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Subject: Opposition to Petition for a Standing in a Contested Case Hearing | Pacific Resource Partnership (PL-CCH-2026-000031) - April 23, 2026 Leeward Planning Commission
Date: Wednesday, April 22, 2026 2:45:31 PM
Attachments: [Applicant Opposition to PRP Request for Intervention.pdf](#)

All,

Attached please find the Applicant's Opposition to Pacific Resource Partnership's Petition for Standing in a Contested Case Hearing; Applicant: DHL Mahi Site M LLC and DHL Mahi PropCo LLC (PL-SMA-2026-000087/Amend SMA 07-019).

As the Petition is scheduled to be heard at the April 23, 2026 Leeward Planning Commission meeting (Item 2 on the Agenda), we request that you disseminate this response to the Commissioners as soon as possible.

If you have any questions, please feel free to contact me.

Thank you,

Kathy

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April 22, 2026

VIA E-MAIL (PLANNING@HAWAIICOUNTY.GOV)

Dean Au, Chairperson
Leeward Planning Commission
Members of the Leeward Planning Commission
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Re: Opposition to Pacific Resource Partnership's Petition for
Standing in a Contested Case Hearing
Applicant: DHL Mahi Site M LLC and DHL Mahi PropCo LLC (PL-SMA-2026-
000087/Amend SMA 07-019)

Dear Chair Au and Members of the Leeward Planning Commission:

This firm represents applicants DHL Mahi Site M, LLC and DHL Mahi PropCo, LLC (together, "**DHL**") in connection with the above-referenced application ("**Application**") to amend Special Management Area ("SMA") Permit 07-019 ("**SMA 07-019**"). DHL opposes the Petition for Standing in a Contested Case Hearing ("**Petition**") filed by Pacific Resource Partnership ("**PRP**") on April 14, 2026.

I. Introduction

In January 2026, DHL filed its Application seeking to amend SMA 07-019. The Application seeks modest, well-planned amendments to SMA 07-019 in order to: (a) construct an emergency evacuation road in furtherance of an existing condition of the SMA 07-019; (b) significantly reduce the density of the project from 1,207 total units (residential and hotel) to 925 total units, which represents a 23.4% reduction in the overall density of the project; (c) eliminate certain golf course and conference facilities, as well as consolidate building footprints, to increase and preserve open space areas; and (d) extend the development timeframe for the project.

In support of the Application, the following updated technical studies were completed: (a) Natural Resource Survey; (b) Archaeological Field Investigation and Literature Review for the Site "M" project area; (c) Archaeological Field Inspection for the emergency evacuation road; (d)

Ka Pa‘akai O Ka ‘Āina Analysis; and (e) Preliminary Engineering Report. As part of preparing the Application, DHL engaged in extensive consultation with relevant agencies and neighboring landowners, and received support from the County Fire Department and the State Department of Transportation for the planned emergency evacuation road.

On April 14, 2026, PRP filed its Petition, although a copy was not provided to DHL until days later, on April 17, 2026. According to the Petition, “PRP is a market recovery trust fund which represents approximately 6,000 men and women union carpenters and 250 large and small contractors throughout the State of Hawai‘i, including approximately 600 union members on Hawai‘i Island.” Petition at 4. PRP’s Petition fails to show that its stated interest is clearly distinguishable from that of the general public, and fails to demonstrate any actual or threatened injury to PRP or its members. The Commission should therefore deny the Petition.

II. Relevant Commission Rules

Under Rule 4-6(b) of the County of Hawai‘i Planning Commission Rules of Practice and Procedure (“**Commission Rules**”), a petitioner shall be admitted as an intervenor only if the petitioner establishes that:

- (1) His or her interest is clearly distinguishable from that of the general public; or
- (2) Government agencies whose jurisdiction includes the land involved in the subject request; or
- (3) That they have some property interest in the land or lawfully reside on the land; or
- (4) That even though they do not have an interest different than the public generally, that the proposed action will cause them actual or threatened injury in fact; or
- (5) Persons who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practice those rights which are customarily and traditionally exercised for subsistence, cultural or religious purposes.

Commission Rule 4-6(b). PRP’s Petition asserts only that it should be allowed to intervene under the first and fourth criteria.

III. Discussion

- a. PRP Fails to Establish that its Interest in the Commission’s Proceedings on the Application is Clearly Distinguishable from that of the General Public.

PRP argues that it is entitled to “organization and associational” standing pursuant to Commission Rule 4-6(b)(1), which provides that a “petitioner shall be admitted as a party if it can demonstrate that: . . . His or her interest is clearly distinguishable from that of the general public[.]”

However, PRP does not allege any interest clearly distinguishable from that of the general public. PRP offers only broad, general statements about an interest in ensuring that development projects reflect responsible and environmentally sound planning and execution. PRP's generalized interest in responsible development is indisputably shared by the general public writ large.

