

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 9, 2024

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

OAHU

Deny Request for Contested Cases by Waila Leolani Sarcedo for the Following Items Approved by the Board of Land and Natural Resources at its meeting on July 12, 2024:

D-1: Quitclaim of State's Interests, if Any, in Portions of Anemoku Street to the City and County of Honolulu, Laie, Koolauloa, Oahu, Tax Map Key: (1) 5-5-011: Road.

D-2: Authorize Variance of Restrictive Covenant Regarding Setback Requirements in Deed dated May 2, 1972, Lot 22, Diamond Head View Lots, Unit Two, Increment One, Roy Yamaguchi Revocable Trust dated November 30, 1990, amended and restated October 19, 2006, Applicant; Kapahulu, Honolulu, Oahu, Tax Map Key: (1) 3-1-048:027.

D-3: Quitclaim of State's Interests, if any, in 30-foot Road in Lualualei as Remnant to the City and County of Honolulu; Lualualei, Waianae, Oahu; TMK: (1) 8-7-008: road.

D-4: Issuance of Right-of-Entry Permit to SKYMAGIC USA, Inc. for Exclusion Zone for an Aerial Display Drone Show, Including Rehearsals, August 13, 2024, through August 18, 2024, at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portion of 021.

Pursuant to Section 92-5(a) (4), Hawaii Revised Statutes (HRS), the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

BACKGROUND:

On July 12, 2024, under agenda items D1 to D-4, the Board approved, as submitted, the staff recommendation regarding the above-referenced Land Division items. Please reference the entirety of the Board submittals on the website at <https://dlnr.hawaii.gov/meetings/blnr-meetings-2024/land-board-submittals-07-12-24/>.

Around 10:34 am on July 12, 2024, the Board Secretary received an email from Waila Leolani Sarcedo (“Requestor”) who requested contested case hearings for the subject four (4) items. A copy of the email request for contested cases is attached as **Exhibit A**. After checking with the Deputy Attorney General assigned for the Board meeting, the email was counted as a request made “during the meeting”. Land Division sent an email to the Requestor on that same day attaching the application form and reminding the Requestor to submit the completed written petition to the department before July 22, 2024. Copies of the communication from staff to the Requestor via email are attached as **Exhibit B**.

As of July 26, 2024, the department did not receive any written petition from the Requestor, noting that a written petition was required within 10 days of the meeting, which expired July 22, 2024.

DISCUSSION:

Requestor is Not Entitled to a Contested Case Due to Failure to Satisfy Administrative Rule Requirements

Section 13-1-29, Hawaii Administrative Rules (HAR) states as follows:

§13-1-29 Request for hearing. (a) On its own motion, the board may hold a contested case hearing. Others must both request a contested case and petition the board to hold a contested case hearing. 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. For good cause, the time for making the oral or written request or submitting a written petition or both may be waived.

(b) Except as otherwise provided in section 131-31.1, the formal written petition for a contested case hearing shall contain concise statements of: (1) The nature and extent of the requestor’s interest that may be affected by board action on the subject matter that entitles the requestor to participate in a contested case; (2) The disagreement, if any, the requestor has with an application before the board; (3) The relief the requestor seeks or to which the requestor deems itself entitled; (4) How the requestor’s participation would serve the public interest; and (5) Any other information that may assist the board in determining whether the requestor meets the criteria to be a party pursuant to section 13-1-31. [Eff 9/7/82; am and comp 2/27/09] (Auth: HRS §91-2) (Imp: HRS §919)

In the request for contested case submitted via email, the Requestor states the following issues with the agenda items:

I express our concerns about the agenda items related to land use and property rights in Hawaii. I understand the benefits for the City and County of Honolulu,

Roy Yamaguchi Revocable Trust, and SKYMAGIC USA, Inc. these benefits in particular are as follows:

1. Quitclaim of Anemoku Street:

- Benefits the City and County of Honolulu by clarifying ownership and allowing for potential development or improvement of the area.*
- May affect nearby property owners or residents, depending on the specific plans for the area.*

2. Variance of restrictive covenant:

- Benefits Roy Yamaguchi Revocable Trust by allowing for more flexibility in property development or use.*
- May impact neighboring properties or the overall character of the Diamond Head View Lots area.*

3. Quitclaim of Lualualei road:

- Benefits the City and County of Honolulu by clarifying ownership and potentially allowing for improved road maintenance or development.*
- May affect local residents or landowners in the Lualualei area.*

4. Right-of-entry permit for drone show:

- Benefits SKYMAGIC USA, Inc. by allowing them to hold an aerial display drone show at Duke Kahanamoku Beach.*
- May impact beach users, nearby residents, or businesses, depending on the specifics of the event.*

For the general public, these agenda items may:

- Impact property values or development in the affected areas*
- Affect access to public spaces or roads*
- Influence the character of neighborhoods or communities*
- Provide opportunities for economic growth or tourism (in the case of the drone show)*

I am worried about the impact on nearby property owners, residents, and the general public.

