

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

**Honolulu, Hawaii  
December 14, 2012**

ENF: HA-12-37

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

**REGARDING:** Unauthorized Conversion of Storage Shed into a Single Family Residence Located in the Conservation District Limited Subzone

**PERMITTEE/  
LANDOWNER:** John W. Grace

**LOCATION:** Laupahoehoe Point, North Hilo, Island of Hawaii

**TMK:** (3) 3-6-002:012

**AREA OF PARCEL:** 5 acres

**AREA OF USE:** 900 ft<sup>2</sup>

**SUBZONE:** **LIMITED**

**DESCRIPTION OF AREA:**

The subject parcel is located in the District of North Hilo on the Island of Hawaii (**Exhibit 1**) in a ravine created by the Laupahoehoe Stream, directly mauka of Laupahoehoe Point (**Exhibit 2**). The parcel is located entirely within the Conservation District Limited Subzone (**Exhibit 3**) and contains moderately dense vegetation including a large number of non-native species such as: Guava, African Tulip, Papaya and an assortment of local shrubs and grasses. The majority of the parcel is moderately to fairly sloped, with steeper slopes at the mauka end of the property. The property is accessible from Mamalahoa Highway/Laupahoehoe Point Road which borders the mauka and north boundaries, the Laupahoehoe Stream which marks the southern boundary with privately owned parcels makai of the subject parcel. The property owner (**Exhibit 4**), John W. Grace, was approved by the Board of Land and Natural Resources on May 8, 1992 to construct a 900ft<sup>2</sup> Storage Shed for agricultural use under Conservation District Use Permit (CDUP) HA-2541.

**ALLEGED UNAUTHORIZED LAND USES:**

*July, 10 2012* A phone call to the Office of Conservation and Coastal Lands (OCCL) by an anonymous "buyer" informed staff that a Single Family Residence (SFR) structure and property was currently for sale, located on TMK: (3) 3-6-002:012 in Laupahoehoe, HI. The caller informed staff that the property contained a Single Family Residence (SFR) structure with a full size bathroom, kitchen, shower, bedroom, outdoor shower, photovoltaic panels, windows, doors and an improved driveway. Further investigation by staff discovered multiple "listings" for the subject parcel on the internet, complete with photographs of the interior improvements (**Exhibit 5; 11 pages**). A review of OCCL files indicated that the permitted structure was a *storage shed*

under CDUP HA-2541, and that no other authorizations had been provided by this office for renovations, expansion or conversion to a single family residence.

**DISCUSSION:**

August 9, 1986

The Board of Land and Natural Resources (BLNR) denied Conservation District Use Application (CDUA HA-1859) for the Construction of a Single Family Residence (SFR) on the subject parcel (Exhibit 6; 6 pages) noting that the proposed land use was not identified for the Limited Subzone.

January-February 1991

Mr. John W. Grace submitted a second Conservation District Use Application (CDUA HA-2465) for a Single Family Residence (SFR) on the subject parcel. The application was withdrawn by the applicant (Exhibit 7)

May 8, 1992

Mr. John W. Grace applied and was approved by the BLNR under CDUA HA-2541 for an agricultural land use (tree farm), which included the construction of a basic wood storage shed (Exhibit 8), access road and silviculture activities; the storage shed was designed and approved with no interior improvements. It was stated in the CDUA that the "storage shed" would be for the storage of equipment related to agricultural uses only (Exhibit 8).

May 11, 1996

Mr. John W. Grace submitted a third CDUA (HA-2541A) requesting approval for the existing "storage shed" to be converted into a Single Family Residence (SFR) structure. The applicant requested that the BLNR permit (Exhibit 9):

- Additional wall openings for windows;
- Modifications to the interior walls to construct a bathroom, kitchen, etc;
- The installation of a cesspool septic system on the property;
- The installation of photovoltaic panels for electric service; and
- The construction of rock mounds, rock walls and storm water diversion structures.

September 3, 1996

Mr. Grace was again informed by the Department that the current and revised rules did not allow for the construction of a Single Family Residence as it was determined that the property was not within a flood zone designated by FEMA and could not be considered for residential use (Exhibit 10).

Staff notes that after a discussion with the Hawaii State Department of Health Wastewater Branch, no evidence of any Individual Wastewater System (IWS) permits or applications for this parcel were found. Similarly staff is unsure if wastewater (i.e., from bathroom toilet) and grey-water (i.e., from the kitchen sink and showers) was disposed or collected on the subject parcel. It should also be noted that during the landowner's attempts to permit a single family residence structure there was no proposal to either (1) amend the Conservation District subzone designation or (2) amend the State Land Use (SLU) boundary to accommodate the landowners proposed single family residential land use.

**ANALYSIS:**

The penalty range for the unauthorized land use 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. In this case there is no identified land use for the conversion of a storage shed to a Single Family Residence (SFR) on this parcel. Therefore, based on the **Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources**, (2.1) Penalty Calculation; *Where Staff was unable to associate the unauthorized use with a typical land use identified in Hawaii Administrative Rules (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*;

Pursuant to Hawaii Administrative Rules (HAR) §13-5-22, P-8, **STRUCTURES AND LAND USES, EXISTING, (D-1)** *Major alteration of existing structures, facilities, uses and equipment, or topographical features which are different from the original use or different from what was allowed under the original permit. When county permit(s) are required for the associated plan(s), the department’s approval shall also be required.*

Under the Penalty Guideline Framework (**Exhibit 11**) this action is considered “Major” since the identified land use would require a Board Permit under the permit prefix “D”. This violation follows a penalty range of \$10,000 to \$15,000.

