

ORDINANCE NO. _____

BILL NO. _____

A BILL FOR AN ORDINANCE
ADDING A NEW CHAPTER TO TITLE 20, MAUI COUNTY CODE,
RELATING TO ECOSYSTEM RIGHTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. This Ordinance shall be known and may be cited as the Nā ‘Āina no I‘a Act, or NANI Act.

SECTION 2. Title 20, Maui County Code (Environmental Protection and Sustainability), is amended by adding a new Chapter 20.XX to read as follows:

“Chapter 20.XX

Ecosystem rights: watersheds and coral reefs.

This chapter establishes rights and duties enforceable under County law and shall be construed within the limits of County authority under the Constitution of the State of Hawaii and general law.

Section 1. Legislative findings and purpose.

A. The Council finds that:

1. Article XI, Sections 1 and 7 of the Constitution of the State of Hawaii establish an affirmative public trust duty to protect natural resources for present and future generations.
2. Watersheds, aquifers, streams, nearshore reefs, and coastal ecosystems are ecologically interconnected.
3. Maui County has experienced catastrophic wildfire, reef decline, coastal erosion, declining stream flow, aquifer stress, and climate-driven impacts.
4. Existing regulatory systems often address discrete permits rather than cumulative ecological harm.
5. Recognition of enforceable ecosystem-level rights strengthens, and does not replace, constitutional public trust protections.

6. Climate change, sea-level rise, coral bleaching, extreme rainfall, and wildfire risk shall be considered foreseeable stressors in evaluating measurable ecological harm.
7. The Council affirms that this chapter is grounded in the 'ike, kuleana, and stewardship traditions of Kanaka Maoli and the enduring principle of mālama 'āina.

B. Purpose. This chapter establishes enforceable ecosystem-level rights to prevent, halt, and remedy ongoing measurable ecological harm within County jurisdiction, consistent with constitutional limits and without creating retroactive liability.

Section 2. Definitions. As used in this chapter:

"Coral reef" means a coral reef ecosystem, including the fish, invertebrates, limu (algae), marine mammals, and all other living components that form a functional marine life ecosystem.

"Ecosystem person" means a coral reef or watershed with legal personhood.

"Legal personhood" or "legal person" means recognition in law as a rights-bearing entity, with the capacity to be represented in legal proceedings and to exercise rights and protections under the law. Legal personhood under this chapter is limited to the ecological rights expressly recognized herein and shall not be construed to grant an ecosystem person any rights, causes of action, or remedies that are uniquely personal to human beings (including claims for harassment, abuse, defamation, emotional distress, or similar personal dignitary harms), nor to create separate legal personhood for any individual fish, animal, plant, or other organism.

"Recognized customary knowledge" means knowledge derived from established Native Hawaiian or local community practices that have been consistently observed, transmitted, and validated within those communities and that are relevant to the stewardship, protection, or restoration of the affected ecosystem person.

"Science-backed claim" means a claim supported by credible evidence, including peer-reviewed research, governmental resource data, or expert testimony grounded in marine science, environmental science, recognized customary knowledge, or Kanaka Maoli traditional ecological knowledge.

"Lawful fishing activity" means commercial, recreational, cultural, or subsistence fishing or other lawful harvest of aquatic life that is conducted in compliance with applicable state and federal law, rules, licenses, permits, seasons, size limits, bag limits, gear restrictions, and area closures.

"Measurable ecological harm" means a material, scientifically demonstrable impairment of an ecosystem person's ecological integrity, including significant adverse change to live coral cover, recruitment, resilience, water quality, stream flow, aquifer recharge, sedimentation, or other parameters relevant to the affected ecosystem person, as established by a science-backed claim.

"Watershed" has the same meaning as in section 183-31, Hawaii Revised Statutes, as amended.

Section 3. Watersheds and coral reefs; legal personhood.

A. Each watershed or coral reef located wholly or partially within the geographic boundaries of the County of Maui shall be recognized as a legal person for purposes of County law and shall have the rights, powers, and protections of a legal person, including the right to exist, flourish, and naturally evolve. These rights are ecosystem-level rights, defined to include measurable ecological conditions such as maintaining or increasing live coral cover, avoiding activities that impair recruitment or resilience, and ensuring conditions that allow natural recovery processes, and as reflected by Kanaka Maoli traditional and customary cultural values, practice, and worldview, including the notion and practice of mālama 'āina.

