

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 3 NA ALA HELE

CHAPTER 130

RULES FOR HAWAII STATEWIDE TRAIL AND ACCESS PROGRAM
(as amended November 15, 2003)

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SUBCHAPTER 1

GENERAL PROVISIONS

§13-130-1 Purpose. (a) These rules provide guidance for the conduct of the Na Ala Hele Advisory Councils; procedures for the selection and inclusion of trails and accesses in the Hawaii statewide trail and access system; and rules for the management and use of program trails and accesses. These rules are not intended to diminish or abrogate the provisions of Article 12, Section 7 of the Hawaii State Constitution or Section 7-1, Hawaii Revised Statutes relating to certain traditional and customary Hawaiian practices.

(b) The trail and access use rules are for the purpose of:

- (1) Preserving and perpetuating the integrity, condition, naturalness, and beauty of the trails or accesses and surrounding areas;
- (2) Protecting cultural and environmental resources;
- (3) Providing safety for trail and access users;
- (4) Preserving the quality of the intended experience for trail and access users;
- (5) Mitigating conflicts between competing activities and users;
- (6) Ensuring public access consistent with paragraphs (1) - (5); and
- (7) Regulating commercial activity that is consistent with paragraphs (1) - (6).

[Eff.] (Auth: HRS §198D-11) (Imp: HRS Chapter 198D)

§13-130-2 Definitions. As used in this chapter, unless otherwise provided or required by context:

"Access" means an easement, route, way, or portion thereof, one which the general public has the right to

travel; and which is used, or has been used by the general public, or is intended for use by the general public, primarily to reach or to depart a public beach, shore, park trail, forest, historic or cultural site, or other public area. It includes a lateral way along the shoreline, coastline, or beach.

"Administrator" means the administrator of the division of forestry and wildlife, department of land and natural resources, or an authorized representative.

"Authorized representative" means a person designated to act for the board, the chairperson, or the administrator, including Na Ala Hele program staff, foresters and biologists, district land agents, conservation enforcement officers, and other persons.

"Bicycle" means any type of non-motorized bicycle including mountain bikes.

"Board" means the board of land and natural resources or its authorized representative.

"Camping" means being in the possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, ~~the use of which necessarily involves overnight sleeping, one hour after sundown along a program trail or access~~ any time after one hour after sundown until sunrise along a program trail or access.

"Chairperson" means the chair of the board of land and natural resources or an authorized representative, except when referring to an advisory council chairperson pursuant to Subchapter 2.

"Commercial" or "commercial purpose" means the receipt of compensation by any person for services rendered to customers or participants in conjunction with a use of or activity on a program trail or access, which compensation is in excess of actual expenses incurred in the pursuit of the use or activity. Any person receiving compensation in conjunction with a use of or activity on a program trail or access who seeks to qualify as non-commercial shall have the burden of establishing to the satisfaction of the department through a written agreement that any fee or charge is strictly a sharing of the actual expenses of the use or activity. A not-for-profit organization that charges only a nominal fee to cover administrative cost and conducts activity on a program trail or access at a frequency or magnitude that does not significantly contribute to the degradation of the trail or access is not commercial.

"Commercial activity" means an activity on a program trail or access for commercial purposes,

including, but not limited to, conducting tours, hikes, bicycle rides, equestrian rides, off-road vehicle rides and providing guide services. Commercial activity include activities whose base of operations are outside the boundaries of the program trail or access, but that rent equipment or livestock for use on a program trail or access, or provide transportation to or from program trails and accesses.

"Compensation" includes, but is not limited to, monetary fees, barter, or services in-kind.

"Course maintained for travel" means the area within a trail or access corridor that is paved, leveled, or otherwise improved for transport or travel, or that is marked as the path for transport or travel.

"Department" means the department of land and natural resources or its authorized representative.

"Division" means the division of forestry and wildlife, department of land and natural resources.

"Equestrian" means horses, mules, and any other animals used to ride or used to transport food, equipment, or cargo.

"Inventoried trails" mean trails and accesses that are included in the Na Ala Hele Program inventories.

