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An Introduction to the *Hoa‘āina* and Their Rights

HOA‘ĀINA, OR *AHUPUA‘A* TENANTS, in Hawai‘i have rights to access both government and privately owned land for traditional and customary Native Hawaiian subsistence, cultural, and religious purposes. These rights of access have always existed and been recognized in Hawai‘i law. In a 1995 ruling concerning a proposal by Nansay Hawai‘i to develop Kohanaiki on the island of Hawai‘i, the Hawai‘i State Supreme Court reaffirmed these rights. In part, the court stated:

However, legitimate customary and traditional practices must be protected to the extent feasible in accordance with article XII, section 7 [of the Hawai‘i state constitution]. . . . Although access is only guaranteed in connection with undeveloped lands, and article XII, section 7 does not require the preservation of such lands, the State does not have the unfettered discretion to regulate the rights of ahupua‘a tenants out of existence.¹

Honolulu magazine, reporting on the ruling in January 1996 in an article honoring Mahealani Pai, a *hoa‘āina* of Kohanaiki, as its “Islander of the Year,” characterized the reaction of many property owners and their attorneys as follows:

For many people, especially property owners in Hawai‘i, what the court did was outrageous. Essentially the court was saying that in Hawai‘i, fee simple title to a property does not give you the kind of absolute ownership that’s conferred by Western law. A deed in Hawai‘i

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comes with limits. . . . To some legal minds, the court decision amounted to heresy. Restricting your right to choose whom to allow on your property cuts the heart out of the concept of private property, they protested. "I have difficulty seeing how the opinion squares with the right to exclude people, which is supposed to be a fundamental right of a citizen who owns property," says David Callies, a professor of law at the University of Hawai'i law school.²

In the wake of the Supreme Court ruling regarding Kohanaiki, this article addresses the following questions: Who are *hoa'āina*? What are their customary and traditional practices? Why does Hawai'i law continue to recognize their rights? What are sources of information about *hoa'āina* customs and practices?

HOA'ĀINA RIGHTS ARE ROOTED IN 'OHANA CUSTOMS AND PRACTICES

Traditional and customary rights of the *hoa'āina* are rooted in the customs, practices, and rights of the original and still primary social unit of the Hawaiian people, the *'ohana*. The word *hoa'āina* means land overseer or caretaker, tenant, and was the term used in the Hawaiian law to refer to tenants of an *ahupua'a*. The *Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands* describes an *ahupua'a* as follows:

The typical form of an Ahupuaa was a strip running from the sea to the mountains and containing a sea fishery and sea beach, a stretch of kula or open cultivatable land and higher up its forest. All Ahupuaas had definite boundaries, usually of natural features, such as gulches, ridges and streams, and each had its specific name.³

The *'ohana* is the extended Hawaiian family. It typically refers to a multigenerational family system composed of grandparents and all relations of the grandparents' generation, their adult children, and their relatives such as their spouses and grandchildren. The system encourages a sharing of household and subsistence activities, inter-generational transmission of values and practices, and the provision of material and emotional support for its members. The *'ohana* connects generations from the past, the present, and the future. The liv-

ing generation bears the responsibility of respecting and continuing family and cultural traditions.⁴

Custom and practice encompass the full range of traditional, cultural, religious, and subsistence activities Native Hawaiian *‘ohana* have engaged in for many centuries in order 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 family, community life, human well-being and spirituality, natural environment, cultural and ecological resources, rights, and economics.⁵

A useful definition of subsistence was provided by the Governor’s Task Force on Moloka‘i Fishpond Restoration and the Governor’s Moloka‘i Subsistence Task Force. According to these sources, 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.⁶

EVOLUTION OF ‘OHANA CUSTOMS AND PRACTICES

Research by archaeologists, anthropologists, and ethnographers over the past thirty years suggests that the precontact period may be looked at in five distinct eras.⁷ Throughout these five eras, the *‘ohana* evolved into the primary and basic unit of the Hawaiian social system.

The first period of early scattered settlements dates between A.D. 0 and 600. Based on current subsurface archaeological research on each of the islands, the dates for the establishment of settlements on the various islands are continually being adjusted to reflect evidence of settlement earlier and earlier within this period.

Throughout the second era, between A.D. 600 and 1100, migrations from Polynesia, particularly the Marquesas, continued, but the population in the Hawaiian islands primarily expanded from natural internal growth on all of the islands. The social system was communal and organized around subsistence production to sustain *‘ohana*, large extended families. Hawaiian spiritual beliefs, customs, and practices focused on maintaining harmonious and nurturing rela-

tionships to the various life forces, elements, and beings of nature as ancestral spirits who were honored as deities. Land and natural resources were not privately owned. Rather, the Hawaiian people maintained a communal stewardship over the land, ocean, and all of the natural resources of the islands. The *kupuna* (elders) provided leadership and guidance to the *makua* (adults), who performed most of the daily productive work of fishing, cultivation, and gathering. By 1100, the existing inhabitants of the Hawaiian Islands shared common ancestors and a common heritage. Moreover, the Hawaiian culture and language were uniquely adapted to the islands of Hawai'i and distinct from those of other Polynesian peoples.

The third period, between A.D. 1100 and 1400, marked the era of the long voyages between Hawai'i and Tahiti and the introduction of major changes in the social system of the Hawaiian people's nation. The chants, myths, and legends record the voyages of great Polynesian chiefs and priests, such as the high priest Pa'ao, the *ali'i nui* Mo'ikeha and his sons Kiha and La'amaikahiki, and the high chief Hawai'i Loa. Traditional chants and myths describe how these new Polynesian chiefs and their sons and daughters gradually appropriated rule over the land from the original inhabitants through intermarriage, battles, and ritual sacrifices. The migration coincided also with a period of rapid internal population growth. Remnant structures and artifacts dating to this time suggest that previously uninhabited leeward areas were settled during this period.

