

STATE OF HAWAII / KA MOKU'AINA O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES

_____ **GOVERNMENT DIVISION**

_____ **APPLICANT**

KA PA'AKAI CULTURAL IMPACT ASSESSMENTS

GUIDANCE DOCUMENT TEMPLATE

January 1, 2026

Permit Application Submittals

Mahalo nui loa!

Engineering Division of the Department of Land and Natural Resources

Hawaii State Aha Moku

Aha Moku Advisory Committee

TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	BACKGROUND	3
	2.1 KA PA'AKAI ANALYSIS.....	3
	2.2 HAWAII STATE AHA MOKU ...	4
	2.3 DEFINITIONS AND TERMS.....	4
3.0	PROCESS OVERVIEW: DLNR CULTURAL ASSESSMENT	5
4.0	DLNR SCREENING ASSESSMENT	7
	4.1 PROJECT INFORMATION.....	7
	4.2 PRE-SCREENED COMPLIANT ACTIVITIES	7
	4.3 SCREENING ANALYSIS	7
5.0	KA PA'AKAI CONSULTATION ASSESSMENT	8
	5.1 PROJECT DESCRIPTION.....	8
	5.2 DESCRIPTON OF PROJECT AREA... ..	8
	5.3 ETHNOGRAPHIC INTERVIEWS.....	9
	5.4 COORDINATION & FACILITATION OF MEETINGS WITH COMMUNITY... ..	9
	5.5 KA PA'AKAI ANALYSIS.....	10
	5.6 CONCLUSION & RECOMMENDATION	10
6.0	REVIEW & VETTING PROCESS	10
	APPENDIX A (KA PA'AKAI PRE-ASSESSMENT FORM)	12

1.0 Introduction

This guidance document assists Hawaii government agencies, landowners and permit applicants who intend to develop, improve, or modify property or facilities under the jurisdiction of the Hawaii Department of Land and Natural Resources, (“DLNR”). The document discusses the process for DLNR, the applicant for a permit, and the applicant to assess possible native Hawaiian cultural impacts to their application.

2.0 Background

The Hawaii State Constitution, Article XII, Section 7 states, “The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes 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.” This provision places an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights.

2.1 *Ka Pa`akai Analysis*

The September 11, 2000, Hawai'i Supreme Court decision in *Ka Pa`akai O Ka `Aina v Land Use Commission* ruled that State agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible. Agencies are obligated to make an assessment, independent of the developer or applicant, of the impacts on customary and traditional practices of native Hawaiians. The independent assessment must include three factors known as the “Ka Pa`akai framework¹.” The framework includes determining:

- 1) Identify the scope of valued cultural, historical, or natural resources in the petition or impacted area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the petition area.
- 2) Determine the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.
- 3) Identify feasible actions, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist.

Using this framework to assess the impacts of the proposed work will be referred to as the Ka Pa`akai Analysis (KPA) and is used herein as the primary means to fulfill the goal of the

¹ *Ka Pa`akai O Ka `Aina v Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000:10).

The KPA is sometimes incorporated into Environmental Impact Statement (EIS) documents in the Cultural Impact Assessments. The DLNR cultural impact assessments discussed in this guidance document and EIS Cultural Impact Assessments, although similar, fulfill different requirements.

2.2. Hawaii State Aha Moku

The Hawaii State Aha Moku (Aha Moku) and the Aha Moku Advisory Committee (AMAC) was established by Act 288 (2012, codified in HRS 171-4.5) and is administratively attached to the DLNR. The eight members were appointed by the Governor and confirmed by the Senate from a list of nominations submitted by the Aha Moku of each island. The Executive Director of the Hawaii State Aha Moku resides in the Chairpersons Office in DLNR. AMAC represents eight island Po'o (island representatives), 46 Moku (district) representatives, and 606 Ahupua'a (land divisions or boundaries). Aha Moku will vet both the Screening Assessment and the KPCA.

2.3. Definitions and Terms

The following are definitions of terms and acronyms used in this guidance document.

Aha Moku: The Hawaii State Aha Moku is an entity that resides in the DLNR; the executive Director of the Aha Moku serves in an advisory capacity to the Chairperson of the Board of Land and Natural Resource ("BLNR").

