

## NATIVE HAWAIIAN RECONCILIATION HEARINGS

### TESTIMONY PRESENTED TO THE U.S. DEPARTMENT OF THE INTERIOR AND THE U.S. DEPARTMENT OF JUSTICE

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The United States' role in the forced erosion of Hawaiian political autonomy through the 1800s and the United States' illegal overthrow of the Hawaiian Kingdom in 1893 have created devastating results for Native Hawaiians. If the more than 100 years of harms created by these actions are to be reconciled, the US must support Native Hawaiian efforts to reach both our long and short term national goals. In the long term, the US must recognize our Hawaiian sovereign nation, return to it the lands which the US illegally took from our nation, and adequately compensate our people for the cumulative direct and indirect results of the overthrow of our nation.

Establishing our sovereign Hawaiian nation will be one of the greatest challenges our people have had to face in recovering from the era of US imperialism in Hawai'i. Hawaiian leaders involved in rebuilding our nation have specific suggestions regarding how the US can facilitate this process. In general, the US must be willing to substantially support the process but do so in a "hands-off" fashion that will not influence the outcome of that process. I leave such specific suggestions for those more involved with the larger process of rebuilding our nation.

In relation to Hawaiian short-term goals, or intermediate steps on the way to establishing our Hawaiian sovereign nation, **a specific area for which I have suggestions involves traditional Hawaiian cultural properties.** In the interim between now and when our Hawaiian sovereign nation is established, the US should improve its role in protecting and restoring Hawaiian historic properties and in facilitating the Hawaiian community's ability to use these properties for cultural purposes.

These historic properties are priceless resources for our people. They are places where our ancestors worshipped, worked, and played--where the presence of our *kūpuna* can still be seen and felt, whether through the structures they built that remain today, through the artifacts they left behind, or most vividly through the spiritual imprint they left on the lands.

We care about these places for many reasons. As a doctoral candidate in Hawaiian archaeology (focusing on historic preservation issues), I understand how these sites can reveal information about our past that is of interest to us and which is otherwise inaccessible. More importantly, as a Hawaiian Studies teacher, I know it is far more valuable for me to have my students experience aspects of Hawaiian culture at the sites in which such practices occurred, rather than having them read about these practices in books or hear about them in a lecture from me. However, as a result of my involvement with various Hawaiian organizations which have tried to protect such sites from destruction in the face of various development projects, I have come to learn that these treasured historic properties remain highly vulnerable.

Through the last century many of our Hawaiian cultural resources were destroyed either unwittingly or callously by federal government agencies. If our nation had not been taken from us in 1893, our Hawaiian people and our cultural experts would have retained total authority over determining what sites would be saved and restored for continued cultural use. As that was not the case, federal agencies for decades had free reign to destroy our cultural resources without any oversight.

It has only been since the 1960s that numerous federal laws were passed that create mechanisms by which our cultural resources may be protected and restored. The ongoing problem is that all of these mechanisms operate within the context of a western tradition of archaeology, a western legal system, and western US government agencies that administer these laws. The entire process which Hawaiian cultural sites undergo when they are subject to these laws remains under the authority of those outside of the Hawaiian culture. The laws allow for various authorities (e.g., an archaeologist contracted by the federal government, the State Historic Preservation Officer [SHPO], the members of the Advisory Council on Historic Preservation, the Keeper of the National Register) to render decisions regarding the treatment of our sites, as long as they can demonstrate that they had "taken into consideration" the viewpoints of Native Hawaiians. In other words, *they* have the final say in determining site treatment, not Hawaiians. This is a direct result of the US seizing our nation and our national authority over a hundred years ago.

