

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

January 23, 2015

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

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

SUBJECT PETITIONS: **OA-15-03:** Petition requesting the Board of Land and Natural Resources hold a Contested Case regarding Enforcement Case OA-15-09.

BACKGROUND

On January 9, 2015 the Board of Land and Natural Resources (BLNR) deferred taking action on Enforcement Case OA-15-09 regarding alleged unauthorized land uses at the Paikō Lagoon Wildlife Sanctuary, Kuliouou 1st, Honolulu, O'ahu, TMK (1) 3-8-001:001.

On January 8, 2015 Dr. Saikley and Mr. Carpenter's counsel submitted testimony asking that the matter be deferred and a contested case granted. Counsel repeated the request at the Board hearing on January 9.

The Board voted to defer the matter pending the outcome of the contested case hearing.

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. HAR §13-1-29 (a) provides that, *the time for making an oral or written request and submitting a written petition may be waived by the Board.*

Additionally, HRS Chapter 92-16 and Chapter 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.

HEARING OF VIOLATIONS

HAR §13-1-31.1 provides that when a violation is alleged for which an administrative remedy is provided, the violator is entitled to a contested case hearing and no person or government agency other than the department and alleged violator shall be admitted as parties in such proceedings.

BASIS FOR DESIGNATING HEARINGS 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 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 Dr. Garrett Saikley and Mr. Robert Carpenter are entitled to a contested case hearing;
- 2) That no person or government agency other than the department and alleged violator shall be admitted as parties in such proceedings;
- 3) That the Board authorize the appointment of a Hearing Officer for Contested Case OA-15-03, and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested case Hearing; and
- 4) That the Board delegate the authority for selection of the Hearing Officer to the Chairperson.

Respectfully submitted,



Samuel J. Lemms, Administrator
Office of Conservation and Coastal Lands

Approved for submittal:



CARTY CHANG, Interim Chair
Board of Land & Natural Resources