

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

June 13, 2014

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

REGARDING: Enforcement MA 13-23 Regarding an Unauthorized Driveway, Rock Walls & Gate in the Conservation District

BY: The William Engel Trust
LANDOWNER: Maui Land & Pineapple Co.

LOCATION: 6501 Hono-a-Pi'ilani Hwy., Honolua, Maui
Tax Map Key (TMK): (2) 4-2-004:062¹

AREA OF USE: Approximately 2,213-square feet

SUBZONE: Limited

DESCRIPTION OF AREA:

The subject parcel owned by Maui Land & Pineapple is undeveloped with a number of introduced species such as ironwood, koa haole, and kiawe. The property is located in the Limited subzone of the Conservation District on the north coast of Maui in the Ka'anapali District near Honolua Bay. **EXHIBIT A.**

To the east of the subject parcel is adjacent parcel 19 recently purchased by the William Engel Trust in December 2011. The Engel Trust parcel has a single family residence and related improvements. The residential use was established via Conservation District Use Permit MA-163 approved by the Board of Land and Natural Resources on January 22, 1971.

ALLEGED UNAUTHORIZED LAND USES:

During the former landowners' tenure on adjacent parcel 19, a driveway was created on subject TMK: (2) 4-2-004:062. **EXHIBIT 1**

On June 29, 2012, a State Department of Transportation (DOT) Highways Division contacted the Maui District Land Office (MDLO) to report a possible Conservation District use violation. It appeared that a new driveway was being constructed to connect to Hono-a-Pi'ilani Highway.

¹ This parcel has also formerly been known as TMK: (2) 4-2-004:032 and TMK: (2) 4-2-001:007

A site inspection was conducted by DLNR MDLO and a Conservation Enforcement Officer that same day. The site inspection revealed what appeared to be new driveway, rock walls and landscaping. **EXHIBIT 2**

On February 6, 2013, correspondence was sent to landowner Maui Land & Pineapple regarding the unauthorized land uses. **EXHIBIT 3A-C**

On March 4, 2013, correspondence was received from landowner Maui Land & Pineapple that explained that MLP did not authorize the activity without the necessary permits and that the property was under an exclusive easement to the William Engel Trust. **EXHIBIT 4**

On October 11, 2013, the William Engel Trust was notified that the Trust would be the responsible party to resolve the unauthorized land use on the subject parcel. **EXHIBIT 5**

On January 14, 2014, a cursory site inspection of the property was conducted and rock columns and gate were noted. **EXHIBIT 6**

REFERRAL OF ALLEGED VIOLATIONS TO THE LAND BOARD RATHER THAN THE CIVIL RESOURCES VIOLATION SYSTEM (CRVS):

A decision was made to refer the alleged violation to the Board of Land and Natural Resources (BLNR) rather than to the CRVS based upon the Conservation District Penalty Guideline Framework. 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.

The driveway, rock walls and gate improvements appear to be a moderate alteration to the existing residence and driveway on adjacent parcel 19 and an identified land use pursuant to Hawaii Administrative Rules (HAR) §13-5-22, P-8 Structures and Land Uses, Existing (C-1) Moderate alteration of existing structures, facilities, uses, and equipment.

Moderate alteration has been defined in Chapter 13-5, HAR as work done to an existing structure, facility, or use that results in more than a 10% increase, but no more than a 50% increase, in the size of the structure, facility, or use.

Under the Penalty Guideline Framework, this action is considered "Moderate" since the identified land use would require a Departmental Permit under the permit prefix "C". This violation follows a penalty range of \$2,000-\$10,000. **EXHIBIT 7**

RESOLUTION OF UNAUTHORIZED LAND USES:

Conservation District

Chapter 13-5, Hawaii Administrative Rules (HAR) pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a

list of uses that may be allowed by Conservation District Use Permit (CDUP). These chapters also provide for penalties, collection or administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained.

Pursuant to HAR, §13-5-6, Penalty (d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

Pursuant to HAR, §13-5-2, "Land Use" is defined as:

- (1) The placement or erection of any solid material on land if that material remains on the land more than 30 days, or which causes permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land: or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

The unauthorized construction of the driveway, rock walls and gate on the property 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.

Pursuant to HRS, §183C-7 Penalty for violation; (b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof.

DISCUSSION:

The original encroachment upon Maui Land & Pineapple's property consisting of a driveway was created by the former land owner of adjacent parcel 19 that is now owned by the Engel Trust. When Mr. Engel was making improvements to his residential lot, he also conducted improvements on Maui Land and Pineapple's parcel 62.

By correspondence dated December 4, 2012, Mr. Engel described the challenges he has encountered since acquiring the adjacent property that included a damaged residence, removing an unauthorized residence, rodents, removing four roll-off dumpsters full of debris and trash, and dealing with trespassers poaching milo wood. **EXHIBIT 8**

Regarding the unauthorized walls and driveway, Mr. Engel has stated "We did not add any concrete; we only removed portions of the existing, and repaired the existing driveways."

"We also built two pairs of concrete and rock columns at each existing driveway entrance. All other rock walls are existing and were repaired/rehabilitated."

In regards to OCCL's inquiry to the encroachment on the subject parcel and highway tie-in, Mr. Engel stated: "I have a legal easement with the neighbor in favor of this existing area and during the repair of the existing southern driveway I removed the tie-in to the State highway back beyond the right of way hence there are no encroachments."

Staff notes that the fine for the driveway, rock wall, gate improvements may be up to \$10,000. Based upon statements by Mr. Engel, he conducted improvements to uses that were not authorized. Mr. Engel's intentions were to clean up and secure his property and obtain authorization for features outside of his property (MLP easement).

Staff believes that a fine of \$2,000 for the unauthorized land use is reasonable given the circumstances. Staff further notes that Mr. Engel has been very cooperative in working with the OCCL to rectify matters pertaining to land uses within the Conservation District. Upon resolving this matter, an After the Fact CDUA shall be filed for a Departmental permit to authorize the driveway, rock walls and gate.

Regarding utilizing the subject driveway, authorization must be obtained from the State Department of Transportation to gain access to the highway.