There is no question that everyone, DHL included, desires responsible development. However, the fact that PRP represents the carpenters union and other contractors does not establish that its interest is clearly distinguishable from that of the general public, nor evidence any sort of constitutional, statutory, or other protected property interest implicated by the Application. See *Sandy Beach Def. Fund v. City Council of City & Cnty. of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260-61 (1989) (where the appellants' asserted property interests are of an aesthetic and general environmental nature, they do not rise to the level of "property" within the meaning of the due process clause and the appellants were thus not entitled to a contested case hearing).

Similar to the Plaintiffs in *Sandy Beach Defense Fund*, PRP argues that "its members, as critical members of the local development section have an interest in development and land use that comprehensively accounts for the local economy and environment by including community members in the administrative process." Petition at 6. Again, these generalized interests are insufficient and PRP cites to no "property interest" or any "benefit to which [any of its members are] legitimately entitled to,"¹ and thus cannot distinguish its interest from that of the general public. PRP therefore cannot establish standing to intervene under Commission Rule 4-6(b)(1).²

b. PRP Fails to Establish that either it or its Members will Suffer an Actual or Threatened Injury.

Because PRP cannot show that it has an interest different than that of the public generally, in order to intervene in this matter, PRP must show that it will suffer an actual or threatened injury pursuant to Commission Rule 4-6(b)(4). PRP has failed to do so.

PRP argues that it satisfies the three-prong test for standing set forth in *Sierra Club v. Dep't of Transp.*, 115 Hawai'i 299, 167 P.3d 292 (2007), which asks: "(1) has the plaintiff suffered an actual or threatened injury . . . ; (2) is the injury fairly traceable to the defendant's actions; and (3) would a favorable decision likely provide relief for plaintiff's injury." *Id.* at 319, 167 P.3d at 312 (citation omitted); see also *Kia'i Wai O Wai'ale'ale v. Bd. of Land & Nat. Res.*, 157 Hawai'i 303,

¹ See *In re Application of Maui Elec. Co., Ltd.* (MECO), 141 Hawai'i 249, 260, 408 P.3d 1, 12 (2017) ("We have long recognized that constitutional due process protections mandate a hearing whenever the claimant seeks to protect a property interest, in other words, a benefit to which the claimant is legitimately entitled.").

² PRP also attaches a decision from a Circuit Court on Kaua'i, where the court found that PRP had established standing to intervene in a case involving an industrial manufacturing plant operated by HPM. DHL cautions the Commission not to read too much into that decision, as it was not reviewed by a Hawai'i appellate court and has no precedential value, and standing to intervene must be decided on a case-by-case basis under the facts and circumstances at issue.

315, 576 P.3d 816, 828 (2025) (articulating same test) (citing *Kilakila ‘O Haleakala v. Bd. of Land & Nat. Res.*, 131 Hawai‘i 193, 204, 317 P.3d 27, 38 (2013) (internal quotation marks omitted)). “Since the test is stated in the conjunctive,” PRP “must satisfy all three prongs to establish its standing.” *Sierra Club v. Hawaii Tourism Auth. ex rel. Bd. of Directors*, 100 Hawai‘i 242, 250, 59 P.3d 877, 885 (2002). PRP fails at each prong.

“The injury prong of the standing inquiry requires an assertion of a **judicially-cognizable injury**, that is, a **harm to some legally-protected interest**.” *Protect & Pres. Kahoma Ahupua‘a Ass’n v. Maui Plan. Comm’n*, 148 Hawai‘i 275, 472 P.3d 42 (Ct. App. 2020) (“**PPKAA**”) (citation omitted; emphasis added). Thus, “[i]n order for individuals or groups legitimately to invoke contested case hearing procedures on SMA permit applications . . . , they must be ‘**directly and immediately** affected by the Commission’s decision[.]’” *Citizens for Prot. of N. Kohala Coastline v. Cnty. of Hawai‘i*, 91 Hawai‘i 94, 100, 979 P.2d 1120, 1126 (1999) (“**Citizens**”) (emphasis added).

PRP first argues that “[t]he interests of PRP and its members in responsible development are affected by the proposed extension inasmuch as it would allow Applicant to continue to delay the proposed Project while avoiding the scrutiny that would come with re-applying for an SMA Use Permit – directly undercutting PRP’s efforts to **advocate** for a stronger, more sustainable Hawai‘i through **responsible development**.” Petition at 5 (emphasis added). PRP’s stated goal of advocating for responsible development is admirable, but falls short of a legally-protected interest or demonstrating that it will be “directly and immediately affected by the Commission’s decision” on DHL’s Application. *Citizens*, 91 Hawai‘i at 100, 979 P.2d at 1126.

PRP next argues that “[i]rresponsible development and unplanned changes in development, such as those proposed here by Applicant, **directly impact contractors** like those represented by PRP” and that “projects that languish in the planning stage for decades **deprive PRP’s members of the ability to appropriately plan potential investment, scheduling, employment, allocation of resources and other opportunities**.” Petition at 5-6 (emphasis added). These arguments suggest that PRP’s allegedly injury is wholly hypothetical, pecuniary in nature, and arises from economic opportunities for and the employment needs of its members. However, PRP provides no argument or authority that any of these alleged harms rise to the level of a “judicially-cognizable injury” or “harm to some legally-protected interest” that is implicated in the Commission’s proceedings on the Application. *PPKAA*, 148 Hawai‘i 275, 472 P.3d 42. PRP has therefore failed to establish an “actual or threatened injury” under the first prong of the *Sierra Club* test.

