

# Planning for Sustainable Tourism



## Part IV: Socio-Cultural & Public Input Study

### Volume III: Socio-Cultural Impact, Native Hawaiians

Prepared for

**DBEDT**  
THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
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**Sustainable Tourism in Hawai`i**

**Socio-Cultural and Public Input Component**

**Volume III: Socio-Cultural Impacts of  
Tourism in Hawai`i –**

**Impacts on Native Hawaiians**

**Prepared for the Project:** Planning for Sustainable Tourism in Hawai`i  
Hawai`i State Department of Business, Economic Development & Tourism

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## **INTRODUCTORY COMMENT**

This is the first of a two-part report on “Socio-Cultural Impacts of Tourism in Hawai`i.” The present volume examines impacts on Native Hawaiians in particular, while the second part considers socio-cultural impact issues and impacts for the General Population of Hawai`i.

The authors of the present report are the members of the Sustainable Tourism Study’s Native Hawaiian Advisory Group:

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John M. Knox & Associates, Inc. provided logistical support, meeting facilitation, reflection on initial drafts, and final editing/formatting. However, the final content is the work of Advisory Group members, and conclusions and recommendations are theirs alone.

To our knowledge, this is the first State-sponsored attempt to analyze the visitor industry’s impacts on Native Hawaiians from a Native Hawaiian perspective.

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# **I. PREAMBLE – IMPACT OF TOURISM ON NATIVE HAWAIIANS: AN OVERVIEW**

## **FAIR REPORTING**

This report is a series of observations and perspectives presented by an advisory group of Native Hawaiians. The authors share a long history of being actively engaged in the economic, socio-cultural, and political issues of the Native Hawaiian community. We believe that our collective knowledge represents a deep reach into the community memory and that our authorship lends a measure of credibility for the Native Hawaiian perspectives presented here. Although no such report can occur without some degree of subjectivity, the panel made a great effort at fair reporting.

## **THE CHALLENGE**

The relationship between Native Hawaiians and tourism is much more complicated than can be succinctly presented for easy analysis. Budget constraints preclude a comprehensive impact analysis model employing sophisticated analytical tools and technologies that might meet higher standards of fact-finding. Instead, our abbreviated analytical model relies on our own observations of tourism impacts.

To understand the Native Hawaiian view of tourism, one must be sensitive to the uneasy relationship between Native Hawaiians and the mainstream of Hawai'i's political and economic institutions. The tourism industry is the dominant subset of those institutions. That is, the industry does not exist in a vacuum and therefore cannot be totally isolated as a focal point for study. Tourism has to be considered as part of a larger landscape of historical conditions, circumstances, events, decisions, and attitudes that have resulted in a diminished status of Native Hawaiians as decision makers in Hawai'i's economic future. In this context, Tourism rises as a present-day flashpoint on a long trail of historical disappointments.

We believe the majority of Native Hawaiians do not fully and comfortably embrace the prevailing business model of corporate tourism as generally contributing to the betterment of conditions of Native Hawaiians. We are not trying to say Native Hawaiians would deny that tourism brings economic benefits or disagree that tourism is an important activity for the

State of Hawai`i. But we are saying that, in our experience, many Native Hawaiians feel the industry's growth has contributed to a degradation of their cultural values; compromised their cultural integrity in the global market place; diminished their presence in Hawai`i's visitor centers; devalued their *wahi-pana* (sacred places); and seriously compromised a Native Hawaiian sense of place in places like Waikīkī.

This assessment is subject to some "good news" about more positive recent directions, which we will discuss shortly. However, our initial focus must be on the larger picture, which involves the contrast between Native Hawaiian values and the prevailing tourism business model.

## **THE BUSINESS MODEL**

The irony is that the Native Hawaiian cultural model of *ho`okipa* or hospitality – the practice of greeting and welcoming strangers – ranks high as an important part of our cultural behavior system. Hawaiians have culturally developed our skills as a hosting population to extremely high levels of sophistication. Few societies, if any, are better at hospitality than Native Hawaiians. On the other hand, many of us are emphatically critical of the *prevailing business model* of tourism which is structured on a vastly different set of values. In fact, another irony is that Native Hawaiians have long been asking the same fundamental question that prompts this study – Is Hawai`i's prevailing tourism model sustainable?

A tourism experience occurs whenever the three elements of visitor, place, and host converge. Hawai`i employs a *typical tourism business model which makes the visitor the most important element* of the three. In the rush to accommodate a visitor's every expectation, this model is now clearly on record as willing to sacrifice the place and the goodwill of the host community for the short term benefit of the visitor. This model eventually turns the place into looking like the place from which the visitor was trying to escape.

The preferred business model embraced by Native Hawaiians is a model that makes preserving the dignity and cultural landscape of the place as the most important element. Such models exist all over Europe where protection of the place, the institutions, the historic buildings, the landscapes, and the local cultures are what give these places their "market" value. Italy is particularly filled with township models such as Florence and Venice, where preservation of the place equals sustainable market share. Santa Fe, New Mexico is another example where preservation of place and native culture translated to a vigorous visitor industry. Emerging Pacific island destinations such as the Republic of Palau, now considered the diving capital of the world, have learned that making the preservation of their cultural landscape and

pristine marine environment is the reason for their steep upward tourism growth curve. Sustainability and the preservation of the cultural landscape is the new model of global tourism.

Such a model is more sustainable because it preserves the goodwill of the host by celebrating the place and maintains the market value of the destination by preserving its cultural uniqueness. Under the Native Hawaiian model, the complete paving over of Waikīkī could never have happened and we would not now have to engage in elaborate and expensive schemes to “restore Hawaiian-ness to Waikīkī”. As long as the *visitor-first* business model dominates industry decision making, it would be valid to say that Native Hawaiians will continue to distance themselves from embracing tourism as a solution to their social, cultural, and economic issues, and that we will continue to cite tourism as part of the problem.

## **HISTORICAL CONTEXT**

Tourism today is Hawai`i’s number one industry. It succeeds sugar and pineapple as the dominant economic driver of the Hawaiian economy. Tourism permeates every aspect of the economic, social, and political life of Hawai`i. It is joined in its importance to the economy by our military-industrial complex, which ironically also brings thousands of strangers to Hawai`i. These industries are the current political outcomes of a western economic system that resulted – without the approval of Hawaiians and at the expense of their sovereignty – from the overthrow of Queen Lili`uokalani. The growth of these industries did not happen with our consent, and they continue without our consent. It would be a mistake not to acknowledge the impact of tourism in this historical context.

A historical chronology of events that maps the shifting relationship between Native Hawaiians and contemporary Hawai`i is provided as Appendix A to this report.

## **NATIVE HAWAIIANS AND LAND**

So as tourism follows sugar, pineapple, and the military, they all comprise a chronology of reincarnations of politically westernized land stewardship systems that alienated many Native Hawaiians from their most fundamental cultural need – access to land. Some might argue that, under the old traditional system of land management, individual Native Hawaiians did not own their land and so they essentially have not technically suffered any “loss.” This is the kind of culturally insensitive argument that further alienates Native Hawaiians. Native Hawaiians did not individually own land because the whole western concept of “owning” land was completely foreign to the cultural land stewardship model that had been in

place for centuries and that provided unlimited opportunities for Hawaiians to access the land. When this *traditional system of access* – which was *absent private property rights* – impeded the growth of ranches and plantations, a momentous change was imposed. The legal concept of private ownership was thrust upon the native population first through the *Māhele*, a *sweeping land division edict little understood by the maka`āinana (commoners)* followed by a blatantly obvious land grab scheme now historically infamous as the Law of Adverse Possession.

To a Native Hawaiian, being alienated from access to land is a cultural tragedy of major proportions. Some might say it is unfair to connect this historical alienation to present-day tourism, since much of it occurred well before the visitor industry became a factor in Hawai`i's economy. However, from a Native Hawaiian perspective, as a business model tourism embraces the same concepts and values as its predecessors. It is a variation of an economic theme that yields the same result: Native Hawaiian alienation from their culture.

Tourism has had the further debilitating effect of distorting the culture through commercially driven presentations that lack cultural depth and dignity. Our culture is further distorted by homogenized presentations that sandwich Hawaiian culture between layers of other Polynesian cultures so that it fails to be distinguishable as unique to the Hawaiian heritage.

## **THE GOOD NEWS**

Attempting to cite the benefits that tourism brings to Native Hawaiians is also a challenge. Even when some aspect of the industry appears to be a benefit, it may not be so beneficial when viewed through Native Hawaiian eyes. For example, employment provided by the industry is often held as an example of a tourism benefit for Native Hawaiians. Yet Native Hawaiians often do not feel particularly grateful, because many find industry policies unattractive and offensive. In our experience, a large number of Native Hawaiians feel they and their culture are unappreciated and disrespected. This is particularly true for Native Hawaiian musicians and hula dancers who are continually reminded of how dispensable they are each time the industry begins tightening its economic belt and the first services to be terminated are the musicians and hula dancers.

The good news is that opportunities for Native Hawaiians to benefit from tourism are growing. For instance, there is a rising demand for genuine Native Hawaiian culture from hotels and other visitor institutions seeking to connect with Native Hawaiian cultural practitioners. Many institutions are embracing Native Hawaiian culture as good for their bottom line; are willing to properly compensate for services; but don't know how to access the services. This is a good problem. Native Hawaiian leaders are being sought out for consultation on matters of cultural protocol. In efforts at re-development or new

development, there is also a heightened sensitivity to the need for restoring or maintaining Native Hawaiian cultural themes. Nowhere is this more evident than at the economic heart of the industry – Waikīkī. As the demand rises for a higher presence of Native Hawaiian culture in the market, there are many new opportunities for Hawaiian entrepreneurship. One of these is the opportunity for Native Hawaiians to tell their own story, on their own terms, with dignity and honor. There is new economic value being assigned to genuine Native Hawaiian culture that was absent during the industry’s period of dynamic growth. Native Hawaiians would welcome culturally appropriate opportunities that tourism offers as a window to the world, because we believe we have something worthwhile to contribute to the betterment of conditions of mankind.

### **SUSTAINING NATIVE HAWAIIAN GOOD WILL**

The great challenge of this sustainability study is determining how to get government and the industry to fully understand the nature of the disconnect between the Native Hawaiian community and Hawai`i’s visitor industry. Whether the issues are “real” or “perceived,” the outcome is the same – loss of good will and increase in anti-tourism sentiment. Central to the question is not only sustaining the goodwill of the Native Hawaiian host culture, but also having a Native Hawaiian cultural presence in high profile as part of both the marketing and the “product quality” planning. That is, Native Hawaiian voices must be heard in order to ensure the destination retains a unique sense of place and therefore heightened value in the marketplace. We are hopeful this study will bring us a step closer to building a bridge of understanding between the host Native Hawaiian culture and the visitor industry.

## II. TOURISM IMPACTS ON NATIVE HAWAIIANS (SUMMARY TABLE)

**Purpose of This Section:** Sustaining the cultural and natural resources of our islands and surrounding reefs and ocean is a responsibility inherited by Native Hawaiians and all those for whom Hawai`i is home. Hawaiian laws recognize this responsibility and have afforded rights of access to natural and cultural resources for customary and traditional Native Hawaiian cultural, religious, and subsistence purposes (HRS 7-1, HRS 1-1, Hawai`i State Constitution, Article XII. Section 7).

The activities and programs related to tourism impact the sustainability of Native Hawaiian cultural and natural resources in a variety of ways. The Advisory Group identified 10 aspects of tourist operations that we believe impact Native Hawaiian communities, families and the Native Hawaiian nation as a whole. We acknowledge this is not a complete list of activities or impacts. We hope it can serve to stimulate thinking about tourism and the sustainability of Native Hawaiian cultural and natural resources.

The 10 aspects of tourist operations include: (1) Property Development and Management, (2) Operations, Activities, Programs, (3) Human Resources – Employer to Worker/ Worker to Worker, (4) Entertainment, (5) Purchase of Local Products and Services, (6) Entrepreneurial Opportunities for Community, (7) Relation to Surrounding Community, (8) Role of Government, (9) Planning Projections, and (10) Tourists, Offshore Landowners, In-Migrants. Some of these have been combined for purposes of the following Summary Table.

**How to Read Summary Table:** In the following table of impacts, the first column lists observed impacts of tourism upon Native Hawaiians. The second column describes how the observed impact is specifically related to tourism, as compared to broader economic changes. The third column suggests methods that can be employed to measure the identified impacts or to monitor them (i.e., repeated observations over time). In some cases, it also suggests possible future research activities that could test to what extent the assumed impacts are actually present, or under what conditions they are most likely to occur.

Attached appendices expand upon the table. Appendix B provides a detailed identification of Native Hawaiian cultural resources and potential impacts by any development – tourist and non-tourist. Appendix C identifies cultural resources located in the coastal zone of our islands.

**LIST OF OBSERVED TOURISM IMPACTS ON NATIVE HAWAIIANS**

**1. Property Development and Management / 2. Operations, Activities, Programs**

Impact	Relation to Tourism and Broader Economic Changes	Methods to Measure and Monitor Impacts as Related to Tourist Activities
<p>Change in natural cultural resources needed by Hawaiians who rely upon subsistence activities (i.e., preserving last vestiges of traditional lifestyles). Such changes include effects on abundance, quality, and access to things such as native plants, fish, and marine resources. See Appendices I and II for list of resources.</p>	<p>Most of this comes from population growth and “modernization” that could have been due to any economic activity. But tourism is the actual current force, and it has the additional effect of urbanizing coastal areas where many Hawaiians practice ocean-based subsistence lifestyles.</p> <p>Also, development in remote rural areas can crowd out last “cultural <i>kipuka</i>” with lifestyles more rooted in agriculture.</p>	<p><u>Measure/Monitor:</u> Marine catch reports comparing catch relative to time and effort spent over the past years.</p> <p><u>Monitor:</u> Repeated surveys of marine resources.</p> <p><u>Measure (qualitative):</u> Interviews of subsistence fishers and gatherers.</p> <p><u>Test Impact:</u> Compare baseline reports in environmental and any cultural impact studies conducted for subsequently-built resorts with current condition of on-site/nearby natural cultural resources.</p> <p><u>Monitor:</u> Assist communities in conducting cultural resource mapping to develop a subsistence-related natural resources overlay mapping process for monitoring resources.</p> <p>Assess carrying capacity of coastal and nearshore areas, trails, streams &amp; waterfalls, volcano area, parks, mountain areas, i.e. when does human activity significantly impact upon the plant, bird, marine life in these areas.</p>

<b>Impact</b>	<b>Relation to Tourism and Broader Economic Changes</b>	<b>Methods to Measure and Monitor Impacts as Related to Tourist Activities</b>
<p>Change in condition and quality of (and access to) cultural use areas – places where cultural and historic sites and resources are located or which are associated with deities or historic figures or places to connect to spiritual forces. See Appendices I &amp; II for list.</p>	<p>Again, this comes from population growth and “modernization” associated with increased economic activities of all types – but tourism is the actual force currently causing most of this kind of change. Tourism has particularly affected the urbanization of coastal areas where many Hawaiians practice ocean-based cultural practices.</p>	<p><u>Test Impact:</u> Compare baseline measures in environmental and cultural impact studies for resort areas already constructed with current condition of cultural resources.</p> <p><u>Monitor:</u> Assist communities in conducting cultural resource mapping to develop a cultural resources overlay mapping process for monitoring resources.</p> <p><u>Measure:</u> Survey practitioners about access to resources.</p>
<p>Disruption of sacred sites, burials, and other places of high value in Native Hawaiian culture.</p>	<p>Development of all types has been a problem (though sacred places enjoy more legal protection lately) ...but resort development has been the most frequent issue in recent years.</p>	<p><u>Measure/Monitor:</u> Analyze archaeological data and site mapping by State Historic Preservation Division in the past four decades to measure proximity to and potential impacts of any new developments and to monitor ongoing impacts upon sites.</p> <p><u>Monitor:</u> Periodic surveys of Burial Councils data to determine effectiveness of protecting burials in resort areas.</p> <p><u>Monitor:</u> Assess effectiveness of cultural resources management plans and monitoring programs that were developed for tourist resort areas.</p>

<b>Impact</b>	<b>Relation to Tourism and Broader Economic Changes</b>	<b>Methods to Measure and Monitor Impacts as Related to Tourist Activities</b>
<p>Loss of Hawaiian sense of place, particularly in valued coastal communities (e.g., Waikīkī 30 yr. ago, West Maui – places that were especially dear to Hawaiians now feel alien).</p>	<p>Some of this could have happened with other economic activity, due to in-migration and population growth ...but tourism has been a particularly strong force because it has been concerned about providing an environment more familiar to tourists than to local people, and because it transformed coastal areas that tended to be “last Hawaiian places” after agriculture displaced many interior Hawaiian communities</p>	<p><u>Measure:</u> Survey questions to determine extent to which residents feel “loss” of valued places to tourism (and/or sense of welcome in and affection for current tourism locales) – comparing Native Hawaiian responses vs. those of other groups.</p> <p><u>Measure:</u> Assess loss of place names or replacement of original Hawaiian place names with new names devised by the tourist industry, by comparing place names in maps and guide books with Pukui’s Place Names and historical maps.</p>
<p>Disruption and dispersal of traditional Hawaiian `ohāna from communities where resorts have been developed.</p>	<p>There are many forces in “modern” life that tend to scatter Hawaiian families across different communities ..... but, again, resort development of specific coastal areas has had an impact unique to those places. Cars, phones, jet service, telecommunications all help to mitigate impact of geographical dispersion but can’t provide a network of care and support for children and the elderly that nearby family and neighbors can.</p>	<p><u>Measure:</u> Surveys of and by Hawaiian service providers can provide a measure.</p> <p><u>Test Impact:</u> Compare EIS studies for resorts with current conditions. For example the study of the impact of tourism on Hawaiian `ohana of Lāna`i by the UH School of Social Work faculty and students provides a model.</p>
<p>Difficulty retaining ancestral kuleana lands due to increased property values and other financial pressures.</p>	<p>Kuleana lands turn over due to many factors, including inheritance taxes and disagreements among multiple heirs ..... but increases in property values generated by nearby resorts are often perceived as one significant factor</p>	<p><u>Test Impact:</u> Kuleana lands can be inventoried; sales tracked by location; and sellers surveyed about reasons for sales. Or a sample survey of a selected area where kuleana lands were sold could be conducted.</p>

<b>Impact</b>	<b>Relation to Tourism and Broader Economic Changes</b>	<b>Methods to Measure and Monitor Impacts as Related to Tourist Activities</b>
Purchase of ancestral lands by offshore landowners who do not interact with neighbors or the community.	Offshore landowners acquire land in Hawai'i as an investment or as speculation for purposes other than tourism. However, many offshore owners first become interested in buying land in Hawai'i when they visit as tourists, use it for vacationing in the islands, or as an investment in condos, timeshares, etc. in resort areas.	<u>Test Impact:</u> Sample survey of offshore landowners and time share holders to ask about connection of land purchase to tourism.

