

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

September 28, 2007

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

Regarding: Appointment and Selection of a Hearing Officer to Conduct All Hearings
for One (1) Contested Case Hearing

Subject Petition: Docket No. OA-08-04

In the matter of a Contested Case hearing request to intervene in Conservation District Use Application (CDUA) OA-3414 for Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge located at Kahuku, Koolauloa, Island of Oahu, TMK: (1) 5-6-001:010.

Background

On August 20 2007, the Department received a petition for a Contested Case from the Ilioulaokalani Coalition to intervene in the James Campbell Company LLC.'s CDUA OA-3414 (Exhibit 1).

Authority for Designating Hearing Officers

Hawaii Administrative Rules (HAR) §13-1-32 (d) provides that the BLNR may conduct the Contested Case Hearing, or at its discretion, may appoint a hearing officer to conduct the hearing. Additionally, Hawaii Revised Statutes Sections 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 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 HAR, §13-1-31 (3) notes, "all persons who have some property interest in the land,

who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application."

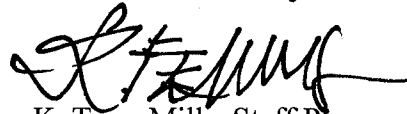
Staff notes that, by designating a Hearing Officer to conduct the hearing, the Board does not relinquish its authority to ultimately decide on the matters being contested. The determinations of standing have not yet been made. Staff believes that the preliminary hearing on standing should also be conducted by the Hearing Officer rather, than the full Board. After the Hearing Officer conducts the preliminary hearing on standing, the Board would still retain its discretion in issuing Orders on this matter of standing. Further, should standing be granted, at the conclusion of the case, the Board would act with its own discretion on the Hearing Officer's Finding of Fact, Conclusion of Law, and Decision and Order.

Staff therefore recommends,

Recommendation:

- 1) That the Board authorize the appointment of a Hearing Officer for Contested Case OA-08-04, and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested Case Hearing, and
- 2) That the Board delegate the authority for selection of the Hearing Officer to the Chairperson.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Laura H. Thielen, Interim Chairperson
Board of Land & Natural Resources

PETITION FOR A CONTESTED CASE HEARING

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

BOARD OF LAND AND NATURAL RESOURCES

2007 AUG 20 P 3: 32

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

- 1. **Name:** 'Īlio`ulaokalani Coalition **Phone:** (808) 521-2302
- 2. **Address:** c/o Native Hawaiian Legal Corporation
1164 Bishop Street, Suite 1205
Honolulu, Hawai'i 96813
- 3. **Attorney:** Native Hawaiian Legal Corporation **Phone:** (808) 521-2302
Camille K. Kalama
Moses K. N. Haia III
- 4. **Address:** Native Hawaiian Legal Corporation
1164 Bishop Street, Suite 1205
Honolulu, Hawai'i 96813
- 5. **Subject Matter:** Conservation District Use Application (CDUA) OA – 3414 Regarding Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge by James Campbell Company LLC. Located at Kahuku, Koolauloa, Oahu, portion of TMK:(1) 5-6-002:010
- 6. **Date of public hearing/Board meeting:** Friday, August 10, 2007
- 7. **Legal authority under which hearing, proceeding or action is being made:**
- 8. **Nature of your specific legal interest in the above matter, including tax map key of property affected:**

HRS Chapter 91, HRS Chapter 183C, HAR Chapters 13-1 and 13-5.

Rights including but not limited to those protected under HRS § 1-1, HRS § 7-1, Hawaii Const. Art. XI, secs. 1& 7, Art. XII, sec. 7. More specifically, Petitioners right to exercise their traditional and customary native Hawaiian rights in, among, and around the Koolauloa shoreline area are derived from HRS § 1-1 and HRS § 7-1. These rights include, but are not limited to, access to fishing grounds in, around, and among the shoreline of the affected areas and the exercise of other rights for religious, cultural, and subsistence purposes.

Article XII, section 7 of the Hawaii Constitution recognizes the importance of such rights and places an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights and confers upon the State and its agencies the power to protect these rights and prevent any interference with the exercise of these rights. In effect, the exercise of such rights is a public trust purpose. The

exercise of these rights by Petitioners is threatened by the proposed subdivision and planned development of lands along the Kahuku shoreline.

HRS Chapter 6E also recognizes that the historic and cultural heritage of the State, including historic burials is an important asset and that rapid economic development threatens the preservation of these assets. These assets are also part of the public trust and require protection. The preservation and protection of historic burials are threatened by the subdivision of the shoreline area and the planned development of the shoreline parcel.

Petitioner `Īlio`ulaokalani is an island wide grassroots organization comprised of kumu (master teachers) and loea (cultural experts) whose purpose is to link and apply traditional Hawaiian cultural principles, practices and skills to effect educational, social, environmental and economic change for the betterment and advancement of native Hawaiians and the community at large. The Coalition seeks to preserve and protect our natural environment and cultural resources.

Tax Map Key Numbers

9. Koolauloa: (1) 5-6-02-010

10. The specific disagreement, denial or grievance with the above matter:

The proposed project will increase the intensity of use in the surrounding area and which will adversely affect gathering practices, recreational activities and existing burials in the shoreline area. The applicant and DLNR have inadequately assessed existing conditions, uses and impacts of the resubdivision. The CDUA fails to meet the criteria in HAR Chapter 13-5 for obtaining a conservation district use permit as well as the public trust doctrine and other applicable legal authority. The applicant has failed to meet its burden of demonstrating that the proposed land use is consistent with the criteria detailed in HAR § 13-5-30(c).

11. Outline of specific issues to be raised:

- 1) Whether the James Campbell Company LLC must comply with the requirements of HRS Chapter § 343-5(b) and prepare and circulate for public review and comment an Environmental Assessment and an Environmental Impact Statement prior to any subdivision of land within the Conservation area.
- 2) Whether the subdivision of shoreline property and subsequent development violates Petitioners constitutionally protected traditional and customary native Hawaiian rights that include, but are not limited to, the gathering of marine resources in the area and access to those areas.
- 3) Whether the Board of Land and Natural Resources has a legal obligation to determine the extent of constitutionally protected traditional and customary native

Hawaiian rights and whether the planned development of the area and use permitted by the subdivision of land impacts these rights.

12. Outline of basic facts:

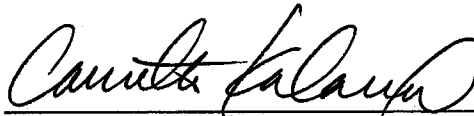
The members of Petitioner 'Īlio'ulaokalani Coalition are Native Hawaiian. Members of Petitioner 'Īlio'ulaokalani Coalition reside and exercise, have exercised, or desire to exercise their traditional and customary native Hawaiian rights within the Kahuku area. Specifically, members have used the area for access to fishing grounds and for fishing and the exercise of other subsistence activities. In addition, the shoreline area that is also part of the proposed development includes sand dunes, which are known as common areas for historic burials.

13. The relief or remedy to which you seek or deem yourself entitled:

- (1) Preparation of an Environmental Assessment pursuant to HRS Chapter 343 to evaluate the full range of impacts of the planned development of the area on the on constitutionally protected rights traditionally and customarily exercised for religious, subsistence, and cultural purposes and historic sites in the area.
- (2) Denial of CDUA OA – 3414.

On behalf of 'Īlio'ulaokalani Coalition, Camille Kalama of the Native Hawaiian Legal Corporation hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above.

Dated: August 20, 2007



Camille K. Kalama
Moses K. N. Haia III

Attorneys for Petitioners
'Īlio'ulaokalani Coalition