

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

July 24, 2026

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

**Regarding**

Decision Making Regarding:

- a) Petitions for Contested Case Hearing (HA-26-02 and HA-26-03) Filed by Opunaha LLC (Ryan Pastorek) and Paul Pastorek Regarding the Board's November 14, 2025, Decisions on CDUAs HA-3981 and HA-3982;
- b) Delegation of Authority to the Chairperson to Select and Appoint a Hearing Officer to Conduct the Contested Case Hearing; and
- c) Motion for Reconsideration or Rescission of the Board's November 14, 2025, Decisions on Conservation District Use Applications HA-3981 and HA-3982;

**Subject Petitions**

- HA-26-02     Petition for a Contested Case Hearing from Opunaha LLC (Ryan Pastorek) regarding Board's decision to deny CDUA HA-3981
- HA-26-03     Petition for a Contested Case Hearing from Paul Pastorek regarding Board's decision to deny CDUA HA-3982

Motion for Reconsideration or rescission of the Board and Natural Resources' November 14, 2005, decisions on Agenda Items K-1 and K-2

**Petitioners**             Ryan Pastorek, sole member of Opunaha LLC, Topanga, CA  
Paul Pastorek, River Ridge, LA

**Counsel**                Onaona P. Theone and Katherine Garson, Carlsmith Ball LLC, Honolulu, HI

Note:                      Due to the large file sizes, we are unable to attach the associated exhibits for the subject petitions. The petitioners will provide a link to the full files prior to the Board meeting.

## **Summary**

On November 14, 2025 the Board of Land and Natural Resources denied Conservation District Use Applications (CDUA) HA-3981 for the consolidation and re-subdivision of two adjacent parcels, single family residence, agriculture, landscaping, and related improvements, and CDUA HA-3982 for the consolidation and re-subdivision of two adjacent parcels, single family residence, removal of invasive species, landscaping, and related improvements.

Counsel for the applicants made an oral request for a contested case hearing for both decisions at the Board meeting, and submitted a written request on November 21, 2025.

Following the Board's November 14, 2025, denial of CDUAs HA-3981 and HA-3982, the applicants timely filed both a Motion for Reconsideration and written petitions for a Contested Case Hearing. If the Motion is denied, OCCL recommends that the Board grant the petitions for contested case hearing, consolidate the proceedings, and delegate authority to the Chairperson to select and appoint a hearing officer.

## **Petitions for a Contested Case Hearing (Exhibits 1 and 2)**

At the November 14, 2025, Board meeting, immediately following the Board's denial of CDUAs HA-3981 and HA-3982, counsel for the applicants orally requested contested case hearings pursuant to HAR §13-5-29. Consistent with HAR §13-1-29, the applicants subsequently filed written petitions for contested case hearing on November 21, 2025.

In their petitions, the applicants contend that the Board's decisions were based on incorrect factual information regarding the approved developed areas of neighboring residences, that the applications satisfied the applicable Conservation District Rules, and that the applicants were not afforded a meaningful opportunity to address OCCL's recommendations or the Board's concerns before the Board rendered its decisions. The petitions also assert that the Board's decisions improperly applied the applicable permit criteria and request that the Board conduct a contested case hearing to resolve the disputed factual and legal issues relating to the applications. Therefore, OCCL Staff recommends that the Board grant the petitions for contested case hearing.

Because CDUAs HA-3981 and HA-3982 were processed together during environmental review and the permit application process, involve applicants who are members of the same family, and raise substantially identical factual and legal issues, staff further recommends that the Board consolidate the petitions into a single contested case proceeding. Staff also recommends that the Board delegate authority to the Chairperson to select and appoint a hearing officer to conduct the contested case hearing."

## **Authority for Designating Hearing Officers**

HAR §13-1-32 (d) provides that the BLNR may conduct the Contested Case Hearing, or at its discretion, may appoint a hearing officer to conduct the hearing.

Additionally, HRS Chapter 92-16 and Chapter 171-6 also provide that the Board may delegate to the Chairperson the authority to select the hearing officer to conduct a Contested Case Hearing.

## **Basis for Designating Hearings Officers**

Conducting a Contested Case Hearing may involve: giving notice of hearings, administering oaths, compelling attendance of witnesses and the production of documentary evidence, examining witnesses, certifying acts, issuing subpoenas, making rules, receiving evidence, holding

conferences and hearings, fixing filing deadlines, and disposing of other matters that may arise during the orderly and just conduct of a hearing.

Designating a hearing officer to conduct these proceedings promotes the efficient administration of the contested case while allowing the hearing officer to develop a complete evidentiary record and prepare proposed findings of fact, conclusions of law, and a recommended decision and order for the Board's consideration.

Staff notes that appointing a hearing officer does not diminish the Board's authority to decide the contested case. At the conclusion of the proceedings, the Board retains its discretion to review the hearing officer's proposed findings of fact, conclusions of law, and recommended decision and order and to issue the Board's final decision.

### **Motion for Reconsideration or Rescission (Exhibit 3)**

Applicants timely filed a Motion for Reconsideration or Rescission pursuant to HAR §§13-1-34 and 13-1-39 following the Board's November 14, 2025, decisions denying Conservation District Use Applications HA-3981 and HA-3982. Under HAR §13-1-39(a), the Board may reconsider a prior decision on the merits only if: (1) new information not previously available would affect the result; or (2) a substantial injustice would occur.

The Motion asserts four principal grounds for reconsideration:

1. OCCL incorrectly described the approved developed areas of neighboring residences during the November 14, 2025, Board meeting;
2. The applications were scheduled for Board consideration shortly before the statutory deadline established by HRS §183C-6(b);
3. The applicants were not afforded sufficient time to present their applications or respond to OCCL's recommendation; and
4. The Board did not review the complete applications before rendering its decisions.

The Motion also argues that the Board's decisions were arbitrary and capricious, an abuse of discretion, and clearly erroneous.

In considering the Motion, the Board should determine whether the applicants have demonstrated either new information not previously available that would affect the result or that reconsideration is necessary to prevent a substantial injustice under HAR §13-1-39. To the extent the Motion challenges the merits of the Board's November 14, 2025, decisions, the Board should determine whether those arguments fall within the limited grounds for reconsideration set forth in HAR §13-1-39.

OCCL recommends that the Board deny the Motion for Reconsideration because the Motion does not establish grounds warranting reconsideration under HAR §13-1-39. Although the Motion identifies an inadvertent factual error regarding OCCL's description of neighboring residences during the November 14, 2025, Board meeting, the Motion does not establish that the corrected information constitutes "new information not previously available" within the meaning of HAR §13-1-39(a). The remaining arguments primarily challenge the timing of the Board's consideration of the applications, the procedures employed during the November 14, 2025, meeting, and the Board's evaluation of the applications. Staff does not believe these arguments demonstrate a substantial injustice warranting reconsideration under HAR §13-1-39. Accordingly, staff recommends that the Motion for Reconsideration be denied.

