



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

June 18, 2014
Honolulu, Hawaii

Application for an After-the-Fact Stream Channel Alteration Permit (SCAP.3790.8)
Paul Dolnick's Road and Culvert Crossing, Waikolu Stream, North Hilo District, Hawaii
TMK: (3) 3-2-002:046, 047, 999; and 3-2-003:003, 008, 999

APPLICANT:

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LANDOWNER:

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County of Hawaii
Department of Public Works
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(3) 3-2-002:999; 3-2-003:999

SUMMARY OF REQUEST:

Applicant Paul Dolnick requests an after-the-fact Stream Channel Alteration Permit (SCAP.3790.8) for a road and culvert crossing at the Waikolu Stream, North Hilo District, Hawaii. The project altered a cobblestone portion of the Stream with fill to improve the road after an existing road and culvert mauka of the project site collapsed after heavy rains. The stream bank was hardened with rip-rap and grout. The County informed the Applicant that the County of Hawaii owned Homestead Road and subsequently amended the ford-type crossing to a culvert design.

LOCATION: Waikaumalo-Maulua Homesteads, North Hilo District. See Exhibit 1.

BACKGROUND:

On Dec. 19, 2012, the Commission on Water Resource Management (“Commission”) staff received a DLNR Division of Conservation and Resource Enforcement investigation report regarding a complaint that a concrete road had been constructed across Waikolu Stream (North Hilo District).

On April 17, 2013, Commission staff sent the Applicant a Notice of Apparent Violation for an unpermitted crossing at the Waikolu Stream. The staff informed the Applicant to prepare and submit an after-the-fact SCAP within 30 calendar days of the date of the letter. The County of Hawaii – Department of Public Works (DPW) staff conducted as tie visit.

On May 17, 2013, the Commission received a completed after-the-fact SCAP application.

On July 19, 2013, the DPW issued a Notice of Violation (“NOV”) to the Applicant for various Hawaii County Code violations related to grading and working within the County right-of-way without a permit. Further investigation revealed a “road in limbo” issue.

On July 24, 2013, the Commission requested additional information regarding the Tax Map Keys for the parcels affected and other landowner signatures (private and the County).

In October 2013, the Applicant appealed the NOV to the County’s Appeals Board regarding ownership of the Homestead Road and the design of the road crossing. The application was based on a “wet” design (ford crossing), but the County preferred a “dry” design with a culvert to prevent vehicles from being swept downstream during flooding.

DESCRIPTION:

The DLNR Department of Aquatic Resources lists the Waikolu Stream as perennial. The stream is 1.7 miles long, 92% in the Agricultural District, and 100% in private ownership. The stream’s biological qualities (native and introduced species) are not rated. The stream is degraded at the site. The Applicant states that there are no fish in the stream.

There is one stream diversion downstream from the project site, and several permitted stream channel alterations (i.e., road crossings) upstream and downstream from the project area. There are no wells in the vicinity.

Exhibit 1. In December 2008, the existing road and culvert (built during the plantation era) mauka of the Project area collapsed. Later, contractors and engineers inspected the mauka road and collapsed culvert. They recommended paving an existing cobblestone section of the stream makai of the collapse. Attempts to obtain an easement access to other routes that do not cross the stream were unsuccessful. Crossing the stream is the only legal access to the belt highway or for emergency vehicles to reach the applicants' home.

Exhibit 2. The *top* picture shows the before-photo of the streambed and banks prior to the stream channel alteration. The stream is typical cobblestones and boulders. The lower picture shows the after-photo of fill applied over the stream with riprap and concrete on the downstream portion of the streambank (looking downstream). The concrete portion is outside of the SCAP boundary.

Exhibit 3. Shows after-photos of the concrete road, fill, riprap and concrete applied to the streambed and banks (looking upstream). Photos are before and after rain. The stream crosses approximately 20 feet of fill. Estimated excavated material was about 3-4 cubic yards and was stored offsite. This ford crossing design was amended by the County. It is now a culvert (see Exhibit 4).

Exhibit 4. CRM wing walls, above and below the stream, are connected by a 48-inch pipe approximately 40-feet long. The stream channel / concrete road crossing is about 20-feet wide.

