

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

April 22, 2016

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

**REGARDING:** Conservation District Enforcement OA 16-127  
Alleged Unauthorized Release of Soil into the Honolulu Watershed Forest Reserve, Tantalus, O'ahu, Tax Map Key: (1) 2-5-019:008

Alleged Unauthorized Grading and Construction of A Pool Located at 3838 Pu'u Kakea Place, Tantalus, O'ahu, Tax Map Key: (1) 2-5-018:032

**LANDOWNERS:** Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust  
3838 Pu'u Kakea Place

State of Hawai'i  
Honolulu Watershed Forest Reserve

**SUBZONE:** Resource

**DESCRIPTION OF AREA (Exhibit 1, 2 & 3)**

The location is Tantalus, O'ahu within the Resource subzone of the Conservation District. The Chan's property is located at 3838 Pu'u Kakea Place on a private cul-de-sac. To the east and west of the Chan's parcel are single family residences and to the north and south is the Honolulu Watershed Forest Reserve with the Moleka trail downhill, approximately 60 to 80-feet from the property boundary.

**ALLEGED UNAUTHORIZED LAND USES:**

On February 4, 2016, the Division of Forestry and Wildlife (DOFAW) staff contacted the Office of Conservation and Coastal Lands (OCCL) inquiring if authorization to conduct land uses were gained from any private residence in the vicinity of the Moleka Trail as soil material was sliding down the hillside covering a section of the public trail. OCCL staff recommended that the Division of Conservation and Resource Enforcement (DOCARE) be contacted immediately to investigate due to the public safety hazard.

On February 5, 2016, a site inspection was conducted by DOCARE. According to the information provided regarding this site inspection:

- Landowner, Mr. Chan was present and was having work done in his yard;
- A backhoe was observed actively working and the operator was using the bucket to dig up and move soil material;

ITEM K-1

- The Officer walked to the edge of where the work was being done and noted soil material “went well” into the State Forest Reserve; and
- In addition, the site inspection also revealed an unauthorized pool present on the property. **(Exhibits 4, 5, 6, 7 & 8)**

Based upon the photos, there does not appear to be any Best Management Practices in place or property boundary markers indicating the limits of work. The encroaching soil material from the Chan’s property slid down the hillside and buried a section of the Moleka Trail. The trail has been closed since the incident occurred. The trail was cleared at least 4 times manually for a total of 30-man hours; however soil debris continues to slide down the hillside covering the trail and according to Na Ala Hele staff, the entire hillside above a section of the trail still contains a large amount of material that was described as loose, fine coarse gravel dirt and rocks. **(Exhibits 9, 10, 11, 12, 13, & 14)**

On March 18, 2016, a NOTICE OF ALLEGED VIOLATION AND ORDER was sent to the Chan Trusts notifying them of the hazardous situation with a recommendation to retain a geotechnical expert to assess the situation. The notice requested a response within 15-days and that the matter would be scheduled before the Board of Land and Natural Resources. **(Exhibit 15)**

On March 31, 2016, Mr. Chan responded to the Notice stating “My landscaper unintentionally released soil into the state land. I am currently working with a geotechnical expert to thoroughly assess the present situation.” **(Exhibit 16)**

## **RESOLUTION OF UNAUTHORIZED LAND USES:**

### **Conservation District**

The Hawai‘i Revised Statutes (HRS), Chapter 183C, and the Hawai‘i Administrative Rules (HAR), Chapter 13-5, regulate land uses in the Conservation District by identifying land uses that may be applied for within the Conservation District. §13-5-2, HAR defines “land use” as:

- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (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.

Photographic evidence illustrates the unauthorized work that took place upon the Chan’s parcel and the resulting encroachment, slide and damage to the public trail. Photographic evidence of the residence also revealed an unauthorized pool has been constructed.

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.

Based on the **Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources** approved by the Board, the unauthorized grading and encroachment into the Forest Reserve is considered a "Major" unauthorized land use since there is a significant adverse impact. The recreational public trail has been closed due to public safety concerns preventing public use and enjoyment. This is a significant adverse impact. This violation has a recommended penalty range of \$10,000 to \$15,000. **(Exhibit 17)**

Penalties to recoup damages to public lands or natural resources for the purpose of enforcement and remediation may be assessed in addition to Conservation District violation penalties by the aforementioned Penalties Schedule Guidelines. The board may adjudicate the assessed total value of the damage or loss (compensatory damages) and the cost of restoration or replacement of the damaged natural resources (primary restoration cost). This could include a full-scale damage assessment by the Department for damages for all impacted systems (Forest Reserve and Trail). The OCCL believes by recommending the Chans to do total remediation, this would resolve the damage done to public land.

The unauthorized pool is also considered a major land use. Under HAR, §13-5-42 Standard Conditions (c) Deviation from any of the conditions, standards, or criteria provided in this chapter may be considered by the board. Failure to secure board approval for a deviation before the deviation occurs constitutes cause for permit revocation. Failure to obtain Board authorization has a recommended penalty range of \$10,000 to \$15,000.

The unauthorized land uses occurred in the Conservation District Resource subzone without approval and therefore allegedly violated the above referenced chapters and rules.

## **DISCUSSION**

Staff has submitted this matter to the Board of Land and Natural Resources as the public recreational trail is closed due to the hazardous conditions created by the unauthorized land use. Staff believes the unauthorized work has contributed to creating a potentially hazardous situation to the general public and would like the Board to order the landowners, Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust, to stop conducting land uses within the Conservation District without authorization from the Department; and direct the landowners, Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust, to hire an Geotechnical Engineer to evaluate the hillside and remediate the public land and mitigate any potential hazards the unauthorized work may have caused. The Chans should also monitor and maintain the remediation/mitigation.

