

MINUTES

of the

PUBLIC HEARING HELD ON

MARCH 12, 2016

THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, CONVENED A PUBLIC HEARING ON SATURDAY, MARCH 12, 2016, AT 12:30 P.M., AT THE LANAI SENIOR CENTER, 309 SEVENTH STREET, LANAI CITY, LANAI, HAWAII, WITH CHAIR MICHAEL B. WHITE PRESIDING FOR THE PURPOSE OF RECEIVING TESTIMONY ON A PROPOSED BILL ENTITLED:

"A BILL FOR AN ORDINANCE AMENDING SECTION 2.80B.070, MAUI COUNTY CODE, TO ADOPT THE UPDATED LANAI COMMUNITY PLAN"

CHAIR WHITE: Good afternoon, and I'd like to call this meeting to order. And I'd like to thank all of you for showing up.

And the purpose of this public hearing is to receive public testimony on the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 2.80B.070, MAUI COUNTY CODE, TO ADOPT THE UPDATED LANAI COMMUNITY PLAN":

Mr. Clerk, please call the roll.

ROLL CALL

PRESENT: COUNCILMEMBERS GLADYS C. BAISA, ELEANORA COCHRAN, DONALD G. COUCH JR., S. STACY CRIVELLO, G. RIKI HOKAMA, AND CHAIR MICHAEL B. WHITE.

EXCUSED: COUNCILMEMBERS ROBERT CARROLL, MICHAEL P. VICTORINO, AND VICE-CHAIR DONALD S. GUZMAN.

COUNTY CLERK DENNIS A. MATEO: Mr. Chair, there are six Members present and three excused. A quorum is present to conduct the business of the Council.

There were 10 members of the public in attendance.

NOTICE OF PUBLIC HEARING

CHAIR WHITE: Mr. Clerk, was the Notice of this Public Hearing properly noticed?

COUNTY CLERK: Mr. Chair, Notice of this Public Hearing on the proposed "BILL FOR AN ORDINANCE AMENDING SECTION 2.80B.070, MAUI COUNTY CODE, TO ADOPT THE UPDATED LANAI COMMUNITY PLAN" was published on March 3, 2016 in the Maui News.

CHAIR WHITE: Thank you, Mr. Clerk. And before we proceed, if everyone could please put their phones on silent mode.

Mr. Clerk, let's proceed.

COUNTY CLERK: Mr. Chair, proceeding with presentation of testimony on the agenda item.

Individuals who wish to offer testimony, please sign in at the table in the back of the room. Testimony is limited to the item listed on today's agenda.

And pursuant to the Rules of the Council, each testifier is allowed to testify for up to three minutes with one minute to conclude if requested. When testifying, please state your name and the name of any organization you represent.

Mr. Chair, we have two individuals who have signed up to provide testimony this morning.

The first individual is Mr. Pat Reilly. And Mr. Reilly will be followed by Mr. Ron McOmber.

PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. PAT REILLY:

Aloha. May I request a seat.

CHAIR WHITE: Aloha. Absolutely.

MR. REILLY: Little wobbly these days. My name is Pat Reilly, Fairfax Reilly, 38 year resident of Lanai, 468 Ahakea Street.

Not to make it like the Academy Awards, but I would like to thank the thousands of people hours that went into this process. From the staff, Council, Planning Department, Council, Planning Commission, and the CPAC. I attended many of those meetings and I know that this community participated, not everybody agreed, but it, we had that strong participation.

I'd like to say that I, I've heard that the Lanai Planning Commission, there may be some issues about the cost of that. To me it's one of the critical elements of government on this island. You have to have residents participating whether they agree or not in creating a community plan.

Strong issue for me is housing. And, within the core, within the plan, I know there is some talk about the County affordable housing project. Perhaps the Corporation has some other plans for housing on this island. But it's gotten to the point where affordable housing within the, within the community is now out of reach of many of my students who are now adults, have families, and working in the hotels, and probably would not qualify for a mortgage. That would be a gentrification where you're moving the local residents out of the community, and they are the heart and soul of this community.

As a senior citizen, this is an ideal community for me. I can walk places, I don't have to worry about traffic. There are good services here, so, but housing is critical for our younger families and people.

