

**STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

October 28, 2016

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

REGARDING: Contested Case Request Regarding the Denial of a Time Extension for the Modification to Conservation District Use Permit (CDUP) OA-30 for Paradise Park

PETITIONER: Paradise Park

LANDOWNER: Paradise Park Exchange LLC

LOCATION: 3737 Mānoa Road, Mānoa, O'ahu
Tax Map Key: (1) 2-9-054:018

SUBZONE: Resource

BACKGROUND:

On March 11, 1966, the Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) OA-30 for the establishment of a Botanical and Zoological Garden for Recreational purposes (**Exhibit 1**). The gardens were successfully operated for years as "Paradise Park."

By 2014, however, most of the Park grounds had been unused for 20-years. Paradise Park submitted proposed modifications to CDUP OA-30 to create a Hawaiian Culture Center in 2014. On October 24, 2014, the Board found the proposed modifications to be consistent and in conformance with CDUP OA-30 and approved the proposed improvement's and alterations noted as Phase I and Phase II (**Exhibit 2**).

This authorized Paradise Park to repair and maintain facilities and also authorized Paradise Park to establish new exhibits within the interior existing space of their main building as well as retrofit existing structures [bird cages] on park grounds. Former gardens are proposed to be re-landscaped with preference to endemic or indigenous plants of Hawai'i. All of these actions were subject to final plan review by the Department and the standard conditions of which any land use permitted within the conservation district is subject to (**Exhibit 3**).

Under standard condition #8, Paradise Park was required to start work within one year. Paradise Park did not do so. The authorization for the modifications expired prior to any plans being approved for the Hawaiian Culture Center modification. On May 27, 2016, a time extension request for the Hawaiian Culture Center modifications and the declaration of exemption to Chapter 343, HRS for the modifications went before the Board and was denied.

A verbal request for a contested case was made by Paradise Park's Counsel prior to the end of the May 27, 2016 meeting and was followed up by a written petition for a contested case hearing that was received by the Office of Conservation and Coastal Lands (OCCL) on June 6, 2016 (**Exhibit 4**).

LEGAL FRAMEWORK

The Hawai'i Revised Statutes (HRS) §91-1(5), defines a "contested case" as "*a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.*"

HRS, §91-1(6) defines an "agency hearing" as "such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14."¹

The question of whether a contested case must be afforded in any particular matter may usefully be divided into two parts: First, could anyone be entitled to a contested case, i.e. are rights of any "specific person" "required by law" to be determined after an "agency hearing"?

Second, does the particular person requesting a contested case have standing, i.e. is the requestor one of the specific persons at issue in the first part of the inquiry?²

1. Whether a contested case is required by law to determine the legal rights, duties, privileges of specific persons

A contested case is "required by law" if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if a hearing is mandated by due process.³

As to due process, the Hawai'i Supreme Court has said, "[I]n order to assert a right to procedural due process, [a party] must possess an interest which qualifies as 'property' within the meaning of the constitution."⁴

Hawaii's courts have developed a two-step analysis to determine if a claimant is entitled to a due process hearing:

¹ The Board's sunshine meeting is not an "agency hearing" as that term is used in these definitions. *Simpson v. Department of Land and Natural Resources, State of Hawai'i*, 8 Haw.App. 16, 25, 791, P.2d 1267, 1273 (1990), overrules on other grounds, *Kaniakapupu v. Land Use Com'n*, 111 Haw. 124, 139 P.3d 712 (2006) and *Pele Defense Fund v. Puna Geothermal Venture*, 77 Hawai'i 64, 69, 881 P.2d 1210, 1215 (1994) (holding that a Board sunshine meeting is "a public hearing required by law" but not "a contested case hearing").

² Cf. HARS, §13-1-29.1(distinguishing "a subject that is not within the adjudicatory jurisdiction of the board" from "a petitioner [who] does not have a legal right, duty, or privilege entitling one to a contested case proceeding"); *Kaleikini v. Thielen*, 124 Hawai'i 1, 17, 237 P.3d 1067, 1083 (2010) (noting separate requirements that the contested case must have been "required by law and determined the rights, duties, and privileges of specific parties" and "the claimant's legal interests must have been injured-i.e., the claimant must have standing to appeal").

