

REQUEST FOR LEGAL SERVICES

RECEIVED

By Corporation Counsel at 2:57 pm, Jun 19, 2018

Date: June 18, 2018
From: Kelly King, Chair
Planning Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: MOLOKAI COMMUNITY PLAN UPDATE (PC-2)

Background Data: Please review the testimony submitted by Malia Akutagawa on June 14, 2018 and advise the Planning Committee whether there are in fact conflicts that remain within the Molokai Island Community Plan that need to be resolved. A copy of Ms. Akutagawa's testimony is attached for your reference. Please provide your response in writing or be prepared to discuss orally at the July 5, 2018 Planning Committee meeting.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER: Provide legal advice

Requestor's signature <u>Kelly King</u> Kelly King	Contact Person <u>Traci Fujita</u> (Telephone Extension: <u>7687</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): July 5, 2018
REASON: Next Planning Committee meeting date.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: MJH	ASSIGNMENT NO. 2017-0096	BY: LUV
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): Provided advice in person, please contact me if further advice is necessary.

DEPARTMENT OF THE CORPORATION COUNSEL

Date OCT 26 2018

By MICHAEL J. HOPPER

(Rev. 7/03)

RECEIVED AT PC MEETING ON 6/14/18

PC Committee

From: Malia Akutagawa <maliaaku@hawaii.edu>
Sent: Thursday, June 14, 2018 12:38 AM
To: PC Committee
Subject: Testimony of Malia Akutagawa in Support of Molokai Community Plan Updates and Objection to Maui County Planning Department's Recommendations
Attachments: Responses2.County.Planning.Dept.Assmt.of.EEPS.022417.docx;
 Responses2.County.Planning.Dept.Assmt.of.WEPS.docx

Aloha Councilmember King, Councilmember Crivello, and all members of the County Council Planning Committee,

Subject: Testimony of Malia Akutagawa in Support of Molokai Community Plan Updates and Objection to Maui County Planning Department's Recommendations

I have just received notice of your meeting tomorrow, June 14, 2018 re: the Molokai Community Plan update. I also received a copy of a June 1, 2018 correspondence from William Spence, Planning Director of the Maui County Planning Department outlining a number of objections to the current updated version of the Molokai Community Plan.

As time is of the essence, I apologize in advance for not addressing all the points made in the correspondence of Planning Director William Spence. I would like to underscore, however, the importance of upholding and passing the current updated Molokai Community Plan and NOT regressing to its former version which came out of the Moloka'i Community Plan Advisory Committee. I also am completely opposed to Mr. Spence's request to adopt the Lana'i Community Plan Appendix into our Moloka'i Community Plan. Our community is unique and it is unfair to Moloka'i to streamline a county process that overlooks the different circumstances we have from Lāna'i or any other community for that matter. It also defeats the purpose of community planning to insert something at the 11th hour that our community had no opportunity to review nor vet.

Mr. Spence has expressed that the Planning Department "has strived to work with the Molokai community to create a plan that address[es] the community's needs ..." This is far from the truth. Every step of the way during the CPAC meetings, the community was effectively barred from meaningful participation in the Community Plan Update process. The Planning Department stressed form over substance as it promoted a new template for the community plan to the point they convinced the CPAC to delete our East End Policy Statement that was developed by kupuna from the 1980s to protect Mana'e's precious resources. It was through grassroots efforts that the community was able to restore our East End Policy Statement and strengthen it. The West End followed suit with their own Policy Statement. Through the leadership of the Moloka'i Planning Commission, we were able to move forward and have our voices heard.

At the CPAC level, the Planning Department provided minimal information by which the CPAC members could make informed decisions. There were no current zoning maps and no explanation of what the county zoning designations meant. When the public offered comment, they were also given little information and minimal clarification on their questions. They were given 3 minutes to testify and summarily dismissed. The people felt very disrespected in a process that was deliberately made to be more confusing to them than it needed to be.

Some of the major issues that occurred during the CPAC review process included:

Lack of Information on Moloka'i Water. No Moloka'i-specific water information was provided. This was especially troubling since the entire island of Moloka'i has been designated as a critical groundwater management area. This designation means that the island has a very limited carrying capacity for future development and population growth; a carrying capacity that is inter-linked to the sustainable yield of our sole-source aquifer. The County planning staff did not furnish copies of the most recent Moloka'i Water Working Group (MWWG) report nor the County Water Use Development Plan (WUDP) for Moloka'i. Other valuable information not furnished was the Department of Hawaiian Home Lands' (DHHL) Strategic Plan for Moloka'i which would have helped the CPAC extrapolate from DHHL's planned projects what the

