

**FOR ACTION**

**I. SUBJECT**

Shall the Authority Adopt Hearing Officer Rodney K.F. Ching’s Findings of Fact, Conclusions of Law, and Recommended Order, Dated April 22, 2026, in the Contested Case, *In the Matter of Tara Rojas vs. Hawaii Community Development Authority*, CCH-2025-001 (“Contested Case”).

**II. BACKGROUND**

The following is a summary of the pertinent procedural history.

The Petitioner, Tara Rojas, requested that a contested case hearing be initiated on the proposed amendments to the plan and rules for the Kalaeloa community development district (“Petition”).

At the November 17, 2025 Kalaeloa Special Meeting, the authority approved assigning the Petition to a hearings officer for further proceedings pursuant to Hawaii Administrative Rules Section 15-219-48, and Section 15-219-26.

HCDA referred the Petition to the State of Hawaii, Office of Administrative Hearings (“OAH”). The OAH assigned this Contested Case to hearings officer, Rodney K.F. Ching (“Hearings Officer”).

Hunt Communities Hawaii LLC, Kalaeloa Ventures, LLC (and its successors in interest), HCHP1 LLC, VA Aloha, LLC, Wakea Garden Apartments, LLC, KVP6AC, LLC, KVP11, LLC, Gentry Homes, Ltd, and Gentry Kalaeloa, LLC (collectively referred to as “Intervenors”) filed a motion to intervene in the Contested Case, which was granted by the Hearings Officer.

HCDA filed a Motion to Dismiss the Contested Case on March 19, 2026. Intervenors joined on HCDA’s Motion to Dismiss.

Petitioner’s Opposition to Motion to Dismiss and Motion to Set Aside was filed on March 23, 2026 (“Opposition”).

HCDA, in response to the Opposition, filed a Reply to Petitioner’s Opposition to Motion to Dismiss and Motion to Set Aside (“Reply”) on April 9, 2026. Intervenors joined on HCDA’s Reply.

On April 13, 2026, Petitioner filed a Notice and Supplemental Clarification in Opposition to Motion to Dismiss and Regarding Ongoing Consultation.

### III. DISCUSSION

A hearing was convened by the Hearings Officer on April 25, 2026. Present at the hearing were the Petitioner; Intervenor; Kelly Suzuka and Kevin Tongg, Deputy Attorneys General, on behalf of HCDA; and HCDA's Executive Director. The Hearings Officer considered the Motion, Opposition, and arguments presented at the hearing and issued a Findings of Fact, Conclusions of Law, and Recommended Order, attached hereto and made a part hereof as Exhibit "A".

### IV. RECOMMENDATION

That the Authority Adopt Hearing Officer Rodney K.F. Ching's Findings of Fact, Conclusions of Law, and Recommended Order in the Contested Case Dated April 22, 2026, *In the Matter of Tara Rojas vs. Hawaii Community Development Authority*, CCH-2025-001, which is attached as Exhibit "A".

**Attachment:**

Exhibit A – Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order; Exhibit A, Dated April 22, 2026

Note: The "Record" for the Contested Case was previously provided to the Kalaeloa board members on May 8, 2026 and May 11, 2026.

Prepared By: Craig K. Nakamoto, Executive Director: Craig K. Nakamoto

Reviewed By: Garet Sasaki, Chief Financial Officer: Garet Sasaki

**EXHIBIT A**



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
**KA 'OIHANA PILI KĀLEPA**  
335 MERCHANT STREET, ROOM 100  
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**DENISE P. BALANAY**  
SENIOR HEARINGS OFFICER

**RODNEY K.F. CHING**  
**DESIRÉE L. HIKIDA**  
**NATALIA T. CHAN**  
**RYAN H. OTA**  
ADMINISTRATIVE HEARINGS OFFICERS

**JOSH GREEN, M.D.**  
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**NADINE Y. ANDO**  
DIRECTOR | KA LUNA HO'OKELE  
**DEAN I HAZAMA**  
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

April 22, 2026

**TARA ROJAS**  
**TARAHAWAIIKIAI@GMAIL.COM**  
(sent via email only)  
(Petitioner)

**KELLY K SUZUKA ESQ**  
**KEVIN C TONGG ESQ**  
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**BKANG@WIK.COM**  
**KCHANG@WIK.COM**  
(Attorneys for Intervenors)

**Re: In the Matter of the Tara Rojas vs.**  
**Hawaii Community Development Authority; CCH-2025-001**

Dear Parties:

Enclosed is a copy of the Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order ("recommended decision"). The recommended decision has been transmitted to the Hawaii Community Development Authority for final decision.