³ *Bush v. Hawaiian Homes Comm'n*, 76 Hawaii 128, 134, 870 P. 2d 1272, 1278 (1994)

⁴ *Sandy Beach Defense Fund v. City Council of City and County of Honolulu*, 70 Haw.361, 377, 773 P.2d 250, 260 (1989). Accord *Brown v. Thompson*, 91 Hawai'i 1, 10, 979 P.2d 586, 595 (1999)

- a) Is the particular interest which the claimant seeks to protect by a hearing “property” within the meaning of the due process clauses of the federal and state constitutions; and
- b) If the interest is “property” what specific procedures are required to protect the interest asserted?

Property rights are protected by the federal and State Constitution. They are not, however, “created by the [federal] Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.”⁵

“To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.”⁶

2. The question of whether a particular person has standing involves a three-part test:

- Whether the person “has suffered an actual or threatened injury as a result of the defendant’s wrongful conduct”;
- Whether “the injury is fairly traceable to the defendant’s action”; and
- Whether “a favorable decision would likely provide relief for [the person’s] injury.”⁷

Whether a particular person has standing can overlap with whether a contested case is required. When a hearing determines the legal rights, duties, or privileges of a specific person, that person will have standing. When the contested case is required by due process, a person with a protectable property interest will have standing.

APPLICATION OF THE LAW TO THIS SPECIFIC PETITION

A contested case is not required by law. We have not found any statute or rule calling for a contested case hearing in the context of the Board extending a deadline in a CDUP. Nothing in HRS, Chapter 183C or in the department’s administrative rules mandates a contested case hearing in this instance. Paradise Park has not addressed this issue or cited any authority.

Without a statute or rule requiring the Board to hold a contested case hearing, the remaining question is whether constitutional due process requires a contested case hearing.⁸

To establish a due process right to a contested case hearing, the claimant must first show that “the particular interest which claimant seeks to protect by a hearing [is] ‘property’ within the meaning of the due process clauses of the federal and state constitutions [.]”⁹

⁵ Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972)

⁶ *In re Robert’s Tours & Transp., Inc.*, 104 Hawai’i 98, 106, 85 P.3d 623, 631 (2004) (quoting *Board of Regents*).

⁷ *E & J Lounge Operating Co., Inc. v. Liquor Con’n of City and County of Honolulu*, 118 Hawai’i 320, 346, 189 P.3d 432, 458 (2008). See also HAR §13-1-31(b).

⁸ *Bush*, 76 Hawai’i at 135, 870 P.2d at 1279.

In this case, Paradise Park as the landowner has a property interest. The property interest is not at stake here and was not affected by the Board's decision. When this matter came to the Board, Paradise Park owned the property, but did not have the right to pursue the project.

Paradise Park asked the Board to grant an extension of time so that it could pursue the project. It made the request based on HAR, §13-5-43. That rule provides:

- (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.
- (b) Time extensions **may be granted** as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.
- (c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.
- (d) Unless otherwise authorized, all time extensions shall be submitted to the department prior to the expiration deadline.
- (e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.
- (f) Temporary variances are excluded from this provision.

Emphasis added.

The rule makes clear that granting or denial of a time extension is a matter of discretion for the Board. Paradise Park has no right to an extension.

It is important to note that Paradise Park may again apply for the modification to the CDUP.

In the absence of any protected interest, there is no due process requirement to provide a contested case.¹⁰

Pursuant to HAR, §13-1-29.1, the Board may deny a request or petition or both for a contested case when it is clear as a matter of law that the petitioner does not have a legal right, duty, or privilege entitling one to a contested case proceeding.

RECOMMENDATION:

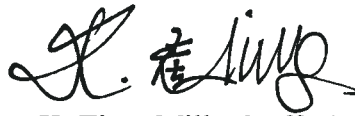
Staff therefore recommends that the Board of Land and Natural Resources deny Paradise Park's request for a contested case in regards to a time extension for the modifications to Conservation

⁹ Sandy Beach Defense Fund v. City Council of City and County of Honolulu, 70 Haw.361, 377, 773 P.2d 250, 260 (1989).

¹⁰ Standing is not discussed, other than to note that if Paradise Park had a property interest, then it would also have standing.

District Use Permit (CDUP) OA-30 for Paradise Park.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Tiger Mills'.

K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

A handwritten signature in blue ink, appearing to read 'Suzanne D. Case'.

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

March 16, 1966

Mr. James M. Y. Wong
President
International Pacific Investment, Inc.
1575 South Beretania Street
Honolulu, Hawaii 96814

Dear Mr. Wong:

The Board of Land and Natural Resources, at its March 11, 1966 meeting approved your request to utilize approximately 47.464 acres of land identified as TMK 2-9-54-07 and 2-9-54-18 for recreational purposes by establishment of ecological and botanical gardens.