ANALYSIS:

Agency Review Comments:

County of Hawaii, DPW: On July 19, 2013, Applicant received a Notice of Violation regarding grading without a permit, erosion and sediment control, work within the County right-of-way without a permit, and other County road improvement compliance requirements. These violations have been resolved between the County and the Applicant.

County of Hawaii, Planning Dept.: Project location not within the Special Management Area (SMA). However, the stream passes through the SMA downstream of the project area. The County wants more information regarding (1) the impact of hardening of the streambed and traffic through the stream on water quality or any native or endemic species within the stream; and (2) how the concrete road is engineered to withstand heavy rain and prevent export of road material downstream into adjacent properties, the SMA, and ocean waters.

DLNR, Aquatic Resources: No objections.

DLNR, Engineering: No comments.

DLNR, Forestry and Wildlife: No objections.

DLNR, Historic Preservation: No historic properties were affected by the project.

DLNR, Land Division: No objections.

DLNR, State Parks: No objections.

Dept. of Health: No comments.

Dept. of Hawaiian Home Lands: No comments.

Office of Hawaiian Affairs: No comments.

University of Hawaii, Environmental Center: No comments.

US Army Corps of Engineers: No comments.

US Fish and Wildlife Service: No comments.

Hawaii Revised Statutes (HRS) Chapter 343, Environmental Review

Office of Environmental Quality Control: Under Haw. Rev. Stat. §343-5(a), at the time the applicant applied for the SCAP in May 2013, it was unknown if the road belonged to the County. In July 2013, the County stated that it is a County road. The use of County land is a trigger for an environmental assessment ("EA"). An EA has not been conducted as of this date.

STAFF REVIEW:

Haw. Rev. Stat. §174C-71 directs the CWRM to protect stream channels from alteration whenever practicable, to provide for the maintenance of aquatic and wildlife habitat; recreation; estuaries, wetlands, and stream vegetation; waterfalls and scenic waterways; navigation; hydropower; maintenance of water quality; the conveyance of irrigation and domestic water supplies to downstream points of diversion; and the protection of traditional and customary Hawaiian rights. Hawaii Administrative Rules "HAR" §13-169-52(c) sets out the criteria for evaluating applications.

(1) Channel alterations that would adversely affect the quantity and quality of the stream water or the stream ecology should be minimized or not be allowed.

The quantity and quality of stream water or stream ecology remains unchanged.

(2) Where interim or instream flow standards have been established, no permit shall be granted for any channel alteration which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses.

The interim instream flow standard for all streams on Hawaii was adopted on June 15, 1988 and is the amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year (HAR §13-169-49.1). The identified instream use is one stream diversion located downstream from the project site. The Applicant claims there are no fish in the stream. The quantity or quality of stream water remains unchanged and should not affect identified instream uses.

(3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted.

It is not expected that the road and culvert will interfere with the stream diversion located downstream of the site. There are no identified instream or non-instream uses in the vicinity of the proposed project.

PERMIT VIOLATION REVIEW:

The Water Code requires persons to obtain a permit from the Commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit. Haw. Rev. Stat. §174C-71(3)(A).

“Channel alteration” means: (1) to obstruct, diminish, destroy, modify, or relocate a stream channel; (2) to change the direction of flow of water in a stream channel; (3) to place any material or structures in a stream channel; and (4) to remove any material or structures from a stream channel. Haw. Rev. Stat. §174C-3.

“Stream” means any natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed or channel have been dredged or improved does not prevent the watercourse from being a stream. Haw. Rev. Stat. §174C-3.

Penalty Policy

Haw. Rev. Stat. §174C-15, as amended, provides for fines up to \$5,000 per day for any violation of any provision of Haw. Rev. Stat. chapter 174C. In April 2001, the Commission adopted an Administrative and Civil Penalty Guideline (G01-01) to provide a logical and consistent means to assess penalties and guide the settlement of Commission enforcement cases. The minimum fine established in G01-01 is \$250 per violation. Exhibit 5.

The Guideline includes Initial Minimum, Gravity, Mitigative, and Duration Components. Gravity and Duration Components can increase the initial minimum penalty while Mitigative

Components can decrease the initial minimum penalty. A summary of the fine calculations are found in Exhibit 6.