foreseeable water uses would be for Hawaiian Homes and agriculture. The State Water Code mandates protection of DHHL's existing and foreseeable water uses. Thus, community planning must also afford the same protections to Hawaiian homesteaders' domestic and agricultural needs into the foreseeable future. Similarly, no information was provided about the Molokai Irrigation System (MIS) and that two-thirds preference is reserved for Native Hawaiian homesteaders. There was also no indication that the CPAC was aware of the ramifications of two Hawai'i Supreme Court rulings on Molokai Water issues; namely, the Wai'ola o Moloka'i, 103 Haw. 401, 83 P.3d 664 (2004) and Kukui Moloka'i Inc., 116 Haw. 481, 174 P.3d 320 (2007) cases that are still on remand with the State Water Commission. These cases dealt with the effects new wells and additional ground water pumping would have on coastal spring lines that create muliwai (brackish water) for Molokai's important fishing grounds, limu, and crab beds. These areas are necessary for Native Hawaiian traditional subsistence practices and are also included as a public trust purpose. Jurisprudence in Hawai'i is clear, commercial uses are not part of the constitutionally protected public trust. Thus, any proposed commercial use of water places the burden on the applicant/developer to prove that its use will not negatively impact traditional and customary Hawaiian rights and the natural resources for which these rights and practices are associated with. Any kind of community planning conducted without this kind of vital information was risky, premature, and opened the CPAC and County Planning Department to arbitrary and capricious actions that violate substantive due process rights of Molokai residents and particularly Native Hawaiian cultural practitioners.

Lack of Housing Data for Moloka'i. CPAC members were encouraged to include multi-family housing within the updated Molokai Community Plan. However, no data was furnished to the CPAC to indicate a need for additional multi-family housing. Essentially, CPAC members were operating blindly without the benefit of any kind of information to help them make well-informed decisions.

Lack of Information Re: Permissible/Authorized Uses within Community Plan Zoning Designations. No information was furnished by the County planners on the definitions of each county zoning designation; alignment with State land use zoning; and a breakdown of allowable uses within each zone and county sub-zone. There were no map overlays that indicated prior zoning under the existing 2001 Molokai Community Plan and any proposed changes to the draft updated plan so that CPAC members and members of the general public could easily discern similarities and differences between each plan. The repercussions of not having this information are quite significant. This seriously hampered the work of the CPAC and caused great confusion to members of the public in attendance who wished to testify meaningfully as to what uses are appropriate and inappropriate in certain geographic areas of the island. Especially problematic are certain zoning designations like "interim" and "mixed-use." The persistent use of "interim" zoning without a real effort to determine an appropriate zoning designation leaves the land vulnerable to illegal spot zoning, which effectively negates the planning process altogether. Similarly, "mixed-use" zoning leaves areas vulnerable to landowners and developers to determine for themselves preferred uses; these uses may be incompatible with Molokai's rural, traditional subsistence lifestyle and circumvents the public review process in violation of residents' substantive and procedural due process rights.

When documentation, reports, and statistical data were formally requested by CPAC members, this information was denied them. *Failure to Provide a Comparison between the 2001 Plan and the CPAC Feb. 2015 Draft Plans.* Throughout nearly the entire CPAC review process, the Planning Director had failed to provide a clear articulation of the changes between the *Molokai Community Plan - Ordinance No. 3022 (2001)*, as amended (Ordinance) and the *Molokai Community Plan Update: Planning Department Draft Prepared for: Community Plan Advisory Committee (CPAC) February 2015 (Draft)*. These actions threatened the community's ability to provide meaningful testimony and in effect violated their due process rights for lack of notice as to how their rights may be affected. Community members were extremely frustrated and complained that the Planning Department was trying to railroad and undo the hard work that had gone into prior Molokai Community Plans.

By then, I received numerous calls from community members seeking my expertise as a law professor and former Chair of the Molokai Planning Commission. My students and I prepared a community tool kit explaining the planning process, zoning designations, administrative law and their due process rights. The 'Aha Kiole o Molokai received legal training and held meetings in each moku. Tremendous efforts were made by the community to restore the East End Policy Statement, introduce a West End Policy Statement, and ensure other protections were inserted in the updated community plan. Many people showed up to the Molokai Planning Commission meetings to offer their testimony and make the necessary improvements that the Planning Department and CPAC had failed to incorporate. The leadership of the Molokai

Planning Commission, particularly former Chair Zhanette Dudoit was instrumental in ensuring that community voices were heard and recommendations honored.

I was present at one of the planning commission meetings and witnessed some disingenuous maneuvering by Mr. Spence and his planning staff. At the last meeting held by the Molokai Planning Commission, I observed Mr. Spence vociferously opposing community recommendations to introduce a Traditional Land Use (TLU) Overlay which had already been endorsed in 2008 by the Maui County Planning Department under former Director Wayne Boteilho who engaged with our East End community in the Mana'e GIS Project. Mr. Spence was adamant that the Planning Department would now not enforce the TLU if passed. When community members introduced the West End Policy Statement, Mr. Spence attempted to convince them to not submit the West End Policy Statement, to do more work and submit it "next time." He did not clarify that the next time would be 10-15 years later and that there would still be time for them to make amendments with the permission of the County Council Planning Committee. As a former planning commissioner, I interjected and advised these community members not to withdraw their West End Policy Statement.

I am attaching here a chart I developed early on when the County Council Planning Committee was beginning to convene for its review of our updated Molokai Community Plan. It is a chart with the Maui County Planning Department's objections and my responses to those objections. I believe it will make clear to you that the Planning Department has abused its authority and has every step of the way attempted to circumvent the will of our Moloka'i Community.

