

William Freitas
P.O. 4650
Kailua Kona HI 96745
pohaku7@yahoo.com

BOARD OF LAND AND NATURAL RESOURCES
FOR THE STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
))
A Contested Case Hearing Re Conservation;)
Use Application (CDUA) HA-3568 For the) **WILLIAM FREITAS SECOND**
Thirty Meter Telescope at the Mauna Kea) **SUPPLEMENTAL EXHIBIT;**
Science Reserve, Ka'ohē Mauka, Hamakua,)
Hawai'i TMK(3)4-4-015:009)
) **CERTIFICATE OF SERVICE**

WILLIAM FREITAS SECOND SUPPLEMENTAL EXHIBIT

Ex No	Description
T-1.c	UNDRIP
T-2.a	2017 Duke University Press
T-2.b	Religious Freedom for Native Hawaiian Prisoners
T-2.4	United States Public Law 103-150
T-3.0	William Freitas Written Direct Testimony Amended
T-3.1	CMP page 1-3
T-3.2	Article X11 (12)
T-3.3	HRS 711-1107 Desecration
T-3.4	Final EIS page 3.2 Cultural Resources
T-3.5	Disclosure of Stanley H. Roehrig September 30, 2016
T-3.6	HAR 13-5-30(c) Conservation District Rules
T-3.j 12	Pohaku Kukui oil
T-3.j 13	Pohaku Ku'i ai

Kailua Kona, HI. February 12, 2017

William Freitas

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting
13 September 2007*

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith, in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

¹ See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53)*, part one, chap. II, sect. A.

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social

progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

² See resolution 2200 A (XXI), annex.

³ A/CONF.157/24 (Part I), chap. III.

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to

⁴Resolution 217 A (III).

their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources

equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law

and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

AGAINST the DAY

Noelani Goodyear-Ka'ōpua

Protectors of the Future, Not Protestors of the Past:
Indigenous Pacific Activism and Mauna a Wākea

We are trying to get people back to the right timescale, so that they can understand how they are connected and what is to come . . . we are operating on geological and genealogical time. . . . The future is a realm we have inhabited for thousands of years.

—Bryan Kamaoli Kuwada, “We Live in the Future. Come Join Us”

On April 2, 2015, thirty-one *aloha 'āina* (people who love the land; patriots) were arrested for “trespassing” on government property and “obstructing” the road upon which construction vehicles were attempting to ascend Mauna a Wākea—commonly known as Mauna Kea, the highest mountain in the Hawaiian islands and a sacred *piko* (umbilicus; convergence) for the *lāhui Hawai'i* (Native Hawaiian people/nation).¹ The next day, Hawaiian activist-blogger Bryan Kamaoli Kuwada (2015) rejected the copious dismissals of these Kānaka Maoli and our allies as “relics of the past.” To be sure, it is a tired colonial trope, representing Indigenous peoples as mere vestiges of a quickly fading and increasingly irrelevant past. But this settler colonial strategy of expropriation and normalization rears its head regularly against Indigenous communities and movements who insist on protecting ancestral connections to lands and waters.

Kuwada instead claimed the future as a realm with which Indigenous people are familiar and highly capable of traversing. His call to “come join us” invited all readers to cast off short-sighted and exploitative notions of prog-

ress that blind us to the inextricable connections between human and planetary health. Indigenous futurities seek to transform settler colonialisms for all who are caught within such relations of violence and exclusion.² Eve Tuck and Ruben Gaztambide-Fernandez (2013: 80) posit that whereas *settler futurity* requires the containment, removal, and eradication of original, autochthonous peoples, *Indigenous futurity* “does not foreclose the inhabitation of Indigenous land by non-Indigenous peoples, but does foreclose settler colonialism and settler epistemologies. . . . Indigenous futurity does not require the erasure of now-settlers in the ways that settler futurity requires of Indigenous peoples.” In the context of the Mauna Kea struggle, Kuwada (2015) put it this way: “Whenever we resist or insist in the face of the depredations of developers, corporate predators, government officials, university administrators, or even the general public, we are trying to protect our relationships to our ancestors, our language, our culture, and our ‘āina. But at the same time, we are trying to reawaken and protect their connections as well.”

In this essay, I follow in Kuwada’s line of thinking, exploring ways Native Pacific activists enact Indigenous futurities and open space to transform present settler colonial conditions. In particular, I highlight the “Protect Mauna a Wākea” movement as a field of such openings. In this movement Kānaka Maoli and settler allies work together to unmake relations of settler colonialism and imperialism, protecting Indigenous relationships between human and nonhumans through direct action and compassionate engagement with settler-state law enforcement. As Kuwada indicates, this kind of futures-creation is not only in the interest of Indigenous people. Indigenous resistance against industrial projects that destroy or pollute our territories concerns the health of all people.

And yet we should not forget that the violences of exploitative and nonreciprocal practices of imperialisms and settler colonialisms have inflicted harms unevenly throughout Oceania.³ Struggles against such ecological and social injustice take on an intensified urgency in a time of increasingly rapid global climate change. In 2013, leaders of the Pacific Islands Forum declared, in no uncertain terms, that climate change is “the greatest threat to the livelihoods, security and well-being of the peoples of the Pacific” (Pacific Islands Forum, 2013). Islanders on low-lying atolls are literally losing their ancestral homelands to the encroaching tides. In the high islands of the Pacific, like my own archipelago, sea-level rise may be less pronounced but increasing heat, changing precipitation patterns, and

diminished natural resources are all posing new threats to cultural practices and material survival, especially for those who are more dependent on land- and ocean-based subsistence economies. Throughout Oceania, our waters are severely overfished, choked with pollutants, and stressed by ocean acidification. The need for transforming settler enclosures, extractivism, and consumerism could not be more clear.

In October 2014, just six months before the arrests on Mauna Kea, thirty-one Pacific Islanders blocked an important waterway and node in the regional economy—Newcastle Harbor, which serves as the largest coal-shipping port in Australia. The network of islanders from fifteen different Pacific Island nations included representation from islands, like Tuvalu, facing immediate inundation of their homelands by rising tides. And yet their rallying cry was not one of victimhood: “We are not drowning. We are fighting!” Known as the Pacific Climate Warriors, they toured Australia and joined together with settler allies to pose a direct challenge to Pacific Rim countries’ extractive and commodifying practices in the form of a flotilla blockade of the harbor. They put producers on notice: “The coal which leaves this port has a direct impact on our culture and our islands. It is clear to us that this is the kind of action which we must take in order to survive. Climate change is an issue which affects everyone and coal companies may expect further actions like this in future” (Queally 2014).

Like the activists on Mauna a Wākeā, the Pacific Climate Warriors not only underscored the ways that imperialist industrial projects harm Indigenous Pacific cultures, but they also drew upon those very cultural practices of renewing connections with lands and waters in order to engage in direct action struggle. Long before the confrontation at Newcastle in 2014, young activists had been learning skills of canoe building from their respective elders. Once these canoes were built, the vessels were paddled into Newcastle and joined by Australian settler allies on kayaks to stop several ships and engage police boats. Restoration of ancestral knowledges continues to be an important part of enacting alternatives to settler colonial, capitalist enclosures. When colonial discourses frame blockades at Newcastle or on Mauna a Wākeā as obstructions on a march to “the future,” they miss the ways this kind of activism is actually protecting the possibilities of multiple futures. The assertion of Indigenous epistemologies and practices renews intergenerational pathways connecting watery bodies—human, lake, harbor—and linking ancestors with descendants.

Opening Settler Colonial Enclosures

In many ways the indigenous person's most powerful weapon against further destruction and exploitation is simply *staying*. When the ultimate goal of colonization is to remove 'ōiwi [Natives] from our land in order to access and suck dry the material and marketable resources our ancestors have maintained for generations, it follows that the stubborn, steadfast refusal to leave is essential to our continued existence.

—Kahikina De Silva, "Ka'ala, Molale I ka Mālie: The Staying Power of Love and Poetry"

In Hawai'i, as in many other settler colonial contexts, both Indigenous people and settlers are here to stay. There will be no mass exodus of non-Natives from the islands, and although more and more Kanaka Maoli find it necessary to move away from Hawai'i, many stubbornly remain in the islands as well. But the problems are not as simple as the fact that Indigenous and settler peoples occupy the same lands and that both typically insist on staying. Our relations with lands and with each other are structured by dominant property regimes that cannot deal with the complexity of our layered and interconnected yet differential interests in the lands on which we reside.

Within settler state government policies and dominant visions of settler futurity, the prevailing models for how to deal with this standoff are inadequate:

- (1) The *allotment* or *assimilation model* aims for a complete enclosure in which the private property system is assumed to be total and Indigenous nations are fragmented as individuals, forever "integrated" or disappeared into settler society;
- (2) the *reservations model* sets aside pockets of land that may be held for the collective benefit of an Indigenous people and polity, while the underlying title often remains with the settler state and while settler society flourishes by commanding the lion's share of lands and resources; and
- (3) the *corporate model* refigures Indigenous nations as private corporate entities that own property and/or development rights that can be capitalized for profit within a globalized capitalist economy.⁴

Thus, if settler colonial relations are built on the enclosure of land as property that can then be alienated from Indigenous peoples, as well as demarcated to privilege certain racialized, classed, and gendered groups of settlers, then we need different ways of relating to land. As Tuck and Yang (2012: 7) argue,

decolonization in settler colonial contexts “must involve the repatriation of land simultaneous to the recognition of how land and relations to land have always already been differently understood and enacted.” To transform settler colonial relations, we need to do more than transfer ownership. We need to fundamentally shift the system that structures our relations to land.⁵ As Candace Fujikane (2015: 9) has pointed out, settler colonial strategies of enclosure try to delink land from water and to cordon off discrete sacred sites from the larger fields of relationality that gives them meaning. She writes,

Under the conditions of a settler colonial capitalist economy . . . in a system premised on the logic of subdivision, the state and developers draw red boundary lines around isolated “parcels” of land to fragment wahi pana (celebrated places) and wahi kapu (sacred places) into smaller and smaller isolated, abstracted spaces that have no continuities and thus, they claim, “no cultural significance.” This is how wastelands are produced as a part of the ongoing process of land seizure in Hawai‘i.

