

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawaii 96813

June 12, 2020

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

APPROVAL OF PETITIONS FOR CONTESTED CASE HEARING BY TYRON  
TERAZONO, KACIE TERAZONO, AND WAYNE NEWMAN REGARDING  
ENFORCEMENT ACTION AGAINST TYRON TERAZONO, KACIE TERAZONO, AND  
WAYNE NEWMAN FOR UNLAWFUL COLLECTION OF AQUATIC LIFE FOR  
AQUARIUM PURPOSES WITHIN THE WEST HAWAI'I REGIONAL FISHERY  
MANAGEMENT AREA, ISLAND OF HAWAI'I

**SUMMARY**

Petitioners Tyron Terazono, Kacie Terazono, and Wayne Newman (collectively “Petitioners”) have requested a contested case hearing challenging the Enforcement Action against Tyron Terazono, Kacie Terazono, and Wayne Newman for Unlawful Collection of Aquatic Life for Aquarium Purposes within the West Hawai'i Regional Fishery Management Area, Island of Hawai'i, which was scheduled to be considered by the Board of Land and Natural Resources (“Board”) at its May 22, 2020 meeting. We find that Petitioners are entitled to a contested case hearing and recommend that the Board grant the petitions.

**BACKGROUND**

At the May 22, 2020 Board meeting via Zoom, under agenda item F-1, the Board was scheduled to consider the Enforcement Action against Tyron Terazono, Kacie Terazono, and Wayne Newman for Unlawful Collection of Aquatic Life for Aquarium Purposes within the West Hawai'i Regional Fishery Management Area, Island of Hawai'i. Prior to the meeting, on May 21, 2020, attorney for Tyron and Kacie Terazono notified the Division of Aquatic Resources (“DAR”) by email that he would be requesting a contested case on behalf of his clients. Based on that representation, agenda item F-1 was withdrawn from consideration by the Board at the beginning of the May 22, 2020 meeting. On May 26, 2020, the Department of Land and Natural Resources (“Department”) received written petitions for a contested case hearing from Tyron Terazono and Kacie Terazono. See **Exhibits 1 and 2**. On June 1, 2020, the Department received a written petition for a contested case hearing from Wayne Newman. See **Exhibit 3**.

**DISCUSSION**

Hawaii Administrative Rules (HAR) §13-1-29(a) requires a person to make an oral or written

request for a contested case hearing “no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition.” A 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. For good cause, the time for making the oral or written request or submitting a written petition or both may be waived.

Under HAR §13-1-31.1 an alleged violator is entitled to a contested case hearing as long as the petition is made in accordance with HAR §13-1-29(a). Petitioners Tyron and Kacie Terazono made a timely written request for a contested case hearing and timely filed written petitions with the Board. Petitioners Tyron and Kacie Terazono complied with the procedural requirements of HAR §13-1-29(a) and thus are entitled to a contested case hearing.

Petitioner Wayne Newman did not make an oral or written request for a contested case hearing prior to the close of the May 22, 2020 Board meeting, but he did timely file a written petition with the Board. Considering 1) the communication challenges associated with holding a Board meeting via Zoom and 2) the Board’s withdrawal of agenda item F-1 at the beginning of the meeting due to receipt of a written request for a contested case by Tyron and Kacie Terazono, DAR believes there is good cause to waive the time for Petitioner Wayne Newman to make an oral or written request. DAR construes Petitioner Newman’s written petition for a contested case hearing as a written request for the purposes of fulfilling the procedural requirements of HAR §13-29(a).

### **CONCLUSION**

Based on the foregoing, and upon consultation with the Department of the Attorney General, DAR recommends that the Board approve all three petitions and commence contested case proceedings.

**RECOMMENDATIONS:**

That the Board:

1. Find that there is good cause to waive the requirement under HAR § 13-1-29(a) that an oral or written request for a contested case hearing be made prior to the end of the meeting at which the subject matter of the request is scheduled for board disposition for Wayne Newman;
2. Approve the Petitions for Contested Case Hearing by Tyron Terazono, Kacie Terazono, and Wayne Newman; and
3. Authorize the Chairperson to appoint a hearing officer to preside over the hearing.