The approval is subject to Paragraph C (Conditions "GU" Conservation Subzone) and Paragraph F (Compliance with Statutes, etc.) of Section 2, Regulation No. 4, Department of Land and Natural Resources. In addition, I would like to direct your attention specifically to the requirements of obtaining this office's approval on all development plans prior to any clearing and/or construction work.

Please feel free to call me should you have any questions concerning this matter.

Very truly yours,

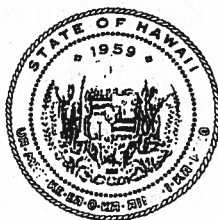
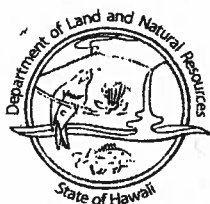
Sumao Kido

SUMAOK KIDO, Deputy
for JAM F. Perry, Chairman & Member
Board of Land and Natural Resources

PTT:TF:ts
cc: Land Use C.M.
CAC Planning Dept.
Bd. of Water Supply
Dept. of Health
University of Hawaii

EXHIBIT 1

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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OFFICE OF CONSERVATION
AND COASTAL LANDS

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

CDUP OA-30

NOV - 7 2014

Julie M. Mandanas
Alston Hunt Floyd & Ing
1001 Bishop Street, Suite 1800
Honolulu, HI 96813

SUBJECT: Conservation District Use Permit OA-30 Modifications to Paradise Park Located at
Mānoa Valley, O'ahu, TMKs: (1) 2-9-054:018

Dear Ms. Mandanas:

On October 24, 2014, the Board of Land and Natural Resources found the modifications to Paradise Park to create a Hawaiian Culture Center are consistent and in conformance with CDUP OA-30 and approved the proposed improvements and alterations noted as Phase I and Phase II only subject to the following conditions:

1. Park premises shall not be subleased to any independent entity for retail or other office use;
2. All conditions imposed under CDUA OA-30, as amended, remain in effect that would include:
 - Submitting a detailed landscaping plan to the Department for approval prior to the implementation of landscaping changes;
 - Submitting the existing and proposed physical layout as well as identify specific uses within each of the structural components with a description of essential elements of the Plan;
 - Submitting an annual report due within 1.5 years of reopening Phase I of the Park that will include a discussion of community concerns, issues, challenges and successes; and
3. Applicable standard conditions of the HAR, §13-5-42 Standard conditions.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided


EXHIBIT 2

Julie M. Mandanas
Alston Hunt Floyd & Ing

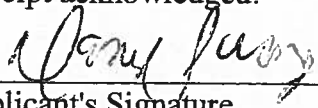
CDUP OA-30

below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Tiger Mills at 587-0382.

Sincerely,


for Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:


Applicant's Signature

Date 3/24/15

* Per discussion with Tiger, the Tree Tops lease is pre-existing
and not subject to Item 1.

c: ODLO/DOFAW
Manoa Neighborhood Board
City & County of Honolulu
-Department of Planning

am 11/14/05; am and comp DEC - 5 2011] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-41.1 Fire buffer zone. Where requested by the department, fire buffer zones shall be established and shall include the requirements listed in Exhibit 5, entitled "Fire Buffer Zone Standards: August 12, 2011", which is located at the end of this chapter and made a part of this section. [Eff and comp

DEC - 5 2011] Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-42 Standard conditions. (a) Any land use permitted within the conservation district is subject to the following standard conditions:

- (1) The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
- (2) The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
- (3) The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
- (4) The permittee shall comply with all applicable department of health administrative rules;
- (5) The single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;

EXHIBIT 3

- (6) The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
- (7) Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
- (8) Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
- (9) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
- (10) The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- (11) In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be

- modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
- (12) When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
 - (13) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
 - (14) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
 - (15) Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
 - (16) Except in case of public highways, access roads shall be limited to a maximum of two lanes;
 - (17) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
 - (18) Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;
 - (19) Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
 - (20) Animal husbandry activities shall be limited to sustainable levels in accordance with good

- soil conservation and vegetation management practices;
- (21) The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
 - (22) For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
 - (23) Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
 - (24) Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;
 - (25) The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and
 - (26) Other terms and conditions as prescribed by the chairperson.
- (b) Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No. DLNR- OCLL OA 16-03	Date Received 6-6-2016
Board Action Date / Item No. May 27, 2016 / K-1	Division/Office OCLL

