March 8, 2013

Board of Land and Natural Resources
State of Hawai‘i
Honolulu, Hawai‘i

REGARDING: Conservation District Enforcement File OA 13-11
Placement of Rocks in the Shoreline Area

BY: Geraldine Sim Trust
48-487 Kamehameha Highway
Kaneohe, Hawaii 96744

LOCATION: Kaneohe, Island of Oahu

Tax Map Key: (1) 4-8-003:048

SUBZONE: Resource

Description of the Area:

The subject area is located on the Windward side of the Island of Oahu, TMK: (1) 4-8-003:048 (Exhibits 1, 2 & 3). The private property is located in the State Land Use Urban District. Lands seaward of the shoreline are located in the Conservation District, Resource subzone.

The shoreline is characterized as mudflats with limited sandy beaches. The shoreline was last certified at this property in 1998 (Exhibit 4). There is no evidence of any shoreline structure based on a review of the 1998 shoreline certification file. The property owner has no permit or authorization from either the City and County of Honolulu, or the State of Hawaii for the placement of rocks along the shoreline.

Chronology:

This matter was brought to the attention of the Office of Conservation and Coastal Lands (OCCL) by the Division of Conservation and Resources Enforcement (DOARE). DOCARE was dispatched to the site on June 4, 2012, and when on site observed rocks being placed on the shoreline by five (5) males. The officer also observed a “Bobcat” type bulldozer being operated near the shoreline. On July 7, 2012 the officer conducted a follow-up site inspection. The officer reported that multiple loads of rock had been strategically placed on the lot’s shore. Photographs are attached to this report as Exhibit 5.
On August 31, 2012, the OCCL sent a Notice of Alleged Violation & Order to the Geraldine E. Sim Trust alleging that multiple truckloads of rocks had been placed along the shoreline (Exhibit 6).

In late September 2012, the OCCL received a transmittal/response from Mr. Alfred Sim (Exhibit 7). Mr. Sim believes that a permit was not needed to install the “riprap” structure because he believes that it is exempt from County building permit requirements.

On November 5, 2012, the OCCL sent a letter to Mr. Sim indicating that the matter would be scheduled before the Board of Land and Natural Resources (BLNR) as an alleged violation (Exhibit 8).

Discussion:

The Department and Board of Land and Natural Resources has jurisdiction over land lying makai of the shoreline as evidenced by the upper reaches of the wash of the waves other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limits of debris left by the wash of the waves, pursuant to §205A-1, Hawai‘i Revised Statutes (HRS).

Staff notes that the highest wash of the waves currently washes against and through the riprap structure (Structure) (See Photographs Exhibit 5). Thus, the Structure is within the Conservation District and within State of Hawaii submerged land. The OCCL believes there is sufficient cause to bring this matter to the Board.

Chapter 13-5, HAR and Chapter 183C, HRS, regulate land uses in the Conservation District by identifying a list of uses that may be allowed by a Conservation District Use Permit (CDUP). The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. HAR §13-5-2 defines “land use” as follows:

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.

Hawai‘i Coastal Erosion Management Plan:

On August 27, 1999, the Board adopted the Hawai‘i Coastal Erosion Management Plan (COEMAP) as an internal policy for managing shoreline issues including erosion and coastal development in Hawai‘i. COEMAP still serves as the primary shoreline policy for the DLNR and recommends a number of strategies to improve our State’s management of coastal erosion and beach resources.

However, COEMAP’s scope is of a general nature, more focused on broader government policy than erosion management practice. The COEMAP effort is guided by the doctrine of sustainability, promoting the conservation, sustainability, and restoration of Hawai‘i’s beaches for future generations. When assessing cases involving unauthorized shoreline structures that affect the shoreline that are constructed after the 1999, there is a “no tolerance” policy and the customary policy is to remove the structure before other actions are considered.
Staff believes that Mr. Sim is incorrect in his analysis of the permitting requirements for shoreline structures in the State of Hawaii. A shoreline structure of this type and location would require either a Shoreline Setback Variance (if located landward of the shoreline, within the 40-foot setback), or a major Conservation District Use Application (if located seaward of the shoreline). The OCCL consulted with the City and it was determined that OCCL would be the lead agency on the enforcement action since it appears that at least a portion of the Structure is located within the wash of the waves (Exhibit 9).

