

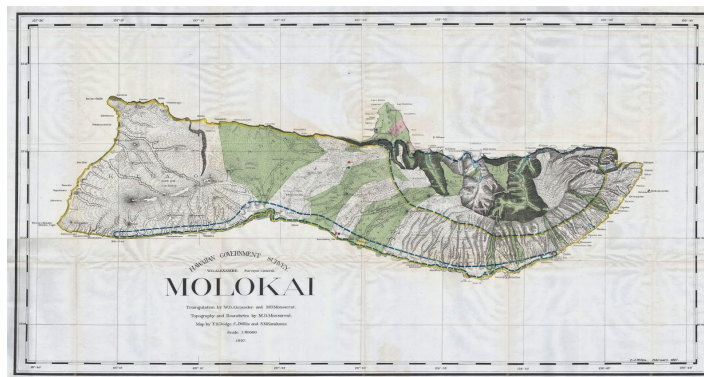
A FRAMEWORK FOR THE ‘AHA MOKU SYSTEM
AND COLLABORATIVE GOVERNANCE

(By Malia Akutagawa and Winston Wong, Updated 03/06/20)

HISTORY OF THE ANCIENT ‘AHA KIOLE – PEOPLE’S COUNCIL

“There is no man familiar with fishing lest he fishes and becomes an expert. There is no man familiar with the soil lest he plants and becomes an expert. There is no man familiar with hō`ola lest he be trained as a kahuna and becomes expert at it.”¹

- Following this principle, leaders who govern people and manage the resources should be those who are actual practitioners; i.e., those who have gained a comprehensive and masterful understanding of the biological, physical, and spiritual aspects of the ‘āina. In traditional Hawaiian resource management, those with relevant knowledge comprised what were called the ‘Aka Kiole,² the people’s council.
 - **‘Aha** – The kūpuna metaphorically ascribed these councils and the weaving of various ‘ike, or knowledge streams, as an ‘aha. The individual aho or threads made from the bark of the olonā shrub were woven together to make strong cordage, called ‘aha. Thus the early Hawaiians referred to their councils as ‘aha to represent the strong leadership created when acknowledged ‘ike holders came together to weave their varied expertise for collective decision-making that benefitted the people, land, and natural resources.³
 - **Kiole** – The term kiole described the abundant human population, likened to the ‘iole or large schools of pua (fish fingerlings) that shrouded the coastline en masse. Thus, Molokai’s councils were called ‘Aha Kiole, the people’s council.⁴
- ‘Aha council leadership was determined by the people who collectively understood who the experts were in their community. These were experts in fisheries management, hydrology and water distribution, astronomy and navigation, architecture, farming, healing arts, etc.
- 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.



¹ *A Mau A Mau (To Continue Forever): Cultural and Spiritual Traditions of Moloka‘i* (Nālani Minton and Nā Maka O Ka ‘Āina 2000) [hereinafter *A Mau A Mau*].

² Id.

³ Id.

⁴ Id.

HOLISTIC PROBLEM SOLVING OF THE ANCIENT 'AHA KIOLE

1. Identify problem or issue
2. Critically examine potential solutions including potential effects upon the 'āina using eight resource realms. These realms provided the ethical foundation for the decision making process:⁵
 - a. **Moana-Nui-Ākea** – the farthest out to sea or along the ocean's horizon one could perceive from atop the highest vantage point.
 - b. **Kahakai Pepeiao** – where the high tide is to where the lepo (soil) starts. This is typically the splash zone where crab, limu, and 'opihi 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.
 - c. **Ma Uka** – from the point where the lepo (soil) starts to the top of the mountain.
 - d. **Nā Muliwai** – all the sources of fresh water -- ground or artesian water, rivers, streams, springs, including coastal springs that create brackish-water and contribute to healthy and productive estuarine environments. Nā Muliwai also includes the rich biota found in these waters.
 - e. **Ka Lewalani** – everything above the land -- the air, winds, sky, clouds, rain, rainbows, birds, atmosphere, sun, moon, planets, and stars. Ka Lewalani encompasses all the elements and celestial bodies that influence the tides and ocean currents, direct traditional navigation, and guide fishing and planting seasons.
 - f. **Kanaka Honua** – the natural resources important to sustain people. Includes the kānāwai (laws) to sustain those resources that are also protected for their intrinsic worth. These kānāwai also ensured societal benefits and contributed to the people's health and well-being.
 - g. **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 'ike (knowledge) holders.
 - h. **Ke 'Ihi'ihī** – our wahi pana (storied places) and wahi kapu (sacred places) and the attributes and elements, including natural forces, deities, ancestors, and ceremonial and religious protocols that enhance and perpetuate these wahi.
3. Implement solution with 3 considerations
 - a. Honor the wisdom and 'ike (knowledge) of the kūpuna (Native ancestors)
 - b. Address the needs of the present
 - c. Establish abundance for future generations

