

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, APRIL 11, 2003
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Timothy Johns
Mr. Ted Yamamura

Ms. Lynn McCrory
Ms. Kathryn Inouye
Mr. Gerald DeMello

STAFF

Ms. Dede Mamiya, Land Division
Mr. Peter Garcia, DOT
Mr. Michael Constantinides, DOFAW

Mr. Sam Lemmo, Land Division
Mr. William Devick, Aquatic
Resources

OTHERS

Ms. Jean Creddick, Deputy Attorney General
Ms. Linda Chow, Deputy Attorney General
Mr. Phil Hauret, D-1
Ms. Donna Leong, D-5
Mr. Charles Wakida, D-2

Ms. Kari Wilhelm, D-4
Mr. Alan Oshima, D-2

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of March 28, 2003

Member Johns and Inouye recused themselves.

Delete Timothy Johns from member present

Page 3, second paragraph

"Richard Van Horn appeared before the Board and inquired if the amount of \$27,390,000 was the final amount. He was told the amount [to be paid would be no more than \$27,390,000]
was an estimate."

Unanimously approved as amended (McCrory/Yamamura).

Item M-1: Issuance of Revocable Permit to GECH Holdings, Inc., Near Pier 60, Honolulu Harbor, Oahu, TMK: (1) 1-2-23-33P.

Mr. Peter Garcia of the Department of Transportation pointed out GECH Holding, Inc. would be leasing a 1,000 square feet of unpaved space for \$180.00 per month. Mr. Garcia recommended the Board approve the issuance of a Revocable Permit to GECH Holdings, Inc.

Unanimously approved as submitted (Inouye/McCrory)

Item M-2: First Amendment to Revocable Permit No. H-892101 Arita/Poulson General Contracting, LLC, Near Pier 42, Honolulu Harbor, Oahu, TMK: (1) 1-2-25-12P and 42P.

Mr. Garcia informed the Board Arita/Poulson General Contracting, a general partnership has changed its name to Arita/Poulson General Contracting, LLC. The applicant would be utilizing 1,081 square feet of warehouse space and 480 square feet of paved space at a monthly rental of \$653.24. The space will be used to locate mobile office trailer to use as office space and storage of construction tools and equipment. Mr. Garcia recommended the Board approve the issuance of a Revocable Permit to the applicant.

Unanimously approved as submitted (Inouye/McCrory).

Item M-3: Issuance of Revocable Permit to Leasing, Sales and Services, Hawaii, LLC. For Inconsistent Use, Kahului Airport, Maui, TMK: (2) 3-8-01-19P.

Mr. Garcia made it known this permit would be for 2 parcels of land one being 1,640 square feet and the other 1,230 square feet. The land will be used for construction sales and equipment leasing at a monthly rent of \$574.00. Mr. Garcia recommended the Board approve the issuance of a Revocable Permit to the applicant.

Unanimously approved as submitted (Yamamura/Johns).

Item D-1: After-the-fact Grant of Perpetual, Non-Exclusive Easement and Maintenance Right-of-Entry to Hawaiian Electric Company, Inc. (HECO) for Utility Purposes, Pupukea Beach Park, Pupukea, Koolauloa, Oahu, TMK: 5-9-20: por. 53 and 5-9-03: por. 53.

Ms. Dede Mamiya Administrator of the Land Division indicated this is a request for an After-the-Fact Perpetual Easement and a Right-of Entry to Hawaiian Electric Company, Inc. (HECO) for Utility Purposes. The Land is encumbered by Executive Order 2955 to the City and County of Honolulu for the Pupukea Beach Park. HECO is working with the City and County for several utility easements in the Pupukea area to upgrade their transmission system. Ms. Mamiya recommended the Board approve the issuance of the easement and the right-of-entry to Hawaiian Electric Company Inc.

Mr. Phil Hauret of HECO was present to answer any questions.

Unanimously approved as submitted (Inouye/Johns).

Item D-4: Request to Extend the Processing Period for an Additional 90-days for Conservation District Use Application (CDUA) HA-3065 for the Keck Outrigger Telescopes Project at Mauna Kea Science Reserve, District of Hamakua, Island of Hawaii.