To borrow Fujikane’s phrase, Indigenous relations to and conceptions of land shatter such “fragile fictions” and settler logics.⁶

Protectors, Not Protestors

The same month that the Pacific Climate Warriors blocked Newcastle Harbor in Australia, the young Kānaka who would later become the most visible in the direct actions on Mauna Kea intervened in the groundbreaking of the Thirty-Meter Telescope (TMT). If built, the TMT would be the largest building on Hawai‘i island (popularly called the “Big Island”), eighteen stories high and occupying over five acres of land near the summit.⁷ For many years, a hui (group) of Kānaka have been working to assert and protect their genealogical connections to elements and deities of the mountain against an expanding footprint of astronomical observatories and telescopes (Casumbal-Salazar 2014). Those earlier battles were often fought in the courts (Puhipau and Lander 2005). But the disruption of the TMT groundbreaking ceremony and subsequent direct action tactics on Mauna a Wākea brought international attention to these protracted struggles.

The ways the self-described “*protectors*, not protestors” or *kia‘i mauna* (guardians of the mountain) conducted the struggle has much to teach us in terms of this essay’s central question of how to transform settler colonial relations with land. There were three levels at which protectors challenged the settler state’s legitimacy over the permitting of the TMT construction: in Indigenous terms, in national terms and in settler state terms.

Protectors of Mauna a Wākea—the mountain of Wākea—see the mauna, first and foremost, as an ancestor and a home of deities (Maly and Maly 2005). It is the highest point in Oceania. Measured from its base under the ocean to the tip of the summit, Mauna a Wākea is the tallest mountain in the world. It rises above 40 percent of the earth's atmosphere. Kanaka Maoli recognize the mauna as home to numerous akua (gods). As protector, Mehana Kihoi pointed out a few weeks in to her occupation on the mauna “all of the deities on this mauna are wāhine, and they all are water forms” (Mo'olelo Aloha 'Āina 2015). Mauna Kea's sacredness has to do not only with its remoteness from the realm of regular human activity but also with its significance in collecting the waters that sustain life. The summit is contained within a large land district, or ahupua'a, named Ka'ōhe. Dr. Pualani Kanaka'ole Kanahale (2015) explains: “In giving the ahupua'a the name of Ka'ōhe . . . the 'ōhe is the product that gathers water in itself. If we live in a bamboo forest, there's always water in the bamboo. This same idea was given to this particular land because the water gathers in this land. . . . It is the 'ōhe. It is the place that we will find water, always.” Hawaiian efforts to stop construction on the summit have been rooted in the ceremonial honoring of the various elemental forms of *akua* who reside on the mountain and thus give continued life through a healthy water supply. Protectors point out the ways the TMT would impact that water and thus human health.

Protectors have also drawn upon at least two legal regimes in their defense of the mauna: Hawaiian Kingdom law and settler state of Hawai'i law. The sacred summit is part of the corpus of lands that were illegally seized from the Hawaiian Kingdom in 1893, when a small group of sugar planters usurped power with backing from the US military. The Hawaiian Kingdom Crown and Government lands—together known as the Hawaiian national lands—remain under control of what protectors on the mauna continue to assert are illegally seized lands, over which the United States and State of Hawai'i have no rightful jurisdiction. Thus, on Hawaiian national terms, protectors assert their rights to challenge construction projects permitted by an illegitimate settler government. But protectors have also worked within settler state legal regimes to halt construction, using the settler state's own laws to challenge the construction of a large complex of buildings on lands that the state itself has zoned for conservation. As of this writing, the TMT project was officially put on pause when a state court found that the Board of Land and Natural Resources violated its own rules in issuing the permit and that petitioners against the TMT had not given due process when the conservation district use permit was issued for the project.

In addition to these layered ways of thinking about land and challenging the TMT, protectors further help us to think about ways to transform settler colonial land tenure through the ways they conducted what observers would describe as a blockade of the roadway to the summit and construction site. But the term *blockade* suggests a hard line, a line of exclusion, and what the protectors created was a space of engagement and an opening to “come join us.”

Prior to and following the April 2, 2015, arrests of those who used their bodies as barriers against the heavy machinery on its way to the summit, protectors established an “Aloha Checkpoint” for engaging police forces, tourists, construction workers, and others. The Aloha Checkpoint differed from a typical blockade in that protectors were not seeking to establish a border that would exclude anyone besides themselves. This was not a possessive, jurisdictional line. The checkpoint served as a porous boundary that was only intended to block construction vehicles. Furthermore, protectors used the checkpoint as a place to invite opponents and unknowing visitors to talk story. Whether passersby remained in their vehicles or got out to join occupiers in the makeshift tents that served as a kitchen and gathering area, protectors created a space for dialogue and an opportunity to engage in discussion about the ways the TMT project would impact at least five acres of the summit, with its various sites of worship, observation, and hiding places for the bones and umbilical cords of generations of some Hawaiian families. So many supporters donated food during the months-long stand on the mauna that the Aloha Checkpoint also unintentionally became a sort of “soup kitchen.” At least one Kanaka relayed that he would pick up houseless people in Hilo and drive them up to the mauna so that hungry folks could eat while also learning about the struggle (Kalaniākea Wilson, pers. comm., April 12, 2016). While the checkpoint was intended to keep construction vehicles out, it was not intended to keep those who operated them off the mountain. Construction workers and police officers, many of whom were also Native Hawaiians, learned through the engagements and in some cases brought their families back up to the mauna when they were off duty, with the intention of learning more and sharing aloha and dialogue with the protectors.

A *kapu aloha*—a philosophy and practice of nonviolent engagement—guided the Aloha Checkpoint and the associated activism on the mauna. Movement leader, *kumu hula* (master hula teacher), and *kia'i mauna*, Pua Case describes this *kapu* as grounded in the teachings of *kūpuna* (elders), and she emphasizes the way the *kapu* calls one to carry oneself with the highest level of compassion for ‘āina and for all people one may encounter (Maly and Maly 2005). The *kapu aloha* requires the discipline of empathy, even and especially for those with whom one may disagree. It is not a command to compromise with or assent to harm. The *kapu aloha* is not intended

as a release valve that makes it possible for people to continue enduring intolerable conditions, or to look away from wrongdoing. Speaking to a crowd gathered on the mauna during the occupation, Lanakila Mangauil (2015)—the young leader who disrupted the TMT groundbreaking ceremony in October 2014—expressed that the kapu aloha was particularly important in guiding behavior in a sacred place such as the mountain summit in the wao akua. Such an environment, he explained, reminds people to speak and act with focus, courage, and the deepest respect, even to those who ascend the mountain “on the machines that would rip up our sacred place. We speak to them with the utmost respect and aloha and compassion” (Mele ma ka Mauna 2015). The kapu aloha is a directive to try to understand the circumstances that bring one’s opponent to the moment of confrontation.

This kind of aloha manifested, for instance, in protectors greeting law enforcement officials who had come to remove them from the mountain with *lei lāʻī* (garlands of made from ti-leaf, known for its protective and healing qualities) and explicit statements recognizing their interrelatedness. Photographic and video images of law enforcement officers exchanging *hā* (breath), nose-to-nose and forehead-to-forehead with protectors circulated virally through social media channels, underscoring the ways that even when settler colonial relations pit Kanaka against Kanaka, we recognize one another (see figure 1). In many ways, the Aloha Checkpoint and the kapu aloha that ruled it changed the terms of political engagement. Protectors sought not to exclude but to powerfully remind opponents of the ways that the mountain is shared and the ways the mountain connects all in its shadow. While settler state officials cast the *kiaʻi* as impediments on the road to “progress” (aka settler futurity) and passed regulations that would be used to specifically target and remove protectors from the mauna, *kiaʻi* stewarded places and practices that invited their antagonists to join them in reaching toward more expansive and sustainable futures.

Kū Kiaʻi Mauna

When you see the possibility of “progress” in this more connected way, you see that we are actually the ones looking to the future. We are trying to get people back to the right timescale, so that they can understand how they are connected and what is to come.

—Bryan Kamaoli Kuwada, “We Live in the Future. Come Join Us”

While Indigenous environmental activism is still often dismissed by the very powers who benefit from exploitative usage of our lands and waters by

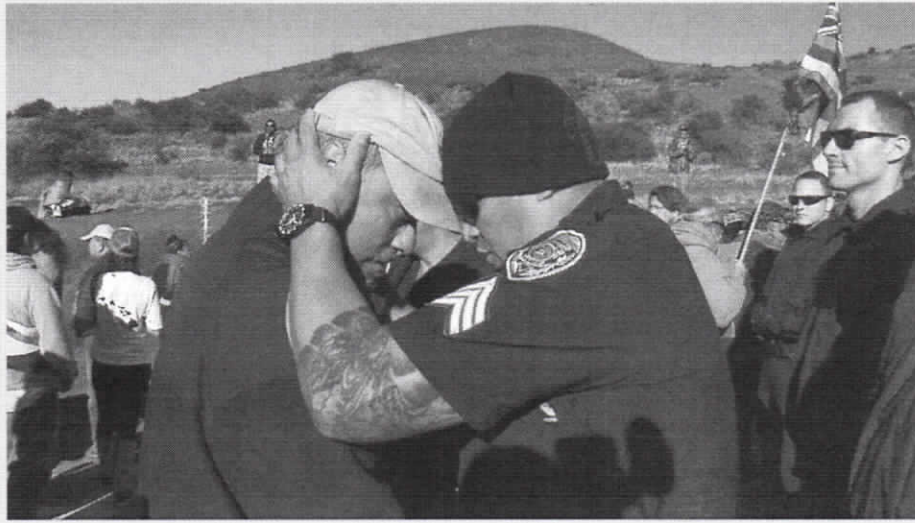


Figure 1. The first arrests began on Mauna a Wākea on April 2, 2015, days after the standoff had begun when construction vehicles began ascending the mountain. Photo by David Corrigan, Big Island News

(mis)representing us as fixed in place, pinned in a remote time, we continue to be concerned with the deep time of human survival. As Auntie Pua Case once said, when she guided my *hālau hula* (hula school) up to Kūkahau‘ula and Waiau a few years before the highly publicized struggle over the TMT erupted: we know that the Mauna could shake her shoulders and throw these telescopes off. We don’t fight for the life of the Mauna, for the Mauna will live far beyond us; we are grateful to celebrate our connection to the Mauna in this way, to remember that we are the Mauna. And so protectors remember and renew connections, inviting others to come join us. Resurgent Indigenous futures beckon.

Acknowledgments

I would like to thank Teresa Shewry for her insightful comments on early drafts of this essay. I am also deeply grateful to Bryan Kamaoli Kuwada, Iokepa Casumbal-Salazar, ‘Ilima Long, Candace Fujikane, Dean Saranillio, Noenoe Silva, No‘eau Peralto, and Auntie Pua Case for conversations that greatly contributed to my thinking.

Notes

- 1 In his essay on the genealogical connections between the mountain and the Native Hawaiian people, Leon No‘eau Peralto (2014) explains: “Born of the union between Papahānaumoku and Wākea, Mauna a Wākea is an elder sibling of Hāloa, the first ali‘i.