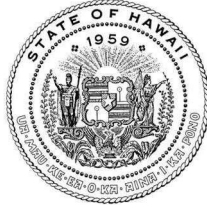
The May 27, 2026 hearing date and all deadlines are taken off the calendar pending final decision.

Sincerely,

  
**RODNEY K.F. CHING**  
Administrative Hearings Officer

RKFC:mjc

Enclosure



HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the matter of

TARA ROJAS,

Petitioner,

vs.

HAWAII COMMUNITY DEVELOPMENT  
AUTHORITY,

Respondent,

and

HUNT COMMUNITIES HAWAII LLC;  
KALAELOA VENTURES, LLC (AND ITS  
SUCCESSORS IN INTEREST); HCHP1  
LLC; VA ALOHA, LLC; WAKEA GARDEN  
APARTMENTS, LLC; KVP6AC, LLC;  
KVP11, LLC; GENTRY HOMES, LTD.;  
AND GENTRY KALAELOA, LLC,

Intervenors.

CCH-2025-001

HEARINGS OFFICERS FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER;  
EXHIBIT "A"

Administrative Hearings Officer:  
Rodney K.F. Ching

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On November 3, 2025, Petitioner TARA ROJAS ("Petitioner"), filed an Amended Petition for Contested Case Hearing ("Amended Petition") against the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("Respondent" or "HCDA").

I HEREBY CERTIFY THAT THE ATTACHED IS A  
TRUE AND CORRECT COPY OF THE ORIGINAL  
ON FILE IN THE DEPARTMENT OF  
COMMERCE & CONSUMER AFFAIRS.

MCasido

On November 25, 2025, HCDA assigned the matter to the Office of Administrative Hearings, Department of Commerce and Consumer Affairs (“OAH”).

On November 28, 2025, HUNT COMMUNITIES HAWAII LLC; KALAELOA VENTURES, LLC (AND ITS SUCCESSORS IN INTEREST); HCHP1 LLC; VA ALOHA, LLC; WAKEA GARDEN APARTMENTS, LLC; KVP6AC, LLC; KVP11, LLC; GENTRY HOMES, LTD.; AND GENTRY KALAELOA, LLC, (“Intervenors”) filed a Joint Motion to Intervene.

On December 1, 2025, OAH transmitted its Notice of Prehearing Conference and Hearing to the parties.

On December 30, 2025, Respondent filed its Response to the Amended Petition.

On January 7, 2026, a prehearing conference was conducted in this matter. Petitioner Tara Rojas was present with her son. Kelly K. Suzuka, Esq. and Kevin C. Tongg, Esq. appeared on behalf of Respondent with Craig K. Nakamoto, Executive Director, present. Brian A. Kang, Esq. appeared on behalf of Intervenor. There being no objection by the parties, Intervenors’ Motion to Intervene was GRANTED. The hearing was scheduled to start on Wednesday, April 15, 2026, at 9:00 a.m. and deadlines were established.

On March 19, 2026, Respondent filed its Motion to Dismiss Amended Petition (“Motion to Dismiss”). On March 20, 2026, Intervenor filed its Substantive Joinder in Respondent’s Motion to Dismiss. On March 23, 2026, Petitioner filed her Opposition to Respondent’s Motion to Dismiss. On April 8, 2026, Petitioner filed her letter regarding an email dated 4/8/26 from HCDA regarding “hold off on scheduling an interview with Petitioner and HCDA’s consultant pending outcome of the contested case hearing”.