OCCL notes Petitioners' contention regarding HRS §183C-6(b). The legal effect of any rescission is not addressed in this submittal because OCCL recommends that the Board deny reconsideration and grant the request for a contested case hearing

## **Recommendation**

1. That Ryan and Paul Pastorek are entitled to a contested case hearing;
2. That the Board authorize the appointment of a Hearing Officer for Contested Case petitions HA-26-02 and HA 26-03, that the petitions be heard in a single contested case hearing, and that the Hearing Officer shall conduct all the hearings relevant to the subject petition for a Contested case Hearing; and
3. That the Board delegate the authority for selection of the Hearing Officer to the Chairperson.
4. That the Board deny the Motion for Reconsideration or Rescission of the Board's November 14, 2025, Decisions on Conservation District Use Applications HA-3981 and HA-3982

Respectfully submitted,

*S Michael Cain*

Michael Cain, Administrator  
Office of Conservation and Coastal Lands

Approved for submittal:



Ryan K.P. Kanaka'ole, Chairperson  
Board of Land and Natural Resources



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<br>Opunaha, LLC (Ryan Pastorek)                     | 2. Contact Person<br>Ryan Pastorek |                              |
| 3. Address<br>533 Fernwood Pacific Drive                    | 4. City<br>Topanga                 | 5. State and ZIP<br>CA 90290 |
| 6. Email<br>ryanpastorek@gmail.com                          | 7. Phone<br>(310) 623-2312         | 8. Fax                       |

| B. ATTORNEY (if represented)                                 |                                     |                           |
|--------------------------------------------------------------|-------------------------------------|---------------------------|
| 9. Attorney Name<br>Onaona P. Thoene and Katherine A. Garson | 10. Firm Name<br>Carlsmith Ball LLP |                           |
| 11. Address<br>1001 Bishop Street, Suite 2100                | 12. City<br>Honolulu                | 13. State and ZIP<br>HI   |
| 14. Email<br>pthoene@carlsmith.com &                         | 15. Phone<br>(808) 523-2500         | 16. Fax<br>(808) 523-0842 |

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| kgarson@carlsmith.com                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                            |  |
| <b>C. SUBJECT MATTER</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                            |  |
| <b>17. Board Action Being Contested</b><br>Action to deny Conservation District Use Permit Application ("CDUA") No. HA-3981 (the "Application").                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                            |  |
| <b>18. Board Action Date</b><br>November 14, 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>19. Item No.</b><br>K-1 |  |
| <b>20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case</b><br>Hawaii Revised Statutes ("HRS") §§ 183C-6, 183C-9<br>Hawaii Administrative Rules ("HAR") §§ 13-1-28, 13-1-31(b), 13-5-42<br>Constitution of the State Hawaii Article I, Section 5 (The rights of due process and equal protection of laws)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |  |
| <b>21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection</b><br>Petitioner is the owner of TMK No. (3) 5-1-010-026 (the "Property") and the applicant under CDUA HA-3981 to develop a single-family residence ("SFR") and related infrastructure. The Board's denial of the Application deprives Petitioner of his due process rights. Under HAR § 13-1-31(b)(2), all persons who have a property interest in the land, or who lawfully reside on the land, "shall be admitted as parties[.]"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                            |  |
| <b>22. Any Disagreement Petitioner May Have with an Application before the Board</b><br><p>The Board's decision to deny the Application was arbitrary and capricious, an abuse of the Board's discretion, in excess of the Board's authority, and clearly erroneous in light of the evidence supporting the Application and information presented to the Board.</p> <p>In denying the Application, the Board expressed two reasons: First, the Board adopted OCCL's unfounded characterization of the Property, and second, the Board stated that size of the proposed SFR was too large despite being below the 5,000 s.f. Maximum Developable Area ("MDA") in the HAR Title 13, Chapter 5 (the "Conservation District Rules") and similar in size to neighboring homes in the area. The Board's decision to deny the Application based on the perception that the proposed SFR was "too large" for the area was based on inaccurate statements by OCCL staff that neighboring homes in the area were in the 2,000 and 3,000 s.f. range.</p> <p>I. The Board's Decision was Made Based on Incorrect Information.</p> <p>At the November 14, 2025 meeting, the Board's stated reason for denying the Application was that the proposed home was too large for the area. Applicant's counsel noted that, just months prior (in March of 2025), the Board approved a second extension of time on a Conservation District Use Permit ("CDUP") for a home whose approved MDA was thought to be around 4,900 s.f. range. (Upon further research, the second extension of time for CDUP HA-3868 relates to an approved MDA of 4,695 s.f.) OCCL Administrator Michael Cain testified that OCCL had identified five (5) CDUPs that were issued for properties that are on both sides of Parcels 026 and 027, and are also located between the two large subdivisions (i.e., HPP and Hawaiian Beaches), and represented the square footage of the maximum developed area as: (a) 3,705 s.f.; (b) 3,013 s.f.; (c) 2,644 s.f.; (d) 3,847 s.f.; and (e) 3,868 s.f. Administrator Cain also stated that OCCL's position was that the dwelling units requested by the Applications were "significantly bigger" than the neighboring homes in the area. OCCL, however, did not provide that information in writing to the Board in the Staff Submittal. This information was the most significant, if not determinative, factor in the Board's decision to deny the Application. Chair Chang indicated that her decision not to approve the Application was based on "the size of the dwellings," that they were "not in alignment," and would</p> |                            |  |

"change the character of the area."

Administrator Cain's statement was demonstrably incorrect. Administrator Cain read the permit numbers for the neighboring properties, not the approved square-footage developed area (or size) of the existing previously approved SFRs. The actual number of CDUPs for SFRs that the Applicant was able to locate between HPP and Hawaiian Beaches was double what Mr. Cain represented.

The SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705 approved for 4,322 s.f.; the permit that Administrator Cain identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for 4,154 s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for 4,695 s.f. Thus, the actual CDUPs that have been granted for homes along Government Beach Road are, in fact, similar in size to what the Applicant is proposing.

The Staff Recommendation and some Board members made statements that the general area in which the Property is located is "remote" and "rural". Denying the Application for this reason was arbitrary and capricious and made in error. As the Applicant pointed out in his written testimony and presentation to the Board, this characterization of the Property is not accurate. In reality, as recognized by the County of Hawai'i Planning Department in its recommendation to approve the Special Management Area permit for the SFR on the Property, "[t]he subject parcels are within an established residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site." (Emphasis added.)

II. The Board Did Not Have Sufficient Time to Consider the Application and Applicant Was Not Given Sufficient Time to Present the Application and Counter the Staff Recommendation.

As a foundational matter, the Board did not have sufficient time to consider the Application. Prior to the November 14, 2025 meeting, Applicant requested that the Board allow Applicant to make a presentation on the Application, particularly because the staff recommendation was to deny the permit. The Applicant was informed that his presentation would be limited to just five minutes. While the Applicant also submitted written testimony in support of the Application and to rebut the matters raised in the Staff Submittal, this is not a substitute for allowing Applicant to present its full case to the Board. A copy of the Applicant's November 12, 2025 written testimony is enclosed as Enclosure 1.

In September 2025, Applicant's consultant was told by OCCL staff that the Application would likely be scheduled for decision making at the Board's October 24, 2025 meeting. This would have given Applicant the opportunity to initially present the Application to the Board at the October 24, 2025 meeting, and if necessary, address any concerns raised by the Board at the November 14, 2025 meeting. The only reason given to Applicant's consultant for not scheduling the Application at the October 24th meeting was that OCCL staff could not complete the submittal in time. Instead, OCCL put the Applicant in the untenable position of scheduling the Application at a Board meeting just 4 days before the automatic approval deadline and on a very packed agenda with other controversial items, thereby forcing the Board to rush through the limited materials provided by OCCL and vote to deny the permit, even if there were any unanswered questions on the project, to avoid an automatic approval. This also resulted in leaving Applicant with no choice but to request a contested case hearing.