For the avoidance of doubt, the recognition of an ecosystem person under this section:

1. Does not equate an ecosystem person to a human being;
2. Does not create separate legal personhood for any individual fish, invertebrate, limu (algae), marine mammal, or other organism; and
3. Does not authorize any claim based solely on alleged harassment or abuse of an individual organism.

Lawful fishing activity shall not, by itself, constitute a violation of an ecosystem person's rights unless the plaintiff establishes, by a science-backed claim, that the conduct caused measurable ecological harm to the affected ecosystem person.

All rights secured by this chapter shall be inherent and inalienable, and shall be self-executing and enforceable against both private and public actors through appropriate equitable relief, including injunctive relief, mandatory corrective actions, and court-ordered restoration.

Courts shall have authority to issue mandatory or prohibitory injunctions, as justice requires, when a violation of an ecosystem person's rights is established. By codifying these rights, the County seeks to ensure the restoration and vitality of watershed and coral reef ecosystems for the benefit of present and future generations, in harmony with Kanaka Maoli knowledge and stewardship practices.

B. All County departments, agencies, boards, commissions, officers, and employees shall recognize the legal personhood of watersheds and coral reefs in the County and shall not engage in, authorize, or attempt to engage in activities that violate the rights, powers, and protections bestowed upon any ecosystem person by its establishment as a legal person.

Section 4. Natural resources; uses; activities; leases. The natural resources found associated with watersheds and coral reefs, including all flora and fauna, shall be considered to have an inalienable connection to the health and well-being of the ecosystem person. No use, activity, or lease involving watersheds or coral reefs shall be approved if it is reasonably likely to cause measurable ecological harm to the affected ecosystem person.

Section 5. Right of action. Any individual, public agency, or private entity may bring an action against another individual or entity that violates the rights of an ecosystem person to exist, flourish, regenerate, and naturally evolve. Remedies shall be limited to equitable relief, including injunctive relief, ecosystem restoration plans, monitoring, and penalties as provided by this chapter. An action brought under this section shall be accompanied by a science-backed claim. The complaint shall identify the specific right alleged to be violated and the measurable ecological harm alleged to have occurred or to be imminent. Standing under this section shall be construed consistent with the purposes of this chapter and Article XI, Sections 1 and 7 of the Constitution of the State of Hawaii.

Actions under this chapter shall be filed in a court of competent jurisdiction. Nothing in this chapter expands or limits the jurisdiction of the state courts, but the County recognizes these rights as enforceable legal interests under County law.

A. A court shall order restoration or rehabilitation measures necessary to repair harm to the ecosystem person or to prevent imminent harm. Restoration shall be available to remedy measurable ecological harm consistent with Section 15 of this chapter.

B. A court may authorize the establishment of a community-based restoration plan, in consultation with relevant public trustee agencies and Native Hawaiian practitioners.

C. Remedies shall prioritize ecological integrity and cultural continuity over monetary damages. No monetary damages shall be awarded to plaintiffs. Civil penalties collected under this chapter shall be deposited into a special fund as provided in Section 18.

D. The court may award reasonable attorney's fees and costs to a prevailing plaintiff acting in good faith.

Section 6. Public trust doctrine; duties of public trustees.

A. The County recognizes that watersheds and coral reefs are held in public trust under Article XI, Sections 1 and 7 of the Constitution of the State of Hawaii for the benefit of present and future generations, and shall exercise its powers in a manner consistent with those constitutional duties. Public trustee agencies shall have a duty to protect, preserve, and restore ecosystem persons consistent with Article XI, Sections 1 and 7 of the Constitution of the State of Hawaii.

B. Nothing in this chapter shall be construed to limit, modify, or impair constitutional public trust duties recognized under Article XI, Sections 1 and 7 of the Constitution of the State of Hawaii.

Section 7. Representation; guardianship; community participation.