**3. Human Resources - Employer to Worker / Worker to Worker**

<b>Impact</b>	<b>Relation to Tourism and Broader Economic Changes</b>	<b>Methods to Measure and Monitor Impacts as Related to Tourist Activities</b>
Hawaiians seem to be tracked into certain roles in the industry to give the industry the appearance of being "Hawaiian."	The hotel industry employment profile reflects ethnic stereotypes which originated on the plantations. Other ethnic groups seem to be tracked into stereotyped roles – Filipinos as maids and custodians; Japanese as electricians and mechanics, etc.	<u>Measure:</u> Examine statistics on jobs and ethnicity  <u>Test Impact:</u> Surveys of job satisfaction among different types of visitor industry workers, and <u>reasons for answers</u> , with analysis by ethnicity.
In many hotels and tour companies, Hawaiian culture and local area history are misrepresented to tourists, because workers frequently lack education in these subjects. Native Hawaiians find this offensive	This is solely a function of tourism growth, and the need to hire non-Hawaiian (and sometimes even Native Hawaiian) workers who are unable to answer visitors' questions accurately. It should be acknowledged that many companies are trying to provide more worker education, though we believe even more effort is needed.	<u>Monitor:</u> Training programs can be evaluated by cultural experts.  <u>Monitor:</u> Workers' increased knowledge can be evaluated in the training programs

**4. Entertainment**

Impact	Relation to Tourism and Broader Economic Changes	Methods to Measure and Monitor Impacts as Related to Tourist Activities
<p>Preservation of some outward forms, but also “commodification” of authentic Hawaiian cultural values/practices.</p> <p><i>(That is, tourism selectively preserves certain traditions and art forms, but usually fails to explain and support “deep” values.)</i></p>	<p>Long before the days of mass tourism, people of all cultures could occasionally see art or traveling performances far out of the original cultural context. But tourism to Hawai`i means that Native Hawaiians have more frequently witnessed the distortion of their culture occurring in the very place where that culture once flourished and had great local meaning.</p>	<p><u>Measure:</u> Academicians might be encouraged to study authenticity of programs offered by the Hawai`i visitor industry – examine training program curriculum, evaluate programs and activities.</p> <p><u>Measure:</u> Hawaiian experts can rate advertising and attractions in terms of authenticity.</p> <p><u>Monitor:</u> Repeated surveys of resident and visitor perceptions about authenticity, to determine changes over time.</p>
<p>Hawaiian feeling that their contributions to the visitor industry – e.g., music, dance, art – are not sufficiently valued.</p>	<p>Many Native Hawaiians are aware that the visitor industry more prominently featured their culture (sometimes accurately, sometimes not) in tourism’s earlier stages. However, contemporary tourism managers seem to be less interested in culture than their predecessors were, less aware of potential for long-term profit and value from supplementary cultural activities</p>	<p><u>Test Impact:</u> Surveys or in-depth interviews with tourism management to determine extent to which decline in cultural content reflects values/attitudes vs. other structural considerations.</p> <p><u>Test Impact:</u> Surveys of Native Hawaiian population to measure extent of belief that tourism industry does or does not do good job of balancing cultural authenticity with entertainment.</p> <p><u>Monitor:</u> Periodic surveys of hotels and attractions to inventory cultural presentations by type.</p>

**5. Purchase of Local Products and Services / 6. Entrepreneurial Opportunities for Community / 7. Relation to Surrounding Community**

Impact	Relation to Tourism and Broader Economic Changes	Methods to Measure and Monitor Impacts as Related to Tourist Activities
Provides jobs and income for grass-roots Hawaiian people.	The issue is whether tourism does better by Hawaiians than other <u>feasible</u> major economic activities here. We believe Native Hawaiian opinions are split, due to uncertainty as to what else is feasible. There is some suspicion that tourism is blocking other industries, but also a feeling it has potential to support local fishing, farms, etc. with significant Native Hawaiian participation.	<u>Test Impact:</u> Workforce surveys could establish extent to which different Hawai`i industries (1) attract and (2) professionally reward Native Hawaiians vs. other groups (controlling for age, gender, and education).
When it occurs, the purchase of local agricultural products and services is a positive impact for rural communities where Hawaiians make up a significant part of the population.	This would enhance opportunities for everyone in the community, not just Native Hawaiians. Hotels could better coordinate purchase of goods and services for programs with the surrounding local community.	<u>Monitor:</u> Perhaps through Hawai`i Hotel Assn., annual survey of hotels to track number and size of contracts with local fish/food providers, as well as reported issues affecting willingness to make or continue such contracts.
Limited Hawaiian involvement, success in tourism <u>business</u> (management or entrepreneurial activity).	A big part of this may be history and other factors above, as well as the limited role of modern "business" in traditional Hawaiian culture ... but the tourism industry seems particularly not attractive to Hawaiians due to specific cultural value differences (e.g., discomfort with "selling aloha")	<u>Monitor:</u> Annual calculation of number/percent of Native Hawaiian enrollment in TIM School or community college visitor industry programs.

### 8. Role of Government

Impact	Relation to Tourism and Broader Economic Changes	Methods to Measure and Monitor Impacts as Related to Tourist Activities
<p>Reliance on tourism undermines diversification of the economy on an island such as Moloka`i or a rural Hawaiian community like Hāna.</p>	<p>Reliance on sugar and pineapple undermined diversity in the economy but agribusiness buffered the economy from the effects of depressions and recessions. Tourism in balance with other economic activities can be positive. It is the diversion of resources away from other economic activities to tourism which is unhealthy.</p>	<p><u>Test Impact:</u> Analyze trends in tourism in comparison with trends in the health and resilience of the economy.</p>
<p>Development of infrastructure for tourism can undermine infrastructure for agriculture and raise property taxes for Hawaiian kuleana owners. Specifically, the diversion of water on Moloka`i away from Hawaiian Homesteads for tourism on the West End is a negative impact upon Native Hawaiian Homesteaders, and increased property taxes have forced kuleana owners to sell their ancestral lands.</p>	<p>The development of infrastructure for tourism can contribute to improvements. However, the costs borne by property tax payers fall heavily upon Native Hawaiian kuleana owners. On Moloka`i, diversion of water for tourism on the West End falls heavily upon Hawaiian Homesteaders.</p>	<p><u>Measure:</u> Evidence presented in hearings and contested cases provides measures of such impacts.</p>

### 9. Planning Projections

Impact	Relation to Tourism and Broader Economic Changes	Methods to Measure and Monitor Impacts as Related to Tourist Activities
<p>Planning for an economy dominated by tourism undermines community-based planning by Hawaiian Homestead communities and rural Hawaiian communities.</p>	<p>State government participates heavily in the marketing of tourism. Sound economic planning would balance the benefits of tourism with other community-based and island-appropriate sustainable economic activities.</p>	<p><u>Test Impact:</u> Compare outcomes for indigenous peoples of different economic planning strategies – i.e. tourism-based strategies in Hawai`i to non-tourist-based strategies in other Pacific Islands.</p> <p><u>Monitor:</u> Neighborhood boards on Oahu and enterprise zone committees, such as on Moloka`i, can play a role in monitoring compliance with conditions imposed on permits and in monitoring impacts.</p>

**10. Tourists, Offshore Landowners, In-Migrants**

<b>Impact</b>	<b>Relation to Tourism and Broader Economic Changes</b>	<b>Methods to Measure and Monitor Impacts as Related to Tourist Activities</b>
<p>Helps to undermine Native Hawaiian efforts to regain greater sovereignty, political self-control.</p>	<p>Loss of sovereignty mostly stems from history flowing from events of 1893, and subsequent effects of becoming US territory and then state. However, tourism dilutes sovereignty efforts by helping to brand Hawai`i as "American" through exposure to many tourists. Tourist jobs, settings, and activities attract more non-Hawaiian residents, many of whom don't understand or sympathize with sovereignty.</p>	<p><u>Test Impact:</u> Survey attitudes toward sovereignty among Hawai`i-born residents and residents born in continental U.S. (with attention to length of residence in Hawai`i)</p> <p><u>Measure:</u> Increased lobby efforts at the U.S. Congress in opposition to legislation to recognize Native Hawaiian sovereignty.</p>
<p>Increase of challenges to existing Native Hawaiian status, rights, and entitlements (including traditional shoreline access, programs serving Native Hawaiians, etc.)</p>	<p>Such challenges reflect certain strands of American values through closer ties to America and more in-migration from America ..... but tourism was in fact the real-life economic engine that socially, politically, and economically integrated Hawai`i more into the U.S. following statehood, due in large part to the factors listed immediately above.</p>	<p><u>Monitor:</u> Number of legal suits and challenges to Native Hawaiian rights over time.</p> <p><u>Measure:</u> Survey status of access rights in selected areas with high rate of new property owners.</p>
<p>Growing sense of social distance between Hawaiians and <i>tourists as people</i>.</p>	<p>Partly a function of growth, but also due to lack of chances to interact on Hawaiian "turf," where Hawaiians can really host.</p>	<p><u>Test Impact:</u> Survey residents to determine if Hawaiians really feel more distant from tourists than other groups.</p> <p><u>Monitor:</u> Comparison of census data for social and economic indicators over time between Native Hawaiians and in-migrants from U.S. continent.</p> <p><u>Measure (qualitative):</u> Focus groups in Hawaiian communities.</p>

<b>Impact</b>	<b>Relation to Tourism and Broader Economic Changes</b>	<b>Methods to Measure and Monitor Impacts as Related to Tourist Activities</b>
Growing sense of distance between Hawaiians and <i>tourism as an industry</i> .	Stems from all of above, but especially belief that tourism values customer preconceptions above host culture authentic values.	<p><u>Test Impact:</u> Survey – Do Hawaiians really feel more distant from tourism than other groups? Do they believe tourism puts visitors first?</p> <p><u>Measure (qualitative):</u> Focus groups in Hawaiian communities.</p>

### III. BEST PRACTICES

The purpose of this chapter is to identify examples of visitor industry activities that exemplify positive, non-exploitive approaches to Native Hawaiian culture – i.e., “best practices.”

The following list is a mix of the Advisory Group’s own selections (many of which are known to us through the experience of the Native Hawaiian Hospitality Association) and some of the winners of Hawai`i Visitors and Convention Bureau (HVCB) 2003 “Keep It Hawai`i Awards.” We are grateful to the HVCB for their permission to use these examples. Their awards process includes an exhaustive statewide review of numerous project entries in 16 categories. Committee panelists are community leaders who represent the broader community as well as the visitor industry, and we would be hard pressed to duplicate this statewide recruitment and review effort in an independent initiative to identify Best Practices.

We are sure there are many Best Practices that have not been cited here and we note that this is not intended to be a representative list of all best practices, but only those practices for which information was readily available for the purposes of this report. For the most part, we focus on *current or recent* examples, though in a few cases we have reached back in time to recognize particularly important “best practice” examples from previous decades.

#### CRITERIA AND ORGANIZATION

In identifying “Best Practices,” the Native Hawaiian Advisory Group applied the following criteria. To qualify as a best practice, the activity must meet at least two of the five criteria.

- Supports or communicates genuine and unique Native Hawaiian cultural activity.
- Supports the creative expressions of Native Hawaiian artists and cultural practitioners.

- Demonstrates exceptional sensitivity to Native Hawaiian cultural customs and traditions.
- Recognizes Native Hawaiian culture as integral to the visitor experience.
- Recognizes or restores a Hawaiian sense of place.

## **CATEGORIES**

Activities have been grouped into 16 categories, also drawn from the Keep It Hawai'i Awards. These categories represent a thoughtful and exhaustive delineation of tourism activity areas that covers every aspect of the industry. They include: Special Projects, Accommodations, Architecture, Attractions, Environmental Preservation, Events, Historic Preservation, Landscaping, Literary Arts, Media/Broadcast, Media/Print, Performing Arts & Shows, Programs, Restaurants, Retail, Visual Arts.

### **1. SPECIAL PROJECTS**

#### **City & County of Honolulu**

Exemplary and respectful ancestral burial handling in Waikīkī. Under the encouragement and direction of the Mayor a formal burial site and memorial was planned by the lineal descendants of recently discovered ancestral remains. The City and County of Honolulu provided the construction funds, and remains that were haphazardly stored in various Oahu locations were retrieved and re-interred at this site. All future Waikīkī discoveries are to be relocated to these central burial grounds. Contact: Department of Parks and Recreation, City and County of Honolulu.

#### **The Ritz Carlton Hotel, Maui**

Exemplary and respectful ancestral burial handling on Maui. A Massive grave site was discovered on a cliff site that was designated for construction of the Ritz-Carlton Maui. The Hotel decided not only to relocate and completely re-design the project, but also took special care to properly landscape and protect the burial area, which can now be visited as a very sacred place. This issue triggered the state legislation creating a burial law that established a system of Island Burial Councils to deal with all issues of Ancestral Remains. Contact: Cultural Resource Specialist at Ritz-Carlton Maui

## **2. ARCHITECTURE**

### **City & County of Honolulu – Group 70 International. Hanauma Bay Marine Education Center**

An education center of 9,000 square feet that blends with and preserves the natural landscape of the area. The Center houses a theater, classroom and training facilities, offices, exhibits for interactive computer stations, 3-D models, and artifact displays – all tucked into lava and earth berms that blend into the natural landscape. Contact: City Department of Parks and Recreation

### **Group 70 International – Parker Ranch Center**

The design of the Parker Ranch Center preserves the Hawaiian paniolo heritage, history, and art of the Waimea community on the Big Island. Indigenous materials and native plantings combine to create the feeling of an old ranch town and a community gathering place. Contact: Group 70 International (Honolulu)

## **3. ACCOMMODATIONS**

### **Hotel Hāna-Maui**

The Hawaiian landscaping and decorative themes that permeate every aspect of the property present a powerful Hawaiian sense of place. The absence of any electronic media in the rooms makes the experience sometimes surreal in its reflective quietness, particularly when surrounded by the lush landscaping that slopes to the sea in a perfect Hawaiian setting. Ninety per cent of the staff are of Hawaiian ancestry, with deep roots in the community, adding significantly to a Hawaiian cultural presence that is unique among hotels. Staff are required to complete a *ho`okipa* training course that incorporates Hawaiian values into every aspect of hotel operations. Contact: Hotel Hāna-Maui

### **Outrigger Reef On the Beach *Ho`okipa* Theme**

This Waikīkī hotel made a total commitment to creating a wrap-around Hawaiian experience with an extensive array of cultural programming which includes their training program for all employees that infuses the language, values, and cultural aspects of Hawai`i, Hawaiian exhibits and festivals, keiki activities, adult classes in Hawaiian crafts, `ukulele, and hula, employee uniforms, and Hawaiian themed restaurants. Contact: Human Resource Department, Outrigger Reef On The Beach Hotel

### **Ritz Carlton Maui, Hawaiian Theming**

This hotel has a total commitment to infusing Hawaiian themes throughout their property, including the landscaping, the architecture, Hawaiian exhibits, and art pieces. They saturate their guests with Hawaiian programs, such as a *kupuna* speaker presentations on cultural topics, native crafts, a weekly cultural theme with demonstrations and performances, and their annual Celebration of the Arts Festival bringing the best cultural practitioners in the state together in a free festival of demonstrations, music, hula, lectures, and Hawaiian ritual. Contact Hawaiian Cultural Specialist, Ritz-Carlton Maui

### **ʻIlima Hotel**

This management of this very small Waikīkī Hotel of 30 employees has made a total commitment to presenting Hawaiian themes to their guests. The decorative themes and programs are all Hawaiian based. Employees attend classes regularly in a Hawaiiiana program run by the hotel's cultural resource department and even perform Hawaiian music in formal competition. The hotel makes a quiet and dignified statement that "small and Hawaiian" can be very beautiful. Contact Ilima Hotel

## **4. ATTRACTIONS**

### **The Kōloa Heritage Trail**

This attraction preserves and recognizes the importance of Native Hawaiian historical sites, while educating visitors. Optional hike or bike the 10-mile trail that abounds in historical, cultural and environmental significance. The trail features 13 marked sites around the south shore of Kauaʻi. Contact Margy Parker; Phone: 808-744-0888

### **Bishop Museum – Navigating Change: The Northwest Hawaiian Islands Exhibit at the Hawaiʻi Maritime Center**

An educational experience that engages students, teachers, and visitors in scientific and cultural activities that explore the wonders of the Northwest Hawaiian islands. The goal is to bring about a better understanding of the unique and fragile eco-system of the 1200 miles of uninhabited atolls that stretch far north of the Main Hawaiian islands. Contact: Bishop Museum Education Department (Honolulu)

### **Hawaiʻi Forest & Trails Kohala Mule Trail Adventure**

An attraction featuring *kamaʻāina* cultural interpreters who guide guests along the trail into Pololū Valley on the Kohala Coast of the Big Island. Contact: Hawaiʻi Visitors and Convention Bureau, Keep It Hawaiʻi Program

## **5. ENVIRONMENTAL PRESERVATION**

### **Parker Ranch Tree Project**

The Big Island's Parker Ranch has designated 2003 as the year of the Hawaiian Forest and established an environmental program on their 200,000 acres to re-plant wild game habitats with indigenous trees and have already planted 800 māmane, `ōhi`a, koa, pilo and pine trees to mark the beginning of a long term commitment. Contact: Parker Ranch Visitor Center (Big Island [Hawai`i Island])

### **City & County of Honolulu – Hanauma Bay Nature Preserve**

In response to a declining pattern of environmental degradation at Hanauma Bay, Honolulu's City and County government has re-established this visitor attraction with a new Visitor Education Center, and converted it to a nature preserve. They have instituted controlled access and now require everyone to participate in an education component about the Bay as a condition of entrance. They close the Bay once a week to allow it to rest. They have partnered with Sea Grant and the Friends of Hanauma Bay in the programs management of the ecosystem, and are enforcing rules and regulations to protect the flora, fauna, and marine life. Contact: City Department of Parks and Recreation

## **6. EVENTS**

### **Ka Moloka`i Makahiki**

The community of Moloka`i celebrates their island once a year with this traditional Makahiki event. The celebration includes both land- and ocean-based Hawaiian cultural sporting competitions, fishing, planting, Hawaiian chant, music, and hula. They celebrate in the traditional calendar time following the harvest season known as the season of the Makahiki. It is the only event of its kind in Hawai`i. Contact: Ron Kimball, 553-3673

### **Ritz-Carlton Maui – Celebration of the Arts**

An annual three-day event during Easter. The Ritz Carlton invites over 100 Hawaiian cultural practitioners in the various cultural disciplines to be their all expenses paid guests in exchange for sharing their expertise with visitors and the community. The celebration includes, exhibits, demonstrations, lectures, workshops, video and film presentations, as well

as Hawaiian ritual ceremonies. All activity is free to the public (except for a lū`au and a Hawaiian music concert, which are ticketed events). Contact: Cultural Specialist at Ritz Carlton Maui.

## **7. HISTORIC PRESERVATION**

### **Mauna Lani Resort – Kalāhuipua`a Fishponds**

Mauna Lani Resort commemorated the preservation of a sacred area on their property as a Hawaiian Spiritual Center by contracting Hawaiian stonework and masonry specialist Billy Fields to construct a stone *ahu* to symbolically link the future to the past. Sited between the Lāhuipua`a and Hope`ala fishponds, the *ahu* is another mark of the long standing and continuing commitment to stewardship of the spiritual significance of the area begun by Mauna Lani co-developer Kenny Brown and the late George Kanahale, known for championing the need for Hawaiian cultural content in island tourism. Contact: Mauna Lani Bay Hotel (Big Island)

### **Sheraton-Moana Surfrider – Restoration of the Hotel in celebration of 100 years.**

Sheraton spared no expense in restoring this historic building to its former elegance and emphatically preserves a monarchical Hawaiian “sense of place” from a by-gone era. The restoration won the prestigious President’s Award for historic preservation by the National Trust for Historic Preservation. Contact: Guest Services, Sheraton-Moana Surfrider.