When HRS § 183C-6 was amended in 2016 to allow for the extension of the 180-day review period of CDUAs by an additional 90 days in the case where environmental review or a contested

case proceeding was required, former Board member Christopher Yuen testified in favor of the measure and aptly noted that "[n]ormally, BLNR's staff has been very good at bringing such applications to the board for a decision at a meeting a month or two before the 180-day deadline." Mr. Yuen further noted that "[d]ecisions involving our conservation lands should be made on the merits, not because of an arbitrary deadline." *Id.*

While the Applicant is appreciative that the Board gave Applicant more than five minutes to present the Application, the time provided was not sufficient to counter OCCL's negative recommendation and the incorrect and incomplete information provided to the Board. This was a clear violation of Applicant's due process rights. Indisputably, Applicant was not given a meaningful opportunity to be heard or any opportunity to refute the incorrect information provided by OCCL. See *Sandy Beach Defense Fund v. City Council of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest."); *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015) (identifying two instances in which a property interest is considered sufficiently substantial to trigger due process protections, including "where an agency denies an applicant's proposed property use").

### III. The Application Was Not Reviewed by the Board Prior to Denying It.

The Board's decision to deny the Application was arbitrary and capricious and made in error because the Board was not provided a copy of the Application as part of the Staff Submittal for Agenda Item K-1. This deprived the Board of any opportunity to review the actual Application it was rendering a decision on. Instead, the Board relied entirely on the analysis provided by OCCL staff, including the incorrect information that was apparently dispositive in the Board's decision to deny the Application. See Part I, *supra*; see also *Mauna Kea Anaina Hou*, 136 Hawai'i at 391, 363 P.3d at 239 (holding that the Board's process of ruling on the merits of a CDUA before the factual record was developed failed to satisfy the appearance of justice).

### IV. The Application Complies with the SFR Standards in the Conservation District Rules.

There is no valid, defensible reason for denying the Application. The proposed SFR complies with the Conservation District Rules, is below the MDA of 5,000 s.f., and is similar in size and scale to other SFRs the Board has approved in the same area. See HAR § 13-5-41 and Exhibit 4 to the Conservation District Rules (providing that the MDA for lots larger than one (1) acre is 5,000 s.f.). Treating Applicant differently from similarly situated neighbors with approved CDUPs for their SFRs is arbitrary, capricious, and a violation of Applicants' due process rights. See *DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC*, 134 Hawai'i 187, 219, 20, 339 P.3d 685, 717-18 (2014) (discussing that the equal protection clauses of the United States and the Hawai'i Constitutions "mandate[] that all persons similarly situated shall be treated alike, both in privileges conferred and in the liabilities imposed" and recognizing an equal protection claim may be brought by a "class of one," "where the plaintiff alleges that [he/she] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (citations omitted).

The design standards contained in Exhibit 4 to the Conservation District Rules are intended to guide the Board and prevent the very kind of subjective and arbitrary decision-making that occurred at the November 14, 2025 meeting. The January 1991 Auditor report to the Hawai'i Legislature on the regulation of SFR construction in the Conservation District, serious concerns were raised that in the absence of specific standards, it would be hard for the Board to determine whether certain

residences were "compatible with the locality and surrounding areas" or violated the subjective condition that "natural beauty and open space be preserved". See Review of the Regulation of Residential Construction in the Conservation District, A report to the Governor and the Legislature of the State of Hawai'i, Report No. 91-1, January 1991 by the Auditor of the State of Hawai'i. Despite the adoption of detailed construction standards, those concerns provided true in the Board's denial of the Application.

HAR § 13-5-41(a) provides that SFR uses approved by the Board must comply with the SFR standards in Exhibit 4 to the Conservation District Rules:

Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(Emphases added.)

Exhibit 4 provides only one exception that allows for a reduction of the permissible MDAs: "Site characteristics and the degree of pre-existing site disturbance may be a further limiting factor in the calculation of maximum developable area when so determined by the board." (Emphases added.) Thus, by its own rules, the Board can only reduce the permissible MDA if it makes explicit determination that such a reduction is warranted based on "site characteristics" and "the degree of pre-existing site disturbance." The Board made no such determination that could justify its decision to deny the Application. Instead, the Board denied the Application based on: (a) certain members' subjective belief about what the right size of the SFR should be (without providing any guidance as to what that would be), and (b) the incorrect information provided by the OCCL Administrator on the sizes of the neighboring homes.

The Board's decision to deny the Application is a clear abuse of the Board's discretion. See Enclosure 2, a copy of the Motion for Reconsideration filed with the Board on November 21, 2025, which arguments and exhibits are incorporated herein by reference.

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

1. Granting of this Petition for Contested Case Hearing to provide Applicant with the opportunity to address the Board's stated reasons for denying the Application;
2. Reversal of Board's November 14, 2025 decision to deny CDUA HA-3981 (or in the alternative, rescission of the Board's November 14, 2025 decision to deny the Application so that the Application would be automatically granted by operation of HRS § 183C-6(b), subject to the conditions agreed upon at the November 14, 2025 meeting between Applicants and OCCL; and
3. Approval of CDUA No. HA-3981.

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

Petitioner's participation will serve the public interest because the contested case proceeding will identify issues with the Board's decision on Agenda Item K-1 and ensure that the Board makes decisions on Conservation District Use Permits on the merits and with correct information.

**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**

See Enclosure 2 - Motion for Reconsideration filed with the Board on November 21, 2025.

☒ 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.

Onaona P. Thoene

Petitioner or Representative (Print Name)



Signature

November 24, 2025

Date



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
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- 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<br>Paul Pastorek                                    | 2. Contact Person<br>Paul Pastorek |                              |
| 3. Address<br>9816 Debra Drive                              | 4. City<br>River Ridge             | 5. State and ZIP<br>LA 70123 |
| 6. Email<br>paul@pastorekpartners.com                       | 7. Phone<br>(225) 571-0771         | 8. Fax                       |

| B. ATTORNEY (if represented)                                 |                                     |                           |
|--------------------------------------------------------------|-------------------------------------|---------------------------|
| 9. Attorney Name<br>Onaona P. Thoene and Katherine A. Garson | 10. Firm Name<br>Carlsmith Ball LLP |                           |
| 11. Address<br>1001 Bishop Street, Suite 2100                | 12. City<br>Honolulu                | 13. State and ZIP<br>HI   |
| 14. Email<br>pthoene@carlsmith.com &                         | 15. Phone<br>(808) 523-2500         | 16. Fax<br>(808) 523-0842 |

FORM APO-11

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| kgarson@carlsmith.com                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                            |  |
| <b>C. SUBJECT MATTER</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                            |  |
| <b>17. Board Action Being Contested</b><br>Action to deny Conservation District Use Permit Application ("CDUA") No. HA-3982 (the "Application").                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                            |  |
| <b>18. Board Action Date</b><br>November 14, 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>19. Item No.</b><br>K-2 |  |
| <b>20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case</b><br>Hawaii Revised Statutes ("HRS") §§ 183C-6, 183C-9<br>Hawaii Administrative Rules ("HAR") §§ 13-1-28, 13-1-31(b), 13-5-42<br>Constitution of the State of Hawaii Article I, Section 5 (The rights of due process and equal protection of laws)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                            |  |
| <b>21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection</b><br>Petitioner is the owner of TMK No. (3) 5-1-010-027 (the "Property") and the applicant under CDUA HA-3982 to develop a single-family residence ("SFR") and related infrastructure. The Board's denial of the Application deprives Petitioner of his due process rights. Under HAR § 13-1-31(b)(2), all persons who have a property interest in the land, or who lawfully reside on the land, "shall be admitted as parties[.]"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |  |
| <b>22. Any Disagreement Petitioner May Have with an Application before the Board</b><br><p>The Board's decision to deny the Application was arbitrary and capricious, an abuse of the Board's discretion, in excess of the Board's authority, and clearly erroneous in light of the evidence supporting the Application and information presented to the Board.</p> <p>In denying the Application, the Board expressed two reasons: First, the Board adopted OCCL's unfounded characterization of the Property, and second, the Board stated that size of the proposed SFR was too large despite being below the 5,000 s.f. Maximum Developable Area ("MDA") in the HAR Title 13, Chapter 5 (the "Conservation District Rules") and similar in size to neighboring homes in the area. The Board's decision to deny the Application based on the perception that the proposed SFR was "too large" for the area was based on inaccurate statements by OCCL staff that neighboring homes in the area were in the 2,000 and 3,000 s.f. range.</p> <p>I. The Board's Decision was Made Based on Incorrect Information.</p> <p>At the November 14, 2025 meeting, the Board's stated reason for denying the Application was that the proposed home was too large for the area. Applicant's counsel noted that, just months prior (in March of 2025), the Board approved a second extension of time on a Conservation District Use Permit ("CDUP") for a home whose MDA was thought to be around 4,900 s.f. (Upon further research, the second extension of time for CDUP HA-3868 relates to an approved MDA of 4,695 s.f.) OCCL Administrator Michael Cain testified that OCCL had identified five (5) CDUPs that were issued for properties that are on both sides of Parcels 026 and 027, and are also located between the two large subdivisions (i.e., HPP and Hawaiian Beaches), and represented the square footage of the maximum developed area as: (a) 3,705 s.f.; (b) 3,013 s.f.; (c) 2,644 s.f.; (d) 3,847 s.f.; and (d) 3,868 s.f. Administrator Cain also stated that OCCL's position was that the dwelling units requested by the Applications were "significantly bigger" than the neighboring homes in the area. OCCL, however, did not provide that information in writing to the Board in the Staff Submittal. This information was the most significant, if not determinative, factor in the Board's decision to deny the Application. Chair Chang indicated that her decision not to approve the Application was based on "the size of the dwellings," that they were "not in alignment," and would "change the character of</p> |                            |  |