Staff recommends that the alleged obtain a Right of Entry from the Department to mitigate, monitor and maintain the area of damage for 5-years based upon the Geotechnical Engineer's

evaluation and by contracting person(s) that are knowledgeable with watershed restoration, erosion control and trail stabilization applications to work with the Department.

In regards to the unauthorized pool, OCCL records reveal the OCCL went through 4 reiterations of the construction plans with the Chans for the residence to insure the residence complies with HAR, Chapter 13-5, Exhibit 4, Single Family Residential Standards Maximum Developable Area (MDA). **(Exhibit 18)**

Based upon County records, the residential development appears to already exceed the MDA. **(Exhibit 19)**

In addition to a fine, staff will recommend that the Chans remove the pool as the MDA of the residence under the current Chapter 13-5, HAR has exceeded 15% that has been defined as the limits of deviation under HAR, §13-5-41 Single family residences.

## **FINDINGS**

1. That Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust did in fact, authorize, cause or allow:
  - Unauthorized grading to occur on the property;
  - Dirt material to be pushed over a ledge encroaching into the Honolulu Watershed Forest Reserve;
  - Damage and closure of the Moleka trail to the public; and
  - An unauthorized pool/water feature to be constructed on the property.
2. That the unauthorized land uses occurred within the State Land Use Conservation District, Resource Subzone.

## **AS SUCH, STAFF RECOMMENDS AS FOLLOWS:**

That, pursuant to HRS, §183C-7, the Board finds Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust in violation of HAR, §13-5-24, and is subject to the following:

1. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust are fined \$15,000.00 for violating the provisions of HAR, §13-5-24, for an unauthorized land use that encroached upon and affected the Forest Reserve and damaged a section of the public Moleka Trail, by pushing dirt over the ledge onto the State Forest Reserve;
2. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust are fined \$2,000.00 for the unauthorized construction of a pool within the Conservation District, Resource subzone prior to obtaining the appropriate approval for land uses within the Conservation District;
3. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust are fined an additional \$1,600.00 [30-

- hours DOFAW staff to clear the trail and OCCL staff] for administrative costs associated with the subject violations;
4. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust shall pay all designated fines and administrative costs that totals \$18,600.00 within **90-days** of the date of the Board's action;
  5. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust shall retain an P.E. sealed<sup>1</sup> Geotechnical Engineer to assess the hillside and determine what measures need to be taken to remediate the affected public land to significantly reduce soil and gravel material from sliding on to the Moleka trail and its users within **30-days** of this Board action;
  6. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust shall apply for a Right of Entry within **30-days** of this Board action to remediate the public hillside based upon the Geotechnical Engineer's evaluation and recommendation **and** the Department's approval; and shall contract person(s) that are knowledgeable with watershed restoration, erosion control and trail stabilization applications to maintain the State Forest Reserve area that was affected by the unauthorized action for five year;
  7. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust shall provide the Department with a post-remediation report describing the work that was conducted within 30 days of completion;
  8. Plantings that may be utilized for remediation shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawai'i. The introduction of invasive plant species is prohibited;
  9. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust shall remove the pool within one year of this Board action;
  10. Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments;
  11. That in the event of failure of Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust to comply with any order herein, the landowner shall be fined an additional \$15,000 per day until the order is complied with;
  12. That in the event of failure of Michael H. Chan, Co-Trustee, and Stephanie L.Q. Chan, Co-Trustee, of the Michael H. Chan Trust and the Stephanie L.Q. Chan Trust to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs; and

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<sup>1</sup> The seal of a Professional Engineer (PE) with experience in the area of geotechnical engineering shall be included with all remediation plans.

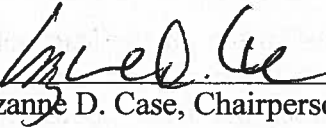
13. The above noted conditions of Enforcement file OA 16-127 shall be recorded with the deed instrument of 3838 Pu'u Kakea Place located at Tantalus, O'ahu, Tax Map Key: (1) 2-5-018:032 pursuant to HAR, §13-5-6(e).

Respectfully submitted,



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

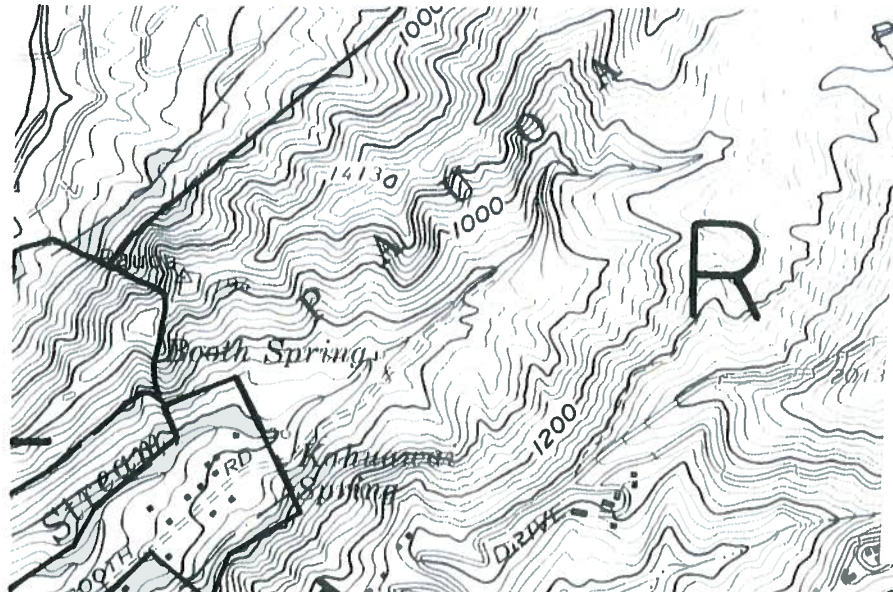
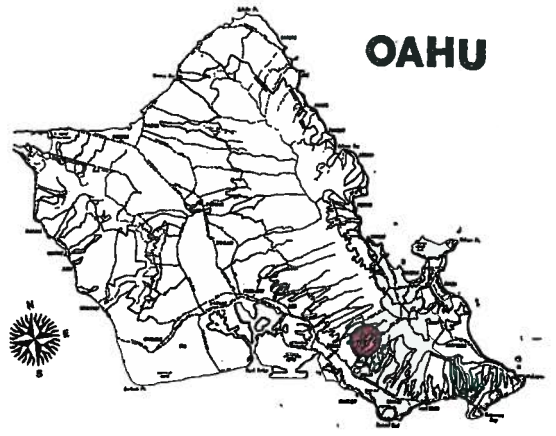
Approved for submittal:



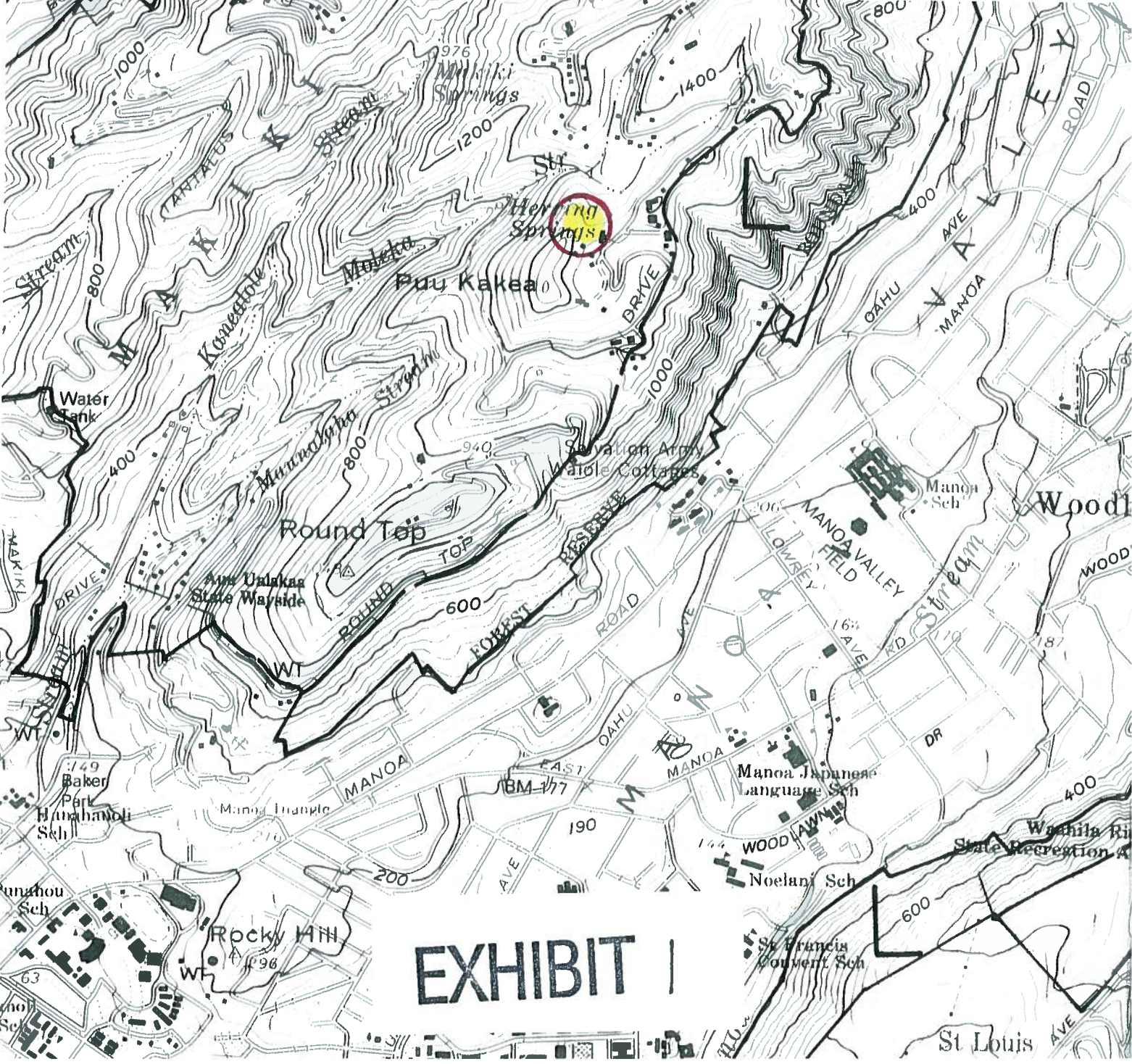
Suzanne D. Case, Chairperson  
Board of Land and Natural Resources



OAHU



R



Hotting Springs

EXHIBIT

St Louis AVE







EXHIBIT 3

Google earth



Imagery Date: 1/15/2013 21°19'23.04" N 157°09'04.96" W elev 1144 ft eye alt 2303 ft