A. An ecosystem person may be represented in legal proceedings by any guardian, community steward, or representative acting in good faith to protect the rights and interests of the ecosystem person. No single person or entity shall have exclusive authority to represent an ecosystem person.

B. In determining appropriate representation, a court shall consider, as relevant:

1. The connection of the proposed representative to the ecosystem and any material interest they hold in the outcome of the action; and
2. The extent to which the proposed representative consults with Native Hawaiian practitioners and community stewardship organizations connected to the ecosystem.

C. In any action under this chapter, the court shall permit intervention by Native Hawaiian practitioners or community stewardship organizations with a recognized connection to the ecosystem person.

D. A court may appoint a guardian ad litem or other representative for an ecosystem person.

E. A court may dismiss or limit participation in an action if it finds retaliation, bad faith, private gain, or conduct inconsistent with the purposes of this chapter.

Section 8. Enforcement; no waiver of accountability; supremacy; application.

A. Notwithstanding any law to the contrary, no officer, agency, or authority of the executive branch of the County shall enter into or enforce any waiver, indemnity agreement, memorandum of understanding, lease, permit, or other legal instrument purporting to release, excuse, or shield any person, corporation, agency, or other entity from liability or accountability under this chapter for harm to an ecosystem person. Any such provision is void.

B. In the event of a conflict between this chapter and any other provision of the Maui County Code, including any law, rule, regulation, permit condition, contract, or agreement that would limit or immunize any party's responsibility for harm to a watershed or coral reef, this chapter shall govern, provided that this subsection shall be construed in harmony with existing public trust doctrine protections. Nothing in this chapter shall be construed to supersede or conflict with state or federal law. Nothing in this chapter shall be construed to interfere with or duplicate enforcement authority vested exclusively in the State of Hawaii or the United States under the federal Clean Water Act (33 U.S.C. § 1251 et seq.) or other existing protections; however, the rights and remedies recognized herein are independent and supplemental equitable protections addressing ongoing ecological harm within County jurisdiction. This chapter operates within the County's constitutional and statutory authority. Nothing in this chapter shall be construed to regulate emissions standards, fuel composition, air quality requirements, or to establish greenhouse gas emission limits.

C. Nothing in this chapter shall be construed to expand the County's regulatory jurisdiction beyond that authorized by state law. Nothing in this chapter authorizes a court to invalidate, suspend, revoke, or modify a permit issued by the State of Hawai'i or the United States. Relief shall

be limited to equitable measures addressing ongoing measurable ecological harm within County jurisdiction. Liability under this chapter attaches only to measurable ecological harm occurring within the geographic jurisdiction of the County of Maui.

D. Nothing in this chapter shall be construed to require the issuance of any new County permit, approval, variance, discretionary review, or procedural authorization beyond those otherwise required by existing law. This chapter establishes substantive ecosystem rights enforceable through equitable relief and does not create an independent permitting program.

E. This chapter shall apply to acts and omissions that continue to occur or begin on or after the effective date of this Ordinance, and shall not apply retroactively except to the extent permitted by law. This chapter applies to any ongoing condition, operation, activity, or discharge that continues to cause measurable ecological harm on or after the effective date, regardless of when the condition began.

F. Nothing in this chapter shall be construed to impose civil liability, authorize restorative relief, or allow civil penalties for conduct occurring before the effective date of this Ordinance, nor to reopen, nullify, or disturb any final judgment, final settlement agreement, or final administrative disposition that became final before the effective date of this Ordinance. This subsection shall not preclude prospective equitable relief to end or mitigate an ongoing violation that is occurring on or after the effective date of this Ordinance, provided that any civil penalty under Section 18 shall be based only on violations occurring on or after the effective date of this Ordinance.

Section 9. Citizen enforcement safeguards and community protections.

A. Citizen enforcement under this chapter shall be conducted in a manner that respects Native Hawaiian traditional and customary practices, community stewardship, and co-governance.

B. Any person or organization intending to bring an action under this chapter shall provide written notice of intent to sue no fewer than sixty days before filing to:

1. The relevant public trustee agency or agencies; and
2. Native Hawaiian practitioners, community organizations, or

stewardship groups known to have a connection to the affected ecosystem.