We hope that this experiment in the hotel is able to provide employment. It's been, as you know, this is a big investment by the Corporation. Probably nobody else could afford to invest in that hotel and renovation. It was absolutely necessary, I just pray that the business plan is able to keep us employed. There is only one game in town here. If this doesn't work, we're really hurting.

So, anything within the community plan that can facilitate that, I would like to speak up in behalf of County services, and State services, yes, very essential to the economic development of this community. As you know, the hospitals up for grabs, the electric company's up for grabs, the airlines were up for grabs, so we're in the midst of a huge transition and this community plan is very important in that process.

I'll put in a, a bid for--

COUNTY CLERK: Three minutes.

MR. REILLY: --yeah, I'd like to ask for one more minute.

CHAIR WHITE: Please proceed.

MR. REILLY: Our small businesses need as much support as possible. As you know, the small business community here is dependent upon lease and lease-hold. How that's going to work and how this experiment with the hotel is going to impact them. But we need strong support for our small businesses and our independent small farmers. There are people here, some of my former students trying to do projects here, they have obtained leases from the company, but they need strong support if they're going to be successful. So, I'll, I'll end with that.

But fundamentally I'm saying thank you for all your work. Everybody from CPAC on up, this has been a tremendous process and I hope we can be successful with this plan. Thank you very much.

CHAIR WHITE: Thank you, Mr. Reilly. Before you, before you get up.

MR. REILLY: I can do it.

CHAIR WHITE: Members, any questions for Mr. Reilly. You're off the hook.

Mr. Clerk.

COUNTY CLERK: The next testifier is Mr. Ron McOmber, to be followed by Butch Gima.

MR. RON MCOMBER:

Good afternoon. Thank you very much for coming to Lanai. My name is Ron McOmber, I'm about 43, 45 year resident of Lanai. I'm one of the members of the CPAC.

This was a nine month expose that we went through. We had to answer questions and try to justify what the heck was going to happen with Pulama. I have, never in my life imagined what we were about to undertake.

About the third, second or third meeting into this process, we'd heard Larry Ellison had bought the island and was going to do some changes. So we asked the, the people in Pulama to please show us what their concept was. Well my god, they threw out a bunch of stuff on the table that would have taken two years to answer. And we had a very short period to do this.

Here's our '98 Community Plan. Look how thick it is. This addressed our concerns, and I was on that CPAC, by the way, I was Chair of that CPAC. And the COO of Pulama was on that CPAC at that, he didn't work for them at that time, he worked for another company, a different company at that time.

In this, this is a complete document, this is what we should go back to. This other stuff in here is, I don't know, I can't figure out half of it. They're not going to do three quarters of it, they've already stopped several of the major projects that we spent two or three weeks on, like the landing on the other side, the airport extension that we're going to put a whole new airport in.

They were going to do desal. They were doing desal while we were sitting in the CPAC meetings. And that was, to me that was hands on wonderful thing because that took water issue right out of the equation. We're sitting, one of the things that we were worried about was water and they were going to take care of that. So, they're out there drilling while we're working in this room thinking that we were going to get desal.

After the CPAC was done, they informed the Planning Commission that we're not going to do that. You guys don't want to give us 30 years, we only wanted 15, you're only going to give us 15 years so we're going to cancel that. They pulled all their equipment and left. That left the CPAC sitting here with egg on our face. We couldn't even discuss water because we figure we had water sewed up.

This is ridiculous, this is, sounds like it was a planned thing. But if you look at all the maps in here, and three-quarters of the stuff in this thing.

COUNTY CLERK: Three minutes.

MR. MCOMBER: I'll never make it in three, in four minutes even, folks. Bear with me a little bit, please.

CHAIR WHITE: We'll give you the additional time.

MR. MCOMBER: Thank you. We, I think we were hoodwinked, I really do. I think we were, we were told things and we were, things were going to happen that till to this day they're not going to do it.

Actually the name of this island should be changed to "Four Seasons Lanai", because if Four Season wants it, Four Season gets it.

My recommendation is we go back to the original community plan which made a lot more sense than this and adopt that. If you don't want to do that, I strongly recommend that you reconvene this body, the CPAC, and let us go back and address some of this stuff. Because a lot of the stuff in here is not going to happen and we need to, we need to address that.

So for the sake of the people of Lanai and all the time that we spent, that nine months we spent, that's usually good for pregnancy, and we didn't get anything but a really bad deal. I'm telling you right now, that nine months was wasted--

COUNTY CLERK: Four minutes.

