



---

## HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

April 26, 2024

Via email: [Jackson.m.bauer@hawaii.gov](mailto:Jackson.m.bauer@hawaii.gov)

Mr. Jackson Bauer  
Manager  
Hawaii Island Na Ala Hele Trail System  
Division of Forestry and Wildlife  
Department of Land and Natural Resources

Re: Request for a Good Cause Exception to Nepotism Prohibition (OTH-23-00672)

Dear Mr. Bauer,

Thank you for contacting our office to request a good cause exception to the Nepotism Law. You are the manager of the Hawaii Island branch of the Na Ala Hele Trail program within the Division of Forestry and Wildlife, Department of Land and Natural Resources (“DLNR”). You contacted our office about the potential hire of Kealani Rae Bergfeld for the position of Trails and Access Specialist II. Ms. Bergfeld would be directly supervised by you. Your direct supervisor is Hawaii Island Branch Manager Steven Bergfeld, who is the father of Ms. Bergfeld. In your absence, Mr. Bergfeld would directly supervise his daughter for programmatic purposes.

Based on the information you provided, it is our opinion that good cause currently does not exist for a waiver of the Nepotism Law. Accordingly, Mr. Bergfeld may not take supervisory action involving his daughter. If this is not possible, then we recommend that you reopen recruitment efforts and solicit additional applicants for the position.

### **Background:**

The Nepotism Law prohibits state employees from taking employment action affecting relatives or household members. Employment action includes such things as hiring, evaluating, demoting, or supervising a relative or household member. The law further provides that the Ethics Commission may grant an exception to this law upon good cause shown. Good cause may include a demonstrated lack of qualified employees or candidates.<sup>1</sup>

---

<sup>1</sup> The Nepotism Law is available here: [Act 261 \(2023\)](#). For more information, please refer to the quick guides posted on the Ethics Commission’s website: [Nepotism Quick Guide](#).

### **Analysis:**

You explained that there have been two periods in which you attempted to fill the position of Trails and Access Specialist II. The first began in November 2019. This recruitment was aborted in April 2020, when DLNR essentially lost funding for the position. During the time the recruitment was open, twenty applications were received.

The second recruitment effort began in August of 2022, after the hiring freeze was lifted. An Internal Vacancy Announcement was issued on August 16, 2022. Four applications were received but none were qualified. An open recruitment was then announced through the Department of Human Resources Development (“DHRD”) beginning on October 24, 2022, and set to run through November 6, 2022, with a cap of twenty-five applicants. Twenty-five applications were received, five of these met the qualifications for the position. Four applicants were on the interview list, but two declined interviews. Two were interviewed but not selected. DLNR then went back to the DHRD and requested additional names. You were then presented with Ms. Bergfeld as an applicant. At this time, Ms. Bergfeld was not selected. DLNR instead opted to try another Internal Vacancy Announcement to run from August 9 through August 21, 2023. At that time, you received three applications. This time, the only qualified applicant was Ms. Bergfeld.

Ms. Bergfeld’s father, Steven Bergfeld is the administrator for the Hawaii Island Forestry and Wildlife Branch. He is responsible for the program management of forestry and wildlife on Hawaii Island. He is your direct supervisor and works from the same office location. Thus, there would be one level of supervision between Mr. Bergfeld and his daughter. Further, in your absence, Mr. Bergfeld would directly supervise his daughter for programmatic purposes, That is, he would supervise her for establishing and carrying out assignments for the trail system. For other areas of supervision, such as general personnel concerns of approving any leave or handling any complaints or disciplinary action, Ms. Bergfeld would be supervised by Outdoor Recreation Section Manager William Stormont. Mr. Bergfeld had no role in the hiring process.

The Ethics Commission believes that the Nepotism Law serves a substantial public purpose in that it:

- Eliminates favoritism, and establishes an equal playing field for other qualified individuals seeking an employment opportunity;
- Avoids conflicts of interest by ensuring state employees can make unbiased decisions in the best interest of the public;
- Helps maintain public confidence in the public integrity and impartiality of elected officials and government as a whole; and
- Prevents abuses of power, that is, the risk of elected officials misusing their authority to benefit family members and expend public resources improperly.

The law is intended to prohibit not only actual abuses of power, but also the appearance of impropriety, so as to preserve the public’s confidence in state employees and state government.

Mr. Jackson Bauer  
April 26, 2024  
Page 3

Accordingly, the Commission believes that a waiver to the application of the law should only be granted for a well-established good cause.

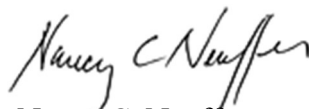
In this case, given the proposed level of supervision between Mr. Bergfeld and his daughter, and the fact that multiple applications were received during each recruitment effort, the Commission does not believe that there is currently good cause to grant a waiver to the Nepotism Law. Absent this waiver, Mr. Bergfeld cannot take supervisory action affecting his daughter. If this is not possible, then you may wish to consider reopening the recruitment process.

Thank you for consulting with the Commission on this matter. As stated above, the Commission believes that the Nepotism Law serves a significant public purpose and that requests for waivers must be cautiously and conservatively reviewed. At this time, the Commission does not believe that there is good cause to grant a waiver.

If you need assistance in determining how to comply with the Nepotism Law moving forward, please do not hesitate to contact our office.

Thank you for your inquiry and if you have questions or would like to discuss this matter further, please contact me at 587-0460.

Sincerely,



Nancy C. Neuffer  
Staff Attorney

NCN/lis