

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

June 12, 2015

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

REGARDING: Conservation District Enforcement OA 15-17 Alleged Unauthorized Land Uses Located in the Conservation District

LANDOWNER: Herbert Kihoi, Jr.

LOCATION: 1551 Moani Street, Kamaikai Valley

TAX MAP KEY: (1) 1-4-001:047

PARCEL SIZE: 6.138-acres

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject parcel is located at 1551 Moani Street in Honolulu, O'ahu, Hawai'i, on the southern hillside of Kamaikai Valley. The parcel is entirely located with the Resource Subzone of the State Land Use Conservation District (**see Exhibit 1**). The area in question is located on the eastern half of the property. The site currently consists of a single-family residence (SFR), two (2) sheds, a driveway and parking area. Records show that the SFR and two (2) sheds are non-conforming structures.

Bordering the parcel on the north, east, and west side are residential properties. To the south of the property, over the ridgeline, is Kamehameha Schools, Kapālama Campus.

ALLEGED UNAUTHORIZED LAND USES

A complaint was filed with the Division of Conservation and Resource Enforcement (DOCARE) Office regarding the possibility of unpermitted construction/development of lands within the State Conservation District at the subject parcel. On September 17, 2014, a DOCARE officer conducted a site inspection at the property and observed three (3) men with a backhoe machine. It appeared the men were excavating a yard area on the southwest side of the property.

In response to the DOCARE site inspection, on November 20, 2014, A Notice of Alleged Violation (NOV) was sent to the land owner, Mr. Herbert Kihoi, Jr. (**see Exhibit 2**).

A subsequent complaint was filed with DOCARE on April 21, 2015. On April 25, 2015, A DOCARE officer conducted another site inspection at the property and observed further work being done. Addition work appeared to include construction of an erosion control structure and improvements to the existing SFR.

In response to the DOCARE site inspection, on May 7, 2015, a second Notice of Alleged Violation (NOV) was sent to the landowner (**see Exhibit 3**).

On May 11, 2015, Staff conducted their own site inspection to assess the situation (**see Exhibit 4**). During the site visit, Staff noticed work was done to the driveway area which included widening of the existing driveway by approximately 2 (two) feet and a new earth retention wall on the eastern side of the driveway. Work was also done to widen the parking lot area by chipping two (2) to three (3) feet off of the existing hillside area. On the northern edge of the property is what appears to be an earth retention rock wall. It is unknown if the wall was previously existing, however, the landowner claimed that the wall was a previously existing loose rock wall and that he had added an additional two (2) feet on top of the existing wall as well as inject cement into the wall to hold the rocks in place. Improvements to the single family residence (SFR) were also noted. Improvements included two wooden decks added to the second floor of the house as well as replacement of the previously existing wooden staircase with stone steps. The landowner claimed that the wooden steps were rotten and needed replacement. A gravel lined trail was also cleared. It is unknown if the trail was previously existing, however, the cleared trail runs from the parking lot area and extends approximately 350 feet to the east. The trail is approximately 8 to 12 feet in width. Clearing included excavation, grubbing and grading as there was evidence of stockpiling of both dirt and vegetation debris piled along the side of the trail. Vegetation removed included a number of invasive plants such as Christmas berry, ironwood, and Thai koa.

DISCUSSION

Chapter 13-5, Hawai'i Administrative Rules (HAR) and Chapter 183C, Hawai i Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit (CDUP). The chapters also provide for penalties, collection of administrative costs, costs associated with land and/or habitat restoration, and damages to state land for uses that are not allowed or for which no permit has been obtained.

Land use is defined in HAR §13-5-2(2) as

- (1) *The placement or erection of any solid material on land if that material remains on the land more than fourteen 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.*

The improvements on the subject parcel falls within this definition of land use as it caused a permanent change in the land area, involved the excavation, grubbing and grading of land, involved the unauthorized construction of earth retention walls, and involved unauthorized improvements to the existing SFR.

The closest identified land use for the earth retention walls would be found under HAR §13-5-22, P-13 LAND AND RESOURCE MANAGEMENT (C-2) *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.* The closest identified land use for the excavation, grubbing, and grading work (gravel lined trail) would be found under and HAR §13-5-23, L-2 LANDSCAPING (C-1) *Landscaping (including clearing, grubbing, and tree removal), including chemical and mechanical control methods, in accordance with state and federal laws and regulation, in an area of less than 10,000 square feet.* The closest identified land use for the improvements to the existing SFR including the addition of two (2) decks and the widening of the driveway and parking lot area would be found under HAR 13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (B-1) *Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment,* while replacement of the stairs can be found under HAR §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (A-1) *Minor repair, maintenance, and operation to an existing structure, facility, use, land, and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource.* The landowner has not applied for a Conservation District Use Permit for any land use on the parcel.

Staff has expeditiously submitted this matter to the Board of Land and Natural Resources as the staff believes that the unauthorized work may contribute to creating potential hazardous health and safety situations including the presence of fire fodder, creating vermin habitat, and the potential for loose material stockpiled along the hillside to be dislodged during high rain events and swept down the hillside to neighboring properties. In addition, Staff would like the Board to direct the landowner, Mr. Kihoi Jr. to hire a Geotechnical Engineer to evaluate the hillside and remediate or mitigate any potential hazards the unauthorized work may have caused.

ANALYSIS:

HRS, §183C-7 **Penalty for violation** notes (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter and (b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, willful violation of this chapter or any rule adopted in accordance with this chapter may incur and additional fine of up to \$15,000 per day per violation for each day in which the violation persists.

The penalty range for the unauthorized land uses will be substantially determined based on the type of permit that would have been required, had the landowner applied to the DLNR to conduct the identified land use(s). Therefore, based on the *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources, Section 2.1, PENALTY CALCULATION (see Exhibit 5)*:

- The earth retention walls, pursuant to HAR §13-5-22, would require a Departmental CDUP, therefore, the Penalty Range is from \$2,000.00 to \$10,000.00;
- The excavation, grubbing, and grading work (gravel lined trail) pursuant to HAR §13-5-23, would also require a Departmental CDUP, therefore, the Penalty Range is from \$2,000.00 to \$10,000.00;
- The SFR improvements, including the additional decks and widening of the driveway and parking lot area, pursuant to HAR §13-5-8, would require a Site Plan Approval (SPA), therefore, the Penalty Range is from \$1,000.00 to \$2,000.00.
- No permit would be necessary for the replacement stair case.

FINDINGS

The unauthorized construction of earth retention walls; excavation, grubbing, and grading (the gravel lined trail); and minor improvements to the existing SFR are in violation of Chapter 183C, HRS and Title 13-5, HAR. Based upon our investigation, OCCL finds that:

1. The location of the improvements, Tax Map Key: (1) 1-4-001:047, is in the Conservation District and is classified as *Resource* Subzone;
2. That these improvements require a CDUP or SPA pursuant to HAR §13-5-22, *Identified Land Uses in the Protective Subzone*, P-8, STRUCUTRES AND LAND USES EXISTING and P-13, LAND AND RESOURCE MANAGEMENT, as well as HAR §13-5-23, *Identified Land Uses in the Limited Subzone*, L-2, LANDSCAPING;¹
3. That these improvements were not authorized by the Department of Land and Natural Resources under HAR §13-5.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to HRS, §183C-7 and HAR, §13-5-6, the Board finds the landowner in violation of HAR, §13-5-22 and HAR §13-5-23, and is subject to the following:

¹ Within the Conservation District, there are five subzones as follows: Protective (P), Limited (L), Resource (R), General (G), and Special Subzone (S). Excluding the Special Subzone, the four remaining subzone are arranged in a hierarchy of environmental sensitivity, ranging from the most environmentally sensitive (Protective) to the least sensitive (General). As the DHSM parcel is located within the Resource Subzone, pursuant to HAR §13-5, all identified land uses and the associated permit or site plan approval requirements listed for the Protective and Limited Subzones also apply to the Resource Subzone, unless otherwise noted.