Staff has determined that there is no adequate identified land use pursuant to Hawaii Administrative Rules (HAR) §13-5, for the conversion of a storage shed to a single family residence.

The unauthorized conversion of a storage shed to a single family residence was a land use that occurred in the Conservation District without approval and therefore allegedly violated the above referenced chapters and rules. This report and staff recommended conditions seek to resolve the subject Conservation District violation.

**FINDINGS:**

1. That the landowner did in fact, authorize, cause or allow the conversion of a storage shed into a Single Family Residence (SFR) without authorization; and
2. That the unauthorized land use occurred within the State Land Use Conservation District, Limited Subzone.

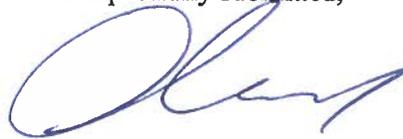
**AS SUCH, STAFF RECOMMENDS AS FOLLOWS:**

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

1. The landowner is fined in one instance for violating the provisions of §183C-7, HRS, and §13-5-6, HAR, for the unauthorized conversion of a storage shed to a single family residence by failing to obtain the appropriate approvals within the Conservation District for \$15,000;

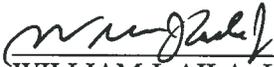
2. The landowner is fined an additional \$500.00 for administrative costs associated with the subject violations;
3. The landowner shall pay all designated fines and administrative costs (total \$15,500) within one-hundred and twenty (120) days of the date of the Board's action;
4. The landowner shall remove all living facilities and return the shed to its original approved configuration and shall allow staff to access the site to verify that the structure is no longer being used as a Single Family Residence (SFR). This shall be done within one-hundred and twenty (120) days of the date of the Board's action; and
5. That in the event of failure of the landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs

Respectfully submitted,



Alex J. Roy, M.Sc., Planner  
Office of Conservation and Coastal Lands

Approved for submittal:

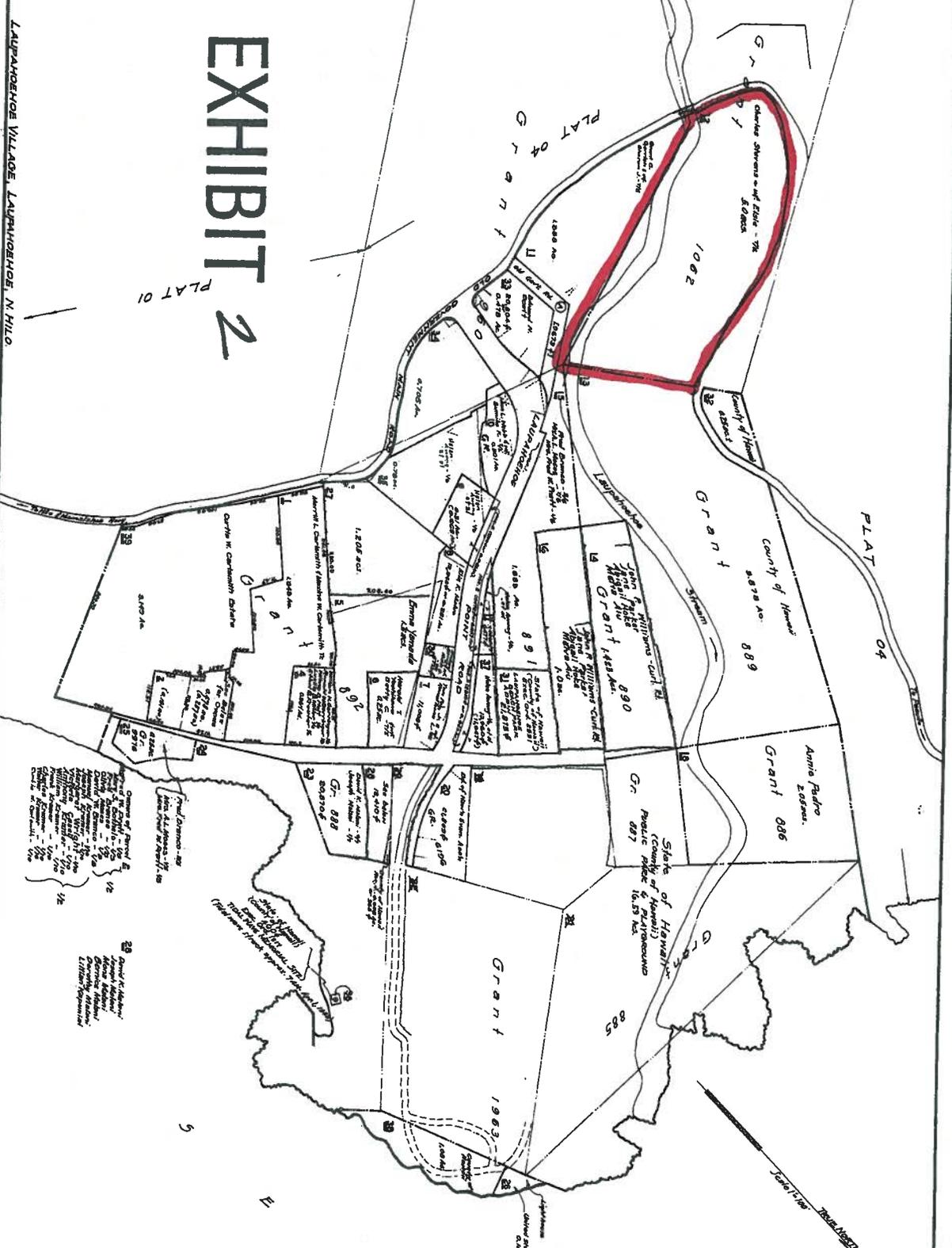


WILLIAM J. AILA, Jr., Chairperson  
Board of Land and Natural Resources



Dep. No. 2319.  
 Source: T.M. Bureau & Percy Dept. City Map 1900  
 Revised by: P. Kelso - October 1949

