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July 29, 2016

BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAI'I

IN THE MATTER OF

Case No. BLNR-CC-16-002

Contested Case Hearing Re: Conservation District  
use Application (CDUA) HA-3568 For the Thirty  
Meter Telescope at Mauna Kea Science Reserve,  
Ka'ohe Mauka, Hamakua, Hawai'i  
TMK (3) 4-4-015:009

Motion to Exclude/Remove PUEO, TMT, UH  
Manoa/Hilo, and All Petitioners Seeking for  
Permit for TMT by circumvention of Religious  
Protections of the Hawaii Constitution Article XII  
and HRS 7-11-1107 Committing Desecration

JUDGE: Riki May Amano (RET)

**MOTION TO EXCLUDE PUEO, TMT, UH MANOA/HILO AND ALL THOSE  
PETITIONERS SEEKING FOR PERMIT FOR TMT BY CIRCUMVENTION OF  
RELIGIOUS PROTECTIONS OF HAWAII CONSTITUTION ARTICLE XII AND  
HRS 7-11-1107 COMMITTING DESECRATION.**

**Comes now;**

I Petitioner Kalikolehua Kanaele Motion the exclusion of PUEO, TMT, UH and all those seeking to break religious protections of Hawaii State Constitution article XII and Hawaii revised statutes protections and criminal penalties for desecration, also Join Motions with Lanny Sinkin Motion to Vacate and Richard Naiwi Wurdeman's Motion 1) Renewal of objections and 2) supplemental:

2011 Hawaii Code  
DIVISION 5. CRIMES AND CRIMINAL PROCEEDINGS  
TITLE 37. HAWAII PENAL CODE  
711. Offenses Against Public Order  
§711-1107 Desecration.

Universal Citation: HI Rev Stat § 711-1107 (2011 through Reg Sess)  
§711-1107 Desecration. (1) A person commits the offense of desecration if the person intentionally desecrates:

(a) Any public monument or structure; or

(b) A place of worship or burial; or

(c) In a public place the national flag or any other object of veneration by a substantial segment of the public.

(2) "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant's action.

(3) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both. [L 1972, c 9, pt of §1; gen ch 1993; am L 2002, c 198, §1]

#### COMMENTARY ON §711-1107

Previous Hawaii law prohibited certain types of desecration. For example, desecration of the United States flag was prohibited.[1] Section 711-1107 deals more generally with all acts of desecration; i.e., acts of physical damage to or mistreatment of venerated places and objects under circumstances which the defendant knows are likely to outrage the sensibilities of persons who observe or discover the defendant's actions. Thus, any desecration of a public monument or structure; or a place of worship or burial (public or private); or, in a public place, the national flag, or any other object (such as certain religious objects) revered by a substantial segment of the public, will constitute an offense. Damage by desecration is treated separately from other types of property damage because the sense of outrage produced by such acts is out of proportion to the monetary value of the damage. Thus, desecration is a misdemeanor, although many such cases might otherwise be petty misdemeanors under §708-823 because the object desecrated is worth less than \$50.

#### SUPPLEMENTAL COMMENTARY ON §711-1107

Act 198, Session Laws 2002, amended this section by changing the penalty for desecration from a misdemeanor to one year imprisonment, a fine of \$10,000, or both. The legislature found that recent vandalism at cemeteries denoted that the current financial penalties of a misdemeanor offense for desecration were an insufficient deterrent. The \$10,000 fine was consistent with the penalty in §6E-11(c), relating to destruction of historic property. The legislature believed that a burial place or grave deserved no less a penalty for damage than did a historical monument. Senate Standing Committee Report No. 2957, House Standing Committee Report No. 416-02.

