



**STATE OF HAWAII
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Via Electronic Mail

Land Use Commission
235 South Beretania Street, Room 406
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Re: Petition for Land Use District Boundary Amendment
A26-812 Lāna'i Resorts DBA Pūlama Lāna'i (Kō'ele Project District)
Mahana Ahupua'a, Lāna'i Moku
Tax Map Keys: (2) 4-9-018:003 (por.); (2) 4-9-002:061 (por.) & :001 (por.)

Aloha e Chair Lee, Vice Chair Kamakea-'Ohelo, and members of the Commission,

The Office of Hawaiian Affairs ("OHA") offers the following **testimony with comments and recommended conditions** to the State of Hawai'i Land Use Commission ("LUC") regarding the Petition for a Land Use District Boundary Amendment to amend the Agricultural and Rural Land Use District boundaries into the Urban Land Use District for approximately 170 acres of land, consisting of portions of Tax Map Keys (2) 4-9-018:003, (2) 4-9-002:061, and (2) 4-9-002:001 at Lāna'i City, Lāna'i ("Petition Area") ("Petition") filed by Pūlama Lāna'i ("Petitioner"). The purpose of the Petition is to facilitate alignment with the underlying Community Plan designations and proposed County Zoning and Kō'ele Project District updates. A District Boundary Amendment ("DBA") will facilitate future development and allow for commercial events and hotel uses that are not allowed in the Agricultural and Rural Land Use Districts.

OHA is the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians.¹ OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries.² Among its statutory duties, OHA is required to (1) serve as principal public agency in the State of Hawai'i responsible for the performance, development and coordination of programs and activities relating to native Hawaiians and Hawaiians; (2) assess the policies and practices of other agencies impacting native Hawaiians and Hawaiians; and (3) conduct advocacy efforts for native Hawaiians and Hawaiians.³

¹ Haw. Const. Art. XII, § 5.

² See HRS Chapter 10.

³ HRS § 10-3.

OHA highlights the following areas of concern regarding the protection of historic, cultural, and water resources.

A. The Petition appears to misstate the locations surveyed in the archaeological field inspection as outside the Petition Area, and thereby excludes the documented potential historic properties recorded during inspection.

OHA is concerned that the Petition’s discussion of historic resources appears to inaccurately describe the relationship between the archaeological field inspection area and the Petition Area. Petition Section VII.E states that Honua Consulting’s assessment identified potential artifacts, surface architecture, or cultural deposits “on two of the parcels (1 and 2 which are not part of the Petition Area),” and further concludes that “[t]here are no historic resources in the Petition Area.” Section XV, regarding cultural resources, makes a similar assertion that no cultural resources were identified within the Petition Area. However, the map and descriptions included in the archaeological literature review and field inspection report (“ALRFI”) appear to show that Parcels 1 and 2 correspond to portions of TMKs (2) 4-9-002:061 and (2) 4-9-002:001 respectively, and are included within the Petition Area.⁴ The State Historic Preservation Division (“SHPD”) April 27, 2022 letter (Exhibit 9) similarly identifies the ALRFI field inspection area as TMK (2) 4-9-002:061 por. and TMK (2) 4-9-002:001 por., and notes that the survey area included 66.7 acres.

This distinction is important because the ALRFI did document archaeological resources within the field inspection area, including previously identified historic properties within the proposed amended Kō‘ele Project District and four newly documented potential historic properties. A truncated fire pit remnant containing native charcoaled plants was documented and designated as SIHP #50-40-98-1988. SIHP # -1988 was recorded in the north central portion of Parcel 1 (:061). In accordance with Hawai‘i Administrative Rules (HAR) § 13-284-6, the fire pit was assessed as having integrity of location and significance under Criterion d (have yielded data important to Hawaiian history).⁵ In addition, a historic road and ditch, historic planter, and historic to modern stockpile of imu stones were identified on those parcels, as well as a number of previously identified sites. Three traditional Native Hawaiian sites are also located to the north of the Petition Area.