John A. King  
 City Engineer  
 City of Honolulu  
 Dec. 31, 1949



# EXHIBIT 2

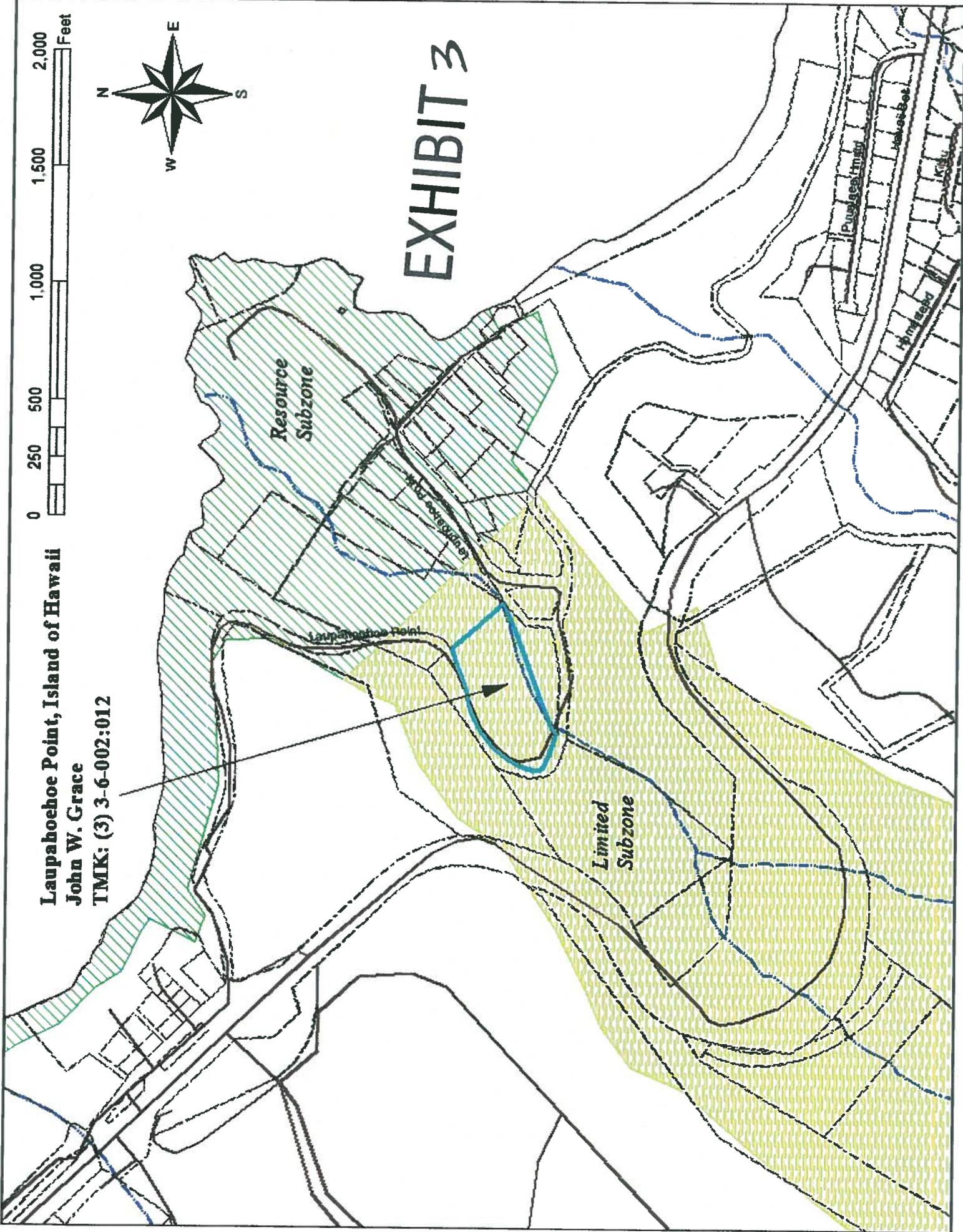
PLAT 01

LAUPAHOEHOE VILLAGE, LAUPAHOEHOE, N. HILO

|                        |      |      |         |
|------------------------|------|------|---------|
| BYATON MAPS BUREAU     |      |      |         |
| TERRITORY OF HAWAII    |      |      |         |
| TAX MAP                |      |      |         |
| THIRD DIVISION         |      |      |         |
| ZONE                   | SEC. | PLAT |         |
| 3                      | 6    | 02   |         |
| CONTAINING             |      |      | PARCELS |
| SCALE: 1 in. = 100 ft. |      |      |         |

# EXHIBIT 3

Laupahoehoe Point, Island of Hawaii  
John W. Grace  
TMK: (3) 3-6-002:012



# EXHIBIT 4

PARID: 360020120000  
 GRACE, JOHN W

**Parcel Data**  
 Site Address  
 Unit No.  
 Property Class  
 Zoning

36-2506 LAUPAHOEHOE POINT ROAD

CONSERVATION  
 Call the Planning Department at (808) 961-8288.

