

Is ‘Aina Still Sacred? How Hawaii’s Unique Environment Creates Controversies in Property Ownership in the Aftermath of Disaster
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I. INTRODUCTION

In August 2023, wildfires ravaged neighborhoods throughout Maui, Hawaii,² resulting in hundreds of individuals dead or missing.³ The tragic blazes not only left survivors without homes but also put their scorched land on the auction block for prospective, wealthy buyers looking for a beachside plot of land to develop.⁴ Due to homeowners being pressured to sell their property at a discounted price, Hawaii’s Governor, Josh Green, warned mainland developers against buying the land, and said that the government would intervene, if necessary.⁵

Natural disasters are not new to the lush archipelago, as Hawaii has averaged one federally declared disaster every two years from 1953 to 2003.⁶ This trend is only getting worse; now averaging more than two disasters a year.⁷ Two

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² There are 8 main islands on the Hawaiian archipelago: O’ahu (“The Gathering Place”), Ni’ihau (“The Forbidden Isle”), Kauai (“The Garden Isle”), Moloka’i (“The Enlightening Isle” or “The Friendly Isle”), Maui (“The Valley Isle”), Lanai (“The Pineapple Isle”), Kaho’olawe (“The Target Isle”), and Hawai’i (“The Big Island”); see *What are the eight islands of Hawaii?*, AMERICAN MASTERS, <https://pbs.org/wnet/americanmasters/what-are-the-eight-islands-of-hawaii/21611/> (last visited Oct. 20, 2023).

³ Kayla Jimenez, *Despite prohibition, would-be buyers trying to snap up land burned in Maui wildfires*, USA TODAY (Sept. 2, 2023, 9:00 AM), <https://www.usatoday.com/story/news/nation/2023/09/02/maui-fire-developers-investigation/70740771007/>.

⁴ *Id.*

⁵ *Id.*

⁶ Seth Borenstein et al., *Fires and other disasters are increasing in Hawaii, according to this AP data analysis*, THE HILL (Aug. 17, 2023, 8:48 AM), <https://thehill.com/homenews/ap/ap-u-s-news/ap-trouble-in-paradise-ap-data-analysis-shows-fires-other-disasters-are-increasing-in-hawaii/>; see also 42 U.S.C. §§ 5121-5207 §401 (stating that the governor of an affected state shall request for a declaration by the President that a major disaster exists for a federal declaration).

⁷ *Id.*

years prior to the Maui wildfires, the largest wildfire in the state’s history happened on Hawaii’s Big Island.⁸ This trend is increasing, largely due to drier, drought summers and wet winters, which the latter produces more flammable shrubbery that fuels the impending blazes.⁹ Nevertheless, Hawaii remains a popular tourist destination while maintaining a high cost of living for its residents.¹⁰

Regarding property ownership, Hawaii is unique among U.S. states; as of 2020, federal agencies own 829,830 acres of Hawaii land.¹¹ In comparison, a state of similar size, New Jersey, only has 171,956 acres of land owned by the federal government.¹² Early into Hawaii’s statehood, much of the land was seized through eminent domain, and the federal government sold land to the island’s residents to combat the island being bought up by developers and investors.¹³ The state government has also taken the interests of native Hawaiians into consideration by providing them with direct benefits for homesteading.¹⁴ As such, this unique

⁸ “Big Island” is the colloquial term used to refer to the archipelago’s largest island, named Hawai‘i, not to be confused with the state name, Hawaii; Gabrielle Canon, ‘A perfect storm’: Hawaii firefighters confront Big Island’s largest wildfire in history, THE GUARDIAN (Aug. 4, 2021, 6:00 AM), <https://www.theguardian.com/us-news/2021/aug/04/hawaii-wildfire-big-island-climate-change-drought>.

⁹ *Id.*

¹⁰ Spencer Kimball, *Hawaii governor warns developers against predatory land buying in devastated Lahaina*, CNBC (Aug. 16, 2023, 3:14 PM), <https://www.cnbc.com/2023/08/16/hawaii-governor-warns-developers-against-predatory-land-buying-in-devastated-lahaina.html>.

¹¹ Carol Hardy Vincent et al., CONG. RSCH. SERV., R42346, *Federal Land Ownership: Overview and Data 7-9* (2020) (There are also approximately 253,000 acres of submerged lands and waters within the Hawaiian Islands National Wildlife Refuge not included in the acreage total), <https://apps.dtic.mil/sti/pdfs/AD1169931.pdf>.

¹² *Id.*

¹³ *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 229-30 (1984).

¹⁴ DEPT. OF HAWAIIAN HOME LANDS, *About the Department Of Hawaiian Home Lands*, <https://dhhl.hawaii.gov/dhhl>. (last visited Oct. 6, 2023).

perspective on property ownership in Hawaii intertwines deeply with the indigenous cultural reverence for the land.

The Hawaiian Islands are considered sacred by the indigenous culture.¹⁵ As articulated by the late Hawaiian activist George Helm:

[T]here is man and the environment. One does not supersede the other . . . Man is merely the caretaker of the land that maintains his life and nourishes his soul. Therefore, 'aina is sacred. The church of life is not a building; it is the open sky, the surrounding ocean, the beautiful soil.¹⁶

Certain laws already reflect this: it is illegal to take sand, dead coral, or coral rubble on a flight from Hawaii.¹⁷

Due to the island's limited land acreage, desirable climate, and high cost of living, land ownership has become a prominent legal issue unique from the other forty-nine states.¹⁸ Natural disasters and climate change catalyze this ongoing controversy.¹⁹ Hawaii is still relatively young in its statehood—not even 65 years old—yet its rich heritage and culture are timeless.²⁰ Ultimately, it is up to the state and federal governments and the courts to optimally balance the interests of wealthy developers, Hawaiian residents, and the environment to preserve the

¹⁵ Phyllis Coochie Cayan, *Basic Protocol at Hawaiian Sacred Places*, UNIVERSITY OF HAWAII AT HILO (1999), <https://hilo.hawaii.edu/maunakea/culture/protocol-wahi-pana>.

¹⁶ *Id.*

¹⁷ Haw. Rev. Stat. Ann., §171-58.5; Haw. Rev. Stat. Ann. §205A-44.

