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Administrative Testimony
Testimony of Kamana'o pono Crabbe, Ph.D
Ka Pouhana, Chief Executive Officer

Honolulu City Council
Bill 53 (2015)
A BILL FOR AN ORDINANCE TO ADOPT THE REVISED
KOOLAU LOA SUSTAINABLE COMMUNITIES PLAN

August 5, 2015

10:00 a.m.

City Council Chamber

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on Bill 53 (2015) for an ordinance to adopt the Revised Ko'olau Loa Sustainable Communities Plan.

As the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians, OHA appreciates this opportunity to comment. OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries. Accordingly, OHA is required to serve as the principal public agency in the State of Hawai'i responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians; assess the policies and practices of other agencies impacting Native Hawaiians; and conduct advocacy efforts for Native Hawaiians.¹ The following comments reflect OHA's responsibility to better the conditions of native Hawaiians and Hawaiians, and are specifically intended to maximize the benefits of the community plan for our beneficiaries.

OHA greatly appreciates the changes made to the draft community plan pursuant to our comments and concerns submitted to the Department of Planning and Permitting (DPP) on January 13, 2011. As discussed below, OHA respectfully reiterates and clarifies our remaining comments and concerns, and asks for your consideration of our suggested amendments.

Native Hawaiian Traditional and Customary Practices

The perpetuation of traditional and customary practices in Ko'olau Loa is particularly significant to the Native Hawaiian community. After statehood, prime lands for agriculture, traditional and customary practices, and sacred sites transitioned to large scale developments, and contributed to the displacement of Native Hawaiians from their ancestral lands and traditional gathering areas. The staggering post-statehood development boom has had devastating impacts to Native Hawaiian culture and the resources upon which they rely. Dr. Davianna McGregor, a leading scholar and expert on Native Hawaiian traditional and customary rights, notes that only a handful of Native Hawaiian communities have managed to continue, unbroken, the traditions and customs of their ancestors. Of those communities that remain on O'ahu, nearly half can be found in Ko'olau Loa (Kahana, Hau'ula, and Lā'ie). These

¹ HRS § 10-3.

communities are rural strongholds where Native Hawaiian beliefs, values, traditions, and customs continue to be honored and practiced. McGregor describes how protecting these cultural kīpuka is essential to the perpetuation of Native Hawaiian culture throughout Hawai‘i, because they are “oases from which traditional Native Hawaiian culture can be regenerated and revitalized.”

Today, many Native Hawaiians continue to call Ko‘olau Loa home and the area is known for its prevalence of natural and cultural resources and traditional and customary practitioners. Access to natural and cultural resources is critical for the perpetuation of traditional and customary practices, including fishing, gathering, cultivating lo‘i, hunting, caring for burials, and accessing sacred and religious sites. These practices occur throughout Ko‘olau Loa and may occur within the proposed growth boundary. A significant increase in visitors and new residents may have impacts on these practices. Considering the potential for Ko‘olau Loa to contribute to the revitalization of Native Hawaiian culture across Ka Pae ‘Āina o Hawai‘i (the Hawaiian Archipelago), the volume of development planned has the potential to have dramatic, negative impacts on natural and cultural resources, as well as the exercise of traditional and customary practices. OHA offers the following comments on traditional and customary practices:

- An increase in the number of visitors has the potential to impact the health of natural and cultural resources, as well as the ability of practitioners to exercise their practices. As mentioned in OHA’s previous letter, OHA would like to see policies and guidelines in Section 3.8.2 Visitor Facilities to address these potential impacts.
- An increase in enrollment at Brigham Young University – Hawai‘i (BYUH) and the associated housing (on-campus student housing and off-campus faculty housing) has the potential to impact the health of natural and cultural resources, as well as the ability of practitioners to exercise their practices. As mentioned in OHA’s previous letter, OHA would like to see policies and guidelines in Section to 3.9.2 BYUH to address these potential impacts.
- Over the years, development has created access issues for Native Hawaiians who fish along Ko‘olau Loa’s shoreline. OHA appreciates the recognition that mauka to makai and lateral public access to the shoreline should be maintained and improved. (Section 3.1.2.2).
- OHA notes that Section 3.4 Historic and Cultural Resources recognizes Ko‘olau Loa’s rich historic and cultural resources. OHA appreciates the insertion of provisions calling for the protection of important areas for Native Hawaiian cultural practices.
- Hawai‘i’s Constitution, statutes, and case law all direct state and county agencies to reasonably protect the exercise of traditional and customary Native Hawaiian practices.² Given that future county planners and policymakers may not necessarily have consistent levels of background knowledge regarding cultural rights and cultural perpetuation, OHA respectfully requests that the community plan be amended to specifically recognize the constitutional, statutory, and case law bases for the protection of Native Hawaiian traditional and customary practices.

² See, e.g., HAW. CONST. ART. XII SEC. 7, HRS §§ 1-1, 7-1; *Ka Pa‘akai o ka ‘Āina v. Land Use Comm’n*, 94 Hawai‘i 31 (2000); *Pele Defense Fund v. Paty*, 73 Haw. 578 (1992).