1. That the landowner is fined \$5,000 in one instance for violating provisions of HRS §183C-7 and HAR §13-5-22 for the unauthorized construction of earth retention walls by failing to obtain the appropriate approvals within the Conservation District;
2. That the landowner is fined \$1,000 in one instance for violating the provisions of HRS §183C-7 and HAR §13-5-22 for the unauthorized improvements to the existing SFR (decks and widening of the driveway and parking lot) and failing to obtain the appropriate approvals within the Conservation District;
3. That the landowner is fined \$10,000 in one instance for violating the provisions of HRS §183C-7 and HAR §13-5-23 for unauthorized excavation, grubbing, and grading work (gravel lined trail) and failing to obtain the appropriate approvals within the Conservation District;
4. That the landowner is fined an additional \$750 for administrative costs associated with the subject violations;
5. That the landowner shall pay all designated fines and administrative costs (\$16,750) within ninety (90) days from the date of the Board's actions;
6. That the landowner shall retain an P.E. sealed² Geotechnical Engineer to assess the hillside and determine what measures need to be taken to remediate the hillside and to reduce slope destabilization or the potential for a landslide event within 2 weeks of this Board action;
7. That the landowner shall remediate the hillside based upon the Geotechnical Engineer's evaluation and recommendation immediately and shall complete remediation within 180-days of this Board action;
8. That the landowner shall provide the department with a post-remediation report describing the work that was conducted within 30 days of completion;
9. The landowner, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the landowner, its successors, assigns, officers, employees, contractors, and agents relating to or connected with this matter;
10. That the landowner shall apply for an after-the-fact CDUP Departmental Permit for the earth retention walls and the excavation, grubbing, and grading work (gravel lined trail) within one hundred twenty (120) days of the Board's action on this matter and shall provide engineered approved stamped plans to be submitted along with the CDUP application;

² The seal of a Professional Engineer (PE) with experience in the area of geotechnical engineering shall be included with all remediation plans.

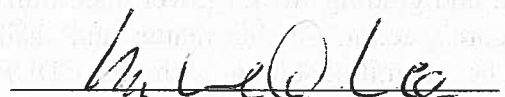
11. That the CDUP for the earth retention walls and excavation, grubbing, and work (gravel lined trail) will need to be approved by the Department, who has the final authority to sign, modify, or deny the permit; and that if the permit is denied the walls will need to be removed and the trail area restored to its natural state;
12. That the landowner shall apply for an after-the-fact SPA for the improvements to the existing SFR (decks and widening of the driveway and parking lot) within ninety (90) days of the Board's action on this matter and shall provide building plans to be submitted along with the SPA application;
13. That the SPA for the SFR improvements (decks and widening of the driveway and parking lot) will need to be approved by the Department, who has the final authority to sign, modify, or deny the permit; and that if the permit is denied the improvements will need to be removed and the area restored to its natural state;
14. And the landowner shall remove discarded debris from the property within 30 days of the Board's action on this matter.
15. The landowner shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments;
16. That in the event of failure of the landowner to comply with any order herein, the landowner shall be fined an additional \$15,000 per day until the order is complied with; and
17. That in the event of failure of the landowner to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs.
18. The above noted conditions of Enforcement file OA 15-17 shall be recorded with the deed instrument pursuant to HAR, §13-5-6(e).

Respectfully submitted,

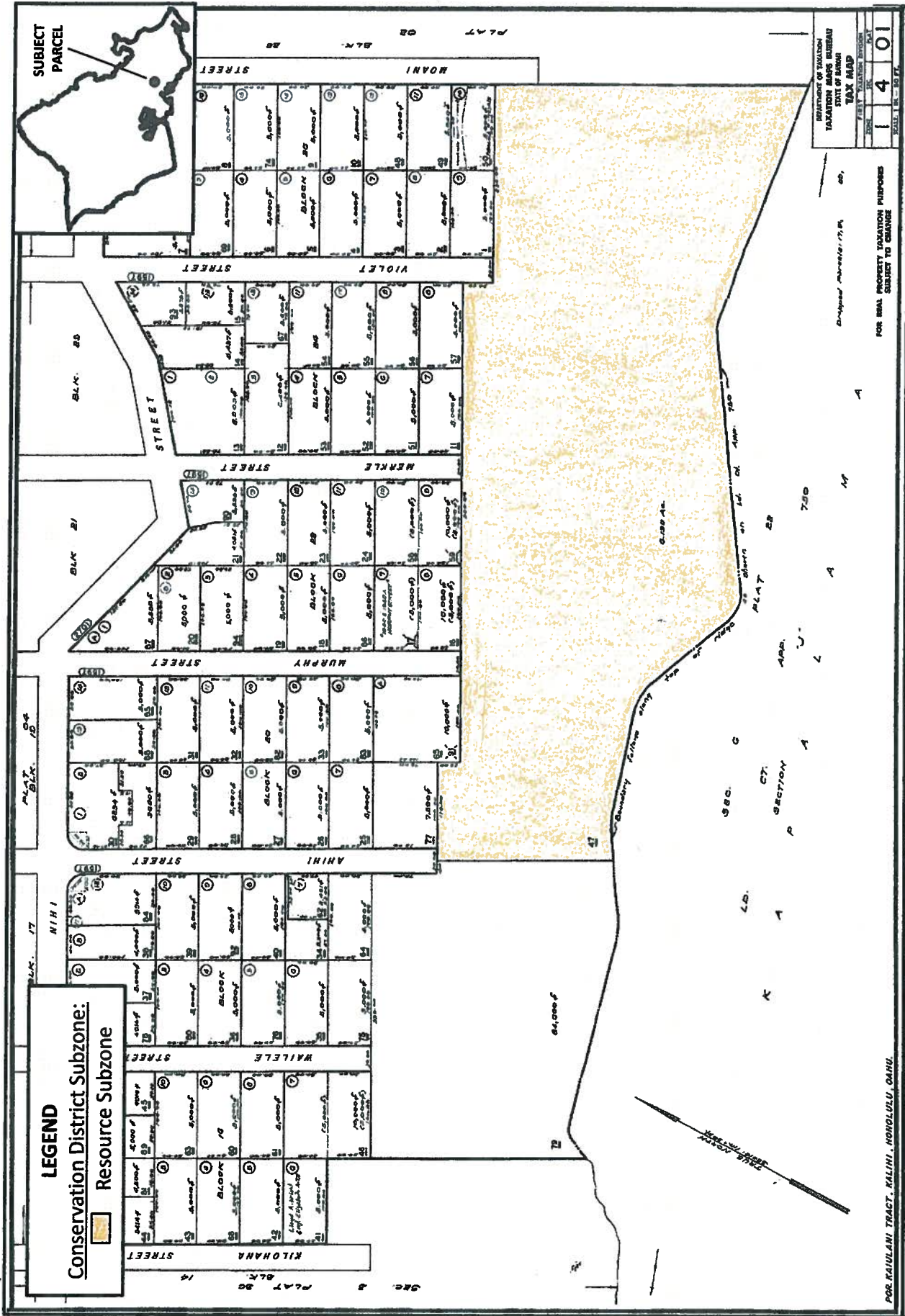


Lauren Yasaka, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources



LOCATION MAP

NEIL ABERCROMBIE
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

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
JESSE K. SOUKI
FIRST DEPUTY
WILLIAM M. TAM
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:LY

ENF: OA 15-17

CERTIFIED MAIL/RETURN RECEIPT

7013 0600 0001 9170 2056

Mr. Herbert Kihoi, Jr.
1551 Moani Street
Honolulu, HI 96819

NOV 20 2014

SUBJECT: Alleged Unauthorized Land Use in the Conservation District Located at 1551 Moani Street, Honolulu, O'ahu
Tax Map Key: (1) 1-4-001:047

Dear Landowner:

A complaint was filed with the Division of Conservation and Resource Enforcement (DOCARE) Office regarding the possibility of unpermitted construction/development of lands within the State Conservation District at the subject property. On September 18, 2014, a DOCARE Officer conducted a site inspection at the subject property and observed three (3) men with a backhoe machine. It appeared that the men were excavating a yard area on the southwest side of the property. The DOCARE officer spoke to one of the men who told him that they were hired by the landowner to excavate and level the surface in that area. Photos were taken of the work being done and are attached for your reference.

