

Walter Ritte Recommendations Accepted by the Planning Commission:

CHAPTER 5 ECONOMIC DEVELOPMENT

Pg. 5-2, line 31, add: [Subsistence is the customary and traditional use by Moloka`i residents of wild and cultivated renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, transportation, culture, religion and medicine, for barter or sharing, and for customary trade. Many families on Moloka`i continue to rely upon subsistence fishing, hunting, gathering, or cultivation for a significant portion of their food. Subsistence has also been critical to the persistence of traditional Hawaiian cultural values, customs and practices.](#)

Pg. 5-3, add new issue: [There is increasing concern that if something is not done now to reverse the trend of overharvesting and diminishing natural resources, there will be nothing left for future generations.](#)

Pg. 5-4, add new policy: [Support community-based management of the natural resources on Moloka`i.](#)

Pg. 5-5, all actions: Add to partners: [Aha Kiole](#)

CHAPTER 6 LAND USE AND HOUSING

Pg. 6-10, all actions: Add to partners: [Aha Kiole](#)

CHAPTER 3 NATURAL HERITAGE, AND SCENIC RESOURCES

3.1 Natural Resources

Pg. 3-7 & 3-8, all actions: Add to partners: [Aha Kiole](#)

(End Walter Ritte Recommendations Accepted by the Planning Commission)

CHAPTER 6 LAND USE AND HOUSING

6.1 Land Use

Map 6.3: Change Community Plan Designation above Ranch Camp from Single Family to Project District.

Pg. 6-6, line 21, add a description for the Kaunakakai Project District. The description will include recognizing the need to move the town *mauka* overtime as SLR begins to impact existing development and land use. Uses will include single family, park, community center, government, commercial and offices.

Pg. 6-6, lines 22 – 23, Subarea Descriptions paragraph to new Chapter 11 Subarea Descriptions.

CHAPTER 11 SUBAREA DESCRIPTIONS

Add a new Chapter 11 Subarea Descriptions to include:

“Maunaloa Policy” with footnote: Moloka`i Planning Commission supports update of this policy at a future time to include the West End and concerns of the Planning Department.

“Exhibit D East End Policy Statement – 2016 edition” with appendices.

Malia Akutagawa Recommendations Accepted by the Planning Commission:

CHAPTER 3 NATURAL HERITAGE, AND SCENIC RESOURCES

3.1 Natural Resources

Pg. 3-1, line 11, add: [Mana‘e is the heart and life source of Moloka‘i. The larger Moloka‘i community identifies Mana‘e as a pu‘uhonua \(safe refuge\). Mana‘e traditionally sustained the highest population on island and contained the oldest settlement sites dating back to 450 A.D., showing that Mana‘e is where our ancestors first settled. It has the most critical natural resources, including the water. It is made up of four major valleys with between 3-5 million gallons of pristine rivers/waters flowing through these valleys everyday, feeding the rich estuaries and near shore fisheries in addition to the multitude of intact terraces. In addition, Mana‘e’s abundance of water on the north shore finds its way to the south shore through underground tunnel systems and springs, providing for the ideal ecological conditions that supported numerous fishponds along Mana‘e’s south shore. This is the value of Mana‘e, the land of ‘āina momona \(abundance\). Thus, it is critical to protect Mana‘e as a special place for all of Moloka‘i as a pu‘uhonua \(safe refuge\), cultural kīpuka \(rural area that serves as a living repository of Hawaiian traditional knowledge, understandings, and practices\), and a place essential to ‘āina momona \(continued food and water security\) for its abundant fishponds, lo‘i kalo \(taro patches\), rich forests, streams, and springs.](#)

3.2 Cultural Resource

Pg. 3-12, edit Policy 8: Protect traditional cultural landscapes such as Hālawā Valley, Hoku Kano-‘Ualapu‘e Complex, Ka`amola, and Kamalo [through the designation of all of Mana‘e within a Traditional Land Use Overlay.](#)

Pg. 3-12, add new policy: [Encourage efforts in Waikolu valley to partner with the Kalaupapa National Historical Park - National Park Service, Department of Land and Natural Resources, the community, and other stakeholders to: a\) conduct archaeological studies; b\) conduct invasive species removal; and c\) implement traditional uses of the valley.](#)

CHAPTER 5 ECONOMIC DEVELOPMENT

Pg. 5-1, line 27, add: [Additionally, according to the 1994 Governor’s Moloka‘i Subsistence Task Force Final Report, subsistence is a viable sector of Moloka‘i’s economy. Subsistence practices on Moloka‘i have continued into today primarily due to the availability of renewable natural resources. With Moloka‘i’s history of years of macroeconomic strategies that have had negative implications on Moloka‘i’s natural resources and native ecosystems, in addition to recognizing Moloka‘i’s subsistence economy, it is equally important to carefully move forward with future endeavors to develop and diversity Moloka‘i’s economy.](#)

