179 | Please delete these 9 files

CAUTION: Email received from an **EXTERNAL** sender. Please confirm the content is safe prior to opening attachments or links.

Hi Dannis,

...

Please clarify next step. From this information it appears an interagency contention or "Catch 22"  
With 2022/NOV-06-142 (SD) unresolved, DLNR will not process my DLNR application  
"DEPARTMENT OF LAND AND NATURAL RESOURCES, Adoption of Chapter 13-5, Hawaii Administrative Rules, August 12, 2011§13-5-31 Permit applications. (8) (e) No permit application shall be processed by the department or board until any violations pending against the subject parcel are resolved."

**From:** Toyama, Dennis  
**Sent:** Tuesday, September 20, 2022 7:52 AM  
**To:** 'Robin Glass' [REDACTED]  
**Cc:** Domingo, Charles <[cdomingo1@honolulu.gov](mailto:cdomingo1@honolulu.gov)>; Silva, David <[dsilva@honolulu.gov](mailto:dsilva@honolulu.gov)>  
**Subject:** RE: Application A2022-06-1179 June 24 2022 | 2022/NOV-06-142 (SD) Aug 3, 2022 | HRO Sec. 18-3.3 | BMP | Hydroseed pre-requisites | Practical use of earth moving equipment

Mr. Glass,

Besides providing immediate stabilization and BMPs at the work site, what I need now is the hard copy of your plans you submitted to for your Building Permit. Just print out your plans and submit to us the hard copy. You do not need to apply for a Grading Permit at this time. We will review what you submitted to try and expedite the review on our side.

Thanks,  
Dennis

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



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
LAURA H.E. KAAKUA  
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: TF

ENF: OA 23-33

**NOTICE OF ALLEGED VIOLATION**

CERTIFIED MAIL/RETURN RECEIPT

Jun 17, 2023

7018 1830 0001 3789 1487

Robin Glass  
3821 Tantalus Drive  
Honolulu, HI 96822

SUBJECT: Alleged Unauthorized Land Use Within the Conservation District  
Located at 3821 Tantalus Drive  
Tantalus, Honolulu, O'ahu  
Tax Map Key (TMK): (1) 2-5-012:015

Dear Mr. Glass:

NOTICE IS HEREBY GIVEN that you may be in violation of Hawai'i Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District. HAR, §13-5 contains the rules and regulations as well as the identified land uses within the State Land Use Conservation District, and was enacted pursuant to Hawai'i Revised Statutes (HRS), Chapter 183C.

The Department of Land and Natural Resources (DLNR) has reason to believe that:

1. The location of the alleged unauthorized land use is on TMK: (1) 2-5-012:015 and within in the Conservation District, Resource Subzone;
2. Based on the information you submitted to OCCL as well as Staff's site visit to the area on 9/8/2022 and 3/3/2023, it appears that alleged unauthorized modifications have been made to the single-family residence on TMK: (1) 2-5-012:015 (**Exhibit 1**);
3. Pursuant HAR, §13-5-2, "land use" is defined as:
  - (1) *the placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;*

REF: OCCL: TF

ENF: OA 23-33

- (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.*

4. These land uses were not authorized by the Department of Land and Natural Resources under HAR, Chapter 13-5.

We recommend that you cease any further activities within the Conservation District immediately. Pursuant to HRS §183C-7 and HAR §13-5-6, 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 for a prohibited use in the Conservation District. 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.

The OCCL intends to schedule this matter before the Board of Land and Natural Resources for final disposition. You will be notified of the time and place for this Board meeting in the future.

Please respond to this Notice in writing within thirty (30) days. Please note any information provided may be used in civil proceedings. If we do not receive a response within thirty (30) days, we will proceed with enforcement actions. Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at [trevor.j.fitzpatrick@hawaii.gov](mailto:trevor.j.fitzpatrick@hawaii.gov).

Sincerely,



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

CC: *Chairperson*  
*DAGS – Risk Management Office*  
*Oahu Division Land Office*  
*City and County of Honolulu, Department of Planning and Permitting*  
*City and County of Honolulu, Department of Facilities and Maintenance*  
*City and County of Honolulu, Department of Design and Construction*  
*City and County of Honolulu, Department of Corporation Counsel*