The notice shall describe the alleged harm, the relief sought, and proposed cooperative steps toward resolution.

C. Within the notice period, any practitioner, community group, or public trustee may respond and propose actions to address the concern through cooperative or customary means. A court may stay proceedings to allow such resolution.

D. No enforcement action under this chapter shall be maintained against the exercise of Native Hawaiian traditional and customary rights, lawful subsistence, recognized community restoration or management activities conducted in good faith, or lawful fishing activity; provided that this subsection shall not bar an action supported by a science-backed claim establishing that the challenged conduct caused measurable ecological harm to the affected ecosystem person.

E. A court shall dismiss, and may impose costs, fees, or sanctions upon any action brought in bad faith, for harassment, retaliation, or to impede legitimate cultural or stewardship practices.

F. Parties are encouraged to resolve disputes through Native Hawaiian dispute-resolution practices, ho‘oponopono, or other forms of mediation before or during litigation.

Section 10. Restoration; continuing duty of repair.

A. Restoration of degraded lands and waters is a continuing moral and fiduciary duty owed to present and future generations.

B. This section and this chapter shall be construed to authorize restorative and equitable remedies only for violations occurring on or after the effective date of this Ordinance, including for ongoing conditions that continue to impair ecological integrity, cultural practice, or public trust values on or after the effective date.

C. Any person, corporation, government, or other entity that causes or contributes to measurable ecological harm on or after the effective date of this Ordinance, including by maintaining, operating, controlling, benefiting from, or failing to remediate a condition, structure, discharge, or activity that originated before the effective date but continues to impair ecological integrity on or after the effective date, shall have a continuing duty of repair under this chapter commensurate with its role, capacity, and present control, management, influence, or ongoing

benefit.

D. Courts and public trustee agencies shall give priority to cases where:

1. The harm remains ecologically or culturally significant;
2. The ecosystem retains potential for recovery or rehabilitation; and
3. Restoration will materially advance ecological integrity or community well-being.

Courts may phase remedies or employ cooperative plans to prevent excessive burden while ensuring long-term repair.

E. Courts are encouraged to employ mediation, restorative justice, and customary Native Hawaiian reconciliation processes in designing restoration plans that advance the purposes of this chapter.

F. Nothing in this section shall preclude the County or any community from acknowledging, documenting, or educating about historic ecological harms as part of an official record of reconciliation, even where full physical restoration is not feasible.

G. Apportionment and Contribution. Where measurable ecological harm is divisible and a reasonable scientific basis exists to apportion responsibility, a court may allocate restorative obligations proportionate to each responsible party's contribution. Where harm is indivisible or apportionment is not reasonably determinable, responsible parties may be held jointly and severally liable for equitable restoration, subject to rights of contribution among themselves.

Section 11. Preservation of constitutional public trust protections.

Nothing in this chapter shall be construed to limit, modify, or supersede the constitutional public trust duties recognized in Article XI, Sections 1 and 7 of the Constitution of the State of Hawaii, nor to alter the standards or protections established in In re Water Use Permit Applications (Waiahole Ditch), 94 Haw. 97 (2000); Ka Pa'akai o ka 'Āina v. Land Use Commission, 94 Haw. 31 (2000); or any other public trust jurisprudence.

Section 12. Relationship to existing environmental laws.

A. The rights recognized by this chapter are in addition to, and shall not preclude, any rights, duties, or remedies available under other laws.

B. Compliance with other permits or regulations shall not, by itself, bar a finding of violation of this chapter if measurable ecological harm is

established.

C. Compliance with a valid permit issued by the State of Hawai'i or the United States shall create a rebuttable presumption that the permitted activity does not cause measurable ecological harm within County jurisdiction. This presumption may be overcome by a science-backed claim demonstrating material, ongoing measurable ecological harm occurring within County jurisdiction.

D. For projects consisting of one hundred percent affordable housing, as defined by Maui County Code, or essential public infrastructure serving a related public purpose, including projects undertaken by the County, State, or Federal government, courts shall consider housing need, public purpose, and feasibility in fashioning equitable relief. Relief shall prioritize mitigation, adaptive management, or restoration measures over project prohibition or delay where measurable ecological harm can be prevented or remedied.

