

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 1, 2018

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OFFICE OF THE MAYOR

Honorable Alan Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Kelly T. King
Chair, Planning Committee
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL


Mayor 6/5/18
Date

Dear Chair King:

SUBJECT: MOLOKA'I COMMUNITY PLAN UPDATE (PC-2)

The Department of Planning (Department) would like to offer comments on the Chair's new May 1, 2018 draft of the Molokai Community Plan update.

As you know, our staff is intimately familiar with this plan, from its initial draft, through the deliberations of the Community Plan Advisory Committee (CPAC), through the deliberations of the Molokai Planning Commission (MoPC), and through its deliberations with your Committee to date. Nonetheless, it took a significant amount of time and energy to review this new version of the plan to identify the changes from the previous version that had been drafted as a result of decisions made by your Committee. The following list identifies the Department's concerns with the May 1, 2018 draft and recommended changes:

(1) Appendix 6.1 and Appendix 6.2 Community Plan Designations: The Department explained to the CPAC and MoPC that the Department would recommend to the Council to include Appendix 9.2 from the adopted Lana'i Community Plan in the Molokai Community Plan. This appendix was vetted by the Council and a great deal of time was devoted to discussing the table and how it brings clarity to the role of the community plan and its relationship to zoning. Your Committee had consensus to use this version of Appendix 6.1 and it was included in you March 9, 2018 draft.

The Appendices 6.1 and 6.2 in the May 1, 2018 draft plan suggest that only certain zoning districts can be allowed with each community plan designation. While it is generally the ideal scenario for zoning and community plan designations to "match", it is not unlawful for them not to match. Community plans inherently create mismatches. For example, land that is zoned and designated agriculture is often re-designated for other uses in the community plan in order to allow for future residential or commercial growth. Such a re-designation does not prohibit agricultural uses on that land, nor would it prohibit the issuance of ministerial permits for that land.

Honorable Alan Arakawa, Mayor
For Transmittal to:
Honorable Kelly T. King
June 1, 2018
Page 2

In fact, Chapter 2.80B, Maui County Code, was amended in 2014 to make this clear. Sec. 2.80B.030.B states "All agencies shall comply with the general plan, and administrative actions by agencies shall conform to the general plan, except for ministerial permits or approvals including, but not limited to, building permits, grading permits, plumbing permits, and electrical permits." It is critical that the community plans make this relationship clear; retaining the March 9, 2018 version of Appendix 6.1 will accomplish this.

A legitimate concern with recognizing the role of zoning in the context of community plans is the "stacked zoning" format of Title 19. This is a concept where a more intensive zoning district allows the uses of a less intensive zoning district. In most of our zoning districts, this makes sense; for example, the B-1 Neighborhood Business District allows limited uses of a scale appropriate for neighborhoods, while the B-2 Community Business District allows the B-1 uses plus others that serve a broader community. In one specific zoning district, however, this stacking has proved to be problematic and controversial: the M-1 Light Industrial District.

The M-1 Light Industrial District allows light industrial uses, and it also allows many businesses uses, as well as apartments. In some instances, this mix of uses could result in a cohesive and well-designed community; in other instances, like we have seen on Maui, it can result in conflicting and incompatible uses, and business uses crowding-out industrial uses due to lower property values and rents.

With properties that are community planned Light Industrial and then subsequently zoned M-1, it also raises a valid question of how business and, more so, apartment uses are consistent with and are effectively implementing the community plan. This question can be appropriately answered during the change in zoning process. At that time, the Council can consider whether to place conditions on the requested M-1 zoning to restrict it to just industrial uses if it is found that business and apartment uses would be inconsistent with the community plan.

We agree that "stacked" zoning can be problematic, and we plan to address this issue during the overhaul of Title 19. In the meantime, it can be addressed by the Council during the change in zoning process.

Department Recommendation: The Department recommends that the committee adopt the same appendix as was approved for the Lana`i Community Plan. Appendix 6.1 is included in the March 9, 2018 version of the plan and makes clear the already codified relationship between community plans and zoning.

(2) Chapter 12 Implementation and Monitoring: We are profoundly concerned that many (40%) of the actions and prioritizations approved by the CPAC and MoPC have been deleted. We are also concerned that the remaining items that they approved have been reprioritized in a manner that does not represent their actions and desires. Additionally, at the March 1, 2018 Committee meeting, there was consensus to leave the prioritization as identified by the CPAC and MoPC.

Honorable Alan Arakawa, Mayor
For Transmittal to:
Honorable Kelly T. King
June 1, 2018
Page 3

It appears that all priority two actions were deleted, and that the remaining priority one actions were reprioritized as one through six. That means that some actions that had been identified by the CPAC as priority one are now priority six. The prioritization process which the Department facilitated with the CPAC was detailed and extensive. The CPAC spent numerous hours over several meetings prioritizing actions based on the criteria identified on the first page of Chapter 12. The MoPC respected the CPAC's prioritization and made very minimal changes during their review. The drastic changes to the implementation table without any discussion on the public record is quite surprising.

