

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
HONOLULU, HAWAII
FEBRUARY 23, 2018**

**BOARD OF LAND AND
NATURAL RESOURCES
STATE OF HAWAII
HONOLULU, HAWAII**

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

STAFF PETITIONS: KA-17-01: Petition requesting the Board of Land and Natural Resources (BLNR) hold a Contested Case regarding Enforcement Case: KA-15-34

BACKGROUND:

On *May 26, 2017*, a contested case request was made before the Board of Land and Natural Resources by Val Sanjara, regarding the Office of Conservation and Coastal Lands (OCCL) Enforcement Case KA-15-34 regarding alleged unauthorized land uses on Lot 207 Wainiha Hui Lands, Hanalei District, Kauai on TMK: (4) 5-8-005:026. Mr. Sanjara followed up the oral request with a written petition, which the OCCL received on *June 6, 2017*.

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

AUTHORITY FOR DESIGNATING HEARING OFFICERS:

Pursuant to Hawaii Administrative Rules (HAR), §13-1-32 (b) *The board may conduct the hearing or, the board in its discretion may delegate the conduct of the contested case hearing to a hearing officer, in which case the chairperson shall select such hearing officer; and*

Hawaii Revised Statutes (HRS), §92-16 and §171-6 provides 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 Hearings Officer (HO) 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 HO 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 Hearings Officer's Finding of Fact, Conclusion of Law, and Decision and Order.

RECOMMENDATION:

- 1) That Val Sanjara is 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 Office for Contested Case KA-17-01, 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 Hearings Officer to the Chairperson.

Respectfully submitted,



Alex J. Roy, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Suzanne D. Case, Chairperson
Board of Land & Natural Resources

Attachment: Petition for Contested Case Hearing



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

JUN - 5 2017

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.

OFFICE OF LAND AND NATURAL RESOURCES
 AND CONSERVATION
 2017 JUN - 6 A 11: 56
 DEPARTMENT OF LAND AND NATURAL RESOURCES
 STATE OF HAWAII

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name VAL SANJARA	2. Contact Person VAL SANJARA	
3. Address P.O. BOX 1713	4. City HANALEI	5. State and ZIP HI 96714
6. Email VSAJARA@YAHOO.COM	7. Phone (808) 212-7939	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name N/A	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER FOR CONSERVATION DISTRICT ENFORCEMENT KAI

17. Board Action Being Contested FOR ALLEGED UNAUTHORIZED LAND USES IN THE CONSERVATION DISTRICT, LOCATED AT WAINIHA POWER HOUSE ROAD, WAINIHA, KAUAI, HAWAII TAX MAP KEY (TMK): (4) 5-8-005:026

18. Board Action Date MAY 26, 2017

19. Item No. K-2

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action ALLOWED LAND AND RESOURCE MANAGEMENT BY CHAPTER 13-5, HAR

21. Any Disagreement Petitioner May Have with an Application before the Board MOBILE RV TRAILER HAS BEEN USED AS TEMPORARY STORAGE. IT IS NOT A PERMANENT STRUCTURE. NO GRADING HAS BEEN DONE ON THE SUBJECT PARCEL.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to VIOLATION PENALTY RELIEF FOR THE ALLEGED UNAUTHORIZED LAND USES. ~~THE~~ SITE PLAN APPROVAL FOR ACCESSORY STRUCTURE ON THE SUBJECT PARCEL

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest IT ~~WILL~~ RESULT IN SIGNIFICANT SAVINGS OF THE COUNTY ROAD MAINTENANCE AND IMPROVED PUBLIC SAFETY

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 DUE TO THE EMERGENCY WITH ALBIZIA TREES, LAND AND RESOURCE MANAGEMENT, THE SUBJECT PARCEL IS IN NEED OF ACCESSORY/UTILITY STRUCTURE

- 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.

VAL SANJARA
Petitioner or Representative

[Signature]
Signature

05/31/2017
Date