## **8. LANDSCAPING**

### **U.S. Department of Defense – Fort DeRussy – Hale Koa Hotel**

For their landscaping and preservation of open space, the Department of Defense and the Hale Koa Hotel are applauded for their \$235 million commitment to greenery and plantings. The Hale Koa property is exclusively planted with indigenous Hawaiian plants and offers a stunning free to the public botanical tour of their grounds. The larger environs of Ft. DeRussy is lushly planted with gorgeous trees and shrubs and open to the public 24 hours a day. This is an extensive commitment to preserving and maintaining a landscaped environment. Contact: Landscape Maintenance, Hale Koa Hotel.

### **City & County of Honolulu – Kūhiō Beach Renovation, Phases I & II**

This project is the most extensive landscape redesign in the history of Waikīkī. The renovation, on the beach side of Kalākaua Avenue, features the extension of the Kapi`olani park landscape theme from the Waikīkī Natatorium to the Sheraton-Moana hotel. It features a wide-path pedestrian experience lined with grassy berms, native plants and trees,

water features, re-paved sidewalks of stone masonry, Victorian lampposts with hanging flower baskets, drinking fountains, beach showers, park benches, and a grass planted hula platform for nightly hula performances. It has totally revitalized the area. Contact City Department of Parks and Recreation.

## 9. LITERARY ARTS

### **Alan Seiden – “Diamond Head, Hawai`i’s Icon”**

A coffee table book with substantive text celebrating the history of Hawai`i’s most famous landmark, Diamond Head. The book features enlightening text that begins with the geologic and volcanic origins of Diamond Head, and takes the reader from pre-contact civilization to contemporary times. The descriptive historic text, as well as lavish visuals of photos and graphics, makes the book extremely readable and brings the history of Diamond Head alive. Contact: Author Alan Seiden (734-4677) or Mutual Publishing

### **Jane Hopkins, Betty Santos and Mutual Publishing – “`Ohana”**

Small book with a big message. The concept of `Ohana is woven into the multi-cultural fabric of Hawai`i. The ageless wisdom of the Kūpuna is presented in an inviting and reader-friendly format. Contact: Native Books (Honolulu)

## 10. BROADCAST MEDIA

### **Aloha Festivals Frank B. Shaner Falsetto Contest**

One of Hawai`i’s most melodic events. A competition between solo singers of the high vocal register sound known as falsetto and practiced as an island Art Form. The show is broadcast live statewide on K-FIVE each August. Contact: KFVE-TV.

### **Pacific Islanders In Communications – Holo Mai Pele Television Documentary**

An original television production of Kumu Hula Pualani Kanaka`ole Kanahale and halau performing a specially choreographed ancient hula of the epic saga of Pele and Hi`iaka. The national broadcast is unparalleled and took millions of viewers “beyond the beach” to a very high level of Hawaiian culture. Contact: Pacific Islanders In Communications (Honolulu).

## 11. PRINT MEDIA

### **Hiroshi Mizuno and Obun Hawai`i Group – Waikīkī Historic Trail**

An elaborately published booklet of the Waikīkī Historic Trail and its 24 Historic markers that create a Hawaiian cultural footprint of Waikīkī. The booklet showcases the trail through photos and graphics that recall the History of Waikīkī. Contact: Obun Hawai`i Inc.

### **Hawaiian Airlines – Hana Hou Magazine on Kalo Culture**

This edition (February/March 2002, Vol. 5, Ed. 1) of the inflight *Hana Hou* publication offers a profound look at the importance of kalo or taro in the Hawaiian culture and how the revival of taro cultivation has helped to connect a new generation of youth to the ways of their ancestors. Contact: Hawaiian Airlines Customer Service.

## 12. PERFORMING ARTS

### **The Maui Arts & Cultural Center – *Hānau Ka Moku, An Island Is Born***

A daring and epic dance adventure rooted in cultural traditions and expanded to innovative modern dance in a blending of two art forms, hula and contemporary dance, by Hālau o Kekuhi and the Tau Dance Theater. A brilliant collaboration of art forms that remained true to Native Hawaiian cultural storylines in a powerful storytelling format. Recent performances have been held on Maui and O`ahu. Contact: Edith Kanakaole Foundation (Big Island)

### **City & County of Honolulu – Kūhiō Beach Torchlighting & Hula Show**

A free public performance on the hula mound at Kūhiō beach that features O`ahu *hālau* hula (schools) four nights a week. The show provides an opportunity for hula schools to engage in paid performances in front of large audiences that pack Kūhiō Beach every Thursday, Friday, Saturday, and Sunday evenings. It is the only regularly scheduled free to the public authentic hula presentation by *hālau* in the state. Contact: Mayor's Office of Culture & the Arts

### **The Hawai`i Theater – Hawaiian Music Series**

A regularly scheduled purely Hawaiian music series featuring the majority of Hawai`i's award winning Hawaiian musicians and dancers in O`ahu's premier performing arts venue that bring great dignity to these Hawaiian art forms. Contact: Hawai`i Theater (Honolulu)

### **Merrie Monarch Festival**

The premier hula event of the year – the Merrie Monarch Festival, in honor of its namesake King David Kalākaua, showcases the best Hula Schools from Hawai`i and some from the mainland in a very high level competition. It is universally considered to be the world's most prestigious hula competition, attracting sold-out crowds each year, and is the town of Hilo's signature event. Contact: Merrie Monarch Hula Festival

### **Maui Myth & Magic Theater – `Ulalena**

A theatrical production of the first magnitude that explores Hawaiian mythology and legend through dance and other forms of body motion. The live traditional music and the eight-channel surround-sound bring the theatrical story telling to new heights of cultural communication with an audience. It features some of Hawai`i's most distinguished musicians and performers. As a theatrical presentation it is in a class of its own. Contact: Maui Myth & Magic Theater

### **The Old Lahaina Lū`au**

A far cut above the traditional rather tacky luaus, the Old Lahaina Luau presents an All-Hawaiian show with dignity and honor. The presentation is an evening of traditional Hawaiian food, music, cultural dances, and island crafts, on the beach at Lahaina, Maui. The staff are exceptionally good at expressing genuine *ho`okipa*. Contact: Old Lahaina Lū`au

## **13. PROGRAMS**

### **Hawai`i Volcanoes National Park – After Dark in the Park**

Regularly scheduled presentations feature Hawaiian cultural specialists, Hawaiian elders, musicians, storytellers, artists, scientists, and historians. The presentations cover Hawaiian culture, history, geology, biology, and conservation issues. The series presents an incredible array of educational opportunities where real learning occurs about one of Hawai`i's most sacred places. Contact: Hawai`i Volcanoes National Park

### **Kā`anapali Beach Hotel – *Po`okela* Program**

This hotel is the flagship example of a fundamental commitment to incorporating Hawaiian themes and behavior throughout its corporate operations. *Po`okela*, which stands for “excellence,” is a staff training program that gives its 300 employees an understanding and appreciation of Hawaiian culture and history. Everything that occurs on the property is immersed in Hawaiiana. Classes include language, music, dance, native foods, flora and fauna, and traditional health and medicine. Employee response is so positive the place vibrates with aloha. The program has ongoing training that keeps employees and management on track in the relationships among themselves, as well as with the guests. This hotel has

created a total Hawaiian immersion program by design that is truly positive and uplifting, and they continue to commit the substantial resources needed to maintain the quality of their product as an integral part of their business strategy to capture market share. Contact: Kā`anapali Beach Hotel Po`okela Program (Maui)

**Waikīkī Historic Trail, The Queen’s Tour – Native Hawaiian Hospitality Association**

A free daily two-hour walking tour of part of the Waikīkī Historic Trail, called the Queen’s Tour. The tour begins at the Royal Hawaiian Shopping Center and is conducted by Native Hawaiian historian-storytellers who cover the history of Waikīkī from pre-contact through the Monarchy period. Contact: Native Hawaiian Hospitality Association (Honolulu)

**The Kāhili Awards, Keep It Hawai`i - Travel Holiday Magazine & Hawai`i Visitors & Convention Bureau**

The Kāhili awards is an outstanding statewide recognition program that rewards projects and activities that strive to maintain Hawai`i’s sense of place and unique and valuable. It recognizes the fragile nature of our Island community and pays great respect to the host culture and to the importance of preserving the essence of aloha and all that it embodies as we continue to grow as a visitor destination. Contact: Hawai`i Visitors and Convention Bureau

**14. RESTAURANTS & FOOD SERVICE**

**Duke’s at Waikīkī Outrigger Hotel**

Themed after Hawai`i’s most well-known personality, surfer Duke Kahanamoku, the interior design is resplendent with museum quality images, photographs, and memorabilia of the Duke. It oozes Hawaiian sense of place. The management engages in exemplary public service with the community on various humanitarian projects as a formal expression of their aloha. They present the best in Hawaiian music and serve a wonderful cosmopolitan menu. Contact: Duke’s Restaurant (Honolulu)

**The Willows**

Rescued from oblivion by the Weinberg Foundation, The Willows features an outstanding Hawaiian landscaped interior, utilizing Hawaiian materials and plants, and period furniture. Their main water feature pond includes a replica of the famous *Hōkūle`a* sailing canoe. The buffet menu features a very large selection of extremely well prepared Hawaiian food. Mondays through Fridays ,they feature Hawaiian music at the bar and a \$10.00 all-you-can-eat pūpū bar with several Hawaiian dishes. It’s a great Hawaiian ambience with food and entertainment experience. Contact: The Willows (Honolulu)

## 15. RETAIL

### **Native Books and Beautiful Things**

This retailer is a co-operative that provides opportunities for Native Hawaiian crafters to showcase their products in a “marketplace” retail concept. The items and vendors must be Hawaiian and of sufficient quality to be deemed as presenting the culture with dignity. The total experience is educational, because the vendors are so willing to answer questions and provide information. They are a unique retailer in that they are willing to send you to another retail source if they don’t have the item you seek. Contact: Native Books and Beautiful Things (Honolulu)

### **Bishop Museum Gift Shop**

A retail shop that is devoted exclusively to Hawaiian themed books, videos, compact discs, crafts, jewelry, clothing, visual art, and an assortment of items that are of high quality, and much of which is handmade. They carry a lot of educational materials on Hawaiian culture, ranging from Coffee table books to serious literary works. Contact: Bishop Museum Gift Shop

### **Nā Mea Hawai`i at Hilton Hawaiian Village**

This is a hotel based retailer at the Hilton Hawaiian Village that features a special inventory of Hawaiian items made in Hawai`i by Hawaiians. There is equal emphasis on children and adults and items include books, crafts, jewelry, art, post cards, visual art, and clothing. Contact Nā Mea Hawai`i, Hilton Hawaiian Village (Honolulu)

## 16. VISUAL ARTS

### **Hilton Hawaiian Village – Kaha Ka `Io Me Nā Mākani**

The Hawk Soars with the Winds – a large bronze sculpture of three hula *kāhiko* dancers and a hawk in flight marks the entrance corner to the Hilton Hawaiian Village. A bronze commissioned work by artist Kim Duffet, the work is a towering expression of Hawaiian cultural strength using hula figures to demonstrate the power of the Hawaiian cultural persona. Definitely a photo opportunity. Contact Hilton Hawaiian Village (Honolulu)

### **City & County of Honolulu – Kūhiō Phases I & II**

As part of their “Restoring Hawaiianness to Waikīkī” effort, the City commissioned several bronze sculptures to enhance the pedestrian walkways from Kapi`olani Park to the Sheraton-Moana Hotel. The sculptures include Queen Lili`uokalani,

Prince Jonah Kūhiō, a surfer on a wave, a surfer and monk seal, and Duke Kahanamoku (with the Waikīkī Improvement Association). Although not formally an art piece, the Kapi`olani Park Bandstand, with its Victorian design celebrating the monarchy period, stands as though it were a work of art. Contact: City Parks and Recreation Department.

**Native Books at Kalihi**

This Native Books location exhibits works of new Hawaiian artists whose art themes are Hawaiian. The majority of the works are paintings, drawings, and other forms of flat art. Their exhibit program generally will focus on one artist at a time, allowing the artist to exhibit a substantial amount of art work in one place. Artists are afforded the opportunity to retail their works or be discovered for a commissioned work. Contact Native Books (Honolulu)

## IV. RECOMMENDATIONS

1. A voting seat on the Hawai'i Tourism Authority for the *Office of Hawaiian Affairs*.
2. A voting seat on the Hawai'i Tourism Authority for the *Native Hawaiian Hospitality Association*.
3. A voting seat on the Board of Land and Natural Resources for the *Office of Hawaiian Affairs*, in order to help assure culturally appropriate stewardship for natural resources impacted by tourism.
4. Provide dedicated funding to the Native Hawaiian Information Alliance – a non-advertising driven media program that seeks to connect visitors and local people with genuine Native Hawaiian cultural experiences.
5. Establish by statute a *Cultural Landscape land classification or zoning district* that would serve to protect important cultural landscape communities with design codes, population density limits, historical preservation designations, and other processes that would prevent the obnoxious and inappropriate intrusions on the cultural and social landscape of so classified communities.
6. Provide dedicated funding for the development of *community-based day tourism* as an alternative economic development business model.
7. Provide dedicated funding for a cultural resource *inventory grants program* that provides financial support to community organizations or State/City agencies to develop a statewide mapping data base of each community's cultural resources that would include historical sites, important native landscapes, *wahi pana* (sacred places), historic buildings, trails, waterways, shoreline environments, and so forth.

Any State training funds associated with such a program (e.g., Employment Training Fund) should be earmarked for cultural awareness or knowledge thereof.

8. Amend the environmental processes that severely limit a community's ability to restore ancient Hawaiian fishponds to useful productivity and provide some financial support for the planning of such projects. This would help assure more of a "sense of Hawaiian place" for residents and visitors alike.
9. State settlement with OHA of the Ceded Lands Trust. This is critical for tourism because of links to airports and harbors.
10. Assess effectiveness of cultural resources management plans and monitoring programs that have been developed for tourist resort areas. For example, a resort on each island could be selected. For each site, the Environmental Impact Study, including the mitigation measures and the conditions imposed for a permit to be granted, could be examined to determine if the conditions were met and if the project impacts were accurately assessed.
11. Promote the purchase of local agricultural and marine products and services.

# APPENDICES

## **APPENDIX A: MILESTONE HISTORICAL EVENTS IMPACTING THE NATIVE HAWAIIAN PEOPLE AND THE CHALLENGES OF THEIR POLITICAL, SOCIAL, AND ECONOMIC STATUS IN THEIR HOMELAND**

### Mai Ka Pō – 1778

- Voyages of discovery and settlement of the Polynesian Triangle.
- Evolution of a uniquely sophisticated language and culture society in geographic isolation.
- Development of a highly sophisticated land-use system resulting in high yield food production and environmentally sustainable natural resource management.
- The emergence of independently sovereign politically subdivided chiefdoms.
- A rigid religion based code of conduct that governed all aspects of the society
- Freedom of the maka`āinana (commoners) to move between chiefdoms and shift their political loyalties.
- Freedom of the maka`āinana to access the use of land for their subsistence and survival in exchange for an annual taxation of their production and services.

### 1778

- First western contact with arrival of English explorer Captain James Cook.
- Captain Cook discovers a population base in excess of 400,000 natives.
- Beginning of trade and barter between natives and the explorers.
- First serious documentation of native society and historical accounts of daily life occurs under Cook.

### 1810

- Kamehameha I succeeds in uniting all the islands under his sovereign rule.
- Western trade and commerce begin to replace the traditional subsistence economy.

1820

- Christian missionaries begin arriving
- In ensuing 30 year period over 100 missionaries dispatched to Hawai`i.
- Missionary influence on customs, traditions, politics, and culture of Hawai`i begins.
- International whaling rises as a major economic activity.
- British Captain Vancouver introduces cattle to the Big Island to start a beef industry.

1826 – 1893

- Hawaiian Kingdom recognized as a sovereign nation via treaties other nations.

1848

- The Māhele – Land Division
- Profound change in the land tenure system from communal ownership to individual property rights.
- Law of Adverse Possession enacted which took advantage of native ignorance of the law and provided forfeiture of land ownership by natives and title transfer to westerners.
- Alienation of the maka`āinana from access to land begins.

1884

- Princess Bernice Pauahi Bishop establishes Education Trust.
- Trust based on perpetual ownership and management of 434,000 acres.
- Sole beneficiary institution of the Kamehameha Schools is established.

1893

- Queen Lili`uokalani moves to re-write the constitution to restore some power to the monarchy and native people.
- Western businessmen organize the Committee On Safety and with the aid of the U.S. Minister and U.S. Marines succeeds in a coup to overthrow the Queen.
- A Provisional Government is established.
- The overthrow violates existing treaties and international law.
- The Queen's Proclamation:  
*"I yield to the United States to avoid any collision of armed forces, and loss of life. I do this under protest and impelled by said force yield my authority until such time as the United States shall undo the action of its representatives".*
- The Hawaiian flag is lowered and a new flag raised at `Iolani Palace.

- The new government is clearly without the support of the native population and a great sorrow engulfs the land.
- February 1 – the new government and its supporters establish a day of celebration.
- A U.S. Presidential inquiry and fact finding results in President Cleveland's report to the U.S. Congress:

1896

- President Cleveland loses election. New President William McKinley takes office.

1897

- Hui Aloha `Āina anti-annexation petition is launched.
- 95% of the native population or 38,000 sign petition decrying the loss of sovereignty.

1898

- Spanish-American War
- The plantation era begins to emerge and the need for direct ties to the U.S. for reasons of international commerce intensifies the drive for annexation.
- Hawai`i is annexed by joint resolution of Congress.
- 1,800,000 acres of crown and public lands of the Kingdom is ceded to the United States without compensation.
- Anti-annexation expressions by the native population is ignored.

1900

- Congress passes the Organic Act and creates a Territorial government.
- The Territory of Hawai`i is established
- The plantation economy demonstrates a strong growth curve.
- Western introduced diseases fall upon the native population who lack immunity and thousands of deaths occur dwindling the population to 35,000.

1909

- Queen Lili`uokalani establishes the Queen Lili`uokalani Children's Trust.
- The trust focuses on orphaned and indigent children of Hawaiian ancestry.

1921

- Prince Jonah Kūhiō successfully maneuvers the Hawaiian Homes Commission Act through the Congress.
- 200,000 acres are set aside for native Hawaiians.
- Purpose of the act is to return native Hawaiians to the land via a long term lease award program.
- Prince Kūhiō suggested a 1/32<sup>nd</sup> blood quantum beneficiary qualification.
- Congress diminishes native access and raises blood quantum to 50%.

1922

- Hawaiians begin their long journey of disorientation to a new culture and political system.
- Hawaiians alienated from their cultural land base are largely unsuccessful at assimilation.