11:23 AM  
3/31/2016

Magnitude

8  
7

3/23/2016 11:56 pm  
3/27/2016

00:00

Tour Guide 2011



Sign In



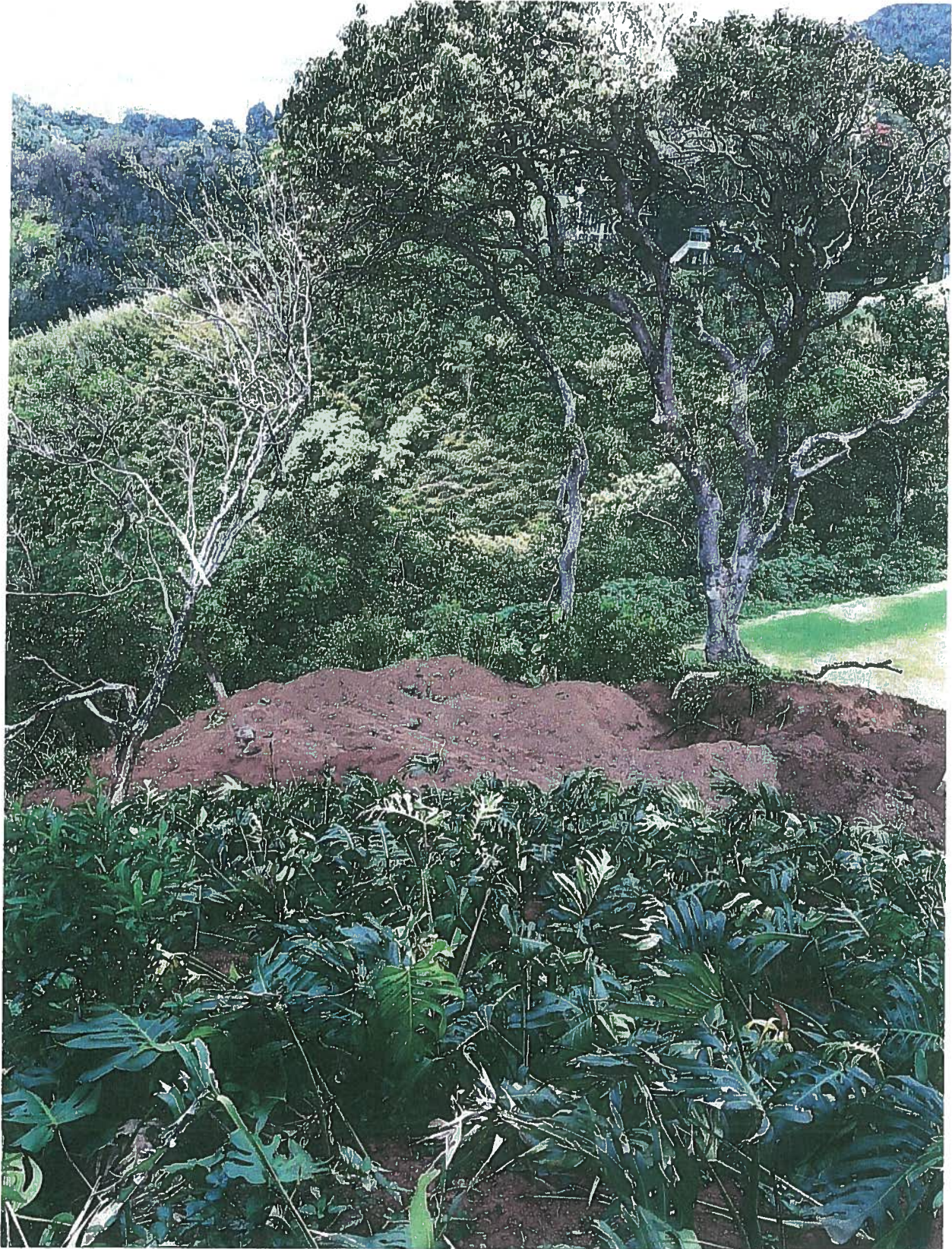




G. Villalobos

Exhibit 4-Facing mauka; active work taking place, pool noted.





G. Villalobos

**Exhibit 5-Photo taken on Chan's property facing the Forest Reserve.**





G. Villalobos

Exhibit 6-Facing makai on Chan's property, Forest Reserve is to the right.





G. Villalobos

**Exhibit 7-Edge of Chan's property looking down into the Forest Reserve.**





G. Villalobos

**Exhibit 8- Edge of Chan's property looking into the Forest Reserve.**





K. Parsons

Exhibit 9-In the Forest Reserve looking up at the Chan's property.





K. Parsons

Exhibit 10-In the Forest Reserve at the property boundaries.





