

**STATE OF HAWAI'I**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Division of Forestry and Wildlife**  
**Office of Conservation and Coastal Lands**  
Honolulu, Hawai'i

July 12, 2024

**Board of Land and  
Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i**

**REGARDING: Grant of Petitions for a Contested Case Hearing and Request for Delegation of Authority to Chairperson for the Appointment and Selection of a Hearing Officer to Conduct All Hearings for Contested Case Hearing Requested:**

Petitioners: Sushil Garg, Benjamin Lessary, LKG HI Properties, LLC

Regarding: *Item C-5 on the April 26, 2024, Board Agenda, titled Request for Administrative Fine of \$1,502,500 and Other Penalties Against LKG HI Properties, LLC (Sushil Garg as Managing Agent), Yue-Sai Kan Trust (Yue-Sai Kan as Trustee), Sushil Garg, Individually, Yue-Kai, Individually, and Benjamin Lassary, Individually for Violation of Section 195D-4(e)(2), Hawai'i Revised Statutes, and Section 13-124-11(a) and (b), Hawai'i Administrative Rules, for the "Take" (Killing) of Two Species of Endangered Nalo Meli Maoli (aka Hawaiian Yellow-Faced Bees) in October 2023, Across Multiple Units of the Marconi Point Condominium Property Regime, Kahuku, O'ahu, Hawai'i, TMK (1) 5-6-003:053*

Petitioners: Association of Unit Owners of Marconi Point Condominium, Sushil Garg, Benjamin Lessary, LKG HI Properties, LLC, Greystone HI Investments, LLC, Makai Ranch LLC, and Wayne Hu and Tara Hu

Regarding: *Item K-1 on the April 26, 2024, Board Agenda, titled Request for Administrative Fines and Other Penalties for Conservation District Enforcement 24-14 Regarding the Alleged Unauthorized Clearing of Land, Unauthorized Removal of 106 Trees, Unauthorized Spreading of Mulch, Unauthroized Fence Lines and Encroachment and Removal of Resources Upon State Land Located at and Makai of Tax Map Key: (1) 5-6-003:053, Against Sushil Garg, manager of LKG HI Properties, LLC, and manager of Greystone HI Investments, LLC, and Benjamin Lassary, Vice President of RCA Trade Center Inc., for the Alleged Unauthorized Clearing of Land, Unauthorized Removal*

DOFAW Item C-4  
OCCL Item K-3

*of 106 Trees, Unauthorized Spreading of Mulch, and Encroachment and Removal of Resources Upon State Land; Against Yue-Sai Kan Trust (Yue-Sai Kan, Trustee), Yue-Sai Kan, individually, for the Alleged Unauthorized Fence Lines on Unit 1; Against Association of Unit Owners of Marconi Point Condominium and/or Makai Ranch, LLC for the Alleged Unauthorized Boundary Fence*

*The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.*

Exhibits:

1. Location Map
2. Letter dated May 2, 2024, from attorney Kalani Morse, Written Petition and Request for Contested Case Hearing, on behalf of Sushil Garg, Benjamin Lessary, LKG HI Properties, LLC, and Greystone Investments, LLC
3. Letter dated May 6, 2024, from Sushil Garg, Written Petition and Request for Contested Case Hearing, on behalf of the Association of Unit Owners of Marconi Point Condominiums
4. Petition for contested case hearing dated May 6, 2024, on behalf of Tara Hu
5. Petition for contested case hearing dated May 6, 2024, on behalf of Wayne Hu
6. Letter dated May 2, 2024, from attorney Eric Robinson, request for Mediation Concerning Agenda Items C-5, C-6, and K-1, on behalf of Yue-Sai Kan and the Yue-Sai Kan Trust
7. Petition for contested case hearing dated May 6, 2024, on behalf of Makai Ranch, LLC

Note:

*Agenda Items C-5, C-6, and K-1 and staff submittals from the Board's April 26, 2024 meeting can be viewed at <https://dlnr.hawaii.gov/meetings/blnr-meetings-2024/land-board-submittals-04-26-24/>.*

**BACKGROUND**

On April 26, 2024, the Department's Division of Forestry and Wildlife (DOFAW) and Office of Conservation and Coastal Lands (OCCL) presented alleged enforcement actions as Agenda Items C-5, C-6, and K-1 to this Board.

Notice of the April 26, 2024, Board meeting (as well as the staff submittals) were mailed to approximately 18 individuals that comprise of the Marconi Point Condominium Property Regime on approximately April 15, 2024. All alleged violators, or their legal counsel, were present at the April 26, 2024 Board meeting.

On April 26, 2024, after DOFAW and OCCL staff presentations of Agenda Items C-5, C-6, and K-1, attorneys for the alleged violators requested contested case hearings during the Board's meeting. The alleged violators' attorneys sent written letters or petitions to the

Department within ten (10) days further requesting contested case hearings on Agenda Items C-5, C-6, and K-1. See *Exhibits 2 through 6*.

The Department received petitions for a contested case hearing from:

- a. Association of Unit Owners of Marconi Point Condominiums, through its president Sushil Garg;
- b. Sushil Garg, Benjamin Lessary, LKG HI, Properties, LLC, and Greystone HI Investments, LLC through legal counsel from Durrett Lang Morse LLLP, relating to Agenda Items C-5 and K-1;
- c. Yue-Sai Kan, individually and as Trustee of the Yue-Sai Kan Trust, Yue-Sai Kan Trust, through legal counsel from Starn O'Toole Marcus & Fisher;
- d. Makai Ranch, LLC, through legal counsel from Damon Key Leong Kupchak Hastert relating to Agenda Item K-1;
- e. Lara Hu, through legal counsel Peter Lenhart, relating to Agenda Item K-1; and
- f. Wayne Hu, through legal counsel Peter Lenhart, relating to Agenda Item K-1.

### **HEARING OF VIOLATIONS**

HAR § 13-1-31.1 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 HAR § 13-1-29(a). No person or government agency other than the department and alleged violator shall be admitted as parties in such proceedings.

Agenda Items C-5, C-6, and K-1 are all violation matters for which an administrative remedy is provided. Department staff finds that Petitioners followed HAR § 13-1-29(a), the Department's procedures for requesting a contested case hearing.

### **AUTHORITY FOR DESIGNATING HEARING OFFICER:**

HAR § 13-1-32(b) 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.

HRS §§ 92-16 and 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 HEARING OFFICER:**

Conducting a contested case hearing for the instant matters 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.

Department staff note 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.

**MEDIATION:**

Petitioners Sushil Garg, Benjamin Lessary, LKG HI Properties, LLC, Greystone HI Investments, LLC, Association of Unit Owners of Marconi Point Condominium, and Yue-Sai Kan have requested mediation pursuant to HAR § 13-5-4 and HRS § 91-8.5.

HRS § 91-8.5 allows for an agency to encourage parties to a contested case hearing to participate in mediation prior to the hearing subject to conditions imposed by the agency in rules adopted in accordance with HRS chapter 91.

HAR § 13-5-4 states, "Upon receipt of a request or on the board's own initiative, the board may request that the petitioner and any affected persons identified as necessary to the resolution of the dispute to participate in mediation. Participation by the parties shall be voluntary. All requests dealing with the same subject matter shall be consolidated into a single mediation."

The Petitions did not indicate specific issues the parties seek to mediate, but rather, it appears that the parties seek to mediate the entire issues presented in the enforcement actions. Due to the complexity of the enforcement matters, a lack of knowledge of which issues the Petitioners seek to mediate, and a lack of procedural mechanisms and safeguards in mediation, the Department does not consent to mediation at this time.

The Department finds that the proper venue for the resolution the Petitioners seek is the contested case hearing itself, as a contested case means a proceeding in which the legal rights, duties, or privileges of specific parties are determined after an opportunity for agency hearing. HRS § 91-1.

**DISCUSSION:**

As Agenda Items C-5, C-6, and K-1 are all enforcement actions that seek to impose financial penalties, and other penalties, against the Petitioners and Petitioners duly followed the Department's rules relating to requesting a contested case hearing, Department staff find that all Petitioners are entitled to a contested case hearing to determine the legal rights, duties or privileges of specific parties.

The Department finds that the most efficient use of State resources and staff time, while still ensuring that all Petitioners receive proper due process, is to appoint one hearing officer to conduct a combined contested case hearing for all remaining violations.

The Department notes that the petition submitted on behalf of Makai Ranch, LLC alleges that the adjacent Turtle Bay Resort is responsible for constructing and installing the alleged unauthorized boundary fence along a shared portion of TMKs: (1) 5-6-003:53 and (1) 5-6-003:054. As such, Makai Ranch, LLC and their counsel are requesting that Turtle



Bay Resort be included as a party to the contested case hearing for this matter. Turtle Bay Resort was not named as an alleged violator regarding the construction and installation of the alleged unauthorized boundary fence, and it will be at the Board's discretion to admit Turtle Bay Resort as party in the contested case proceedings.