1922 – 1959

- Sugar and Pineapple rises as the dominating economic activity.
- Plantation culture takes deep root in Hawai`i society as forming the basis of all political and economic power.
- Plantations initiate massive recruitment programs to attract foreign labor to work the plantations.
- Hawai`i begins a profound period of multi-culturalism rooted in the cultural practice of Hawaiians to embrace and welcome these new foreigners and the concept of the “Aloha Spirit” is established.
- The Plantation Era ushers in the rise of the “Big Five” corporate bodies that successfully dominate the political and economic life of the territory.
- The U.S. military emerges as a major industry.
- The military presence has a profound effect on land use as they occupy large tracts of land to establish their bases. On Oahu, all major inland waterways and adjacent lands are brought under military control most notably Pearl Harbor and Kāne`ohe Bay.
- A long political initiative advocating Hawai`i Statehood nears fruition.
- Tourism begins to emerge as a major industry and Waikīkī becomes the world's most famous beach.

1959

- Hawai`i becomes the 50<sup>th</sup> State of the United States.
- Hawaiians continue to have negative assimilation experiences and dominate the lower end statistics of all social and economic indicators.
- Congress requires the State to administer the Hawaiian Homes Commission Act of 1920.
- All Hawaiian ceded lands are transferred to the State government in a ceded land trust relationship.

- The ceded land trust section 5(f) identifies “the betterment of conditions of native Hawaiians” as one of the five purposes of the trust.

1961

- The State creates the Department of Hawaiian Home Lands to administer the trust established by the Hawaiian Homes Commission Act.
- In the federal transfer of responsibility for trust administration to the state no federal funding is provided.
- The trust is forced to generate its own revenue for operations, housing development, land management, and all other functions and is ill prepared to provide timely or meaningful service toward the goal of restoring Hawaiians to their land base.
- The 50% blood quantum alienates a large percentage of succeeding generations of Hawaiians whose lineal ancestors were part of the original qualifying pool of beneficiaries but whose blood quantum was compromised by intermarriage while the original applicants died while on the waiting list.
- 1975-80
- The Protect Kaho`olawe `ohana is organized to protest the bombing of Kaho`olawe by the military.
- This is the first sign of a viable activist political insurgency by native Hawaiians and fuels a controversy that dominates the daily news media.
- The Hōkūle`a (voyages of rediscovery) project is launched and is a lightning rod that attracts thousands of supporters in a high profile and positive effort at cultural retrieval.
- Both of these projects take on a spirituality that ignites a Renaissance of Hawaiian culture and creates a broad constituency of both Hawaiian and non-Hawaiian supporters that number in the thousands.
- Sugar begins to decline as a sustainable industry as the ability to compete with less expensive and more competitively priced third world sugar production requires federal price support and subsidies.

1978

- The Office of Hawaiian Affairs (OHA) is established by the 1978 State Constitutional Convention.
- OHA trustees are elected by the Hawaiian population to manage that portion of the revenues of the ceded land trust amounting to a 20% share for the “betterment of conditions of native Hawaiians”.
- Major disputes arise between OHA and the State in identifying which ceded lands are to be included in the inventory qualifying for the 20% assessment.

1980 - 1990

- Strident Hawaiian leadership begins to emerge and calls for political and social action begin to attract an identifiable political constituency.
- Political initiatives to hold both state and federal government accountable in honoring the various trusts are launched.
- Hawai'i's congressional delegation and Hawaiian leaders begin to make headway in gaining federal attention that manifests itself in major federal funding of programs to address critical social services, health, and education issues for native Hawaiians.
- The Hawai'i State Legislature begins dialogue on the ceded land trust and OHA revenue entitlements.
- Sugar begins to suffer critical financial losses.
- Tourism continues a dynamic growth curve and becomes the state's number one industry.

1993

- A long standing effort to secure an acknowledgement and apology from the federal government for the illegal overthrow of Queen Lili'uokalani is realized by congressional action in passing a U.S. Joint Resolution that includes a historical account of the events leading to the overthrow and details of the actual coup.
- The bill is signed into law by President Clinton.
- The bill acknowledges the U.S. role in the demise of the Hawaiian government as well as the devastating social impact and goes further to promise reconciliation.
- Sugar plantations begin to close and it is clear that the era of the sugar plantation is over.

1999

- Federal reconciliation hearings to address self-determination for Native Hawaiians are held by the Department of Justice and Department of Interior.

2000

- Bill to recognize Hawaiians as native Americans (Federal Recognition Bill) is introduced in the congress.
- The bill, a product of fairly extensive community dialogue, attempts to reaffirm Native Hawaiians political status and the trust relationship obligation and also provides a process that may lead to Native Hawaiian self-governance.
- State Legislature supports the advocacy for self-determination.
- The first federally funded program in support of the Department of Hawaiian Home Lands - NAHASDA - is enacted in the amount of \$9.6 million.

- A major set-back occurs with a U.S. Supreme Court ruling that strikes down OHA elections being limited to voters of Hawaiian ancestry. This ruling triggers subsequent challenges that threaten all federal and state programs that single out Hawaiians as a special beneficiary class.

## **APPENDIX B: NATIVE HAWAIIAN CULTURAL IMPACT ASSESSMENT MODEL**

Excerpted from: Davianna McGregor, Jon Matsuoka, Luciano Minerbi. Native Hawaiian Cultural Impact Assessment Workbook, from the Hawai'i Externalities Workbook, Prepared for Hawaiian Electric Company, Inc., Maui Electric Company, Limited, Hawai'i Electric Light Company, Inc., July 1997

In order to appropriately assess impacts to Hawaiian subsistence, cultural, and spiritual customs, beliefs, and practices, the following aspects of Hawaiian people and their immediate environments need to be examined (Minerbi, McGregor, Matsuoka, 1993):

1. Family - refers to the extended family; conjugal support systems, sharing, exchange of services, and child-rearing networks.
2. Community Life - the cohesion and integrity of Hawaiian communities; the continuity of life cycle events; community services; and any displacement of people.
3. Human Well-Being and Spirituality - refers to physical health in relation to cultural loss/stress syndrome; the impact of changes on mental and cultural health; and identity and pride; community-based health care.
4. Natural Environment, Cultural and Ecological Resources - refers to areas to gather; sense of place; wahi pana, legendary or sacred places where spiritual ties to ancestors, deities, life forces are experienced; healing places; and hunting areas, fishing zones and access; integrity of ahupua`a resources mauka to makai.
5. Customs and Practices - refers to subsistence activities; the exercise of spiritual beliefs, customs and practices; intergenerational linkages to ancestral lands and to cultural/historic sites.
6. Rights - Impacts on the exercise of rights defined in the Hawai'i State Constitution, the Hawai'i' Revised Statutes, the American Indian Religious Freedom Act, and common law.

7. Economics and Hawaiian Lands- refers to employment, wages, purchasing power, socioeconomic status, and cost of living; value of subsistence activities; and benefit to community-based and culturally appropriate economic development initiatives. Hawaiian lands include lands and natural resources in their ecological *ahupua`a* setting used for homesteading, farming, ranching, aquaculture, fishing, income generating activities and for subsistence gathering; community land trusts as land base for group oriented activities (CLTs); and government land held in trust for the benefit of Hawaiians.

### **Method**

The seven aspects identified above became the categories for assessing Native Hawaiian externalities. Relevant variables for each impact category were identified and distinguished into two columns as impact or as receptor variables. For each category, a narrative was written describing the nature of the receptor and the impact variables and the significance of these in relation to the life ways of Native Hawaiians.

## **8.3.2 Family**

### **Family Receptors**

Family themes common to Pacific Islander and Asian cultures allow for generalizations made to "local" families from a discussion based on the Hawaiian concept of "ohana." The traditional Hawaiian household is a multi-generational family with grandparents living with the family of their adult children. Family members are expected to share in household tasks and subsistence activities to the extent of their abilities. While the middle generation is engaged in supporting the family, the grandparents assume responsibilities for many household tasks including care of infants and children.

Family members or extended family members often engage in a process involving the pooling together of material or physical resources for mutual gain. For example, family members contribute their collective efforts to activities where numerous workers are required (e.g., house building or repair, preparing for a luau). This system of assistance is rotational as contributions of family members will be reciprocated at some future point in time.

Economic changes have led to the nuclearization of the family; moving away from the traditional extended family mold. This change severs ties between grandparents, who are the proprietors of the culture, and children. The inability to transmit cultural knowledge between generations has significant implications for the perpetuation of the culture. Another major threat to traditional family functioning is an increase in cost-of-living which requires parents to spend more time

working and less time at home with their children, leads to chronic displacement of families who are unable to find adequate or affordable housing, and contributes to overall dissolution of the family system predisposing it to a series of internal problems (e.g., domestic violence, acting-out behaviors).

***Family Impacts***

The concept of family change and cohesion is critical in terms of analyzing the effects of social change on the family unit. The current status of families and changes associated with socioeconomic conditions provides useful information regarding those factors which buffer against family problems and those which contribute to the development of dysfunctional conditions. Objective and subjective measures can be used to examine family structure and attitudes. Objective measures include divorce rate, family size, rates of child-abuse and neglect, proximity of extended family members, etc.

## **FAMILY RECEPTORS AND IMPACTS**

### ***Receptors***

### ***Impacts***

#### **Family Structure**

`Ohana Family System (structure, function, dynamics, roles)

- Change in extended/`ohana family system (e.g., increase in nuclear families, single-parent families)
- Change in marital status (e.g., increase in divorce, widowhood, isolation of individuals)
- Household composition, change in number of families per household
- Imbalanced age distribution (e.g., more children under 18 or more adults per/household, isolation of elderly)
- Gender composition, imbalanced gender ratio (e.g., more women per/household)

#### **Employment status of adult family members**

- Increased employment, unemployment or under-employment
- Change in employment status (e.g., increased seasonal and part-time employment, increased dependency on public assistance, decline in subsistence resources)
- Change in amount of gross family income and or subsistence resources
- Change in levels of cost-of-living in relation to family income
- Change in income discrepancy between community levels and that of larger systems (e.g., county, state, nation)

- Number of family and relatives living in community
- Change in number of relatives living within close proximity and kinship patterns
  - Change in types and levels of socio-emotional support: Food, resource sharing, advice sharing, child-care rearing, elderly care, kōkua labor, Hānai children

**Family Stability and Well-Being**

- Housing status and satisfaction levels
- Intergenerational conflicts (e.g., differential acculturation), change in quality of exchange between children, parents, grandparents
- Departure/retention of youth, increased retention or out-migration of youth
- Housing situation, increased home-ownership, renting or homelessness
- Increased rates of incest/child sexual-abuse
- Change in rate of teen-pregnancy
- Youth psychosocial problems, change in rate of mental health and delinquency among youth

**Family Culture and Values**

Transmission of cultural values, practices and knowledge: ability to transmit values related to family cohesion and continuity, ability to pass on land to next generation, ability to care for elders

Role prescriptions: ability to sustain traditional role expectations and performances

Prospective norms: ability to sustain traditional enforcement measures encouraging behavior conformance to family rules and standards

Identity (e.g., collective/family vs. individual)

- Change in general patterns and practices related to child-rearing which ultimately lead to changing values and personality, land dispossession and loss of burial family grounds/sites

- Change from a collective/family orientation to an individualistic identity

### **8.3.3 Community**

#### ***Community Receptors***

The rural, multi-cultural character of communities has persisted in Hawai'i, especially in rural areas removed from changes associated with urban development. Residents engage in subsistence activities as a means to a supplementary food source. They rely upon fishing and gathering from shoreline and offshore areas rich in marine resources and hunt the forested upland regions in order to provide meat for their families. These activities also comprise a major form of recreation, cultivate a sense of environmental kinship, and engender an active network of sharing and exchange between households in the community, both within extended families and between neighbors.

Extended families and neighbors share in childrearing and exchange labor to help each other on household projects. Long-term residents generally know everyone in the district. They experience a strong sense of community cohesion and security related to their children and property. Recreational activities revolve around the family and are largely oriented toward the outdoors and nature. Given the rural and agrarian character of the community, the lifestyle and livelihood of the community are interconnected with and reliant upon natural resource of the district.

Communities are generally represented by an area or location with distinct physiographic characteristics. Rural Hawai'i communities exist mauka (inland or towards the mountain) or makai (by the ocean). They are comprised of residential areas, major thoroughfares, and town centers which include commercial (e.g., businesses) and government (e.g., police station) establishments. Commercial areas are comprised of family-run businesses which tend to be gathering places for local people. This is a critical function underlying the well-being of communities. Gathering places benefit local people because they provide an informal social context where individuals can engage in specific activities (e.g., dining, shopping) while greeting friends, exchanging information, and learning about community events.

Social patterns, organizations, institutions, and physical qualities of rural communities are symbols or defining principles that contribute to a collective sense of identity. Far more subtle, but equally important kinds of qualities include sights, sounds, smells, and mood. These unique attributes draw people together through common experiences associated with a place.

**Community Impacts**

The health of a community can be inferred from a variety of indicators including economic well-being, level of crime, satisfaction with services, degree of organizational and political participation by residents, and perceptions of the degree of control a community has over its future. Community health and cohesion can be measured through residential perceptions related to employment-economics, stability and demographic turnover, resident identity and commitment to the community, social problems within the community (e.g., crime), and the adequacy of community services and facilities (e.g., infrastructural resources). Objective measures can also be used to quantify community experiences or phenomenon (e.g., employment rates, cost of living, crime statistics) and civic activities (e.g., membership in community organizations and degree of civic participation).

**COMMUNITY RECEPTORS AND IMPACTS**

***Receptors***

***Impacts***

**Composition of Community Population**

- Change in multicultural balance/percent leading to greater cultural homogeneity (resembling American continent), decreased diversity

Mix based on historical immigration patterns and Hawaiian population base leading to an emergence of a unique rural culture

**Activity Nodes/Interchange**

- Alteration or loss of activity nodes/interchange

Traditional gathering places/social centers that are critical to exchange and community cohesion

**Infrastructure**

Refers to carrying capacity of utilities, public and human services, resource yields for population existing within prescribed geographic parameters

- Change in adequacy of infrastructure to accommodate community needs related to quality

**Population size/population density rings and distribution**

- Change in population size, distribution/nodes, in relation to multiculturalism, infrastructure, etc

**Demographic Characteristics**

(e.g., ethnic/racial, age, gender, income, educational level)

- Change in demographic characteristics of a community which correlates with changing values

**Community Lifecycle and Continuity**

- Disruption in the natural course of community development, continuity, and family permanence

**Lifestyle**

- Change in activities and attributes that constitute lifestyle

Economic Sustainability: vitality of economy, replacement economy

Pace: generally implies increased rate which correlates with stress

Recreation: levels, preferences, interference with traditional forms, less discretionary time

Subsistence: levels, degree of necessity/preference, interference with traditional areas/resources

Friendship/Socializing Patterns: friendship/socializing patterns (e.g., expanding pool of friends), socioemotional supports, time availability

Values: values related to internal factors (e.g., in-migration) or infusion related to changing societal values (e.g., impact of the media)

Neighborliness/Cohesion: cohesion as measured by identity, exchange and interaction

Social Well-Being: refers to general quality of community life

**Social Well-Being Impacts**

- Change in the general level of community satisfaction
- Increase/decrease in rate, type, and severity of crimes
- Increase/decrease in rates of abuse and type of substance (i.e. drugs and alcohol; its influence of behavior and related problems (e.g., crime)
- Change in rate, patterns, and severity of domestic violence; family and community response
- Change in educational achievement and aptitude; delinquency (e.g., substance abuse, crime, status offense); socioemotional issues/family supports; educational, employment, and recreational opportunities
- Change in status and welfare of elderly; socioemotional issues/family supports; mental health; access to program facilities and health care; social and recreational opportunities
- Change in cohesion; degree of social/racial integration or conflict; vandalism and property crime

Religious institutions

- Change in significance of churches in terms of number, attendance, decision-making power, and promotion of values

Community events/activities (e.g., annual celebrations)

- Change in number and types of events/activities, participation rates and volunteerism, community-based preparation vs. corporate sponsorship

Community organizations/clubs (e.g., culture, business, recreation)

- Change in number and types of organizations/clubs, participation rates, relevance to traditional and contemporary conditions, decision-making power

- |  |  |
|--|--|
| Community participation (e.g., types, degree)        | • Availability and interest in community affairs; extending interest or volunteerism into greater levels of involvement, security of involvement/ freedom of participation |
| Community services (e.g., health and human services) | • Change in quality (e.g., resources, access, range, and availability) of services   |
| Community identity/pride                             | • Change in levels of community identity, personal sense of connection and pride tied to a particular locale; related to genealogical and intergenerational ties           |

### **8.3.4 Human Well Being and Spirituality**

#### ***Receptors of Human Well-Being and Spirituality***

Cultural health is bound to traditional aspects of human well-being and spirituality. Hawaiian cosmology, traditional values and beliefs influence a Hawaiian world view and modes of interpersonal behavior and dynamics. The etiology of disease and health problems can be analyzed in relation to lifestyle and environmental factors which effect the Hawaiian sense of self and contribute to a collective loss of cultural direction.

Hawaiian values are related to beliefs of a sacred animate and inanimate natural world, an interdependence between people, nature and gods and deities, the protection and conservation of natural resources, use and share of resources among people, cooperation and cultural affiliation among people, centrality of the extended family, and spiritual guidance and ritual observance.

Cultural, physical, and mental health can be studied using conceptual models that focus on risk, stress, and responses by individuals, families, and communities within an ecological context.

#### ***Impacts***

Cultural health can be generally assessed by examining social and health indicators. In the case of Hawaiians, they are overrepresented in numerous health, mental health, and social problem categories. Cause and effect dynamics are sometimes difficult to distinguish because they may be confounded by numerous factors. Despite the difficulty in isolating relationships between factors/variables, it is generally agreed that there is a strong correlation between the health and integrity of the culture and the well-being of the people. At the root of well-being for many Hawaiians is a spirituality cultivated from environmental kinship, ceremony, and communion. Disruption or diminishment of spirituality predisposes Hawaiians to a host of health problems.

## **HUMAN WELL-BEING AND SPIRITUALITY RECEPTORS AND IMPACTS**

### ***Receptors***

#### **Human Body/Physical Health**

Heart disease

Cancer

Accidents and adverse effects

Cerebrovascular diseases

Diabetes

Conditions originating from perinatal conditions

Pneumonia and influenza

Congenital anomalies

Circulatory diseases

Infectious and parasitic diseases

### ***Impacts***

- Change in incidence of disease in relation to demographic qualities (proportion of group afflicted relative to general population), locale, mortality, trends over time, access to medical care, prevention.

**Human Psyche/Mental Health**

Depression  
Anxiety/Hypertension  
Schizophrenia  
Somatic disorders  
Obsessive compulsive disorder  
Paranoia  
Suicide

- Change in incidence of problem/disorder in relation to demographic qualities (proportion of group afflicted relative to general population), severity, locale, trends over time, access to appropriate treatment, prevention.

**Stress**

Drug and alcohol abuse  
Domestic problems (e.g., spouse/child abuse, family discord/break-up).

**Spirituality**

Church Attendance/Participation  
Religious Ceremonies  
Ho`okupu  
Hula  
Prayer/Chant  
Communing With Nature

- Change in frequency and type of spiritual/religious activity or behavior; access to areas and resources required for ceremonies; continuity of beliefs/activities; significance of nature in relation to spirituality and well-being; decline in manifestations (kinolau), and places of worship to experience spiritual phenomenon (churches/nature).

**Quality of Life/Well Being**

- Change in the general attitudes related to quality of life, life satisfaction, well-being.

