

COMPREHENSIVE MANAGEMENT PLAN (CMP)

CR – 7 : Kahu Kū Mauna shall take the lead in determining the appropriateness of constructing new Hawaiian Cultural Features

Policy for CR-7

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

1. Any Native Hawaiian who would like to construct a new cultural feature shall, prior to any construction or preparation for construction, register the proposed site of the new cultural feature with the OMKM. OMKM will keep a record of the location and contact information of the responsible party. Responsible party means the person who registers the proposed site.
2. New cultural features shall be placed out of plain sight, or a minimum of 100 yards from existing roads and in designated areas to discourage copycat behavior. Plain sight includes areas close to or adjacent to roads, parking areas, driveways or within 100 yards of buildings.
3. New cultural features shall not be placed in any areas used for operations.
4. Any and all new cultural features shall not be placed in any area that would create a risk to public health, safety or the environment.
5. New cultural features shall be placed at least 200 feet from existing historic sites.
6. 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-11.
7. New cultural features are to be maintained by the responsible party .
8. Upon observation that the structure has been disturbed or damaged, OMKM shall contact the responsible party.
9. If the new cultural feature is constructed from or includes in its composition materials that are not from the surrounding area it will be removed and the incongruous materials disposed of.
10. New cultural features that have not been registered with the OMKM prior to construction may be subject to removal.

11. All applicable Hawaii State laws and regulations shall apply.

Supporting Documentation

Hawaii State Constitution

The Hawaii State Constitution states in Article XII, Section 7 that:

“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. [Add Const Con 1978 and election Nov 7, 1978]”

While traditional and cultural rights are recognized as an important aspect of our political heritage the Hawaii State Constitution also tasks the state with the regulation of these rights.

Hawaii Revised Statutes

§6E-11 Civil and administrative violations.

- (a) 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 the private lands of any owner thereof without the owner's written permission being first obtained. 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, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

- (b) It shall be a civil and administrative violation for any person to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site, or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

- (c) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial

site during the course of land development or land alteration activities to which section §6E-42 applies, without obtaining the required approval.

- (d) It shall be a civil and administrative violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section §6E-43.6.
- (e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in section §6E-2, except as permitted by the department.
- (f) Any person who violates this section shall be fined not more than \$10,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the environmental court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.
- (g) Any person who knowingly violates this chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.
- (h) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.
- (i) The civil and administrative penalties imposed pursuant to this chapter shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law. [L 1976, c 104, pt of §2; gen ch 1985; am L 1990, c 306, §8; am L 1992, c 113, §3; am L 1996, c 97, §8; am L 2003, c 104, §3; am L 2005, c 128, §3; am L 2006, c 38, §1 and c 45, §2

Conservation District

183C-2 Definitions

"Land use" means:

- (1) The placement or erection of any solid material on land;

- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

Department of Land and Natural Resources Administrative Rules

Natural Areas Reserve

HAR 13-209-4, prohibited activities within the Natural Area Reserve

The following activities are prohibited within a natural area reserve:

- (1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;
- (2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department and service animals accompanying their handlers;
- (3) To remove, damage, or disturb any geological or paleontological features or substances;
- (4) To remove, damage, or disturb any historic or prehistoric remains;
- (5) To remove, damage, or disturb any notice, marker, or structure;
- (6) To engage in any construction or improvement;

Forest Reserve

HAR 13-104-4, preservation of public property and resources.

The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the Board or authorized representative or as provided by rules of the Board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g. natural stream beds) except as authorized by the board or its authorized representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
- (4) To remove, damage, or disturb any notice, marker, or structure;

- (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within or on forest reserve except as authorized by the board or its representative;
- (6) To engage in any construction or improvement except as authorized by the board.
- (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board.
- (8) To distribute or post handbills, circulars, or other notices. Unofficial compilation:
- (9) To introduce any plant or animal except as approved by the Board.
- (10) To enter or remain within forest reserves when under the influence of alcohol, narcotics, or drugs, to a degree that may endanger oneself or endanger or cause annoyance to other persons or property. The use or possession of narcotics, drugs or alcohol within forest reserves is prohibited. [Eff 9/28/81; am and comp 10/15/93] (Auth: HRS §183-2) (Imp: HRS §§183- 2, 183-17) §

Conservation District Rules

HAR 13-5-2 Definitions

"Land use" means:

- (1) 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;
- (2) The grading, removing, harvesting, dredging, Unofficial Copy §13-5-2 5-6 mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, noncommercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

§13-5-6 Penalty

- (d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.