MR. MCOMBER: --on our behalf. And so, I recommend and I'm recommending that we go back to the original community plan. Let me say one other thing here, one more thing and then I'll, I'll stop, Mr. White.

In here on page 53 of the community plan we had in there, you do not extend the runway towards the city. It's not in the new plan, it isn't even mentioned in the new plan and it has to be. You cannot have airplanes landing any further towards the city. But we want that put back into it. If you're going to keep this, then we need that statement in there that there'll be no runway extension toward the city. If they want to extend it the other way towards Kaunapali, fine. Thank you.

CHAIR WHITE: Okay, thank you, Mr. McOmber. Members, any questions for Mr. McOmber.

MR. MCOMBER: They're afraid to ask.

CHAIR WHITE: Seeing none, thank you very much, Ron.

MR. MCOMBER: Okay.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Mr. Chair, the last individual who had signed up to testify this afternoon is Mr. Butch Gima.

MR. BUTCH GIMA:

I thought it was a good afternoon. My name is Butch Gima, resident of Lanai. As you well know a letter was sent to all the Councilmembers regarding our response to the series of drafts that have come before our community. As much as we would like to have an approved plan, I think it's imperative that the document in front of you, in front of us, in front of our community is consistent with what our community put together, the CPAC and the LPC.

Now a lot of the concerns that were addressed in the letter revolved around some content issues and then some process issues. So let me go over the content issues first. It is not very clear with the language in, in the most current version, how does it

make our community plan clearer, stronger, or better. We've asked that, hasn't been explained to us.

Secondly, is it consistent with what Will Spence noted in the, the December LPC meeting where he said "zoning follows community plan designation". And that's something many of us on the Community Plan Advisory Committee and the LPC were concerned about.

Third, does this language codify the practices of the Planning Department as stated by Will in January's meeting. That hasn't been answered as of yet.

Four, how does the pending Kihei lawsuit affect both the language and the insertion of this language into our community plan. As noted in the LPC meeting, we are hoping that this is not an example of the tail wagging the dog. That hasn't been answered.

I consider myself fairly intelligent individual but I'm having much, much difficulty understanding this language, the need or the problem statement that necessitated this change in the language, and the intent of the insertion of this language. So that's covering the content stuff and I hope, hopefully many of you can answer these questions.

From a process point of view, as noted in Councilmember Couch's recent correspondence, I, I disagree and I think several of the members of the community disagree that this has been a very transparent process.

The bowling alley meeting with, that Don chaired several months ago was a, was a good example of how opaque it was. I mean we didn't have hard copies. We, we had difficulty getting it online and so we were basically working off of three or four hard copies that Denise had to bring in from Riki's office and then pretty much off of Don's iPad.

COUNTY CLERK: Three minutes.

MR. GIMA: Debbie dela Cruz couldn't be here, Bev couldn't be here so they asked me, they asked if they could give their three minutes each to me so I could finish my presentation.

CHAIR WHITE: We'll give you the extra minute, but not the, you can't testify with other people's three minutes.

MR. GIMA: Please remember, okay, will you please call me up later if I can't finish, I'd appreciate that.

Please remember we are volunteers, we started this in January of 2013, so it's been difficult to keep up with all of the versions. Whereas, Planning staff, Council staff, you guys are paid to keep up with the different versions.

Very importantly, as testified to the CPAC and the LPC, I believe we were never given the option to discuss, let alone insert into the, the plan the language "specifically prohibit" so that, we, we weren't given the option to specifically prohibit things in the community plan designations--

COUNTY CLERK: Four minutes.

MR. GIMA: --so that community plan designations do not follow zoning. Zoning should follow community plan designations. Again, it was not clear why this language was introduced so late into the document, in 2015, late 2015. We don't, we're not sure why.

And then, how detrimental is it to Lanai and our community plan if this language is not inserted. Again, what was the initial problem statement that necessitated this language.

CHAIR WHITE: Mr. Gima, you're going to have to provide a concluding thought and, and I know if, if the Members have questions, we'll be happy to call you up during the deliberation.

MR. GIMA: Thank you.

CHAIR WHITE: This is just, this is just the public testimony section of the meeting.

MR. GIMA: Okay, thank you for the extra time. I'm pau.

CHAIR WHITE: Thank you very much. Members, any questions for Mr. Gima.