[In *Wāiahole I*, the Hawai‘i Supreme Court held that the public trust doctrine affords protection to natural resources that are important for Native Hawaiian traditional and customary practices,¹ including subsistence. The Court further held that private commercial use is not a protected public trust use.² Additionally, as public and private interests often conflict, the State has a constitutional obligation to weigh competing interests in public trust resources with a presumption in favor of public use, access, and enjoyment.³ In order to ensure Moloka‘i’s subsistence economy remains its viable and ensure the rural character of Mana‘e remains in tact, it is](#)

¹ [In re Waiāhole Combined Contested Case Hearing \(*Waiāhole I*\)](#), 94 Hawai‘i 97, 136 9 P.3d 409, 448, 137.

² [Id. at 138.](#)

³ [Id. at 141-42.](#)

[critical to ensure that the continuous development of Moloka'i's economy is done so in a way that is in accordance with the state's affirmative obligations.](#)

Pg. 5-4, add new policy: [Encourage the protection of the north shore coastline, valleys, and fisheries from all commercial activities.](#)

CHAPTER 6 LAND USE AND HOUSING

6.1 Land Use

Pg. 6-4, line 9, add: [This area boundary was chosen since the lands contained within that area match the East Moloka'i Planning Region, are similar in actual use/ownership today, and match the community lifestyle.](#)

Pg. 6-8, add new issue: [There are potential future impacts from sea level rise to existing coastal development that are not adequately addressed.](#)

Pg. 6-9, add new policy: [Support the development of a climate change policy and adaptation plan to address rising sea levels and beachfront housing and development on Moloka'i.](#)

Pg. 6-9, add new policy: [Identify and protect Mana'e's numerous cultural and natural resources through adoption of a "Traditional Land Use" Overlay Designation. The boundaries of the Overlay should be from Makolelau to Halawa on the south shore. Adoption of this TLU Overlay means that any proposed development in Mana'e should be aligned with the data and community recommendations from the Mana'e GIS Mapping Project \(COM, 2008\) and the Traditional and Cultural Practices Report for Mana'e \(OHA, 2016\). In addition, this area should allow for traditional Hawaiian structures to allow people to live in these sensitive areas to take care of them.](#)

Pg. 6-10, add new action: [Research and develop a climate change policy and adaptation plan to address rising sea levels and beachfront housing and development.](#)"; Lead County Agency: "Planning Department"; Partners: ["Aha Kiole o Moloka'i, Moloka'i Community](#)

6.2 Housing

Pg. 6-15, add new action: [Establish a cap on TVRs and on STRHs.](#) Lead County Agency: Planning Dept.

CHAPTER 9 PUBLIC FACILITIES AND SERVICES

9.1 Parks

Pg. 9-4, edit Policy 9: Support and expand the State Na Ala Hele trail system [by considering such designation for all traditional trails,](#) and including a coastal trail system.

Pg. 9-4, add a new policy: [Encourage the State to install cabins up mauka on State lands on Moloka'i along each ahupua'a or ahupua'a cluster \(e.g., Pua'ahala - Ka'amola; 'Ohia - Ualapu'e; Kalua'aha; Mapulehu - Puko'o; etc.\). These cabins would be multi-purpose: Hunters can use them to access areas with a high concentration of ungulates they cannot reach within a day's hike, who need to stay overnight to continue the hunt and bring the animals down the mountain. The second purpose is to conduct conservation work, such as monitoring, removal of invasive species, establishing new strands of native plants, and maintenance of trails and cultural sites.](#)

9.7 Governance

Pg. 9-23, add new action: [Provide training to the Moloka'i Planning Commission on all applicable laws providing the legal framework agencies must follow when engaging in decision making actions that may impact Native Hawaiian traditional and customary practices.](#)

CHAPTER 1 INTRODUCTION

Appendices

Add new appendix:

[The following section provides an important legal framework in which agencies are must follow when engaging in decision making actions that may impact Native Hawaiian traditional and customary practices. Hawai'i Revised Statute § 1-1 guides agencies to look to Hawaiian judicial precedence and custom and usage in making their decisions. Agencies are required to protect their kuleana rights of hoa'āina or kuleana.](#)

[A. The 'Aha Kiole: The People's Councils and The Eight Realms of Decision Making](#)

['According to Kumu John Ka'imikaua the purpose of the 'aha councils was to utilize the expertise of those with 'ike \(knowledge\) to mālama 'āina, to care for the natural resources, and to produce food in abundance not just for the people, but for successive generations. 'Aha council leadership was determined by the people who collectively understood who the experts were in their community.'](#)⁴

[With this in mind, when you look at Hawaiian custom and usage, the ancient traditions of which Moloka'i's 'āina momona was based upon are the eight realms of decision making from the ancient 'aha councils. Historically, the 'aha councils of Moloka'i considered the following eight realms before making their decisions:](#)

1) [Moana-Nui-Ākea](#) – the farthest out to sea or along the ocean's horizon one could perceive from atop the highest vantage point in one's area.