The ALRFI further notes that it is likely that future construction activities may disturb additional traditional and/or historic subsurface deposits, artifacts, or burials due to the presence of the identified features and previously documented sites.⁶ The report further recommends archaeological monitoring for any future ground disturbance.

⁴ See Petition, Ex. 6 Final Environmental Assessment (“FEA”), Appendix E, p. 6, Fig. 4.

⁵ *Id.* Appendix E at 157.

⁶ *Id.* Appendix E at 180.

SHPD provided concurrence for the Kō‘ele Project District Amendment permit applications before the County of Maui on April 27, 2022. SHPD’s letter requested to review future projects involving ground-disturbing activities within the Kō‘ele Project District Amendment area, specifically requesting the County of Maui to flag TMK (2) 4-9-002:061 and :001 regarding the identified historic properties on those parcels.⁷

Aside from the noted inconsistency in the Petition regarding Parcels 1 and 2 in the ALRFI, the field inspection did not cover TMK (2) 4-9-018:003. Thus, while the petition claims that impacts to archaeological resources were assessed for the Petition Area, this is not entirely true. The portion of this TMK petitioned for reclassification, including 81.207 acres of Agricultural and 2.073 acres of Rural designations, fell outside of the field inspection coverage area.

OHA therefore requests that the record accurately reflect that several previously identified and newly identified historic resources are located within portions of the Petition Area. Additionally, the record should reflect that the portion of TMK (2) 4-9-018:003 included in the Petition Area has not been assessed for possible impacts to archaeological resources. These disclosures are necessary to ensure that the Petition adequately addresses impacts to area resources pursuant to HAR § 15-15-50(c)(11). OHA further recommends that any LUC approval of the Petition include an express condition requiring HRS Chapter 6E review prior to any future ground-disturbing activities within the Petition Area, consistent with SHPD’s request, and requiring archaeological monitoring for construction projects within the Petition Area consistent with the mitigation measures recommended in the ALRFI report.

B. The Petition relies on historical and archaeological documentation to support its cultural analysis, but does not appear to include current cultural consultation to identify ongoing traditional and customary practices in the Petition Area or broader impact area.

As you are aware, the LUC has affirmative constitutional and legal obligations to assess the identity, scope, and extent to which valued cultural, historical, and natural resources may be affected by the proposed action before final decision-making, consistent with *Ka Pa‘akai o Ka ‘Āina v. Land Use Commission*, 94 Haw. 31 (2000). While the Petition, Final Environmental Assessment (“FEA”), Cultural and Historic Resources Survey prepared by Kepā Maly, and *Ka Pa‘akai* analysis memorandum prepared by Honua Consulting provide substantial historical, archaeological, and previously documented interviews regarding the Kō‘ele area, they do not appear to include current cultural consultation or interviews conducted for this Petition.

In *Ka Pa‘akai*, the Hawai‘i Supreme Court reaffirmed the constitutional protections afforded under Article XII, Section 7 of the Hawai‘i State Constitution, emphasizing that all state

⁷ Petition, Ex. 9.

and county agencies share a duty to reasonably protect Native Hawaiian traditional and customary rights.⁸ Information gathered during a Cultural Impact Assessment (“CIA”) conducted under HRS Chapter 343 review typically informs this analysis and may support a *Ka Pa‘akai* analysis (“KPA”). However, the FEA for this project did not include a CIA. Instead, the FEA included a Cultural and Historic Resources Survey, which relied heavily on documentary research and previously recorded interviews conducted almost two decades before the FEA was published in 2022.⁹ The Survey report was prepared by Maly nearly a decade ago (March 2017), with documented interviews dating back to 2005 as part of a Lāna‘i Oral History Program. The report explicitly states that it did not include any updated interviews. The ALRFI, which only covers part of the Petition Area, also did not include any updated interviews either. Lastly, the KPA memorandum included in the Petition (Exhibit 16) relies primarily on archaeological resources and the historical record, including the 1989 oral history record of Lāna‘i Ranch, without documenting any current consultation to identify ongoing cultural practices or cultural resources that may be affected by the proposed DBA.¹⁰

