

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Office of Conservation and Coastal Lands**  
Honolulu, Hawai'i

February 25, 2011

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

**REGARDING:** Request For Decision-Making by the Board, (a) On Its Own Motion Hold a Contested Case Hearing or Grant Requests by Mauna Kea `Anaina Hou, Fred Stone, KAHEA Environmental Alliance, Kukauakahi (Clarence Ching), and Sierra Club for a Contested Case Hearing, and (b) Appoint a Hearings Officer and Delegate to the Chairperson the Authority to Select Said Hearings Officer to Conduct All Hearings for One (1) Contested Case Hearing, with Respect to Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope by the University of Hawaii at Hilo, at Mauna Kea Science Reserve, Ka`ohe Mauka, Hamakua District, Island of Hawai'i, TMK: (3) 4-4-015:009

**BACKGROUND**

On April 5, 2011 the Office of Conservation and Coastal Lands (OCCL) accepted Conservation District Use Application (CDUA) HA-3568 from the University of Hawai'i for the proposed Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka`ohe Mauka, Hāmakua District, Hawai'i, TMK (3) 4-4-015:009.

Public Hearings were held on the application at Hilo on December 2, 2010, and at Kailua-Kona on December 3, 2010. The Hearings were noted in the paper of record. OCCL received oral requests for a contested case from Mauna Kea `Ainana Hou, Fred Stone, KAHEA Environmental Alliance, Kukauakahi (Clarence Ching), and Sierra Club. Requests for a Contested Case Hearing were also received in written testimony from these groups and individuals.

**AUTHORITY FOR DESIGNATING HEARING OFFICERS**

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, HRS §92-16 and §171-6 also provides that the Board may delegate to the Chairperson the authority to select the hearing officer to conduct a Contested Case Hearing.

**BASIS FOR DESIGNATING HEARINGS OFFICERS**

Conducting a Contested Case Hearing may involve: giving notice of hearings, administering

oaths, compelling attendance of witnesses and the production of documentary evidence, examining witnesses, certifying acts, issuing subpoenas, making rules, receiving evidence, holding conferences and hearings, fixing filing deadlines, and disposing of other matters that may arise during the orderly and just conduct of a hearing. History suggests that designating a Hearing Officer to perform these actions may provide a more expeditious resolution of the case than having the full Board conduct the hearing.

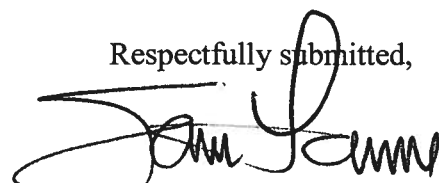
**DISCUSSION:**

Staff notes that, by designating a Hearing Officer to conduct the hearing, the Board does not relinquish its authority to ultimately decide on the matters being contested. 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.

**RECOMMENDATION:**

- 1) Request decision-making by the Board, (a) on its own motion hold a contested case hearing or grant requests by Mauna Kea `Anaina Hou, Fred Stone, KAHEA Environmental Alliance, Kukauakahi (Clarence Ching), and Sierra Club for a contested case hearing; and
- 2) Appoint a hearings officer and delegate to the Chairperson the authority to select said hearings officer to conduct all hearings for one (1) contested case hearing


Respectfully submitted,



FOR

S. Michael Cain, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:



WILLIAM J. AILA, Interim Chairperson  
Board of Land & Natural Resources