2) [Kahakai Pepeiao](#) – where the high tide is to where the lepo (soil) starts. This is typically the splash zone where crab, limu (seaweed), and 'opihi (limpet) may be located; sea cliffs; or a gentle shoreline dotted with a coastal strand of vegetation; sands where turtles and seabirds nest; or extensive sand dune environs.

3) [Ma Uka](#) – from the point where the lepo (soil) starts to the top of the mountain.

4) [Nā Muliwai](#) – all the sources of fresh water, ground/artesian water, rivers, streams, springs, including springs along the coastline that mix with seawater.

5) [Ka Lewalani](#) – everything above the land, the air, the sky, the clouds, the birds, the rainbows.

6) [Kanaka Hōnua](#) – the natural resources important to sustain people. However, management is based on providing for the benefit of the resources themselves rather than from the standpoint of how they serve people.

7) [Papahelōlona](#) – knowledge and intellect that is a valuable resource to be respected, maintained, and managed properly. This is the knowledge of the kahuna, the astronomers, the healers, and other carriers of 'ike.

8) [Ke 'Ihi'ihi](#) – elements that maintain the sanctity or sacredness of certain places.⁵

⁴ Malia Akutagawa, Shaelene Kamaka'ala, Harmonie Williams, et al., OFFICE OF HAWAIIAN AFFAIRS, TRADITIONAL & CUSTOMARY PRACTICES REPORT FOR MANA'E, MOLOKA'I, 47 (2016).

⁵ Interview with Dr. Kawika Winter, Director, Limahuli Garden and Pres., Hā'ena Makai Watch Coordinator, and former member of the late Kumu John Ka'imikaua's Halau Hula o Kukunaokalā in Honolulu, Haw. (Dec. 10, 2014).

This ancient decision making matrix honors our ancestral past and wisdom, by looking to the needs of the present and ensuring that our decisions provide for abundance for future generations yet unborn. For every decision made and every land use proposal, any proposed amendments to the Molokaʻi Community Plan or any permit request, should be analyzed according to the impacts of these eight realms and the decision making matrix should be applied because these are customary laws from ancient times, which were codified by the Kingdom, and adopted by the State of Hawaiʻi. These laws are inherent rights of Native Hawaiians to self-determination and sovereignty.

Additionally, international law recognizes the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which President Obama signed this into law in 2010. Since then, various federal advisory councils that serve as advisory bodies to federal agencies, have provided guidelines for which to implement UNDRIP and to implement provisions for free, prior, and informed consent of native peoples. As such, we here by adopt the UNDRIP and its underlying principles as a mandate that the State and County government must adhere to in making land use decisions in collaboration with native individuals and communities on Molokaʻi.

‘There are certain vested rights of native Hawaiian ahupuaʻa tenants (hoaʻāina) that have their origins in the ancient land tenure system. This customary law was codified by the Hawaiian Kingdom and later adopted by the State of Hawaiʻi. The State has reaffirmed these rights in its Constitution and statutes. A unique body of jurisprudence has developed around these laws which reflect a heightened obligation by the State and its political subdivisions to reasonably protect traditional and customary Native Hawaiian rights on both public and private lands.’⁶

The native people of Manaʻe and Molokaʻi continue to strongly with their cultural practices and their relationship to ʻāina. For these reasons, this community plan is a reflection of self-determination and the community’s right to determine its own autonomy. As a people, the greater Hawaiian community is exploring different avenues to attain sovereignty. However, as the Manaʻe and Molokaʻi community engages with local government, international, federal, state, and county laws need to be recognized and upheld.

B. Sources of Native Hawaiian Rights Law

The Hawaiʻi State Constitution reaffirms these rights--particularly Hawaiian access rights--which are protected in ones ahupuaʻa of residence⁷ or if shown to be customary, in other ahupuaʻa without the benefit of tenancy if shown that this was the accepted custom and long-standing practice.⁸ All State and County agencies and decision making bodies are obligated under the Hawaiʻi State Constitution and various statutes to ensure that these Hawaiian rights are not regulate out of existence. There are affirmative obligations to protect Hawaiian custom and usage and the resources that Native Hawaiians depend upon.⁹ State and County agencies must make an independent assessment regarding the impact that a proposed action may have on Native Hawaiian traditional and customary practices, and must consider the following three factors:

(A) 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;

⁶ Akutagawa, Kamakaʻala, Williams, et al., TRADITIONAL & CUSTOMARY PRACTICES REPORT FOR MANAʻE, *supra* note 4 at 58.

