

RESOLUTION NO. 205 17

**A RESOLUTION ACKNOWLEDGING THAT HAWAI'I COUNTY AND THE HAWAI'I DEPARTMENT OF TRANSPORTATION HAVE HISTORICALLY DISCRIMINATED AGAINST LOW INCOME AND NATIVE HAWAIIAN COMMUNITIES OF THE PUNA AND KA'Ū DISTRICTS, AS ESTABLISHED BY THE OFFICE OF CIVIL RIGHTS' SEPTEMBER 28, 2000, RULING, AND PLEDGING THE COUNCIL'S COMMITMENT TO ADDRESSING DISPARITY AND PREVENTING DISCRIMINATION AGAINST DISADVANTAGED POPULATIONS.**

**WHEREAS**, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance, and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Section 1-101, directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations; and

**WHEREAS**, on September 28, 2000, the Director of the Office of Civil Rights of the Federal Highways Administration ruled in favor of the Sustainability Committee in response to its complaint of discrimination against the Hawai'i Department of Transportation (HDOT) and Hawai'i County as indicated in the attached Exhibit A; and

**WHEREAS**, complainants (the Sustainability Committee) alleged that State and County officials deliberately undercount residents to favor large landowners/developers, and that State and County officials knowingly zone residential land as agricultural land, based upon erroneous projected population figures that could not be supported by State or Hawai'i County officials; and

**WHEREAS**, complainants alleged that the substandard subdivisions of Hawai'i Island (in Puna and Ka'ū) have been, by design, denied access to basic infrastructure and services for forty years while continuously providing taxes that subsidize additional services to existing, already served, higher income communities; and

**WHEREAS**, complainants also alleged that "the primary financial beneficiary of the tax subsidy provided by these substandard subdivisions is the town of Hilo, which has had a substantial per capita subsidy in taxes paid and services received for every year since 1955"; and

**WHEREAS**, the Federal Highways Administration concluded that evidence supported the allegations raised in the complaint of discrimination, and that HDOT and Hawai'i County were not in compliance with the requirements of Title VI of the Civil Rights Act of 1964 as outlined by the procedures and requirements at 23 Code of Federal Regulations (CFR), Part 200 and 49 Code of Federal Regulations (CFR), Part 21 as well as Executive Order 12898, Section 3-3; and

**WHEREAS**, the Hawai'i 2011-2015 American Community Survey estimates that 33.4% of persons in the Pāhoia census tract are estimated to be living below the federal poverty level in comparison to the Hilo (Kahuku-Kaūmana) census tract where 8.3% of persons are living below the poverty level; and

**WHEREAS**, Section 2.1, Table 2-2, of the Hawai'i County General Plan 2005, as amended, states that the estimated resident population in Puna as of 2015 will be 49,801, and that Puna is now, and will continue to be, the most populous area of Hawai'i County through 2020; and

**WHEREAS**, according to the April 12, 2017 budget presentation by Hawai'i County Police Chief Paul Ferreira, the district of Puna is being served by the fewest police officers per capita in Hawai'i County; and

**WHEREAS**, substandard roads in Puna cause many residents to drive for more than an hour to reach the nearest hospital; and

**WHEREAS**, the lack of any wastewater treatment facilities in Puna is the primary challenge to the construction of a hospital in the area; and

**WHEREAS**, the Council finds that the access to clean drinking water for many Puna residents does not meet the standards established by the United Nations human right to water and sanitation in Resolution 64/292, in part because many residents must drive up to 40 minutes on unpaved substandard roads to access and haul drinking water from spigots; and

**WHEREAS**, disparity in Puna is prevalent given that access to basic infrastructure and services such as limited police services, substandard roads, a lengthy distance to the nearest hospital, and lack of reasonable accessibility to clean water and sanitation, all endanger the health and well-being of residents as well as limit economic growth, creating an inequitable experience to that of neighboring districts of Hawai'i County, despite having a comparable population size and paying comparable taxes; now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI'I** that it acknowledges the September 28, 2000, ruling establishing that the County of Hawai'i and the Hawai'i Department of Transportation have historically discriminated against low income and Native Hawaiian communities in Puna and Ka'ū.

**BE IT FURTHER RESOLVED** that the Council of the County of Hawai'i herein commits to addressing disparity and preventing discrimination against low income, Native Hawaiian, and other disadvantaged populations of Hawai'i County, particularly in Puna and Ka'ū.

**BE IT FINALLY RESOLVED** that the County Clerk shall transmit a copy of this resolution to the Honorable Governor David Ige; Honorable Mayor Harry Kim; Ford Fuchigami, Director of the Hawai'i Department of Transportation; Ralph Rizzo, Hawai'i Division Administrator of the Federal Highways Administration; Frank Demarco, Director of the Department of Public Works; Michael Yee, Director of the Department of Planning; William A. Kucharski, Director of the Department of Environmental Management; Collins Tomei, Director of the Department of Finance; Curtis Sharp, Administrator of the Mass Transit Agency; Charmaine L. Kamaka, Director of the Department of Parks and Recreation; Paul Ferreira, Chief of Police, Hawai'i Police Department; Keith Okamoto, Manager-Chief Engineer of the Department of Water Supply; and Joseph K. Kamelamela, Corporation Counsel, Office of the Corporation Counsel.