The fourth period dates from A.D. 1400 through 1600. Voyaging between Hawai'i and Tahiti ended. As a result of the external influences introduced by the migrating Polynesian chiefs and priests and internal developments related to the geometric growth of the population, sophisticated innovations in cultivation, irrigation, aquaculture, and fishing were implemented. These innovations were applied in the construction of major fishponds, irrigation systems, and field cultivation systems. Such advances resulted in the production of a food surplus that sustained the developing stratification of Hawaiian society into three basic classes—*ali'i*, the chiefs; *kahuna*, the priests; and *maka'ainana*, the commoners. Oral traditions relate stories of warring chiefs, battles, and conquests resulting in the emergence of the great ruling chiefs who controlled entire islands rather than portions of islands.

Although the common people provided food, barkcloth, and household implements to the chiefs, Hawaiian society remained predominantly a subsistence agricultural economy. There is no evidence of a money system or commodity production. A system of barter in essential goods among fishermen, mountain dwellers, and taro cultivators existed within the framework of the extended family unit called *‘ohana*. In general, this exchange within the *‘ohana* functioned primarily to facilitate the sharing of what had been produced upon the *‘ili*, or extensive land grant, that the *‘ohana* held and worked upon in common.

Mary Kawena Pukui and E. S. Craighill Handy described this as follows:

Between households within the *‘ohana* there was constant sharing and exchange of foods and of utilitarian articles and also of services, not in barter but as voluntary (though decidedly obligatory) giving. *‘Ohana* living inland (*ko kula uka*), raising taro, bananas, *wauke* (for *tapu*, or barkcloth, making) and *olona* (for its fibre), and needling gourds, coconuts and marine foods, would take a gift to some *‘ohana* living near the shore (*ko kula kai*) and in return would receive fish or whatever was needed. The fisherman needing *poi* or *‘awa* would take fish, squid or lobster upland to a household known to have taro, and would return with his *kalo* (taro) or *pa‘i‘ai* (hard *poi*, the steamed and pounded taro corm). . . . In other words, it was the *‘ohana* that constituted the community within which the economic life moved.⁸

Cultivation of taro and fishing were the centerpieces of the material culture. The system of irrigation, fishing, and aquaculture was highly developed and produced a surplus that sustained a relatively developed and unified social structure that was embraced throughout the whole archipelago.

In the fifth period, during the century preceding the opening of Hawai‘i to European contact in 1778, the Hawaiian economy expanded to support a population between 400,000 and 800,000 people.⁹ The social system consisted of the *‘ohana* who lived and worked upon communally held portions of land called *‘ili* within the *ahupua‘a* natural resource system. These *‘ohana*—the foundation of the Hawaiian social system—were ruled over by the stewards of the land, the chiefs along with their retainers and priests.

Even during this period of chiefly rule, land in Hawai'i was still not privately owned. The chiefly class that provided stewardship over the land divided and redivided control over the districts of the islands among themselves through war and succession. A single chief could control a major section of an island, a whole island, or several islands depending upon his military power. Up until the time of Kamehameha I, however, no one chief was ever paramount over all of the islands.¹⁰

The chief divided his landholdings among lesser ranking chiefs, who were called *konohiki*. The *konohiki* functioned as supervisors on behalf of the chief over the people who lived on the lands and cultivated them. The tenure of a *konohiki* was dependent upon his benefactor, the chief. The *konohiki* represented the collective interest of the *ali'i* class over the *maka'āinana* as well as the individual interest of his patron chief.

The lands allocated to the *konohiki* were called *ahupua'a*. *Ahupua'a* boundaries coincided with the geographic features of a valley. They ran from the mountain to the ocean, were watered by a stream, and included landscape features such as mountain ridges and cinder hills.¹¹ The *ahupua'a* of the *konohiki* were further divided into strips of land called *'ili*, which were allocated either by the chief or *konohiki* to the *'ohana*. These *'ili* either extended continuously from the mountain to the ocean or were composed of separate plots of land located in each of the distinct resource zones of the *ahupua'a*. The *'ohana* was afforded access to all of the resources within the *ahupua'a* necessary for survival—vines, timber, thatch, and medicinal plants from forested mountain areas; sloping land for sweet potatoes and crops that require higher altitudes; low-lying lands irrigated by stream waters for taro and fresh water; and shoreline, reef, and ocean areas for fish, limpids, crustaceans, and seaweed, the principal source of protein for Hawaiians.¹²

Ahupua'a boundaries reflected the pattern of land use that had evolved as the most efficient and beneficial to the *'ohana* throughout previous centuries. The boundaries were adopted and instituted by the *ali'i* and *konohiki* to delineate units for the collection of tribute. These boundaries did not restrict access by the *'ohana* to those natural resources needed for survival that were unavailable within their own *ahupua'a*.

For example, the adze is an essential tool for the *‘ohana*, yet the basalt used to hew adzes was not available within every *ahupua‘a*. *‘Ohana* could access the adze quarries even though they were located outside of their *ahupua‘a*. On the island of Moloka‘i, members of *‘ohana* living in the *ahupua‘a* of the windward valleys would annually reside temporarily in the *ahupua‘a* of Kaluako‘i in the summer months to gather and salt fish. The salted fish would sustain them during the winter months when the ocean off of their *ahupua‘a* was too rough for fishing. Evidence suggests that the island of Kaho‘olawe was also a place of temporary residence for Maui *‘ohana* to gather fish and to acquire the basalt needed for making adzes.

The tenure of the *‘ohana* on the land was stable, unlike that of the *ali‘i* and the *konohiki*. This was reflected in the Hawaiian saying, “Ko luna pohaku no ke ka‘a i lalo, ‘a‘ole hiki i ko lalo pohaku ke ka‘a” (“A stone that is high up can roll down, but a stone that is down cannot roll”).¹³ In other words, the chief and his retainers, including the *konohiki*, could be overthrown and lose their positions of influence, but the common people who lived on the land from the days of their ancestors were stable on the land.