FINDINGS:

1. That the William Engel Trust did in fact, authorize, cause or allow improvements consisting of a driveway, rock walls and gate to occur on approximately a 2,213-ft² portion of TMK: (2) 4-2-004:062; 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 finds the William Engel Trust in violation of §183C, HRS and §13-5 HAR, in regards to unauthorized land uses within the Limited subzone of the Conservation District located at 6501 Hono-a-Pi'ilani Hwy., Honolua, Maui, TMK: (2) 4-2-004:062 and is subject to the following:

1. The William Engel Trust is fined in one instance for violating the provisions of 183C-7, HRS, and 13-5-6, HAR, for the unauthorized improvements consisting of a driveway, rock walls and gate by failing to obtain the appropriate approvals within the Conservation District for \$2,000;
2. The William Engel Trust is fined an additional \$250.00 for administrative costs associated with the subject violations;
3. The William Engel Trust shall pay all designated fines and administrative costs (total \$2,250) within ninety (90) days of the date of the Board's action;

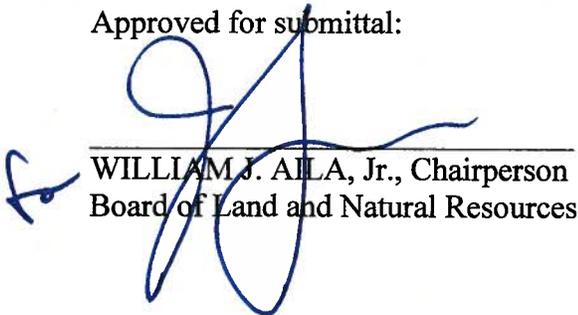
4. With Maui Land & Pineapple's permission, the William Engel Trust shall obtain an After the Fact Conservation District Use Permit for the driveway, rock walls and gate located on TMK: (2) 4-2-004:062 or remove the improvements within one year of these findings; and
5. That in the event of failure of the William Engel Trust to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,