Aha Moku Advisory Committee (AMAC): An eight-member advisory appointed by the Governor and confirmed by the Senate to represent the island Po'o representatives, Moku representatives, and Ahupua'a; serves in an advisory capacity to the Chairperson of the BLNR.

Aha Moku: Community of advisors on each island who provide native Hawaiian generational knowledge and information, which is the foundation of the Aha Moku System.

Ahupua'a: A smaller traditional socioeconomic, geologic, and climatic subdivision of land; each ahupua'a is like a slice of pie that begins at the top of the mountain and goes down to the depths of the ocean.

DLNR Screening Assessment ("DSA"): An analysis performed by DLNR staff to examine the work proposed by the landowner or applicant in its project proposal or permit application and assess whether the three-factor Ka Pa'akai Framework may be impacted, which would trigger a more in-depth KPA performed by the applicant.

Ka Pa'akai: A Coalition of plaintiffs on the Big Island of Hawaii who challenged the State Land Use Commission's (LUC) ruling, arguing amongst other items the LUC failed to ensure customary and traditional practices of native Hawaiians be protected to the extent feasible; in 2000, the State Supreme Court ruled in favor of Ka Pa'akai, obligating agencies to make independent assessments of the impacts on customary and traditional practices of Native Hawaiians, also known as a Ka Pa'akai analysis; and the assessments must include three factors known as the "Ka Pa`akai framework."

Ka Pa'akai Analysis: An analysis of the potential effect of any proposed physical alterations on native Hawaiian cultural resources, practices, or beliefs; the analysis examines the three factors in the "Ka Pa`akai framework.

Ka Pa'akai Framework: Three factors identified by the State Supreme Court, in its September 11, 2000 ruling, requiring government agencies to consider to ensure native Hawaiian resources, traditions, practices, and beliefs are reasonably protected.

KPA: Ka Pa'akai Consultation Assessment is a cultural impact assessment performed by the landowner or applicant, which will include interviews with Kupuna families and a Ka Pa'akai Analysis.

Kupuna: Native-Hawaiian elders and ancestors who are highly respected and honored as keepers of and valued links to ancestral knowledge and culture.

Moku: A district or land division that sections off portions of each island. Each moku or district is made up of smaller land divisions, or Ahupua'a.

Po'o: The island representative for one of eight Hawaiian Islands.

3.0 Process Overview: DLNR Cultural Assessment

This section provides a high-level discussion of the entire DLNR Cultural Assessment process from the applicant permit application to the KPA. Figure 1 is a graphic representation of the process.