FINE CALCULATION

Violation(s): Stream channel alteration without a SCAP Haw. Rev. Stat. §174C-71(3)(A).

Minimum Components:

Component	Description	Applicability	Amount (\$day/incident)
1	Finding of violation	Construction of a road over the Waikolu Stream without a SCAP.	250
2	Occurring in a Water Management Area	Waikolu Stream is not in a Surface Water Management Area.	250
3	Repeat Violation	The applicant does not have repeat violations with the Commission	250
TOTAL			250

A repeat violation is deemed to occur when the party has previously been found to be a violator by the Commission. A repeat violation is tied to the party involved and is irrespective of the nature of the violation.

Staff recommends a Minimum Penalty component of \$250.

Gravity Components:

Gravity factors can be considered in the recommendation of any fine or alternative penalty. The gravity component can increase the minimum component up to a maximum of \$5,000 per violation and initiate daily fines. Gravity factors include but are not limited to:

Component	Description	Applicability	Amount (\$)
G1	Significant risk to the water resource or environment	There was no significant risk to resource	0
G2	Actual damage or harm to the water resources or the environment	No harm or damage was done to the resource	0
G3	Multiple or repeat violations of the code or regulation	No multiple or repeat violations	0
G4	Evidence that the violator should have known about the violation	The applicants' road/fill is an alteration of the stream channel	200
G5	Refusal to correct the violation once noticed	The applicant showed good faith effort by applying for an after-the-fact SCAP when informed that a permit was required	0

G6	Failure to meet deadlines as set by the Commission or its staff	The applicant met the 30-day deadline to file a SCAP	0
TOTAL			200

The Applicant knew that the road was not his property, but believed it belonged to his neighbor. A closer look at a TMK map would have revealed that it was a County road. Therefore, staff recommends a minimum Gravity Component of \$200 be added.

Mitigative Components:

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. The presence of one or more mitigative factors can reduce or eliminate the minimum penalty component fine or alternative penalty recommendation. Mitigative factors include but are not limited to:

Component	Description	Applicability	Amount Reduced (\$)
M1	No significant impact on the resource	There does not appear to be a significant risk to the Waikolu Stream	(100)
M2	Attempt to remedy the violation without notice	Not applicable	
M3	Good faith effort to remedy violation once noticed	The applicant showed good faith effort by applying for an after-the-fact SCAP when informed that a permit was required	(100)
M4	Self reporting in a timely manner	Not applicable	
M5	Diligent and speedy effort to remedy the violation once noticed	Not applicable	
[M6]	Emergency situations (not mentioned in the current penalty policy)	Not applicable	
TOTAL			(200)

Staff recommends a \$100 reduction for Mitigative Component M1 and M3, for a total reduction of \$200 in fines.

Duration Component:

If one or more of the gravity components are met, a daily fine may be imposed. The duration component has been difficult in its application by staff as specified in the penalty guideline because:

1. It does not consider emergency situations.
2. It does not specify certain circumstances such as non-permit related violations of the code (water use reporting, submission of completion reports for maintenance activities, etc.).
3. It does not consider permit holder acknowledgement of conditions through formal signing of administrative permits (i.e. SCAP or stream diversion works permits).
4. It does not consider noticing aspects of violations, which allow opportunity for violator to remedy or show good faith effort in compliance.
5. Strict adherence to the duration has in the past resulted in overly large sanctions. For example, repeat violation sanctions are both within the minimum penalty and gravity component calculations and start daily fines.

The circumstances surrounding each type of violation vary but the penalty guideline has proved flexible enough to consider the shortfalls mentioned above. Basically, when reasonable notice is given, compliance is speedy and shows good faith, the policy has been to limit the duration exposure to fine to a single day minimum for many of the typical after-the-fact violations brought before the Commission.

Applicability to Violation: Staff believes that the circumstances here do not warrant more than a single day duration of fines.