"Mode of transport or travel" means any method used to move humans along trails, including, but not limited to, walking, running, bicycling, skating, skate boarding, roller blading, riding equestrian animals, motorcycles, trucks, and automobiles.

"Motorized vehicle" means a vehicle of any shape or form that depends on a motor (gas, electric, or other fuels) for propulsion.

"Na Ala Hele" means the statewide trails and access program authorized by chapter 198D, Hawaii Revised Statutes.

"Non-motorized vehicle" means a vehicle of any shape or form that depends on human, animal, wind, spring, or other non-motorized means for propulsion.

"Open fire" means a fire that does not emanate from a device that utilizes a refined fuel source such as propane or gasoline.

"Person" includes, but is not limited to, an individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or other entity.

"Post" means the placement of any sign restricting, or conditioning, or advising regarding the

use of a program trail or access.

"Program access" are the accesses designated pursuant to subchapter 3.

"Program trails" are the trails and accesses designated pursuant to subchapter 3, as amended. Program trails consist of a corridor which includes the course maintained for travel plus adjacent land, if any, that is subject to a right of way, license, memorandum of agreement, or any other agreement with another public agency or a private landowner pertaining to the use or disposition of the land for a program trail or access.

"Residing" means being on the same trail or access or any portion thereof for more than three continuous days.

"Service Animal" includes any animal individually trained to do work or perform tasks for the benefit of an individual with a disability.

"Spark arrester" means a device constructed of nonflammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that is operated by hydrocarbon fuels.

"Special event" means a use that is compatible with the functions and purposes of a program trail or access, or trail segment, but which is in the nature of an event and requires exclusive use of an area for a limited period of time. Special uses include, but are not limited to, meetings, weddings, races, concerts, shows, other community events or activities, and scientific collection of plants and animals.

"Trail" means an identifiable linear course or portion thereof which has been used, is used, or is intended for use by the general public primarily for a recreational, educational, traditional, or inspirational experience to traverse, reach or to depart a public beach, shore, park, forest, historic or cultural site, or other public area. "Trail" also includes "access" when the context does not preclude such an interpretation.

"Wheelchair" means a mobility aid used primarily by individuals with disabilities. [Eff.]
(Auth: HRS §198D-11) (Imp: HRS Chapter 198D)

§13-130-3 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, this invalidity shall

include the current chairperson or an alternative from each of the six island advisory councils and shall include a representative of the motorized trail user group as well as non-motorized trail users.
[Eff. _____] (Auth: HRS §198D-11) (Imp: HRS §198D-9(2))

§13-130-6 Advisory council terms. The members of the advisory councils shall serve a one-year term and may be reappointed for consecutive terms.
[Eff. _____] (Auth: HRS §198D-11) (Imp: HRS §198D-9(2))

§13-130-7 Ex officio members. Division and Na Ala Hele Program staff, representatives from other divisions of the department, federal government, and other governmental agencies, commercial trail and access tour operators and members of the public, may serve as ex officio members at the discretion of the chairperson and advisory council members.
[Eff. _____] (Auth: HRS §198D-11) (Imp: HRS §198D-9(2))

§13-130-8 Meetings. (a) The statewide advisory council shall conduct a meeting at least once each year at a time and place designated by the chairperson of the statewide advisory council in consultation with division and Na Ala Hele staff.

(b) The island advisory councils shall meet at the times and places designated by the chairperson of each respective island advisory council in consultation with Na Ala Hele staff.

(c) Meetings of any advisory council may be scheduled at the request of:

- (1) A simple majority of a council;
- (2) The chairperson of each council; or
- (3) Division or Na Ala Hele staff.