### **8.3.5 Hawaiian Subsistence, Cultural, and Religious Beliefs, Customs and Practices**

Hawaiian custom and practice encompasses the full range of traditional, subsistence, cultural, and religious, activities. Hawaiian `ohana or extended families have engaged in for many centuries to live as a people and survive in a unique island environment. There are customs and practices related to each major aspect of Hawaiian lifestyle and livelihood including: (1) community life; (2) family; (3) human well-being and spirituality; (4) stewardship and use of natural and cultural resources; (5) rights; and (6) economics.

The National Register Bulletin #38 "Guidelines for Evaluating and Documenting Traditional Cultural Properties" is instructive in defining traditional culture and the associated traditional cultural properties. It defines culture as the traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of a community. According to the National Register Bulletin, the concept of traditional cultural properties refers to those beliefs, customs, and practices of a living community of people that are associated with natural resources and prehistoric or historic sites. These aspects of culture have been passed down through the generations, usually orally or through practice. According to the bulletin, properties to which traditional cultural value is ascribed often take on a vital significance, so that any damage to or infringement upon them is perceived to be deeply offensive to, and even destructive of the group that values them.

The Governor's Task Force on Moloka`i Fishpond Restoration and the Governor's Moloka`i Subsistence Task Force developed a useful definition of subsistence. According to these task forces, subsistence is the customary and traditional uses of wild and cultivated renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, transportation, culture, religion, and medicine; for barter, or sharing, for personal or family consumption and for customary trade.

**Land and Natural Elements -  
The Foundation of Hawaiian Subsistence, Culture, and Religion**<sup>1</sup>

TO HAWAIIANS, THE LAND AND NATURAL ELEMENTS ARE THE FOUNDATION OF SUBSISTENCE, CULTURAL AND RELIGIOUS BELIEF, CUSTOM, AND PRACTICE. The land and the natural environment is alive, respected, treasured, praised, and even worshipped. The land is one Hānau, sands of birth, and kulaīwi, resting place of ancestral bones. The land lives as do the `uhane, or spirits of family ancestors who nurtured both physical and spiritual relationships with the land. The land has provided for generations of Hawaiians, and will provide for those yet to come.

When Hawaiians live on and work the land, they become knowledgeable of the life of the land. In daily activities, they develop a partnership with the land so as to know when to plant, fish, or heal the mind and body according to the ever changing weather, seasons and moons. Hawaiians acknowledge the `aumākua and akua, the ancestral spirits and gods of special areas. They even make offerings to them. They learn the many personalities of the land, its form, character and resources and name its features as they do their own children.

Hawaiian subsistence practitioners speak of their cultural and spiritual relation to the lands of their region and their commitment to take care of it and protect it for future generations. The land is not viewed as a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians. They trace their lineage to the lands in the region as being originally settled by their ancestors. The land is a part of their `ohana and they care for it as they do the other living members of their families.

**Hawaiian Stewardship and Use of Natural and Cultural Resources**

There are certain basic principles of Hawaiian stewardship and use of natural and cultural resources which are relevant in identifying Hawaiian externalities. Five of these are discussed below.

First, the ahupua`a is the basic unit of Hawaiian natural and cultural resource management. An ahupua`a runs from the sea to the mountains and contains a sea fishery and beach, a stretch of kula or open cultivable land and higher up, the forest. The court of the Hawaiian Kingdom described the ahupua`a principle of land use in the case *In Re Boundaries of Pūlehunui*, 4 Hawa. 239, 241 (1879) as follows:

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<sup>1</sup> This section is an excerpt from - Aluli, Noa Emmett, M.D. 1988. "Land Issues Are Integral Part of Life: Aloha 'Aina is More Than Popular Slogan," Star-Bulletin Ho'olako Year of the Hawaiian Progress Edition. Alto, New Mexico: C.F. Boone Publishing Col. 25.

A principle very largely obtaining in these divisions of territory [ahupua`a] was that a land should run from the sea to the mountains, thus affording to the chief and his people a fishery residence at the warm seaside, together with products of the high lands, such as fuel, canoe timber, mountain birds, and the right of way to the same, and all the varied products of the intermediate land as might be suitable to the soil and climate of the different altitudes from sea soil to mountainside or top.

Second, the natural elements - land, air, water, ocean - are interconnected and interdependent. The atmosphere affects the lands which, in turn, affects running streams, the water table and the beaches and ocean. Cultural land use management must take all aspects of the natural environment into account.

Hawaiians consider the land and ocean to be integrally united and that these land sections also include the shoreline as well as inshore and offshore ocean areas such as fishponds, reefs, channels, and deep sea fishing grounds. Coastal shrines called fishing ko`a were constructed and maintained as markers for the offshore fishing grounds that were part of that ahupua`a.<sup>2</sup>

Third, of all the natural elements, fresh water is the most important for life and needs to be considered in every aspect of land use and planning. The Hawaiian word for water is wai and the Hawaiian word for wealth is waiwai, indicating that water is the source of well-being and wealth.

Fourth, Hawaiian ancestors studied the land and the natural elements and became very familiar with its features and assets. Ancestral knowledge of the land was recorded and passed down through place names, chants and legends which name the winds, rains, and features of a particular district. Hawaiians applied their expert knowledge of the natural environment in constructing their homes, temples, cultivation complexes and irrigation networks. Hawaiian place names, chants, and legends inform Hawaiians and others who know the traditions of the cultural and natural resources of a particular district. Insights about the natural and cultural resources inform those who use the land about how to locate and construct structures and infrastructure so as to have the least negative impact upon the land.

This ancestral knowledge about the land and its resource is reinforced through continued subsistence practices. While traveling to the various `ili or sections of the traditional cultural practices region through dirt roads and trails, and along spring fed streams, and the shoreline, practitioners continuously renew their cultural knowledge and understanding of the landscape, the place names, names of the winds and the rains, traditional legends, wahi pana, historical cultural sites,

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<sup>2</sup> At Kala`e, South Point on the island of Hawai'i a fishing ko'a marks an fishing ground which is 8 miles from the shoreline.

and the location of various native plants and animals. The practitioners are sensitive to the condition of the landscape and the resources and their changes due to seasonal and life cycle transformations. This orientation is critical to the preservation of the natural and cultural landscape.

Fifth, an inherent aspect of Hawaiian stewardship and use of cultural and natural resources is the practice of malama `āina or conservation to ensure the sustainability of natural resources for present and future generations. These rules of behavior are tied to cultural beliefs and values regarding respect of the `āina, the virtue of sharing and not taking too much, and a holistic perspective of organisms and ecosystems that emphasizes balance and coexistence. The Hawaiian outlook which shapes these customs and practices is lokahi or maintaining spiritual, cultural and natural balance with the elemental life forces of nature.

Hawaiian families who rely upon subsistence for a primary part of their diet respect and care for their surrounding natural resources. They only use and take what is needed in order to allow the natural resources to reproduce. They share what is gathered with family and neighbors. Through understanding the life cycle of the various natural resources, how changes in the moon phase and the wet and dry seasons affect the abundance and distribution of the resources, the subsistence practitioners are able to plan and adjust their activities and keep the resources healthy. Such knowledge has been passed down from generation to generation through working side-by-side with their kūpuna or elders.

***Receptors for Hawaiian Subsistence, Cultural, and Religious Beliefs, Customs, and Practices:***

***Natural and Cultural Resources of the Land, Ocean, Air and Water***

Hawaiians subsistence, cultural, and religious beliefs, customs, and practices include, cultivation of taro and other plants used for food, structures, implements, medicine, adornment, ceremonies and rituals, clothing, cooking, fuel, mulching; mauka (upland) gathering; makai (shoreline and reefs) gathering; stream gathering; hula; spiritual practices; lā`au lapa`au or healing practices; weaving; carving; beating of bark cloth; lei making; swimming; surfing; experience hō`ailona or natural phenomena which convey a spiritual message etc. All of these activities are dependent upon having access to and being able to care for and use natural and cultural resources of the land, ocean, air, and water. Therefore, the receptors for Hawaiian subsistence, cultural, and religious beliefs, customs, and practices are the natural and cultural resources of the land, ocean, air, and water. These include the following:

1. Wahi Pana: These are sacred sites such as heiau, shrines, sacred pohaku or stones; burial caves and graves, geographic features, and natural resources associated with deities and significant natural, cultural, spiritual or

historical phenomenon or events. Edward Kanahale offered the following description of wahi pana in the introduction to *Ancient Sites of O`ahu* by Van James (1991):

The gods and their disciples specified places that were sacred. The inventory of sacred places in Hawai`i includes the dwelling places of the gods, the dwelling places of venerable disciples, temples, and shrines, as well as selected observation points, cliffs, mounds, mountains, weather phenomena, forests, and volcanoes.

2. Streams, Springs, Ponds: These waters are important as habitats for native species of marine life, for taro cultivation, for domestic uses, for conducting cultural and spiritual customs, and for recreation.
3. Shorelines, Reefs, Fishponds, Nearshore and Offshore Ocean: These areas are important for gathering of foods, medicine and for conducting cultural and spiritual customs, and for recreation.
4. Forests: Forests are important for hunting pigs and other animals; for gathering plants used for medicine, foods, ceremonial adornment, ritual offerings, for the conduct of spiritual customs, and for recreation.
5. Domains of `Aumākua or Ancestral Deities: Particular natural and cultural areas are important as traditional domains of `aumākua or ancestral spirits and deities, where Hawaiians renew their ties to ancestors through experiencing natural phenomena and witnessing ho`ailona or natural signs.
6. Resources which Embody a Hawaiian Deity: Hawaiian deities are the elemental forms of nature. Certain resources are believed to be manifestations of the deities. For example, the volcano, its steam, the active eruption, the flowing lava, and earthquakes are believed to be manifestations of the Hawaiian deity Pele.
7. Archaeological and Historic Sites: Natural places have mana or spiritual power, and are sacred because of the presence of the gods, the akua, and the ancestral guardian spirits, the `aumākua. Major gods manifest themselves in natural phenomena, such as the rain and the clouds, or in certain localities. The gods kino lau or body forms include plants and animals. Human-made structures for the Hawaiian religion and family religious practices are also sacred. These structures and places include temples and shrines or heiau for war, peace, agriculture, fishing, healing, etc.; pu`uhonua, the places of refuge and sanctuaries for healing and rebirth; agricultural sites and sites of food production such as the lo`i pond fields and terraced slopes, `auwai irrigation ditches, and fishponds; and special function sites such as trails, salt pans, hōlua slides, quarries, petroglyphs, gaming sites and canoe landings.

8. Areas of Taro Cultivation - a taro landscape is designed as a single system with interrelated elements (fields, streams and `auwai).
9. Other Areas of Cultivation - areas used for the cultivation plants used for food, medicine, adornment, ornament, implements, cooking, fuel, mulching, ceremony, etc.
10. Circulation Networks Including Trails and Dirt Roads - over land, these include trails and roads for lateral access and for mauka to makai access. Most islands have a round-the-island trail affording lateral access between ahupua`a. Trails and roads affording access to the various resource zones within an ahupua`a were also important. These include bridges. By ocean, these include landings, piers, and harbors.
11. Buildings, structures, non-structural facilities, objects - these include residences, churches, schools, camp grounds, parks, storage and work staging baseyards; gardens; water catchments, etc.
12. Clusters - groupings of structures
13. Internal Boundaries - roads, irrigation features, streams, cliffs, ridgelines, pu`u or hills, fencing, walls.
14. Irrigation Ditch System - where ditches have been constructed on the various islands, they comprise major features and complexes including tunnels, ditches, aqueducts, and roads.
15. Open Areas - lands that have no structures and are not under cultivation which act as buffers between settlements and uses. They function to maintain and define density and characteristic spatial patterns.
16. Viewing points and view sheds - places that offer significant and panoramic views of the community and the surrounding landscape. For visitors they function as scenic lookouts, affording a more holistic perspective on the land. For the local community, they may represent landmarks offering reference points for direction or orientation and occasionally meeting places in times of emergency.

**Assessment of Impacts**

An impact would be any change in the condition, integrity, access to, or usability, boundaries and buffers, ownership, quality of experience of a natural or cultural resource. In turn, these changes would also affect the exercise of a Hawaiian belief, custom, or practice.

The assessment of impacts would need to take into account the interdependence and cumulative effects of development impacts on natural and cultural resources and on the perpetuation of traditional Hawaiian customs and practices as it is lived.

**CULTURAL & NATURAL RESOURCES FOR SUBSISTENCE, CULTURAL, AND SPIRITUAL BELIEFS, CUSTOMS AND PRACTICES RECEPTORS AND IMPACTS**

***Receptors***

***Impacts***

**Wahi Pana**

Heiau

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

- |  |   |
|--|---|
| Shrines  | <ul style="list-style-type: none"><li>• Change in condition</li><li>• Change in integrity</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in access</li><li>• Change in boundaries</li><li>• Change in ownership</li><li>• Change in quality of experience</li></ul> |
| Ko`a Shrines and Associated Fishing Grounds in the Ocean | <ul style="list-style-type: none"><li>• Change in condition</li><li>• Change in integrity</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in access</li><li>• Change in boundaries</li><li>• Change in ownership</li><li>• Change in quality of experience</li></ul> |
| Named Landscape Features                                 | <ul style="list-style-type: none"><li>• Change in condition</li><li>• Change in integrity</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in access</li><li>• Change in boundaries</li><li>• Change in ownership</li><li>• Change in quality of experience</li></ul> |

Sacred Pōhaku

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Geographic Features Associated as Domain or Kino Lau (body form) of a Deity

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Natural Resources Associated With or Constituting a Manifestation or Body form of a Deity

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Places to Experience Hō`ailona  
or Natural Phenomena Which  
Convey Spiritual Messages

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

**Archaeological and Historic Sites**

Pu`uhonua

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Agricultural Sites

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

House Sites

- Change in condition
- Change in integrity
- Change in use
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Salt Pans

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Hōlua Slides

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Quarries

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Gaming Sites

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Canoe Landings

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Petroglyphs, etc.

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

**Streams**

- Change in condition, e.g. temperature, depth, flow, amount, eutrophication
- Change in quality
- Change in course
- Change in features such as waterfalls, pools
- Change in access
- Change in use - e.g. drinking, fishing, bathing, washing, swimming, irrigation
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in aquatic resources
- Change in access or availability

**Streamlife**

- Change in species, amount, size
- Change in reproductive cycle
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in quality

**Springs**

- Change in amount of water, temperature, depth, flow
- Change in quality
- Change in aquatic resources
- Change in course
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

**Ponds**

- Change in amount of water, temperature, depth, flow
- Change in quality
- Change in aquatic resources
- Change in course
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

**Wetlands**

- Change in amount of water, temperature, depth
- Change in quality
- Change in aquatic resources
- Change in birdlife
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

**Marine Resources**

- |           |  |
|-----------|--|
| Shoreline | <ul style="list-style-type: none"><li>• Change in landscape features</li><li>• Change in quality</li><li>• Change in fauna</li><li>• Change in flora</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in access</li><li>• Change in usability</li></ul>  |
| Nearshore | <ul style="list-style-type: none"><li>• Change in condition - e.g. temperature, salinity, depth, shorebreak, currents</li><li>• Change in aquatic resources</li><li>• Change in access</li><li>• Change in quality</li><li>• Change in use - e.g. swimming, surfing, fishing, gathering</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in availability</li></ul> |
| Fishponds | <ul style="list-style-type: none"><li>• Change in condition - e.g. temperature, salinity, depth,</li><li>• Change in integrity</li><li>• Change in aquatic resources</li><li>• Change in access</li><li>• Change in quality</li><li>• Change in ownership</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in availability</li></ul>       |

- |                       |  |
|-----------------------|--|
| Barrier Reef & Lagoon | <ul style="list-style-type: none"><li>• Change in condition</li><li>• Change in aquatic resources</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in access</li><li>• Change in quality</li></ul> |
| Fringing Reef         | <ul style="list-style-type: none"><li>• Change in condition</li><li>• Change in aquatic resources</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in access</li><li>• Change in quality</li></ul> |
| Offshore              | <ul style="list-style-type: none"><li>• Change in condition</li><li>• Change in aquatic resources</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in access</li><li>• Change in quality</li></ul> |
| Channels              | <ul style="list-style-type: none"><li>• Change in condition</li><li>• Change in aquatic resources</li><li>• Change in use</li><li>• Change in use for traditional &amp; customary subsistence, cultural, &amp; religious purposes</li><li>• Change in access</li><li>• Change in quality</li></ul> |

Bays

- Change in condition
- Change in aquatic resources
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in quality

River Mouths / Estuaries

- Change in condition
- Change in aquatic resources
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in quality

**Dunes**

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

**Forests**

- Change in condition
- Change in integrity
- Change in species
- Change in biodiversity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership
- Change in quality of experience

Trees

- Change in species
- Change in biodiversity
- Change in condition, e.g. height, density, age, fruits and flowers
- Change in access
- Change in ownership
- Change in quality of experience
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

Plants

- Change in species
- Change in biodiversity
- Change in condition, e.g. height, density, age, fruits, and flowers
- Change in access
- Change in ownership
- Change in quality of experience
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

Game for Hunting: Pigs, Deer, Sheep, Goats, Wild Cattle, Birds

- Change in condition - number, size, age, gender, weight,
- Change in species
- Change in locality
- Change in access
- Change in ownership
- Change in quality of experience
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

**Trails, Dirt Roads, Bridges**

- Change in access
- Change in ownership
- Change in quality of experience
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

**Landings, Piers, Harbors**

- Change in access
- Change in ownership
- Change in condition
- Change in use
- Change in usability

**Taro Cultivation Areas**

Pond Fields

- Change in condition - size, acreage,
- Change in quality
- Change in water availability, amount, temperature, flow, quality
- Change in ownership
- Change in access
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

`Auwai System

- Change in condition - length, growth of plants and bushes,
- Change in course
- change in water availability, amount, temperature, flow, quality
- Change in ownership
- Change in access
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

**Other Cultivation Areas**

- Change in condition - size, acreage,
- Change in quality
- Change in water availability, amount, temperature, flow, quality
- Change in ownership
- Change in access
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

**Former Cultivation Areas**

- Change in condition - vegetation, terracing, walls
- Change in integrity
- Change in water availability, amount, temperature, flow, quality
- Change in ownership
- Change in access
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes

**Irrigation Ditch System**

- Change in condition - length, growth of plants and bushes,
- Change in course
- Change in water availability, amount, temperature, flow, quality
- Change in ownership
- Change in access
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in usability

**Buildings and Structures**

Residences

- Change in density
- Change in spatial patterns
- Change in ownership
- Change in design

Churches

- Change in location
- Change in condition

Schools

- Change in location
- Change in condition
- Change in demography

Parks, Camp Grounds

- Change in condition
- Change in access
- Change in ownership or management
- Change in use for traditional & customary subsistence, cultural, & religious purposes

Gardens/Arboretums

- Change in condition
- Change in access
- Change in ownership or management
- Change in use for traditional & customary subsistence, cultural, & religious purposes

**Cemeteries & Burial Grounds**

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership

**Internal Boundaries**

Ridgelines & Pu`u

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes

Walls and Fences

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes

**Ahupua`a Contiguity/Integrity**

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership

**Open Areas**

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership

**View Points, Vistas, View Sheds**

- Change in condition
- Change in integrity
- Change in use
- Change in use for traditional & customary subsistence, cultural, & religious purposes
- Change in access
- Change in boundaries
- Change in ownership

**8.3.6 Hawaiian Rights**

The indigenous Hawaiian people, unlike Native Americans, Aleuts, and Eskimos, are not yet recognized as a nation by the United States government. Nevertheless, Congress has included Hawaiians in the definition of Native Americans in federal legislation which recognizes the distinct social condition and cultural beliefs, customs and practices of indigenous peoples within the United States. The definition currently being used in Congress for "Native Hawaiian" is, "any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i." It is significant to note that in November Congress passed and President Bill Clinton signed into law a joint resolution, P.L. 103-150 which offered a formal and official apology to the Native Hawaiian people for the role of the U.S. in the illegal overthrow of the Hawaiian monarchy on January 17, 1893.