the area."

Administrator Cain's statement was demonstrably incorrect. Administrator Cain read the permit numbers for the neighboring properties, not the approved square-footage developed area (or size) of the existing previously approved SFRs. The actual number of CDUPs for SFRs that the Applicant was able to locate between HPP and Hawaiian Beaches was double what Mr. Cain represented.

The SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705 approved for 4,322 s.f.; the permit that Administrator Cain identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for 4,154 s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for 4,695 s.f. Thus, the actual CDUPs that have been granted for homes along Government Beach Road are, in fact, similar in size to what the Applicant is proposing.

The Staff Recommendation and some Board members made statements that the general area in which the Property is located is "remote" and "rural". Denying the Application for this reason was arbitrary and capricious and made in error. As the Applicant pointed out in his written testimony and presentation to the Board, this characterization of the Property is not accurate. In reality, as recognized by the County of Hawai'i Planning Department in its recommendation to approve the Special Management Area permit for the SFR on the Property, "[t]he subject parcels are within an established residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site." (Emphasis added.)

## II. The Board Did Not Have Sufficient Time to Consider the Application and Applicant Was Not Given Sufficient Time to Present the Application and Counter the Staff Recommendation.

As a foundational matter, the Board did not have sufficient time to consider the Application. Prior to the November 14, 2025 meeting, Applicant requested that the Board allow Applicant to make a presentation on the Application, particularly because the staff recommendation was to deny the permit. The Applicant was informed that his presentation would be limited to just five minutes. While the Applicant also submitted written testimony in support of the Application and to rebut the matters raised in the Staff Submittal, this is not a substitute for allowing Applicant to present its full case to the Board. A copy of the Applicant's November 12, 2025 written testimony is enclosed as Enclosure 1.

In September 2025, Applicant's consultant was told by OCCL staff that the Application would likely be scheduled for decision making at the Board's October 24, 2025 meeting. This would have given Applicant the opportunity to initially present the Application to the Board at the October 24, 2025 meeting, and if necessary, address any concerns raised by the Board at the November 14, 2025 meeting. The only reason given to Applicant's consultant for not scheduling the Application at the October 24th meeting was that OCCL staff could not complete the submittal in time. Instead, OCCL put the Applicant in the untenable position of scheduling the Application at a Board meeting just 4 days before the automatic approval deadline and on a very packed agenda with other controversial items, thereby forcing the Board to rush through the limited materials provided by OCCL and vote to deny the permit, even if there were any unanswered questions on the project, to avoid an automatic approval. This also resulted in leaving Applicant with no choice but to request a contested case hearing.

When HRS § 183C-6 was amended in 2016 to allow for the extension of the 180-day review period of CDUAs by an additional 90 days in the case where environmental review or a contested

case proceeding was required, former Board member Christopher Yuen testified in favor of the measure and aptly noted that "[n]ormally, BLNR's staff has been very good at bringing such applications to the board for a decision at a meeting a month or two before the 180-day deadline." Mr. Yuen further noted that "[d]ecisions involving our conservation lands should be made on the merits, not because of an arbitrary deadline." *Id.*

While the Applicant is appreciative that the Board gave Applicant more than five minutes to present the Application, the time provided was not sufficient to counter OCCL's negative recommendation and the incorrect and incomplete information provided to the Board. This was a clear violation of Applicant's due process rights. Indisputably, Applicant was not given a meaningful opportunity to be heard or any opportunity to refute the incorrect information provided by OCCL. See *Sandy Beach Defense Fund v. City Council of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest."); *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015) (identifying two instances in which a property interest is considered sufficiently substantial to trigger due process protections, including "where an agency denies an applicant's proposed property use").

### III. The Application Was Not Reviewed by the Board Prior to Denying It.

The Board's decision to deny the Application was arbitrary and capricious and made in error because the Board was not provided a copy of the Application as part of the Staff Submittal for Agenda Item K-2. This deprived the Board of any opportunity to review the actual Application it was rendering a decision on. Instead, the Board relied entirely on the analysis provided by OCCL staff, including the incorrect information that was apparently dispositive in the Board's decision to deny the Application. See Part I, *supra*; see also *Mauna Kea Anaina Hou*, 136 Hawai'i at 391, 363 P.3d at 239 (holding that the Board's process of ruling on the merits of a CDUA before the factual record was developed failed to satisfy the appearance of justice).

### IV. The Application Complies with the SFR Standards in the Conservation District Rules.

There is no valid, defensible reason for denying the Application. The proposed SFR complies with the Conservation District Rules, is below the MDA of 5,000 s.f., and is similar in size and scale to other SFRs the Board has approved in the same area. See HAR § 13-5-41 and Exhibit 4 to the Conservation District Rules (providing that the MDA for lots larger than one (1) acre is 5,000 s.f.). Treating Applicant differently from similarly situated neighbors with approved CDUPs for their SFRs is arbitrary, capricious, and a violation of Applicants' due process rights. See *DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC*, 134 Hawai'i 187, 219, 20, 339 P.3d 685, 717-18 (2014) (discussing that the equal protection clauses of the United States and the Hawai'i Constitutions "mandate[] that all persons similarly situated shall be treated alike, both in privileges conferred and in the liabilities imposed" and recognizing an equal protection claim may be brought by a "class of one," "where the plaintiff alleges that [he/she] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (citations omitted).

The design standards contained in Exhibit 4 to the Conservation District Rules are intended to guide the Board and prevent the very kind of subjective and arbitrary decision-making that occurred at the November 14, 2025 meeting. The January 1991 Auditor report to the Hawai'i Legislature on the regulation of SFR construction in the Conservation District, serious concerns were raised that in the absence of specific standards, it would be hard for the Board to determine whether certain

residences were "compatible with the locality and surrounding areas" or violated the subjective condition that "natural beauty and open space be preserved". See Review of the Regulation of Residential Construction in the Conservation District, A report to the Governor and the Legislature of the State of Hawai'i, Report No. 91-1, January 1991 by the Auditor of the State of Hawai'i. Despite the adoption of detailed construction standards, those concerns provided true in the Board's denial of the Application.