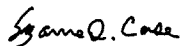
Respectfully submitted,



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Brian J. Neilson, Administrator  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



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

Attachments

- Exhibit 1** – Petition for Contested Case Hearing by Tyron Terazono
- Exhibit 2** – Petition for Contested Case Hearing by Kacie Terazono
- Exhibit 3** – Petition for Contested Case Hearing by Wayne Newman



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.

RECEIVED  
 OFFICE OF CONSERVATION  
 AND COASTAL LANDS  
 2020 MAY 26 P 12:05  
 DEPARTMENT OF LAND AND NATURAL RESOURCES  
 STATE OF HAWAII

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Tyron Terazono	2. Contact Person Jason R. Braswell, Esq.	
3. Address 79-983 Kawanui Place	4. City Kealakekua	5. State and ZIP HI 96750
6. Email tyronterazono@gmail.com	7. Phone (808) 443-6575	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name Jason R. Braswell	10. Firm Name Braswell Fujioka-Lilley LLP	
11. Address P.O. Box 2429	12. City Kailua-Kona	13. State and ZIP HI 96745
14. Email jason@bflwlaw.com	15. Phone (808) 464-5223	16. Fax

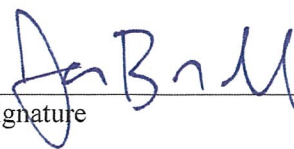
**C. SUBJECT MATTER**

<b>17. Board Action Being Contested</b> Enforcement Action against Tyron Terazono, Kacie Terazono, and Wayne Newman for Unlawful Collection of Aquatic Life for Aquarium Purposes within the West Hawai'i Regional Fishery Management Area, Island of Hawai'i.	
<b>18. Board Action Date</b> May 22, 2020	<b>19. Item No.</b> F-1
<b>20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case</b> Because a significant fine is sought against petitioner, a contested case is required by the due process clauses of the Hawai'i State Constitution and the United States Constitution.	
<b>21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection</b> A significant monetary fine is sought against petitioner.	
<b>22. Any Disagreement Petitioner May Have with an Application before the Board</b> Petitioner contests all aspects of the Division of Aquatic Resources' request/recommendation for fines against petitioner.	
<b>23. Any Relief Petitioner Seeks or Deems Itself Entitled to</b> Petitioner is entitled to rejection of the staff recommendation and a closure of the enforcement action. Additionally, because of petitioner's property interests and due process rights, petitioner is entitled to a hearing and judicial review of the Board's decision.	
<b>24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest</b> Petitioner's participation will insure that due process is afforded to petitioner and that the Board's action is based on evidence and witness testimony subject to rights and protections of contested case procedures. Petitioner faces significant fines that staff recommends, and must be afforded an opportunity to present their case and appeal an adverse decision.	
<b>25. 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</b>	

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.

Jason R. Braswell, Esq.  
Petitioner or Representative (Print Name)

  
Signature

5/22/2020  
Date



STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

**PETITION FOR A CONTESTED CASE HEARING**

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 OFFICE OF CONSERVATION  
 AND SOILS  
 LANDS  
 2020 MAY 26 P 12:05  
 DEPT. OF LAND & NATURAL RESOURCES  
 ADMINISTRATIVE PROCEEDINGS OFFICE

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A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Kacie Terazono	2. Contact Person Jason R. Braswell, Esq.	
3. Address 79-983 Kawanui Place	4. City Kealakekua	5. State and ZIP HI 96750
6. Email tyronterazono@gmail.com	7. Phone (808) 443-6575	8. Fax


B. ATTORNEY (if represented)		
9. Attorney Name Jason R. Braswell	10. Firm Name Braswell Fujioka-Lilley LLP	
11. Address P.O. Box 2429	12. City Kailua-Kona	13. State and ZIP HI 96745
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- 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.

Jason R. Braswell, Esq.  
Petitioner or Representative (Print Name)

  
Signature

5/22/2020  
Date



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A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Wayne Newman	2. Contact Person	
3. Address PO Box 3471	4. City Kailua Kona	5. State and ZIP HI 96745
6. Email qualityoceananicexports@gmail.com	7. Phone 808-938-9178	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



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DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

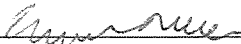
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Petitioner or Representative (Print Name)

  
Signature

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Date