

CMP IMPLEMENTATION  
NATIVE HAWAIIAN CULTURAL RESOURCES  
**CR - 7**

**Kahu Kū Mauna shall take the lead in determining the appropriateness of  
constructing new Hawaiian cultural features**

**I. STATUTES AND ADMINISTRATIVE RULES**

Conservation Districts Administrative Rules (HAR 13-5)

§13-5-2 Definitions

“Land use” means:

The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs.

The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;

The subdivision of land; or

The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

Natural Area Reserve Policy (HAR 13-209)

§13-209-4 Definitions

It is prohibited:

To remove, damage, or disturb any geological or paleontological features or substance;

To engage in any construction or improvement;

Historic Preservation (HRS 6E)

§6E-11 Penalties

“It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department....”

## **II. PROPOSED OMKM POLICY**

The construction of new cultural features is generally not allowed unless a permit is first obtained from the Office of Mauna Kea Management.

Guidelines for erecting and maintaining new cultural features such as, for example, shrines or alters:

1. Definition:
  - a. Cultural features is defined as Native Hawaiian cultural feature
2. New cultural features shall be placed out of plain sight, or a minimum of 100 yards from existing roads and in designated areas. Plain sight includes areas close to or adjacent to roads, parking areas unless hidden by natural features such as rock outcroppings or mounds.
3. New cultural features shall be placed at least 200 feet from existing historic sites.
4. New cultural features shall be made of natural materials from the surrounding area, but shall not be removed from existing historical sites. Removal, disturbance or damage to historic sites is a violation of state law, HRS 6E.
5. New cultural features are to be maintained by those who erected them.
6. Upon observation that the structure has been disturbed or damaged, OMKM shall contact the responsible individual.
7. If the new cultural feature is not properly maintained, or if after 30 days following notification of the responsible party, or within a period of time agreed to by OMKM and the responsible party, the structure is not repaired or replaced, the structure shall be removed. If after 60 days the responsible party cannot be reached or fails to respond to OMKM's efforts to contact the person, the structure shall be removed.
8. Floral items are allowed, except as noted below. Floral items left at the structure shall be removed by OMKM after 10 days.
9. Food items are not allowed unless removed immediately following a ceremony or ritual. Any food items left at the structure shall be immediately removed.
10. Soil, sand, animals or animal parts, insects and seed bearing plants or parts of plants, especially grasses or invasive species, are not allowed. Any seed bearing plants or parts of plants shall be removed immediately
11. Man made articles left at or near the structure shall be removed by OMKM after 10 days.
12. Cultural features for which OMKM did not issue a permit shall be removed.

## **III. DISCUSSION**

The construction of Hawaiian cultural features is an extremely sensitive issue. Many Native Hawaiians will be the first to say that it is not their kuleana to judge the cultural practices of another Hawaiian or to judge without knowing the reason for constructing a feature. The CMP discussion on CR-7 states the intent of this management action is to develop a process to determine cultural appropriate protocols and to develop guidelines to assist in formulating culturally appropriate protocols, such as determining “which kinds of features and locations are appropriate or inappropriate as well as if and when a regulatory review process is necessary.

CR-7 states that Kahu Kū Mauna should “take the lead in determining the appropriateness of constructing New Hawaiian cultural features”. However, in reviewing this management action Kahu Kū Mauna agrees that it is not their kuleana to develop culturally appropriate protocols for constructing cultural features. Protocols are personal and private in nature and to develop a one-size-fits-all protocol is not appropriate. Further to question a person’s reasons for constructing a cultural feature may be viewed as niele or not another person’s business. More importantly the exercise of Native Hawaiian traditional and customary rights is constitutionally protected subject to reasonable regulation as permitted by law. Kahu Kū Mauna does not have the authority to regulate the traditional customary practices of other Native Hawaiians.

#### Legal consideration

A legal consideration is compliance with existing regulations. The University’s managed lands on Mauna Kea are classified Conservation District lands and fall under HAR 13-5 which governs land uses. Land uses are defined in the HAR and may be allowed depending on the type and subzone designation. One of the definitions of land use is the “placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs”. The rules do not specifically address the construction of cultural features, however the construction of cultural features, especially one that remains for more than 30 days, fall under this definition. Also a cultural feature that remains as a permanent structure changes the land area.