On April 8, 2026, a status conference was conducted on this matter. Petitioner Tara Rojas was present. Kelly K. Suzuka, Esq. and Kevin C. Tongg, Esq. appeared on behalf of Respondent with Craig K. Nakamoto, Executive Director, present. Brian A. Kang, Esq. appeared on behalf of Intervenor. There being no objection by the parties, HCDA’s March 27, 2026 letter-request to continue the contested case hearing until a date *after* its Motion to Dismiss is heard, was approved. The hearing was rescheduled to start on Wednesday, May 27, 2026, at 9:00 a.m. and new deadlines were established.

On April 9, 2026, Respondent filed its Reply to Petitioner’s Opposition to Motion to Dismiss. That same date, Intervenor filed its Substantive Joinder thereto.

On April 13, 2026, Petitioner filed her Notice and Supplemental Clarification in Opposition to Motion to Dismiss and Regarding Ongoing Consultation.

On April 15, 2026, a hearing on Respondent's Motion to Dismiss was convened by the undersigned Hearings Officer. Petitioner Tara Rojas was present with her son, and several observers/supporters appeared by ZOOM. Kelly K. Suzuka, Esq. (by ZOOM) and Kevin C. Tongg, Esq. appeared on behalf of Respondent with Craig K. Nakamoto, Executive Director, present. Brian A. Kang, Esq. appeared on behalf of Intervenor. All parties presented their argument(s) on the Motion to Dismiss.

Having reviewed and considered the motion, opposition, and argument presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law, and recommended order.

## II. FINDINGS OF FACT

1. At the hearing, Petitioner agreed that the *timeline* stated in the **Background relating to the Amended Petition**, Section II. b., pages 4 to 5 of Respondent's Motion to Dismiss (emphasis in original), *is accurate*. See Recording at 39:40 to 40:13. The *timeline* is attached hereto at Exhibit A. Accordingly, the Hearings Officer hereby incorporates the *timeline* by reference herein, and adopts the *timeline* as his own findings of fact for purposes of this Motion.

2. To date, the Kalaeloa Board has *not* taken any action or made any decision on the Proposed Amendments to the Kalaeloa Master Plan and Kalaeloa Rules ("Proposed Amendments"). See Exhibit A, page 5.

## III. CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

On March 19, 2026, Respondent filed its Motion to Dismiss. Respondent seeks dismissal of the Amended Petition because "there is **no HCDA action or decision** on the proposed amendments to the Kalaeloa Master Plan and Kalaeloa Rules **for the Petitioner to challenge**." See Motion to Dismiss at page 2 (emphasis added). In other words, Respondent asserts that the Amended Petition is *premature*. See Motion to Dismiss at page 6.

On March 23, 2026, Petitioner filed her Opposition to Respondent’s Motion to Dismiss. Petitioner asserts that the matter is *not* moot or *premature*. See Petitioner’s Opposition to Motion to Dismiss at page 1.

HAR § 15-219-46 provides as follows:

A contested case shall commence upon the filing of a petition for permitted relief with the authority within thirty days of **the action or decision** for which the contested case hearing is sought.

See HAR § 15-219-46 (emphasis added).

Rule 12(b)(6) of the Hawaii Rules of Civil Procedure, allows defendants to file a motion to dismiss for “failure to state a claim upon which relief can be granted”. In reviewing a motion to dismiss, the court must accept all factual allegations in the complaint as true and draw reasonable inferences in the plaintiff’s favor. Even accepting that all factual allegations (and reasonable inferences therefrom) in the Amended Petition are true, the *one unassailable overriding fact* is that “there is **no HCDA action or decision** on the proposed amendments to the Kalaeloa Master Plan and Kalaeloa Rules **for the Petitioner to challenge.**” See Motion to Dismiss at page 2 (emphasis added). Accordingly, the Amended Petition is *premature*.

The authority cited in Petitioner’s Petition is not inconsistent with the Hearings Officer’s conclusion that the Amended Petition is *premature* – inasmuch as the **Kalaeloa Board has not taken any action or made any decision** on the Proposed Amendments - and accordingly, the Amended Petition *fails to state a claim upon which relief can be granted*.

