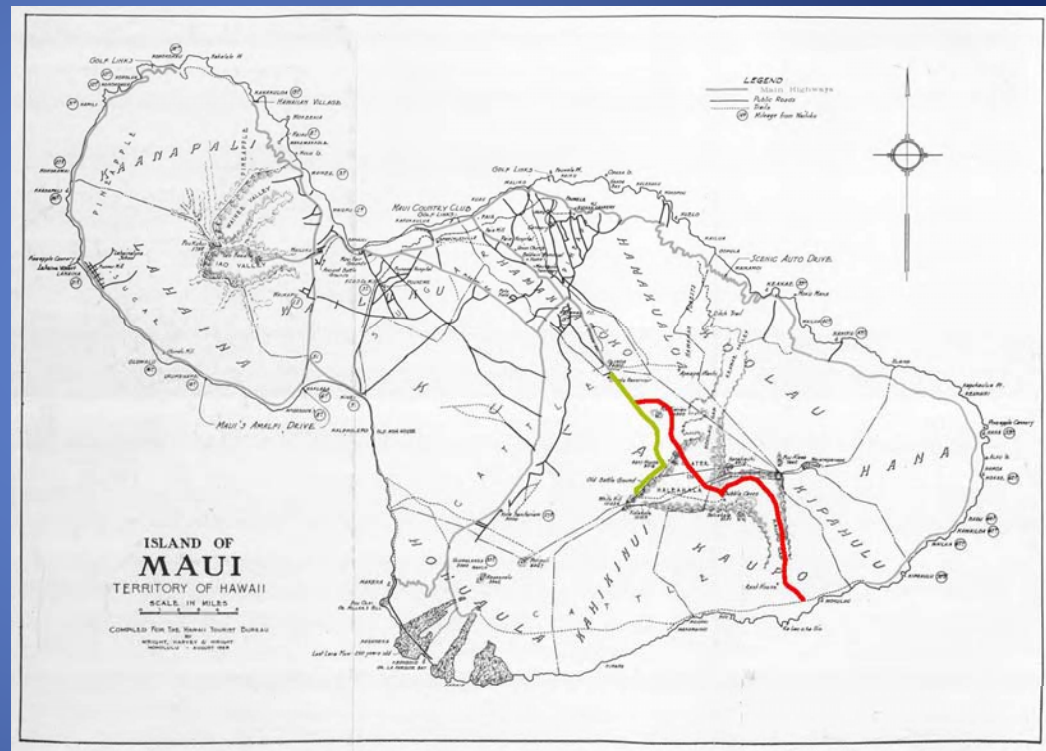


Tom Pierce
MauiLandLaw.com

TODAY'S "TRAIL MAP"

- Is there a clear path?
- Why worry?
- Wealth of trail law
- Who is responsible?
- Haleakala Trail
- A template



**WHEN IT COMES TO TRAILS . . .
IS THERE A CLEAR PATH?**















Horse on Māmālahōa trail circa early 1900's. Hawaiian Mission Children's Museum photo.







WARNING



Hazardous Cliff!

This trail or area contains this hazard. The ground may break off without warning and you could be seriously injured or killed.

Wainou Spring Trail



Loop Trail
Junct on 0.33 mi
Spring Trail
0.8 mi

This trail is subject to Chapter 60A or 70C of the Revised Administration Rules (RAR) Subchapter 4-2. Commercial Use Only With a Permit. Dept. of Land and Natural Resources Permit. Revised Statewide Trail and Access Program Rules.

- Is it important to the public?
- May it be destroyed?
- May it be moved?
- May it be improved?
- May only certain people use it?
- Who may regulate it?
- **Who owns it?**

WHY SAVE ANCIENT TRAILS?

ANCIENT TRAILS IMPORTANCE . . .

OUR PAST?

OUR PRESENT?

OUR FUTURE?



Photo: Bryan Berkowitz

WHY RESEARCH ANCIENT TRAILS?

“If you don't know history, then you don't know anything. You are a leaf that doesn't know it is part of a tree.”

Michael Crichton

WHY SAVE ANCIENT TRAILS?

“The most effective way to destroy people is to deny and obliterate their own understanding of their history.”

George Orwell

WHY NOW?

“We'll be remembered more for what we destroy than what we create.”

Chuck Palahniuk

HAWAII'S WEALTH OF TRAIL LAW

**APPLICABLE
HAWAIIAN LAW**

- Judiciary Act of 1892 (HRS § 1-1) **Encompasses:**

- **Hawaiian Laws**

- Fundamental Hawaiian Property Law
- 1797 - Law of the Splintered Paddle (HI Const. Art. 9, § 10)
- 1840 - Hawaiian Constitution
- 1848 - Mahele (and subsequent reservation of rights)
- 1850 - Kuleana Act (HRS § 7-1)
- 1892 - Highways Act (HRS § 264-1(b))

- **Western Laws**

- Public dedication (common law)
- Public Trust Doctrine (common law) (also HI Const. Art. XII, § 4)

Judiciary Act of 1892 (HRS § 1-1)

INSTRUCTION NO. 24

The applicable law at all relevant times was and is as follows:

The common law of England, as ascertained by English and American decisions, is hereby declared to be the common law of the Hawaiian Islands in all cases, except as otherwise expressly provided by the Hawaiian Constitution or laws, or fixed by Hawaiian judicial precedent, or established by Hawaiian national usage.

