

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 26, 2012

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

HAWAII

Enforcement of Violation on Unencumbered Public Lands, Unauthorized Land Clearing, Construction of Perimeter Fence and Removal of Ohia Timber by Connections New Century Public Charter School, Kukuau, South Hilo, Hawaii; TMK (3) 2-5-06:141 portion.

PURPOSE:

Enforcement of violation of Hawaii Administrative Rules relating to unencumbered public lands, unauthorized bulldozing and land clearing construction of perimeter fence and removal of ohia timber by the Connections New Century Public Charter School and/or agents acting on their behalf occurring on State unencumbered lands makai of Edita Street, Hilo, further identified by tax map key 3rd/2-5-06:141 and shown as Exhibit A.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended
Section 13-221-23, and 28, Hawaii Administrative Rules (HAR), as amended.

BACKGROUND:

On March 28, 2008 under agenda item D5, the Board of Land and Natural Resources approved in principle, the issuance of a direct lease to the Connections New Century Public Charter School (Connections) for school purposes pending the finding of no significant impact (FONSI) of their environmental assessment for the school site. Then, at its meeting of January 13, 2012 under agenda item D-4, the Board approved the direct lease to Connections for a period of sixty-five (65) years. There was no management right of entry agreement on either Board submittal and no authorization for the applicant to enter onto the State land prior to the lease document being fully executed.

On July 27, 2012, Hawaii District Land Office (HDLO) staff received a telephone call from the Law Office of Ted H. S. Hong, agent for Connections informing DLNR staff that a contractor hired by Connections had cut and removed several ohia logs from the property without authorization. When asked to explain further, staff was then informed the contractor had bulldozed the perimeter of the lower portion of the State property and erected a hog-wire fence around the boundary with several gates placed at strategic locations. This information was followed by a letter (copy to HDLO) dated August 2, 2012 from the office of Mr. Hong to the contractor apprising them of possible legal repercussions.

A theft investigation for the removal of ohia trees from State property was opened by the County of Hawaii Police Department on July 14, 2012. Subsequently, this information has been forwarded to the DOCARE East Hawaii District Branch for further investigation.

A site inspection of the property was conducted on August 10, 2012 by staff and confirms the bulldozing activity in addition to the construction of a hog-wire fence along the perimeter of the lower portion of parcel 141. The inspection revealed evidence of several ohia trees being pushed over. Some of the larger trees appeared to have been cut with a chain saw and removed. It is not clear whether they were cut prior to being bulldozed. The exact number of trees removed has not been determined thus far. (Photos attached as Exhibit B)

As a requirement for the issuance of a direct lease, the applicant, Connections was required to conduct an Environmental Assessment for the proposed use of State lands¹. In the Final Environmental Assessment (FEA) submitted by Connections, and published on November 8, 2010, caution was given to any land clearing and construction in areas where possible lava tubes may be present. The FEA identified portions of the Kaumana Caves system as being located under a section of the lower property and recommended the position be identified and flagged. The FEA also stated that clearing of the ohia forest above the cave could have significant indirect effects to the cave ecosystem. It appears from the maps provided in the FEA that the bulldozing occurred over a portion of the cave system.

Pursuant to section 13-221-23, HAR, "No person shall destroy, disturb, or mutilate any geological features or dig, or remove sand, earth, gravel, minerals, rocks, fossils, coral or any other substances on the premises". The perimeter of the lower portion of the property was bulldozed and a hog-wire fence was constructed. This action constitutes a disturbance to the geological features.

Further, Section 13-221-28(d) cites "No person shall destroy, dig, remove, or possess any tree, shrub or other plant, except for noxious weeds, as defined in Chapter 4-6B, HAR, within the premises", the removal of Ohia timber at the subject location is considered a violation of this administrative rule.

¹ The Environmental Assessment submitted by the Applicant to the Office of Environmental and Quality Control (OEQC) does not provide for the construction or installation of perimeter fencing.

Staff is therefore recommending the Board impose a fine in the amount of \$5,000 against Connections New Century Public Charter School. Additionally, Staff spent 12 hours conducting two site inspections of the unauthorized clearing and fence installation, reviewing files, meeting with Mr. Hong and preparing the present Board submittal. Staff therefore recommends an assessment of administrative costs against Connections in the amount of \$540. Further, staff is recommending the removal of the perimeter fence and restoration of the land at Connections' expense. Finally, staff is recommending that the Board reserve the right to impose additional fines against Connections or others in the event the ongoing investigation by DOCARE Officers into the alleged theft of ohia trees from State land warrants such action.

