

11/17/2015

Aloha Land Use Commissioners,

My name is Ryan Kāwika Ali'inoa Aspili. I am a Native Hawaiian of lineal descent from the Olowalu area, and am currently finishing my Bachelors in Hawaiian Language and Studies at University of Hawai'i at Mānoa.

I am here today to urge the Land Use Commission to deny the reclassification of land in Olowalu from agricultural to urban and rural districts. The Final EIS is insufficient and does not meet the State of Hawai'i's responsibility to protect Native Hawaiian rights in congruency with Article XII Section 7 of the Hawai'i State Constitution. Also, if the Land Use Commission were to adopt the proposed EIS, they would be improperly delegating its duty to protect Native Hawaiian rights to Olowalu Town LLC and Olowalu 'Ekolu LLC, consistent with the findings in *Ka Pa'akai o Ka 'Āina v. Land Use Commission*. Lastly, the Land Use Commission should do its due diligence in researching the validity of the title to the lands situate at Olowalu, and determine whether or not they have clear title to the land or if they are in fact Crown Lands from the Kingdom era.

Article XII, §7 of the Hawaii State Constitution states that:

" The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights."

The Final EIS provided does not reasonably protect these rights and does not address in what ways these rights will be hindered. In the EIS, they mention that the Alaloa trail was used for intra-ahupua'a travel, but the mauka-makai trail was preferred for inter-ahupua'a travel. They use this rhetoric to divert your attention from the Alaloa, in which they intend to substantially limit if not cut off access entirely to said trail and resources obtained near the shoreline. This is evident in their plan to relocate the Honoapiilani Highway and convert the old highway road to a "secondary coastal roadway". The access to mauka and makai resources are already significantly impaired, can you imagine how what type of access would be afforded with 1,500 more families and homes? There are also special pōhaku found only on the Olowalu coastline that

my 'ohana have used from time immemorial to make pōhaku ku'i 'ai for subsistence purposes. Not only were the pōhaku not mentioned in the cultural impact study, they are also not currently being protected under the current EIS. Ultimately, it will terminate the ability of mine and countless other 'ohana to access and gather pōhaku for subsistence purposes. If the Final EIS being proposed does not address all traditional and customary rights of Native Hawaiians, then how can we be sure that they will plan to protect said rights from being regulated out of existence.

According to the analytical framework proposed in *Ka Pa'aka'i o Ka 'Āina v. Land Use Commission*, the State "must at a minimum-make specific findings to the following: (1) the identity and scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (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 LUC to reasonably protect native Hawaiian rights if they are found to exist."

In *Ka Pa'akai o Ka 'Āina*, the LUC improperly delegated its duty to protect Native Hawaiian rights to Ka'upulehu Developments because they had failed to lie out their Resource Management Plan, in full, on the front end. Here we see a similar narrative in which many issues including Traffic Improvements and Culture Resources still remain unresolved. Olowalu Town LLC and its associates have not identified all of the valued cultural, historical, and natural resources, which I can attest to. Secondly they have not mentioned in specificity the extent to which these Native Hawaiian resources and rights will be affected or impaired by the development. Therefore, the only feasible action to be taken by the LUC to reasonably protect native Hawaiian rights is to deny the re-zoning of the petition area in Olowalu. If the Land Use Commission accepts the petition to re-zone and develop the Olowalu area without due diligence, they would be improperly delegating its duty to protect Native Hawaiian customary and traditional rights.

Finally, I would like to urge the LUC to research the validity of the title to the lands situate at Olowalu, and determine whether or not they have

clear title to the land or if they are in fact Crown Lands from the Kingdom era. Mentioned within the EIS is that approximately 6,025 acres was leased to the Olowalu Sugar Company at \$800 per year with a lease contract dated October 5, 1875 that was set to expire on July 1, 1908. Before the end of the contract on July 1906, Walter M. Giffard purchased all of the lands leased by the Olowalu Sugar Company at public auction from the Territory of Hawai'i for \$37,750. Given the political history of Hawaiian Kingdom, there needs to be research done to validate the title of such lands and whether or not the Territory of Hawai'i had the right to sell those lands in the first place. If found to be invalid, the land would revert back to the Crown Lands, in which genuine conversations about ahupua'a and sustainability of the lāhui can be obtained.

I conclude by reiterating my stance in opposition to the re-zoning and development of Olowalu and would like to say mahalo the members of the Land Use Commission for hearing our testimonies.

Aloha,
Ryan Kāwika Ali'inoa Aspili