

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

September 12, 2014

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

REGARDING: Appointment and Selection of a Hearing Officer to Conduct All Hearings for Civil Resource Violation System (CRVS) Notices Regarding Encroaching Vegetation Located at Hā'ena/Wainiha, Island of Kaua'i, makai of Tax Map Keys: (4) 5-8-008: 035; (4) 5-9-002: 033; (4) 5-8-010: 016; (4) 5-8-008: 048; (4) 5-8-008: 034

BACKGROUND:

The Department has a history of complaints regarding coastal property owners in the communities of Hā'ena and Wainiha **allegedly** inducing vegetative growth beyond the shoreline. Coastal vegetation that extends seaward of its natural range can inhibit lateral shoreline access by creating a barrier along the dynamic boundary between submerged and fast lands.

Induced, cultivated, or unmaintained vegetation that obstructs or inhibits public transit within the beach transit corridor must be removed pursuant to Hawaii Revised Statute (HRS), §115-5. According to HRS, §115-10(a), the DLNR shall maintain access within beach transit corridors under this chapter and chapter 183C, by requiring private property owners to ensure that beach transit corridors abutting their lands shall be kept passible and free from the landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach transit corridors."

OCCL identifies vegetation that may inhibit lateral access within the beach transit corridor and issues a notice to abutting landowners to remove the encroaching vegetation. Once a site inspection or evidence that the abutting landowner has removed the encroaching vegetation is completed, a letter of compliance is issued.

The OCCL may issue a Notice of Violation or levy fines against abutting landowners who fail to comply with the initial notice to remove the encroaching vegetation. If an abutting property owner fails to remove the encroaching vegetation within twenty-one (21) days of a formal notice, the DLNR may fine the property owner \$1,000 or more for continuing violations, pursuant to §183C-7 of the Hawaii Revised Statutes and the Conservation District's Administrative Sanctions Schedule (**Exhibit 1**).

Hā'ena/Wainiha Encroaching Vegetation Cases

On February 13-14, 2013, the DLNR Office of Conservation and Coastal Lands Shoreline Specialist and Coastal Lands Program Manager conducted a site inspection and documented the shoreline from Hā'ena State Park to Wainiha Bay. This would include Tunnels Beach, Hā'ena Point, Naue Beach, Ka'anohi Beach and Kepuhi Beach. Based upon this survey, in August 2013, CRVS notices were mailed out to 44 adjacent property owners whose vegetation were determined to be beyond the shoreline and encroaching upon public land. The following individuals have requested a contested case:

1. CRVS KA 14-7 Steven and Robin Sedgwick: The Sedgwick's property was determined to have encroaching vegetation and a CRVS notice was sent to the landowner at the address on record on August 1, 2013. On September 23, 2013, the Administrative Proceedings Office received a written request from Mr. Sedgwick contesting the Notice of Violation.
2. CRVS KA 14-14 Chulack Family Trust: The Chulack Family Trust's property was determined to have encroaching vegetation and a CRVS notice was sent to the landowner at the address on record on August 20, 2013. On September 5, 2013, OCCL received a written request from Belles Graham Proudfoot Wilson & Chun, LLP, representing the landowner, contesting the Notice of Violation.
3. CRVS KA 14-21 Noel F. Gaige: The Gaige property was determined to have encroaching vegetation and a CRVS notice was sent to the landowner at the address on record on August 27, 2013. On September 26, 2013, OCCL received a written request from Mr. Gaige, contesting the Notice of Violation.
4. CRVS KA 14-41 Burmeister Family Trust: The Burmeister Family Trust's property was determined to have encroaching vegetation and a CRVS notice was sent to the landowner at the address on record on August 27, 2013. On September 19, 2013, the Administrative Proceedings Office received a written request from Mr. Burmeister contesting the Notice of Violation.
5. Wyle Family Trust: The Wyle Family Trust's property was determined to have encroaching vegetation and a CRVS notice was sent to the landowner at the address on record on August 27, 2013. On September 19, 2013, the Administrative Proceedings Office received a written request from Ms. Valerie Wyle contesting the Notice of Violation.

DISCUSSION

Subsequent site inspections that have taken place on November 14, 2013 and July 23, 2014 has revealed that encroaching vegetation has not been removed at the noted locations.

The abutting property owners, Steven and Robin Sedgwick; the Chulack Family Trust; Noel F. Gaige; the Burmeister Trust; and the Wyle Family Trust have timely contested the CRVS Notice and have requested an administrative contested case hearing.

Chapter 13-1, Subchapter 5 entitled Contested Case Proceedings identifies persons and agencies that may participate in contested case hearings and are entitled to be a party. When a violation is alleged for which an administrative remedy is provided, the alleged violator is entitled to a contested case hearing.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

Pursuant to HAR, §13-1-31.1 Hearings of violations that the Board finds:

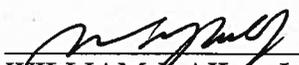
- 1) That Steven and Robin Sedgwick; the Chulack Family Trust; Noel F. Gaige; the Burmeister Trust; and the Wyle Family Trust are entitled to a contested case hearing;
- 2) No person or government agency other than the department and alleged violator shall be admitted as parties in such proceedings; and
- 3) The Board authorize the appointment of a Hearing Officer and delegate authority for the selection of the Hearing Officer to the Chairperson.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



WILLIAM J. AILA, Jr., Chairperson
Board of Land and Natural Resources

**Conservation District
Administrative Sanctions Table**

Item	Authority	Violation	Notice	Fine		Other Sanctions*
				Very Minor	Minor	
I	§183C-7, HRS	Identified Land Use	1st	Up to \$1,000	\$1,001 to \$2000	<ul style="list-style-type: none"> • Remediation • Removal • After the Fact Site Plan Approval
II		Non-Identified Land Use	1st	Up to \$1,000	\$1,001 to \$2000	<ul style="list-style-type: none"> • Remediation • Removal
III		Vegetation Removal	1st	Up to \$1,000	\$1,001 to \$2000	<ul style="list-style-type: none"> • Remediation • Removal • After the Fact Site Plan Approval
IV		Permit Noncompliance	1st	Up to \$1,000		<ul style="list-style-type: none"> • Board Determination

*No permit applications shall be processed by the Department until any violations pending against the subject parcel are resolved.

Item	Authority	Violation	Notice	Fine	Other Sanctions*
V	§115, HRS	Encroaching Vegetation Within the Beach Transit Corridors	1st	\$0	• Removal
			2nd	\$1,000	• Removal
	§183C-7, HRS		3rd	\$2,000	• Removal
			4th		• Board Determination

*No permit application shall be processed by the Department until any violations pending against the subject parcel are resolved.