Under the Penalty Guideline Framework (Exhibit 10) this action is considered “Major” since the identified land use would normally require a Board Permit under the permit prefix “D.” This violation follows a penalty range of $10,000 to $15,000. The comparable identified use in the Hawaii Administrative Rules (HAR-13-5) would be “Shoreline Erosion Control” for which a Board Permit is normally required.

Therefore under the Penalty Guideline Framework this unauthorized land use is considered:
1. a Major harm to resource or potential harm to resource; and
2. a Major comparable harm to resource.

This submittal and notice of the Board’s meeting shall be sent to the landowner by certified mail to the landowner’s address on record.

Staff believes that the landowner should be fined one time for the unauthorized land use. Staff will recommend a fine of $10,000. Staff will also recommend administrative penalties.

As such, staff recommends as follows:

That pursuant to Chapter 183C, HRS, the Board finds the Landowner of TMK: (1) 4-8-003:048 at Kaneohe Island of Oahu, in violation of Chapter 183C-7, HRS and Chapter 13-5-6, HAR, subject to the following:

1. The Landowner is fined $10,000.00 for the Conservation District violation, pursuant to Chapter 183C-7, HRS;
2. The Landowner is fined an additional $500.00 for administrative costs associated with the subject violation, pursuant to Chapter 183C-7, HRS;
3. The Landowner shall pay all fines (total $10,500.00) within sixty (60) days of the date of the Board’s action;
4. The Landowner shall remove the riprap Structure within three (3) months of the date of the Board’s decision on this matter;
5. That in the event of failure of the landowners to comply with any order herein, the landowner shall be fined an additional $15,000.00 per day until the order is complied with; and

---

1 Mr. Sim asserts that the work that was conducted did not require a permit.
6. That in the event of failure of the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,

Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Approved for submittal:

William J. Aila, Jr., Chairperson
Board of Land and Natural Resources
48 473 KAM HWY

General Information

- TMK: 48003024:0000
- Building Value: $82,100.00
- Building Exemption: $0.00
- Land Value: $704,600.00
- Land Exempt: $0.00
- Acres: 1
- Square Feet: 0
- Property Tax Class: Residential
- City: Kaneohe
- Zip Code: 96744
- Realtor Neighborhood: WAIKANE

Nearest Park: Waiahole Beach Park (undeveloped)

Tax Bill Owner Information

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<td>KANEHOE HI 96744</td>
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<td>432 EAST YALE LOOP</td>
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</tbody>
</table>
THIS WORK PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.

ROBERT K. SING
LICENSED PROFESSIONAL LAND SURVEYOR HAWAII, U.S.A.

SHERELINE SURVEY
PORTION OF LOTS 1 AND 2 OF FILE PLAN 1742
AT WAIKANE, Koolaupoko, Oahu, Hawaii
Tax Map Key: 4-8-03: 48
February 28, 1998

F.B. 84: 68
Photographic Report

CLASSIFICATION: RO
date / time: 7-16-12

scene: 48-487 kamehameha hwy Kaneohe, HI 96744 taken by:

equipment: olympus stylus 1030 sw

signature:

weather / lighting: clear sunny afternoon
Photographic Report

CLASSIFICATION: 

DATE / TIME: 7-16-12

SCENE: 48-487 Kamakakeha TAKEN BY: 

EQUIPMENT: OLYMPUS STYLUS 

WEATHER / LIGHTING: CLEAR SUNNY AFTERNOON

EXHIBIT 5
Photographic Report

CLASSIFICATION:  

DATE / TIME: 7-10-12

SCENE: 48-487 Kamchamche Hwy

TAKEN BY:  

EQUIPMENT: Olympus Stylus 1020 SW

SIGNATURE:  

WEATHER / LIGHTING: Clear sunny afternoon
NOTICE OF ALLEGED VIOLATION & ORDER

CERTIFIED MAIL RETURN RECEIPT

Geraldine E. Sim Trust
48-487 Kamehameha Highway
Kaneohe, Hawaii 96744

SUBJECT: Alleged Unauthorized Placement of Rocks in the Shoreline Area of the Conservation District, Located at Kaneohe, Island of Oahu, TMK: (1) 4-8-003:048

Dear Property Owner:

NOTICE IS HEREBY GIVEN that 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 Chapter 183C, Hawaii Revised Statutes (HRS). We have received a report and pictures that you have placed multiple truckloads of rocks along the shoreline.

It appears that the rocks have been placed on and seaward of the shoreline, which is located in the State Conservation District, Resource Subzone under the jurisdiction of the State of Hawaii, Department of Land and Natural Resources. The Department has not authorized any such work in this area.

Please cease from performing any work within the Conservation District. We are currently investigating this matter as an enforcement case. Be aware, 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. After written or verbal notification from the department, willful violation may incur an additional fine of up to $15,000.00 per day per violation for each day in which the violation persists.

The Department intends to schedule this matter before the Board of Land and Natural Resources (BLNR) as an alleged violation. You will be notified of the time and place of the BLNR meeting in the near future. You may wish to contact the Office of Conservation and Coastal Lands (OCCL) to discuss the matter. Please note any information provided may be used in civil proceedings. Should you have any questions, contact Sam Lemmo of the OCCL at (808) 587-0377.

Sincerely,

WILLIAM J. AILA JR., Chairperson

C: ODLO/DOCARE-Oahu
City and County of Honolulu
Dept. of Planning and Permitting
Response from: Geraldine E. Sim Trust  
48-487 Kamehameha Hwy  
Kaneohe, Hawaii 96744

Response to: NOTICE OF ALLEGED VIOLATION & ORDER

Dear Mr. William J. Aila Jr., Chairperson,

We received a notice from you and or your office dated Aug. 31, 2012 which states we have “placed multiple truckloads of rocks along the shoreline” and in fact we have. We followed the guidelines published in the, City and County of Honolulu Neighborhood Board information Handbook, dated April 2010 which is readily available for download on the City of Honolulu website of which I have included a copy for your convenience. This publication describes in detail the process of obtaining and the determination of requiring a building permit. Please refer to page 22, the title and bullet points from that publication which I have inserted a few lines below for your convenience;

**Building Permits Are Not Required for:**

- Retaining walls, fences, and planter boxes which are not more than 30 inches in height; walkways, riprap walls, and outside paving within private property.

The statement “Building permits are Not Required for” is unambiguous, it lists conditions where an owner of private property in this state is NOT required by the City and County of Honolulu Department of Planning and Permitting to apply, ask permissions, or otherwise obtain a permit prior to or post building certain items “within private property”. “within private property” encompasses the meets and bounds of the property owned.

Riprap Walls are included in the list in which the aforementioned statement directly states that “Are Not Required for”.

I have also included (attached exhibit “a & b”) in this response the absolute definition, and design criteria of typical Riprap walls, below is some excerpts again for your convenience,

**Merriam Webster Dictionary**- “a foundation or sustaining wall of stones or chunks of concrete thrown together without order”. “a layer of this or similar material on an embankment slope to prevent erosion”.

**Wikipedia**- “Rip-rap—is rock or other material used to armor shorelines, streambeds, bridge abutments, pilings and other shoreline structures against scour, water or ice erosion”. “It is made from a variety of rock types, commonly granite or limestone, and occasionally concrete rubble from building and paving demolition. It can be used on any waterway or water containment where there is potential for water erosion”.

**EXHIBIT 7**
The DLNR officer that visited the property in the early part of June, the day the riprap wall was began, inspected the property and explained he was there due to a neighbor complaint alleging sediment was being generated and disbursed into the water. He did not find evidence to support that complaint. He took pictures and asked for detailed information on what was being done. It was explained in detail that we were installing a riprap wall to mitigate erosion and cleaning foreign debris from the beach" he asked if we were planning on using concrete to hold the rocks together and we told him "no" we were “piling rocks on the slope”. He explained "everything looks good to me" and to "be sure the wall was on private property", then spoke with Geraldine (the owner) and left. He did not say to stop, cease and desist, wait, or otherwise any verbiage that would indicate we were violating any DLNR requirement. He thoroughly inspected the site in early June, 2012. The riprap wall was completed 5 days later.

Finally, the use of riprap walls to mitigate erosion is in wide use by DLNR, and the City and County statewide. It is used in parks that abut the ocean, piers, streams and many situations to mitigate erosion exactly as we have installed and is permitted in the City and County of Honolulu Neighborhood Board information Handbook. I do not believe it would be authorized and permitted in the very documents published by the department of Planning and Permitting for guidelines the landowners are to follow and then these agencies that published the rules to follow prosecute these very same landowners “up to 15,000.00 dollars per day” for doing so. I believe it would constitute entrapment.

Very truly yours,

Alfred Sim
Below are images of typical Riprap walls that can be used as comparison to the riprap wall we installed;
I have also included (attached exhibit "C") from the State of Massachusetts .gov website the definition, purpose and typical general building practice's followed in installing typical riprap walls to use as comparison to the riprap wall we installed.

Due to erosion and coconut trees on our private property being undermined we installed a riprap wall to mitigate erosion. To the best of our knowledge the wall was placed on the private property side of the mean water line evidenced by the upward most vegetation line established over the years, in compliance with the rules and regulations derived from the publications set forth and offered by the City and County of Honolulu Department of Planning and Permitting.

The property owner adjacent to Geraldine's property has a mortared CRM over 30"/ partial riprap wall. See pictures below;

Picture 1, date taken- 6/5/2012 9:38am. CRM Retaining wall over 30", concrete bench within easement.
Picture 2, date taken- 6/5/2012 9:20am, CRM retaining wall over 30" in height, top right of picture- cabana built within 40' easement.
Picture 3, date taken 6/5/2012: 9:21am, CRM retaining wall over 30" in height, concrete riprap. Sailboat parked within 40' easement, cabana and CRM wall over 30" in height in easement.
This wall and these other violations were brought to the attention of the DLNR officer during his initial inspection, Steve Chun during his inspection, and lastly Thomas Ah San Jr. during both his inspections yet the City, County and State has shown prejudice against the Sim Trust evidenced by the lack of concern or actions by the aforementioned governing agencies to respond to clear violations brought to their attention.

- CRM retaining wall over 30"
- Cabana within 40' easement
- Boat parked within easement
- Concrete chairs within easement
Mr. Alfred Sim  
Geraldine E. Sim Trust  
48-487 Kamehameha Highway  
Kaneohe, Hawaii 96744  

SUBJECT: Alleged Unauthorized Placement of Rocks in the Shoreline Area of the Conservation District, Located at Kaneohe, Island of Oahu, TMK: (1) 4-8-003:048

Dear Property Owner:

We are in receipt of your response to our Notice of Alleged Violation & Order. We are currently investigating the legality of the CRM wall on the adjacent shoreline property and we have opened an investigation on that matter.

The Department intends to schedule your case before the Board of Land and Natural Resources (BLNR) as an alleged violation. You will be notified of the time and place of the BLNR meeting in the near future. You may wish to contact the Office of Conservation and Coastal Lands (OCCL) to discuss the matter. Please note any information provided may be used in civil proceedings. Should you have any questions, contact Sam Lemmo of the OCCL at (808) 587-0377.

Sincerely,

Samuel J. Lemmo, Administrator

C: ODLO/DOCARE-Oahu  
City and County of Honolulu  
Dept. of Planning and Permitting
October 11, 2012

Mr. Alfred Sim
Geraldine Sim Trust
48-487 Kamehameha Highway
Kaneohe, Hawaii 96744

Dear Mr. Sim:

Subject: Notice of Violation 2012/NOV-07-003
48-487 Kamehameha Highway – Kahaluu
Tax Map Key 4-8-003: 048 (POID 10995)

This is to provide you with an update on the status of the above Notice of Violation (NOV) dated July 02, 2012.

Following discussions of your case between the City Department of Planning and Permitting (DPP) and the State Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), it has been determined that DLNR/OCCL will be the lead agency for enforcement actions related to this matter. As such, the DPP will defer its subsequent enforcement action, i.e., issuance of a Notice of Order and assessed civil fines, to DLNR/OCCL.

However, the NOV will remain active until the violation is corrected by either removing the stockpile boulders or obtaining a Shoreline Setback Variance for the seawall.

Should you have any questions, please contact Steve Cheung of our Code Compliance Branch at 768-8114.

Very truly yours,

Jiro A. Sumada, Acting Director
Department of Planning and Permitting

JAS:ra

cc: State DLNR/OCCL

12NOV07-003
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

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APPENDIX E: PENALTY CALCULATION WORKSHEET
1 INTRODUCTION

Hawaii Revised Statutes (FIRS) §1 83C-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 § 1 83C, 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 § 1 83C, HRS.

The Staff will treat each case individually when assigning conservation district penalties using the following framework, and additional considerations and factors for upward or downward adjustments. The staff of the OCCL (Staff) will use these penalty schedule guidelines to issue violation notices and to make recommendations to the Board of Land and Natural Resources (Board), Chairperson of the Board of Land and Natural Resources (Chairperson), or Presiding Officer, whom may ultimately adjudicate the Conservation District penalties. These guidelines presume that all cases in which a violation has occurred, the Chairperson, Board, or Presiding Officer may also assess administrative costs, damages to public land or natural resources, and costs associated with land or habitat restoration.

2.1 PENALTY CALCULATION

The penalty range for these actions will be substantially determined based on the type of permit that would have been required if the individual(s) had applied to the Department of Land and Natural Resources (Department) or Board for pre-authorization to conduct the identified use, under Hawaii Administrative Rules (HAR) §13-5-22, 23, 24, 25. Assessing the penalties according to the Conservation District permit type accounts for the level of review or scrutiny the unauthorized use would have received by the Department or Board in order to avoid damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential "harm to the resource" caused by the violation.

Once the baseline for the penalty range has been established according 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). 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 use in HAR § 13-5, or according to the "harm to the resource" caused by the violation. Table I presents the baseline for the penalty range and the ranges associated with the "harm to resource." The Staff will use these guidelines to determine the penalty.

Schedule Guidelines

2 CONSERVATION DISTRICT VIOLATION PENALTIES

In order to issue violation notices and to make recommendations to the Board of Land and Natural Resources, the Chairperson of the OCC (chairman) will use the penalties schedule.

The Staff will treat each case individually when assigning conservation district penalties.

SCHEDULE GUIDELINES

2 CONSERVATION DISTRICT VIOLATION PENALTIES

In order to issue violation notices and to make recommendations to the Board of Land and Natural Resources, the Chairperson of the OCC (chairman) will use the penalties schedule.
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

Table 1. Penalty Guideline Framework

| Harm to resource or potential | Identified and use permit | Penalty Range
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<tr>
<td>Minor B (Site Plan)</td>
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<td>Very Minor (B) (Site Plan)</td>
<td>Permit ID</td>
<td>Up to $1,000</td>
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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.

Violations identified with the required permit prefix (C) may incur a penalty in the range of $2,000-$10,000 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.

