

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

March 25, 2021

**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 Contested Case OA 21-04 Regarding Conservation District Enforcement File OA 20-37 for the Alleged Construction of an Unauthorized Rock Revetment Located Along the Coastline within the Conservation District at Punalu'u, O'ahu makai (seaward) of 53-227 Kamehameha Highway, noted as Tax Map Key (TMK): (1) 5-3-002:034 by Zdenek "Don" Prchal

**BACKGROUND**

Zdenek "Don" Prchal (Landowner) owns shoreline property located along the coastline of Punalu'u in the Ko'olauloa area of O'ahu's east shore, TMK: (1) 5-3-002:034 (the property). Landowner allegedly constructed an unauthorized rock revetment on state owned conservation land seaward of the property in violation of Chapter 183-7, HRS and Chapter 13-5-6, HAR.

Staff submitted the alleged violation to the Board of Land and Natural Resources (Board). The Board considered the matter at its sunshine meeting of January 22, 2021. Landowner was provided notice of the meeting and was present. Landowner was advised of his right to request a contested case but chose not to do so until the Board made its decision – as is also Landowner's right.

After the Board voted on the subject matter, Landowner orally requested a contested case hearing and noted that a proper filing would be coming pursuant to HAR, §13-1-29. This request was acknowledged by Chairperson Case.

On January 29, 2021, the Department received a petition from Landowner contesting the Board's findings during the January 22, 2021 Board Meeting (*Exhibit A & B*).

**HEARINGS OF VIOLATIONS**

§13-1-31.1, HAR provides that when a violation is alleged for which an administrative remedy is provided and with respect to which the alleged violator is entitled to a contested case hearing, a contested case shall be held upon the petition of the alleged

violator, provided that the petition is made in accordance with the provisions of section 13-1-29(a). No person or government agency other than the department and alleged violator shall be admitted as parties in such proceedings.

#### **AUTHORITY FOR DESIGNATING HEARING OFFICERS**

§13-1-32 (b), HAR provides that the Board may conduct the contested case hearing, or at 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.

Additionally, §92-16 and §171-6, HRS 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 HEARING 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:**

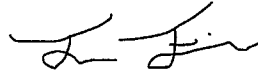
Staff notes that, by designating a Hearing Officer to conduct the hearing, the Board does not relinquish its authority to ultimately decide on the matters being contested. At the conclusion of the contested case, the Board would act with its own discretion on the Hearing Officer's Finding of Fact, Conclusion of Law, and Decision and Order.

#### **AS SUCH, STAFF RECOMMENDS AS FOLLOWS:**

- 1) That Landowner is entitled to a contested case hearing;
- 2) That the Board withdraw any and all previous decisions and determinations regarding Landowner or the alleged violation;
- 3) No person or government agency other than the department and alleged violator(s) shall be admitted as parties in such proceedings; and
- 4) The Board authorizes the appointment of a Hearing Officer and delegate authority for the selection of the Hearing Officer to the Chairperson.

Board of Land and  
Natural Resources

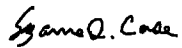
Respectfully submitted,



Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands

*SL*

Approved for submittal:



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

# Exhibit A: Punalu'u

Ko'olaupua, O'ahu



**Legend**  
📍 53-227 Kamehameha Hwy



Google Earth

400 ft



# Exhibit B



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:**

1. 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

2. 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.
3. 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.
4. 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.
5. 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 ZDENEK PRCHAL	2. Contact Person ZDENEK PRCHAL	
3. Address 53-227 KAMEHAMEHA HWY	4. City PUNALUU	5. State and ZIP HI 96717
6. Email N/A	7. Phone [REDACTED]	8. Fax

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

C. SUBJECT MATTER	
<b>17. Board Action Being Contested</b> Alleged Violation of Unauthorized LAND USE TMN (1) 5-3-002:034	
<b>18. Board Action Date</b>	<b>19. Item No.</b> ENF:OA 20-37
<b>20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case</b> Fifth Amendment and Fourteenth Amendment of the USA CONSTITUTION	
<b>21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection</b> Direct and Derivative Rights	
<b>22. Any Disagreement Petitioner May Have with an Application before the Board</b> Passed Shoreline Erosion Issues were <del>passed</del> INHERITED	
<b>23. Any Relief Petitioner Seeks or Deems Itself Entitled to</b> Authorization to effectively protect the Land/Property as granted in Oceanfront Estate in Waimanalo	
<b>24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest</b> Protection of the Marine Life and Shoreline	
<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> Please refer to Previous Owner's violations and requests	

- 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.

Zdenek Archal \_\_\_\_\_ 1/27/21  
 Petitioner or Representative (Print Name)      Signature      Date