BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:	NO. No. 99-41
DAVID ALVES	STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between David Alves and the EXECUTIVE ETHICS BOARD ("Board") through Brian R. Malarky, Executive Director. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

A. FACTS

1. David Alves is a Forester 2 assigned to the Central Region of the Department of Natural Resources ("DNR").

2. On December 27, 1999, the Board received an ethics complaint alleging misuse of state resources against Mr. Alves. On December 5, 2000, the State Auditor transmitted to the Board a Report of Whistleblower Investigation regarding the same alleged misuse of state resources. The Report concluded that Mr. Alves violated state law by using state resources for personal gain or for the benefit of a private non-profit organization and the owner of private land.

3. On December 27, 2000 the Board staff referred the matter to DNR for investigation, pursuant to WAC 292-100-040. On January 2, 2001, DNR completed its investigation and reported its findings to the Board (see attached report). The DNR report noted that all the allegations contained in the initial ethics complaint were included in a February 8, 2000, DNR investigation, which had substantiated a number of allegations against Mr. Alves.

4. DNR's investigation formed the basis of a July 28, 2000, notice of discipline and Mr. Alves' demotion from Natural Resource Camp Manager 3 to Forester 2 on August 16, 2000. Mr. Alves demotion resulted in a reduction in gross monthly pay of $656.00 ($7,872.00 annually). Mr. Alves appealed the DNR discipline action to Washington State Personnel Appeals Board, Case No. DEMO-00-0014.

5. The DNR investigation concluded that:

a. Mr. Alves attended ethics training on January 31, 1995;

b. On at least five occasions between May 20, 1999 and June 9, 1999, Mr. Alves used, without authorization, a state vehicle to commute during the off-fire season, which constituted a willful violation of DNR policy PO01-008;

c. On at least four occasions between June 28, 1999 and September 1, 1999, Mr. Alves, used a DNR work crew to load and a DNR vehicle to transport waste wood home for the benefit of several charities located near his home, which constituted a willful violation of DNR policy PO01-008; and

d. In 1998, Mr. Alves directed a Forest Crew Supervisor to have a ten person inmate work crew build a horse trail on private property for the benefit of the private property owner, which constituted a willful violation of DNR policy PO01-008. The work crew performed at least two days of work building the private horse trail.

6. On January 8, 2001, Mr. Alves executed an agreement with DNR in which he:

a. Accepted a demotion from his position with the DNR as a Natural Resource Camp Manager 3 to the class of Forester 2, effective August 16, 2000, as described in the disciplinary letter dated July 28, 2000, contingent upon the Board's approval of this agreement; and

b. Withdrew his appeal to the Personnel Appeals Board, Case No. DEMO-00-0014, contingent upon the Board's approval of this agreement. (See attached Agreement)

7. Mr. Alves asserts that when he removed the surplus wood from his workplace he was acting on a supervisor's recommendation that DNR employees assigned to the Central Region should try to give surplus wood to local charities rather than disposing of the material at cost to DNR.

B. APPLICABLE LAW

1. RCW 42.52.070 states:

> Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

2. RCW 42.52.160(1) states:

> No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

C. AGGRAVATING & MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, Board staff reviewed the criteria in WAC 292-120-030. In the case at hand: (1) the violations were continuing in nature (WAC 292-120-030(2)(a)); (2) the violation significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)); and, (3) the violation involved personal gain or special privilege to Mr. Alves and the private land owner (WAC 292-120-030(2)(f)).

2. It is an aggravating factor that: (1) the violations were intentionally committed with knowledge that the conduct constituted a violation (WAC 292-120-030(3)(a)); and (2) Mr. Alves had significant management and supervisory responsibility (WAC 292-120-030(3)(d)).

3. It is a mitigating factor that David Alves has accepted his demotion from Camp Manager 3 to Forester 2. This demotion resulted in a $656.00 reduction of gross monthly salary. (WAC 292-120-030(4)(f))

D. RESOLUTION

1. Mr. Alves admits that he violated provisions of chapter 42.52 RCW: (1) by, on at least five occasions using, without authorization, a state vehicle to commute during the off-fire season, a violation of RCW 42.52.160; (2) by, on at least four occasions, using DNR employees, under his supervision, and a state vehicle to transport waste wood home for the benefit of several charities located near his home, a violation of RCW 42.52.070 and RCW 42.52.160; and (3) by directing a Forest Crew Supervisor to have a ten person inmate work crew build a horse trail on private property for the benefit of the private property owner, a violation of RCW 42.52.070 and RCW 42.52.160.

2. Mr. Alves will pay a civil penalty in the amount of one thousand dollars ($1,000.00). The Board agrees to suspend six hundred dollars ($600.00) on the condition that Mr. Alves complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of three (3) years from the date this Stipulation and Order is accepted by the Board.

3. The civil penalty in the amount of four hundred dollars ($400.00) is payable to the *State of Washington* which will be remitted to the Executive Ethics Board in four (4) equal installments of one hundred dollars ($100.00) due on February 15, 2001 and the 15th day of each month thereafter until paid in full. Failure to make timely payment will cause the entire amount of the civil penalty, including the amount previously suspended, to become due and payable within ten (10) days of the missed payment.

4. Mr. Alves will pay restitution to the Department of Natural Resources in the amount of one thousand dollars ($1,000.00). The restitution is payable to the *Department of Natural Resources* in five (5) equal installments of two hundred dollars ($200.00) due on February 15, 2001 and the 15th day of each month thereafter until paid in full. Failure to make timely payment will cause the entire amount of the restitution to become due and payable within ten (10) days of the missed payment. .

E. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over David Alves and over the subject matter of this complaint.

2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.

3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2) which states in part:

> The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

F. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges David Alves from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment in full of the civil penalty and restitution owed in the amount of $2,000.00 ($600.00 suspended as noted above) and compliance with all other conditions of this Stipulation. David Alves agrees to release and discharge the State of Washington, the Board, its officers, agents, and employees and the Department of Natural Resources, its officers, agents, and employees from all claims, damages, and causes of action arising out of this complaint and this Stipulation and Order.

2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between David Alves and the Department of Natural Resources, the State of Washington, or other third party, which are now in existence or may be filed in the future.

3. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

G. CERTIFICATION

I, David Alves, hereby certify that I have read this Stipulation and Order in its entirety; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

David Alves

1-8-2001

Date

Stipulated to and presented by:

Brian R. Malarky
Executive Director

January 8, 2001
Date

Jerri L. Thomas
Senior Counsel, Assistant Attorney General
Counsel for the Executive Director

Jan. 11, 2001
Date

II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

__X__ ACCEPTED in its entirety;

_____ REJECTED in its entirety;

_____ *MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by _____.

_____

_____

_____

_____

DATED this 11th day of January, 2001.

James M. Vaché

James M. Vaché, Chair

Laquita Fields

Laquita Fields, Vice Chair

Cheryl L G Rohret

Reverend Cheryl Rohret, Member

_____

Sutapa Basu, Member

I, _____, accept/do not accept (circle one) the proposed modification.

_____ _____

Respondent Date