These agenda items may affect property values, access to public spaces, and the character of our neighborhoods. I urge you to carefully consider the potential consequences of these decisions and ensure that the interests of all parties are taken into account.

Procedurally, the Requestor should be denied a contested case solely on the Requestor's failure to submit a written petition for a contested case within 10 days of the Board meeting. Additionally, staff does not believe that the requirement to submit a written petition be waived in this instance. Staff promptly contacted Requestor the day of the Board meeting and informed the Requestor of the requirement to submit a written petition by the close of business on July 22, 2024 as well as

providing the Requestor the Petition for Contested Case form. Staff has not received any follow up communication from the Requestor since that email. Even if the written request were considered in a manner most favorable to the Requestor, it cannot be considered a satisfactory petition as it does not contain information required to establish the Requestor's right to a contested case.

Requestor Does Not Have Standing for a Contested Case

The Hawaii Supreme Court has ruled that similar to lawsuits filed in court under the Hawai'i Rules of Civil Procedure, petitions for contested case hearings must assert "injury in fact" standing. *Community Associations of Hualalai, Inc. v. Leeward Planning Commission*, 150 Hawai'i 241, 258, 500 P.3d 426, 443 (2021) ("Hualalai"). The injury in fact standing test requires: "(1) an actual or threatened injury, which, (2) is traceable to the challenged action, and (3) is likely to be remedied by favorable judicial action." *Id.* (quoting *Kilakila 'O Haleakalā v. Bd. of Land & Nat. Res.*, 131 Hawai'i 193, 204, 317 P.3d 27, 38 (2013)). Here, the Requestor has not provided any information as to any of the requirements to have standing. The Requestor's statements do not identify any specific injury in fact to any party (much less themselves) resulting from the Board's approval of the items. The statements by the Requestor are highly speculative and conjectural, such as the Board's actions may result in a benefit to specific parties or individuals. Such a statement, even if true does not constitute an injury in fact under the test for standing. Accordingly, Requestor does not address how a contested case would be remedied by the contested case.

A Contested Case is Not Required By Law

An administrative agency must only hold a contested-case hearing when it is required by law, which means that the contested-case hearing is required by (1) statute, (2) administrative rule, or (3) constitutional due process. *Mauna Kea Anaina Hou v. BLNR*, 136 Hawai'i 376, 390, 363 P.3d 224, 238 (2015). When a contested-case hearing is required by statute or administrative rule, the analysis is simple. However, the statutes relevant to the subject actions do not have a contested case requirement. Whether a contested-case hearing is required by constitutional due process is a much more complicated analysis.

There is a two-step process in determining whether a person is entitled to a contested-case hearing under constitutional due process. First, a court must consider "whether 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." *Flores v. BLNR*, 143 Hawai'i 114, 424 P.3d 479 (2018). Second, if a court "concludes that the interest is 'property,' th[e] court analyzes what specific procedures are required to protect it." *Id.*

Step one merely requires the court to determine whether an appellant seeks to protect a constitutionally cognizable property interest. *Flores*, 143 Hawai'i at 125. To have such a property interest, a person "must clearly 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." *Sandy Beach Def. Fund v. City & County of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260 (1989). Legitimate claims of entitlement that constitute property interests "are not created by the due process clause itself. Instead, they are created and their dimensions are defined by existing

rules or understandings that stem from an independent source such as state law[.]” *Flores*, 143 Hawai‘i at 125.

The touchstone of due process is “notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest.” *Sandy Beach*, 70 Haw. at 378, 773 P.2d at 261. If step one of the analysis is satisfied, then step two analyzes how the government action would affect that interest with and without procedural safeguards. With respect to step two, the Hawai‘i Supreme Court has been careful to emphasize that “[d]ue process is not a fixed concept requiring a specific procedural course in every situation.” *Id.* Due process “is flexible and calls for such procedural protections as the particular situation demands.” *Id.* (quoting *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972)).

In determining what procedures are necessary to satisfy due process, the administrative agency must examine and balance three factors:

- (1) the private interest which will be affected;
- (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and
- (3) the governmental interest, including the burden that additional procedural safeguards would entail.

Flores, 143 Hawai‘i at 126-127.

