

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawai'i 96819

December 8, 2017

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

Land Board Members:

SUBJECT: APPROVAL OF REQUEST FOR CONTESTED CASE HEARING BY
MR. STEPHEN E.J. KOEHNE REGARDING NOVEMBER 9, 2017
ENFORCEMENT ACTION FOR ALLEGED ILLEGAL COMMERCIAL
ACTIVITY, IN VIOLATION OF HAWAII ADMINISTRATIVE RULE §
13-256-39(b)(5).

SUMMARY:

Mr. Stephen E.J. Koehne requests a contested case hearing concerning the November 9, 2017 Board of Land and Natural Resources (Board) enforcement action brought by the Division of Boating and Ocean Recreation (DOBOR). Mr. Koehne is entitled to a contested case hearing, and DOBOR staff recommends the Board approve Mr. Koehne's request for a contested case hearing.

BACKGROUND:

As Item J-1 of the Board's regularly scheduled meeting on November 9, 2017, DOBOR brought an enforcement action against Mr. Koehne for alleged illegal commercial activity, in violation of Hawaii Administrative Rule (HAR) § 13-256-39(b)(5). Mr. Koehne submitted a contested case request through email to the Board on November 3, 2017 (attached hereto as **Exhibit A**). Mr. Koehne then submitted a written petition for contested case hearing on November 16, 2017 (attached hereto as **Exhibit B**).

DISCUSSION:

HAR § 13-1-29(a) provides in part: "An oral or written request for a contested case hearing must be made to the board no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition. An agency or 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."

As stated above, Mr. Koehne submitted his initial contested case hearing request through email on November 3, 2017 and submitted his written petition for contested case hearing on November 16, 2017. Mr. Koehne therefore meets the deadline requirements of HAR § 13-1-29(a).

Additionally, because the November 9, 2017 enforcement action involves penalties for alleged violations, Mr. Koehne is entitled to a contested case hearing.

RECOMMENDATION:

DOBOR recommends that the Board:

- 1) Approve Mr. Stephen E.J. Koehne's petition for a contested case hearing.
- 2) Authorize the Chairperson to appoint a Hearing Officer for Mr. Koehne's contested case hearing.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

From: stephen koehne [REDACTED]
Sent: Friday, November 03, 2017 8:42 PM
To: DLNR.BLNR.Testimony <blnr.testimony@hawaii.gov>
Subject: Alleged Violations of HAR Sec. 13-256-39 Hanalei Bay ocean water, general restrictions - Item J-1 November 9th hearing

To The Board of Land & Natural Resources

I am emailing you to request a Contested Case Hearing on the above alleged violations against me. I received the DBOR letter regarding the alleged violations on October 30, 2017, and understand that the case against me will be presented to you on November 9, 2017. This does not give me enough time to review the evidence or retain an attorney and, therefore, I am requesting the Contested Case hearing.

I have been informed that a formal, written Petition for Contested Case hearing must be filed within 10 days. I will be filing the Petition within 10 days, after I have retained counsel.

For the record, I deny the charges against me. At no time did I admit to any employee of DLNR that I was operating a commercial boating activity or taking any commercial boater's "overflow". I had a conversation with the officer and he either took what I said out of context or misheard what I said to him. At all times, I was on private, non paying trips with personal friends of mine.

Also, I already explained to Ed Underwood that my girlfriend, Teal, is expecting a baby within the next few weeks and I am unable to leave Kauai at this time. I did request a continuance of the November 9, 2017, hearing, which your attorney denied. I respectfully ask that you grant my request for Contested Case hearing.

Thank you and sincerely,
Stephen Koehne
[REDACTED]



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:

- 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://dlnr.hawaii.gov/forms/contested-case-form/>). 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.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name <i>Stephen Koehne</i>	2. Contact Person <i>Stephen Koehne</i>	
3. Address <i>P.O. Box 366</i>	4. City <i>Kilauea</i>	5. State and ZIP <i>HI / 96754</i>
6. Email [REDACTED]	7. Phone [REDACTED]	8. Fax

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 <u>Alleged Violations of HAR Sec. 13-256-39 Hanalei Bay Waters, general restrictions</u>	
18. Board Action Date <u>November 9th, 2017</u>	19. Item No. <u>J-1</u>
20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action <u>A civil enforcement action is being levied against me.</u>	
21. Any Disagreement Petitioner May Have with an Application before the Board <u>I disagree I should be fined</u>	
22. Any Relief Petitioner Seeks or Deems Itself Entitled to <u>Reversal of a board decision to fine me</u>	
23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest <u>Public interest in due process</u>	
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 <u>I have a substantial property interest in that the board is trying to fine me.</u>	

☐ 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.

Stephen Koehne Stephen Koehne 11/14/17
 Petitioner or Representative (Print Name) Signature Date

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

4 Sand Island Access Road
Honolulu, Hawaii 96819

October 26, 2017

BOR-A-084-18

VIA U.S. POSTAL SERVICE CERTIFIED MAIL

Mr. Stephen E.J. Koehne
P.O. Box 366
Kilauea, HI 96754

Dear Mr. Koehne:

You are hereby notified that the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) plans to bring an enforcement action against you at the November 9, 2017 Board of Land and Natural Resources (BLNR) meeting for alleged illegal commercial activity, in violation of Hawai'i Administrative Rule § 13-256-39(b)(5).

As of October 26, 2017, DOBOR has transmitted the submittal document for the abovementioned enforcement action to the DLNR Chairperson's office for the Chairperson's signature. Once the Chairperson approves the submittal, the matter will be placed on the agenda for the November 9, 2017 BLNR meeting. The November 9, 2017 BLNR meeting will take place on O'ahu at 9:30 A.M. at the following address:

Kalanimoku Building DLNR Board Room
1151 Punchbowl Street, Room 132
Honolulu, HI 96813

Once the agenda and submittal documents are ready for public distribution, you may view the files at the following website: <http://dlnr.hawaii.gov/meetings/blnr-meetings-2017>. Agendas and submittals are generally posted about one week before each scheduled BLNR meeting.

Thank you,

A handwritten signature in black ink, appearing to read "Edward Underwood".

Edward Underwood
Administrator, Division of Boating and Ocean Recreation