

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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August 28, 2012

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

Re: Respondent: The Bill Healy Foundation
Notice of Civil Resource Violation (CRVS HA 4 12-36)
Tax Map Key: (3) 8-2-006:027 ("Property")

Dear Mr. Lemmo:

On behalf of Respondent The Bill Healy Foundation ("**Foundation**"), we submit the enclosed Answer to the Notice of Civil Resource Violation ("**Notice**"), dated July 3, 2012, for the alleged "work without a permit for the unauthorized land use - placement of sand from an unknown source on the shoreline of land that lies within the Protective Subzone of the Conservation District." On July 25, 2012, an administrative time extension to submit an answer to the Notice was granted from July 26, 2012 to September 10, 2012.

Enclosed is a check in the total amount of \$2,000.00 for the administrative fine assessed in the Notice. Although the Foundation does not contest the Notice, we are paying the fine and providing a statement (attached to the Notice) in full and final settlement of the events which resulted in the issuance of the Notice.

Please feel free to contact me should you have any questions or require additional information. Thank you for your consideration.

Very truly yours,


Steven S.C. Lim

SSL/KYL

xc: Client

Dana K.N. Sato, Esq.

Allen Salavea, Kamehameha Schools

BJ Leithead Todd, County of Hawaii Planning Director

S. V. (Bud) Quitiquit, Esq.

William L. Moore

Ron Terry, Ph.D.

HONOLULU

HILO

KONA

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GUAM

SAIPAN

LOS ANGELES

SEP - 4 2012

RECEIVED
COUNTY OF HAWAII
PLANNING
DEPT.

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2012 AUG 29 P 1:24

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OFFICE OF CONSERVATION
AND COASTAL LANDS





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
NOTICE OF CIVIL RESOURCE VIOLATION



Notice No. CRVS HA 4 12-36

Date: June 29 2012

TO RESPONDENT: Any administrative proceedings instituted pursuant to this Notice shall not preclude the State from pursuing separate criminal prosecution against you for an offense committed in the same course of conduct.

COMPLAINT: The undersigned official/officer of the Department of Land & Natural Resources (DLNR) states that the named respondent did commit the civil resource violation(s) noted below.

A. RESPONDENT INFORMATION			
Last Name / Company Name Bill Healy Foundation	First Name, M.I.	Sex <input type="checkbox"/> M <input type="checkbox"/> F	Date of Birth
Street Address 14075 HW Old Germantown Rd	City Portland	State & ZIP (Country) OR 97231	
ID Type	Issued By	ID No.	Juvenile <input type="checkbox"/>
			Phone

B. VEHICLE/VESSEL INFORMATION (If applicable)	
Vehicle License Plate No., VIN / Vessel Type, ID, Name	License State Year / Make / Model / Color
Vessel	

C. STATEMENT OF FACTS	
Date May 07 2012	Time 10 <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Violation Site: Island / Location / TMK Maunaloa Beach Shoreline, Kaulaokua Bay, South Kona, TMK (3) 2 006 027	
DESCRIPTION: (Specify any witness, evidence, damage, injury and seizure. Attach additional sheet if needed.) Unauthorized land use-Placement of sand from an unknown source on the shoreline of land that lies within the Protective subzone of the Conservation District.	
Should you have any questions regarding this matter, contact Tiger Mills at (808) 587-0382	

D. CITATION(S)		E. FINES ASSESSED	
No.	Authority	Civil Resource Violation	Comply in 21 days
1	\$ 183C 7, HRS	Conducting work without a permit	\$2000
2	\$		\$
3	\$		\$
TOTAL ADMINISTRATIVE FINE ASSESSED >>>			\$2000

F. OTHER SANCTIONS AND REQUIREMENTS
TO RESPONDENT: In addition to any fines assessed in Section E, you must comply with the following sanctions and requirements within 21 days of the service of this Notice, unless a different period is provided in this section below. Should the respondent wish to do additional beach nourishment, please file an application and obtain authorization for beach nourishment.