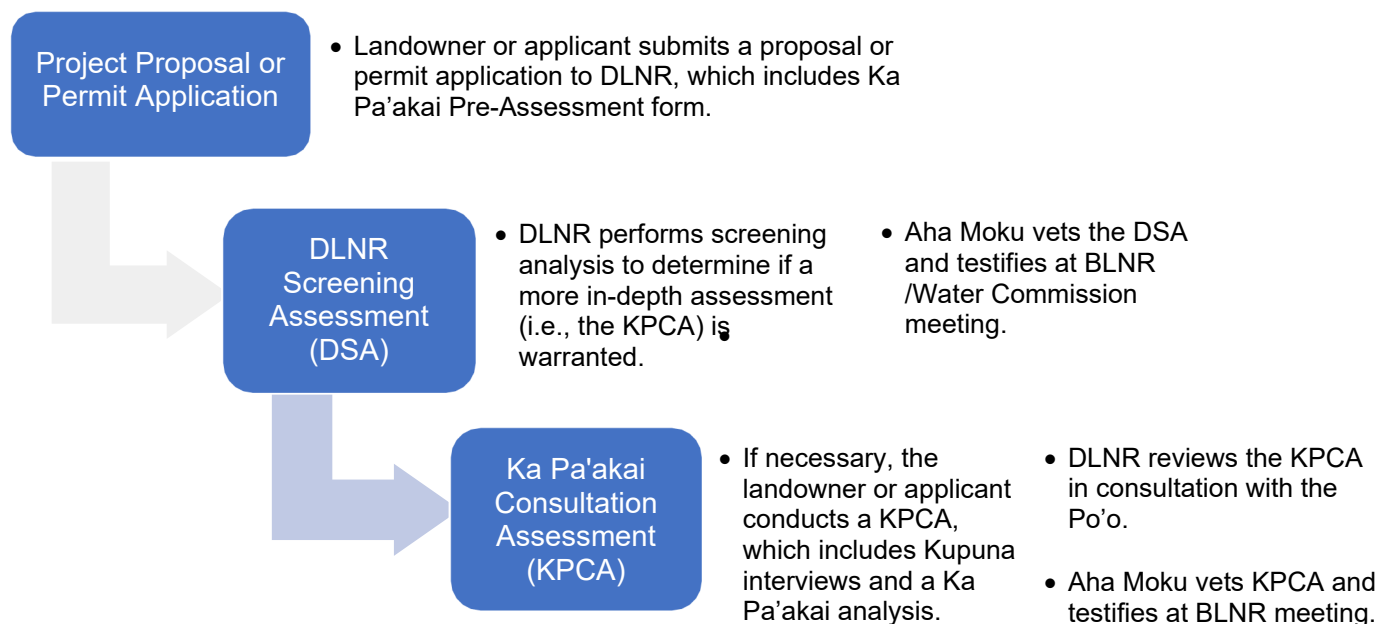


Figure 1. Flow path for the DLNR Cultural Assessment process.

1. **Pre-Screened Compliant Activities.** DLNR in consultation with the Aha Moku will establish a list of compliant activities, which by the nature of the work will not impact native Hawaiian cultural resources, practices, or beliefs and the Ka Pa'akai Framework. These pre-screened compliant activities will not require the additional KPCA. The list will be established and published on the DLNR Division's website. (See appendix A)
2. **Permit Application and Pre-Assessment Form.** The DLNR Cultural Assessment Process is initiated when the landowner or applicant submits a project proposal or permit application. Included in the package will be a Ka Pa'akai Pre-Assessment form (see Appendix A), which facilitates the DSA.
3. **DLNR Screening Assessment.** DLNR will conduct a screening assessment to determine whether a KPCA is warranted. The screening initially compares the proposed scope of work in the application with the Pre-Screened Compliant Activities list. Permit actions on this list will satisfy the requirements of the DLNR Cultural Assessment process.

If a proposed work is not on the approved list of compliant activities, the screening analysis continues by asking a set of four screening questions. If all four of the questions are answered "No," the proposed work will satisfy the requirements of the DLNR Cultural Assessment process, and no further analysis is required.

If, however, one or more of the four screening questions are answered “Yes,” DLNR will consult Aha Moku and/or the Po’o of the respective island to determine the likelihood of the proposed work affecting the Ka Pa’akai Framework. If it is deemed further investigation is required, the applicant will conduct a KPCA. Section 4.0, DLNR Screening Assessment, discusses the contents and intent of the assessment.

4. Ka Pa’akai Consultation Assessment (KPCA). The applicant will be responsible for completing and documenting the KPCA to further evaluate potential cultural impacts and if needed discuss further mitigative actions. However, the DLNR representative will coordinate and facilitate meetings between the applicant, Po’o, Moku, Ahupua’a representatives, and Kupuna families. In addition to ethnographic interviews, the KPCA also requires a Ka Pa’akai analysis to determine whether the permit activity will impact the Ka Pa’akai framework. The results of the forementioned activities may determine the need for additional surveys, studies, and ethnographic information. Section 5.0, Ka Pa’akai Consultation Assessment, discusses the contents and intent of the KPCA.

4.0 DLNR Screening Assessment

DLNR will perform the screening assessment using the Ka Pa’akai Pre-Assessment Form (see Appendix A), which will be submitted by the landowner or applicant as part of the project proposal or permit application. The pre-assessment form will require the following information from the applicant:

4.1 Project Information

Provide information such as the landowner or applicants name, pertinent facility State ID number, owner name/title/company, type of project, a brief description of the project, the tax map key(s), and name(s) of the Ahupua’a. Or, in cases such as commercial marine permits, a general area of fishing is required.

4.2. Pre-Screened Compliant Activities

Indicate which of the compliant activities listed are consistent with the permit activities, if any.

4.3. Screening Analysis

The screening analysis will evaluate the possible cultural impacts of the proposed application using four screening factors:

1. Upon completion, will the proposed work result in a physical change to the

geographical landscape of the area?

2. Upon completion, will the proposed work result in changes to the water flow frequency, volume, or path upstream of the property or facility, through the project site, or downstream of the project site? Include impacts during conditions such as severe storm events.