Although rules governing the Mauna Kea Ice Age Natural Areas Reserves (NAR) do not apply to UH’s managed lands, the NAR is an integral part of the cultural landscape of Mauna Kea. OMKM recognizes the cultural landscape encompasses the NAR and UH’s managed lands and political boundaries should not be a reason for parceling the cultural landscape. OMKM acknowledges the NAR rules which prohibits engaging in construction or improvement and removing, damaging, or disturbing geological features or substance. But OMKM also acknowledges that the right of Native Hawaiians to practice and exercise traditional and customary practices is constitutionally protected subject to reasonable regulation of such rights as permitted by law.

#### Historic Sites

Pursuant to HRS 6E-11, it is violation to injure, destroy or alter any historic property (an historic property includes, for example, any building, structure, object or site that is over

fifty years old). The potential exist for the uninitiated to use rocks from an existing historic site for the construction of a cultural feature.

*Preserving the cultural and natural landscape*

Another major consideration is preservation of the cultural landscape. The building of new features should not be constructed without some thought for maintaining or removing them after the purpose for which they were built has ended. It is not OMKM's kuleana to maintain these features but rather the responsibility of the individual(s) who erected them.

The creation of new features that are visible to the public might encourage others who do not understand the nature or purpose of these new cultural features to engage in "copy cat" behavior. Further, having cultural features in plain view can also result in vandalism or inadvertent disturbance or damage to the sites. Constructing the features out-of-site or a distance away from the road and historic sites will help to prevent disturbance to new and historic sites.

It is OMKM's responsibility to preserve not only the cultural landscape, but also the natural landscape and biological community. It is not uncommon to bring and leave flowers, leaves and other plant parts, sometimes with viable seeds, especially those that are easily distributed by wind. Food items left behind can attract vermin such as rats and mongoose, or undesirable arthropods, including ants. Often times man made articles are left behind such as beer cans, crystals, and statues. These, plus plant material, and food items left behind eventually become trash or are blown about by the winds.

The BLNR approved Public Access Plan for UH's managed lands on Mauna Kea, contains a hierarchy of public access control with personal responsibility being the fundamental and lowest level of control. It states:

"As individuals we bring our own personal sense of responsibility and kuleana to Mauna Kea. This sense of kuleana is shaped by our upbringing and by the degree to which we have been taught to act with common courtesy, humility and respect both for nature and for other people...Although this sense of responsibility may not be shared equally by all members of the public, there is a foundation of personal accountability upon which to build. The most effective management tool is the ability of each individual to take responsibility for their own actions...."

It follows that the maintenance of newly constructed features should be the responsibility of the individual(s) who erected them. Items left behind that are not originally part of the natural landscape should be removed.

**ACTION:****Need for a Process**

There needs to be a process that accommodates those wishing to exercise their cultural practices, and which ensures compliance with regulations, prevents disturbance or damage to historic sites, and provides for proper maintenance to help preserve the cultural and natural landscape,

**Permit**

To comply with conservation district rules the OMKM process requires applying for and obtaining a permit from OMKM to construct a new cultural feature.

- The application for a permit shall include the date, name of the person, contact information, location, description, and longevity/permanence of the feature, and a photo of the feature after it is completed.
- OMKM shall designate areas and provide a map where features can be constructed. The map shall depict areas that are 200 ft away from existing historic sites; a 100 yard buffer from the access road; and boundaries of UH's lands. In addition, designated areas shall avoid locations containing threatened and endangered species. The buffer zone for the latter shall be determined depending on the particular threatened or endangered species
- The application shall be accompanied with the terms of the permit including a discussion on the purpose and reasons for the conditions, OMKM's roles, and the responsibilities of the applicant.

OMKM will apply for a permit from DLNR that allows OMKM to issue permits for constructing new cultural features only on UH's managed lands.

OMKM shall also seek approval from DLNR designating areas for the construction of cultural features.