Summary of Total Recommended Fines (from Exhibit 6):

Minimum Component:	\$250/day
Gravity Component:	\$200
Mitigative Component:	(\$200)
<u>Duration:</u>	<u>1 day</u>
Total Fine:	\$250

Alternative Penalty Settlement:

The penalty guideline allows that in lieu of the total monetary fines, the violator may be offered an alternative sanction. Considerations that guide staff in offering such an alternative are:

1. A minimum \$500 fine in addition to the alternative offered.
2. The alternative must not be something the violator was required to do anyway because of legal or other obligations.
3. The alternative must result in new information, education, or other benefit to the water resources of the state.
4. The alternative must be completed within a specified timeframe and failure to do so will result in the reinstatement of total recommended fines.

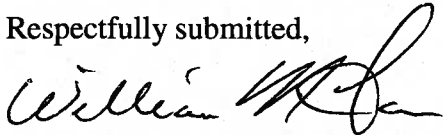
For this case, there is no recommended alternative penalty settlement.

RECOMMENDATION:

That the Commission:

1. Approve an after-the-fact Stream Channel Alteration Permit for roadbed and streambank hardening on Waikolu Stream in North Hilo, Hawaii on TMK's (3) 3-2-002:046, 047, 999; and 3-2-003:003, 008, 999 subject to the standard conditions in Exhibit 7.
2. Find that the applicant was in violation of HRS §174C-71(3)(A) for altering a stream channel without a SCAP on Waikolu Stream in North Hilo, Hawaii.
3. Fine the applicant \$250 for the violation listed above.
4. Issue a written warning to the applicant indicating any future violations involving the alteration of stream channels or stream diversions without the necessary permits may be considered repeat violations with fines up to \$5,000 for each day of violation.
5. That the Applicant obtain final approval from the County and address its concerns regarding easement and right-of-way issues.

Respectfully submitted,



WILLIAM M. TAM
Deputy Director

Exhibits:

1. Location (from Google).
2. Before and after photos of streambed and banks (looking downstream).
3. After photo of fill and riprap to streambed and banks (before and after rain).
4. Road improvement plan.
5. Penalty Policy G01-01 (dated 4/18/01).
6. Summary of fine calculations.
7. Standard Stream Channel Alteration Permit Conditions.

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson

Location (from Google).



Before photo of streambed and banks (looking downstream).



After photo of fill to streambed and banks (looking downstream).



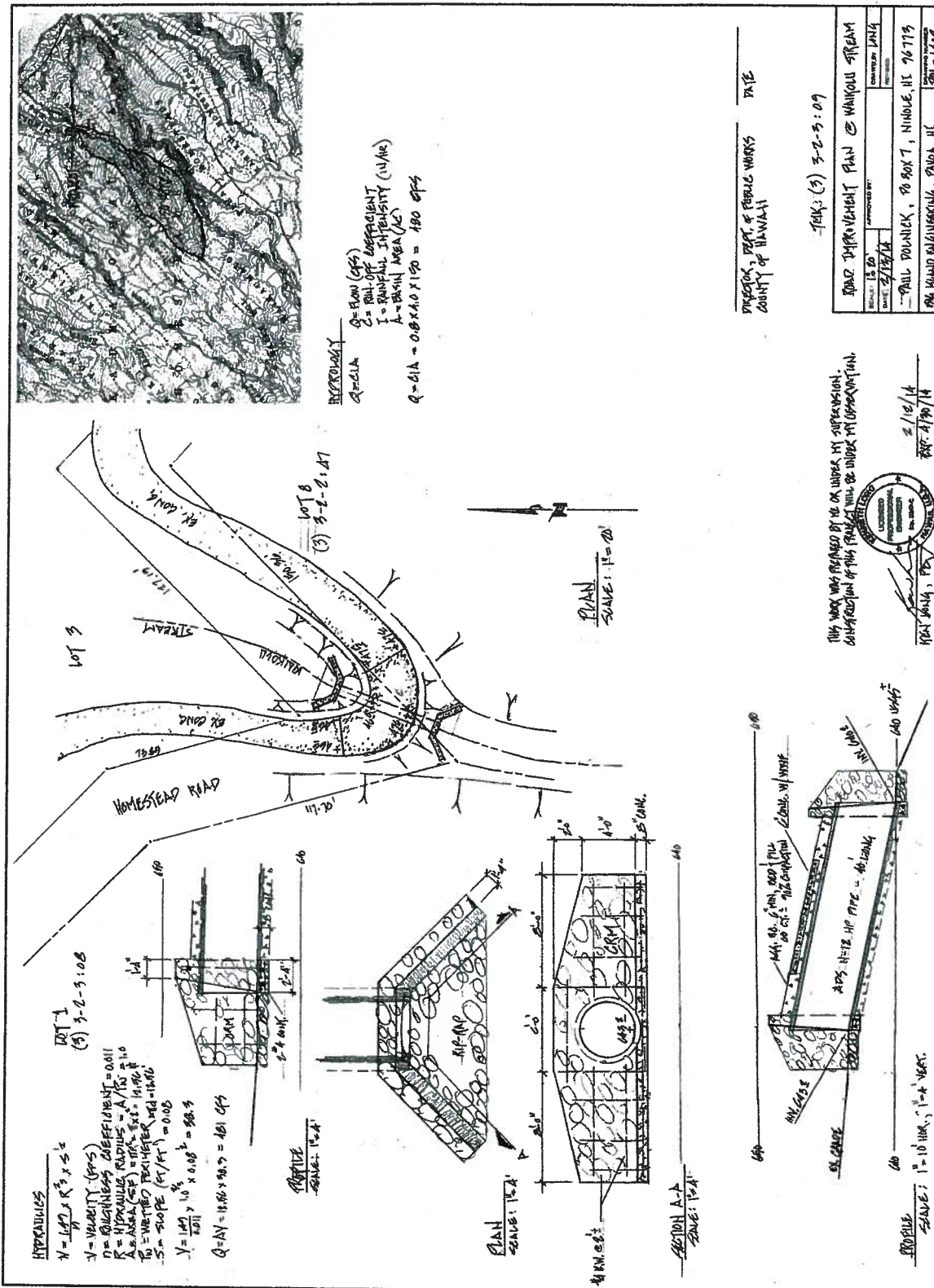
After photo of fill and riprap to streambed and banks (before rain) looking upstream.



