

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

July 25, 2025

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

Deny Request for a Contested Case Hearing filed by Petitioner E Pa'a Ka'ū for the Action Approved by the Board of Land and Natural Resources (**Board**) at its Meeting held April 25, 2025, under Agenda Item C-1:

(1) Approve five grants of available funds from the fiscal year 2025 land conservation fund for the acquisition of interests and rights in specific parcels of land having value as a resource to the state (total area approximately 2,711 acres)...

B. The Nature Conservancy, up to \$2,000,000 (full funding) for the acquisition of approximately 1,916.058 acres at District of Ka'ū, Island of Hawai'i (Hīlea), Tax Map Key Number (3) 9-5-018:001, with a grant of exemption for any easement required pursuant to Section 173A-4, Hawaii Revised Statutes.

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

SUMMARY

After consulting with the Department of the Attorney General, the Division recommends that the Board deny Petitioner E Pa'a Ka'ū's request for a contested case hearing under Section 13-1-29.1 of the Hawaii Administrative Rules (**HAR**). The Division believes the request falls outside the Board's jurisdiction and that the Petitioner does not have a legal right, duty, or privilege that would entitle it to a contested case proceeding.

BACKGROUND

At its meeting on April 25, 2025, under agenda item C-1 (1)B, the Board approved the Division's recommendation concerning the subject land acquisition grant.

Receipt of Petition for Contested Case Hearing

- May 5, 2025: The Department (**DLNR**) received, via email from Jacob Delaplane (Counsel for E Pa'a Ka'ū), a Form APO-11 Petition for a Contested Case Hearing

(**Petition**) regarding the Board's action. This Petition, signed by Attorney Delaplane and dated April 25, 2025, is attached as Exhibit 1.

- May 9, 2025: DLNR also received paper copies of the Petition by mail along with a \$100 check from an account held by Pernell E. Hanoa (Contact Person for E Pa'a Ka'ū) and others, payable to DLNR.

Department's Response

- May 13, 2025: DLNR returned the unnegotiated check to Mr. Hanoa, explaining that:
 - The Petition does not involve a Conservation District Use Permit.
 - According to HAR Section 13-1-30, a filing fee is not required.
- The Petition indicated that additional supporting documentation would be submitted, but as of July 10, 2025, no additional documentation has been received.

Legal Framework for Contested Case Hearings

A contested case is defined by HRS Section 91-1(5) as a proceeding where specific legal rights, duties, or privileges of parties are determined by law after an opportunity for a hearing. A contested case is:

- Required if mandated by statute or rule.
- May be required by due process if the party has a property interest at stake.

HAR Section 13-1-29 governs requests:

- A contested case can be initiated by the Board or by a party through a request and petition.
- The request must be made orally or in writing no later than the close of the Board meeting at which the matter was decided.
- A written petition must be submitted or postmarked within ten days of the meeting's close.
- The Board may waive deadlines for good cause.

Content of the Petition

Petitioner and affiliated persons (Mr. Hanoa and Mr. Delaplane):

- Did not testify or request a contested case at the April 25, 2025, Board meeting.
- Did submit a formal written Petition that includes the following:

1. Requestor's Interest (§13-1-29(b)(1))

- The group includes lineal descendants and traditional practitioners with kuleana in the area who were not notified or consulted.

2. Disagreements with the Application (§13-1-29(b)(2))

The Petition identifies seven main points:

- 1) Lack of consultation with cultural practitioners (despite the application's claims).
- 2) Lack of specificity and metrics supporting ecological conservation plans.
- 3) Lack of consultation with known stakeholders.
- 4) Inadequate evidence showing the area is under development threat; concerns about TNC's potential development.
- 5) No detailed long-term management plan addressing:
 - a. Invasive species control
 - b. Native Hawaiian access
 - c. Integration with conservation areas
 - d. Funding and stewardship
- 6) Insufficient detail on:
 - a. Cultural importance of Kōhaikalanī Heiau
 - b. Archaeological surveys and historical records
 - c. Letters of support from cultural practitioners
- 7) Concerns about TNC's track record regarding oversight, access, and conflict of interest.

3. Relief Requested (§13-1-29(b)(3))

- Reverse the Board's approval.
- Require TNC to provide detailed information and conduct meaningful stakeholder consultation before resubmission.

4. Public Interest Served (§13-1-29(b)(4))

- E Pa'a Ka'ū includes lineal descendants and practitioners with kuleana who should have been consulted.