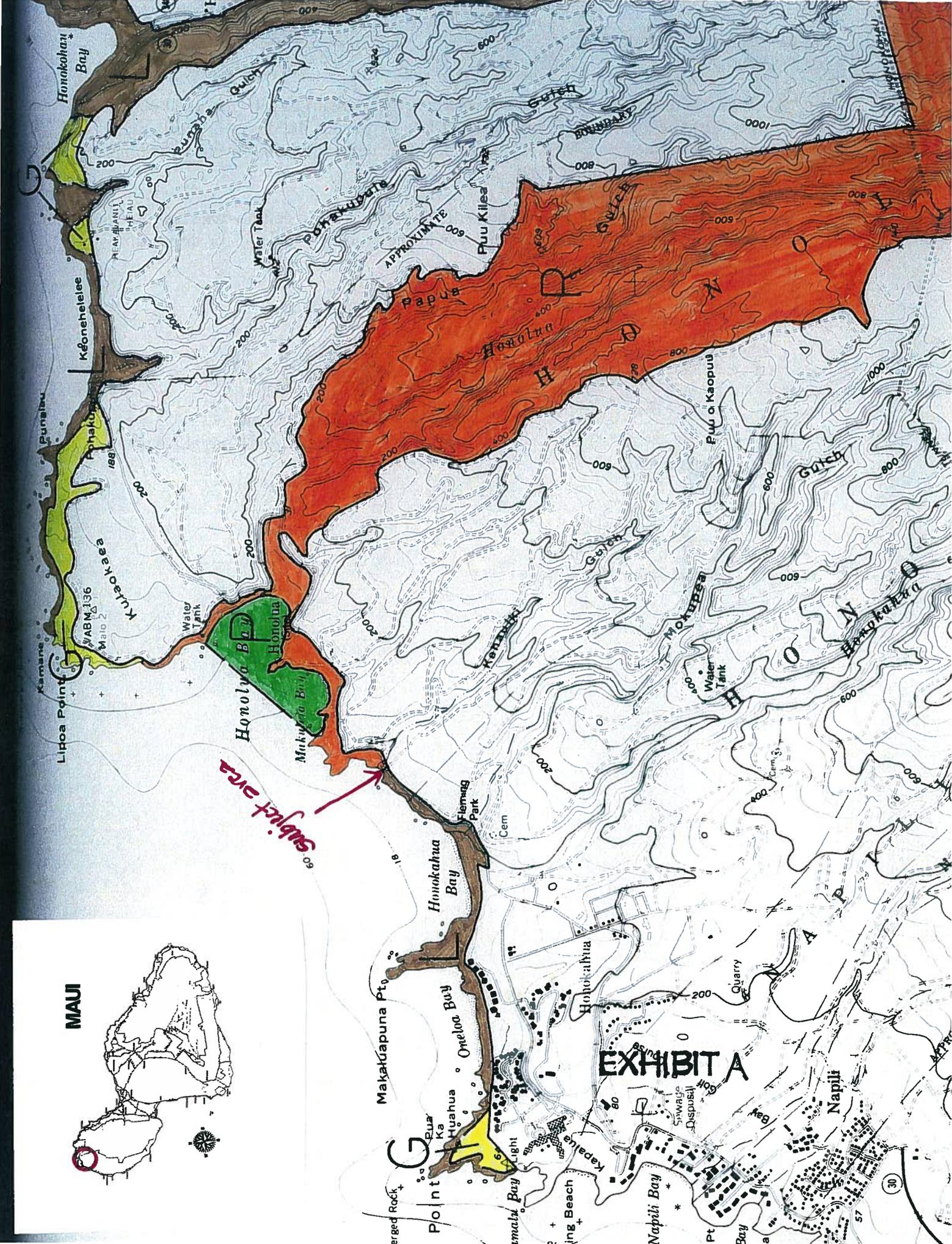


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



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



MAUI

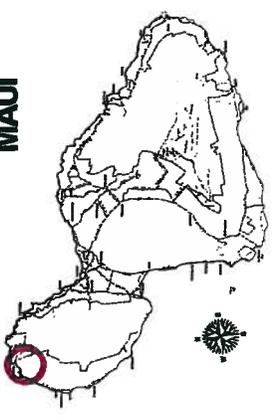


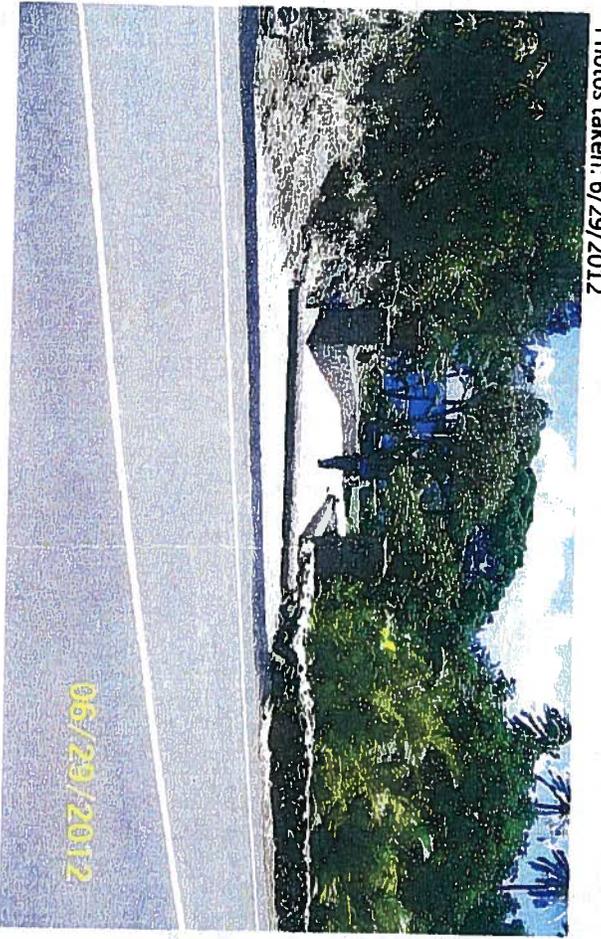
EXHIBIT A



February 11, 2006

EXHIBIT I

Photos taken: 6/29/2012



Engle Property, TMK: (2) 4-2-004:019

Photos depict newly constructed concrete driveway which wraps around the dwelling to provide entry and exit from Honoapiilani Hwy. to or from the subject property.



EXHIBIT 2

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

ENF: MA 13-23

FEB - 6 2013

CERTIFIED MAIL

7009 3410 0000 4942 9415

Maui Land & Pineapple, Co. Inc.
200 Village Road
Lahaina, HI 96761

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at Honolua, Maui, TMK: (2) 4-2-004:032

Dear Maui Land & Pineapple:

The Office of Conservation and Coastal Lands (OCCL) has become aware that an unauthorized land use consisting of a driveway and retaining walls exists on your property. It appears the driveway was created sometime after 1971 and has been significantly improved in 2012 (**Exhibit A, B & C**).

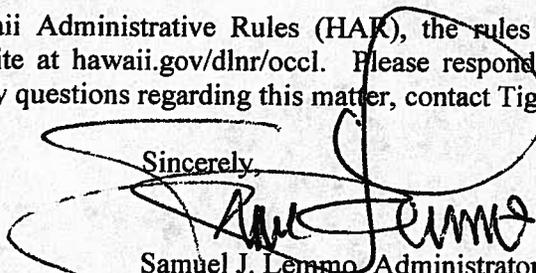
The OCCL notes your property appears to lie within the Conservation District Limited subzone. The OCCL regulates land uses within the Conservation District. However the OCCL has no record of authorizations for the noted improvements. Therefore there appears to be alleged Conservation District use violations. While we are aware that an easement exists for the driveway that benefits your neighbor, as the landowner, we are notifying Maui Land & Pineapple Co., Inc.

Be aware, pursuant to 183C-7, HRS, the Board of Land and Natural Resources may subject parties to fines of up to \$15,000.00 per violation in addition to administrative costs for unauthorized land uses in the Conservation District. After written or verbal notification from the Department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

Should you have evidence of authorization for the noted use, please forward that information to our Office. Further you may wish to propose resolutions to resolve the alleged unauthorized uses. However please note any information provided may be used in civil proceedings.

You will find Chapter 13-5, Hawaii Administrative Rules (HAR), the rules and regulations of the Conservation District, on our website at hawaii.gov/dlnr/occl. Please respond to this correspondence within 30 days. Should you have any questions regarding this matter, contact Tiger Mills of our Office at (808) 587-0382.

Sincerely,


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

C: Chairperson
MDLO/DOCARE-Mau`i
County of Mau`i, Planning Dept.
William Engle Trust

EXHIBIT 3



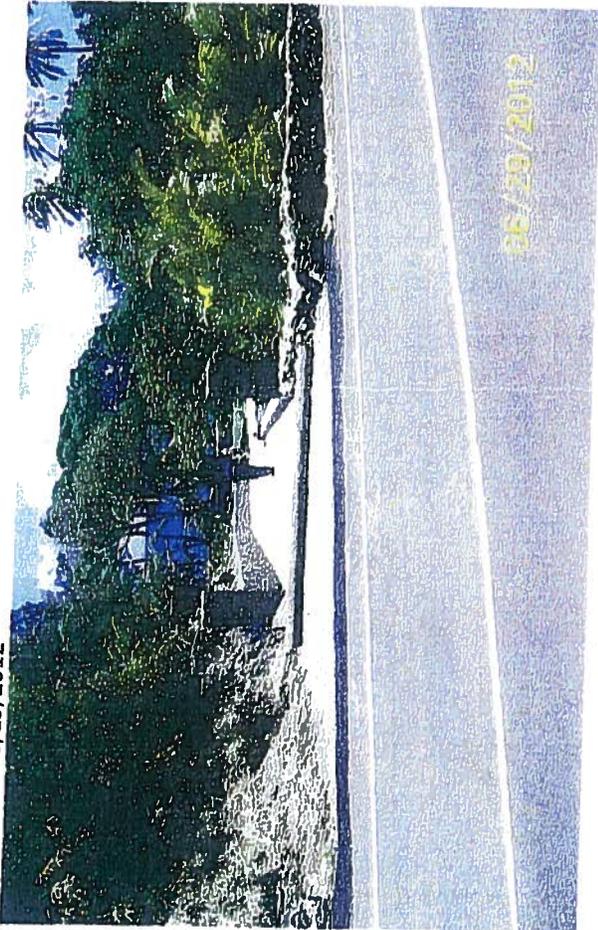
Feb. 11 2006

P.