Although the chiefs and their *konohiki* had full appropriation rights over the land and the people, in the main this was a system of mutual obligation and benefit between the chiefs and the people. The chiefs controlled the land and distributed it among the *maka-‘āinana*. The chief was required to manage and oversee the production on the land. He regulated the use of scarce resources; apportioned these resources among the people according to principles of fair usage; regulated the use of water, which was the most valued resource of the land; assured that the irrigation system was properly maintained; conducted proper rituals to the gods who controlled nature; and conserved the resources of the land through restriction and replacement policies. In return, the *‘ohana* were obliged to provide labor service and products of the land to the chiefs and *konohiki*.

While Hawaiian tradition records cases of arbitrary, irresponsible, and self-serving chiefs who abused the people, they were clearly exceptional cases and were quickly replaced with responsible chiefs who cared for the well-being of the people.¹⁴

The fragile system of checks and balances between the common people and ruling class that developed during the latter stage of

Hawai'i's pre-European contact history functioned efficiently so long as the interest and values of both classes remained in basic harmony. To the extent that Hawaiian society had evolved into a socially and economically stratified system by 1600, however, there was always inherent in this system the threat of dissolution of the bonds that tied commoners and ruling chiefs together.

'OHANA CUSTOMS AND PRACTICES UNDER THE MONARCHY

The responses of the Hawaiian people to contact and change after 1778 were divergent and largely influenced by the individual social and economic role they played in the society. The acceptance or rejection of Western culture was largely the prerogative of the ruling class of *ali'i*. The common people did not play a major role in determining the political and economic future of Hawai'i. Instead, the Hawaiian social system assigned the *ali'i* the lead role. In exercising this role, their response to foreign interests and foreign powers further distanced them from the common people, who were left with the problem of trying to survive the burdens of contact—war, disease, and depopulation.

Periodically, the common people also suffered from the famines that gripped the land, as the chiefs gave priority to meeting the needs of the fur and sandalwood traders:

[A]s the desires of the chiefs and the pressure of the trading captains grew, more and more people were put to the task, fewer and fewer were left for the normal duties of everyday living; in many areas planting and fishing virtually ceased, and for a season thereafter there would be little harvested beyond the needs of the *ali'i* and their *kono-hiki* (supervisors). It was the people who went hungry.¹⁵

Upon the death of King Kamehameha I in 1819, those chiefs who were closely allied to him feared a rebellion by rival traditional chiefs. As a means of undermining their rivals, the Council of Chiefs, under the leadership of Mo'i Kamehameha II, Kuhina Nui Ka'ahumanu, and High Chief Kalanimōkū, instituted the *'ai noa*, or abolition of the state religion.¹⁶ By abolishing the traditional chiefly religion under

which rivals could claim rank, prestige, and position, the Kamehameha chiefs consolidated political power under their control.

It is important to note that while the chiefly religious rituals and privileges were abolished under the *‘ai noa*, the *‘ohana* beliefs, customs, and practices persisted. The *‘ohana* beliefs, customs, and practices predated the *ali‘i*; coexisted under the rule of the *ali‘i*; and have continued to be practiced, honored, and transmitted to the present. The *‘ohana* continued to honor their *‘aumakua* (ancestral deities). Traditional *kahuna la‘au lapa‘au* (herbal healers) continued their healing practices using native Hawaiian plants and spiritual healing arts. Family burial caves and lava tubes continued to be cared for. The hula and chants continued to be taught, in distinctly private ways, through *‘ohana* lines. Most prominent among the *‘aumakua* who continued to be actively honored, worshipped, thought of, and respected, even to the present, was Pele and her family of deities. Every volcanic eruption reinforced and validated her existence to her descendants and new generations of followers.¹⁷

In 1820, the year following the *‘ai noa*, American missionaries began to settle in Hawai‘i and convert Hawaiians to Christianity. In that same year, commercial whaling began to attract increasing numbers of foreign settlers who demanded rights of citizenship and private ownership of land.¹⁸

By 1840, King Kamehameha had transformed the government into a constitutional monarchy, having signed a bill of rights in 1839 and a constitution for the Kingdom of Hawai‘i in the following year. In 1845, despite petitions of protest signed by 5,790 Hawaiians, foreigners were allowed to become naturalized citizens and to hold public office. Ka Māhele (The Land Division) in 1848 established a system of private land ownership that concentrated 99.2 percent of Hawai‘i’s lands among 245 chiefs, the crown, and the government. Less than 1 percent of the lands were given to 28 percent of the people, leaving 72 percent of the people landless. In 1850, over the protests of Hawaiians, foreigners were given the right to own land. From that point on, foreigners, primarily Americans, continued to expand their interests, eventually controlling most of the land, sugar plantations, banks, shipping, and commerce of the Islands.¹⁹

HOA'ĀINA RIGHTS: A CONDITION OF ADOPTING PRIVATE PROPERTY

When the system of private property was established in Hawai'i, the king and the legislature adopted, in 1846, "An Act to Organize the Executive Departments of the Hawaiian Islands," which established a Board of Commissioners to Quiet Land Titles. This act also included the "Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented To Them."

The introduction to the principles reviews the nature of the rights of the king, the chiefs, and the common people in the land. Up until the creation of a system of private property, the king and the chiefs held all land as a trust. The rights of the *hoa'āina* upon the land were not affected, even by the lease or purchase of the land. According to the introduction to the principles:

The same rights which the King possessed over the superior landlords and all under them the several grades of landlords possessed over their inferiors, so that there was a joint ownership of the land; the King really owning the allodium, and the person in whose hands he placed the land, holding it in trust. . . .

