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

June 27, 2014

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

Contested Case: KA 14-02

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

PETITION: Docket No. KA 14-02
Petition requesting the Board of Land and Natural Resources for a Contested Case Hearing regarding Enforcement Action KA 14-02.

BACKGROUND

On May 23, 2014, the Board of Land and Natural Resources found landowner, Lance Laney, in violation of the following:

1. Unauthorized construction pursuant to HAR §13-5-6 (d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained by the department; and

2. Unauthorized commercial vacation rental activity pursuant to HAR §13-5-42 (a) (5) Transient rentals are prohibited, with the exception of wilderness camps approved by the board.

On the same date, Harold Bronstein, representing the landowner, submitted a written request for a contested case hearing on the violation (Exhibit 1). Subsequently on May 30, 2014, OCCL received a petition for a Contested Case from Mr. Bronstein (Exhibit 2).

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 hearing, 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 CC KA 14-02, and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested case Hearing, and

2) That the Board delegate 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:

WILLIAM J. AILA, Jr., Chairperson
Board of Land & Natural Resources
May 23, 2014

Board of Land and Natural Resources
State of Hawaii
c/o William Aila, Jr.
Chairperson
1151 Punchbowl Street
Honolulu, HI 96813

RE: Lance Laney
ENF: KA-08-29

Dear Chairperson Aila and Board Members:

Please be advised that pursuant to HAR 13-1-29(a), Lance Laney and Hermina Morita hereby request a contested case hearing with respect to the Board’s May 23, 2014 agenda item K-1.

Very truly yours,

[Signature]

HAROLD BRONSTEIN

HB: rsnh

cc: Lance Laney
Hermina Morita

EXHIBIT 1
Dear Sirs:

Enclosed please find the original and one (1) copy of a Petition For A Contested Case Hearing in the above referenced matter.

Also enclosed is my check for filing fees, if necessary, in the amount of $100.00. (See HAR 13-1-30).

Please return a filed copy of the Petition in the self-addressed envelope enclosed.

Thank you.

Very truly yours,

HAROLD BRONSTEIN

HB:tes
Enclosures

cc: Lance Laney
STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES
PETITION FOR A CONTESTED CASE HEARING

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
      Lance Laney & Hermina Morita

   2. Contact Person
      Harold Bronstein, Esq.

   3. Address
      P. O. Box 1038

   4. City
      Hanalei

   5. State and ZIP
      HI 96714

   6. Email
      hbronstein@aloha.net

   7. Phone
      245-1997

   8. Fax
      245-8929

B. ATTORNEY (if represented)

   9. Attorney Name
      Harold Bronstein

   10. Firm Name
       Harold Bronstein, Esq.

   11. Address
       P. O. Box 3064

   12. City
       Lihue

   13. State and ZIP
       HI 96766

   14. Email
       hbronstein@aloha.net

   15. Phone
       245-1997

   16. Fax
       245-8929
<table>
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<tr>
<th>17. Board Action Being Contested</th>
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<tr>
<td>Approval of Staff Report dated May 23, 2014 Re: Lance Laney, ENF: KA-08-29</td>
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<tr>
<td>May 23, 2014</td>
<td>K-1</td>
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<tr>
<th>20. Nature and Extent of Petitioner’s Interest That May Be Affected by the Board Action</th>
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<tr>
<td>Laney and Morita are the owners of the real property, i.e. Land Patent No. 13,247, Lot 25, Hanalei Homesteads Subdivision, TMK 4-5-4-02-032, the subject matter of the Board’s May 23, 2014 action.</td>
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<th>21. Any Disagreement Petitioner May Have with an Application before the Board</th>
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<td>Petitioners disagree with the May 23, 2014 Staff Report and the Board’s approval of the Staff Report in ENF: KA-08-29.</td>
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<th>22. Any Relief Petitioner Seeks or Deems Itself Entitled to</th>
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<tr>
<td>See HAR 13-1-31.1 (See attached)</td>
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<th>23. How Petitioner’s Participation in the Proceeding Would Serve the Public Interest</th>
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<td>Please see Petitioners’ Response to paragraphs 20-22.</td>
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<th>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</th>
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<td>Please see Petitioners’ Response to paragraphs 20-22.</td>
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☐ 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.

Harold Bronstein 5/30/14

Petitioner or Representative (Print Name) Signature Date
Petition for a Contested Case Hearing

Attachment to No. 22

22. Petitioners seek the reversal and/or modification of the May 23, 2014 Staff Report i.e. item K-1 and the Board approval, as it is:

a. In violation of the Board’s statutory authority;
b. In excess of the Board’s statutory authority;
c. Wrong, as a matter of law;
d. Affected by other error or law;
e. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
f. Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.