Wai (Water)

Water's importance to the Native Hawaiian people is captured in the 'ōlelo no'ēau – Ola i ka Wai (Water is Life). Management of this precious resource and assurance of mauka to makai stream flow provided sufficient water for food production, drinking water, native stream life, healthy estuaries, and ground water recharge. Indeed, access to and proper management of water is necessary for a thriving Native Hawaiian people and culture.

OHA advocates for appropriate water management practices and compliance with laws that protect both Native Hawaiians and the larger Hawai'i community. Decisions on water allocation have direct, long-term impacts on Native Hawaiians' priority rights protected by the Hawai'i State Constitution, the Water Code, and applicable case law. Pursuant to well established case law, public trust purposes have priority over other users and thus should be given priority in permitting decisions. This means that traditional and customary practitioners, domestic users, the Department of Hawaiian Home Lands, appurtenant rights holders, and the environment should receive priority consideration over other users.

OHA offers the following comments on Section 4.2 Water Allocation and System Development:

- Section 4.2 notes that surface water provides agricultural irrigation water for Punalu'u and Kahana Valleys in Ko'olau Loa. As noted previously, OHA would like to see a more comprehensive description of current surface water users in the area. Are the streams in Punalu'u and Kahana used for other purposes? Do community members rely upon other streams in Ko'olau Loa for agricultural irrigation, lo'i kalo (irrigated taro terraces), gathering of native stream or estuarine life, or spiritual and religious practices?
- Many Native Hawaiians in Ko'olau Loa rely on stream flow and ground water to exercise their traditional and customary rights to cultivate lo'i, gather native species from streams and estuaries, fish along the shoreline, and perform spiritual and religious practices. As previously requested, OHA asks that the community plan, at a minimum, recognize these water uses and seek to incorporate more information related to how water is used for these purposes.

Maintenance and Use of Agricultural Lands

OHA notes the significant expansion of the growth boundary. (Appendix A Maps). Such expansion may be inconsistent with the O'ahu General Plan (Section 1, Objective B, Policy 1, 2, & 3) and O'ahu General Plan Public Review Draft (2013), which calls for development to be focused in the primary urban center and secondary urban center at Kapolei. (Section 1, Objective B, Policies 1 & 2). Further, Ko'olau Loa is projected to have limited future population growth, so expansion of the growth boundary may not be appropriate at this time. (Sections 2 & 4.4).

OHA appreciates that the plan acknowledges Ko'olau Loa's potential to support expanded agricultural production on O'ahu. (Section 3.2). As referred to in the plan, and as discussed in *Native Planters In Old Hawai'i*, the area from Lā'ie through Hau'ula to Punalu'u and Kahana Valleys is known historically for its extensive wet land lo'i. (Section 3.2). This history, combined with the current volume of available agricultural lands and water, makes Ko'olau Loa an attractive place to concentrate O'ahu's agricultural efforts. As previously

mentioned, OHA would like to see more information on the lost agricultural production incurred if the growth occurs within the designated growth boundary. Before expanding an urban growth boundary, or calling for removing land from the State Land Use Agricultural District, the following question should be seriously considered, and should provide important guidance to decision-makers: Are the lands included in the proposed expansion particularly suited or unsuited for agriculture?

Kuleana Lands

OHA appreciates the community plan's recognition of kuleana lands and the struggle for Native Hawaiians to continue their ownership of these lands. Although Section 3.4.1 "[a]cknowledge[s] the cultural and historic significance of *kuleana* lands," OHA is concerned that kuleana lands may be impacted by the community plan's vision to expand facilities and infrastructure in the area, including acquisition of shoreline areas for public recreational uses, development of a new community park in Lā'ie, expansion of the Hau'ula Community Park (Section 3.3.2), and building of a new mauka road. (Section 3.5). Community members have expressed concern, as noted in footnote 14 in Section 4.1, that the area for the proposed road may cross through kuleana lands. OHA urges that kuleana lands be exempt from possible condemnation proceedings to facilitate this growth. OHA would like to see language inserted into the community plan to alleviate concerns that ownership of kuleana lands will be impacted by proposed expansion.

In addition to the comments above, OHA notes that the community plan, which was drafted in 2013, does not include any reference to the forthcoming conservation easements that will preserve and protect hundreds of acres of Turtle Bay.³

Finally, OHA acknowledges that, by deleting references to the proposed Malaekahana Residential Community as detailed in Council Communications 70 (2015) and 73 (2015), **Bill 53 (2015) FD1** partially alleviates concerns raised above, particularly relating to potential impacts to natural and cultural resources, as well as the ability of practitioners to exercise their practices in the area. However, these changes do not fully address natural and resource cultural concerns relating to increased visitors and access limitations in Malaekahana, nor do they address the other concerns raised to DPP in 2011 and reiterated above.

OHA appreciates the opportunity to comment on this matter. For any questions or concerns, please have your staff contact Jessica Freedman at 594-1779 or jessicaf@oha.org.

³ See Act 81 (2014).