Step One: The Requestor Fails to Identify a Constitutionally Cognizable Property Interest

HAR § 13-1-29(b) provides that a formal petition for a contested-case hearing must include, among other things, a statement of “[t]he nature and extent of the requestor’s interest that may be affected by board action on the subject matter that entitles the requestor to participate in a contested case[.]”

Here, the Requestor does not identify any protected property interest held by them that is affected in any of the actions identified in their request. Furthermore, the Requestor has not substantiated how their protected property interests would be harmed specifically by any of the actions that are the subject to the request for contested case. Although the Requestor makes general statements as the action impact neighboring property owners and residents, Requestor does not identify themselves as one of those parties and makes no statement as to how these impacts may affect their protected property interests.

Step Two: Even if Requestor Identified a Constitutionally Cognizable Property Interest, It Is Not Entitled to a Contested-Case Hearing Based Upon the Specific Factual Situation at Issue

However, even if the Requestor were to establish that it is seeking to vindicate a constitutionally cognizable property interest, it is not entitled to a contested-case hearing under the current circumstances. Even if the Requestor asserted a constitutionally cognizable property interest, that is not the end of the inquiry as to whether a contested-case hearing is required. The Requestor must further meet the remaining criteria in the aforementioned *Flores* three-part test, to determine

whether the Requestor received notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest.

A party is not at risk of the erroneous deprivation of its protected interest when it has "already been afforded a full opportunity to participate in a contested case hearing and express [its] views and concerns on the matter," such that "the provision of an additional contested case hearing is [not] necessary to adequately safeguard against erroneous deprivation" of its rights. *Id.*, 143 Hawai'i at 127, 424 P.3d at 482. Flores essentially sought a distinct hearing "in order to express the same concerns, and to vindicate the same interests, that he previously raised in the [prior] contested case hearing[.]" *Id.* Thus, in *Flores*, the court held the appellant was not entitled to a contested case to challenge a Board decision because he had already "participated extensively" in a prior contested case hearing on a similar decision "by presenting evidence ... and arguments concerning the effect that the" challenged action would have in his protected rights. *Id.*, 143 Hawai'i at 127, 424 P.3d at 482.

The *Flores* court also noted that the appellant did not clarify the extent to which he would put forth evidence and arguments "materially different" from that which had already been proffered in the previous contested case. *Id.* "On this particular record," the *Flores* court wrote, "we are not convinced that an additional contested case hearing would offer any probable value in protecting against the erroneous deprivation of his interest[.]" *Id.*

For all four items, the Department followed all applicable Sunshine Law requirements in providing the public notice of the July 12, 2024 Board meeting, including providing instructions on how to testify either in person or virtually. The Requestor did not attend the meeting to testify either in person or virtually. Moreover, Requestor did not submit testimony for any of the subject items and staff had no previous contact with the Requestor prior to receiving the request for contested case hearing. As staff was not aware of any issue the Requestor had with any of items on the agenda. Coupled with the request's lack of information to establish the Requestor's protected property interest in, there is no reasonable expectation that staff should have been aware of, and specifically contact the Requestor to provide additional notice of items to be heard at the Board meeting.

The governmental interest, including the burden that holding a contested-case hearing would entail, weighs very heavily in favor of rejecting the contested case petition. Contested case hearings are expensive and time-consuming endeavors for the staff of the Department of Land and Natural Resources, the Board, and its attorneys. The cost for retaining hearing officers and court reporters can be thousands of dollars for even one-day contested case hearings and may go into the many tens-of-thousands of dollars, once again not counting staff and attorney time. Given that the Requestor has not complied with administrative rule requirements, nor provided any required information in support of their entitlement to a contested case, the Board should deny the request. Furthermore, if the Board were to grant a contested case under these circumstances, then it would set a troublesome precedent where almost any party that merely disagrees with a Board decision could request a contested case and may be entitled to one, regardless of whether the party meets the well-established legal standard. This would impose significant staff and cost burdens on the Department and its ability to carry out its mission and operations.

Therefore, the Requestor has been provided sufficient due process in this matter and is not entitled to an additional contested case simply because it does not agree with the Board's decision.

RECOMMENDATION

That the Board deny the Request for Contested Case Hearings filed by Waila Leolani Sarcedo on July 12, 2024.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson

RT

Hirokawa, Ian C

From: DLNR.BLNR.Testimony
Sent: Friday, July 26, 2024 3:23 PM
To: Hirokawa, Ian C
Subject: FW: [EXTERNAL] LATE SUBMISSION REQUEST HEARING

From: Sarcedo Waila [REDACTED]
Sent: Friday, July 12, 2024 10:34 AM
To: DLNR.BLNR.Testimony <blnr.testimony@hawaii.gov>
Subject: [EXTERNAL] LATE SUBMISSION REQUEST HEARING

To the Honorable Members of the BOARD OF LAND AND NATURAL RESOURCES

The 10th Amendment to the US Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

I have a few 10th Amendment-based arguments for and against county government land use decisions:

The county's land use decisions violate the 10th Amendment by usurping powers reserved to the people, such as the right to private property and local self-governance.