Hawaiians have long criticized and bemoaned the most frequently selected site treatment alternative of "preserving" a site by mapping it, excavating it, or otherwise recording aspects of it as data on paper (a treatment euphemistically referred to as site

"mitigation"). Once sites are "preserved" in this fashion, they are physical destroyed. Regardless of vehement, long-standing Hawaiian objections to such treatment, archaeologists, who earn additional fees for conducting such mitigation, regularly recommend this "preservation" method. Their choice is of course related to the fact that federal agencies who are planning a given project, and who are employing the contract archaeologists, find such treatment expedient in eliminating the Hawaiian historic sites which pose obstacles to the agencies attempting to forward their projects.

Although recent federal laws and guidelines (in particular the National Register Bulletin 38, the Native American Graves Protection and Repatriation Act [NAGPRA], and the 1999 Section 106 revised regulations) require that Native Hawaiians be consulted through the process of identifying and determining the treatment of cultural properties, Native Hawaiians have no decision making power over these cultural properties. Federal laws empower those with little or no Hawaiian cultural knowledge to make and execute decisions that are contrary to the testimony of Hawaiian cultural experts.

The Federal Highway Administration's Interstate H-3 project offers a perfect example of the problem. In the early months of 1990, Hawaiian historians and cultural practitioners such as Dr. Lilikalā Kame'eleihiwa and Kumu Frank Kawaikapuokalani Hewitt affirmed that site G5-86, situated along the H-3 Kāne'ohe corridor, was Kukuiokāne *heiau* (a traditional place of worship) and not a dry-land agricultural terrace, as Bishop Museum contract archaeologists contended. Despite appeals from the Hawaiian community to divert H-3 and save Kukuiokāne *heiau*, the SHPO, who oversees the implementation of federal historic preservation law within the state,

approved the Bishop Museum archaeologists' evaluation. By June of 1990, the SHPO let bulldozers level the top of Kukuioikāne *heiau* and cover it with dirt and gravel making way for H-3. The *mana*, meaning, and cultural use of Kukuioikāne was lost to Native Hawaiians forever. Future Hawaiians will never experience this site.

Significantly, by May of the next year the lead Bishop Museum archaeologist at the site presented a paper at a local archaeological conference in which he stated that he is "convinced" he made a mistake and that the site was indeed part of Kukuioikāne *heiau*. Here, an evaluation from an archaeologist contracted by the federal government who had a minimal understanding of Hawaiian sites and Hawaiian culture was provided with greater authority to evaluate a site than were Hawaiian cultural experts. Further, the SHPO, again empowered by the federal government, seconded the archaeologists' belief. Both said they had "taken into account" the views of Native Hawaiians. Both were wrong.

Another example illustrates a different harm stemming from the same problem of those outside of Hawaiian culture having the power to determine the treatment of Hawaiian cultural properties. This case involves extensive burial sites situated at Mōkapu Peninsula on O'ahu where Kāne'ohe Marine Corps Air Station is now located. Both Native Hawaiians and the Marines recognize specific areas at Mōkapu as the places of origin for over 1,500 sets of Native Hawaiian human remains that the Marines and other agencies disinterred over the last decades. There is additional agreement that these 1,500 individuals should be reinterred at Mōkapu. However, while the Marines have communicated that Native Hawaiians will only be allowed to rebury these individuals in one locale, Hawaiians are requesting additional areas at

Mōkapu for reburial, as these additional sites are the places from which the burials were known to originate. From a Hawaiian cultural perspective it is imperative that the individuals be placed back in the specific areas in which they were buried, given Hawaiians' intimate relationships with specific lands and traditional Hawaiian burial practices that honored such relationships.

One might suspect that the Marines have higher concerns such as national defense blocking them from allowing the reburial of the individuals back on their original lands. However, what the Marines have cited are "quality of life" concerns for their enlisted personnel at the base. One of the areas requested by Hawaiian organizations for a reburial site and currently disallowed by the Marines is a golf course, a recreational facility for US military personnel. (In fact, some of the remains disinterred from Mōkapu experienced that defilement and disturbance as a result of the military golf course being established there.) In short, the Marines have communicated that it is more important for them to play uninterrupted golf than it is for Native Hawaiian ancestors to be returned back to their original place of rest from which they were disturbed. The Marines have the power to maintain this stance. Nothing in current historic preservation law or NAGPRA can force them to change their position.

