

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 10, 2013

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Kauai

Enforcement Action and Imposition of Fine against Ku'i Palama for Unauthorized Waste Disposal and Trespassing on State Unencumbered Lands; Indefinite Closure and Remediation of State Unencumbered Lands; Request to the Department of the Attorney General to Commence Criminal and/or Civil Proceedings to Recover Costs for Remediation of Unencumbered State Lands at Hanapepe, Kauai, Tax Map Key: (4) 1-8-005:008.

PURPOSE:

Remediation of Unauthorized Waste Disposal and Trespassing by Ku'i Palama.

LEGAL REFERENCE:

Section 171-6 and 31.6, Hawaii Revised Statutes, as amended (HRS); Hawaii Administrative Rules (HAR) Section 13-221-4, and other applicable sections of the HRS and HAR

LOCATION:

Portion of Government lands at Hanapepe, Kauai identified by Tax Map Key: (4) 1-8-005:008, as shown on the attached map labeled Exhibit "A".

PARCEL AREA:

22.65 acres, more or less

LAND OWNERSHIP:

The subject unencumbered land is owned by the State of Hawaii. According to the County of Kauai's Real Property Tax Office, A & B Hawaii, Inc. is the owner of the private land, designated as TMK: (4) 1-8-005:011, surrounded by State land. See Exhibit "A"

HRS CHAPTER 343:

No environmental assessment was conducted for the unauthorized work in the subject parcel. Staff believes the Unauthorized Waste Disposal and Trespassing can be remediated under Land Division's Exemption List. See Exhibit "B".

BACKGROUND:

State TMK (4) 1-8-005:008 is a 22.65 acre parcel zoned Conservation with a subzone Resource. It entirely surrounds A & B Hawaii, Inc. property designated as TMK (4) 1-8-005:011. The State parcel was previously under lease to Manuel Andrade. On May 9, 2011 the County of Kauai notified the Kauai District Land Office (KDLO) that there were possible violations on the property being leased by Mr. Andrade. On May 11, 2011 Staff filed a report stating that Mr. Andrade had confronted the "Palama brothers" on the unlawful use of his leased property. He stated that the Palamas claimed that the land was "theirs" and that they had documentation to prove it. On October 6, 2011 Mr. Andrade was notified that the unauthorized grubbing and grading occurring on the property was in violation of his lease. On January 1, 2012 Mr. Andrade's lease expired with the issues unresolved.

On September 26, 2012, staff conducted an inspection of the property. Multiple violations were found on the State parcel including waste disposal, grubbing, grading, and water diversion from the Hanapepe River. Other State and County violations including unpermitted structures and an unpermitted cesspool were found on the adjacent private property owned by A & B Hawaii, Inc. While departing the property staff was confronted by Mr. Ku'i Palama and asked why staff was on the property. This was staff's first encounter with Mr. Palama. The following day, September 27, 2012, staff was notified of a large fire (approximately 20 acres) that was started on the parcel. The fire was burning down Hanapepe Valley, pushed by high winds, towards homes and farms. The Kauai Fire Department along with an adjacent State permittee, Gay & Robinson, Inc. extinguished the fire. The Kauai Fire Department, per Department protocol, did not do an investigation because there was no loss of life or property.

October 10, 2012, Land Division staff met with staff from A & B Properties, the management for A & B Hawaii, Inc., and Mr. Ku'i Palama along with his native Hawaiian advisor. The discussion was regarding Mr. Palama's claim of ownership and the State and private owner's rights to manage the property. There was also discussion about the fire and while Mr. Palama would not admit to having started the fire on September 27, 2012 he did admit to having cut trees and burned them in the past. Staff

clearly stated that this was in violation of Conservation rules and County ordinances and that it caused a serious risk for the health and safety of the public. Mr. Palama provided staff with information about his claim of ownership and staff stated an abstract of title would be ordered to determine if Mr. Palama had a valid claim. Because the process to complete an abstract takes an extended period of time, Land Division Staff suggested that Mr. Palama could apply to lease the property under a revocable permit if he was willing to meet DLNR's requirements for insurance and proper management of the property. No application to use the property has been received as of the date of this submittal. After reviewing all documentation on the matter, staff now believes that due to the hostile nature and disregard that Mr. Palama and his associates show for the State's public trust obligations, staff would no longer recommend issuing a permit to him.

On October 10, 2012, the Commission on Water Resource Management issued a cease-and-desist for the diversion of water from the Hanapepe River. Mr. Ku'i Palama claims Kanaka Maoli rights and refutes the State's authority over him in the matter. Mr. Palama is claiming gathering and cultivating rights for the taking of water for the purpose of growing taro.

On December 3, 2012, the State Abstractor prepared an opinion (Exhibit "C") that states that the State Parcel TMK (4) 1-8-005:008 came to the State from the Territory as a portion of the un-awarded Government "Crown Lands". At no time in the past did Mr. Ku'i Palama or his family appear to have an ownership interest in the property. The Abstractor's opinion specifically excluded A & B Hawaii, Inc. TMK (4) 1-8-005:011.

From January through March 2013, the KDLO continued to receive calls about the river diversion causing flooding and other general complaints about the Palamas' behavior in the valley. On March 1, 2013, staff conducted another inspection. Additional grading, fencing, and building was noted and the water diversion from the river caused additional flooding of a river crossing area, preventing private property owners and the County of Kauai Department of Water from crossing the river.

Staff was unsuccessful at obtaining a satisfactory bid to survey the State parcel. The survey was desired primarily to determine the location of the unauthorized grading, structures, cesspool and other improvements. On March 20, 2013, A & B Properties contracted Esaki Surveying to pin and flag the corners of its parcel to assist in determining the location of the violations. Photos and a map with structure location are attached as Exhibit "D".

On March 22, 2013, staff went to the property with a Division of Conservation and

Resources Enforcement (DOCARE) officer to take photos of the flagging as the surveyors were placing the corner markers. It was correctly assumed that immediately after leaving the property, Mr. Palama and his associates would remove the pins. While Staff was taking photos, Mr. Ku'i Palama arrived at the property and became increasingly agitated. Prior to leaving, KDLO staff served Mr. Palama with a Notice to Vacate, Exhibit "E", and posted a sign at the entrance of the State property notifying anyone entering the property that, amongst other restrictions, no trespassing was permitted. While exiting the property staff was confronted by another man, Lance Palama, who was very agitated by staff's presence.

On March 25, 2013 Mr. Ku'i Palama e-mailed a Notice to Cease and Desist to Land Division Staff and DOCARE Staff, Exhibit "F". In his Notice Mr. Palama States that "The *de facto* STATE OF HAWAII, are in no way shape or form, Heir, Successors or are they Hoa'aina or Kanaka Maoli of Ko Hawai'i Pae 'Aina." The Notice goes on to state that the State is violating his rights as a Kanaka Maoli.

#### ENVIRONMENTAL IMPACTS:

The objective of the Conservation District, Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. While grubbing, grading and agricultural development may be allowed within the subzone, those actions would require permission of the property owner, a Conservation District Use Application, and a management plan. Mr. Ku'i Palama has refused to recognize the State of Hawaii's authority to manage the parcel and submit applications to DLNR's Commission on Water Resource Management (CWRM) or the Office of Conservation and Costal Lands (OCCL). There are separate violations that concern the diversion of the Hanapepe River that will be addressed to CWRM, and the unpermitted grubbing, grading, and construction within the Conservation zone that will be addressed to the Board by OCCL.

In this case, Mr. Ku'i Palama, knowingly trespassed on and made improvements to the State property without complying with the required procedures for projects on State land.

#### DISCUSSION:

The 2008 Legislature amended Hawaii Revised Statutes (HRS) Section 171-6 to augment the Department's enforcement powers for natural resource violations. The Department sought this amendment in response to an increased incidence of such violations. The Department explained to the Legislature that these violations were causing a considerable

strain on the Department's ability to fulfill its public trust obligation to protect State resources. Examples of violations included the operation of unpermitted surf schools and other unauthorized commercial activities on public beaches, operation of all-terrain vehicles on unencumbered or other restricted public lands, damage to archeological, historical, or geologic features, and destruction, defacing, or removal of natural features or natural resources on public lands.

Increasing the severity of the penalties for civil violations of the State's natural resources laws was seen an effective means for deterring unlawful behavior. Under prior law, the remedy for encroachment on public lands was for the violator to restore public land, if altered, to its original condition and assume the costs thereof, but did not require the payment of administrative costs and damages incurred by the Department. Other infractions of chapter 171, HRS, and the rules adopted thereunder for which a penalty is not otherwise provided, require the violator to pay for administrative costs and damages incurred by the Department. The 2008 legislation corrected that inconsistency by requiring the violator who encroaches on public land to be liable for administrative costs incurred by the Department and for payment of damages. The Governor signed the bill into law under Act 215, Session Laws of Hawaii 2008.

HRS Section 171-6 now provides in part as follows:

Section 171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26. In addition to the foregoing, the board may:...

(12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:

- (A) Be fined not more than \$1,000 a day for the first offense;
- (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
- (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
- (D) Assume such costs as may result from adverse effects from such restoration; and
- (E) Be liable for administrative costs incurred by the department and for payment of damages....

(15) Set, charge, and collect reasonable fines for violation of this chapter or

any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined not more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation, provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
- (B) Fined not more than \$10,000 per violation for a second violation within five years of the last violation, provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
- (C) Fined not more than \$20,000 per violation for a third or subsequent violation within five years of the last violation, provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii state constitution;

Staff notes that this violation cannot be handled through the Department's Civil Resource Violation System (CRVS). According to the Penalties Coordinator, the penalty schedule has to be approved by the Land Board before any cases can be handled by the CRVS.

The penalty schedule has not yet been approved.

