



STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

RECEIVED

2021 JUL 19 PM 2:12

PETITION FOR A CONTESTED CASE HEARING

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. 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
2. 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.
3. 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.
4. 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.
5. All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Nā Pāpa'i Wāwae 'Ula'ula	2. Contact Person Kai Nishiki	
3. Address 4930 Kahekili Highway	4. City Wailuku	5. State and ZIP Hawai'i, 96793
6. Email kai.nishiki@gmail.com	7. Phone (808) 283-0566	8. Fax N/A

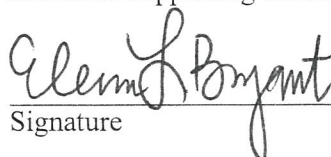
B. ATTORNEY (if represented)		
9. Attorney Name Isaac Moriwake (#7141), Elena Bryant (#9548)	10. Firm Name EARTHJUSTICE	
11. Address 850 Richards Street, Suite 400	12. City Honolulu	13. State and ZIP Hawai'i, 96813
14. Email: imoriwake@earthjustice.org ebryant@earthjustice.org	15. Phone (808) 599-2436	16. Fax (808) 521-6841

C. SUBJECT MATTER	
<b>17. Board Action Being Contested</b> Approval of Conservation District Use Application SH-3877 (Applicant: DLNR) for A Programmatic Statewide Small Scale Beach Restoration (SSBR) Program Affecting Beaches of the Main Hawaiian Islands	
<b>18. Board Action Date</b> July 9, 2021	<b>19. Item No.</b> K-2
<b>20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case</b>  See ATTACHMENT	
<b>21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection</b>  See ATTACHMENT	
<b>22. Any Disagreement Petitioner May Have with an Application before the Board</b>  See ATTACHMENT	
<b>23. Any Relief Petitioner Seeks or Deems Itself Entitled to</b>  See ATTACHMENT	
<b>24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest</b>  See ATTACHMENT	
<b>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</b>	

☒ 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.

Elena L. Bryant  
 Petitioner or Representative (Print Name)

  
 Signature

July 19, 2021  
 Date

STATE OF HAWAI‘I  
BOARD OF LAND AND NATURAL RESOURCES  
**PETITION FOR A CONTESTED CASE HEARING**

NĀ PĀPA‘I WĀWAE ‘ULA‘ULA

July 19, 2021

---

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

Pursuant to Hawai‘i Administrative Rules (“HAR”) § 13-1-28(a), “[w]hen required by law, the board shall hold a contested case hearing upon . . . a written petition of . . . any interested person.” As detailed in the next section, Nā Pāpa‘i Wāwae ‘Ula‘ula (“Nā Pāpa‘i”) is entitled to a contested case hearing as a matter of constitutional due process, based on numerous rights protected under the Hawai‘i Constitution, including the right to a clean and healthful environment under article XI, § 9, the right to exercise traditional and customary Native Hawaiian practices under article XII, § 7, and rights of shoreline access and protection under the public trust doctrine established in article XI, § 1.

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

Nā Pāpa‘i is entitled to a contested case hearing in this proceeding under the due process clause of the Hawai‘i Constitution, article I, § 5, to protect its members’ constitutional rights, including: their rights to a clean and healthful environment under article XI, § 9; their rights to exercise traditional and customary Native Hawaiian practices under article XII, § 7; and their rights related to public trust shoreline resources under article XI, § 1. All of these rights are “protectable property interests” that entitle Nā Pāpa‘i to a contested case hearing.

Right to Clean and Healthful Environment: As the Hawai‘i Supreme Court has now repeatedly made clear, article XI, § 9’s substantive “right to a clean and healthful environment,

as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources,” establishes a “protectable property interest” entitled to due process. *In re Maui Elec. Co.*, 141 Hawai‘i 249, 261, 264, 408 P.3d 1, 13, 16 (2017) (“*MECO*”) (quoting Haw. Const. art. XI, § 9). The Court recently reaffirmed this due process right in *Protect & Preserve Kahoma Ahupua‘a Ass’n v. Maui Planning Comm’n*, \_\_ P.3d \_\_, 2021 WL 2451978, specifically in relation to the Coastal Zone Management Act (“CZMA”), HRS chapter 205A, which the Court held “is a law relating to environmental quality” under article XI, § 9. 2021 WL 2451978 at \*8. Likewise, the Conservation District statute, HRS chapter 183C, is a law expressly related to “environmental quality, including . . . *conservation, protection and enhancement of natural resources*,” Haw. Const. art. XI, § 9 (emphasis added). In nearly identical terms to this constitutional provision, Chapter 183C declares its purpose is “to *conserve, protect, and preserve the important natural resources* of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.” HRS § 183C-1 (emphasis added).<sup>1</sup> Thus, article XI, § 9’s right to a clean and healthful environment, as defined by the environmental benefits of chapter 183C, establishes a “substantive right . . . [and] legitimate