After photo of fill and riprap to streambed and banks (after rain) looking upstream.



Road improvement plan.



Penalty Policy G01-01 (dated 4/18/01).

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



GILBERT S. COLOMA-AGARAN
CHAIRPERSON

BRUCE S. ANDERSON
ROBERT G. GIRALD
BRIAN C. NISHIDA
DAVID A. NOBRIGA
HERBERT M. RICHARDS, JR.

LINNEL T. NISHIOKA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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ADMINISTRATIVE AND CIVIL PENALTY GUIDELINE (G01-01)
COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

I. GOALS

This penalty guideline seeks to provide a logical and consistent means to assess penalties and guide the settlement of Commission on Water Resource Management (Commission) enforcement cases. The Commission and staff should use this system to:

- A. Deter violations;
- B. Remove the economic benefit of violations;
- C. Provide fair treatment of the regulated community; and
- D. Offer the violator a chance to undertake a beneficial alternative, under proper conditions, in a partial or total replacement of a cash penalty.

II. LEGAL AUTHORITY

Hawaii Revised Statutes (HRS) § 174C-15 provides for fines of up to \$1,000 for any violation of any provision of HRS § 174C. For a continuing offense, each day during which the offense is committed is a separate violation.

Administrative Rule § 13-167-10 provides for fines of up to \$1,000 for any violation of any provision of Title 13, any permit condition or limitation established pursuant to Title 13, or for negligent or willful failure to comply with any final order of the Commission. For a continuing offense, each day during which the offense is committed is a separate violation.

III. APPLICABILITY

- A. This guideline applies to the Commission programs, which include but are not limited to:
 1. Measuring and reporting of water data;
 2. Well Construction and Pump Installation Permits;
 3. Stream Diversion Works Permits;
 4. Stream Channel Alteration Permits;

5. Instream Use Protection Program;
6. Instream Flow Standards;
7. Water Use Permits;
8. Violations of any permit issued by the Commission;
9. Violations for failure to comply with final orders issued by the Commission; and
10. Violations of Hawaii Administrative Rules Title 13.

- B. This guideline is only for use by Commission personnel. The guideline is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the Commission on Water Resource Management, Department of Land and Natural Resources or the State of Hawaii. The Commission's staff reserves the right to act at variance with this guideline and to change it at any time without notice. The Commission's staff expects to change this guideline as it gains experience with the guideline's implementation.