In part the Notice to Vacate served to Mr. Palama on March 22, 2013 stated:

ANY AND ALL PERSONS FOUND OCCUPYING, CAMPING  
AND/OR RESIDING UPON SUBJECTS LANDS AFTER 6:30 A.M.,  
March 25, 2013, SHALL BE SUBJECT TO ARREST AND  
PROSECUTION FOR TRESPASSING AND ALSO SHALL BE  
SUBJECT TO A FINE OF UP TO \$5,000 PER DAY, PLUS  
ADMINISTRATIVE COSTS AND DAMAGES FOR VIOLATIONS OF  
THE PROVISIONS OF SECTION 171-6, HRS, AS AMENDED

Staff is recommending against allowing Mr. Ku'i Palama to remediate the property at his own expense. The conservation property is too sensitive of an area for the work to be entrusted to persons who have such disregard for the State's property rights and public trust obligations. Rather, staff recommends that the State hire a contractor and make Mr. Palama liable for the expense.

Staff is recommending a fine of \$5,000 of which is strictly a penalty to deter future violations on the State lands. Staff recommends that the cost to remediate the property be assessed after the final cost has been determined. Staff is not recommending any administrative costs because staff did not document their time on this investigation.

Additionally, the Board has authority under Hawaii Administrative Rules Section 13-221-4 to close the subject land:

Closing of areas. The board or its authorized representative may establish a reasonable schedule of visiting hours for all or portions of the premises and close or restrict the public use of all or any portion thereof, when necessary for the protection of the area or for the safety of and welfare of persons or property, by the posting [of] appropriate signs indicating the extent and scope of the closure. All persons shall observe and abide by the officially posted signs designating closed areas and visiting hours.

Staff is including a recommendation below that the Board order the closure of the land to all persons except those who have a written right-of-entry permit from the Chairperson. The Kauai District Land Office will post signs at appropriate entry points to the property advising that the area is closed and trespassers will be fined \$1,000 per day of trespass onto the land.

Finally, Mr. Ku'i Palama has failed to show that his use of the land fits within any native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii state constitution. The Land Board addressed a similar issue of native Hawaiian rights to grow taro on State land in Kau, Hawaii during its January 13, 2011 meeting under Item D-6.

Mr. Makuakane [asked] about his rights for subsistence. Deputy Attorney General said people can have Native tenant rights, but those rights don't include going on to somebody else's property which in this case the State's to start operating a farm without any authorization. It may include gathering rights and other things, but it does not include the right to occupy the property and start a farm on somebody else's property. To the extent he has such rights those rights are not affected by the disposition, but in the view of the Department of the Attorney General those rights do not include the right to occupy or run a farm on the property.

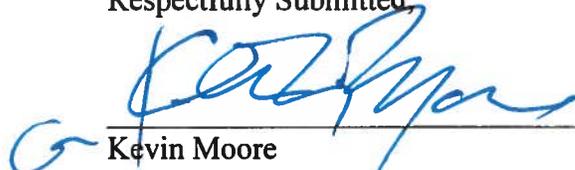
RECOMMENDATION: That the Board:

1. Finds that Ku'i Palama violated the provisions of Chapter 171-6, Hawaii Revised Statutes regarding unauthorized use and trespassing on public land and is hereby ordered to pay a fine of \$5,000 within thirty (30) days of the date of the Board's action May 10, 2013. The fine shall be paid to the Department of Land and Natural Resources.
2. Hereby orders the closure of the subject land to all persons except those who have a written right-of-entry permit from the Chairperson of the Board of Land and Natural Resources to enter upon the land. The lands shall remain closed 24-hours-a-day until such time as the Chairperson determines in writing that the closure order is no longer necessary or can be amended to allow limited or unrestricted public access. The Kauai District Land Office is directed to post signs indicating the extent and scope of the closure at appropriate entry points to the land. Any person who defaces or removes any such sign shall be fined \$1,000 per sign in addition to any other penalty that may be imposed under applicable law.
3. Hereby orders that in the event Ku'i Palama, or any other persons who do not have a right-of-entry permit from the Chairperson, shall enter the land on or after May 17, 2013, they shall be subject to arrest and prosecution in accordance with

applicable laws, and shall be fined \$1,000 for each day or part thereof that they remain on or are found on the land. As to Ku'i Palama, such fines are to be in addition to the \$5,000 fine imposed above.

4. Directs the Kauai District Land Office to take all necessary steps to remove all encroachments and nuisances from the land, coordinate with the Commission on Water Resource Management on the termination of the unauthorized water diversion, coordinate with the Office of Conservation and Coastal Lands to abate all unpermitted activity on the land, and coordinate with the Division of Conservation and Resources Enforcement to secure the land and remove all trespassers.
5. Requests the Department of the Attorney General to commence appropriate civil and/or criminal actions against Ku'i Palama and any other responsible parties to recover costs, including but not limited to, administrative costs, incurred by the Department in removing all encroachments and trespassers and restoring the land to a condition acceptable to the Chairperson.

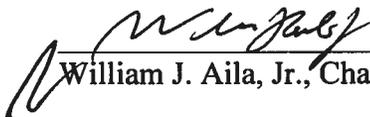
Respectfully Submitted,



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Kevin Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:



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William J. Aila, Jr., Chairperson





**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 10, 2013

**EXEMPTION NOTIFICATION**

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Enforcement Action and Imposition of Fine against Ku'i Palama for Unauthorized Waste Disposal and Trespassing on State Unencumbered Lands; Indefinite Closure and Remediation of State Unencumbered Lands; Request to the Department of the Attorney General to Commence Criminal and/or Civil Proceedings to Recover Costs for Remediation of Unencumbered State Lands at Hanapepe, Kauai, Tax Map Key: (4) 1-8-005:008.

**Project / Reference No.:** Refer to TMK (4) 1-8-005:008

**Project Location:** Hanapepe, Kauai, Tax Map Key: (4) 1-8-005:008

**Project Description:** Enforcement Action and Imposition of Fine against Ku'i Palama for Unauthorized Waste Disposal and Trespassing on State Unencumbered Lands

**Consulted Parties:** CWRM, OCCL

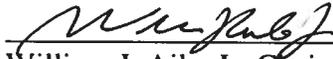
**Exemption Class No. and Description:** In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated December 4, 1991, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No.8 that states: "Demolition of structures, except those structures located on any historic site as designated in the National Register of Hawaii Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, or Chapter 6E, Hawaii Revised Statutes [HAR 11-200-8(a)(8)]"

**Exhibit B**

Exemption Notification for Enforcement Action  
And Imposition of Fine Against Ku'i Palama For  
Unauthorized Waste Disposal and Trespassing  
TMK (4) 1-8-005:008  
Page 2

Exemption Item Description: No environmental assessment was conducted for the unauthorized work in the subject parcel. Staff believes the Unauthorized Waste Disposal and Trespassing can be remediated without significant impact to the environment. By remediating the unauthorized work on the parcel it can be returned to a natural state, improving the environmental and/or cultural resources in the area.

Recommendation: It is recommended that the Board find that the remediation of Unauthorized Waste Disposal and Trespassing will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila, Jr. Chairperson

  
4/24/13  
\_\_\_\_\_  
Date



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

December 3, 2012

10475(K)

MEMORANDUM

**TO:** Milo Spindt, Kauai Land Agent

**THROUGH:** Russell Y. Tsuji, Administrator

**FROM:** E. Mahoe Collins, State Abstractor

**SUBJECT:** State of Hawaii's Title in and to Tax Map Key (4) 1-8-005:008, situated at Hanapepe, Waimea, Kauai

Pursuant to an alleged claim of ownership to the subject real property designated as Tax Map Key (4) 1-8-005:008, we have been requested to confirm the State of Hawaii's title in and to the subject premises shown colored in green on the map attached hereto as Exhibit A.

As shown thereon, the subject property situated, lying and being a portion of the Ahupuaa of Hanapepe, containing 22.65 acres, **excludes the area of L.C. Aw. 9029 (TMK 1-8-05:11)** and adjoins L.C. Aw. 10271:1 (TMK 1-8-05:13 and 14).

An examination of the records and files located in the State Survey Office, the Bureau of Conveyances and the Land Division of the Department of Land and Natural Resources reveal that on March 8, 1848 Kamehameha III reserved the Ahupuaa of Hanapepe in the District of Kona, on Island of Kauai, and other lands, as his own private property.

By the Act of June 7, 1848, the title and ownership of Kamehameha III in and to the Ahupuaa of Hanapepe and all of the lands he reserved (the "King's Lands"), was confirmed as his private lands, to have and to hold to himself, his heirs, and his successors, subject only to the rights of the tenants.

The title of Kamehameha III in and to the "King's Lands", including said Hanapepe, was devised to Kamehameha IV and subsequently descended to Kamehameha V, subject to Queen Emma's right to dower.

By Deed dated January 1, 1865 and recorded in Liber 19, Page 13 (LOD No. 30), Queen Emma quitclaimed all of her right, title and interest in and to the "King's Lands", including the Ahupuaa of Hanapepe, unto the Hawaiian Government.

**EXHIBIT "C"**

To relieve the Royal Domain of encumbrances and to render the same inalienable, the office of the Commissioner of Crown Lands was established in accordance with the Act of January 3, 1865, to manage and control the "King's Lands", including Hanapepe, for the use and benefit of the reigning sovereign. Said lands are thenceforth known as the "Crown" Lands.

Through operation of laws subsequent, the title of Kamehameha V in and to the "Crown Lands", including the un-awarded portions of the Ahupuaa of Hanapepe, is seized by the Provisional Government in 1893, ceded to the United States of America under the Organic Act of April 30, 1900 and subsequently transferred to the State of Hawaii in accordance with §5(b) of the Admissions Act of March 18, 1959.

