

Name: Johann Lall

Agenda item: B.1. Goal 2.5 | Responsible Stewardship of Wahi Kūpuna and Historic Properties

Date: February 28, 2022

Good morning, my testimony is attached. It is on my own behalf and I am on vacation!

Aloha, here is my testimony on my own behalf with my comments in blue and my suggested changes in orange. – Johann Peter Lall

Policies

2.5.1 | Require development projects seeking county permits or exemptions to provide continued access to kuleana lands, and preserve and protect access to areas both mauka and makai for any lands where native Hawaiian rights were customarily and traditionally exercised for subsistence (including fishing, hunting and gathering), cultural or religious purposes. Applicable laws include Section 7-1, Hawai'i Revised Statutes; Article XII, Section 7, of the Hawaii State Constitution; and the Hawaii Supreme Court's PASH opinion, 79 Haw. 425 (1995).

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Original Language for comparison: 2.5.1 | Ensure new development projects provide continued access to kuleana lands protected under Section 7-1, Hawai'i Revised Statutes, as well as continued access for cultural practices including fishing, hunting and gathering to areas both mauka and makai.

SMA exemptions aren't technically permits and single-family mansions along the shorelines usually get SMA exemptions. South of Palaua Bay, shoreline access is blocked by a string of large houses which weren't required to provide shoreline access. Even with edit, it may not be possible to put access conditions on a 7499 sq foot mansion that gets an SMA exemption, but staff could clarify this.

2.5.2 | New d Development projects shall engage in consultation with Native Hawaiian Organizations, those who have genealogical ties, (and those with generational ties), cultural practitioners and knowledgeable individuals connected or associated with the project area and provide evidence of this engagement to the appropriate reviewing agency.

Meeting minutes or recordings should be provided as well. Maps and other documents from meetings should be part of the application. Promises and claims seem to be made during outreach, and then referenced at hearings and contested cases, but without definitive records.

2.5.3 | Identify, preserve, protect, and restore significant wahi kūpuna and significant historic properties in South Maui.

Please include language to ensure enforcement because there is no protection without enforcement. I reported multiple violations of the preservation plan for Kalani Heiau in the Garcia Subdivision, SHPD investigated, confirmed, and requested stop work orders. The County did not issue stop work orders and only sent a Notice of Warning. Notices of Violation and fines are necessary to deter developers from violating preservation plans and other regulations, especially for damage that cannot be undone.

2.5.7 | Healthy mature trees, particularly native trees, must shall be preserved and incorporated into the landscape plans of subdivisions, roads, and any other construction or development. If they must be removed, first consult with Native Hawaiian Organizations prior to possible

removal for safety then agreements should shall be made to provide offer wood or other useful elements to Hawaiian cultural practitioners, or non-profit organizations or artisans from the particular area first for sustainable cultural use.

This seems to only require consultation and then the developer would be able to remove the native trees regardless of what the NHO says. With development in Hawai'i, the tendency seems to be to create plans and then go in for the approvals, so by the time permitting begins, they would have to change their existing plans to protect native trees, and that costs money. Developers might prefer to go through the "formality" of consultation to allow them to remove trees that don't conform to their plans.

Non-native trees should also be protected. We have very few remaining native trees in South Maui. Our quality of life, shade, and health is promoted by almost entirely non-natives and even invasives. For example, at Uluu Beach there is a large kiawe tree that provides shade to the north side of the beach which is very popular with families. This is the "local side" of the beach. The tree has fallen over during recent storms and there is now only a fraction of the former shaded area. The tree will probably be removed. Kiawe is invasive, but often it's the only tree we have.

See Austin tree ordinance which requires review by the City Arborist for mature trees:

§ 30-5-602 - DEFINITIONS.



In this subchapter:

- (1) OWNER includes a lessee.
- (2) PROTECTED TREE means a tree with a circumference of 60 inches or more, measured four and one-half feet above natural grade.
- (3) REMOVAL means an act that causes or may be reasonably expected to cause a tree to die, including:
 - (a) uprooting;
 - (b) severing the main trunk;
 - (c) damaging the root system; and
 - (d) excessive pruning.

Source: City Code Section 25-8-602; Ord. 031211-11; Ord. 031211-42.

§ 30-5-603 - ADMINISTRATION.



- (A) A city arborist, appointed by the director, shall implement this subchapter.
- (B) The director shall adopt administrative rules in accordance with [Section 30-1-61](#) (Administrative Rules) to:
 - (1) protect trees against damage during development;
 - (2) identify actions that will constitute removal; and
 - (3) identify the root areas that require protection against soil compaction or the effects of impervious paving.

