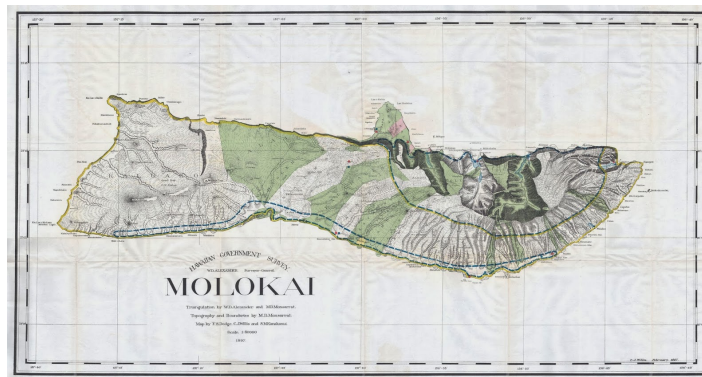


A FRAMEWORK FOR THE AHA MOKU SYSTEM AND COLLABORATIVE GOVERNANCE

HISTORY OF THE 'AHA COUNCILS

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

- Following this principle, leaders who govern people 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 COUNCILS

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 in one’s area.
 - 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/artesian water, rivers, streams, springs, including springs along the coastline that mix with seawater.
 - e. **Ka Lewalani** – everything above the land, the air, the sky, the clouds, the birds, the rainbows.
 - f. **Kanaka Hōnua** – the natural resources important to sustain people. However, management is based on providing for the benefit of the resources themselves rather than from the standpoint of how they serve people.
 - 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 carriers of ‘ike.
 - h. **Ke ‘Ihi‘ihi** – elements that maintain the sanctity or sacredness of certain places.
3. Implement solution with 3 considerations
 - a. Honor ancestral past
 - b. Address the needs of the present
 - c. Set up future generations to have more abundance

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

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 ahupua‘a and moku (regional) boundaries. Its goal is to find methods of sustaining, protecting and keeping the natural balance among the different ecosystems existing within the eight main Hawaiian Islands. It serves in an advisory capacity to the chairperson of the Board of Land and Natural Resources (BLNR). 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.

⁵ Presentation by Dr. Kawika Winter, ethnobotanist and director of Limahuli Garden and Preserve on the island of Kaua‘i. 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.

⁶ *A Mau A Mau*, supra note 1.

The ‘aha were created under Act 288, which recognized that over the past 200 years, Hawaii has suffered through extensive changes to the Native Hawaiian culture, language, values, and land tenure system, resulting in the following:

- Over-development of coastlines;
- Alterations of fresh water streams;
- Destruction of watersheds;
- Decimation of coral reefs;
- The decline of endemic marine and terrestrial species⁷

In addition to these consequences, Act 288 recognized the value of cultural practitioners and their use of knowledge that has been passed down through kupuna, experienced farmers, and fishers to engage and enhance sustainability, subsistence, and self-sufficiency.⁸

Puwalu ‘Ekahi – From August 15-17, 2006, representatives from 43 moku (regions) across the state and over one hundred Hawaiian cultural practitioners, including kupuna and acknowledged traditional experts, joined together to share their mana‘o and call on Native Hawaiians to begin a process to uphold and continue Hawaiian traditional land and ocean practices.⁹

Puwalu ‘Elua – On November 8 and 9, 2006, educators, administrators, cultural practitioners, and kupuna discussed how to incorporate traditional Hawaiian cultural knowledge into an educational framework that could be integrated into a curricula for all public, private, charter, and Hawaiian immersion schools in Hawaii.¹⁰

Puwalu ‘Ekolu – On December 19 and 20, 2006, policymakers and stakeholders engaged in protecting Hawai‘i’s ecosystems; Native Hawaiian practitioners 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 in Puwalu ‘Ekolu, agreed that statutes, ordinances, and a framework for consultation with Hawaiian communities using the Hawaiian perspective and traditional methods such as the ahupua‘a management system are needed, and that the ‘aha moku system should be established.¹¹

From 2006 to 2010, three more puwalu were convened to gather additional community input on best practices in the area of native Hawaiian resource management. Integrating the mana‘o of farmers, fishers, environmentalists, educators, organizations and agencies, and governmental representatives, consensus was reached on the necessity of integrating the ‘aha moku system into government policy.¹²

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

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

⁹ 2012 Haw. Sess. Laws Act 288, § 1 at 2:8-3:7.

¹⁰ 2012 Haw. Sess. Laws Act 288, § 1 at 3:8-19.

¹¹ 2012 Haw. Sess. Laws Act 288, § 1 at 3:20-4:10.