Member DeMello recused himself.

Mr. Sam Lemmo Planner with the Land Division told the Board before them is a request by the University of Hawaii (UH) to extend the processing period for an additional ninety days for CDUA HA-3065. The reason they are asking for an extension is because they are currently involved in a contested case hearing. The hearing has been completed and they are awaiting recommended findings of fact by the various parties involved. Mr. Lemmo recommended the Board approve the extension of the processing period for an additional 90 days.

The Board questioned whether the extension of 90 days was sufficient time.

Mr. Lemmo addressed the Boards concern by noting UH would like to request a short extension as their interest is to move things along as quickly as possible.

The Board received written testimony from Life of the Land. They also questioned if Life of the Land was a party in the contested case to which the answer was no.

Ms. Kari Wilhelm representing UH came before the Board and went through the deadlines set forth for the case – proposed finds of fact and conclusion of law due on May 19 and the hearings officer will submit the recommendation of findings on June 6. Ms. Wilhelm told the Board she would not be against the Board issuing a 120 day extension to ensure everything is completed. Ms. Wilhelm questioned if there would be more than one Board meeting on the contested case hearing.

The Board explained the process of a contested case to Ms. Wilhelm.

The Board amended the Recommendation Section to read as follows:

"That the Board of Land and Natural Resources approve this request to extend the processing period for CDUA HA-3065 ad additional [90-] 120 days (to [August 14, 2003] September 13, 2003) to allow sufficient time to complete the contested case hearing process."

Unanimously approved as amended (Johns/Yamamura).

Item D-5: CDUA OA-3100 to Retain the Portion of Driveway and Parking Area Already Repaired and Resurface; and to Resume and Complete the Repair and Resurfacing of the Remaining Portion of the Driveway and Parking Area, at 45-644B Kionale Road, Kaneohe, Oahu. Applicant: Donna Leong, Cades Shutte.

Mr. Lemmo went over the history of the property. He noted this was a five acre parcel in Kaneohe next to the HECO substation at the intersection of Highway Three and Kamehameha Highway. The property has been on the market for at least 5 years but since it is in the conservation district and the property contained 4 dilapidated structures the owners would need to submit a CDUA to bring things into compliance. Upon passing the above property Staff noticed work was being done on the property. Land Division advised the property owners to contact Staff before they do anything on the property but the owners went ahead and repaired and resurfaced a part of their driveway. The Board found the applicant to be in violation and assessed a fine. The applicants were told to file a CDUA within 30 days of the Board action. When the applicant turned in a CDUA they sought approval to retain the repaired and resurfaced driveway and parking area and to also seek approval to reconstruct an old driveway and parking area. Staff told the applicant they were unable to accept the application because if they wanted to add the remainder of the driveway they would need to submit a Draft Environmental Assessment (DEA). Mr. Lemmo recommended the Board approve the application to retain the driveway and parking area already repaired and resurfaced, this excludes the extension.

The Board asked whether the applicants required a CDUA for the home. Mr. Lemmo said he could not answer that question because he did not know the extent of the repairs made on the structure. He told the Board the rules do not allow for the reconstruction or replacement of non-conforming use.

Donna Leong appearing on behalf of Christopher and Doreen Emerson spoke before the Board. She noted the applicant is not herself by the Emerson's. Ms. Leong told the Board she provided Staff with information to show the houses were constructed circa 1920's to 1950's. Ms. Leong noted when she appeared before the Board last year, the Emerson told the Board they wanted to repair and resurface the entire driveway. She informed the Board the driveway beyond House 3 previously existed but it was not in very good shape. Ms. Leong advised the Board her after discussion with her clients she would like to withdraw the portion of the CDUA with regards to the driveway that her clients have not repaired or resurfaced (driveway beyond house 3). Lastly Ms. Leong asked the Board to amend certain portions of

Staff's report so that the wording would not be construed as findings by the Board regarding abandonment, nonconformity and with regards to extending part of the driveway.