Judiciary Act of 1892 (HRS § 1-1)

L A W S
OF
HER MAJESTY LILUOKALANI
QUEEN OF THE HAWAIIAN ISLANDS,
PASSED BY THE
LEGISLATIVE ASSEMBLY
AT ITS SESSION
1892.

Printed by Order of the Government.

HONOLULU:
LITTLE, GREENE, STEAM BOOK AND JOB PRINTERS,
23 and 27 NEEHOE STREET, (OP. WARD).

CHAPTER LVII.

AN ACT

TO REORGANIZE THE JUDICIARY DEPARTMENT.

Be it Enacted by the Queen and the Legislature of the Hawaiian Kingdom:

SECTION 5. The common law of England, as ascertained by English and American decisions, is hereby declared to be the common law of the Hawaiian Islands in all cases, except as otherwise expressly provided by the Hawaiian Constitution or laws, or fixed by Hawaiian judicial precedent, or established by Hawaiian national usage, provided however, that no person shall be subject to criminal proceedings except as provided by the Hawaiian laws.

Fundamental Hawaiian Property Law

INSTRUCTION NO. 26

In Hawaiian property law, land in its original state is public land and if not awarded or granted, such land remains in the public domain.

1797 - Law of the Splintered Paddle (HI Const. Art. 9, § 10)

Kānāwai Māmalahoe

Oh people,
Honor thy god;
Respect alike people both great and humble;
May **everyone**, from the old men and women to the
children
Be free to go forth and lie in the road
Without fear of harm.
Break this law, and die.

1840 – Hawaiian Constitution

INSTRUCTION NO. 25

The Kingdom of Hawaii Constitution of 1840, promulgated by King Kamehameha III, states:

KAMEHAMEHA I, was the founder of the kingdom, and to him belonged all land from one end of the Islands to the other, thought it was not his own private property. It belonged to the chiefs and the people in common, of whom Kamehameha I, was the head, and had the management of the landed property.

1848 – Mahele

INSTRUCTION NO. 27

In Hawaii, it is established that:

1. Prior to the Mahele of 1848, the people of Hawaii, through the sovereign, owned all of the land, including roads, in the Kingdom of Hawaii; and
2. After the Mahele of 1848, private roads could be constructed on private property, but roads that were formerly public remained so.

In this case, if you find that a trail or road was in existence prior to 1848, you must conclude that the trail or road is public.

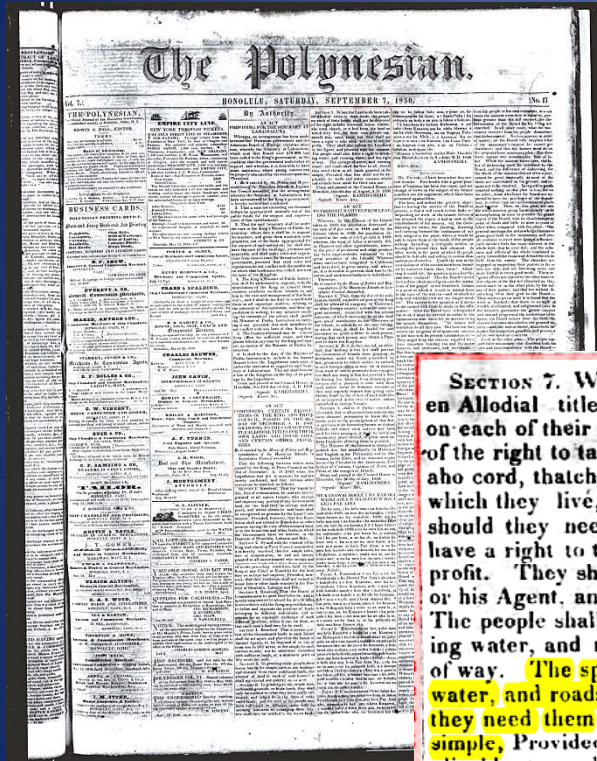
1848 – Mahele (and reservation of rights)

“ua koe ke Kuleana o na Kanaka”

“But reserved are the rights of **the people** therein”

The image shows a handwritten document in Hawaiian script. At the top, the date and location are written as "Heleu 7/24 Hoamaikaaloa". Below this, there are several lines of cursive text. A prominent circular stamp is visible in the center of the page, partially overlapping the text. The text appears to be a legal or official document, likely related to the Mahele of 1848. The handwriting is in a traditional Hawaiian style, and the stamp is a circular seal with some illegible text inside.