¹⁸ Angela Mae, *How Much You Need to Live Comfortably in Hawaii*, YAHOO FINANCE (June 16, 2023), <https://finance.yahoo.com/news/much-live-comfortably-hawaii-120017133.html>.

¹⁹ Christopher Flavelle et al., *How Climate Change Turned Lush Hawaii into a Tinderbox*, THE NEW YORK TIMES, <https://www.nytimes.com/2023/08/10/climate/hawaii-fires-climate-change.html> (last updated Aug. 14, 2023).

²⁰ The U.S. National Archives and Records Admin., Hawaii Statehood, August 21, 1959, <https://www.archives.gov/legislative/features/hawaii> (last updated March 10, 2023).

sacred land.²¹ In this unique environment, the convergence of environmental pressures and cultural preservation requires vigilant governance.

In Hawaii, natural disasters have fueled a phenomenon called climate gentrification, which poses unique challenges due to the islands' limited residential land and high costs of living, as developers attempt to buy residential property. The state's unique culture and climate make it crucial for the government to prevent climate gentrification, preserving both Hawaii's heritage and its residents' well-being, as past efforts and legal rulings have recognized the importance of preserving the state's rich culture.

This Article outlines what those interests are and how the forces of the law can protect the rights of aggrieved Hawaiians while continuing to honor and protect the environment Hawaiians deem sacred. Constitutional limits of power are discussed, and how the state and federal governments can effectively promote the wellbeing of conflicting interests, within the bounds of the U.S. Constitution and state constitution. Further, this Article addresses the tactics wealthy developers use to buy land from residents and its environmental impact. Lastly, this Article will address possible solutions that can ameliorate these issues, and what the future holds for upcoming generations of Hawaiians who will inherit the islands one day.

²¹ See Isabella O'Malley, et al., *In Hawaii, concerns over 'climate gentrification' rise after devastating Maui fires*, THE ASSOCIATED PRESS (Aug. 18, 2023, 11:40 A.M.), <https://apnews.com/article/maui-hawaii-fire-climate-gentrification-housing-displacement-aa827eabef48d2764aa58d01f7a6969c>.

II. BACKGROUND

A. *The History of Hawaii*

The first settlers of the Hawaiian Islands arrived at around 400 A.D. when Polynesians from the Marquesas Islands traveled over 2,000 miles to Hawaii's Big Island via canoe.²² The first Hawaiians lived in small chieftain-led communities battling one another for territory.²³ Centuries later, in 1778, the Hawaiian Islands were first discovered by the western world, as British Captain James Cook landed on the island of Kauai.²⁴ By this time, the indigenous Hawaiians had a highly organized, self-sustaining, survival-oriented society characterized by communal land tenure with a sophisticated language, religion, and culture.²⁵ King Kamehameha ruled.²⁶ Between 1791 and 1810, Kamehameha conquered all other rulers and united the communities across the archipelago into one kingdom.²⁷

When Cook arrived, the population was around 300,000 people. As more western traders and whalers arrived, disease wiped out the indigenous islanders and the native population decreased to roughly 70,000 people.²⁸ American influence grew, and was established in the mid-late 1800s when the sugar trade dominated

²² *Hawaii – History and Heritage*, SMITHSONIAN MAGAZINE (Nov. 6, 2007), <https://www.smithsonianmag.com/travel/hawaii-history-and-heritage-4164590/>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Native Hawaiian Traditional and Customary Rights*, LAND USE COMMISSION, https://luc.hawaii.gov/wp-content/uploads/2022/06/3.-NH-Traditional-and-Customary-Practices_Summary_June-2022.pdf (June 2022).

²⁶ SMITHSONIAN MAGAZINE, *supra* note 22.

²⁷ *Id.*

²⁸ *Id.*

the Hawaiian economy.²⁹ Because of Hawaii's unique climate and soil,³⁰ sugar cane became one of the most profitable resources between the United States and the Hawaiian Islands.³¹ The whaling industry faded by the 1860s, whereas the sugar cane industry flourished, attracting many Japanese workers to cultivate the sugar cane fields.³² This powerful economic binder increased the United States' influence over time, and by 1898, they were able to overthrow the kingdom and annex the islands by a joint congressional resolution signed by President William McKinley.³³

Queen Lili'uokalani of Hawaii protested this annexation and wrote to the U.S. House of Representatives articulating her stance.³⁴ She wrote against the "assertion of ownership" by the United States of one million acres of her property.³⁵ Lili'uokalani added that this violated due process as it constituted a taking with no just or other compensation.³⁶ Despite this, the last Hawaiian ruler was deposed, imprisoned, and forced to abdicate.³⁷

²⁹ Office of the Historian, *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Hawaii*, FOREIGN SERVICE INSTITUTE, UNITED STATES DEPARTMENT OF STATE, <https://history.state.gov/countries/hawaii> (last visited Oct. 20, 2023).

³⁰ Note that there are two distinct typographical representations: "Hawai`i" and "Hawaii." One spelling contains an okina, which is a typographical symbol represented by a reversed apostrophe. The traditional "Hawai`i" spelling represents the concept of the islands prior to statehood, whereas the modern "Hawaii" represents the U.S. State of Hawaii. For consistency purposes, the okina and other Hawaiian typography are generally omitted.

³¹ Office of the Historian, *supra* note 29.

³² *Id.*

³³ *Id.*

³⁴ The U.S. National Archives and Records Admin., *Letter from Liliuokalani, Queen of Hawaii to U.S. House of Representatives protesting U.S. assertion of ownership of Hawaii, Dec. 19, 1898*, <https://www.archives.gov/legislative/features/hawaii/queen.html> (last updated April 9, 2021).

³⁵ *Id.*

³⁶ *Id.*

³⁷ SMITHSONIAN MAGAZINE, *supra* note 22.

Hawaii eventually earned its statehood in 1959, becoming the 50th U.S. state.³⁸ To this day, tourism has become one of the most dominant industries on the islands.³⁹ A total of 9,247,848 visitors arrived on the islands in 2022.⁴⁰ Like the sugar cane trade before it, tourism has helped keep Hawaii economically bound to the mainland.⁴¹ Also, just like the sugar cane industry, the tourism industry in Hawaii is fueled by one thing: its unique, paradisiacal environment.