COUNCILMEMBER HOKAMA: I have one.

CHAIR WHITE: Okay.

COUNCILMEMBER HOKAMA: Was it, again, Butch, Mr. Gima, we appreciate your volunteering to serve our community. So the interesting point for me, like you, is our existing plan, and it is still the existing plan until it's replaced, okay. So the plan Mr. McOmber showed all of us is the current plan and until that is replaced, that stands as the community plan.

So in our current plan we have prohibitions that we placed 16, 18 years ago, that was taken out by either CPAC or Planning Commission, or that was a departmental adjustment that they made on their own regarding the prohibition of the existing plans. You understand my question, Butch.

MR. GIMA: Not clearly.

COUNCILMEMBER HOKAMA: The current language prohibits certain things, the current plan, okay. The new plan as we have reviewed it does not include those prohibitions, like the runway extension toward the community, the city. That was something you folks decided to do, or that was automatically done as a rewrite from the department. Or is that something CPAC and Lanai Planning Commission chose to delete on it's own.

MR. GIMA: I cannot remember specifically why the language for the runway is as is right now. And obviously I, I mean without going through the notes to figure out what's prohibited and not prohibited. I think many on the CPAC do not remember from the Planning Department saying okay if you guys don't prohibit in this community plan designation, then zoning is going to take the lead in, in the future. That was never something we truly understood. And I can only speak for myself but the, you know, hearing other members that's why this language coming in late in the process kind of really stumped us.

COUNCILMEMBER HOKAMA: Well, that's why Council is here to make the decision today, Mr. Gima. So I thank you for your testimony.

CHAIR WHITE: Members, other questions for Mr. Gima.

I'm sure you'll be here in case we have questions later as we get into the deliberations. Thank you very much.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, there are no further individuals signed up to testify this afternoon. If there is any individuals who wish to offer testimony, please identify yourself and proceed to the testimony location at this time.

Mr. Chair, there are no individuals who wish to offer testimony.

CHAIR WHITE: Thank you, Mr. Clerk.

Members, I note that we've received written testimony. Without objection, we'll accept it into the record.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Thank you.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY
RECEIVED FROM THE FOLLOWING WERE MADE A PART
OF THE RECORD OF THIS MEETING:

1. Deborah dela Cruz;
2. Kamana`opono Crabbe, Office of Hawaiian Affairs; and
3. Jim Smith.

CHAIR WHITE: And without objection, we'll close public testimony.

MEMBERS VOICED NO OBJECTION.

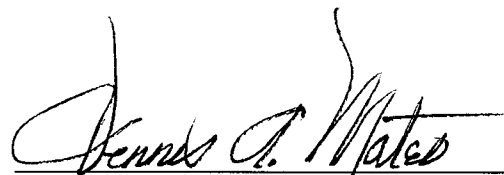
CHAIR WHITE: Okay, so ordered.

We'll take a five, well, we'll adjourn the public hearing and we'll go right into our special Council meeting. We'll take a three minute recess.

We're adjourned.

ADJOURNMENT

The public hearing of *MARCH 12, 2016*, was adjourned by the Chair at 12:52 p.m.



DENNIS A. MATEO, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

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P.O. Box 630046
Lanai City, HI 96763
March 8, 2016

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OFFICE OF THE
COUNTY CLERK

Dear Maui County Council Members:

Thank you for travelling to Lanai to hear the community's concerns and comments regarding the Lanai Community Plan. I am testifying in writing as I am out of state.

I am a member of the Lanai CPAC. After a recent Planning Committee meeting at which the Lanai Community Plan was reviewed, a very intelligent Lanai person whom I highly respect said that the Plan was useless. That was disheartening after spending literally years on the Plan. After giving it some thought, two actions or lack of actions would render it useless.

First, if the Plan is not used and implemented as set forth in the Maui County Code. We hold you, the Mayor and the County personnel responsible for proper use and implementation. The previous Plans have generally not been implemented.