**Owner**

GRACE, JOHN W

975 LICK BR

OLIVE HILL

KY

41164

**Sales**

\$25,000

06/27/1989

06/21/1989

8900093698

**Permits**

07/09/1993

931292

\$14,000

**Other Buildings/Yard Improvements**

TMK 360020120000  
 Type Code Description WD STO EC  
 Quantity 1  
 Year Built 1995  
 Area 900  
 Gross Building Value  
 Description

**Land**

CONSERVATION

108900

2.5

CONSERVATION

108900

2.5

**Tax Bill Information**

| Year          | Description       | Due Date  | Amount        | Interest     | Penalty     | Other       | Total         |
|---------------|-------------------|-----------|---------------|--------------|-------------|-------------|---------------|
| 2012-1        | Real Property Tax | 20-AUG-12 | 163.02        | 16.30        | 1.79        | 0.00        | 181.11        |
| 2012-2        | Real Property Tax | 20-FEB-13 | 163.02        | 0.00         | 0.00        | 0.00        | 163.02        |
| <b>Total:</b> |                   |           | <b>326.04</b> | <b>16.30</b> | <b>1.79</b> | <b>0.00</b> | <b>344.13</b> |

**Tax Details 2011**

| Year          | Description   | Amount        | Interest       | Penalty     | Other       | Total       |
|---------------|---------------|---------------|----------------|-------------|-------------|-------------|
| 2011-1        | Beginning Tax | 163.02        | 0.00           | 0.00        | 0.00        | 0.00        |
| 2011-1        | Payment       | 0.00          | -163.02        | 0.00        | 0.00        | 0.00        |
| 2011-2        | Beginning Tax | 163.02        | 0.00           | 0.00        | 0.00        | 0.00        |
| 2011-2        | Payment       | 0.00          | -163.02        | 0.00        | 0.00        | 0.00        |
| <b>Total:</b> |               | <b>326.04</b> | <b>-326.04</b> | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> |

**Payment Summary**

| Year          | Payment No. | Date      | Amount         | Interest    | Penalty     | Other       |
|---------------|-------------|-----------|----------------|-------------|-------------|-------------|
| 2011          | 2770019     | 20-AUG-11 | -163.02        | 0.00        | 0.00        | 0.00        |
| 2011          | 2776325     | 31-AUG-11 | -163.02        | 0.00        | 0.00        | 0.00        |
| <b>Total:</b> |             |           | <b>-326.04</b> | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> |

**Tax Details 2010**

| Year          | Description   | Amount        | Interest       | Penalty     | Other       | Total       |
|---------------|---------------|---------------|----------------|-------------|-------------|-------------|
| 2010-1        | Beginning Tax | 163.02        | 0.00           | 0.00        | 0.00        | 0.00        |
| 2010-1        | Payment       | 0.00          | -163.02        | 0.00        | 0.00        | 0.00        |
| 2010-2        | Beginning Tax | 163.02        | 0.00           | 0.00        | 0.00        | 0.00        |
| 2010-2        | Payment       | 0.00          | -163.02        | 0.00        | 0.00        | 0.00        |
| <b>Total:</b> |               | <b>326.04</b> | <b>-326.04</b> | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> |

**Payment Summary**

| Year          | Payment No. | Date      | Amount         | Interest    | Penalty     | Other       |
|---------------|-------------|-----------|----------------|-------------|-------------|-------------|
| 2010          | 2539002     | 23-AUG-10 | -163.02        | 0.00        | 0.00        | 0.00        |
| 2010          | 2622764     | 15-FEB-11 | -163.02        | 0.00        | 0.00        | 0.00        |
| <b>Total:</b> |             |           | <b>-326.04</b> | <b>0.00</b> | <b>0.00</b> | <b>0.00</b> |

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Rarely available property at Laupahoehoe Point, one of the coast's best kept secrets. There is an off-grid cabin on the property that is finished by the County of Hawaii as a 900 sq. ft. "storage building." The secluded cabin is basic with 1 bedroom, 1 bathroom and a nice outdoor shower. Solar PV system runs the lights. Hot water, stove, and refrigerator are all on propane. Water is County. Subject property is listed by the Hawaii County Real