The Department has reached a tentative settlement agreement, subject to Board approval, with the Yue-Sai Kan Trust and Yue-Sai Kan, individually and as Trustee of the Yue-Sai Kan Trust. In the event that the settlement agreement is not approved by the Board, the Department recommends adding Yue-Sai Kan and the Yue-Sai Kan Trust as parties to the contested case hearing at that time. *See Agenda Items C-3 or K-2.*

**AS SUCH, DOFAW AND OCCL STAFF RECOMMEND AS FOLLOWS:**

- 1) That the Board deny the Petitioners' request(s) for mediation;
- 2) That the Petitioners are entitled to a contested case hearing;
- 3) The Board approve the Petitions for a contested case hearing requested by:
  - a. Association of Unit Owners of Marconi Point Condominiums;
  - b. Sushil Garg;
  - c. Benjamin Lessary;
  - d. LKG HI Properties, LLC;
  - e. Greystone Investments, LLC;
  - f. Makai Ranch, LLC;
  - g. Lara Hu; and
  - h. Wayne Hu.
- 4) No person or government agency other than the department and alleged violator(s) shall be admitted as parties in such proceedings; and
- 5) The Board authorize the appointment of a Hearing Officer and delegate authority for the selection of a Hearing Officer to the Chairperson.

for DGS

Respectfully submitted,

*Robert Hauff*

David G. Smith, Administrator  
Division of Forestry and Wildlife

*L. F.*

Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:



DAWN N.S. CHANG, Chairperson  
Board of Land & Natural Resources



Google Earth Pro 56-1089 Kamehameha Hwy. TMK: (1) 5-6-003:053



ATTORNEYS AT LAW

Garg  
Lessary

**DURRETT LANG MORSE, LLP**

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
KALANI A. MORSE, ESQ.  
DIRECT: 808.792.1213  
KMORSE@DLMHAWAII.COM

2024 MAY -6 P 12:31

2 May 2024

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

**Via Email & Certified Mail, Return Receipt Requested**

Dawn N.J. Chang, Chair  
Board of Land and Natural Resources  
DLNR Main Office  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawai'i 96813  
[dlnm@hawaii.gov](mailto:dlnm@hawaii.gov)

**Re: Office of Conservation and Coastal Lands Conservation District  
Enforcement Action OA 24-14 - Written Petition and Request for  
Contested Case Hearing**

Dear Chair Chang:

As you are aware, our office represents Sushil Garg, Benjamin Lessary, LKG HI Properties, LLC, and Greystone HI Investments, LLC (collectively, the "**Requestors**") in connection with the DLNR's Office of Conservation and Coastal Lands' ("**OCCL**") Enforcement Action OA 24-12 ("**OA 24-14**") and the DLNR's Division of Forestry and Wildlife's ("**DOFAW**") investigation and request for administrative fines and other penalties against the Requestors and others (collectively the "**Enforcement**").

The Enforcement requests that the Board impose administrative fines and other penalties against Requestors for:

A. "Alleged Unauthorized Clearing of Land, Unauthorized Removal of 106 Trees, Unauthorized Spreading of Mulch, and Encroachment and Removal of Resources Upon State Land" and other lands located on and makai of the real property located at 56-1089 Kamehameha Highway, Kahuku Hawai'i 96731 (identified as Tax Map Key ("**TMK**") (1) 5-6-003:053) (the "**Property**"), and

B. The alleged "violation of Section 195D-4(E)(2), Hawai'i Revised Statutes, and Section 13-124-11 (A) and be (B), Hawai'i Administrative Rules, for the "take" (killing) of two species of endangered Nalo Melo Maoli (aka Hawaiian Yellow-Faced Bees) in October 2023".

PACIFIC GUARDIAN CENTER MAUKA TOWER | 737 BISHOP ST SUITE 1850 | HONOLULU, HI 96813 | 808.526.0892 | WWW.DLMHAWAII.COM



We write as a follow-up to our oral request for a contested case concerning the Enforcement, made at the Board's April 26, 2024 meeting. This written petition for contested case hearing is made in accordance with Hawai'i Administrative Rules ("**HAR**") § 13-1-29 and Hawai'i Revised Statutes ("**HRS**") § 91. We note that the Board received our oral contested case request at the Board's April 26, 2024 meeting and previously asserted that alleged violators in enforcement actions are entitled to a Contested Case as of right.

**I. Nature and Extent of the Requestor's Interest**

LKG HI Properties, LLC and Greystone HI Investments, LLC own a number of the condo units at the Property that are situated in and mauka of the subject area of the Enforcement and are two of the parties cited in OA 24-14. The Property is located in Kahuku, on Oahu's North Shore.

On or about October 26, 2024, only one of the Requestors, Greystone HI Investments, LLC received a Notice of Alleged Violation letter from the DLNR for the Enforcement. Subsequent correspondence with DLNR commenced whereby Greystone HI Investments, LLC repeatedly sought the DLNR's input on and authorization to commence immediate remediation and restoration efforts at the Property. DLNR neither reached out, provided meetings, nor provided any input or responses as to whether immediate restoration and remediation efforts could proceed under the direction of a qualified conservation biologist. Greystone HI Investments, LLC contact a qualified biologist to commence discussions with DLNR but DLNR never responded to the biologists repeated phone calls and emails.

Rather, DLNR officers informed Greystone's representatives that they should not undertake any restoration or remediation efforts until they heard back from the DLNR. DLNR did not reach out until just a few days before DLNR staff issued their staff recommendations in anticipation of the Board Meeting, and that conversation was initiated by DLNR merely to confirm a mailing address. When asked again what could be done to commence remediation and restoration, the answer again was nothing.

The Enforcement was then placed on the Board's agenda as items C-5 and K-1 on April 15, 2024 and was heard by the Board on April 26, 2024.

The OCCL recommends in its staff submittal for that meeting that some of the Requestors (Sushil Garg and Benjamin Lessary) be fined and held jointly and severally liable for a total of \$1,640,000 for the various alleged violations outlined in the OCCL staff submittal and request to the Board.

The DOFAW recommends in its staff submittal for that meeting that some of the Requestors (Sushil Garg, LKG HI Properties, LLC, and Benjamin Lessary) and others be fined a total of \$1,502,500 and be held jointly and severally liable for the alleged violations outlined in the DOFAW staff submittal

and request to the Board.

As owners and managers of portions of the Property and the alleged violators identified by OA 24-14, the OCCL and DOFAW staff submittals to the Board and the Board's actions in the Enforcement will directly and substantially affect each of the Requestors and their respective interests. Accordingly, Requestors are entitled to contested case hearings as to the various alleged violations and penalties requested by DNLR staff, as set forth in the Enforcement documents and staff recommendations to the Board.

## **II. Requestor's Disagreement**

Requestors contest the fines proposed under the Enforcement, pursuant to HRS §§ 171-6 and 183C-7. Fines of such magnitude are entirely unprecedented and raise a number of significant statutory and constitutional concerns, including many basic due process concerns. Requestors also wish to review and address each instance of violation alleged in the Enforcement, including evidence purporting to show the alleged conduct. Finally, Requestors contest the other related staff recommendations and requests from OCCL and DOFAW and their respective staff submittals to the Board.

## **III. Relief Requestor Seeks**

Requestors seek to avoid arbitrary and capricious monetary penalties, such as those outlined in the staff submittal. Requestors also desire to work towards a holistic shoreline management solution to ensure safe and proper management of those protected resources located in those portions of the Property found in the conservation district. Requestors are amenable to mediating the Enforcement (pursuant to HAR § 13-5-4 and HRS § 91-8.5).

The current staff recommendations present unprecedented, unsubstantiated, and largely unworkable maximum penalties and Requestors are in need of clarity as to the law and facts relevant to the Enforcement in order to ensure proper protection of both the resources on the Property and their constitutional and other legal rights, as well as ensure that the Enforcement is resolved properly.

## **IV. Public Interest**

It is in the public interest to resolve this Enforcement (and others) and to address longer-term solutions to ensure not only the protection of due process and other constitutional rights, but also to ensure that a sustainable and workable remediation and conservation plan can be implemented. Requestors must fully identify all relevant facts and law related to and underlying the Enforcement, in order to ensure a workable solution for conservation and remediation on the Property in order to resolve the Enforcement and



Dawn N. S. Chang, Chair  
May 2, 2024  
Page 4

properly provide for the adequate protection of those resources found on the Property going forward.

**V. Other Information**

Requestors are not aware of any permits applicable to the Property or the Enforcement and are thus not including the \$100 filing fee otherwise required by HAR § 13-1-30; please let us know if the Board or the DLNR has a different understanding.

Requestors will request the complete file concerning the Enforcement and the Property from the OCCL and DLNR. Consequently, Requestors reserve the right to amend the contents of this request for contested case hearing in the event that other pertinent materials or information comes to light or are made available.

Very Truly Yours,



Kalani A. Morse, Esq.

ASSOCIATION OF UNIT OWNERS OF MARCONI POINT CONDOMINIUMS

6 May 2024

Dawn N.S. Chang, Chair  
Board of Land and Natural Resources  
DLNR Main Office  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawai'i 96813  
[dlnr@hawaii.gov](mailto:dlnr@hawaii.gov)

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OFFICE OF CONSERVATION  
AND COASTAL LANDS

2024 MAY -7 A 10:4

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STATE OF HAWAII

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

2024 MAY -7 AM 7:46

RECEIVED  
LAND DIVISION

**Re: Written Petition and Request for Contested Case Hearing for the Office of Conservation and Coastal Lands Conservation District's Enforcement Action OA 24-14**

Dear Chair Chang:

I write on behalf of the Association of Unit Owners of Marconi Point Condominiums (the "*Association*") with respect to the DLNR's Office of Conservation and Coastal Lands' ("*OCCL*") Enforcement Action OA 24-12 ("*OA 24-14*") and the DLNR's related investigation and request for administrative fines and other penalties against the Association and others.

Our understanding is that the DLNR issued a notice of alleged violation to a number of unit owners at the Marconi Point Condominiums sometime in October 2023. That notice, however, was not addressed to, and did not identify the Association as a recipient or a party of interest.

It is also our understanding that the OCCL issued to a number of Marconi Point Condominium unit owners (and other parties) an April 15, 2024 Notice of Board Hearing for consideration of the OCCL's Request for Administrative Fines and Other Penalties for Conservation District Enforcement OA 24-14 (the "Request"). While we have been informed that the Request specifically identified the Association as an alleged violator, the Association was not provided with notice of the Board's hearing and has not been served with the Request.

