

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 21-3 Regarding Conservation District Enforcement File OA 21-03 for the Alleged Construction of an Unauthorized Erosion Control Structure Located Along the Coastline within the Conservation District at Paumalū (Sunset Beach), O'ahu, makai of 59-175C Ke Nui Road, noted as Tax Map Key (TMK): (1) 5-9-002:026 by Liam McNamara and Brandee McNamara/Seamaids LLC

BACKGROUND

Liam McNamara and Brandee McNamara/Seamaids LLC own shoreline property located along the coastline of Paumalū (Sunset Beach) on the north shore of Oahu, TMK (1) 5-9-002:026 (the property). The landowners allegedly constructed an unauthorized seawall makai 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 as Item K-3. The landowners were provided notice of the meeting and were both present. The landowners were advised of their 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, the Landowners 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 petitions from the landowners, Mr. Liam McNamara and Mrs. Brandee McNamara/Seamaids LLC, contesting the Board's findings during the January 22, 2021 Board Meeting (*Exhibits 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 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 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 the landowners, Mr. Liam McNamara and Mrs. Brandee McNamara/Seamaids LLC, are 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 violators 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.

Respectfully submitted,

Salvatore Saluga

Salvatore Saluga, Coastal Lands Program Specialist
Office of Conservation and Coastal Lands

Approved for submittal:

Suzanne D. Case

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



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

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2021 JAN 29 PM 1:14

PETITION FOR A CONTESTED CASE HEARING

DEPT. OF LAND
& NATURAL RESOURCES

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.

(If there are multiple petitioners, use one form for each.)		
1. Name Liam McNamara	2. Contact Person Liam McNamara	
3. Address 59-175C Ke Nui Rd	4. City Haleiwa	5. State and ZIP Hawaii; 96712
6. Email [REDACTED]	7. Phone [REDACTED]	8. Fax
9. Attorney Name EDMUND K. SAFFERY 5860-0 FOREST B. JENKINS 9761-0		10. Firm Name GOODSILL ANDERSON QUINN & STIFEL A LIMITED LIABILITY LAW PARTNERSHIP LLP
11. Address First Hawaiian Center, Suite 1600	12. City Honolulu	13. State and ZIP Hawaii; 96813

***Exhibit A: Petition for a Contested Case Hearing
From Liam McNamara***

999 Bishop Street		
14. Email esaffery@goodsill.com; fjenkins@goodsill.com	15. Phone (808) 547-5600	16. Fax (808) 547-5880

17. Board Action Being Contested Petitioner Liam McNamara ("Petitioner") is contesting the notice for and decision of the BLNR on submittal item number K-3 in the January 22, 2021 BLNR meeting titled "Conservation District Enforcement Case OA 21-03, Regarding an Alleged Unauthorized Land Use Along the Shoreline on State Land Within the Conservation District" (the "Meeting").	
18. Board Action Date January 22, 2021	19. Item No. K-3
20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case Pursuant to Hawaii Administrative Rules ("HAR") §13-1-29(a), Petitioner orally requested a contested case hearing prior to the close of the Meeting. Petitioner is also filing the instant written petition for a contested case within ten calendar days after the close of the board meeting at which the matter was scheduled for disposition. Therefore, Petitioner is procedural compliant with HAR § 13-1-29 and entitled to a contested case hearing.	
21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection Petitioner is an owner of the property located at 59-175C Ke Nui Road, Haleiwa, Hawaii 96712 (TMK No. (1) 5-9-002-026) (hereinafter referred to as the "Subject Property"), along with his wife Petitioner Brandee McNamara, who is the sole member/manager of Seamajds LLC (the registered fee owner of the Subject Property). Petitioner also resides at the Subject Property. Pursuant to HAR § 13-1-31(b)(2), "[a]ll persons who have some property interest in the land, who lawfully reside on the land ... or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application." In this case, Petitioner has a property interest in the Subject Property (e.g. land, buildings, etc.) as marital property, lawfully resides on the Subject Property, and it is clear that the requested action has a direct and immediate impact on Petitioner for a number of reasons (e.g. financial, property interest, and impact on his family residence). Therefore, under HAR § 13-1-31(b)(2), Petitioner should be admitted as a party to the contested case hearing.	
22. Any Disagreement Petitioner May Have with an Application before the Board The following is a non-exhaustive list of Petitioner's disagreements with the decision of the BLNR on submittal item number K-3 that was made on January 22, 2021 during the Meeting. Petitioner expressly reserves his right to supplement the below list as the contested case progresses. <ul style="list-style-type: none"> • Petitioner did not receive the August 6, 2020 alleged violation claim and was only given the notice for the January 22, 2021 Meeting. Petitioner therefore disagrees with the sufficiency and procedural validity of the notice given regarding the alleged violation. • DLNR previously approved sand pushing, sand bags, burritos and other "soft" means of protecting private property. In this case, after repeated requests from the Petitioner, DLNR did not allow for these immediate "soft" measures and this caused significant harm to the Petitioner's property. • Neighboring properties along this coastline have had regular and repeated sand pushing actions. Petitioner is not being treated consistently and fairly compared to shoreline erosion measures along this coastline, as well as other parts of the Island of Oahu. • Executive Order No. 2598 transferred beach jurisdiction from the State of Hawaii to the City and County of Honolulu ("City"), for the Pupukea-Paumalu (Sunset) Beach Park ("Beach Park"). This includes the public access way that adjoins the Subject Property. The City has 	