Based upon review of our records, we have no record of authorizations for the noted excavation work. The OCCL notes that the subject property appears to be located within the Resource Subzone of the Conservation District. Therefore, there appears to be an alleged Conservation District use violation.

Please be aware, pursuant to 183C-7, Hawai'i Revised Statutes (HRS), the Board of Land and Natural Resources may subject parties to fines of up to \$15,000.00 per violation in addition to administrative costs for unauthorized land uses in the Conservation District. 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.

Should you have authorization for the noted use, please forward that information to our Office. In addition, please contact our Office at your earliest convenience to discuss this matter.

For more information regarding the Conservation District and for a copy of our rules (Hawai'i Administrative Rules (HAR) Chapter 13-5), please visit our website at dlnr.hawaii.gov/occl.

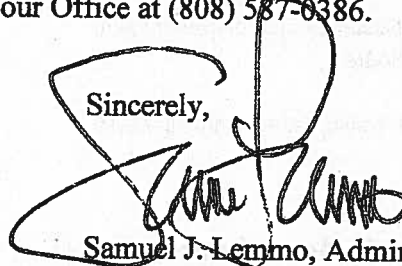
EXHIBIT 2

Mr. Herbert Kihoi, Jr.

ENF: OA 15-17

Please respond to this correspondence within 30 days. Should you have any questions regarding this matter, contact Lauren Yasaka of our Office at (808) 587-0386.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

C: ODLO
DOCARE
City & County of Honolulu, DPP

INVESTIGATION #

DISTRICT

LEAD INVESTIGATOR

KEY REPORT

DATE / TIME REPORTED
9/17/2014 9:10:00 AM

LOCATION
1551 Moani Street, Kalihi
Valley, Hon, HI 96819

CLASSIFICATION
Office of Conservation and Coastal Lands (OCCL)

[] Yes []

CONNECTING REPORT(S)

Report Description: 1551 Moani Street address area of construction

Date/Time Taken: 09-18-2014/1230 hours

Taken By:

Scene: 1551 Moani Street, Kalihi Valley, Hon. HI 96819

Equipment:

Weather Conditions: clear

Lighting: clear

Focus: clear

1 Unimproved driveway at 1551 Moani Street address



2 Area of construction



3 Front driveway of resident: 1551 Moani Street



4 KHOI's residence: 1551 Moani St. Kalihi Valley



INVESTIGATION #

DISTRICT

LEAD INVESTIGATOR

KEY REPORT

[] Yes []

DATE / TIME REPORTED
9/17/2014 9:10:00 AM

LOCATION
1551 MOANI ST.
KALIHI VALLEY

CLASSIFICATION
Office of Conservation and Coastal Lands (OCCL)

CONNECTING REPORT(S)

5



6



7



8



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
KEKOA KALUHIWA
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:LY

ENF: OA 15-17

CERTIFIED MAIL/RETURN RECEIPT
7013 0600 0001 9170 2261

MAY 07 2015

Mr. Herbert Kihoi, Jr.
41-339 Waiiokeola Street
Waimanalo, HI 96795

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at 1551
Moani Street, Honolulu, O'ahu
Tax Map Key: (1) 1-4-001:047

Dear Mr. Kihoi:

Late last year, a complaint was received by our Department regarding work being done at the subject property. On September 18, 2014, a Division of Conservation and Resource Enforcement (DOCARE) Officer conducted a site visit at the property and observed excavation work occurring at the property. A letter regarding the alleged unauthorized land use was sent to you on November 20, 2014. Since then, a subsequent complaint was recently filed with the Division of Conservation and Resource Enforcement (DOCARE) Office regarding the possibility of unpermitted construction/development of lands within the State Conservation District at the subject property. On April 21, 2015, a DOCARE Officer conducted a site inspection at the subject property and observed additional work being done at the site. Additional work included the construction of an erosion control structure and what appears to be improvements to the single family residence (SFR) located on the property.

Therefore, NOTICE IS HEREBY GIVEN that you may be in violation of Hawai'i Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District providing for land uses within the State Land Use Conservation District, enacted pursuant to Hawai'i Revised Statutes (HRS), Chapter 183C.

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

1. The location of the alleged unauthorized land uses is located in the Conservation District, Resource Subzone;
2. According to our records, the subject property has an existing nonconforming 30 foot by 60 foot SFR, a 14-foot wide driveway, and two (2) 10 foot by 12 foot sheds.

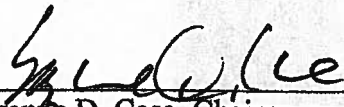
3. Photos taken during separate site inspections conducted on September 18, 2014 and April 21, 2015 by a DOCARE officer, revealed disturbed vegetation, exposed soils, and no best management practices in place on the subject property. In addition, it would appear that new erosion control structures, as well as improvements to the SFR on property, were also constructed.
4. Pursuant to §13-5-2, HAR, "Land use" means:
 - (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
 - (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land; and
5. These land uses were not authorized by the Department of Land and Natural Resources pursuant to Chapter 13-5, HAR.

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

The Office of Conservation and Coastal Lands (OCCL) intends to schedule this matter before the Board of Land and Natural Resources (BLNR) for final disposition. You will be notified at that time concerning the time and place.

Should you have any questions, contact Lauren Yasaka of the Office of Conservation and Coastal Lands at (808) 587-0386.

Sincerely,



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

C: ODLO
DOCARE
City & County of Honolulu, DPP

INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
DATE / TIME REPORTED 4/21/2015 9:15:00 AM	LOCATION TMK 14001047	CLASSIFICATION CONSERVATION DISTRICT P-1 VIOLATION	CONNECTING REPORT(S)

Report Description:

Date/Time Taken: 04-24-15/ 1100 HRS

Taken By:

Scene: TMK 14001047

Equipment:

Weather Conditions: CLEAR

Lighting:

Focus:

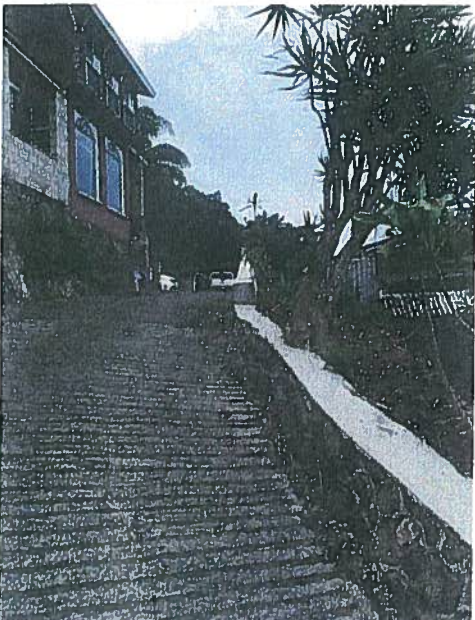
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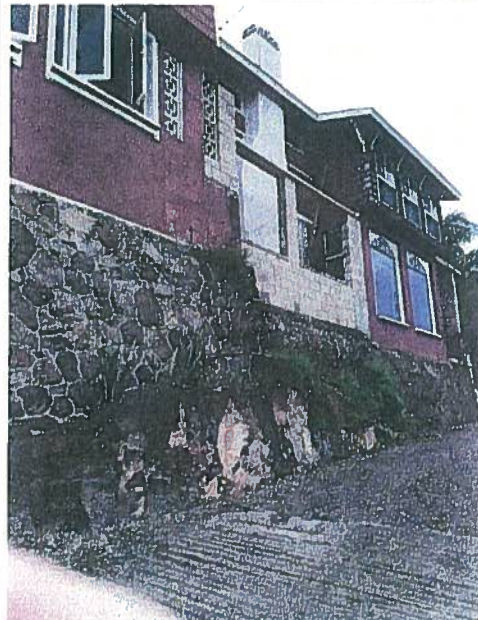
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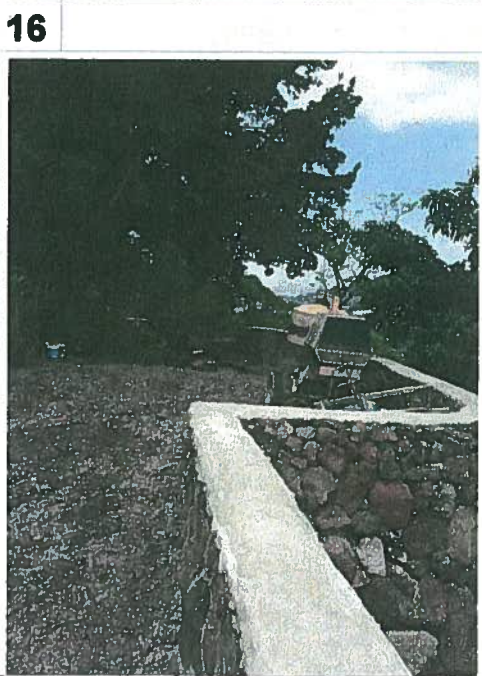
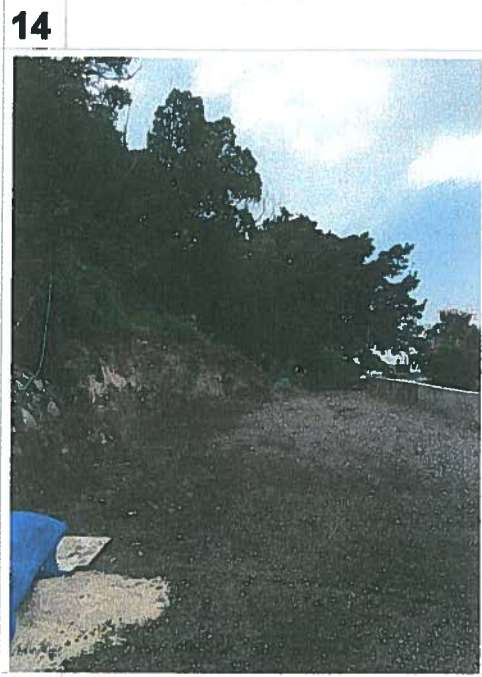
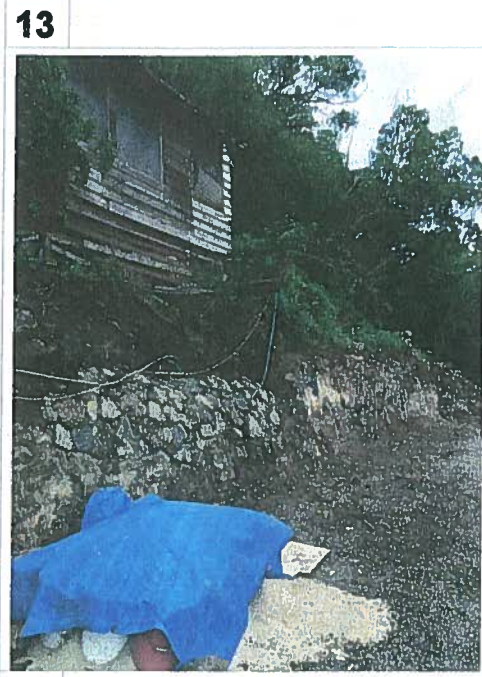
INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
DATE / TIME REPORTED 4/21/2015 9:15:00 AM	LOCATION TMK 14001047	CLASSIFICATION CONSERVATION DISTRICT P-1 VIOLATION	CONNECTING REPORT(S)



INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
DATE / TIME REPORTED 4/21/2015 9:15:00 AM	LOCATION TMK 14001047	CLASSIFICATION CONSERVATION DISTRICT P-1 VIOLATION	CONNECTING REPORT(S)



INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
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INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
DATE / TIME REPORTED 4/21/2015 9:15:00 AM	LOCATION TMK 14001047	CLASSIFICATION CONSERVATION DISTRICT P-1 VIOLATION	CONNECTING REPORT(S)

Report Description:

Date/Time Taken: 04-24-15/ 1100 HRS

Taken By:

Scene:

Equipment:

Weather Conditions:

Lighting:

Focus:



INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
DATE / TIME REPORTED 4/21/2015 9:15:00 AM	LOCATION TMK 14001047	CLASSIFICATION CONSERVATION DISTRICT P-1 VIOLATION	CONNECTING REPORT(S)



INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
DATE / TIME REPORTED 4/21/2015 9:15:00 AM	LOCATION TMK 14001047	CLASSIFICATION CONSERVATION DISTRICT P-1 VIOLATION	CONNECTING REPORT(S)

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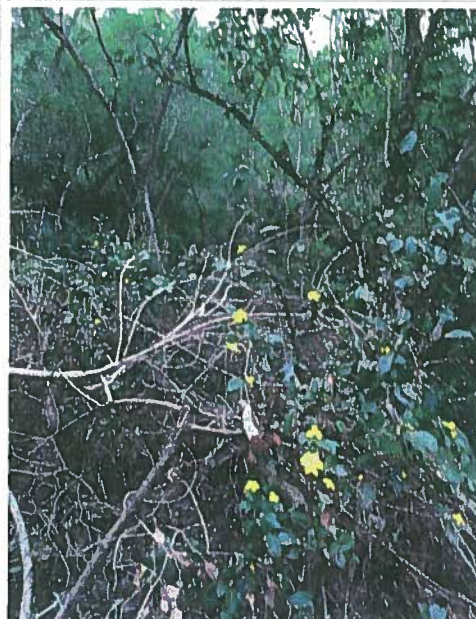
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INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
DATE / TIME REPORTED 4/21/2015 9:15:00 AM	LOCATION TMK 14001047	CLASSIFICATION CONSERVATION DISTRICT P-1 VIOLATION	CONNECTING REPORT(S)

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INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
DATE / TIME REPORTED 4/21/2015 9:15:00 AM	LOCATION TMK 14001047	CLASSIFICATION CONSERVATION DISTRICT P-1 VIOLATION	CONNECTING REPORT(S)

Report Description:

Date/Time Taken: 04-24-15/ 1105 HRS

Taken By:

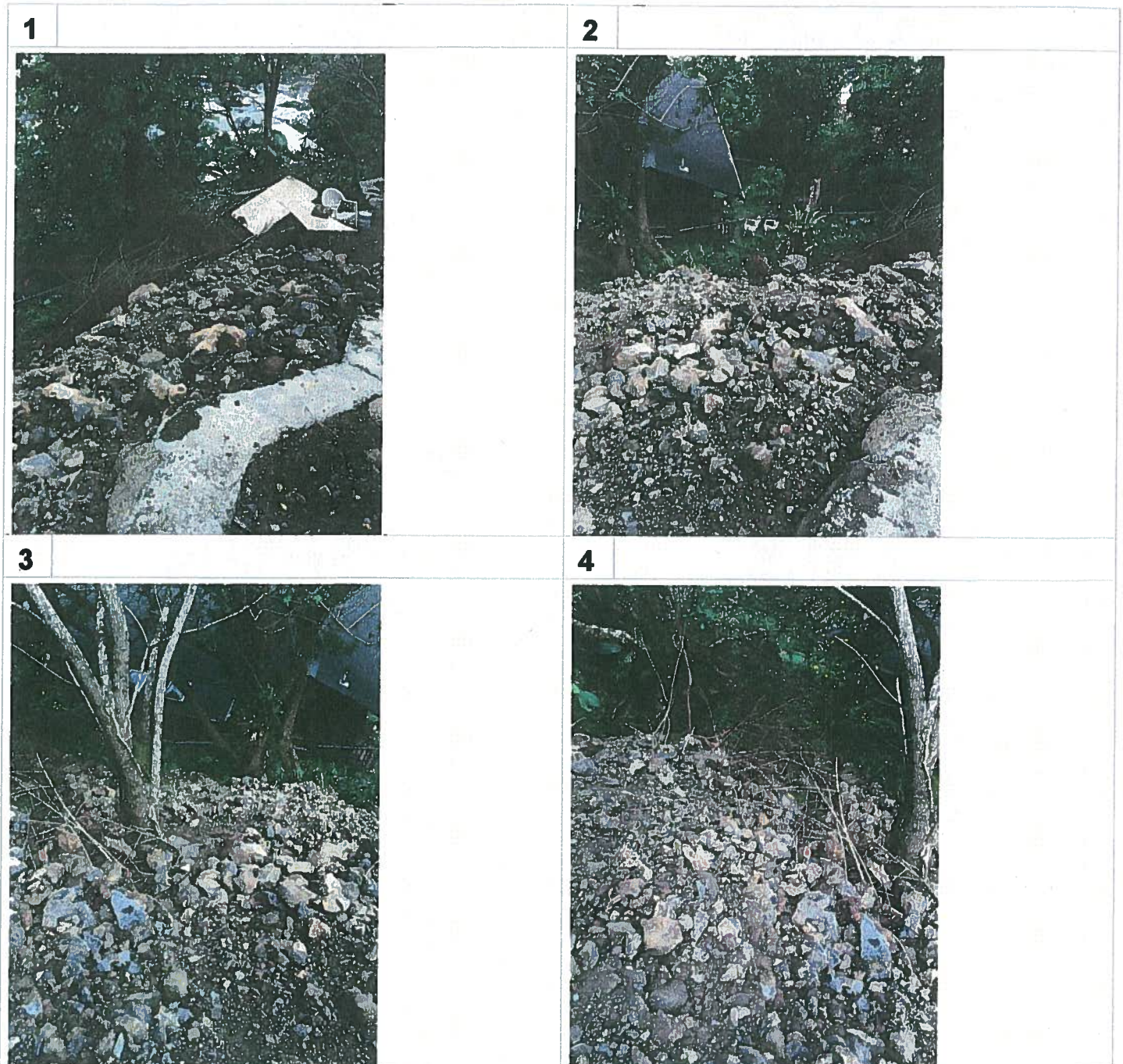
Scene: TMK 14001047

Equipment:

Weather Conditions:

Lighting:

Focus:



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INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT [] Yes []
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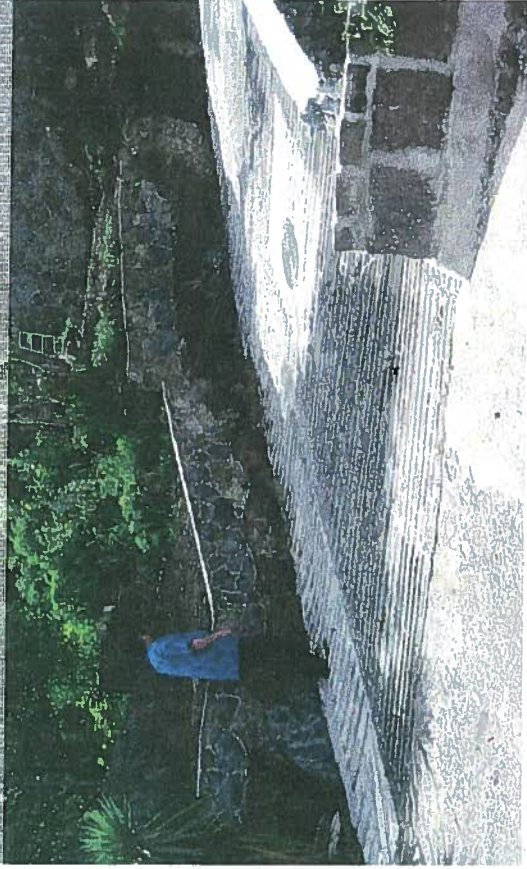
16



WIDENED DRIVEWAY



WIDENED DRIVEWAY AND EARTH RETENTION WALL



DISTURBED HILLSIDE AREA TO WIDEN PARKING LOT AREA



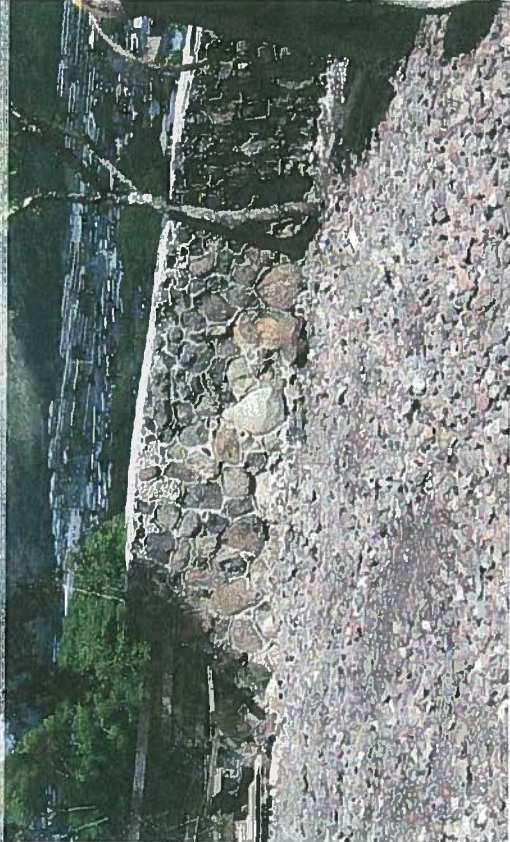
WIDENED GRAVEL PARKING LOT AREA



SITE VISIT
MAY 11, 2015

PHOTOS
1-4

NORTHWESTERN PROPERTY BORDER EARTH RETENTION WALL (PARKING LOT AREA)



NORTHWESTERN PROPERTY BORDER EARTH RETENTION WALL (DRIVEWAY)

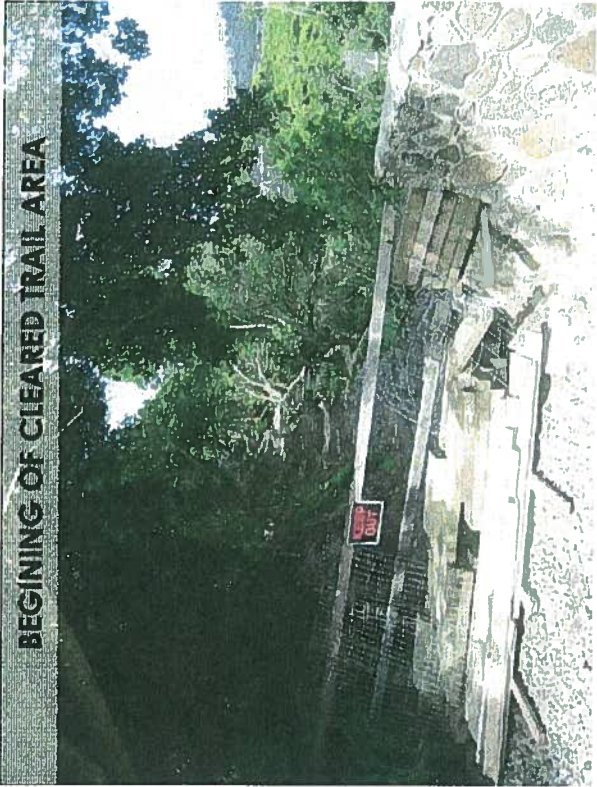


NORTHWESTERN PROPERTY BORDER EARTH RETENTION WALL (PARKING LOT AREA LEADING TO TRAIL)



