

BOARD OF APPEALS
COUNTY OF HAWAII

DRAFT MINUTES
May 15, 2026

The County of Hawai'i Board of Appeals met in regular session at 9:30 a.m. in the Hawai'i County Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720 and via the Zoom online platform. The meeting was called to order with Chair Cathy Lewis presiding. A quorum was established with four members in attendance.

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/watch?v=W2hXUwyAqbl>

MEMBERS PRESENT IN PERSON: Cathy Lewis (Chair), Rachel Able (Vice Chair) and Scott Martin

MEMBERS PRESENT ON ZOOM: John Kimura.

MEMBERS EXCUSED: Maci Wilson

ALSO IN ATTENDANCE: Sylvia Wan, Esq. (Deputy Corporation Counsel for the Board), Bethany Morrison (Staff to the Board), and Kim Tanaka (Staff to the Board)

There were three members of the public in attendance and one member via Zoom.

Chair Lewis reviewed online meeting protocols and procedures.

Introductions of board members and staff were made.

STATEMENTS FROM THE PUBLIC ON ITEMS ON THE AGENDA

At 9:33 a.m., Chair Lewis called for statements from the public. There were no public testifiers.

[SEE YOUTUBE TIMESTAMP 4:11]

Testimony closed at 9:34 a.m.

OLD BUSINESS

1. DWIGHT VICENTE (PL-INT-2025-011330)

PROPOSED ORDER REJECTING DEFECTIVE PETITION

Appeal of Decision by the Planning Director, Date Unknown.

Location: Ainaola Drive, Hilo, HI 96720

TMK: (3) 2-4-050:037

PARTIES PRESENT: Dwight Vicente (appellant)

This item was called to order at 9:37 a.m. There were three members of the public and no public testimony was provided.

[SEE YOUTUBE TIMESTAMP 7:02] Chair Lewis asked Mr. Vicente whether he wished to provide public testimony, noting that he had previously provided input on this agenda item.

[SEE YOUTUBE TIMESTAMP 7:06] Mr. Vicente testified on behalf of the Hawaiian Kingdom, presenting his views on the legal status of Crown Lands, leased lands, and governmental jurisdiction. He referenced historical land transactions, the 1848 Mahele, and court cases to argue that certain leased lands are not subject to state or county jurisdiction. He concluded by reserving his rights under Queen Lili'uokalani's January 17, 1893 protest.

[SEE YOUTUBE TIMESTAMP 10:41] Vice Chair Able moved to approve the proposed order rejecting Petition PL-INT-2025-011330 as defective, consistent with the Board's January 9, 2026 decision. Board member Martin seconded the motion. There were no further discussion on this matter. A roll-call vote was taken and the motion passed with four ayes (Able, Kimura, Martin, Lewis).

This item concluded at 9:43 a.m.

NEW BUSINESS

2. WILLIAM FRAZIER (PL-BOA-2025-000123)

Appeal of Decision by the Director of Public Works Dated July 23, 2025, Regarding Notice of Unpermitted Driveway in the County Right-of-Way.

Location: Wright Road, Volcano, HI 96785

TMK: (3) 1-9-003:018

PARTIES PRESENT: William Frazier (appellant), Sinclair Salas Ferguson (Deputy Corporation Counsel for the Department of Public Works)

This item was called to order at 9:44 a.m. Four members of the public were present in person, and one member participated via Zoom. No public testimony was provided.

[SEE YOUTUBE TIMESTAMP 13:14] Mr. Frazier testified that the property is a vacant agricultural lot still under development and therefore does not currently require a driveway. He stated that the Old Volcano Road access was created for drainage purposes, is used only occasionally, and is not the primary means of accessing the property. He also expressed concerns about the County's enforcement of driveway requirements and neighboring property compliance.

[SEE YOUTUBE TIMESTAMP 22:27] Mr. Salas Ferguson objected to the appellant's testimony regarding the neighboring property and advised that the appeal should be limited to matters concerning the appellant's driveway.

[SEE YOUTUBE TIMESTAMP 22:39] Chair Lewis stated that portions of the testimony were not relevant to the appeal, noting that while explanations regarding whether the subject area constitutes a driveway were relevant, issues concerning the neighboring property's driveway should be addressed separately.

[SEE YOUTUBE TIMESTAMP 22:56] Mr. Frazier testified that the property is used for agricultural purposes and is still being cleared. He stated that the access area is not being used as a driveway and requested that installation of a driveway be deferred until future development of the property occurs and the final access location is determined.