HAR § 13-5-41(a) provides that SFR uses approved by the Board must comply with the SFR standards in Exhibit 4 to the Conservation District Rules:

Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(Emphases added.)

Exhibit 4 provides only one exception that allows for a reduction of the permissible MDAs: "Site characteristics and the degree of pre-existing site disturbance may be a further limiting factor in the calculation of maximum developable area when so determined by the board." (Emphases added.) Thus, by its own rules, the Board can only reduce the permissible MDA if it makes explicit determination that such a reduction is warranted based on "site characteristics" and "the degree of pre-existing site disturbance." The Board made no such determination that could justify its decision to deny the Application. Instead, the Board denied the Application based on: (a) certain members' subjective belief about what the right size of the SFR should be (without providing any guidance as to what that would be), and (b) the incorrect information provided by the OCCL Administrator on the sizes of the neighboring homes.

The Board's decision to deny the Application is a clear abuse of the Board's discretion. See Enclosure 2, a copy of the Motion for Reconsideration filed with the Board on November 21, 2025, which arguments and exhibits are incorporated herein by reference.

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

1. Granting of this Petition for Contested Case Hearing to provide Applicant with the opportunity to address the Board's stated reasons for denying the Application;
2. Reversal of Board's November 14, 2025 decision to deny CDUA HA-3982 (or in the alternative, rescission of the Board's November 14, 2025 decision to deny the Application so that the Application would be automatically granted by operation of HRS § 183C-6(b), subject to the conditions agreed upon at the November 14, 2025 meeting between Applicants and OCCL; and
3. Approval of CDUA No. HA-3982.

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

Petitioner's participation will serve the public interest because the contested case proceeding will identify issues with the Board's decision on Agenda Item K-2 and ensure that the Board makes decisions on Conservation District Use Permits on the merits and with correct information.

**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**

See Enclosure 2 - Motion for Reconsideration filed with the Board on November 21, 2025.

☒ 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.

Onaona P. Thoene

Petitioner or Representative (Print Name)



Signature

November 24, 2025

Date

CARLSMITH BALL LLP

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Attorneys for Applicants  
OPUNAHA, LLC (RYAN PASTOREK) AND PAUL PASTOREK

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of

Conservation District Use Permit Application  
Nos. HA-3981 and 3982; Applicants Opunaha,  
LLC (Ryan Pastorek) and Paul Pastorek, Tax  
Map Key Nos. (3) 1-5-010: 026 and 027, Puna,  
County and Island of Hawai'i

CDUA NOS. HA-3981 AND HA-3982

MOTION FOR RECONSIDERATION OR  
RECISSION OF THE BOARD OF LAND  
AND NATURAL RESOURCES'  
NOVEMBER 14, 2025 DECISIONS ON  
AGENDA ITEMS K-1 AND K-2;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF  
COUNSEL; EXHIBITS "A" - "E";  
CERTIFICATE OF SERVICE

**MOTION FOR RECONSIDERATION OR RECISSION OF  
THE BOARD OF LAND AND NATURAL RESOURCES' NOVEMBER 14, 2025  
DECISIONS ON AGENDA ITEMS K-1 AND K-2**

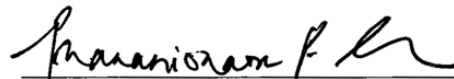
Applicants OPUNAHA, LLC (RYAN PASTOREK) and PAUL PASTOREK

(collectively, "**Applicants**"), through its undersigned counsel, respectfully moves the Board of  
Land and Natural Resources of the State of Hawai'i ("**Board**") to reconsider or rescind its  
decisions taken at its November 14, 2025 meeting to deny Conservation District Use Permit  
Application Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2). This Motion

4900-6854-4635.4.072076-00001

for Reconsideration ("**Motion**") is made pursuant to Hawai'i Administrative Rules §§ 13-1-34 and 13-1-39, and is supported by the attached Memorandum in Support and exhibits thereto. Applicants request that the Board agendaize this Motion for hearing at the Board's next regularly scheduled meeting on December 12, 2025.

DATED: Honolulu, Hawai'i, November 21, 2025.

A handwritten signature in black ink, appearing to read "Katherine A. Garson", written over a horizontal line.

KATHERINE A. GARSON  
PUANANIONAONA P. THOENE

Attorneys for Applicants  
Opunaha, LLC (Ryan Pastorek) and Paul  
Pastorek

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of

Conservation District Use Permit Application  
Nos. HA-3981 and 3982; Applicants Opunaha,  
LLC (Ryan Pastorek) and Paul Pastorek, Tax  
Map Key Nos. (3) 1-5-010: 026 and 027, Puna,  
County and Island of Hawai'i

CDUA NOS. HA-3981 AND HA-3982

MEMORANDUM IN SUPPORT OF  
MOTION

**MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION**

**I. INTRODUCTION**

At its regular meeting on November 14, 2025, the Board of Land and Natural Resources of the State of Hawai'i ("**Board**") heard and considered Conservation District Use Permit Application ("**CDUA**") Nos. HA-3981 (Agenda Item K-1) and HA-3982 (Agenda Item K-2) (collectively, the "**Applications**"). The Applications seek the Board's approval to consolidate and resubdivide Tax Map Key ("**TMK**") Nos. (3) 1-5-010: 026 ("**Parcel 026**") and (3) 1-5-010: 027 ("**Parcel 027**") (collectively, the "**Properties**"), and develop one single-family residence ("**SFR**") on each of Parcel 026 and Parcel 027, as permitted under Hawai'i Administrative Rules ("**HAR**") Title 13, Chapter 5 (the "**Conservation District Rules**"). Under HAR § 13-5-42 and Exhibit 4 (Single-Family Residential Standards), properties that are one (1) acre or greater in size have a maximum developable area<sup>1</sup> ("**MDA**") of 5,000 square feet ("**s.f.**"). Under the Applications, the proposed MDA for Parcel 026 is approximately 4,739 s.f. on 4.048 acres (post-consolidation/resubdivision) and the proposed MDA for Parcel 027 is approximately 4,984 s.f. on 6.402 acres (post-consolidation/resubdivision). Thus, both indisputably satisfy the MDA

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<sup>1</sup> MDA "[m]eans the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, decks, pools, saunas; garage or carport, and other above ground structures." Exhibit 4 to the Conservation District Rules.

requirements under the Conservation District Rules.

The Properties are located in the Puna District on the Island of Hawai‘i, and **are located between two large subdivisions**, Hawaiian Paradise Park ("**HPP**") which consist of approximately 8,800 lots and a population nearing 15,000,<sup>2</sup> making it one of the largest subdivisions in Hawai‘i, and Hawaiian Beaches, which consists of approximately 1,300 lots. The Properties are approximately one mile from the HPP subdivision, and two miles from the Hawaiian Beaches subdivision, and are located makai of Government Beach Road, which runs between the two subdivisions.

The Department of Land and Natural Resources ("**DLNR**") Office of Conservation and Coastal Lands ("**OCCL**") staff recommendation to the Board was to deny both Applications, generally stating, but without providing sufficient analysis, that the Applications did not satisfy the eight criteria set forth in Hawai‘i Administrative Rules ("**HAR**") § 13-5-30(c). The primary basis for recommending denial, however, was OCCL's opinion that the proposed SFRs were purportedly not appropriate for the area.

In denying the Applications, the Board expressed two reasons: First, the Board adopted OCCL's unfounded characterization of the Properties, and second, the Board stated that sizes of the proposed SFRs were too large despite being below the 5,000 s.f. MDA in the Conservation District Rules and similar in size to neighboring homes in the area. The Board's decisions to deny the Applications based on the perception that the proposed SFRs were "too large" for the area were based on inaccurate statements by OCCL staff that neighboring homes in the area were in the 2,000 and 3,000 s.f. range.