REF: OCCL: TF

ENF: OA 23-33

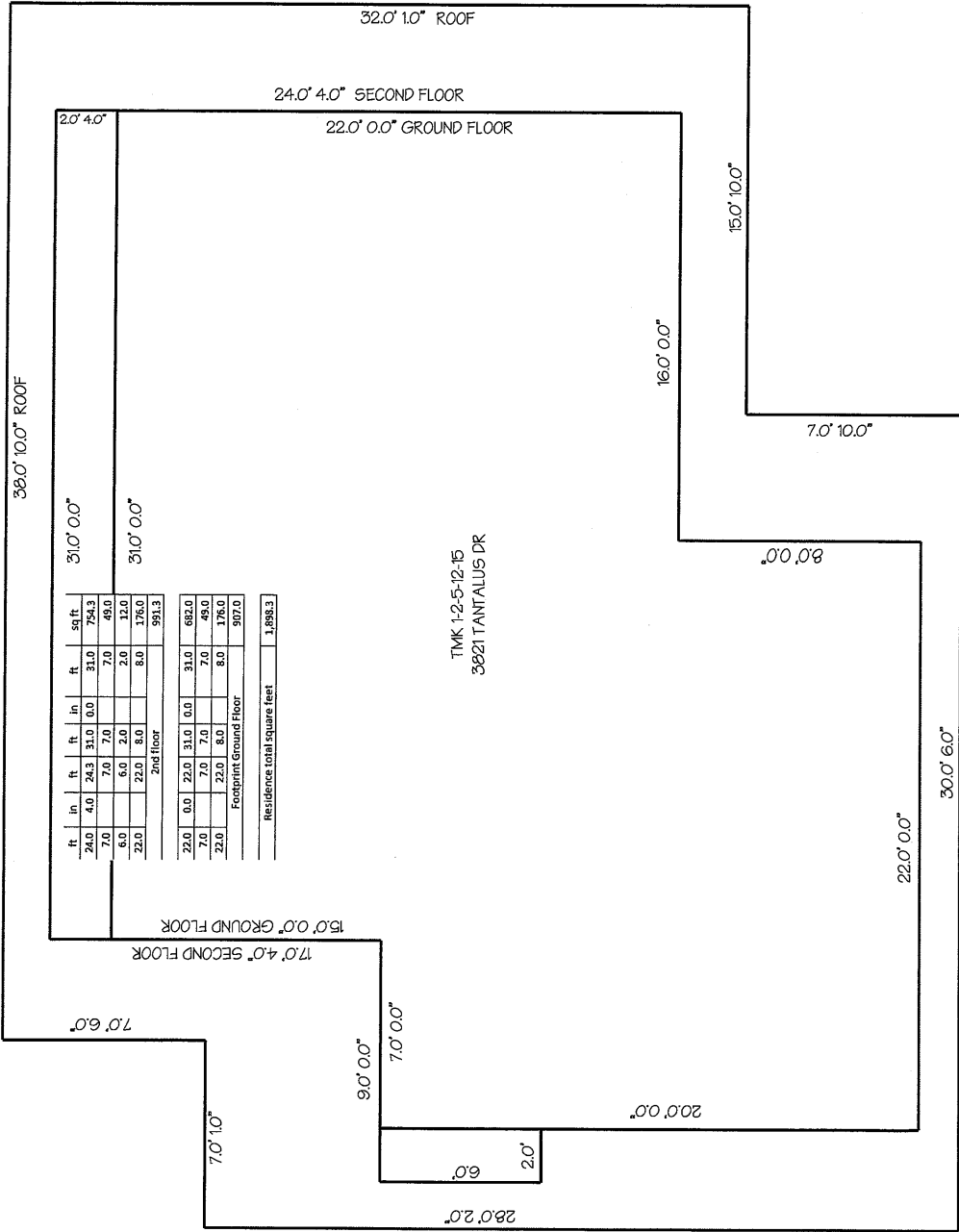


Exhibit 1

REF: OCCL: TF

ENF: OA 23-33

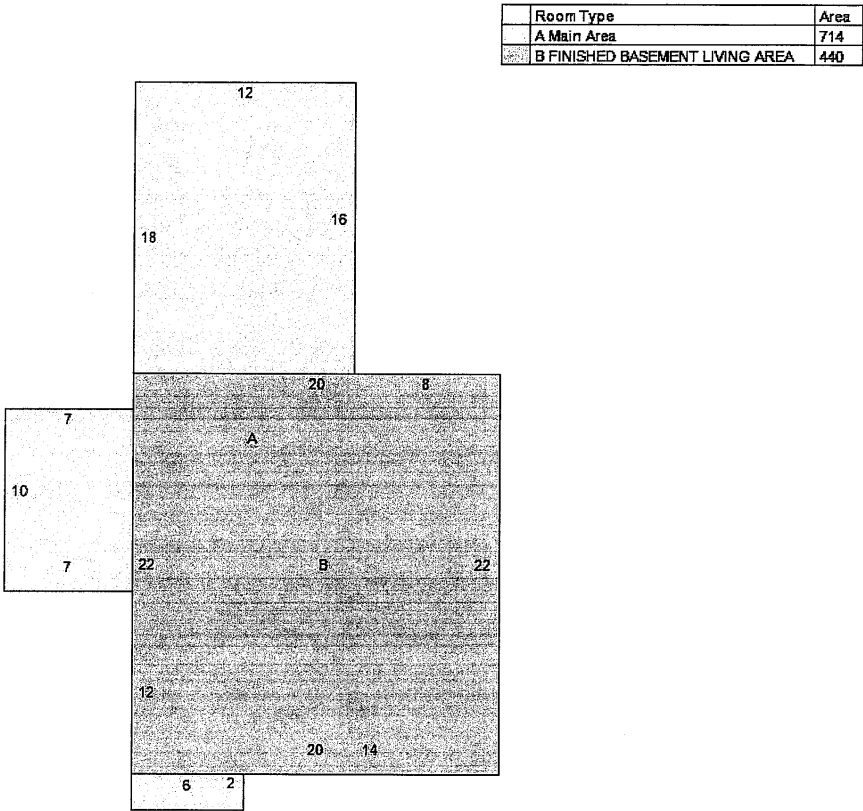


Exhibit 1

Ref: ENF: OA 23-33  
Glass

**Fitzpatrick, Trevor J**

**From:** Kelihoomalū, Kim C  
**Sent:** Thursday, November 21, 2024 8:12 AM  
**To:** Fitzpatrick, Trevor J  
**Subject:** FW: [EXTERNAL] FW: 3821 Tantalus Dr; Request for extension/square footage variance  
**Attachments:** 2024-11-24\_application\_for\_extension\_square\_footage\_variance.pdf

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2024 NOV 21 A 8:36

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Hi Trevor,

I received this call yesterday from homeowner Robin Glass. I first asked him to look at the last paragraph of the correspondence that he received from staff to find out the contact person. I then asked him to forward the correspondences to me and I will direct him to the appropriate staff. Turns out this isn't Land Division. Could you please give him a call [REDACTED]

Thank you.

**From:** [REDACTED]  
**Sent:** Wednesday, November 20, 2024 7:34 PM  
**To:** Kelihoomalū, Kim C <kim.c.kelihoomalū@hawaii.gov>  
**Cc:** [REDACTED]  
**Subject:** [EXTERNAL] FW: 3821 Tantalus Dr; Request for extension/square footage variance

Dear Kim,

It was nice to meet you by phone. If you believe the attached information would be appropriate at this time, please forward it along to the appropriate staff member. Otherwise I understand from the attached correspondence that I should continue to wait for DLNR to send me further instructions.


Attached is my request info including related letters from DLNR.

1. On June 23, 2023 I wrote: "Request resolution to 744 square foot building **variance**; tax record vs actual TMK 1-2-5-12-15"
2. On July 10, 2023 DLNR wrote: "We are attempting to provide you with an opportunity to propose a resolution to ENF: OA 23-33. If we are unable to resolve it and we believe a land use violation occurred, we will schedule the matter for a BLNR meeting along with our recommendation for potential fines and/or mitigation. We are attempting to provide you an opportunity to resolve the alleged violation without going to the BLNR."

I don't know what else I can do at this time other than provide the more detailed more detailed "Request for Variance to Retain Existing Square Footage of Historic Home" attached. Do you or anyone else you know have a suggestion?

3. So, it seems like I should remain waiting for further instructions, however, attached is a more detailed "Request for Variance to Retain Existing Square Footage of Historic Home" (pages 1 to 6 of 22).