1850 - Kuleana Act



AN ACT
CONFIRMING CERTAIN RESOLUTIONS OF THE KING AND PRIVY COUNCIL, PASSED ON THE 21st DAY OF DECEMBER, A. D. 1849. GRANTING TO THE COMMON PEOPLE ALLODIAL TITLES FOR THEIR OWN LANDS AND HOUSE LOTS, AND CERTAIN OTHER PRIVILEGES.

Be it enacted by the House of Nobles and Representatives of the Hawaiian Islands, in Legislative Council assembled:

That the following Sections which were passed by the King, in Privy Council on the 21st of December, A. D. 1849, when the Legislature was not in session; be and are hereby confirmed, and that certain other provisions be inserted, as follows,

SECTION 7. When the Landlords have taken 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 ti leaf from the land on which they live, for their own private use, should they need them, but they shall not have a right to take such articles to sell for profit. They shall also inform the Landlord or his Agent, and proceed with his consent. The people shall also have a right to drinking water, 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.

Done and passed at the Council House in Honolulu, this 6th day of August, A.D. 1850.
(Signed) KAMEHAMEHA.
(Signed) KEONI ANA.

“... The springs of water, running water, **and roads** shall be free to all, should they need them on **all** lands granted in fee simple”

1892 – Highways Act

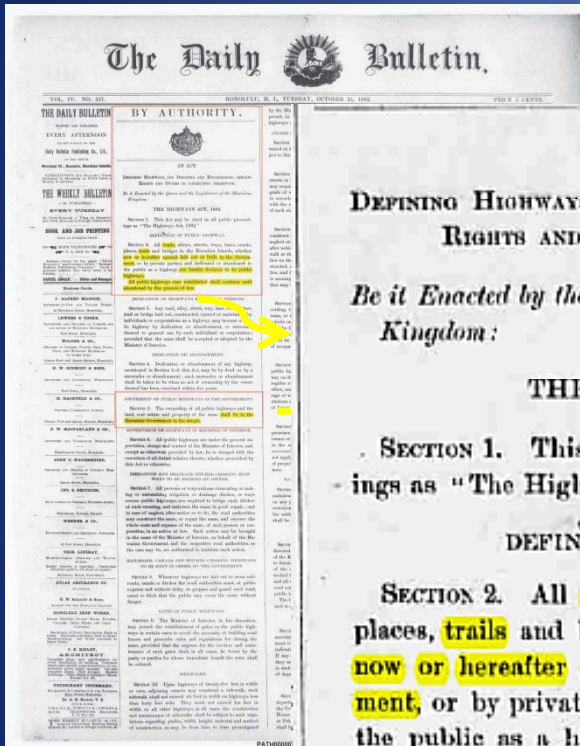
INSTRUCTION NO. 28

The Highways Act of 1892 was and is the applicable law and states:

All roads and trails in the Hawaiian Islands, whether now or hereafter **opened, laid out or built** by the Government are hereby declared to be public highways.

All public highways once established shall continue until abandoned by due process of law.

The Daily Bulletin (10/25/1892)



AN ACT

DEFINING HIGHWAYS, AND DEFINING AND ESTABLISHING CERTAIN RIGHTS AND DUTIES IN CONNECTION THEREWITH.

Be it Enacted by the Queen and the Legislature of the Hawaiian Kingdom:

THE HIGHWAYS ACT, 1892.

SECTION 1. This Act may be cited in all public proceedings as "The Highways Act, 1892."

DEFINITION OF PUBLIC HIGHWAY.

SECTION 2. All roads, alleys, streets, ways, lanes, courts, places, trails and bridges in the Hawaiian Islands, whether now or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways.

All public highways once established shall continue until abandoned by due process of law.

OWNERSHIP OF PUBLIC HIGHWAYS IN THE GOVERNMENT.

SECTION 5. The ownership of all public highways and the land, real estate and property of the same shall be in the Hawaiian Government in fee simple.



"All roads, . . . trails . . . whether now or hereafter opened, laid out or built by the Government . . . are hereby declared to be public highways.

**APPLICABLE
WESTERN LAW**

- Judiciary Act of 1892 (HRS § 1-1) **Encompasses:**

- Hawaiian Laws

- Fundamental Hawaiian Property Law
- 1797 - Law of the Splintered Paddle (HI Const. Art. 9, § 10)
- 1840 - Hawaiian Constitution
- 1848 - Mahele (and subsequent reservation of rights)
- 1850 - Kuleana Act (HRS § 7-1)
- 1892 - Highways Act (HRS § 264-1(b))

- **Western Laws**

- **Public dedication (common law)**
- **Public Trust Doctrine (common law) (also HI Const. Art. XII, § 4)**

Public Dedication

[C]ommon law dedication may be accomplished without any statement, written or spoken, for one who invites or merely permits the public to use his or her land for a long period may be held to have made an offer of implied dedication.