B. Hawaii's Unique Environment

The Hawaiian Islands form an archipelago made up of 132 islands, atolls, reefs, shallow banks, shoals, and seamounts stretching over 1,500 miles across the North Pacific Ocean.⁴² These islands were formed by a volcanic eruption from a hot spot on the Earth's crust.⁴³ As a result, Hawaii is covered by diverse climates and terrain, with various peaks, valleys, ridges, and broad slopes in addition to the surrounding ocean.⁴⁴ Mountains influence the weather by blocking, redirecting, and speeding up air-flow.⁴⁵ When warm, moist air rises over the side of the mountain where the wind is coming from, it creates more clouds and rain than over the open

³⁸ The U.S. National Archives and Records Admin., *supra* note 20.

³⁹ *December 2022 Total Visitor Count 91.5 Percent of the 2019 Level*, STATE OF HAWAII DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM (Jan. 30, 2023), <https://dbedt.hawaii.gov/blog/23-03/>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *How did the Hawaiian Islands form?*, NATIONAL OCEAN SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, <https://oceanservice.noaa.gov/facts/hawaii.html> (last updated Jan. 20, 2023).

⁴³ *Id.*

⁴⁴ *Climate of Hawai'i*, NATIONAL WEATHER SERVICE, https://www.weather.gov/hfo/climate_summary (last visited Dec. 18, 2023).

⁴⁵ *Id.*

sea.⁴⁶ On the other side of the mountain, where the air descends, it is usually sunny and dry.⁴⁷ Mountain-surrounded areas have different wind patterns than places out in the open, and as one ascends up a mountain, it gets colder.⁴⁸ Hawaii's mountains, which range from sea level to nearly 14,000 feet, create a range of climates from tropical to sub-Arctic.⁴⁹

Hawaii's climate has two seasons: a winter and a summer.⁵⁰ The summers tend to be drier and the winters yield more rainfall, as droughts may occur if there are no winter storms or trade winds.⁵¹ A dry winter, followed by a normally dry summer and another dry winter, can cause serious problems.⁵² This dryness could result in wildfires, among other issues.⁵³ Unlike other U.S. states with dry biomes, like California, Hawaiian ecosystems are not adaptive to wildfire, nor is fire a part of the natural life cycle.⁵⁴ Only a few native species can regenerate after a wildfire.⁵⁵ Wildfires wreak devastating effects on the small islands, from the destruction of cultural resources, cost in taxpayer money, negative impact on drinking water and human health, increasing soil erosion, impact on near-shore and marine resources, and destruction of native species and native ecosystems.⁵⁶ Wildfires are becoming

⁴⁶ NATIONAL WEATHER SERVICE, *supra* note 44.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Canon, *supra* note 8.

⁵⁴ *Hawaii Statewide Assessment of Forest Conditions and Resource Strategy 2010*, ISSUE 3: WILDFIRE, 101, <https://dlnr.hawaii.gov/forestry/files/2013/09/SWARS-Issue-3.pdf> (last visited Oct. 20, 2023).

⁵⁵ *Id.*

⁵⁶ *Id.*

more frequent in Hawaii with the introduction of non-native fire-adapted grass species.⁵⁷ Where there was previously little or no wildfire risk in the past, now there is a higher risk with more people living in close proximity to wildland areas, putting residential areas in danger.⁵⁸

Climate change has also impacted land use in upland areas, where rising sea levels cause people to move upland, like in South Kona.⁵⁹ There, deforestation practices for cattle grazing above 4000 feet can significantly affect water resources in lowland regions, both in terms of quantity and quality.⁶⁰ Fire risk should be taken into account when assessing these upland land use modifications.⁶¹ Of Hawaii's 4.1 million acres of land, 48% is zoned Conservation, 47% Agriculture, and 5% is zoned Urban.⁶² Living area is already scarce, but now it is becoming a dangerous risk to health and home.⁶³ These new dangers have a direct impact on the consecrated land and the cultural customs of the indigenous population.⁶⁴

C. The Indigenous Impact

Under Hawaii state law, the government is obligated to “preserve and protect the exercise of traditional and customary Native Hawaiian rights.”⁶⁵ Concepts of

⁵⁷ ISSUE 3: WILDFIRE at 104, *supra* note 54.

⁵⁸ *Id.*

⁵⁹ *Id.* at 106.

⁶⁰ *Id.*

⁶¹ ISSUE 3: WILDFIRE at 104, *supra* note 54.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ LAND USE COMMISSION, *supra* note 25.

⁶⁵ *Id.*

Hawaii property law differ from Western property law principles.⁶⁶ Western property law has unequivocal property ownership rights, like the right to exclude others, transfer the land, and use and possession of land.⁶⁷ Meanwhile, Hawaiian property law safeguards the practice of traditional and customary rights, restricting the owner's right to exclude.⁶⁸ Hawaii's land use theory during the British arrival was based on accessibility and mobility.⁶⁹ It was an important part of the way of life to have access from one area to another, from shore to shore, between adjacent ahupua'a (land divisions), to the ranging mountains, and to small plots of land cultivated or harvested by native tenants.⁷⁰

Traditional and customary practices hold a strong connection with the land, or 'aina, for indigenous Hawaiians.⁷¹ Their cultural and spiritual identity is rooted in their association with the land, considering it an integral part of their 'ohana (family).⁷² As a result, traditional Hawaiian customs place significance on respecting and nurturing the land and its resources.⁷³ Native practitioners are able to spiritually connect with 'aina and its resources by engaging in traditional and customary activities, like hunting, gathering, and fishing, whether for sustenance, cultural, or religious reasons.⁷⁴

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

Foreign intervention made land use in Hawaii increasingly complicated; thus, in 1839, the Bill of Rights of the Hawaiian Islands was enacted.⁷⁵ This guaranteed land would not be taken from the natives.⁷⁶ In 1840, the first Constitution of Hawaii was enacted, which made it clear that people had an interest in land greater than that of bounty and produce.⁷⁷ Kamehameha III and others came together to divide the land from the then-existing feudal system.⁷⁸ This land division was called the Great Mahele, and occurred in 1848, marking one of the most important events in the history of land title in Hawaii.⁷⁹ Of the roughly four million acres in Hawaii, the king reserved one million acres for himself and his family, called crown lands.⁸⁰ Of the remaining three million acres, around half were designated to the government and the other half was given to chiefs and headmen.⁸¹ To this day, title to all land in Hawaii can be traced back to one of these three land divisions created by the Great Mahele.⁸²

