

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

May 13, 2010

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

PSF No.: 06HD-178
HAWAII

Request that the Board Grant in Part Petition for Contested Case Hearing by Steve Baczkiewicz, Wesley McGee, and Raymond McGee for a Contested Case Hearing as to Enforcement Action as to Steve's Ag Services, Ltd., Steve Baczkiewicz, Contract Milling, Wesley McGee, and Raymond McGee (Loggers) Involving the Removal of Koa and Other Timber Resources and Road Construction on State Unencumbered Lands, Alika and Papa 1, South Kona, Hawaii, Tax Map Key: (3) 8-8-1:8 and for Authorization to Select and Appoint a Hearing Officer

At the Board of Land and Natural Resource's meeting of April 8, 2010, the Board approved staff's recommendation as follows:

- 1) Find that Loggers violated HAR §13-221-28(a), §13-221-28(c) and §13-221-28(d).
- 2) Authorize a fine of \$500 per tree pursuant to Haw. Rev. Stat. § 171-6(15) (1993) for a total of \$105,500 to be assessed against each Logger, individually. There is no right of contribution as to fines. Each of the loggers individually violated the rules. Each is individually liable for the fines.
- 3) Authorize damages of \$409,423.41 for value of wood taken to be assessed against Loggers, jointly and severally.
- 4) Authorize administrative costs of \$53,870.80 to be assessed against Loggers, jointly and severally for the violations of Chapter 13-221, HAR.

Mr. Doug Ing orally requested a contested case hearing before the close of the meeting on April 8, 2010.

On April 12, 2010, Mr. Ing submitted to the Department petitions for contested case on behalf of Steve Baczkiewicz, Raymond McGee, and Wesley McGee pursuant to Hawaii Administrative Rules 13-1-29 and 13-1-31.1. Copies of the petitions are attached.

After consultation with the Department of Attorney General, the Department is recommending that the petitions be granted, provided that whether the State owns the subject property has been determined in federal court and is not an issue for the contested case. The Department notes that petitions were not submitted for Steve's Ag Services, Ltd. or Contract Milling.

RECOMMENDATION: That the Board:

- 1) Grant the petitions and authorize a contested case as to the fine, damages, and costs assessed against Steve Baczkiewicz, Wesley McGee, and Raymond McGee, provided that ownership of the property and the fine, damages, and costs assessed against Steve's Ag Services, Ltd. and Contract Milling are not at issue in the contested case.
- 2) Authorized appointment of a Hearing Officer to conduct hearings relevant to the petition as provided by law.
- 3) Delegate the authority for selection of the hearing officer to the Chairperson.

Respectfully submitted,



Charlene Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 

67011

Watanabe Ing
A LIMITED LIABILITY LAW PARTNERSHIP

'10 APR 12 P12:07

April 9, 2010

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Via Certified Mail, Return Receipt Requested

Laura Thielan
Chair, Board of Land and Natural Resources
Department of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, HI 96813

RECEIVED
LAND DIVISION
2010 APR 14 P 1:20
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

RE: WRITTEN REQUEST FOR CONTESTED CASE HEARING
In the Matter of an Enforcement Action as to Steve's Ag Services, Ltd.,
Steve Baczkiewicz, Contract Milling, Wesley McGee, and Raymond
McGee involving Removal of Koa and other Timber Resources and Road
Construction on State Unencumbered Lands, Alika and Papa 1, South
Kona, Island of Hawaii, TMK (3) 8-8-01:08

Dear Chair Thielan:

Attached are the written Petitions for a Contested Case Hearing for
Petitioners Steve Baczkiewicz, Raymond McGee, and Wesley McGee (collectively, the
"Loggers") pursuant to Hawaii Administrative Rules ("HAR") §§ 13-1-29 and 13-1-31.1.
The Loggers hereby contest the fines, damages, and costs based upon alleged violations
of Hawaii Revised Statutes ("HRS") § 171-6(15) (Supp. 2003) and HAR § 13-221-28
that the Board of Land and Natural Resources ("BLNR") imposed at its April 8, 2010
meeting, under Agenda Item No. D-14.