The rationale behind this theory is that the owner is estopped to deny permanent public access where he has admitted the public to use the land over a long time.

There must be an offer and acceptance of dedication. When there is no express offer, *the offer may be implied under the circumstances and the acceptance may also be implied by the nature of the public use.*

In other words, the duration and type of public use can raise both the presumption of the owner's intent (or offer) to dedicate land to public use, as well as constitute acceptance by the public.

Application of Banning, 73 Haw. 297, 304-05, 832 P.2d 724, 728-29 (1992).

Extended Use = Public Right of Way (depending)

Public Trust Doctrine

State must protect Kuleana rights. Haw. Const. art. XII, § 7

State must treat public lands “as a public trust for native Hawaiians and the general public.” Haw. Const. art. XII, § 4

WHO IS RESPONSIBLE?

HRS Chapter 115 (encouraging County access purchases)

Encourages purchasing accesses to coastal areas and inland recreation areas.

The legislature finds . . . ***that the absence of public access to Hawaii's shorelines and inland recreational areas constitutes an infringement upon the fundamental right of free movement in public space and access to and use of coastal and inland recreational areas....***

HRS § 46-6.5(a) (access during subdivision process)

Requires county to obtain access from subdivider,

Coastal areas and...

Inland areas

...to areas in the mountains where there are existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding, and other recreational purposes, and where there are existing mountain trails.

HRS Chapter 198D (Na Ala Hele Program)

Administered by DLNR

Funded by highway fuel taxes and federal programs.

Must establish inventory of “all trails and accesses in the State” (private or public)

Classify each trail (function, type, theme, desired use intensity, etc.)

May regulate (to preserve integrity of trail, for public safety, for environment)

Shall examine legal issues relating to trails.

May indemnify landowners

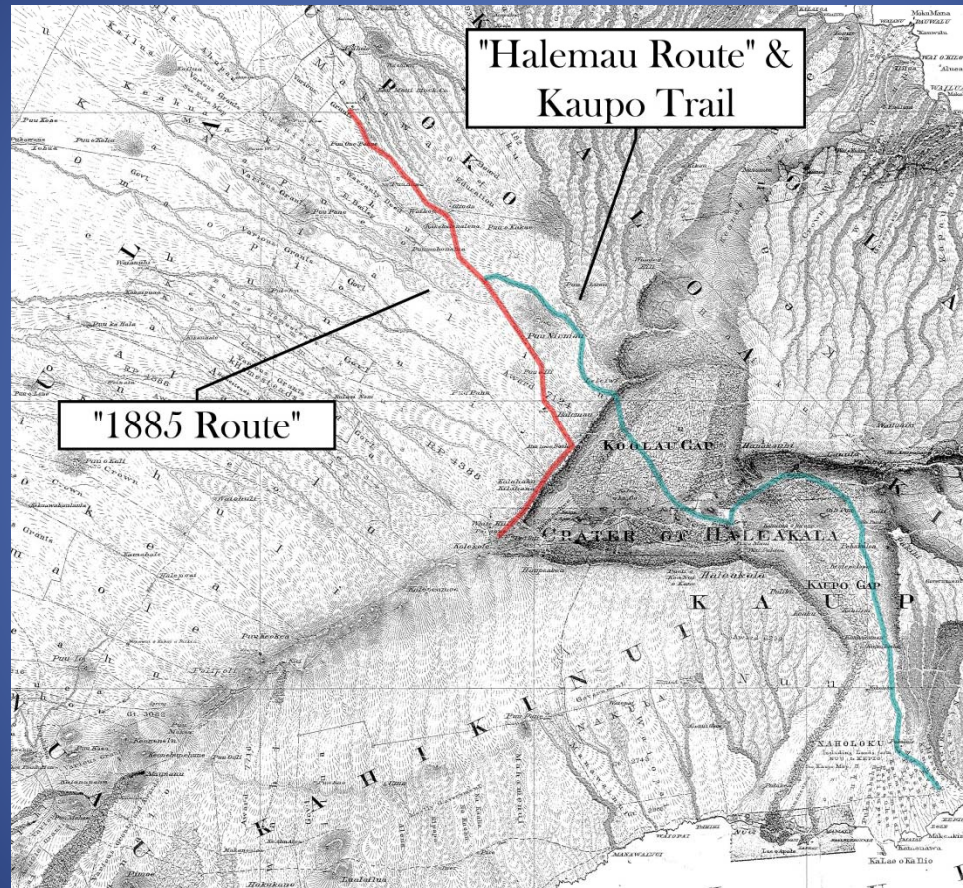
Public Trustee (extra care)

