APPENDICES
Senate Bill No. 8 is presented below as a sample of the format of a bill. The Hawaiian community and its supporters rallied to defeat this bill when it was introduced in 1997. The Kumu Hula came together in the 'Ilio'ulaokalani Coalition and were an effective voice for the Hawaiian community in this effort.

THE SENATE
NINETEENTH LEGISLATURE, 1997
STATE OF HAWAII

S.B. NO. 8

A BILL FOR AN ACT

RELATING TO LAND USE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that there is a conflict between the property rights of private landowners of undeveloped land and the traditional and customary rights of native Hawaiians. Specifically, private property rights in Hawaii are unclear as to whether landowners have clear title to undeveloped land if native Hawaiians assert traditional and customary rights on a private landowner's land. As a result of this uncertainty, many title insurance companies throughout the State are treating traditional and customary rights of native Hawaiians as an encumbrance on title, and buyers of undeveloped land may experience difficulty in obtaining title insurance for financing.

The purpose of this Act is to provide private landowners with reassurance regarding the status of their title while preserving the rights of native Hawaiians to continue to engage in traditional and customary practices on undeveloped lands.

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART TREATMENT OF NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY RIGHTS

§205-A Definitions. As used in this chapter:

"Certificate of registration of native Hawaiian rights" means a certificate issued by the commission which shall vest in the holder a personal right to engage in

APPENDIX A
native Hawaiian traditional and customary practices on the property specifically identified and subject to any time limits, and other limitations or restrictions imposed under this chapter.

"Commission" means the state land use commission, as established under section 205-1.

"Petition for a certificate of registration" means a petition for a certificate of registration of native Hawaiian rights filed with the commission by a petitioner requesting permission to engage in traditional and customary practice on private landowner's undeveloped land.

"Petitioner" means a descendent of native Hawaiians, regardless of ahupua'a, tenancy, or blood quantum, who inhabited the Hawaiian Islands prior to 1778 and who asserts valid traditional and customary Hawaiian rights.

"Traditional and customary" means reasonable Hawaiian activities and usage which predate November 25, 1892, and that have been handed down and uniformly practiced by native Hawaiians on the specifically identified undeveloped land to further their culture and religious beliefs. Traditional and customary practices shall include, but not be limited to, rights of native Hawaiians to access land, to gather plants and undomesticated animals for noncommercial, subsistence, and medicinal purposes, and to practice religious beliefs.

"Undeveloped land" means a legally subdivided lot of record upon which a building, structure, or other improvement does not exist or for which a permit or approval has not yet been obtained to grade, build, or construct a building, structure, or improvement. Improvements include, without limitation, sidewalks, pathways, paved trails, golf course fairways and greens, recreational playing fields, and the installation of utilities.
§205-B Resolution of native Hawaiian claims. (a) The commission has the exclusive authority to hear and resolve claims filed by a petitioner asserting the petitioner's right to engage in traditional and customary practices on undeveloped lands owned by a private landowner. A person who has not been granted a certificate of registration of native Hawaiian rights shall not be entitled to legally engage in traditional and customary practices on undeveloped lands owned by a private landowner.

(b) In a petition for a certificate of registration filed with the commission, the petitioner shall establish, by clear preponderance of evidence, that the petitioner is a descendent of native Hawaiians who engaged in traditional and customary practices on the specified undeveloped land prior to November 25, 1892. In rendering its decision on a petition, the commission shall give deference to determinations made by the other state and county judicial and administrative bodies that a petitioner is entitled to engage in traditional and customary practices on undeveloped land owned by a private landowner. A petitioner who has successfully proven that the petitioner's ancestors engaged in traditional and customary practices on the undeveloped land shall not be denied access on the undeveloped land to continue to engage in such practices.

(c) The commission may impose conditions upon the holder of a certificate of registration of native Hawaiian rights to prevent unreasonable activities that may interfere, impede, or hinder the private landowner's use or possession of the undeveloped land.

§205-C Procedure. (a) The commission shall establish rules in the manner prescribed in chapter 91 for the processing of petitions for a certificate of registration and the resolution of claims.
(b) The petition for a certificate of registration, at a minimum, shall include:

1. Name and address of the petitioner, and any other lineal descendant of the petitioner who will accrue to the benefits conferred by the issuance of a certificate of registration of native Hawaiian right;

2. Genealogy of petitioner or other documentation conclusively establishing that the petitioner is a descendant of native Hawaiians who inhabited or occupied the Hawaiian islands prior to 1778;

3. A description of the undeveloped land or portion of the undeveloped land in which the petitioner claims that traditional and customary practices have occurred;

4. The nature or description of the traditional and customary practices that the petitioner desires to practice on the undeveloped land; and

5. Any documents or records that the practices have been undertaken by the petitioner or the petitioner's ancestors on the undeveloped land.