Second, it will be useless if it doesn't reflect the intent of the CPAC and the Lanai Planning Commission. Portions of the Plan have been deleted, intent changed and wording added that aren't attributable to specific committees or departments. The community has addressed these changes and been able to undo some of them. However, the last minute changes to Page 9-3 and Appendix 9.2 added the following wording, "Unless specifically prohibited, the uses permitted by zoning and the standards applicable to the typical zoning district apply to the corresponding community plan designations." Planning Committee Chair Don Couch stated that the CPAC and Planning Commission could have put in prohibitions and that there are a few in the Plan. If there are prohibitions, we didn't add them as such. We did not go through the endless hours of Plan development and review with the thought that we had to watch for specific prohibitions. We were not given enough training on zoning to even be aware of the potential uses which conflicted with the Plan designations.

There were statements made at the Planning Committee meetings to the effect that the new language simply states current practice. If so, then there should be no need to put it in the Plan especially at this late stage (end of 2015). Including the verbiage gives the appearance that we were agreeable to anything not prohibited, and that is definitely not the case. The inclusion was tantamount to an ambush. If you insist on keeping this statement in, I request that you provide both the CPAC and Planning Commission extensive zoning training and allow us to reconvene and review the Plan for prohibitions. Absent deleting the language or allowing us to reconvene, the Plan is rendered useless.

As the Lanai Plan is the first, I've included comments on the process at the end of this letter in the hopes of making it easier for subsequent CPACs.

I thank the Planning Department members who worked so hard on our Plan especially Mary Jorgensen and David Yamashita who I think really “get” Lanai. And I echo the beautifully crafted sentiment of the Dedication to those who passed away in and survived the tragic February 26, 2014 plane crash.

Sincerely,

Deborah dela Cruz

COMMENTS ON CPAC PROCESS:

1. Minutes and revised sections need to be provided more quickly so that the issues are still fresh in members' minds.
2. All changes need to be clearly marked so people don't have to do a side-by-side comparison every time there's a new revision. That is a very laborious process, and it's easy to miss changes. It would also be helpful to know who made the changes.
3. CPAC and Planning Commission members should be offered the option of receiving all subsequent revisions in printed form so they can follow the Plan through completion.

NOTE: I realize that the CPAC basically loses its authority once its final draft is sent forward, but it is common courtesy to acknowledge its efforts by implementing 3. and 4. CPAC and Planning Commission members could provide background during Planning Committee and Council reviews.

4. CPAC and Planning Commission members should be offered the option of receiving notifications every time their Plan is being reviewed, e.g., CPAC receive notices of Planning Commission meetings; CPAC and Planning Commission members receive notices of Planning Committee meetings, etc.
5. Develop a system for clearly identifying revisions until the final revision. It is extremely confusing trying to keep track of the sequence of changes.

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OFFICE OF HAWAIIAN AFFAIRS

Administrative Testimony

Testimony of Kamana'opono Crabbe, Ph.D

Ka Pouhana, Chief Executive Officer

Maui County Council

Agenda Item

OFFICE OF THE
COUNTY CLERK

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80B.070, MAUI COUNTY
CODE, TO ADOPT THE UPDATED LĀNA'Ī COMMUNITY PLAN

March 12, 2016

11:00 a.m.

Lāna'ī Senior Center

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on the update to the Lāna'ī Community Plan (2015). These comments were previously submitted for the December 16, 2015 Maui County Council Planning Committee meeting.

As the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians, 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

OHA appreciates that the proposed updated Lāna'ī Community Plan (2015)² (proposed Community Plan) acknowledges the importance of the rural character and lifestyle of Lāna'ī, and the need to protect the island's natural and cultural resources and subsistence opportunities. OHA offers the following general comments and specific recommendations for amendments and additions³ to the proposed Community Plan on issues of particular concern to the Native Hawaiian community, including Native Hawaiian traditional and customary practices, burials, subsistence practices, water resource protection, and housing.

¹ HRS § 10-3.

² For the purposes of this testimony, OHA has referred to sections as well as page numbers when recommending amendments or additions. Page numbers refer to the proposed updated Lāna'ī Community Plan (2015), rather than earlier drafts.

³ OHA's proposed additions to existing language in the draft Community Plan are underlined while deletions are stricken-through. For the purposes of the suggested amendments, OHA used the most recent proposed draft, the Lāna'ī Community Plan (2015).

Native Hawaiian Traditional and Customary Practices and Subsistence Practices

The health of Lānaʻi's natural and cultural resources, and continued access to these resources, are critical for the perpetuation of traditional and customary practices, such as fishing, gathering, cultivating loʻi, hunting, and caring for burials and sacred sites.