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#### §711-1107 Commentary:

1. H.R.S. §733-6; another example is §734-3 which prohibits desecration of a grave.

HAR 13-5-6 (a) "Any" person, firm, government Agency or corporation violating "any" of the provisions of this chapter or permits issued, thereto shall be punished as provided in chapter 183C. HRS (b) and (c)

"all of these protections above are a misdemeanor but by the sheer mass of destruction and how much pecuniary funds to restore to original condition and the funds spent for a Public Institutions to fight the "Public" over constitutional issues and protections, by now the destruction and restoration must be in the billions". by Kalikolehua Kanaele

While the EIS recognizes that "traditional knowledge" of Mauna Kea is of "profound importance in Hawaiian culture,"[2] it does nothing to address the constitutional mandate to protect Native

Hawaiian cultural rights secured by Article XII, section 7, of the Hawai'i State Constitution. HAW. CONST. ART. XI, §7. As such, the EIS identifies that "Mauna Kea is the cultural connection or piko (umbilical cord) to Papa and Wākea, the deities who created Native Hawaiians," but yet, again it confuses the public to put Astronomy on equal footing as cultural rights. The EIS states, "For the astronomical, community Mauna Kea is the scientific umbilical cord to the mysteries of the 4/14/2015 University of Hawaii Mail (no subject) <https://mail.google.com/mail/u/1/?ui=2&ik=5a046f4367&view=pt&search=inbox&msg=14cbab19b8f1e463&siml=14cbab19b8f1e463> 3/4 universe." The Astronomy community DOES NOT have protected rights under the Constitution. Agency actions, such as this, fly in the face of the State Constitution and the unique laws of this state. As such, BLNR failed to act with a sense of fiduciary responsibility to the beneficiaries in the management of these lands. PDF at 605. Public trust purposes such as the "betterment of conditions of Native Hawaiians" and the constitutional mandate to protect traditional rights are the PRIORITY under the law; commercial development use has no priority at all. HAW. CONST. ART. XI, §7, Admissions Act § 5(f). Therefore, these laws collectively provide adequate protection to shield Mauna Kea from further development because of the cultural significance this site has to the identity of Native Hawaiians. Despite these Constitutional protections, BLNR violated the Constitution by arbitrarily granting a CDUP that would effectively destroy the perpetuation and customary practice of Native Hawaiian culture. By granting a CDUP without properly assessing the cultural impact of the TMT mega telescope, BLNR and UH violated the law by prioritizing corporate development over public trust purposes. An enormous telescope is NOT a public trust purpose and does not have the same constitutional protections as customary and traditional rights.

### **Why are there "protections" in the State of Hawaii Constitution for the Hawaiians religious rights and Hawaii Revised Statutes for desecration?**

1. There are other religions professing that their God owns everything and everyone including the Hawaiians. The Kanaka Hawaiians know that their Gods and Goddesses made everything. These other religions of State Officials, Native Hawaiians, desecrated our Gods and Goddesses physical body forms by mountain top removal prior to this new desecration also by mountain top removal.
- 2> There are Sciences in the name of "progressive" but destructive for the Hawaiians "Living God" that sustain the Hawaiian Religion, wants to destroy parts of our living God's and thinks mitigating the damage, releases them for breaking of the HRS 7-11 Desecration law by mountain top removal.
- 3-there are State Agents and Officers using their office by opinions have already desecrated and want to make new desecration in other areas of our Gods and Goddesses body forms by mountain top removal of sacred body parts.
4. There are "kanaka americans" of the natives hawaiiens that believe that Jesus Christ is their savior and are part of the funding by THINK program funded by the TMT, are not Cultural Practitioners and using these definitions of native hawaiiens for economic gains to enrich themselves and others by filing for the TMT designed to circumvent the protections of native religions and spiritual practices Cultural practitioners and agree to the desecration HRS 7-11-1107 and Article XII by mountain top removal of our sacred Gods and Goddesses body parts and forms, these actions were used to commit the breakage of HRS 7-11-1107 by first mountain top removals of our tips (our sacred Pu`u's).
5. There are State Departments who are charged with the protections of these rights described in Article XII, that have and may again let these "protections" be circumvented and HRS 7-11-1107 and Article XII even though the protections of the 8 criteria and other protections have been compromised due to the opinions of the legal arm of the State of Hawaii called the State Attorney Generals and desecration HRS 7-11-1107 and Article XII and any pertinent Articles by mountain top removal of the sacred body forms of our Gods and Goddesses.

6. The State's alleged EA now called EIS also shows adverse and substantial damage.
7. There economic gains that are being considered over the Religious rights of the "Hawaiians" (as a Nationality) and native kanaka as a race inhabiting the Hawaiian Islands before 1778.