Petitioner asserts two primary albeit related challenges to the Proposed Amendments, *constitutionality* and compliance with *Ka Pa‘akai*<sup>1</sup>:

This Petition is made pursuant to Hawai‘i Revised Statutes (HRS) Chapter 91 and Hawai‘i Administrative Rules (HAR) Title 15, Chapter 219, which provide for a contested case hearing **when an agency’s action** affects the personal rights, duties, or privileges of a specific person. The Hawai‘i State **Constitution**, Article XII Section 7, guarantees the protection of Native Hawaiian traditional and customary practices.

The Hawai‘i Supreme Court in *Ka Pa‘akai o Ka ‘Aona v. Land Use Commission*, 94 Hawai‘i 31 (2000), and *In re Water Use Permit Applications (Waiahole Ditch)*, 94 Hawai‘i 97 (2000), **requires**

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<sup>1</sup> *Ka Pa‘akai o Ka ‘Aona v. Land Use Commission*, 94 Hawai‘i 31 (2000).

**agencies to make specific findings** to protect Native Hawaiian rights and public-trust resources **before approving development actions.**

See Amended Petition number 3 (emphasis added).

**Constitutionality**

The Hearings Officer is persuaded by the case law cited in Respondent’s pleadings and incorporates said case law herein by reference.

A challenge to the *constitutionality* of a *rule* can only be made *after* the rule has been *adopted*, and only in the proper *court*.

Our holding today only requires agencies to show that they met their obligations under the constitution so that the public can evaluate an **agency’s decision**, and **courts** have a basis to review that decision if subsequently challenged in **court**. **After** the agency has prepared and made a **written statement** of the [Ka Pa‘akai] analysis . . .and the **rule** has been adopted, plaintiffs may challenge the **constitutionality of the rule** under article xii, section 7.

See *Flores-Case ‘Ohana v. University of Hawaii*, 153 Hawaii 76 at 85, 526 P.23d 601 at 610 (2023)

First, this tribunal is *not* a *court*.

Second, there is no basis for this tribunal to review HCDA’s *decision* inasmuch as the HCDA has *not yet decided to adopt* the Proposed Amendments.

**Ka Pa‘akai**

According to Respondent, HCDA has retained Keala Pono Archaeological Consulting, LLC (“Keala Pono”) to provide support to the HCDA as the agency independently undertakes the *Ka Pa‘akai* analysis *before* adopting the Proposed Amendments. See HCDA’s Response to Petition at page 3. Based on the work performed by Keala Pono thus far, HCDA staff have proposed that the following recommendations be incorporated into the Proposed Amendments:

- 1) undertake various environmental, archeological, and cultural landscape studies;
- 2) establish an ‘Aha advisory council on cultural issues related to development;
- 3) advocate for the cleanup of Ordy pond;
- 4) support access for cultural practitioners; and
- 5) consider means to support the preservation of traditional cultural practices.

See HCDA's Response to Petition at page 7.

On its face, the Keala Pono *recommendations* appear to be designed to protect Native Hawaiian rights and public-trust resources. As Respondent correctly points out, the Proposed Amendments have *not* been adopted. There is *no HCDA decision* for the public to evaluate. Inasmuch as the HCDA has *not yet* made a decision on the Proposed Amendments, the HCDA is not yet required to make a *written statement* of its *Ka Pa 'akai* analysis available to the public. The HCDA has *not taken action* or made a *decision* that has affected anyone's *constitutional* rights. The Petition is *premature*.

IV. RECOMMENDED ORDER

Accordingly, the Hearings Officer recommends that Respondent's Motion to Dismiss be GRANTED.

DATED: Honolulu, Hawaii, April 22, 2026.