RECOMMENDATION:

That the Board:

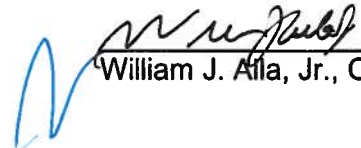
1. Find that Connections New Century Public Charter School violated Sections 13-221-23 and 13-228-28, Hawaii Administrative Rules;
2. Impose a fine in the amount of \$5,000 and assess administrative costs in the amount of \$540 against Connections pursuant to HRS § 171-6;
3. Require Connections to remove the fence line and restore the land to the satisfaction of the department within 60 days from the date of this Board action at Connections' expense;
4. Reserve the right to impose additional fines in the event the ongoing investigation by DOCARE Officers into the alleged theft of ohia trees from State land warrants such action; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

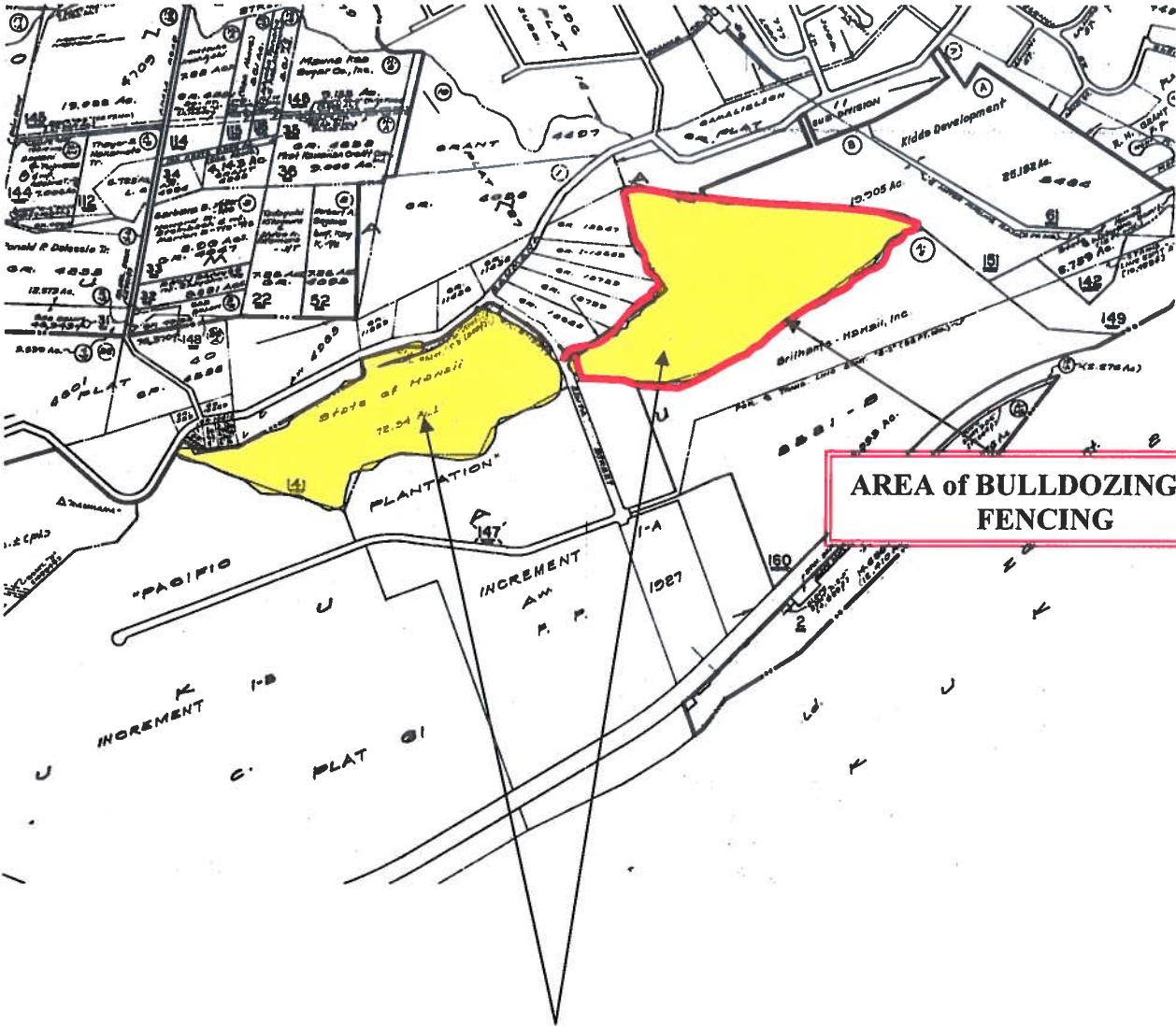
APPROVED FOR SUBMITTAL:



William J. Afa, Jr., Chairperson

EXHIBIT A

**CONNECTIONS PUBLIC CHARTER SCHOOL
TMK: 3rd / 2-5-06:141**



AREA of BULLDOZING and FENCING

SUBJECT PROPERTY



EXHIBIT B



EXHIBIT B



EXHIBIT B