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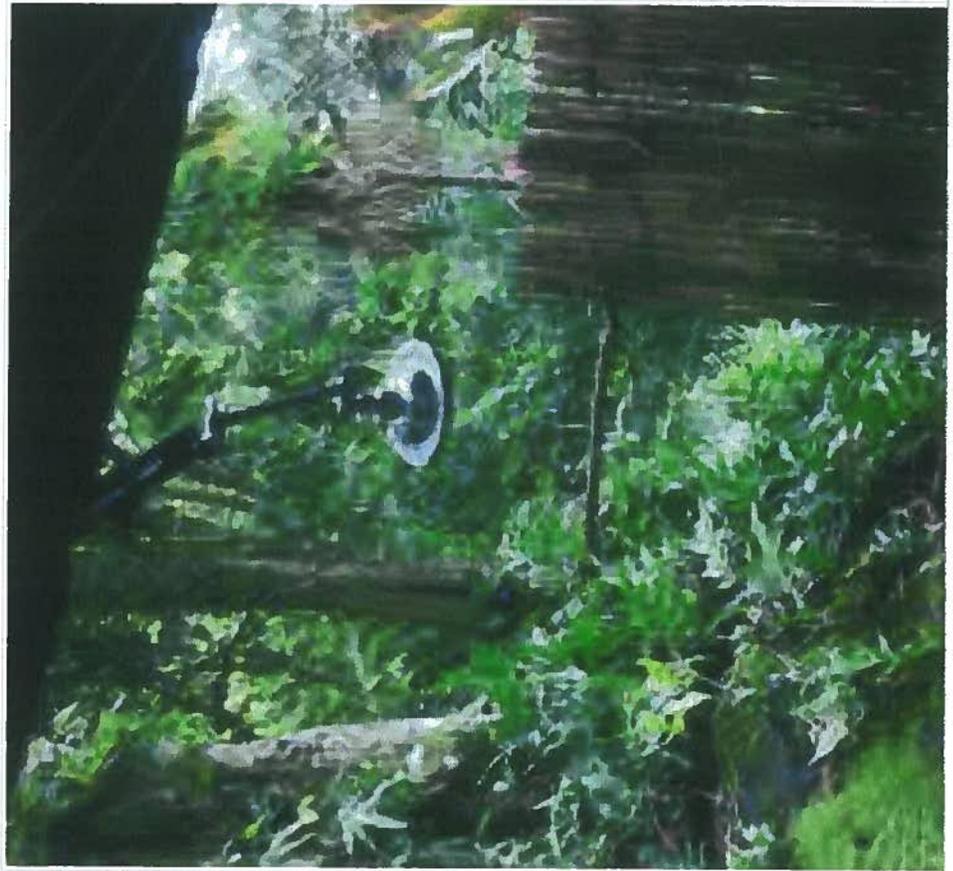
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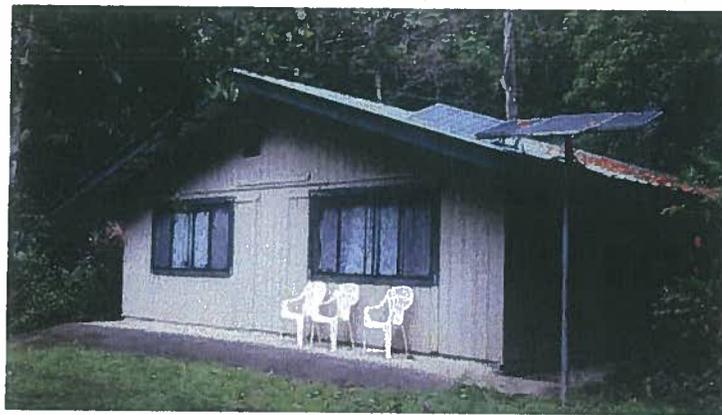
Rarely available property at Laupahoehoe Point, one of the coast's best kept secrets. There is an off-grid cabin on the property that is finished by the County of Hawaii as a 900 sq. ft. "storage building." The secluded cabin is basic with 1 bedroom, 1 bathroom and a nice outdoor shower. Solar PV system runs the lights. Hot water, stove, and refrigerator are all on propane. Water is County. Subject property is listed by the Hawaii County Real

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**Showcase Property Ronald Rigg, R, CRS,  
RA**

**Phone:** (808) 936-1962  
**Fax:** (808) 885-6353  
**Toll Free:** (888) 526-8352  
**Office:** (808) 887-0887  
**Clark Realty Corp -  
 Kamuela**  
**Phone:** (808) 887-0887



"Rarely available property at Laupahoehoe Point, one of the coast's best kept secrets. There is an off-grid cabin on the property that is finalized by the County of Hawaii as a 900 sq. ft. storage building."

The secluded cabin is basic with 1 bedroom, 1 bathroom and a nice outdoor shower. Solar PV system runs the lights. Hot water, stove, and refrigerator are all on propane. Water is County.

Subject property is listed by the Hawaii County Real Property Tax Office as 5.00 acres. There is reason to believe that a modern metes & bounds survey would show less property, so it is entered into MLS as 3.5 acres. Buyer to be aware and assume any cost for the update. The TMK map does show the boundary on the north as the road coming in and south boundary being along the river.

This property is in a Conservation sub-zone, which may limit use.

Laupahoehoe Beach Park is just down the road. The park is maintained by the County of Hawaii. Swimming, fishing, camping, volleyball, boating and a boat ramp are the big attractions of this well maintained area."

|                            |                             |                     |               |                               |
|----------------------------|-----------------------------|---------------------|---------------|-------------------------------|
| <b>Price:</b><br>\$200,000 | <b>Location:</b><br>36-2506 | <b>Beds:</b><br>N/A | <b>Baths:</b> | <b>Property Type:</b><br>Land |
|----------------------------|-----------------------------|---------------------|---------------|-------------------------------|

PAGE 6 of 11

36-2506 LAUPAHOEHOE POINT RD, LAUPAHOEHOE, HI 96764

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Homes for Sale > North America  
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Laupahoehoe, HI 96764  
Address: 36-2506 LAUPAHOE  
POINT RD  
Neighborhood: Laupahoehoe  
Status: Available

Search for more listings like this one

EMAIL

SAVE

Credit Score and Repair

Current Search Criteria

Search for Real Estate for Sale...

Provide City, Prov. Or Postal Code

Laupahoehoe, HI

Price Range

\$160,000

\$240,000

Beds & Baths

Any Beds

Any Baths

Virtual Tours

Video Tours / Virtual Tours



15 16 17 18 19 20 21 22 23 24

ID# 19085168

Property Description

"Rarely available property at ...  
Laupahoehoe Point, one of the coast's best kept secrets. There is an off-grid cabin on the property that is finaled by the County of Hawaii as a 900 sq. ft. "storage building."