K. Parsons

Exhibit 11-Near the Moleka Trail

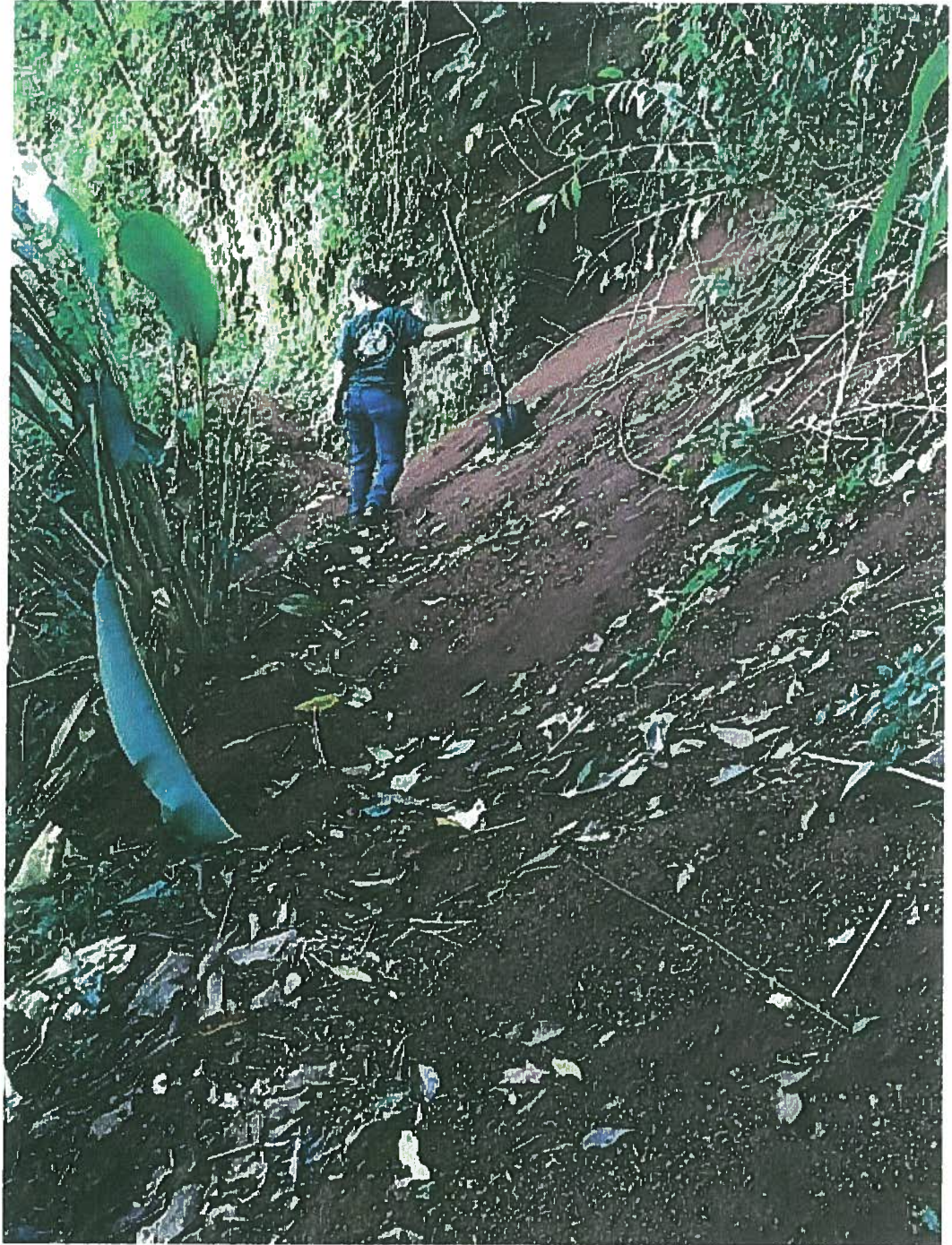




K. Parsons

Exhibit 12-Buried Section of Moleka Trail





K. Parsons

Exhibit 13- DOFAW staff preparing to clear the trail.



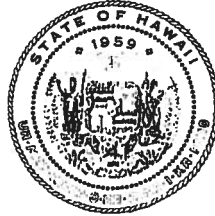


K. Parsons

Exhibit 14-Moleka Trail after being cleared.



DAVID Y. IGE  
GOVERNOR OF  
HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
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:TM

ENF: OA 16-127

**NOTICE OF ALLEGED VIOLATION AND ORDER**

**MAR 18 2016**

CERTIFIED MAIL RETURN RECEIPT

7015 1730 0001 5437 0341

Chan, Michael H. Trust  
Chan Stenhanie LQ Trust  
:  
Honolulu, HI

**SUBJECT:** Alleged Unauthorized Dumping of Material Within the Honolulu Watershed Forest Reserve Located Within the Conservation District From 3838 Pu'u Kakea Place, O'ahu, TMK: (1) 2-5-018:032

Dear Landowner:

Material of an unknown source originating from your property has encroached upon State land creating a hazardous situation to the general public.

NOTICE IS HEREBY GIVEN you may be in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District providing for land use within the Conservation District, enacted pursuant to the Hawaii Revised Statutes (HRS), Chapter 183C.

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

1. The location of this alleged unauthorized land use is located in the Conservation District, Resource Subzone;
2. A site inspection conducted on February 5, 2016, revealed disturbed vegetation, exposed introduced gravel soil upon State land within the Honolulu Forest Reserve originating from your property; [EXHIBITS A, B & C]
3. The Moleka Trail has been closed due to the public safety hazard created by the alleged unauthorized land use;
4. Pursuant to §13-5-2, HAR, "Land use" means:

**EXHIBIT 15**



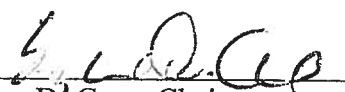
- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
  - (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
  - (3) The subdivision of land; or
  - (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.
5. This land use was not authorized by the Department of Land and Natural Resources under 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.

We recommend that you retain a geotechnical expert to assess if the situation you have created has resulted in any slope destabilization or rock fall hazard, and what if any measures need to be taken immediately to reduce such hazards that could have resulted from the unauthorized work.

**Please respond to this Notice within 15-days.** Please note any information provided may be used in civil proceedings. The Office of Conservation and Coastal Lands (OCCL) intends to schedule this matter before the Board of Land and Natural Resources. Should you have any questions, contact Tiger Mills of the OCCL at (808) 587-0382.