Kumu John Ka'imikaua expressed that this procedural management resulted in lōkahi, "the balance between the land, the people that lived upon the land and the akua (gods)." In turn, lōkahi manifested "pono, the spiritual balance in all things."⁶

⁵ Dr. Kawika Winter, *Applying Traditional Resource Mgmt. Philosophies to Contemporary Conservation Efforts on Kaua'i*, Presentation to the Native Hawaiian Rights Clinic, Univ. of Haw. William S. Richardson Sch. of Law (Nov. 9, 2015). Dr. Winter is a former hālau member of Hālau Hula o Kukunaokalā, led by the late Kumu John Ka'imikaua, who re-introduced the history of the ancient 'aha councils in his film *A Mau A Mau* and in educational workshops on Moloka'i. It was Kumu John's wish to revitalize the 'aha councils to restore pono to the land and people; *Eight Principles for Understanding and Managing the Ahupua'a*, OLOWALU TOWN – BY MAUI, FOR MAUI, Spr./Summer 2007, available at http://www.dpz.com/uploads/Charrettes/0521-Olowalu_Post.pdf (citing teachings of Kumu John Ka'imikaua at http://hawaii.gov/dbedt/czm/todays_challenges/principles.html) [hereinafter "OLOWALU TOWN"].

⁶ *A Mau A Mau*, supra note 1.

‘AHA MOKU SYSTEM UNDER STATE LAW

What is it? - The ‘Aha Moku system is a land, water, and ocean system of best practices that is based upon Indigenous resource management practices of moku (regions) and ahupua‘a (traditional land divisions within a moku). Its goal is to find methods of protecting and sustaining Hawai‘i’s ecosystems. An important focus of the ‘Aha Moku system is to bring regional concerns from island communities forward to the Department of Land and Natural Resources (DLNR) so issues can be addressed and if needed, mitigated.

Starting in 2006, a series of puwalu (gatherings) took place among Native Hawaiian kupuna (elders) and cultural practitioners, educators, governmental agency representatives, State legislators, environmentalists, and various organizations concerned about the declining State of Hawai‘i’s natural resources:

- Puwalu ‘Ekahi (August 15 - 17, 2006) - representatives from 43 moku across the State and over one hundred Hawaiian cultural practitioners, including kupuna and acknowledged traditional experts, joined together to share their mana‘o (views, insights) and begin a process to uphold and continue Kanaka ‘Ōiwi (Native Hawaiian) traditional land and ocean practices.⁷
- Puwalu ‘Elua (November 8 - 9, 2006) - educators, administrators, cultural practitioners, and kupuna discussed how to incorporate ‘Ōiwi cultural knowledge into an educational framework that could be integrated into curricula for all public, private, charter, and Hawaiian immersion schools in Hawai‘i.⁸
- Puwalu ‘Ekolu (December 19 - 20, 2006) - policymakers and stakeholders engaged in protecting Hawai‘i’s ecosystems; Kanaka ‘Ōiwi with expertise in traditional sustainability methods; Native Hawaiian organizations, agency and legislative representatives in State government; and experts in education and environmental advocacy discussed existing programs and their successes and failures in community-building. Participants agreed that statutes, ordinances, and a framework for consultation with Hawaiian communities using the Kanaka ‘Ōiwi perspectives and traditional methods such as the ahupua‘a management system were needed, and that some form of the ‘Aha Kiole governance process should be re-established.⁹

These puwalu were the impetus for the passage of Act 212 in 2007 which established the ‘Aha Kiole Advisory Committee (AKAC). The AKAC was comprised of eight po‘o (leaders) representing the eight main Hawaiian islands. The AKAC was tasked with “initiat[ing] the process to create a system of best practices that is based upon the Indigenous resource management practices of moku (regional) boundaries, which acknowledges the natural contours of land, the specific resources located within those areas, and the methodology necessary to sustain resources and the community.”¹⁰

⁷ 2012 Haw. Sess. Laws Act 288, § 1 at 2:8-3:7.