As such, the Association did not have a representative present at that BLNR's April 26, 2024 hearing, where OA 24-14 was considered; no one authorized to represent the Association could notify the Board of the Association's intent to request a contested case hearing in OA 24-14. Thus, I write on behalf of the Association to follow-up and formally request a contested case hearing, in accordance with Hawai'i Administrative Rules ("*HAR*") § 13-1-29.

**I. Nature and Extent of the Association's Interest**

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MAILING ADDRESS: 737 BISHOP STREET SUITE 1850 HONOLULU, HAWAII 96813

The Association has control over the common areas at the Marconi Point Condominiums, which are situated in and adjacent to the subject areas identified by OA 24-14, and are located in Kahuku, on Oahu's North Shore.

The Request appears to name the Association as a violator against whom fines and other penalties be assessed and specifically request that the "landowners" of TMK (1)5-6-003:053 (all of whom are ostensibly members of the Association) be held liable for fines and other penalties. As such, enforcement of OA 24-14 will directly and substantially affect the Association and the Association is entitled to a contested case.

## **II. The Association's Disagreement**

Per HRS §§ 171-6 and 183C-7, the Association contests the fines and penalties proposed as well as the other related staff recommendations, all of which raise a host of statutory, regulatory, and constitutional concerns, including serious issues of due process.

## **III. Relief Sought**

The Association needs clarity as to the law and facts relevant to OA 24-14, seeks to avoid arbitrary and capricious monetary penalties, and aims to work towards solutions that will ensure safe and proper management of the Association's common areas located in the conservation district. Per HAR § 13-5-4 and HRS § 91-8.5, the Association is open to mediating the issues in OA 24-14.

## **IV. Public Interest**

It is in the public interest to resolve OA 24-14 and protect due process and constitutional rights while also ensuring that remediation and conservation plans can be properly implemented.

## **V. Other Information**

The Association will request the complete file concerning OA 24-14 and reserves the right to amend the contents of this request for contested case hearing in the event that other pertinent materials or information comes to light or are made available.

Very Truly Yours,



Sushil Garg, President  
Association of Unit Owners of  
Marconi Point Condominium

cc: Association Board Members



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2024 MAY -6 PM 4:56

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**FACSIMILE TRANSMITTAL**

TO: Department of Land and  
Natural Resources  
Administrative Proceedings Office

DATE: May 6, 2024

FAX NO: (808) 587-0390

TIME: 3:49 a.m. (p.m.)

FROM: Peter J. Lenhart, Esq.

RE: Request for Administrative Fine and Other Penalties for Conservation District  
Enforcement OA 24-14; Association of Unit Owners of Marconi Point Condominium  
and/or Makai Ranch, LLC

**The Following Is (Are) Transmitted Herewith:**

1. Tara Leiko Hu's Petition For A Contested Case
2. Supplemental Submissions to Petition for a Contested Case

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> For Your Information | <input checked="" type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Signature & Return     |
| <input type="checkbox"/> For Review & Comment | <input type="checkbox"/> Per Your Request                | <input type="checkbox"/> For Signature & Forwarding |
| <input type="checkbox"/> For Correction       | <input type="checkbox"/> Per Our Conversation            | <input type="checkbox"/> For Distribution           |
| <input type="checkbox"/> For Your Files       | <input type="checkbox"/> For Payment                     | <input type="checkbox"/> See Remarks Below          |

**REMARKS:**

**Please feel free to contact our office at the telephone number or E-mail above with any questions as to the attached documents.**

**Thank you for your attention to this matter.**

**THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.** If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us at the above address. If you do not receive all the pages or if they are illegible, call us at (808) 536-7599.

**NUMBER OF PAGES (INCLUDING TRANSMITTAL PAGE): 14**

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STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

**PETITION FOR A CONTESTED CASE HEARING**

<b>Case No.</b>	<b>Date Received</b>
<b>Board Action Date / Item No.</b>	<b>Division/Office</b>

**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.

PETITIONER		
(If there are multiple petitioners, use one form for each.)		
<b>1. Name</b> Tara Leiko Hu	<b>2. Contact Person</b> Peter J. Lenhart, Esq.	
<b>3. Address</b> 1088 Bishop Street, Suite 907	<b>4. City</b> Honolulu	<b>5. State and ZIP</b> Hawaii, 96813
<b>6. Email</b> plenhart@aol.com	<b>7. Phone</b> (808) 536-7599	<b>8. Fax</b> (808) 536-7515

ATTORNEY (If Applicable)		
<b>9. Attorney Name</b> Peter J. Lenhart	<b>10. Firm Name</b> Peter J. Lenhart, Attorney at Law, LLLC	
<b>11. Address</b> 1088 Bishop Street, Suite 907	<b>12. City</b> Honolulu	<b>13. State and ZIP</b> Hawaii, 96813
<b>14. Email</b> plenhart@aol.com	<b>15. Phone</b> (808) 536-7599	<b>16. Fax</b> (808) 536-7515

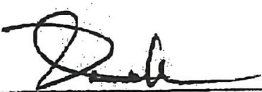


<b>17. Board Action Being Contested</b> Request for Administrative Fine and Other Penalties for Conservation District Enforcement OA 24-14 Regarding the Alleged Unauthorized Boundary Fence Upon State Land Located at and Makai of Tax Map Key: (1) 5-6-003:053 as against Association of Unit Owners of Marconi Point Condominium and/or Makai Ranch, LLC	
<b>18. Board Action Date</b> April 26, 2024, meeting	<b>19. Item No.</b> Agenda Item K-1
<b>20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case</b> Due Process pursuant to Article I, Section 5 of the Hawaii State Constitution, which states, in pertinent part: "No person shall be deprived of life, liberty or property without due process of the law..."	
<b>21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection</b> Petitioner is a unit owner within the Marconi Point Condominiums project and, therefore, has a property interest in the common element upon which the boundary fence is located. As a unit owner, Petitioner is also a member of the Association of Unit Owners of Marconi Point Condominiums, which association was only arguably constituted in February 2024 (although it is also Petitioner's view that the Association was illegally constituted). It is Petitioner's view that any fines and penalties levied as a result of the aforementioned Agenda Item K-1 should be issued against the developer, Makai Ranch, LLC, which entity erected the boundary fence without approval or consensus by the unit owners	
<b>22. Any Disagreement Petitioner May Have with an Application before the Board</b> The staff report submitted by the Office of Conservation and Coastal Lands sets forth the alleged violators as "Association of Unit Owners of Marconi Point Condominium and/or Makai Ranch, LLC". It is Petitioner's view that Agenda Item K-1 is properly brought against Makai Ranch, LLC, and not the Association. As the staff report properly notes in footnote 1, Makai Ranch, LLC had control of the project at the time the fence was erected (this was during the "developer control period"). The Association should be dismissed as an alleged violator as to the unauthorized boundary fence. As discussed above, the boundary fence was erected without approval or consensus by the unit owners.	
<b>23. Any Relief Petitioner Seeks or Deems Itself Entitled to</b> Petitioner seeks to have the Association of Unit Owners of Marconi Point Condominiums dismissed as an alleged violator as to the unauthorized boundary fence. The Association was not constituted at the time the boundary fence was erected (and Petitioner argues that the Association is not yet legally constituted). The proper and only party against whom fines and penalties should be sought is the developer, Makai Ranch, LLC.	
<b>24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest</b> With reservation of rights, Petitioner does not object to the relief requested by the Office of Conservation and Coastal Lands. Petitioner objects to the naming of the Association of Unit Owners of Marconi Point Condominiums, as discussed in previous sections above, and requests that the Association be dismissed as an alleged violator. Petitioner would like to see the boundary fence removed from the conservation area in order to protect and preserve the lands, animals and plants encompassed by the conservation area. In fact, Petitioner is an advocate for the restorations of these lands and believes that the consequences of such alleged actions should be imposed upon the proper alleged violator, Makai Ranch, LLC.	
<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> Pursuant to HAR Section 13-1-31(b)(2), Petitioner has "some property interest in the land" and "can demonstrate that [she] will be so directly and immediately affected by the requested action that [her] interest in the proceeding is clearly distinguishable from that of the general public". Petitioner is a unit owner and therefore has an interest in the common element on which the boundary fence was erected. Further, Petitioner, as a member of the Association will incur additional assessments and fees as a result of any monetary fines/penalties levied against the Association	

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.

Tara Leiko Hu  
Petitioner or Representative (Print Name)

  
Signature

May 6, 2024  
Date

**Supplemental Submissions to**  
**Petition for a Contested Case Hearing**

1. Letter dated May 6, 2024, from Peter J. Lenhart, Esq. to Hawaiiana Management Company, Ltd. Attn: Ross Uehara-Tilton, Esq.
2. Copy of Notice of First Annual Meeting of the Association of Unit Owners of Marconi Point Condominiums
3. Copy of Notice of the Reconvened First Annual Meeting of the Association of Unit Owners of Marconi Point Condominiums

Tori Maeshiro, Esq.  
Associate  
tori@hiconvey.com

Sharnell Shimamoto  
Legal Assistant  
sharnell@hiconvey.com

**Peter J. Lenhart**

ATTORNEY AT LAW, LLLC

1088 Bishop Street, Suite 907, Honolulu, Hawaii 96813  
Telephone: (808) 536-7599 • Fax: (808) 536-7515  
plenhart@aol.com

Gail C. Takeuchi  
Paralegal  
gail@hiconvey.com

Kazuko Imai  
Paralegal  
kazuko@hiconvey.com

May 6, 2024

**Via E-mail**

Hawaiiana Management Company, Ltd.  
Attn: Ross Uehara-Tilton, Esq.  
Damon Key Leong Kupchak Hastert  
1003 Bishop Street, Suite 1600  
Honolulu, Hawaii 96813

Re: Hawaiiana Management Company, Ltd.: Board of Land and Natural Resources April 26, 2024 Meeting Agenda Item K-1 – Conservation District Enforcement OA 24-14

Dear Ross:

This letter is sent to you in your dual capacity as legal counsel for Hawaiiana Management Company, Ltd. ("Hawaiiana") and for Jeremiah A. Henderson, III and his various entities. This letter is also in regard to the above Agenda Item K-1, which was before the State of Hawaii Board of Land and Natural Resources ("BLNR") on April 26, 2024, and is in response to your letter addressed to our office dated February 20, 2024.