Kauai Springs, Inc. v. Planning Comm'n of Cnty. of Kauai, 133 Haw. 141, 173-74, 324 P.3d 951, 983-84 (2014):

When an agency or other deciding body considers an application for permits under circumstances that requires the deciding body to perform as a public trustee **to protect a public trust resource**, the agency or other deciding body must make findings sufficient to enable an appellate court to track the steps that the agency took in reaching its decision. An agency is encouraged to be clear; “clarity in the agency's decision is all the more essential ... where the agency performs as a public trustee **and is duty bound to demonstrate that it has properly exercised the discretion vested in it by the constitution and the statute.**”

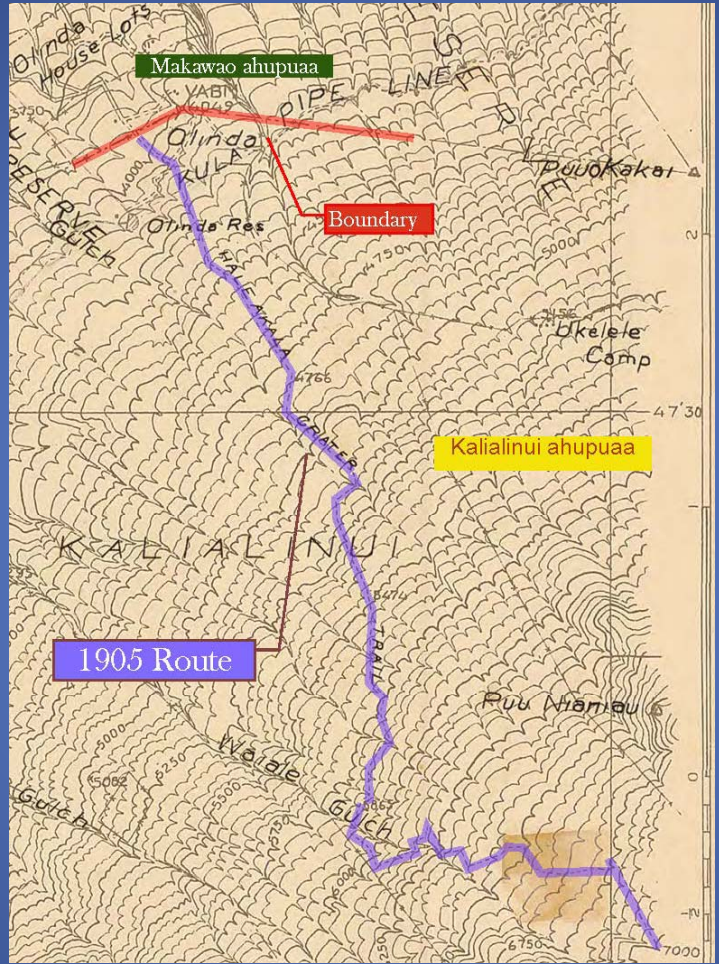
(Permit applicant has the burden of proof.)

HALEAKALA TRAIL



"Halemau Route" &
Kaupo Trail

"1885 Route"



"Hawaiian Usage and Custom" > Act



- Kingdom of Hawai'i Public Works (1888-1889)
- Territory of Hawai'i Public Works (1903-1905)

The Maui News (5/23/1903)

LOCALS

Up up the Beach
The Maui Senators and Representatives have just completed their caucus on the Loan Bill which belongs to Maui County. Their pro rata is \$184,651.58 and they have agreed on appropriations in the sum of \$184,600 (leaving out the \$651.58), as follows:

ATHLETIC NOTES

The athletic games played in the afternoon at the Maui Athletic Club were most interesting. The contest between the Maui and the Honolulu teams was a most exciting one. The Maui team was victorious in the game, and the Honolulu team was defeated. The game was played in the afternoon and the Maui team was victorious in the game. The Honolulu team was defeated in the game. The Maui team was victorious in the game. The Honolulu team was defeated in the game.

ADMINISTRATOR'S NOTICE TO CREDITORS

Notice is hereby given that the estate of the late Mrs. Mary Ann Keane, deceased, is being administered by the Administrator of the Estate of Mrs. Mary Ann Keane, deceased, and that all persons having claims against the estate of the late Mrs. Mary Ann Keane, deceased, are required to present the same to the Administrator of the Estate of Mrs. Mary Ann Keane, deceased, on or before the 1st day of June next.

WE ARE OUT

for a share of your trade. We can deliver to the Steamer free of charge of packing.

Also many other articles of furniture. We would be pleased to submit cuts and prices. If in Honolulu, call, whether you wish to buy or not and we will gladly show you our stock.

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FOR SALE

A fine lot of building material, including lumber, shingles, and other supplies, for sale at a low price. The material is of the best quality and is suitable for all building purposes. The price is very low and is a great opportunity for those who are building.