Aloha, Robin Glass

Robin Glass,  
Property Owner  
3821 Tantalus Drive  


Wednesday, November 20, 2024

**Department of Land and Natural Resources**

Land Division

kim.c.kelliroomalu@hawaii.gov

**Subject:** Request for Variance to Retain Existing Square Footage of Historic Home

Dear Kim K.,

I am writing to formally request a variance to retain additional square footage in my historic home, located in the conservation district, for reasons outlined below. This request seeks to balance the conservation district's guidelines with the historic, functional, and practical needs of the property.

If this request is not directly related to your responsibilities, would it be possible for you to forward it to the appropriate staff member?

**1. Existing Use and Historic Value**

The additional square footage in question has been part of the home for an extended period, likely added long before current zoning regulations were enacted. As the house is a historic, non-conforming structure, removing this space would compromise its character and function, potentially causing irreparable harm to its historical integrity.

page 1 of 22



Furthermore, the home with the additional square footage remains significantly below the Maximum Developable Area (MDA) allowed under current DLNR rules. Specifically, the total area, including the extension, is 1,380 square feet less than the MDA for this lot.

Additionally, the home's interior, even with the extension, is 525 square feet smaller than the average home in the Makiki Heights/Round Top neighborhood. Reducing the square footage further would exacerbate this discrepancy and hinder the home's functionality in comparison to other properties in the area.

714	A Main area
440	B Finish basement living area
1,154	Total tax record area
1,898	Current square footage
744	Current living area is larger than tax square footage; requested variance
13,112	TMK 1-2-5-12-15 land area
	HAR Chapter 13 Exhibit 4; formula for 25% Maximum Developable Area
3,278	MDA
1,898	Current square footage
(1,380)	Current living area is less than MDA
	Average home interior square feet in Subdivision: Makiki Hts/Roundtop, on Tantalus Dr; 163 houses
2,423	
1,898	Current square footage
(525)	Current living area is less than average home interior square feet in Subdivision: Makiki Hts/Roundtop, on Tantalus Dr; 163 houses

Allowing the variance aligns with current standards and supports the fair preservation of the property.