⁷ FORMAN & SUSAN K. SERRANO, HOʻOHANA AKU, A HOʻOLA AKU HOʻOLA AKU: A LEGAL PRIMER FOR TRADITIONAL AND CUSTOMARY RIGHTS IN HAWAII 9 (2012) [hereinafter FORMAN & SERRANO, HOʻOHANA AKU, A HOʻOLA AKU] (citing Kalipi, 66 Haw. at 9, 656 P.2d at 750).

⁸ Pele Def. Fund v. Paty (*Pele I*), 73 Haw. 578, 620, 837 P.2d 1247, 1272 (1992). See FORMAN & SUSAN K. SERRANO, HOʻOHANA AKU, A HOʻOLA AKU, *supra* note 7, at 13 (citing *Pele I*, 73 Haw. at 620, 837 P.2d at 1272).

⁹ Ka Paʻakai O Ka ʻAina v. Land Use Comm’n, 94 Hawaiʻi 31, 7 P.3d 1068, 1083 (2000).

(B) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and
(C) the feasible action, if any, to be taken . . . by the [State and/or its political subdivisions] to reasonably protect native Hawaiian rights if they are found to exist.¹⁰

C. 'Ohana Values: The Foundations of Hawaiian Traditional and Customary Practices

'Dr. Davianna Pōmaika'i McGregor interviewed a large number of kama'āina informants residing in "cultural kīpuka" (rural areas that have maintained cultural understandings and practices)¹¹ who identified common 'ohana cultural values and customs for subsistence and mālama. It is the essence of these understandings that should be the standard by which to measure whether something is a customary practice or not.'¹² According to Dr. McGregor, what distinguishes Hawaiian custom and practice is the honor and respect for traditional 'ohana cultural values and customs to guide subsistence harvesting of natural resources. Such 'ohana values and customs include but are not limited to the following:

- 1) Only take what is needed.
- 2) Don't waste natural resources.
- 3) Gather according to the life cycle of the resources. Allow the native resources to reproduce. Don't fish during their spawning seasons.
- 4) Alternate areas to gather, fish and hunt. Don't keep going back to the same place. Allow the resource to replenish itself.
- 5) If an area has a declining resource, observe a kapu on harvesting until it comes back. Weed, replant and water if appropriate.
- 6) Resources are always abundant and accessible to those who possess the knowledge about their location and have the skill to obtain them. There is no need to overuse a more accessible area.
- 7) Respect and protect the knowledge which has been passed down inter-generationally, from one generation to the next. Do not carelessly give it away to outsiders.
- 8) Respect each other's areas. Families usually fish, hunt, and gather in the areas traditionally used by their ancestors. If they go into an area outside their own for some specific purpose, they usually go with people from that area.
- 9) Throughout the expedition keep focused on the purpose and goal for which you set out to fish, hunt, or gather.
- 10) Be aware of the natural elements and stay alert to natural signs, e.g. falling boulders as a sign of flash flooding.
- 11) Share what is gathered with family and neighbors.
- 12) Take care of the kūpuna who passed on the knowledge and experience of what to do and are now too old to go out on their own.
- 13) Don't talk openly about plans for going out to subsistence hunt, gather, or fish.
- 14) Respect the resources. Respect the spirits of the land, forest, ocean. Don't get loud and boisterous.
- 15) Respect family 'aumakua. Don't gather the resources sacred to them.¹³

¹⁰ FORMAN & SUSAN K. SERRANO, HO'OHANA AKU, A HO'OLA AKU, *supra* note 7, at 17 (citing *Ka Pa'akai*).

¹¹ DAVIANNA PŌMAIKA'I MCGREGOR, NĀ KUA'ĀINA: LIVING HAWAIIAN CULTURE, 21 (2007).

¹² Akutagawa, Kamaka'ala, Williams, et al., TRADITIONAL & CUSTOMARY PRACTICES REPORT FOR MANA'Ē, *supra* note 4 at 7-58.

¹³ DAVIANNA MCGREGOR, THE NATURE CONSERVANCY, CULTURAL ASSESSMENT FOR THE KAMAKOU PRESERVE, MAKAKUPA'IA AND KAWELA, ISLAND OF MOLOKA'Ī 16-17 (2006).