THE MAUI BAZAAR

For the purpose of raising funds for the benefit of the Hawaiian people, a bazaar will be held at the Maui Athletic Club on the 30th day of May next. The bazaar will consist of a variety of goods, including clothing, furniture, and other articles. The proceeds of the bazaar will be used for the benefit of the Hawaiian people.

What Maui Gets.

The Maui Senators and Representatives have completed their caucus on the items in the Loan Bill which belong to Maui County. Their pro rata is \$184,651.58 and they have agreed on appropriations in the sum of \$184,600 (leaving out the \$651.58), as follows:

COFFEE

Recommended by the Manager of Post Office, Maui, and approved by the Hawaiian people. The coffee is of the best quality and is suitable for all purposes. The price is very low and is a great opportunity for those who are buying coffee.

WATER PROOF COLD WATER PAINT

The best painting material for all purposes. The paint is of the best quality and is suitable for all painting purposes. The price is very low and is a great opportunity for those who are painting.

Trail to summit Haleakala 5,000

PACIFIC HARDWARE CO. LTD

THE MAUI BAZAAR

Honolulu, H. I.

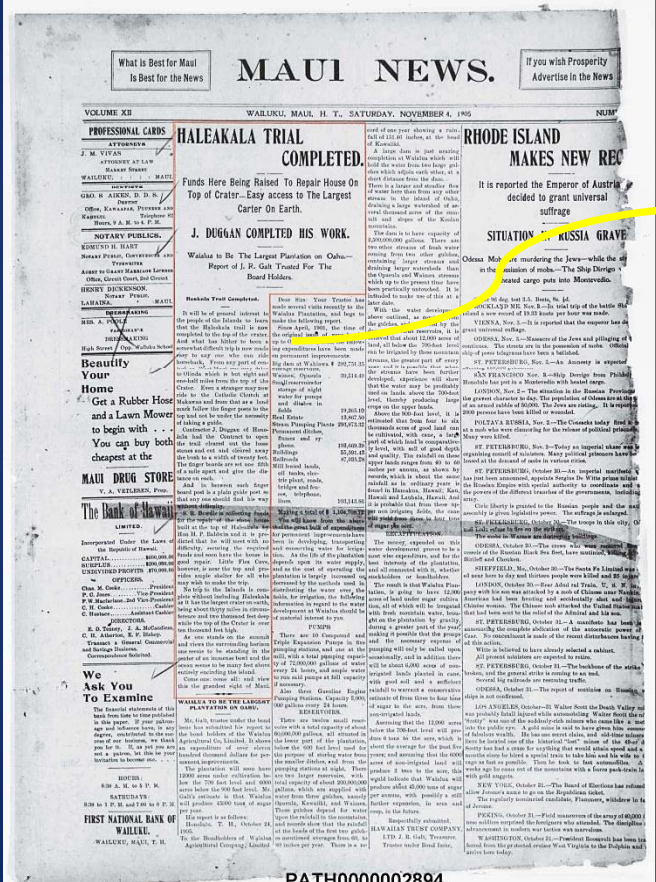
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Trail to summit Haleakala 5,000

J. G. AXTELL

Lahaina, Maui

Maui News (11/4/1905)



“It will be of general interest to the people of the Islands to learn that the Haleakala trail is now completed to the top of the crater.

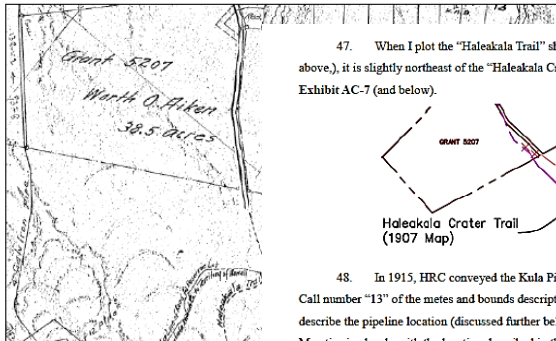
And what has hitherto been a somewhat difficult trip is now made easy to any one who can ride horseback.

... [O]ne may drive to Olinda which is but eight and one-half miles from the top of the Crater....

PATH000002894

SP-265

43. The 70.5 acre parcel is what is depicted on the 1907 Map as "Grant 4937," and the 38.20 acre parcel is what is depicted on the 1907 Map as "Grant 5207." As shown on the excerpt from the 1907 Map below, these two grants are separated by "the Mountain Road to Haleakala" (as described in the grants), which becomes "Haleakala Trail" after it continues *mauka* into Kaliaimui.



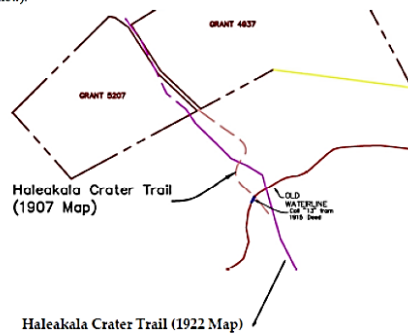
44. Grant 4937 and Grant 5207 w description from triangulation stations still in where Olinda Road is on the ground today.