IV. PENALTY CALCULATION METHOD

- A. The Commission's staff shall calculate an initial minimum penalty figure for daily fines for settlement purposes based on the following:

1. Finding of violation = \$250 per day/incident
2. Occurring in Water Management Area = \$250 per day/incident
3. Repeat Violation = \$250 per day/incident

(A repeat violation is deemed to occur when the party has previously been found to be a violator by the Commission. A repeat violation is tied to the party involved and is irrespective of the nature of the violation.)

- B. Adjustments to Initial Minimum Penalty Figure in Section A: Mitigative and Gravity Factors.

Reduction or enhancement of any recommended fine will be made based on: (1) the degree of risk or actual harm to water resources or the environment and (2) specific factors listed below. Where the risk or actual harm is slight, reduction of the recommended fine should be considered and where the risk or actual harm is great, enhancement of the recommended fine should be imposed.

1. Mitigation Component

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. Presence of one or more mitigative factors can reduce or eliminate the fine or alternative penalty recommendation. Mitigative factors include but are not limited to: insignificant impact on the resource, attempt to remedy the violation without notice, good faith effort to remedy violation once noticed, self reporting in a timely manner, and diligent and speedy effort to remedy the violation once noticed.

2. Gravity Component

Gravity factors can be considered in the recommendation of any fine or alternative penalty. Presence of one or more gravity factors can enhance the fine or alternative penalty recommendation. Gravity factors include but are not limited to: significant risk of or actual damage or harm to the water resources or the environment, multiple or repeat violations of the code or regulations, evidence that the violator should have known about the violation, refusal to correct the violation once noticed, failure to meet deadlines as set by the Commission or its staff.

C. Calculation of the Number of Days for the Recommended Fine.

1. If one or more of the gravity components are met, a daily fine may be imposed. Those fines shall accrue on the following basis:

1. Violation where no permit is issued and no prior permits have been issued or no permit is required.

The date the violation has occurred.

2. Violation where no permit is issued but prior permits have been issued

The date the violation has occurred.

3. Violation where permit has been issued

Either:

a. The date the violation has occurred

b. The date of permit approval

c. The date permit issued

d. The date of Commission meeting for conditions or deadlines imposed by the Commission not contained in a permit

4. Tolling. In calculating a recommendation for the imposition of a daily fine, the time may be tolled for upon the filing of a permit application, satisfactory progress in addressing the violation, or for good cause.

5. End. In calculating a recommendation for the imposition of a daily fine, the period of the violation ends upon: (1) satisfactory resolution of the violation, or (2) removal or remedy of the violation.

D. No staff recommendation shall exceed the maximum amount allowable in Section 174C-15, HRS.

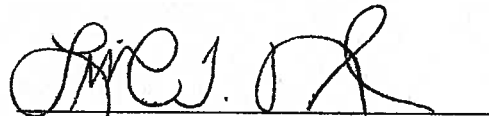
V. ALTERNATIVE SETTLEMENT

The following considerations will guide the Commission's staff recommendation in deciding whether to allow a project to substitute for or be credited against a cash penalty. However, any finding of a violation by the Commission shall result in a minimum one-time \$500 cash fine in addition to an alternative settlement. Failure to successfully meet the alternative will result in re-institution of the fines as calculated in IV.

1. The project must be something that the violator was not required to do anyway, either because of legal or other obligation. Projects committed to, or started before a settlement is finally agreed upon may be eligible for credit, but such projects must be carefully examined to determine the extent to which they resulted from the enforcement case or were due to other factors, or prior plans or commitments. In some cases, partial credit may be appropriate.
2. The project must result in new water resources (including aquatic biota) information, provide water resources education, or benefit the water resources of the state.
3. The project may consist of corrective action to be completed within a timeframe established by the Commission. Failure to abide by the timeframe will result in re-institution of the fines as calculated in IV.

VI. FUTURE APPLICATIONS

Future applications from an applicant who has not paid fines or met alternative settlements or for a project with outstanding violations may be considered incomplete until sanctions are fulfilled and/or violations are corrected.