As you know, on or about April 18, 2024, the unit owners of Marconi Point Condominiums (the "Project") received a "Notice of Board Hearing" from the State of Hawaii Department of Land and Natural Resources Office of Conservation and Coastal Lands ("OCCL") dated April 15, 2024, together with a staff report submitted by the OCCL regarding:

"Request for Administrative Fines and Other Penalties for Conservation District Enforcement OA 24-14 Regarding the Alleged Unauthorized Clearing of Land, Unauthorized Removal of 106 Trees, Unauthorized Spreading of Mulch, Unauthorized Fence Lines and Encroachment and Removal of Resources Upon State Land Located at and Makai of Tax Map Key: (1) 5-6-003:053"

In particular, the staff report sets forth the "Association of Unit Owners of Marconi Point Condominium and/or Makai Ranch, LLC" as the alleged violators as to an unauthorized boundary fence along the Kuilima border, within a common element of the Project, and extending into the Conservation District along the makai edge of the Project.

Our office assumes that you are aware of this allegation as your clients' (i.e., Jeremiah A. Henderson, III) various entities, RCA Trade Center, Inc., MP Unit 21 LLC



Hawaiiana Management Company, Ltd.  
Attn: Ross Uehara-Tilton, Esq.  
May 6, 2024  
Page 2

and Marconi Farms LLC were noted as addressees on the "Notice of Board Hearing", and Makai Ranch, LLC is also named as an alleged violator together with the Association of Unit Owners of Marconi Point Condominium (the "Association"). Your associate, David Abitbol, Esq., even made an appearance at the BLNR hearing on April 26, 2024, on behalf of Makai Ranch, LLC.

However, despite this intimate knowledge of the OCCL allegations against the Association, it appears that you have failed to properly inform your **other** client, Hawaiiana, as to the BLNR proceeding that took place on April 26, 2024, which directly and adversely affects Hawaiiana's client, the Association. It is clear that your **dual agency** is negatively impacting your ability to effectively and impartially represent both Mr. Henderson (and his various entities) and Hawaiiana and adversely impacts my ability to advocate on behalf of my client, Wayne Hu, as a purported Board member of what we have described as an illegally constituted Board of Directors of the Association by the developer, Makai Ranch, LLC.

Mr. Hu has not received from Hawaiiana any notice of an emergency meeting of the Board of Directors of the Association to (1) determine how to address the alleged violations set forth in Agenda Item K-1, (2) engage an attorney to represent the Association as general counsel, (3) request that the Association's general counsel engage a second attorney to represent the Association in the BLNR proceeding, and (4) obtain E&O insurance for the Association. The undersigned requested a contested case on behalf of Wayne and Tara Hu at the BLNR meeting on April 26, 2024, but our office **does not** represent the Association. We represent Wayne and Tara Hu as unit owners **only**. Our request for a contested case as the April 26, 2024, BLNR hearing was **not** on behalf of the Association.

Your failure to properly notify Hawaiiana as to the allegations against the Association puts your office, the Association and Hawaiiana at substantial risk. The OCCL has requested that the BLNR approve an imposition of a \$15,000 fine against the Association and the removal of the offending boundary fence, which may incur substantial costs for the Association. Your failure to properly inform Hawaiiana as to their responsibility to call an emergency meeting of the Board of Directors after receipt of the BLNR's Notice of Board Hearing on or about April 18, 2024, may now result in a failure of the Board of Directors to timely engage an attorney to represent the Association in the BLNR proceeding as to the above allegations. Should the BLNR impose monetary fines on the Association, the Association members will want to know why it is that they are needing to pay a fine for a violation perpetrated by the developer, Makai Ranch, LLC and why Hawaiiana did not call an emergency Board meeting of the Association. It is clear that your dual representation (of Hawaiiana and Mr. Henderson and his entities including Makai Ranch, LLC) is detrimental to the Association and in favor of Mr. Henderson. Our client, Makai Ranch, LLC, would prefer that liability rest with the Association, and not with Makai Ranch, LLC. Your representation of Mr. Henderson, and his entities, and Hawaiiana is "conflicted", and your immediate

Hawaiiana Management Company, Ltd.  
Attn: Ross Uehara-Tilton, Esq.  
May 6, 2024  
Page 3

withdrawal as general counsel for Hawaiiana as to its representation of the Association is required in order to properly protect **ALL** Association members.

As you know, our office, on behalf of Mr. & Mrs. Hu, objected to the constitution of the Association at the January 17, 2024, and February 20, 2024, meetings. It was clear to Mr. & Mrs. Hu, at that time, that the Project was not in compliance with various federal, state and local laws, rules and regulations. It was irresponsible of the developer, Makai Ranch, LLC, (yet another business owned/operated by Mr. Henderson and represented by your office) to "turn over" the Project to the Association when there were questions as to the propriety and legality of a number of elements within the Project (i.e., the warehouses, illegal commercial activities, etc.). We can reasonably assume Mr. Henderson and your law firm knew of the pending BLNR action prior to calling for the meeting to constitute the Board of the Association and certainly before the February 20, 2024, Association meeting. Nothing was disclosed by you, by Mr. Henderson or by Hawaiiana at the 2-20-2024 meeting about this pending BLNR action. It is apparent that Mr. & Mrs. Hu's concerns are now coming to fruition – the boundary fence at issue in the BLNR proceeding is allegedly not in compliance with Conservation District into which it extends. The developer, Makai Ranch, LLC, should have been diligent in following all laws and regulations as to these sensitive areas. Due to the developer's failure to do so, and now, as a result of your further failure to properly perform your duties as legal counsel for Hawaiiana to notify Hawaiiana, the Association may now suffer administrative consequences and is prejudiced.

Your failure, as well as the failure of Hawaiiana, to properly call a meeting of the Board of Directors is a breach of Hawaiiana's fiduciary duty to the Association. The failure to timely engage an attorney to appear in the BLNR proceeding and to timely request a contested hearing is a breach of Hawaiiana's fiduciary duties. You have made it immensely difficult for our client, Mr. Hu, to call a meeting of the Board of Directors. By instructing our office to refrain from communicating directly with Hawaiiana as to all matters regarding the Project and the Association, all of our communication with Hawaiiana now must first, go through your office first, and, as you know, that relationship is conflicted as to you representing unit owners, i.e., RCA Trade Center, Inc. and MP Unit 21, LLC, who are in litigation with my clients.

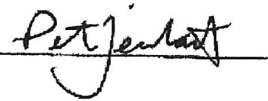
Due to your failure to properly advise Hawaiiana as to the proper course of action, we are now **DEMANDING**, on behalf of our clients, that Hawaiiana call an emergency meeting of the Board of Directors to address the BLNR alleged violations, engage an attorney as general counsel for the Association, engage an attorney to appear in the BLNR proceeding, and obtain liability insurance for the Association. We further **DEMAND** that your office withdraw as general counsel for Hawaiiana as to its representation of the Association, as long as you are representing Mr. Henderson and his entities, who not only have an involvement in the bad and illegal conduct allegedly by the BLNR but also while your clients are involved in an activate litigation involving issued having to do with your clients' activities and conduct at the Marconi Point

Hawaiiana Management Company, Ltd.  
Attn: Ross Uehara-Tilton, Esq.  
May 6, 2024  
Page 4

Condominium project. It is clear that you are unable to properly fulfill your obligations as legal counsel for both Hawaiiana and Mr. Henderson (and his various companies). You cannot serve these two masters without conflict and without prejudice to the Association. Mr. Henderson's interests are to himself, his companies and the units they own, and Hawaiiana's interest is, or should be, to the unit owners of the Project. You cannot, in serving these two masters, reconcile these conflicting and competing interests.

We look forward to receiving a timely notice from Hawaiiana as to an emergency meeting of the Board of Directors of the Association that will avoid prejudice to the Association before the BLNR, and to your office's statement of withdrawal from representation of Hawaiiana.

Very truly yours,

By 

**PETER J. LENHART**

cc: client



MAKAI RANCH, LLC  
1810 E. Sahara Avenue, Suite 110  
Las Vegas, Nevada 89104

**NOTICE OF FIRST ANNUAL MEETING OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARCONI POINT CONDOMINIUMS**

NOTICE IS HEREBY GIVEN that the **FIRST ANNUAL MEETING** of the Association of Unit Owners of Marconi Point Condominiums has been called and will be held as follows:

**DATE:** Wednesday, January 17, 2024

~~**TIME:** 11:00 a.m.~~

**PLACE:** Hawaiiana Management Company, Limited  
Pacific Park Plaza  
711 Kapiolani Boulevard  
Honolulu, Hawaii 96813

for the following purposes:

1. To elect Directors as prescribed in the By-Laws; and
2. To transact such other business as may properly come before the meeting.

Unit Owners of record as of January 1, 2024 will be entitled to vote at the meeting. All owners are encouraged to attend the meeting.

Pursuant to Haw. Rev. Stat. § 514B-121(e)(4)(A), a majority of Unit Owners have given consent for the meeting to also be conducted by electronic means. Thus, Unit Owners may also participate remotely by Zoom video conference. The Zoom Meeting ID is 738 735 4581. The password is 063664.