In the absence of a national government, `Ohana (extended family) networks survive as the primary traditional social unit of organization, particularly in rural Hawaiian communities. Traditional and customary rights of Hawaiians are rooted in the customs, practices and rights of the original and still primary social unit of the Hawaiian people, the `Ohana.

**Hawai`i State Law**

In order to protect the indigenous Hawaiian culture for future generations, the Hawai`i State Constitution and the Hawai`i Revised Statutes reaffirm the state's responsibility to protect Hawaiian rights. Infringements upon these rights are illegal.

The following are applicable sections of state law:

Article XII of the Hawai`i State Constitution deals with Hawaiian Affairs. Section 7 states:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights."

The Hawai`i Revised Statutes, Chapter 7-1 defines rights of the people which were established in 1850 when Kuleana Act granted private property parcels to the common people:

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.

The Hawai`i Revised Statutes, Chapter 1-1 Common Law & Hawaiian Usage reads as follows:

The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawai`i in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State.

The notes included in the Hawai`i Revised Statutes regarding this section provide crucial clarifications and conditions accepted by the Supreme Court regarding "Hawaiian usage" rights. These are:

- (1) "Hawaiian usage" must predate November 25, 1892. (58 H. 106, 566 P. 2d 725.)
- (2) Where practices have, without harm to anyone, been continued, reference to Hawaiian usage in this section insures their continuance for so long as no actual harm is done thereby. Retention of a Hawaiian tradition should in each case be determined by balancing respective interests and harm once it is established that application of the custom has continued in a particular area. (66 H. 1, 656 P. 2d 745.)

Chapter 174C - 101 of the Hawai`i Revised Statutes deals with conservation and resources. Part (c) reads as follows:

(c) Traditional and customary rights of ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hīhīwai, `ōpae, `o`opu, limu, thatch, t`i leaf, aho cord, and medicinal plants for subsistence, cultural and religious purposes.

The Hawai`i Revised Statutes, Chapter 6E defines how prehistoric burial sites must be treated. Under the law, before a proposed project which may affect unmarked prehistoric or historic Hawaiian burials *commences*, the Department of Land and Natural Resources (DLNR) must be notified, allowed to review, comment and concur. This includes development of a burial treatment plan that must be approved by the appropriate island burial council. After referral, the council shall have 30 days to make a determination whether to approve the burial treatment plan.

### ***Hawai`i State Supreme Court***

The Hawai`i State Supreme Court first dealt with the subject of Hawaiian gathering rights in *Kalipi v. Hawaiian Trust Co.*, (66 Haw. 1, 656 P. 2d 745 (1982)).<sup>3</sup> In that case, the Supreme Court held that such gathering rights are derived from the three sources discussed above, HRS 7-1 and 1-1 (1985) and Article XII, Section 7 of the Hawai`i State Constitution. In *Kalipi*, the Supreme Court held that lawful residents of an ahupua`a may, for the purposes of practicing Hawaiian customs and traditions, enter undeveloped lands within the ahupua`a to gather the items enumerated in HRS 7-1. However, those rights are limited to the five items enumerated in HRS 7 - 1, i.e. firewood, house-timber, aho cord, thatch, and kī leaf. The

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<sup>3</sup> This summary of the actions of the Hawai`i State Supreme Court regarding Native Hawaiian gathering and access rights is taken from the Opinion of the Intermediate Court of Appeals of the State of Hawai`i. January 28, 1993. No. 15460 in Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission, Civ. No. 90 - 293K, Judges Burns, C.J., Heen, and Watanabe, J.J., hereinafter referred to as the PASH ruling.

Supreme Court also held that it is obligated "to preserve and enforce such traditional rights" under Article XII, Section 7 (66 Haw. at 4, 656 P. 2d at 748). The *Kalipi* court further stated that HRS 1-1 ensures the continuation of other Hawaiian customs and traditions not specifically enumerated in HRS 7 - 1 that may have been practiced in certain ahupua`a "for so long as no actual harm is done thereby." It noted, "The retention of a Hawaiian tradition should in each case be determined by balancing the respective interests and harm once it is established that the application of the custom has continued in a particular area." (Id. at 10, 656 P. 2d at 751).

The Supreme Court again ruled on Hawaiian gathering rights in the case of *Pele Defense Fund v. Paty*, (73 Haw. 578, 837 P.2d 1246, 1992). In this case, the Supreme Court further expanded the rights established in *Kalipi*.<sup>4</sup> In *Pele*, the Supreme Court explained that, although in *Kalipi* it had recognized the gathering rights of Hawaiians under HRS 7 - 1, *Kalipi* allowed only the residents of an ahupua`a to exercise those rights on undeveloped lands within the ahupua`a. However, based on the record of the Constitutional Convention of 1978 which promulgated Article XII, Section 7, the Supreme Court held in *Pele* that the provision should not be narrowly construed. Accordingly, in *Pele* the Supreme Court held that "Native Hawaiian rights protected by Article XII, Section 7, may extend beyond the ahupua`a in which a Hawaiian resides where such rights have been customarily and traditionally exercised in this manner." (73 Haw. at 620, 837 P. 2d at 1272).

In 1993, the Hawai`i State Intermediate Court of Appeals reviewed and made a ruling on Hawaiian gathering rights in Public Access Shoreline Hawai`i (PASH) v. Hawai`i County Planning Commission ( No. 15460, Civ. No. 90-293K). The Intermediate Court of Appeals ruled that Article XII, Section 7 imposes on a government agency the same obligation to preserve and protect Hawaiian rights as it does on the court. It also took up the issue of what happens to Hawaiian gathering rights when development occurs in the area used for gathering. *Kalipi* and *Pele* only guaranteed access to undeveloped lands and did not require that any land be held in their natural state for the exercise of Hawaiian rights.<sup>5</sup> The court further noted that *Kalipi* and *Pele* did not discuss the question of what happens to those gathering rights in a situation where the property owner wishes to develop his property. Therefore, the Intermediate Court went a step further

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<sup>4</sup> PASH ruling, p. 10.

<sup>5</sup> In *Pele*, 73 Haw. at 621 n. 36, 837 P. 2d at 1272 n. 36. The *Kalipi* court noted: "The requirement that these rights be exercised on undeveloped land is not, of course, found within the statute. However, if this limitation were not imposed, there would be nothing to prevent residents from going anywhere within the ahupua'a, including fully developed property, to gather the enumerated items. In the context of our current culture this result would so conflict with understandings of property, and potentially lead to such disruption, that we could not consider it anything short of absurd and therefore other than that which was intended by the statute's framers. 1982. *Kalipi v. Hawaiian Trust Co.*, 66 Haw. 1, 8, 656 P.2d 745, 750.

and made the following ruling, "It is our view, in light of Article XII, Section 7, that all government agencies undertaking or approving development of undeveloped land are required to determine if Hawaiian gathering rights have been customarily and traditionally practiced on the land in question and explore the possibilities for preserving them." The court stated that on remand, it may be possible for the Hawai'i County Planning Commission to impose some reasonable conditions on the permit to protect the Hawaiian rights where those conditions would not cause actual harm. It qualified this by adding in a footnote that the Commission is not compelled to do so, since the property will no longer be undeveloped lands.<sup>6</sup> In 1995, the Hawai'i State Supreme Court issued an opinion which upheld the ruling of the Intermediate Court of Appeals.

### **Access Rights**

Ancient Hawaiian ahupua`a tenants needed access to the mountains and sea and along shorelines in order to fish, gather, cultivate crops and to communicate with neighboring ahupua`a tenants. In general, there were two kinds of trails to meet these needs. One kind of trail ran vertically from the mountains to the sea and the other ran horizontally, mostly along the shorelines.<sup>7</sup> These shoreline trails are what the ancient Hawaiians used to move between ahupua`a districts.

Hawaiian ahupua`a tenants can assert constitutional claims to the use of ancient Hawaiian trails under Article XII, section 7 of the state constitution, which protects Hawaiian customary practices exercised for subsistence, cultural and religious purposes.<sup>8</sup> The use of ancient trails for these purposes, it can be argued, is an ancient Hawaiian custom protected by this constitutional provision.

In addition, section 7-1 of the Hawai'i Revised Statutes provides a right of way to ahupua`a tenants.<sup>9</sup> To date, this provision has been interpreted to entitle landlocked kuleana tenants a right-of-way by necessity if it can be shown that

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<sup>6</sup> PASH ruling, p. 13. Upon appeal to the Hawai'i State Supreme Court for certiorari review of the PASH ruling, the Supreme Court agreed to review three issues: (1) whether an agency is obligated to preserve and protect Native Hawaiian rights as is the court, (2) the criteria for assessing impacts on Native Hawaiian gathering rights, and (3) whether or not the condition on the property owner to protect Native Hawaiian gathering rights constitutes a "taking". The Supreme Court will render a ruling in late 1993.

<sup>7</sup> Native Hawaiian Legal Corp., *supra* note 5 at 212.

<sup>8</sup> Haw. Const. art. XII, sec. 7.

<sup>9</sup> State of Hawai'i. 1988. *Haw. Rev. Stat.*, sec. 7-1.

access to an ancient kuleana was originally by way of another kuleana, or that a right-of-way was established by ancient usage.<sup>10</sup>

Other common law theories granting rights of access besides those based on ancient usage and necessity are express dedications of right of way and the public trust doctrine in which lands belonging to the sovereign are held in trust for use by the public.<sup>11</sup> All these are common law theories in American jurisprudence, which Hawaiians can use to gain needed access to land or sea.

Early Hawai'i Supreme Court cases held that kuleana owners are entitled to access to their property under the English common law concept known as an easement. An easement to a kuleana parcel is either expressly or implied.

The public trust doctrine stems from the ancient English principle that all submerged and tidal lands are owed in fee by the king, but are held in trust for the common use of the people. Under this doctrine, all public lands and interests in land are held in trust by a state or municipality for the benefit of the people and must be preserved and maintained for public purposes. It has been used to: (1) lay public claim to navigable waters; (2) insure the public's right to take fish; (3) claim lava extensions as public land; (4) claim lands below the high reaches of the waves as a natural resource owned by the state in trust for the enjoyment of the public; and (5) declare that water is a resource which the state must manage for the common good. This doctrine may also be applicable to establish public ownership and the public's right to access along ancient Hawaiian trails. In adopting a private property system the king, in his sovereign capacity, retained his interests in all ancient trails and held such interests in trust for the benefit of the public.

Under the Highways Act of 1892, a trail became a public right-of-way under if it was either dedicated, surrendered, or abandoned to the government. Usually dedication was by deed from a private landowner to the government. Surrender or abandonment of a privately owned trail occurred when the owner exercised no act of ownership over the trail for a period of five years after the passage of this act. If there has been a dedication, surrender, or abandonment by the private owner, fee ownership of the trail vests in the government.

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<sup>10</sup> Haw. App. 387, 633. 1981. *Santos v. Perreira*: 2d 1118.

<sup>11</sup> Native Hawaiian Legal Corp., *supra* note 5 at 217.

The state legislature has established a statewide trail and access system in Hawai`i known as "Nā Ala Hele."<sup>12</sup> The access system is set up to inventory all trails and accesses in the state on both public and private lands. The system is administered by the department of land and natural resources (DLNR). The DLNR, however, can only regulate trails within its jurisdiction (i.e. public lands).<sup>13</sup> Thus, the fact that a trail or access on privately owned lands is designated a part of the Na Ala Hele does not mean that it is open to the public under this statute. However, this still does not prevent Hawaiians from asserting a constitutional right to use ancient trails and accesses for subsistence cultural and religious purposes under article XII, section 7 of the state constitution or under section 7-1 of the Hawai`i Revised Statutes.

### ***Hawaiian Fishing Rights***

If subsistence fishing is disrupted, the lifestyle of the families who rely upon the fishing for their diet will be negatively impacted. This will precipitate a chain of negative impacts for those families. Systemic change is likely to occur such as disruption of the `Ohana system of exchange and sharing of foods caught and gathered. The diet of the families would worsen. The standard of living would be negatively impacted by the increased cost of purchasing food, due to the lack of fish, seaweed, and other marine foods which are part of their regular diet. The inability to fish and gather marine foods regularly relied upon might impair the ability of the `Ohana(extended family) to celebrate life cycle events - baby lū`au, weddings or birthdays.

In ancient Hawai`i the right to fish in any given area of the sea depended upon rank. The "ali`i nui" or high chief of the island owned all the land and its adjacent fishing areas in his personal and sovereign capacity. He gave the chiefs under him, or "konohiki," the ahupua`a and their adjacent fisheries to manage. In return the konohiki paid tribute to the ali`i nui by giving him their oaths of allegiance and portions of bounties that the ahupua`a tenants under them harvested from the land and sea.<sup>14</sup>

As western influence grew during the 1800s, konohiki interests in fisheries were translated into terms compatible with the concept of private property. Eventually konohiki interests in fisheries became privatized and known in law as "konohiki fishing rights." The konohiki fishing area extended from the shoreline to the edge of the reef. Where there was no reef, the konohiki had a private fishing right that extended one mile seaward of the shore.<sup>15</sup>

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<sup>12</sup> State of Hawai`i. 1988. *Haw. Rev. Stat.* sec. 198D et. al.

<sup>13</sup> *Id.* sec 198D-10 (1988).

<sup>14</sup> Native Hawaiian Legal Corp.1991. *Native Hawaiian Rights Handbook*. Honolulu: 173.

<sup>15</sup>7. *Id.* at 174 - 175. Laws of 1845-46, ch. VI, art. V, sec. 8 (Kingdom of Hawai`i), Thurston, L. 1904. *The Fundamental Law of Hawaii* 21.

Traditionally, the tenants of an ahupua`a shared the use of fisheries that were adjacent to the ahupua`a with the konohiki. Duty required them to reserve portions of their catch and certain species of marine life for the konohiki and ali`i nui. Thus, the only persons that were allowed to fish in fisheries adjacent to the ahupua`a were the tenants and konohiki of the ahupua`a. The deep ocean beyond the reef, however, was open to anyone to fish from.<sup>16</sup>

All exclusive rights to fisheries, including that of the konohiki, were repealed at the time of annexation under section 95 of the Organic Act of 1900.<sup>17</sup> Only exclusive rights that were registered with the territory within two years of the enactment of the Organic Act were considered vested and protected. The Organic Act still reserved the right of the territory to condemn vested private rights to fisheries and pay just compensation to the owners of these rights.<sup>18</sup> It was the intent of Congress in enacting section 95 that all fisheries would eventually be made available to the public.<sup>19</sup> The provisions of section 95 are included in article XI, section 6 of the state constitution. Thus, the public has a constitutional right to the fisheries in sea waters of the state.<sup>20</sup>

Today, the public enjoys the use of most fisheries adjacent to the shorelines. Specifically exempted, however, from the Organic Act's provisions abolishing exclusive fishing rights were private fish ponds and artificial enclosures that existed at the time of enactment.<sup>19</sup> Thus, most fisheries in the state are open to the public save for the few exceptions mentioned herein.<sup>21</sup>

Aside from the rights Hawaiians can claim as members of the general public to the use of fisheries, Hawaiian ahupua`a tenants have a unique constitutional claim to the use of fisheries adjacent to their ahupua`a under article II, section 7 of

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<sup>16</sup> Native Hawaiian Legal Corp., *supra* note 5 at 174.

<sup>17</sup> State of Hawai'i. 1988. *Haw. Rev. Stat. Organic Act*, sec. 95.

<sup>18</sup> *Id.* at sec. 96.

<sup>19</sup> State of Hawai'i. 1964. *State v. Hawaiian Dredging Co.*, 48 Haw. 152, 397:2d 593.

<sup>20</sup> Haw. Const. art. XI, sec. 6.

<sup>21</sup> State of Hawai'i. 1988. *Haw. Rev. Stat. Organic Act*, sec. 95.

the state constitution. This right is guaranteed by the general language of this section protecting rights "customarily and traditionally exercised for subsistence...[and] cultural purposes...."<sup>22</sup>

***Laws of Kamehameha III, June 7, 1839 and 1842***

Kamehameha III officially acknowledged the ancient fishing practices and uses of the ocean by Hawaiians in the Law of Kamehameha III, June 7, 1839. Under that proclamation, the king formally distributed the fishing grounds among the different classes of people, foreshadowing the land distribution to come in the Mahele a decade later. The subsequent statute, section 8, chapter 111 of the Laws of 1842, stated, in part:

His Majesty the King hereby takes the fishing grounds from those who now possess them from Hawai`i to Kaua`i, and gives one portion of them to the common people, another portion to the landlords, and a portion he reserves to himself.

These are the fishing grounds which His Majesty takes and gives to the people; [sic] the fishing grounds without the coral reef, viz: the Kilo he`e grounds, the Lūhe`e ground, the Mālolo ground, together with the ocean beyond.

But the fishing grounds from the coral reef to the sea beach are for the landlords and for the tenants of their several lands, but not for others.

While the law specifically recognized the people's rights in the fisheries, it went on to sanction the practice of the konohiki of placing a kapu on certain fish and fishing seasons. If the konohiki exceeded this limitation by unduly seizing or taxing the people for his catch, the law provided a penalty. It also reserved for the king certain species from the fishing grounds seaward of the konohiki fisheries.

This revolutionary 1839 law was the first formal recognition of the people's fishing rights. Significantly, it was also the first time that the ability of the konohiki to regulate these fishing rights was limited.

In later statutes, the kingdom amended and redrafted the 1839 law with only minor changes. With the passage of the organic acts establishing the kingdom's governmental structure in 1845-46, fishing rights within the ahupua`a remained basically the same. Difficulties with enforcement and conflicts with the konohiki led to subsequent legislative amendments that, in effect, opened the ocean fisheries seaward of the konohiki fisheries ". . . to everyone with respect to all fish." In 1851, a major revision granted all fishing grounds adjacent to any government land or otherwise belonging to the government to the people for free and equal use of all persons.

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<sup>22</sup> Haw. Const. art. XII, sec. 7.

The kingdom codified konohiki fishing rights into sections 384-396 of the Civil Code of 1859. These statutes were carried forward without material change and incorporated into section 358 of the Civil Code of 1892 and Chapter 84 of the Penal Laws of 1897. Despite errors and ambiguity in the English translation of the 1839 law, few material changes were made to the original statute. Hence, konohiki fishing rights, as expressed in the kingdom's statutes, can be summarized as follows:

1. The private fisheries of the konohiki extended from the beach at low watermark to the edge of the reefs and, where there was no reef, to one geographical mile seaward of the beach.
2. Within these private fisheries, fishing was restricted to the exclusive but joint use of the konohiki and the tenants of the ahupua`a to which the fisheries were assigned.
3. The konohiki could regulate fishing within these private fisheries:
  - a. By reserving aside or placing a kapu on one specific type of fish for exclusive use; or
  - b. After consultation with the tenants, by prohibiting fishing during certain months of the year and, during the fishing season, taking from each tenant one-third of the fish caught in the fishery.

