

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Office of the Chairperson  
Honolulu, Hawaii 96813

June 27, 2008

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

REQUEST FOR APPROVAL TO APPOINT MR. THOMAS P. RACK  
AS A DEPARTMENTAL ADMINISTRATIVE HEARINGS OFFICER AND  
TO ENTER INTO A MEMORANDUM OF AGREEMENT BETWEEN  
THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND  
THE DEPARTMENT OF HEALTH FOR THE SERVICE OF MR. RACK

I. ACTION REQUESTED:

The Department of Land and Natural Resources (hereinafter "Department"), Office of the Chairperson, hereby submits a request for your approval to appoint Mr. Thomas P. Rack of the Hawaii State Department of Health as a Departmental Administrative Hearings Officer for a term from July 1, 2008 to June 30, 2009, and to enter into a Memorandum of Agreement (hereinafter "MOA") between the Department of Land and Natural Resources and the Department of Health for the service of Mr. Rack.

II. SUBJECT MATTER:

A. Appointment of Mr. Rack as a Departmental Hearings Officer

In recent years, the Department has seen a rising caseload of contested case hearings as the Department is stepping up its enforcement actions. With the anticipation that the Civil Resource Violations System will begin implementation in the coming year, the Department believes that the number of contested cases will further increase, and as such there is a heightened need to hire a Departmental Administrative Hearings Officer.

Hiring a Departmental Hearings Officer by contract term will bring to the Department many benefits. First, a hearing officer more familiar with the functions of the Board and the Department will help promote consistency among the divisions as to their hearing procedure and penalty assessment. In addition, a centralized case hearing system at the departmental level will improve staff efficiency and facilitate the filings and communications among participants of administrative proceedings. Further, as in our current practice, hiring an outside hearing officer for each contested case is neither economical nor efficient. Setting up a hearing officer position will provide greater and quicker assistance to the divisions while cutting cost.

For this purpose, the Department proposes to appoint Mr. Thomas P. Rack as a Departmental Administrative Hearings Officer for a one-year term starting July 1, 2007, subject to the Board's approval and an agreement between the Department and the Department of Health.

§171-6(11), Hawaii Revised Statutes, provides that the Board of Land and Natural Resources may "[a]ppoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish".

Mr. Rack is currently a Departmental Hearings Officer of the Department of Health and has served on that position since February 2004. He also possesses extensive experience in different government entities and in private law practice. See attached Exhibit 1: Curriculum Vitae of Mr. Thomas P. Rack.

This initiative will allow Mr. Rack to hold concurrent appointments as a hearing officer for both of the departments. It was first conceived by the heads of two departments as they saw that Mr. Rack has been successful in discharging his duties at the Health Department but could be running under capacity from time to time. As such, this initiative will not only allow us to tap into a valuable and readily available expertise at lower cost, it is also an efficient use of a current state personnel resource.

On June 2, 2008, an interview of Mr. Rack was conducted by a committee consisting of First Deputy Russell Tsuji, DOCARE Administrator Gary Moniz, OCCL Administrator Sam Lemmo, and DLNR Administrative Proceedings Coordinator Bin Li. During the interview, Mr. Rack indicated that he would accept an appointment if offered to him. The committee recommends the appointment of Mr. Rack.

#### B. Memorandum of Agreement with the Department of Health

This MOA will be necessary to provide for the scope, supervision and compensation of Mr. Rack's service with us. Any compensation will be paid to the Department of Health on a reimbursement basis.

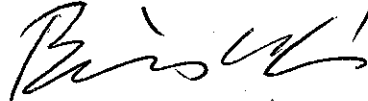
#### III. RECOMMENDATION:

"That the Board of Land and Natural Resources

1. Approve the appointment of Mr. Thomas P. Rack as an Administrative Hearings Officer of the Department of Land and Natural Resources for a term from July 1, 2008 to June 30, 2009;
2. Authorize the Chairperson to, as deemed appropriate in the Chairperson's discretion, select and install Mr. Rack as the presiding hearing officer in any administrative proceedings to be conducted with the sanction of the Board; and

3. Authorize the Chairperson to negotiate and enter into a memorandum of agreement between the Department of Land and Natural Resources and the Department of Health in regard to the service to be performed by Mr. Rack.”

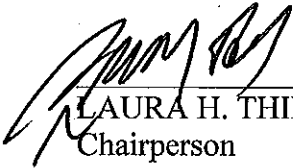
Respectfully submitted,



BIN C. LI

Administrative Proceedings Coordinator

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN

Chairperson

Board of Land and Natural Resources

EXHIBIT LIST:

- Exhibit 1: Curriculum Vitae of Mr. Thomas P. Rack.

# THOMAS P. RACK

## EDUCATION

- J.D. 1979**                   **Potomac School of Law; Washington, D.C.**  
Activities: Vice-Chancellor--Potomac Trial Court Board; President--  
Potomac Chapter of the Association of Trial Lawyers of America; Delta  
Theta Phi Law Fraternity; Instructor--Close-Up Foundation.
- B.A. 1975**                   **Rutgers University; New Brunswick, New Jersey**  
Major: Geography (Transportation Management emphasis).

## RECENT EMPLOYMENT

- 2/04 - present**           **Department of Health, State of Hawaii**  
Hearings Officer; Honolulu, Hawaii
- I conduct contested case hearings regarding administrative rule violations mainly for environmental issues such as Clean Air, Wastewater, Solid and Hazardous Waste, Clean Water, Drinking Water, Sanitation, Food and Drug, Noise, Indoor Air and Radiation, as well as some health care licensing disputes. As the Hearings Officer, I act as an Administrative Law Judge and make rulings on evidence and issue Findings of Fact, Conclusions of Law, a Decision and Order.
- In addition to my main duties as the Hearings Officer, I also served as the Department's Interim HIPAA (Health Insurance Portability and Accountability Act) Officer from January to November 2006.
- 10/00 - 2/04**           **Employment Security Appeals Office, State of Hawaii**  
Honolulu, Hawaii  
Per Diem Appeals Officer
- 4/99 - 2/01**           **Department of the Corporation Counsel, County of Maui**  
Wailuku, Maui  
Deputy Corporation Counsel
- 2/97 - 4/99**           **Department of the Prosecuting Attorney**  
**City & County of Honolulu**  
Deputy Prosecuting Attorney
- 9/91 - 2/97**           **Department of the Corporation Counsel**  
**City & County of Honolulu**  
Deputy Corporation Counsel