Furthermore, actions from Chapters 10 (East End Policy Statement) and Chapter 11 (West End Policy Statement) appear to be prioritized one through four, rather than one through six. There is absolutely no explanation provided about why priority two actions were deleted, nor what criteria were used to reprioritize the remaining actions and actions from Chapters 10 and 11.

Department Recommendation: The Department requests the priorities as identified by CPAC and MoPC be retained in Chapter 12.

(3) Chapter 10 East End Policy Statement and Chapter 11 West End Policy Statement: Chapters 10 and 11 contain numerous policies and actions that are duplicative with the rest of the plan, as well as content that is either covered by existing laws and regulations or is too detailed and inappropriate in a community plan. This creates a plan that is too long, unclear, and difficult to implement. See Attachment 1 for a detailed list of the Department's concerns.

Since the beginning of the community plan update process the Department has strived to work with the Molokai community to create a plan that address the community's needs and goals, and is clear, implementable, and consistent with Chapter 2.80B. Throughout the CPAC process, community members from the East End and West End provided verbal and written testimony. Their concerns were addressed and reflected in numerous amendments to the issues, policies and implementation actions throughout the Moloka'i Community Plan. Documentation is provided in the minutes from the CPAC and MoPC meetings.

Community plans reference many other plans, studies, and reports without incorporating them into the plan itself. If a plan becomes too voluminous with redundant or ancillary information it loses its effectiveness and credibility.

Department Recommendation: The Department requests that Chapters 10 and 11 be removed from the plan and preserved as reference documents. The Council could consider adopting Chapters 10 and 11 separately by resolution as reference documents to the Moloka'i Community Plan.

Honorable Alan Arakawa, Mayor
For Transmittal to:
Honorable Kelly T. King
June 1, 2018
Page 4

(4) Other Concerns: The Department has various others concerns and recommendations regarding the draft plan as listed below:

Page 9, last paragraph: The reference to Appendix 1.4 is out of place. This is a list of chapters, no other appendices are listed. Additionally the statement that "this appendix was also reviewed by the Planning Department, CPAC, and vetted by the community" is incorrect.

Page 14 and 15, G: The Community-Based Subsistence Fishing Area Proposal and Management Plan are in the process of being developed and reviewed with the community. It may be premature to specifically reference the draft proposal and management plan. Additionally, the link provided in footnote 6 is broken.

Page 69, Policy 23: See Department comment for *Page 14 and 15, G*.

Page 87, Action 6.1.09: The Planning Department cannot implement this action. Real Property Tax should be identified as the lead County agency.

As noted above, it took our staff a great deal of time and effort to identify these new alterations in this latest version. We are concerned with them because changes to proposed community plan updates at the Council level are supposed to be made in an open public setting, where testimony can be received, where the public can hear what changes are being made and why, where staff (whether Council or Administration) can offer comments and context, and where the deliberations and decisions are documented by meeting minutes and other components of the Committee record. The general public, the Molokai community, the CPAC and the MoPC would have a difficult time discerning what this latest version contains compared to the last one that the Committee reviewed and had consensus on. This would be a disservice to the public.

Similarly, the community plan update process is codified in Chapter 2.80B, Maui County Code, in great detail. It calls for the Planning Department, CPAC, planning commission and Council to each play a prescribed role. The process to adopt Chapter 2.80B was extensive and pain-staking. To present a new version of the plan in this way appears to be contrary to, or circumvents, the process established by Chapter 2.80B.

Thank you for your consideration of this matter. Should further clarification be necessary, please contact Pam Eaton, Planning Program Administrator at Ext. 7372.

Sincerely,


William Spence
Planning Director

Honorable Alan Arakawa, Mayor
For Transmittal to:
Honorable Kelly T. King
June 1, 2018
Page 5

Attachment

xc: Pam Eaton, Planning Program Administrator (pdf)
Jennifer Maydan, Planner Supervisor (pdf)
LRD Correspondence File

WRS:JLM:rhl

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Attachment 1

Chapters 11 and 12 List of Concerns

Chapter 10 East End Policy Statement

Introduction and Description

- Pg. 162, 1st paragraph, 2nd sentence: This sentence is false. The East End Policy Statement was never reviewed by the CPAC.