45. During one of my field trips I between Grant 4937 and Grant 5207. Based c not fall exactly within the recorded right of w seen in Exhibit AC-6, Olinda Road, where it modern times this is a common occurrence, a

47. When I plot the "Haleakala Trail" shown on the 1907 Map (excerpt at ¶ 43, above), it is slightly northeast of the "Haleakala Crater Trail" shown on the 1922 Map. See Exhibit AC-7 (and below).

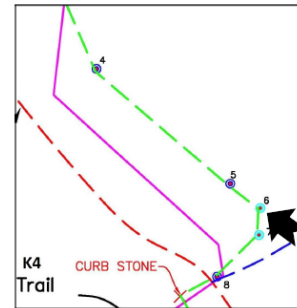
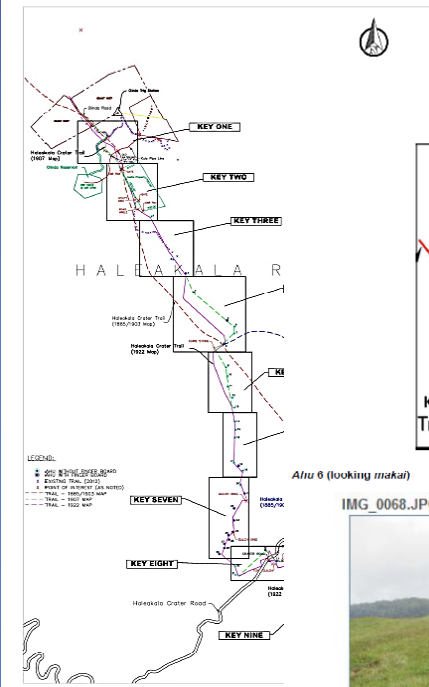


48. In 1915, HRC conveyed the Kula Pipeline Easement to the Territory of Hawai'i. Call number "13" of the metes and bounds description uses a point on the Haleakala Trail to describe the pipeline location (discussed further below). The Haleakala Trail shown on the 1907 Map ties in closely with the location described in the Kula Pipeline Easement. See Exhibit AC-8 (and below).



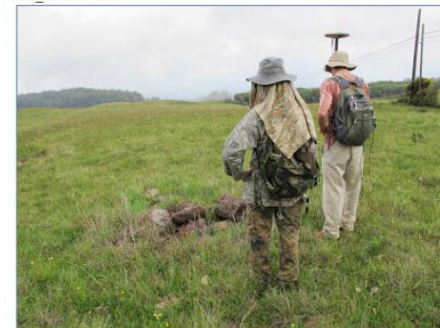
SP-313

PHOTO KEY MASTER



Atu 6 (looking *maaka*)

IMG_0068.JPG



SP-481, SP-482

**CENTERLINE OF HALEAKALA CRATER TRAIL
BASED ON "1922 MAP" AND FIELD INSPECTIONS**

AFFECTING TMK 2-2-3-005-004

BEGINNING AT THE NORTHWESTERN END OF THE CENTERLINE OF THIS HALEAKALA CRATER TRAIL, AT THE CENTER OF THE SOUTHWESTERN TERMINUS OF OLINDA ROAD, A PUBLIC RIGHT-OF-WAY, THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "PUU NIANIAU", STATE PLANE COORDINATES, NAD83, ZONE 2, BEING 171,001.71 FEET NORTH AND 1,774,444.78 FEET EAST AND RUNNING BY GRID AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

| | | | |
|---|---------|------|-----------------------------------|
| 1 | 306°00' | 553 | FEET AFFECTING TMK 2-2-3-005-004; |
| 2 | 29°20' | 160 | FEET AFFECTING TMK 2-2-3-005-004; |
| 3 | 56°15' | 300 | FEET AFFECTING TMK 2-2-3-005-004; |
| 4 | 1°55' | 80 | FEET AFFECTING TMK 2-2-3-005-004; |
| 5 | 289°00' | 390 | FEET AFFECTING TMK 2-2-3-005-004; |
| 6 | 316°50' | 375 | FEET AFFECTING TMK 2-2-3-005-004; |
| 7 | 334°55' | 290 | FEET AFFECTING TMK 2-2-3-005-004; |
| 8 | 332°40' | 1080 | FEET AFFECTING TMK 2-2-3-005-004; |
| 9 | 358°55' | 300 | FEET AFFECTING TMK 2-2-3-005-004; |

SP-317



SP-417



A TEMPLATE

National Park Service
U.S. Department of the Interior
Ala Kahakai National Historic Trail