[SEE YOUTUBE TIMESTAMP 24:00] Mr. Salas Ferguson stated that county code requires a permitted driveway approach whenever a county road is used for property access. Because the appellant acknowledged using the access point for ingress and egress, he argued that a permit is required and Public Works standards must be met. He requested that the Board uphold the Department's decision requiring the appellant to obtain the necessary permit.

[SEE YOUTUBE TIMESTAMP 25:34] Chair Lewis asked Mr. Frazier whether he intended to present or question witnesses. Mr. Frazier stated that he did not have any witnesses.

[SEE YOUTUBE TIMESTAMP 25:48] Mr. Salas Ferguson clarified that a prior statement made during the hearing did not constitute evidence but was only a statement.

[SEE YOUTUBE TIMESTAMP 26:13] Ms. Wan advised Mr. Frazier that his prior remarks constituted an opening statement and argument rather than evidence. Ms. Wan then asked whether he wished to testify on his own behalf and informed him that this would be the appropriate time to present evidence for the Board's consideration.

[SEE YOUTUBE TIMESTAMP 28:10] Ms. Wan stated that before proceeding with the Department's presentation, Mr. Frazier waived his right to present witnesses for the hearing.

[SEE YOUTUBE TIMESTAMP 29:29] A standing recess was called at 10:01 a.m. to get set up for the witness.

[SEE YOUTUBE TIMESTAMP 31:03] Melanie DeMello, Deputy Chief of the Engineering Division, was sworn in and testified on behalf of the Department. The Record on Appeal was admitted into evidence. Ms. DeMello explained the complaint investigation process and confirmed that an investigation of the subject

property found an unpermitted driveway violation, resulting in the issuance of a Notice of Violation. She also confirmed that the Record on Appeal included the complaint, investigation findings, and Notice of Violation.

[SEE YOUTUBE TIMESTAMP 56:38] Chair Lewis announced the start of closing statements and advised the parties that each would be allowed up to ten minutes to present their closing arguments. The Chair then invited Mr. Frazier to proceed with his closing statement and noted that a time warning would be provided if necessary.

[SEE YOUTUBE TIMESTAMP – 57:00] Mr. Frazier acknowledged that a driveway permit would eventually be required but argued that it was premature to require one while the property remains under development. He requested additional time to determine the appropriate driveway location and maintained that the existing access is only occasionally used and not the primary access point. He also contended that the complaint stemmed from a dispute with a neighboring property owner and stated his intent to obtain the necessary permit in the future.

[SEE YOUTUBE TIMESTAMP – 1:13] In closing, Mr. Salas Ferguson argued that the Board's review is limited to determining whether the Department's decision was clearly erroneous, contrary to law, arbitrary, capricious, or an abuse of discretion. He maintained that the evidence supported the issuance of the Notice of Violation and requested that the Board affirm the Department's decision.

[SEE YOUTUBE TIMESTAMP 1:08:10] Vice Chair Able moved to affirm the Director's decision, finding it was not erroneous, arbitrary, capricious, or an abuse of discretion. She noted that the appellant acknowledged placing cinder material in the access area and using the access across the County right-of-way without the required permit. Board Member Martin seconded the motion, and there was no further discussion. A roll-call vote was taken and the motion passed with four ayes (Able, Kimura, Martin, Lewis).

This item concluded at 10:45 a.m.

3. CLAUDIA ROHR (PL-BOA-2025-000119)

Appeal of Decision by the Planning Director Dated April 11, 2025, Regarding Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2025-000280) Exemption.

Location: 14 Oeoe Street, Hilo, HI 96720

TMK: (3) 2-1-018:013

PARTIES PRESENT: Claudia Rohr (appellant)

This item was called to order at 11:01 a.m. There were three members of the public and no public testimony was provided.

[SEE YOUTUBE TIMESTAMP 1:29:47] Chair Lewis acknowledged receipt of the appellant's memorandum and informed the parties that the Board would review the document as part of its consideration of the appeal.

[SEE YOUTUBE TIMESTAMP 1:30:53] Chair Lewis reconvened the meeting at 11:03 a.m. and provided procedural reminders to participants. Attendees were asked to silence mobile phones and other devices that could cause distractions, and Zoom participants were reminded to keep their cameras on throughout the hearing. Ms. Wan identified the individuals present in person and by Zoom for the record, including Board members, staff, the landowner, and the appellant. She noted that the appellant was present on Zoom but did not have her camera activated and stated that she would be asked to turn it on when her case was called.

