

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

December 12, 2014

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

APPROVAL OF PETITION FOR CONTESTED CASE HEARING BY ELPÍE VALDEZ
REGARDING ENFORCEMENT ACTION AGAINST ELPÍE VALDEZ

SUMMARY

Petitioner Elpie Valdez requested a contested case hearing challenging a \$4,000 fine imposed by the Board at its October 10, 2014 meeting. We find that Petitioner is entitled to a contested case hearing and recommend that the Board grant the petition.

BACKGROUND

On October 10, 2014, under agenda item F-2, the Board approved the staff recommendation to fine Petitioner \$4,000 for engaging in illegal lay net activity at Kanahā Beach Park, Maui. Petitioner's son, Louel Valdez, who represented Petitioner at the October 10 meeting, made an oral request for a contested case hearing prior to the close of the meeting. On October 20, 2014, Petitioner filed a written Petition for Contested Case Hearing. See **Exhibit 1**.

DISCUSSION

Hawaii Administrative Rules (HAR) §13-1-29(a) requires a person to make an oral or written request for a contested case hearing "no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition." A person so requesting a contested case must also file (or mail a postmarked) written petition with the board for a contested case no later than ten calendar days after the close of the board meeting at which the matter was scheduled for disposition.

Under HAR §13-1-31.1 an alleged violator is entitled to a contested case hearing as long as the petition is made in accordance with HAR §13-1-29(a). Here, the Petitioner made a timely oral request for a contested case hearing and timely filed a written petition with the Board. Petitioner complied with the procedural requirements of HAR §13-1-29(a) and thus is entitled to a contested case hearing.

CONCLUSION

Based on the foregoing, and upon consultation with the Department of the Attorney General, DAR recommends that the Board approve the Petition.

RECOMMENDATIONS:

1. That the Board approve the Petition for Contested Case Hearing by Elpie Valdez; and
2. That the Board authorize the Chairperson to appoint a hearing officer to preside over the hearing.

Respectfully submitted,



Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson
Board of Land and Natural Resources

Attachment

Exhibit 1 – Petition for Contested Case Hearing



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:

1. File (deliver, mail or fax) 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
Phone: (808) 587-1496, Fax: (808) 587-0390

2. 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.
3. 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.
4. 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	Elpie Valdez	2. Contact Person	Louel Valdez
3. Address	77 Eleu place	4. City	5. State and ZIP
6. Email	V.Louel@gmail.com	7. Phone	8. Fax
		808-757-3324	HI,96753

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER	
17. Board Action Being Contested Enforcement action against Elpie Valdez	
18. Board Action Date October 10,2014	19. Item No.
20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action	
21. Any Disagreement Petitioner May Have with an Application before the Board Disagreement in committing illegal lay net activity	
22. Any Relief Petitioner Seeks or Deems Itself Entitled to	
23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest	
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	

- 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.

Elpie Valdez

 Petitioner or Representative (Print Name)

Elpie Valdez

 Signature

10-20-14

 Date