---

<sup>1</sup> See also HAR § 13-5-1 (similarly declaring the purpose of the conservation district rules “to regulate land-use in the conservation district for the purpose of conserving, protecting, and preserving the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare”); HRS § 183C-2 (defining land to include “all real property, fast or submerged, and all interests therein, including fauna, flora, minerals, and all such natural resources”).

entitlement to that benefit as defined by state law,” which constitutes a “property interest protected by due process.” *MECO*, 141 Hawai‘i at 264, 408 P.3d at 16.

Native Hawaiian Rights: The Hawai‘i Supreme Court has also established that “[t]he right to exercise Native Hawaiian customs and traditions is explicitly protected by article XII, section 7 of the Hawai‘i Constitution.” *Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai‘i 376, 390, 363 P.3d 224, 238 (2015). The Court held that a contested case is “required as a matter of constitutional due process” to protect these rights. *Id.* In *MECO*, the Court confirmed that the rights “guaranteed by article XII, section 7 . . . are protectable interests under the due process clause.” 141 Hawai‘i at 264, 408 P.3d at 16.

Public Trust Rights: Long-standing Hawai‘i Supreme Court precedent also establishes that “public use of Hawaii’s beaches . . . has ripened into a customary right,” and that shoreline lands below the high-water mark are public trust resources. *Cnty. of Haw. v. Sotomura*, 55 Haw. 176, 182-84, 517 P.2d 57, 61-63 (1973); *see also Diamond v. Dobbin*, 132 Hawai‘i 9, 26, 319 P.3d 1017, 1034 (2014) (recognizing *Sotomura* and the “well-established public right of access to Hawai‘i’s shorelines”). The public trust has been established as a constitutional mandate in article XI, § 1. *See In re Waiāhole Ditch Combined Contested Case Hr’g*, 94 Hawai‘i 97, 132, 9 P.3d 409, 444 (2000) (“*Waiāhole*”). Among its core mandates, the public trust “requires the government of the State to *preserve [trust resources] for the use of the public*,” “*freed from the obstruction or interference of private parties*.” *Id.* at 136, 9 P.3d at 448 (emphasis in original).

Public trust rights are widely recognized as a form of protected property right.<sup>2</sup> Like the other constitutional rights above, these public trust rights are also protectable interests requiring due process.

Nā Pāpa‘i’s Rights and Interests in This Proceeding:

Nā Pāpa‘i is an unincorporated community association based in West Maui. Members of Nā Pāpa‘i include spearfishers, fishers, surfers, paddlers, divers, swimmers, Native Hawaiian cultural practitioners, and others concerned about West Maui’s nearshore environment. Nā Pāpa‘i holds community meetings with West Maui community members, advocates for the public interest in nearshore areas and the environment, and administers a social media page on facebook.com for a group called “Access Denied!” that has over 4,700 members. Nā Pāpa‘i is greatly concerned with the impacts the SSBN proposal will have on Maui’s coastlines, including public trust shoreline resources and the community uses and traditional and customary practices and rights that depend on them.

Members of Nā Pāpa‘i regularly access the public beach, shoreline, and nearshore areas along Maui’s coastlines to engage in a variety of traditional, cultural, spiritual, religious,

---

<sup>2</sup> See, e.g., *Ctr. for Biological Diversity, Inc. v. FPL Group, Inc.*, 83 Cal. Rptr. 3d 588, 596 (Cal. Ct. App. 2008) (“[T]he courts in this country have treated the public trust largely as a *public property right* of access to certain public trust natural resources for various public purposes.”) (emphasis added, quotation marks omitted); *Marks v. Whitney*, 491 P.2d 374, 380-82 (Cal. 1971) (en banc) (deeming the “public trust easement” a distinct “estate or interest in,” “burden,” and “servitude” on property); *Holman v. Renaud*, 125 S.W. 843, 845 (Mo. Ct. App. 1910) (“A public trust is one in which the public at large, or some undermined portion of it, have a direct interest or *property right*.”) (emphasis added).

recreational, and aesthetic practices. Nā Pāpa‘i members also regularly engage in advocacy and enforcement efforts to protect Maui’s shoreline and nearshore areas.