**SITE VISIT
MAY 11, 2015**

**PHOTOS
5-7**

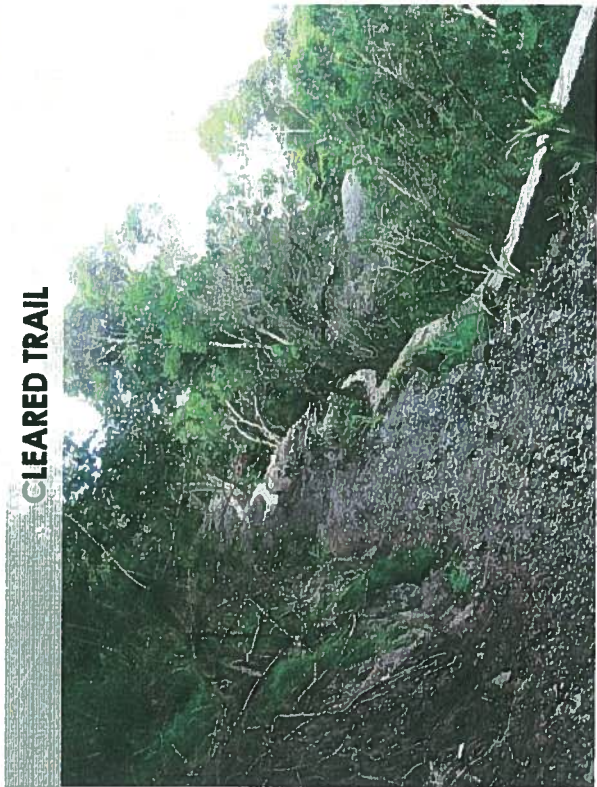


BEGINNING OF CLEARED TRAIL AREA

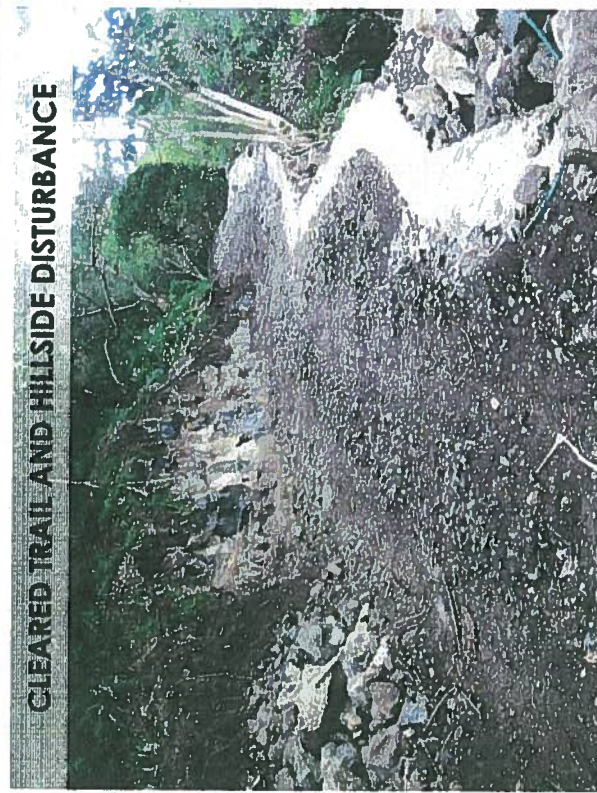


Neighboring Home

CONTINUATION OF EARTH RETENTION WALL ALONG TRAIL



CLEARED TRAIL



CLEARED TRAIL AND HILLSIDE DISTURBANCE

SITE VISIT
MAY 11, 2015

PHOTOS
8-17

LOOSE BOULDERS/ROCKS ALONG TRAIL



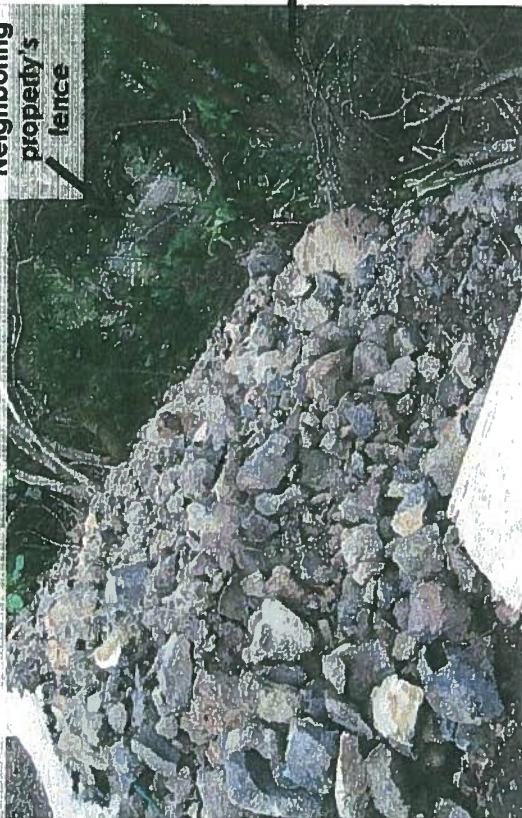
PHOTO SHOWING PROXIMITY OF ROCKS AND DEBRIS TO THE ADJACENT PROPERTY



DEBRIS PILE ON HILLSIDE ALONG CLEARED TRAIL



PHOTO SHOWING QUANTITY OF LOOSE ROCKS ON HILLSIDE ALONG TRAIL



SITE VISIT
MAY 11, 2015

PHOTOS
16-19

DEBRIS PILE ON HILLSIDE ALONG CLEARED TRAIL



LOOSE ROCKS ON HILLSIDE ALONG TRAIL



DEBRIS PILE ON HILLSIDE ALONG TRAIL

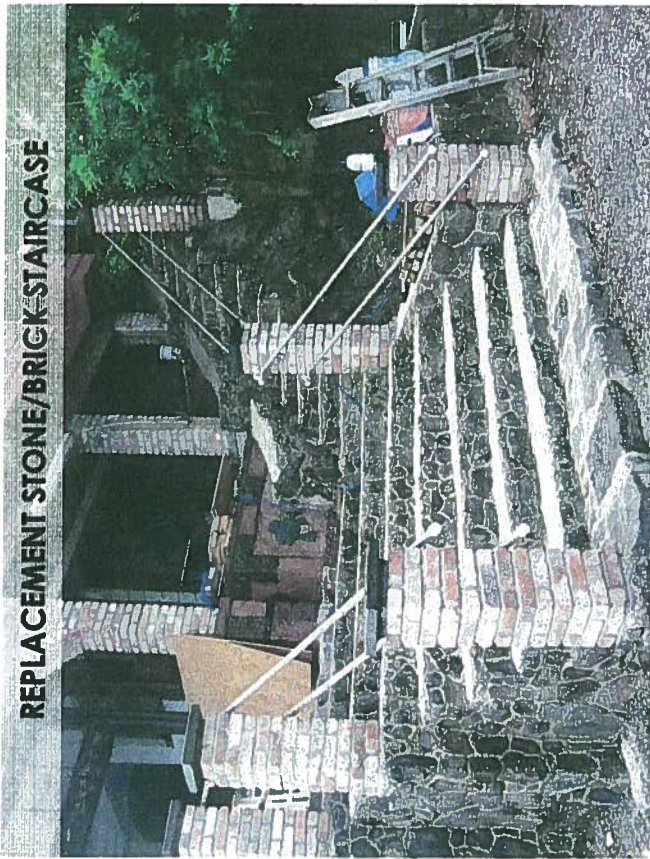


DEBRIS PILE ADJACENT TO NEIGHBORING HOME

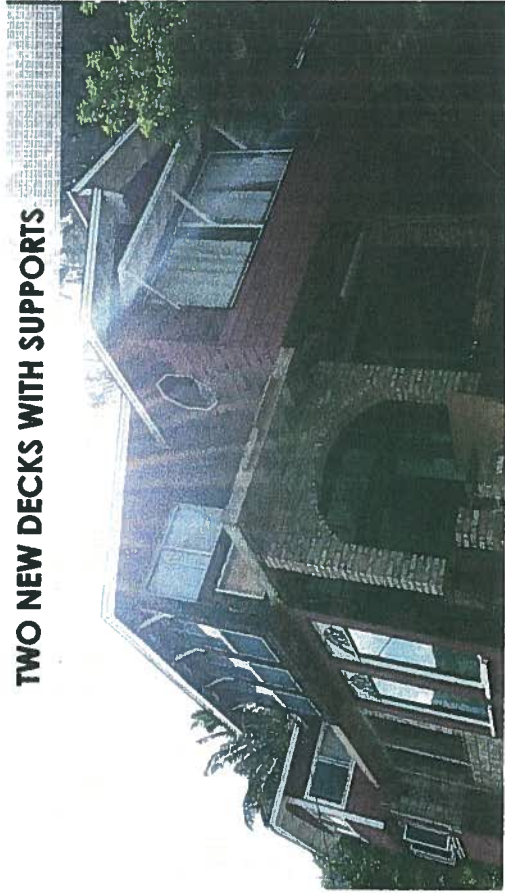


SITE VISIT
MAY 11, 2015

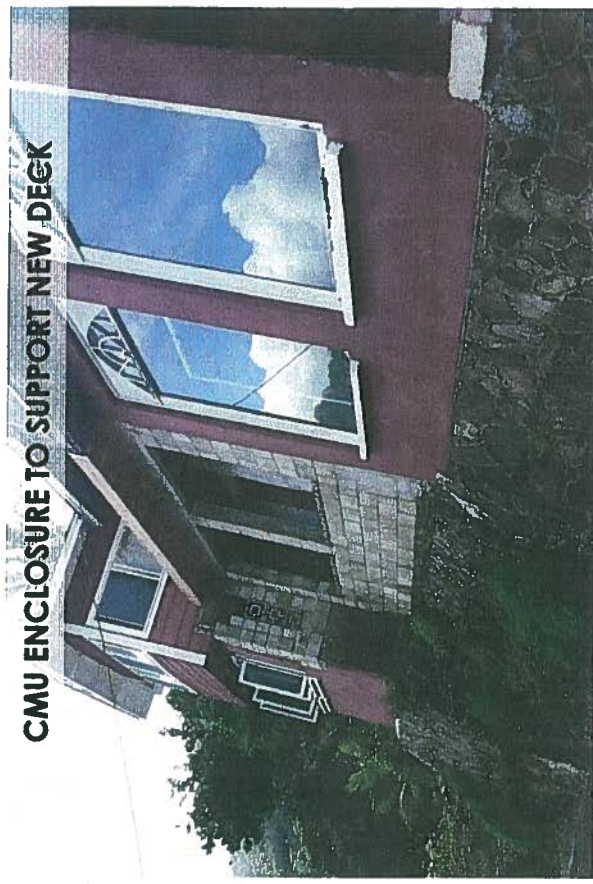
PHOTOS
19-22



REPLACEMENT STONE/BRICK STAIRCASE



TWO NEW DECKS WITH SUPPORTS



CMU ENCLOSURE TO SUPPORT NEW DECK

**SITE VISIT
MAY 11, 2015**

**PHOTOS
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CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES AND ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

September 2009

Relating to penalties for violations within the Conservation District

Act 217

1 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, *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land and Natural Resources* 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).

2 CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES

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.

2.1 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(s) 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 (HAR) §13-5-22, 23, 24, 25. 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 according the required permit, 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 (See 2.1.4),² within the assigned penalty range. Where Staff was unable to associate the unauthorized use with a typical land use identified in HAR §13-5, Staff may try to associate the action with the most similar identified land use in HAR §13-5, or according to the "harm to the resource" caused by the violation. Table 1

¹ "Harm to resource" is an actual or potential impact, whether direct or indirect, short or long term, impact on a natural, cultural or social resource, which is expected to occur as a result of unauthorized use of construction, disturbance alteration, or landscape alteration (See Appendix B: Definitions) Adapted from Florida Department of Environmental Protection 2000 Administrative Process and Damage Liability, Ch. 62B-54

² Penalty amounts may be adjusted up or down, based on additional considerations, such as the actual extent of the direct damage, significance of any other indirect impact, environmental record of the violator, responsiveness of violator, etc. (See 2.1.4 Additional Considerations and Factors).

was created to demonstrate the penalty ranges for the type of required permit and "harm to resource" (See 2.1.1 or Appendix A).

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 discussed in Section 2.1.1, Identified land use penalties.

2.1.1 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 in this graduated framework.

Table 1. Penalty Guideline Framework

Harm to resource or potential for harm to resource	Identified land use permit designating with the letter	Penalty Ranges
Major	D (Board)	\$10,000-\$15,000
Moderate	C (Departmental)	\$2,000-\$10,000
Minor	B (Site Plan)	\$1,000-\$2,000
Very Minor	(B) (Site Plan)	Up to \$1,000

Major Harm to the Resource/ Board Permit (D)

Violations identified with the required permit prefix (D) may incur a penalty in the range of \$10,000 - \$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 (C)

Violations identified with the required permit prefix (C) may incur a penalty in the range of \$2,000-\$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 (B) Permit