Section 10.1 Environment and Natural Resources

- Pgs. 165 – 167: Much of this information is covered in Chapter 3, Section 3.1 (Natural Resources), Chapter 4 (Hazards), and Chapter 6, Section 6.1 (Land Use).
- Pg. 167, Action 10.1.01: This action is very unclear. The Department has questions about what this action intends to achieve and has serious concerns regarding budgetary implications. The Mana`e GIS Mapping Project was a pilot project to collect and analyze cultural and natural resources data in the Mana`e region of Moloka`i. Some of the recommendations from the project, which this action directs the Planning Department to implement, include conducting a wetlands inventory and conducting oral histories. These two task are outside of the Department's expertise and are very costly projects.

Section 10.2 Cultural Resources and Traditional Land Uses

- Pgs. 168 – 175: Much of this information is covered in Chapter 3, Section 3.2 (Heritage Resources).
- Pg. 171, Policy 4: Policy 4 is duplicative with Policy 17.
- Pg. 171, Policy 6: Policy 6 is duplicative with Policy 24.
- Pg. 172, Policy 14: Policy 14 states "Work with the private landowner to protect the area.....". What is "the area"? This policy is very unclear, and therefore cannot be implemented.
- Pg. 173, Actions 10.2.01 and 10.2.02: These statements are policies not actions.
- Pg. 173, Action 10.2.03: The action is very unclear and cannot be implemented by the Department as written.
- Pg. 174, Action 10.2.4: This is not a complete sentence.

Section 10.3 Social and Economic Resources

- Pgs. 175 – 176: Much of this information is covered in Chapter 5 (Economic Development).
- Pg. 175, 3rd paragraph, sentences 1 – 3: What does this statement mean?
- Pg. 176, Actions 10.3.02 and 10.3.03: These statements are policies not actions.

Section 10.4 Land Use

- Pgs. 176 – 178: Much of this information is covered in Chapter 6, Section 6.1 (Land Use).

Section 10.5 Public Facilities

- Pgs. 178 – 181: Much of this information is covered in Chapter 9 (Public Facilities and Services) and Chapter 3, Section 3.1 (Natural Resources).
- Pg. 179, 2nd and 3rd paragraphs: This discussion of feral ungulates and hunting has nothing to do with County public facilities and is far too detailed for the community plan.
- Pg. 179, last paragraph: This paragraph about `Aha Kiole o Moloka`i seems out of place and has nothing to do with County public facilities.
- Pg. 180, Issue 4: This issue has nothing to do with County public facilities and is addressed in Section 3.1 Natural Resources.
- Pg. 180, Policy 1: This policy is very unclear, and therefore cannot be implemented.
- Pg. 181, Policy 3: This policy about watershed protection has nothing to do with County public facilities and is addressed in Section 3.1 Natural Resources.
- Pg. 181, Policy 4 and Policy 6: These two policies are redundant.
- Pg. 181, Policy 5 and Policy 7: These two policies are redundant.
- Pg. 181, Action 10.5.03: This action was deleted and moved to Policy 4 by the Planning Committee per the recommendation of the Department of Public Works.

Chapter 11 West End Policy Statement

Section 11.1 Environment and Natural Resources

- Pgs. 185 – 188: Much of this information is covered in Chapter 3, Section 3.1 (Natural Resources), Section 3.2 (Heritage Resources), and Chapter 4 (Hazards).
- Pg. 187, Policy 7: This policy is a duplicate of Action 11.1.01. The policy and action both state "Clear litter and supply adequate rubbish bins at County beach access points". This is a maintenance issue and should not be included in a long range planning document.
- Pg. 187, Policy 8: This policy is written as an action. Policies should start with verbs such as "support" or "encourage".
- Pg. 188, Action 11.1.01: See comment for Policy 7.

Section 11.2 Cultural Resources and Traditional Land Uses, Including Subsistence

- Pgs. 185 – 188: Much of this information is covered in Chapter 3, Section 3.1 (Natural Resources), and Section 3.2 (Heritage Resources).
- Pg. 191, last paragraph: The County has absolutely no regulatory authority over hunting. The information provided in this section regarding a proposed subsistence deer hunting management plan is far too detailed for inclusion in a community plan.
- Pgs. 193 - 194, Policies: The policies are not West End specific, rather they apply to the whole island and are already covered in Chapter 3, Section 3.1 (Natural Resources), and Section 3.2 (Heritage Resources).
 - Policy 1: Addressed in Section 3.1, Policy 8.
 - Policy 2: Addressed in Section 3.1, Policy 13 and Action 3.1.12.
 - Policy 3: Addressed in Section 3.2, Policy 6.
 - Policy 4: Addressed in Section 3.2, Policies 1, 2, and 3.
 - Policy 5: Addressed in Section 3.2, Policies 1, 2, and 3.
 - Policy 7: Addressed in Section 3.2, Policy 4.
 - Policy 8: Addressed in Section 3.2, Action 3.2.01.
 - Policy 9: Addressed in Section 3.2, Policy 9.
 - Policy 12: Addressed in Section 3.2, Policy 15.
 - Policy 13: Addressed in Section 3.2, Policy 13 and Action 3.2.12.
 - Policy 14: Addressed in Section 3.2, Policy 11 and Action 3.2.13.
- Pg. 195, Action 11.2.01: This action is addressed in Section 3.2, Action 3.2.04.
- Pg. 195, Action 11.2.03: This is a policy, not an action.