(d) All meetings of the council shall be properly noticed and open to the public, except that the council may meet in executive session, as provided in section 92-4, Hawaii Revised Statutes. [Eff. _____]
(Auth: HRS §198D-11) (Imp: HRS §198D-9(2))

§13-130-9 Quorum. A simple majority of the voting members of each council constitutes a quorum for

that council. [Eff.] (Auth: HRS §198D-11) (Imp: HRS §198D-9(2))

§13-130-10Council actions. Any matter shall be approved by a simple majority of the voting members of an advisory council in order to constitute an official council action. [Eff.] (Auth: HRS §198D-11) (Imp: HRS §198D-9(2))

§13-130-11Minutes. Each council secretary shall record minutes of its meetings setting forth an accurate record of actions taken at the meetings. Unless otherwise required by law or order, the minutes need not include a verbatim record of discussions at meetings. [Eff.] (Auth: HRS §198D-11) (Imp: HRS §198D-9(2))

SUBCHAPTER 3

PROGRAM TRAIL AND ACCESS SELECTION, DESIGNATION, AND CLASSIFICATION

§13-130-12General purpose and scope. The Na Ala Hele program shall be responsible for maintaining an inventory of trails and accesses in the State of Hawaii. Program trails shall be selected from among the inventoried trails. Program trails are subject to the trail use rules set forth in subchapters 4, 5, and 6. The Na Ala Hele program shall maintain a list of program trails, as it may be amended from time to time, and maps delineating and defining the trail location and route. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-13Program trail and access designation. The board shall periodically designate the inclusion of a trail or access selected from among the inventoried trails and accesses upon consultation with the division, the Na Ala Hele staff, and the respective island advisory council from which a particular trail or access is located. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

(Imp: HRS §198D-6)

§13-130-17Conflicting rules. Program trails and accesses may be located in whole or in part on public lands under the jurisdiction of the department, other government agencies, or on private land, pursuant to an agreement with the private landowner. When a trail or access, or segment thereof, is subject to rules, regulations, and conditions, other than this chapter, all rules, regulations, or conditions, whenever possible, shall be interpreted in a manner that gives full effect to both. If there is a conflict between such regulations and these rules, the more restrictive regulation or rule shall apply.

[Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-18Obstruction of trails and accesses. No person shall interfere with the rights of any other person to use a program trail, access, or trail facilities, except as authorized by law, or permit, or an authorized representative. Interference includes, but is not limited to, physically blocking trails and accesses, making physical changes to a trail that impede use of the trail, threatening physical harm to persons using a trail, threatening civil or criminal trespass actions against trail users, posting signs such as "no trespassing" or "kapu", or otherwise intimidating persons from using the trail.

[Eff.] (Auth: HRS §198D-6)
(Imp: HRS §198D-6)

§13-130-19Trail and access activity restrictions.

(a) An authorized representative may temporarily close a program trail or access, and may restrict the days and hours of public usage of, or numbers of persons allowed access to, or the types of uses or activities allowed on any trail, access, or segment and any such restrictions shall be posted on the trail access or portion thereof:

- (1) In the event of an emergency on public safety reasons;
- (2) In order to address an imminent threat of harm to a trail, natural resource, or person;

- (3) To comply with the requirements of agreements made with private landowners or lessees who permit access to program trails through their land;
- (4) To mitigate user impacts upon the trail surface, historic and culturally sensitive areas, or environmentally sensitive areas;
- (5) To minimize incompatible uses in the same area, e.g., horseback riding and motorcycle riding, or hiking and bicycle riding; and
- (6) To manage and control periods of use of a program trail.
- (b) An authorized representative may require a trail use permit for use of any restricted program trail access or portion thereof.
 [Eff. _____] (Auth: HRS §198D-6)
 (Imp: HRS §198D-6)

§13-130-20 Protection of public property and resources. The following activities shall be prohibited on all program trails and accesses, except as authorized in writing by an authorized representative:

- (1) Removing, in whole or in part, injuring, or killing any form of plant or animal life. For purposes of this chapter, removing, injuring, or killing does not include the taking of aquatic life or wildlife that is regulated by the state fishing and hunting laws or the gathering of natural resources for personal non-commercial uses.
- (2) Removing, damaging, or disturbing any natural feature, geological feature, or resource, in whole or in part;
- (3) Removing, damaging, or disturbing any historic or prehistoric objects, ruins, or remains;
- (4) Removing, damaging, or disturbing any notice, signage, marker, or structure;
- (5) Entering, occupying, or using any building, structure, facility, motorized vehicle, machine, equipment, or tool of another on a program trail;
- (6) Engaging in any construction, improvement, or maintenance;
- (7) Selling, peddling, soliciting, or offering