Subsistence activities are an important cultural practice for many Native Hawaiians, particularly for those who live on Lānaʻi. Subsistence harvesting also provides an affordable and essential food source for families and communities. Given the subsistence needs of Lānaʻi's families, land use planning should prioritize the preservation of and access to natural resources.

Accordingly, to ensure the perpetuation of cultural practices and subsistence activities on Lānaʻi, and to more fully recognize the constitutional, statutory, and judicial protections for traditional and customary practices within in the proposed Community Plan, OHA respectfully offers the following comments and recommendations.

A. In order to emphasize the continued importance of natural and cultural resources and Native Hawaiian cultural practices and practitioners, OHA recommends that the following be added to Chapter 5, section A, Existing Conditions, on page 5-2:

"Today, numerous Native Hawaiian traditional and customary practices, including fishing, gathering, cultivating loʻi, hunting, caring for burials, and accessing sacred and religious sites, continue to be practiced on Lānaʻi. The health of Lānaʻi's natural and cultural resources, and access to these resources by Native Hawaiian practitioners, mauka to makai, is critical to the perpetuation of Native Hawaiian culture."

B. To maximize the Community Plan's utility, OHA recommends including references to the constitutional, statutory, and judicial bases for the protection of Native Hawaiian traditional and customary practices, including the obligations of State and County agencies to reasonably protect Native Hawaiian traditional and customary rights, by inserting the following language (along with footnotes) in Chapter 5, section A, to read as follows:

"In the past several decades, the rights of Native Hawaiians, particularly relating to access and gathering, have been extended and clarified. State and county governments and agencies have obligations to protect the reasonable exercise of traditional and customary practices of Native Hawaiians, to the extent feasible. Relying on the rights recognized in key constitutional and statutory provisions, as well as court decisions,ⁱ the Hawai'i Supreme Court established an analytical framework for State and county agencies to follow when considering land use and development projects.ⁱⁱ Under this framework, agencies must identify 1) the scope of valued cultural, historical, and natural resources in the area, including the extent

to which traditional and customary rights are exercised; 2) the extent to which these resources will affect or be impaired by the proposed action; and 3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights, if found to exist.

ⁱ 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). For additional information, see also DAVID M. FORMAN & SUSAN K. SERRANO, HO'OHANA AKU, A HO'OLA AKU: A LEGAL PRIMER FOR TRADITIONAL AND CUSTOMARY RIGHTS IN HAWAI'I (2012), available at <https://www.law.hawaii.edu/sites/www.law.hawaii.edu/files/content/Programs%2C Clinics%2CInstitutes/Ho%27ohana%20Aku%20Final.pdf>.

ⁱⁱ See *Ka Pa'akai o Ka 'Āina v. Land Use Comm'n*, 94 Hawai'i 31 (2000); see also *Pele Defense Fund v. Paty*, 73 Hawai'i 578 (1992); see also *Public Access Shoreline Hawai'i v. Hawai'i County Planning Comm'n*, 79 Hawai'i 425 (1995)."

C. OHA recommends the following policies in Chapter 5, section C, on page 5-4, be amended, to read as follows:

- Policy 7: "Support access for subsistence hunting, fishing, and gathering. Ensure appropriate public access is provided to the shoreline, public trails and hunting areas, in a manner that protects natural and cultural resources and respects cultural practices."
- Policy 8: "Support the protection of native Hawaiian rights customarily and traditionally exercised for subsistence, cultural, and religious purposes in accordance with Article XII, Section 7, of the Hawai'i State Constitution, HRS sections 1-1 and 7-1, and Hawai'i law-court decisions."
- Policy 9: "Require development to mitigate their impacts on historic, cultural, natural, subsistence, and scenic resources."
- Policy 10: "Protect scenic roadway views and significant view corridors and viewsheds. Protect significant views of ridgelines and hill-slopes to maintain open space character. Retain significant vistas associated with archaeological features and culturally significant areas."

D. OHA recommends highlighting the impacts of erosion on natural, cultural, and subsistence resources by amending Issue 2 in Chapter 3, section B, on page 3-3, to read as follows:

"Erosion impacts water quality by causing excessive sediment to enter surface and ocean waters, which in turn negatively impacts the natural, cultural, and subsistence resources found in reefs and coastal waters. In addition, discharges of

chemicals and fertilizers from golf courses, households, businesses, and farms may increase the amount of pollutants found in the soil and water.”