⁸ 2012 Haw. Sess. Laws Act 288, § 1 at 3:8-19.

⁹ 2012 Haw. Sess. Laws Act 288, § 1 at 3:20-4:10.

¹⁰ ‘AHA KIOLE ADVISORY COMMITTEE, REPORT TO THE TWENTY-FIFTH LEGISLATURE 2009 REGULAR SESSION: FINAL REPORT 7 (2008) (quoting S.B. 1853, 2007 Leg., 24th Sess. (Haw. 2007)).

Shortly after the passage of Act 212, Moloka‘i Po‘o Vanda Hanakahi began to work on the mokupuni (island) level to advise residents in the formation of their own island council. In 2008, Moloka‘i held elections for the first po‘o for their respective moku¹¹ and since that time the island council, known as the ‘Aha Kiole o Moloka‘i, has been serving as a liaison between government and the community on important natural and cultural resource management issues.

The AKAC operated as an independent body and reported to the legislature and governor its findings, recommendations, and progress in establishing the ‘Aha Kiole system. As additional puwala were convened to gather more community input on Indigenous best practices in mālama ‘āina (land stewardship), participants reached consensus on the necessity of integrating the ‘Aha Kiole system into government policy. To achieve these ends, securing a more permanent home for the AKAC to directly advise a government agency primarily tasked with making land use and resource management decisions would be ideal.¹² This led to the eventual passage of Act 288 in 2012 which renamed the ‘Aha Kiole Advisory Committee into the ‘Aha Moku Advisory Committee (AMAC).

The legislature recognized that over the course of Hawai‘i’s colonial history, Kanaka ‘Ōiwi have endured multiple threats to their Native culture, language, ‘āina, and right to self-determination. One of the effects of western colonialism has been a rejection of ‘Ōiwi land management and governance that was place-based, decentralized, and adaptive in nature in favor of a more centralized, bureaucratic, and politicized, top-down process that has resulted in the following:

- over-development of coastlines;
- decimation of coral reef ecosystems;
- destruction of watersheds;
- fresh water streams diversions; and the
- decline of endemic marine and terrestrial species.¹³

Act 288 acknowledged the value of ‘Ōiwi knowledge passed down by the kupuna and the expertise of cultural practitioners experienced in mahi‘ai (farming) and lawai‘a (fishing) in sustainable ways.¹⁴ In order to bring the voices of these expert cultural practitioners to the table in government decision-making processes, Act 288 placed the AMAC within the State Department of Land and Natural Resources. Each island representative on the AMAC comes from a list of nominations made by their respective island councils; the governor appoints AMAC po‘o from that list; and the senate confirms their appointment. Each AMAC po‘o is charged with bringing their island’s concerns to DLNR to assist the agency in making sound resource management decisions that reflect Indigenous knowledge.

Act 288 assumes the pre-existence of the ‘Aha Moku island councils, since by necessity these island councils must exist in order to nominate candidates to the Statewide AMAC. Act 288 essentially recognizes a two-tier governance process. The first tier is comprised of leadership on the mokupuni (island) level. Each mokupuni establishes their own ‘Aha Moku island council from the grassroots level and customizes governance to the unique needs of their respective island community. The State Attorney General’s office has clarified that these island councils are not

¹¹ Zalina Alvi. *Elections Begin for ‘Aha Kiole*. MOLOKAI DISPATCH, July 21, 2008, available at <https://themolokaidispatch.com/elections-begin-aha-kiole/>.

¹² 2012 Haw. Sess. Laws Act 288, § 1 at 4:11-22.

¹³ 2012 Haw. Sess. Laws Act 288, § 1 at 1:1-8.

¹⁴ 2012 Haw. Sess. Laws Act 288, § 1 at 1-8.

subject to the “Sunshine Law” when it comes to publishing meeting notices a week in advance. However, it is a good practice for ‘Aha Moku island councils to provide public notice through locally accepted mechanisms, as a way to achieve solid community engagement. With their eyes and ears on the pulse of their own communities, the ‘Aha Moku island councils serve as a bottom-up governance process to effectively advise and carry community concerns to the AMAC. The island councils may also work directly with various DLNR divisions on specific natural and cultural resource management issues. The second tier in the governance structure is the Statewide AMAC who receives and conveys input from the ‘Aha Moku island councils to DLNR, its respective divisions, and ultimately the Board of Land and Natural Resources (BLNR). Thus, the role of the AMAC is to encourage congruency of DLNR and Board decisions with the advice given by the ‘Aha Moku island councils.