~~Pursuant to Article I, Section 3 of the By-Laws, this Meeting is being called by request of the following Unit Owners (in excess of 10% of all Unit Owners):~~

- Units 2-4, 6, 28, and 32: LKG HI Properties, LLC (23.10%)
- Units 16-19: Greystone HI Investments LLC (15.4%)
- Units 20-23: RCA Trade Center, Inc. (3.82%)
- Units 24-27: MP Unit 21 LLC (3.82%)
- Unit 29: Makai Ranch LLC (3.85%)
- Unit 31: BSS HI Properties, LLC (3.85%)

The meeting Agenda is enclosed.

DATE OF THIS NOTICE: **JANUARY 3, 2024.**

**FIRST ANNUAL MEETING OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARCONI POINT CONDOMINIUMS**

**AGENDA**

1. Roll Call/Quorum
2. Proof of Notice of Meeting
3. Election of Directors
4. New Business
5. Adjournment

**Note: There will be a short Organizational Meeting of the new Board of Directors immediately following adjournment of the Annual Meeting. All Directors are asked to remain for this brief meeting.**

REQUEST FOR ANNUAL MEETING

The undersigned, being a majority by percentage common interest of the Unit Owners of the Marconi Point Condominiums Project, hereby request that an annual meeting of the Association of Unit Owners be held as soon as reasonably practical and pursuant to Haw. Rev. Stat. § 514B-121(e)(4)(A), consent to the holding of such meeting by electronic means.

LKG HI PROPERTIES, LLC,  
a Hawaii limited liability company,

GREYSTONE HI INVESTMENTS, LLC,  
a Hawaii limited liability company,

By: Sushil Garg  
~~Sushil Garg~~  
Its Manager

By: Sushil Garg  
~~Sushil Garg~~  
Its Manager

RCA TRADE CENTER, INC.,  
a Hawaii corporation,

MP UNIT 21 LLC,  
a Texas limited liability company,

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its President

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its Manager

BSS HI PROPERTIES, LLC,  
a Hawaii limited liability company,

MAKAI RANCH, LLC,  
a Texas limited liability company,

By: BSS HOLDERS CORP.,  
a Delaware corporation,  
Its Member,

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its Manager

By: Sushil Garg  
SUSHIL GARG  
Its President

828031

**MAKAI RANCH, LLC**  
**1810 E. Sahara Avenue, Suite 110**  
**Las Vegas, Nevada 89104**

**NOTICE OF ~~THE~~ RECONVENED FIRST ANNUAL MEETING OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARCONI POINT CONDOMINIUMS**

NOTICE IS HEREBY GIVEN that the RECONVENED FIRST ANNUAL MEETING of the Association of Unit Owners of Marconi Point Condominiums has been called and will be held as follows:

~~DATE: Tuesday, February 20, 2024~~

TIME: 11:00 a.m.

PLACE: Hawaiiiana Management Company, Limited  
Pacific Park Plaza  
711 Kapiolani Boulevard  
Honolulu, Hawaii 96813

for the following purposes ONLY:

**1. To elect Directors as prescribed in the By-Laws**

Unit Owners of record as of January 1, 2024 will be entitled to vote at the meeting. All owners are encouraged to attend the meeting.

Pursuant to Haw. Rev. Stat. § 514B-121(e)(4)(A), a majority of Unit Owners have given consent for the meeting to also be conducted by electronic means. Thus, Unit Owners may also listen in only remotely by Zoom video conference. Unit Owners will be muted and cannot vote by Zoom video conference. The Zoom Meeting ID is 738 735 4581. The password is 665765.

Pursuant to Article I, Section 3 of the By-Laws, this Meeting is being called by request of the following Unit Owners (in excess of 10% of all Unit Owners):

- Units 2-4, 6, 28, and 32: LKG HI Properties, LLC (23.10%)
- Units 16-19: Greystone HI Investments LLC (15.4%)
- Units 20-23: RCA Trade Center, Inc. (3.85%)
- Units 24-27: MP Unit 21 LLC (3.85%)
- Unit 29: Marconi Farms, LLC (3.85%)
- Unit 31: BSS HI Properties, LLC (3.85%)

The meeting Agenda is enclosed.

DATE OF THIS NOTICE: JANUARY 22, 2024.

**RECONVENED FIRST ANNUAL MEETING OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARCONI POINT CONDOMINIUMS**

**AGENDA**

1. Roll Call/Quorum
2. Proof of Notice of Meeting
3. Election of Directors
4. New Business
5. Adjournment

Note: There will be a short Organizational Meeting of the new Board of Directors immediately following adjournment of the Annual Meeting. All Directors are asked to remain for this brief meeting.

REQUEST FOR ANNUAL MEETING

The undersigned, being a majority by percentage common interest of the Unit Owners of the Marconi Point Condominiums Project, hereby request that an annual meeting of the Association of Unit Owners be held as soon as reasonably practical and pursuant to Haw. Rev. Stat. § 514B-121(e)(4)(A), consent to the holding of such meeting by electronic means.

LKG HI PROPERTIES, LLC,  
a Hawaii limited liability company,

GREYSTONE HI INVESTMENTS, LLC,  
a Hawaii limited liability company,

By: Sushil Garg  
Sushil Garg  
Its Manager

By: Sushil Garg  
Sushil Garg  
Its Manager

RCA TRADE CENTER, INC.,  
a Hawaii corporation,

MP UNIT 21 LLC,  
a Texas limited liability company,

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its President

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its Manager

BSS HI PROPERTIES, LLC,  
a Hawaii limited liability company,

MARCONI FARMS, LLC,  
a Texas limited liability company,

By: BSS HOLDERS CORP.,  
a Delaware corporation,  
Its Member,

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its Manager

By: Sushil Garg  
SUSHIL GARG  
Its President

828031



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Tori Maeshiro, Esq.  
Associate  
tori@hiconvey.com  
  
Sharnell Shimamoto  
Legal Assistant  
sharnell@hiconvey.com

**Peter J. Lenhart**  
ATTORNEY AT LAW, LLLC  
1088 Bishop Street, Suite 907, Honolulu, Hawaii 96813  
Telephone: (808) 536-7599 • Fax: (808) 536-7515  
plenhart@aol.com

Gail C. Takeuchi  
Paralegal  
gail@hiconvey.com  
  
Kazuko Imai  
Paralegal  
kazuko@hiconvey.com

**FACSIMILE TRANSMITTAL**

TO: Department of Land and  
Natural Resources  
Administrative Proceedings Office

DATE: May 6, 2024

FAX NO: (808) 587-0390

TIME: 3:42 a.m./p.m.

FROM: Peter J. Lenhart, Esq.

RE: Request for Administrative Fine and Other Penalties for Conservation District  
Enforcement OA 24-14; Association of Unit Owners of Marconi Point Condominium  
and/or Makai Ranch, LLC

**The Following Is (Are) Transmitted Herewith:**

1. **Wayne Masao Mun Keong Hu's Petition For A Contested Case**
2. **Supplemental Submissions to Petition for a Contested Case**

<input type="checkbox"/> For Your Information	<input checked="" type="checkbox"/> For Necessary Action	<input type="checkbox"/> For Signature & Return
<input type="checkbox"/> For Review & Comment	<input type="checkbox"/> Per Your Request	<input type="checkbox"/> For Signature & Forwarding
<input type="checkbox"/> For Correction	<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> For Distribution
<input type="checkbox"/> For Your Files	<input type="checkbox"/> For Payment	<input type="checkbox"/> See Remarks Below

**REMARKS:**

**Please feel free to contact our office at the telephone number or E-mail above with any questions as to the attached documents.**

**Thank you for your attention to this matter.**

**THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.** If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us at the above address. If you do not receive all the pages or if they are illegible, call us at (808) 536-7599.

**NUMBER OF PAGES (INCLUDING TRANSMITTAL PAGE): 14**

#113.0005.fax



STATE OF HAWAII  
 BOARD OF LAND AND NATURAL RESOURCES  
**PETITION FOR A CONTESTED CASE HEARING**

<b>Case No.</b>	<b>Date Received</b>
<b>Board Action Date / Item No.</b>	<b>Division/Office</b>

**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.)		
<b>1. Name</b> Wayne Masao Mun Keong Hu	<b>2. Contact Person</b> Peter J. Lenhart, Esq.	
<b>3. Address</b> 1088 Bishop Street, Suite 907	<b>4. City</b> Honolulu	<b>5. State and ZIP</b> Hawaii, 96813
<b>6. Email</b> plenhart@aol.com	<b>7. Phone</b> (808) 536-7599	<b>8. Fax</b> (808) 536-7515

<b>9. Attorney Name</b> Peter J. Lenhart		
<b>10. Firm Name</b> Peter J. Lenhart, Attorney at Law, LLLC		
<b>11. Address</b> 1088 Bishop Street, Suite 907	<b>12. City</b> Honolulu	<b>13. State and ZIP</b> Hawaii, 96813
<b>14. Email</b> plenhart@aol.com	<b>15. Phone</b> (808) 536-7599	<b>16. Fax</b> (808) 536-7515