The subject property, being a portion of the un-awarded Government (Crown) Land of Hanapepe, is comprised of portions of Lots 27 and 28 and all of Lots 29 to 34, (inclusive) of the Hanapepe Rice and Kula Lots, created, opened and laid out by the government as platted by the 1918 survey of Thomas J.K. Evans on Government Survey Registered Map No. 2617.

From January 1920 to the expiration of General Lease No. S-5517 on January 1, 2012, the said Hanapepe Rice and Kula Lots comprising the subject property, were continuously leased by the Territory and State governments.

In conclusion we find that pursuant to §5(b) of the Admissions Act of March 18, 1959, the State of Hawaii owns the subject property, being a portion of the un-awarded Government (Crown) Land of Hanapepe identified as Tax Map Key (4) 1-8-005:008, in fee simple.

NOTES:

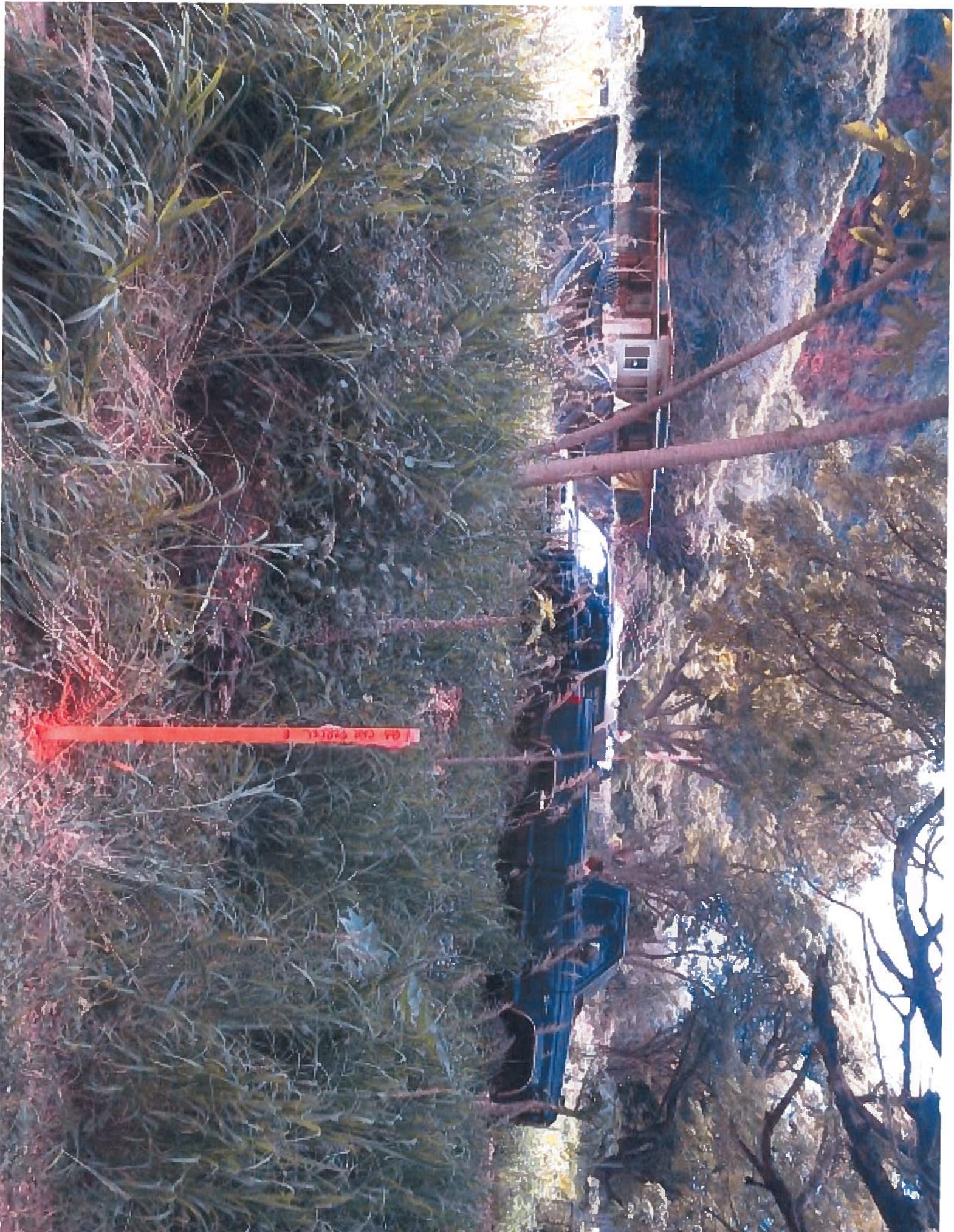
1. The County of Kauai Real Property Assessment and Tax Billing Divisions' website at [qpublic.net](http://qpublic.net), assess the ownership of Parcels 11 and 14 to A & B Hawaii, Inc., and the ownership of Parcel 13 to Ambrose Smith, Carlen L. Smith and Wilfred L. Peralta.
2. The information provided by the claimant and submitted with your request, appear to assert an alleged claim in and to Land Commission Award 9029 to Kaohulihau, affecting TMK (4) 1-8-05:11 only.

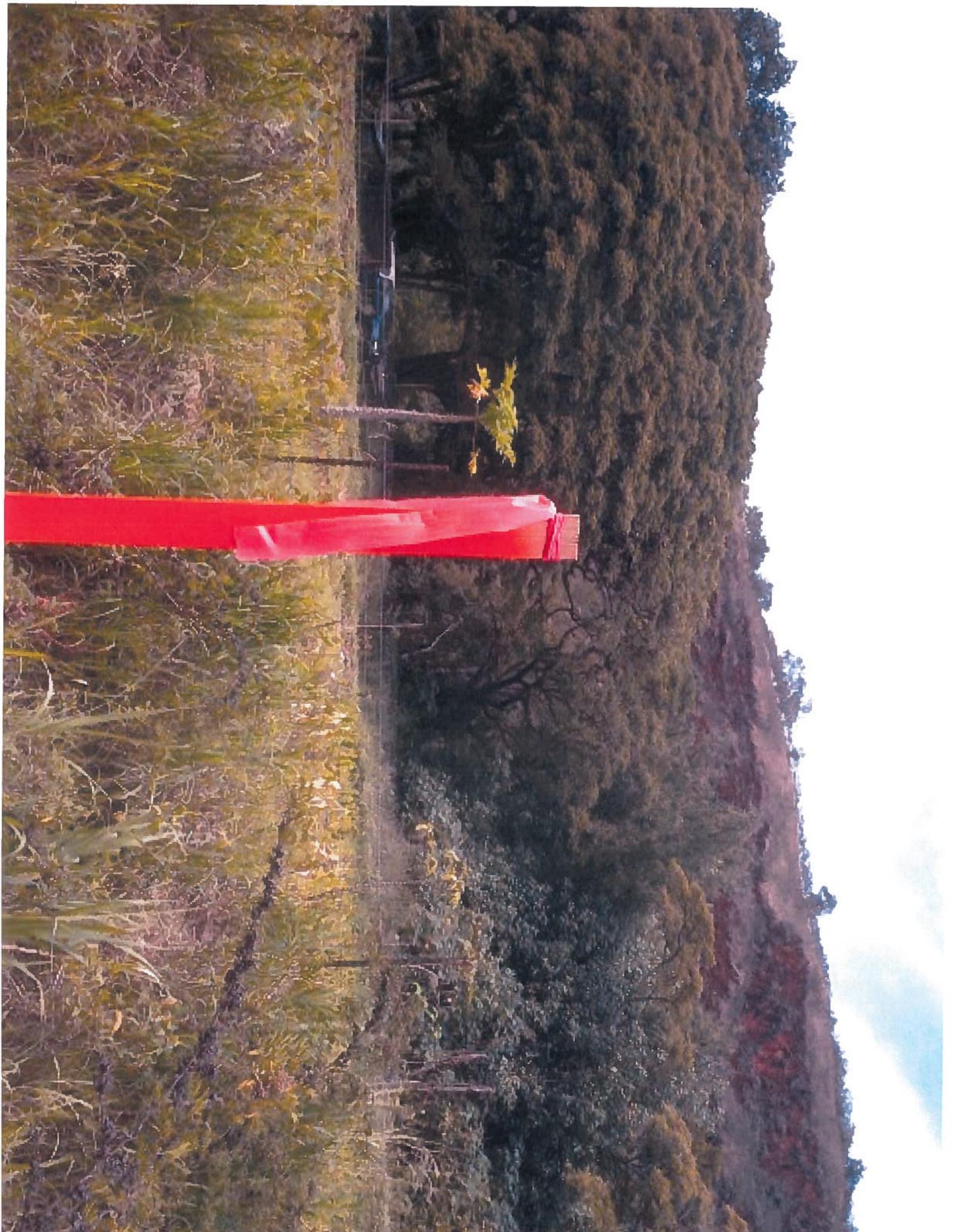
We further find that the alleged claim does not affect the State of Hawaii's title and ownership in and to the subject property.

If you have any questions, please feel free to call me at 587-0458.

Enclosure



















NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AHA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIHOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

NOTICE TO VACATE

TO: WHOM IT MAY CONCERN

THIS IS TO INFORM YOU that the subject land area at Hanapepe, Waimea, Kauai identified as Parcel 46 of Tax Map Key: (4) 1-8-005:008,001,021 and (4) 1-8-004:003 are owned by the State of Hawaii.

Any person placing any vehicles, bicycles, boats, stacks of lumber, piles of debris and/or structures, including but not limited to, a dwelling, lean-to, shed, tent, or campsite and any person occupying, camping and/or residing on subject lands without the written authorization of the Board of Land and Natural Resources, State of Hawaii, is encroaching upon public lands in violation of Section 171-6, Hawaii Revised Statutes (HRS), as amended, and shall be subject to a fine of up to \$5,000 per day, plus charges for damages and administrative costs incurred by the Department of Land and Natural Resources.