I am grateful that you have worked to strengthen the community plan further by ensuring that our East End and West End Policy Statements are now actual chapters within the community plan, rather than relegated to the appendices section. The County Council Planning Committee has been very supportive of our community in honoring what we have worked very hard for --to make this Moloka'i Community Plan something we can be proud of. I urge you to support the updated community plan in its current version.

Mahalo,

Malia Akutagawa, Esq.
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MOLOKA'I COMMUNITY PLAN -- REVIEW INDICATING CONFLICTS WITH 2016 DRAFT COMMUNITY PLAN AND AREAS OF REDUNDANCY

***East End Policy Statement – 2016 edition
Responses to County Planning Department Comments***

PAGE/ LINE #	REDUNDANCY/ CONFLICT WITH CP	COMMENTS
PG.ii	Conflict	<p>Appendices A, B, C, D, E, F, G & H – Do not belong in community plan. The community plan references many other documents, however the documents are not <i>included</i> in the plan as appendices.</p> <p>Response: We disagree. There is no real conflict here. The Maui County Code (MCC) Chapter 2.80B sets forth the criteria for the Maui County General Plan and the various Community Plans, including for Moloka'i. The appendices in the East End Policy Statement merely reference what is contained specifically within the policy statement, which is completely appropriate and within the parameters and criteria afforded within MCC 2.80B. The Appendices include the Traditional and Customary Practices Report for Mana'e, Moloka'i (February 2016) (Appendix A); A Framework for the 'Aha Moku System and Collaborative Governance (Appendix B); United Nations Declaration on the Rights of Indigenous Peoples (Appendix C); Advisory Council on Historic Preservation – Section 106 And the U.N. Declaration on the Rights of Indigenous Peoples: Intersections and Common Issues: Article 18 and Section 106 (Appendix D); Mana'e GIS Mapping Project (May 2008) (Appendix E); Table 5.1: Mana'e Subsistence & Ahupua'a Management Plan Framework & Table 5.3: Community Suggestions for East Slope Management Plan (Appendix F); University of Hawai'i Archaeological Training Project, Kamalo, Moloka'i, Hawai'i (December 2005) (Appendix G); Relevant Hawai'i State Constitutional Provisions (Art. XII, § 7 and XI, § 1) and Statutes (Haw. Rev. Stat § 1-1 and 7-1) (Appendix H). To state</p>

that the appendices are not included in the plan is a strange argument as they are appendices to the East End Policy Statement which in and of itself is part of the Moloka'i Community Plan. It is analogous to the several reports that are referenced in an Environmental Impact Statement (e.g., Cultural Impact Assessment, Archaeological Report, etc.) that are incorporated into the EIS as a whole as appendices.

Furthermore, the East End Policy Statement as incorporated into the Moloka'i Community Plan and its appendices directly reflect criteria set forth in the MCC 2.80B.070(E). For example, we included Appendices A, E, and F that speak directly to MCC 2.80B.070(E)(9) re: listing significant archaeological, historical, and scenic sites warranting protection. The East End Policy Statement and some of its appendices also touch upon additional criteria in MCC 2.80B.070(E)(9) on providing "planning standards and principles relating to land uses." Appendices A, B, C, D, E, and H provide standards of review that are based in international law constructs that have been adopted domestically by the U.S. and State constitutional and statutory provisions, as well as, jurisprudence respecting traditional and customary Hawaiian rights and the public trust. State and county government and agencies are required to follow these standards and therefore, their inclusion fulfills the mandate provided in MCC 2.80B.070(E)(9). Appendix E, the Mana'e GIS Mapping Project, documents a collaborative partnership between the Moloka'i East End community and the Maui County Planning Department which resulted in the identification of sites important to the perpetuation of traditional land uses within each ahupua'a of East Moloka'i. The Mana'e GIS Mapping Project also resulted in a strong recommendation for the creation of a "Traditional Land Use (TLU) Overlay Designation" within the community plan. This was timely introduced into the community plan update process and seeing its value not just for the East End, the Moloka'i Planning Commission adopted the TLU Overlay Designation for the entire island. This action is wholly consistent with MCC 2.80B.070(E)(9) criteria 16 which states that the community plan should also identify "regulations that need to be developed" for the specified planning period.

The Maui County Planning Department fails to provide any explanation as to why it would deem the inclusion of the East End Policy Statement and its appendices in the Moloka'i Community Plan to be a conflict and redundant. More importantly, as stated above, the Maui County Code itself supports these efforts at the grassroots level to include language that is provided in the East End Policy Statement and its appendices. It is also good practice to include appendices when one references them in a document. They are properly referenced as appendices so that the reader doesn't lose the big picture in the main policy document. At the same time, the appendices are important in

achieving the purpose of serving as references that provide greater guidance, detail, and context for the policies outlined within the East End Policy Statement.

The East End Policy Statement itself also provides an extra layer of protection to the community as well as increases the understanding of Moloka'i Planning Commission members when they review land use permitting proposals. The East End Policy Statement provides a clear intent of the community on land use issues that affect them the most. If anything, the policy statement serves as greater insurance that good and well-informed decision-making will take place in the future. The East End Policy Statement and its appendices complements, guides, and informs the goals and action steps described in the main body of the Moloka'i Community Plan.