  
\_\_\_\_\_  
RODNEY K.F. CHING  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs

community. Id. at ¶ 11. The draft Proposed Amendments were posted to the HCDA website for public review prior to the August 7, 2024 presentation hearing. Id. Since then, the HCDA made edits to the Proposed Amendments in response to agency, stakeholder, and community feedback. Id. Additionally, in furtherance of the HCDA's obligation to engage in a contemporaneous Ka Pa'akai analysis when promulgating administrative rules pursuant to Flores-Case 'Ohana v. Univ. of Haw., 153 Hawai'i 76, 526 P.3d 601 (2023), the HCDA retained Keala Pono Archaeological Consulting LLC ("Keala Pono") to provide support to the HCDA as the agency independently undertakes the Ka Pa'akai analysis before adopting the Proposed Amendments. Tam Decl. at ¶ 12; see Ka Pa'akai O Ka 'Aina v. Land Use Comm'n, State of Haw., 94 Hawai'i 31, 7 P.3d 1068 (2000).

**b. Background relating to the Amended Petition.**

On September 3, 2025, the HCDA held a presentation public hearing on the Proposed Amendments. Tam Decl. at ¶ 13. The draft Proposed Amendments were posted to the HCDA website for public review prior to the September 3, 2025 presentation hearing. Id. During this public hearing, the Petitioner verbally requested a contested case hearing regarding the Proposed Amendments. Id. On September 12, 2025, the Petitioner submitted to the HCDA a written request for a contested case hearing regarding the Proposed Amendments (the "Original Petition"). Id. at ¶ 14. On September 25, 2025, pursuant to HAR § 15-219-47(b) the HCDA Executive Director requested that the Petitioner submit an updated petition to include certain items required by HAR § 15-219-47(a). Id. at ¶ 15. The Petitioner submitted the Amended Petition on November 3, 2025. Id. at ¶ 16.

The Petitioner makes the following claims in the Amended Petition:

HCDA's proposed Kalaeloa Master Plan and rules will directly impact my community by allowing development over areas

identified with Native Hawaiian traditional and customary practices, known burials, and public-trust resources (groundwater and shoreline). As a Honouliuli resident relying on the same aquifer and transportation corridors, I will be adversely affected by cumulative impacts to water, traffic, and cultural landscapes.

See Amended Petition. Regarding the “Law or Rule Affording Right to Hearing,” the Petitioner claims:

This Petition is made pursuant to Hawai‘i Revised Statutes (HRS) Chapter 91 and Hawai‘i Administrative Rules (HAR) Title 15, Chapter 219, which provide for a contested case hearing **when an agency’s action** affects the personal rights, duties, or privileges of a specific person. The Hawai‘i State Constitution, Article XII, Section 7, guarantees the protection of Native Hawaiian traditional and customary practices.

The Hawai‘i Supreme Court in *Ka Pa ‘akai o Ka ‘Āina v. Land Use Commission*, 94 Hawai‘i 31 (2000), and *In re Water Use Permit Applications (Waiāhole Ditch)*, 94 Hawai‘i 97 (2000), requires agencies to make specific findings to protect Native Hawaiian rights and public-trust resources **before approving development actions**.

See id. (emphasis added).

At the HCDA’s scheduled decision-making hearing regarding the Proposed Amendments on November 5, 2025, the Kalaeloa Board indefinitely deferred decision-making on the Proposed Amendments until completion of the Petitioner’s contested case. Tam Decl. at ¶ 17. On November 17, 2025, the Kalaeloa Board assigned the Amended Petition for further proceedings before a hearings officer and authorized the Executive Director to take all actions necessary to retain a hearings officer and facilitate the contested case hearing. Id. at ¶ 18.

The HCDA retained a hearings officer, and on January 7, 2026, the parties attended a prehearing conference. The contested case hearing is scheduled for April 15-17, 2026.

To date, the Kalaeloa Board has not taken any action or made any decision on the Proposed Amendments. Tam Decl. at ¶ 19.