5. Additional Information (§13-1-29(b)(5))

- E Pa'a Ka'ū claims a direct stakeholder interest that distinguishes it from the general public.

Conclusion

The Department has determined that:

- The Petition was not accompanied by a timely oral or written request at the Board meeting.
- As of July 10, 2025, no additional supporting documentation has been submitted by E Pa'a Ka'ū.
- The next steps should consider the requirements under HAR Section 13-1-29 and HRS Section 91-1(5) for evaluating the Petition's validity.

DISCUSSION

The Petitioner did not request a contested case hearing on Item C-1 during the Board meeting held on April 25, 2025. Consequently, the Board may deny Petitioner's subsequent written request for a contested case hearing due to noncompliance with the

rule requiring a timely request for such hearings (HAR §13-1-29(a)). Although the Board has discretion to waive this requirement upon showing good cause, the Division does not believe that good cause exists under the circumstances described below.

There is no statute or rule requiring the Board to hold a contested case hearing in cases where it is considering approving a grant from the Land Conservation Fund (**LCF**) to support a private nonprofit land conservation organization's purchase of private property.

Specifically:

- HRS §173A-5(i) authorizes the Board to "review and approve or reject" grant applications based on the available funds in the LCF.
- HRS §173A-9 empowers the Board, after consulting the Senate President and Speaker of the House and with the Governor's approval, to award grants to state agencies, counties, and nonprofit land conservation organizations to acquire land or conservation easements.
- The relevant administrative rule (HAR §13-140-6(a)) does not require a hearing before the Board decides on The Nature Conservancy's grant application.

Given that no statutory or rule-based requirement exists for a contested case hearing, the Board should next consider whether constitutional due process mandates such a hearing.

Due Process Consideration:

To establish a constitutional right to a contested case hearing, the Petitioner must demonstrate that the interest they seek to protect qualifies as "property" under the federal and state due process clauses. The Petitioner's submission (Exhibit 1) does not show any legally recognized property interest in the grant agreement between the Board and The Nature Conservancy to acquire private property.

Notably:

- A transfer of private property ownership does not, by itself, affect a person's traditional and customary rights to access or use that property.
- Without a recognized property interest, there is no constitutional due process requirement for a contested case hearing.

As the Petitioner failed to submit a timely request and has not demonstrated a protected property interest, the Board may deny the untimely request for a contested case hearing.

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RECOMMENDATION

That the Board deny the Request for Contested Case Hearing filed on May 5, 2025 by Petitioner E Pa'a Ka'ū.

Respectfully Submitted,

Robert Hauff

David G. Smith, Administrator

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

EXHIBIT 1: Petition for a Contested Case Hearing, including email transmittal
EXHIBIT 2: Acting Administrator Memo (Robert Hauff)



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

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

INSTRUCTIONS:

- 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
- 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 E Pa'a Ka'u	2. Contact Person Pernell E. Hanoa	
3. Address P.O. BOX 488	4. City Pahala	5. State and ZIP HI 96777
6. Email poele8@aol.com	7. Phone 808-928-6235	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name Jacob G. Delaplane	10. Firm Name Law Office of Jacob G. Delaplane	
11. Address PO Box 5150	12. City Hilo	13. State and ZIP HI 96720
14. Email jake@oahu.law	15. Phone 8083584942	16. Fax