It seems natural then, and obviously just, that the king, in disposing of the allodium, should offer it first to the superior lord, that is to the person who originally received the land in trust from the King; since by doing so, no injury is inflicted on any of the inferior lords or tenants, they being protected by law in their rights as before; and most obviously the King could not dispose of the allodium to any other person without infringing on the rights of the superior lord. But even when such lord shall have received an allodial title from the King by purchase or otherwise, the rights of the tenants and sub-tenants must still remain unaffected, for no purchase, even from the sovereign himself, can vitiate the rights of third parties. The lord, therefore, who purchase the allodium, can no more seize upon the rights of the tenants and dispossess them.²⁰

It is assumed that the establishment of a private property system in Hawai'i changed these relationships and responsibilities. However, even after Ka Māhele was established in 1848 and the Kuleana Act

was passed in 1850, Section 7 of the Kuleana Act afforded *hoa‘āina* gathering rights, rights to drinking water and running water, and the right of way, provided that permission was obtained from the landlord. When permission was denied, the common people suffered. For example, fifty-four *hoa‘āina* in Kane‘ohe petitioned their representative in the legislature as follows:

We are in trouble because we have no firewood and no la‘i, and no timber for houses, it is said in the law that those who are living on the land can secure the things above stated, this is all right for those persons who are living on lands which have forests, but we, who live on lands which have no forest, we are in trouble. The children are eating raw potato because of no firewood, the mouths of the children are swollen from having eaten raw taro. We have been in this trouble for three months, the Konohikis with wooded lands here in Kaneohe have absolutely withheld the firewood and la‘i and the timber for houses.²¹

In 1851, the legislature amended Section 7 of the Kuleana Act, deleting the requirement that tenants obtain the permission of the landlords in order to exercise their *ahupua‘a* tenants’ rights. Since 1851, the law has read as it now does in Chapter 7-1 of the Hawai‘i Revised Statutes (HRS):

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.²²

Hoa‘āina rights were further expanded in 1978 when a constitutional convention included Article XII, Section 7, in the state constitution:

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.

Explicit in the proceedings of the Hawaiian Affairs Committee of the Constitutional Convention was the committee's intent, through Article XII, Section 7, to remove the limit on what could be gathered to the five listed items—firewood, house-timber, aho cord, thatch, and ki leaf.²³

HAWAII STATE SUPREME COURT RULINGS

The Hawai'i State Supreme Court first dealt with the subject of Native Hawaiian gathering rights in *Kalipi v. Hawaiian Trust Co.*²⁴ In that case, the Supreme Court held that such gathering rights are derived from three sources—Chapters 7-1 and 1-1 of the Hawai'i Revised Statutes (1985) and Article XII, Section 7, of the state constitution. In *Kalipi*, the court held that lawful residents of an ahupua'a may, for the purposes of practicing Native Hawaiian customs and traditions, enter undeveloped lands within the ahupua'a to gather the five items enumerated in HRS 7-1. The court also held that it is obligated "to preserve and enforce such traditional rights" under Article XII, Section 7.²⁵ The *Kalipi* court further stated that HRS 1-1 ensures the continuation of other Native 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."²⁶

The Supreme Court again ruled on Native Hawaiian gathering rights in the case of *Pele Defense Fund v. Paty*.²⁷ In this case, the court further expanded the rights established in *Kalipi*.²⁸ In *Pele*, the court explained that although in *Kalipi* it had recognized the gathering rights of Native 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. Based on the record of the 1978 constitutional convention, which promulgated Article XII, Section 7, the court held

in *Pele* that the provision should not be narrowly construed. Accordingly, in *Pele* the court held that “Native Hawaiian rights protected by Article XII, Section 7, may extend beyond the *ahupua'a* in which a Native Hawaiian resides where such rights have been customarily and traditionally exercised in this manner.”²⁹

On August 31, 1995, the Hawai'i State Supreme Court expanded upon its two earlier rulings in a sixty-one-page opinion in *Public Access Shoreline Hawai'i and Angel Pilago v. Hawai'i County Planning Commission and Nansay Hawaii, Inc.* (Kohanaiki case). In this ruling, the court placed an obligation upon state agencies to “protect customary and traditional rights to the extent feasible under the Hawai'i Constitution and relevant statutes.” In addition, the court clarified that no blood quantum is required of those who assert their valid customary and traditional rights, but it expressly reserved or left open the question of the extent to which non-Hawaiian members of an *'ohana* may claim the same rights.

Regarding the exercise of customary rights on developed and undeveloped lands, an issue addressed in the *Kalipi* case, the court stated:

we choose not to scrutinize the various gradations in property use that fall between the terms “undeveloped” and “fully developed.” Nevertheless we refuse the temptation to place undue emphasis on non-Hawaiian principles of land ownership in the context of evaluating deliberations on development permit applications. Such an approach would reflect an unjustifiable lack of respect for gathering activities as an acceptable cultural usage in pre-modern Hawai'i.

Moreover, the court ruled that although access is only guaranteed in connection with undeveloped lands and preservation of those lands is not required, the state does not have the “unfettered discretion to regulate the rights of *ahupua'a* tenants out of existence.”

One of the issues that has arisen in the exercise of traditional and customary gathering rights in a particular area is whether practitioners must prove that those rights have been continuously practiced. On this issue, the court ruled that “the right of each *ahupua'a* tenant to exercise traditional and customary practices remains intact, notwithstanding arguable abandonment of a particular site, although

this right is potentially subject to regulation in the public interest.”

In essence, the Supreme Court has brought the interpretation of the law in line with the ongoing customs of Hawaiian *‘ohana* as they have continued to be actually practiced from one generation to the next up to the present.

PERSISTENCE OF HOA‘ĀINA CUSTOMS AND PRACTICES IN CULTURAL KIPUKA

Rural communities where Hawaiians have maintained a close relationship to the land through their subsistence livelihoods have played a crucial role in the survival of Hawaiian culture.³⁰ An analogy that conveys a sense of the significance of these areas can be found in the natural phenomena in the volcanic rainforest. Botanists who study the volcanic rainforest have observed that eruptions, which destroy large areas of forest land, leave oases of native trees and plants called *kipuka*. From these natural *kipuka* come the seeds and spores for the eventual regeneration of the native flora upon the fresh lava. Rural Hawaiian communities are cultural *kipuka* from which Native Hawaiian culture can be regenerated and revitalized in the contemporary setting. Protection of the natural resources and the integrity of the lifestyle and livelihoods of the Hawaiians in these rural districts is essential to the perpetuation of Hawaiian culture.