LINNEL T. NISHIOKA
Deputy Director

Summary of fine calculations (based on Penalty Guideline G01-01)

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
DAILY FINES								DURATION CALCULATION								
Item No.	Description	Finding of Violation (min \$250)	Occurring in a WMA (min \$250) (Y/N)	Repeat Violation (min \$250) (Y/N)	Gravity Component	Mitigative Component	Total Daily Fines (C thru G)	Start Date	End Date	No. of Days (J-I)	Compliance Within 30 Days (Y/N)	Duration of Violation (Days)	Alternate Settlement (Y/N)	Subtotal Fine for one Incident (H*M)	No. of Incidents	Subtotal Fines (O x P)
1	ATF SCAP 3790.8	\$250	\$0	\$0	\$200	(\$200)	\$250	11/20/13	11/20/13	1	yes	1	no	\$250	1	\$250
TOTAL FINES																\$250

NOTES:

Maximum daily fines are \$5,000 per violation. Haw. Rev. Stat §174C-15. Percentages are used to recalculate new minimum values.

- A Individual violation item and corresponding number.
- B Description of the violation, see submittal text for specific rules violated.
- C Finding of violation - where there is a violation, a minimum daily fine of \$250 is applied.
- D Occurring in Water Management Area - when the violation is located in a designated WMA, there is a minimum additional daily fine of \$250.
- E Repeat violation - when the violator has committed violations in the past, there is a minimum additional daily fine of \$250.
- F Gravity component - allows for the increase of the daily fine and includes: significant risk of or actual damage or harm to the water resources or the environment, multiple or repeat violations of the code or regulations, evidence that the violator should have known about the violation, refusal to correct the violation once noticed, failure to meet deadlines as set by the Commission or its staff.
- G Mitigative component - allows for the decrease of the daily fine and includes: insignificant impact on the resource, attempt to remedy the violation without notice, good faith effort to remedy violation once noticed, self reporting in a timely manner, and diligent and speedy effort to remedy the violation once noticed.
- H Total Daily Fines - the sum of the values in columns C through G.
- I Start date - date where calculation of daily fines begin (date of notice of violation, permit approval, permit issued, permit signed, violation occurred, or Commission Order).
- J End date - same as start date if in compliance with Notice of Violation requests within 30 days or the date of the end of the violation, latest Commission meeting, completed permit application, removal/remedy of the violation.
- K Number of days - calculated between start and end dates.
- L Compliance within 30 days - if the applicant complies with the Commission staffs' notice of violation requirements within 30 days.
- M Duration of violation - if there was compliance with staff notice of violation within 30 days, the duration shall be one (1) day. If there was no compliance with staff notice of violation within 30 days, the duration shall be the total days of the violation.
- N Alternate settlement - an alternate settlement in lieu of the daily fine.
- O Subtotal fine for one incident - per incident fine.
- P Number of incidents - of similar violations that occurred for this investigation.
- Q Subtotal fines - calculated by multiplying (per incident fine) x (number of incidents).

STANDARD STREAM CHANNEL ALTERATION PERMIT CONDITIONS
(Revised 9/19/07)

1. The permit application and staff submittal approved by the Commission at its meeting on June 18, 2014, shall be incorporated herein by reference.
2. The applicant shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments.
3. The applicant, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the applicant or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
4. The applicant shall notify the Commission, by letter, of the actual dates of project initiation and completion. The applicant shall submit a set of as-built plans and photos of the completed work to the Commission upon completion of this project. This permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The proposed work under this stream channel alteration permit shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.
5. Before proceeding with any work authorized by the Commission, the applicant shall submit one set of construction plans and specifications to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
6. The applicant shall develop site-specific, construction best management practices (BMPs) that are designed, implemented, operated, and maintained by the applicant and its contractor to properly isolate and confine construction activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting state waters. BMPs shall control erosion and dust during construction and schedule construction activities during periods of low stream flow.
7. The applicant shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The applicant shall plant or cover lands denuded of vegetation as quickly as possible to prevent erosion and use native plant species common to riparian environments to improve the habitat quality of the stream environment.
8. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the applicant shall stop work in the area of the find and contact the Department's Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.