OHA does not dispute that the documentation provided contains valuable historical information. However, archaeological and historical documentation are not a substitute for meaningful consultation with living cultural practitioners and community members who may have current knowledge of traditional and customary practices, cultural access, gathering, or other cultural resources associated with the Petition Area and broader Kō‘ele region. Without such consultation, it is unclear whether the Petition adequately identifies the scope of Native Hawaiian traditional and customary practices that may be affected by the proposed reclassification and future development enabled by the DBA pursuant to HAR § 15-15-50(c)(21).¹¹

OHA underscores the LUC’s independent obligation to conduct and support a complete *Ka Pa‘akai* analysis prior to any final decision. OHA recommends that the LUC carefully evaluate the *Ka Pa‘akai* requirements, which include:

- 1) The identity and scope of valued cultural, historical, or natural resources in the subject area, including the extent to which traditional and customary native Hawaiian rights are exercised;
- 2) The extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and
- 3) The feasible action, if any, to be taken by the (agency) to reasonably protect native Hawaiian rights if they are found to exist.¹²

⁸ 94 Haw. at 53.

⁹ See Petition, Ex. 6 FEA, Appendix F, at 198.

¹⁰ See Petition, Ex. 16, p. 8-11.

¹¹ See also, *Ka Pa‘akai o Ka ‘Āina*, 94 Haw. 31.

¹² *Id.* at 47.

In order for the LUC to adequately assess cultural impacts, OHA requests that meaningful consultation and outreach be conducted with Lāna‘i residents, cultural practitioners, lineal and cultural descendants, and appropriate Native Hawaiian organizations to identify cultural resources and practices occurring within the Petition Area and broader Kō‘ele impact area. This outreach should not be limited to the Petition Area boundaries alone, because cultural practices, access routes, landscape features, water resources, and cultural associations may extend beyond the lands proposed for reclassification.

Ka Pa‘akai compliance is a prerequisite to lawful project approval, and the LUC bears independent responsibility for ensuring that a complete *Ka Pa‘akai* analysis is conducted before final action on the Petition.¹³ This necessarily includes meaningful cultural consultation—conducted by the Petitioner and/or the LUC—to identify current cultural practices and resources within the Petition Area and surrounding impact area, with documented findings considered prior to any final decision. OHA therefore respectfully recommends that the LUC require supplemental cultural consultation and an updated *Ka Pa‘akai* analysis before approving the Petition.

C. The Petition should more fully address housing impacts associated with expanded resort and commercial event uses.

OHA requests clarification regarding the Petition’s conclusion that the proposed land use realignment “will not impact housing needs.” Petition Section IV.C provides this conclusion without further explanation. However, the Petition proposes to enable additional resort-related uses, including hotel expansion of up to nine villas, additional spa hales and resort support buildings, expanded ranch and tennis/pickleball amenities, and commercial events such as weddings and outdoor dinners. Even if the proposed hotel expansion remains just below the County’s workforce housing threshold, expanded lodging, event, and resort operations may still increase staffing needs and related housing demand on Lāna‘i.

Maui County’s Residential Workforce Housing Policy, Maui County Code (MCC) Chapter 2.96, reflects the County’s recognition that development, including lodging and hotel expansion, can generate workforce housing needs. That policy applies to developments creating 10 or more lots, lodging units, time share units, or dwelling units, and to hotel renovations that increase the number of lodging units by 10 or more. While the Petition currently describes the hotel expansion as including up to nine villas, OHA does not believe the Petition should characterize the proposed DBA as having no impact on housing needs without further analysis of the project’s anticipated workforce demand, operational expansion, and relationship to future phases or related resort improvements. OHA further notes that the socio-economic impact report prepared for the FEA

¹³ *Id.* at 44–46.