[SEE YOUTUBE TIMESTAMP 1:33:08] Chair Lewis reviewed the hearing procedures, reminding participants to mute microphones when not speaking, wait to be recognized before speaking, identify themselves for the record, and avoid side conversations. She emphasized maintaining an orderly proceeding to ensure a clear recording and transcript and noted that a transcript would be available after the hearing.

[SEE YOUTUBE TIMESTAMP 1:34:56] Chair Lewis requested that Ms. Rohr turn on her camera as her case was being called. The Chair then called the case of Claudia Rohr, Case No. PL-BOA-2025-000119, an appeal of the Planning Director's April 11, 2025 decision regarding a Special Management Area (SMA) Use Permit Assessment Exemption Application (PL-SAA-2025-000280). The property subject to the appeal is located at 14 Oeoe Street, Hilo, Hawai'i 96720.

[SEE YOUTUBE TIMESTAMP 1:35:55] Chair Lewis asked if there were any public testifiers. There were no public testifiers on this agenda item.

[SEE YOUTUBE TIMESTAMP 1:46:56] Ms. Campbell argued that the appellant failed to establish standing because she did not demonstrate a direct and particularized injury distinct from that of the general public. She explained that the appeal concerned an SMA Use Permit Exemption for minor residential improvements and maintained that the appellant's concerns regarding traffic, parking, and emergency access were speculative and unrelated to the exemption determination. She requested that the Board dismiss the appeal for lack of standing.

[SEE YOUTUBE TIMESTAMP 1:54:01] Ms. Rohr argued that the proposed second-story deck and stairway would improperly expand a nonconforming use and raise zoning and land use concerns. She also contended that the Department's motion to dismiss was untimely and deprived her of a fair opportunity to respond, requesting that the appeal proceed on the merits. Additionally, she asserted that her geographic proximity and a prior Board decision support her standing in the case.

[SEE YOUTUBE TIMESTAMP 1:58:47] Ms. Campbell argued that the motion to dismiss was timely under Board rules and reiterated that the appeal is limited to the Planning Director's SMA exemption determination. She maintained that zoning and nonconforming use issues were outside the Board's jurisdiction and that the appellant's evacuation-related concerns were generalized public impacts insufficient to establish standing.

[SEE YOUTUBE TIMESTAMP 1:59:58] Mr. Standke provided testimony regarding local traffic conditions, stating that Oeoe and Nini Streets serve only a small number of households and experience minimal vehicle traffic. He also noted that traffic congestion near Richardson's Beach Park occurs primarily on weekends and is unrelated to the subject appeal.

[SEE YOUTUBE TIMESTAMP 2:01:09] Ms. Rohr disputed testimony that traffic impacts in the area are minimal, stating that the surrounding roads experience significant congestion and raising concerns about pedestrian and crosswalk safety. She also disagreed with the characterization that only a small number of neighbors are affected and noted that the property is managed remotely by the landowner.

[SEE YOUTUBE TIMESTAMP 2:03:15] Vice Chair Able moved to grant the Planning Department's motion to dismiss for lack of standing, finding that the appellant's alleged injuries were generalized, speculative, and unsupported by evidence. Board Member Martin seconded the motion. Chair Lewis agreed, stating that the claimed impacts were not sufficiently concrete or directly connected to the Planning Department's action to establish standing. A roll-call vote was taken, and the motion passed with four ayes (Able, Martin, Lewis, Kimura).

[SEE YOUTUBE TIMESTAMP – 2:07:57] Chair Lewis stated that the Motion to Dismiss was granted and the Contested Case Hearing would not proceed. Chair Lewis directed Ms. Campbell to prepare a detailed written order including Findings of Fact and Conclusions of Law, to be submitted for the Board's consideration.

[SEE YOUTUBE TIMESTAMP – 2:08:25] Ms. Wan advised that the proposed order is due June 5, 2026. She further stated that the non-prevailing party (the appellant) and the landowner may submit objections or comments to the proposed order, due by June 22, 2026.

This item concluded at 11:42 a.m.

4. **CLAUDIA ROHR (PL-BOA-2025-000121)**

Appeal of Decision by the Director of Public Works Dated April 1, 2025, Regarding Issuance of Building Permit No. PW.B2024-005123.

Location: 14 Oeoe Street, Hilo, HI 96720

TMK: (3) 2-1-018:013

PARTIES PRESENT: Claudia Rohr (appellant)

This item was called to order at 11:42 a.m. There were two members of the public, one member via Zoom and no public testimony was provided.

[SEE YOUTUBE TIMESTAMP 2:10:09] Chair Lewis asked if there were any public testifiers. There were no public testifiers on this agenda item.