Following the Board's decisions to deny the Applications, Applicants made a timely

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<sup>2</sup> COUNTY OF HAWAII RESEARCH AND DEVELOPMENT, *Census Community Profiles*, available at <https://www.rd.hawaiicounty.gov/data-information/community-profiles> (last visited Nov. 10, 2025).

verbal request for a contested case hearing on Agenda Items K-1 and K-2 pursuant to HAR § 13-5-29(a).

The Board's decisions to deny the Applications were arbitrary and capricious, an abuse of the Board's discretion, in excess of the Board's authority, and clearly erroneous in light of the evidence supporting the Applications and information presented to the Board. For the reasons set forth herein, Applicants request that the Board reconsider its decisions to deny the Applications and grant the Conservation District Use Permits for Parcels 026 and 027 ("CDUPs") subject to the conditions agreed upon at the November 14, 2025 meeting between Applicant and OCCL (which include all of the standard conditions in HAR § 13-5-42 and additional conditions requested by OCCL). In the alternative, the Applicants request that the Board rescind its decisions to deny the Applications made at the November 14, 2025, after which the Applicants will withdraw their requests for contested case hearings. The result would be that the Applications would be automatically granted by operation of Hawai'i Revised Statutes ("HRS") § 183C-6(b). In the event the Board rescinds its decisions, the Applicants will agree to the conditions agreed upon at the November 14, 2025 meeting between Applicants and OCCL.

## **II. LEGAL STANDARD**

Under HAR § 13-1-39(a), the Board may reconsider a prior decision it made on the merits if the movant shows that: "(1) New information not previously available would affect the result; or (2) A substantial injustice would occur."

## **III. ARGUMENT**

- A. The Motion Should be Granted Because the Applications and Information on the Sizes of the Neighboring Homes were Misstated by OCCL.

At the November 14, 2025 meeting, the Board's stated reason for denying the Applications were that they were too large for the area. Applicants' counsel noted that, just

months prior (in March of 2025), the Board approved a third extension of time on a CDUP for a home whose MDA was in excess of 4,900 s.f. OCCL Administrator Michael Cain testified that OCCL had identified five (5) CDUPs that were issued for properties that are on both sides of Parcels 026 and 027, and are also located between the two large subdivisions (i.e., HPP and Hawaiian Beaches), and represented the square footage of the maximum developed area as: (a) 3,705 s.f.; (b) 3,013 s.f.; (c) 2,644 s.f.; (d) 3,847 s.f.; and (d) 3,868 s.f. Administrator Cain also stated that OCCL's position was that the dwelling units requested by the Applications were "significantly bigger"<sup>3</sup> than the neighboring homes in the area. OCCL, however, did not provide that information in writing to the Board in the Staff Submittal. This information was the most significant, if not determinative, factor in the Board's decision to deny the Applications. Chair Chang indicated that her decision not to approve the Applications was based on "the size of the dwellings," that they were "not in alignment," and would "change the character of the area."

**Administrator Cain's statement was demonstrably incorrect.** Administrator Cain read the *permit numbers* for the neighboring properties, not the approved *square-footage* developed area (or size) of the existing previously approved SFRs. The actual number of CDUPs for SFRs that the Applicant was able to locate between HPP and Hawaiian Beaches was double what Mr. Cain represented and are set forth in the chart below and supported by Figures 1 - 3 and Exhibits A and B.

The SFR that Administrator Cain represented as having an approved developable area of 3,705 s.f. was CDUP HA-3705 approved for **4,322** s.f.; the permit that Administrator Cain identified as being 3,013 s.f. is actually CDUP HA-3013 & HA-3482 approved for **4,154** s.f.; and the permit represented as being 3,868 s.f. is actually CDUP HA-3868 approved for **4,695** s.f.

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<sup>3</sup> Video recording of the Board's November 14, 2025 meeting is available at <https://www.youtube.com/watch?v=s0Iu5QfSlc0&list=PLDh6ZXzdUvQkHtqVoauOkfa26NfNLh2pK>. See the recording at around the 1:54:00 mark.

Thus, the actual CDUPs that have been granted for homes along Government Beach Road are, in fact, similar in size to what the Applicants are proposing. The chart below details the sizes of the neighboring homes, as shown on Figures 1 - 3.

|    | TMK No./<br>Current Owner<br>Name per COH<br>RPT Website | Size            | CDUP<br>No.             | Date Approved                                                                      | MDA Per<br>Conservation<br>District Rules<br>in Effect on<br>Date Approved<br>(in sq. ft.) | Approved Development Area                                                                                                                                                      |
|----|----------------------------------------------------------|-----------------|-------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | (3) 1-5-010-009<br>Garrett /<br>Kamahele Farms<br>LLC    | 13.43<br>acres  | HA-3868                 | Oct. 9, 2020<br>(2nd time<br>extension<br>approved March<br>14, 2025) <sup>4</sup> | 5,000                                                                                      | <b>4,695</b><br>SFR and 680 s.f.<br>Farm/utility shed <sup>5</sup>                                                                                                             |
| 2. | (3) 1-5-010-025<br>Wood                                  | 5.43<br>acres   | HA-3482                 | Nov. 25, 2008                                                                      | 5,000                                                                                      | <b>4,154</b> <sup>6</sup><br>(originally HA-3013 approved on<br>May 11, 2001 for 3,700 s.f.)                                                                                   |
| 3. | (3) 1-5-010-028<br>Melella                               | 3.5<br>acres    | HA-3705                 | Aug. 22, 2014                                                                      | 5,000                                                                                      | <b>4,332</b> <sup>7</sup><br>as of February 16, 2022, SFR and<br>accessory uses<br>(originally approved 3,371 s.f.)                                                            |
| 4. | (3) 1-5-010-029<br>Robinson                              | 3.6<br>acres    | HA-2644                 | Sept. 10, 1993                                                                     | No MDA limit                                                                               | 2,600                                                                                                                                                                          |
| 5. | (3) 1-5-010-031<br>Moore                                 | 8.75<br>acres   | HA-3847                 | Nov. 8, 2019<br>(3rd time<br>extension<br>approved<br>Sept. 12, 2025) <sup>8</sup> | 5,000                                                                                      | (originally approved <b>4,301</b> )<br>currently 3,592 Developable Area<br>and a 769 sq. ft. farm shed after<br>alterations and additions <sup>9</sup>                         |
| 6. | (3) 1-5-009-035<br>Yermian                               | 2.181<br>acres  | HA-3676                 | Dec. 13, 2013 <sup>10</sup>                                                        | 5,000                                                                                      | <b>4,470</b> <sup>11</sup>                                                                                                                                                     |
| 7. | (3) 1-5-009-036<br>Ray                                   | 1.6310<br>acres | HA-<br>3/15/82-<br>1466 | On or about<br>Aug. 13, 1982                                                       | No MDA limit                                                                               | 2,200 s.f. <sup>12</sup><br>(COH RPT drawing shows 2,662 s.f.<br>including "porch unceiled shed roof")                                                                         |
| 8. | (3) 1-5-009-040<br>Gadler Family<br>Trust                | 10.005<br>acres | HA-3233                 | Oct. 28, 2005                                                                      | 5,000                                                                                      | <b>4,096</b><br>SFR approx. 2,849 s.f, covered lanais<br>(594.5 s.f.), arcade, breezeway<br>(approx. 352.5 s.f.), utility, storage<br>area (approx. 300.68 s.f.) <sup>13</sup> |

<sup>4</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2025/05/Minutes-250314.pdf> (Item K-1).

<sup>5</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2025/03/K-1.pdf> (page 1).