PRP’s arguments under the second and third prongs are not entirely clear. Ultimately, however, PRP argues that “[a] decision by the Commission to deny the Application for an extension would vindicate PRP and its members’ interest” and that “if granted, this extension will directly and significantly undermine PRP’s efforts to advocate for responsible development and, even more insidiously, may encourage other developers to sit on SMA Use Permit approvals for inordinate amounts of time as potential adverse effects mount.” Petition at 6. In other words, PRP is urging the Commission to take punitive action to deny the DHL’s Application, so as to deter

future developers and developments from seeking time extensions, even where the Commission Rules explicitly allow for such time extensions. See Commission Rule 9-11(g).

PRP's argument ignores the fact that the project has not yet exceeded the initial development timeframe and administrative time extensions approved under SMA 07-019, and that DHL is following the appropriate process for obtaining a further time extension from the Commission.³ PRP's argument also defies common sense and logic – a denial of the Application could result in the hurried and unordered development of the project at a higher density than proposed in the Application, further delays in the development of the project, or the project not being developed altogether. These results appear contrary, if not antithetical, to PRP's claimed injury to its members' "ability to appropriately plan potential investment, scheduling, employment, allocation of resources and other opportunities" in connection with development projects across the state and its concerns over supporting the local economy.

For all of these reasons, PRP has failed to establish that it has an actual or threatened injury under Commission Rule 4-6(b)(4).

c. PRP Fails to Establish that it has Organizational Standing to Intervene on Behalf of its Members.

PRP also argues that "organizations such as PRP have associational standing to sue on behalf of their members, even though they have not themselves been injured, when: '(a) its members would otherwise have standing to sue in their own right; (b) the interest it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" Petition at 7 (quoting *Sierra Club*, 115 Hawai'i at 334, 167 P.3d at 327).

However, other than summarily concluding that it satisfies these three requirements, PRP offer no actual argument as to how its members would demonstrate standing under Commission Rule 4-6(b). For example, PRP argues, without any elaboration, that "its members, as citizens of the broader Hawai'i Island Community, would have standing on their own to raise issues relating to responsible development concerns." Petition at 7. In other words, PRP argues that any member of any union or any contractor represented by PRP that resides within the County of Hawai'i would automatically and necessarily have standing to intervene on DHL's Application, regardless of where they live in the County, regardless of whether they will be "directly and immediately affected by the Commission's decision" on DHL's Application, *Citizens*, 91 Hawai'i at 100, 979 P.2d at 1126, and regardless of whether the alleged harm rises to the level of a "judicially-cognizable injury" or a "harm to some legally-protected interest." *PPKAA*, 148 Hawai'i 275, 472 P.3d 42. PRP offers no analysis of an alleged injury-in-fact to any of its members or declarations

³ DHL's request for an extension is objectively reasonable and made in good faith, given the unprecedented impacts of the COVID-19 pandemic and the significant amount of time, money, and resources DHL has invested in working with the County Fire Department on the emergency evacuation road and completing the updated studies supporting the Application.

or other statements from any of its members to establish such an injury. There is absolutely no support for such a broad and sweeping view of the Commission's standing requirements, and PRP offers none.

PRP concludes by arguing that "[t]he Application on its face raises questions regarding potential intervening events since the initial Permit approval that warrant additional scrutiny as to whether the Project continues to align with the needs of the community," and points to the findings and recommendations in the updated Ka Pa'akai O Ka 'Āina Analysis and comments about traffic included in the Application. Once again, however, PRP provides no discernable argument (or evidence) as to how any of these alleged "intervening events" have resulted or will result in a cognizable injury to its members, other than their alleged broad, generalized interest in "responsible development." This is fatal to PRP's request to intervene, because "[a]lthough the Supreme Court of Hawai'i has acknowledged a variety of . . . interests that, if injured, can form the basis for standing in environmental cases, **the ultimate inquiry depends on injury to the plaintiffs themselves, not the environment.**" *PPKAA*, 148 Haw. 275, 472 P.3d 42 (emphasis added).

For all of these reasons, PRP has failed to establish that it has standing on behalf of its members under Commission Rule 4-6(b).

IV. Conclusion

PRP's Petition fails to establish that it is entitled to intervene in the Commission's proceedings on DHL's Application and should be denied.

Sincerely,

CARLSMITH BALL LLP

A handwritten signature in black ink, appearing to read 'Katherine A. Garson', with a long horizontal flourish extending to the right.

Katherine A. Garson
Partner

cc: William Jarrett, Deputy Corporation Counsel
Jean Campbell, Deputy Corporation Counsel
Abigail Holden and Andrew Recktenwald, Cox Fricke LLP