If in the ocean, upon completion, will the proposed work negatively impact traditional practices in that area (example: night fishing, he'e gathering, ect.)

3. Upon completion, is there a possibility the proposed work may impact "valued cultural, historical, or natural resources in the petition area?"
4. Upon completion, is there a possibility the proposed work may change public accessibility to the surrounding area?

Triggering of any of the screening factors will prompt consultation with Aha Moku and/or the island Po'o to see if a KPCA is warranted, or if no further analysis is required.

5.0 Ka Pa'akai Consultation Assessment (KPCA)

If a KPCA is deemed appropriate, the applicant will be responsible for the assessment, which will evaluate the proposed work by conducting ethnographic interviews and a Ka Pa'akai analysis. The Ka Pa'akai analysis is the primary means to ensure the KPCA fulfills its objective. The KPCA will include the components discussed below, as well as any literature reviews and community meetings. Include in the appendix of the KPCA a copy of the signed DLNR Ka Pa'akai Pre-Assessment Form.

5.1. Project and/or Applicant Description

Provide a detailed description of the project or application, including amongst other items its purpose, location, scope, project stakeholders (e.g., owner applicant, designer, construction contractor, etc.), construction methods, phases/timeline, and permitting requirements (if warranted). As much as possible, include sketches, diagrams, a map, and drawings (if warranted) of any proposed work. Also include a brief discussion on any changes or impacts to downstream waterways. The information and material for the application and/or project description is typically obtained from the applicant's permit application.

5.2. Description of Project Area

Discuss the location of the project area and include a map(s) of the Moku (district) and Ahupua'a (land division or boundary). If on land, include a description of the surrounding area, especially downstream of the project, populous, waterways, and other natural features. Also include a description of the neighboring properties, as far as the usage, residences, and pre-existing development and infrastructure (e.g., paved

roads, utilities, piped water, power, communications, wastewater, or drainage). The information and material describing the project area is typically obtained from the applicant's permit application and maps from Aha Moku.

If on the ocean, the information will be within the 3-miles of state waters. Therefore, the identification of the correlating land ahupua'a should be noted.

5.3. *Ethnographic Interviews*

Ethnographic interviews with Kupuna families or individuals, who have a lineal and cultural link to the project area, are essential to understanding an area's history and culture. The prescribed method is in-person interviews with those with cultural or historic knowledge of the project area and to the extent possible a genealogical relationship to the area.

To ensure sufficient information is collected for the KPCA, a minimum of two (2) families and/or individuals must be interviewed. However, if the applicant is not able to interview two families/individuals, the applicant should document how the families/individuals were contacted and the reason they were not interviewed. Include in this discussion the methods used to solicit interviews.

The KPCA should include the name of the interviewee, date of interview, biography on the interviewee (e.g., historical and genealogical relationship to the project area, particular expertise, etc.), an overview of the discussion, general discussion, cultural resources identified, traditions and customs identified, impacts identified, and if appropriate mitigation measures and recommendations. Aha Moku and/or the Po'o will furnish a list of candidate interviewees to DLNR and the applicant for use in arranging interviews as part of the KPCA.

The KPCA report documenting the discussion, findings and recommendations will be prepared by the landowner or applicant and evaluated by DLNR in consultation with the Aha Moku and the island Po'o, or the island representative of the island the project is being done.

After Aha Moku vets the KPCA report, the Aha Moku Executive Director will provide testimony on the proposed work at the BLNR meeting in which the DLNR Division presents a recommendation on the project or permit.

5.4. *Coordination & Facilitation of Meetings with Community*

As discussed above, DLNR will obtain from Aha Moku and/or the island Po'o the name of the Moku representative and a list of Kupuna families/individuals for interview. DLNR

will share this list with the landowner or applicant as a suggestion of candidate interviewees with knowledge of the Ahupua'a and project area. At the request of Aha Moku, DLNR will arrange the interviews and be present during the interviews, which will be led by the landowner or applicant. The landowner or applicant will secure an appropriate venue in or near the Ahupua'a and provide refreshments.