## 2. Unique Hardship Due to Age and Ownership

page 2 of 22

At the age of 70, as a retired homeowner and owner-builder, the physical and financial burden of demolishing the additional square footage presents a significant hardship. The space serves a necessary purpose for my household, particularly for my wife's career as an award-winning classical pianist. Her grand piano requires a minimum space of 250-400 square feet for proper acoustics and function, which this unpermitted space accommodates.

### **3. Prior Representation of Square Footage**

When I purchased the home, the additional square footage was represented as part of the property's value. See MLS 2009119 attached: "Public Remarks: GREAT PRICE FOR TANTALUS!!HOME IS MUCH LARGER THEN TAX OFFICE SHOWS!!".

Although there is no certainty regarding when it was added, its longstanding inclusion as part of the home's footprint indicates it has been recognized as integral to the property for many years.

### **4. Functional Necessity for Non-Standard Use**

The unpermitted space serves as a critical area for my wife's piano practice, performances, and recordings, supporting her contributions to the community's cultural landscape. Given the spatial requirements for her Steinway grand piano, the alternative spaces in the home are insufficient for acoustics and recording quality. Without this space, her ability to work effectively would be severely impacted.

Small to Medium Steinway Models:  
Ideal Room Size: Around 250-400 square feet.

Dimensions: Approximately 15' x 17' or 20' x 20' with at least 9-10 feet of ceiling height.

This size allows enough space for sound to develop without overwhelming the room and is ideal for both playing and recording.

Large Steinway Models (Model A, B, and larger, like Model D):

Ideal Room Size: Around 400-600 square feet or more.

Dimensions: At least 20' x 20' or 20' x 30' with 10-12 feet of ceiling height, especially for the Model B (7') and Model D (9').

A larger room accommodates the powerful sound of these grand pianos, which is especially important for recording to avoid sound distortion and resonance issues.

See 2023-6-17.pdf attached illustrating ground floor area where piano studio exists

22 width
16 length
352 Current ground floor piano studio space

Other ground floor areas are 2 bedrooms and a bathroom.

## 5. Alternative Compliance Proposals

I am open to designating the space as a non-living area to address conservation and historic guidelines. Potential uses include:

- A music or art studio for piano practice and recording.
- A home office, library, or storage space for instruments and archives.
- A craft workshop or exercise room.

I am also willing to make any necessary upgrades to meet safety or structural codes to ensure compliance.

## 6. Supportive Comparisons to Current Standards

Current DLNR guidelines allow for larger homes on similarly sized lots. Granting this variance would still leave the home well below the allowable size range, ensuring it does not conflict with conservation district standards.

#### **7. Financial Hardship Due to Retirement**


As a retired homeowner, I lack the financial means to undertake a costly remodel or demolition of this space, especially since it was present when I purchased the property and serves an essential purpose. Additionally, the space poses no safety or environmental concerns, making such measures an unnecessary hardship.

#### **8. Summary of Request**

I respectfully request the DLNR approve this variance to retain the existing square footage. This request supports the preservation of the home's historical character, accommodates necessary household functions, and aligns with current conservation and neighborhood standards.

I am committed to working with DLNR to address any additional requirements or concerns and to ensure the property continues to meet conservation district expectations. Supporting documentation, including previous communications with DLNR, a ground floor layout and calculations, are attached for your review.

Thank you for your time and consideration. I look forward to your response and would be happy to provide further information or meet to discuss this request in detail.

Sincerely,  
Robin Glass,  
3821 Tantalus Drive  




Residential 360 Property View

3821 Tantalus Drive, HONOLULU, HI 96822

Listing

1-2-5-012-015-0000 3821 Tantalus Dr, HONOLULU 96822  
MLS #: 2009119 Region: Metro Bldg Nm: LP: \$322,900  
Status: Sold Nhbhrd: TANTALUS Fee Options: OLP: \$340,000  
Lnd Tenure: FS - Fee Simple SP: \$295,000  
Listing Service:



General Information

Prop Type: Single Family  
Style: Detach Single Family  
Prop Cond: Fair

Soft Information

Grg/Car Sqft: 714  
Sqft Liv: 13,112  
Lanai Sqft: 440

Sqft Oth: 1,154  
Total Sqft: 13,112  
Land Sqft: .301  
Lot Acres: .301

Bldg Information

Beds: 3  
Baths: 2/0  
New Dev: No  
Ttl Park: Addl Park:  
Stories: 1949  
Yr Rmdld: 1949

DOM: 217

CDOM: 0

Furnished: No

Fract Own: No

School Information

Elem: KAAHUMANU  
Middle: STEVENSTON  
High: MCKINLEY

Additional Information

View: Mountain, Ocean, Other, Sunrise, Sunset  
Zoning: 61 - P-1 Restricted Preservation  
Flood Zone: Zone X  
Lot Desc: Irregular  
Set Backs: C&C, Of Record  
Prop Frnt: Other  
Easements: Other  
Land Recorded: Regular System