Violations identified with the required permit prefix (B) 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-\$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.

Very Minor Harm to the Resource/(B) Permit

In instances in which a permit with the B prefix should have been sought but are considered to have only caused "very minor harm(s) 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.

2.1.2 Non-Identified Land Use Penalties

Violations in which an unauthorized use is not identified in HAR §13-5-22, 23, 24, 25, Staff may try to associate the action with the most similar identified land use in HAR.

§13-5 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 HAR §13-5, Staff will refer to Table 1 and the definitions of the four violation types of "harm to resource" (See Appendix B: Definitions).

2.1.3 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.¹ 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.

2.1.4 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 HAR §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

¹ While Staff and Board decisions in MA-01-09, OA-03-40 and HA-06-08 have treated the removal of non-native, invasive, or noxious trees as one citation of "clearing" with mandatory remediation plans.

Department may see fit to assess the removal/clearing of threatened, endangered, or commercially valuable plants similar to the modified tree removal framework and may be penalized on an individual plant basis of up to \$15,000 per plant.

Table 3. Vegetation Removal

Action	Comparable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000*

Notes: 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.

2.1.5 Additional Considerations and Factors

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.

2.1.6 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.

* Provided the harm to the resource and office damage were minimal.

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.

2.1.7 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.⁴ 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 (1) the responsible party is a government entity, such as a federal agency, state agency, county agency, city agency, university, or school board, or if (2) the responsible party is a private party proposing an environmental

⁴ In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection, 2007, Program Directive 923, Settlement guidelines for civil and administrative penalties.

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.

3 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,

2.1.8 Penalty Adjudication

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

Guamable Harm to Resource	Identified Land Use Permit and Penalty Range	Penalty Adjudicator
Major	\$10,000-\$15,000	Board
Moderate	\$2,000-\$10,000	Board
Minor	\$1,000-\$2,000	Chairperson or Presiding Officer
Very Minor	up to \$1,000	Chairperson 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.

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.

3.1 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.

3.2 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(s) 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 damages 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.

3.3 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.

APPENDIX A: GUIDELINE FRAMEWORK TABLES

Table 1. Penalty Guideline Framework

Harm to resource or potential for harm to resource	Identified land use permit restricting with the letter	Penalty Range
Major	D (Board)	\$10,000-\$15,000
Moderate	C (Departmental)	\$2,000-\$10,000
Minor	B (Site Plan)	\$1,000-\$2,000
Very Minor	(B) (Site Plan)	Up to \$1,000

Table 2. Vegetation Removal

Action	Commensurate Harm to Resources	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ^a

Note: According to Table 2, the clearing of vegetation may incur a penalty of up to \$17 sq. ft., as clearing 10,000 sq. ft. shall incur a penalty of \$10,000. 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.