TBD-To Be Determined

G. ISSUANCE AND SERVICE	
DLNR & Last Name S. Lemmo	Office DCCG
Signature 	Signature
Service: <input type="checkbox"/> Unoccupied vehicle/vessel <input type="checkbox"/> Personal <input type="checkbox"/> Certified Mail <input type="checkbox"/> First-Class Mail	Issued by APO

H. ACKNOWLEDGEMENT
I acknowledge the receipt of this Notice. This is not an admission of responsibility.
Respondent Signature

I. SUMMONS TO RESPONDENT

Pursuant to §199D-1, HRS, and §13-1-63, H.A.R. you are hereby summoned and required to submit an answer to this Notice within twenty one (21) days from the date of service of this Notice. Submit your answer, payment, statement and/or evidence to DLNR/APO, 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813, or at www.hawaii.gov/dlnr/apo. If you fail to answer within 21 days after receiving this Notice, a default decision for the relief demanded in this Notice will be entered against you.

J. ANSWER BY RESPONDENT (Required)

INSTRUCTIONS:

1. You have three options in answering this Notice. CHOOSE ONLY ONE and check the corresponding box below. Sign and date your answer and return it to the DLNR Administrative Proceedings Office (DLNR/APO) at the address listed above. You may also submit your answer and payment online at www.hawaii.gov/dlnr/apo.
2. If you choose Option 1, include with your answer payment in the amount stated in the first column of Section E if you are answering within 21 days of receiving this Notice or in the amount stated in the second column if after 21 days. Make your check payable to DLNR. For credit/debit card payment, see Section K below. You are also required to comply with all sanctions and requirements specified in Section E. Your case will be concluded.
3. If you choose Option 2, include with your answer a statement and evidence showing the mitigating circumstances. A hearing officer will review your request and render a decision without holding a hearing, and may adopt, modify or reverse any sanctions assessed in this Notice. This decision is final and may not be contested or appealed.
4. If you choose Option 3, include with your answer a statement and evidence showing the reasons of your contest. A Notice of Administrative Hearing will be mailed to you within 30 days after your answer is received.
5. If answer by mail, return this original page to DLNR/APO. Retain a copy of everything you submit for your record. For inquiries, contact DLNR/APO at (808) 587-1496, DLNR_CO_APO@hawaii.gov or www.hawaii.gov/dlnr/apo

Option 1: Comply

I DO NOT contest this Notice, and have complied with all sanctions assessed herein.

Option 2: Request Mitigation

I DO NOT contest this Notice, but request mitigation in the assessed sanctions.

Option 3: Contest

I DO contest this Notice, and request an administrative contested case hearing.

STATEMENT OF RESPONDENT: (Please type or write legibly. Use additional sheet if necessary.)

See attached Statement.

RECEIVED
OFFICE OF CONSERVATION
AND SPECIAL LANDS
2012 AUG 29 P 1:24
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Print your name: Steven S.C. Lim

Signature: 

Date: 8/27/12

Attorney for Respondent

K. CREDIT/DEBIT CARD PAYMENT

Card Type <input type="checkbox"/> VISA <input type="checkbox"/> MasterCard	Card Number ____/____/____/____	Exp. Date (MM/YYYY) ____/____
Name (as shown on card)	Billing Address (if different from Section A) _____ _____	
Payment Amount \$ _____	Phone No. _____	Signature _____

Respondent: The Bill Healy Foundation
Answer to Notice of Civil Resource Violation (CRVS HA 4 12-36)
Tax Map Key: (3) 8-2-006:027

STATEMENT

The March 11, 2011 tsunami event caused: (1) substantial shoreline damage along the Leeward coast of the Big Island, including the park on the subject Property and (2) contributed to a change in the shoreline conditions, causing the shoreline to move mauka of the pre-tsunami survey position. Post-tsunami clean-up efforts were conducted by numerous community volunteers assisted by the Foundation.