The Board amended:

- 1) **The Applicant from Donna Leong to Christopher and Doreen Emerson;**
- 2) **The Current Use Section to clarify the first sentence on page 3 to read as follows:**

"Approximately 500 feet of the entrance of driveway consists of [a-dirt] an old asphalt road."
- 3) **The Analysis Section by amending paragraph 8 to read as follows:**

**"8) ~~[At this moment, staff is not sure that the proposed action, as proposed]~~
The action will not be materially detrimental to the public health, safety and welfare."**
- 4) **The Recommendation Section by amending paragraph 4 to read as follows:**

"4) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form ~~[as-a-part of the deed instrument,]~~ within thirty (30) days of the Board's action;"
- 5) **The Recommendation Section by amending paragraph 6 to read as follows:**

"6) No work shall be conducted in the Conservation District, unless under an approved CDUA or unless otherwise approved by the Department or Chairperson;"

Unanimously approved as amended (Inouye/McCrory).

Item F-1: Request for Approval to Enter into Three Agreements with the Research Corporation of the University of Hawaii (RCUH).

Mr. William Devick Administrator for the Division of Aquatic Resources informed the Board he is requesting approval to enter into three agreements with the Research Corporation of the University of Hawaii (RCUH). Mr. Devick made it known these positions would be for operational activities within the division. He noted the funds may be adjusted depending on the outcome of the legislature. The first project would serve fishery research, statistics and data management. It would deal with information on the central data base and management decisions regarding commercial fisheries. The second would be a Stream/Estuarine Fisheries Study, which would, related to ongoing research on native freshwater species and freshwater/estuarine habitats. The third project a Marine Population Survey would provide a scientific bases for on going changes in fishing regulations. Mr. Devick recommended the Board approve the following agreements.

The Board asked Mr. Devick if there was any money in the Marine Population Survey that would go towards educating the public on why we need to close certain areas or why certain areas are off limit for fishing.

Mr. Devick answered the Board by stating the description of the project states the funds will be used to conduct research to provide scientific bases for establishing fishing regulations.

Mr. Devick informed the Board his division is in the process of developing a comprehensive public information and education program.

Unanimously approved as submitted (Johns/DeMello).

Item F-2: Request for Approval to Amend Three (3) Agreements with the Research Corporation of the University of Hawaii (RCUH).

Mr. Devick conveyed he is requesting to amend the 3 previous agreements with RCUH. The amendment will secure assistance and the continuation of the projects with RCUH. The Hawaii Marine Recreational Fishing Survey would collect data and focus on the interactions between fishermen and sea turtles. The Coastal Fisheries Stock Enhancement project would focus on the release of cultured native mullet into its nursery habitat. Lastly the Statewide Public Fishing Areas project would establish and/or manage Statewide Fishing Areas and collect data on bio-agent Cyrtobagous salviniae (the Salvania weevil) as to whether it should be imported for use in controlling Salvania Molesta.

Unanimously approved as submitted (Johns/DeMello).

Item D-3: Grant of Perpetual, Non-Exclusive Easement to Maui Electric Company, Limited for Utility Purposes, and Request for Construction Right-of-Entry, Wailuku Town, Wailuku, Maui, TMK: (2) 3-4-009:004 (Por.).

Ms. Mamiya pointed out this request is for a non-exclusive easement and right-of-entry to Maui Electric Company (MECO) for utility purposes. Because the easement only serves Iao Intermediate School Ms. Mamiya is recommending gratis consideration. Ms. Mamiya recommended the Board authorize the issuance of a perpetual non-exclusive easement to MECO.

Unanimously approved as submitted (Yamamura/Johns).

Item D-6: Set Aside to County of Hawaii for Recreational Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-06:13 & 15.

Ms. Mamiya noted this was a set aside to the County of Hawaii for recreational purposes. This property has been vacant for more than twenty years and prior to that in the 1900's the land was used for commercial purposes. Ms. Mamiya believes the property has limited commercial value due to the absence of road frontage along Kalanianiole Avenue. The County of Hawaii, wishes to utilize the property as an addition to their Reeds' Bay Park by allowing public parking and increased shoreline access. There were no major comments or

objections to the proposed request. Ms. Mamiya recommended the Board set aside the subject lands to the County of Hawaii.

