

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

June 22, 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

SUBJECT PETITIONS: **OA-18-02:** Petition requesting the Board of Land and Natural Resources hold a Contested Case regarding Conservation District Use Application (CDUA) OA-3808

BACKGROUND

On April 27, 2018 the Board of Land and Natural Resources (BLNR) denied Conservation District Use Application (CDUA) OA-3808 by the Doris Duke Foundation for Islamic Art for the *Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project at Kūpikipiki'ō* (Black Point), Waikīkī Ahupua'a, Kona District, O'ahu, TMK (1) 3-1-041:005. On May 25, 2018 the permit application was brought back to the Board for reconsideration; the Board again denied the application.

At the meeting on April 27 counsel for the Doris Duke Foundation made an oral request for a contested case hearing on the decision. Counsel subsequently submitted a written request, which was received by the Department of Land and Natural Resources on May 3, 2018.

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 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.

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 the Board authorize the appointment of a Hearing Officer for Contested Case OA-18-02, 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,



Michael Cain, Planner
Office of Conservation and Coastal Lands

Approved for submittal:



SUZANNE D. CASE
Board of Land & Natural Resources



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

PETITION FOR A CONTESTED CASE HEARING

2018 MAY -3 P 12:54

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

OFFICE OF CONSERVATION
& NATURAL RESOURCES
STATE OF HAWAII

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

2018 MAY -3 AM 11:56

RECEIVED

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 Doris Duke Foundation for Islamic Art	2. Contact Person Konrad Ng	
3. Address 4055 Papu Circle	4. City Honolulu	5. State and ZIP HI 96816
6. Email kng@ddcf.org	7. Phone 808-734-1941	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name Yvonne Izu	10. Firm Name Morihara Lau & Fong LLP	
11. Address 841 Bishop Street, Suite 400	12. City Honolulu	13. State and ZIP HI 96813
14. Email yizu@moriharagroup.com	15. Phone 808-526-2888	16. Fax 808-566-0800

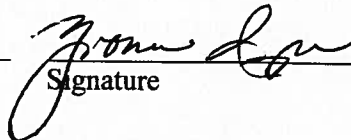
C. SUBJECT MATTER

17. Board Action Being Contested Conservation District Use Application CDUA OA-3809 Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project	
18. Board Action Date April 27, 2018	19. Item No. K-4
20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action Petitioner is the applicant for CDUA OA-3809.	
21. Any Disagreement Petitioner May Have with an Application before the Board Petitioner supports CDUA OA-3809 and requests that, following a contested case proceeding, the Board grant the conservation district use permit.	
22. Any Relief Petitioner Seeks or Deems Itself Entitled to Petitioner requests approval of the project and granting of the conservation district use permit.	
23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest As the applicant, Petitioner will present evidence to show that all criteria for issuance of a conservation district use permit are met and that the project is in the public interest.	
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 Pursuant to HAR § 13-1-31(a), "[w]ithout a hearing, an applicant ... shall be a party." Additionally, Petitioner is entitled to be a party pursuant to HAR § 13-1-31(b)(2).	

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.

Yvonne Izu
Petitioner or Representative (Print Name)


Signature

May 3, 2018
Date