As such, both the Mauna and Kanaka are instilled, at birth, with particular kuleana to each other. This relationship is reciprocal, and its sanctity requires continual maintenance in order to remain pono, or balanced" (234).

- 2 *Futurity* refers to the ways groups come to imagine or know about the future(s). Drawing on the work of Benedict Anderson, geographer Andrew Baldwin (2012) argues that certain logics and practices for anticipating and preempting particular futures bolster whiteness. Tuck and Gaztambide-Fernandez (2013) extend Baldwin's usage of this term in order to differentiate between settler and Indigenous futurities, where the former bolsters and extends settler colonial relations of power while the latter challenges them.
- 3 See Johnston and Barker 2008; Barker 2012; Teaiwa 2014; Goodyear-Ka'ōpua et al., 2014.
- 4 A fourth, less common, model is a leftist *settler commons model*, which envisions a complete shift to a communal form of land tenure in which all people—without distinction between Indigenous and settler—gain access to all lands before or without simultaneously dismantling settler colonialism. For instance, one such vision in Hawai'i proposes a settler reclamation of the commons from the last remaining Native Hawaiian-controlled landed trusts. Such a transition that fails to take into account the differential positionalities with respect to historically rooted systems of wealth and power in the islands would heighten existing inequalities, in which Native Hawaiians have been dispossessed of lands and remain at the bottom of various indicators of social, economic, and physical well-being.
- 5 As a way to unsettle settler regimes of land tenure, I look to Native Hawaiian understandings and practices of *kuleana* (authority, responsibility, privilege), particularly in relation to land and learning.
- 6 The phrase "fragile fictions" comes from Fujikane's forthcoming book, *Mapping Abundance: Indigenous and Critical Settler Cartographies in Hawai'i*, which will include some of her analysis on critical settler cartography and Indigenous cartography on Mauna a Wākea.
- 7 The final environmental impact statement of the TMT project acknowledges that the cumulative impacts of all the existing telescopes and related infrastructure on Mauna Kea have already been "substantial, significant, and adverse" on biological habitats. They rationalize the project by saying that further development would add only "incremental impact," thus keeping the level of harm at a continued level that is "substantial, significant, and adverse" (University of Hawai'i at Hilo 2010: S-8).
- 8 *Wahine* refers to women, the feminine, or female elements. See Mo'olelo Aloha 'Āina 2015 for Mehana Kihoi's explanation.

References

- Baldwin, Andrew. 2012. "Whiteness and Futurity: Towards a Research Agenda." *Progress in Human Geography* 36, no. 2: 172–87.
- Barker, Holly M. 2012. *Bravo for the Marshallese: Regaining Control in a Post-Nuclear, Post-Colonial World*. 2nd ed. Belmont, CA: Wadsworth Publishing.
- Casumbal-Salazar, Iokepa. 2014. "Multicultural Settler Colonialism and Indigenous Struggle in Hawai'i: The Politics of Astronomy on Mauna a Wākea." PhD diss., University of Hawai'i at Mānoa.
- De Silva, Kahikina. 2011. "Ka'ala, Molale I Ka Mālie: The Staying Power of Love and Poetry." Colloquium paper presented at the "Reclaiming CELANEN: Land, Water, and Governance" symposium, University of Hawai'i at Mānoa, October 28.

- Fujikane, Candace. 2015. "Indigenous and Critical Settler Cartography: Mapping a Mo'ō'āina Economy of Abundance on Mauna a Wākea." Paper presented at the Political Science Colloquium Series, University of Hawai'i at Mānoa, November 13.
- Goodyear-Ka'ōpua, Noelani, Ikaika Hussey, and Erin Kahunawaika'ala Wright, eds. 2014. *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty*. Durham, NC: Duke University Press.
- Johnston, Barbara Rose, and Holly M. Barker. 2008. *The Consequential Damages of Nuclear War: The Rongelap Report*. Walnut Creek, CA: Left Coast Press.
- Kanahele, Pualani Kanaka'ole. 2015. "Pualani Kanaka'ole Kanahele on Mauna Kea and Ka'ōhe." Big Island Video News. YouTube video, 5:46. April 27. www.youtube.com/watch?v=oxhfjYRFWiI.
- Kuwada, Bryan Kamaoli. 2015. "We Live in the Future. Come Join Us." *Ke Kaupa Hehi Ale* (blog), April 3. hehiale.wordpress.com/2015/04/03/we-live-in-the-future-come-join-us/.
- Maly, Kepa, and Onaona Maly. 2005. "Mauna Kea: Ka Piko Kaulana O Ka 'Āina." Prepared for the Office of Mauna Kea Management. Hilo: Kumu Pono Associates LLC.
- Mele ma ka Mauna. 2015. "Lanakila Mangauil: 'What Is Kapu Aloha?' Speech." 'Ōiwi TV video, 12:17. April 17. oiwi.tv/oiwitv/mele-m-a-ka-mauna-lanakila-mangauil-speech/.
- Mo'olelo Aloha 'Āina. 2015. "Mehana Kihoi: The Goddesses That Guide Us." Vimeo video, 00:46. September 13. moolelo.manainfo.com/2015/09/the-goddesses-that-guide-us/.
- Pacific Islands Forum. 2013. Majuro Declaration for Climate Leadership. Sept 5, 2013, Majuro. www.majurodeclaration.org/the_declaration (accessed July 1, 2016).
- Peralto, Leon No'eau. 2014. "Mauna a Wākea: Hānau Ka Mauna, the Piko of Our Ea." In *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty*, edited by Noelani Goodyear-Ka'ōpua, Ikaika Hussey, and Erin Kahunawaika'ala Wright, 233–36. Durham, NC: Duke University Press.
- Puhipau, and Joan Lander. 2005. *Mauna Kea: Temple under Siege*. Nā'ālehu, Hawai'i: Nā Maka o ka 'Āina. DVD, 50:16 min. oiwi.tv/oiwitv/mauna-kea-temple-under-siege/.
- Queally, Jon. 2014. "'Not Drowning, Fighting': Pacific Climate Warriors Blockade Australian Coal Port." *Common Dreams*, October 17. www.commondreams.org/news/2014/10/17/not-drowning-fighting-pacific-climate-warriors-blockade-australian-coal-port.
- Teaiwa, Katerina Martina. 2014. *Consuming Ocean Island: Stories of People and Phosphate from Banaba*. Bloomington: Indiana University Press.
- Tuck, Eve, and Ruben Gaztambide-Fernandez. 2013. "Curriculum, Replacement, and Settler Futurity." *Journal of Curriculum Theorizing* 29, no. 1: 72–89.
- Tuck, Eve, and K. Wayne Yang. 2012. "Decolonization Is Not a Metaphor." *Decolonization: Indigeneity, Education, and Society* 1, no. 1: 1–40.
- University of Hawai'i at Hilo. 2010. "Final Environmental Impact Statement, Vol. 1: Thirty Meter Telescope Project, Island of Hawai'i." University of Hawai'i at Hilo. www.malamamaunakea.org/uploads/management/plans/TMT_FEIS_vol1.pdf.

19 05-GS-59 VOTED: The Twenty-fifth General Synod of the United Church of Christ votes in favor of the resolution,
20 "Religious Freedom for Native Hawaiian Prisoners."
21

22 **RELIGIOUS FREEDOM FOR NATIVE HAWAIIAN PRISONERS**
23

24 WHEREAS, In response to Jesus' teaching and the aloha of all people, the Twenty-fifth General Synod of the
25 United Church of Christ recognizes the inherent right of Native Hawaiians to practice their ancient and traditional
26 religion as guaranteed by law and pledges its support to those Native Hawaiians;
27

28 WHEREAS, Native Hawaiian religious rites are protected under the Constitutions of the United States of America,
29 the State of Hawai'i, the State of Oklahoma, the Religious Land Use and Institutionalized Persons Act of 2000 (42
30 USCS § 2000cc), and the American Indian Religious Freedom Act (42 U.S.C. § 1996);
31

32 WHEREAS, the free exercise of religion for Hawai'i prisoners at the Diamondback Correctional Facility in
33 Watonga, OK, is making strides to provide minimal religious opportunities as required by law;
34

35 WHEREAS, inter-religious and interfaith spiritual accompaniment requires specific training, theological hospitality
36 to different religious expressions, and a commitment to mutual respect of diverse belief systems;
37

38 WHEREAS, our local United Church of Christ churches and the Oklahoma United Church of Christ 'ohana
39 (family)—qualified, trained and ordained advocates now have access;
40

41 WHEREAS, Native Hawaiian prisoners are 6,000 miles from their homeland, 'ohana and religious leaders; and that
42 up to 2,500 Hawai'i pa'ahao are located in correctional facilities in Oklahoma, Arizona, Mississippi, and Colorado;
43

44 WHEREAS, spirituality, and its diversity of practice, is an essential part of rehabilitation;
45

46 WHEREAS, Native Hawaiian prisoners through the Native Hawaiian Religion and Culture Group have requested
47 advocacy, support, and pastoral presence at weekly spiritual gatherings and specific holy day observances;
48

49 WHEREAS, the Native Hawaiian prisoners' United Church of Christ kūpuna (elders) and kahu (pastors) have
50 commended their 'ohana to the care of Oklahoma area United Church of Christ clergy; and that some of the pa'ahao
51 (prisoners) are sons and yohana of our own churches in the Hawai'i Conference United Church of Christ;
52

53 WHEREAS, the Association of Hawaiian Evangelical Churches United Church of Christ of the Hawai'i Conference
54 United Church of Christ is in covenantal relationship with all the settings of the United Church of Christ;
55

T-2.b

1 THEREFORE, BE IT RESOLVED that the Twenty-fifth General Synod of the United Church of Christ recognizes
2 the inherent right of Native Hawaiians to practice their ancient and traditional religion as guaranteed by law, and
3 pledges its support to those native Hawaiians;
4

5 BE IT FURTHER RESOLVED that the Twenty-fifth General Synod of the United Church of Christ encourages the
6 Association of Hawaiian Evangelical Churches' Justice and Witness Team to work in partnership with the Hawai'i
7 Conference's Witness Missional Team, and the Oklahoma Association through the Kansas-Oklahoma Conference
8 to coordinate efforts and ministry with the Native Hawaiian Religion and Culture Group of the Diamondback
9 Correctional Facility in Watonga, Oklahoma to minister to the Native Hawaiian and other Hawai'i prisoners;
10

