



October 13, 2022

To: Board of Land and Natural Resources
blnr.testimony@hawaii.gov

Re: Testimony of KAHEA: The Hawaiian Environmental Alliance to the Board of Land and Natural Resources on Item K-2 "Request for Approval to hold Statewide Public Hearings to Amend and Compile Title 13, Chapter 5, Hawai'i Administrative Rules regarding the Conservation District"

PROTECTING

Aloha Chair Case and Board members,

NATIVE HAWAIIAN

KAHEA: The Hawaiian-Environmental Alliance (KAHEA) is a nonprofit organization whose mission concerns the preservation and protection of the natural and cultural resources of Hawai'i. KAHEA strongly urges the Board to defer action on Item K-2 until OCCL has consulted with community-based groups and individuals on how to improve conservation district rules.

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The proposed rules include changes that are beneficial, worrisome, and questionable. Although further public hearings are part of the rule-making process, for OCCL to integrate public input and amend these rules – OCCL would have to re-start the notice and hearing process at expense to the State and its taxpayers. The public would have to endure a relatively formal process – submitting multiple copies of testimony, exhibits, and so on – at their own private expense. *See e.g.* HAR §13-1-24(e) (requiring 11 copies of exhibits, unless excused). It is more appropriate to start with a good proposal based on community concerns rather than have to amend, re-amend, and re-start the process. This would be a waste of the community's and OCCL's time and energy.

OUR FRAGILE

ENVIRONMENT

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Community input is particularly needed on the radical proposed changes to the eight criteria for conservation district permitting. OCCL's approach appears to be to make the criteria more specific and definite. To ensure this change does not limit the reach of the rules, more community input should be sought. For instance, proposed §13-5-30(d)(8)(A), titled "Historic Resources" provides: "The land use complies with the provisions and guidelines contained in chapter 6E, HRS[.]" First, all projects in all districts have to comply with HRS chapter 6E, so this criterion does nothing at all. Historic resources in conservation districts include some of the most significant resources in Hawai'i. Conservation district uses should thus be required to affirmatively demonstrate that any use will not significantly impact any historic property, including those not yet recorded or documented by the State Historic Preservation Division. Applicants should also be required to consider the larger landscape within which the historic resources are located, such that applicants cannot cordon them off from larger significance. This criterion, as much if not more than the others, requires input from community stakeholders who have copious

KAHEA: the Hawaiian-Environmental Alliance is a non-profit 501(c)3 working to protect the unique natural and cultural resources of the Hawaiian islands. KAHEA translates to English as "the call."

Office of Conservation and Coastal Lands
Department of Land and Natural Resources
Honolulu, HI
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information about the failures of the understaffed, beleaguered SHPD's implementation of HRS chapter 6E in protecting historic sites and cultural resources.

KAHEA opposes the deletion under proposed §13-5-30(d)(4): "The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region." Natural resources include cultural resources. HAR §13-5-2. Removing this criterion also removes a critically important limit to the amount of adverse impacts that could occur under the other criteria. That is, even with BMPs and compliance with other laws as required by other proposed §13-5-30 criteria, a proposed land use could substantially, adversely impact the conservation district. This rule should remain.

Proposed §13-5-32 usefully authorizes the chairperson to waive filing fees for non-profits where the primary goal of the proposed project is to preserve and protect the natural or cultural resources of Hawai'i. This waiver should extend to community associations that may be unincorporated or fiscally sponsored by other nonprofits.

Given the limited time to review Item K-2, KAHEA is unable to provide comprehensive comments. We ask you to defer this item and request that OCCL confer with community stakeholders in preparing a new draft of the rules. Mahalo for considering our comments.

Me ke aloha,
Board and Staff, 2022
KAHEA: The Hawaiian Environmental Alliance