Only a handful of rural Hawaiian communities have survived the onslaught of poststatehood (1959) development. These include the islands of Moloka‘i and Ni‘ihau; the districts of Hāna and Kahakuloa on Maui; Kahana, Hau‘ula, Lā‘ie, and sections of the Wai‘anae coast on O‘ahu; the districts of Ka‘ū, and Puna and small communities in Kona, excluding Kailua, on the Big Island; and Kekaha and Anahola on Kaua‘i.

Cultural *kipuka* were traditional centers of spiritual power. In traditional Hawaiian chants and mythology, major *akua* (gods) and Hawaiian deities were associated with the areas. The districts were isolated and difficult to access over land and by sea. Due to the lack of good anchorage and harbors, early traders often bypassed these districts in favor of more accessible areas. The missionaries entered

these areas and established permanent stations during a later period than in other parts of Hawai‘i. Thus, traditional Hawaiian spiritual beliefs and practices persisted there, without competition, for a longer period of time. As Christian influences entered these areas, they coexisted with traditional beliefs and practices.

The geography of these districts discouraged the widespread or long-term development of sugar plantations. In the arid areas, the lack of water resources made development of sugar plantations unfeasible. In the areas with sufficient rainfall, the terrain was too steep or rugged for plantation agriculture. Where plantation agriculture failed, such as in Moloka‘i and the Hāna district, ranches were able to succeed. The ranches employed Hawaiian men as cowboys and allowed them to live with their families in these isolated districts and pursue traditional fishing, gathering, and hunting activities to supplement their wages.

Where neither plantations nor ranches were established, traditional subsistence activities continued to be pursued, undisturbed by modern economic development. In the wetland areas, taro continued to be farmed, often in conjunction with rice. In the arid areas, sweet potatoes, dryland taro, and other traditional and introduced crops suited to the dry soil and climate were cultivated.

The undeveloped natural resources in these areas provided an abundance of foods for the Native Hawaiians who lived there. Forested lands provided Hawaiians with fruits to eat; vines, plants, and woods for making household implements and tools; and herbs to heal themselves. They provided a natural habitat for animals that were hunted for meat. Marine life flourished in the streams. The ocean provided an abundance of food. Subsistence activities continued to be the primary source of sustenance for the native Hawaiians. Production in these districts was primarily oriented around home consumption. We find in these areas that the natural resources sustained a subsistence lifestyle, and a subsistence lifestyle, in return, sustained the natural resources.

The quality and abundance of the natural resources of these rural Hawaiian communities can be attributed to the persistence of *‘ohana* values and practices in the conduct of subsistence activities. An inherent aspect of these *‘ohana* values is the practice of conservation to

ensure availability of natural resources for present and future generations. These rules of behavior are tied to cultural beliefs and values regarding respect of the *‘āina* (land), 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 that shapes these customs and practices is *lokahi*, or maintaining spiritual, cultural, and natural balance with the elemental life forces of nature.

In communities where traditional Hawaiian customs and practices have continued to be practiced, the *‘ohana* respect and care for the surrounding natural resources. They only use and take what is needed. They allow the natural resources to reproduce. They share what is gathered with family and neighbors. Such knowledge has been passed down from generation to generation through working side-by-side with their *kupuna*, or elders.

This ancestral knowledge about the land and its resources is reinforced through continued subsistence practices. While traveling to the various *‘ili* of the traditional cultural practices region, through dirt roads and trails, 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, and the location of various native plants and animals. The practitioners stay alert 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. The land is not a commodity to them. It is the foundation of their cultural and spiritual identity as Hawaiians. They proudly 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.

‘OHANA PRACTITIONERS

Hoa‘āina customs and practices are basically carried out within the context of the primary Hawaiian social unit, the *‘ohana*. These customs and practices are usually carried out in relation to the district in which an *‘ohana* or cultural group has exercised or intends to

reestablish traditional access and use rights. Included within the *'ohana* are all members of the extended family living within or in close proximity to the natural or cultural resource area being considered and who frequently use the area for cultural, religious, or subsistence purposes and activities. Non-Hawaiians who are part of Hawaiian *'ohana* through intermarriage or *hānai* (reared as part of the *'ohana*) are considered to be part of the *'ohana*. In some cases, there are also cultural groups whose members live in the district which may be seeking to reestablish and revive subsistence, religious, or cultural uses of the area. As residents of the area, they also have rights of access for such traditional purposes. Nonresidents, both Hawaiian and non-Hawaiian, may also accompany *'ohana* members in the exercise of these traditional and customary activities.

Members of Hawaiian *'ohana* who live outside of the natural or cultural resource area and have formerly established and seek to reestablish and revive religious, cultural, or subsistence practices in those districts also have *hoa'āina* rights of access. This would include a non-resident individual member of an *'ohana* that still resides in the area and also nonresident members of *'ohana* who, in their genealogies, trace their origin or some family connection to these districts even though no family member now resides in the natural or cultural resource area.

In the case of Hawaiian Homelands areas, Hawaiians and their *'ohana* who seek to become established on those lands as stewards, curators, settlers, or license holders have exercised and been recognized to have rights of access.

Hawaiian cultural groups who live outside of the natural or cultural resource area but have established or seek to reestablish and revive religious, cultural, or subsistence practices in those districts may establish *hoa'āina* rights of access. This would include traditional Hawaiian healers who may use these areas to gather *lā'au lapa'au* (native plants for medicine); hula *hālau* whose chants and dances honor deities associated with the natural or cultural resource area who may need to gather certain native plants from these districts; and fishermen, hunters, gatherers, taro planters, and so forth who have accessed and used the natural or cultural resource area for subsistence. The primary example of such a cultural group is the Protect Kaho'olawe 'Ohana. Its right of access was recognized under a 1980

consent decree with the U.S. Navy and was reaffirmed by the Kaho‘o-lawe Island Reserve Commission in 1995.³¹

‘OHANA STEWARDSHIP AND USE OF NATURAL AND CULTURAL RESOURCES

Methods and techniques of accessing, acquiring, or utilizing traditional natural resources may have changed over time. This does not, however, detract from the fact that practitioners are guided by traditional knowledge and values in conducting these activities and are motivated by purposes related to traditional subsistence, religion, or culture.