Section 11.3 Social and Economic Resources

- Pgs. 197 – 199: Much of this information is covered in Chapter 5 (Economic Development).
- Pg. 198, Goal: The purple underlined text added at the end of the goal doesn't make sense with the rest of the sentence.
- Pg. 198, Policies: The policies are not West End specific, rather they apply to the whole island and are already covered in Chapter 5 (Economic Development).
 - Policy 1: Addressed in Chapter 5, Policy 12.
 - Policy 2: Addressed in Chapter 5, Policy 6.
 - Policy 4: Addressed in Chapter 5, Policy 5.
 - Policy 6: Addressed in Chapter 5, Policy 14.

Section 11.4 Land Use and Housing

- Pgs. 200 – 205: Much of this information is covered in Section 3.2 (Heritage Resources), Chapter 4 (Hazards), Chapter 5 (Economic Development), Section 6.1 (Land Use), Section 6.2 (Housing), and Chapter 7 (Community Design).
- Pg. 200, 3rd paragraph, last sentence: This statement is about a private entity setting rental rates and is not appropriate in a community plan.
- Pg. 201, Issue 1: The second half of the statement is about a private entity setting rental rates and is not appropriate in a community plan.
- Pg. 201, Issue 4: This issue is out of place in the land use and housing section and is covered in Section 3.1.
- Pg. 201, Issue 5: This issue statement is unproductive and unrealistic. Property taxes fund many of the County services and facilities that Molokai residents benefit from, include West End residents.
- Pgs. 202 - 203, Policies: Most of the policies are not West End specific, rather they apply to the whole island and are already covered in Section 3.2 (Heritage Resources), Chapter 4 (Hazards), Chapter 5 (Economic Development), Section 6.1 (Land Use), Section 6.2 (Housing), and Chapter 7 (Community Design).
 - Policy 1: Addressed in Section 6.2, Policy 1.
 - Policy 3: Addressed in Chapter 5, Policy 20.
 - Policy 4: Addressed in Chapter 7, Policy 6.
 - Policy 5: Addressed in Section 3.2, Policies 4 and 5, and Section 6.1, Policy 12.
 - Policy 6: Addressed in Section 6.1, Policy 17.
 - Policy 7: Addressed in Section 3.2, Action 3.2.06.
 - Policy 12: Addressed in Section 6.1, Policy 6.
 - Policy 13: This policy is unclear. What is the “large-scale development area” and “surrounding affected region”?
 - Policy 14: Addressed in Chapter 4 in multiple policies and actions.
- Pg. 203, Action 11.4.02: The community plan cannot create new regulations, therefore this action cannot be implemented. In order to implement this action Hawaii Revised Statutes Chapter 343 would need to be amended. Furthermore, it is unclear what is meant by “large-scale commercial developers”.
- Pg. 205, Action 11.4.03: This action is unclear and no lead County agency is identified. Conducting wildlife surveys are not the responsibility of any County department.
- Pg. 205, Action 11.4.04: This action is a duplicate of Section 6.2, Action 6.2.06.

Section 11.5 Infrastructure, Public Facilities and Services

- Pgs. 205 – 210: Much of this information is covered in Chapter 4 (Hazards), Chapter 8 (Infrastructure), and Chapter 9 (Public Facilities and Services).
- Pgs. 206 – 207, Water section, paragraphs 2 through 4: These paragraphs include far too much detail for a community plan.
- Pg. 207, Road section, paragraphs 2 and 3: These paragraphs include far too much detail for a community plan.
- Pg. 209, Policy 5: Addressed in Section 9.2, Policy 1, and Section 9.3, Policy 2.
- Pg. 209, Policy 7: Duplicate of Policy 4.
- Pg. 209, Policy 8: Addressed in Chapter 4, Policy 13 and Action 4.17.
- Pg. 209, Policy 9: This policy cannot be implemented. The DOH Safe Drinking Water Branch's responsibility for water quality ends where the public water system connects to a private residence.
- Pg. 210, Action 11.5.01: In a letter to the Committee, the County Emergency Management Agency requested that this action be deleted since it is already completed.
- Pg. 210, Action 11.5.02: Is this a County or private road?
- Pg. 210, Action 11.5.03: Addressed in Section 8.1, Action 8.1.07.
- Pg. 210, Action 11.5.04: Addressed in Section 8.5, Action 8.5.11.