

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

July 22, 2022

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

**SUBJECT:** Approval of petition for a contested case hearing (CCH) by Eric R. Alpert regarding June 24, 2022 enforcement action for alleged illegal principal habitation of a vessel, in violation of Hawaii Administrative Rule (HAR) § 13-231-26, or alternatively for alleged violation of HAR § 13-231-28, regarding staying aboard a vessel moored in Ala Wai small boat harbor.

**SUMMARY:**

Eric R. Alpert requests a CCH concerning the June 24, 2022 Board of Land and Natural Resources (Board) enforcement action brought by the Division of Boating and Ocean Recreation (DOBOR). Mr. Alpert is entitled to a CCH, and DOBOR staff recommends the Board approve Mr. Alpert's CCH petition.

**BACKGROUND:**

As Item J-3 of the Board's regularly scheduled meeting on June 24, 2022, DOBOR brought an enforcement action against Mr. Alpert for alleged illegal principal habitation of a vessel, in violation of HAR § 13-231-26, or alternatively for alleged violation of HAR § 13-231-28, regarding staying aboard vessels in Ala Wai small boat harbor. Mr. Alpert verbally requested a CCH petition at the June 24, 2022 Board meeting, then submitted a written CCH petition to the Board on July 5, 2022 (attached as **EXHIBIT A**).

**DISCUSSION:**

HAR § 13-1-29(a) provides in relevant part:

An oral or written request for a contested case hearing must be made to the board no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition. An agency or person so requesting a contested case must also file (or mail a postmarked) written petition with the board for a contested case no later than ten

calendar days after the close of the board meeting at which the matter was scheduled for disposition.

As stated above, Mr. Alpert verbally requested a CCH at the June 24, 2022 Board meeting and submitted his written CCH petition on July 5, 2022. Mr. Alpert therefore meets the deadline requirements of HAR § 13-1-29(a).

Additionally, because the June 24, 2022 enforcement action involves penalties for alleged violations, Mr. Alpert is entitled to a contested case hearing.

RECOMMENDATION:

DOBOR recommends that the Board:

- 1) Approve Eric R. Alpert's petition for a contested case hearing; and
- 2) Authorize the Chairperson to take any and all actions necessary to effectuate its decision including, but not limited to, appointing a Hearing Officer for Mr. Alpert's contested case hearing.

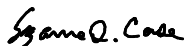
Respectfully Submitted,



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EDWARD R. UNDERWOOD, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



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SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachments:

- A. Contested case hearing petition by Eric R. Alpert (submitted July 5, 2022)



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  
 2022 JUL -5 PM 3:24  
 DEPT. OF LAND & NATURAL RESOURCES  
 STATE OF HAWAII

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name ERIC R. ALPERT	2. Contact Person JASON Z. SAY, ESQ.	
3. Address [REDACTED]	4. City HONOLULU	5. State and ZIP HAWAII 96814
6. Email [REDACTED]	7. Phone [REDACTED]	8. Fax [REDACTED]

B. ATTORNEY (if represented)		
9. Attorney Name JASON Z. SAY, ESQ	10. Firm Name LAW OFFICE OF JASON Z. SAY LLLC	
11. Address 1001 BISHOP STREET, SUITE 1503	12. City HONOLULU	13. State and ZIP HAWAII 96813
14. Email JZS@JASONSAYLAW.COM	15. Phone (808) 679-7360	16. Fax (808) 772-4538

**C. SUBJECT MATTER**

**17. Board Action Being Contested**

- 1. Revocation of Petitioner's existing use permits.
- 2. Not reissuing to Petitioner any new use permits for a period of two years.
- 3. \$30,000 total fine (\$5,000 per incident for 6 alleged violations).

**18. Board Action Date**

June 24, 2022

**19. Item No.**

J 3

**20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case**

HAR Sec. 13-1-29

**21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection**

Legally attained use permits

**22. Any Disagreement Petitioner May Have with an Application before the Board**

Reserved.

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

Petitioner request the Board rescind its decision issued on June 24, 2022 with respect to Agenda item J 3.

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

The public has an interest in proper oversight of DLNR to ensure that they are conducting proper investigations and enforcement pursuant to the HAR. The public also has an interest in ensuring a citizen accused of certain acts gets due process under the law.

**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**

Reserved.

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.

JASON Z. SAY, ESQ

Petitioner or Representative (Print Name)

Signature

JULY 4, 2022

Date