The following table identifies the po‘o on the Statewide AMAC:

<u>THE STATEWIDE ‘AHA MOKU ADVISORY COMMITTEE (AMAC)</u>	
Statewide ‘Aha Moku Advisory Council (AMAC)	
Po‘o – Hawai‘i	Pi‘ilani Ka‘awaloa
Po‘o – Maui	Kyle Nakanelua
Po‘o – Kaho‘olawe	Les Kuloloio
Po‘o – Lāna‘i	Winifred “Winnie” Basques
Po‘o – Moloka‘i	Kamalu Poepoe
Po‘o – O‘ahu	Rocky Kaluhiwa
Po‘o – Kaua‘i	Thomas Hashimoto
Po‘o – Ni‘ihau	Keith Robinson

It is important to note that at the time of this writing, the governor has not appointed new members to the AMAC, despite the fact that the term for each member has expired. The Executive Director for the AMAC, an employee of DLNR and staff to the AMAC, is currently operating within a vacuum -- without input from a now defunct advisory committee. Without a functioning AMAC in place, there are no adequate checks-and-balances on the Executive Director such that she may at-will elect to serve a more perfunctory role in rubber-stamping DLNR decisions. This situation also hampers the ability of the ‘Aha Moku island councils to properly advise DLNR on natural and cultural resource management issues and to ensure that Indigenous best management practices are integrated into government decision- and policy-making. The governor’s failure to fill the empty AMAC seats compromises DLNR’s ability to make well-informed decisions and circumvents the very purpose for which the ‘Aha Moku legislation was created.

This underscores the need for all islands to build capacity and develop strong local and Indigenous leadership through creating and empowering their respective ‘Aha Moku island councils. Some island councils are more active than others in this work. The ‘Aha Kiole o Moloka‘i has demonstrated strong and consistent leadership for more than a decade, since its inception in 2008.

Provided below is a table of the current leadership for Moloka‘i’s island ‘Aha Moku council.

‘Aha Kiole o Moloka‘i	
Po‘o – Mokupuni o Moloka‘i	Malia Akutagawa
Po‘o /Alaka‘i – Moku o Mana‘e	Hanohano Naehu, La‘a Poepoe, Mahina Poepoe, Malia Waits, Bronson Kalipi
Po‘o/Alaka‘i – Moku o Kawela	Kanoe Davis, Keani Rawlins-Fernandez, Lorilei Rawlins-Crivello, Kawika Crivello
Po‘o/Alaka‘i – Moku o Pala‘au	Kamalu Poepoe, Lori Buchanan
Po‘o Ahupua‘a o Naiwa	Lori Buchanan
Po‘o Ahupua‘a o Kalaupapa	James Espaniola
Po‘o/Alaka‘i – Moku o Kaluako‘i	Byron Espaniola, Madonna Dizon
Po‘o – Planning/Consultation	Walter Ritte, Jr.
Po‘o - Education	Loretta Ritte
Po‘o – Cultural Specialist	‘Opu‘ulani Albino
Po‘o – Resource Management	Kelson “Mac” Poepoe

Together, the Statewide ‘Aha Moku Advisory Committee and the island councils comprise the ‘Aha Moku System. The presence of the island councils ensures a bottom-up governance mechanism by which communities may have a meaningful voice in government decision-making. The Statewide ‘Aha Moku Advisory Committee was designed to serve as a bridge between the island councils and the Department of Land and Natural Resources, the State agency primarily responsible for managing natural and cultural resources. In essence, this is a form of collaborative governance.