⁷⁵ *LAND IN HAWAII: A brief history of the transition from a Feudal System to an Allodial System and Hawaiian words used in real estate in Hawai'i today*, RE3 LLC REAL ESTATE SERVICES (2004), https://files.hawaii.gov/dcca/reb/real_ed/re_ed/ce_prelic/land_in_hawaii.pdf.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

III. HISTORY OF PROPERTY ISSUES

A. Climate Gentrification

As defined by Merriam-Webster, gentrification is a process where a residential area experiences an increase of wealthy people “who renovate and rebuild homes and businesses and which often results in an increase in property values and the displacement of earlier, usually poorer residents.”⁸³ This process can also be initiated by wealthy real estate development companies.⁸⁴ The U.S. trend toward gentrification initially began in 2000, when the federal government enacted the New Markets Tax Credit, which allocated tens of billions of dollars in government money for urban revitalization projects in lower-income communities.⁸⁵ This trend also has contextual racial and socioeconomic issues tied to it, but the principle revolves around buying property at a low cost, and making the overall community more expensive.⁸⁶ This ultimately raises the cost of living in these new neighborhoods, and forces people unable to keep up with the rising costs to leave.⁸⁷ Despite having a potentially harmful impact on lower-income individuals, gentrification does have many economic benefits for communities and governments on a larger scale.⁸⁸

⁸³ *Gentrification*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/gentrification> (last visited Dec. 12, 2023).

⁸⁴ *Gentrification*, NATIONAL GEOGRAPHIC, <https://education.nationalgeographic.org/resource/gentrification/> (last updated Oct. 30, 2023).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

Because of Hawaii’s desirable climate and recent natural disasters, it has experienced its own form of gentrification hundreds of miles away from the mainland.⁸⁹ A housing crisis has “priced out” native Hawaiians from their homes, as prices rise with new developments.⁹⁰ This is called “climate gentrification,” which is a term coined by Jesse Keenan, an associate professor of sustainable real estate and urban planning at Tulane University School of Architecture.⁹¹ This term was created in the aftermath of changes in housing markets following extreme weather events.⁹² Potential developers and investors can research who has mortgages and can even execute cold calls and place flyers on cars at grocery stores.⁹³ Even if people want to sell their homes, this could still raise the cost of living for other residents in the area.⁹⁴

B. Constitutional Authority

1. Federal Constitution

The U.S. Constitution grants Congress with the authority to create legislation pursuant to Article 1, Section 8, Clause 3, often called the Commerce Clause.⁹⁵ This provision gives Congress the power to “regulate commerce with foreign nations, among states, and with the Indian tribes.”⁹⁶ This causes

⁸⁹ O’Malley, *supra* note 21.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ NATIONAL GEOGRAPHIC, *supra* note 84.

⁹⁵ U.S. CONST. art. I, § 8, cl. 3.

⁹⁶ *Id.*

controversy among the states, especially regarding the balance of power with the federal government.⁹⁷ Congress has used this power to exercise power over the activity of states and citizens and can include broad-reaching subjects like property ownership and environmental law.⁹⁸

What “commerce” means has been broadened by the Supreme Court in *NLRB v. Jones & Laughlin Steel Corp.* in 1937 to include activities that had a substantial economic effect on interstate commerce or if the cumulative effect of one act could have an effect on such commerce.⁹⁹ Eventually, the Court limited the reach of the Commerce Clause in *United States v. Lopez* in 1995, stating that Congress could only regulate the channels of commerce, the instrumentalities of commerce, and actions that substantially affect interstate commerce.¹⁰⁰ While the Commerce Clause gave Congress the power to regulate state activity, it also imposes restrictions on state governments and how they implement legislation that discriminates against interstate commerce, called the “Dormant Commerce Clause” by the Court.¹⁰¹ In *West Lynn Creamery, Inc. v. Healy*, the Court struck down a Massachusetts state tax because it discriminated against non-Massachusetts citizens and businesses.¹⁰²

⁹⁷ *Commerce Clause*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/commerce_clause (last visited Nov. 17, 2023).

⁹⁸ *Id.*

⁹⁹ *Id.* (referencing *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)).

¹⁰⁰ *Id.* (referencing *United States v. Lopez*, 514 U.S. 549 (1995)).

¹⁰¹ *Id.* (referencing *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994)).

¹⁰² *Id.*

The Fifth Amendment of the U.S. Constitution also provides that if the government takes private property for public use, it must provide “just compensation” to the owner of the property.¹⁰³ This is referred to as the Takings Clause and allows the government to exercise the use of eminent domain.¹⁰⁴ The quantification of “just compensation” is determined by an appraisal of the property’s fair market value.¹⁰⁵ In *Kelo v. City of New London*, the Court considered the furthering of economic development a “public use” for the benefit of the community.¹⁰⁶ These seizures are justified if rationally related to a conceivable public purpose.¹⁰⁷

The First Amendment of the U.S. Constitution grants people the right to free speech.¹⁰⁸ This right even includes commercial speech which, although less protected than individual speech, still gives corporate entities the right to promote commerce and make business offers.¹⁰⁹ As long as commercial speech is not misleading or misrepresenting, it is protected under the Constitution.¹¹⁰

The First and Fifth Amendments of the U.S. Constitution were originally applicable to the federal government and its powers. However, the Fourteenth Amendment’s Due Process clause applies the first ten amendments, that make up

¹⁰³ U.S. CONST. amend. V.

¹⁰⁴ *Takings*, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/takings>, (last visited Nov. 17, 2023).

¹⁰⁵ *Id.* (referencing *Kohl v. U. S.*, 91 U.S. 367, 377 (1875)).

¹⁰⁶ *Id.* (quoting *Kelo v. City of New London*, 545 U.S. 469, 484 (2005)).

¹⁰⁷ *Id.* (referencing *Midkiff*, 467 U.S. 229).

¹⁰⁸ U.S. CONST. amend. I.

¹⁰⁹ *Commercial Speech*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/commercial_speech, (last visited Nov. 17, 2023).