### ***Free Exercise of Hawaiian Religion***

Ka Po`e Hawai`i, the Hawaiian people, were the original inhabitants of the island archipelago, Hawai`i. Hawaiian oral traditions passed on through chants, legends, myths and mo`okū`auhau or genealogies, trace the origins of the Hawaiian people to early Polynesian ancestors and beyond them to the life forces of nature itself. The Hawaiian people are believed to be the living descendants of Papa, the earth mother and Wākea, the sky father. Many Hawaiians trace their origins through Kāne of the living waters found in streams and springs; Lono of the winter rains and the life force for agricultural crops; Kanaloa of the deep foundation of the earth, the ocean and its currents and winds; Kū of the thunder, war, fishing and planting; Pele of the volcano; and thousands of deities of the forest, the ocean, the winds, the rains and the various other elements of nature.

Many Hawaiian people believe themselves to be a part of nature and nature is a part of them. This unity of humans, nature and the gods formed the core of the Hawaiian people's philosophy, world view and spiritual belief system. In Hawaiian, the term which expressed this harmonious fundamental relationship was lokahi/unity. Related terms expressing this fundamental relationship was aloha `āina / love the land and mālama `āina / care for and protect the land.

Aloha `āina / love the land, aloha in nā akua /love the gods, aloha kekāhi i kekāhi / love one another, expresses the three precepts which formed the core of the Hawaiian people's philosophy, world view and belief system. It was important for a Hawaiian to sustain supportive, nurturing and harmonious relations with the land, the gods, and each other, particularly their `Ohana or extended family.

Moreover, the Hawaiian, the land, and the gods were also spiritually, culturally, and biologically united as one - lōkāhi - by lineal descent. In their mo`okū`auhau / family genealogy chants, Hawaiians traced their lineal ancestry to historical figures and ultimately, through them, to various deities and gods of the land, ocean, forest and nature. <sup>23</sup>

The land and all of nature was the source of existence for the Hawaiians - not only as the origin of humanity, but also as the source of natural resources for day-to-day subsistence. The Hawaiian honored and worshipped the life forces of nature as gods. They did not possess or own the land or its abundant resources. Instead, they maintained stewardship over it - planting and fishing according to the moon phases and the changes from rainy to dry seasons. The traditional Hawaiian land system evolved to provide Hawaiians access to the resources they would need for subsistence and to allow for stewardship over the land to the lineal descendants associated with particular ancestral `aumakua / deities and akua / gods.

### ***Constitutional Protection***

Both the Hawai`i State and U.S. constitutions have a provision which forbids the enactment of laws prohibiting the free exercise of religion. <sup>24</sup> Hawai`i case law, however, has established stringent constitutional tests that must be met before a court of law will find an act an unconstitutional infringement on a religious practice.

The Hawai`i Supreme Court in the case of *State ex re. Minami v. Andrews* (1982), set out factors which a court would look to in determining whether or not there is an unconstitutional infringement on a religious practice. These factors are as follows: 1) the legitimacy and sincerity of the religious belief; 2) whether or not the practice is burdened; 3) the extent of

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<sup>23</sup> Handy, E.S. Craighill and Mary Kawena Pukui. *The Polynesian Family System in Ka'ū, Hawai'i*. (Wellington: Polynesian Society, 1958; reprint Tokyo: Charles E. Tuttle Company, Inc., 1976). Johnson, Rubellite Kawena. 1981. *Kumulipo: The Hawaiian Hymn of Creation, Volume One*, Honolulu: Topgallant Publishing Co., Ltd.

<sup>24</sup> U.S. Constitution, Amendment I, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" Haw. Const. Art. I, Sec. 4. "No law shall be enacted respecting an Establishment of religion, or prohibiting the free exercise thereof,".

the impact on religious practices; and 4) whether or not the state had a compelling interest that justified the burden it placed on a religious practice.<sup>25</sup>

In 1987, the Hawai'i Supreme Court made it even more difficult for a court to find an unconstitutional infringement on a religious practice. In the case of *Dedman v. Board of Land and Natural Resources* (1987) the Hawai'i Supreme Court required the claimant to show that an infringement would cause *significant* harm to a religious practice and further suggested that *objective* evidence would be needed to prevail on such a claim.<sup>26</sup> This standard is a difficult one for Hawaiian religious practitioners, who believe that everything is sacred, to meet.

In *Dedman* the court did not accept the testimony of the plaintiffs (Hawaiian religious practitioners), that geothermal drilling at a spot along a volcanic vent, would harm the goddess Pele's body, and that geothermal drilling would "significantly" harm their opportunities to worship the goddess Pele.<sup>27</sup> It appears clear, then, from Hawai'i case law that the state constitutional provision protecting the free exercise of religion is a narrow one for religious beliefs that do not comport with western religious beliefs.

Another constitutional claim to freely exercise ancient Hawaiian religious beliefs, however, can be asserted by Hawaiian ahupua`a tenants under article XII, section 7. This constitutional provision provides for the protection of customs and traditions exercised by Hawaiian ahupua`a tenants for "religious purposes."<sup>28</sup> This constitutional right was not asserted in *Dedman* and has yet to be interpreted by the courts in Hawai'i.

*B. American Indian Religious Freedom Act (AIRFA)*

The American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996, Pub. L. No. 95-341, 1978) ensures that actions taken or licensed by federal agencies do not interfere with the inherent right of individual Native Americans (including Native American Indians, Eskimos, Aleuts, and Native Hawaiians) to believe, express, and exercise their traditional religions. These rights include access to religious sites, use and possession of sacred objects, and the freedom to worship through traditional ceremonies and rights. When a federal agency finds, upon consultation, that its proposed

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<sup>25</sup> State of Hawai'i. 1982. *State ex re. Minami v. Andrews*, 65 Haw. 289, 291, 651 P.2d 473, 474.

<sup>26</sup> *Dedman v. Board of Land and Natural Resources* 69 Haw. 255, 740 P.2d 28. (1987), cert. denied, 108 S.Ct. 1573 (1988).

<sup>27</sup> Ibid.

<sup>28</sup> Haw. Const. art. XII, sec. 7.

action would deny the free exercise of religion and yet determines that there is a compelling need for the action, the decision to proceed may be made, but appropriate mitigation measures to reduce interference with traditional religious practice to the lowest possible level must be included.

### **Water Rights**

Water was a vital resource to the cultivation of taro and other staple crops in ancient Hawai`i. Hawaiian ahupua`a tenants built extensive irrigation channels to water their wetland taro, one of the primary staples of the Hawaiian diet. These irrigation systems were collectively maintained and water distributed to tenant plots on a rotation basis.<sup>29</sup>

Today, many Hawaiians, (e.g. Waiāhole Valley farmers) who want to cultivate taro and engage in other subsistence practices requiring the use of substantial amounts of water can assert three different kinds of rights to water. All three are based on customary use and common law doctrine and all three are guaranteed under the state constitution and the state water code found in the Hawai`i Revised Statutes.<sup>30</sup> Two of these water rights are based on tradition and customary use and common law doctrines known as "appurtenant rights" and "riparian rights." Hawaiians who qualify for Hawaiian Home Lands under the Hawaiian Homes Commission Act of 1920 have a unique third claim to water as homestead land recipients. These three claims to water are discussed below.

The Hawaiian Homes Commission Act, enacted by Congress in 1920, set aside 188,000 to 203,000 acres of Government and Crown Lands to provide Hawaiians, with fifty percent or more Hawaiian blood, opportunities to lease lands for residential, agricultural, and pastoral purposes.<sup>31</sup> The leases are for a period of ninety nine years with a nominal lease payment of one dollar per year.<sup>32</sup>

The Hawaiian Homes Commission Act, 1920 (hereinafter "HHCA") was enacted to improve the plight of the Hawaiian population whose numbers were rapidly declining due in part to being displaced from their land.

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<sup>29</sup> A. Perry, "Hawaiian Water Rights," *Thrum's Annual*, 1913, 94-95; H.A. Wadsworth, *A Historical Summary of Irrigation in Hawaii* 131 (Hawaiian Planters Record 134, 1933).

<sup>30</sup> State of Hawai`i. 1989. *Haw. Const.* art. XI, sec. 7; art. XII secs. 2 and 7; *Haw. Rev. Stat.* sec. 174C-10 Supp.

<sup>31</sup> Native Hawaiian Legal Corp., *supra note* 5, at 43 and 66 (fn. 2).

<sup>32</sup> HHCA secs. 207(a) and 208(2).

Today the Department of Hawaiian Home Lands (DHHL), a state agency, administers the HHCA. As of 1990 only 17.5 percent of land set aside under the HHCA were resided upon. Over 19,000 Hawaiians were on the waiting list.<sup>33</sup> Much of the delay in awarding homestead lands and moving Hawaiians onto their tracts of land has been due to DHHL's failure to generate revenues to provide tracts of land with needed infrastructure for water, electricity, and sewage.

Another right to water, which Hawaiians and non-Hawaiians alike may claim, where applicable, are appurtenant rights or "kuleana water rights." This right is codified in the state constitution and in Hawai'i's Revised Statutes.<sup>34</sup> Appurtenant rights are rights to water that maybe exercised by owners of lands that are adjacent to natural water courses. Such lands must have been in taro cultivation at the time of the "Māhele" or great land division of 1848. The right entitles a land owner to an amount of water necessary for the cultivation of taro.<sup>35</sup>

To date there has been no law that specifically prohibits the use of appurtenant rights for purposes other than taro cultivation. Thus, the owner of land upon which a hotel is located, which had formerly been taro land, may assert appurtenant rights to water for hotel use until and if successfully challenged in a court of law.

Appurtenant rights run with the land and may not be transferred or extinguished. Since it is possible for taro lands to be owned by non-Hawaiians, appurtenant rights are not an exclusive right of the Hawaiian race. As with Hawaiian rights to water for homestead lands, appurtenant rights are guaranteed under the state constitution and state water code.

The third claim to water, also guarantee by the state constitution and state water code, can be asserted by Hawaiian and non-Hawaiian land owners alike who live adjacent to water courses.<sup>61</sup> This is the right of riparian use to these waters. A riparian right entitles the land owner living adjacent to streams and rivers to make reasonable use of the natural flow of these water courses as long as the use does not infringe upon the riparian rights of others to the water course. Riparian rights run with the land and cannot be bought, sold or transferred, except they maybe extinguished by deed.

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<sup>33</sup> Department of Hawaiian Home Lands. 1987. *Annual Report 10*. Honolulu.

<sup>34</sup> State of Hawai'i. 1988; 1991 supp. Haw. Const. art. XI, sec.7; Haw. Rev. Stat. sec. 174C-101(a),(d).

<sup>35</sup> State of Hawai'i. 1930. *Carter v. Territory*, 24 Haw. 47, 66 (1917); *Territory v. Gay*, 31 Haw. 376, 383.

### ***Laws Applicable To Water Rights***

In contrast to the movement toward private ownership of land, the laws of 1839 treated water as a natural bounty reserved to all of the people. Specifically, the law "Respecting Water for Irrigation" provided that:

In all places which are watered by irrigation, those farms which have not formally received a division of water, shall, when this new regulation respecting lands is circulated, be supplied in accordance with this law, the design of which is to correct in full all those abuses which men have introduced. All those farms which were formally denied a division of water, shall receive their equal proportion. Those bounties which God has provided for the several places should be equally distributed, in order that there may be an equal distribution of happiness among all those who labor in those places. The allowance of water shall be in proportion to the amount of taxes paid by the several lands. For it is not the design of this law to withhold unjustly from one, in order to unjustly enrich another according to the old system which has been in vogue down to the present time. That the land agents and the lazy class of persons who live about us should be enriched to the impoverishment of the lower classes who with patience toil under their burdens and in the heat of the sun is not in accordance with the designs of the law . . . such is considered to be the proper course by this law, regulating the property of the kingdom; not in accordance with the former customs of the country which was for the chiefs and land agents to monopolize to themselves every source of profit.

This language revealed the king's intent to assert his sovereign power to regulate water for the common good. The right to use water was dependent upon taxes paid to the king, not upon servience to the konohiki of the ahupua`a. The implication is that the central government controlled the distribution of waters.

This law was apparently aimed at correcting certain abuses which arose during the transition from the traditional taro economy to a Western mercantile economy. In the process of change, the system of cooperation between the konohiki and tenants broke down along with the traditional restraints on the powers of the konohiki. With the introduction of the Western concept of material wealth, water came to be viewed as a commodity that could be separated from the land and consumed, rather than as a resource to be shared equally. The attainment of wealth would, therefore, depend more upon maximum use of the "commodity," and less upon the working of the land. The shift in thinking from equal rights to maximum use may have led the konohiki to neglect the irrigation rights of some tenants. These changes would assume great importance as the sugar industry rose to dominate the political and economic life of the islands. In any event, the law may have been the government's attempt to guard the rights of all the people against the intrusion of foreign practices.

The act creating the Land Commission required that its decisions be based on existing law and native usages with regard to land, including among other things "water privileges." Despite that language, the Land Commission did not determine

or award water rights. However, the right to use water for irrigation has invariably been implied in an award of taro land by the Land Commission, even if the deed did not mention water rights. Such rights came to be viewed as "appurtenant" to taro lands by reason of ancient custom and usage. Section 7 of the Kuleana Act also contained the following water rights provision:

The people also shall have a right to drinking and running water, and the right of way. The springs of water, and running water, and roads shall be free to all, should they need them, on all lands granted in fee simple: provided, that this shall not be applicable to wells and water courses which individuals have made for their own use.

Over 100 years later, the Hawai'i Supreme Court held that this provision codified the common law doctrine of riparian water rights in Hawai'i.

With regard to Hawaiian water rights, the code contains the following provisions:

Section 174C-101 Hawaiian water rights. (a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapter 175, relating to the Moloka'i irrigation system.

(b) No provision of this chapter shall diminish or extinguish trust revenues derived from existing water licenses unless compensation is made.

(c) Traditional and customary rights of ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hīhīwai, `opae, `o`opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.

(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.

### ***Applicable Federal Laws***

The following are federal laws which are applicable in relation to Hawaiian subsistence, cultural, and religious beliefs, customs, and practices:

- 1. National Environmental Policy Act of 1969**, as amended [42 U.S.C. 4371 et. seq., Pub. L. 91-190 (1970), and amendments thereto]. Regulations of the Council on Environmental Quality, 40 C.F.R. 1500-1517. To promote conditions under which "man and nature can exist in productive harmony," federal agencies may take practicable measures to help the Nation "preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice."
- 2. National Historic Preservation Act of 1966**, as amended [16 U.S. C. 470; 80 Stat. 915; Pub. L. No. 89-665 (1966), and amendments thereto]. Regulations; Protection of Historic Properties (Advisory Council on Historic Preservation) 36 CFR Part 800, as amended. Pertinent addition in the 1992 amendments include: Section 304 (a) - (b) on withholding from disclosure and Section 101 (d) (6) - (C) on traditional cultural properties of religious significances; and on State consultation with Hawaiian groups during the Section 106 Review process.
- 3. American Indian Religious Freedom Act (AIRFA) of 1978**, [42 U.S.C. 1996, Pub. L. No. 95-341, 1978] ensures that actions taken or licensed by federal agencies do not interfere with the inherent right of individual Native Americans (including Native American Indians, Eskimos, Aleuts, and Native Hawaiians) to believe, express, and exercise their traditional religions. These rights include access to religious sites, use and possession of sacred objects, and the freedom to worship through traditional ceremonies and rights. When a federal agency finds, upon consultation, that its proposed action would deny the free exercise of religion and yet determines that there is a compelling need for the action, the decision to proceed may be made, but appropriate mitigation measures to reduce interference with traditional religious practice to the lowest possible level must be included.
- 4. Archaeological Resources Protection Act of 1979**, as amended [16 U.S.C. 470 aa-470mm; Pub. L. No. 96-95 (1979), and amendments thereto]. To protect archaeological resources on public lands and Indian lands; requires that American Indian tribes be notified prior to any negative impact on cultural and spiritual sites located on federal lands; substantially increases the severity of civil and criminal penalties imposed on unqualified and unpermitted looters; assures that information concerning the nature and location of any archaeological resource may not be made available to the public. This act's provisions do not specifically include Hawaiians; however, by implementing ARPA federal agencies have adopted various policies and guidelines that encourage early consultation with concerned Native Americans.
- 5. Archaeological and Historic Preservation Act of 1974**, [16 U.S.C. 469 - 469c; Pub. L. 86-532 (1960), and amendments thereto]. To provide for the preservation of historical and archaeological data which might otherwise be lost as the result of the construction of a dam (or any alteration of the terrain caused as a result of federal construction or

federally licensed activity). This law applies if a federal project requires placement of dredged or fill materials along a coast.

**6. Native American Graves Protection and Repatriation Act of 1990** [25 U.S.C. 3001 - 3013; Pub. L. 101 - 601 (1990)]. NAGPRA Regulations; Proposed Rule (F.R. May 28, 1993), 43 C.F.R. 10. To provide direction on how Native American remains and burial artifacts are to be treated. The statute deals with museum collections receiving federal funds and with ongoing archaeological investigations. NAGPRA encourages in situ preservation of archaeological sites that include burials and requires federal agencies to consult with affiliated, or potentially affiliated, Native Americans concerning the treatment and disposition of cultural remains. Hawaiian organizations and Hawaiian Home Lands are specifically cited.

***Receptors Relative to Hawaiian Rights***

Given the above, it would follow that the following would be included as receptors relative to Hawaiian Rights:

1. Rights of the Hoā`āina (ahupua`a tenants), i.e., "rights, customarily and traditionally exercised for subsistence, cultural and religious purposes"
2. Access rights
3. Fishing rights
4. Free exercise of Hawaiian religion
5. Water rights
6. The quality, integrity, use of, and access to traditional cultural properties as defined in National Register Bulletin #38, "those beliefs, customs, and practices of a living community of people that are associated with natural resources and prehistoric or historic sites."
7. The quality, integrity, use of, and access to burials, burial grounds, and burial artifacts

***Impacts on Hawaiian Rights***

Impacts on Hawaiian Rights would include:

1. A change which would affect the exercise of Hawaiian rights and responsibilities discussed above.
2. A change which would affect the quality, integrity, use of, and access to natural resources and traditional cultural properties, burials, burial grounds, and artifacts.

There is also a need to take into account the interdependence and cumulative effects of development impacts on Hawaiian rights as it is exercised.