<p>failed to regularly and adequately maintain the Beach Park and public access ways. This has put the Subject Property in jeopardy.</p> <ul style="list-style-type: none">• Petitioner intends to raise jurisdictional issues contesting the jurisdiction of the BLNR, DLNR, and DLNR's Office of Conservation and Coastal Lands regarding its enforcement case against Petitioners and the Subject Property.• Petitioner also asserts that the lack of enforcement against adjacent properties for various violations, including, but not limited to, oversized burittos, installation of an excessive number of burittos, and illegal seawalls (construction and restoration) which over time have compromised Petitioner's preoperty and caused excessive sand erosion.• Petitioner also asserts that there is an immediate danger to life and safety for any individual accessing the beach right of way after the seawall on the Subject Property was compromised. Petitioner was faced with the risk that he would be held responsible for death and/or bodily injury to others and was forced to take protective measures to avoid any unreasonable risk of harm to others.
<p>23. Any Relief Petitioner Seeks or Deems Itself Entitled to</p> <p>Petitioner believes that the decision of the Board that they engaged in an unauthorized land use in the conservation district justifying the imposition of fines is unwarranted. Petitioner wants to continue to work with DLNR on immediate and long-term solutions related to seasonal coastal erosion and protection of the Subject Property. The fine is unwarranted and unreasonable and the DLNR's response to Petitioner's actions to protect his property is not consistent with other shoreline and erosion protection measures afforded others along the North Shore and other parts of the Island of Oahu. Petitioner also asserts that the City should both fulfill its responsibilities to adequately maintain the beach and public access way as well as take responsibility for the consequences of its failure to do so.</p>
<p>24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest</p> <p>Petitioner has the right to protect the Subject Property, just as other properties are protected along this coastline and elsewhere on the Island of Oahu. There is certainly a public interest in Hawaii for homeowners to protect and preserve their interests in property. Moreover, there is a public interest in avoiding the loss or destruction of property in Hawaii. In addition, Petitioner should be treated fairly and consistently in comparison to other residents with similar hazards and hardships. Additionally, the City has not fulfilled its responsibility to maintain the beach and public access way. There is a public interest in fair and consistent treatment for all residents under the law. Agency decisions, regulations and responses should be applied uniformly to all residents. There is a public interest in the uniform application of agency regulations and other applicable laws and against selective enforcement of the same.</p>
<p>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</p> <p>Petitioner hereby incorporates the testimony of Liam and Brandee Mcnamara from the January 22, 2021 board meeting, and the questions and responses of the staff and BLNR members at the meeting. The statements of BLNR members at that meeting clearly indicate that Petitioner has the right to a contested case, is an eligible party to the contested case and has raised significant concerns about the lack of fair and adequate treatment. Aside from clearly satisfying the criteria set forth in HAR § 13-1-31(b)(2) for an admitted party, under HAR § 13-1-31(c), Petitioner also has a substantial interest in the instant matter given his ownership and financial interest in the Subject Property. Moreover, Petitioner's family resides at the Subject Property. As the owner of the Subject Property, Petitioner's participation will substantially assist the board in the decision making process.</p>

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.

Forest Jenkins, Esq. *Forest Jenkins* 1/29/2021
Petitioner or Representative (Print Name) Signature Date



STATE OF HAWAII
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(If there are multiple petitioners, use one form for each.)		
1. Name Brandee McNamara/Seamaids LLC	2. Contact Person Brandee McNamara	
3. Address 59-175C Ke Nui Rd	4. City Halciwa	5. State and ZIP Hawaii; 96712
6. Email [REDACTED]	7. Phone [REDACTED]	8. Fax

9. Attorney Name EDMUND K. SAFFERY 5860-0 FOREST B. JENKINS 9761-0	10. Firm Name GOODSILL ANDERSON QUINN & STIFEL A LIMITED LIABILITY LAW PARTNERSHIP LLP	
11. Address First Hawaiian Center, Suite 1600	12. City Honolulu	13. State and ZIP Hawaii; 96813

***Exhibit B: Petition for a Contested Case Hearing
From Brandee McNamara/Seamaids LLC***

999 Bishop Street		
14. Email esaffery@goodsill.com; fjenkins@goodsill.com	15. Phone (808) 547-5600	16. Fax (808) 547-5880

17. Board Action Being Contested Petitioner Brandee McNamara, in both her individually capacity and in her capacity as Manager of Seamajds LLC ("Petitioner"), is contesting the notice for and decision of the BLNR on submittal item number K-3 in the January 22, 2021 BLNR meeting titled "Conservation District Enforcement Case OA 21-03, Regarding an Alleged Unauthorized Land Use Along the Shoreline on State Land Within the Conservation District" (the "Meeting").	
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21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection Petitioner is the owner of the property located at 59-175C Ke Nui Road, Haleiwa, Hawaii 96712 (TMK No. (1) 5-9-002-026) (hereinafter referred to as the "Subject Property"), by virtue of Petitioner's ownership and control of Seamajds LLC (the registered fee owner of the Subject Property). Through ownership and control of Seamajds LLC, Petitioner has a property interest in the Subject Property in question. Pursuant to HAR § 13-1-31(b)(2), "[a]ll persons who have some property interest in the land, who lawfully reside on the land . . . or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application." Petitioner has a property interest in the Subject Property (e.g. land, buildings, etc.), lawfully resides on the Subject Property, and it is clear that the requested action has a direct and immediate affect on Petitioner's ownership interest in the Subject Property, financial stability and threatens her family dwelling. Therefore, under HAR § 13-1-31(b)(2), Petitioner should be admitted as a party to the contested case hearing.	
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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.

Forest Jenkins, Esq.
Petitioner or Representative (Print Name)


Signature

1/29/2021
Date