C. SUBJECT MATTER	
17. Board Action Being Contested Board authorization of: THE NATURE CONSERVANCY, UP TO \$2,000,000 (FULL FUNDING) FOR THE ACQUISITION OF APPROXIMATELY 1,916.058 ACRES, DISTRICT OF KAU ISLAND OF HAWAII (HILEA), TAX MAP KEY NUMBER (3) 9-5-018:001, WITH A GRANT OF EXEMPTION FOR ANY EASEMENT REQUIRED PURSUANT TO SECTION 173A-4, HAWAII REVISED STATUTES.	
18. Board Action Date 4/25/2025	19. Item No. C-1(B)
20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case Hawaii Administrative Rules 13-1	
21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection E Pa'a Ka'u includes lineal descendant and traditional practitioners who have kuleana in the area and were not notified or consulted regarding TNC application listed above.	
22. Any Disagreement Petitioner May Have with an Application before the Board E Pa'a Ka'u has the following concerns and disagreements with the Application: <ol style="list-style-type: none"> 1. Lineal descendants and traditional practitioners who have kuleana in the area were not notified of this application, despite the application stating that such contacts were made. 2. The lack of detailed data or metrics in the application regarding the claims of ecological conservation plans for wildlife and water resources. The information provided is general in nature and lacks the specificity that should be required for such a massive undertaking. 3. While the Application states that there was stakeholder consultation, E Pa'a Ka'u is not aware of any such consultation with the stakeholders known to it. 4. The Application makes vague reference to threat of development, but lacks sufficient detail or support to show that the area is under threat of development. In fact, it is concerning that if TNC acquires the property, it could plan to develop the property as it has with other TNC properties around the world. 5. The Application contains no long-term management plan, and is devoid of any details regarding invasive species control, Native Hawaiian access, integration with existing conservation areas, long-term funding and stewardship commitments. 6. The Application focuses on the scenic beauty of the area, but does not describe or acknowledge with specificity the cultural importance of the Kohaikalani Heiau. It includes no archaeological surveys, historical records or documentation. It also lacks letters of support from cultural practitioners or recognized lineal descendants. 	

7. The Nature Conservancy has faced criticism regarding the Waikamoi Preserve with regard to oversight and maintenance. Access at that site, and other TNC sites, have been a repeated concern wherever this non-profit acquires important lands. Their history of partnerships with large corporations can often create a conflict of interest in conservation efforts - which should be addressed in this application, not after acquisition.

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

Petitioner requests that the Board reverse its approval of the item, requiring TNC to include more detailed information and make meaningful stakeholder contacts prior to resubmitting to the Board.

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

E Pa'a Ka'u includes lineal descendants and cultural practitioners with kuleana in this specific area. These are the types of stakeholders that should have been consulted before the board ever took action.

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

E Pa'a Ka'u will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public, as it has a direct stakeholder interest in the subject application.

☐ 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.

Attorney Jacob G. Delaplane (for E Pa'a
Ka'u)

Petitioner or Representative (Print Name)


Signature

04/25/2025

Date

From: [Li, Bin C](#)
To: [DLNR.FW.LegacyLand](#)
Subject: Re: Completed: You're copied on "Request for Legal Assistance_BLNR Contested Case Hearing_20250425"
Date: Monday, May 12, 2025 3:06:09 PM
Attachments: [2025-05-09 E Paa Kau contested case petition re Nature Conservancy grant \(mailed-in copy\).pdf](#)

Aloha David,

We received the attorney's mailed-in filing last Friday. See file. It's postmarked Monday, May 5. So it's on time.

I'm forwarding the hard copies to you now with a check they tendered with the filing. Since it's not a CDUP issue, I don't think we should charge them the fee. So you may return the check to them if you so decide.

Thank you.

Bin C. Li
Department of Land and Natural Resources
Administrative Proceedings Coordinator
1151 Punchbowl St, Rm 131, Honolulu, Hawaii 96813
Phone (808)587-1496, bin.c.li@hawaii.gov

From: [DLNR.BLNR.Testimony](#)
To: [Li, Bin C](#)
Cc: [Wright, Reeana-Vel](#); [Kealalio, Kanani](#); [Chang, Dawn](#); [Penn, David](#); [Smith, David G](#)
Subject: FW: [EXTERNAL] Petition for Contested Case
Date: Monday, May 5, 2025 4:43:26 PM
Attachments: [APO-11-Petition-for-Contested-Case-version-2020.pdf](#)

Aloha Bin,

Forwarding a CCH request for your appropriate attention and action.

Mahalo,
Kanani

From: jake@oahu.law <jake@oahu.law>
Sent: Monday, May 5, 2025 4:28 PM
To: DLNR.BLNR.Testimony <blnr.testimony@hawaii.gov>
Subject: [EXTERNAL] Petition for Contested Case

See attached,

Thanks,
Jacob Delaplane
Counsel for E Pa'a Ka'u

EXHIBIT 2
ACTING ADMINISTRATOR MEMO

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
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

July 3, 2025

MEMORANDUM

TO: Division Administrators, Heads of Offices, DOFAW Staff

FROM: David G. Smith, DOFAW Administrator *DGS*

SUBJECT: Acting Administrator, Division of Forestry and Wildlife

I will be on out on vacation from July 7-10, 2025. In my absence, State Protection Forester, Robert Hauff will be Acting Administrator.

Your usual courtesy and cooperation to Mr. Hauff will be greatly appreciated.