

TYPES OF ACCESS



PUBLIC ACCESS

Public access ensures the right for the public to enter and access coastal and inland recreational areas.

Obstructions to public rights of access are regulated by the County Planning Department and is enforced in the [Hawai'i Revised Statute § 115-9](#).

Each county is responsible for developing and maintaining public access to these areas. Ordinances related to public access exist for each county.

Kaua'i - Requires a standard access width of 10 ft. minimum. Public access intervals vary depending on the district zoning but range between 300-1,500 ft. ([Kaua'i County code 1987, Ch. 9 Article 2 Section 9-2.9](#))

Hawai'i - Requires a minimum width of 10 ft. and access intervals that vary on zoning but range between 800-2,500 ft. ([Hawai'i County code Section 34-5 & Section 34-7](#))

O'ahu - Requires a minimum width of 12 ft. except as otherwise approved by the director upon consultation with the director of parks and recreation. ([Revised Ordinances of Honolulu Ch. 22 Section 22-6.4](#))

Maui - Maui's subdivision ordinances require public access intervals no greater than 1,500 ft. and a minimum width of 15 ft. ([Maui Ordinances Ch. 18.16 Section 18.16.2010](#))

RIGHT OF ENTRY

Right of Entry is the right for an individual or party to make their way over another piece of land without being accused of trespassing.

Right of Entry permits are required for commercial, compensation, or beach wedding activities on unencumbered State shorelines. The Hawai'i Department of Land and Natural Resources (DLNR) defines these types of activities in the DLNR Amendments to [Chapter 13-221](#), Hawai'i Administrative Rules.

DLNR also maintains a list of permitted beach [sites](#) throughout Hawai'i that require permits.

These permits are referred to as "Wiki Permits."

You can apply for a permit [online](#) through the Wiki Permitting System or through mail by filling out and submitting the Wiki Permit [application](#).



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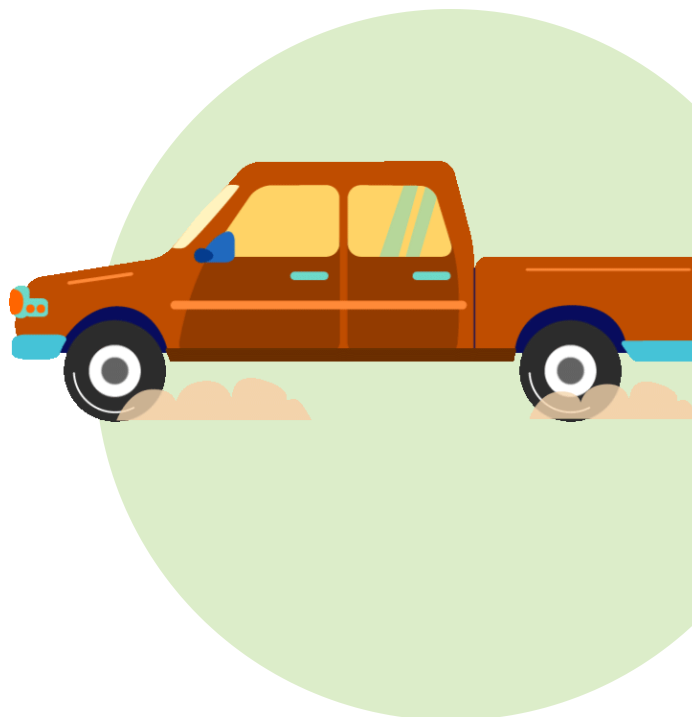


KULEANA RIGHTS Walking Access

Kuleana lands are parcels granted to Native Hawaiian tenants during the mid-1800s. There are specific rights attached to these lands that allow rights to access and use the resources that stem forth from these areas. [Hawai'i Reserved Statutes § 7-1](#) states that people shall not be deprived of the right to take firewood, house-timber, aho cored, thatch, or kī leaf for personal use. People also have the right to drinking water, running water, and the right of way to access these resources. Additionally, the [Hawai'i State Constitution Article XII § 7](#) reaffirms all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes.

KULEANA RIGHTS Driving Access

In the same way that Kuleana Rights exists for walking access onto Kuleana lands for the purpose of agricultural and religious use, subsistence, gathering rights, and water rights, in some cases, Kuleana Rights can also include driving access to these designated areas for the specified reasons previously mentioned.



COURT JUDGEMENTS

In some cases, the court can rule to give rights to access. Common cases involving county judgments usually involve situations where landowners of private, small parcels cannot access their property due to the lack of legal access, consequently turning this property into what is referred to as a landlocked parcel. These judicial rulings require the finding of the original unity of the parcel. The unity of ownership of a property requires that different parcels be owned by the same owner or set of owners. Judicial rulings will require finding who the original owner or set of owners are for the property. Overall, ruling varies from case to case; however, it should be noted that court judgments do have the power to give rights to access.



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CONSERVATION EASEMENTS

A Conservation Easement is a voluntary agreement in which the landowner permanently limits the type and amount of development that can take place on a parcel of land. With this agreement in place, the land that the easement is tied to, is and will forever remain protected even if the land undergoes a change of ownership.

The Hawaiian Islands Land Trust is an organization that utilizes Conservation Easements as a tool for protecting land. In their work they outline 3 benefits for Conservation Easements in Hawai'i;

- Preservation of Agricultural Lands
- Protection of Open Space and Scenic Landscapes for residents and visitors alike
- Protection of Cultural heritage

For more information about Conservation Easements and examples of places where these types of easements have proven successful, please visit [Hawaiian Islands Land Trust's](#) webpage and read more about Conservation Easement initiatives in Hawai'i.

GRANTS OF EASEMENTS

An Easement by Grant is when the landowner grants another person or party the right to use and access the landowner's property for a specified purpose without giving them the authority of owning it.

Grants of Easements also occur in court and is common for landlocked property. A parcel that has no legal access to the property is considered landlocked. The landlocked owner can petition for a Grant of Easement in order to access their parcel.

Terms commonly used in these situations are "servient estate" and "dominant estate." The land through which the easement is granted is referred to as the servient estate. The land that the easement benefits is referred to as the dominant estate.



**Kapua grants Kanalu an easement to cross her land so that he can gain access to his own home. In this situation, Kapua's land would be considered the servient estate and Kanalu's land is considered the dominant estate.*



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EXCLUSIVE VS. NON-EXCLUSIVE EASEMENTS



Easements can either be "exclusive" or "non-exclusive". Depending on the type of easement that is granted, different numbers of parties will have access to, or possibly, denied access to the property the easement is bound to.

Exclusive Easement

An exclusive easement limits that right to use the easement to a particular party at the exclusion of others. Meaning, if you were granted an exclusive easement over a particular property, you and you alone, will have the right to enter the estate for the specified purpose previously agreed upon, while everyone else is excluded from access and cannot enter.

Non-Exclusive Easement

A non-exclusive easement occurs when one party has an easement over a particular property; however, the landowner has also granted additional easements to other parties. In situations of non-exclusive easements, multiple parties who have vested interests in the use of the property are granted a non-exclusive easement over the estate. All parties possessing a non-exclusive easement must share the use of the property and, unlike an exclusive easement, cannot block access to the easement area.