PG. 4

redundant

A.1. Already covered in CP CH 9, pg. 9-6, issue #1; pg. 9-7, policy #1; pg. 9-8, Action 9.2.5; pg. 9-11 Action 9.3.3.

conflict

Response: Section II.A.1. in the East End Policy Statement and the Community Plan Chapter 9 provisions are complementary. The East End Policy Statement also adds and enhances the Community Plan in that it identifies the critical need for medical and ambulance emergency services, whereas the Community Plan only identifies police response capabilities and increasing the capacity of the Puko'o firestation to address fire service needs.

A.3. Already addressed in CH 3 Cultural Resources.

Response: Section II. A.3. in the East End Policy Statement which identifies the need for the maintenance of archaeological and cultural resources within an East End Community Service Center provides greater specificity than what is afforded in the main body of the Moloka'i Community Plan in Chapter 3.2 titled "Heritage Resources." In Chapter 3.2, the plan addresses a broader need to "increase community awareness and stewardship of Moloka'i's historic and cultural resources." There is no redundancy here. Rather, the East End Policy Statement would provide greater guidance on how the Mana'e community would like to preserve and curate cultural artifacts rather than have them removed off the island into the possession of other repositories/museums.

"Recommendations" not appropriate in sub area plan. Additionally, already covered in CH 9

Response: There is no conflict with the Moloka'i Community Plan to recommend in the East End Policy Statement that a medical/dental/health service installation and hybrid library/cultural center be established in Mana'e. Rather this recommendation encompasses several sections in the Community Plan and provides greater specificity as it relates to Mana'e.

Global Response:

The wording between the main body of the Moloka'i Community Plan and the East End Policy Statement are not identical. The sections described here in the East End Policy Statement are complementary and provide greater specificity and detail as justification for goals and policy actions described within the main body of the Moloka'i Community Plan. Furthermore, the Maui County Code provisions 2.80B.030 and 2.80B.070(E) do not prohibit these types of inclusions in the East End Policy Statement and Community Plan overall.

The language of so-called "redundancies" is a literary "sleight of hand" on the part of the Maui County Planning Department. The truth is that language in the East End Policy Statement is complementary, not redundant. The East End Policy Statement as a whole provides the broader strokes, big picture vision for the Mana'e (East End) community. The East End Policy Statement helps to inform the goals and action steps provided within the main body of the Moloka'i Community Plan. They are supposed to complement each other. This is very much akin to the passage of laws and ordinances. Whenever an agency or a judicial body interprets laws, they will look to the legislative intent behind the adoption of those laws. They will review legislative committee and hearing reports. The same goes for the community planning process. When the Moloka'i Planning Commission reviews a permit application, its members will first consult the Moloka'i Community Plan and zoning designations for allowable land uses, then it will look to the Community Policy Statement to determine the community's overall vision for the character of their place and what they perceive to be acceptable land uses.

If we give credence to the County Planning Department's claims of "redundancy" and as a result decide to excise the East End Policy Statement as a whole or in part, we essentially defeat the purpose of the planning process. These so-called "redundancies" are actually safeguards that demonstrate how the main body of the Moloka'i Community Plan is and SHOULD BE aligned with the Policy Statement of the East End community. To ensure that the East End Policy Statement would be consistent with the Moloka'i Community Plan, we testified and successfully offered motions before

the Moloka'i Planning Commission for inclusion of specific goals and action steps within the main body of the Moloka'i Community Plan. The Planning Commission exercised good faith and due diligence in supporting these motions and formally adopting the recommended goals and action steps into the Community Plan. The Moloka'i Planning Commission serves as the eyes and ears of the island community and is a proper check and balance to the Community Plan Advisory Committee (CPAC). Oftentimes, community members expressed frustration with the CPAC and the heavy-handedness taken by the County Planning Department in its proposed changes to the Moloka'i Community Plan. One of the decisions the CPAC made at the insistence of Planning Department staff was to completely gut out the East End Policy Statement that was drafted by kūpuna in the 1980s because it didn't fit the County's new planning template. This is a dangerous precedent. Form should never defeat substance, especially when the community's constitutional due process rights are at risk.

PG 4-5

conflict & redundancy

"Recommendation" does not belong in subarea plan. Already addressed in CP CH 9, pg. 9-4, policy #11

Response: There is no conflict, nor redundancy. The wording between the main body of the Moloka'i Community Plan and the East End Policy Statement are complementary. Pages 4-5 in the East End Policy Statement addressing Hunting/Conservation Cabins deliberately complements Policy # 11 on page 9-4 of the Moloka'i Community Plan. In order to give our East End Policy teeth, we recommended that the Planning Commission approve a motion for inclusion of similar language in the main body of the Moloka'i Community Plan. Furthermore, the Maui County Code provisions 2.80B.030 and 2.80B.070(E) do not prohibit these types of inclusions in the East End Policy Statement and Community Plan overall; rather these provisions encourage the level of planning undertaken by the Mana'e community.

conflict

C. Ocean access/boat ramp - not under county jurisdiction. State issue only - DLNR

Response: There is no conflict. The East End Policy Statement merely contains greater detail and specificity of the community's intent regarding whether or not a boat ramp should be allowed. It provides guidance to the Moloka'i Planning Commission and other governmental entities in future decision-making. This kind of public participation and community advocacy and vigilance should be encouraged rather than invalidated or devalued. These efforts -- a policy and practice of public participation and inclusion -- are the hallmarks of a functioning and effective democracy.