Very truly yours,

WATANABE ING LLP


J. DOUGLAS ING

Attachments

EXHIBIT "A"



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY

| | |
|------------------------------|-----------------|
| Case No. | Date Received |
| Board Action Date / Item No. | Division/Office |

INSTRUCTIONS:

- File (deliver, mail, fax or email) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Email: DLNR.CO.APO@hawaii.gov, Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

A. PETITIONER

(If there are multiple petitioners, use one form for each.)

| | | |
|----------------------|-------------------|-----------------------------------|
| 1. Name Ray McGee | 2. Contact Person | |
| 3. Address | 4. City Hilo | 5. State and ZIP Hawaii, 96721 |
| 6. Email | 7. Phone (808) | 8. Fax |

B. ATTORNEY (if represented)

| | | |
|--|-----------------------------------|----------------------------|
| 9. Attorney Name J. Douglas Ing | 10. Firm Name Watanabe Ing LLP | |
| 11. Address 999 Bishop Street, 23rd Floor | 12. City Honolulu | 13. State and ZIP 96813 |
| 14. Email douging@wik.com | 15. Phone (808) 544-8300 | 16. Fax (808) 544-8399 |

C. SUBJECT MATTER

17. Board Action Being Contested

Imposition of fines, damages, and costs for alleged violations of HRS 171-6(15) and HAR 13-221-28

18. Board Action Date

April 8, 2010

19. Item No.

D.14

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

Petitioner was directly alleged to have committed violations

21. Any Disagreement Petitioner May Have with an Application before the Board

N/A

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

Dismissal of action

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

N/A

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

N/A

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

J. Douglas Ing
Petitioner or Representative
(Print your name)


Signature

April 9, 2010
Date



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BOARD OF LAND AND NATURAL RESOURCES

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A. PETITIONER

(If there are multiple petitioners, use one form for each.)

| | | |
|-----------------------------|--------------------------|--|
| 1. Name Wes McGee | 2. Contact Person | |
| 3. Address | 4. City Hilo | 5. State and ZIP Hawaii, 96721 |
| 6. Email | 7. Phone (808) | 8. Fax |

B. ATTORNEY (if represented)

| | | |
|---|--|-----------------------------------|
| 9. Attorney Name J. Douglas Ing | 10. Firm Name Watanabe Ing LLP | |
| 11. Address 999 Bishop Street, 23rd Floor | 12. City Honolulu | 13. State and ZIP 96813 |
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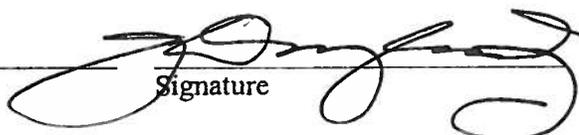
24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

N/A

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Check this box if Petitioner will submit additional supporting documents after filing this form.

J. Douglas Ing
Petitioner or Representative
(Print your name)



Signature

April 9, 2010
Date



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| A. PETITIONER | | |
|---|--------------------|-----------------------------------|
| (If there are multiple petitioners, use one form for each.) | | |
| 1. Name Steve Baczkiewicz | 2. Contact Person | |
| 3. Address | 4. City Volcano | 5. State and ZIP Hawaii, 96785 |
| 6. Email | 7. Phone (808) | 8. Fax |

| B. ATTORNEY (if represented) | | |
|--|-----------------------------------|----------------------------|
| 9. Attorney Name J. Douglas Ing | 10. Firm Name Watanabe Ing LLP | |
| 11. Address 999 Bishop Street, 23rd Floor | 12. City Honolulu | 13. State and ZIP 96813 |
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J. Douglas Ing
Petitioner or Representative
(Print your name)


Signature

April 9, 2010
Date