For example, Hawaiian fishermen may use motor boats rather than canoes to get to their ancestral fishing grounds. They may use a nylon net rather than one sewn out of native plant materials to surround the fish and *pa‘ipai*, or entangle, them in the overnight tide. In most cases they are still utilizing ancestral knowledge of ocean tides, currents, and reefs to locate and catch the fish. Their catch is used to honor family *‘aumakua* and to feed their extended families and neighbors.

Hawaiian hunters may drive a truck on a dirt road rather than walk along a trail to reach the area of forest where the pigs roam. They may use a gun rather than a spear or knife. Since agriculture and residential development have destroyed the lowland forest areas where the pigs used to be plentiful and easily reached on foot trails, Hawaiians must go deeper into the same forests or higher up the same mountain hunted by their ancestors. The meat is shared with their large extended families as well as neighbors who no longer have the stamina to go out and hunt.

What distinguishes Hawaiian custom and practice is the honor and respect for traditional *‘ohana* cultural values and customs in the harvesting of natural resources and the sharing of what is gathered with family and neighbors. Special care is given to sharing with the *kupuna* who passed on their knowledge and experience but who have grown too old to go out on their own. In some communities, this is reflected in the practice of reserving the easy-to-reach areas for the *kupuna* to gather and fish.

There are certain basic principles of *‘ohana* stewardship that continue to guide Hawaiian practitioners in their use of natural and cultural resources.

The *ahupua‘a* is considered to be the basic unit of natural and cultural resource management. Given this orientation, it becomes obvious that 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 and the various natural resource zones within an *ahupua‘a* into account.

Hawaiians consider the land and ocean to be integrally united. The *ahupua‘a* encompasses 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*.³²

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.

Contemporary Hawaiians understand that their ancestors studied the land and the natural elements and became very familiar with their features and assets. Ancestral knowledge of the land was recorded and passed down through place names, chants, and legends that name the winds, rains, and features of a particular district. Hawaiian ancestors applied their expert knowledge of the natural environment in constructing their homes, temples, cultivation complexes, and irrigation networks. Decisions about the location and scale of contemporary structures and infrastructure should take into account such ancestral knowledge as well as the location of traditional Hawaiian structures and cultural use areas. 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. They do not waste the natural resources.

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. Custom dictates not to catch fish and marine animals during their spawning seasons. One must gather, hunt, and fish in a manner that allows the natural resources to reproduce and replenish themselves. Plants and seaweeds are plucked, not uprooted. Harvesting areas are alternated. If the resources of an area are declining, a *kapu*, or taboo, on harvesting is observed until the resources revive. If necessary, resources are replanted or reseeded. Resources will always be abundant and accessible to those who possess knowledge about their location and have the skill to obtain them. There is no need to overuse more accessible areas. The knowledge about the natural resources that has been passed down from one generation to the next is respected and protected. It is not carelessly given away to outsiders.

Practitioners usually do not talk openly about plans for going out to subsistence hunt, gather, or fish. Throughout their expedition, practitioners keep focused on the purpose and goal for which they set out. They keep aware of the natural elements and stay alert to natural signs, such as falling boulders as a sign of flash flooding. To maintain their focus, it is important to keep quiet, and not to be loud and boisterous.

Families usually fish, hunt, and gather in the areas traditionally used by their ancestors. If they go into an area outside their own for some specific purpose, they usually go with people from that area.

Hawaiian *‘ohana* maintain a respect for the spirits of the land, forest, and ocean. They especially respect their family *‘aumakua* and do not gather the resources sacred to them.

RESOURCES FOR HAWAIIAN SUBSISTENCE, RELIGIOUS, AND CULTURAL PRACTICES

Within a given landscape a range of resources are utilized for Hawaiian subsistence, religious, and cultural beliefs, customs, and practices. These include but are not limited to: *wahi pana*; fresh water sources such as streams, springs, and ponds; marine resources, including the

shoreline, reefs, and nearshore and offshore waters; forest resources; traditional domains of *‘aumakua*; resources that embody a Hawaiian deity; archaeological and historical sites; areas of taro cultivation; other cultivation areas; circulation networks, including trails and dirt roads; buildings and structures; internal boundaries; irrigation ditches; open areas; and viewing points and view sheds. These are resources that Hawaiian *‘ohana* require access to and use of in order to carry out traditional subsistence, religious, and cultural activities. *Wahi pana* are sacred sites such as *heiau*, shrines, burial caves, graves, and geographic features associated with deities and significant natural, cultural, spiritual, or historical phenomena or events. Edward Kanahele described *wahi pana* this way:

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.³³

Streams, springs, and ponds are important for taro cultivation; for domestic uses; for habitats of native species of aquatic life; for recreation; and for conducting cultural and spiritual customs.

Shorelines, reefs, and nearshore and offshore ocean are important for the gathering of foods and medicine; for recreation; and for conducting cultural and spiritual customs.

Forests are important for hunting pigs and other animals; for gathering plants used for medicine, foods, ceremonial adornment, and ritual offerings; and for the conduct of spiritual customs.

Particular natural and cultural areas are important as traditional domains of *‘aumakua* where Hawaiians renew their ties to ancestors through experiencing natural phenomena and witnessing *hō‘ailona*, or natural signs.

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. These resources are believed to embody a Hawaiian deity and are especially important for Hawaiian religious customs and practices.

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 *'aumakua*. 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, and the like; *pu'uhonua*, 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.

A taro cultivation area is designed as a single system with interrelated elements, including the stream, the *'auwai*, and the various pond fields.

Hawaiians have also developed other areas for the cultivation of plants used for food, medicine, adornment, ornament, implements, cooking, fuel, mulching, and ceremony. These areas provide important resources for traditional customs and practices.

Over land, circulation networks 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* are also important. These include bridges. By ocean, these include landings, piers, and harbors.

Buildings, structures, and facilities include residences, churches, schools, camp grounds, parks, storage and work staging baseyards; gardens; water catchments, and the like.

Facilities such as roads, irrigation features, streams, cliffs, ridgelines, *pu'u*, or hills, fencing, and walls form important internal boundaries and reference points for subsistence gatherers.