Unanimously approved as submitted (DeMello/Yamamura).

Item D-7: Certification of Election and Appointment of Soil and Water Conservation District Directors.

Ms. Mamiya indicated this is a request to certify election and appointment of Soil and Water Conservation District Directors. She is requesting the appointment of Roy Asao as Director of West Oahu Soil and Water Conservation District.

Unanimously approved as submitted (Johns/Inouye).

Item D-8: Issuance of Right-of-Entry Permit to the County of Hawaii, Department of Public Works and Wilson Okamoto Corporation on Encumbered State Lands at Hienaloli and Puaa, North Kona, Hawaii, TMK: (3) 7-5-08: 10; 7-5-09: 26, 43 & 66.

Ms. Mamiya briefed the Board. She noted an Executive Order, a General Lease and several Easements encumber the land. The permit would be used to conduct field studies and topographical surveys in conjunction with the proposed Alii Drive Improvements along Oneo Bay. Ms. Mamiya recommended the Board authorize the issuance of a right of entry permit.

Unanimously approved as submitted (DeMello/Johns).

The Board recessed at 10:14 a.m. and resumed the meeting at 10:27 a.m.

Member Johns recused himself.

Item D-2: Alleged Conservation District Violations (Timber Harvesting) by Kahuku Ranch, at Kau, Hawaii, TMK: (3) 9-2-1:2 (por.)

Mr. Lemmo pointed out before the Board is an alleged Conservation District Violation for Timber Harvesting. The area in which the unauthorized logging occurred is on the western boundary of the parcel adjoining state unencumbered lands and private lands of Kapua, Honomalino, Papa 1 and 2 and Alike Homesteads. The affected area is within the Limited and General Subzones of the Conservation District. In March 2001 the Department received a complaint alleging that intensive logging was underway within the Conservation District on Kahuku Ranch lands. Staff conducted a file search to determine if permits for timber harvesting had been issued. None were issued. In May 2002 Land Division requested assistance from the Division of Forestry and Wildlife (DOFAW) to conduct an assessment of the impact of timber harvesting on portions of the subject parcel. DOFAW provided a copy of their summary. In the report DOFAW stated 712 native trees were either harvested or killed. The majority of these are koa (651) with some ohia and kolea. DOFAW also noted a logging road was constructed to provide access to these areas and to haul logs. In 1992 a contract was signed that allowed Mr. Steve Baczkiewics Agricultural Service Company (Steve's) to harvest Koa on property owned by the Estate of Samuel M. Damon

(Damon). The contract stipulates that only downed or severely distressed trees was to be harvested but it did not prohibit the taking of trees from Conservation District lands. Damon reported receiving \$372,095,000 from the contractor for logs taken off State Lands and State zoned Agriculture lands. DOFAW attempted to calculate the profits earned from the sale of the 712 trees cut on conservation lands. DOFAW produced a figure of \$113,776,000. In terms of a restoration plan DOFAW provided Land Division with a report which outlined the total cost. The Department of Land and Natural Resources (DLNR) first preference would be to require restoration of the forest area damaged by the loggers' action. However since the National Park Service (NPS) is acquiring the land, Damon would need to work with NPS to restore the affected areas. Since it would be difficult to hold Damon responsible for restoration of the areas if NPS did not also agree, Staff decided an alternative enforcement approach, would require the collection of penalties for the management or restoration of conservation lands. Staff imposed a fine on a per tree basis (\$2,000 per tree). Therefore the maximum fine the Board could levy is \$1,426,000.00. Because of mitigating circumstances, (Damon did not cut the trees, Damon has cooperated with DLNR, etc.) Staff proposed a reduction in the fines to \$265 per tree. Staff is also recommending a fine of \$2,000 for the illegal logging road and \$13,535 for administrative costs. Mr. Lemmo recommended the Board fine the landowner in violation of Chapter 183C, HRS and Chapter 13-5, HAR and subject the applicant to the following 11 conditions stated in the submittal.