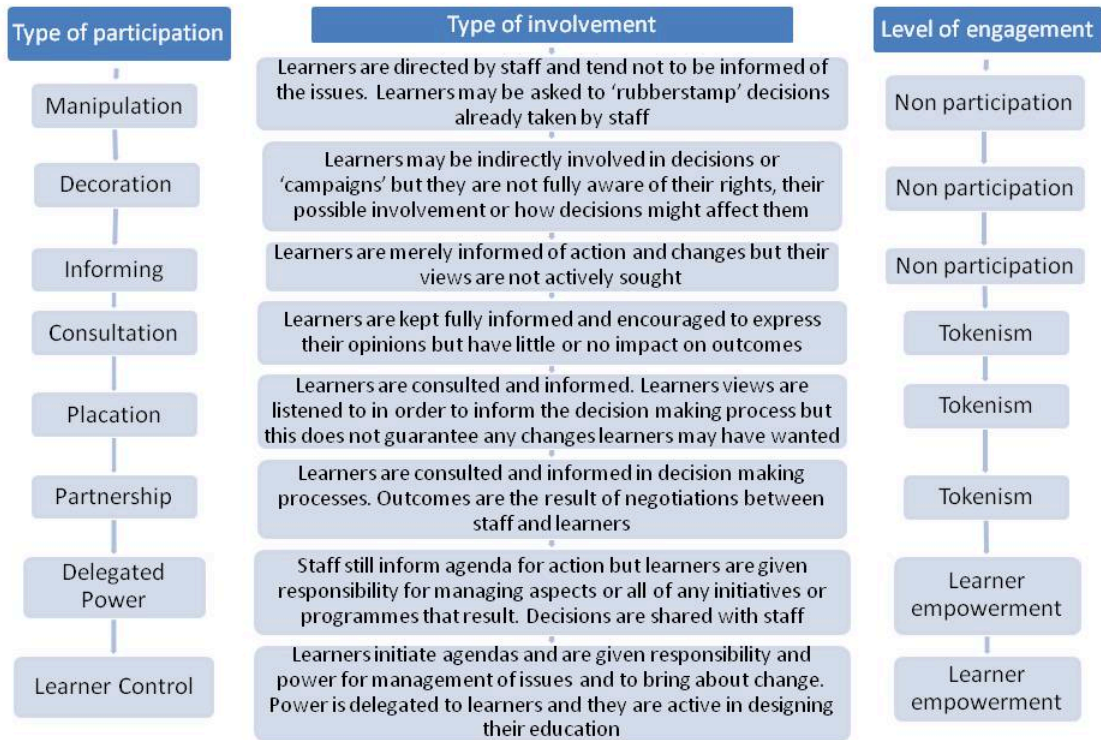
COLLABORATIVE GOVERNANCE

Collaborative governance, brings public and private stakeholders together in collective forums with public agencies to engage in consensus-oriented decision making.

Collaborative Governance stresses six important criteria:

- (1) a forum initiated by public agencies or institutions,
- (2) participants in the forum include non-state actors,
- (3) participants engage directly in decision making and are not merely “consulted” by public agencies,
- (4) the forum is formally organized and meets collectively,
- (5) the forum aims to make decisions by consensus (even if consensus is not achieved in practice), and
- (6) the focus of collaboration is on public policy or public management.

'LADDER' OF PARTICIPATION



Acts 212 and 288, in the creation of the 'Aha Moku System, attempt to integrate collaborative governance processes into policy- and decision-making. Collaborative governance affords citizens greater power and parity in the decision-making process, as seen above in Arstein's Ladder of Participation.¹⁵

PROS/CONS OF COLLABORATIVE GOVERNANCE	
PROS	CONS
May be cheaper/quicker than litigation	Power imbalances between stakeholders
Greater fulfillment for community from public discussion	Commitment needed by both public/private stakeholders
Educated decisions made by those who are most affected	Decisions may still be made contrary to suggestions of stakeholders
Decisions/deliberations made public	History of antagonism may impede process

¹⁵ Arnstein's Ladder of Participation - https://talintuoh.files.wordpress.com/2013/03/ladder_-of-participation.jpg

WHAT AREAS OF EXPERTISE MAY THE ‘AHA MOKU ADVISORY COMMITTEE AND THE ‘AHA MOKU ISLAND COUNCILS ADVISE ON?

AND WHAT ENTITIES MAY THEY ADVISE?

Under Act 288, now codified as Hawai‘i Revised Statutes, Section 171-4.5, the ‘Aha Moku Advisory Committee and ‘Aha Moku Island Councils are empowered to advise government on the following:

1. Integrating Indigenous resource management practices with western management practices in each moku;
2. Identifying a comprehensive set of Indigenous practices for natural resource management;
3. Fostering the understanding and practical use of Native Hawaiian resource knowledge, methodology, and expertise;
4. Sustaining the State’s marine, land, cultural, agricultural, and natural resources;
5. Providing community education and fostering cultural awareness on the benefits of the ‘Aha Moku system;
6. Fostering protection and conservation of the State’s natural resources; and,
7. Developing an administrative structure that oversees the ‘Aha Moku system.

