

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

February 27, 2009

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

REGARDING: Approval of Selected Hearing Officer to Conduct the Contested Case of Makena Boat Partners.

SUBJECT PETITION: DAR Enforcement File No. DAR-MA-08-01

A Contested Case Hearing request in the matter of the October 24, 2008 Board Agenda Item #F-3, Enforcement Action Against Makena Boat Partners for Breaking and Damaging Stony Coral in Makena Bay, Maui.

BACKGROUND:

On October 24, 2008, the Board of Land and Natural Resources imposed fines, fees, and costs against Makena Boat Partners and its general partners Kai Kanani, Inc. and Maalaea Boat Sales and Charters, Inc. ("MBP") totaling \$542,950.49.

On November 3, 2008, MBP, through its attorneys Dennis Niles and Ronald Kim, filed a timely Petition for a Contested Case Hearing. (Exhibit A).

APPROVAL OF SELECTED HEARING OFFICER:

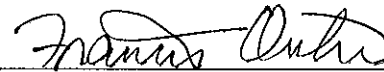
Hawaii Administrative Rules section 13-1-32(d) provides that the Board may conduct the Contested Case Hearing, or at its discretion, the Board may appoint a Hearing Officer to conduct the hearing. Pursuant to Hawaii Revised Statutes section 92-16 and 171-6, the Board may delegate to the Chairperson the authority to select the Hearing Officer.

On February 9, 2009, the Chairperson appointed Mr. Lou Chang as the Hearing Officer, based on the recommendation of a three-member committee.

RECOMMENDATION:

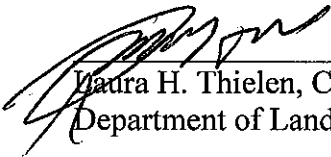
1. That the Board approve the selection and appointment of Mr. Lou Chang as Hearing Officer for the Makena Boat Partners Contested Case Hearing.

Respectfully submitted,



Francis Oishi, Program Manager
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson
Department of Land and Natural Resources

BOARD OF LAND AND NATURAL RESOURCES

1151 Punchbowl St., Kalanimoku Bldg. Rm. 130

Attn: Land Board Secretary

Honolulu, HI 96813

RECEIVED

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DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

PETITION FOR A CONTESTED CASE HEARING

1. Name Makena Boat Partners Phone (808)879-7218 Fax _____
2. Address 5400 Makena Alanui, Makena, HI
Email Address _____
3. Attorney (if any) Dennis Niles & Ronald Kim Phone 524-1212 Fax 523-0777
4. Address ASB Tower, Suite 1300, 1001 Bishop Street, Honolulu, HI 96813
Email Address dniles@pjpn.com; rkim@pjpn.com
5. Subject Matter: Board Agenda Item #F-3, Enforcement Action Against Makena Boat Partners for breaking & Damaging Stony Coral in Makena Bay, Maui
6. Date of Public Hearing/Board Meeting October 24, 2008
7. Legal authority under which hearing, proceeding or action is being made HRS Sec. 91-9
8. Nature of your specific legal interest in the above matter, including tax map key of property affected: The Board purported to impose fines totaling \$542,950.49 against Makena Boat Partners
9. The specific disagreement, denial or grievance with the above matter: N/A
10. Outline of specific issues to be raised: The specific issues will be disclosed in accordance with the hearing officer's pre-hearing order.
11. Outline of basic facts: The basic facts will also be outlined in accordance with the hearing officer's pre-hearing order.
12. The relief or remedy to which you seek or deem yourself entitled: Makena Boat Partners submits this request without prejudice to its right to assert its rights under, and (see next page)

(If there is not sufficient space to fully answer any of the items above, use additional sheets of paper.)

The above-named person hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above. Dated: November 3, 2008

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

12. Remedy/relief (continued)

to retain the protections of, the laws and constitution of the United States in an appropriate forum. Makena Boat Partners disputes the Board's jurisdiction to administratively prosecute and/or try this enforcement action under HRS §187A-12.5 and challenges the Board's authority to conduct this enforcement action and to impose the present fines.

The Board has stated that it is not the appropriate body to address these issues and Makena Boat Partners expressly reserves its rights to have these issues decided in the appropriate judicial forum.