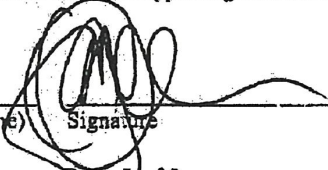


<b>17. Board Action Being Contested</b> Request for Administrative Fine and Other Penalties for Conservation District Enforcement OA 24-14 Regarding the Alleged Unauthorized Boundary Fence Upon State Land Located at and Makai of Tax Map Key: (1) 5-6-003:053 as against Association of Unit Owners of Marconi Point Condominium and/or Makai Ranch, LLC	
<b>18. Board Action Date</b> April 26, 2024, meeting	<b>19. Item No.</b> Agenda Item K-1
<b>20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case</b> Due Process pursuant to Article I, Section 5 of the Hawaii State Constitution, which states, in pertinent part: "No person shall be deprived of life, liberty or property without due process of the law..."	
<b>21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection</b> Petitioner is a unit owner within the Marconi Point Condominiums project and, therefore, has a property interest in the common element upon which the boundary fence is located. As a unit owner, Petitioner is also a member of the Association of Unit Owners of Marconi Point Condominiums, which association was only arguably constituted in February 2024 (although it is also Petitioner's view that the Association was illegally constituted). It is Petitioner's view that any fines and penalties levied as a result of the aforementioned Agenda Item K-1 should be issued against the developer, Makai Ranch, LLC, which entity erected the boundary fence without approval or consensus by the unit owners	
<b>22. Any Disagreement Petitioner May Have with an Application before the Board</b> The staff report submitted by the Office of Conservation and Coastal Lands sets forth the alleged violators as "Association of Unit Owners of Marconi Point Condominium and/or Makai Ranch, LLC". It is Petitioner's view that Agenda Item K-1 is properly brought against Makai Ranch, LLC, and not the Association. As the staff report properly notes in footnote 1, Makai Ranch, LLC had control of the project at the time the fence was erected (this was during the "developer control period"). The Association should be dismissed as an alleged violator as to the unauthorized boundary fence. As discussed above, the boundary fence was erected without approval or consensus by the unit owners.	
<b>23. Any Relief Petitioner Seeks or Deems Itself Entitled to</b> Petitioner seeks to have the Association of Unit Owners of Marconi Point Condominiums dismissed as an alleged violator as to the unauthorized boundary fence. The Association was not constituted at the time the boundary fence was erected (and Petitioner argues that the Association is not yet legally constituted). The proper and only party against whom fines and penalties should be sought is the developer, Makai Ranch, LLC.	
<b>24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest</b> With reservation of rights, Petitioner does not object to the relief requested by the Office of Conservation and Coastal Lands. Petitioner objects to the naming of the Association of Unit Owners of Marconi Point Condominiums, as discussed in previous sections above, and requests that the Association be dismissed as an alleged violator. Petitioner would like to see the boundary fence removed from the conservation area in order to protect and preserve the lands, animals and plants encompassed by the conservation area. In fact, Petitioner is an advocate for the restoration of these lands and believes that the consequences of such alleged actions should be imposed upon the proper alleged violator, Makai Ranch, LLC.	
<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> Pursuant to HAR Section 13-1-31(b)(2), Petitioner has "some property interest in the land" and "can demonstrate that [he] will be so directly and immediately affected by the requested action that [his] interest in the proceeding is clearly distinguishable from that of the general public". Petitioner is a unit owner and therefore has an interest in the common element on which the boundary fence was erected. Further, Petitioner, as a member of the Association will incur additional assessments and fees as a result of any monetary fines/penalties levied against the Association.	

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.

Wayne Masao Mun Keong Hu  
Petitioner or Representative (Print Name)



May 6, 2024  
Date

**Supplemental Submissions to**  
**Petition for a Contested Case Hearing**

1. Letter dated May 6, 2024, from Peter J. Lenhart, Esq. to Hawaiiiana Management Company, Ltd. Attn: Ross Uehara-Tilton, Esq.
2. Copy of Notice of First Annual Meeting of the Association of Unit Owners of Marconi Point Condominiums
3. Copy of Notice of the Reconvened First Annual Meeting of the Association of Unit Owners of Marconi Point Condominiums

Tori Maeshiro, Esq.  
Associate  
tori@hiconvey.com

Sharnell Shimamoto  
Legal Assistant  
sharnell@hiconvey.com

**Peter J. Lenhart**

ATTORNEY AT LAW, LLLC

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Kazuko Imai  
Paralegal  
kazuko@hiconvey.com

May 6, 2024

**Via E-mail**

Hawaiiana Management Company, Ltd.  
Attn: Ross Uehara-Tilton, Esq.  
Damon Key Leong Kupchak Hastert  
1003 Bishop Street, Suite 1600  
Honolulu, Hawaii 96813

Re: Hawaiiana Management Company, Ltd.: Board of Land and Natural Resources April 26, 2024 Meeting Agenda Item K-1 – Conservation District Enforcement OA 24-14

Dear Ross:

This letter is sent to you in your dual capacity as legal counsel for Hawaiiana Management Company, Ltd. ("Hawaiiana") and for Jeremiah A. Henderson, III and his various entities. This letter is also in regard to the above Agenda Item K-1, which was before the State of Hawaii Board of Land and Natural Resources ("BLNR") on April 26, 2024, and is in response to your letter addressed to our office dated February 20, 2024.

As you know, on or about April 18, 2024, the unit owners of Marconi Point Condominiums (the "Project") received a "Notice of Board Hearing" from the State of Hawaii Department of Land and Natural Resources Office of Conservation and Coastal Lands ("OCCL") dated April 15, 2024, together with a staff report submitted by the OCCL regarding:

"Request for Administrative Fines and Other Penalties for Conservation District Enforcement OA 24-14 Regarding the Alleged Unauthorized Clearing of Land, Unauthorized Removal of 106 Trees, Unauthorized Spreading of Mulch, Unauthorized Fence Lines and Encroachment and Removal of Resources Upon State Land Located at and Makai of Tax Map Key: (1) 5-6-003:053"

In particular, the staff report sets forth the "Association of Unit Owners of Marconi Point Condominium and/or Makai Ranch, LLC" as the alleged violators as to an unauthorized boundary fence along the Kuilima border, within a common element of the Project, and extending into the Conservation District along the makai edge of the Project.

Our office assumes that you are aware of this allegation as your clients' (i.e., Jeremiah A. Henderson, III) various entities, RCA Trade Center, Inc., MP Unit 21 LLC



Hawaiiana Management Company, Ltd.  
Attn: Ross Uehara-Tilton, Esq.  
May 6, 2024  
Page 2

and Marconi Farms LLC were noted as addressees on the "Notice of Board Hearing", and Makai Ranch, LLC is also named as an alleged violator together with the Association of Unit Owners of Marconi Point Condominium (the "Association"). Your associate, David Abitbol, Esq., even made an appearance at the BLNR hearing on April 26, 2024, on behalf of Makai Ranch, LLC.

However, despite this intimate knowledge of the OCCL allegations against the Association, it appears that you have failed to properly inform your **other** client, Hawaiiana, as to the BLNR proceeding that took place on April 26, 2024, which directly and adversely affects Hawaiiana's client, the Association. It is clear that your **dual agency** is negatively impacting your ability to effectively and impartially represent both Mr. Henderson (and his various entities) and Hawaiiana and adversely impacts my ability to advocate on behalf of my client, Wayne Hu, as a purported Board member of what we have described as an illegally constituted Board of Directors of the Association by the developer, Makai Ranch, LLC.

Mr. Hu has not received from Hawaiiana any notice of an emergency meeting of the Board of Directors of the Association to (1) determine how to address the alleged violations set forth in Agenda Item K-1, (2) engage an attorney to represent the Association as general counsel, (3) request that the Association's general counsel engage a second attorney to represent the Association in the BLNR proceeding, and (4) obtain E&O insurance for the Association. The undersigned requested a contested case on behalf of Wayne and Tara Hu at the BLNR meeting on April 26, 2024, but our office **does not** represent the Association. We represent Wayne and Tara Hu as unit owners **only**. Our request for a contested case as the April 26, 2024, BLNR hearing was **not** on behalf of the Association.

Your failure to properly notify Hawaiiana as to the allegations against the Association puts your office, the Association and Hawaiiana at substantial risk. The OCCL has requested that the BLNR approve an imposition of a \$15,000 fine against the Association and the removal of the offending boundary fence, which may incur substantial costs for the Association. Your failure to properly inform Hawaiiana as to their responsibility to call an emergency meeting of the Board of Directors after receipt of the BLNR's Notice of Board Hearing on or about April 18, 2024, may now result in a failure of the Board of Directors to timely engage an attorney to represent the Association in the BLNR proceeding as to the above allegations. Should the BLNR impose monetary fines on the Association, the Association members will want to know why it is that they are needing to pay a fine for a violation perpetrated by the developer, Makai Ranch, LLC and why Hawaiiana did not call an emergency Board meeting of the Association. It is clear that your dual representation (of Hawaiiana and Mr. Henderson and his entities including Makai Ranch, LLC) is detrimental to the Association and in favor of Mr. Henderson. Our client, Makai Ranch, LLC, would prefer that liability rest with the Association, and not with Makai Ranch, LLC. Your representation of Mr. Henderson, and his entities, and Hawaiiana is "conflicted", and your immediate

Hawaiiana Management Company, Ltd.  
Attn: Ross Uehara-Tilton, Esq.  
May 6, 2024  
Page 3

withdrawal as general counsel for Hawaiiana as to its representation of the Association is required in order to properly protect **ALL** Association members.