- for sale any merchandise or service;
- (8) Distributing or posting handbills, circulars, advertisements, or other notices;
 - (9) Introducing or releasing any plant or animal;
 - (10) Entering or remaining on a program trail when under the influence of alcohol, narcotics, or drugs to a degree that may endanger oneself or endanger or cause annoyance to other persons or property;
 - (11) Using or possessing narcotics, drugs, or alcohol; and
 - (12) Leaving the course maintained for travel except to enter the ocean, lake, or stream, or as otherwise permitted in this subchapter.
- [Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-21 Litter and sanitation. The following acts shall be prohibited on a program trail or access:

- (1) Draining, dumping, or leaving any litter, animal waste or remains, or any other material on a program trail including streams and other water sources;
- (2) Depositing any human waste in areas without comfort stations without first digging and then depositing the waste in a hole and then covering all signs of the waste;
- (3) Depositing any human or animal body waste within 150 feet of a spring, stream, lake, or reservoir; and
- (4) Leaving or abandoning a vehicle, equipment, or any other large items, including but not limited to refrigerators, stoves, household garbage, trash, or other forms of waste or debris, on a program trail access.

[Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-22 Report of injury or damage. All incidents resulting in serious injury or death to persons or damage to property shall be reported by the person or persons involved as soon as is reasonably possible to the administrator. This report does not relieve persons from the responsibility of making any other accident reports which may be required under federal, state, or county statutes, ordinances, or rules. [Eff. _____] (Auth: HRS §198D-6)

(Imp: HRS §198D-6)

§13-130-23 Camping restrictions. (a) No person shall camp on or along a program trail or access without a camping permit issued by an authorized representative.

(b) No person shall reside on or along a program trail or access, except as provided in section 13-130-40. [Eff.] (Auth: HRS §198D-6)
(Imp: HRS §198D-6)

§13-130-24 Fire use restrictions. An open fire is only allowed in a fire pit or receptacle established by the Division for that purpose, except when the trail is closed due to fire hazard. The following acts shall be prohibited on a program trail and access:

- (1) Building any fire on the ground or in a structure not designated for this purpose;
- (2) Building any fire outside a designated fire pit or receptacle without using a portable stove or other self-contained unit;
- (3) Leaving a fire unattended without extinguishing all traces of heat;
- (4) Depositing or discarding any potential fire-producing material such as embers, coals, or ashes without extinguishing all traces of heat;
- (5) Setting on fire or causing to be set on fire any live or dead vegetation except for department fire control measures;
- (6) Starting a fire in windy conditions in a place or manner that is likely to cause live or dead vegetation to be set on fire; and
- (7) Using any motor vehicle, motorized equipment, internal combustion engines, or electric motors unless equipped with efficiently operating spark arresting equipment. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-25 Hunting and fishing. The hunting, fishing, trapping, or disturbing of any fish, animal, or bird is prohibited on or along a program trail or access, except as provided by department hunting or

fishing rules. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-26 Firearms or other weapons. Firearms including air or gas operated, bow and arrow, and other weapons are prohibited except as provided by department hunting rules and are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-27 Swimming and bathing. Swimming and bathing in waters within a program trail corridor are permitted at a person's own risk except in waters where the activities are prohibited by an authorized representative, or other government authority, in the interest of public health and safety, or environmental protection. The excepted waters and time shall be designated by posted signs. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-28 Vehicles and transportation. (a) The following acts shall be prohibited on a program trail or access, except as authorized in writing by an authorized representative:

- (1) Driving, operating, transporting, or using any motorized or non-motorized land vehicle, glider, hang glider, aircraft, balloon, or parachute, or leading or riding equestrian animals, carelessly and without due caution for the rights or safety of others and in a manner that endangers any person, property, or natural or cultural resources;
- (2) Launching or landing airplanes, gliders, helicopters, balloons, parachutes, or other similar means of transportation without a trail use permit issued pursuant to subchapter 5, provided that landing is authorized without a permit in case of any emergency;
- (3) Driving, operating, or using any motorized vehicle on a program trail not designated and posted for that purpose, provided, however, that the use of a wheelchair by an individual whose disability requires use of a wheelchair shall not be considered driving or operating

§13-130-30 Animals. (a) Dogs, cats, and other animals are prohibited on a program trail access unless crated, caged, or on a leash, at all times, except for service animals, and hunting dogs when permitted by chapters 13-122 and 13-123.