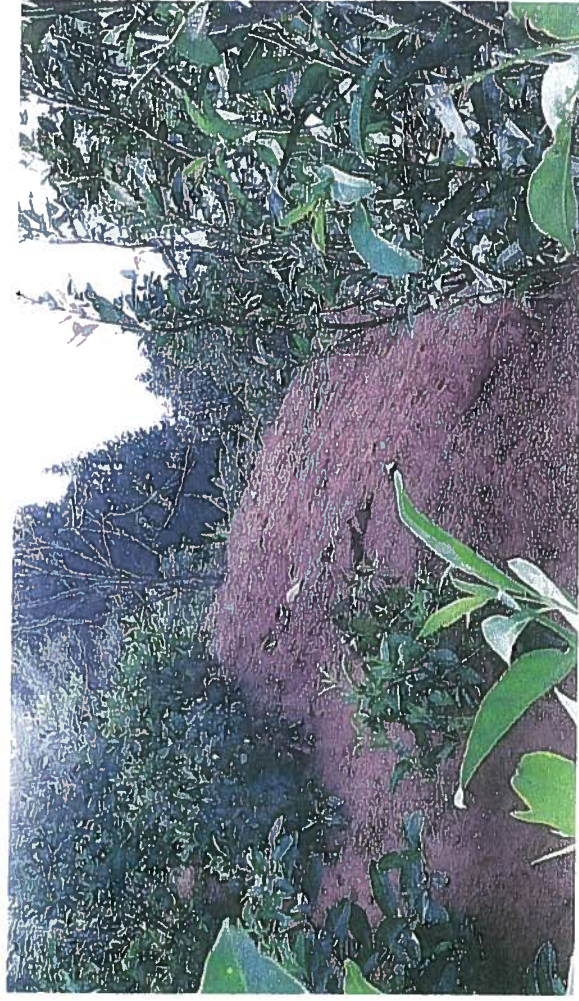
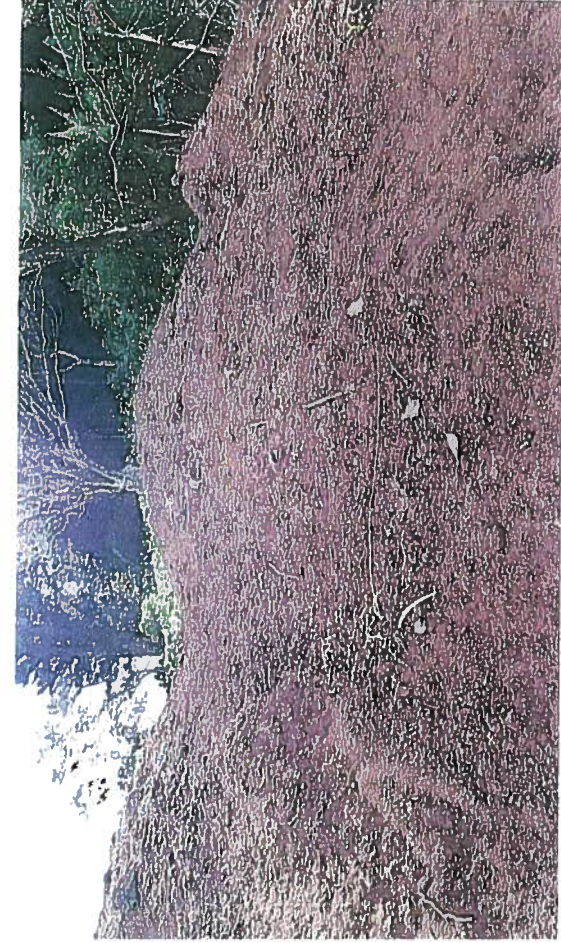
Sincerely,

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

C: ODLO/DOFAW/NAH  
DOCARE-O'ahu  
CCH- DPP



Hill Above Na Ala Hele Moleka Trail Within the Forest Reserve







Hillside Above Trail



Moleka Trail after being cleared on 4 occasions

EXHIBIT D



3/31/2016

Department of Land and Natural Resources  
State of Hawaii  
Office of Conservation and Coastal Lands  
Administrator  
Samuel J. Lemmo

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2016 MAR 31 A 10:00

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Subject: Alleged Unauthorized Dumping of Material From 3838 Pu'u  
Kakea Place, O'ahu | TMK: (1)2-5-018:032

Dear Administrator Sam Lemmo,

My landscaper unintentionally released soil into the state land. I am currently working with a geotechnical expert (Foundation Solution LLC), to thoroughly assess the present situation. We will keep you posted as soon as we receive results from the Foundation Solution LLC. In the meantime, we will also be sure to monitor the trail. Please feel free to email \_\_\_\_\_) or call me at :\_\_\_\_ with any questions.  
Thank you.

Mahalo,

  
Mike Han Chan

EXHIBIT 16



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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*

APPENDIX A: GUIDELINE FRAMEWORK TABLES

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APPENDIX D: DAMAGES EXAMPLES

APPENDIX E: PENALTY CALCULATION WORKSHEET



## 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"<sup>1</sup> caused by the violation.

Once the baseline for the penalty range has been established according to 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),<sup>2</sup> 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

<sup>1</sup> "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 acts of construction, shoreline alteration, or landscape alteration (See Appendix B: Definitions) Adapted from Florida Department of Environmental Protection 2000 Administrative Fines and Damage Liability, Ch. 62B-54.