The language provided in the East End Policy Statement re: ocean access/boat ramp are relevant to

and congruent with the Maui County Code 2.80B.070 which provides community planning criteria.

While the County may not have primary jurisdiction in authorizing the construction of a boat ramp, this action would trigger county review and permit approvals (e.g., shoreline setback variance and special management area permit) as companion requirements to federal (e.g., Army Corps dredge and fill permit) and state permits (e.g., Environmental Assessment of Impact Statement, water quality permit, etc.).

PG 11

conflict

"Recommendation" does not belong in subarea plan.

Response: The Maui County Code provisions 2.80B.030 and 2.80B.070(E) do not prohibit this recommendation re: whether or not to authorize and/or permit a boat ramp in East Moloka'i. The East End Community Statement makes clear that this is a contentious issue that requires further vetting by the community and therefore, no preemptive approvals should be granted by the county, nor any other governmental entity. The East End Policy Statement makes clear that nothing should preclude the community from utilizing its local and traditional decision-making processes afforded through the 'Aha Kiole. This is conscientious planning at its best. The Maui County Code encourages rather than dissuades the level of planning and vigilance the Mana'e community has committed itself to, so that the rural character and the specialness of this place remains for present and future generations to enjoy.

PG 12

redundant

III. Environment and Natural Resources - all material covered in CP CH 3 Natural Resources

Response: Chapter 3.1 in the Moloka'i Community Plan provides a broader brush stroke of the natural resources throughout Moloka'i island. The East End Policy Statement more appropriately describes the natural resources of Mana'e. Mana'e is a micro-climate that is vastly different from other areas of the island and contains the richest resources. The language is not redundant, nor duplicative of the main body of the Moloka'i Community Plan. Rather, it enhances Chapter 3 in the Community Plan and better informs decision-makers about the important and unique resources in Mana'e that warrant protection. Once again, the Maui County Code does not prohibit, but rather encourages this level of planning.

PG 13

conflict

Lines 6-7 has nothing to do with Erosion. Also, hunting allowed for "Moloka'i residents"? What about non-Moloka'i residents?

Response: There is no conflict, the analysis is aligned with community planning criteria under MCC 2.80B.030 and 280B.070(E). Hunting is a recommended solution here for erosion caused by feral ungulates/deer. Much of the lands are privately owned which makes it difficult for families to conduct subsistence hunting activities without being criminalized. Community planning is about the community weighing in on issues most important to them, it is not about worrying about non-residents. Further, the inclusion into the East End Policy Statement of the Mana'e Traditional and Customary Practices Report makes clear the concerns residents have of making hunting a commercial activity for outsiders because of the heavy dependence of all Moloka'i families on subsistence.

redundant

Lines 10-11, lines 19-20, line 24 Already addressed CH 6, pg. 6-9, policy #14 also all addressed in County Multi- Hazard Mitigation Plan

Response: Policy # 14 in Chapter 6, page 6-9 of the main body of the Moloka'i Community Plan acknowledges the wishes of the East End community to discourage hotel and multifamily development in Mana'e. The EEPS provisions referenced by the Planning Department here add more depth as to the community's rationale behind this recommendation; namely risks of flooding and tsunami inundation, and the need to further modify the environment to receive waste and treat increased sewage output. The EEPS adds further detail that is not provided in the main body of the community plan. The EEPS enhances the ability of the Planning Commission to make well-informed and conscientious decisions.

conflict/redundant

"Recommendation" does not belong in subarea plan. Make a specific recommendation to add to CP, not blanket inclusion of language. Also already covered in CH 3 Policy #8, Action 3.2.1, 3.2.2, 3.2.3

Response: This comment from the Planning Department is disingenuous. The only reason Actions 3.2.01, 3.2.02, and 3.2.03 are included in the community plan is because we asked the Planning Commission to include them based on recommendations made in the East End Policy Statement. The Planning Commission wanted to expand our recommendations to the entire island and that is how those action items were included in the overall Moloka'i Community Plan. Also, as stated above, there is no conflict and no redundancy here, the recommendations found in the East End Policy Statement merely provide greater detail and rationale behind the action steps described in the main body of the Moloka'i Community Plan and will assist the Moloka'i Planning Commission in making well-informed decisions.

PG 14

redundant

IV. Cultural Resources & Traditional Land Uses - 3rd paragraph - already addressed in CH 3 Natural Resources, Policy #5, pg. 3-14

Response: Again, this comment from the Planning Department is disingenuous. The only reason Policy #5 on page 3-14 is included in the community plan is because we asked the Planning Commission to include this provision. There is no redundancy here, the East End Policy Statement merely provides greater detail and rationale behind the provision in the main body of the Moloka'i Community Plan and will assist the Moloka'i Planning Commission in making well-informed decisions.

redundant

Paragraph 5 - Already addressed in CP, CH 8 Policy #1, pg. 8-3; pg. 8-4 Policies #13 & 14

Response: Again, this comment from the Planning Department is disingenuous. The only reason Policy #1 on page 8-3 respecting "priority water rights of Native Hawaiians under the Hawaiian Homes Commission Act, the State Water Code" and protecting various water resources that also important to the Native Hawaiian rights and practices that are protected under constitutional and statutory provisions is included in the community plan is because we asked the Planning Commission to include this provision. There is no redundancy here, the East End Policy Statement merely provides greater detail and rationale behind the provision in the main body of the Moloka'i Community Plan and will assist the Moloka'i Planning Commission in making well-informed decisions.