**EXHIBIT A**



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
**KA 'OIHANA PILI KĀLEPA**  
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April 22, 2026

TARA ROJAS  
TARAHAWAIIKIAI@GMAIL.COM  
(sent via email only)  
(Petitioner)

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KEVIN C TONGG ESQ  
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(Attorneys for Respondent)

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KENDRICK S CHANG ESQ  
999 BISHOP ST STE 1250  
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BKANG@WIK.COM  
KCHANG@WIK.COM  
(Attorneys for Intervenors)

Re: *In the Matter of the Tara Rojas vs.*  
*Hawaii Community Development Authority; CCH-2025-001*

Dear Parties:

Enclosed is a copy of the Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order ("recommended decision"). The recommended decision has been transmitted to the Hawaii Community Development Authority for final decision.

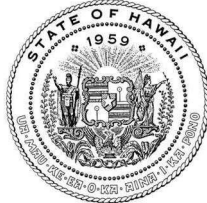
The May 27, 2026 hearing date and all deadlines are taken off the calendar pending final decision.

Sincerely,

**RODNEY K.F. CHING**  
Administrative Hearings Officer

RKFC:mjc

Enclosure



HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the matter of

TARA ROJAS,

Petitioner,

vs.

HAWAII COMMUNITY DEVELOPMENT  
AUTHORITY,

Respondent,

and

HUNT COMMUNITIES HAWAII LLC;  
KALAELOA VENTURES, LLC (AND ITS  
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AND GENTRY KALAELOA, LLC,

Intervenors.

CCH-2025-001

HEARINGS OFFICERS FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER;  
EXHIBIT "A"

Administrative Hearings Officer:  
Rodney K.F. Ching

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On November 3, 2025, Petitioner TARA ROJAS ("Petitioner"), filed an Amended Petition for Contested Case Hearing ("Amended Petition") against the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("Respondent" or "HCDA").

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On March 19, 2026, Respondent filed its Motion to Dismiss Amended Petition (“Motion to Dismiss”). On March 20, 2026, Intervenor filed its Substantive Joinder in Respondent’s Motion to Dismiss. On March 23, 2026, Petitioner filed her Opposition to Respondent’s Motion to Dismiss. On April 8, 2026, Petitioner filed her letter regarding an email dated 4/8/26 from HCDA regarding “hold off on scheduling an interview with Petitioner and HCDA’s consultant pending outcome of the contested case hearing”.

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Having reviewed and considered the motion, opposition, and argument presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law, and recommended order.

## II. FINDINGS OF FACT

1. At the hearing, Petitioner agreed that the *timeline* stated in the **Background relating to the Amended Petition**, Section II. b., pages 4 to 5 of Respondent's Motion to Dismiss (emphasis in original), *is accurate*. See Recording at 39:40 to 40:13. The *timeline* is attached hereto at Exhibit A. Accordingly, the Hearings Officer hereby incorporates the *timeline* by reference herein, and adopts the *timeline* as his own findings of fact for purposes of this Motion.

2. To date, the Kalaeloa Board has *not* taken any action or made any decision on the Proposed Amendments to the Kalaeloa Master Plan and Kalaeloa Rules ("Proposed Amendments"). See Exhibit A, page 5.

## III. CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

On March 19, 2026, Respondent filed its Motion to Dismiss. Respondent seeks dismissal of the Amended Petition because "there is **no HCDA action or decision** on the proposed amendments to the Kalaeloa Master Plan and Kalaeloa Rules **for the Petitioner to challenge**." See Motion to Dismiss at page 2 (emphasis added). In other words, Respondent asserts that the Amended Petition is *premature*. See Motion to Dismiss at page 6.

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See HAR § 15-219-46 (emphasis added).

Rule 12(b)(6) of the Hawaii Rules of Civil Procedure, allows defendants to file a motion to dismiss for “failure to state a claim upon which relief can be granted”. In reviewing a motion to dismiss, the court must accept all factual allegations in the complaint as true and draw reasonable inferences in the plaintiff’s favor. Even accepting that all factual allegations (and reasonable inferences therefrom) in the Amended Petition are true, the *one unassailable overriding fact* is that “there is **no HCDA action or decision** on the proposed amendments to the Kalaeloa Master Plan and Kalaeloa Rules **for the Petitioner to challenge**.” See Motion to Dismiss at page 2 (emphasis added). Accordingly, the Amended Petition is *premature*.