Violations identified with the required permit prefix (B) may incur penalties due to the possibility of causing "minor harm(s) to the resource." "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-scale construction, construction of accessory structures, installation of temporary or minor shoreline activities or similar uses.

Violations identified with the required permit prefix (B) may incur penalties due to the possibility of causing "very minor harm(s) to the resource." "Very minor harm(s) to the resource" may incur a penalty of up to $1,000 and could be actions in which the impact on the 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 BAR § 13-5-22, 23, 24, 25, Staff may try to associate the action with the most similar identified land use in HAR (if available).
§ 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 1-IAR § 13-5, Staff will refer to Table I 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. 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 vegetation removal as one 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 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

<table>
<thead>
<tr>
<th>Violation Category</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major</td>
<td>$10,000-$15,000</td>
</tr>
<tr>
<td>Moderate</td>
<td>$5,000-$10,000</td>
</tr>
<tr>
<td>Minor</td>
<td>$2,000-$5,000</td>
</tr>
<tr>
<td>Very Minor</td>
<td>Up to $1,000</td>
</tr>
</tbody>
</table>

Note: The clearing of threatened, endangered, or commercially valuable plants will be considered on an individual plant basis of up to $15,000 per plant, as clearing 10,000 sq. ft. or more could assess a penalty of up to $15,000.

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 and the 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.

While the Sloth mist Board decision in MA.Ot.09, OA.nS.40 aid l-tA-06.Ot trace, violation of a one violation penalty may be considered. However, the removal of a native, invasive, or commercially valuable tree as one citation or "clearing" must be added as a recommendation. Provided the harm to the resource and other damage were normal.
Violations 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, archaeological, 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. 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 restoration or remediation efforts that may be already required to meet the Department’s requirements.

In-kind penalties will only be considered if (1) the responsible party is a governmental entity, such as a federal agency, state agency, county agency, city agency, university, or school board, or (2) the responsible party is a private party proposing an environmental restoration with the Department’s approval. The in-kind penalty may be in the form of a project that will benefit proposed government-sponsored environmental projects.

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 Education projects. Any information or education project proposed must demonstrate how the information or education project will directly enhance the Department’s mission to protect and conserve Hawaii’s natural resources, and preferably the O‘ahu Conservation Lands.

c. Capital or Facility improvements. Any capital or facility improvement project proposed must demonstrate how the improvement will directly enhance the Department’s mission to protect and conserve Hawaii’s natural resources, and preferably the O‘ahu Conservation Lands.

d. Property. A responsible party may propose to donate land to the Department. The Department will give preference to properties in a manner that will benefit the Department’s mission to protect and conserve Hawaii’s natural resources, and preferably the O‘ahu Conservation Lands.

The in-kind penalty framework has been adopted from Florida Department of Environmental Protection 2007, Program Guidelines 923, Section 5120, for civil actions for civil penalties.
2.1.8 Penalty Adjudication

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

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<thead>
<tr>
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<th>Penalty Ranee</th>
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<tbody>
<tr>
<td>Major</td>
<td>$510,000-$515,000</td>
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<tr>
<td>Moderate</td>
<td>$2,000-$10,000</td>
</tr>
<tr>
<td>Minor</td>
<td>$1,000-$2,000</td>
</tr>
<tr>
<td>Very Minor</td>
<td>up to $1,000</td>
</tr>
</tbody>
</table>

The Board may adjudicate penalties to violations categorized as causing or potentially causing major or moderate harm 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 (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.
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 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 FIRS § 83C-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 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. These natural resource damages may be assessed using economic valuation techniques to:

- Determine the extent and type of damage to natural resources and any services which may be valued.
- Estimate the level of ecosystem services that were lost or degraded.
- Calculate the net present value of the loss of ecosystem services.
- Determine the cost of restoring the lost ecosystem services.
- Calculate the cost of implementing the restoration activities.

The total value of the natural resource that is lost or damaged may include the initial and

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/or services are estimated to be recovered.