<sup>2</sup> Penalty amounts may be adjusted up or down, based on additional considerations, such as the actual extent of the direct damages, significance of any other indirect impacts, environmental record of the violator, repetitiveness 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 2.1.1.1, 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 beginning 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

### 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.<sup>1</sup> If violation is considered as one violation, a fine amount of up to \$15,000 may be incurred, utilizing the guidelines for Major, Moderate, Minor, and Very Minor outlined in this schedule. However, the removal of any federally or state listed threatened or endangered tree shall be considered on a one violation per tree basis, with a maximum penalty of up to \$15,000 per tree.

### 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

<sup>1</sup> While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-native, invasive, or noxious trees as one citation of "clearing" with mandatory remediation plans.

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 <sup>4</sup>

Note: The clearing of threatened, endangered or commercially valuable plants will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant. According to Table 2, the clearing of vegetation may incur a penalty of up to \$1/sq.ft., as clearing 10,000 sq.ft. Staff could assess a penalty of \$10,000.

### 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.

<sup>4</sup> Provided the harm to the resource and public 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.<sup>5</sup> This would not serve as a way to avoid payment but as a way to reduce the cash amount owed while allowing the Department to consistently enforce its rules. The in-kind penalty project is not designed to credit the violator for restoration or remediation efforts that may be already required, but to offset a portion of the cash penalty assessed. The in-kind penalty should be enough to ensure future compliance with HAR §13-5 and HRS §183C, by the violator and to deter other potential violators from non-compliance.

In-kind penalties will only be considered if (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

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<sup>5</sup> In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection, 2007, Program Directive 923, Settlement guidelines for civil and administrative penalties.

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

2.1.8 Penalty Adjudication

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

Comparable 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.

Penalties to recoup damages to public lands or natural resources for the purposes of enforcement and remediation may be assessed in addition to Conservation District violation penalties assessed by the aforementioned guidelines. The assessed total value of the initial and interim natural resource(s) damaged or lost (compensatory damages) and the cost of restoration or replacement of the damaged natural resource(s) (primary restoration cost) along with any other appropriate factors, including those named in HAR §13-1-70, may be adjudicated by the Board. The total value may be estimated on a per annum basis, and then may be used to calculate the net present value of the initial and interim loss of natural resource benefits, until the ecosystem structure, function, and/or services are restored.

The cost of a full-scale damage assessment by the Department would be an administrative cost, which could be recouped by the Board from the landowner or offender pursuant §HRS 183C-7. In some cases, the damage to public lands or natural resources may occur on more than one ecosystem or habitat type, (e.g., sandy beaches, seagrass beds, and coral reefs). In such instances, damages for all impacted systems will be handled cumulatively.

Since all the ecosystem services provided by the ecosystem in question cannot be quantified (e.g., the aesthetic value), the values obtained are lower bound estimates, and may be applied to systems similar to the referenced ecosystem using the benefit transfer method. These valuations, to account for the loss of ecosystem services and the cost to restore them, may be applied to Hawaiian ecosystems on public lands: such as Koa and Ohia forests, coral reefs, seagrass beds, wetlands, dune and beach ecosystems, and other important Hawaiian ecosystems.

While each case is unique and individual in nature, the Department may not be able to conduct detailed damage assessments in each case, and may refer to past precedent,



economic ecosystem valuations, and other published environmental valuations to estimate and assess damages on smaller scales (for valuations and publication examples see Appendix C: References and Appendix D: Damages Examples). Using the benefit transfer method to apply past precedents and published valuations in some situations would allow the Department to focus its administrative duties and time on remediation and restoration efforts. However, as ecological valuation and research continue, more comprehensive estimates may be produced and utilized.

The Board may allow restoration activities and damage penalties to be conducted and/or applied to a site different from the location of the damaged area where similar physical, biological and /or cultural functions exist. These assessed damages are independent of other, city, county, state and federal regulatory decisions and adjudications. Thus, the monetary remedies provided in HRS §183C-7 are cumulative and in addition to any other remedies allowed by law.

### 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 damage occurred may be calculated to have a higher present benefit worth than the benefit of restoration activities undertaken a year or two later.

In other instances, a habitat equivalency analysis (HEA) or a resource equivalency analysis (REA) may be used to scale equivalent habitat or wildlife losses for estimating both ecosystem damage penalties and restoration efforts.

### 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 beginning 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	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 <sup>a</sup>

Note: 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. 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.<sup>7</sup>
- (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,*

<sup>7</sup> Ecosystem Valuations [http://www.ecosystemvaluation.org/benefit\\_transfer.htm](http://www.ecosystemvaluation.org/benefit_transfer.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.<sup>8</sup>
- (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*

<sup>8</sup> Definition adapted from Florida Department of Environmental Protection. 2000 Administrative Fines and Damage 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

- Cesar, H., van Beukering, P., Pintz, S., Dierking, J. 2002. Economic valuation of the coral reefs of Hawaii. NOAA Final Report NA 160A1449.
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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/m<sup>2</sup> 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/m<sup>2</sup>), of the coral reefs in Kihei to be \$28.09 million (\$65/m<sup>2</sup>) and the coral reefs on the Kona coast to be \$17.68 million (\$19/m<sup>2</sup>).