The authority cited in Petitioner’s Petition is not inconsistent with the Hearings Officer’s conclusion that the Amended Petition is *premature* – inasmuch as the **Kalaeloa Board has not taken any action or made any decision** on the Proposed Amendments - and accordingly, the Amended Petition *fails to state a claim upon which relief can be granted*.

Petitioner asserts two primary albeit related challenges to the Proposed Amendments, *constitutionality* and compliance with *Ka Pa‘akai*<sup>1</sup>:

This Petition is made pursuant to Hawai‘i Revised Statutes (HRS) Chapter 91 and Hawai‘i Administrative Rules (HAR) Title 15, Chapter 219, which provide for a contested case hearing **when an agency’s action** affects the personal rights, duties, or privileges of a specific person. The Hawai‘i State **Constitution**, Article XII Section 7, guarantees the protection of Native Hawaiian traditional and customary practices.

The Hawai‘i Supreme Court in *Ka Pa‘akai o Ka ‘Aona v. Land Use Commission*, 94 Hawai‘i 31 (2000), and *In re Water Use Permit Applications (Waiahole Ditch)*, 94 Hawai‘i 97 (2000), **requires**

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<sup>1</sup> *Ka Pa‘akai o Ka ‘Aona v. Land Use Commission*, 94 Hawai‘i 31 (2000).

**agencies to make specific findings** to protect Native Hawaiian rights and public-trust resources **before approving development actions.**

See Amended Petition number 3 (emphasis added).

**Constitutionality**

The Hearings Officer is persuaded by the case law cited in Respondent’s pleadings and incorporates said case law herein by reference.

A challenge to the *constitutionality* of a *rule* can only be made *after* the rule has been *adopted*, and only in the proper *court*.

Our holding today only requires agencies to show that they met their obligations under the constitution so that the public can evaluate an **agency’s decision**, and **courts** have a basis to review that decision if subsequently challenged in **court**. **After** the agency has prepared and made a **written statement** of the [Ka Pa‘akai] analysis . . .and the **rule** has been adopted, plaintiffs may challenge the **constitutionality of the rule** under article xii, section 7.

See *Flores-Case ‘Ohana v. University of Hawaii*, 153 Hawaii 76 at 85, 526 P.23d 601 at 610 (2023)

First, this tribunal is *not* a *court*.

Second, there is no basis for this tribunal to review HCDA’s *decision* inasmuch as the HCDA has *not yet decided to adopt* the Proposed Amendments.

**Ka Pa‘akai**

According to Respondent, HCDA has retained Keala Pono Archaeological Consulting, LLC (“Keala Pono”) to provide support to the HCDA as the agency independently undertakes the *Ka Pa‘akai* analysis *before* adopting the Proposed Amendments. See HCDA’s Response to Petition at page 3. Based on the work performed by Keala Pono thus far, HCDA staff have proposed that the following recommendations be incorporated into the Proposed Amendments:

- 1) undertake various environmental, archeological, and cultural landscape studies;
- 2) establish an ‘Aha advisory council on cultural issues related to development;
- 3) advocate for the cleanup of Ordy pond;
- 4) support access for cultural practitioners; and
- 5) consider means to support the preservation of traditional cultural practices.

See HCDA's Response to Petition at page 7.

On its face, the Keala Pono *recommendations* appear to be designed to protect Native Hawaiian rights and public-trust resources. As Respondent correctly points out, the Proposed Amendments have *not* been adopted. There is *no HCDA decision* for the public to evaluate. Inasmuch as the HCDA has *not yet* made a decision on the Proposed Amendments, the HCDA is not yet required to make a *written statement* of its *Ka Pa 'akai* analysis available to the public. The HCDA has *not taken action* or made a *decision* that has affected anyone's *constitutional* rights. The Petition is *premature*.

IV. RECOMMENDED ORDER

Accordingly, the Hearings Officer recommends that Respondent's Motion to Dismiss be GRANTED.