The Board questioned why staff did not charge Damon \$2,000 per tree plus the divestment of any profits made from the sale of the trees. The Board noted in the past the violation has been \$2000 per tree whether the action was willful or not.

Mr. Lemmo addressed the Board by saying if Staff charged \$2,000 per tree the violation would total to just about \$1.5 million, a very large fine. He suggested looking at a lesser number in hopes of keeping Damon from walking away from the table.

Ms. Linda Chow from the deputy attorney general's office appeared before the Board. She explained to the members of the Board because koa harvesting is such a commercial activity they wanted to send out the message, "anything you gain from this type of illegal activity will be taken away from you." By doing this they hope to discourage the commercial benefits derived from this activity – taking away all profits. Ms. Chow also noted a fine \$2,000 per tree plus the divestment of profits would exceed our statutory authority.

The Board asked Staff why they didn't assess a penalty for the spur roads. Mr. Lemmo said they had no particular reason for not charging for the spur roads.

Michael Constantinides Forester for the Division of Forestry and Wildlife appeared before the Board. The Board asked Mr. Constantinides why he provided the Board with a conservative underestimate tally of trees that were felled or knocked down due to logging activities instead of a reasonable tally of trees. He told the Board the nature of his background and training in this field of science is to only present information on what you have the utmost confidence in. He noted the style of survey he used was highly unconventional. He did a 100 percent sweep of the areas involved. Typically he would have gone in and sampled a small percentage of an area then develop and expansion factor based on statistical strengths.

The Board asked Mr. Constantinides if he took a conservative approach (to the number of trees knocked or felled down due to logging) and Staff in the Land Division also took a conservative approach to the numbers, are we providing a true end result.

When asked by the Board if he chose a reasonable approach to the number of trees knocked or felled by what percent would his number increase? Mr. Constantinides estimated an increase of about ten percent. When speaking of the types of trees cut down (selective or not), Mr. Constantinides told the Board he felt all types of trees were being cut-dead and down, burned and trees standing and living. When asked if he counted the spur roads, he stated he didn't as it would have taken an intensive effort since there were so many roads. With regards to the reforestation of the spur roads, Mr. Constantinides believed it would take five to ten years to get vegetation back. The Board asked Mr. Costantinides if he believed the practice by Damon Estates to rid the forest of dead and dying trees to be a good forestry practice. He replied yes because he believes the dead and dying trees being a resource will rot away and disappear otherwise. When asked to characterize the cutting of the forest as selective versus clear cut, Mr. Constantinides noted it was selective. Mr. Constantinides noted there was one saw mill site. When asked if he saw any type of markings on the trees to indicated which trees would be removed, he replied he didn't see any markings.

Mr. Alan Oshima representing Damon Estate appeared before the Board. At the onset he wanted to make it clear the initially logging activities began in agriculture lands and with change of personnel things proceeded on their own. He can not tell with certainty what happened in 1997-1999 when the harvesting appears to have occurred in conservation land. Mr. Oshima noted there is another action before the Board in regards to koa harvesting on State lands thus Damon has chosen to avoid discussing koa harvesting as to not seem they are influencing things or obstructing justice. Mr. Oshima does not disagree that koa and other native trees were harvested within the conservation district. However, he is asking the Board not to impose the harsh penalties suggested by Staff. He does not believe the law allows for such penalties. In reference to HRS § 183-7(b), Mr. Oshima stated the law authorizes DLNR to impose a fine of not more than \$2,000 on any person violating Chapter 183C or any rule adopted hereunder, plus administrative costs if State land is damaged (which is not the case here) the penalties can include recovery of damages to State land within the Conservation District. With regards to HAR §13-5-22 it requires a permit for taking more than 5 mature trees (more than 6 inches in diameter) in the conservation district, Mr. Oshima believes the statue does not provide for a per tree penalty. He feels if the statue allowed for a per tree penalty it could lead to an abuse of power. He believes Staff's recommendations are punitive and are not supported by applicable law. Mr. Oshima went on to refer to Exhibit 10 of the Staff report. He noted Board precedent in cases where there were multiple violations, Staff applied a fine of \$2,000 per violation. The fines were not imposed per tree, per yard of grading or per square foot of excavation. He believes case law in other jurisdictions supports his interpretation, especially in his case where there is no allegation of willful or wanton conduct on Damon's part. Mr. Oshima believes his interpretation of the law allows for a maximum fine of approximately \$20,000; \$2,000 for unpermitted logging, \$2,000 for the logging road and administrative costs.