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date.
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.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name PARADISE PARK, INC	2. Contact Person DARRYL WONG	
3. Address 3737 Manoa Road	4. City HONOLULU	5. State and ZIP Hawaii, 96822
6. Email dwong@99imperial.net	7. Phone 808-946-2966	8. Fax 808-943-3140

B. ATTORNEY (if represented)		
9. Attorney Name DERWIN HAYASHI	10. Firm Name LAW OFFICES OF DERWIN HAYASHI, LLC	
11. Address P. O. Box 860053	12. City Wahiawa	13. State and ZIP Hawaii
14. Email	15. Phone	16. Fax

hayashilaw@live.com	(808) 545-5555	N/A
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C. SUBJECT MATTER

17. Board Action Being Contested

Denial of Extension of Time pursuant to Hawaii Administrative Rules Chapter 13-5-43 for the October 24, 2014; Board of Land and Natural Resources approval of Conservation District Use Permit OA-30 for the Modification to Paradise Park to create a Hawaiian Culture Center.

18. Board Action Date

Friday, May 27, 2016

19. Item No.

K1

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

Without the extension of time, Petitioner cannot proceed on the October 24, 2014 approval from the Board of Land and Natural Resources to submit plans for the Modification to Paradise Park to create a Hawaiian Culture Center

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

Since there seemed to be some confusion as to what was before the Board please see the FACTS below before going into the Disagreements that Petitioner may have with the application before the Board.

FACTS:

Paradise Park applied for a Modification to Conservation District Use Permit OA-30 (which was approved in 1966) to create a Hawaiian Culture Center. The Modification to CDUP OA-30 to create a Hawaiian Culture Center went before the Board on October 24, 2014. The Board approved the measure and a letter drafted on November 7, 2014 addressed to Julie M. Mandanas of Alston Hunt Floyd and Ing was sent stating "On October 24, 2014, the Board of Land and Natural Resources found the modifications to Paradise Park to create a Hawaiian Culture Center are consistent and in conformance with CDUP OA-30 and approve the proposed improvements and alterations noted as Phase I and Phase II only subject to the following conditions for Paradise Park to sign and return.

Paradise Park never received the November 7, 2014 from their counsel and only became aware that there might be a letter approval on March 4, 2015 at the Manoa Neighborhood Board meeting. This prompted Darryl Wong to call Tiger Mills and Tiger Mills then sent the November 7, 2014 Board approval to Darryl Wong. Darryl Wong promptly signed the November 7, 2014 Board approval and returned it to Tiger Mills. It was later learned that Tiger Mills had also called Alston Hunt Floyd and Ing numerous times and left messages and never got a return call.

Paradise Park was also not advised by Alston Hunt Floyd and Ing that there was a ONE (1) year time limitation to submit Paradise Parks plans for approval by DLNR.

Paradise Park submitted their plans for approval on November 19, 2015 was later informed by DLNR that the October 24, 2014 approval from the Board had expired in conformance with HAR 13-5-42 (8).

Therefore, Paradise Park is currently before the Board pursuant to HAR 13-5-43 requesting an extension of time which took place on May 27, 2016.

I. The Denial of the Extension of Time was based upon false information regarding the lack of notice due to Dale Kobayashi individually and as Chairperson of the Manoa Neighborhood Board lying by saying that the Manoa Neighborhood Board had no prior notice regarding the October 24, 2014 Board of Land and Natural Resources Hearing regarding the Modification to the Conservation District Use Permit to create a Hawaiian Culture Center (hereinafter referred to as "Modification").

II. The Board of Land and Natural Resources (hereinafter referred to as "Land Board") erred by reopening the actual approval of the Modification since the matter had been discussed and approved and no contested case hearing was requested on October 24, 2014.

III. The Board erred as there are no requirements for the general public to be notified individually according to the State of Hawaii Statutes and Laws including but not limited Hawaii Administrative Rules Chapter 91 and Chapter 5.

IV. The Land Board erred when it stated that an EIS was necessary.

V. The Land Board erred when it stated that due to segmentation that an EIS was necessary.

VI. The Land Board should have granted the Extension of Time pursuant to Hawaii Administrative Rules, Section 13-5-43 for the following reasons

A. No notice of approval to Paradise Park from prior counsel including but not limited to:

1. Paradise Park only became aware of approval from March 4, 2015 Manoa Neighborhood Board Meeting;

2. Immediately contacted Tiger Mills and got approval letter dated November 7, 2014;

3. Darryl Wong immediately signed on March 24, 2015 and returned the approval letter dated November 7, 2014;

4. Tiger Mills called prior counsel for Paradise Park and never got a return call;

B. Paradise Park then proceeded to get funding but started almost FIVE (5) months late due to lack of notice from prior counsel;