As you know, our office, on behalf of Mr. & Mrs. Hu, objected to the constitution of the Association at the January 17, 2024, and February 20, 2024, meetings. It was clear to Mr. & Mrs. Hu, at that time, that the Project was not in compliance with various federal, state and local laws, rules and regulations. It was irresponsible of the developer, Makai Ranch, LLC, (yet another business owned/operated by Mr. Henderson and represented by your office) to "turn over" the Project to the Association when there were questions as to the propriety and legality of a number of elements within the Project (i.e., the warehouses, illegal commercial activities, etc.). We can reasonably assume Mr. Henderson and your law firm knew of the pending BLNR action prior to calling for the meeting to constitute the Board of the Association and certainly before the February 20, 2024, Association meeting. Nothing was disclosed by you, by Mr. Henderson or by Hawaiiana at the 2-20-2024 meeting about this pending BLNR action. It is apparent that Mr. & Mrs. Hu's concerns are now coming to fruition – the boundary fence at issue in the BLNR proceeding is allegedly not in compliance with Conservation District into which it extends. The developer, Makai Ranch, LLC, should have been diligent in following all laws and regulations as to these sensitive areas. Due to the developer's failure to do so, and now, as a result of your further failure to properly perform your duties as legal counsel for Hawaiiana to notify Hawaiiana, the Association may now suffer administrative consequences and is prejudiced.

Your failure, as well as the failure of Hawaiiana, to properly call a meeting of the Board of Directors is a breach of Hawaiiana's fiduciary duty to the Association. The failure to timely engage an attorney to appear in the BLNR proceeding and to timely request a contested hearing is a breach of Hawaiiana's fiduciary duties. You have made it immensely difficult for our client, Mr. Hu, to call a meeting of the Board of Directors. By instructing our office to refrain from communicating directly with Hawaiiana as to all matters regarding the Project and the Association, all of our communication with Hawaiiana now must first, go through your office first, and, as you know, that relationship is conflicted as to you representing unit owners, i.e., RCA Trade Center, Inc. and MP Unit 21, LLC, who are in litigation with my clients.

Due to your failure to properly advise Hawaiiana as to the proper course of action, we are now **DEMANDING**, on behalf of our clients, that Hawaiiana call an emergency meeting of the Board of Directors to address the BLNR alleged violations, engage an attorney as general counsel for the Association, engage an attorney to appear in the BLNR proceeding, and obtain liability insurance for the Association. We further **DEMAND** that your office withdraw as general counsel for Hawaiiana as to its representation of the Association, as long as you are representing Mr. Henderson and his entities, who not only have an involvement in the bad and illegal conduct allegedly by the BLNR but also while your clients are involved in an activate litigation involving issued having to do with your clients' activities and conduct at the Marconi Point

Hawaiiana Management Company, Ltd.  
Attn: Ross Uehara-Tilton, Esq.  
May 6, 2024  
Page 4

Condominium project. It is clear that you are unable to properly fulfill your obligations as legal counsel for both Hawaiiana and Mr. Henderson (and his various companies). You cannot serve these two masters without conflict and without prejudice to the Association. Mr. Henderson's interests are to himself, his companies and the units they own, and Hawaiiana's interest is, or should be, to the unit owners of the Project. You cannot, in serving these two masters, reconcile these conflicting and competing interests.

We look forward to receiving a timely notice from Hawaiiana as to an emergency meeting of the Board of Directors of the Association that will avoid prejudice to the Association before the BLNR, and to your office's statement of withdrawal from representation of Hawaiiana.

Very truly yours,

By 

**PETER J. LENHART**

cc: client



MAKAI RANCH, LLC  
1810 E. Sahara Avenue, Suite 110  
Las Vegas, Nevada 89104

**- NOTICE OF FIRST ANNUAL MEETING OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARCONI POINT CONDOMINIUMS**

NOTICE IS HEREBY GIVEN that the **FIRST ANNUAL MEETING** of the Association of Unit Owners of Marconi Point Condominiums has been called and will be held as follows:

DATE: Wednesday, January 17, 2024

~~TIME: 11:00 a.m.~~

PLACE: Hawaiiana Management Company, Limited  
Pacific Park Plaza  
711 Kapiolani Boulevard  
Honolulu, Hawaii 96813

for the following purposes:

- 1. To elect Directors as prescribed in the By-Laws; and
- 2. To transact such other business as may properly come before the meeting.

Unit Owners of record as of January 1, 2024 will be entitled to vote at the meeting. All owners are encouraged to attend the meeting.

Pursuant to Haw. Rev. Stat. § 514B-121(e)(4)(A), a majority of Unit Owners have given consent for the meeting to also be conducted by electronic means. Thus, Unit Owners may also participate remotely by Zoom video conference. The Zoom Meeting ID is 738 735 4581. The password is 063664.

~~Pursuant to Article I, Section 3 of the By-Laws, this Meeting is being called by request of the following Unit Owners (in excess of 10% of all Unit Owners):~~

- Units 2-4, 6, 28, and 32: LKG HI Properties, LLC (23.10%)
- Units 16-19: Greystone HI Investments LLC (15.4%)
- Units 20-23: RCA Trade Center, Inc. (3.82%)
- Units 24-27: MP Unit 21 LLC (3.82%)
- Unit 29: Makai Ranch LLC (3.85%)
- Unit 31: BSS HI Properties, LLC (3.85%)

The meeting Agenda is enclosed.

DATE OF THIS NOTICE: **JANUARY 3, 2024.**

**FIRST ANNUAL MEETING OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARCONI POINT CONDOMINIUMS**

**AGENDA**

1. Roll Call/Quorum
2. Proof of Notice of Meeting
3. Election of Directors
4. New Business
5. Adjournment

Note: There will be a short Organizational Meeting of the new Board of Directors immediately following adjournment of the Annual Meeting. All Directors are asked to remain for this brief meeting.



REQUEST FOR ANNUAL MEETING

The undersigned, being a majority by percentage common interest of the Unit Owners of the Marconi Point Condominiums Project, hereby request that an annual meeting of the Association of Unit Owners be held as soon as reasonably practical and pursuant to Haw. Rev. Stat. § 514B-121(e)(4)(A), consent to the holding of such meeting by electronic means.

LKG HI PROPERTIES, LLC,  
a Hawaii limited liability company,

GREYSTONE HI INVESTMENTS, LLC,  
a Hawaii limited liability company,

By: Sushil Garg  
-----  
Sushil Garg  
Its Manager

By: Sushil Garg  
-----  
Sushil Garg  
Its Manager

RCA TRADE CENTER, INC.,  
a Hawaii corporation,

MP UNIT 21 LLC,  
a Texas limited liability company,

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its President

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its Manager

BSS HI PROPERTIES, LLC,  
a Hawaii limited liability company,

MAKAI RANCH, LLC,  
a Texas limited liability company,

By: BSS HOLDERS CORP.,  
a Delaware corporation,  
Its Member,

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its Manager

By: Sushil Garg  
-----  
SUSHIL GARG  
Its President

828031

**MAKAI RANCH, LLC**  
**1810 E. Sahara Avenue, Suite 110**  
**Las Vegas, Nevada 89104**

**NOTICE OF THE RECONVENED FIRST ANNUAL MEETING OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARCONI POINT CONDOMINIUMS**

NOTICE IS HEREBY GIVEN that the RECONVENED FIRST ANNUAL MEETING of the Association of Unit Owners of Marconi Point Condominiums has been called and will be held as follows:

~~DATE: Tuesday, February 20, 2024~~

TIME: 11:00 a.m.

PLACE: Hawaiiana Management Company, Limited  
Pacific Park Plaza  
711 Kapiolani Boulevard  
Honolulu, Hawaii 96813

for the following purposes ONLY:

**1. To elect Directors as prescribed in the By-Laws**

Unit Owners of record as of January 1, 2024 will be entitled to vote at the meeting. All owners are encouraged to attend the meeting.

Pursuant to Haw. Rev. Stat. § 514B-121(e)(4)(A), a majority of Unit Owners have given consent for the meeting to also be conducted by electronic means. Thus, Unit Owners may also listen in only remotely by Zoom video conference. Unit Owners will be muted and cannot vote by Zoom video conference. The Zoom Meeting ID is 738 735 4581. The password is 665765.

Pursuant to Article I, Section 3 of the By-Laws, this Meeting is being called by request of the following Unit Owners (in excess of 10% of all Unit Owners):

- Units 2-4, 6, 28, and 32: LKG HI Properties, LLC (23.10%)
- Units 16-19: Greystone HI Investments LLC (15.4%)
- Units 20-23: RCA Trade Center, Inc. (3.85%)
- Units 24-27: MP Unit 21 LLC (3.85%)
- Unit 29: Marconi Farms, LLC (3.85%)
- Unit 31: BSS HI Properties, LLC (3.85%)

The meeting Agenda is enclosed.

DATE OF THIS NOTICE: JANUARY 22, 2024.

**RECONVENED FIRST ANNUAL MEETING OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARCONI POINT CONDOMINIUMS**

**AGENDA**

1. Roll Call/Quorum
2. Proof of Notice of Meeting
3. Election of Directors
4. New Business
5. Adjournment

Note: There will be a short Organizational Meeting of the new Board of Directors immediately following adjournment of the Annual Meeting. All Directors are asked to remain for this brief meeting.

REQUEST FOR ANNUAL MEETING

The undersigned, being a majority by percentage common interest of the Unit Owners of the Marconi Point Condominiums Project, hereby request that an annual meeting of the Association of Unit Owners be held as soon as reasonably practical and pursuant to Haw. Rev. Stat. § 514B-121(e)(4)(A), consent to the holding of such meeting by electronic means.

