

**STATE OF HAWAI‘I**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Office of Conservation and Coastal Lands**  
Honolulu, Hawai‘i

March 27, 2015

**Board of Land and Natural Resources**  
**Department of Land and Natural Resources**  
**State of Hawai‘i**  
**Honolulu, Hawai‘i**

**Contested Case: KA 15-4**

**REGARDING:** Appointment and Selection of a Hearing Officer to Conduct All Hearings for One (1) Contested Case Hearing

**PETITION:** **Docket No. KA 15-4**  
Petition requesting the Board of Land and Natural Resources for a Contested Case Hearing regarding Enforcement Action KA 14-58 for the Unauthorized Construction of Erosion Control Structures, Landscaping, Drainage Improvements in the Conservation District, Located at Kawaihau, Kua‘i, Tax Map Key (4) 4-9-005: 027.

**BACKGROUND**

On February 27, 2015 the petitioner contested the OCCL staff report prior to the Board of Land and Natural Resources (BLNR) meeting. On March 9, 2015, OCCL received a petition for a Contested Case from Ms. Margery Bronster/Donna Marron of Bronster Hoshibata, Attorneys at Law, representing the landowner (**Exhibit 1**).

**AUTHORITY FOR DESIGNATING HEARING OFFICERS**

HAR §13-1-32 (d) provides that the BLNR may conduct the Contested Case Hearing, or at its discretion, may appoint a hearing officer to conduct the hearing.

Additionally, HRS §92-16 and §171-6 also provide that the Board may delegate to the Chairperson the authority to select the hearing officer to conduct a Contested Case Hearing.

**BASIS FOR DESIGNATING HEARING OFFICERS**

Conducting a Contested Case Hearing may involve: giving notice of hearings, administering oaths, compelling attendance of witnesses and the production of documentary evidence, examining witnesses, certifying acts, issuing subpoenas, making rules, receiving evidence, holding conferences and hearings, fixing filing deadlines, and disposing of other matters that may

arise during the orderly and just conduct of a hearing. History suggests that designating a Hearing Officer to perform these actions may provide a more expeditious resolution of the case than having the full Board conduct the hearing.

**DISCUSSION:**

Staff notes that, by designating a Hearing Officer to conduct the hearings, the Board does not relinquish its authority to ultimately decide on the matters being contested. At the conclusion of the contested case, the Board would act with its own discretion on the Hearing Officer's Finding of Fact, Conclusion of Law, and Decision and Order.

Staff therefore recommends,

**RECOMMENDATION:**

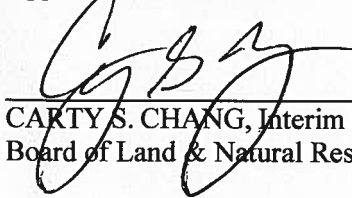
- 1) That the Board authorize the appointment of a Hearing Officer for KA 15-4, and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested case Hearing, and
- 2) That the Board delegates the authority for selection of the Hearing Officer to the Chairperson.

Respectfully submitted,



Lauren Yasaka, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:



CARTY S. CHANG, Interim Chairperson  
Board of Land & Natural Resources

ORIGINAL

KA-15-34



STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

2015 MAR -9 P.M.L.S. +

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date.  
 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
- 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.
- All materials, including this form, shall be submitted in **three (3)** photocopies.

RECEIVED  
 OFFICE OF CONSERVATION  
 AND COASTAL LANDS  
 2015 MAR -9 P 2:34  
 DEPT. OF LAND &  
 NATURAL RESOURCES  
 STATE OF HAWAII

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Norman Caris	2. Contact Person Margery Bronster/Donna Marron (Counsel)	
3. Address P.O. Box 542	4. City Anahola	5. State and ZIP HI 96703
6. Email See B, below	7. Phone See B, below	8. Fax See B, below

B. ATTORNEY (if represented)		
9. Attorney Name Margery Bronster/Donna Marron	10. Firm Name Bronster Hoshibata, Attorneys at Law	
11. Address 1003 Bishop Street, Suite 2300	12. City Honolulu	13. State and ZIP HI 96813
14. Email mbronster@bhhawaii.net/dmarron@bhhawaii.net	15. Phone 808-524-5644	16. Fax 808-599-1881

**C. SUBJECT MATTER**

**17. Board Action Being Contested**

The Staff Submittal Regarding "Unauthorized, 1) Construction of Erosion Control Structures, 2) Landscaping including grubbing and grading, and 3) Draining Improvements Located in the Conservation District Limited and General Subzones," which the Board deferred, on Staff's recommendation, due to the Petitioner's request for a contested case hearing.

**18. Board Action Date**

February 27, 2015

**19. Item No.**

K-2 (As Listed on Meeting Agenda)

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

The Petitioner owns and resides on the property on which the alleged activities took place.

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

The Staff Submittal alleges multiple regulatory violations and recommends: 1) imposition of a fine in the amount of \$42,500; 2) that the landowner be required to conduct land restoration as prescribed by the DLNR or apply for after the fact authorizations; and 3) that the landowner complete an addendum archaeological inventory survey of the subject parcel. The Petitioner contests both the recommendations and the allegations that form the basis of the claims that violations allegedly occurred.

**22. Any Relief Petitioner Seeks or Deems Itself Entitled to**

The Petitioner requests that the recommendations of the Staff Submittal be rejected, and that the fine and other remedies recommended be eliminated or abated.

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

The Petitioner has standing as owner of the subject property. His participation will also serve the public interest because the erosion control and drainage improvement modifications at issue address a longstanding erosion and sedimentation problem created by runoff through the Caris property from upslope properties within the Aliomanu Estates Subdivision. Their removal would harm the public.

**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**

None

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.

Margery Bronster

Petitioner or Representative (Print Name)



Signature

March 9, 2015

Date