

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii

July 12, 2013

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

This submittal was deferred from the meeting dated June 28, 2013. All contents remain the same with the exception of the date of the meeting and the item number.

APPROVAL OF REQUEST FOR CONTESTED CASE HEARINGS BY MAURICE ROSETE, PATRICK KIRKLAND, ROBERT JERALDS, DONALD KRISPIN, AND JONATHAN ALEXANDER; DENIAL OF REQUEST FOR CONTESTED CASE HEARING BY SIERRA MASTERS AND DELEGATE TO THE CHAIRPERSON THE AUTHORITY TO SELECT A HEARING OFFICER TO CONDUCT THE CONTESTED CASE HEARINGS REGARDING THE ENFORCEMENT ACTIONS BROUGHT AGAINST THE INDIVIDUALS LISTED ABOVE

BACKGROUND:

The Department received petitions for a contested case hearing from Maurice Rosete, Sierra Masters, Patrick Kirkland, Robert Jeralds, Donald Krispin, and Jonathan Alexander contesting the Land Board's decision regarding item J-1 at the April 12, 2013 Board of Land and Natural Resources (Board) meeting. At this meeting, the Board approved the administrative enforcement action brought against the individuals listed above for being in violation of Hawaii Administrative Rule, Section 13-231-26, Use of a Vessel as a Place of Principal Habitation. Fines of \$1,000 were issued to the vessel owners, \$500.00 fines were issued to those individuals found onboard that were not the vessel owner, and one mooring permit was revoked primarily due to the fact that the owner was knowingly advertising the use of her vessel on Craig's List as a place to stay aboard.

Upon the advice of the Deputy Attorney General, a contested case hearing is required if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if a hearing is mandated by due process. In this case, a contested case hearing is warranted because the Petitioners possess an interest which rises to the level of "property".

One Petitioner, Donald Krispin, properly followed the requirements contained in Hawaii Administrative Rule, Section 13-1-29, for requesting a contested case hearing. The other individuals did not request a contested case hearing at the time of the meeting but did comply with all other requirements. Sierra Masters has voluntarily relinquished her mooring permit and no longer has a property interest so a contested case hearing is no longer necessary.

ITEM J-3

Approval of Request for Contested Case Hearings By Maurice Rosete, Patrick Kirkland, Robert Jeralds, Donald Krispin, and Jonathan Alexander; Denial of Request for Contested Case Hearing by Sierra Masters and Delegate to the Chairperson the Authority to Select A Hearing Officer to Conduct the Contested Case Hearings Regarding the Enforcement Actions Brought Against the Individuals Listed Above

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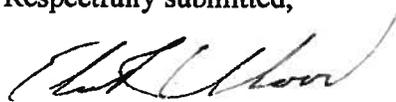
Item J-3

RECOMMENDATION:

That the Board:

1. Approve the petition for a contested case hearing filed by Donald Krispin; waive the procedural defect for not requesting a contested case hearing at the time of the meeting and approve the petition for a hearing from Maurice Rosete, Patrick Kirkland, Robert Jeralds, and Jonathan Alexander; and deny the request for a hearing by Sierra Masters due to the fact that she voluntarily relinquished her mooring permit.
2. Delegate to the Chairperson the authority to select a hearing officer to conduct the contested case hearings regarding the enforcement actions brought against the individuals listed above.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson and Member