Source: City Code Section 25-8-603; Ord. 031211-11; Ord. 031211-42.

§ 30-5-604 - DEVELOPMENT APPLICATION REQUIREMENTS.



For an application for preliminary plan or final plat approval that proposes the removal of a protected tree, the city arborist must review the application and make a recommendation before the application may be administratively approved or presented to the land use commission or city council.

Source: City Code Section 25-8-604; Ord. 031211-11; Ord. 031211-42.

Another thing to consider is that there is a difference between undeveloped and developed land, as my understanding is that Native Hawaiian Constitutional access is only guaranteed on undeveloped land. So when a kiawe forest is removed and turned into manicured landscaping, there is no longer the right to access, and land owners can then require Hawaiians to seek permission. This would be something to confirm with Corp Counsel or staff, this is just my understanding from the Ku Huli Ao training. My point is that there is an impact even from removing invasive trees.

On the next page are drone orthomosaics showing a Makena ATC preservation area approved by SHPD that originally was wooded with kiawe, mango, and breadfruit. The preservation plan included preserving the mango and breadfruit, and they were left during clearing but later

excessively “trimmed” to the point that they could have died. It will take years for the canopies to recover and make the area hospitable and welcoming for cultural practitioners.

Mango and breadfruit trees are not native but non-native trees matter and often have historical and cultural significance, and they can contribute to food security.



****This policy requires further discussion, language based on CPAC recommendations. All other policies have been discussed and approved by CPAC. Black text is language CPAC added. Grey text is language CPAC deleted.**

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2.5.8 | Use traditional ecological knowledge, in coordination with cultural practitioners and in consultation with those who have generational knowledge (‘ike kūpuna) in the design of new development and redevelopment projects, and environmental restoration efforts.

2.5.9 | Encourage voluntourism that increases awareness of wahi kūpuna and South Maui’s history.

trained volunteers to help increase cultural awareness, cultural appreciation and cultural respect of wahi kupuna and South Maui’s history at the discretion of area cultural practitioners and ‘ike kupuna.

2.5.10 | When wahi kūpuna or other historic properties are located within **or adjacent to a project area, require restoration or preservation of the site(s) and require mitigation of potential adverse impacts on cultural resources **during construction** , as directed by in consultation with State Historic Preservation Division, Maui County Archeologist, Cultural practitioners, and Native Hawaiian Organization or other applicable laws and regulations , including site avoidance, adequate buffer areas and interpretation. Particular attention should be directed toward the southern areas and shoreline of the planning region.**

“Adjacent” or similar language is important. There are heiaus only 50-100 feet away from mansions that tower over them, because impacts to nearby cultural resources are not currently considered. The Cultural Overlay Bill used “In close proximity to...”

The “during construction” phrase omits impacts by the development itself, like a large house blocking views from Kalani Heiau to Pu’u Olai for example. My suggested version:

2.5.10 | When wahi kūpuna or other historic properties are located within or in proximity to a project area, require restoration or preservation of the site(s) and require mitigation of potential adverse impacts on cultural resources, in consultation with State Historic Preservation Division, Maui County Archeologist, Cultural practitioners, and Native Hawaiian Organizations, including site avoidance, adequate buffer areas, interpretation, educational signage, and paths for access by cultural practitioners.

2.5.11 | When wahi kūpuna or other historic properties are located adjacent to a project area, ~~within the same parcel~~ require mitigation of potential adverse impacts on cultural resources during construction, in consultation with State Historic Preservation Division, Maui County Archeologist, Cultural practitioners, and Native Hawaiian Organization including site avoidance, and adequate buffer areas. Particular attention should be directed toward the southern areas and shoreline of the planning region.

I don’t think “within the same parcel” is necessary or useful. With Garcia Subdivision, Makena Builders stored construction materials in the preservation area which is a separate parcel. We should want construction impacts to be mitigated in all parcels, not just the one for the project itself. Impacts after construction are also important as noted above. My suggestion:

2.5.11 | When wahi kūpuna or other historic properties may be impacted, or access and viewplanes may be impacted, require mitigation of potential adverse impacts on cultural resources during and after construction. Require consultation with State Historic Preservation Division, Maui County Archeologist, Cultural practitioners, and Native Hawaiian Organizations. Mitigation may include but is not limited to site avoidance, adequate buffer areas, and access paths for cultural practitioners.