¹¹⁰ *Id.*

the Bill of Rights, to the states.¹¹¹ Most of the rights outlined in the Bill of Rights are incorporated by the states both substantially and procedurally.¹¹² Specifically the Takings Clause of the Fifth Amendment is partially incorporated in *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*.¹¹³ The Court held that the states cannot take private property without providing just compensation.¹¹⁴ The First Amendment has been fully incorporated.¹¹⁵

2. *State Constitution*

While the U.S. Constitution has authority over the states in certain aspects, the Constitution of the State of Hawaii delegates legislative authority within the state. Article I, Section 20 states “private property shall not be taken or damaged for public use without just compensation,” essentially reciting the Takings Clause from the federal constitution.¹¹⁶ Additionally, Article I, Section 2 provides citizens with the freedom to acquire and possess property.¹¹⁷ Article I, Section 5 also contains a Due Process Clause, which states, “[n]o person shall be deprived of life, liberty or property without due process of law.”¹¹⁸

¹¹¹ U.S. CONST. amend. XIV. § 1.

¹¹² *Incorporation Doctrine*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/incorporation_doctrine, (last visited Nov. 16, 2023) (referencing *Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226 (1897)).

¹¹³ *Id.*

¹¹⁴ *Chicago, B. & Q.R. Co.* 166 U.S. 226.

¹¹⁵ LEGAL INFORMATION INSTITUTE, *supra* note 112.

¹¹⁶ HAW. CONST. art. I, § 20 (Legislative Reference Bureau through Nov. 1978 amendments).

¹¹⁷ HAW. CONST. art. I, § 2 (Legislative Reference Bureau through Nov. 1978 amendments).

¹¹⁸ HAW. CONST. art. I, § 5 (Legislative Reference Bureau through Nov. 1978 amendments).

Article XII, Section 7 of the Hawaii Constitution protects the rights and interests of its indigenous population by expressly stating that “all rights, customarily and traditionally exercised for subsistence, 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 right of the State to regulate such rights.”¹¹⁹

C. Government Actions

Effective April 1, 1979, President Jimmy Carter signed Executive Order 12127, which established the Federal Emergency Management Agency (“FEMA”).¹²⁰ FEMA employs more than 20,000 people nationwide and has 10 regional offices nationwide.¹²¹ This disaster response initiative equips America’s most vulnerable regions for disaster response and rehabilitation, while leading communities in climate resilience.¹²²

Meanwhile, to protect its own environment, Hawaii enacted the Land Fire Protection Law. This legislative authority mandates the Department of Land and Natural Resources (“DLNR”) to “take measures for the prevention, control, and extinguishment of wildland fires within forest reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves.”¹²³ This law provides a

¹¹⁹ HAW. CONST. art. XII, § 7 (Legislative Reference Bureau through Nov. 1978 amendments).

¹²⁰ *About Us*, FEDERAL EMERGENCY MANAGEMENT AGENCY, <https://www.fema.gov/about>, (last updated July 7, 2023).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Land Fire Protection Law*, DEPT. OF LAND AND NATURAL RESOURCES, <https://dlnr.hawaii.gov/forestry/fire/land-fire-protection-law/>, (last visited Nov. 16, 2023).

statutory requirement to cooperate with recognized county and federal government fire control agencies.¹²⁴ This involves creating plans, programs, and mutual aid agreements to provide assistance in preventing, controlling, and extinguishing fires on forest, grass, brush, and watershed lands that fall outside the department's specified fire protection responsibilities.¹²⁵

The Hawaiian Homes Commission Act of 1920 (“The Act”) was enacted by the U.S. Congress to provide protection for the life and well-being of native Hawaiians.¹²⁶ The act created a commission to administer Hawaiian home lands for homesteads.¹²⁷ According to the Act, native Hawaiians are defined as individuals having at least fifty percent Hawaiian blood.¹²⁸ The Department of Hawaiian Home Lands (“DHHL”) is governed by the act, and is responsible for serving its beneficiaries and managing its extensive land trust, which consists of over 200,000 acres on the islands.¹²⁹

D. Challenges to Authority

Tracing back to the chieftain rule of the Hawaiian Islands, real property has always been a contentious topic. Hawaii’s economy revolved around a feudal land tenure system where an island’s high chief, called the ali’i nui, controlled the land

¹²⁴ *Id.*

¹²⁵ DEPT. OF LAND AND NATURAL RESOURCES, *supra* note 123.

¹²⁶ DEPT. OF HAWAIIAN HOME LANDS, *supra* note 14.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

and assigned it for development to certain subchiefs.¹³⁰ Essentially, there was no private ownership of land.¹³¹

In the mid-1960s, the Hawaii Legislature discovered that the State and Federal Governments owned almost 49% of the State's land, while another 47% was in the hands of only 72 private landowners.¹³² To reduce the concentration of land ownership, the Hawaii Legislature enacted the Land Reform Act of 1967, which created a land condemnation scheme where title in real property is taken from lessors and transferred to lessees.¹³³ Lessees living on single-family residential lots within tracts at least five acres in size would be entitled to ask the Hawaii Housing Authority to condemn the property on which they live so the tenants can purchase a fee simple for that property, given a few other conditions.¹³⁴ This act was challenged before the Supreme Court of the United States under the Fifth and Fourteenth Amendments and the Public Use Clause, in *Hawaii Housing Authority v. Midkiff*.¹³⁵ The Court ruled that this act was constitutional, as a means to put an end to the everlasting land oligopoly in Hawaii, satisfying “public use” and justifying the exercise of eminent domain power.¹³⁶

Despite this intervention, Hawaiian residents are still dealing with these problems as developers continue to buy off their homes.¹³⁷ Hawaii is the most

¹³⁰ *Midkiff*, 467 U.S. at 232.

¹³¹ *Id.*

¹³² *Id.* at 232.

¹³³ *Id.* at 234.

¹³⁴ *Id.*

¹³⁵ *Id.* at 242.

¹³⁶ *Id.* at 243.