[SEE YOUTUBE TIMESTAMP – 2:11:21] Ms. Wan noted for the record that the Board had received and reviewed Ms. Rohr's opposition memorandum and requested confirmation that the parties had also received and reviewed it. Mr. Salas Ferguson confirmed that he had received and read the memorandum.

[SEE YOUTUBE TIMESTAMP 2:12:24] Mr. Salas Ferguson argued that the appellant's claims involve generalized community concerns rather than a direct, individualized injury required to establish standing. He maintained that the alleged impacts were speculative and not distinguishable from those experienced by the general public, and requested that the Board dismiss the appeal for lack of standing.

[SEE YOUTUBE TIMESTAMP 2:17:38] Ms. Rohr argued that she had standing under Hawai'i environmental law and that the Department's interpretation of standing was too narrow. She also contended that the motion to dismiss was procedurally improper and denied her a fair opportunity to respond. Additionally, she reiterated constitutional concerns regarding property rights and environmental protections and maintained that she had submitted evidence supporting her claims.

[SEE YOUTUBE TIMESTAMP 2:26:20] Board Member Martin moved to grant the Department of Public Works' motion to dismiss. Chair Lewis confirmed the motion, and Board Member Kimura provided a second. Board Member Martin stated in support of the motion to dismiss that there is a lack of evidence establishing standing. He indicated that he found the County's legal argument regarding standing to be solid and undisputed.

[SEE YOUTUBE TIMESTAMP – 2:27:38] Chair Lewis found that the appellant failed to demonstrate a concrete, individualized injury sufficient to establish standing, concluding that the alleged impacts were speculative, unsupported by the record, and not redressable. With no further discussion. For these reasons, she found the motion to dismiss well taken. No further discussion. A roll-call vote was taken, and the motion passed with four ayes (Martin, Able, Kimura, Lewis).

[SEE YOUTUBE TIMESTAMP 2:30:21] Ms. Wan directed the prevailing party (the Department) to prepare the proposed order, including Findings of Fact and Conclusions of Law, due June 5, 2026. The non-prevailing party (the appellant) and the landowner were given until June 22, 2026 to submit written objections or comments.

[SEE YOUTUBE TIMESTAMP – 2:31:22] Ms. Rohr requested an outside transcript of the hearing as an ADA accommodation, citing hearing loss and difficulty following portions of the proceedings. The Chair acknowledged the request, stated it was not within the Board’s authority to grant, and advised that the Zoom transcript could be used if available. The request was noted and taken under advisement.

[SEE YOUTUBE TIMESTAMP – 2:34:55] Chair Lewis then concluded the matter and indicated the Board would proceed with remaining business.

MINUTES

[SEE YOUTUBE TIMESTAMP 2:35:05] There were no members of the public in attendance and no public testimony was provided. Chair Lewis asked if all Board Members reviewed the January 9, 2026, hearing minutes and all Board Members affirmed. A motion was made by Board Member Martin to approve the hearing minutes of January 9, 2026, as circulated. The motion was seconded by Board Member Kimura. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[SEE YOUTUBE TIMESTAMP 2:37:01] There were no members of the public in attendance and no public testimony was provided. Chair Lewis asked if all Board Members reviewed the January 9, 2026, hearing transcripts and all Board Members affirmed. A motion was made by Board Member Martin to approve the hearing transcripts of January 9, 2026, as circulated. The motion was seconded by Board Member Kimura. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

ADMINISTRATIVE MATTERS

[SEE YOUTUBE TIMESTAMP 2:37:56] There were no members of the public in attendance and no public testimony was provided. Ms. Wan provided an update on pending and upcoming appellate matters, noting that several cases remain active, including appeals before the ICA and a matter involving Ms. Rohr pending in U.S. District Court. She also reported that a recent ICA decision in the Ford and Gage case reversed the Circuit Court and remanded the matter to the Board for further proceedings, including preparation of Findings of Fact and Conclusions of Law. She further noted upcoming Board action on the 1250 Oceanside matter, which will involve review of the appellate decision and preparation of a revised order.

[SEE YOUTUBE TIMESTAMP 2:39:42] Chair Lewis added clarification regarding the Oceanside case, explaining that the Board is authorized to consider motions for summary judgment and will be required to develop a factual record and legal findings consistent with the appellate decision. She indicated the matter will be discussed further at the June meeting.

[SEE YOUTUBE TIMESTAMP – 2:40:36] Ms. Wan concluded by reminding Board members that she is available to provide guidance regarding their roles, responsibilities, and obligations.

ADJOURNMENT

The hearing was adjourned at 12:16 p.m.

Respectfully Submitted,

Shantel Miller, Board Secretary