PG 15

redundant

Paragraphs 1 - 3 - Already addressed in Chapters 3 & 8 (Water)

Response: The citation of laws and jurisprudence protecting public trust resources like water is important, as it best informs the Moloka'i Planning Commission on its constitutional obligations and standards of review. Again, there is no redundancy here, the East End Policy Statement merely provides greater detail and rationale behind the provision in the main body of the Moloka'i Community Plan and will assist the Moloka'i Planning Commission in making well-informed decisions.

PG 16 -
17

conflict/redundant

"Recommendations" does not belong in subarea plan. Recommendation 1 - Already addressed in CH 3 pg. 3-13, issues # 1& 2, policies #1-3 pg. 3-15 and Action 3.2.1, 3.2.2, 3.2.3, 3.2.4. Recommendations 3 & 4 - already addressed in pg. 3-14, Policies #3, 4, and 5. Recommendation 6 - already addressed in CH 3 policy #6 & 9. Recommendation 7 - already addressed in CH 6, pg. 6-9, policy #14.

Recommendation 8 - already addressed in CH 3 pg. 3-14, policy #8. Recommendation 9 - already addressed in CH 3 - is the GOAL, policy #5, 19 Action 3.2.2 and also CH 6 policy #7. Recommendation 10 - already addressed in CH 8 (Water) pg. 8-3, policy #1, and pg. 8-4 policies 11, 13 & 14.

Response: The recommendations provided in the East End Policy Statement should be seen as companion language that is complementary and provides greater detail and rationale for the provisions and action steps found in the main body of the Moloka'i Community Plan. A number of these recommendations were formally adopted by the Planning Commission. This body saw the value of our recommendations as applicable to the entire island. This constitutes good planning. Furthermore, the recommendations provided in the East End Policy Statement directly reflect criteria set forth in the MCC 2.80B.070(E). Once more, there is no conflict and no redundancy here, the recommendations found in the East End Policy Statement merely provide greater detail and rationale behind the action steps described in the main body of the Moloka'i Community Plan and will assist the Moloka'i Planning Commission in making well-informed decisions.

PG 18

conflict/redundant

"Recommendations" does not belong in subarea plan. Already addressed in CH 3, pg. 3-14, line 20, policy #8, pg. 3-16, Action 3.2.2.

Response: The recommendations provided in the East End Policy Statement should be seen as companion language that is complementary and provides greater detail and rationale for the provisions and action steps found in the main body of the Moloka'i Community Plan. A number of these recommendations were formally adopted by the Planning Commission. This body saw the value of our recommendations as applicable to the entire island. This constitutes good planning. Furthermore, the recommendations provided in the East End Policy Statement directly reflect criteria set forth in the MCC 2.80B.070(E). Once more, there is no conflict and no redundancy here, the recommendations found in the East End Policy Statement merely provide greater detail and rationale behind the action steps described in the main body of the Moloka'i Community Plan and will assist the Moloka'i Planning Commission in making well-informed decisions.

conflict

B. Pu'u o Hoku - specific actions on private property

PG 19

redundant

D. Ke'ana O Hina - Recommendations - "Recommendations" does not belong in subarea plan. #3 - incomplete sentence? #5 already addressed in CH 3 and 5

conflict

Reference to Moloka'i Nov 2015 draft plan - several changes made since then and should not be referenced. Source of data referring to # of households? Year?

Response: The best available data was utilized here. The experienced staff of the Planning Department may provide better research data if it elects to do so. References to the November 2015 draft plan were made because that was the most updated version available to the Mana'e community to review. There was a deep concern from the Mana'e community about the CPAC's decision under the recommendation of the Planning Department to totally exclude the East End Policy Statement from the updated Moloka'i Community Plan. This prompted greater vigilance on the part of the Mana'e community to advocate before the Planning Commission to approve the re-inclusion of the East End Policy Statement with additional amendments to the older version. As the Moloka'i Community Plan is nearing finalization, it is okay now to redact any references to the November 2015 draft plan.

Redundant/conflict

"Recommendations" does not belong in subarea plan. Already addressed in CH 5 pgs. 5-4,5, policies #1,2,3,4,5,7,8,12,13,14,15,16,17,18,19,20,22,23, pgs. 5-7, 8, Actions 5.1, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.14, 5.15, 5.16, 5.17. #3 refers to Aquaculture areas for consideration etc. -- under the jurisdiction of DLNR NOT the County

Response: The recommendations provided in the East End Policy Statement should be seen as companion language that is complementary and provides greater detail and rationale for the provisions and action steps found in the main body of the Moloka'i Community Plan. A number of these recommendations were formally adopted by the Planning Commission. This body saw the value of our recommendations as applicable to the entire island. This constitutes good planning. Furthermore, the recommendations provided in the East End Policy Statement directly reflect criteria set forth in the MCC 2.80B.070(E). Once more, there is no conflict and no redundancy here, the recommendations found in the East End Policy Statement merely provide greater detail and rationale behind the action steps described in the main body of the Moloka'i Community Plan and will assist the Moloka'i Planning Commission in making well-informed decisions.