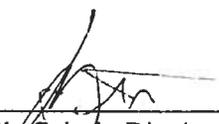
NOTICE TO VACATE is hereby given to all persons occupying, camping and/or residing on subject lands without the written approval of the Board of Land and Natural Resources, State of Hawaii, that you must vacate subject lands immediately and remove all structures, vehicles and personal belongings placed thereon.

ANY AND ALL PERSONS FOUND OCCUPYING, CAMPING AND/OR RESIDING UPON SUBJECT LANDS AFTER 6:30 A.M., MARCH 25, 2013, SHALL BE SUBJECT TO ARREST AND PROSECUTION FOR TRESPASSING AND ALSO SHALL BE SUBJECT TO A FINE OF UP TO \$5,000 PER DAY, PLUS ADMINISTRATIVE COSTS AND DAMAGES FOR VIOLATIONS OF THE PROVISIONS OF SECTION 171-6, HRS, AS AMENDED.

FURTHER, ANY AND ALL VEHICLES, BICYCLES, BOATS, STACKS OF LUMBER, STRUCTURES, AND PERSONAL BELONGINGS PLACED, MAINTAINED AND/OR FOUND ON SUBJECT LANDS AFTER SAID TIME AND DATE, SHALL BE CONSIDERED ABANDONED AND SHALL BE SOLD, DONATED OR OTHERWISE DISPOSED OF BY THE STATE OF HAWAII AT THE FORMER OWNER'S COST AND EXPENSE AND IN ACCORDANCE WITH SECTION 171-31.5, HRS.

Dated: March 22, 2013, Lihue, Kauai

DEPARTMENT OF LAND AND NATURAL RESOURCES

  
Milo Spindt, District Land Agent

*officer Robert Rushforth*

*Sent to Kwi Palama on 3/22 in person at Hanapepe*

**EXHIBIT "E"**

Ku'i Palama  
PO Box 170  
Waimea, HI 96796  
808-652-6843  
kuipalama@hotmail.com

NOTICE TO CEASE & DESIST

TO: Milo Spindt, District Land Agent  
State of Hawai'i DLNR  
PO Box 621  
Honolulu, HI 96809

RE: NOTICE TO VACATE/ SERVED BY STATE

THIS IS TO DEMAND THE *de facto* STATE OF HAWAII DLNR immediately CEASE & DESIST any and all action to enter the subject land area at Hānapēpē, Waimea, Kaua'i identified as Parcel 46 of Tax Map Key: (4) 1-8-005:008,001,021 and (4) 1-8-004:003 which are legally owned by allodium, the Heirs and Successors forever of Sovereign King Kamehameha III.

The *de facto* STATE OF HAWAII, are in no way shape or form Heirs, Successors nor are they Hoa'āina or Kanaka Maoli of Ko Hawai'i Pae 'Āina. As you can see in **Exhibits:1** (The Kamehameha's Genealogy), **Exhibits:2** (An Act Relating to the Lands of His Majesty the King and of the Government) and **Exhibit:3** (Nā Palapala o ka Māhele Māhele Database- Ulukau).

The truth is the current government, the *de facto* "STATE OF HAWAII," is a corporate contract, of the United States, and is not and could never be living, human beings. But merely a result of a series of unlawful acts stemming from the 1893 unlawful takeover of the recognized, peaceful, civil government of the Hawaiian Kingdom. The government of the United States has twice officially acknowledged (in 1893 and again in 1993) that its participation in the takeover of a friendly, neutral nation was an unprovoked unlawful act of aggression. Followed by a Joint Resolution NOT a Treaty of Annexation. **United States Public Law 103-150**, pg.4 paragraph 29 states: "*Whereas, the indigenous people, Hawaiian people never directly relinquished their claims to their inherent sovereign as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.*" A complete act of RACIAL GENOCIDE!

That's why all Kingdom laws are still in effect and Crown Lands (Ceded Lands), Kuleana Lands and all Lands of the Kingdom of Ko Hawai'i Pae 'Āina, "*de facto* STATE OF HAWAII)" are still held in Trust for the benefits of Kanaka Maoli/Native Hawaiians now and forever. Explained in **Exhibits:4** (Compilers Preface 1846)

On your NOTICE TO VACATE you clearly stated that we are encroaching upon public lands in violation of HRS §171-6 Powers. As amended, and shall be subject to a fine of up to \$5000 per day, plus charges for damages and administrative costs incurred by the DLNR.

Also stated in HRS §171-6 Powers. No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii state constitution; Therefore by stating that "Any and all persons found occupying, camping and/or residing upon subject

**EXHIBIT "E"**

lands after 6:30 A.M., March 25, 2013, shall be subject to ARREST and PROSECUTION for TRESSPASSING and also shall be subject to a FINE of up to \$5,000 per day, plus administrative costs and damages for violations of the provisions of §171-6 HRS, as amended.

All threats made by the *de facto* State of Hawai'i DLNR Land Division, violates not only my inherit VESTED Rights as a Kanaka Maoli/Native Hawaiian Iloa'āina that was granted by the Sovereign King Kauikeaouli Kamehameha III. But, also my constitutional and statutory law Rights according to Laws;

**Article I §5 of the Hawaii State Constitution; Due Process and Equal Protection;** *“No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of laws, not be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.”*

**Article XII §7 of the Hawaii State Constitution; Traditional and Customary Rights;** *“The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.”*

**Hawaii Revised Statutes §1-1; Common Law of the State; exceptions,** *“The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or the State.”*

**Hawaii Revised Statutes §7-1; Building Materials, Water, etc.; Landlords, Tenants' use,** *“Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.”*

**Hawaii Revised Statutes §174C-101; Native Hawaiian Water Rights;** *(a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 if the Hawaiian Homes Commission Act.*

*(b) No provision of this chapter shall diminish or extinguish trust revenues derived from existing water licenses unless compensation is made.*

*(c) Traditional and customary rights of ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such*

*traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hihiwai, poae, o'opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.*

*(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by failure to apply for or to receive a permit under this chapter.*

Although the Hawaii State Constitution and Hawaii Revised Statutes are New Laws or amendments of the old, it cannot divest Rights previously acquired. As remedies may be altered, Rights themselves, if Vested, cannot be constitutionally disturbed. As stated in **Exhibits:5** (Constitution, Declaration of Rights, Both of the People and Chiefs), **Exhibits:6** (Hoa'āina Rights of 1846), **Exhibits:7** (Findings of fact, conclusions of Law, and order granting Defendant's Motion to Dismiss).

We assert our rights to perpetuate our traditional way of life, rights, guaranteed by the state constitutional and statutory law, yet the State and Federal Government fails to give us the betterment, preservation of our indigenous way of life to instead suppress and discourage us, until the extinction of our culture and people. Violation of Human Rights, a true perpetuated act of RACIAL GENOCIDE!

“Ua Mau ke Ea o ka 'Āina i ka Pono”, was said by Kamehameha III himself on July 31, 1843, which translate to “The Sovereignty of the Land is Perpetuated in Righteousness.” The now motto of the *de facto* State of Hawaii whom claims it to translate it as “The Life of the Land is Perpetuated in Righteousness.” This is what “Ua Mau ke Ea o ka 'Āina i ka Pono” looks like; **Exhibit:8** (Historic Photos of Subject Lands). DLNR-LAND DIVISION: *Responsible for the management of State-owned lands in ways that will promote the well-being of Hawaii's people and insure that these lands are used in accordance with the goals, policies and plans of the State. Lands that are not set aside for use by other government agencies come within the direct purview of the division. The division also serves as an office of record and maintains a central repository of all government documents dating back to the “Great Māhele” of 1848.* If DLNR claims to have records of all government document from the time of the “Great Māhele” then in the all purchasing, leasing and dividing of land to and by the government shall state; “*Ua koe ke o kuleana o na kanaka*” which translate to “Reserving the rights of Native Tenants”. The *de facto* State of Hawai'i's pledge to the Native Hawaiian People: **Exhibits:9** (HRS-CHAPTER 26), **Exhibits:10** (KAUA'I GENERAL PLAN; 3.6 NATIVE HAWAIIAN RIGHTS). When will they keep they're pledge and become law-abiding?

As concluded, the *de facto* State of Hawai'i DLNR failed to establish ownership to the subject parcel on which they threaten me with a NOTICE TO VACATE. Therefore, I demand that the *de facto* State of Hawai'i DLNR, CEASE & DESIST any and all actions to arrest, prosecute for trespass, fine me up to \$5,000 per day, plus administrative costs and damages for violations, sell, donated or otherwise dispose of any of my personal property, at my cost and expense. Which not only violates my vested Right, but also my constitutional and Human Rights.

Should you fail to comply I will take legal action and file a complaint against the State of Hawai'i and any person whom are to be held responsible for this act of RACIAL GENOCIDE!