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The total value of the natural resource that is lost or damaged may include the initial and

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 (HIA) 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 penalties assessed, the Department is allowed to recoup all administrative costs associated with the alleged violation pursuant to MRS § 183C-7(b). All penalties assessed will be in compliance with HRS § 183C-7(c) and will proceed to the Board for final determination. The determination of the damages and penalties assessed will be according to Table 1, which sets forth the penalty guidelines for various levels of damage.

#### APPENDIX A: GUIDELINE FRAMEWORK TABLES

<table>
<thead>
<tr>
<th>Table 1. Penalty Guideline Framework</th>
<th>Table 2. Vegetation Removal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Harm to resource or Identified land use or potential for harm to Penalties</strong></td>
<td><strong>Removal of more than Major $10,000-$15,000</strong></td>
</tr>
<tr>
<td>Major D (Board) $10,000-$15,000</td>
<td>Moderate C (Department) $2,000-$5,000</td>
</tr>
<tr>
<td>Moderate C (Department) $2,000-$5,000</td>
<td>Minor B (Site Plan) $1,000-$2,000</td>
</tr>
<tr>
<td>Minor B (Site Plan) $1,000-$2,000</td>
<td>Very Minor (B) (Site Plan) Up to $1,000</td>
</tr>
</tbody>
</table>

HARM TO RESOURCE OR IDENTIFIED LAND USE OR POTENTIAL FOR HARM TO PENALTIES

<table>
<thead>
<tr>
<th>Major D (Board)</th>
<th>Moderate C (Department)</th>
<th>Minor B (Site Plan)</th>
<th>Very Minor (B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000-$15,000</td>
<td>$2,000-$5,000</td>
<td>$1,000-$2,000</td>
<td>Up to $1,000</td>
</tr>
</tbody>
</table>

The damages and penalties assessed will be calculated based on the department’s assessment and are to be in compliance with HRS § 183C-7(c). All penalties assessed will be in compliance with HRS § 183C-7(c) and will proceed to the Board for final determination.

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The determination of the damages and penalties assessed will be according to Table 1, which sets forth the penalty guidelines for various levels of damage.
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 similar or related services to another location or issue.
(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, 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, recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

Ecosystem Valuations: http://www.ecosystemvaluations.org/benefitstransfer.html

Ecosystem control, causation, protection, the loss of people to tourism, plant and/or wildlife habitat, biodiversity, air and water purification, 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, recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.
associated with minor land uses requiring an administrative Site Plan Approval, for building a small accessory structure.

APPENDIX C: REFERENCES


www.dep.state.fl.us/admin/depdirs/pdf/923.pdf.

Florida Department of Environmental Protection. 2000. Rules and procedures for... http://www.dep.state.fl.us/coastal/lsabitats/seagrass/awareness/damage...costs.htm
APPENDIX D: DAMAGES EXAMPLES


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.

Coral

Florida Department of Environmental Protection (Civil Damages):

The DEP can impose fines of up to $1,000/in^2 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 were calculated. The study found the total assessed value of coral reefs based on the annual benefits of the coral reefs to be:

- Hanauma Bay: $37.57 million ($2,568/in^2)
- Kihei: $28.09 million ($65/m^2)
- Kona Coast: $17.68 million ($19/in^2)

The DEP can impose fines of up to $1,000/in^2 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.

Cost of 2002 (Restoration Service Value)
was similar to the estimated Cost of remediation efforts $390,000 to Clean 5,000 yd³ of beach sand. However between 30,000-50,000 yd³ was estimated to be impacted, totaling $2,300,000-$3,900,000. While cleaning the sediment from the reef was estimated to cost approximately $845,000 (for the 13 acres, or $65,000 for 100 m²). 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).

Titus damage to corals may be calculated as follows:

\[
\text{Cost} = \text{Number of square meters of coral damaged} \times \$1,000 \text{ (or estimated value of coral on per/area basis)}
\]

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 coral reestablishment
+ Plus cost of cleaning sediment from reef
+ Plus cost of cleaning sediment from beach area
+ Plus cost of net present value of ecosystem service lost due to recovery
+ Plus cost of coastal vegetation
+ Plus cost of beach nourishment
+ Plus cost of native dune vegetation

Sea Grass beds (Compensatory damaged):
The Florida DEP fines offenders $100/yd² of damage to seagrass beds for the first yd² damaged and $75/yd² per each additional yd² damaged.

\[
\text{Cost} = 100 \times \text{Area in yd}^2
\]

or net present total value of ecosystem services lost until recovery

Vegetation planting
+ Monitoring

Sand Beaches (Compensatory Damaged)

Minimum penalty cost of restoration and potential negative ecological, social and environmental impacts may be assessed in conjunction with the following:

+ Plus cost of coral reestablishment
+ Plus cost of cleaning sediment from beach
+ Plus cost of net present value due to ecosystem services lost until recovery
+ Plus cost of reef
+ Plus cost of coastal vegetation

Sand Beaches (Compensatory Restoration Costs)

In some circumstances the loss of beach resources may be assessed in conjunction with (e.g., loss of beach):

+ Plus cost of coral reestablishment
+ Plus cost of cleaning sediment from beach
+ Plus cost of net present value due to ecosystem services lost until recovery
+ Plus cost of reef
+ Plus cost of coastal vegetation

\[
\text{Cost} = \text{Area in yd}^2 \times \$1000 \text{ (or estimated value of coral on per/area basis)}
\]

\[
\text{Cost} = 100 \times \text{Area in yd}^2
\]

or net present total value of ecosystem services lost until recovery

Vegetation planting
+ Monitoring

Sea Grass beds (Compensatory Damaged)

The Florida DEP fines offenders $100/yd² of damage to seagrass beds for the first yd² damaged and $75/yd² per each additional yd² damaged.
### APPENDIX E: PENALTY CALCULATION WORKSHEET

#### Part 1 - Penalties

<table>
<thead>
<tr>
<th>Violation Permit</th>
<th>Harm to Property</th>
<th>Penalty Adjustments</th>
<th>Multi-day (# of days to multiply penalty)</th>
<th>Status</th>
<th>Choice of Penalty</th>
<th>Penalty Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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**Total Multi-day:**

#### Part 2 - Penalties and Description

<table>
<thead>
<tr>
<th>Description</th>
<th>Penalty Total</th>
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**Total Multi-day:**

#### Part 3 - Penalties and Description

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<th>Description</th>
<th>Penalty Total</th>
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**Total Multi-day:**

#### Part 4 - Penalties and Description

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<th>Description</th>
<th>Penalty Total</th>
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**Total Multi-day:**

#### Part 5 - Penalties and Description

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<th>Description</th>
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**Total Multi-day:**

#### Part 6 - Penalties and Description

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<th>Penalty Total</th>
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**Total Multi-day:**

#### Part 7 - Penalties and Description

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<th>Description</th>
<th>Penalty Total</th>
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**Total Multi-day:**

#### Part 8 - Penalties and Description

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<th>Description</th>
<th>Penalty Total</th>
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**Total Multi-day:**

#### Part 9 - Penalties and Description

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<th>Description</th>
<th>Penalty Total</th>
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**Total Multi-day:**

#### Part 10 - Penalties and Description

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<th>Description</th>
<th>Penalty Total</th>
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</table>

**Total Multi-day:**

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**Notes:**
- Violator's Name(s):
- TMK:
- Date:
- Was the violator Responsive and exhibit a level of cooperation with the Department and/or Staff?
- Does the violator have a Financial Hardship?
- Did the violator receive Economic or commercial gain through non-compliance?
- Does the violator have a History of Violation?
- Was the violation of a long duration or repetitious?
- Number of days to multiply penalty: 
- Total Adjustment: up/down
- Penalties Adjustments and Descriptions (please attach additional adjustments and descriptions, including but not limited to those listed in §13-1-70)