Some illustrative and nonexclusive examples of Nā Pāpa‘i members’ activities and interests related to public trust shoreline resources on the island of Maui include:

- Kai Nishiki is a coordinating member of Nā Pāpa‘i. She was born and raised on the island of Maui and currently lives in Wailuku with her ‘ohana. She and her family frequently access the beach to swim, surf, fish, and gather limu. For decades, she has been a steadfast advocate for shoreline preservation and defending public access to our beaches. In 2017, she was one of the awardees of the Sierra Club Maui Group’s “Mālama Kahakai” award, which recognized her work in protecting Maui’s coasts and defending public access to beaches. As a member of Nā Pāpa‘i, she regularly spearheads efforts to preserve and expand public beach access for public recreational use, Hawaiian cultural practices, subsistence, aesthetic enjoyment, and ecological protections for West Maui. She regularly works with state and county agencies and project consultants to advocate for community concerns on various proposed beach restoration projects in West Maui. She frequently receives requests for feedback in early consultation on proposed beach restoration projects in West Maui, including most recently a request for early consultation on a beach nourishment project proposed for Honokōwai, Maui, which involves the construction of multiple T-groins along the coast and extending into the nearshore waters. The Honokōwai Draft Environmental Assessment Early Consultation Package indicates that the project may qualify under the proposed scope of the SSBN statewide program and permit.

- Tiare Lawrence is an active member of Nā Pāpa‘i. She regularly testifies and advocates on behalf of the community interest in public access and shoreline protection. She was born and raised on the island of Maui, and she and her family are Native Hawaiian lineal descendants of West Maui. She is a Native Hawaiian cultural practitioner and engages in a wide range of beach- and ocean-related activities along the West Maui coast, including camping, fishing, surfing, diving, and paddling. She and members of her ‘ohana swim, surf, fish, gather limu, and conduct other traditional and customary practices at Kahana Bay and other West Maui areas. Over the years, she has observed throughout the West Maui coastline an increase in coastal erosion and beach loss, together with an increase in installation of shoreline hardening materials and structures, in an accelerating vicious cycle. She is concerned that her access to and along shorelines in West Maui will be restricted by increased beach erosion and loss caused by further development and hardening along the shoreline. In the Kahana Bay area, for example, she has observed first-hand numerous failing shoreline reinforcement and erosion control projects and the harm such projects cause to the public’s ability to use and enjoy the beaches. With the degradation of beaches in Kahana Bay, she has also observed a decrease in the amount and varieties of limu, which adversely impacts her cultural practices.

- Archie Kalepa is a member of Nā Pāpa‘i. His ‘ohana has lived in the ahupua‘a of Lahaina for six generations. He is a Native Hawaiian cultural practitioner, retired lifeguard, fisherman, professional surfer, and an all-around waterman. His traditional and customary practices include navigational voyaging, diving, fishing, surfing, paddling, nearshore gathering, other ocean-going practices, and the protection of Lahaina’s nearshore resources, reef, and

beaches for future generations to come. For decades, he and members of his ‘ohana have accessed the shoreline and coastal areas for recreational purposes, family gatherings, paddling, gathering cultural resource items, canoeing, fishing, surfing, diving, catching tako, throwing fishnets, and teaching new generations to do the same. He has seen firsthand how shoreline mismanagement—including failed erosion control measures such as sandbag revetments and encroachment of coastal vegetation propagated by coastal landowners—impairs public beach resources and access and his and his family members’ ability to access and enjoy the shoreline to conduct Hawaiian cultural practices.

- Paul Hanada is a member of Nā Pāpa‘i. He was born and raised on the island of Maui, and his roots in Maui span multiple generations. He comes from a long line of fishermen and he and his ‘ohana are closely connected to the ocean. He is an avid spearfisher, fisherman, and waterman, and he shares these passions with his children and grandchildren, who are of Native Hawaiian descent. He holds a bachelor’s degree in biology from the University of Hawai‘i at Mānoa, and he has spent decades documenting cultural and natural resources across the state, including forest reserve areas, sand dunes, and the shoreline. As a lifelong diver, he is exceptionally familiar with sand migration patterns along the coast of Maui and how sand movement corresponds to changes under the surface of the water, including, for example, the changing patterns of various marine life species. He has seen and documented the negative impacts that beach restoration projects—such as sand replenishment and construction of beach stabilization structures—have had along the northern coast of Maui, including significant adverse impacts to the reef, reef life, and down-current properties. These negative impacts impair his

access, use, and enjoyment of these shoreline resources and deepens his personal sense of disappointment that his children and grandchildren will not be able to experience them as he has.