Within the DLNR, several divisions are tasked with issuing permit and licensing approvals related to land, water, and ocean uses and the management of historic and cultural sites:

<p>STATE HISTORIC PRESERVATION DIVISION (SHPD)</p> <p>SHPD’s three branches, History and Culture, Archaeology, and Architecture, strive to accomplish this goal through a number of different activities.</p>
<p>DIVISION OF AQUATIC RESOURCES (DAR)</p> <p>Manages the State’s marine and freshwater resources through programs in commercial fisheries and aquaculture; aquatic resources protection, enhancement and education; and recreational fisheries. Issues fishing licenses.</p>
<p>DIVISION OF STATE PARKS</p> <p>Responsible for the care and management of 52 parks on 25,000 acres of land on five of the main Hawaiian islands.</p>
<p>DIVISION OF BOATING AND OCEAN RECREATION (DOBOR)</p> <p>Responsible for the management and administration of statewide ocean recreation and coastal areas programs pertaining to the ocean waters and navigable streams of the State which include 21 small boat harbors, 54 launching ramps, 13 offshore mooring areas, 10 designated ocean water areas, 108 designated ocean recreation management areas, and beaches encumbered with easements in favor of the public. Registers small vessels.</p>
<p>OFFICE OF CONSERVATION AND COASTAL LANDS (OCCL)</p> <p>The Office of Conservation and Coastal Lands is responsible for overseeing private and public lands that lie within the State Land Use Conservation District. In addition, to privately and publicly zoned Conservation District lands, OCCL is responsible for overseeing beach and marine lands out to the seaward extend of the State’s jurisdiction.</p>

COMMISSION ON WATER RESOURCES MANAGEMENT (CWRM)

Sets policies and administers regulatory procedures to protect water resources, biota, public recreational uses, Native Hawaiian rights and practices as part of Hawai‘i’s constitutionally protected public trust.

DIVISION OF FORESTRY AND WILDLIFE (DOFAW)

Responsible for the management of State-owned forests, natural areas, public hunting areas, and plant and wildlife sanctuaries. Program areas cover watershed protection; native resources protection, including unique ecosystems and endangered species of plants and wildlife; outdoor recreation; and commercial forestry. Issues hunting permits.

DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT (DOCARE)

Responsible for enforcement activities of the Department. The division, with full police powers, enforces all State laws and rules involving State lands, State Parks, historic sites, forest reserves, aquatic life and wildlife areas, coastal zones, Conservation districts, State shores, as well as county ordinances involving county parks. The division also enforces laws relating to firearms, ammunition, and dangerous weapons.

During the 2015 legislative session, the legislature passed Senate Concurrent Resolution 55, mandating the AMAC to draft administrative rules. The AMAC, with input from the island ‘Aha Moku councils, passed the “Final Rules of Practice and Procedure of the ‘Aha Moku Advisory Committee” in October 2016.¹⁶ Section 1-3 on “Definitions and Terminology” defines “agency” as “the department of land and natural resources, its divisions, and any Federal, State or County agency that the department advises.” Thus, other State, County, and Federal agencies may also consult with the AMAC and the island councils; especially when many proposed land use projects require permits and approvals from multiple agencies at all levels of government.

The ‘Aha Kiole o Moloka‘i (island council) consults with and advocates on behalf of its respective moku leaders and residents and serves as a liaison between community and various County, State, and Federal agencies and decision-makers, as well as private entities (e.g., permit applicants, large landowners, etc.) on a number of issues:

- Revisions to the Moloka‘i Island Community Plan (Moloka‘i Planning Commission, Maui Planning Department, Maui County Council)
- Conservation Fencing in Mana‘e (East Moloka‘i Watershed Partnership, DLNR-DOFAW, large private landowners, The Nature Conservancy)
- Mo‘omomi Community Based Fishing Area – proposed designation and rulemaking (DLNR-DAR, Department of Hawaiian Home Lands (DHHL), and conservation-oriented landowners such as the Moloka‘i Land Trust and The Nature Conservancy)
- Proposed Aerial Shooting of Deer in the Mo‘omomi Nature Preserve (The Nature Conservancy, DLNR – Forestry Program, Maui Branch)
- Cetacean strandings, endangered Hawaiian turtle monitoring, monk seal deaths (National Oceanic and Atmospheric Administration (NOAA) Fisheries, Hawai‘i Marine Animal Response (HMAR), Center for Conservation Peacebuilding – CPeace, DLNR-DAR, DLNR-DOCARE)

¹⁶ FINAL RULES OF PRACTICE AND PROCEDURE, DEP’T. OF LAND & NATURAL RES., ‘AHA MOKU ADVISORY COMM., (Oct. 20, 2016), *available at* http://www.ahamoku.org/wp-content/uploads/2016/12/FINAL.AMAC_Admin_Rules_effective.102016.pdf.