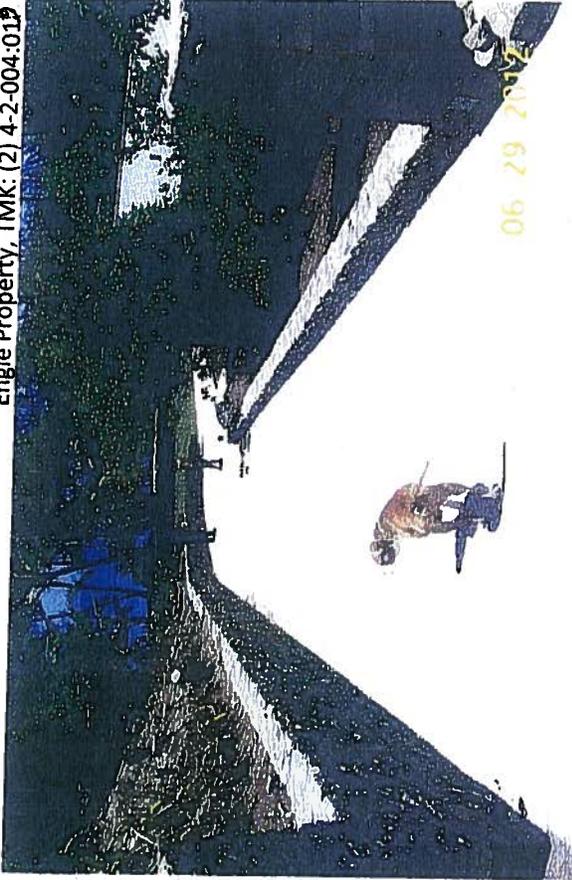


P.

Photos taken: 6/29/2012



Engle Property, TMK: (2) 4-2-004:012

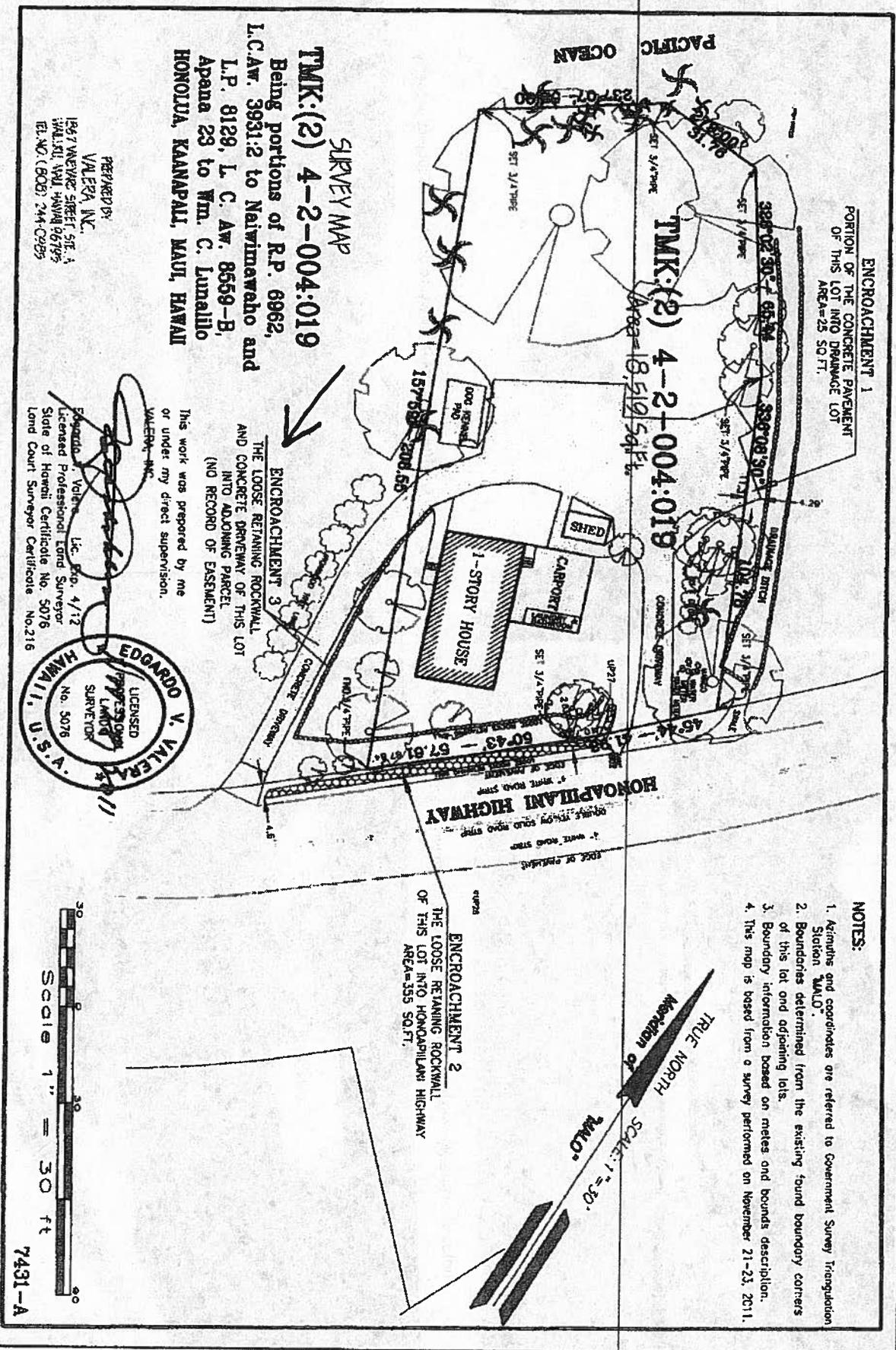


Photos depict newly constructed concrete driveway which wraps around the dwelling to provide entry and exit from Honoapiilani Hwy. to or from the subject property.



EXHIBIT 3B

Exhibit C
Survey Map





Maui Land & Pineapple Company, Inc.

RECEIVED
2013 MAR -4 A 8:49

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 1, 2013

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
State of Hawaii
Department of Land and Natural Resources
P. O. Box 621
Honolulu, HI 96809

Dear Mr. Lemmo:

RE Alleged Unauthorized Land Uses in Conservation District Located at
Honolua, Maui, TMK (2) 4-2-004:032

We are in receipt of your letter, dated February 6, 2013, regarding the subject property.

Maui Land & Pineapple Company, Inc. (MLP) is the fee simple landowner and we acknowledge that permitting applies to us. However, improvements alleged to have been illegally constructed were not done by MLP. The property is under an exclusive easement to the William Engle Trust.

MLP did not permit, authorize or condone this activity without the necessary permits. MLP is fully committed to rectifying this matter and will work with the easement holder to that end.