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

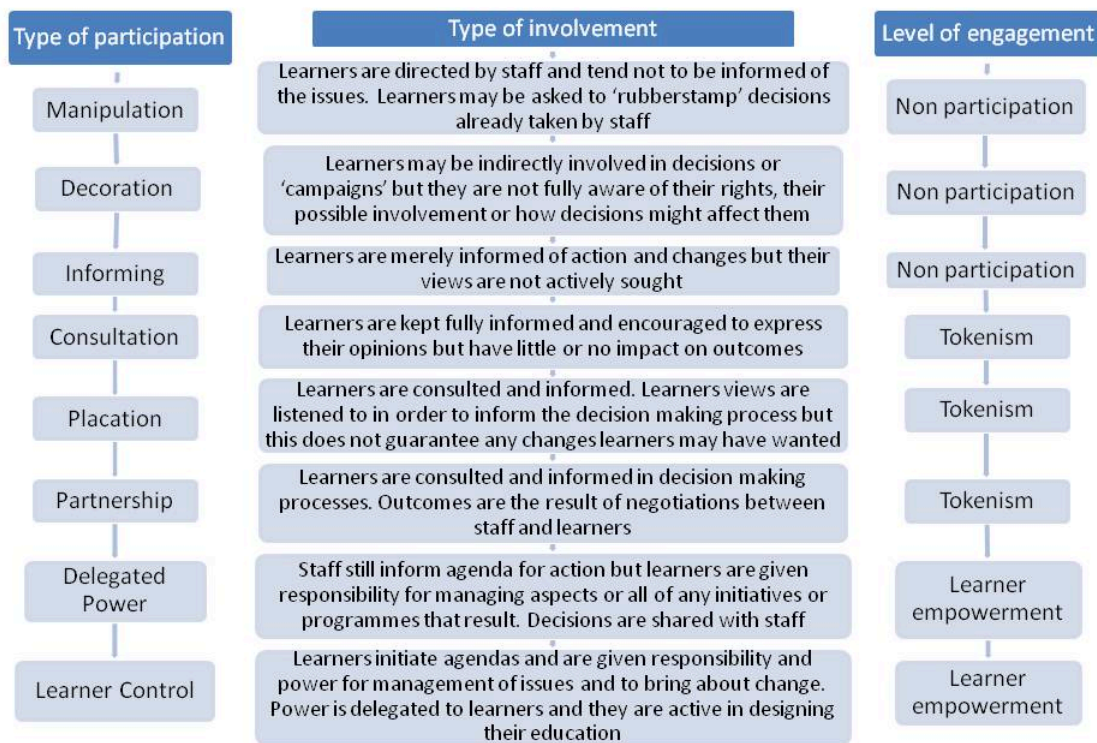
COLLABORATIVE GOVERNANCE

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 nonstate 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. This is a more restrictive definition than is sometimes found in the literature.

‘LADDER’ OF PARTICIPATION



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Collaborative governance allows those affected by decisions and those with relevant knowledge to have an influential say in the decision making process. Act 288 and creation of the ‘aha

¹³ Arnstein’s Ladder of Participation - https://talintuoh.files.wordpress.com/2013/03/ladder_of-participation.jpg

councils are attempts to integrate collaborative governance processes through communication lines to DLNR and through annual reports.

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

WHAT AREAS OF EXPERTISE MAY THE ‘AHA COUNCILS ADVISE ON?

The aha councils are allowed to provide advice 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 related to these areas:

<p>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>BOATING AND OCEAN RECREATION (DBOR)</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>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>

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.

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.**

HISTORIC PRESERVATION DIVISION (SHPD)

SHPD's three branches, History and Culture, Archaeology, and Architecture, strive to accomplish this goal through a number of different activities.

IS THERE A LEGAL BASIS TO REQUIRE COLLABORATIVE GOVERNANCE?

- 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!¹⁴
 - The failure of a state agency to take appropriate measures may be a breach of constitutional obligations to protect Native Hawaiian interests and possibly an infringement upon due process rights.
- Ka Pa'akai O Ka 'Aina v. Land Use Commission (Ka Pa'akai),¹⁵
 - Supreme Court of Hawaii rules 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."¹⁶
 - 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."¹⁷ 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

¹⁴ 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).

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

¹⁶ 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).

¹⁷ Ka Pa'akai, 94 Hawai'i at 46, 7 P.3d at 1083.

- 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
- (C) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.¹⁸
 - The Ka Pa‘akai ruling now mandates this legal framework be followed by all State and County agencies for the protection of traditional and customary Hawaiian rights.
 - The Statewide AMAC, with direction from local ‘aha councils on each island, 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 and how to protect traditional and customary rights and practices on the ground.
- DLNR has consulted with ‘Aha Kiole o Moloka‘i (along with other Native Hawaiian groups, such as the Hawaiian Civic Clubs and OHA) on a variety of resource management issues¹⁹ including in November 2012 when ‘Aha Kiole o Moloka‘i reached an understanding with the state about limiting cruise ship visits to the island following protests the previous year (and earlier, in 2007) that blocked landings at the Kaunakakai pier.²⁰

¹⁸ Id. at 47, 7 P.3d at 1084.

¹⁹ Forman & Serrano, supra note 14, at 53.

²⁰ Id.