(b) All dogs used for hunting shall be crated, caged, or leashed or otherwise under restrictive control while in transit to and from hunting areas along program trails and access.

(c) Dogs, cats, or other domestic animals, observed by an authorized representative, running without control of a person, or in the act of killing, injuring, or molesting humans, wildlife, or property, may be restrained or disposed of in the interest of public safety and the protection of the program trail and access, whichever is deemed reasonable under the circumstances.

[Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-31 Audio devices and noise. Creating noise or sound on a program trail and access, either vocally or otherwise (i.e., public address systems, radios, television sets, musical instruments) or use of any noise producing devices, i.e., electric generating plants, generators, or other equipment driven by motors or engines in a manner and at times that create a nuisance is prohibited, except when authorized in writing by an authorized representative.

[Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-32 Explosives. The use or possession of fireworks, firecrackers, explosive devices, or incendiary devices other than matches or cigarette lighters, on a program trail and access is prohibited, provided however, that the department may use explosive devices to maintain and construct program trails and accesses. [Eff. _____] (Auth: HRS §198D-6)

(Imp: HRS §198D-6)

§13-130-33 Disorderly conduct. Disorderly conduct,

as defined in section 711-1101, Hawaii Revised Statutes, is prohibited on a program trail and access. [Eff.] (Auth: HRS §198D-6)
(Imp: HRS §198D-6)

§13-130-34 Compliance with laws. All persons entering a program trail or access shall comply with all applicable federal, state, and county laws, ordinances, and rules. [Eff.]
(Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-35 Commercial activity. Commercial activity along a program trail and access is strictly prohibited without a commercial trail or access activity permit. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

SUBCHAPTER 5

PROGRAM TRAIL AND ACCESS ACTIVITY PERMITS

§13-130-36 Trail and access activity permits. A permit is required pursuant to these rules for access to restricted areas, camping, or for special events. [Eff.] (Auth: HRS §198D-6)
(Imp: HRS §198D-6)

§13-130-37 General permit provisions. All trail and access activity permits shall be subject to the following provisions:

- (1) Permits shall not be transferable or assignable;
- (2) Persons to whom permits are issued shall be held responsible for all conditions stipulated on the permit, and all rules, regulations, and laws applicable to the activity of the trail and access;
- (3) All persons eighteen years of age or older shall be eligible to secure a permit and all minors shall be allowed activity of the program trail and access pursuant to a permit provided that they are under the direct supervision of one adult for every ten minors;
- (4) The department may require the permittee, at

- the permittee's own cost, to provide police protection where it is required in the interest of the public safety and welfare, and for the protection of property due to the number of persons using the program trail or access as part of the permitted activity;
- (5) All permittees shall, upon request, show the permit to any law enforcement officer, or other authorized representative of the department;
 - (6) An authorized representative may impose any other restrictions or conditions on the permitted activity in order to protect the integrity, condition, naturalness, beauty, and safety of the program trails and accesses, and to otherwise further the purposes of the Na Ala Hele program. Such restrictions may include, but are not limited to, restrictions on the number of persons, types of activities to be conducted on a program trail or access, types of transport, length of stay, number of trips, and seasonal or weather restrictions; and
 - (7) The issuance of a permit shall not constitute a vested property interest, but is a privilege for the activity on a specific public trail for a specific activity and time period. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-38 Permit applications. (a) Permit applications shall be available at the district offices of the division during normal office hours. Completed applications shall be returned to the district offices of the division with any applicable permit fee.

(b) The department may require any information from the applicant needed to make a decision on the granting of the permit and to formulate any appropriate permit conditions.