We believe the Office of Conservation and Coastal Lands has or will be contacted directly by a representative of the William Engle Trust.

Please feel free to contact us if you have any questions.

Sincerely,

Ryan Churchill
President & Chief Operating Officer

C Planning Dept., County of Maui

EXHIBIT 4

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
ESTHER KIA'ALINA
FIRST DEPUTY
WILLIAM M. TAM
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

William Engle Trust
590 15th St.
Del Mar, CA 92014

ENF: 13-23
OCT 1 2013

SUBJECT: Alleged Unauthorized Land Uses in the Conservation District Located at 6501 Honoapi'ilani Hwy., Honolua, Maui, TMK: (2) 4-2-004:062

Dear William Engle Trust:

The Office of Conservation and Coastal Lands (OCCL) has made inquiry to the landowner, Maui Land & Pineapple (MLP) regarding improvements made on their land on the west side of your property that consists of a driveway and walls. According to MLP and you, authorization for the driveway encroachment on the adjacent lot to the west was gained from MLP and you believe the repair and rehabilitation of the walls and driveways were to an existing land use.

While the encroaching driveway and walls were present on the subject parcel prior to your purchase of the adjacent property in December of 2011, these improvements were not authorized. The area of the encroachment appears to lie within the Limited subzone of the Conservation District.

The unauthorized land use appears to be a moderate alteration to the existing driveway and residence on your property and an identified land use pursuant to §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (C-1) Moderate alteration of existing structures, facilities, uses, and equipment. To resolve this matter, you may wish to remove the improvements and apply for the use or you may wish to propose to retain the use and OCCL staff will make a recommendation to the Board and have the unauthorized land use vetted by the Board of Land and Natural Resources.

Please let us know how you wish to resolve this matter. You may wish to contact Tiger Mills of our Office at (808) 587-0382 or at kimberly.mills@hawaii.gov

Sincerely,

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

C: MDLO
MLP
County of Maui- Department of Planning

EXHIBIT 5

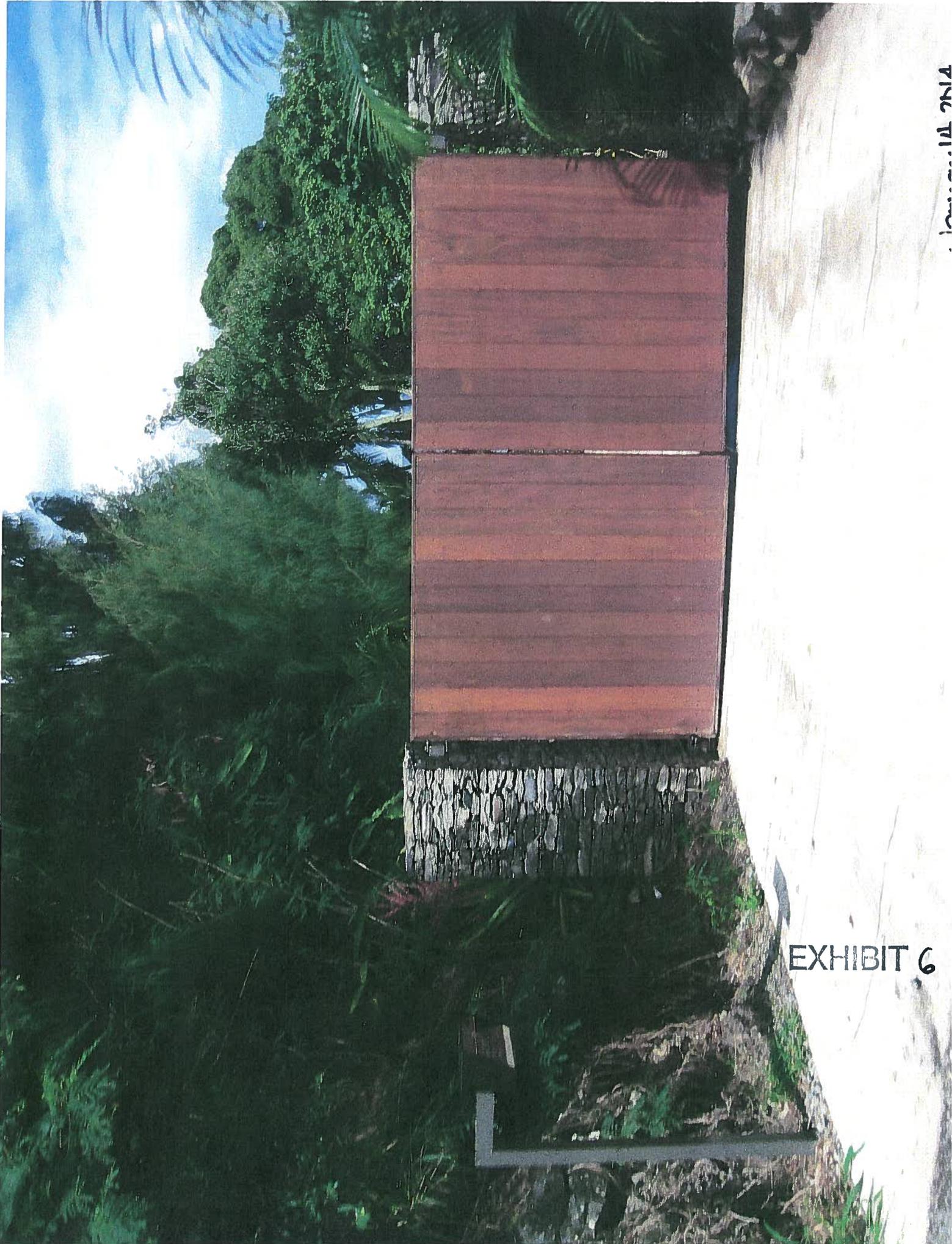


EXHIBIT 6

PLATE 11A 2014

TABLE OF CONTENTS

1 INTRODUCTION.....1

2 CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES.....1

2.1 PENALTY CALCULATION.....2

 2.1.1 Identified Land Use Penalties.....3

 2.1.2 Non- Identified Land Use Penalties.....4

 2.1.3 Tree Removal.....5

 2.1.4 Vegetation Removal/Vegetation Clearing.....5

 2.1.5 Additional Considerations and Factors.....6

 2.1.6 Continuing Violations and Permit Non-Compliance.....6

 2.1.7 In-Kind Penalties7

 2.1.8 Penalty Adjudication9

3 ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES.....10

 3.1 PRIMARY RESTORATION DAMAGES11

 3.2 COMPENSATORY DAMAGE CALCULATION12

 3.3 ADJUDICATION OF DAMAGES.....13

APPENDIX A: GUIDELINE FRAMEWORK TABLES

APPENDIX B: DEFINITIONS

APPENDIX C: REFERENCES

APPENDIX D: DAMAGES EXAMPLES

APPENDIX E: PENALTY CALCULATION WORKSHEET

**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"¹ 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),² within the assigned penalty range. Where Staff was unable to associate the unauthorized use with a typical land use identified in HAR §13-5, Staff may try to associate the action with the most similar identified land use in HAR §13-5, or according to the "harm to the resource" caused by the violation. Table 1