Presented by

Ronald Rigg, R, CRS, RA  
Clark Realty Corp -  
Kamuela  
67-185 Mamalaha Hwy,  
Suite E128  
Kamuela, HI 96743



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Neighborhood: Laupahoehoe

Status: Available

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Laupahoehoe, HI

Price Range

\$180,000

\$240,000

Beds & Baths

Any Beds

Any Baths

Virtual Tours

Video Tours / Virtual Tours

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06 07 08 09 10 11 12 13 14 15

[close]



ID# 19085168

Property Description

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Price Range

\$160,000

\$240,000

Beds & Baths

Any Beds

Any Baths

Virtual Tours

Video Tours / Virtual Tours

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07 08 09 10 11 12 13 14 15 16

[close]



ID# 19085168

Property Description

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### Current Search Criteria

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Provide City, Prov. Or Postal Code

Laupahoehoe, HI

Price Range

\$160,000

\$240,000

Beds & Baths

Any Beds

Any Baths

Virtual Tours

Video Tours / Virtual Tours

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10 11 12 13 14 15 16 17 18 19

[close]



ID# 19085168

### Property Description

"Rarely available property at ...  
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## Features & Amenities of 36-2506 Laupahoehoe Point Rd

Rarely available property at Laupahoehoe Point, one of the coast's best kept secrets. There is an off-grid cabin on the property that is finished by the County of Hawaii as a 900 sq. ft. "storage building." The secluded cabin is basic with 1 bedroom, 1 bathroom and a nice outdoor shower. Solar PV system runs the lights. Hot water, stove, and refrigerator are all on propane. Water is County. Subject property is listed by the Hawaii County Real Property Tax Office as 5.00 acres. There is reason to believe that a modern metes & bounds survey would show less property, so it is entered into MLS as 3.5 acres. Buyer to be aware and assume any cost for the update. The TMK map does show the boundary on the north as the road coming in and south boundary being along the river. This property is in a Conservation sub-zone, which may limit use. Laupahoehoe Beach Park is just down the road. The park is maintained by the County of Hawaii. Swimming, fishing, camping, volleyball, boating and a boat ramp are the big attractions of this well maintained area.

# EXHIBIT

PAGE 1 OF 6

FILE NO: HA-11/7/85-1858  
REF. NO.: CPO-0513-96  
DOCUMENT NUMBER: 10448  
TMK: 3-6-02:12

MAY 21 1986

Mr. John W. Grace  
7551 Sunmist Drive  
Oakland, California 94605

Dear Mr. Grace:

SUBJECT: Conservation District Use Application for a single family residence at Laupahoehoe, Hawaii

I am sorry to inform you that the Board of Land and Natural Resources, on April 11, 1986 denied your application for the following reasons:

1. That the proposed use is not complementary to the objective of the Limited Subzone; and
2. The applicant had not been able to provide evidence that the provision relating to non-conforming use is applicable.

Should you have any questions, please contact our Office of Conservation and Environmental Affairs at 548-7837.

Very truly yours,

SUSUMU ONO, Chairman  
~~XXXXXXXXXXXXXXXXXXXX~~

SUSUMU ONO, Chairperson  
Board of Land and Natural Resources

cc: Hawaii County Board Member  
Hawaii County Land Agent  
Hawaii County Planning Department  
DOH/OHA

bcc: DONALD  
DAR  
DOPAN  
State Parks/Historic Sites  
DOCARE

ALS:ser

As  
5/16/86



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P. O. BOX 621  
HONOLULU, HAWAII 96809

SUSUMU ONO, CHAIRMAN  
BOARD OF LAND & NATURAL RESOURCES  
EDGAR A. HAMASU  
DEPUTY TO THE CHAIRMAN  
DIVISIONS:  
AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

PAGE 2 OF 6

FILE NO.: HA-11/7/85-1859  
180-Day Exp. Date: 5/5/86  
DOC. NO.: 0883B

April 11, 1986

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

Gentlemen:

CONSERVATION DISTRICT USE APPLICATION  
for a Single-Family Residence  
at Laupahoehoe, Hawaii  
TMK 3-6-02:12

APPLICANT: Mr. John W. Grace  
7551 Sunkist Drive  
Oakland, California 94605

LANDOWNERSHIP: Private

LOCATION: Laupahoehoe, Hawaii

AREA OF PARCEL/USE: 5.0 acres/1,500 square feet

SUBZONE: Limited

DESCRIPTION OF AREA/CURRENT USE:

The property is currently undeveloped. Approximately 25% of the terrain of the property is moderately to steeply sloping with the greatest degree of inclination immediately adjacent to the roadway along the northeast perimeter. The remainder of the property is flat to moderately sloping toward the stream, which essentially defines its southern boundary.

PROPOSED USE:

Permission is sought to construct a single-family residence. The applicant selected a "pole house" design as an attempt to minimize the disturbance of the natural environment.

SUMMARY OF COMMENTS:

The application was referred to the following agencies for review and comment:

The Department of Land and Natural Resources' Divisions of Forestry and Wildlife, Aquatic Resources, Water and Land Development, Land Management, State Parks/Historic Sites, Conservation and Resources Enforcement and Natural Area Reserves; the State of Hawaii Department of Health, Environmental Council/Office of Environmental Quality Control, Department of Planning and Economic Development and Office of Hawaiian Affairs; and the County of Hawaii's Planning Department and Board of Water Supply.

The Division of Aquatic Resources offers the following:

We have no objection to the proposal provided measures are taken (especially during construction) to prevent excessive amounts of eroded soils, construction materials, waste petroleum products, and landscaping substances (e.g. herbicides, pesticides and fertilizers) from blowing, washing, flowing, or leaching into Laupahoehoe Stream and nearshore waters.