(c) The commission shall process a petition for a certificate of registration as follows:

1. Upon receipt of a petition for a certificate of registration, the commission shall notify the private landowner of the undeveloped land in writing within thirty days that a petition for a certificate of registration has been filed. The written notice shall be given by registered or certified mail with return receipt requested and by publication at least once a week for two successive weeks in a newspaper of general circulation on the island upon which the undeveloped land is located.
(2) The commission shall allow the landowner a reasonable time to respond to the petition for a certificate of registration and to request a contested case hearing pursuant to chapter 91. If the private landowner responds to the petition for a certificate of registration within the time allotted, then the commission shall hold a hearing pursuant to chapter 91. If the landowner fails to respond to the commission's written notice within the allocated time as established by the commission, the commission may issue a certificate of registration of native Hawaiian right and the private landowner shall be prevented from denying the petitioner and the petitioner's lineal descendants access over, across, or upon the undeveloped land and to engage in traditional and customary practices; provided that the traditional and customary practices are reasonable or that none of those circumstances in section 205-D exist.

(d) In order to be valid, a petition for a certificate of registration must be filed with the commission on or before a building or grading permit is issued on the undeveloped land. If no petition for a certificate of registration is filed with the commission prior to the issuance of a building or grading permit, the landowner may improve the undeveloped land and the undeveloped land shall be considered developed, and shall therefore, not be subject to any claims or rights to native Hawaiian traditional and customary practices.

§205-D Termination or modification of traditional and customary practices.
(a) The commission shall establish rules in the manner prescribed in chapter 91 that allows a private landowner of undeveloped land to petition the commission for termination or modification of a certificate of registration of native Hawaiian right issued previously by the commission on the undeveloped land; provided that a determination by the commission is made that the continuation of the petitioner's or
the petitioner's lineal descendants' traditional and customary practices on the undeveloped land will cause hardship to the landowner and pose an unreasonable restriction on the landowner's intended use of the property.

(b) The petition to terminate or modify a certificate of registration of native Hawaiian right shall contain, a minimum, the following:

(1) Name of the landowner and the landowner's agent, if applicable;
(2) A description of the undeveloped land and portion of the undeveloped land upon which the applicant claims that traditional and customary practices have occurred;
(3) Reason for petitioning for the termination, or modification of the petitioner's and the petitioner's lineal descendant's traditional and customary practices.

(c) The commission shall process a petition for termination or modification as follows:

(1) Upon receipt of a petition, the commission shall give written notice within thirty days to the petitioner and those lineal descendants identified on the certificate of registration of native Hawaiian right, if any, that a petition has been filed to terminate or modify their traditional and customary practices. The notice shall be given by registered or certified mail with return receipt requested or by publication at least once a week for two successive weeks in a newspaper of general circulation on the island upon which the undeveloped land is located.

(2) The commission shall allow the petitioner and petitioner's known lineal descendants a reasonable time to respond to the petition for a certificate of registration and to request a contested case hearing pursuant to chapter 91.
(3) If the petitioner responds within the time allotted as established by the commission, then the commission shall hold a public hearing pursuant to chapter 91. If the petitioner fails to respond to the commission's notice within the allocated time, then the petitioner's and the petitioner's lineal descendant's traditional and customary rights shall be deemed terminated or modified.

§205-E Fees for certificate of registration process. The commission may establish reasonable fees for the processing of petitioners for a certificate of registration under section 205-B, and the processing of requests for terminating or modifying traditional and customary practices under section 205-D. Any fees collected shall be deposited to the credit of the general fund.

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of the statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: (Randy Iwase signature)
## Oral Testimony Outline

| Chair of the House or Senate Committee | Randall Iwase and Mālama Solomon, Co-chairs |
| Name of the House or Senate Committee | Senate Committee on Water, Land & Hawaiian Affairs |
| Bill or Resolution No., Draft No. (if any) | S.B. No. 8 |
| Day or date of hearing | Tuesday, February 4, 1997 |
| Time and place of hearing | 1:00 pm, State Capitol Room 229 |
| Name | Malia Akutagawa |
| **Introduction** | Aloha, my name is Malia Akutagawa, I am 25 years old and a law student at the University of Hawai‘i. First and foremost, however I am a Hawaiian and kū‘āina of Moloka‘i. |
| **Arguments** | SB 8 serves to alienate my ‘ohana and all Hawaiians from the land; reducing our rights to a piece of paper which can be extinguished by the whim of a governmental body . . . who shall demand that Hawaiians define and justify themselves as a people . . . |
| **Countering opponent’s arguments** | The drafters of SB 8 justify the creation of this bill as necessary to resolving a "conflict between the property rights of private landowners of undeveloped land and the traditional and customary rights of native Hawaiians," In actuality, there is no spoken conflict and there never was. |
| **Conclusion** | For the reasons stated above, I urge you to kill Senate Bill No. 8. |
WRITTEN TESTIMONY OUTLINE

CHAIR OF THE HOUSE OR SENATE COMMITTEE
NAME OF THE HOUSE OR SENATE COMMITTEE

BILL OR RESOLUTION NO., DRAFT NO. (if any)

Day and Date of Hearing

Time and Place of Hearing

Introduction: (1) Introduce who you are and/or the group or organization that you represent; (2) State the measure you are testifying on; and (3) State your position on the measure (e.g., "I am testifying in favor of/in support of..." or "I am testifying against/in opposition to...")

Content: State or list the reasons for taking your position, starting with the most important or compelling reasons. Include any facts, figures, statements, and experiences to support your position.

Content: State or list any additional reasons for taking your position.

Closing: (1) Include any closing remarks; and (2) Reiterate your position on the measure (especially if you did not clearly state your position previously within the testimony).

Your name

The group or organization that you represent (if any)

A contact number or address

APPENDIX C