Dated: March 23, 2013, Waimea, Kauai

(WHOM IT MAY CONCERN)



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Ku'i Palama, Hoa'aina

## Exhibit: I

### THE KAMEHAMEHAS

- (1) Keawe-ikekahi-aliokamoku II ((about 1700) direct line from Liloa and Umi)  
1m. Lono-ma'a-i-kanaka ( a chiefess of Ka-u and a descendant of 'I)
- (2) Kalani-nui-'i-a-mamao  
2m. Kane-'alai ((w) a ruling chiefess of Molokai and a dau. of Luahiwa of the reigning family of Kauai)
- (2) Ila'o  
(2) 'Awili  
(2) Ka-lilau-moku  
(2) Kumuheha  
3m. (Keawe had more children by other chiefesses, lesser rank, and of commoners)  
4m. Kalani-kau-lele-ia-iwi ((granddaughter of Iwikauikaua and daughter of the high chiefess Keakealani-wahine) direct line from Liloa and Umi)  
(2) Kekela-nui A.K.A. Kekela-kekcu-okalani (w)  
m. Haac-a-mahi (k)  
(3) Kekuiapoiva II  
(2) Keeaumoku-nui  
m. Kamakaimoku ((Kohala wahine of the renowned family of chiefs of Kau, the I's) name means "The island ruler")
- (3) Kalaniopuu (? - 1782)  
m3. Kamakolunuiokalani (w)  
(4) Pualinui ((w) mother of Luluhiwalani of Lahaina)  
m5. Kanekapolei (means "A lei for the head of the God, Kane"; claimed by some to be daughter of Kauakahiakua, of the Maui royal family, and his wife Umiaemoku; other claim she's of the Ka'u race of chiefs)  
(4) Keoua Peeale (k)  
(4) Keoua Kuahuula ((k) name means "Keoua of the Red Alter")  
m1. Kalola ((w) chiefess of Maui; daughter of Kekaulike and Kekuiapoivanui; sister of Kahekili)  
(4) Kiwalao ((k) King of Hawaii)  
m. Liliha-nui (His half-sister)  
(5) Keopuolani ((1782? - Sept. 16, 1823) name means "The heavenly one in the cloudless sky")  
m. Hoapili (2nd husband)  
m. **Kamehameha I** (1758? - 1819)  
m2. Kalaiwahineuli ((w) daughter of Heulu and his wife Kahikiokalani)  
(4) Kalaipaihala ((k) great-grandfather of queen-dowager, Emma Kaleleonalani)  
m4. Mulehu ((w) of a Kau chief family; also married Kalaniwahikapaa, son of Kumukoa-a-Keawe and Kaulahoa (w); with 2nd marriage she became grandmother of A. Paki, and great-grandmother of Bernice Pauahi Bishop.)  
(4) Manoua or Manowa ((w) grandmother of Asa Kaeo; great-grandmother of Peter Kaeo Kekuokalani)  
m6. Kekuohi or Kekupuohi ((w) no children)  
(3) Keawe (Hilo)  
(3) **Keoua-nui** A.K.A. Keoua Kalanikupuapaikalani-nui (Kohala)  
1m. Kahikikala (daughter of Kalahumoku, reigning high chief of Hana, and Kalani Kaumehameha) Kalahumoku was a lineal descendant of Loe, the great progenitor of Maui's chiefdom, the Piilanis, Kamalalawalu and others.)  
(4) Kalokuokamaile (k)  
m. Kaloiookalani (w)  
(5) Kaohelani (w)  
m. Nuhi ((k) son of high chief Hinai)  
(6) Kekaikuihala (w)  
(6) Laanui (k)  
m1. Kekuwai-Piia ((w) sister to Kaahumanu and Kaheiheimalie)  
m2. Teresa Owana Kaheiheimalie (w)  
(7) Elizabeth Kekaaniauokalani (w)  
(7) Gideon Kailipalaki o Keheananui (k)  
m. Kamaikaopa (w)  
(8) Teresa Owana Kaohelani  
m1. A.J. Cartwright Jr.  
m2. Hon. Robert W. Wilcox  
3m. Kalola (Maui)  
(4) Liliha-nui (w)

m. Kiwalao ((k) see above)  
 2m. Kekuiapoiwa II ((9th in line) niece of Alapainui, King of Hawaii; after living with her husband (Keoua) without issue - went alone to visit King Kahekili of Maui and returned with child)  
 (4)Kekuiapoiwa (full brother)  
 (4)Kaleimamahu (half brother, d. ca. 1810)  
 m. Kalakua  
 (4)Peleuli (w)  
 (5)Kinau (k)  
 (6)Kekauohohi (high chiefess)  
 m1. Kealiihonui (eldest son of Kaumualii, King of Kauai)  
 m2. Haalelea (k)  
 (4)Piipii (w)  
 (5)Kanihonui ("big teeth")  
 (4)Kamehameha I ((1758? - 1819) name means "The loneliness of a God")  
 m. Keopuolani (from above)  
 (5)Liholiho Iolani ((Kamehameha II) 1793? - 1824)  
 m. Kamamalu (also Kamehamalu)  
 (5)Kauikeaouli ((Kamehameha III) August 11, 1813-1854)  
 m. Feb. 4, 1837 Kalama (d. 1879)  
 (6)Keawe Awcua O Kalani (lived 31 days)  
 m. **Kaahumanu** ((1774-1832) dau. of warrior Keeaumoku Nohonaapeape, and Grand-dau. of Kekaulike)  
 m. (19 others)  
 m. Kalakua aka Kaheiheimalie ((Kaahumanu's sister) d. 1842)  
 (5)Kekauluohi ? (1794? - 1845)  
 (5)Kamamalu (Kamehamalu)  
 m. Kamehameha II (Liholiho Iolani)  
 (5) Kinau (1796? - 1839)  
 m1. Kahalaia ((High Chief) d. 1827)  
 m2. Kekuaaoa (1794 - 1868)  
 (6)David (1828 - 1835)  
 (6)Moses Kekuaiwa ((died as youth) 1829-1848)  
 (6)Lot Kamehameha ((Kamehameha V)  
 (6)Alexander Liholiho ((Kamehameha IV) Feb. 9, 1834- Nov. 30, 1863)  
 m. Emma Kaleleonalani Rooke (great-granddaughter of Kealiimaikai, Kamehameha I's brother)  
 (7) Ka Haku O Hawaii (Albert Edward)  
 (6)Victoria Kamamalu (1838-1866)  
 4m. Kamakaeheikuli ((w) daughter of w. Kalelemauliokalani and k. Haae, of the famous Mahi family in Kohala)  
 (4) Kalaimamahu (k)  
 m. Kalakua (Her real name was "Ka-heihei-malie")  
 (5)Kekauluohi ((w)1794-1845)  
 m. 1822 High Chief Charles Kanaina ((Manoa line) d. 1877)  
 (6)William Charles Lunalilo ((Lunalilo means "highest point in heaven") Nov. 1, 1835- Feb. 3, 1874)  
 5m. Akahi (w)  
 (4) Kaleiwohi (k)  
 m. Kailipakalua (w)  
 (5)Pauwelua  
 m. Kaluai (of the Waimea, Hawaii line of chiefs)  
 (6)Akahi (w)  
 m. Keeaumoku II (Queen Kaahumanu's younger brother)

#### SOURCES:

Pratt, Elizabeth Kekaaniauokalani. History of Keoua Kalanikupuapa-i-kalani-nui, Father of Kings, and His Descendants, with Notes on Kamehameha I, First King of All Hawaii. Honolulu, T.H., 1920  
 Hunter, Charles H. The Kamehamehas; Kalakaua; Kauai Kings; Kawanakoas. Genealogical Tables. 1968  
 Fornander, Abraham Fornander's Ancient History of the Hawaiian People Mutual Publishing; Honolulu, HI. 1996  
 Kamakau, Samuel M. Ruling Chiefs of Hawaii. Kamehameha Schools Press; Honolulu, HI. 1992.

Exhibit:2

AN ACT RELATING TO THE LANDS OF HIS MAJESTY THE KING AND OF THE GOVERNMENT.

Whereas, It hath pleased His Most Gracious Majesty Kamehameha III., the King, after reserving certain lands to himself as his own private property, to surrender and forever make over unto his Chiefs and People, the greater portion of his Royal Domain :

And whereas, it hath pleased our Sovereign Lord the King, to place the lands so made over to his Chiefs and People, in the keeping of the House of Nobles and Representatives, or such person or persons as they may from time to time appoint, to be disposed of in such manner as the House of Nobles and Representatives may direct, and as may best promote the prosperity of this kingdom and the dignity of the Hawaiian Crown : Therefore,

Be it enacted by the House of Nobles and Representatives of the Hawaiian Islands, in Legislative Council assembled :—

That, expressing our deepest thanks to His Majesty for this noble and truly royal gift, we do hereby solemnly confirm this great act of our good King, and declare the following named lands, viz :

Weliweli, . . .	Ahupuaa,	Kona,	Kauai,
Koloa Hikina, . . .	Ahupuaa,	Kona,	"
Koloa Komohana, . . .	Ahupuaa,	Kona,	"
Wahiawa, . . .	Ahupuaa,	Kona,	"
½ Punalau, . . .	Ili no Hanapepe,	Kona,	"
<b>NAMES OF LANDS.                      AHUPUAA.                      DISTRICTS.                      ISLANDS.</b>			
½ Koula, . . .	Ili no Hanapepe,	Kona,	Kauai
Makaweli, . . .	Ahupuaa, Eia	} Kona,	"
	na ili a me na		
	Moo, a me na		
	Loi, no koa.		
Honopu, . . .	Ahupuaa,	Napali,	"
Kalalau, . . .	Ahupuaa,	Napali,	"
Pohakuao, . . .	Ahupuaa,	Napali,	"
½ Honokoa, . . .	Ahupuaa,	Napali,	"
Hanakapiai, . . .	Ahupuaa,	Napali,	"
Waioli, . . .	Ahupuaa,	Halelea,	Kauai,
Kilauea, . . .	Ahupuaa,	Koolau,	Kauai,
Waiakalua Hikina,	Ahupuaa,	Koolau,	"
Pilaa, <i>kekahi aoao</i> ,	Ahupuaa,	Koolau,	"
Moloaa, . . .	Ahupuaa,	Koolau,	"
Papaa, . . .	Ahupuaa,	Koolau,	"
Aliomanu, . . .	Ahupuaa,	Koolau,	"
Homaikawaa, . . .	Ahupuaa,	Koolau,	"
Halaula, . . .	Ahunuaa,	Koolau,	"
Ulakiu, Ili no Kapaa,	Ahupuaa,	Puna,	Kauai,
Paikahawai, Ili no Kapaa,	Ahupuaa,	Puna,	"
½ Olohena, . . .	Ahupuaa,	Puna,	"
Kikiaola, . . .	Ili no Waimea,	Kona,	Hauai,
Niihau, . . .	Ka Mokupuni,	"	Niihau,
Pohueloa, . . .	Ahupuaa,	Niihau,	
Kaluahonu, . . .	Ahupuaa,	Niihau,	
Pauhula, . . .	Ahupuaa,	Niihau,	

Made over to the Chiefs and People, by our Sovereign Lord the King, and we do hereby declare those lands to be set apart as the lands of the Hawaiian Government, subject always to the rights of tenants. And we do hereby appoint the Minister of the Interior and his successors in office, to direct, superintend, and dispose of said lands, as provided in the Act to organize the Executive Departments, done and passed at the Council House in Honolulu, the 27th day of April, A. D., 1845 : Provided, however, that the Minister of the Interior and his successors in office shall have the power, upon the approval of the King in Privy Council, to dispose of the government lands to Hawaiian subjects, upon such other terms and conditions as to him and the King in Privy Council, may seem best for the promotion of agriculture, and the best interests of the Hawaiian Kingdom:

Done and passed at the Council House, in Honolulu, this 7th day of June, A. D., 1848. KAMEHAMEHA.  
KEONI ANA.