The Division of Water and Land Development submits the following:

The proposed single-family residence will be built near the Laupahoehoe Stream on sloping terrain. Hence, the applicant should implement appropriate erosion-sedimentation control measures during and after construction of the house.

The Division of Forestry and Wildlife suggests that the applicant should be apprised of the possibility of local flooding and rock slides.

Historic Sites Section comments as follows:

Our records indicate that no archaeological surveys have taken place on this five-acre parcel. Therefore, we do not know if significant historic sites are present. The applicant states that the general Laupahoehoe Point area had once been developed for residential and commercial uses in the late 1800s/early 1900s, and Exhibit 4, an early 1900s photo, appears to show a few buildings in the general area of the parcel. Exhibit 5, a map of the vegetation on the parcel, shows two areas of rock walls and some remnant steps. Thus, some remains of historic era Laupahoehoe might be present in this parcel. Buried sites or poorly visible sites might also be present, particularly since this property was not damaged by any recorded tsunami.

The impacts of the applicant's proposed action to the existing terrain are fairly minor. The house will be a "pole house" and only c. 1,000 ft<sup>2</sup> in area, a narrow access driveway will be graded, and landscaping is to minimally disturb the natural setting.

Because this is a single-family residence with minor impacts to the terrain, usual demands for archaeological survey would

seem unreasonable. Construction is not planned to begin until July 1986. We recommend that the CDUA application be accepted, with two conditions to be completed prior to the start of construction: 1) a member of our staff check the property more closely for the presence of archaeological sites and 2) if sites are found, appropriate steps be taken by the applicant in consultation with our office.

The DPED advises that appropriate flood precaution designs should be incorporated because of the potential for flooding.

The County of Hawaii Planning Department points out that county structure siting requirements should be observed.

Land Management Division, State Parks Division, the Department of Health, Department of Transportation and the Department of Water Supply of the County of Hawaii have no objections to the proposal.

ANALYSIS:

Following review and acceptance of the application for processing, the applicant, by letter dated December 27, 1985, was notified that:

1. The proposed use is a conditional use in the Limited subzone of the Conservation District according to Title 13, Chapter 2, Administrative Rules, as amended;
2. No public hearing pursuant to Chapter 183-41, Hawaii Revised Statutes, as amended, will be required in that the proposed use is not of a commercial nature; and
3. An exempt action pursuant to Section 1:33 of the EIS Regulations has been determined for the proposed use and written clearance from the County of Hawaii regarding SMA requirements has been obtained.

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities.

Section 13-2-21(b)(1) relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

Because of the Board's long-standing practice of disallowing single-family homes in the Limited Subzone, the applicant was informed by letter dated December 27, 1985 that he may apply as a non-conforming use rather than as a conditional use.

Pursuant to Section 13-2-1, of Chapter 13, Chapter 2, Administrative Rules, as amended, an application may be considered as a nonconforming use if the following conditions are met:

Any parcel of land not more than ten acres in area which, as of January 31, 1957, was subject to real property taxes and upon which such taxes were being paid, and which was held and intended for residential or farming use, whether actually put to such use or not provided that the use, whether or not established, shall be limited to either:

1. One residential dwelling; or
2. A farm with no more than one residential dwelling.

There are four conditions to be satisfied when the eligibility of a nonconforming use application under Title 13, Chapter 2 of Departmental Administrative Rules, as amended, is under consideration:

1. The land parcel has to be no more than ten (10) acres;
2. The land parcel was created and subject to real property taxes no later than January 31, 1957, and since then such taxes have been paid accordingly;
3. The land parcel has been held and intended for residential or farming use; and
4. Either one residential dwelling or a farm together with no more than one residential dwelling is proposed to be put on the subject land parcel.

In applying the above four criteria for eligibility of nonconforming use, staff finds the application to have fully satisfied two of the four necessary conditions.

1. The land parcel of five acres;
2. The proposed use is for one single-family dwelling.

The applicant was informed of submission of necessary information to qualify as a nonconforming use. To date, staff has not received any information from the applicant concerning his application. Staff was verbally informed that the applicant was unable to verify that the land was held and intended for residential or farming use; therefore, he understood that his application would be rejected.

As such, staff recommends as follows:

**RECOMMENDATION:**

That the application to construct a single-family residence under nonconforming use at Laupahoehoe, Hawaii on TMK 3-6-2:12 be denied based on the following:

1. The proposal is inconsistent with the objective of the subzone; and

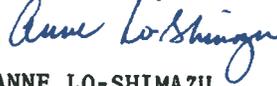
PAGE 6 OF 6

Board of Land and  
Natural Resources

HA-1859  
4/11/86

2. The applicant had not been able to provide evidence that the provision relating to nonconforming use is applicable.

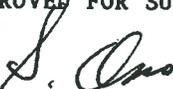
Respectfully submitted,



ANNE LO-SHIMAZU  
Staff Planner

Attachments

APPROVED FOR SUBMITTAL:



SUSUMU ONO, Chairperson  
Board of Land and Natural Resources

# EXHIBIT 7

RFP:OCEA:SKK

AUG 20 1991

FILE NO.: HA-2465  
DOC. NO.: 1403E

Mr. John Grace  
2269 Mastland Drive  
Oakland, CA. 94611

Dear Mr. Grace,

On August 9, 1991, the Board of Land and Natural Resources allowed your attorney to withdraw your application for a single family residence at Laupahoehoe, Hawaii. The validity of "non-conforming use" in areas outside of forest reserves, as is your parcel, has been challenged by the Legislative Auditor. The Department of Attorney General appears to agree with the Auditor's position but the matter is still under discussion. We will advise you on the resolution of the matter.