Where ditches have been constructed on the various islands, they comprise major features and complexes, including tunnels, ditches, aqueducts, and roads.

Open areas, lands that have no structures and are not under cultivation, serve as buffers between settlements and uses. They also function to maintain and define density and characteristic spatial patterns.

Viewing points and view sheds are 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.

SOURCES OF INFORMATION ABOUT ‘OHANA CUSTOMS AND PRACTICES

In the early nineteenth century, the four Lahainaluna Hawaiian scholars, David Malo, Samuel Kamakau, Kepelino, and John Papa I‘i, each documented through oral histories, many facets of Hawaiian custom, belief, and practice. Explorers, artists, and missionaries added to the ethnography of Hawai‘i in their journals, diaries, writings, and works of art. Government records and documents are in the Hawai‘i State Archives. Of special importance are the Land Commission testimonies and records.

In the twentieth century, A. D. Kahā‘ulelio documented fishing traditions, custom, and practice. Mary Kawena Pukui collaborated with E. S. Craighill Handy and Elizabeth Green Handy to document the customs and practices of Hawaiians in planting taro, sweet potato, banana, and other food crops. Cultural anthropologists and ethnographers Abraham Fornander, Peter Buck, Nathaniel Emerson, Kenneth Emory, Theodore Kelsey, Marion Kelly, and Dorothy Barrère have each written volumes of information documenting customs and practices unique to particular districts as well as those generally practiced throughout the Islands. The Hawai‘i Ethnographic Notes collection of the Bernice Pauahi Bishop Museum and its Audio Recording Collection of chants and oral history interviews have a wealth of information concerning Hawaiian custom, belief, and practice.

Traditionally, cultural knowledge was remembered and passed down through oral tradition in chants, legends, myths, genealogies, and place names. There is still a wealth of knowledge that is kept alive and practiced by living generations of Hawaiian families, and those who received traditional training such as *kumu hula* and *kahuna*

lā'au lapa'au. Moreover, the living culture is constantly undergoing growth and change. Therefore, any effort to understand and document the natural and cultural resources of an area must include consultation with the Hawaiian *'ohana*, *kumu*, and cultural groups who live in the area, have use rights, and take responsibility for the cultural and natural resources of the area.

CONCLUSION

The Hawai'i State Supreme Court has ruled that it is the responsibility of state agencies to protect Hawaiian customary and traditional rights. There is ample evidence that the persistence of Hawaiian *'ohana* values and practices has contributed to protection of the rich cultural and natural resources that make Hawai'i a special place to live. Thus, it is also the responsibility of everyone who enjoys living in Hawai'i to protect the precious resources of the islands and the integrity of the Hawaiian people who rely upon these natural resources for their subsistence, religious, and cultural beliefs, customs, and practices.

NOTES

- ¹ *Public Access Shoreline Hawaii v. Hawaii County Planning Commission*, 79 Haw. 246 (1995).
- ² Janice Otaguro, "Islander of the Year," *Honolulu*, Jan. 1996, 32–34, 62, 69–70.
- ³ Office of the Commissioner of Public Lands of the Territory of Hawai'i, *Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands* (Honolulu: Star-Bulletin Press, 1929) ix.
- ⁴ Mary Kawena Pukui, E. W. Haertig, and Catherine A. Lee, *Nana I Ke Kumu (Look To the Source)*, vol. 1 (Honolulu: Hui Hanai, 1972) 166–74.
- ⁵ Luciano Minerbi, Davianna McGregor, and Jon Matsuoka *Native Hawaiian Local and Hawaiian Cultural Assessment Project* (Honolulu: Hawai'i State Department of Health, 1993).
- ⁶ Governor's Task Force On Moloka'i Fishpond Restoration, *Governor's Task Force On Moloka'i Fishpond Restoration Report* (Honolulu: Department of Land and Natural Resources, 1993); Governor's Moloka'i Subsistence Task Force, *Governor's Moloka'i Subsistence Task Force, Final Report* (Honolulu: Department of Business and Economic Development and Tourism, 1994).
- ⁷ These periods are discussed and summarized in Patrick V. Kirch, *Feathered Gods*