- Cruise Ship controversy (American Safari Tours, DLNR, State of Hawai‘i Department of Transportation – Harbors Division, Moloka‘i Councilman Danny Mateo of the Maui County Council)
- Overfishing in Moloka‘i waters from international canoe races and regattas and the establishment of the annual Kulaia Ho‘olaulea Festival of the Canoes (DLNR, canoe clubs, escort boats, Maui County Councilwoman Stacy Helm-Crivello)

IS THERE A LEGAL BASIS TO REQUIRE COLLABORATIVE GOVERNANCE?

YES

- Agencies responsible for protecting traditional and customary Native Hawaiian rights must conduct detailed inquiries into the impacts on those rights to ensure that proposed uses of land and water resources are pursued in a culturally appropriate way. This is the responsibility of the agency, not the developer and not at the burden of Native Hawaiians to ensure their rights are being protected.¹⁷ The failure of a State agency to take appropriate measures may result in a breach of constitutional obligations to protect customary Native Hawaiian rights that will be affected or impaired by the proposed action. Thus, government must ensure that feasible actions are taken to protect Native Hawaiian rights, if they are found to exist.¹⁸
- The Ka Pa‘akai O Ka ‘Aina v. Land Use Commission (Ka Pa‘akai) case provides the legal framework by which State and County agencies must make decisions with respect to proposed projects that may affect Native Hawaiian rights and practices:¹⁹
 - The Supreme Court of Hawaii has ruled that “the State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.”²⁰
 - In a dispute brought by Native Hawaiian cultural practitioners opposed to a developer’s request before the State Land Use Commission (LUC) to reclassify certain lands to urban zoning on Hawai‘i Island in order to build a resort, the Hawai‘i Supreme Court noted “[a]rticle XII, section 7 of the Hawai‘i Constitution obligates the LUC to protect the reasonable exercise of customarily and traditionally exercised rights of Native Hawaiians to the extent feasible when granting a petition for reclassification of district boundaries.”²¹ In order to satisfy these obligations the LUC needed to evaluate:
 - (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;
 - (B) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and

¹⁷ David M. Forman & Susan K Serrano, Ho‘ohana Aku, a Ho‘ōla Aku: A Legal Primer for Traditional and Customary Rights in Hawai‘i 15 (2012).

¹⁸ Id. at 47, 7 P.3d at 1084.

¹⁹ 94 Hawai‘i 31, 35, 7 P.3d 1068, 1071 (2000).

²⁰ See also Pub. Access Shoreline Hawai‘i v. Hawai‘i Cnty. Planning Comm’n, 79 Hawai‘i 425, 450 n.43, 903 P.2d 1246, 1271 (1995).

²¹ Ka Pa‘akai, 94 Hawai‘i at 46, 7 P.3d at 1083.

- (C) the feasible action, if any, to be taken by the agency to reasonably protect native Hawaiian rights if they are found to exist.²²
- The Statewide AMAC, with direction from local ‘Aha Moku island councils, could utilize their traditional knowledge and cultural expertise to provide advisories or guidance documents to the DLNR and its multiple divisions on protocol for engagement with Native Hawaiian communities on how to protect traditional and customary rights and practices on the ground.

FINAL RULES OF PRACTICE & PROCEDURE FOR THE ‘AHA MOKU ADVISORY COMMITTEE (AMAC) AND WORKING WITH ‘AHA MOKU ISLAND COUNCILS IN COLLABORATION WITH STATE, COUNTY, AND FEDERAL ENTITIES

The ‘ike kūpuna (ancestral knowledge) and ethos of Native Hawaiians exists in the Final Rules of Practice and Procedure of the ‘Aha Moku Advisory Committee (AMAC)²³ which were adopted in October 2016 and reaffirmed by the network of ‘Aha Moku island councils at the 9th Puwalu held the following month.²⁴