##### Filaa 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 m<sup>2</sup> of coral reef damage. This calculation



was similar to the estimated cost of remediation efforts \$390,000 to clean 5,000 yd<sup>3</sup> of beach sand. However between 30,000-50,000 yd<sup>3</sup> 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 10m<sup>2</sup>). 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)
- (#m<sup>2</sup> 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 Hanauma 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/yard<sup>2</sup> of damage to seagrass beds for the first yd<sup>2</sup> damaged and \$75/yard<sup>2</sup> per each additional yd<sup>2</sup> 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 yd<sup>3</sup> 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)**

1. Actual environmental damage extent (onsite)  
 Description: \_\_\_\_\_

2. Actual environmental damage extent (offsite)  
 Description: \_\_\_\_\_

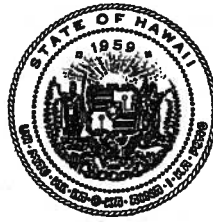
3. Does the violator's have a history of violations?  
 \_\_\_\_\_
4. Was the violation repetitious or of a long duration?  
 \_\_\_\_\_
5. Was the violator Responsive and exhibit a level of cooperation of with the Department and/or Staff?  
 \_\_\_\_\_

6. Does the Violator have a Financial Hardship?  
 \_\_\_\_\_
7. Did the violator receive Economic or commercial gain through non-compliance?  
 \_\_\_\_\_
8. Other.  
 Description: \_\_\_\_\_

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



LINDA LINGLE  
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

Laura H. Thiele  
Chairperson  
Board of Land and Natural Resources  
Commission on Water Resource Management

Russell Y. Tsuji  
First Deputy

Ken C. Kawahara  
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  
Kahoelawe Island Reserve Commission  
Land  
State Parks

REF: OCCL:MC

CDUP OA-3446

Stephen Nakai  
Osumi Nakai Maekawa,  
700 Bishop St. Suite 228  
Honolulu, HI 96813

MAR 16 2009

SUBJECT: CONSTRUCTION PLANS FOR CONSERVATION DISTRICT USE PERMIT OA-3446  
Tantalus, Honolulu District, O'ahu  
TMK (1) 2-5-18:32

The Office of Conservation and Coastal Lands (OCCL) has reviewed the revised building plans you submitted as part of Conservation District Use Permit (CDUP) OA-3446.

These plans are not the same as the ones that we reviewed with you in person, and OCCL will not be signing off on them. Specifically, you have significantly enlarged the carport. The plans thus continue to exceed the allowable maximum developed area (MDA).

OCCL also notes that the landscaping plan has changed from the plans that were presented to and approved by the Board. The landscaping now contains numerous invasive species, which contradicts Conditions 11 and 18 of the CDUP OA-3446.

The "garden lanai" underneath the Master Bedroom has also changed character from the plans that were submitted to the Board. In the original design OCCL had been concerned that this "lanai" was actually a carport. The landowner was notified that the area either had to be redesigned, or counted towards the MDA. The landowner chose to landscape the area with rocks and trees; this is what was presented to the Board. The current plans show that the area has reverted back to a 45'5" x 22'6" cement slab structure. Despite being labeled a "lanai," it once again has all the appearances of a carport.

This will be the fourth time that OCCL is returning Building Plans for revision. Please review the conditions of CDUP-3446 and the Design Standards contained in the Hawai'i Administrative Rules, and submit plans that are in conformance to them.

You can contact Michael Cain at (808) 587-0048 if you have any questions on this matter.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Samuel Lemmo".

Samuel Lemmo, Administrator  
Office of Conservation and Coastal Lands

EXHIBIT 18

cc: County Planning Department; Chair  
Attachments: Staff Report to BLNR; CDUP OA-3446

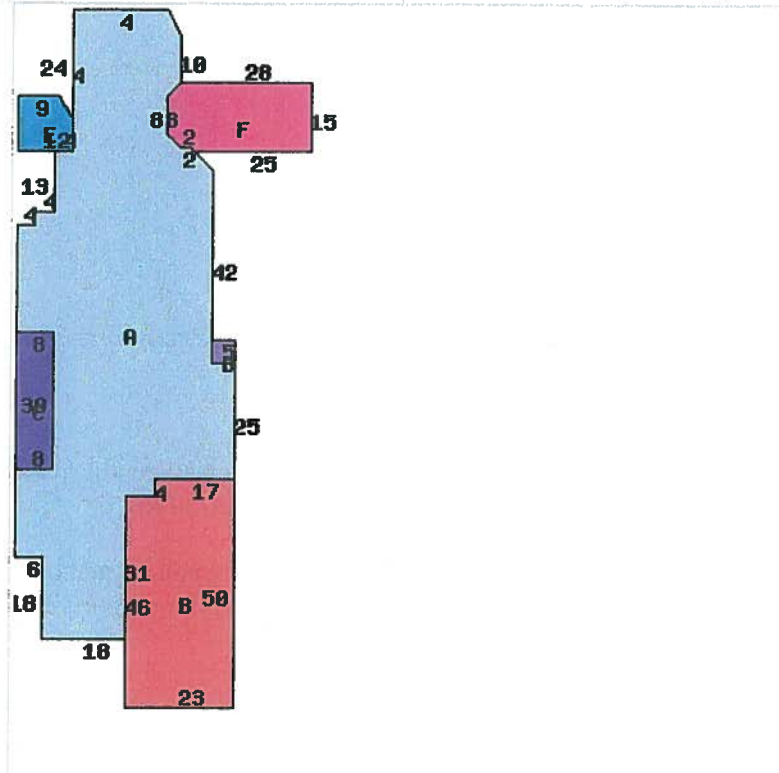


**Parcel Number:**  
250180320000

**Building Number:**  
1

**Owner:** CHAN, MICHAEL H TRUST

**Physical Address:** 3838 PUU KAKEA PL



Color	Area Type Description	Square Feet
A	MAIN AREA	4071
B	OPEN CARPORT BIT/CONC FLOOR	1126
C	PORCH CEILED SHED ROOF	240
D	PORCH CEILED SHED ROOF	25
E	PORCH CEILED SHED ROOF	137
F	PORCH CEILED SHED ROOF	451

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EXHIBIT 19