C. Paradise Park had difficulty getting Flora Expert Rick Barboza because due to FIVE (5) month delay due to lack of notice from prior counsel; Rick Barboza was already committed to other work;

D. Consultant John Fielding advised Paradise Park to wait as long as possible as Exhibit Prices due to technology would be lower the longer Paradise Park waited;

E. Failure of prior counsel to advise of Time Limitation;

F. Dale Kobayashi lied regarding Paradise Park having notice of a ONE (1) year submittal of Plans notice regarding the January 2014 Tree Cutting permit as that permit had nothing to do with the November 7, 2014 approval letter for the October 24, 2014 Land Board approval for the Modification.

VII. The Land Board erred as the Statute of Limitations to challenge the October 24, 2014 Land Board granting of the Modifications ended TEN (10) days after October 24, 2014 when no contested case was requested.

VIII. The UNITE HERE! LOCAL 5 v CITY AND COUNTY OF HONOLULU, 123 Haw. 150, 231 P.3d 423 (2010) does not apply to this matter because there is no definite reference to the phasing and timing of the action. In the instant case, the Supreme Court stated that "The record in the instant case indicates that the EIS was based upon and limited to data available in 1985 and projected through 2000. As a result, the 1985 EIS addressed only the environmental impacts of the project within that time frame. For example; the evidence in the record indicates that: (1) traffic studies analyzed traffic impact projections through 2000; (2) visitor units, hotel demand, and population growth were also projected and analyzed only through 2000; and (3) monk seal populations were nearly non-existent in the project area at the time and, thus, were not considered in the 1985 EIS. Here the 1985 EIS explicitly described the scope of the

project and centered its analysis on the size, location, intensity, and use of Kuilima's expansion. The 1985 EIS also specifically referenced the phasing and timing of the action, stating that the Phase I designation generally indicated a 1986 start of construction date, Phase II, commencement between 1988 to 1989, and Phase III commencement between 1993 to 1996. Although the phasing projections were flexible, such projections indicate that the 1985 EIS was subject to an implied timing condition or time frame, especially in light of the plain language of HAR Section 11-200-26 identifying timing as a consideration". The Paradise Park request has no such limitations.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

I. Approval of the Extension of Time for the Modification to Paradise Park to create a Hawaiian Cultural Center as granted by the Land Board on October 24, 2014.

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

- I. New Information not previously available will affect the result.
- II. A Substantial Injustice would occur.
- III. One of the main reasons for the denial of Petitioner's request was based upon the lies of no notice or knowledge of the October 24, 2014 based upon the the lies from Dale Kobayashi both individually and as the Chairperson of the Manoa Neighborhood Board.
- IV. Based upon the facts and the prior approval on October 24, 2014, the Land Board erred when it ruled that an EIS is necessary.
- V. Dale Kobayashi unethically used his position of Chairperson of the Manoa Neighborhood Board to have the Land Board deny the Time Extension so Dale Kobayashi could lower the land value of Paradise Park so he could boast to the people of Manoa that if Dale Kobayashi got into office Dale Kobayashi could move to purchase Paradise Park for a lower price.
- VI. Paradise Park will work on community concerns under its control. It cannot control traffic or parking signs on the roadway the City or State does not wish to maintain. However, even though the City or State do not wish to accept the roadway at this time, Paradise Park has voluntarily maintained the foliage growing along much of that roadway and will do so until either the State or City adopt the roadway. Please note that the title searches showed that Bishop Estate owns the private road, however at the present time Bishop Estate now claims that Bishop Estate does not own the road.
- VII. Paradise Park provides hikers on State land the use of its bathroom facilities at no cost to the State. If Paradise Park did not offer facilities to its more than 150,000 visitors the State would need to provide facilities.
- VIII. Paradise Park provides a wash station for hikers to wash off dirt and spores from their shoes so as to not spread invasive plant in other parts of Hawaii.
- IX. In order for Paradise Park to maintain the forest it resides on, it must charge admission and operate at its current hours so as to raise funds to keep the invasive plants from continuing to overtake the valley.

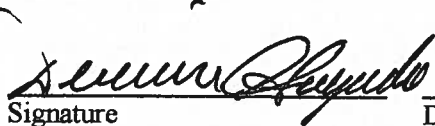
24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR
FINAL

☒ 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.

DERWIN HAYASHI

Petitioner or Representative (Print Name)


Signature

Jan 6, 2016
Date