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

² 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.³ 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

³ While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-active, 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.⁵ 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

⁵ 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 OCEC's, mission to protect and conserve Hawaii's Conservation District Lands.
- c. **Capital or Facility Improvements.** Any capital or facility improvement project proposed must demonstrate how the improvement will directly enhance the Department's and/or public's use, access, or ecological value of the conservation property.
- d. **Property.** A responsible party may propose to donate land to the department as an in-kind penalty. Donations will be handled by the Department's Legacy Lands program or similar program.

3 ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

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

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

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

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

2.1.3 Penalty Adjudication

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

| Comparable Harm to Resource | Identified land use permit and Penalty Range | Penalty Adjudicator |
|-----------------------------|--|----------------------------------|
| Major | \$10,000-\$15,000 | Board |
| Moderate | \$2,000-\$10,000 | Board |
| Minor | \$1,000-\$2,000 | Chairperson or Presiding Officer |
| Very Minor | up to \$1,000 | Chairperson or Presiding Officer |

Major and Moderate Harm to the Resource

The Board may adjudicate penalties to violations categorized as causing or potentially causing major or moderate harm(s) to the resource. The Board may also adjudicate cases in which repeat violations, repeat violators, or egregious behavior were involved, or moderate to significant actual harm to the resource occurred. The Board may also adjudicate the payment of part or all, of the penalty as part of an In-kind penalty.

Minor and Very Minor Harm to the Resource

The Board may delegate to the Chairperson or a Presiding Officer the power to render a final decision in minor and very minor conservation district violations in order to provide expeditious processing and cost effective resolution. The Chairperson or appointed Presiding Officer may adjudicate penalties to minor and very minor violations characterized by inadvertent or unintentional violations and those violations which caused minor or very minor harm to the resource.

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 ⁵ |

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

APPENDIX B: DEFINITIONS

Definitions:

- (1) "Baseline" means the original level of services provided by the damaged resource.
- (2) "Benefit Transfer Method" estimates economic values by transferring existing benefit estimates from studies already completed for another location or issue.⁷
- (3) "Board" means the Board of Land and Natural Resources.
- (4) "Board Permit" means a permit approved by the Board of Land and Natural Resources.
- (5) "Chairperson" means the chairperson of the board of land and natural resources
- (6) "Civil Resource Violations System" or "CRVS" means a system of administrative law proceedings as authorized under chapter 199D, HRS, and further prescribed in Subchapter 7, 13-1, HAR, for the purpose of processing civil resource violations.
- (7) "Compensatory Damages" means damages for compensation for the interim loss of ecosystem services to the public prior to full recovery.
- (8) "Contested Case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.
- (9) "Department" means the Department of Land and Natural Resources.
- (10) "Departmental Permit" means a permit approved by the Chairperson.
- (11) "Discounting" means an economic procedure that weights past and future benefits or costs such that they are comparable with present benefits and costs.
- (12) "Ecosystem Services" means natural resources and ecosystem processes, which may be valued according to their benefits to humankind.

For example: carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism,

⁷ Ecosystem Valuations http://www.ecosystemvaluation.org/benefit_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.⁸
- (14) "Harm to resource" means an actual or potential impact, whether direct or indirect, short or long term, acting on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration as is defined as follows:

- (a) "Major Harm to resource" means a significant adverse impact(s), which can cause substantial adverse impact to existing natural resources within the surrounding area, community or region, or damage the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics
- (b) "Moderate Harm to Resource" means an adverse impact(s), which can degrade water resources, degrade native ecosystems and habitats, and/or reduce the structure or function of a terrestrial, littoral or marine system (but not to the extent of those previously defined as those in (a)).
- (c) "Minor Harm to Resource" means limited to short-term direct impacts from small scaled construction or shoreline or vegetation alteration activities.
- (d) "Very Minor Harm to Resource" means an action in which the impact on the water resource or terrestrial, littoral or marine ecosystem was insignificant, and was not of a substantial nature either individually or cumulatively.

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

⁸ Definition adapted from Florida Department of Environmental Protection, 2000 Administrative Fines and 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.
- Costanza, R. and Farley J. 2007. Ecological economics of coastal disasters: Introduction to the special issue. Ecological Economics 63 p. 249-253.
- Costanza, R., d'Arge, R., de Groot, R., Farber, S., Grasso, M., Hannon, B., Limburg, K., Naeem, S., O'Neill, R.V., Paruelo, J., Raskin, R.G., Sutton, P., van den Belt, M. 1997. The Value of the World's Ecosystem Services and Natural Capital. Nature 387 p. 253-260.
- Florida Department of Environmental Protection. Damage Costs in Seagrass Habitats. 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>
- Florida Department of Environmental Protection. 2007. Program Directive 923. Settlement guidelines for civil and administrative penalties. www.dep.state.fl.us/admin/depdirs/pdf/923.pdf
- 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>

NOAA Coastal Services Center. Habitat Equivalency Analysis.
www.csc.noaa.gov/coastal/economics/habitat/eq.htm

Maine Land-Use Regulation Commission. 2007. 2008 Workshop Draft Comprehensive Land Use Plan. for areas within the jurisdiction.

http://www.maine.gov/doc/lurc/reference/cluprev/CLUP_PWDraft_pg5.shtml

APPENDIX D: DAMAGES EXAMPLES

Examples of Damage Assessments and Possible Remediation Efforts

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

Coral

Florida Department of Environmental Protection (Civil Damages):

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

Cesar et al 2002 (Ecosystem Service Valuation)

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

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

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

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

Thus damage to corals may be calculated as follows:

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

Plus the estimated net present value of ecosystem services lost until recovery. (This may be more if damage to an area such as 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/yard² of damage to seagrass beds for the first yd² damaged and \$75/yard² per each additional yd² damaged.