If you have any further questions at this time, please contact Don Horiuchi of our Office of Conservation and Environmental Affairs at 548-7837.

Very truly yours,

  
WILLIAM W. PARK

cc: Steve Mendezes

  
dh  
SKK



May 11, 1996

**Applicant:**

John W. Grace  
7551 Sunkist Drive  
Oakland Ca, 94605

# EXHIBIT 9

PG 1 OF 2

**Purpose:**

The purpose of this application is to request a Board Permit for the conversion of an agricultural storage building to residential use.

**Existing Structure:**

The existing structure is a single story, 30' x 30' building, with a peaked roof, rising to 15' above ground level. It is of wood frame construction, on a concrete pad.

The structure is well to the interior of the property, is not visible from the adjoining roadway. There is a narrow driveway leading to the building. There is no electrical service or sanitary facilities serving the property, There is a single water tap at the structure.

Conversion will necessitate some additional wall-openings for windows and doors, as well as interior modifications for a bathroom, kitchen, etc.. The floor area of 900 square feet would not be changed.

The residence on the adjoining property uses a county-approved septic system. I propose to use a similar system, with capacity to serve 1 to 2 persons.. Electrical power would be obtained from photovoltaic panels.

The gulch bank rises to the north of the structure. A rock wall will be constructed along the north side of the building to afford protection from debris which may occasionally loosen from the bank. There has been no evidence of any erosion or sliding since the building was constructed, and little evidence of erosion in recent historic times. The gulch bank is quite overgrown and appears to have become quite stable over the passage of many years. An adequate wall can be constructed using rock found on the property.

Laupahoehoe stream is known to experience occasional flooding. The flooding is principally in the area of the single lane bridge which crosses Laupahoehoe stream at the western end of the property.. The area beneath the bridge is restricted and excess flow is forced over the roadway before returning to the main stream channel. The building is several hundred feet from the flooding area. In 1962 there was flooding which destroyed a residence which was approximately 50 feet from the bridge. That was the greatest flood in local memory, and the flow appears to have re-entered the stream bed well above the location of my building. In any case, there is a substantial mound of rock and soil, approximately four feet high, adjoining the west side of the building. I propose to surface this mound with rock to form a substantial flood barrier. I, like other property owners in the gulch, assume full responsibility for any acts of nature which may affect my property.

**Threatened or Endangered Species:**

There are no threatened or endangered species of plants or animals, on the property.

PAGE 2 OF 2

**Land Use Classification Compliance:**

The property is in the Conservation District Limited subzone. The conversion of this structure to residential use is permitted under: Department of Land and Natural Resources Administrative Rules, Section 13-5-23, sub-section L-6, which states, "A single family residence in a floodplain or a coastal high hazard area that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter."

An Special Management Area permit was obtained for the original construction of the building. A re-confirmation of that permit will be obtained upon request.

SEP 3 1996

File No. HA-2541A

John W. Grace  
7551 Sunkist Drive  
Oakland, California 94605

**EXHIBIT 10**

Dear Mr. Grace,

Subject: Application to Amend Conservation District Use Permit HA-2541A

We are returning your application forms and application fee you submitted to amend your existing Conservation District Use Permit. Your understanding that the revision of our administrative rules would allow your proposed amendment is incorrect. Our rules still do not allow residential use in steeply sloping Limited subzone.

Your information about our rule revision is incomplete. Although the Board may now allow residential use in flat, coastal, flood-zone areas designated as Limited subzone. Residential use in other areas such as yours is still prohibited. For reference about the flood-zone areas, please consult the Flood Insurance Rating Maps published by the Federal Emergency Management Agency. You will find that your property is not within a FEMA flood zone and, therefore, cannot be considered for residential use.

I'm sorry that I had to relay such discouraging news to you. If you have any question about this matter, please contact Don Horiuchi at 587-0381.

Very truly yours,

/s/ GILBERT S. COLOMA-AGARAN  
Michael D. Wilson.

Enc.

*dh*

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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"<sup>1</sup> 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 (Sec 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 Adopted 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 offsite indirect impacts, 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 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>3</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>3</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*    |

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.

\* Provided the harm to the resource and offsite 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.

**2.1.8 Penalty Adjudication**

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

| Compatible Harm to Resource | Identified land use permitted | Penalty Adjudicator              |
|-----------------------------|-------------------------------|----------------------------------|
|                             | and Penalty Range             |                                  |
| 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.

**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,

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>e</sup> |

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. 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.
- Conservation International. 2008. Economic Values of Coral Reefs, Mangroves, and Seagrasses: A Global Compilation. Center for Applied Biodiversity Science, Conservation International, Arlington VA, USA.
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- Florida Department of Environmental Protection. Damage Costs in Seagrass Habitats. [http://www.dep.state.fl.us/coastal/habitats/seagrass/awareness/damage\\_costs.htm](http://www.dep.state.fl.us/coastal/habitats/seagrass/awareness/damage_costs.htm)
- Florida Department of Environmental Protection. 2000 Administrative Fines and Damage Liability, Ch. 62B-54. <http://www.dep.state.fl.us/legal/Rules/beach/62b-54.doc>
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- Florida Department of Environmental Protection. 2000. Rules and procedures for application for coastal construction permits. Ch. 62B-41. <http://www.dep.state.fl.us/beaches/publications/pdf/62b-41.pdf>

## 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 Kihai 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>).

##### 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 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: \_\_\_\_\_