**Exhibit:3**

**Nā Palapala o ka Māhele Māhele Database - Ulukau**

<b>CLAIMANT</b>	<b>LCA</b>	<b>RP</b>	<b>TMK</b>
<b>ABCFM (Mission)</b>	00387*K	1936,1938,1942,1958, 1600	01 - 07 - 01
<b>Aihoi</b>	8036	*	1 - 8 - 05, 1 - 9 - 01
<b>Aimoo</b>	11068	6932	1 - 8 - 04
<b>Alaiki</b>	8035		1 - 8 - 01
<b>Alihi</b>	8011	6142	1 - 8 - 05
<b>Halekapu</b>	8198	4334	*
<b>Haoleki</b>	8254	*	1 - 9 - 12
<b>Heau</b>	8182	4736	1 - 9 - 12
<b>Hii</b>	8077	7703	1 - 9 - 02, 1 - 9 - 12
<b>Holeka</b>	8123	4758	1 - 9 - 12
<b>Iese</b>	8215	4760	1 - 9 - 09, 1 - 9 - 12
<b>Kaaha</b>	01280*K	8178,8205,8493	*
<b>Kaaha</b>	5572B	8178	1 - 9 - 02, 1 - 9 - 07
<b>Kaenalii</b>	5309	5270	1 - 8 - 03
<b>Kahakuhananui</b>	7928	7046	1 - 8 - 03
<b>Kaiahauna</b>	7919	*	1 - 9 - 02
<b>Kaipehu</b>	9272	7854	*
<b>Kalepuna</b>	9135	*	1 - 8 - 03
<b>Kalunu</b>	29MA	*	*
<b>Kamae</b>	3654	7776	1 - 8 - 08
<b>Kanehiwa</b>	19BMA	*	*
<b>Kanialama</b>	7677	4321	1 - 9 - 09
<b>Kapaehaa</b>	7922	3958	1 - 9 - 02
<b>Kapekue</b>	9142	7938	1 - 9 - 10
<b>Kapoanu</b>	9282	4757	1 - 9 - 10
<b>Kapoi, Aka</b>	8020	7925	*
<b>Kauhi</b>	9654	3000	*
<b>Kaulahea</b>	9029	7084	1 - 8 - 05
<b>Kawelo</b>	9232	*	1 - 9 - 04
<b>Keawe</b>	7925	4314	*
<b>Keawe</b>	9189	4755	1 - 9 - 07, 1 - 9 - 08, 1 - 9 - 12
<b>Kekeko</b>	7923	*	1 - 8 - 03

<b>Kekuamanoha, wahine</b>	6377	8460	1 - 8 - 08
<b>Kekuanaoa, Mataio</b>	7712	4485	*
<b>Kelemoku</b>	7631	4786	1 - 9 - 08, 1 - 9 - 12
<b>Keliinui</b>	9283	*	1 - 9 - 10, 1 - 9 - 12
<b>Kikoi</b>	7920	*	1 - 9 - 02
<b>Kipani, Kupia</b>	9265	7947	1 - 8 - 04
<b>Koolua, Sirimona</b>	9116	4761	1 - 9 - 08, 1 - 9 - 12
<b>Kualeho</b>	7321B	7852	1 - 8 - 07
<b>Kupia, Wana</b>	9190	4186	1 - 9 - 02, 1 - 9 - 10, 1 - 9 - 12
<b>Lauki</b>	10017	4759	*
<b>Lihue</b>	5473	7509	1 - 9 - 10
<b>Lono</b>	10016	*	1 - 9 - 04
<b>Lopailani</b>	10010	7946	1 - 8 - 03
<b>Lunalilo, William C.</b>	08559B*K	7060, 7373, 8173, 8323	*
<b>Makaiku</b>	11011B	*	1 - 9 - 01
<b>Makailio</b>	10271	3002	1 - 8 - 05
<b>Makaino</b>	10275	*	1 - 8 - 03
<b>Manienic</b>	10274	6933	1 - 8 - 04
<b>Manua</b>	10069	*	1 - 9 - 03
<b>Nakapa</b>	10349	8035	1 - 8 - 03
<b>Naloheelua</b>	10526	7987	1 - 8 - 04
<b>Namaielua</b>	10312	6450	1 - 9 - 10, 1 - 9 - 09
<b>Namoki</b>	10457	3855	1 - 8 - 01
<b>Namoku</b>	10311	4756	1 - 9 - 10, 1 - 9 - 12
<b>Nuanua</b>	5447	5041	*
<b>Paele</b>	6578	*	*
<b>Pala</b>	7993	*	1 - 9 - 02
<b>Palama</b>	11011	6738	1 - 9 - 01
<b>Paniani</b>	55MA	*	*
<b>Pua</b>	10678	7726	*
<b>Puakala</b>	10595	7853	1 - 9 - 11, 1 - 9 - 12
<b>Puakala</b>	9142	7938	1 - 9 - 10
<b>Sigalas, Hannah</b>	*	4504	1 - 8 - 07
<b>Ula</b>	10922	*	*
<b>Wahineaea</b>	3284	7452	1 - 8 - 05, 1 - 9 - 01, 1 - 9 - 03, 1 - 9 - 07

## COMPILER'S PREFACE.

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THE Hawaiian kingdom was governed until the year 1838, without other system than usage, and with a few trifling exceptions, without legal enactments. The bill of rights, proposed and signed by His Majesty on the 7th of June, 1839, was the first essential departure from the ancient despotism. The Constitution which he voluntarily conferred on the people on the 8th of October, A. D. 1840, recognized the three grand divisions of a civilized monarchy, king, legislature and judges, and defined in some respects the general duties of each. These however, were so engrafted on the ancient form of government that there seemed to be a blending of their separate functions, requiring the aid of organic acts, limiting their usual spheres, in order to secure the civil liberties intended to be conferred upon the people. The Constitution had not been carried into full effect. Its provisions needed assorting and arranging into appropriate families, and prescribed machinery to render them effective.

Some of the most obvious points in civil and criminal jurisprudence had been in some measure provided for by declaratory and penal ordinances, either proclaimed by the king before, or enacted by the legislature after the Constitution was given. Yet as civilization very rapidly progressed, and commerce with the increase of foreign population largely augmented, these were found in their nature much too loose to satisfy the national wants. These laws and rules, though universally promulgated at home, and somewhat extensively abroad, were neither well known nor understood. From detached fragments they were collated and translated into the English language in 1842,

by the Rev. William Richards, who has since been distinguished as one of His Majesty's Envoys to Europe. That translation containing 200 pages, 12 mo., is systematized for reference into 55 chapters, each devoted to some distinct subject of legislation. It will be found of lasting benefit to the Hawaiian government in defining the public and private rights, duties and obligations that existed before the present codification, which is in fact based upon it. Many cases must necessarily arise that can only be measured by the old law. New laws or amendments of the old, cannot divest rights previously acquired, and, as in other countries, so in this, the repealed ordinances must be resorted to in numerous cases accruing before the repeal or modification. Means and remedies may be altered, but the rights themselves, if vested, cannot be constitutionally disturbed. This is one admitted doctrine of civilized jurisprudence. Another of its admitted doctrines, even in the exposition of new laws is, that the old law must first be understood and the mischief intended to be cured by it, in order to apply the remedy. That axiom will of itself render continual retrospection necessary, so that neither the judge nor the barrister will be able, notwithstanding the new enactments, at least historically, to dispense with the translation of Mr. Richards.

Criminally, the old law applies to the most heinous offences—to open breaches of the public peace and decorum—and to wrongs towards the person and property of individuals. The native dialect not admitting of distinction, these offences are all indiscriminately called "*heua*," which word literally means "wrong." It is, however, for the most part erroneously translated into the English, "crime," regardless of the judicial meaning of that word. Thus the treaty stipulations providing for consular juries in all cases of crime alleged against foreign residents, are made verbally applicable to the least moral dereliction; and the legal distinction between crimes, misdemeanors and torts, does not definitely exist in the old compilation, except by adopting the European and American measure of offences—the penalty annexed to them. A misdemeanor would never be understood in England or the United States as a crime, nor the converse, although denoted by the technical name of some crime or misdemeanor; and those nations in contracting with His Majesty for the peculiar formation of juries in cases of crime, cannot have cov-

ered all the wrongs known in the native by the word "hewa," but not punished as crimes by us.

Civilly, the old law likewise embraced the most usual rights and duties of the social relations augmentative of population and incitative to industry. The fundamental basis of landed tenures was declared, and cultivation of the soil, under a feudal tenancy not much differing from that of ancient Europe, was encouraged by relaxing the vassal service. The revenue, derived chiefly from the native population, was slight and utterly insufficient to maintain the more regular system demanded by the increase of foreign commerce and the enhanced value of property; which required something more of the Hawaiian courts than mere investigation of facts.

As results of missionary labor, however, the ordinances have been greatly serviceable in preparing the nation for what has since become indispensable to its political existence—a complete code of laws, embracing organic forms of the different departments, particularly executive and judicial, with outlines of their duties and modes of procedure and comprehensive civil and criminal digests. The events of the late Provisional Cession to Great Britain conclusively prove that some more minute and extensive judicature was long since requisite. These national wants were brought to His Majesty's notice by the Ministerial Reports of May 21st, 1845, in consequence of which the Legislative Houses passed the following

Source

Statue Laws of His Majesty Kamehameha III. King of the Hawaiian Islands; Passed by the House of Nobles and Representatives, During the Twenty-First Year of His Reign, and the Third and Fourth Years of His Public Recognition, A.D. 1845 and 1846. To which are appended the Acts of Public Recognition, and the Treaties with Other Nations. Vol. I- Charles E. Hitchcock, Printer, 1846

## CONSTITUTION, LAWS &c.



### DECLARATION OF RIGHTS, BOTH OF THE PEOPLE AND CHIEFS.

“God hath made of one blood all nations of men to dwell on the earth,” in unity and blessedness. God has also bestowed certain rights alike on all men and all chiefs, and all people of all lands.

These are some of the rights which He has given alike to every man and every chief of correct deportment; life, limb, liberty, freedom from oppression; the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws.

God has also established government, and rule, for the purpose of peace; but in making laws for the nation it is by no means proper to enact laws for the protection of the rulers only, without also providing protection for their subjects; neither is it proper to enact laws to enrich the chiefs only, without regard to enriching their subjects also, and hereafter there shall by no means be any laws enacted which are at variance with what is above expressed, neither shall any tax be assessed, nor any service or labor required of any man, in a manner which is at variance with the above sentiments.

### PROTECTION FOR THE PEOPLE DECLARED.

The above sentiments are hereby published for the purpose of protecting alike, both the people and the

chiefs of all these islands, while they maintain a correct deportment; that no chief may be able to oppress any subject, but that chiefs and people may enjoy the same protection, under one and the same law.

Protection is hereby secured to the persons of all the people, together with their lands, their building lots, and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws. What ever chief shall act perseveringly in violation of this constitution, shall no longer remain a chief of the Hawaiian Islands, and the same shall be true of the Governors, officers, and all land agents.

But if any one who is deposed should change his course, and regulate his conduct by law, it shall then be in the power of the chiefs to reinstate him in the place he occupied previous to his being deposed.

Source

Translation of the Constitution and Laws of the Hawaiian Islands, Established in the Reign of Kamehameha III.-Lahainaluna 1842

JOINT RESOLUTIONS ON THE SUBJECT OF RIGHTS IN LANDS AND  
THE LEASING, PURCHASING AND DIVIDING OF THE SAME.

*Resolved, by the Nobles and Representatives of the people of the Hawaiian Islands, in Council assembled :—*

1. The rights of the *Hoaina* in the land, consists of his own taro patches, and all other places which he himself cultivates for his own use, and if he wish to extend his cultivation on unoccupied parts, he has the right to do so. He has also rights in the grass land, if there be any under his care, and he may take grass for his own use or for sale, and may also take fuel and timber from the mountains for himself. He may also pasture his horse and cow and other animals on the land, but not in such numbers as to prevent the konohiki from pasturing his. He cannot make agreements with others for the pasturage of their animals without the consent of his konohiki, and the Minister of the Interior. The hoaina has also the right to take fish in those fishing grounds of the konohiki and those other places which are specified in the laws.

2. The rights of the konohiki consist of his own koeles, and he may also make others. He has rights in the grass land and in the timber of the mountains, as specified in the laws. He has also the right to his prescribed fish, and his hoaina owe to him three day's monthly labor. He cannot so dispose of the grass land as to leave the government and his hoainas destitute. After informing the Privy Council, through the Minister of the Interior, and receiving their approbation, he may lease the grass land, the government receiving one half of the rent. When the land is thus leased, the hoaina can no longer collect fuel, timber or grass for sale to others, without the consent of the owner, though he may still continue to feed his animals. He shall not be deprived of that right; nor of the right to procure grass and wood for his own use.

3. The rights of the government in the lands consist of its own koeles, and it may also make others. The government have rights also in the grass land and in the forests, and own the prohibited fish as specified by law. The government shall also have the right to lease land at discretion, though not without the knowledge of the konohiki, and he shall receive one half of the rent. But the rights of the hoainas as specified above, shall remain unaffected. The government however shall have the right out of its own portion to make appropriations for schools and for the support of public worship, in accordance with the laws.

4. If any man wish to obtain an allodial title to the land which he has himself cultivated, he shall have the right to petition the Minister of the Interior, in writing, who, in connection with the Minister of Finance, may determine on the terms of sale, which being complied with, an allodial title to said land shall be given under the great seal of the kingdom, as prescribed in Act 2, part 1, chap. 7, art. 2; after which the owner shall be no longer liable to the government labor tax, nor to the labor tax of the konohiki. That burden shall be removed, but the highway tax and other taxes for special emergencies shall remain. The pay for said lands shall be divided equally between the government and the konohikis.

5. Whenever any individual secures an allodial title to his cultivated grounds, as specified above, and the pasture ground and uncultivated parts remain, then that remainder shall belong equally to government and to the konohiki.

6. Any man wishing to purchase land may petition the Minister of the Interior, in writing, who, having ascertained what lands are unoccupied, shall have power to sell the same in the manner and on the terms to be prescribed by the Privy Council, and the products of the sale shall be divided equally between the government and the konohiki. The whole vacant land of no Ili shall be so disposed of as to leave the hoaina destitute.

7. If any konohiki wish to have his portion of any given Ili or ahupuaa set off to him according to his rights in the same, that he may procure an allodial title therefor, he may petition the Minister of the Interior, on stamped paper, who shall have power, with the approbation of His Majesty in Privy Council, to complete the arrangements for the same, after which there shall be given to the konohiki a patent for the same, in accordance with Act 2, part 1, chapter 7, article 2.

8. If the government wish to have its portion of the uncultivated part of any Ili or ahupuaa set off according to its rights, the Minister of the Interior shall address the konohiki thereof, and if they can agree, their agreement shall be executed; but if they cannot agree, then His Majesty in Privy Council shall decide between them; but in all such cases, the rights of the hoaina shall be respected.

9. It is further resolved in relation to all people who are absolved from the labor tax on account of having obtained an allodial title to land, that they shall not be freed from paying a school tax to the superintendent of schools for the benefit of the young. Whenever the legislature shall thus decree, they shall then pay a uniform tax. Those, therefore, who obtain allodial titles, and those who are freed from the labor tax are not to suppose that education is to be neglected, and therefore refuse to pay anything to the school superintendent. Schools for children are to be perpetual, and all people will be required to aid in supporting education ; that is not to cease.

Done at the Council House in Honolulu, Nov. 7, 1846.

KAMEHAMEHA.

KEONI ANA.

#### Sources

Statute Laws of His Majesty Kamehameha III., King of the Hawaiian Islands; Passed by the Houses of Nobles and Representatives, During the Twenty-Second Year of His Reign, and the Fifth Year of His Public Recognition, A.D. 1847: To which are appended the Acts of Public Recognition, and the Treaties with Nations. Vol. II-Charles E. Hitchcock, Printer, 1846

**Exhibit:7**

FILED

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2012 APR 26 AM 8:06

5TH CIRCUIT COURT  
STATE OF HAWAII  
Doreena Olivas-Brun  
CLERK

Attorney for DEFENDANT

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
STATE OF HAWAII

STATE OF HAWAII,

CR. NO. 11-1-0116

vs.

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
DEFENDANT'S MOTION TO DISMISS

KUI PALAMA,

Defendant,

Hearing Dates: March 13, 2012 and April 5, 2012  
Presiding Judge: Kathleen N.A. Watanabe

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

On March 13, 2012 at 9:00 a.m. and April 5, 2012 at 1:30 p.m., Defendant Kui Palama's Motion to Dismiss came on for hearing in the Fifth Circuit Court, the Honorable Kathleen N.A. Watanabe presiding. Defendant Kui Palama was present, represented by his court-appointed counsel Timothy J. Tobin. Deputy Prosecuting Attorney John Murphy represented the State of Hawaii. The Court received evidence and heard arguments of counsel.

The issues presented were as follows: Whether Defendant's pig hunting, on or about January 17, 2011, falls within the scope of constitutional protection privilege, more specifically, whether: (a) Defendant is native Hawaiian; and, (b) his claimed right is constitutionally protected as a customary or traditional native Hawaiian practice as codified—but not necessarily enumerated—in article XII, § 7 of the Hawai'i Constitution, HRS §§ 1-1 and or HRS § 7-1; and, (c) the exercise of the right occurred on undeveloped or less than fully developed property. State

v. Hanapi, 970 P.2d 485, 493-94, 89 Haw. 177, 186 (1998). And whether the State's prosecution of Defendant's protected conduct is constitutional when balancing the State's interest in regulating the exercise of said rights and the reasonableness of Defendant's exercise of said rights. *Id.*

The Court holds that to the extent findings of fact constitute conclusions of law, and to the extent that conclusions of law constitute findings of fact, they shall be so deemed. The Court finds as follows:

#### **FINDINGS OF FACT**

1. In the above-captioned matter, Defendant was charged with simple trespass in violation of HRS 708-815 of the Hawaii Revised Statutes, and hunting on private lands prohibited in violation of HRS 183D-26 of the Hawaii Revised Statutes.
2. On or about the 17<sup>th</sup> day of January, 2011, in the County of Kauai, State of Hawaii, Defendant entered upon Kupo Ridge, situated at Hanapepe Valley ("the subject property"); Defendant entered the subject property by foot accompanied by a mule and dogs; Mr. Palama used a knife to hunt, kill, and gut two wild pigs on the subject property.
3. Defendant establishing through evidence that Defendant is native Hawaiian, that hunting pig is constitutionally protected as a customary or traditional native Hawaiian practice, and that the pig hunting occurred on less than fully developed property.
4. The State offered no evidence to controvert that Defendant is native Hawaiian.
5. The State offered no evidence to controvert that Defendant's pig hunting is constitutionally protected as a customary or traditional native Hawaiian practice.
6. The State offered no evidence to controvert that Defendant's pig hunting occurred on less than fully developed property.