APPENDIX B: DEFINITIONS

Definitions:

- (1) "Baseline" means the original level of services provided by the damaged resource.
- (2) "Benefit Transfer Method" estimates economic values by transferring existing benefit estimates from studies already completed for another location or issue.⁷
- (3) "Board" means the Board of Land and Natural Resources.
- (4) "Board Permit" means a permit approved by the Board of Land and Natural Resources.
- (5) "Chairperson" means the chairperson of the board of land and natural resources
- (6) "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.
- (7) "Compensatory Damages" means damages for compensation for the interim loss of ecosystem services to the public prior to full recovery.
- (8) "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.
- (9) "Department" means the Department of Land and Natural Resources.
- (10) "Departmental Permit" means a permit approved by the Chairperson.
- (11) "Discounting" means an economic procedure that weights past and future benefits or costs such that they are comparable with present benefits and costs.
- (12) "Ecosystem Services" means natural resources and ecosystem processes, which may be valued according to their benefits to humankind.

For example: 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,

⁷ Ecosystem Valuations http://www.ecosystemvaluation.org/benefit_manager.htm

recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

- (13) "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.⁸
- (14) "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:
 - (a) "Major Harm to resource" means a significant adverse impact(s), 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
 - (b) "Moderate Harm to Resource" means an adverse impact(s), 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)).
 - (c) "Minor Harm to Resource" means limited to short-term direct impacts from small scaled construction or shoreline or vegetation alteration activities.
 - (d) "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.

For example, "major harm to the resource(s)" would be associated with a major land use violation that would have likely required a Board Permit, such as building a house, while a "minor harm to the resource(s)" may be

⁸ Definition adapted from Florida Department of Environmental Protection, 2000 Administrative Fines and Damages Liability, Ch. 62B-54.

associated with minor land uses requiring an administrative Site Plan Approval, for building a small accessory structure.

- (15) "Knowing" violation means an act or omission done with awareness of the nature of the conduct.
- (16) "Net Present Value" means the total present value (PV) of a time series of cash flows.
- (17) "OCCL Administrator" means the Administrator of the Office of Conservation and Coastal Lands.
- (18) "Party" means each person or agency named or admitted as a party.
- (19) "Person" means an appropriate individuals, partnership, corporation, association, or public or private organization of any character other than agencies.
- (20) "Presiding Officer" means the person conducting the hearing, which shall be the chairperson, or the chairperson's designated representative.
- (21) "Primary Restoration Damages" means the costs to restore the damaged site to its prior baseline state.
- (22) "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.
- (23) "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.

APPENDIX C: REFERENCES

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www.csc.noaa.gov/coastal/economics/habitatequ.htm

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APPENDIX D: DAMAGES EXAMPLES

Examples of Damage Assessments and Possible Remediation Efforts

The following are only brief past estimates used in Hawaii and other states; they are by no means comprehensive or limiting. These are intended to be examples for possible assessments and remediation efforts not as templates. As previously stated each case will be handled individually to account for unique ecological, economic and cultural impacts. The following are organized by habitat type.

Coral

Florida Department of Environmental Protection (Civil Damages):

The DEP can impose fines of up to \$1,000/m² of reef damaged and is dependent on the absence of extenuating circumstances such as weather conditions, disregard of safe boating practices, navigational error, whether the vessel operator was under the influence of drugs or alcohol etc.

Cesar et al 2002 (Ecosystem Service Valuation)

Cesar et al. used a Simple Coral Reef Ecological Economic Model (SCREEM) to assess Hawaiian coral reefs based on the annual benefits of the coral reefs to recreation/tourism, property amenities, biodiversity, fisheries and education. The annual benefits and total economic value could then be expressed on a 'per area' basis. This study found the total annual benefits of the coral reefs of Hanauma Bay to be \$37.57 million (\$2,568/m²), of the coral reefs in Kihui to be \$28.09 million (\$65/m²) and the coral reefs on the Kona coast to be \$17.68 million (\$19/m²).

Pilaa enforcement (KA-02-10) (Primary Restoration Cost)

Damage to Coral reef ecosystems was assessed for restoration activities according to Florida guidelines, as \$5,830,000 for 5,380 m² of coral reef damage. This calculation

was similar to the estimated cost of remediation efforts \$390,000 to clean 5,000 yd³ of beach sand. However between 30,000-50,000 yd³ was estimated to be impacted, totaling \$2,300,000-\$3,900,000. While cleaning the sediment from the reef was estimated to cost approximately \$845,000 (for the 13 acres, or \$65,000 for 10m²). This totaled between \$3,100,000 and \$4,700,000, and did not include coral colony re-establishment. An additional \$630,000 was estimated for the 10-year monitoring period, (however studies by Cesar et al. 2003 estimated a 25 year period for recovery of ecological impacts).

Thus damage to corals may be calculated as follows:

- # Number of square meters of coral damaged
- X Multiplied by \$1,000 (or estimated value of coral on per/area basis)
- (#m2 x \$1000)

Plus the estimated net present value of ecosystem services lost until recovery. (This may be more if damage to an area such as Hanalei Bay with increased recreational economic revenue.)

- +Plus cost of Remediation
- +Plus Cost of cleaning sediment from reef
- +Plus Cost of cleaning sediment/mud from beach sand
- +Plus Cost of coral reestablishment
- +Plus Cost of Monitoring
- +Plus Cost of Management

Seagrass beds (Compensatory Damage)

The Florida DEP fines offenders \$100/yd² of damage to seagrass beds for the first yd² damaged and \$75/yd² per each additional yd² damaged.

- \$100 for the first yard damaged
- + \$75 per each additional yard
- or net present total value of ecosystem services lost until recovery
- +vegetation planting
- +monitoring

Sand Beaches (ex. Of Primary Restoration Costs)

Minimum penalty cost of restoration and potential negative ecological, social and environmental impacts should be included in the assessment of damaged, degraded or lost sandy beaches. As one of Hawaii's greatest natural resources the following should be included in the minimum penalty assessment, however, as ecological valuation and research continue, more comprehensive estimates may be produced. In KA-02-10 Pilaa, \$390,000 fine was estimated to clean 5,000 yd³ of beach.

- +Cost of lost revenue due to altered Beach resources (compensatory)
- +primary restoration costs
- +Plus cost of cleaning of sediment/mud from beach area (if necessary)
- +Plus cost of beach nourishment (sand replacement)
- +Plus cost of native dune vegetation

(In some circumstances the loss of beach resources may be assessed in conjunction with other ecological impacts listed above, such as coral reefs and sea grass beds.)

APPENDIX E: PENALTY CALCULATION WORKSHEET

Violator's Name(s): _____
 TMK: _____
 OCCL Staff Member: _____
 Date: _____

Part 1 - Penalties

Violation Type	Permit Prefix (D.C. B)	Harm to Resource (actual & potential)	Tree or Vegetation Status	Penalty Range	Adjustments (Mark Adj. Choice #1-8)	Multi-Day (# days)	Total
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

Penalty Total: _____

Penalty Adjustments and Descriptions (please attach additional adjustments and descriptions, including but not limited to those listed in §13-1-70)

- Actual environmental damage extent (onsite)
Description: _____
- Actual environmental damage extent (offsite)
Description: _____

- Does the violator's have a history of violations?

- Was the violation repetitious or of a long duration?

- Was the violator Responsive and exhibit a level of cooperation of with the Department and/or Staff?

- Does the Violator have a Financial Hardship?

- Did the violator receive Economic or commercial gain through non-compliance?

- Other:
Description: _____

Total Adjustment: up/down _____
 Multi-day penalties
 Number of days to multiply penalty: _____
 Reasoning: _____
 Total multi-day: _____