<sup>6</sup> See Exhibit A (CDUP HA-3482 and Staff Submittal at 6).

<sup>7</sup> See Exhibit B (After the Fact Site Plan Approval).

<sup>8</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2025/09/K-1.pdf>

<sup>9</sup> *Id.* at 15.

<sup>10</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2020/11/131213-minutes.pdf> (Item K-5).

<sup>11</sup> <https://files.hawaii.gov/dlnr/meeting/submittals/131213/K-5.pdf> (page 3).

<sup>12</sup> See Exhibit C (CDUA HA-3/15/82-1466, dated August 13, 1982).

<sup>13</sup> See Exhibit D (Staff Recommendation) and Exhibit E CDUP HA-3233.

|                             |                                           |                |         |                             |       |                                                                             |
|-----------------------------|-------------------------------------------|----------------|---------|-----------------------------|-------|-----------------------------------------------------------------------------|
| 9.                          | (3) 1-5-009-053<br>Grossbard &<br>Bourzat | 6.91<br>acres  | HA-3851 | Dec. 13, 2019 <sup>14</sup> | 5,000 | <b>3,418</b><br>(2,560 SFR, 858 carport<br>and utility shed <sup>15</sup> ) |
| 10.                         | (3) 1-5-009-055<br>Dearing                | 6.79<br>acres  | HA-3797 | Oct. 13, 2017 <sup>16</sup> | 5,000 | <b>4,922<sup>17</sup></b>                                                   |
| <i>Applicants' Proposal</i> |                                           |                |         |                             |       |                                                                             |
| 11.                         | (3) 1-5-010-026                           | 4.048<br>acres | HA-3981 | N/A                         | 5,000 | <b>MDA 4,739</b><br>4,010 s.f. SFR                                          |
| 12.                         | (3) 1-5-010-027                           | 6.402<br>acres | HA-3982 | N/A                         | 5,000 | <b>MDA 4,984 s.f.</b><br>2,750 SFR + landscaping, pool, art<br>studio       |

**Figure 1**



<sup>14</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2019/12/Agenda-191213-D.pdf> (Item K-1).

<sup>15</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2019/12/K-1.pdf> (p. 4)

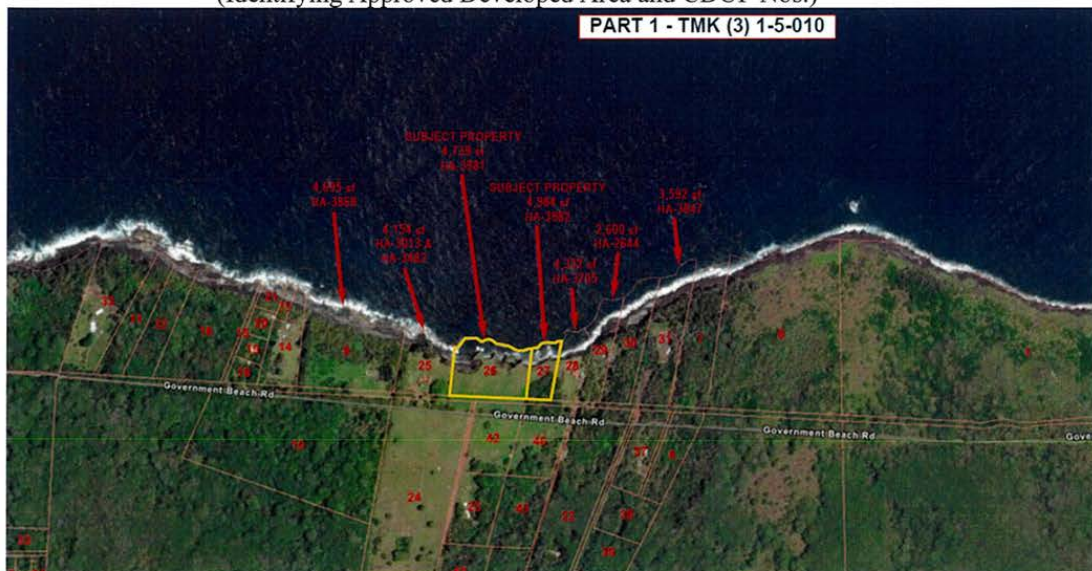
<sup>16</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2018/02/Minutes-171013.pdf> (pgs. 12-13)

<sup>17</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2017/10/K-1.pdf> (p. 4).

6.

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**Figure 2**  
(Identifying Approved Developed Area and CDUP Nos.)



**Figure 3**  
(Identifying Approved Developed Area and CDUP Nos.)



7.

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The Staff Recommendation and some Board members made statements that the general area in which the Properties are located is "remote" and "rural". Denying the Applications for this reason was arbitrary and capricious and made in error. As the Applicants pointed out in their written testimony and presentation to the Board, and as shown on Figures 1 -3 above, this characterization of the Properties is not accurate. In reality, as recognized by the County of Hawai'i Planning Department in its recommendation to approve the Special Management Area permit for the SFRs on Parcels 026 and 027, "[t]he subject parcels are within an *established* residential community that [sic] both agricultural and residential uses, as well as the fully developed Hawaiian Paradies [sic] Park located north of the project site." (Emphasis added.)

B. The Motion Should be Granted Because a Substantial Injustice Has Occurred.

1. The Board Did Not Have Sufficient Time to Consider the Applications and Applicants Were Not Given Sufficient Time to Present the Applications and Counter the Staff Recommendations.

As a foundational matter, the Board did not have sufficient time to consider the Applications. Prior to the November 14, 2025 meeting, Applicants requested that the Board allow Applicants to make a presentation on the Applications, particularly because the staff recommendations were to deny the permits. The Applicants were informed that their presentations would be limited to just five minutes.

In September 2025, Applicants' consultant was told by OCCL staff that the Applications would likely be scheduled for decision making at the Board's October 24, 2025 meeting. This would have given Applicants the opportunity to initially present the Applications to the Board at the October 24, 2025 meeting, and if necessary, address any concerns raised by the Board had at the November 14, 2025 meeting. The only reason given to Applicants for not scheduling the Applications at the October 24th meeting was that OCCL staff could not complete the submittal in time. Instead, OCCL put the Applicants in the untenable position of scheduling the

Applications at a Board meeting just 4 days before the automatic approval deadline and on a very packed agenda with other controversial items, thereby forcing the Board to rush through the limited materials provided by OCCL and vote to deny the permits, even if there were any unanswered questions on the projects, to avoid an automatic approval. This also resulted in leaving Applicants with no choice but to request a contested case hearing.

When HRS § 183C-6 was amended in 2016 to allow for the extension of the 180-day review period of CDUAs by an additional 90 days in the case where environmental review or a contested case proceeding was required, former Board member Christopher Yuen testified in favor of the measure and aptly noted that "[n]ormally, BLNR's staff has been very good at bringing such applications to the board for a decision at a meeting a month or two before the 180-day deadline."<sup>18</sup> Mr. Yuen further noted that "[d]ecisions involving our conservation lands should be made on the merits, not because of an arbitrary deadline." *Id.*

While the Applicants are appreciative that the Board gave them more than five minutes to present the Applications, the time provided was not sufficient to counter OCCL's negative recommendation and the incorrect and incomplete information provided to the Board. This was a clear violation of Applicants' due process rights. Indisputably, Applicants were not given a meaningful opportunity to be heard or any opportunity to refute the incorrect information provided by OCCL. *See Sandy Beach Defense Fund v. City Council of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest."); *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 389, 363 P.3d 224, 237 (2015) (identifying two

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<sup>18</sup> Testimony of Christopher Yuen in support of HB2036, available at [https://www.capitol.hawaii.gov/sessions/Session2016/Testimony/HB2036\\_TESTIMONY\\_WAL\\_02-01-16\\_.PDF](https://www.capitol.hawaii.gov/sessions/Session2016/Testimony/HB2036_TESTIMONY_WAL_02-01-16_.PDF).

instances in which a property interest is considered sufficiently substantial to trigger due process protections, including "where an agency denies an applicant's proposed property use").