¹³⁷ O'Malley, *supra* note 21.

expensive state to reside in by a considerable margin, as the median price of a single-family home in Maui exceeds \$1 million.¹³⁸ This negatively affects the native Hawaiian population, as there is a great lack of affordable living options on the islands.¹³⁹ As the native Hawaiian population has historically, and presently, resisted colonization and gentrification efforts from the Western world, this creates a unique conflict in private property ownership on the islands.¹⁴⁰ In the aftermath of natural disasters, like the Lahaina wildfires in 2023, the already-existing housing crisis was amplified when residents with very high land values had their homes destroyed, where only wealthy developers could afford to fix the land.¹⁴¹

IV. PROPOSED RESPONSE TO THE MAUI WILDFIRES

A. Disaster Response

In the aftermath of the Lahaina wildfires, FEMA has played an integral part in providing immediate relief for those most affected.¹⁴² For example, FEMA has modified its “one application per residence” requirement, which allows multiple people under one family roof to apply for FEMA assistance, individually.¹⁴³ For the opening of each disaster recovery center, native Hawaiian cultural practitioners

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Tariro Mzezewa, *Hawaii Is a Paradise, but Whose?*, THE NEW YORK TIMES (Feb. 4, 2020), <https://www.nytimes.com/2020/02/04/travel/hawaii-tourism-protests.html> (last updated June 11, 2021).

¹⁴¹ O'Malley, *supra* note 21.

¹⁴² *A Month after the Devastating Wildfires, Maui 'Ohana Are Rebuilding Together*, FEDERAL EMERGENCY MANAGEMENT AGENCY (Sept. 8, 2023), <https://www.fema.gov/press-release/20230909/month-after-devastating-wildfires-maui-ohana-are-rebuilding-together#>.

¹⁴³ *Id.*

conduct blessing ceremonies.¹⁴⁴ FEMA also has funded emergency housing efforts around Maui County, in coordination with the Red Cross.¹⁴⁵ So far, \$65 million in federal assistance for Maui survivors has been approved by FEMA and the U.S. Small Business Administration, which includes \$21 million in FEMA assistance for individuals and households.¹⁴⁶ Disaster recovery centers have been opened to provide residents with information critical to recovery.¹⁴⁷ Such information could provide Lahaina residents with essential information to protect their property interests, which is a chief concern in the aftermath of the wildfires.

B. Wildfire Prevention

As discussed earlier, wildfires pose a great threat to the well-being of Hawaiians and ignite more controversies in property ownership.¹⁴⁸ Wildfires are not regular to the Hawaiian ecosystems, and thus cause invasive plants and fire-prone grasses to take over the landscape, rather than native trees refilling the area.¹⁴⁹ This is especially detrimental as it can lead to decreased water quality, increased erosion, and damage to coral reefs from sedimentation and nutrient loading.¹⁵⁰ Hawaii is also home to an incredibly unique and beautiful array of plants and animals found nowhere else in the world.¹⁵¹ Preventing these wildfires is critical to

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Fire Management*, DEPT. OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE: FORESTRY PROGRAM, <https://dlnr.hawaii.gov/forestry/fire/>, (last visited Nov. 17, 2023).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

the ecosystem, but it is also critical to preserving Hawaiian culture and the livelihood of the islands' residents. Roughly 90% of wildfires in Hawaii are caused by humans, so it is within the control of the state and federal governments to maintain the beautiful landscape.¹⁵²

Hawaii's Department of Land and Natural Resources is responsible for "managing, administering, and exercising control over public lands, water resources, ocean waters, navigable streams, coastal areas (except commercial harbors), minerals, and all interests therein."¹⁵³ The department's jurisdiction spans across nearly 1.3 million acres of state lands, beaches, and coastal waters.¹⁵⁴ Within the Division of Forestry and Wildlife is the Forestry Program, which is responsible for managing forest resources and products.¹⁵⁵ Guided by the Forest Action Plan, the program prioritizes wildfires as a focal point for protecting Hawaii's forests.¹⁵⁶

Since one of the main causes of Hawaiian wildfires is an invasive, flammable grass, a solution would be to try and eliminate the dry vegetation.¹⁵⁷ These grasses, chiefly guinea and fountain grass, grow rapidly when unmanaged and can dry out

¹⁵² *Id.*

¹⁵³ *About DNLR*, DEPT. OF LAND AND NATURAL RESOURCES, <https://dlnr.hawaii.gov/about-dlnr/>, (last visited Nov. 16, 2023).

¹⁵⁴ *Id.*

¹⁵⁵ DEPT. OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE: FORESTRY PROGRAM, *supra* note 148.

¹⁵⁶ *Id.*

¹⁵⁷ DEPT. OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE: FORESTRY PROGRAM, *supra* note 148; Lauren Sommer, *3 strategies Maui can adopt from other states to help prevent dangerous wildfires*, NPR (Aug. 18, 2023, 6:00 AM), <https://www.npr.org/2023/08/18/1194505306/3-strategies-maui-can-adopt-from-other-states-to-help-prevent-dangerous-wildfire>.

very quickly, posing a major fire hazard.¹⁵⁸ In states like California where wildfires are common, homeowners in high-risk areas are required to clear brush.¹⁵⁹ Inspections are also done by both city and state fire agencies.¹⁶⁰ Given that Hawaii has wildfire prevention action for state lands managed by the DLNR, removing the dangerous grass should be implemented on both state and private lands. In San Diego, for example, if a homeowner does not comply with clearing flammable brush, the municipality will hire a contractor to do the work and put a lien on the property to cover the cost.¹⁶¹ Areas around the edges of towns in Hawaii, like Lahaina, should also be cleared of the dry vegetation to work as a buffer against fire, for which residents have pleaded for years, to no avail.¹⁶²

Regardless of whether homeowners have yards full of dry grasses, it is mostly the embers of the wildfires that cause homes to ignite, rather than advancing flames.¹⁶³ A potential solution for Hawaiians is to enact building codes that require homes to use fire-resistant materials in high-risk areas. California, along with other states, has already implemented similar laws.¹⁶⁴ This then becomes a balancing act where Hawaii residents would be required to follow new laws, which could financially burden homeowners even more in an economy where the cost of living is

¹⁵⁸ Elizabeth Pickett & Ilene Grossman, *Western Maui Community Wildfire Protection Plan*, HAWAII WILDFIRE MANAGEMENT ORGANIZATION, 77 (2014), <https://static1.squarespace.com/static/5254fbc2e4b04bbc53b57821/t/54ff533ee4b0d8debf83ed8d/1426019167515/Western+Maui+CWPP+Final+with+Appendices.pdf>.