The cases of H-3 and the Mōkapu burials are two of many more that could be cited which illustrate the irreparable harms that have been inflicted by the federal government on Hawaiian cultural properties and the living, deceased, and unborn Hawaiians connected to these. The laws that are in place today to protect our cultural resources leave us powerless in crucial ways. Those with little understanding of our

culture continue to have the authority to assert their own understandings, beliefs, and values over ours.

In order for our Hawaiian cultural priorities regarding historic preservation to be consistently and adequately addressed, as opposed to our views simply being "taken into account" as current laws dictate, new laws need to be written to reflect Hawaiian cultural priorities, and individuals with an in-depth understanding of Hawaiian culture and Hawaiian cultural sites must be empowered to have genuine authority in the administration of such laws. To accomplish this in earnest is a long-term goal for Native Hawaiians as we move toward reestablishing our Hawaiian nation.

Nonetheless, significant changes can occur in the interim. **In order to begin reconciling the effects of the overthrow of our Hawaiian nation and the ongoing effects of that act as they pertain to Hawaiian cultural properties, the Department of the Interior should consider enacting amendments to historic preservation laws which address some of Hawaiians' concerns:**

- 1) In the same way that sites are evaluated for scientific archaeological significance by qualified archaeologists, Hawaiian sites should also undergo an *equally authoritative* evaluation of cultural significance by a qualified Hawaiian cultural expert. The current situation in which archaeologists are expected and allowed to conduct cultural assessments of sites after consulting with Native Hawaiians is inadequate.
- 2) Qualifications for archaeologists overseeing projects involving Hawaiian cultural sites should include a minimum number of years of experience and training in working with Hawaiian cultural sites. Currently, it is perfectly legal for

an archaeologist with expertise in the cultures of the North American southwest to nonetheless be the principal investigator for a project in Hawai'i involving Hawaiian cultural properties.

- 3) When disputes occur between Hawaiian communities and federal agencies involved in an undertaking, and the Advisory Council on Historic Preservation is asked to render their higher judgment, there should be ad hoc positions established on the Advisory Council for Hawaiian cultural experts. Their ad hoc membership should make up at least 50 percent of the Council positions for such cases. Their expertise will allow them to render more accurate judgments and to serve as objective sources of information for the other Council members. For the same reason that those with historic preservation expertise are sought to hold Council positions, those with additional Hawaiian cultural expertise should be invited to hold ad hoc Council positions for cases involving Hawaiian cultural sites. The same should occur with the NAGPRA Review Committee. When a NAGPRA dispute arises involving a Native Hawaiian issue, and the NAGPRA Review Committee is asked to render a decision, at least 50 percent of the Committee's membership should include those with appropriate Hawaiian cultural expertise who hold ad hoc positions as NAGPRA Review Committee members.
- 4) NAGPRA should be revised to include a section on the reburial of human remains which are subject to NAGPRA. A section should set forth that an agency which has inadvertently discovered human remains or which has repatriated human remains previously disinterred, must provide for land to

rebury the remains, if the remains were taken from lands previously or currently under an agency's control. The specific location of the land area selected for reburial should be mutually identified by the federal agency and the lineal descendants, tribes, or Hawaiian organizations to whom the remains were repatriated.

In concept the above are simple suggestions. However, implementing such suggestions would require significant changes to the existing laws. As such **I and other Hawaiians would be willing to work with the Department of Interior to draft such amendments, if there is a chance that these amendments would be considered seriously.**

The above suggestions focus on giving those with Hawaiian cultural expertise some genuine authority to make historic preservation related decisions. By providing such individuals with that authority, Hawaiians who try to protect sites for various cultural reasons will stand of greater chance of their views truly being "taken into account."

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