The county's actions exceed their delegated authority, infringing on individual rights and local autonomy.

The county's land use decisions are a legitimate exercise of their delegated authority to regulate land use, as granted by the state and federal governments and The 10th Amendment does not preclude counties from making decisions about land use, as this power is inherent to local governance , However, I have 1st hand knowledge and experience that will show cause by clear evidence being overt inducing crimes against poverty, Crimes against humanity and crimes against children (CPR) and families. With that being said :

I Waila Sarcedo On behalf of the 13 original United States now known as Hawaiian Islands ,declare and state that Although the county has been delegated certain powers, their authority is invalidated when they disregard the voices and interests of the people they are supposed to serve. As our representatives, they have a fiduciary duty to act in our best interests, but these land use decisions demonstrate a clear disregard for our well-being and wishes. By ignoring our concerns and pushing forward with changes that harm our community, they have exceeded their legitimate authority and violated the trust placed in them. We, the people, will not stand idly by as our rights and interests are trampled upon.

I express our concerns about the agenda items related to land use and property rights in Hawaii. I understand the benefits for the City and County of Honolulu, Roy Yamaguchi Revocable Trust, and SKYMAGIC USA, Inc. these benefits in particular are as follows:

1. Quitclaim of Anemoku Street:

- Benefits the City and County of Honolulu by clarifying ownership and allowing for potential development or improvement of the area.
- May affect nearby property owners or residents, depending on the specific plans for the area.

2. Variance of restrictive covenant:

- Benefits Roy Yamaguchi Revocable Trust by allowing for more flexibility in property development or use.
- May impact neighboring properties or the overall character of the Diamond Head View Lots area.

3. Quitclaim of Lualualei road:

- Benefits the City and County of Honolulu by clarifying ownership and potentially allowing for improved road maintenance or development.
- May affect local residents or landowners in the Lualualei area.

4. Right-of-entry permit for drone show:

- Benefits SKYMAGIC USA, Inc. by allowing them to hold an aerial display drone show at Duke Kahanamoku Beach.
- May impact beach users, nearby residents, or businesses, depending on the specifics of the event.

For the general public, these agenda items may:

- Impact property values or development in the affected areas
- Affect access to public spaces or roads
- Influence the character of neighborhoods or communities
- Provide opportunities for economic growth or tourism (in the case of the drone show)

I am worried about the impact on nearby property owners, residents, and the general public.

These agenda items may affect property values, access to public spaces, and the character of our neighborhoods. I urge you to carefully consider the potential consequences of these decisions and ensure that the interests of all parties are taken into account.

Furthermore the repeated violations demonstrated on our west side is being done knowingly, willfully and intentionally, causing hardship for our communities and families, who are stricken with poverty's because of the city and county decision making.

TAKE NOTICE The Waianae District of preservation of

I request a contested hearing to provide a platform for a more thorough discussion and to allow all parties to present their concerns and evidence.

Mahalo for your attention to this matter.

Sincerely,

/S/ Waila Leolani Sarcedo

All rights reserved none waived

CC: Publicly Posted On Leolani Sarcedo Facebook

CEASE AND DESIST NOTICE OF INTENT

we the people is often used to represent the citizenry who hold power in a democracy. This collective power can be exercised through various means, including cease and Desist orders and notices

A cease and desist order will be served on you regarding land use being used by fraud. This will be- issued by We the people. to stop these activities that violates zoning regulations. activities like unauthorized construction, using land for a purpose not permitted in that zone, or storing hazardous materials in a residential area.

Please right the wrongs and I look forward to your response

Thank you

Waila Sarcedo

From: [Cheung, Barry W](#)
To: [REDACTED]
Subject: LATE SUBMISSION REQUEST HEARING
Date: Friday, July 12, 2024 2:36:00 PM
Attachments: [APO-11-Petition-for-Contested-Case-version-2020.docx](#)
[APO-11-Petition-for-Contested-Case-version-2020.pdf](#)

In response to your request for contested case hearing sent through email to us around 11:51 am this morning, please complete and return the attached petition within 10 calendar days of July 12, 2024, so by COB July 22, 2024. You can choose to submit a Word or pdf version. Please also note that a completed petition will need to be returned to the address noted on the form for each item you are contesting. Thank you.

DLNR, Land Division

EXHIBIT B