We disagree with the Planning Department that aquaculture activities do not fall under the purview of the County. Multiple county, state, and federal permit approvals are required for aquaculture

operations whether within fishponds or nearshore. The Planning Department and the Moloka'i Planning Commission will have to weigh in on these permit applications. Therefore, understanding what the Mana'e community considers acceptable land use, including aquaculture operations is important to their decision-making.

PG 21

conflict

Taxes - not appropriate in a CP

Response: This comment from the Planning Department is overly simplistic and fails to address the larger implications of county actions that have heretofore allowed transient vacation rentals and bed and breakfast establishments. These operations, whether operating legally or illegally, have had a direct and harsh consequence on Mana'e residents as newcomers buy up former kuleana lands through quiet title actions and develop these newly acquired properties to accommodate tourists. While these TVRs are untaxed as compared to valid hotel establishments; they steadily increase property taxes for the long-time residents of Mana'e to the point where they can no longer afford to live in Mana'e and are forced to sell their lands and relocate. This is a major problem that has to be addressed and the Planning Commission can take these things into consideration when reviewing permits for TVRs and bed and breakfast establishments. The Planning Commission would be better equipped to understand the larger implications of these types of permit applications that have a significant impact on changing the character of the community to one that is stable and long-standing to a transient population that has no commitment to caring for Mana'e.

PG 22 -
25

redundant

VII A Legal Framework for Land Use Policy, Permitting, and Decision-making - should not be contained in CP -- repetitive and is addressed in HRS as appropriate

1. Do not understand why redundant under MCC 2.80B and why it can't be included; as it is not prohibited under MCC 2.80B.030 and 2.80B.070 subsection E, #1-16?

MOLOKA'I COMMUNITY PLAN -- REVIEW INDICATING CONFLICTS WITH 2016 DRAFT COMMUNITY PLAN AND AREAS OF REDUNDANCY

West End Policy Statement – 2016 edition

Maunaloa West End Policy Statement – 2016 edition

Can this name be used as requested by Maunaloa & West End residents?

PAGE/ LINE #	REDUNDANCY/ CONFLICT WITH CP	COMMENTS
Pg 1	Conflict	<p>First paragraph, line 4 – Inaccurate information: "2015 Molokai Community Plan Committee". This document was presented to the Molokai Planning Commission.</p> <p><i>(Need to check with those who presented.)</i></p>
	Conflict	<p>Second paragraph, first sentence – no evidence to substantiate the statement that "extensive West End community input over the past year" occurred.</p> <p><u>Response:</u> We disagree. A list of meeting dates, times, locations, and minutes exist and can be provided upon request. Some of those dates include: 1/17/2016, 1/20/2016, 1/21/2016, 2/18/2016, 3/20/2016, and 6/7/2016. <i>(Get all dates to include)</i></p>

	Conflict	<p>Last paragraph, first sentence – inaccurate information: The West End is not a “fragile, narrow, coastal community”.</p> <p>Response: Could be rephrased, but the main intent of the sentence should remain, which is that the West End has suffered severe environmental damage, and its relatively small/limited land mass is surrounded by ocean/coastline. Decades of mismanagement of the land, mostly by the primary landowner; Molokai Ranch, has resulted in severe erosion, run-off, and siltation of West End beaches and ocean, which impacts residents’ ability to subsist (fish) and recreate there.</p>
PG 2	Redundant	<p>II. Subsistence – Already addressed in CH 1 and 3, pg. 1-1, lines 10-17; pg. 1-11, lines 22-24; pg. 3-13, lines 2-23.</p> <p>Response: Section II in the West End Policy Statement and the Community Plan Chapters 1 and 3 provisions are complementary. The Subsistence section of the WEPS begins with a short overview, which sets the context for the importance of subsistence activities for West End/Maunaloa residents.</p>
PG 3	Conflict	<p>Axis Deer – Hunting limited to Molokai residents?</p> <p>This was community input because the majority of Maunaloa hunts for SUBSISTENCE. You think they want the Ranch to bring in trophy hunters to make money at the expense of the Maunaloa community?</p>
	Conflict/redundant	<p>Community based game management plan already covered in CH 3, pg. 3-10, Action 3.1.13.</p> <p>Maunaloa’s needs were specific. Those are not addressed. You have the policy. Read the hunting management part. The specific problem is there is no hunting management except the Ranch’s arbitrary control. There was favoritism in issuing hunting passes. There was not any type of education to prevent the community itself to hunt does rather than bucks for their meat. The entire island has different hunting needs. Different areas need different specifics.</p>