LKG HI PROPERTIES, LLC,  
a Hawaii limited liability company,

GREYSTONE HI INVESTMENTS, LLC,  
a Hawaii limited liability company,

By: Sushil Garg  
Sushil Garg  
Its Manager

By: Sushil Garg  
Sushil Garg  
Its Manager

RCA TRADE CENTER, INC.,  
a Hawaii corporation,

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a Texas limited liability company,

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its President

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its Manager

BSS HI PROPERTIES, LLC,  
a Hawaii limited liability company,

MARCONI FARMS, LLC,  
a Texas limited liability company,

By: BSS HOLDERS CORP.,  
a Delaware corporation,  
Its Member,

By: Jeremiah A. Henderson III  
Jeremiah A. Henderson III  
Its Manager

By: Sushil Garg  
SUSHIL GARG  
Its President

828031



STARN • O'TOOLE • MARCUS & FISHER

A LAW CORPORATION

May 2, 2024

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2024 MAY -6 P 12:36

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

VIA E-MAIL & U.S. MAIL

Chair Dawn Chang  
Department of Land and Natural Resources  
Administrative Proceedings Office  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813  
[Dawn.chang@hawaii.gov](mailto:Dawn.chang@hawaii.gov)

Michael Cain  
Administrator  
Office of Conservation and Coastal Lands  
1151 Punchbowl St., Room 131  
Honolulu, HI 96813  
[michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov)

Danica L. Swenson, Esq.  
Deputy Attorney General, Land Division  
Department of the Attorney General,  
State of Hawaii  
465 S. King Street, Suite 300  
Honolulu, Hawaii 96813  
[danica.l.swenson@hawaii.gov](mailto:danica.l.swenson@hawaii.gov)

David Smith  
Administrator  
Division of Forestry and Wildlife  
1151 Punchbowl St., Room 325  
Honolulu, HI 96813  
[david.g.smith@hawaii.gov](mailto:david.g.smith@hawaii.gov)

**RE: Mediation Concerning Division of Forestry and Wildlife Agenda Items C-5 and C-6 and Office of Conservation and Coastal Lands Enforcement Action OA 24-14 (Agenda Item K-1) at the Board of Land and Natural Resources' April 26, 2024 Meeting**

Dear Chair Chang, Ms. Swenson, Mr. Cain, and Mr. Smith:

As you know, our firm represents Yue-Sai Kan, individually, and the Yue-Sai Kan Trust (collectively, "**Ms. Kan**") regarding the enforcement actions that were the subject of Division of Forestry and Wildlife Agenda Items C-5 and C-6 and Office of Conservation and Coastal Lands Enforcement Action OA 24-14 (Agenda Item K-1) at the Board of Land and Natural Resources' April 26, 2024 Meeting (the "**Enforcement Actions**").

While we recognize that there is a difference of opinion regarding Ms. Kan's liability, we strongly believe that it would be beneficial to engage in mediation ahead of any contested case hearing. Mediation provides a viable, time-effective and cost-effective avenue to discuss the Enforcement Actions, and we believe that there are concrete, specific items that are possible and could result in a beneficial solution for the Department, the relevant agencies, Ms. Kan, and the public.

Pacific Guardian Center, Makai Tower • 733 Bishop Street, Suite 1900 • Honolulu, Hawaii 96813  
Telephone: (808) 537-6100 • Fax: (808) 537-5434 • Web: [www.starnlaw.com](http://www.starnlaw.com)

Accordingly, we respectfully request your consideration of mediation pursuant to Hawai'i Revised Statutes § 91-8.5 and ask that mediation be expressly addressed in the staff submittal for the agenda item in which it is recommended that the Board authorize the appointment of a Hearing Officer for the contested case(s).

Thank you for giving our request your consideration. Please feel free to contact the undersigned should you have any questions.

Respectfully,



Maile S. Miller  
Eric S. Robinson



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  
 DEPARTMENT OF LAND AND NATURAL RESOURCES  
 STATE OF HAWAII  
 2021 MAY -6 PM 2:13

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
<b>1. Name</b> Makai Ranch, LLC	<b>2. Contact Person</b> Jeremiah A. Henderson, III	
<b>3. Address</b> 1810 E. Sahara Ave., Ste. 110	<b>4. City</b> Las Vegas	<b>5. State and ZIP</b> Nevada 89104
<b>6. Email</b> jh@jhenderson.com	<b>7. Phone</b> 702-370-3677	<b>8. Fax</b>

B. ATTORNEY (if represented)		
<b>9. Attorney Name</b> Gregory W. Kugle, Esq. Ross Uehara-Tilton, Esq. David Abitbol, Esq.	<b>10. Firm Name</b> Damon Key Leong Kupchak Hastert	
<b>11. Address</b> 1003 Bishop St., Ste. 1600	<b>12. City</b> Honolulu	<b>13. State and ZIP</b> Hawaii 96813

<b>14. Email</b> gwk@hawaiilawyer.com rut@hawaiilawyer.com dha@hawaiilawyer.com	<b>15. Phone</b> 808-531-8031	<b>16. Fax</b> 808-533-2242
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**C. SUBJECT MATTER**

**17. Board Action Being Contested**  
Request for Administrative Fines and Other Penalties for Conservation District Enforcement OA 24-14 Regarding the Alleged Unauthorized Boundary Fence.

<b>18. Board Action Date</b> April 26, 2024	<b>19. Item No.</b> Agenda Item K-1
--	--

**20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case**  
Article XI, Section 1 of the Hawaii State Constitution, Chapter 183C, Hawaii Revised Statutes, and Title 13-5 of the Hawaii Administrative Rules.

**21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection**  
DLNR and/or OCCL attempts to infringe upon Petitioner's constitutionally protected property rights. The OCCL recommendation would constitute a physical taking of property, which is entitled to due process protections under the 5th and 14th amendments of the United States Constitution, as well as Article 1 Sections 5 and 20 of the Hawaii State Constitution. Petitioner has a constitutionally protected right to adequate pre-deprivation notice and an opportunity to be heard. Adopting the OCCL's recommendations without adequate notice and an opportunity to be heard would violate Petitioner's due process rights.

**22. Any Disagreement Petitioner May Have with an Application before the Board**  
Petitioner strongly opposes the staff recommendation. DLNR seeks to impose fines against Petitioner for a boundary fence that is allegedly located on Petitioner's property and allegedly encroaches into the conservation district. DLNR erroneously names Petitioner as the alleged violator; however, the boundary fence identified by the OCCL is not on Petitioner's property. The boundary fence is on the Turtle Bay Resort side of the property line, and was primarily built by and/or at the direction of Turtle Bay Resort, in 2015. The OCCL identifies Turtle Bay as the correct TMK owner where the property line is built stating, "[t]he subject fence is located at the boundary between TMK 5-6-003:54 (owned by Turtle Bay) and the subject parcel." In addition, Petitioner believes that the fence as originally constructed was not located within the conservation district. A survey should confirm that the fence line is on the Turtle Bay property and/or that it is located mauka of the conservation district.

Nevertheless, the OCCL attempts to assess fines against Petitioner for the violations of Turtle Bay. Further, Turtle Bay Resorts previously represented to Petitioner that it planned to seek the appropriate conservation district use permits. Therefore, Petitioner is not the appropriate party to adjudicate this issue and the Board should identify Turtle Bay Resorts as the alleged violator.

Moreover, the OCCL recommendation inappropriately conflates the issue of the boundary fence with violations that are alleged to have been committed by other parties, not the Petitioner. Specifically, OCCL recommends fines against Mr. Sushil Garg and Mr. Benjamin Lassary for alleged unauthorized removal of trees and vegetation (staff recommendation 1)



and the Yue-Sai Kan Trust/Yue-Sai Kan Trustee for a separate, unrelated unauthorized fences in the Conservation district (staff recommendation 3). Given that these violations are unrelated to the Petitioner's case, and the Petitioner is not named as an alleged violator in those instances, the Petitioner requests that the Board bifurcate the contested case hearings on staff recommendation 2 regarding the western boundary fence within the Conservation District from the remaining issues and recommendations outlined in Agenda Item K-1.

**23. Any Relief Petitioner Seeks or Deems Itself Entitled to**

In response to the erroneous enforcement actions proposed against the Petitioner, the Petitioner seeks several forms of relief that it deems necessary and justified under the circumstances. Primarily, Petitioner requests that the Board reject the staff recommendation aimed at enforcing penalties against Petitioner and, instead, direct such enforcement action toward Turtle Bay Resorts, or whichever party is the appropriate alleged violator based on the correct factual circumstances. Given that the boundary fence issue--central to the enforcement action--is on the Turtle Bay Resort property, it is unjust to hold the Petitioner accountable for these alleged violations.

Additionally, considering the Petitioner's significant real property interests and their constitutional rights under both the United States and Hawaii State Constitutions, the Petitioner asserts its entitlement to a full and fair contested case hearing. Further, Petitioner reserves its right to seek judicial review of the Board's decision, once appropriate.

Finally, Petitioner requests that the Board ultimately dismiss the enforcement action against the Petitioner.

**24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest**

Petitioner's participation will ensure that due process is afforded and that the Board's ultimate action is based on evidence and witness testimony, subject to rights and obligations afforded by a contested case procedure. Petitioner is named as an alleged violator yet Turtle Bay Resorts owns the Property, and Petitioner faces the fines that staff recommends. Petitioner must be afforded an opportunity to present its case and to appeal an adverse decision.

**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**

Under HAR § 13-1-31(a), "Without a hearing, an applicant or an alleged violator shall be a party." Petitioner Makai Ranch, LLC, is named as an alleged violator and, therefore, meets the criteria to be a Party to a contested case hearing.

Pursuant to HAR § 13-1-31(c), "Other persons who can show a substantial interest in the matter may be admitted as parties. The board may approve such requests if it finds the requestor's participation will substantially assist the board in its decision making." Here, Turtle Bay Resorts is the fee owner of the TMK where the western boundary fence lies. As such, Petitioner requests for Turtle Bay Resorts and/or owner of TMK 5-6-003:54 to be added as a party to the contested case hearing because Turtle Bay Resort's participation is necessary to adjudicate the alleged violations here.

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.

David H. Abittbol, Esq.  
Petitioner or Representative (Print Name)

David H. Abittbol  
Signature

May 6, 2024  
Date