E. OHA recommends that the following policies be added to Chapter 3, section C, on page 3-4, to read as follows:

- “In managing the negative and adverse impacts of feral ungulates and invasive species, simultaneously recognize Native Hawaiian access and gathering rights and the importance of subsistence activities.”
- “Support appropriate access to the shoreline.”

F. OHA recommends that the following policy be added to Chapter 7, section C, on page 7-5, to read as follows:

“Ensure that watershed protection and other conservation measures, including fencing, facilitate Native Hawaiian access rights related to subsistence activities and traditional and customary practices.”

G. OHA recommends adding the following policies to the indicated chapters, in order to ensure appropriate evaluation of the impacts of land use changes to natural and cultural resources, to read as follows:

- Chapter 7, section C, on page 7-22: “Minimize the impact transportation system development and maintenance will have on natural and cultural resources, cultural practices, and Native Hawaiian burials.”
- Chapter 8 section C on page 8-2: “Minimize the impact of public and recreational facility improvement and expansion will have on natural and cultural resources, cultural practices, and Native Hawaiian burials.”
- Chapter 9, section C, on page 9-11:
 - “Evaluate the impact public utility facilities development and land use changes will have on natural and cultural resources, cultural practices, and Native Hawaiian burials.”
 - “Consult with and solicit input from community members, including community members with generational knowledge, early and often about how to minimize the impact of proposed changes to the use of land on cultural practices, cultural sites, and culturally significant areas, including burials.”

Wai (Water)

The importance of water to the Native Hawaiian people is captured in the ‘ōlelo no‘eau, “Ola i ka Wai (Water is Life).” Traditional Hawaiian management of this precious resource assured mauka to makai stream flow, which provided sufficient water for food production, drinking water, native stream life, healthy estuaries, and ground water recharge. Groundwater sources, such as springs and anchialine ponds, were highly respected and cared for. Today, access to and proper management of water continues to be necessary for a thriving Native Hawaiian people and culture. The health of Lāna‘i’s fishponds, limu, and nearshore and estuarine environments depend upon sufficient groundwater discharge. Decreases in the levels or quality of discharge from over withdrawal may have devastating impacts to marine resources, as well as the cultural and subsistence practices that depend on these resources.

Pursuant to the Hawai‘i Constitution, Article XI, sections 1 and 7, water is a public trust resource, held in trust by the State for the benefit of the people, for both present and future generations.⁴ Recent court decisions have affirmed that state and county permitting agencies have affirmative and independent obligations to ensure that our public trust water resources are protected and used for the public benefit. This means that traditional and customary practitioners, domestic users, the Department of Hawaiian Home Lands, appurtenant right holders, and the environment should receive priority consideration in the decisions that may affect the allocation of public trust water resources.

OHA notes that the proposed Community Plan clearly recognizes that Lāna‘i has limited water resources, and that new growth will depend upon the development of alternative water resources.⁵ In order to better ensure that future land use changes take into consideration the county and state’s legal obligations and responsibilities relating to water as a public trust resource, OHA respectfully recommends the following amendments and additions.

A. In order to explicitly recognize water as a public trust resource, OHA recommends that the following is added to the Existing Conditions section of Chapter 7.1 on Water, on page 7-3, to read as follows:

“Pursuant to the Hawai‘i Constitution, Article XI, sections 1 and 7, water is a public trust resource, held in trust by the State for the benefit of the people, for both present and future generations. Traditional Hawaiian management of this precious resource provided sufficient water for food production, drinking water, native

⁴ See, e.g., HAW. CONST. ART. XI SECS. 1 & 7, ART. XII SEC. 7; HRS §§ 1-1, 7-1, 174C-101; HRS CHAPTER 174C; In re Water Use Permit Applications, 94 Hawai‘i 97, 9 P. 3d 409 (2000) (Waiāhole I); Ko‘olau Agricultural Co., Ltd. v. Comm’n on Water Res. Mgmt., 83 Hawai‘i 484, 927 P.2d 1367 (1996); Reppun v. Bd. Of Water Supply, 65 Hawai‘i 531, 656 P.2d 57 (1982).