To address the issue of reforestation, Mr. Oshima says this is not an option. He states the law does not provide for recovery of damages to private lands. It provides for damages to State lands therefore under HRS 183-7(b) reforestation by Staff cannot be required.

In conclusion, Mr. Oshima believes Damon Estate acted responsibly by requiring in its written license agreement that only downed or severely distressed trees could be cut. In doing so Damon was trying to act as a good steward of the land. Lastly, the estate required Steve's to obtain all necessary permits.

Referring to the statement in Damon's agreement with Steve's which states "any tree so selected will be flagged and approved by the Trustees or their agent for cutting," the Board asked Mr. Oshima did the trustees or agent flag the trees in A-G Kipuka's? Mr. Oshima answered, no there was no record of it. He went on to say through the course of time, he does not know what happened between the ranch manager and Steve's with regards to flagging the trees.

When the Board question Mr. Oshima if he agrees that the land owner is responsible for activities on their property he answered generally and ultimately yes the landowner has a responsibility to the State.

The Board asked Mr. Oshima if he agreed with the statement made by Mr. Constantinides that the tree cutting was selective rather then clear cut. Mr. Oshima replied that he agreed but he cautioned the Board on the use of the word "selective." He noted there are still trees on the site that are good for cutting.

The Board asked Mr. Oshima if the Estate ever provided Steve's with a map that showed the Agriculture area. Mr. Oshima replied he was unsure.

To address the comment Mr. Oshima made earlier regarding the violations in Exhibit 10, the Board noted the only violation that came before them after the ruling on a per tree violation was made was the Gusher case. The Board went on to say (in the Gusher case) even though there were pipes that connected the Jacuzzi to the pump house they viewed it as two separate violations.

Mr. Lemmo made a comment that in every case involving private conservation land where a third party is the responsible entity for the violation, Staff has always gone after the land owner. In terms of the penalty assessed Mr. Lemmo stated , in circumstances where Staff feels people have not willfully violated the rules we still impose a fine because that is what the law allows. Just because it is not willful doesn't mean Staff won't impose a fine.

Mr. Charles Wakida a retired forester with DOFAW appeared before the Board on behalf of Damon Estate. He went through the "Inspection Report Covering Harvesting of Koa from Damon Estate Conservation Lands" which he submitted to the Board members. Mr. Wakida's in his inspection of the Kipuka's estimated the percentages of koa trees felled as follows: Kipuka A ± 10 percent, Kipuka B 10 to 15 percent, Kipuka C 25 to 30 percent, Kipuka D and E were damaged to the a fire, Kipuka F ± 10 percent and Kipuka G 5 to 10 percent. Mr. Wakida believes the cutting of trees were selective but he did mention there were live standing trees that were both good and those that were bad which were still in the area in question.

The Board took a break at 12:56 p.m. and resumed the meeting at 1:12 p.m.

The Board noted in Exhibit 6, Damon's letter to Steve's that Damon's intent was to be selective when flagging the trees to be harvest. This then supports the concept that each tree cut is a separate and distinction action.

Mr. Oshima did not agree with the above assessment. He felt if Steve's asked to go into the conservation to harvest trees, the Estate might have place other requirements on Steve and the Estate might have reviewed the application to see exactly what Steve was requesting to cut.

