

Ka Pa`akai O Ka `Aina v. Land Use Commission (Hawai`i 2000)

Land Use Commission reclassified 1,009 acres from conservation to urban in the ahupua`a of Ka`upulehu on the Big Island.

Court ruled that the LUC had not fulfilled its duties under Article XII, Section 7, and remanded the matter so that the LUC could:

(1) determine the “‘valued cultural, historical, or natural resources’ in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area;”

(2) the extent to which these resources and rights will be affected by the proposed action; and

(3) “the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.”

Hawai`i Constitution, Article VII, Section 7:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence and 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 rights of the State to regulate such rights.

Is it a “taking” of property for the State of Hawai`i to require a private landowner to accommodate the traditional religious, access, and gathering rights of Native Hawaiians?