⁵ OHA notes that the proposed Community Plan references a water desalination facility as well as other alternatives to pumping from the aquifer. As reflected in the updated Community Plan, OHA emphasizes the importance of exploring alternative water sources to avoid over pumping Lāna‘i’s aquifer .

stream life, healthy estuaries, and ground water recharge. The health of Lānaʻi's streams and nearshore and estuarine environments depend upon sufficient freshwater discharge. Decreases in the levels or quality of discharge from over withdrawal may have devastating impacts to marine resources, as well as the cultural and subsistence practices that depend on these resources."

B. OHA recommends that the following policies be added to Chapter 7.1 on Water, section C, page 7-5, to read as follows:

- "Recognize that water is held in public trust by the State, for the benefit of the people. Public trust purposes, which receive priority over private commercial uses, include domestic uses, Native Hawaiian and traditional and customary rights, appurtenant rights, environmental protection, and reservations for the Department of Hawaiian Homelands."
- "Expanded withdrawal from Lānaʻi's aquifer may have a significant detrimental effect on natural, cultural, and subsistence resources."

C. OHA recommends that the following sentence be added to the end of section A on Existing Conditions of Chapter 7.6 on Stormwater Drainage, page 7-27, to read as follows:

"Stormwater runoff and erosion can negatively impact soils, fishponds, wetlands, coastal waters, and reefs. Siltation of reefs and coastal waters can have detrimental effects on fish, limu, and other ocean resources upon which the Lānaʻi community depends for subsistence fishing, gathering, and other cultural practices."

Housing

OHA notes that the proposed Community Plan includes significant areas for proposed land use changes, much of which will permit residential housing (in the rural and mixed use residential land use designations). As indicated by a recent study by the Department of Business, Economic Development and Tourism (DBEDT), Hawaiʻi's population has grown more quickly than Hawaiʻi's housing stock, and housing prices in the state reached a record high in 2014.⁶ This increase in prices makes housing less affordable for residents. OHA hopes that increases in housing on Lānaʻi will provide affordable housing for Lānaʻi's residents. One strategy to address the lack of affordable housing on Lānaʻi is the proposed Lānaʻi City affordable housing project, which is planned to include 372 units.

⁶ DBEDT, RESEARCH AND ECONOMIC ANALYSIS DIVISION, MEASURING HOUSING DEMAND IN HAWAII 2015-2025 7, 15 (2015) available at <http://files.hawaii.gov/dbedt/economic/reports/2015-05-housing-demand.pdf>.

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Thank you for the opportunity to provide comments on the proposed updated Lāna‘i Community Plan. OHA welcomes discussion on these issues, and would be happy to provide additional information or background material related to the recommendations above. Should you have any questions, please do not hesitate to have your staff contact Jessica Freedman at (808) 594-1779 or via e-mail at jessicaf@oha.org.

Jim Smith
99 Kapuai Road
Haiku, Maui, Hawaii 96708

March 12, 2016

Chairperson Michael White and
Members of the Maui County Council
200 S. High Street
Wailuku, Maui, Hawaii 96732

TESTIMONY: Update Lanai Community Plan

Dear Chairperson White and Members of the Council,

My name is Jim Smith and I have served on a Citizen Advisory Committee for the Haiku Area. We provided recommendations to update an existing plan in the mid-1990's. It is a labor intensive endeavor and requires support from the Department of Planning, and not its management.

In my review of documents related to the Lanai Update, I am astounded by the treatment given appointed members of that CAC based upon changes made by this Council. They were treated like children, by technical experts who conducted a series of "charades" to position them into making the recommendations that appeared predetermined. And yet they prevail.

It seems they did not fail their duty to provide this Council with independent advice. This independent view is necessary and why the Charter requires CAC appointment and advice.

Still, the update you consider is terribly flawed. Please consider Chapter 9 Land Use, C. Goal and Policies, Land Use Policies at policy 10 page 9-12 states "Ensure all lands are zoned and zoning standards are consistent with community plan policies and land use designations". But Community Plans established boundaries, not designations.

This failure to distinguish between designation and boundary advances the cause of real estate sales known as form based zoning, that negates land use regulation. In effect it creates dysfunction shifting administration to a planning consultant who may occupy a public office. This update creates dysfunction.

I request that you refer this matter back to committee on the basis that it creates internal inconsistency that leads ultimately to dysfunction. This requires reflection and reconsideration. This Council has the integrity to make this happen, should it find just cause. Hope of course may be a thing of feathers and not votes.

Thank you

Signed: Jim Smith
03_12_16