¹⁵⁹ Sommer, *supra* note 157.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

already the highest in the nation. Even homebuilding associations have also pushed back against fireproofing requirements in some states.¹⁶⁵ However, fireproofing for new construction is not very expensive, and is feasible as many homes will need to be rebuilt in the aftermath of the Maui wildfires.¹⁶⁶

1. Wildfire Negligence Cause of Action

In the aftermath of the Lahaina wildfires, negligence lawsuits are starting to commence litigation. It can be difficult to sufficiently prove a wildfire's exact origin, as it is often contingent on the environment. Aggrieved homeowners can find viable causes of action against corporations that neglect prevention measures or fail to mitigate damages. Holding accountable those with the power to lessen the blow of the wildfire damage is possible through these lawsuits.

Currently, the state and a major island landowner, Bishop Estate, are being sued under a basic negligence cause of action.¹⁶⁷ This kind of lawsuit would be a “first-of-its-kind” filed by the father of a woman who died in the Maui wildfires.¹⁶⁸ Plaintiffs argue that the risk of wildfires was well-known to the defendants and that they were preventable.¹⁶⁹ Due to the dry vegetation scattered across the island,

¹⁶⁵ *Id.*

¹⁶⁶ Lauren Sommer, *Fireproofing your home isn't very expensive — but few states require it*, NPR (July 28, 2022, 5:07 PM), <https://www.npr.org/2022/07/28/1114242871/fireproofing-your-home-isnt-very-expensive-but-few-states-require-it>.

¹⁶⁷ Clark Mindock, *Hawaii, Maui sued by victim's family for gross negligence in deadly wildfires*, REUTERS (Sept. 5, 2023, 5:05 PM), <https://www.reuters.com/legal/hawaii-maui-sued-gross-negligence-deadly-wildfires-by-victims-family-court-2023-09-05/>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

those in possession of large plots of land are being challenged for their failure to clear out the flammable grass.¹⁷⁰

Hawaiian Electric was also sued under the same negligence theory, as its alleged duty was to de-energize its electrical equipment during hurricane-force winds which allegedly sparked the fires.¹⁷¹ The electric company is already facing several civil lawsuits and possibly upcoming class actions due to its alleged mismanagement of electrical equipment.¹⁷²

2. Climate Change

According to many environmentalists, climate change is the culprit of any wildfire or other natural disaster. It is important to address climate change concerns, especially because Hawaii is becoming drier, with less and less rainfall each year.¹⁷³ As precipitation decreases, tree trunks dry up, and leaves fall, which allows sun rays to reach the soil quicker.¹⁷⁴ This eventually leads to deforestation, which can also occur as a result of agriculture. Because rising sea levels force agriculture to move upland, causing deforestation, the soil is further dried out.¹⁷⁵

As the federal government works to slow and mitigate climate change around the globe, it is important to adapt to the change of the climate as well. The Hawaiian landscape is covered in dry, flammable grass that ignites easily. As

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Mindock, *supra* note 167.

¹⁷³ Flavelle, *supra* note 19.

¹⁷⁴ *Id.*

¹⁷⁵ ISSUE 3: WILDFIRE at 104, *supra* note 54.

Hawaii’s landscape is becoming drier due to climate change, it must adapt to the new risks. Most of the damage to the climate is seemingly irreversible, so continuing to fireproof and protect the delicate property is imperative to prevent future harm.

C. Anti-Predatory Practices

Hawaii Governor Josh Green warned developers against predatory land buying in the aftermath of the Lahaina wildfires and the unfolding of climate gentrification.¹⁷⁶ Hawaii state law protects such practices, as it provides penalties for those who seek to exploit homeowners for economic gain.¹⁷⁷ The State of Hawaii prepared a news release directing homeowners to notify the Department of Commerce and Consumer Affairs’ (“DCCA”) Office of Consumer Protection and the Regulated Industries Complaints Office (“RICO”) should any unsolicited communications take place.¹⁷⁸ The Office of Consumer Protection (“OCP”) is “entrusted with protecting the consumer public” and can investigate these matters as home equity theft.¹⁷⁹ The news release also warns homeowners of the misrepresentation of vital information when talking with prospective buyers.¹⁸⁰

¹⁷⁶ Kimball, *supra* note 10.

¹⁷⁷ Josh Green M.D., et al., *RELEASE: MAUI HOMEOWNERS URGED TO EXERCISE CAUTION, REPORT UNSOLICITED OFFERS TO BUY THEIR PROPERTIES*, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (Aug. 14, 2023), <https://cca.hawaii.gov/blog/release-maui-homeowners-urged-to-exercise-caution-report-unsolicited-offers-to-buy-their-properties/>.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

Governor Josh Green also ordered the attorney general to put lawyers at response centers to provide free legal advice to displaced residents as they receive offers for their devastated land.¹⁸¹ These solutions are helpful but not complete in addressing the issue. Many homeowners are not only displaced physically, but financially as well. Even before the wildfires, residents struggled with the high cost of living. Because of financial struggles, homeowners may feel they have no other choice than to accept monetary offers for their land, which they can no longer use. More than 1,000 hotel rooms and 435 donated units were available for temporary housing.¹⁸² President Joe Biden declared the wildfire a major disaster and unlocked emergency federal assistance for the island.¹⁸³ This includes grants for temporary housing and low-cost loans to cover uninsured property losses.¹⁸⁴ Wildfire victims, upon receiving substantial aid, may have more bargaining power and financial capacity to refuse predatory land offers.

At the same time, the rights of real estate developers are also an important consideration. While the State of Hawaii has warned prospective land buyers who might send offers, their offers are protected under the First Amendment as commercial speech. As the State said in its news release, homeowners who deal with these real estate developers can find a cause of action on the grounds of misrepresentation. Additionally, homeowners are directed to speak with an

¹⁸¹ Kimball, *supra* note 10.

¹⁸² Kimball, *supra* note 10.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

attorney for free legal advice at relief centers which allows them to understand their rights when dealing.

The rights of buyers are conveniently protected from adverse legislation through the U.S. Constitution's Commerce Clause and its Dormant Commerce Clause. This depends on whether any statutes or regulations are "discriminatory" on interstate commerce if they prevent mainland buyers from dealing with Hawaii residents. This is not a balancing test, as the Commerce Clause and Dormant Commerce Clause can make a law intended to protect vulnerable Hawaiian residents unconstitutional. Legislature needs to take this into consideration before implementing new laws. The best course of action for the Hawaii legislature would be to draft legislation that does not expressly disincentivize mainland out-of-state buyers exclusively but includes Hawaii-based buyers as well. That way, there is no discrimination against other states if a law equally applies to Hawaii.