The Board referred to Exhibit 9 in the Staff report and asked Mr. Constantinides if he could identify the areas the reforestation was proposed for. He could not but he did state the area would be approximately 1,000 – 1,500 acres. It would include the 500 acres trees were taken from and also the area damaged by fire. The Board asked Mr. Constantinides if he was given a set amount of money and could reforest the area of his choosing would he choose a particular area or the entire area. He stated the answer would depend on the individual person's philosophy to either work on the area most damaged or the flip side would be to work with the area that is most intact thereby ensure a greater chance of bringing the area back to its original condition as quickly as possible.

Motion made at 1:23 p.m. to move into Executive Session to consult with the Deputy Attorney General regarding the appropriateness of fines imposed.

Unanimously approved to move into Executive Session (Inouye/McCrory).

The Board reconveyed at 2:04 p.m.

The Board amended the Recommendation Section to read as follows:

"Based on staff's findings and conclusions, the Board of Land and Natural Resources (BLNR) hereby finds that the landowner is in violation of Chapter 183C, Hawaii Revised Statutes and Chapter 13-5, Hawaii Administrative Rules, and therefore subject to the following:

- [1.] Damon violated the provisions of Chapter 183C, Hawaii Revised Statutes, and Chapter 13-5, Hawaii Administrative Rules (HAR), in 713 instances by failing to obtain the appropriate approvals for road construction and the destruction of 712 native trees within the conservation district;]**
- [2]1. Damon shall be fined \$13,535.00 for administrative costs associated with the subject violations to be paid within sixty (60) days of the BLNR's action;**
- [3]2. Damon shall be fined [\$326,243.00] \$480,535.00 for the harvesting and killing of 712 native trees, which fine would include \$2,000 for logging road construction and \$2,000 for the mill site to be paid within sixty (60) days of the BLNR's action;**
- [4]3. That in lieu of the payment of the fines noted in paragraph 3 above (except for the administrative fine to be paid to the Department of Land and Natural Resources (DLNR), within 60 days of the BLNR's action), Damon may restore**

the Kahuku Ranch lands subject to a habitat and forest restoration plan to be approved by the [Chairperson] BLNR. At its own expense, Damon shall prepare and submit to the [Chairperson] BLNR the restoration plan within 3-months of this BLNR action. The restoration plan shall include the activities to be performed and the timeframe for completion of each activity;

- [5]4. In the event that Damon chooses to restore the area according to an approved restoration plan rather than pay the fine, Damon shall post a bond in the amount of [\$334,680.00] \$480,535.00. The bond will be returned to Damon upon satisfactory completion of the actions required by the BLNR pursuant to this submittal, as determined by the Chairperson;
- [6]5. Upon approval of the restoration plan, Damon shall at its own expense, implement the [DLNR] BLNR approved habitat restoration plan and restore the land within the conservation district to a condition suitable to the Chairperson within one (1) year of approval of the plan or by any other time as determined by the Chairperson;
- [7]6. If after approval of the habitat restoration plan, the Chairperson determines that Damon has not fulfilled its responsibility to implement the plan, Damon shall forfeit the bond to DLNR;
- [8.] ~~Within four months of the BLNR's Action, or any time afterwards, if it is determined by the Chairperson that Damon has not cooperated in the development of a habitat restoration plan for these lands, the Chairperson shall order Damon to pay the fine of \$334,680.00 immediately;~~
- [9]7. If the fine is paid to DLNR, the money shall be used by the Division of Forestry and Wildlife (DOFAW) to manage or restore Forest or Natural Area Reserve lands subject to a plan prepared by DOFAW and approved by the Chairperson to be completed within one (1) year of the Board's action'
- [10]8. That in the event of failure of Damon to comply with any conditions, Damon shall be fined an additional \$2000 per day until the order is complied with; and
- [11]9. That in the event of failure of Damon to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs."

Unanimously approved as submitted (DeMello/McCrory)

The Board suggested in the calculation of future fines Staff come up with a plan that would have looked at the conservation lands as a whole. Also when the cost of the restoration plan is determined calculate that backwards into the fine.

Mr. Oshima requested a contested case.

There being no further business, Chairperson Young adjourned the meeting at 2:12 p.m.

Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Terry Crowell

Approved for submittal:

Peter T. Young
for PETER T. YOUNG
Chairperson
Department of Land and Natural Resources