## **HAWAIIAN RIGHTS RECEPTORS AND IMPACTS**

### ***Receptors***

### ***Impacts***

#### **Rights of Ho`āina**

- Change in ability to exercise rights and responsibilities as ho`āina of an ahupua`a
- Change in condition, integrity, use, access to natural resources and cultural properties

#### **Access Rights**

- Change in ability to exercise access rights and responsibilities
- Change in access to natural resources and cultural properties

#### **Fishing Rights**

- Change in ability to exercise fishing rights and responsibilities
- Change in condition, integrity, use, access to natural resources and cultural properties related to fishing and gathering of marine resources

#### **Free Exercise of Hawaiian Religion**

- Change in ability to freely exercise Hawaiian religion
- Change in condition, integrity, use, access to natural resources and cultural properties related to the exercise of Hawaiian religion

#### **Water Rights**

#### **Quality, integrity, use & access to natural resources**

- Change in condition, integrity, use, and access to fresh water
- Change in condition, integrity, use, access to natural resources

- |  |  |
|--|--|
| <b>Quality, integrity, use &amp; access to traditional Hawaiian cultural properties</b>                          | • Change in condition, integrity, use, access to traditional Hawaiian cultural properties                          |
| <b>Quality, integrity, use &amp; access to traditional Hawaiian burials, burial grounds and burial artifacts</b> | • Change in condition, integrity, use, access to traditional Hawaiian burials, burial grounds and burial artifacts |

### **8.3.7 Community Economics and Hawaiian Lands**

#### ***Economic Receptors***

Community economic development is designed by and for community residents with the objective of reaching and benefiting all members of a community. It includes both market and subsistence activities. Under this approach communities generate culturally compatible goods and services to meet the needs of local residents and sell the surplus for export outside the community.

Economic receptors pertaining to Hawaiian communities include: (1) the Hawaiian people in the labor force; (2) jobs including wage employment and self-employment opportunities, such as locally owned micro-enterprises; (3) community-based development corporations (CDCs), producer-consumer co-operatives, and `Ohana groups' engaged in production and subsistence activities; (4) lands, natural resources in their ecological *ahupua`a* setting used for homesteading, farming, ranching, aquaculture, fishing, income generating activities and for subsistence gathering; community land trusts as land base for group oriented activities (CLTs); and government land held in trust for the benefit of Hawaiians. These lands include: Ceded Lands, Department of Hawaiian Home Lands; private Hawaiian Trust Lands such as Bernice P. Bishop Estate Trust, Queen Lili`uokalani Children Center, Queen's Hospital, Queen Emma Foundation, and Lunalilo Estate; and lands held in private property by Hawaiian families inherited as Royal Patent Land Awards. Land Commission Awards, Homestead Awards, including the Kuleana Lands.

Hawaiian community economics is a way to preserve pristine areas and rural areas under pressure of suburbanization and development. The evaluation of community economics includes small individual and family commercial ventures, community based economic development, the economic of natural resource sustainable uses and impacts of development projects on local Hawaiian economies. Mobilization of resources, production and sharing of wealth are intimately linked to community decision making, conflict resolutions, discharge of reciprocal obligations, and food security (Minerbi and Murakami, 1993).

### ***Community Economic Impacts***

Functioning Hawaiian communities have a set of workable relationships between labor, management and unions, and have a degree of local ownership of the means of production, including land. They have a decision making system to ensure that job creation is at pace with the need of people entering the labor force and does not involve the influx of many migrants. Development projects and infrastructure affect this type of balance. They also affect the value, access and use of natural resources and land impacting Hawaiian cultural and subsistence practices. Cost-of-living for Hawaiians includes changes in the consumer price index, land values, land leases and land rent, and all forms of taxation and fees. Impacts can be detected in the amount of funds available for community reinvestment, and the increase/decrease in type and number of Hawaiian-owned and operated businesses, microenterprises, community development corporations, cooperatives, and community land trusts. Impacts on Hawaiian land bases include present and future use, loss of present and future revenues to which Hawaiians are entitled, and environmental impact affecting the ecological integrity of the land base and its natural resources.

### ***The Public Land Trust***

Hawaiians have a range of interests in lands in Hawai`i. Aside from religious, spiritual, familial relationship to land, aside from the needs of cultural and subsistence practices, discussed elsewhere in this report, they have legal interest as trust beneficiary of certain federal and state lands, as beneficiary of private estates formed by lands trust originally belonging to the king and his successors, and lands they were awarded in fee simple by acts of the Hawaiian Monarchy. These lands, their trust relationship toward Hawaiians, and the legal and statutory authority is described below.

The public land trust includes those lands which were ceded to the United States by the Republic of Hawai`i, and subsequently conveyed to the State of Hawai`i by virtue of Section 5(b), 5(c), 5(d) and 5(e) of the Admission Act of 1959. The public land trust also includes those lands that have continued to be controlled by the Federal Government and are subject to return to the State of Hawai`i under U.S. Public Law 88-233.

### ***The Ceded Lands***

The Ceded Lands comprise 1,800,000 acres of Hawaiian government and Crown Lands which were ceded (yielded, transferred) to the US by the Republic of Hawai`i and subsequently conveyed to the State of Hawai`i. The Ceded Lands are lands that the US Congress set aside in Section 5(f) of the Hawai`i Admission Act of 1959 (P. L. 86-3,73 Stat 4) for the "betterment of Native Hawaiians conditions" and for the general public. Currently

20 % of the revenues from lease of the Ceded Lands are given to the Office of Hawaiian Affairs for the betterment of Native Hawaiians.

***Annexation: The Newlands Joint Resolution of Annexation 1898***

On July 7, 1898 the U.S. Congress passed the Newlands Joint Resolution of Annexation as a measure to annex Hawai'i to the United States. Congress kept the existing laws of the Republic of Hawai'i relating to public lands and introduced the public trust concept by stating that "That all revenue from or proceeds... shall be used solely for the benefit of the inhabitants of the Hawaiian Island for education and other public purposes".

***The Organic Act of 1900***

On April 30, 1900 the U.S. Congress passed the Organic Act setting up the Territory of Hawai'i. Legal title to the public lands of Hawai'i (all land classed as government or crown lands) was retained by the United States, but the Territory was given administrative control and use of the lands by this act. The United States also reserved the right to set aside lands by executive order for the use by the U.S. government. Some lands, while not formally set aside, were used by the United States through the use of permits, licenses or with the permission of the Territorial Government. The Organic Act also allowed the United States to convey legal titles to the Territory of Hawai'i of certain lands used by the Territory. In addition to the ceded lands both the Federal Government and the Territory in various ways acquired fee simple title to certain private lands. Some of these lands acquired by the Territory were also set aside by executive order for the use by the United States.

***The Hawaiian Home Commission Act of 1920***

On July 9, 1921, the U.S. Congress passed the Hawaiian Homes Commission Act, 1920, placing 200,000 acres of public lands in trust to help with the rehabilitation of native Hawaiians by providing them with rural homesteading (agricultural and pastoral land leases) of ninety-nine years at \$1 per year on Moloka'i and Hawai'i islands. The native Hawaiian were defined as "any descendant of not less than one-half part of blood of the races inhabiting the Hawaiian Islands previous to 1778". Congress amended the Act on February 3, 1923 to permit residence lots of one-half acre or more; and amended it again on March 7, 1928 to remove a probationary provision, extending the program to all the islands, and adding conditions limiting the operating revenues, the number of acreages to be used by the Commission in any calendar five-year period, and requiring the commission to return the remainder of its lands to the Commissioner of Public Lands to generate revenues through general leases. Under the Admission Act of March 8, 1959 granting statehood to the Territory of Hawai'i, the titles to public land, including Hawaiian Home lands, passed to the State of Hawai'i in fiduciary obligation. The State of Hawai'i as a compact with the United States in its State Constitution accepted the

Hawaiian Home Lands including the trust obligation to faithfully carry out the Hawaiian home projects and the rehabilitation of the Hawaiian race (Hawai`i Const. Art XI, Sec. 2 (1959) renumbered Art. XII, Sec. 2 (1978).

**Statehood: The Hawai`i Admission Act of 1959**

Hawai`i became a state on August 21, 1959. By 1959 there were several categories of lands owned by the Federal and Territorial Governments:

1. Ceded land, titled vested in the Territory of Hawai`i
2. Non-ceded, territorial lands, titled vested in the Territory of Hawai`i
3. Ceded lands, titled vested in the United States, but whose control and use was by the Territory of Hawai`i
4. Ceded lands formerly set-aside by presidential executive order for use by the Federal government
5. Territorial lands formally set-aside by gubernatorial executive orders for use by the Federal Government
6. Ceded lands under the control of the Territory of Hawai`i but used by the Federal government under permits and licenses; and
7. Non-ceded lands acquired and used by the Federal government.

The Admission Act stipulated for the following sections:

Section 5 (b): the State of Hawai`i received titles to about 1,200,00 acres of public lands land.

Section 5 (c): the Federal government retains titles to about 287,078 acres of land, or those ceded and territorial lands that had been formally set aside by act of congress, presidential and gubernatorial executive orders for the use of the Federal government.

Section 5 (d): the Federal government had the authority to vest in the United States title to those ceded and territorial lands controlled by the United States at time of statehood. Of these 117,412.74 acres, 87,236.55 were vested in the United States, 30,176.19 remained with the State but were leased for 65 years to the Federal government.

Section 5 (e): the Federal government could return those land retained under subsection (c) and (d) back to the State, should those land no longer be needed by the United States within 5 years. Only 595.41 were returned. P.L. 88-233 on December 23, 1963 lifted the 5 years deadline.

Section 5(f): the lands granted to the State under subsection (b) and the land retained by the Federal government and later conveyed under subsection (e) together with the proceeds from sale or other disposition of any such lands “shall be held by said State as a public trust...for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended...in such a manner as the constitution of laws of said State may provide”.

***The State of Hawai`i Constitutional Convention of 1978***

On November 7, 1978 the Constitutional Convention amended the Constitution of the State of Hawai`i. Article XII deals with Hawaiian Affairs:

Section 1 adopts the Hawaiian Home Commission Act as a law of the State, so that the proceeds and the incomes from Hawaiian home lands shall be used only in accordance with the terms and the spirit of the act. It further requires the legislature to make available sufficient sums for: (1) development and homes, agriculture, farms and ranch lots; (2) loans for the same purpose and for aquaculture; (3) rehabilitation projects by which the general welfare and conditions of native Hawaiians are thereby improved and (4) administration and operation of the Department of Hawaiian Home Lands. Thirty percent of the state receipts derived from leasing of sugarcane lands and from water licenses (even if these lands are sold, or otherwise utilized or developed) shall be transferred to the native Hawaiian rehabilitation funds, without any limiting ceiling for the fund.

Section 2 accepts a compact with the United States for the trust obligation to fulfill the Hawaiian Home Commission Act in order to faithfully further the rehabilitation of the Hawaiian race.

Section 3 spells out the procedures after adoption of the compact to ensure --among other things-- that the Hawaiian home-loan fund, the Hawaiian home -operating fund and the Hawaiian home-development funds shall not be reduced or impaired.

Section 4 defines the State’s role in administering the trust imposed by Section 5(f) of the Hawai`i Admission Act of 1959: “The lands granted to the State of Hawai`i by Section 5(b) of the Admission

Act....excluding therefrom lands defined as ‘available lands’ by Section 203 of the Hawaiian Homes Commission Acts, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.“

Section 5 establishes the Office of Hawaiian Affairs (OHA) to hold in title “all the real and personal property now and hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.” The Office of Hawaiian Affairs deals with the affairs of Hawaiians regardless of blood quantum.

Section 6 defines the powers of the Board of Trustees of the Office of Hawaiian Affairs.

In 1978 and 1980 Chapter 10 HRS described the revenues due to OHA from the ceded lands (Office of the Governor, January 1991).

### ***Government and Kings’ Lands***

After the Māhele or land division between the King and the chiefs on March 7, 1848, the king held almost 2.5 million acres or 60.3 % of the total land, while the chiefs had received a total approximating 1.5 million acres. The king then divided his lands into two parts. The larger portion, 1.5 million acre, he “set apart forever to the chiefs and the people” of the kingdom. These lands became known as the Government Lands “subject always to the rights of the people”. The king, Kamehameha III, retained for himself, his heir and successors, the remaining lands called the King’s Lands, approximately one million acres, also made subjects to the rights of the native tenants (MacKenzie, 1991:7).

### ***Konohiki Lands***

The konohiki or land agent were entitled to full allodial title to their land in the form of royal patents, subject to the rights of native tenants (MacKenzie, 1991:7).

### ***Kuleana Lands***

The Kuleana Lands are plot of lands awarded by the Land Commission in fee simple to Hawaiian tenants, together with drinking and running water rights and right of way, with the Kuleana Act of August 6, 1850. A kuleana parcel could come from the lands of the king, government or chiefs. The kuleana lands were generally among the richest and most fertile lands suitable for taro cultivation because they were located often along streams on alluvial soil. However, of the 8,205 awards given by the Land Commission only 7,500 awards

involved kuleana lands benefiting only 26 % of the adult male native population at that time. While one third of the land of Hawai`i was to be given to the maka`āinana, after the king partitioned out his personal lands, only 28,600 acre, much less than one percent of the total land, went to the maka`āinana (MacKenzie, 1991:8).

## **COMMUNITY ECONOMICS AND HAWAIIAN LANDS RECEPTORS AND IMPACTS**

### ***Receptors***

### ***Impacts***

#### **Employment in Main Economic Sectors**

- Change in wage employment in Hawai`i large traditional industries (sugar, pineapple, tourism and military)
- Number of jobs gains and losses
- Change self-employed status

#### **Education of Hawaiian Labor Force**

- Education and technical skill levels of Hawaiian labor force

#### **Small Businesses**

- Change in number of Hawaiian small businesses and microenterprises
- Dollar amount of goods and services bought from Hawaiian enterprises

**Job and Labor Force Match**

- Percentage of jobs by type (skilled vs. low skilled) going to Hawaiians vs. to others
- Fit of education level to new job requirements
- Fit between number of Hawaiians entering in the labor force pool and number of jobs created per year
- Cultural compatibility with new job or occupation
- Availability of Training & Job Advancement Programs for Hawaiians

**Natural Resources Availability**

(e.g.: acreage and monetary value)

- Change in access and availability to natural land and ocean resources used in Hawaiians' productive activities and used in subsistence in lieu of monetary cash expenditures
- Impacts on hunting, fishing, gathering, gardening and raising of livestock
- Impacts on beaches, reefs, farming, ranching, streams and forests
- Level of fence-off, cut-off, reduction or change in customary resource use

**Use of Hawaiian Material Culture**

- Degree of outsiders' utilization or loss of Hawaiian Material culture (incorporation of Hawaiian artifacts, structures and sites in resort projects without compensation to Hawaiians)

**Cost of Living for Hawaiians**

- Changes in cost of living
- Changes in inflation
- Changes in family income in relation to changes in cost of living
- Change in taxation level (property, income tax, general excise tax, user's fee,)
- Change in land values, land lease values and rents
- Change in local expenditures for infrastructures (water, sewage, waste disposal, flood control, roads, transport, communication facilities) and for services (hospitals, schools, parks, welfare, police, and fire

**Availability of Finance Capital**

- Annual influx of money into the local economy and degree of access by Hawaiians to capital

**New Economic Sector or Project's Compatibility with Hawaiians Lifestyles**

- Gain or loss of water for taro farming, and ranching, encroachment on fishing grounds, agricultural lands and gathering areas

**Community Reinvestment**

- Compliance with the Federal Community Reinvestment Act measured by increase of financing and loan to community based and Hawaiian owned enterprises and microenterprises that obtain credit
- Change in number and type of Community Development Corporations (CDCs), Community Land Trusts (CLTs) and cooperatives
- Level of Hawaiian community self-reliance and economic independence

**Hawaiian Land Base**

- Impact of Hawaiian lands (see below for type of land ownership)
- Changes in availability and use of Hawaiian lands, loss of future habitation, loss of lease revenues from lease compensations under the Ceded Land Trust and under the Hawai'i Home Commission Act
- Land, water and air contamination due to toxic fuel spillage, leakage, emission toxicity, soil contamination, noise, and potential catastrophic accidents

**Government Lands  
(State of Hawai'i)**

Ceded Lands

- Changes in revenues (20%) for Hawaiians and changes in current and future use by Hawaiians

General Leases to Hawaiians

- Current leases and use by Hawaiians

Homestead Land Leases to Hawaiians  
(Department of Hawaiian Homes)

- Changes in current leases and uses by Hawaiians

**Private Lands**

- Current and future ownership by Hawaiians

Royal Patent Land Awards  
Land Commissioner Awards  
Homestead Awards  
(including Kuleana lands)

**Hawaiian Trust Lands**

- Changes in number of beneficiaries and type and quality of benefice

Bernice P. Bishop Estate/  
(The Kamehameha Schools)  
Queen Lili`uokalani Children Center  
Queen's Hospital  
Queen Emma Foundation  
Lunalilo Estate

## APPENDIX C: LIST OF NATIVE HAWAIIAN CULTURAL RESOURCES LOCATED IN COASTAL ZONE MANAGEMENT AREAS

- |  |   |
|--|---|
| _____ streams                          | _____ ponds   |
| _____ `auwai (taro irrigation ditches) | _____ lo`i kalo (taro pond fields)  |
| _____ springs                          | _____ caves   |
| _____ trails                           | _____ wahi pana (named places)  |
| _____ sacred places                    | _____ dunes   |
| _____ landings                         | _____ bridges   |
| _____ surfing sites                    | _____ sandy beach   |
| _____ fishing area                     | _____ fishpond  |
| _____ fish trap                        | _____ fish house  |
| _____ hunting areas                    | _____ kilo i`a (fish sighting spot)                                       |
| _____ muliwai (brackish pond)          | _____ anchialine pond   |
| _____ trails                           | _____ salt ponds  |
| _____ wells                            | _____ turtle nesting area   |
| _____ historic walls                   | _____ basalt veins for tools  |
| _____ `alaea vein                      | _____ salt pans   |
| _____ shrines                          | _____ salt gathering areas  |
| _____ ko`a (fishing shrines)           | _____ heiau (temples)   |
| _____ historic sites                   | _____ cultural use areas  |
| _____ ho`āilona (natural signs)        | _____ sighting place  |
| _____ lele (cliff jumping spots)       | _____ native plants   |
| _____ pu`uhonua (places of refuge)     | _____ hōlua slides (slides for sleds)                                     |
| _____ cultivation area                 | _____ leina (jumping off point<br>for souls to cross into the next world) |
| _____ archaeological sites             | _____ kupe`e  |
| _____ burials                          | _____ hīhīwai/wī  |
| _____ `o`opu                           | _____ `anae   |
| _____ āholehole                        | _____ bathing pools   |
| _____ steam bath areas                 |   |

- |       |                                       |       |                            |
|-------|---------------------------------------|-------|----------------------------|
| _____ | limu gathering areas                  | _____ | lava tubes                 |
| _____ | subterranean water course             | _____ | petroglyphs                |
| _____ | kapu kai/hi`u wai areas               | _____ | paddling areas             |
| _____ | artifacts                             | _____ | view plane                 |
| _____ | seasonal residential sites            | _____ | burial markers             |
| _____ | water caves                           | _____ | birthing stones            |
| _____ | phallic stones                        | _____ | Pōhaku Kāne                |
| _____ | coral reef                            | _____ | estuary                    |
| _____ | spawning grounds                      | _____ | nearshore marine resources |
| _____ | house sites                           | _____ | dams                       |
| _____ | `aumakua (ancestral deities) domain   |       |                            |
| _____ | pō kāne routes (night marcher routes) |       |                            |

**Source:** Hawai`i Coastal Zone Management Program, Office of Planning, Department of Business, Economic Development and Tourism. Phase III Hawaiian Access Rights Project Recommendations for SMA Rules and Process, December 15, 2002, p. 15.



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