11 BE IT FURTHER RESOLVED that the Twenty-fifth General Synod of the United Church of Christ calls on the five
12 associations of the Hawai'i Conference United Church of Christ as well as the Hawai'i Conference Board of
13 Directors to join in this ministry to native Hawaiian prisoners, especially those who are in continental facilities far
14 from Hawai'i;
15

16 BE IT FURTHER RESOLVED that the Twenty-fifth General Synod of the United Church of Christ urges the
17 leaders in the Hawai'i State Legislature and the United States Congress to call upon the Department of Public Safety
18 in Hawai'i and the Department of Corrections in Oklahoma to recognize the need to uphold the laws of the
19 Constitution of the United States of America to allow Native Hawaiian prisoners in all the continental United States
20 facilities and the State of Hawai'i the freedom to exercise fully their religion in a non-hostile and non-retributive
21 environment.
22

23 BE IT FURTHER RESOLVED that the Twenty-fifth General Synod of the United Church of Christ calls on the
24 Association of Hawaiian Evangelical Churches United Church of Christ through its Pāpā Makua and Luna
25 Hoʻomalū and the Conference Minister and Chairperson of the Board of Directors of the Hawai'i Conference
26 United Church of Christ to urge the Department of Public Safety of the State of Hawai'i to provide for routine visits
27 from practitioners of Native Hawaiian spirituality;
28

29 BE IT FURTHER RESOLVED that the Twenty-fifth General Synod of the United Church of Christ encourages
30 through its Justice and Witness Ministries and the Hawai'i Conference United Church of Christ through its Witness
31 Missional Team to call upon the Corrections Corporation of America (CCA) to insure religious freedom for those
32 who practice non-Christian religion with adequately trained professionals and open the faith pods to include
33 interfaith groups.
34

35 BE IT FURTHER RESOLVED that the Twenty-fifth General Synod of the United Church of Christ encourages and
36 supports the Association of Hawaiian Evangelical Churches United Church of Christ to work in concert with the
37 Oklahoma Association United Church of Christ and the Kansas-Oklahoma Conference UCC, the Native Hawaiian
38 Religion and Culture Group, the Council for American Indian Ministry (CAIM), the Justice and Witness Ministries
39 of the UCC, and other peace and justice networks of the United Church of Christ to provide advocacy and financial
40 support to expand the witness for religious freedom for all Native Hawaiian prisoners throughout the United States
41 of America.
42

43 The implementation of this resolution will be by the Justice and Witness Ministries' Human Rights, Justice for
44 Women, and Transgendered Ministry—especially Criminal Justice and Human Rights, the Association of Hawaiian
45 Evangelical Churches of the Hawai'i Conference United Church of Christ and all its settings, the Oklahoma
46 Association of the Kansas-Oklahoma Conference United Church of Christ as all its settings, and all other interested
47 settings of the United Church of Christ.
48

49 Funding for the implementation of the resolution will be made in accordance with the overall mandates of the
50 affected agencies and funds available.

UNITED STATES PUBLIC LAW 103-150

103d Congress Joint Resolution 19

Nov. 23, 1993

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas, a unified monarchical government of the [Hawaiian Islands](#) was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in [1826](#), 1842, [1849](#), [1875](#), and [1887](#);

Whereas, the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the [Iolani Palace](#) to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas, the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

"I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

"That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

"Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional [Sovereign](#) of the Hawaiian Islands."

Done at Honolulu this 17th day of January, A.D. 1893.;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas, the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, [President Grover Cleveland reported fully and accurately](#) on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas, President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Hawaiian monarchy;

Whereas, the Provisional Government protested President Cleveland's call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas, the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred to in this Resolution as the "Committee") to conduct a new investigation into the events surrounding the overthrow of the monarchy;

Whereas, the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;

Whereas, on January 24, 1895, while imprisoned in [Iolani Palace](#), Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the [Hawaiian Islands](#) to the United States;

Whereas, the Republic of Hawaii also [ceded 1,800,000 acres of crown, government and public lands](#) of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas, the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas, the Newlands Resolution also specified that [treaties existing between Hawaii and foreign nations](#) were to immediately cease and be replaced by United States treaties with such nations;

Whereas, the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent [sovereignty](#) as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;

Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;

Whereas, the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas, the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;

Whereas, the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993, should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas, the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas, it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians;

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACKNOWLEDGMENT AND APOLOGY.

The Congress -

- (1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;
- (2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;
- (3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;
- (4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and
- (5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

SEC. 2. DEFINITIONS.

As used in this Joint Resolution, the term "Native Hawaiians" means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised [sovereignty](#) in the area that now constitutes the State of Hawaii.

SEC. 3. DISCLAIMER.

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Approved November 23, 1993

LEGISLATIVE HISTORY - S.J. Res. 19:

SENATE REPORTS: No. 103-125 (Select Comm. on Indian Affairs)
CONGRESSIONAL RECORD, Vol. 139 (1993):

[Oct. 27, considered and passed Senate.](#)

[Nov. 15, considered and passed House.](#)

Written Direct Testimony
Of
William Freitas

Genealogy

I William Freitas, is the grandson of Tamara Ka'ao'aolahilahikeohokalole Pahia, 100% Hawaiian, born in 1896. Her grandparents called her by Lahilahi. Her grandpa and grandma born in 1947 Frank Kaipanio Pahia Haupu , and Abigail Kuaana I'I, raised her, and her brothers and sister. Her parents Bishop Pahia Haupu and Mary Nahuina of 1877 had died early both were 100% Hawaiian. During this time my grandma and her family were impacted by colonization, led to believe that U.S. had the rights to take over the Hawaiian Kingdom.

My mother is my grandmother's first child out of nine children. She was born Susan Pahia and one year later baptized Josephine T. Ahuna. My mother is the eldest of 9 siblings. I was not fortunate to learn much of our ancestral roots from grandma directly. My mother and I lived in Kailua, Kona on the island of Hawaii and my grandmother lived in Laie Oahu. I was 7 yrs old when my grandmother passed away. My sister Donnett is my grandmothers first grandchild, and she was raised by grandma her whole life and given the history of accounts and genealogy of our grandparents, great grandparents and great great grandparnts and so on. Our great great grandfather Frank Kaipanio Pahia Haupu is from Hawi, Kohala born 1847 and our great grandmother Mary Nahuina is from south Kona, born 1877.

In 1970 my mother, studied books she read at Hulihe'e Palace while working as a curator with the beloved aunty Iolani Luahine. My grandmother's name, "Ka'ao'aolahilahikeohokalole" given to her by her grandparents, stems from beyond the time of Pa'ao's voyage to Kawaiki (Hawaii). The knowledge and mo'olelo shared between her by aunty Iolani Luahine, our roots connects us to the heaven and the earth in Kauikioli Kamehameha 3rds birth chant, the Kumulipolipo. Aunty Iolani Luahine, and Uncle George Naope, and my mother, were haumana (students), of the late Tom Hiona, kumu of temple hula, chants and mo'olelo of enchant times. Wai Kane, represents the source of (Water). Mauna A Wakea, a place known as the Wao Akua, (realm of the deities of water) Poliahu, lilinoe, Waiou and all the forms of water that resides in and around the Wao Akua on' Papa Hanaumoku, (Mother that bears life). Haloa, son of Wakea and Papa is the (Taro) the staple of our existence as Kanaka Maoli Ko Pae Aina (aboriginal, indigenous people of Hawaii). This is imbedded in our Iwi (bones) to the smallest amount.

The knowledge I have, as well as witnessing spiritual moments and ceremonies with items revealed to me through my life up till today has given a much greater understanding of my heritage and the reason I stand in protection of the most sacred place of our Hawaiian People, Mauna A Wakea. I am connected to my kupuna iwi (bones of my ancestors) to the land, ocean and water that is a vital importance of life to Native Hawaiian understanding to give honor in the highest respect to Ke Akua (the god),

Makua Kane I Ka Lane, (father in heaven) Io, (highest in heaven), Wakea (sky father) all which is, one Creator of the Kini Akua (life sustaining elements) to co exist with nature in the middle of the pacific for thousands of years. "A true cycle of Aloha"

Today, our most Sacred place is being threaten, by BLNR and DLNR to be used under a land lease to the university of Hawaii science reserve for astronomy. The Proposed Development of TMT in this science reserve is presenting a Substantial Accumulative Impact to Native Hawaiians Spirit to a spiritual area known as the WAO AKUA. A religious area to Native Hawaiians for burials, placing of placentas, placing of piko, placing of cremation Ashes, places of **worship** on Ahu's, Ku Pohaku (up right stones) to mark areas to where these things, mentioned above are placed.

My Koko (blood), qualifies me as a descendant beyond 1778. My kuliana is to protect all Traditional Customary Cultural Religious Spiritual rights and practices with knowledge to pass to my children, grandchildren, and for the unborn, in efforts to help other Kanaka Maoli find a link to lineage in our genealogy, so they can connect and do the same. I know that all Kanaka Maoli Ko Pae Aina are related in one way or another. Relates to, PASH case.

Experience History

I William Freitas, continue to live with Traditional Customary Cultural Religious and Spiritual Practices of my Native Hawaiian ancestral people. I have engage in Practices shown to me by my mom, Aunties, Uncles and Kupuna including Hawaiian family's that live these traditions and share with me hands on knowledge passed to them from generation to generation. I witness Mauna A Wakea pure as my ancestors saw it!

I am a Pohaku Kane (stone mason). My experiences started at a young age not knowing how Pohaku would connect me to the land, water and ocean of my Hawaii. 1961 in Kailua, Kona at the age of 5yrs old, my mother and I went to gather kukui nuts to make Ina Mona; it was when I found a stone under the kukui leaves in the dirt. My mother said it was a special stone use for food or medicine by our kupuna (ancestors). Then she chanted with prayers for protection and permission to malama (care for). This special "stone" was given to my eldest sister, she is 20 yrs older than me, to care for until I was ready and responsible to have. My sister Donnet, was like a second mom to me. She said that mommy made her promise not to give it to me until she felt I was ready to receive it. My sister gave it to me in 2015 after seeing me stand for Mauna A Wakea, and my participation in constructing the Ahus on the proposed TMT site. See Exhibit T-3.j 13

I have been connected with Pohaku from age 5yrs old to present day. Pohaku has been part of me in many unexpected ways and opportunities in moments of my life. In 2015, many things have been revealed to me spiritually and psychically, such as this Pohaku, found while removing dried roots from cleaning in the ahupua'a where I live. My kupuna told me it is a sign of awakening, for this stone was used for Kukui hele po (lamp), and La'au lapa au (medicine). T-3.j12

I am connected to an area along the west coast of north Kona called "Kiholo". At Kiholo there is sacred waters that flow from Mauna A Wakea to the caverns that hold these water's. In Kiholo at the age of 5yrs old, we journeyed by boat from Kawaihae with my uncle "Jack Paulo" and camped at kiholo for two weeks. We gathered 95% of our foods from the area of Kiholo and all our Water. This area is where I was given my Hawaiian name.

I have witness, and participated in ceremonies that relates to heavens, land, ocean and fresh water by my mother, aunties, uncles and families that live and practice Native Hawaiian Traditional Customary Cultural and Spiritual Religious ways. I have built Ahu, Walls, Heiau restoration, loko ia (fish ponds), kahua's (foundations) to inset Ku'ula (stone fishing shrine), Hale foundation's and thatched Hale's, throughout the Islands. At present time I am building traditional thatched Hale's along with traditional ceremonies to every sequence as these structures are built. See Exhibits T-3.j thru T-3.j11

I was a Licensed Stone Mason Contractor for 16yrs, until 2008. As I learned, because of Corporate Greed, caused the down fall of the U.S. economy. This left me no other choice, but to dissolve the business. Prior to contracting, I have worked in the construction trade for over 35 yrs in many different fields of construction. I worked as a journeyman carpenter, finish carpenter, mason, drywall hanger, drywall finisher, stone setter, heavy equipment operator, pipe sitter for sewer and water, grade setter, grade checker and layout tech. I worked on steel buildings, high rise, commercial, water tanks, road, curb, drainage coverts, manhole installations and private structures, including historical restorations, such as Pu'u Kohola Heiau, in Kawahae, and Pi'i lani Heiau in Hana, Maui. In Kona, at Kahalu'u Park, Wai Kua A'Ala Loko Pond including Kaloko fish Pond, and Magic sands beach park Pahoehoe Ahupua'a, Re-establishment of Kipapa Ohana Ku'ula Stone. SIHP site 21220 Exhibit T-3.j1,j2,j3,j4,j5,j6,j7 and Exhibit T-3.i2

I have references of Family's and people that I have had the honor and opportunities to work with to preserve historical Native Hawaiian Traditional Customary Religious and Spiritual Practices with an "emphases on Spiritual ". These Traditions always included Spiritual. From Beginning to completion, with kuleana (responsibility). See Exhibit T-3.i,

1

History of Political Events To Land in Hawaii and law that Protect Rights of Religious Spiritual Practices including places of worship

In 1978 Hawaii State Constitutional Convention adopted Article 12 section 7, to protect rights of Native Hawaiians for Traditional Customary Cultural Religious Practices, which most Cultural practices of Native Hawaiian include Spiritual connection to Earthly Creations. I know today that through the creation of Office of Hawaiian Affairs to provide for the betterment of Kanaka Maoli, are identified as Native Hawaiian. Native Hawaiian are a race of people, aboriginal and indigenous to Hawaii beyond 1778.

In connection to the 1920 Hawaiian Homes Commission Act of the U.S. congress to provide land to lease to Hawaiian Beneficiary of no less than 50% Hawaiian blood, which in turn Hawaiians could never own there, lands. Then in 1959 U.S. congress passed the Admissions Act, admitting Hawaii as part of the U.S. 50th state. Identity of Hawaiian became native Hawaiian.

In connecting the beginning of the first illegal U.S. Act's of congress, is the documented, and recorded, as the 1898 U.S. Joint Resolution also known as the "Newlands" resolution. The study has been already acknowledged by International and U.S. law professors, as an "illegal process", for a country to acquire another country. No country can legally acquire another country by Joint Resolution. The only legal Treaty that the U.S. has is the Treaty of 1844 acknowledging Kingdom of Hawaii as a neutrality Jurisdiction. Queen Liliokalani never relinquished her Kingdom of Hawaii, because she knew the U.S. Acted upon an illegal process in acquiring Hawaii to U.S. Territory, first under International law, second under U.S. law. This is recorded and documented.

In connecting the U.S. Public Law 103-150, 103d Congress Joint Resolution 19 November 23, 1993 acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii. In this reading, states, the Native Hawaiians have not relinquished there sovereign rights. Therefore, the U.S. admits its wrong doing and obligates to commence ramifications.

In connecting the ramification efforts of the U.S. set forth Hawaii State senators of congress to draft the bills that would ramify wrong doing, such as Akaka Bill, inline with Office of Hawaiian Affairs, Kau Inoa, Not all Native Hawaiians agreed. This lead the U.S. to give its responsibility to the State of Hawaii to handle its obligation to the apology Bill. This begins SB1520 legislature bill passes in May 3, 2011 and was signed by Neil Abercrombie on July 6, 2011 and becomes Act 195 "Roll call commission". This instigates OHA to fund, Kanaiolowau, lead by former Gov. John Waihee, to get Native Hawaiians to sign to relinquish there sovereign rights by Acquiescent (including my mothers name she passed 30yrs ago). Native Hawaiians unknowingly had there names on the list, including myself.

Again not all agree, Now comes “Nai Aupuni” funded by OHA, to get Native Hawaiians to relinquish by Acquiescent or unknowingly their sovereign rights, this was stopped by Hawaii State Supreme Court ruling. These efforts are to identify “Native Hawaiians as Indians” under 25 U.S. Code Chapter 15- Constitutional Rights Of Indians, subject to U.S. Code title 18 Chapter 53. This would relinquish rights to the “Lands” of Native Hawaiian, Identified Kanaka Maoli Ko Pae Ania. Including lands of Mauna A Wakea, that Native Hawaiians struggle to protect the most Sacred place of their religious Spiritual Practices.

In connecting these U.S. Act’s of congress and the validity of the State of Hawaii Agencies under truth, leaves me as Kanaka Maoli Ko Pae Aina Under Threat, Duress, and Coercion subjected to the laws put upon myself, my family, my kupuna of past and present and to our spirit of Native Hawaiians. My Spirit, moves me in truth.

Threat to Spiritual, Traditional Customary Cultural Religious Practices, of Native Hawaiians on Mauna A Wakea.

In understanding the oppressions of Native Hawaiians by these foreign Governments and Agencies it is pertinent to stand in truth “Kapu Aloha” against desecration to our lands of Hawaii and its natural resources. In understanding the Law’s of Desecration, “HRS 711-1107 that is to Protect our Place of Worship, Mauna Kea and for its entirety of Spiritual Religious Practices to Native Hawaiians continued use of Ahu, upright stones, burials ect.. See Exhibit T-3.c, T-3.e, T-3.f

In the acknowledgement of Office of Mauna Kea Management Comprehensive Plan, they express “Mauna Kea as a spiritual and religious site of prayer and contemplation, which includes the building of family Ahus (altars) and placement of offerings to honor families or as a form of personal spiritual worship. See Exhibit CMP section 1: Culture Orientation pg. 1-3

In Exhibit T-3.c is a Ahu that was established under intense duress for prayers and offering on June 24th 2015. It was Dedicated and Consecrated. Its name is Kauakoko. In August on or about the 25th, it was bulldozed by an employee of Mauna Kea Support Services. The Incident was reported and a complaint was videoed and noted. This desecration of a place of worship is a crime, which affects Native Hawaiians till today. OMKM is the responsible party. DLNR is responsible to enforce the law. The Governor of the State of Hawaii should be concerned about the laws that protect Native Hawaiians Safety, Health and Welfare.

In Exhibit T-1.b is a picture of emotional duress of a kupuna that could not control his emotions, with two men trying their best to be strong for him and help him compose himself. This is an example of the struggle Native Hawaiians such as this Kupuna has endured his whole life as a Kanaka Maoli Standing for Native Hawaiian rights. Psychological genocide. This has been identified by the United Nations Declaration Rights of Indigenous People. See Exhibit T-1.a,1 UNDRIP

In Exhibit T-3.2 is State of Hawaii Constitution Article 12 Sec. 7. Reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendents of native hawaiiians who inhabited the Hawaiian Islands prior to 1778 subject to the right of the State to regulate such rights. (Add Const Con 1978 and election November 7, 1978. This is included in the FEIS pdf. Pg. 87, sec. 3-2 for the proposed TMT, and this also relates to OMKM CMP commitment that is written to include these rights of Native Hawaiians and protect.

In 2015 on Mauna A Wakea, I personally witness many incidents of threat, emotional abuse, intimidation, and physical violence by Agencies of the State of Hawaii, to Kupuna, Keiki, young men and women. I am affected as well, to sacrifice myself to protect further desecration to our Mauna A Wakea, for Native Hawaiian Rights and all who stand for it. 1

In Exhibits and testimonies show other wise with substantial effect on Native Hawaiians as well as non native hawaiiians, persons out of state to include State of Hawaii Constitution 1st Amendment, Freedom of Speech and religion.

In Exhibits T-3.a is Ahu "Ku Kia'i Mauna Kekahi" Established by Native Hawaiian and non hawaiiians under intense duress on June 22, 2015 dedicated and consecrated for prayers and offerings to the desecration of land by the bulldozing of the access road to the proposed TMT site. Under extreme threat, were guided by the spirit of our kupuna, and they acknowledged us of there presents by the elements around us, that this establishment for prayers and offerings, was Pono in Kapu Aloha.

In Exhibits T-3.b is Ahu " Ku Kia'i Mauna E Lua " Established by Native Hawaiian and non hawaiiians under greater emotion duress on June 23, 2015 dedicated and consecrated for prayers and offerings to the further desecration of land that had not been touched by bulldozers and excavators setting on proposed TMT site. Protectors were informed that the County Police, DLNR, TMT and its contractors will proceed in efforts to start construction. This caused extreme Duress upon all who were there and all who could not be there though out the Islands and across the U.S. and International countries. On June 24th, our Spirits of our Kupuna, and the Spirits of all, gave raise to a level of intensity where no matter what it took to stop this efforts by the proposed desecration of TMT in " Kapu Aloha" none violent, vigil of reverence to Mauna A Wakea, WE STOOD, that day through out the world. We continue to Stand today in Kapu Aloha.

Spirit of the Lands on Mauna A Wakea and Spirit of Native Hawaiian with Religious Spiritual Practices being threatened.

In December 2, 2015 KHNL news now (Mileka Lincoln) reports- The state "put the cart before the horse" when it issued a permit for construction of the Thirty Meter Telescope before a contested case hearing on the issue was resolved, the state Supreme Court ruled.

This Action by the State has not only put duress upon Native Hawaiian for protection of rights, but the state did not even follow its own rules. This has put the State of Hawaii and its political process in question. And the Direct harm it put upon Native Hawaiians and non hawaiians to constitutional laws that are to protect rights of people.

In the 8 criteria of DLNR, the State, County, University of Hawaii with there out of state and foreign investors, cannot and did not meet the eight criteria that has already cause harm to Native Hawaiians and none hawaiians in criteria 8, such as health and welfare, and more so, to the host culture Native Hawaiian with Hawaii State Constitution Article 12 sec. 7. And to the Hawaii State Constitution 1st Amendment, Freedom of speech and religious rights.

In History of the State of Hawaii, (under illegal Acts done by U.S.) to authorize the lease of a recognized national historic property of Conservation land in 1968, till today, has shown direct accumulative impact to Mauna A Wakea, with 48yrs of desecration to a most Sacred and Spiritual Wao Akua to Native Hawaiians the Host Culture. I am witness to this continued destruction. TMT will add more destruction and desecration to cultural and religious practices.

In disclosures of personnel directly involved in the abuse of lands of Native Hawaiians such as State Agents in BLNR, board of regents. For example Doc.295 disclosure of BLNR board member and his affiliations with U.H decisions, that has affected Mauna A Wakea and its Sacred Spiritual Wao Akua that feeds our Natural Resources, for the “decades”. Based on, Science Education, Economics, Foreign corporate investors, out of State business corporations profit and non-profit and Politics, not for the well being of Mauna A Wakea and its People, Native Hawaiian and non Hawaiian.

In witnessing the events of abuse upon people non hawaiians and Native Hawaiian during 2015 stand on the Mauna, to Protect, not to Protest, has given me a better understanding of economics that puts Agents and Officers of the State of Hawaii in positions to enforce authority of law upon people non hawaiians and Native Hawaiian even when BLNR wrongfully issued a permit without following its own rules. In this case, Native Hawaiian County Police, DLNR Officers, arresting Native Hawaiians, Construction Workers some Native Hawaiian, for Good Fellow hired by TMT corp.. This proposed development of TMT has caused harm on both sides.

Future of Mauna A Wakea and Substantial Adverse Impacts

In the decisions pertaining to Mauna A Wakea with accumulative development continuing to Impact its Sacred Spiritual Religious Practice to Native Hawaiians and non hawaiians. Mauna Kea is being disrespected for its Natural Resources it provides, such as “Water” to dikes, caverns, springs and aquifers, and Spiritual Sacredness that has given Protection from hurricane.

In providing protection to Mauna A Wakea the lower lands will flourish for the future. The Mauna will live and provide our water sheds with abundance of plant life, which gives off oxygen. More development of Observatories, such as TMT, for astronomy will ultimately cause future generations to suffer with less natural resources, with increase of population and decreasing our water sheds, disrupting the natural water flow of underground dikes, caverns, springs and aquifers.

In the world of astronomy, it is known that beyond the earth atmosphere Stars don't twinkle and can be studied clearer than anywhere on earth. Astronomy cannot provide "Water", to irrigate our farms and provide water for our live stalk. Replenish our water sheds that provides clean air. It would be foolish and selfish science to destroy natural resources that all people rely on. This is simple logic that needs to be taken seriously, and not taken for granted. Proposed TMT will increase disturbance of Natural Resources.

In the CDUA it provides a section of decommissioning of Observatories. It does not provide for Damage of Natural Resources such as, Historical 600,000 to 1.5,000,000yr pahoehoe lava flows with natural water flow of cracks and grieves, dikes and aquifers that is unknown in the proposed TMT site, that will be excavated more than two stories down. The Natural Flow of Water will be affected. Once damaged, it cannot be repaired.

In the CDUA it explains that the TMT will be the biggest and largest Telescope in the U.S. and the most powerful capable of exploring deeper into space and finding new stars and galaxies, and would give the State of Hawaii and its foreign Investors the state of the art Telescope which would make Astronomy in the U.S. ahead in the quest of new findings in space. It does not explain that there are other Telescopes being built larger than thirty meters, its not hard to understand that this is a competition, it will promote a larger and bigger telescope to stay ahead of the game in astronomy. The pattern repeats itself over and over again. It does not say that TMT is the last one. It does not say that 13 existing telescopes will be removed with a time frame from "start" to finish. There is no assurance that Mauna A Wakea and the Spiritual Deities of Water can live Free and be allowed to heal the land.

Mauna A Wakea under Threat to CDUA

In promoting education for destruction of natural resources for economics is not a good. Continuing this trend, will impact, the future generations with, detrimental results. Agencies of the State of Hawaii need to focus on educating our young generations to preserve and replenish these resources, more than destroying it. "The water is cleaner at the very top of the stream before it reaches the first one who drinks from it". This was told to me in boy scouts. "Mauna kea is the highest, the most sacred waters come from it, and the most respected. The CDUA for the proposed TMT cannot and will not be able to provide assurance that it will not contaminate these Sacred Spiritual Waters. The Waters of Hawaii Island are being contaminated in lower regions already.

In effort to preserve our natural resources for sustainability of all people's health safety and welfare, cannot be met by the CDUA for proposed TMT. In reference to DLNR criteria 8, cultural sites have been desecrated already.

In efforts to protect the rights of Native Hawaiians Health, Safety and Welfare as the host culture cannot be met by the CDUA for proposed TMT, by criteria 8 as well. Including the FEIS in reference to DLNR criteria 4, protection of natural resources, that connects Native Hawaiian Spiritual Religious Practices under Article 12 sec. 7. This has already contributed to emotional harm to Native Hawaiians as well as non Hawaiian.

In protection of Cultural Resources, SHPD sites, and fine spots on Mauna A Wakea. The FEIS cannot meet criteria 4, same as paragraph above. Destruction of established up right stones and Ahu have already been destroyed. And existing Ahus for Prayers and Offering are protected under Article 12 sec 7 now being threatened to be removed by OMKM, TMT, CMP and CDUA.

In protection of Ahus in proposed TMT site, established under duress caused by TMT proposed development, gives the rights of law to Native Hawaiians Traditional Customary Religious Cultural Practices, including Spiritual in Protection to State of Hawaii's Constitution Article XII section 7, State of Hawaii's 1st Amendment, Freedom of Speech, United Nations Declaration of Indigenous Rights and HRS 711-1107.

William Freitas

petrel), nēnē, and palila. They also traveled to the koa and 'ōhi'a forest on the mountain's lower slopes to gather wood for canoe-making and to collect bird feathers.

1.2.2 Contemporary Cultural Practices

As it may have been in ancient times, the Mauna Kea landscape is today considered by many in the Hawaiian community to be the most sacred and culturally significant location on the island of Hawai'i, if not in the whole of Hawai'i. While as Maly (1999:12) relates, "[t]his attachment to the mountain landscape is rooted in antiquity and remains important in the lives of Native Hawaiians today, who attribute spiritual and cultural values to Mauna Kea." The practices identified here as contemporary are either not part of a documented longstanding family tradition, are modern adaptations of ancient practices, or are new activities not traditionally practiced. Nonetheless, these contemporary cultural practices are significant to the practitioners and their families and may ultimately be the foundation for future traditional cultural practices.

Chief among the contemporary practices is the use of the whole of Mauna Kea as a spiritual and religious site of prayer and contemplation, which includes the building of family ahus or altars and the placement of offerings to honor families or as a form of personal spiritual worship. Other practices include the collection of basalt from Keanakāko'i; the scattering of ashes of cremated remains of families and friends; and subsistence and recreational hunting.

1.3 Mauna Kea and the *Lanau'u Mamao*² Concept

Mauna Kea as a kuahu to the unions of Wākea and Papahānaumoku, as well as, Wākea and Ho'ohōkūkalani, ties the Hawaiian people to the elder Hawai'i, and Hawai'i to them. The physical prominence of Mauna Kea as well as its stationing nearest to the heavens holds a spiritual significance for the Hawaiian people, a significance that can be expressed in likening the mountain to a sacred altar. This concept is best articulated through the work of Uncle Ed, one of the original members of Kahu Kū Mauna (Guardians of the Mountain) and a cultural practitioner with intimate knowledge of Mauna Kea. Uncle Ed describes the mountain as the physical manifestation of a lananu'u mamao, a sacred tower located within a heiau at and upon which worship takes place and offerings to the gods are made. As Malo (1851) relates, lananu'u mamao are constructed with three kahua (levels), the lowest and least restricted being the lana, which was used for the bestowal of offerings. The second kahua is called the nu'u, and is more sacred – being reserved for the priests and their attendants. The third and most sacred kahua is the mamao where only the high priest and king were allowed to ascend. At times of ritual significance, the lananu'u mamao was draped in 'oloa (fine white kapa), and in appearance was perhaps not unlike the upper slopes of Mauna Kea draped in snow.

When considering Mauna Kea as a representation of such an altar, one can begin to understand that the mountain, like the lananu'u mamao, is a revered medium through which contact is made with the gods. In the three-level construct of the lananu'u mamao, physical ascension is tied to escalating sanctity and restriction. With respect to Mauna Kea, the following model is applied: the lana would begin at an elevation above the areas of mundane resource procurement, at about 11,000 feet and extend to about 12,000 feet, to the zone where there is a concentration of ancient offering shrines as documented archaeologically. The nu'u, beginning around 12,000 feet extends to about 13,000 feet, to the point where the presence of pre-Contact archaeological features significantly diminishes. Above 13,000 feet is the mamao, the partition with the utmost sanctity and highest levels of restriction.

² The lananu'u mamao is one cultural concept to describe Mauna Kea. We recognize there may be other perspectives.

Return to the [Hawaiian Independence Home Page](#) or the [Legal Index](#)

STATE CONSTITUTION

THE CONSTITUTION OF THE STATE OF HAWAII

As Amended and in Force January 1, 1997



ARTICLE XII

HAWAIIAN AFFAIRS

HAWAIIAN HOMES COMMISSION ACT

Section 1. Anything in this constitution to the contrary notwithstanding, the Hawaiian Homes Commission Act, 1920, enacted by the Congress, as the same has been or may be amended prior to the admission of the State, is hereby adopted as a law of the State, subject to amendment or repeal by the legislature; provided that if and to the extent that the United States shall so require, such law shall be subject to amendment or repeal only with the consent of the United States and in no other manner; provided further that if the United States shall have been provided or shall provide that particular provisions or types of provisions of such Act may be amended in the manner required for ordinary state legislation, such provisions or types of provisions may be so amended. The proceeds and income from Hawaiian home lands shall be used only in accordance with the terms and spirit of such Act. The legislature shall make sufficient sums available for the following purposes:

1. development of home, agriculture, farm and ranch lots;
2. home, agriculture, aquaculture, farm and ranch loans;
3. rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved;
4. the administration and operating budget of the department of Hawaiian home lands; in furtherance of (1), (2), (3) and (4) herein, by appropriating the same in the manner provided by law.

Thirty percent of the state receipts derived from the leasing of cultivated sugarcane lands under any provision of law or from water licenses shall be transferred to the native Hawaiian rehabilitation fund, section 213 of the Hawaiian Homes Commission Act, 1920, for the purposes enumerated in that section. Thirty percent of the state receipts derived from the leasing of lands cultivated as sugarcane lands on the effective date of this section shall continue to be so transferred to the native Hawaiian rehabilitation fund whenever such lands are sold, developed, leased, utilized, transferred, set aside or otherwise disposed of for purposes other than the cultivation of sugarcane. There shall be no ceiling established for the aggregate amount transferred into the native Hawaiian rehabilitation fund. [Ren and am Const Con 1978 and election Nov 7, 1978]

ACCEPTANCE OF COMPACT

Section 2. The State and its people do hereby accept, as a compact with the United States, or as conditions or trust provisions imposed by the United States, relating to the management and disposition of the Hawaiian home lands, the requirement that section 1 hereof be included in this constitution, in whole or in part, it being intended that the Acts of the Congress pertaining thereto shall be definitive of the extent and nature of such compact, conditions or trust provisions, as the case may be. The State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to the

continuance of the Hawaiian homes projects for the further rehabilitation of the Hawaiian races shall be faithfully carried out. [Ren and am Const Con 1978 and election Nov 7, 1978]

COMPACT ADOPTION; PROCEDURES AFTER ADOPTION

Section 3. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the constitution of this State, as provided in section 7, subsection (b), of the Admission Act, subject to amendment or repeal only with the consent of the United States, and in no other manner; provided that (1) sections 202, 213, 219, 220, 222, 224 and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212 and other provisions relating to the powers and duties of officers other than those charged with the administration of such Act, may be amended in the constitution, or in the manner required for state legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for state legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of such Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for state legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands," as defined by such Act, shall be used only in carrying out the provisions of such Act. [Add 73 Stat 4 and election June 27, 1959; ren and am Const Con 1978 and election Nov 7, 1978]

PUBLIC TRUST

Section 4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public. [Add Const Con 1978 and election Nov 7, 1978]

OFFICE OF HAWAIIAN AFFAIRS; ESTABLISHMENT OF BOARD OF TRUSTEES

Section 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians. There shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The board shall select a chairperson from its members. [Add Const Con 1978 and election Nov 7, 1978]

POWERS OF BOARD OF TRUSTEES

Section 6. The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board. [Add Const Con 1978 and election Nov 7, 1978]

[Justia](#) › [US Law](#) › [US Codes and Statutes](#) › [Hawaii Revised Statutes](#) › [2009 Hawaii Revised Statutes](#) › [Volume 14](#) › [TITLE 37 - HAWAII PENAL CODE](#) › [CHAPTER 711 - OFFENSES AGAINST PUBLIC ORDER](#) › [§711-1107 - Desecration.](#)

[View the 2015 Hawaii Revised Statutes](#) | [View Previous Versions of the Hawaii Revised Statutes](#)

2009 Hawaii Code

Volume 14

TITLE 37 - HAWAII PENAL CODE

CHAPTER 711 - OFFENSES AGAINST PUBLIC ORDER

§711-1107 - Desecration.

§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

T-3.3

3.2 Cultural Resources Practices and Beliefs

Articles IX and XII of the State Constitution, other state laws, and the courts of the state require government agencies to promote and preserve cultural resources of native Hawaiians and other ethnic groups. To assist decision-makers in the protection of cultural resources, HRS Chapter 343 and HAR Section 11-200 establish rules for the environmental impact assessment process requiring project proponents to assess proposed actions for their potential impact on cultural resources.

“Cultural resources” is a broad term that encompasses cultural and religious practices and beliefs plus historic properties, such as structures over 50 years old and archaeological sites. The historic properties component of cultural resources, including archaeological sites, is discussed in Section 3.3. This section focuses on cultural resources practices and beliefs in the region and specific Project areas, the potential impact of the Project on those resources practices and beliefs, and mitigation measures the Project will employ to minimize those potential impacts.

3.2.1 Environmental Setting

In Hawaiian culture, natural and cultural resources are one and the same. Native traditions describe the formation (literally the birth) of the Hawaiian Islands and the presence of life on, and around them, in the context of genealogical accounts. All forms of the natural environment, from the skies and mountain peaks, to the watered valleys and lava plains, and to the shore line and ocean depths are believed to be embodiments of Hawaiian gods and deities.

It was the nature of place that shaped the cultural and spiritual view of the Hawaiian people. “Cultural Attachment” embodies the tangible and intangible values of a culture – how a people identify with, and personify the environment around them. It is the intimate relationship (developed over generations of experiences) that people of a particular culture feel for the sites, features, phenomena, and natural resources, etc., that surround them - their sense of place. This attachment is deeply rooted in the beliefs, practices, cultural evolution, and identity of a people.¹⁵

The epic “Kumulipo,” a Hawaiian Creation Chant, was translated by Martha Warren Beckwith (1951). The “pule” (prayer) was given, in ca. 1700, at the dedication of the new-born chief, Ka-‘i-i-mamao, also known as Lono-i-ka-Makahiki. Beckwith described the *pule* as:

The Hawaiian Kumulipo is a genealogical prayer chant linking the royal family to which it belonged not only to primary gods belonging to the whole people and worshiped in common with allied Polynesian groups, not only to deified chiefs born into the living world, the Ao, within the family line, but to the stars in the heavens and the plants and animals useful to life on earth, who must also be named within the chain of birth and their representatives in the spirit world thus be brought into the service of their children who live to carry on the line in the world of mankind ...¹⁶

¹⁵ cf. James Kent, “Cultural Attachment: Assessment of Impacts to Living Culture.” September, 1995.

¹⁶ Beckwith 1951:8

BICKERTON ■ DANG

A LIMITED LIABILITY LAW PARTNERSHIP

September 30, 2016

Via Email to Suzanne.case@hawaii.gov
Suzanne D. Case, Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Re: CDUA HA-3568 (Thirty Meter Telescope) Contested Case.

Dear Suzanne:

I have written the following disclosure. I would appreciate it very much if you would forward this to the parties in the contested case, our fellow board members, and to anyone else you may find appropriate.

**Disclosure of Board Member Stanley H. Roehrig
re CDUA HA-3568 (Thirty Meter Telescope)**

BACKGROUND

I was born in Honolulu, on March 11, 1939. I was licensed to practice law in the State of Hawaii On November 10, 1965. I have practiced law in Hilo, Hawaii for about 51 years. We dissolved our last Hilo law firm in 2008. I have been *Of Counsel* for Bickerton, Dang LLLP for about five years.

I was appointed to the legislature in January 1969 by Governor John A. Burns, a leader of the Democratic Revolution in Hawaii. I served until 1976. A man of few words, he strived to bring the entire community together and move the State of Hawai'i forward in harmony, "Aloha aku, Aloha mai." My home precinct was Keaukaha. My Keaukaha precinct campaign managers during those years were Genesis Lee Loy and Samson Kela, Sr. Measures passed between 1969-1976 affecting the future of Hawai'ian Cultural Rights included approval of the University of Hawai'i at Mānoa School of Law; SB 660 (1973), extending the Statute of Limitations on Adverse Possession claims from 10 to 20 years; and the 1976 revision of the Uniform Probate Code CH. 490 HRS to reflect local intestacy law refinements affecting the Hawai'ian community.

I served on the Board of Regents, State of Hawaii from 1997-1999. During that time, emphasis by the Board and the Administration was given in part to enhance the management of Mauna Kea and develop a Hilo-based astronomy infrastructure.

Between September 1999 and May 14, 2005, I was a student at the Ka Haka' Ula 'O Ke'elikōlani Hawai'ian Language College at UH-Hilo. I graduated on May 14, 2005 with a **Palapala Hō'ōia Kālai'ike** (completion of all requirements for Hawai'ian Language). My law partner and I attended the Hawai'ian Language College to develop better skills to represent local Hawai'ian families to recover land lost to developers and plantation entities over the past 150 years. Much of the historic information regarding land title is uniquely documented only in the

T-3.5

Received
Office of Conservation and Coastal Lands
2016 Sept 30 6:47 pm
Department of Land and Natural Resources
State of Hawaii

Hawaiian language. English translations by the plantations and landowners were not always reliable.

I served in the State of Hawaii Land Use Commission (LUC) from 1999-2003. On September 11, 2000, while I was a member of the LUC, the Supreme Court of the State of Hawaii, in *Ka Pa`akai O Ka`aina et al. v. Land Use Commission, State of Hawaii et al.* 94 Hawai`i 31 (2000), Vacated and Remanded the State Land Use Commission's reclassification of approximately 1,000 acres of land from the State Land Use Conservation District. The Court held that the LUC's Findings of Fact and Conclusions of Law pertaining to a large area in proximity to the 1801 Hualalai lava flow and the shore line in the Ka`upulehu area of North Kona were insufficient to preserve and protect customary and traditional rights of Native Hawaiians protected by Article XII Sec. 7 of the Hawai`i Constitution.

After the Court's decision, the LUC revisited the issues and facts of the Ka Pa`akai docket. The LUC entered a revised Order.

The revised LUC Order generally provided as follows:

- (I.) A permanent plan of joint management of the development at Ka`upulehu, Hawai`i.
- (II.) A plan for the set aside of a particular area of the 1801 lava flow for Hawai`ian worship.
- (III.) A plan for the reinterment or other action resulting from to the discovery of ancient human burial remains on the premises.
- (IV.) A plan for the harvesting of sea salt, gathering of shells, and other shoreline resources.

That 2nd Order of the LUC was not appealed.

I am presently serving on the Board of Land and Natural Resources as the Big Island member for a term expiring June 30, 2018.

CONTACT WITH THE CONTESTED CASE PARTIES

(1) **Applicant for this CDUA is the University of Hawaii at Hilo.**

(a) As mentioned above, I was a member of the Board of Regents of the University of Hawaii from approximately December, 1997 until June 30, 1999. In that official capacity, I engaged in no decision making or other discussions with respect to the TMT project at the summit of Mauna Kea.

(b) After I became a member of the BLNR on July 1, 2014, and until the Decision by the Supreme Court of Hawaii in December, 2015, vacating the UHH Conservation District Use Permit, herein. I had contact with administrative personnel at UH Hilo. This included Chancellor Don Straney; his secretary, Marsha Heller; and Ka`tu Kimura, Director of the Imiloa Astronomy Center. Since December, 2015, when the Vacation Order from the Supreme Court was issued, I have suspended all contact with UH Hilo staff on any matters relating to the TMT contested case docket.

BICKERTON ■ DANG

A LIMITED LIABILITY LAW PARTNERSHIP

(2) **Party/Petitioners Mauna Kea Anaina Hou, Kealoha Pisciotta, Paul K. Neves, et al.**

(a) During the period from approximately 2002 through 2008, I discussed the subject of Hawai`ian Culture and PASH rights with *Kealoha Pisciotta* on approximately a half dozen occasions. I remember at least five or six occasions when this occurred at canoe races, both in Hilo and on the Kailua-Kona pier. This occurred both during the races and afterward at the post race club potlucks. She also came to our law office at the Hilo Lagoon Centre. I confirmed this with my former law partner, Andrew P. Wilson. She participated in a discussion in our library with five or six other people, including Mr. Wilson and myself about PASH rights. There was no discussion about the TMT Project.

(b) I also know *Paul K. Neves*. He lives about a block and a half from our house in Keaukaha. He lives on Nahale-a Street. When I am exercising on the road in the morning, I see him walking his dog.

(3) **Party/ TMT International Observatory LLC.**

(a) Before the State Supreme Court's December 2015 decision above, I was introduced to Henry Yang. He visited me at my office to introduce himself. We did not discuss the TMT project. I also met Sandra Dawson to pick up an invitation in 2014. We had no discussions about the TMT project.

(4) **Party/Perpetuating Unique Educational Opportunities, Inc (PUEO), Inc.**

(a) I have known both attorneys Lincoln Ashida and Newton Chu for a number of years as fellow members of the Hawai`i Bar Association. I believe they are both partners of the Torkildson, Katz et al. law firm. In 2015, Lincoln Ashida, of that firm, was co-counsel for the Defense in a major personal injury case here on the Big Island. Bickerton, Dang, LLLP, of which I am *Of Counsel*, represented the Plaintiffs, a Chinese family from Puna. On the eve of the trial in April 2015, the case was sent to mediation by the Third Circuit Trial Court. Judge Amano (Ret.) was the mediator. A mediated resolution was reached in about June, 2015. (See also: "Interactions with Judge Amano")

(b) I have known *Shadd Keahi Warfield* since 2002. We were students together at the Ka Haka `Ula o Ke`elikōlani, College of Hawai`ian Language at the University of Hawaii at Hilo. He graduated a year or two before me. I graduated in 2005. In approximately 2006 or 2007, he became a paddler at Keaukaha Canoe Club and also a volunteer at the Keaukaha One Youth Development (KOYD), a 501(c)(3) public charity in Keaukaha.

(c) KOYD was conceived by Jimmy Nani`ole of Hilo, then President of the Keaukaha Canoe Club, to provide support to at-risk local youth, principally in the Keaukaha-Pana`ewa Hawai`ian Homes area. I supported him in his efforts. Keahi Warfield eventually became Executive Director of KOYD after Jimmy Nani`ole stepped down as President of the Keaukaha Canoe Club and KOYD. My wife and I were volunteers on the board of KOYD until March, 2015, when we resigned. KOYD has its after school program next door to our house at

the former Doc Hill premises, which is presently owned by me, my wife, and our three children as a Limited Liability Family Partnership called "Makana Kai LLFP." Since approximately 2014, KOYD has been paying a portion of the maintenance and upkeep on the premises. The youth program generally meets four to five afternoons a week at the premises.

The program also has a lease (BOC Document No. Doc A-50930414) (TMK: 3-2-014: 033, 055, 056, 057) across the street from the Doc Hill premises until 2018. The educational uses include farming, canoe carving, and canoe restoration.

KOYD also leases a 60-acre parcel (BOC Document No. Doc A-50930413) (TMK 3-8-7-013:063) in Opihihale, Kona for camping trips and shoreline fishing on at least a quarterly basis until 2018.

(d) I have known **Richard Ha** for a number of years. Richard's father was my client until he died. His father was a chicken farmer in the Pana'ewa farm lots area.

(e) I have had no involvement of any nature whatsoever with PUEO, Inc. I was not involved in its incorporation nor have I been involved in any of its ongoing operations or decision making.

(5) **Party/ Kalikolehua Kanaele.**

I first met **Kaliko Kanaele** at my law office in Hilo in June or July, 2005, after I graduated from the UH Hilo Hawai'ian Language College. He and two other representatives of the Royal Order of Kamehameha made a visit to my office. We discussed Hawai'ian Cultural matters. I also saw him within the last year or two at the Hale Kaulike Courthouse here in Hilo.

(6) **Party Stefanie-Malia Tabbada**

Ms. Tabbada's mother, Margaret Dancel, formerly of Na'alehu, was my client and political supporter in the 1960's. I briefly met Stefanie on several occasions at the Dancel home years ago.

(7) **Party Dwight J. Vincente**

I have seen Dwight Vincente at the various court houses in Hilo from time to time.

(8) **Relationships with Law Firms in the TMT contested case.**

(a) **Carlsmith Ball LLP. Maui Cases - Adverse**

(1) 'Ulupalakua Ranch Case

We represented Defendants' Snowden from the 1990's until early 2000's. Carlsmith Ball represented the developer. The case was settled sometime in 2003.

(2) Lochland Holdings v. Keleau et al.

BICKERTON ■ DANG

A LIMITED LIABILITY LAW PARTNERSHIP

Carlsmith Ball represents the Plaintiff, and our prior firm represented the Defendants Snowden. This case is 19 years old and is still ongoing. It has been to the Appellate Courts twice so far. Counsel Richard Wurdeman represents other Defendants. My former law partner, Andrew P. Wilson, and I still represent Defendants Snowden.

(b) **Carlsmith Ball LLP. Big Island Cases - Adverse**

(1) Ho`opuloa Mauka

We represented Defendants Kuahiwinui. Carlsmith Ball represented Dillingham Investment.

(2) Pahochoe/Kahuna `Aina Heirs

Carlsmith Ball represented the Magoon Estate. We represented one of the Fred Iona heirs.

(3) Ka`awaloa Ahupua`a Litigation

Carlsmith Ball represented the major land owner. We represented one lot owner.

(4) Kanani Ili v. Kuwahara et al.

We represented the Plaintiff in a Hawai`ian Quiet Title/Fraud case. The matter went to a jury trial. The verdict was appealed. It was affirmed by the State Supreme Court.

(5) The Hīlea Ahupua`a Litigation

We represented numerous Hawai`ian Plaintiffs. The trial court granted Ka`ū Sugar/Olsen Trust Partial Summary Judgment. It was appealed and affirmed by the State Supreme Court in 2007. (See *Clara Apili Omerod et al v. Heirs of Kainoa Kupuna et al*, 116 Hawai`i 239, Nov. 15, (2007)).

Carlsmith Ball represented Ka`ū Sugar. After the Supreme Court decision, Judge Amano commenced mediation between some of the Parties. Clients we represented settled some issues with successor, Olsen Trust. Other PASH issues are ongoing before Judge Amano. I have withdrawn from the case and further mediation. My former law partner, Andrew P. Wilson, is still representing my former clients.

University of Hawai`i at Mānoa Professor Davianna McGregor was hired in the early stages of the above litigation as an expert witness. She has been listed as a potential witness in the TMT contested case.

(6) Bickerton, Dang LLLP, of which I am *Of Counsel*, represents the Plaintiffs in a major personal injury case in Kona, *Haynes v. Clark Realty et al*. Carlsmith Ball represents one of the Defendants, Allied Self Storage. That case is on appeal.

BICKERTON ■ DANG

A LIMITED LIABILITY LAW PARTNERSHIP

(7) Carlsmith Ball represented McCandless Ranch in a boundary dispute. We represented a native Hawai'ian neighbor. The case was settled before trial.

(c) Carlsmith Ball tax attorney, Jim Starshak, has provided estate planning advice to members of my family from time to time.

(9) **Interaction With The Hearing Officer Judge Amano**

Judge Amano (Ret) served as a Circuit Court Judge in the Third Circuit. I appeared before her in numerous trials and related motions. She was also a mediator on a major personal injury action brought in the Third Circuit involving a Chinese family from Puna as plaintiffs. I participated in this matter as Of Counsel for the plaintiffs as part of the Bickerton, Dang LLLP law firm. Lincoln Ashida of the Katz et al defense firm represented one of the major defendants in that case. A mediated settlement was reached by Judge Amano on or about June 2015.

I also participated as co-counsel with one of my former partners, Andrew P. Wilson in a quiet title action in Ka'u where Judge Amano was a mediator in the Hilea Ahupua'a litigation (See *infra* at Carlsmith Ball) (See also *Omerod et al v. Heirs of Kaheananui et al* 116 Hawai'i 239, Supreme Court of the State of Hawai'i (2007)).

(10) **Financial Interest/Bias/Partiality**

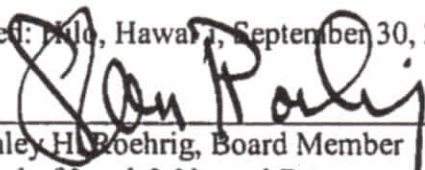
I have no financial interest in the outcome of this CDUA. I have no financial relationship with any of the parties. Based on my background in the public sector, including service in the State of Hawai'i House of representatives, the Board of Regents, the Land Use Commission, and the BLNR, I have strived to make reasonable decisions in the public interest as a voting member of the above public entities.

CONCLUSION

I have disclosed above, my contacts and relationships with the parties and representatives of those parties. None of these relationships will influence my actions. I have not been asked to state or agree to a position by anyone with respect to any such decision. I have in no way prejudged my position in any matter before the BLNR with respect to the TMT contested case.

Based on the above, I do not think that a reasonable person knowing all the facts herein would conclude that the above context would cause me to be partial for or against this CDUA or any of the parties thereto.

Dated: Hilo, Hawaii, September 30, 2016


Stanley H. Roehrig, Board Member
Board of Land & Natural Resources
State of Hawai'i

BICKERTON ■ DANG

A LIMITED LIABILITY LAW PARTNERSHIP

(c) In evaluating the merits of a proposed land use, the department or board shall apply the following criteria:

- (1) The proposed land use is consistent with the purpose of the conservation district;
- (2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;
- (3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management", where applicable;
- (4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;
- (5) The proposed land use, including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;
- (6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;
- (7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and
- (8) The proposed land use will not be materially detrimental to the public health, safety, and welfare.

The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria. [Eff 12/12/94; am and comp]
(Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

Note: For regulation of activities in:
State Parks; see Chapter 13-146.
Forest Reserves; see Chapter 13-104.



T-3.j 12

T-3.j 13