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

Sand Beaches (ex. Of Primary Restoration Costs)

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

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

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

APPENDIX E: PENALTY CALCULATION WORKSHEET

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

Part 1 - Penalties

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

Penalty Total: _____

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

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

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

- Was the violation repetitious or of a long duration?

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

- Does the Violator have a Financial Hardship?

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

- Other.
 Description: _____

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

Total multi-day: _____

December 4, 2012

CERTIFIED MAIL – Return Receipt Requested
EMAIL

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COSTAL LANDS
Post Office Box 621 Honolulu, HI 96809
Attn: Samuel J. Lemmo and Tiger Mills

2012 DEC 12 A 5: 26
STATE OF HAWAII

SUBJECT: Letter Received From the Office Of Conservation and Costal Lands dated November 13, 2011
Alleged Unauthorized Land Uses in the Conservation District Located at 6245 Honoapiilani Hwy., Honolulu, Maui
TMK: (2) 4-2-004:019

2012 DEC 12 A 11: 07
DEPT. OF LAND & NATURAL RESOURCES
OFFICE OF CONSERVATION AND COSTAL LANDS
STATE OF HAWAII

Dear Mr. Lemmo and Ms. Mills,

I am writing in response to the subject letter I received from you / the Office Of Conservation and Costal Lands. First I would like to say that I intend to fully cooperate and assist you and the Office Of Conservation and Costal Lands in resolving this matter forthwith. In the subject letter you reference a Conservation District Use Application submitted on March 6, 2012 along with a number of improvements you suggest I have made to the subject property. Although I do not concur with the list in its entirety I do agree that some work has been done. In efforts of assisting in resolving this matter, and for clarity purposes, I would like to briefly describe the steps I have taken to rehabilitate and preserve this special property.

In December, 2011 I purchased this property. As a homeowner my son Paul Engel and I began a major cleanup of the existing house that included removal of dead rodents as well as 60#'s rodent droppings in the attic, broken cabinets, broken windows, built-up trash/debris and years of neglect. As we proceeded with our work we discovered the need for outside help and hired a licensed professional contractor to assist with the project. He assisted in fully implementing standard BMPs for shoreline projects, general safety, and the cleanup work itself. We filled four 30 Yard Roll-Off dumpsters in total with trash and debris we removed from the property. The first two dumpsters were filled with trash and debris consisting of miscellaneous scrap metal, discarded furniture, discarded carpet, an abandoned severely rusted car, a broken trailer, miscellaneous animal pens on concrete pads, old tires, and a large discarded MECO wire spool. A second non-permitted structure was also removed from the property at the time of my purchase. We filled the last two dumpsters with broken pieces of rebar filled concrete and asphalt pavement dumped by previous owners. We carefully removed this debris by hand from along the shoreline directly in front of the property.

During the cleanup process and by mere chance, particularly on weekends, off hours and holidays we confronted different groups of people harvesting Milo trees from the neighboring lot to the North of my property which is owned by Howard Kihune. They were found using my property as a staging area to load trucks with the Milo wood. We had non-friendly confrontations with these groups of poachers when requested to leave the property. My son even contacted the Lahaina Police and DLNR for assistance in the matter. Howard Kihune and I decided it may be a good idea to build a wall between our properties to help avoid these types of trespassing/pouching problems. Being a fairly remote area we also encountered quite a few other people driving on the property at late hours for parking and drinking which was witnessed by a friend that was staying on site during some of the work. All of this caused alarm so we decided to install a fence along the east side of the property bordering the highway and to construct rock columns and gates at both existing driveway entrances. We also built a 5' tall privacy wall along a portion of the North property line stopping the construction before the shoreline setback.

In response to the Conservation District Use Application (submitted on March 6, 2012) and improvements you reference and suggest I have made in your letter, I have commented on each below and have included before and after photos for added documentation purposes.

1. "Conservation District Use Application submitted on March 6, 2012": By way of this letter I am formally requesting to withdraw this application and all documents directly related to it.
2. "...new driveways,...": Both driveways (and all parking areas are existing). We did not add any concrete, we only removed portions of the existing, and repaired the existing driveways. See Photos 1, 2, and 3 below.

Existing Driveways before rehabilitation:

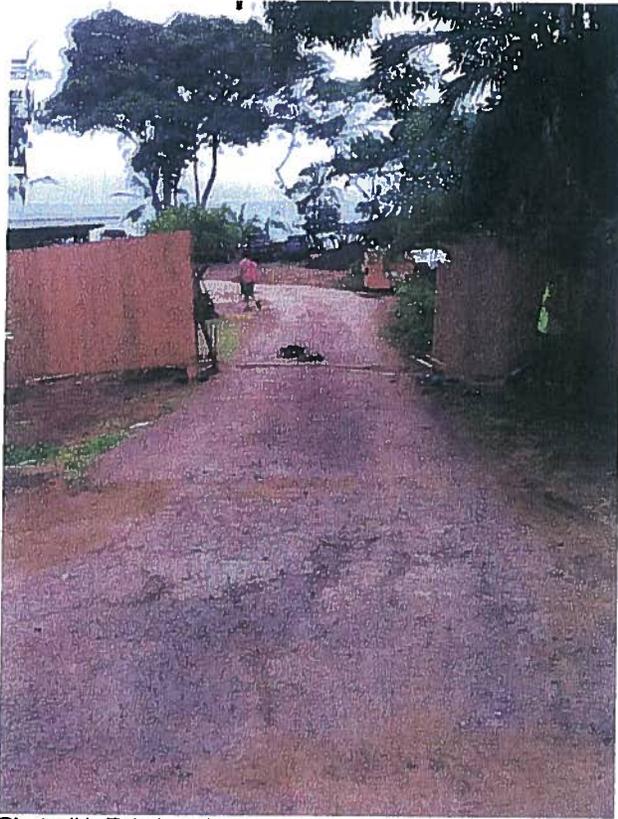


Photo #1: Existing Northern Driveway Entrance

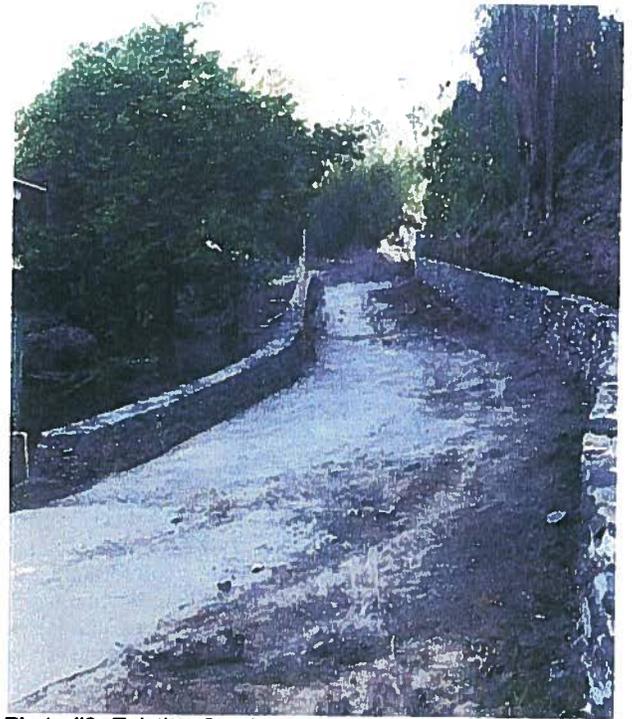


Photo #2: Existing Southern Driveway



Photo #3: Existing Southern Driveway and one animal pen concrete pad

3. "...new rock walls,...": We built one 5' tall concrete and rock privacy wall along a portion of the North property line stopping the construction before the shoreline setback. We also built two pairs of concrete and rock columns at each existing driveway entrance. All other rock walls are existing and were repaired / rehabilitated. See photos 4 and 5 below.



Photo #4: Existing Eastern rock walls before repair.



Photo #5: Existing Southern rock walls before repair.

4. "...new irrigation with a newly planted lawn,...": All irrigation existed, we just repaired and replaced the components of the system. The lawn also existed, we just rehabilitated the lawn. See photos 6 below.



Photo #6: Existing lawn and irrigation before repair and rehabilitation.

5. "...introduced soil and erosion control measures consisting of burlap material along the embankment above the shoreline...": There has been no soil introduced along the embankment above the shoreline. We did implement some erosion control measures consisting of the burlap material along the embankment above the shoreline. We implemented this during the hand cleanup of the debris along the shoreline dumped by previous owners. The burlap material along the embankment has since been removed.
6. "...it appears that improvements have encroached upon your neighbor's property noted as TMK: (2) 4-2-004:032 and the State highway.": No improvements have been made in this area, only repairs and rehabilitation work to existing improvements have been made. Furthermore, I have a legal easement with the neighbor (TMK: (2) 4-2-004:032) in favor of this existing area and during the repair of the existing southern driveway I removed the tie-in to the State highway back beyond the right of way hence there are no encroachments. See included copy of the my easement labeled "Attachment -A".

Please be aware that prior to our clean up, repair, and rehabilitation work the existing condition of the property was not safe environmentally. In a case of a big rain runoff would likely have carried debris to the shoreline and into the ocean. Below I have included before and after photos of the property reflecting the overall difference before my ownership and following my clean-up and rehabilitation efforts.



Photo #7: Before I purchased the property

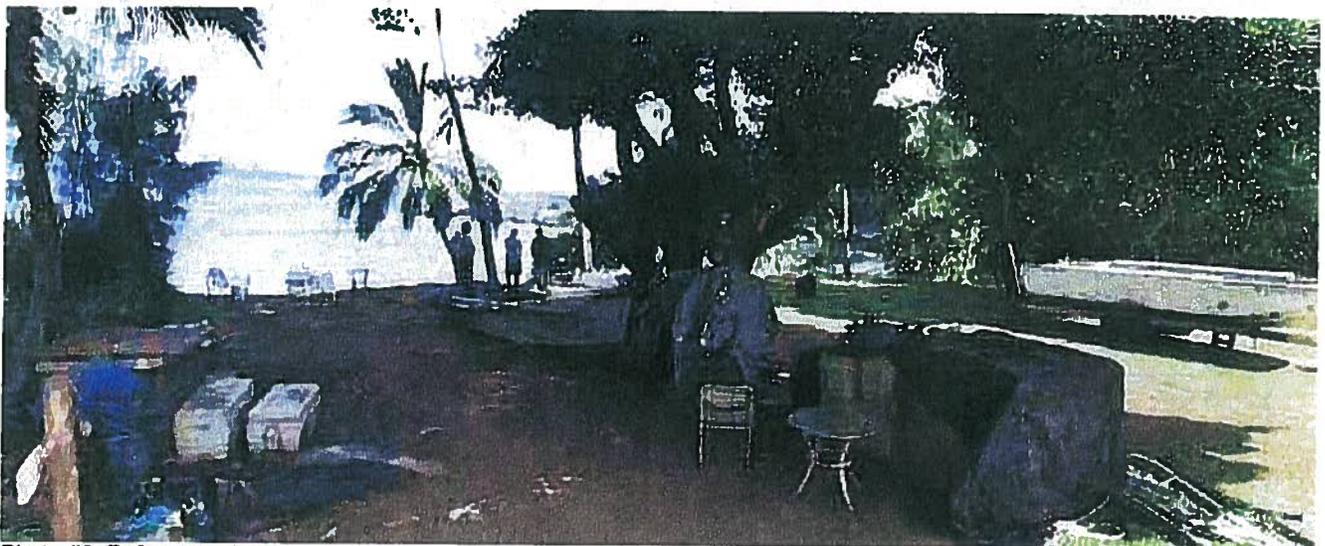


Photo #8: Before my clean up, repair, and rehabilitation work



Photo #9: After our clean up, repair, and rehabilitation work

Lastly, at no time were chemicals or fertilizers used during landscaping rehabilitation.

Please again be advised that I intend to fully cooperate and assist you and the Office Of Conservation and Costal Lands in resolving this matter forthwith, including obtaining any approvals and permitting legally required. Atom Kasprzycki with Love & Architecture Inc and Kasprzycki Designs Inc. will be assisting me in resolving these issues and I would appreciate it if you would communicate directly with him and carbon copy me at BEngel@pealio.com, while resolving this matter. Please feel free to contact me to discuss this matter further and I look forward to hearing back from you.

Thank you,

William Engel
Trustee of the William Engel Trust
590 15th Street, Del Mar, CA 92014
[REDACTED]