The passage of the ‘Aha Moku rules are necessary and timely given the important outcomes and recognition of Indigenous peoples at the 2016 convening of the World Conservation Congress (WCC) of the International Union for the Conservation of Nature (IUCN) hosted by Hawai‘i.²⁵ The WCC underscored the important role that Indigenous knowledge and ecological models can serve in conservation efforts throughout the world, including Hawai‘i’s “ahupua‘a system . . . which integrate[s] land and sea ecosystems and relationships within a shared geographic, social, cultural, and political context.”²⁶ The WCC also adopted the “Hawai‘i Commitments” that includes recognizing Aloha ‘Āina as an ethic for the world to strive for in order to “address the tremendous environmental challenges we face.”²⁷ The document states further that “creat[ing] a stronger culture of conservation . . . [requires looking to] [t]he values and wisdom of [I]ndigenous peoples . . . [to] help inform the necessary transformational changes in the . . . governance and regulatory systems of our societies.”²⁸ The ‘Aha Moku rules manifests here at home a roadmap for the State to integrate the solutions described in the World Conservation Congress’ Hawai‘i Commitments. Moreover, the rules align with international law; particularly the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and serves as a vehicle to implementing Free, Prior, and Informed Consent (FPIC).

²² *Id.* at 47, 7 P.3d at 1084.

²³ FINAL RULES OF PRACTICE AND PROCEDURE, DEP’T. OF LAND & NATURAL RES., ‘AHA MOKU ADVISORY COMM., (Oct. 20, 2016), available at http://www.ahamoku.org/wp-content/uploads/2016/12/FINAL.AMAC_Admin_Rules_effective.102016.pdf.

²⁴ *Puwalu ‘Eiwa, Ka Holomua Ana O Ka ‘Aha Moku – Puwalu 9, Moving the ‘Aha Moku Forward*, Ala Moana Hotel, Honolulu, Haw. (Nov. 28-29, 2016).

²⁵ Mahesh Cleveland, *A New Emphasis on Models of Ancient Hawaiian Sustainability*, CIVIL BEAT, Oct. 31, 2016, available at <http://www.civilbeat.org/2016/10/a-new-emphasis-on-models-of-ancient-hawaiian-sustainability/>.

²⁶ *083 – Affirmation of the role of indigenous cultures in global conservation efforts*, IUCN WORLD CONSERVATION CONGRESS, Sep. 1-10, 2016, available at <https://portals.iucn.org/congress/motion/083>.

²⁷ *The Hawai‘i Commitments*, IUCN WORLD CONSERVATION CONGRESS, Sep. 1-10, 2016, available at https://portals.iucn.org/congress/sites/congress/files/EN%20Navigating%20Island%20Earth%20-%20Hawaii%20Commitments_FINAL.PDF.

²⁸ *Id.*

The rules also provide foundational principles from Hawaiian cosmogony known as the Kumulipo and the metaphysical and epistemological framework for understanding all phenomena known as Papakū Makawalu.²⁹ It also safeguards traditional knowledge through its adoption by reference to the Paoakalani Declaration ratified in 2003 to protect ‘Ōiwi cultural expressions from misappropriation.³⁰

The rules reaffirm statutory and constitutional laws and judicial precedent protecting traditional and customary Hawaiian rights and the public trust. The ‘Aha Moku rules also operationalize the legal methodology set forth in case law respecting Kanaka ‘Ōiwi rights. In doing so, the rules provide real guidance and concrete measures that DLNR can use to engage Hawaiian communities collaboratively.

These rules are significant in that they also direct the AMAC to collaborate with other State, County, and Federal agencies for which DLNR consults with. This would include Maui County governance structures (e.g., the County Council, Planning Department, and the Moloka‘i Planning Commission). With the approval of the updated Moloka‘i Island Community Plan by the Maui County Council in 2018, the ‘Aha Moku rules; namely, the Indigenous methodologies and protections of Native rights are now integrated in the assessment and land use decision-making processes with the Maui Planning Department and Moloka‘i Planning Commission.

To review these historic provisions, the full text of the Final ‘Aha Moku Rules of Practice and Procedure is provided online at the www.ahamoku.org website.³¹

²⁹ *Papakū Makawalu*, EDITH KANAKA‘OLE FOUNDATION, *available at* <https://www.edithkanakaolefoundation.org/current-projects/papaku-makawalu/>.

³⁰ KA ‘AHA PONO ‘O3: NATIVE HAWAIIAN INTELLECTUAL PROPERTY RIGHTS CONFERENCE, PAOAKALANI DECLARATION 2 (Oct. 3-5, 2003).

³¹ See http://www.ahamoku.org/wp-content/uploads/2016/12/FINAL.AMAC_Admin_Rules_effective.102016.pdf