(Exhibit 6, FEA Appendix H) included projections regarding resort operations, workforce demand, and housing needs that were not disclosed in the Petition’s discussion of economic or housing impacts.¹⁴

According to the March 2021 socio-economic impact report, resort operations at full development are projected to support approximately 450 direct jobs and 180 indirect jobs, including approximately 570 jobs on Lāna‘i.¹⁵ By comparison, 2019 resort operations supported approximately 36 jobs on Lāna‘i. The report further states that, in 2019, jobs generated by resort operations supported approximately 80 residents in 34 homes on Lāna‘i. Under the proposed development scenario, resort operations are projected to support approximately 1,250 residents in 540 homes on Lāna‘i.¹⁶ In other words, the report projects that the proposed resort operations would support an increase need of approximately 506 homes for workers on Lāna‘i.

OHA therefore recommends that the Petitioner provide additional analysis of housing impacts and clearly disclose potential impacts in the Petition pursuant to HAR §§ 15-15-50(c)(14)–(15). This analysis should include the relevant findings of the socio-economic impact report, identify whether the proposed development or any future phase will trigger Maui County’s Residential Workforce Housing Policy, and explain how the Petitioner will avoid segmenting related lodging or resort improvements in a manner that understates cumulative housing impacts. OHA further notes that the LUC has previously imposed housing-related conditions in DBA proceedings where future development may affect housing demand, and OHA recommends that such a condition be considered here.¹⁷

D. Water resource protections should be preserved through a condition prohibiting the use of water from Lāna‘i’s groundwater aquifer for golf course irrigation and park or open space landscape irrigation within the Petition Area, requiring alternative non-potable water sources.

OHA is concerned that approval of the Petition, without a clear water resource condition, could unintentionally allow or preserve future golf course irrigation uses within the Petition Area that rely on potable water from Lāna‘i’s high-level aquifer. The Petition is being advanced in coordination with proposed County zoning and Kō‘ele Project District amendments, including Maui County Bills 24 and 25 (2024). Bill 25 (2024) would amend MCC Chapter 19.71, including the existing Kō‘ele Project District irrigation provisions for golf course uses in Section 19.71.055.

¹⁴ See Petition §§ X.B, IV.C; HAR § 15-15-50(c)(14)–(15).

¹⁵ Petition, Ex. 6 FEA, Appendix H, at III-9.

¹⁶ *Id.* at III-10.

¹⁷ See e.g., *Status Report on Royal Kunia Phase II Development Compliance with Conditions*, State of Hawaii Land Use Commission Amended Decision and Order (Docket No. A92-683, October 1, 1996), p. 3 (“Petitioner shall provide affordable housing opportunities for low to moderate income residents of the State of Hawai‘i to the satisfaction of the City and county of Honolulu...”).

Under the existing Kō‘ele Project District provisions, “[n]o high level aquifer groundwater will be used for golf course maintenance or operation”, with limited exception, and golf course irrigation is required to use alternative nonpotable water sources. MCC § 19.71.055. Bill 25 (2024) would substantially revise the section to include a new provision that states “golf courses in existence and operation prior to 1991 that have continually and lawfully utilized high-level aquifer groundwater for maintenance and irrigation must be permitted to continue such use,” subject to other code provisions.¹⁸ This proposed change would erode long-standing policy protecting Lāna‘i’s water resources well beyond the Petition Area. Although the current Petition states that the former Kō‘ele Golf Course area is proposed for use as a park and possible sculpture garden, this proposed County amendment raises questions about whether future golf course or golf course-related irrigation uses may later be claimed or authorized within the broader Kō‘ele Project District.