(c) Applications for trail and access activity permits shall be submitted to the affected branch office of the division at least fifteen days before the permit is to be in effect. Late applications may be accepted at the discretion of an authorized representative. [Eff.] (Auth: HRS

§198D-6) (Imp: HRS §198D-6)

§13-130-39 Permit denial. Trail and access activity permits may be denied when:

- (1) Granting the permit would be detrimental to the integrity, condition, naturalness, beauty, and safety of a program trail;
- (2) The size or intensity of the activity is not consistent with management objectives for the program trail, site, access, or facilities;
- (3) The facilities are inadequate to meet the immediate needs of the users;
- (4) Repairs or improvements are being made to the trail or at the site;
- (5) The program trail or access, use site, associated sites or facilities, will be in use by other permittees or a government agency;
- (6) The applicant has been found by the department to have violated permit conditions or to have been in violation of the provisions of this chapter within one year prior to the date of application;
- (7) An emergency is declared by the department or other proper authority;
- (8) Any other basis for denial provided for in these rules specifically for trail and access activity permits;
- (9) Any other basis for denial exists that is provided for in these rules; or
- (10) Required fees have not been paid or the applicant is delinquent in fees owed to the department. [Eff.] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-40 Permit procedures. (a) Trail and access activity permits shall be issued by the department.

(b) Trail and access activity permits may be granted on a "first come, first served" basis.

(c) Trail and access activity permits may be issued for a specific trail, access, or portion thereof, and for a specific time period.

(d) Trail and access activity permits for camping shall prohibit the permittee from remaining at a

specific campsite for longer than seven consecutive days, provided that an authorized representative may extend the length of stay for good cause; provided further that the length of stay shall not exceed fourteen days.

(e) All persons receiving a trail or access activity permit shall sign a waiver of liability and release agreement, releasing the State of Hawaii from any and all liability for the activity of the program trail and access prior to the issuance of a trail activity permit.

(f) Persons receiving a trail and access activity permit may not be granted a subsequent trail and access activity permit for the same area for at least thirty days after the expiration of the initial permit. This restriction shall apply to all persons named in the initial permit. An authorized representative may waive the thirty day provision for good cause.

[Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-41 Permit cancellation, revocation, or termination. The department may cancel, revoke, or terminate a permit without notice and hearing when:

- (1) An emergency is declared by the department or other proper authorities; or
- (2) A permittee violates permit conditions or provisions of this chapter, and the permittee's activity damages or threatens to damage, the integrity, or condition of the program trail or access, or the surrounding environment, or threatens the safety of trail users. [Eff. _____]

(Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-42 Permit fee. An application fee may be charged in order to defray the cost of processing, issuance, and administration of a trail activity permit. The department may waive the fee for good cause. The amount of the fee shall be set from time to time by the department. [Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

SUBCHAPTER 6

COMMERCIAL TRAIL AND ACCESS ACTIVITY PERMITS

§13-130-43 Commercial trail and access activity permits. (a) Commercial trail and access activity is subject to the following hierarchy of priorities relating to activity on public lands under the jurisdiction of the department:

- (1) Protection and stewardship of natural and cultural resources is the highest priority;
- (2) Access for general public activity in a manner that does not damage these resources is the second priority; and
- (3) Access for commercial activity in a manner that does not damage these resources or compromise the general public's activity is the third priority.

(b) Commercial activity along a program trail or access is strictly prohibited without a commercial trail or access activity permit. Commercial trail and access activity permits shall be granted only for program trails, accesses, or segments thereof, that have been designated for commercial activity pursuant to subchapter 3. [Eff.] (Auth:

HRS §198D-6) (Imp: HRS §198D-6)

§13-130-44 General commercial activity permit provisions. All commercial trail and access activity permits shall be subject to the following provisions:

- (1) Permits shall not be transferable or assignable;
- (2) The person to whom a permit is issued shall be responsible for all permit conditions, and compliance with all rules, regulations, and laws applicable to the use of the trail or access;
- (3) Permits shall not be issued to a person under eighteen years of age;
- (4) Permittee shall, upon request, show the permit to any law enforcement officer or authorized representative of the department;
- (5) Any other restrictions or conditions may be imposed on the permittee or permitted use to protect the integrity, condition,

naturalness, beauty, and safety of, or access of the general public to, the program trails and accesses, or which furthers the purposes of the Na Ala Hele program. Such restrictions may include, but are not limited to, restrictions on the number of persons, types of transport, length of stay, number of trips, and seasonal or weather restrictions; and

- (6) The issuance of a permit shall not constitute a vested property interest, but is a privilege granted for the use of a program trail or access for a specified activity and time period. [Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-45 Commercial activity permit applications.