Listing/Agent/Office Information

Listing Date: 09/19/00 Cont Acc Date: 04/23/01 Tmp Wth Date: Exp Date: 12/11/00  
TOM Date: Canceled Date: BOM Date: 04/12/01  
Possession: At Closing  
List Type: Exclusive Rights  
Agent: Peter M Chessen (R)  
Ag Email: RB-12852  
License #: Coldwell Banker Pacific Prop.  
Office: Georgia L Roberson (R)  
Co-List Agent: Georgiar@cbpacific.com  
Co Ag Email: RB-17251  
License #: Corp Office Lic #: Off Fax Ph: (808) 593-0341

Compensation to Cooperating Brokerage

Compensation: 3% % or \$:  
Dual/Var Rate: No Comp. Subj To: GE Tax Paid-Seller:  
Comp. Method: Remarks

Pub Rmks: GREAT PRICE FOR TANTALUS!! HOME IS MUCH LARGER THEN TAX OFFICE SHOWS!! BANK OWNED PROPERTY!! ALL OFFERS MOST INCLUDE PRE-QUAL LETTER! FAX ALL OFFERS TO GEORGIA AT 593-6466!! EZ TO SHOW CALL OFFICE 596-0456!

Show Inst: Appointment Only, Call Office & Go, <8 Hrs Notice Read  
Mgmt Co: Mgmt Co #:  
Community Assn: Assoc Phone:  
Public Report #:

Features

Story Type: Two  
Parking: Street  
Roofing: Composition  
Topography: Gentle Slope, Level, Other, Steep Slope  
Security Feat: Key  
Pool Feat: None  
Amenities: None  
Utilities: Cesspool, Overhead Electricity, Telephone, Water Catchment  
Inclusions: None  
Disclosures: None

Room Information

Room	Lvl	Description	Room	Lvl	Description
Other					

Tax & Financial Information

TMK: 1-2-5-012-015-0000  
Taxes/Mnthly: \$84 Tax Assess Imp: \$27,800 Terms Acceptable: Cash, Conventional  
Tax Year: 2001 Tax Assess Lnd: \$247,500 Rent Inc Mthly:  
Home Exempt: Tax Assess Tot: \$275,300 Spcl Sales Cond:

Sold Information

Sold Date: 06/12/01 Cont Acc Date: 04/23/01 Sold Price: \$295,000 DOM: 217  
Buy Agent: Peter M Chessen (R) Agent Ph: (808) 551-4460 CDOM: 0  
Buy Off: Coldwell Banker Pacific Prop.  
Co Buy Agent:  
Co Buy Off:  
Concessions:  
Sell Ag Remarks:

Click on the arrow to view Additional Photos



© HiCentral MLS, Ltd.®. All rights reserved. Information herein deemed reliable but not guaranteed. Generated on 08/05/2024 3:27:36 PM

Tax

### Owner Information

Lessor-Owner:	<b>Glass Robin C &amp; Mami I</b>	Mailing Address:	<b>3821 Tantalus Dr</b>
Tax Billing City & State:	<b>Honolulu HI</b>	Tax Billing Zip:	<b>96822</b>
Tax Billing Zip+4:	<b>5031</b>	Land Tenure:	<b>FEE SIMPLE</b>
Owner Occupied:	<b>Yes</b>		

### Location Information

Zip Code:	<b>96822</b>	Carrier Route:	<b>C004</b>
Census Tract:	<b>011600</b>	Region:	<b>METRO</b>
DPC:	<b>C/61/60 - P-1 PRESERVATION</b>	Zoning:	<b>C/61/60</b>
Neighborhood Code:	<b>TANTALUS</b>		

### Estimated Value

RealAVM™:	<b>\$1,166,300</b>	RealAVM™ Range High:	<b>\$1,285,800</b>
RealAVM™ Range Low:	<b>\$1,046,900</b>	Value As Of:	<b>07/22/2024</b>
Confidence Score:	<b>79</b>	Forecast Standard Deviation:	<b>10</b>

(1) RealAVM™ is a CoreLogic® derived value and should not be used in lieu of an appraisal.  
(2) The Confidence Score is a measure of the extent to which sales data, property information, and comparable sales support the property valuation analysis process. The confidence score range is 60 - 100. Clear and consistent quality and quantity of data drive higher confidence scores while lower confidence scores indicate diversity in data, lower quality and quantity of data, and/or limited similarity of the subject property to comparable sales.  
(3) The FSD denotes confidence in an AVM estimate and uses a consistent scale and meaning to generate a standardized confidence metric. The FSD is a statistic that measures the likely range or dispersion an AVM estimate will fall within, based on the consistency of the information available to the AVM at the time of estimation. The FSD can be used to create confidence that the true value has a statistical degree of certainty.