Section 13. Coastal zone and marine management. Public trustee agencies shall incorporate ecosystem person rights into coastal zone management, marine protected area design, and reef management planning.

Section 14. Watershed management. Public trustee agencies shall incorporate ecosystem person rights into watershed planning, stream restoration, aquifer protection, and land-use decisions affecting water resources.

Section 15. Burden of proof.

A. Scientific standards. In any action under this chapter, the plaintiff bears the burden of proof by a preponderance of the evidence. Measurable ecological harm must be material and scientifically demonstrable. Claims of cumulative harm shall be supported by credible methodology. Courts shall consider best available science, recognized customary knowledge, and Kanaka Maoli traditional ecological knowledge.

B. Cumulative and Concurrent Causation. Measurable ecological harm may result from cumulative, incremental, or interacting stressors over time. A defendant need not be the sole, primary, or predominant cause of harm to be held responsible under this chapter. Liability may attach where the defendant's conduct is a substantial contributing factor to measurable ecological harm, even if other natural forces, background conditions, or third-party conduct also contributed to the same harm.

Section 16. Remedies; restoration; monitoring.

A. Courts may order restoration, remediation, monitoring, and adaptive management. Restoration may include remediation necessary to return the ecosystem person to baseline ecological conditions that would likely have existed absent the cumulative measurable ecological harm. In fashioning equitable relief, courts shall consider proportionality, feasibility, and constitutional limitations, and may phase remedies to avoid unnecessary constitutional conflict while ensuring restoration of ecological integrity.

B. Civil penalties shall be assessed as provided in Section 18 and shall be deposited into the ecosystem rights special fund as provided in Section 17.

C. In cases involving residential housing projects serving documented affordable housing needs, courts shall, where practicable, tailor relief to avoid unnecessary delay or prohibition of housing units while ensuring protection of ecosystem person rights.

Section 17. Ecosystem rights special fund.

A. There is established the ecosystem rights special fund called the NANI Fund to be administered by the County department(s) designated by the Mayor in collaboration with the party or parties who brought the action resulting in the deposit of funds under this chapter, and, where applicable, in consultation with appropriate public trustee agencies and recognized Native Hawaiian practitioners and community stewardship organizations connected to the affected ecosystem.

B. Moneys collected under this chapter shall be deposited into the fund and used exclusively for restoration, monitoring, community stewardship, and implementation of this chapter.

C. The Mayor shall submit an annual report to the Council summarizing expenditures, actions and restoration outcomes under this chapter.

Section 18. Civil penalties.

A. Any person or entity who violates this chapter shall be subject to civil penalties.

B. Penalties shall be assessed per violation, per day of violation, and per affected ecosystem person.

C. Penalties shall be scaled to the severity of measurable ecological harm, the violator's role and capacity, deterrence, and constitutional

proportionality principles, and shall not be excessive in relation to the gravity of the violation.

D. Each day that a violation continues shall constitute a separate and distinct violation.

E. In addition to civil penalties, the court may order disgorgement of any economic benefit realized by the violator as a result of the violation.

F. Civil penalties shall be in addition to, and not in lieu of, full costs of restoration, remediation, monitoring, and long-term ecological recovery.

G. If the violation is found to be knowing, intentional, or in reckless disregard of ecosystem person rights, the court may increase the civil penalty up to three times the amount otherwise authorized.

H. In determining penalties, the court shall consider cumulative ecological harm, including harm arising from incremental or aggregated conduct over time, historical patterns of conduct, and prior violations affecting the same ecosystem person.

I. In assessing penalties under this section, courts shall consider proportionality, feasibility, and constitutional limitations to ensure penalties are not disproportionate to the measurable ecological harm established.

Civil penalties assessed under this section shall be recoverable in a civil action brought in a court of competent jurisdiction and shall be deposited into the NANI Fund established by this chapter.”

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This Ordinance takes effect on approval. If any provision of this Ordinance or its application is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision.

INTRODUCED BY:
