

Ali`i Sir Kalikolehua Kanaele KCK

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

(Contested Case Hearing Re Conservation District)

Use Application (CDUA) HA-3568 For the)

Thirty Meter Telescope at the Mauna Kea Science Reserve,

Ka`ohe Mauka, Hamakua, Hawai`i)

TMK (3) 4-4-015:009

IN THE MATTER OF

MOTION TO JOIN ATTORNEY FOR THE PETITIONERS RICHARD WURDEMAN'S
RESPONSE TO UNIQUE EDUCATIONAL OPPORTUNITIES INC., PROPOSED MINUTE
ORDER, GRANTING MOTION TO SET ISSUES FILED SEPTEMBER 9 2016 AND
CERTIFICATE OF SERVICE

COMES NOW, Petitioner Kalikolehua Kanaele MOTION TO JOIN ATTORNEY FOR THE
PETITIONERS RICHARD WURDEMAN'S RESPONSE TO UNIQUE EDUCATIONAL
OPPORTUNITIES INC., PROPOSED MINUTE ORDER, GRANTING MOTION TO SET
ISSUES FILED SEPTEMBER 9 2016.

INTRODUCTION

I am of Hawaiian Nationality and Kanaka Maoli is my race, we have the largest Nation in the world. the Ocean connects not separates us. We as Hawaiians been dealing with the Occupation of our allies The United states and their political subdivision called the State of Hawaii. The Corporate United States and The Corporate State of Hawaii self appointed themselves the "managers" and have somehow now claim they own it all by "taking" The law says if you "take" or condemn you must pay fair market value for the "taking". The Corporate United States and the Corporate State of Hawaii have not paid for their "taking". The Hawaii State Constitution is clearer they are not the owners, but the State of Hawaii claims their the "managers" of the

Hawaiian Kingdom lands and resources called 5a to 5f lands. We now have great showmanship of “at least there is some show of the semblance of justice”, from the Hearings Officer.

I have objected and made motion to Exclude UNIQUE EDUCATIONAL OPPORTUNITIES INC., and all other Petitioners seeking to circumvent the existing laws protecting our sacred (protected areas) areas sites and districts from this Contested Case Hearing for asking to break HRS 711-1107 and desecrate by mountain top removal, other Constitutional laws. No formal final written decision have been forthwith so a HAR 13-5-3 Appeal could be made in a real court of Justice, that can read and understand the law.

My Motion to Exclude was not challenged and “should have been” executed and ruled in my favor by the Hearings Officer Amano, but for some reason HO Amano orally ruled against my Petition stating “because nobody answered my motion” she ruled against my motion

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,

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.

§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.](https://mail.google.com/mail/u/1/?ui=2&ik=5a046f4367&view=pt&search=inbox&msg=14cbab19b8f1e463&siml=14cbab19b8f1e463%203%2F4%20universe.)” 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 hawaiiains 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 hawaiiains 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 the desecrators and polluters, PUEO, TMT, UH, and other petitioners supporters of filings for the TMT to desecrate. 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.

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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.](https://mail.google.com/mail/u/1/?ui=2&ik=5a046f4367&view=pt&search=inbox&msg=14cbab19b8f1e463&siml=14cbab19b8f1e463%203%2F4%20universe.)"

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.

Ali‘i Sir Kalikolehua Kanaele KCK

ARGUMENT

The Hearing Officer Riki Msy Amano, MAY have shown the overstepping of discretionary powers by granting and asking the improper party Unique Educational opportunities Inc. to make the Proposed Minute Order.

- 1)UEO Inc., have no standing except the “standing” given by the Hearing Officer, discretionary mistake,
- 2)which the Hearings Officer have stated “I have read every Petition”,
- 3)Petitioner Kanaele “also read” the UEO Inc. Petition,
- 4) after all that “reading” the Hearings Officer “creates standing” (look at previous Minute Orders and

- 5) later grants the Petitioner UEO Inc., with no merit in the HAR 13-1-31,
- 6) to now, create a Minute Order for the Contested Case Hearing to “set” Issues,
- 7) to me shows abuse of discretionary powers and possible conflict of interest. and setting the record in favor of the desecrators.
- 8) These are very serious issues that have been circumvented by all the previous Hearings officers that have advised the BLNR to desecrate and break desecration laws, Constitutional mandates etc...

CONCLUSION

Accordingly, based on the plain language of Article XI, Section 1, the application of principles guiding the

27

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interpretation of constitutional provisions, the special history of the public trust doctrine in this State, and this court’s precedents implicating the public trust doctrine in land cases, the summit area of Mauna Kea, as state conservation land, is within the public trust and entitled to the protections that the public trust doctrine provides.

C.

The Board’s error in this case lies in approving the permit **before making specific findings and conclusions on whether the proposed use**

satisfies all requisites of the public trust doctrine.

As recognized by the Administrator of the Office of Conservation and Coastal Lands, the proposed use of the conservation land implicates the constitutional right of individuals of Native Hawaiian descent to exercise traditional and customary Native Hawaiian practices.

Under such facts, the role of an agency is not merely to be a passive actor or a neutral umpire, and its duties are not fulfilled simply by providing a level playing field for the parties. See *Save Ourselves, Inc.*, 452 So. 2d at 1157 (“[T]he commission’s role as the representative of the public interest does not permit it to act as an umpire passively calling balls”).

45

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and strikes for adversaries appearing before it.”). Rather, an agency of the State must perform its statutory function in a manner that fulfills the State’s affirmative constitutional obligations. See, e.g., *Ka Pa‘ākau O Ka‘āina*,

94 Hawai'i at 45, 7 P.3d at 1082 (placing "an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights")

Again Petitioner Diplomat Ali`i Sir Kalikolehua Kanaele KCK, Ali`i Okana jurisdiction Quadrant, Hamakua, Hilo, Puna and Ka`u for the Hawaiian Kingdom of the Hawaiian Isles, Territories and Dominions. Charges the Occupational State Agencies and their Hearings Officers to follow their State Constitution, stop committing cultural cide/Genocide by brainwashing on the true owners and the rest of the Peoples of Hawaii God given gifts of clean Air clean clear fresh Water clean ocean clean Land clean Us. Our highest Aquifer/Watershed, is being poisoned and gravity brings everything down from the Mauna (s) if you continue to poison our AQUIFER/WATERSHED, we cannot flush our middle and low lands from all the poisons and toxins produced by the Plantations and Peoples AND THAN BLAME IT ON THE MOSQUITOS OR FLYS OR SOME OTHER MADE UP FLU. Enough Desecration and excuses to keep on desecrating. If the "shibai" keeps happening, I will stop and boycott the hearings and wait till we go court again.

Ali`i Sir Kalikolehua Kanaele KCK