## CONCLUSION

Reading the motions of PUEO, TMT, UH, and other petitioners supporters of filings for the TMT. None of them really address the 8 criteria except in economic terms and educational reasoning, that are not included in the 8 criteria as a criteria. PUEO, TMT, UH and other petitioners supporting the desecration of our mountain have cited more economic, educational ventures as "mitigating measures" for permission to desecrate " Education by desecration is no education at all". None of these Petitioners have come close to any criteria of conservation, actually the UH/ Management Plans calls for the blame shifted to the "Hawaiians". Practitioners and the General Public as the "culprits" and curtailing our access by claiming "moving of a few rocks" will endanger the pristine environment, while the real "culprits" are the State of Hawaii BLNR, DLNR, DOCARE, UH/MM who have and let be destroyed the historical conservation district of a "protected" area removing the tops of our sacred Pu`u and calls it educational. While the real definition of this destructive behaviors come from the religious beliefs and non-religious briefs of other cultures and Sciences. When we go for site inspection, I already have observed the wanton destruction in the name of education and development, called intrusive development, within a "protected area". Equipment leaks, road, fence, in a pristine watershed area, never before invaded and made un pristine, which will take a lot of time and court ordered monetary funds, to clean our watershed protected area.

While the EIS recognizes that "traditional knowledge" of Mauna Kea is of "profound importance in Hawaiian culture,"[2] it does nothing to address the constitutional mandate to protect Native Hawaiian cultural rights secured by Article XII, section 7, of the Hawai'i State Constitution. HAW. CONST. ART. XI, §7. As such, the EIS identifies that "Mauna Kea is the cultural connection or piko (umbilical cord) to Papa and Wākea, the deities who created Native Hawaiians," but yet, again it confuses the public to put Astronomy on equal footing as cultural rights. The EIS states, "For the astronomical, community Mauna Kea is the scientific umbilical cord to the mysteries of the 4/14/2015 University of Hawaii Mail (no subject) <https://mail.google.com/mail/u/1/?ui=2&ik=5a046f4367&view=pt&search=inbox&msg=14cbab19b8f1e463&siml=14cbab19b8f1e463> 3/4 universe." The Astronomy community DOES NOT have protected rights under the Constitution. Agency actions, such as this, fly in the face of the State Constitution and the unique laws of this state. As such, BLNR failed to act with a sense of fiduciary responsibility to the beneficiaries in the management of these lands. PDF at 605. Public trust purposes such as the "betterment of conditions of Native Hawaiians" and the constitutional mandate to protect traditional rights are the PRIORITY under the law; commercial development use has no priority at all. HAW. CONST. ART. XI, §7, Admissions Act § 5(f). Therefore, these laws collectively provide adequate protection to shield Mauna Kea from further development because of the cultural significance this site has to the identity of Native Hawaiians. Despite these Constitutional protections, BLNR violated the Constitution by arbitrarily granting a CDUP that would effectively destroy the perpetuation and customary practice of Native Hawaiian culture. By granting a CDUP without properly assessing the cultural impact of the TMT mega telescope, BLNR and UH violated the law by prioritizing corporate development over public trust purposes. An enormous telescope is NOT a public trust purpose and does not have the same constitutional protections as customary and traditional rights.

Relief- we ask that any Petitioner asking for a permit to continue, or to encourage for a permit; to continue to break the protection laws of the Hawaii Constitution and HRS the desecration and

cause irreparable and criminal damage, with only mitigation through education and economics for continuing of breaking the constitutional protected “religious rights” of the Petitioners who are protecting our sacred body forms of our Great Gods and Goddesses called “protected” watershed aquifer conservation district of the Science Reserve. I Kalikolehua Kanaele Chief and cultural practitioner ask that these Petitioners PUEO, TMT, UH and other Petitioners supporting the continuing desecration HRS 7-11-1107 and circumvention of Article XII of the State of Hawaii Constitution, thus defeating the constitutional protections and HAR 13-5 PURPOSE and other relevant protections of HAR 13-5 and supporting authorities of the HRS’s supporting HAR 13-5, be excluded and or removed from this instant case.

DATED: Hilo, HI, July 29, 2016.

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Ali'i Sir Kalikolehua Kanaele KCK