Mr. Hanada is aware that historically there has been a huge lack of oversight and monitoring of impacts to nearshore ocean resources caused by the types of beach restoration projects authorized under the proposed SSBN program, and he is concerned that the SSBN proposal will further accelerate and exacerbate these problems. He is also concerned about the sourcing of sand for various sand replenishment projects that have occurred on the island of Maui. These projects often used sand extracted from culturally sensitive inland sand dunes that are known burial sites; the sand was also poorly matched with the shoreline project sites and end up suffocating and smothering the reefs. He is also concerned with the large amount of discretion the SSBN proposal seeks to give to OCCL in handling beach restoration projects under the program, given OCCL’s long history of failures in planning and management. One such example is the Stable Road project, which grossly underestimated the sand available for offshore dredging. Moreover, Mr. Hanada documented how the pipeline used to pump sand onto the shoreline devastated the reef. This significantly impairs Mr. Hanada’s ability to fish and gather in the nearshore areas fronting Stable Road Beach, where he has dived for decades. He has personally observed how the Stable Road project has negatively affected down-current properties and is especially concerned about a future phase two of the Stable Road project, which he fears will have a significant negative impact on Kanaha Beach Park, which is a public park down the coast from Stable Road.

The interests of Nā Pāpa‘i and its members have been and will continue to be harmed by the types of beach restoration, reinforcement, and construction activities authorized – such as sand pushing, backpassing, and bypassing, and the recovery, transport, and placement of beach compatible fill – under the proposed statewide SSBN program and permit. These activities and projects negatively affect Nā Pāpa‘i members’ ability to use and enjoy public beaches, shorelines, and nearshore resources, and to engage in traditional and customary Native Hawaiian practices.

The proposed SSBN program and permit would authorize “construction of beach stabilization structures,” which include “sand filled geotextile bags or tubes, stone filled marine mattresses, geotextile filter fabric, core stone, armor stone, steel or vinyl sheet pile, timber piles, and concrete, among others.” CDUA at 18, 22. Secondary actions included within the SSBN proposal’s authorized activities include the “[c]onstruction, installation, and removal of temporary construction-related erosion protection, including but not limited to . . . sand bag revetments” and “[p]lanting vegetation to stabilize the beach with special conditions for types of vegetation and maintenance.” *Id.* at 23. The blanket authorization of such projects and activities for fast-track processing and implementation across the state will exacerbate the problems and harms already suffered by Nā Pāpa‘i and its members. The SSBN proposal’s endorsement of sandbag revetments and other intrusive shoreline reinforcement measures will exacerbate the ongoing problem of such installations becoming a permanent fixture on beaches across the islands, including Maui’s northern and western coastlines. Likewise, allowing the planting of

vegetation in SSBN projects will exacerbate the problems with artificial vegetation encroachment and restricted lateral access along Maui’s coastline.

Overall, the SSBN proposal prioritizes the interests of beachfront property owners over the public trust. Rather than closing loopholes and ameliorating the ongoing lack of enforcement and failures to protect and manage public shorelines, the proposal contrarily expands the size and intensity of shoreline projects eligible for fast-track approval and implementation. This harms the interests of Nā Pāpa‘i and its members in accessing, utilizing, and enjoying the public beach and shoreline for traditional and customary religious, cultural, and subsistence practices, as well as recreational, aesthetic, and other environmental purposes. It also severely curtails their ability to assert and protect their rights to shoreline resources guaranteed under the multiple provisions of the Hawai‘i Constitution discussed above.