### Tax Information

TMK:	<b>1-2-5-012-015-0000</b>	Lot Number:	<b>2</b>
Legal Description:	<b>LOT 2-D-2 POR LOT 3 POR LP GR 4426 13,112 SF DES TOG/R/O/W ESMT, 150 SF DES</b>		
Exemptions:			
<b>Homestead</b>			

### Assessment & Taxes

Assessment Year	2024	2023	2022
Assessed Value - Total	<b>\$920,400</b>	<b>\$823,000</b>	<b>\$784,400</b>
Assessed Value - Land	<b>\$679,000</b>	<b>\$666,100</b>	<b>\$543,200</b>
Assessed Value - Improved	<b>\$241,400</b>	<b>\$156,900</b>	<b>\$241,200</b>
YOY Assessed Change (\$)	<b>\$97,400</b>	<b>\$38,600</b>	
YOY Assessed Change (%)	<b>11.83%</b>	<b>4.92%</b>	
Exempt Building Value	<b>\$160,000</b>		
Exempt Total Value	<b>\$160,000</b>		
Tax Year	2023	2022	2021
Total Tax	<b>\$2,040.50</b>	<b>\$2,255.40</b>	<b>\$1,758.40</b>
Change (\$)	<b>-\$215</b>	<b>\$497</b>	
Change (%)	<b>-9.53%</b>	<b>28.26%</b>	

### Characteristics

Lot Sq Ft:	<b>13,112</b>	Lot Acres:	<b>0.3010</b>
Building Type:	<b>Residential</b>	# of Buildings:	<b>1</b>
Style:	<b>CONTEMPORARY</b>	Stories:	<b>1</b>
Year Built:	<b>1949</b>	Remodeled Year:	<b>1996</b>
Building Sq Ft:	<b>1,154</b>	Ground Floor Area:	<b>714</b>
Total Rooms:	<b>4</b>	Bedrooms:	<b>2</b>
Total Baths:	<b>1</b>	Full Baths:	<b>1</b>
Finished Basement Sq Ft:	<b>440</b>	Floor Covering Material:	<b>PINE</b>
Interior Wall Material:	<b>WOOD PANEL</b>	Exterior Wall Material:	<b>Wood</b>
Exterior Wall Frame:	<b>WOOD</b>	Foundation:	<b>Pier</b>
Roof Frame:	<b>WOOD</b>	Roof Material:	<b>Composition Shingle</b>
Roof Shape:	<b>GABLE</b>	Quality:	<b>AVERAGE</b>
Condition:	<b>Good</b>	Additional Fixtures:	<b>page 16 of 22</b>

Basement Sq Ft:	<b>440</b>	Attic Type:	<b>NONE</b>
Building Shape:	<b>L-SHAPED</b>	Bath Fixtures:	<b>5</b>
Basement Type:	<b>Finished</b>	Building Percent Complete:	<b>100</b>
Total Dwellings:	<b>1</b>	Hawaii Use Code:	<b>100</b>
County Land Use:	<b>Improved Residential</b>	Universal Land Use:	<b>Sfr</b>

Building Description	Building Size
<b>MAIN AREA</b>	<b>714</b>
<b>LWR FIN BASEMENT LIVING AREA</b>	<b>440</b>
<b>1DF</b>	

Photos



History

#### Listing History from MLS

MLS#: **2009119**  
Sold

**3821 Tantalus Dr HONOLULU 96822**

PropType: **RES**



DOM	CDOM	Chg Type	Chg Type	Chg Date	Chg Time
217		Price Decrease	\$322,900->\$295,000	06/14/01	10:24 AM
217		Sold	(\$295,000)	06/14/01	10:24 AM
217		Price Decrease	\$340,000->\$322,900	11/14/00	03:05 PM
217		New Listing	->A	09/19/00	02:29 PM

#### Sale History from Public Records

Rec. Date	Sale Price	Nom.	Buyer Name(s)	Seller Name(s)	Document Type	Abs/Tor Doc. #	TCT #	Multi/Spli
03/11/14		Y	Glass Robin C & Mami I	Glass Robin C	Warranty Deed	<b>A51830191</b>		
09/21/06		Y	Glass Robin C	Glass Robin C	Quit Claim Deed	<b>172881</b>		
06/12/01	\$295,000		Glass Robin C & Gloria J	Beneficial Hawaii	Warranty Deed	<b>87377</b>		
06/30/00	\$296,700		Beneficial Hi Inc	Eubank Carl A	Warranty Deed	<b>90269</b>		
10/23/96		Y	Eubank Carl A	Eubank Carl A	Deed (Reg)	<b>151906</b>		
10/30/92		Y	Eubank Carl A	Eubank Carl A	Quit Claim Deed	<b>177417</b>		
09/22/92		Y	Eubank Carl A	Eubank Carl A	Quit Claim Deed	<b>153640</b>		
	\$8,000				Fee Simple Deed			