(a) Permit applications shall be available at the district offices of the division during office hours. Completed applications shall be filed at the branch offices of the division with any applicable permit fee.

§13-130-46 Commercial activity permit criteria.

(a) A commercial trail and access activity permit may be granted for designated program trails or accesses or segments only when the commercial activity is consistent with the hierarchy of priorities as provided in section 13-130-46 (a) and is otherwise consistent with the purposes of the Na Ala Hele program.

(b) Specifically, but not in limitation of the provisions of subsection (a), commercial trail and access activity permit applications may be denied when:

- (1) The proposed activity would be detrimental to the integrity, condition, naturalness, or beauty of a program trail or access or the surrounding area;
- (2) The proposed activity would be detrimental to the safety of trail users;
- (3) The proposed activity would compromise the quality and nature of the expected experience provided by a program trail or access of its classification;
- (4) The size or intensity of the proposed activity would exceed the limits of acceptable change of a program trail or access, site, or facilities;

- (5) The size, intensity, or nature of the proposed activity would diminish the availability of a program trail or access for use by the general public;
- (6) Repairs or improvements are being made to a program trail, access, site, or facility;
- (7) The program trail, access, site, or facility for the proposed activity will be in use by other permittees or a government agency;
- (8) The applicant has been found by the department to have violated permit conditions or to have been in violation of the provisions of this chapter within one year prior to the date of application;
- (9) An emergency is declared by an authorized representative or other proper authority;
- (10) The proposed commercial activity is not allowed on the proposed program trail, access, or portion thereof, under the terms of an agreement with a private landowner or another government agency concerning the use of the program trail, access, or portion thereof; or
- (11) Any other basis for denial exists that is provided for in these rules.
 [Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-47 Commercial activity permit cancellation, revocation, or termination. The department may cancel, revoke, or terminate a permit without notice and hearing when:

- (1) An emergency is declared by the department or other proper authority;
- (2) A permittee violates permit conditions or provisions of this chapter;
- (3) The permitted activity damages, threatens serious damage to the integrity or condition of the program trail or to the surrounding environment, or threatens the safety of trail users; or
- (4) Fees are not paid when required. [Eff. _____] (Auth: HRS §198D-6) (Imp: HRS §198D-6)

§13-130-48 Commercial activity permit fees. (a)

Persons applying for a commercial trail or access activity permit may be charged an application fee at the time of filing the application to defray the cost of processing, issuing, and administering commercial trail and access activity permits. The amount of the fee shall be set from time to time by the department. The application fee shall be paid when the application is filed.

(b) A commercial activity fee shall be charged pursuant to the provisions established in a commercial trail and access activity permit. The activity fee is for the purpose of defraying the costs of maintaining program trails and accesses and administering the Na Ala Hele program incurred by the State as a result of commercial trail and access activity permit activities; to provide a fair return to the government for the opportunity of the permittee to make a profit from the use of public resources; and to compensate the State for degradation, depletion, or consumption of public resources and use of manpower and materials. [Eff.

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SUBCHAPTER 7

ENFORCEMENT

§13-130-49 Penalties. Any person who violates any provision of this chapter or any condition of provision of a permit issued pursuant thereto shall be punished as provided in chapter 198D, HRS.~~shall be held liable for all costs of clean up and restoration, and damages to public or private property; shall be subject to the confiscation and forfeiture of any tools and equipment used in the violation as well as any plants, objects, or artifacts removed illegally from the program trail and access; shall be guilty of a petty misdemeanor; and shall be subject to a fine of \$500, per incident.~~ Each violation shall be considered a separate incident for the purposes of this section. [Eff. 4/24/99; am

—] (Auth: HRS§198D-6) (Imp: HRS§198D-6)