2. The Applications Were Not Reviewed by the Board Prior to Denying Them.

The Board's decisions to deny the Applications were arbitrary and capricious and made in error because the Board was not even provided copies of the Applications as part of the Staff Submittals for Agenda Items K-1 and K-2. This deprived the Board of any opportunity to review the actual Applications it was rendering decisions on. Instead, the Board relied entirely on the analysis provided by OCCL staff, including the incorrect information that was apparently dispositive in the Board's decision to deny the Applications. *See* Part III.A, *supra*; *see also* *Mauna Kea Anaina Hou*, 136 Hawai'i at 391, 363 P.3d at 239 (holding that the Board's process of ruling on the merits of a CDUA before the factual record was developed failed to satisfy the appearance of justice).

3. The Applications Comply with the SFR Standards in the Conservation District Rules.

There is no valid, defensible reason for denying the Applications. The proposed SFRs comply with the Conservation District Rules, are below the MDA of 5,000 s.f., and are similar in size and scale to other SFRs the Board has approved in the same area. *See* HAR § 13-5-41 and Exhibit 4 to the Conservation District Rules (providing that the MDA for lots larger than one (1) acre is 5,000 s.f.). Treating Applicants differently from similarly situated neighbors with approved CDUPs for their SFRs is arbitrary, capricious, and a violation of Applicants' due process rights. *See DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC*, 134 Hawai'i 187, 219, 20, 339 P.3d 685, 717-18 (2014) (discussing that the equal protection clauses of the United States and the Hawai'i Constitutions "mandate[] that all persons similarly situated shall be treated alike, both in privileges conferred and in the liabilities imposed" and recognizing an equal

protection claim may be brought by a "class of one," "where the plaintiff alleges that [he/she] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (citations omitted).

The design standards contained in Exhibit 4 to the Conservation District Rules are intended to guide the Board and prevent the very kind of subjective and arbitrary decision-making that occurred at the November 14, 2025 meeting. The January 1991 Auditor report to the Hawai'i Legislature on the regulation of SFR construction in the Conservation District, serious concerns were raised that in the absence of specific standards, it would be hard for the Board to determine whether certain residences were "compatible with the locality and surrounding areas" or violated the subjective condition that "natural beauty and open space be preserved". See *Review of the Regulation of Residential Construction in the Conservation District*, A report to the Governor and the Legislature of the State of Hawai'i, Report No. 91-1, January 1991 by the Auditor of the State of Hawai'i.<sup>19</sup> Despite the adoption of detailed construction standards, those concerns provided true in the Board's denial of the Applications.

HAR § 13-5-41(a) provides that SFR uses approved by the Board must comply with the SFR standards in Exhibit 4 to the Conservation District Rules:

Single family residential uses approved by the board ***shall comply with the design standards contained in Exhibit 4***, entitled "Single Family Residential Standards: August 12, 2011", located at the end of this chapter and made a part of this section, ***except*** as may be allowed by the board ***upon finding that prevailing conditions warrant the deviation from specific standards***, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen percent.

(Emphases added.)

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<sup>19</sup> THE AUDITOR, STATE OF HAWAII, *RESIDENTIAL CONSTRUCTION IN THE CONSERVATION DISTRICT, REPORT NO. 91-1* (Jan. 1991), available at <https://files.hawaii.gov/auditor/Reports/1990-1995/91-1.pdf>.

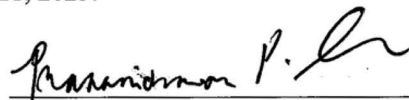
Exhibit 4 provides only one exception that allows for a reduction of the permissible MDAs: "*Site characteristics* and the *degree of pre-existing site disturbance* may be a further limiting factor in the calculation of maximum developable area *when so determined by the board.*" (Emphases added.) Thus, by its own rules, the Board can only reduce the permissible MDA if it makes explicit determination that such a reduction is warranted based on "site characteristics" and "the degree of pre-existing site disturbance." The Board made no such determination that could justify its decision to deny the Applications. Instead, the Board denied the Applications based on: (a) certain members' subjective belief about what the right size of the SFRs should be (without providing any guidance as to what that would be), and (b) the incorrect information provided by the OCCL Administrator on the sizes of the neighboring homes.

The Board's decisions to deny the Applications are clear abuses of the Board's discretion.

### **III. CONCLUSION**

For the reasons set forth above, the Motion should be granted and the Board should approve CDUA HA-3981 and CDUA HA-3982 subject to the standard conditions in HAR § 13-5-42 and the additional conditions proposed by OCCL at the November 14, 2025 meeting. In the alternative, the Board should rescind its prior actions denying the Applications so that the Applicants can withdraw their requests for contested cases hearings and the CDUPs can be issued by operation of law.

DATED: Honolulu, Hawai'i, November 21, 2025.



KATHERINE A. GARSON  
PUANANIONAONA P. THOENE

Attorneys for Applicants  
Opunaha, LLC (Ryan Pastorek) and Paul  
Pastorek

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of

Conservation District Use Permit Application  
Nos. HA-3981 and 3982; Applicants Opunaha,  
LLC (Ryan Pastorek) and Paul Pastorek, Tax  
Map Key Nos. (3) 1-5-010: 026 and 027, Puna,  
County and Island of Hawai'i

CDUA NOS. HA-3981 AND HA-3982

DECLARATION OF COUNSEL;  
EXHIBITS "A" - "E"

**DECLARATION OF COUNSEL**

I, PUANANIONAONA P. THOENE, hereby declare as follows:

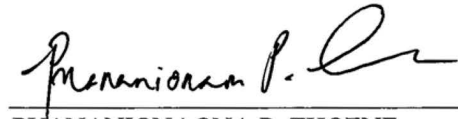
1. I am an attorney with the law firm of Carlsmith Ball LLP, counsel of record for Applicants Opunaha, LLC (whose sole member is Ryan Pastorek) and Paul Pastorek (collectively, "**Applicants**"). This declaration is made on my personal knowledge and I am competent in all respects to make this declaration.
2. Attached hereto as Exhibit A is a true and correct copy of excerpts from a file labeled CDUA #HA-3482 TMK: 3-1-5-10:25 obtained from the State of Hawai'i, Department of Land and Natural Resources, Office of Conservation and Coastal Lands ("**OCCL**") files on November 20, 2025.
3. Attached hereto as Exhibit B is a true and correct copy of a letter dated February 16, 2022 from OCCL to Kim Chiodo at Land Planning Hawaii LLC regarding an After-the-Fact Site Plan Approval (SPA) for the placement of a portable spa on an existing 17' x 17' concrete slab and the partial removal of a pre-existing concrete slab at 2225 Government Beach Road, Puna, Hawaii, Tax Map Key No.: (3) 1-5-010:028.
4. Attached hereto as Exhibit C is a true and correct copy of the OCCL staff submittal dated August 13, 1982 in File No.: HA-3/15/82-1466, obtained from OCCL files on November 21, 2025.
5. Attached hereto as Exhibit D is a true and correct copy of the OCCL staff submittal dated October 28, 2025 in File No.: HA-3233, obtained from OCCL files on November 21, 2025.

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6. Attached hereto as Exhibit E is a true and correct copy of Conservation District Use Permit HA-3233 dated October 28, 2025, obtained from OCCL files on November 21, 2025.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawai‘i, November 21, 2025.

  
PUANANIONAONA P. THOENE