DATED: Honolulu, Hawaii, April 22, 2026.

  
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RODNEY K.F. CHING  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs

community. Id. at ¶ 11. The draft Proposed Amendments were posted to the HCDA website for public review prior to the August 7, 2024 presentation hearing. Id. Since then, the HCDA made edits to the Proposed Amendments in response to agency, stakeholder, and community feedback. Id. Additionally, in furtherance of the HCDA's obligation to engage in a contemporaneous Ka Pa'akai analysis when promulgating administrative rules pursuant to Flores-Case 'Ohana v. Univ. of Haw., 153 Hawai'i 76, 526 P.3d 601 (2023), the HCDA retained Keala Pono Archaeological Consulting LLC ("Keala Pono") to provide support to the HCDA as the agency independently undertakes the Ka Pa'akai analysis before adopting the Proposed Amendments. Tam Decl. at ¶ 12; see Ka Pa'akai O Ka 'Aina v. Land Use Comm'n, State of Haw., 94 Hawai'i 31, 7 P.3d 1068 (2000).

**b. Background relating to the Amended Petition.**

On September 3, 2025, the HCDA held a presentation public hearing on the Proposed Amendments. Tam Decl. at ¶ 13. The draft Proposed Amendments were posted to the HCDA website for public review prior to the September 3, 2025 presentation hearing. Id. During this public hearing, the Petitioner verbally requested a contested case hearing regarding the Proposed Amendments. Id. On September 12, 2025, the Petitioner submitted to the HCDA a written request for a contested case hearing regarding the Proposed Amendments (the "Original Petition"). Id. at ¶ 14. On September 25, 2025, pursuant to HAR § 15-219-47(b) the HCDA Executive Director requested that the Petitioner submit an updated petition to include certain items required by HAR § 15-219-47(a). Id. at ¶ 15. The Petitioner submitted the Amended Petition on November 3, 2025. Id. at ¶ 16.

The Petitioner makes the following claims in the Amended Petition:

HCDA's proposed Kalaeloa Master Plan and rules will directly impact my community by allowing development over areas

identified with Native Hawaiian traditional and customary practices, known burials, and public-trust resources (groundwater and shoreline). As a Honouliuli resident relying on the same aquifer and transportation corridors, I will be adversely affected by cumulative impacts to water, traffic, and cultural landscapes.

See Amended Petition. Regarding the “Law or Rule Affording Right to Hearing,” the Petitioner claims:

This Petition is made pursuant to Hawai‘i Revised Statutes (HRS) Chapter 91 and Hawai‘i Administrative Rules (HAR) Title 15, Chapter 219, which provide for a contested case hearing **when an agency’s action** affects the personal rights, duties, or privileges of a specific person. The Hawai‘i State Constitution, Article XII, Section 7, guarantees the protection of Native Hawaiian traditional and customary practices.

The Hawai‘i Supreme Court in *Ka Pa ‘akai o Ka ‘Āina v. Land Use Commission*, 94 Hawai‘i 31 (2000), and *In re Water Use Permit Applications (Waiāhole Ditch)*, 94 Hawai‘i 97 (2000), requires agencies to make specific findings to protect Native Hawaiian rights and public-trust resources **before approving development actions**.

See id. (emphasis added).

At the HCDA’s scheduled decision-making hearing regarding the Proposed Amendments on November 5, 2025, the Kalaeloa Board indefinitely deferred decision-making on the Proposed Amendments until completion of the Petitioner’s contested case. Tam Decl. at ¶ 17. On November 17, 2025, the Kalaeloa Board assigned the Amended Petition for further proceedings before a hearings officer and authorized the Executive Director to take all actions necessary to retain a hearings officer and facilitate the contested case hearing. Id. at ¶ 18.

The HCDA retained a hearings officer, and on January 7, 2026, the parties attended a prehearing conference. The contested case hearing is scheduled for April 15-17, 2026.

To date, the Kalaeloa Board has not taken any action or made any decision on the Proposed Amendments. Tam Decl. at ¶ 19.