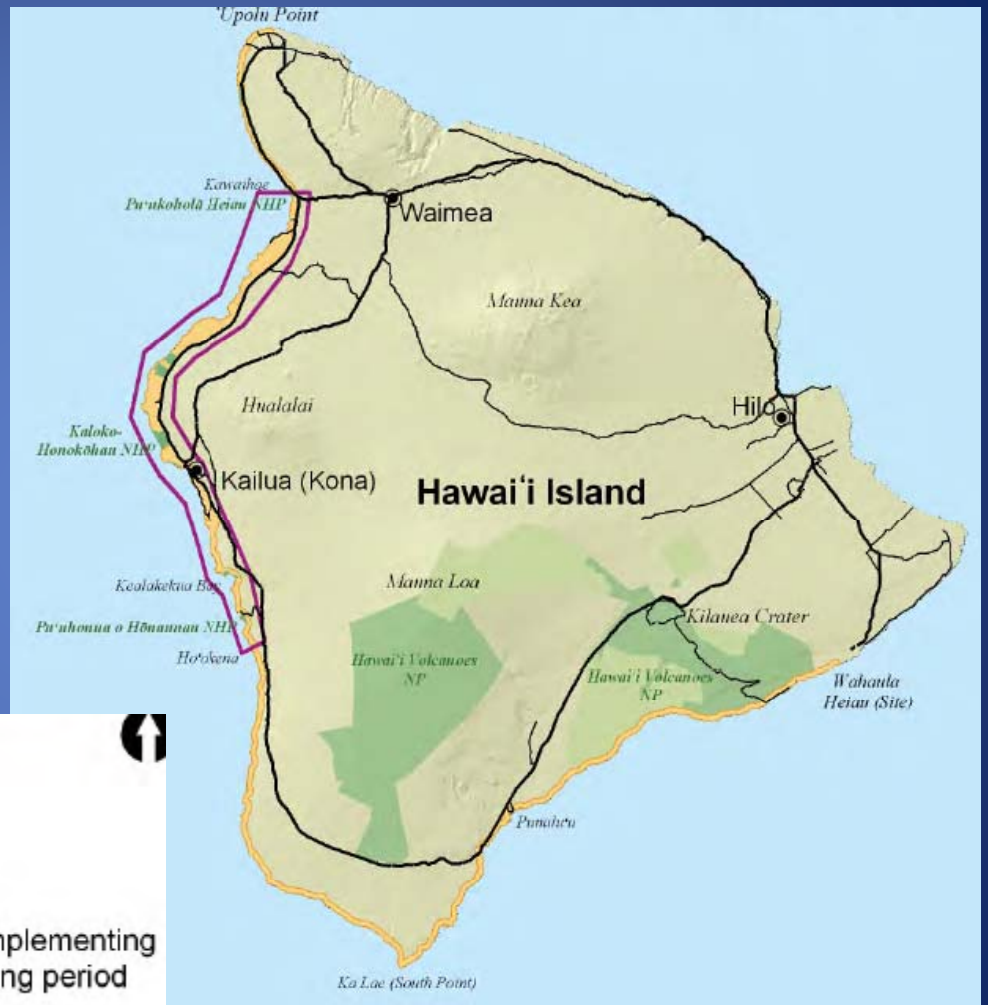


Ala Kahakai


National Historic Trail

Comprehensive Management Plan







Legend


 Ala Kahakai NHT Corridor


Roads

 Primary

 Secondary

 Parks

 Wilderness

 Priority Area for implementing the 15-year planning period

Purpose of the Trail

- To preserve, protect, reestablish as necessary, and maintain a substantial portion of the ancient coastal *ala loa* (long trail) and associated resources and values, along with linking trails on or parallel to the shoreline on Hawai'i Island
- To provide for a high quality experience, enjoyment, and education — guided by Native Hawaiian protocol and etiquette — while protecting the trail's natural and cultural heritage and respecting private and community interests



Community Vision for the Trail

Communities along the route expressed a vision for this national historic treasure. The Ala Kahakai NHT will:

- preserve ancient and historic trails within the corridor and tell the stories of those who use them
- provide access to practice traditional lifestyles and mālama 'āina (care for the land)
- protect sacred sites, historic places, and natural areas
- become a living classroom for educating Hawai'i's people and visitors

- offer opportunities for community partnerships based on the ahupua'a concept
- create safe and well-kept places for spiritual, cultural, and recreational practices
- unite local communities around common goals to preserve Hawai'i's culture and environment





The Ala Kahakai NHT is a dynamic, living cultural resource reflecting the values of an island people and their continuing responsible relationship with their community, land, and ocean resources.

What we will preserve, protect, and interpret:

- stories of stewardship and the cultural heritage of an island people including oral histories, newspaper accounts, diaries, archives, photographs
- remnants of the *ahupua'a* land management system that allowed for cultural and economic self-sufficiency and sustainable abundance
- connection of the *ahupua'a* system and cultural stewardship values and patterns to management of the Ala Kahakai NHT