An alternative, non-governmental effort can be exercised by local organizers and leaders in communities like Lahaina and push for preservation efforts in coordination with real estate developers, creating a shared vision for development projects.¹⁸⁵ This is called "equitable development" and is a proposed solution to gentrification in urban areas on the mainland.¹⁸⁶ This process could be equally applied to the climate gentrification occurring in Maui if the aforementioned gubernatorial efforts fail. It could further ensure that residents who wish to sell

¹⁸⁵ NATIONAL GEOGRAPHIC, *supra* note 84.

¹⁸⁶ *Id.*

their land are able to, and those who wish to retain their property will not be indirectly expelled from the resulting higher living costs associated with redevelopment.

D. Exercise Eminent Domain Power

In addition to anti-predatory practices, there is a near fool-proof way to eliminate predatory land offers altogether. The state or federal government can intervene using eminent domain power and buy the land from the homeowners. As seen in *Midkiff*, this has been previously done in Hawaii, though for a different reason.¹⁸⁷ As long as the government provides homeowners with “just compensation,” then it can take the scorched property, as the Court in *Midkiff* made it clear that the redistribution of property from private citizens constituted a “public use” for purposes of the Fifth Amendment.¹⁸⁸ If the government does not abuse its ownership of the land and provides reasonable and rational means for the original homeowners to recover their land after restoration has been completed, then this would be a viable solution.

However, the government’s “just compensation” might not match other compelling bids, which are often higher. Thus, the government may end up working against the interests of the public by forcing them to take a lesser offer. It may be difficult for the government to confirm that by buying out everyone’s property, they are working in the interest of every aggrieved resident.

¹⁸⁷ *Midkiff*, 467 U.S. at 229-30.

¹⁸⁸ *Id.*

To effectively ensure that eminent domain is used for the best interest of aggrieved residents, the government must first provide residents with access to counsel, which Hawaii has already done. The state should provide residents with the option for their property to be “bought back” after restoration is finished, which could take years to complete. In *Midkiff*, the Court considered the taking to be for a “public use” because the land was taken from private entities and then redistributed among other private entities.¹⁸⁹ Here, the state can essentially do the same thing. It should keep the village of Lahaina to its residents by use of eminent domain. For residents who do not want to return to Lahaina, their former property should be sold as a residence—to meet the standard for “public use.” This constitutional solution could combine the cultural public interests of Hawaii with practical recovery means for aggrieved residents.

E. Protecting Indigenous Hawaiians

To preserve Hawaii's rich culture and history, its indigenous population must be protected in the face of dangers to their land. If the native Hawaiians are neglected, then the United States has failed the sacred islands. Natural disasters displaced many residents, which includes members of Hawaii's indigenous population. This vulnerable group, which has already been decimated by diseases during the settler era, is facing a crisis as real estate agents start sending offers for all they have left.

¹⁸⁹ See *Midkiff*, 467 U.S. at 229-30.

The Department of Hawaiian Homelands, as mentioned earlier, provides indigenous Hawaiians with benefits for homesteading and continuing to live on the land of their ancestors.¹⁹⁰ As far as benefits go, native Hawaiians can receive 99-year homestead leases at \$1 per year.¹⁹¹ These leases can be extended for an aggregate term not to exceed 199 years.¹⁹² They can also receive financial assistance through direct loans, insured loans, or loan guarantees for home purchase, construction, home replacement, or repair.¹⁹³ Aside from the homesteading program, DHHL leases trust lands not in homestead use at market value and issues revocable permits, rights-of-entry, and licenses.¹⁹⁴ In addition, for survivors who prefer to receive help from other Native Hawaiians, the Council for Native Hawaiian Advancement opened a disaster relief center at Maui Mall.¹⁹⁵ These benefits and forms of assistance can greatly help the indigenous population preserve Hawaii's rich culture, tradition, customs, and practices, as it allows them to continue to reside on their land and provide for future generations in the aftermath of a natural disaster.

V. CONCLUSION

Despite being hundreds of miles away, in the middle of the ocean, far off the coast of the continental U.S., Hawaii's recent disasters have gained the attention of

¹⁹⁰ DEPT. OF HAWAIIAN HOME LANDS, *supra* note 14.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ FEDERAL EMERGENCY MANAGEMENT AGENCY, *supra* note 142.

mainland Americans and the federal government. The Lahaina wildfires have wreaked havoc upon Hawaiian residents, some with indigenous Hawaiian ancestry. Homes have been destroyed and oceanside property is scorched to the ground. People have lost their homes in an already scarce housing market. Many are displaced and may be bombarded with offers from real estate developers and wealthy individuals for their valuable but burned land. These aggrieved Hawaiians are often left with no other choice than to accept such offers and forfeit their land.

Ordinarily, the development of urban communities on the mainland may have harmful effects on displaced residents, but the economic effects of gentrification are so great that they usually are encouraged by local governments. However, due to Hawaii's unique culture and climate, this kind of development poses many problems. Residential land is already scarce on the islands, and it is expensive. Native Hawaiians have trouble retaining the land of their ancestors as the cost of living rises. Residents are then forced to pay extremely high rent prices just to live on the island, which is a vacation destination for many. The government has the authority to prevent such climate gentrification from occurring. In the past, it has made efforts to help residents in landowning controversies and the Supreme Court of the United States has ruled in favor of the public interest of preserving Hawaii's rich culture.¹⁹⁶ As nature is a sacred concept to indigenous Hawaiians, the state and federal government should do whatever it can to prevent these natural

¹⁹⁶ See *Midkiff*, 467 U.S. at 229-30.

disasters from tearing apart the islands' heritage while keeping its residents safe from incidental displacement efforts.

As Lahaina recovers from one of the worst wildfires in Hawaii's history, a time of discourse has opened for the future of the islands. New climate threats are arising, and property ownership issues are becoming more complex. Even if these proposed solutions are primarily directed towards Hawaii, they can be lessons for the rest of the planet as climate change, gentrification, and indigenous interests all extend to nations around the globe. 'Aina is still sacred and requires special attention from authority to preserve it in the aftermath of tragic disasters.