As a matter of constitutional due process, Nā Pāpa‘i must be allowed an opportunity to contest the SSBN proposal, limit its harmful impacts, and ensure any SSBN program and permit complies with the law, upholds community-based principles and values, considers each beach’s unique characteristics and needs, and incorporates public and community input. Nā Pāpa‘i and its members undeniably have standing to seek to address and remedy the SSBN proposal’s impacts on their interests and rights. *MECO*, 141 Hawai‘i at 270, 408 P.3d at 22.<sup>3</sup>

---

<sup>3</sup> While DLNR’s rules refer to persons with an interest in the proceeding “clearly distinguishable from that of the general public,” HAR § 13-1-31(b)(2), the Hawai‘i Supreme Court has long rejected such a requirement, *Pele Def. Fund v. Puna Geothermal Venture*, 77 Hawai‘i 64, 70, 881 P.2d 1210, 1216 (1994), and instead, has recognized a “lower standard” for standing in cases relating to environmental and Native Hawaiian rights. *See MECO*, 141

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

The crux of the disagreement Nā Pāpa‘i has with the application is its failure to consider and address the potential harmful impacts that the broad and ambiguous categories of activities authorized under proposed SSBN statewide program and permit would have on constitutionally protected traditional and customary Native Hawaiian rights and public trust resources. The SSBN proposal would significantly expand its authorized categories of activities to include the dredging and placement of far greater volumes of sand than before, as well as the construction of intrusive and potentially harmful beach stabilization structures such as sand-filled geotextile bags or tubes, armor stone, steel or vinyl sheet pile, and concrete; it also sanctions the use of artificial vegetation as part of the authorized projects. Moreover, the SSBN proposal significantly expands OCCL’s authority and discretion to fast-track projects and bypass the usual individualized analysis and justification that would otherwise be required to ensure the protection of shoreline resources. Of particular note, nothing in the proposal mentions or considers the need for managed retreat in response to sea-level rise; rather, the sole focus is on encouraging band-aid solutions for short-term expediency. Overall, the SSBN proposal appears to be geared toward protecting shoreline property owners, rather than the public interest in shoreline management and access over the long term.

---

Hawai‘i at 270, 408 P.3d at 22; *Kilakila*, 131 Hawai‘i at 205, 317 P.3d at 39. Nā Pāpa‘i and its members meet either standard.

Nā Pāpa‘i’s disagreement with the CDUA includes, without limitation, the following legal issues:

(1) First, the proposed Conservation District Use Permit (“CDUP”) for the SSBN program fails to meet the legal requirements and criteria for such permits. These include the requirement of a determination whether the activity: (1) is consistent with statutory coastal zone management guidelines; (2) will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region; (3) are compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels; and (4) whether the environmental aspects of the land will be preserved or improved upon. *See* HAR § 13-5-30(c). These criteria require site-specific analysis and cannot be disposed of on a programmatic, state-wide basis, particularly for the major types of activities classified under the SSBN proposal as “Category III.” Moreover, Hawai‘i statutory coastal zone management objectives and policies call for the minimization or prohibition of erosion-protection structures constructed seaward of the shoreline, which the expanded SSBN proposal disregards and contradicts.

(2) Second, the SSBN proposal runs afoul of Article XII, § 7 of the Hawai‘i Constitution, which obligates the state to protect Native Hawaiian rights. This duty requires agencies to consider (1) the identity and scope of valued resources and the exercise of Native Hawaiian rights in the affected area; (2) the extent to which the proposed action may affect or impair those resources and rights, and (3) the feasible

actions to reasonably protect them. *See Ka Pa‘akai o ka ‘Āina v. Land Use Comm’n*, 94 Hawai‘i 31, 45-47, 7 P.3d 1068, 1082-1084 (2000). The SSBN proposal provided no such “*Ka Pa‘akai* analysis,” and again, the proposed blanket approval of expansive categories of projects, including beach stabilization structures, is not consistent or compatible with the site-specific nature of this constitutionally required inquiry.

(3) Third, the SSBN proposal is contrary to the state’s obligations under the public trust doctrine established under Article XI, § 1 of the Hawai‘i Constitution. Well-settled Hawai‘i law makes clear that shoreline resources are protected under the public trust, which imposes rigorous procedural and substantive duties on state agencies to protect those resources “at every stage of the planning and decisionmaking process.” *Waiāhole*, 94 Hawai‘i at 143, 9 P.3d at 455. The expanded SSBN proposal does not comport with these trust duties.

(4) Finally, rulemaking may be advisable or required to promulgate aspects of the SSBN proposal seeking to establish a broad framework of rules, standards, and processes for categories of activities and projects. *See Aluli v. Lewin*, 73 Haw. 56, 828 P.2d 802 (1992). Such a process would allow “[a]ll interested persons . . . an opportunity to submit data, views, or arguments which are relevant to the issues” and require the Board to “consider all relevant comments and materials of record before taking final action.” *See* HAR 13-1-24.

