



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

Board of Land & Natural Resources  
Submittal Item C-1

REQUEST FOR DELEGATION OF AUTHORITY FOR PERMITS AND ACTIONS UNDER  
HAWAI'I ADMINISTRATIVE RULES CHAPTERS 13-122 AND 13-123, TO THE  
CHAIRPERSON, THE ADMINISTRATOR AND BRANCH MANAGERS OF THE DIVISION  
OF FORESTRY AND WILDLIFE.

AND

AUTHORIZE THE CHAIRPERSON, AND THE ADMINISTRATOR AND BRANCH  
MANAGERS OF THE DIVISION OF FORESTRY AND WILDLIFE TO DETERMINE AND  
APPROVE CHAPTER 343, HAWAI'I REVISED STATUTES (HRS) ENVIRONMENTAL  
COMPLIANCE REQUIREMENTS, INCLUDING APPROVAL OF DECLARATIONS OF  
EXEMPTIONS, AS APPLICABLE, FOR PERMITS ISSUED UNDER THE RULES  
REGULATING HUNTING IN HAWAI'I ADMINISTRATIVE RULES CHAPTERS 13-122  
AND 13-123

July 10, 2015

9:00 a.m.

Conference Room 132

The Administration of the Office of Hawaiian Affairs (OHA)<sup>1</sup> **OPPOSES** the staff request for delegation of authority with regards to the closure of public hunting areas under HAR §§ 13-122-11.9 and 13-123-21.1, and urges the Board of Land and Natural Resources (BLNR) to retain responsibility and public input opportunities for decisions which could limit access to a significant portion of our islands' natural areas, as well as invite unnecessary and unwanted legal challenges by affected stakeholders.

OHA understands that the stated intent of this submittal is to administratively streamline permits to reduce routine paperwork and administrative processes, as well as minimize public turnaround time for permits. However, given that the closure of public hunting areas may have direct and substantial impacts to traditional and customary and subsistence hunting practices, that such closures "are relatively rare," and given the highly dubious use of the terms "public safety" and "protection of natural resources" by

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<sup>1</sup> OHA is the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians. HAW. CONST. ART. XII SEC. 5. OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for the agency's beneficiaries. See HRS Chapter 10. 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. HRS § 10-3.

Department of Land and Natural Resources (DLNR) staff in item C-2 of today's agenda, OHA strongly believes that the expertise and judgment of the entire BLNR, with public and agency oversight and input pursuant to the state Sunshine Law, should continue to be used in closure decisions.

As a preliminary matter, undeveloped natural areas such as public hunting areas are, by definition, those places where constitutionally-protected Native Hawaiian traditional and customary practices occur.<sup>2</sup> A significant number and range of practices are dependent upon access to the natural and cultural resources and cultural sites that are found in such areas. In addition, public hunting areas support subsistence hunting practices, which a significant number of Native Hawaiians engage in both as a means of obtaining food, and as a means of maintaining a religious and spiritual relationship to the 'āina, their communities, and to their ancestors. Accordingly, closures of public hunting areas have the potential to severely impact constitutionally-protected Native Hawaiian traditional and customary rights, the perpetuation of Native Hawaiian cultural values, as well as a major means of providing food for Native Hawaiian families and communities.

OHA can appreciate that exigent circumstance presenting bona fide threats to public safety or the natural environment may nevertheless justify decisionmaking that would close portions of public hunting areas for a temporary amount of time. However, as demonstrated by item C-2 of today's agenda, there is a real possibility that delegating authority to close public hunting areas for such reasons could result in closure decisions that are less-than-fully-informed or justified. For example, as outlined in OHA's testimony for item C-2, notwithstanding a lack of specific evidence or other justification, DLNR staff are recommending the immediate closure of an 18,000 acre<sup>3</sup> corridor leading to and including the summit of Mauna Kea during stargazing hours, due to the threat of "imminent peril" to public safety and natural resources posed by a handful of "encampments" (generally less than twenty individuals per day) on the side of the Summit Access Road. While the BLNR will have the opportunity today to approve or reject such a recommendation, delegating temporary closure authority to the Chairperson alone will foreclose BLNR review in similar future instances. Moreover, in addition to abdicating its responsibilities to ensure due diligence and protect the rights of Native Hawaiians in administering public trust resources, the BLNR may also eliminate any opportunity for public and agency review and input – input which could otherwise help to mitigate any impacts to Native Hawaiians or the general public, better achieve closure goals, and minimize the potential for after-the-fact legal challenges which may drain the DLNR of fiscal, staff, and legal counsel resources otherwise critical to its broader responsibilities.<sup>4</sup>

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<sup>2</sup> *State v. Hanapi*, 89 Hawai'i 177, 186-87 (1998) (discussing protection of traditional and customary rights on "less-than-fully-developed" land).

<sup>3</sup> 18,000 acres is equivalent to approximately 13,500 football fields, or over 60% of the island of Kaho'olawe, or the area on O'ahu Island between Diamond Head and River Street in Chinatown, from the Ko'olau ridgeline to the shoreline.

<sup>4</sup> Please see OHA's testimony on agenda item C-2, regarding the high potential for a broad range of legal challenges to the closure recommendation contemplated there, that may carry significant opportunity costs for the DLNR should the staff recommendation in C-2 be approved.

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OHA notes that the “relatively rare” occurrence of temporary closures, as described in the instant submittal, will also minimize any administrative relief that delegating closure authority to the Chairperson will provide.

Accordingly, OHA urges the retention of public hunting area closure authority by the BLNR, and that the BLNR deny the requested delegation of such authority under HAR §§ 13-122-11.9 and 13-123-21.1.

Mahalo nui for the opportunity to comment on this matter. For any questions or concerns, please contact Sterling Wong, Public Policy Manager, at 594-1908 or via email at [sterlingw@oha.org](mailto:sterlingw@oha.org).