#### Mortgage History

Date	Amount	Mortgage Lender	Mort. Doc #	Mortgage Type Code	Mortgage Type	Term	Int Rate
04/24/2013	\$226,460	Us Bk National Assn	<b>000A48620176</b>	CONVENTIONAL	REFI	30	
04/01/2009	\$239,000	Central Pac Homeloans Inc	<b>000000048452</b>	CONVENTIONAL	REFI	30	
09/21/2006	\$235,000	Homestreet Bk	<b>000000172882</b>	CONVENTIONAL	NOMINAL	30	
05/29/2003	\$235,800	Homestreet Bk	<b>000000105395</b>	CONVENTIONAL	REFI	30	
11/29/2002	\$234,000	Homestreet Bk	<b>000000213060</b>	CONVENTIONAL	REFI	30	
06/12/2001	\$236,000	Homestreet Bk	<b>000000087378</b>	CONVENTIONAL	RESALE	30	
04/27/1998	\$12,000	Beneficial Hi Inc	<b>000000057191</b>	CONVENTIONAL	REFI		
10/17/1997	\$280,000	Beneficial Hi Inc	<b>000000141468</b>	CONVENTIONAL	REFI		

Parcel Map





Flood Map			
Flood Zone Code:	X	Flood Zone Panel:	15003C0360G
Flood Zone Date:	01/19/2011	Special Flood Hazard Area (SFHA):	Out
Flood Code Description:	Zone X-An Area That Is Determined To Be Outside The 100- And 500-Year Floodplains.		

R-120

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JUN 12, 2001 08:01 AM

Doc No(s) 2001-087377

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES  
CONVEYANCE TAX: \$295.00

After Recordation, Return by Mail (X) Pickup ( )  
HOMESTREET BANK TG: 75446 - A ① DIS  
1221 KAPIOLANI BLVD TGE: A1-106-0334  
STE 644 Lilian Morris  
HONOLULU HI 96814 This Document Contains 9 Pages

Tax Map Key: (1) 2-5-012-015

LIMITED WARRANTY DEED

THIS DEED, made this 22nd day of MAY,  
2001, by and between BENEFICIAL HAWAII, INC., a Delaware  
corporation, hereinafter called the "Grantor," and ROBIN CHARLES  
GLASS and GLORIA JEAN GLASS, husband and wife, whose address is  
13201 Clayton Road, St. Louis, Missouri 63131, hereinafter  
together called the "Grantee,"

W I T N E S S E T H :

That in consideration of the sum of TEN DOLLARS  
(\$10.00) and other valuable consideration paid by the Grantee,  
the receipt of which is hereby acknowledged, the Grantor does  
hereby grant, bargain, sell and convey unto Grantee as JOINT  
TENANTS, with full rights of survivorship, their assigns and the  
heirs and assigns of the survivor of them, in fee simple all of

those certain premises more particularly described in Exhibit "A" attached hereto and made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances made or suffered by the Grantor, except for the lien of real property taxes not yet by law required to be paid, and except as may herein specifically be set forth; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will warrant and defend the same unto the Grantee, forever, against the lawful claims and demands of all persons, except as herein set forth.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, Grantee's heirs, personal representatives, and assigns.

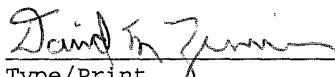
The property is conveyed by the Grantor to the Grantee "AS IS, WHERE IS," without warranty or representation, express or implied, as to condition, or fitness for any purpose whatsoever, and Grantee accepts the same "AS IS, WHERE IS."

The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

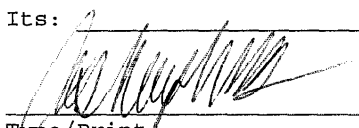
The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents on the day and year first above written.

BENEFICIAL HAWAII, INC.  
a Delaware corporation

By   
Type/Print  
Name: David M. Zimmerman  
Asst. Vice President

Its: \_\_\_\_\_

By   
Type/Print  
Name: Ashley M. Bean  
Asst. Vice President

Its: \_\_\_\_\_

"Grantor"

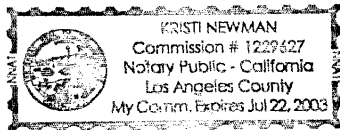
  
\_\_\_\_\_  
ROBIN CHARLES GLASS

  
\_\_\_\_\_  
GLORIA JEAN GLASS

"Grantee"

STATE OF CALIFORNIA                     )  
   ) SS:  
COUNTY OF LOS ANGELES                     )

On this 4<sup>TH</sup> day of MAY, 2001, before me  
personally appeared David M. Zimmerman and  
Asst. Vice President  
Ashley M. Bean  
Asst. Vice President, to me personally known  
(~~or proved to me on the basis of satisfactory evidence~~), who,  
being by me duly sworn or affirmed, did say that such person(s)  
executed the foregoing instrument as the free act and deed of  
such person(s), and if applicable, in the capacity shown, having  
been duly authorized to execute such instrument in such capacity.

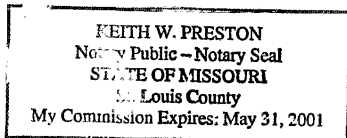


Kristi Newman  
Type/Print  
Name: KRISTI NEWMAN  
Notary Public, State of California  
My commission expires: 07-22-03



STATE OF MISSOURI )  
 ) SS:  
COUNTY OF St. Louis )

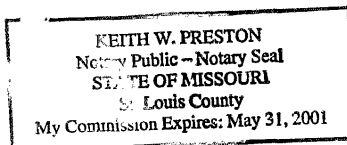
On this 22 day of May, 2001, before me personally appeared ROBIN CHARLES GLASS, to me personally known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.



Keith W. Preston  
Type/Print  
Name: KEITH W. PRESTON  
Notary Public, State of Missouri  
My commission expires: 5/31/01

STATE OF MISSOURI )  
 ) SS:  
COUNTY OF St. Louis )

On this 22 day of May, 2001, before me personally appeared GLORIA JEAN GLASS, to me personally known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument and she acknowledged that she executed the same as her free act and deed.



Keith W. Preston  
Type/Print  
Name: KEITH W. PRESTON  
Notary Public, State of Missouri  
My commission expires: 5/31/01

EXHIBIT A

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 4426 to A. C. Lovekin) situate, lying and being at Tantalus, City and County of Honolulu, State of Hawaii, being LOT 2-D-2, same being a portion of Lot 3 and thus bounded and described as per survey of John K. McCandless, Registered Land Surveyor, with Pacific Surveying & Field Data Corp., dated November 17, 1975, to wit:

Beginning at the southwest corner of this parcel of land, being also the southeast corner of Lot 30B, the point of beginning referred to Government Survey Triangulation Station "NAHUINA" being 168.47 feet north and 869.53 feet east, thence running by azimuths measured clockwise from true South:

- |    |      |     |        |   |
|----|------|-----|--------|---|
| 1. | 141° | 24' | 44.82  | feet along Lot 3-B, being a portion of Lot 3 of Grant 4426 to A.C. Lovekin;               |
| 2. | 193° | 10' | 108.50 | feet along Lot 2-E being a portion of Lot 2 of Grant 4424 to L.A. Thurston;               |
| 3. | 133° | 00' | 180.00 | feet along Lot 2-E being a portion of Lot 2 of Grant 4424 to L.A. Thurston;               |
| 4. | 258° | 05' | 50.00  | feet along a portion of Lot 3 of Grant 4426 to A.C. Lovekin;                              |
| 5. | 267° | 35' | 33.00  | feet along a portion of Lot 3 of Grant 4426 to A.C. Lovekin;                              |
| 6. | 326° | 04' | 156.00 | feet along a portion of Lot 3 of Grant 4426 to A.C. Lovekin;                              |
| 7. | 13°  | 10' | 149.65 | feet along a portion of Lot 3 of Grant 4426 to A.C. Lovekin to the point of beginning and |

containing an area of 13,112  
square feet, more or less.

TOGETHER WITH a right-of-way easement for access to the  
above described lot from Tantalus Drive across a portion of the  
remainder of Lot 3, described as follows:

Beginning at the north corner of Lot 2, on the South  
side of Tantalus Drive, which point is marked by a 3/4 inch  
driven iron pipe, and running by true azimuths:

1. 258° 02' 14.0 feet;
2. 166° 30' 17.0 feet, more or less to the  
South side of Tantalus Drive;
3. Thence along the South side of Tantalus Drive, 23 feet, more  
or less to the point of  
beginning, and containing an  
area of 150 square feet, more  
or less.

Being the premises described in Warranty Deed in Lieu  
of Foreclosure dated June 13, 2000, recorded in the Bureau of  
Conveyances of the State of Hawaii as Document No. 2000-090269.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all  
mineral and metallic mines.

2. Grant in favor of Hawaiian Electric Company, Inc.  
and GTE Hawaiian Telephone Company Incorporated, dated  
January 13, 1956, recorded in said Bureau in Liber 3073 at  
Page 91; granting an easement for guy wires and anchors.

3. Structure position discrepancies as shown on the  
survey map prepared by Dennis K. Hashimoto, Land Surveyor, with  
DJNS Surveying & Mapping, Inc., dated November 17, 2000.

-NOTE:- The foregoing is subject to the provisions of  
Chapter 669, Hawaii Revised Statutes.

4. Encroachment(s) as shown on the survey map prepared by Dennis K. Hashimoto, Land Surveyor, with DJNS Surveying & Mapping, Inc., dated November 17, 2000.

TOGETHER, ALSO, WITH all built-in furniture, attached fixtures, built-in appliances, water heater, electrical and/or gas and plumbing fixtures, attached carpeting, ranges (2), refrigerators (2), tv cable outlet, and hot water heater, all of said personal property being situate in or used in connection with the above-described real property. All appliances are conveyed in "as is" condition.

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**

Harm to resource or potential for harm to resource	Identified land use permit	Penalty Range
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**

<b>Action</b>	<b>Harm to Resource</b>	<b>Penalty Range</b>
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**

<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,

<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.