1. Beach Sand Introduction: During the tsunami, a large amount of sand was deposited on the adjacent lot (TMK: (3) 8-2-006: 029). As part of the post-tsunami clean-up efforts of this adjacent lot, a miniscule amount of sand was inadvertently placed on TMK: (3) 8-2-006: 027 without securing any DLNR permits/clearances. As acknowledged by DLNR in the Notice, the small quantity of introduced sand has dissipated and mixed with the darker sand with no detriment to ocean resources. As such, no mitigative measures and/or corrective actions will be required of the Foundation as to this activity.
2. Soil Deposit: Volunteers working with the Foundation, unaware that the tsunami had caused the shoreline to move further mauka of the pre-tsunami surveys, and in the interest of restoring the park and preventing long-standing coconut trees from toppling, created rock planters, stacked low rock walls, planted several low shrubs, deposited a layer of soil to restore the lawn, and installed irrigation lines and sprinklers in what has been now determined to be the shoreline area. Mitigative measures and/or corrective actions to be implemented by the Foundation include the naturalization of the shoreline through non-machinery, hand removal of the rock planters, stacked rock and shrub planting. It also includes hand removal of all emplaced soil from the area makai of a line 5 feet mauka of the DLNR-proposed shoreline, with disposal outside of the Special Management Area.

The Foundation is also moving the Port-a-Potty mauka to be fully within the adjacent property. The Foundation understands that none of these shoreline naturalization actions requires a DLNR permit, and it will address SMA compliance for these activities directly with the County of Hawaii Planning Department.

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DEPARTMENT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII
MAY 29 P 1:24
DEPARTMENT OF CONSERVATION
COASTAL LANDS

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July 19, 2012

PLANNING DEPARTMENT
COUNTY OF HAWAII

2012 JUL 23 PM 3: 20

BM
11-675

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

Re: Respondent: The Bill Healy Foundation
Notice of Civil Resource Violation (CRVS HA 4 12-36)
Tax Map Key: (3) 8-2-006:027

Dear Mr. Lemmo:

This firm represents Respondent The Bill Healy Foundation ("**Foundation**"), an Oregon nonprofit corporation, lessee of the above-referred parcel. The Foundation's President Cameron Healy, and its corporate offices are located in Portland, Oregon. Mr. Healy recently provided us with a copy of the Notice of Civil Resource Violation ("**Notice**"), dated July 3, 2012,¹ which states as follows:

Citation of the violation: Conducting work without a permit for the unauthorized land use – placement of sand from an unknown source on the shoreline of land that lies within the Protective Subzone of the Conservation District.

Summons: Respondent is required to submit an answer to the Notice within twenty-one (21) days from the date of service of the Notice.

Hawaii Administrative Rule ("**HAR**"), Section 13-1-63(c), provides that "for good cause shown, the administrator may extend the period allowed for answering a violation notice." The Respondent is obtaining evidence to respond to the notice, but needs more time to interview the relevant witnesses to the alleged violation. In addition, due to the location of the sand near the shoreline, the Respondent has retained a surveyor to assist in the research, and that information cannot be obtained in the short time remaining for response. The Respondent will also be travelling and thus is unable to complete the response to the Notice by the July 26, 2012 deadline for response. It is our understanding that Foundation consultant Ron Terry discussed the

¹ We believe that the date of service of the Notice to the Foundation was on or about July 5, 2012.

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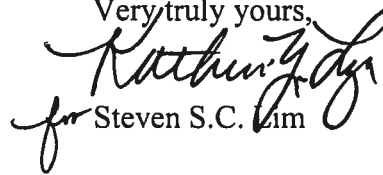
LOS ANGELES



administrative time extension with Tiger Mills of your Department on July 16, 2012. As conveyed by Mr. Terry, due to prior travel commitments, Mr. Healy will not have sufficient time to answer the Notice by the July 26, 2012 deadline as required under HAR, Section 13-1-63.

Therefore, on behalf of the Foundation and Mr. Healy, and pursuant to HAR, Section 13-1-63(c), and in recognition of Mr. Healy's travel schedule, this letter respectfully requests your approval of a 45-day administrative time extension from July 26, 2012 to September 10, 2012, within which to answer the Notice.

Please direct all future communication on this matter to my attention, with a copy to William L. Moore, 159 Halai Street, Hilo, Hawaii 96720. Should you have any questions, please feel free to contact me. Thank you for your consideration.

Very truly yours,

for Steven S.C. Lim

SSL/KYL

xc: Client
Paul Kealoha, Kamehameha Schools
S. V. (Bud) Quitiquit, Esq.
William L. Moore
Ron Terry, Ph.D.
✓ BJ Leithead Todd, County of Hawaii Planning Director