



Ancient, Historic, and Old Government Trails and Roads in Hawaii **A Summary of Pertinent Law**

Hawaii, unlike any other State in the U.S., was originally a sovereign nation - a kingdom. There were certain preexisting laws that were passed on and incorporated into what became laws of the U.S. Territory, and then ultimately, of the State. In relation to trails, the following two citations describe the legal tools used by the Na Ala Hele Program to identify and possibly claim public ownership of specific features:

The Highways Act of 1892

In October of 1892, Queen Liliuokalani approved law that determined that 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. The definition of public highway includes all existing trails at the time "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." Furthermore, "All public highways once established shall continue until abandoned by due process of law".

Chapter 264-1(b), Hawaii Revised Statutes (HRS)

The following HRS furthers the intent of the Highways Act:

All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-way by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights of way at any time hereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the State Board of Land and Natural Resources - unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county. All State trails once established shall continue until lawfully disposed of pursuant to Chapter 171, HRS.

What this means

If the State can document the existence of a trail prior to 1892, and the feature has not been disposed of pursuant to Chapter 171, the State may claim the trail. This applies even if the trail does not currently exist on the ground physically - in many instances trail sections have been destroyed over time due to various land uses or natural process. While a landowner may not adversely possess State land, the burden of proof is upon the State to document ownership. This can be adverse to adjacent private landowners, and may create the necessity for legal action.

Prior to promotion for public use, a necessary (and sometimes costly) step is to reconcile the historic documentation with an on-the-ground metes and bounds survey.

It is imperative to confirm that the identified trail is the same alignment that was originally in existence prior to 1892. Trail routes can migrate over time for numerous reasons, creating legal challenges to the application of the laws cited above. Other necessary steps include the creation of a cultural survey and management plan, and then establishing a trail restoration, maintenance and signage program.