Dated at \_\_\_\_\_, Hawai'i, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

INTRODUCED BY:

  
 \_\_\_\_\_  
 COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL  
 County of Hawai'i  
 Hilo, Hawai'i

ROLL CALL VOTE

	AYES	NOES	ABS	EX
CHUNG				
DAVID				
EOFF				
KANUHA				
LEE LOY				
O'HARA				
POINDEXTER				
RICHARDS				
RUGGLES				

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on \_\_\_\_\_.

ATTEST:

Reference: \_\_\_\_\_ C-281/GREDC

COUNTY CLERK    CHAIRPERSON & PRESIDING OFFICER

RESOLUTION NO. **205 17**



US Department  
of Transportation  
Federal Highway  
Administration

7-13-08  
DIVISION

DIRECTOR'S OFFICE  
DEPT OF  
TRANSPORTATION

SEP 28 Oct 5 2 02 PM '08

400 Seventh St., S.W.  
Washington, D.C. 20590

DL  
cc:l

Refer to: HCR

*niemiec@stanford.edu*

Mr. Kazu Hayashida, Director  
Hawaii Department of Transportation  
869 Punchbowl Street  
Honolulu, Hawaii 96813-5036

DEPT OF TRANSPORTATION  
STATEWIDE TRANS.  
PLANNING OFFICE  
OCT 11 12 15 PM '08

Dear Mr. Hayashida:

The Federal Highway Administration (FHWA) has completed the investigation of the complaint of discrimination filed by the Sustainability Committee against the Hawaii Department of Transportation (HDOT) and your subrecipient, Hawaii County. The FHWA has concluded that the evidence supports the allegations raised in the complaint of discrimination. A copy of the Investigative Report is enclosed. The FHWA has outlined a list of recommendations that must be implemented before your agency can be determined to be in compliance. In accordance with the regulations at 23 Code of Federal Regulations, Part 200.9(a)(3), which provides that the State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State signed assurances and required guidelines.

Anyone who intimidates, threatens, coerces, or engages in other discriminatory conduct against individuals because of actions taken to secure rights protected by civil rights laws may be found in violation of these laws. Any individual who believes he or she has been subjected to harassment or intimidation may file a complaint with the Federal Highway Administration. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records. In the event we receive such a request, we will seek to protect personal information which, if released, could constitute an unwarranted invasion of privacy.

Sincerely yours,

*George F. Morris, Jr.*  
Edward W. Morris, Jr.  
Director, Office of Civil Rights

Enclosure

EXHIBIT A

### Analysis of Evidence

Complainants allege that State & County officials "deliberately" undercount residents due to policy set by State and County officials in favor of large land owners /developers. Complainants allege that State and County officials knowingly zone residential land as farm land, based upon erroneous projected population figures, which cannot be supported by the State or Hawaii County officials.

Complainants provided data which shows that the HDOT & Hawaii County are excluding low income and Native Hawaiians from consideration in its HL RTP based upon land use policies.

Investigation disclosed that Respondent officials use outside consultants to prepare population projections, in formulating their general plan. Respondent officials were unable to provide documentation regarding how the consultants arrive at their projected population data for any of its jurisdictions. Investigation disclosed that Respondents take the word of the consultants without verification.

Investigation further disclosed that Respondents are not collecting data in accordance with the requirements of 23 CFR, Part 200.9 (b) (4) and Executive Order 12898, Section 3-3.

Investigation also disclosed through an interview with the Title VI Specialist for HDOT that the Title VI Specialist only spends 5% of his time in the Title VI area.

The position description for the Title VI Specialist which is dated May 8, 1970, addresses only equal employment opportunity (EEO) duties. There is nothing in the position description that covers Title VI.

The Title VI Specialist stated that he does not conduct program reviews for compliance with Title VI nor does he exercise oversight for Title VI compliance with subrecipients.

Record evidence shows that the latest Title VI Plan submitted by HDOT to the Division Office does not comply with 49 CFR 21 or 23 CFR 200.

### Conclusion

Based upon the information reviewed during the investigation, the record shows that the Respondents Hawaii Department of Transportation and Hawaii County are not in compliance with the requirements of Title VI of the Civil Rights Act of 1964 as outlined by the procedures and requirements at 23 CFR 200 and 49 CFR 21. The evidence further shows that the requirements of Executive Order 12898, Section 3-3 are not being followed.

Specifically, the investigation disclosed the following:

1. The HDOT and Hawaii County have failed to collect, analyze and evaluate data as required under 49 CFR 21.9 (b), 23 CFR 200.9 (b), and Executive Order 12898, Section 3-3;
2. The HDOT does not have a viable Title VI Plan in operation;
3. The HDOT's Title VI Specialist is not performing the requirements of the position as outlined in the regulations at 23 CFR 200.9 (b).

#### **VIII. RECOMMENDATIONS**

1. It is recommended that with the assistance and guidance of the Western Resource Center and the FHWA Division Office, the HDOT and its subrecipient, shall take immediate action to come into compliance with 23 CFR 200, 49 CFR 21 and Executive Order 12898. Areas requiring immediate attention and action include, but are not limited to the following:
  - a. The development of a Title VI Implementation Plan that complies with the regulations;
  - b. The immediate collection, maintenance and analysis of information regarding the populations in the State of Hawaii identified by race, national origin, and income level as outlined in Executive Order 12898, Section 3-3. The population areas cited in the complaint should be included in the analysis.
  - c. The data retrieved and analyzed in (b) above shall be immediately and appropriately utilized in the development of the HLRP.
2. It is recommended that HDOT request and receive immediate Title VI training. The Western Resource Center will provide the Title VI training.