PG 3-4	Conflict/redundant	Goal and Action – no actions in policy statements. Far too much detail for a community plan. The commission need the redundancy. Without the mo'olelo, the commission finds ways to circumvent the will of the people
PG 5	Conflict/redundant	Goal and Action – no actions in policy statements. Far too much detail for a community plan. <i>Is this a rule?</i>
PG 5-7	Conflict/redundant	Contaminated Water Concern – State DOH and CWRM issue – concern could be summarized in 2 to 3 sentences.
PG 7-8	Redundant	Goal and Action – no actions in policy statements.
	Redundant	A.3 – Already covered in CH 9, pg. 9-6, Issue 1; pg. 9-7, Policy 1; pg. 9-8, Action 9.2.05; pg. 9-10, Issue 1
PG 8	Conflict	V. Public Facilities, first paragraph, second sentence – “...but do not qualify as such under this group” – Corporation Counsel advised that this is a legal concept and should be deleted.
PG 9	Redundant	Goal and Action – no actions in policy statements.
	Redundant	A & B – Already covered in CH 8 and 9, pg. 8-21, Action 8.5.11.
PG 9-10	Redundant	Already covered in CH 3 and 8, Pg. 8-3, Policy 1; pg. 8-4, Policies 13 and 14
PG 10	Conflict	A. Water 1 – Water allocation is the jurisdiction of CWRM.
	Redundant	A. Water 2 – Already covered in CH 8, pg. 8-3 and 8-4, Policies 1, 13 and 14
PG 11	Redundant	A. Water 3 – Already covered in CH 8, pg. 8-3, Policy 9

	Redundant	A. Water 4 – Already covered in CH 8, pg. 8-3 Policy 1
	Redundant	A. Water 5 – Already covered in CH 8, pg. 8-4 Policy 14
	Redundant	B. Control Erosion 1 – Already covered in CH 3, pg. 3-7, Policy 13; pg. 3-10, Action 3.1.13
	Redundant	B. Control Erosion 2 – Already covered in CH 3, pg. 3-7, Policies 3 and 8; pg. 3-10, Actions 3.1.06 and 3.1.08
	Redundant	B. Control Erosion 3 – Already covered in CH 3, pg. 3-17, Policy 9; pg. 3-10, Action 3.1.07
	Redundant	B. Control Erosion 4 – Already covered in CH 5, pg. 5-4, Policy 3, pg. 5-7, Actions 5.01 and 5.04
	Redundant	C. Be Prepared for Tsunami – Already covered in CH 4, pg. 4-4, lines 1-13
	Conflict	C. Be Prepared for Tsunami 1 & 2 – Discouraging multi-family and resort development in Kaluakoi conflicts with the community plan, land use entitlements for that area, and other statements in the Maunaloa Policy.
PG 12	Redundant	D. 1 – 6 and E 1 – 3 – Already covered in CH 3 and 8, pgs. 3-6 – 3-9 Issues 1, 2, 3 and 5, Policies 4, 5, 6, 17 and 19, Actions 3.1.06, 3.1.08, 3.1.09, 3.1.10, 3.1.11, 3.1.12, 3.1.14, 3.1.15; pgs. 8-3 – 8-5, Policies 1, 12, 13, 14, and 15, and Action 8.1.08.
PG 12 – 14	Redundant	VII. Cultural Resources and Traditional Land Uses – Already covered in CH 3, pg. 3-11, lines 3-13 and 15 – 32, pg. 3-14, Policy 5.
PG 15	Redundant	A. 1 – 8 – Already covered, and directly from CH 3, pgs. 3-14 – 3-15.
	Redundant	A. 9 – Nuclear power is prohibited in Maui County per MCC.

	Redundant	B. 1 – 4 – Already covered in CH 3, pg. 3-14, Policies 1, 2, and 3, pg. 3-15, Actions 3.2.01, 3.2.02, 3.2.03, and 3.2.04.
PG 16	Redundant	C. 1 – 3 – Already covered in CH 3, pg. 3-14, Policies 4 and 9.
	Conflict	D. 1 – CWRM regulates water allocation. D.2 – A moratorium on tourist related development conflicts with the community plan, land use entitlements for that area, and other statements in the Maunaloa Policy.
	Redundant	E. 1 – 3 – Already covered in CH 3, pg. 3-4, Policy 8 and pg. 3-16, Action 3.2.02.
	Redundant	F. 1 – 3 – Already covered in CH 3, pg. 3-9, Action 3.1.06.
PG 17 – 18	Redundant	VIII. Social and Economic Resources – Already covered throughout CH 5.
PG 18	Conflict	A. 1 – Conflicts with CH 5, pg. 5-5, Policy 17.
PG 18 – 20	Redundant/conflict	A. 2 – C.6 – Either already covered throughout CH 5 or State responsibility.
PG 20	Conflict	IX. Land Use, second paragraph – False statement.
PG 20	conflict	A. Taxes - not appropriate in a CP
PG 21	Conflict	B. Commercial Development – The community plan cannot establish permit review procedures.
PG 212 – 23	Redundant	6.h – Already covered by State Burial Law.

PG 23	Redundant	5. – Already covered by Section 404 Clean Water Act, HRS Chapter 205A Coastal Zone Management, and HRS Chapter 343 Environmental Impact Statement Law.
PG 26	Conflict	IX. Land Use - The community plan cannot establish permit review procedures.