5.5. Ka Pa'akai Analysis

The Ka Pa'akai analysis will analyze the potential effects of any proposed physical alterations on cultural resources, practices, or beliefs; the potential of the proposed action to isolate cultural resources, practices, or beliefs from their setting; and the potential of the proposed action to introduce elements which may alter the setting in which cultural practices take place.

The analysis shall discuss in detail the findings on the following three factors known as the Ka Pa'akai Framework:

1. Identify the scope of valued cultural, historical, or natural resources in the petition or impacted area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area.
2. Determine the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.
3. Identify feasible actions, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist.

5.6. Conclusion & Recommendation

Summarize findings, conclusions, recommendations, and possible mitigation measures to address potential impacts.

6.0 Review & Vetting Process

The DSA and KPCA will be vetted by Aha Moku. However, the KPCA will be reviewed by DLNR in consultation with the island Po'o, prior to being vetted with Aha Moku. Aha Moku questions or concerns with the KPCA will be directed to DLNR, who will address the issues with the applicant. See table 1 for a summary of the review and vetting responsibilities.

	Who Performs	Who Reviews	Vetting Process
Pre-Screened Compliant Activities	DLNR	Aha Moku and/or Po'o	Aha Moku and/or Po'o
DLNR Screening Assessment (DSA)	DLNR	Aha Moku and/or Po'o	Aha Moku Testimony at BLNR meeting
Ka Pa'akai Consultation Assessment (KPCA)	Applicant	Aha Moku in consultation with the island Po'o and island representatives	Aha Moku Testimony at BLNR meeting

Table 1. Roles and responsibilities for DLNR cultural assessment activities.

APPENDIX A

Ka Pa'akai Pre-Assessment Form

Ka Pa'akai Pre-Assessment Form

PROJECT INFORMATION (To be completed by the landowner or applicant)

Name: _____

Brief Description of Project (as needed, attach diagrams, maps, etc.): _____

TMK(s) If applicable: _____

Ahupua'a: _____

PRE-SCREENED COMPLIANT ACTIVITIES (To be completed by the landowner or applicant)(Note: Divisions should list their own activities)

Yes	No	Compliant Activity
		Repair and maintenance (example)
		Removing trees or vegetation (example)
		Valve replacement (example)
		Outlet modification (example)
		Perimeter fence installation (example)
		Service roadway installation (example)
		Part of an existing developed area (example)

Does the permit activity meet any of the pre-screened compliant activities? Yes _____ No _____

If Yes, no further analysis will be required. Submit form to DLNR Division.

If No, the applicant needs to complete the SCREENING ANALYSIS section.

SCREENING ANALYSIS (To be completed by the landowner or applicant)

Provide responses to the following four screening questions:

- 1. Upon completion, will the proposed project result in a physical change of the geographical landscape in the area?

- 2. Upon completion, will the proposed project result in changes to the water flow frequency, volume, or path upstream of the project, through the project site, or downstream of the project site? Include impacts during conditions such as severe storm events.

- 3. Upon completion, is there a possibility the project may impact “valued cultural, historical, or natural resources in the petition area?”

- 4. Upon completion, is there a possibility the project may change public accessibility to the project or surrounding area?

_____ If AT LEAST ONE of the four questions above were answered Yes, Division will consult Aha Moku and/or the Po’o of the respective island to determine the likelihood of the proposed permit activity to affect the Ka Paakai Framework. If it is deemed that further investigation is required, the applicant will conduct a KPCA. Otherwise, no further analysis will be required.

_____ If ALL of the four questions above were answered “No,” no further analysis will be required and the applicant will NOT need to perform a KPCA.

SCREENING SUMMARY (To be completed by DLNR Division)

Is a Ka Pa'akai Consultation Assessment required?

Yes _____ – Subject to approval, inform the landowner or applicant to perform a Ka Pa'akai Consultation Assessment

No _____ – Subject to approval by Aha Moku, who will provide a recommendation to BLNR.

Comments: _____

SIGNATURES (To be processed by DLNR Divisions)

Reviewer Name (Printed): _____

Reviewer Signature: _____

DLNR Division Administrator Name (Printed): _____

DLNR Division Administrator Signature: _____

Aha Moku Executive Director (Printed): _____

Aha Moku Executive Director Signature: _____

Island Po'o (Printed) _____

Island Po'o Signature _____

Ahupua'a Representative (Printed) _____

Ahupua'a Representative Signature _____

_____ Attachments