The problems and disagreements Nā Pāpa‘i has with the application were also discussed and highlighted during the Board’s July 9, 2021 meeting. Nā Pāpa‘i’s founding member, Kai

Nishiki, attended the July 9 meeting to provide oral testimony in strong opposition to OCCL’s CDUA. She testified concerning the importance of prioritizing beach preservation over private property protection, and she articulated numerous concerns regarding the scope of activities allowed under the SSBN proposal and the failure to consider impacts on Native Hawaiian rights and practices and the public interest. She further detailed how the types of projects that will be streamlined under the SSBN proposal are *already* wreaking havoc on Maui’s shores. Nā Pāpa‘i member Tiare Lawrence also testified in strong opposition to OCCL’s CDUA, raising OCCL’s lack of public outreach and concerns that the SSBN proposal would exacerbate the types of long-standing illegal beach revetments that have done more harm than good to the West Maui shoreline. In light of its concerns, Nā Pāpa‘i requested that the Board reject OCCL’s CDUA or significantly modify it to limit its scope and add safeguards.

The public testimony and Board discussion similarly raised concerns and objections related to shortfalls in public and stakeholder outreach related to the SSBN proposal, the expansive and ambiguous scope and impact of authorized projects, and OCCL’s open-ended discretion with respect to approvals and denials of projects. OCCL indicated its willingness to take the time to do proper public outreach and come back to the Board for further presentation. When it became clear that such community and stakeholder consultation to correct and improve the proposal would not occur, Ms. Nishiki made an oral request for contested case hearing on behalf of Nā Pāpa‘i.<sup>4</sup>

---

<sup>4</sup> Nā Pāpa‘i’s founding member, Kai Nishiki, made the timely request for a contested case hearing in accordance with HAR 13-1-29, requiring “[a]n oral or written request for a contested

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

Nā Pāpa‘i seeks corrections, clarifications, and modifications of the SSBN proposal that fulfill the Board’s duties and obligations to protect Native Hawaiian rights and public trust resources and promote a longer-term vision incorporating a strategy of managed retreat in response to climate change and sea-level rise. Nā Pāpa‘i seeks, and is entitled to, any and all relief necessary to remedy the legal deficiencies discussed in the previous section. Specifically, Nā Pāpa‘i seeks to clarify and reduce the scope of the SSBN proposal to focus on truly benign and beneficial measures from a short- and long-term perspective, avoid a one-size-fits-all approach to beach restoration, and facilitate a longer-term plan and strategy for managed retreat that prioritizes the public trust over private property. Moreover, Nā Pāpa‘i seeks to include exemptions or rigorous conditions to protect highly valuable and culturally sensitive beaches from any potential projects authorized under the SSBN program and permit.

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

Nā Pāpa‘i’s participation in this proceeding would serve the public interest by bringing Nā Pāpa‘i’s important perspective and expertise to bear on the important factual and legal issues related to the SSBN proposal, and by recognizing and upholding Nā Pāpa‘i’s constitutional rights to participate in this proceeding to that end. As discussed above, Nā Pāpa‘i members are long-standing and recognized community leaders on issues of public shoreline access and protection, with an established successful track record of engagement on these issues. Nā Pāpa‘i members

---

case hearing . . . no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition.”

are directly and personally familiar with the way beach restoration projects have been carried out for decades along the shores of Maui, and the negative impacts those projects have on public trust resources and Native Hawaiian traditional and customary practices. Not only do Nā Pāpa‘i members stand to be directly affected by the type of projects the SSBN proposal would authorize, but based on their wealth of first-hand and community-based experience over many years, they are uniquely positioned to inform this proceeding regarding the real-world, on-the-ground impacts of these types of activities, and to offer corrections and improvements to the SSBN proposal to mitigate or avoid these impacts.

Nā Pāpa‘i can and will bring to this proceeding factual and technical information and legal insights that have been lacking in the development and discussion of the SSBN proposal. These include, for example, historical, factual, and technical background and documents, kama‘āina and expert testimony, as well as legal expertise through Nā Pāpa‘i’s counsel Earthjustice, regarding the merits of the SSBN proposal and the activities and structures it authorizes. Nā Pāpa‘i’s participation in this proceeding will thus contribute to the development of a sound record for a decision on the proposal, which is also in the public interest.