Bill 25 (2024) similarly amends the Park section, MCC § 19.71.050, to allow for high-level aquifer groundwater use for irrigation in areas where sufficient brackish or recycled water is not available, and states that “[a]reas within park districts that have continually and lawfully used high level aquifer groundwater for maintenance and irrigation must be permitted to continue such use,” subject to other code provisions.¹⁹

OHA does not take a position on how the County may ultimately interpret Bill 25 (2024), or whether its proposed language would apply to any particular existing or former golf course. However, because the Petition Area includes former golf course lands and because the DBA would facilitate future urban and project district uses, OHA believes the LUC should ensure that approval of this Petition does not imply authorization to use potable high-level aquifer water for golf course irrigation within the Petition Area.

This concern is especially important given the history of LUC proceedings and litigation regarding golf course irrigation on Lāna‘i. In *Lanai Co. v. Land Use Commission*, 105 Hawai‘i 296, 97 P.3d 372 (2004), and *Lāna‘ians for Sensible Growth v. Land Use Commission*, 146 Hawai‘i 496, 463 P.3d 1153 (2020), the Hawai‘i Supreme Court reviewed LUC conditions imposed in relation to the Mānele Golf Course DBA. Those conditions prohibited the use of potable water from Lāna‘i’s high-level groundwater aquifer for golf course irrigation and required alternative non-potable water sources. The Court emphasized the State’s constitutional obligation to protect water for future generations and reinforced the LUC’s duty to enforce conditions protecting public trust resources.²⁰

¹⁸ Bill 25 (2024), p. 11.

¹⁹ Bill 25 (2024), p. 6.

²⁰ *Lāna‘ians for Sensible Growth*, 146 Hawai‘i at 508-09, 463 P.3d at 1165-66 (referencing the State’s constitutional public trust obligations under Haw. Const. Art. XI, §§ 1,7).

Accordingly, OHA recommends that any approval of the Petition include a condition prohibiting future golf course use within the Petition Area unless irrigation is limited to alternative non-potable water sources and does not use groundwater. We additionally recommend similar requirements for park, open space, and landscape irrigation uses, requiring those uses to rely on alternative non-potable water sources. Inclusion of this condition is consistent with the Petition’s current representation that the former golf course lands are proposed for park or recreational use, rather than active golf course use. It would also ensure that the DBA does not unintentionally undermine long-standing protections for Lāna‘i’s limited potable water resources or conflict with the LUC’s public trust responsibilities.

For these reasons, OHA respectfully recommends the following conditions with any approval of the Petition:

- 1) Ensure that the record accurately reflects the historic properties and potential historic properties identified within portions of the Petition Area;
- 2) Ensure that the record accurately reflects that the entirety of the Petition Area has not been assessed for possible impacts to historic properties;
- 3) Require HRS Chapter 6E review and SHPD consultation before any future ground-disturbing activities occur;
- 4) Require archaeological monitoring for future ground-disturbing activities within the Petition Area;
- 5) Require supplemental cultural consultation and an updated *Ka Pa‘akai* analysis that identifies current traditional and customary Native Hawaiian practices and resources within the Petition Area and broader Kō‘ele impact area before final approval or implementation of future development;
- 6) Ensure that the record accurately reflects the projected economic and housing impacts due to increased resort operations and consider including a housing impact mitigation condition;
- 7) Require that future resort improvements are evaluated cumulatively, and prohibit segmentation of related improvements in a manner that would avoid or undermine review of housing or other cumulative impacts; and

- 8) Prohibit the use of water from Lāna‘i’s groundwater aquifer for golf course irrigation, park irrigation, open space irrigation, or landscape irrigation within the Petition Area, requiring the alternative use of non-potable sources of water.

Mahalo for the opportunity to comment. If you should have any questions, please contact OHA Compliance Advocate, Leialoha Mākuanani, at andream@oha.org.

‘O wau iho nō me ka ‘oia ‘i‘o,



Summer Sylva
Interim Ka Pouhana, Chief Executive Officer

SS:lm