

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:

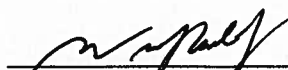
- 1) That the Board authorize the appointment of a Hearing Officer for CC KA 14-02, and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested case Hearing, and
- 2) That the Board delegate the authority for selection of the Hearing Officer to the Chairperson.

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

Harold Bronstein

Attorney and Counsellor at Law

P.O. Box 3064, Lihue, Hawaii 96766 • Phone (808) 245-1997

May 23, 2014

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

HAND DELIVERED

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,



HAROLD BRONSTEIN

HB:rsnh

cc: Lance Laney
Hermina Morita

EXHIBIT 1

Harold Bronstein
Attorney and Counsellor at Law

244
KA-14-02

RECEIVED
P.O. Box 3066, Lihue, Hawaii 96766 • Phone (808) 345-1977
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

2014 MAY 33 A 9 14
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May 30, 2014
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, HI 96813

via PRIORITY MAIL and
TELECOPIER (587-0390)

RE: Lance Laney
ENF: KA-08-29
TMK: 4-5-4-02-032

Dear Sirs:

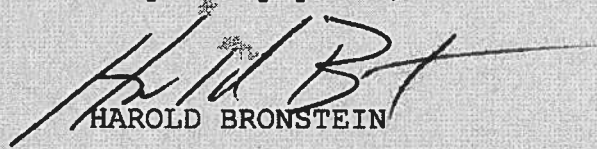
Enclosed please find the original and one (1) copy of a
Petition For A Contested Case Hearing in the above referenced
matter.

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

RECEIVED

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DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

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 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

- 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.

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

C. SUBJECT MATTER

17. Board Action Being Contested

Approval of Staff Report dated May 23, 2014 Re: Lance Laney, ENF: KA-08-29

18. Board Action Date

May 23, 2014

19. Item No.

K-1

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

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.

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

Petitioners disagree with the May 23, 2014 Staff Report and the Board's approval of the Staff Report in ENF: KA-08-29.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

See HAR 13-1-31.1
(See attached)

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

Please see Petitioners' Response to paragraphs 20-22.

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

Please see Petitioners' Response to paragraphs 20-22.

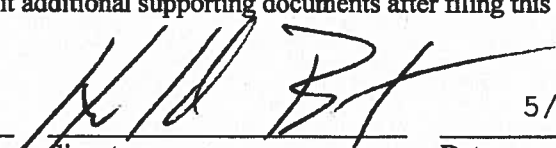
Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Harold Bronstein

Petitioner or Representative (Print Name)

Signature



Date

5/30/14

Lance Laney; ENF: KA-08-29

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.