- and *Fishhooks: An Introduction to Hawaiian Archaeology and Prehistory* (Honolulu: U of Hawai‘i P, 1985). They are also discussed in Malcolm Naea Chun and Matthew Spriggs, “New Terms Suggested For Early Hawaiian History,” *Ka Wai Ola O OHA*, Feb. 1987, 4. Other sources for dating these periods are Abraham Fornander, *Fornander Collection of Hawaiian Antiquities and Folk-Lore*, Bernice P. Bishop Museum Memoirs 4, 5, 6 (Honolulu: Bishop Museum, 1916–1920); Martha W. Beckwith, *Hawaiian Mythology* (Honolulu: U of Hawai‘i P, 1970); Samuel Kamakau, *Ruling Chiefs of Hawaii* (Honolulu: Kamehameha Schools Press, 1961); Samuel M. Kamakau, *Ka Po‘e Kahiko: The People of Old*, Bernice P. Bishop Museum Special Publication 51 (Honolulu: Bishop Museum P, 1964); Samuel M. Kamakau, *The Works of the People of Old*, Bernice P. Bishop Museum Special Publication 61 (Honolulu: Bishop Museum P, 1976); David Kalakaua, *The Legends and Myths of Hawaii: The Fables and Folklore of a Strange People* (1888; rpt. Rutland, Vt: Charles E. Tuttle, 1973).
- 8 E. S. Craighill Handy and Mary Kawena Pukui, *The Polynesian Family System in Ka-u, Hawaii‘i* (1958; rpt. Rutland, Vt: Charles E. Tuttle, 1981) 5–6.
- 9 Estimate from Cook’s voyage was 400,000. See Captain James Cook, *The Journals of Captain James Cook on His Voyages of Discovery, Volume III, The Voyage of the Resolution and Discovery 1776–1780 Part One* (Cambridge: Hakluyt Society, 1955–1974) 620. Recent studies place the precontact population as high as 800,000. See David E. Stannard, *Before the Horror: The Population of Hawai‘i on the Eve of Western Contact* (Honolulu: Social Science Research Institute, U of Hawai‘i, 1989).
- 10 At the time of Cook, Kalani‘ōpu‘u controlled Hawai‘i island, and Kahekili controlled Maui, O‘ahu, Moloka‘i, Lana‘i, Kaho‘olawe, Kaua‘i, and Ni‘ihau.
- 11 On O‘ahu, the ahupua‘a were bounded on each side by mountain ridges. On Maui, the ahupua‘a were bounded on each side by streams. On Hawai‘i, cinder hills, or pu‘u, were used as boundary markers.
- 12 E. S. Craighill Handy, Elizabeth G. Handy, and Mary Kawena Pukui, *Native Planters in Old Hawaii: Their Life, Lore, and Environment*, Bernice P. Bishop Museum Bulletin 233 (Honolulu: Bishop Museum P, 1972). For a detailed description of traditional Hawaiian land divisions, see David Malo, *Hawaiian Antiquities (Moolelo Hawaii)*, trans. Nathaniel B. Emerson (Honolulu: Bernice P. Bishop Museum, 1951).
- 13 Mary Kawena Pukui, *‘Ōlelo No‘eau: Hawaiian Proverbs and Poetical Sayings* (Honolulu: Bishop Museum P, 1983), no. 1833.
- 14 Kamakau, *Ruling Chiefs* 1–21; Marion Kelly, *Majestic Ka‘u: Mo‘olelo of Nine Ahupua‘a* (Honolulu: Bernice P. Bishop Museum, 1980) 1–6.
- 15 Handy and Pukui, *The Polynesian Family System* 234–35.
- 16 Kamakau, *Ruling Chiefs* 219–28; Kalakaua, *Legends and Myths* 429–46; Marshall Sahlins, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom* (Ann Arbor: U of Michigan P, 1981) 55–64; William Davenport, “The Hawaiian ‘Cultural Revolution’: Some Economic and

- Political Considerations," *American Anthropologist* 71 (1969): 1–20; A. L. Kroeber, *Anthropology* (New York: Harcourt, Brace, 1948).
- ¹⁷ Pualani Kanahēle, *Ka Honua Ola (The Living Earth): An Introduction to Pele and Hiiaka with Annotated Bibliography* (Honolulu: s.n., 1989), Hawaiian Collection, Hamilton Library, U of Hawai'i.
- ¹⁸ Kamakau, *Ruling Chiefs* 396–415; Ralph S. Kuykendall, *The Hawaiian Kingdom, 1778–1854: Foundation and Transformation* (Honolulu: U of Hawai'i P, 1938) 269–98.
- ¹⁹ Kuykendall, *The Hawaiian Kingdom* 269–98; Davianna McGregor-Alegado, "Voices of Today Echo Voices of the Past," in *Malama Hawaiian Land and Water*, ed. Dana Naone Hall (Honolulu: Bamboo Ridge P, 1985) 44–58.
- ²⁰ Office of the Commissioner of Public Lands, *Indices of Awards* 2.
- ²¹ Legislative Petition File, translation of petition of 14 Aug. 1851 to J. Kalili. AH.
- ²² Haw. Rev. Stat., sec. 7-1 (1985).
- ²³ *Proceedings of the Constitutional Convention of Hawaii of 1978*, 1: 638–40, 2: 433–37.
- ²⁴ *66 Haw. 1, 656 P. 2d 745 (1982)*. 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, No. 15460, in *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, Civ. No. 90-293K, Jan. 28, 1993, Judges Burns (chief judge), Heen, and Watanabe, hereafter referred to as the PASH ruling.
- ²⁵ *66 Haw. at 4, 656 P. 2d at 748*.
- ²⁶ *Id. at 10, 656 P. 2d at 751*.
- ²⁷ *73 Haw. 578, 837 P. 2d 1246, 1992*.
- ²⁸ PASH ruling, 10.
- ²⁹ *73 Haw. at 620, 837 P. 2d at 1272*.
- ³⁰ The primary sources of information for the information on contemporary 'ohana customs and practices are: Davianna McGregor, "Traditional Hawaiian Cultural, Spiritual, and Subsistence Beliefs, Customs, and Practices and Waiahole, Waikāne, Hakipu'u, and Kahana" (unpublished ms., 15 Sept. 1995, available through Native Hawaiian Advisory Council); Kaho'olawe Island Reserve Commission, *Kaho'olawe Use Plan: Palapala Ho'omohono Moku'āina o Kaho'olawe* (Honolulu: Kaho'olawe Island Reserve Commission, 1995); Group 70, Inc., Davianna McGregor, and Cultural Surveys Hawai'i, Inc., *Kalo Kanu O Ka 'Āina: A Cultural Landscape Study of Ke'anae and Wailuanui, Island of Maui* (Wailuku: County of Maui Planning Department and the Maui County Cultural Resources Commission, May 1995); Jon K. Matsuoka, Davianna McGregor, and Luciano Minerbi, *Native Hawaiian Ethnographic Study for the Hawai'i Geothermal Project Environmental Impact Study* (Oakridge: Oakridge National Laboratories, 1993); Jon K. Matsuoka, Davianna McGregor, and Luciano Minerbi, *Governor's Moloaka'i Subsistence Task Force Report* (Kaunakakai: Moloka'i Department of Business, Economic Development, and Tourism, 1993); Minerbi, McGregor, and Matsuoka, *Native Hawaiian and Local Cultural Assessment Project*.

- ³¹ Consent Decree, *Aluli v. Brown*, and Letter of Understanding Between the Kaho‘olawe Island Reserve Commission and the Protect Kaho‘olawe ‘Ohana, 1995.
- ³² At Kalae, South Point, on the island of Hawai‘i, a fishing *ko‘a* marks a fishing ground that is eight miles from the shoreline.
- ³³ Van James, *Ancient Sites of O‘ahu: A Guide to Hawaiian Archaeological Places of Interest* (Honolulu: Bishop Museum P, 1991) ix–xi.