7. Defendant is native Hawaiian, as testimony and exhibits collectively demonstrated that Defendant is a descendant of native Hawaiians who inhabited Kauai prior to 1778, regardless of Defendant's specific blood quantum. See Article XII, section 7 of the Hawaii Constitution; see also *Public Access Shoreline Hawaii v. Hawaii County Planning Comm'n*, 79 Haw. 425, 442, 903 P.2d 1246, 1263 (1995) (hereinafter "PASH").
8. Defendant established, through kama'aina and expert testimony, that his hunting pig on the subject property is constitutionally protected as a customary or traditional native Hawaiian practice.
9. Dr. Jonathon Osorio, a professor at the Center for Hawaiian Studies at the University of Hawaii, is qualified to testify as an expert witness on customary and traditional native Hawaiian practices.
10. Based on Dr. Jonathan Osorio's expert testimony, as well as the testimony of kama'aina witnesses, the Court finds that Defendant's pig hunting on the subject property constitutes an established native Hawaiian custom or tradition practiced prior to 1892. See generally *State v. Pratt*, 243 P.3d 289, 311 (Haw. Ct. App. 2010) cert. withdrawn, SCWC-27897, 2011 WL 1090187 (Haw. Mar. 18, 2011) and cert. granted, SCWC-27897, 2011 WL 1523485 (Haw. Apr. 21, 2011).
11. Defendant and his ohana occupy the same ahupua'a that the subject property is located.
12. Defendant and his ohana maintain a taro farm on the subject ahupua'a.
13. Defendant and his ohana hunt pig for food and subsistence; the pig meat is shared with members of the ohana.
14. Defendant and his ohana hunt pig for cultural reasons.
15. Defendant and his ohana hunt pig to preserve ohana tradition.

16. Defendant and his ohana hunt pig to keep the wild pig population down.
17. Pigs are a nuisance to Kauai's landscape and agriculture; this finding is based on testimony presented by Defense and stipulation by the State of Hawaii.
18. There was nothing unreasonable about the way Defendant hunted pig.
19. The State's attempt to regulate Defendant's conduct—charging Defendant with simple trespass in violation of HRS 708-815 of the Hawaii Revised Statutes, and hunting on private lands prohibited in violation of HRS 183D-26 of the Hawaii Revised Statutes—amounts to a blanket prohibition or extinguishment of Defendant's protected practice of hunting pig on the subject property. PASH at 442.

#### **CONCLUSIONS OF LAW**

1. Hawaii's concepts and laws relating to land tenure are unique within United States law. The relevant statutory and constitutional provisions which guide Hawaii's unique framework are Haw. Rev. Stat. § 7-1, Haw. Rev. Stat. § 1-1, and Article XII, section 7 of the Hawaii Constitution.
2. Lawful native Hawaiian occupants of an ahupua'a may—for the purposes of practicing native Hawaiian customs and traditions—enter undeveloped lands within the ahupua'a to gather specifically enumerated items. *Kalipi v. Hawaiian Trust Co., Ltd.* 66 Haw. 1, 3-4, 656 P.2d 745 (1982). Defendant and his ohana are lawful occupants of the subject ahupua'a.
3. The "Hawaiian usage" clause may establish certain customary Hawaiian rights beyond those found in HRS § 7-1. *Id.* at 751.
4. In the case at bar, pig hunting, while not specifically enumerated in HRS § 7-1, qualifies as a traditional and customary native Hawaiian practice deserving Constitutional

- protection, as Defendant brought forward evidence that hunting pig was an established native Hawaiian custom or tradition practiced prior to 1892. See generally *State v. Pratt*.
5. Native Hawaiian rights protected by article XII, § 7 may extend beyond the ahupua'a in which a native Hawaiian resides where such rights have been customarily and traditionally exercised in this manner. *Pele Defense Fund v. Paty*, 73 Haw. 578, 619, 837 P.2d 1247 (1992). In the instant matter, Defendant's Ohana's pig hunting has been customarily and traditionally exercised on the subject property.
  6. Rights of native Hawaiians to enter undeveloped lands owned by others to practice continuously exercised access and gathering rights necessary for subsistence, cultural or religious purposes may be upheld as long as no actual harm was done by the practice. *Id.* The evidence presented to the Court evidenced that there was no actual harm caused by Defendant hunting pig on the subject property.
  7. Constitutionally protected native Hawaiian rights, reasonably exercised, qualify as a privilege for purposes of enforcing criminal trespass statutes. *State v. Hanapi*. The reasonable exercise of ancient Hawaiian usage is entitled to protection under article XII, section 7. *Id.* Here, Defendant's exercise of his ancient Hawaiian usage was reasonable.
  8. Because Defendant satisfied his burden through evidence and testimony, the Court reconciled the competing interests and upheld Defendant's privilege because it was reasonably exercised to the extent feasible.
  9. The regulatory power provided in article XII, section 7 does not justify summary extinguishment of such rights by the State merely because they are deemed inconsistent with generally understood elements of the western doctrine of "property." PASH at 442. Extinguishing traditional rights based simply upon the possible inconsistency of

purported native rights with our modern system of land tenure must fail; the Court's obligation to preserve and enforce such traditional rights is part of the Hawaii State Constitution. *Kalipi v. Hawaiian Trust Co., Ltd.*, at 748. Here, the State's attempt to regulate Defendant's traditional right, through criminal prosecution, amounts to a blanket prohibition or extinguishment of Defendant's protected practice of hunting pig on the subject property.

10. The government must protect the privilege of Defendant to enter the subject property to practice continuously exercised access and gathering rights necessary for subsistence and cultural purposes because no actual harm was done by Defendant. *Pele Defense Fund v. Paty*, 73 Haw. 578, 619, 837 P.2d 1247 (1992).

11. For the above reasons, Mr. Palama's activities are established native Hawaiian customs or traditions that require this Court's constitutional protection.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE**

NOW, THEREFORE, based on the foregoing Findings of Fact, and Conclusions of Law, it is HEREBY ORDERED, ADJUDGED, AND DECREED, that Defendant Kui Palama's Motion to Dismiss is GRANTED and the above-captioned matter is HEREBY DISMISSED WITH PREJUDICE.

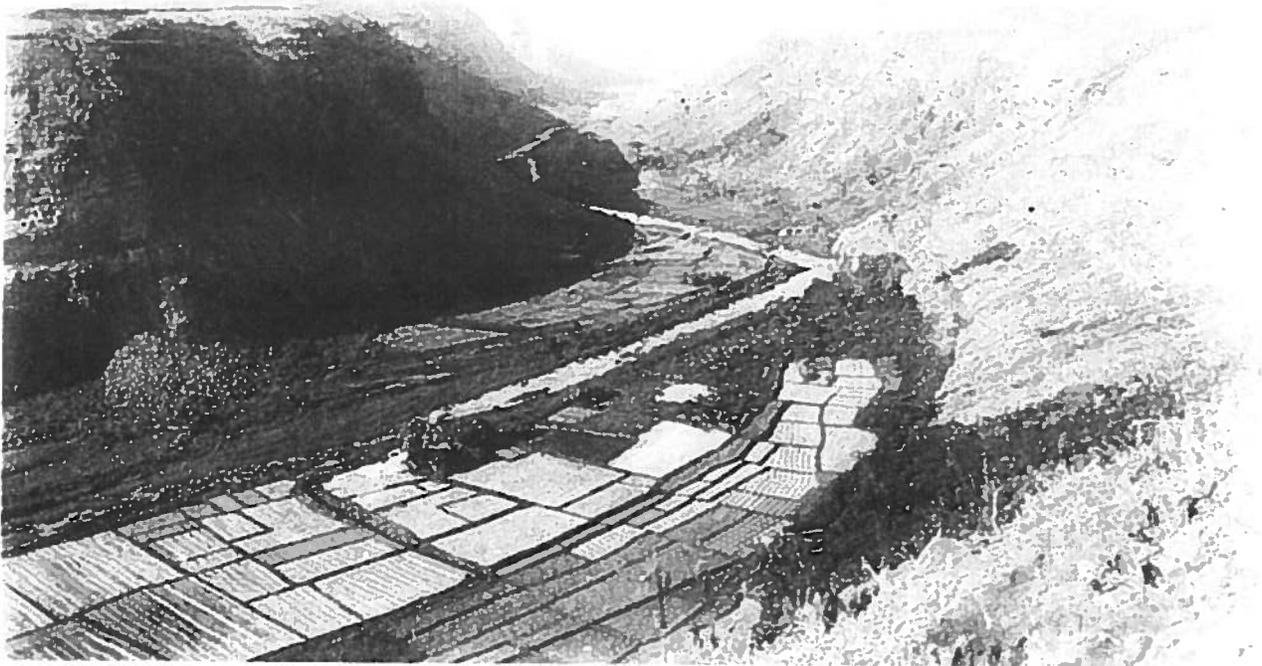
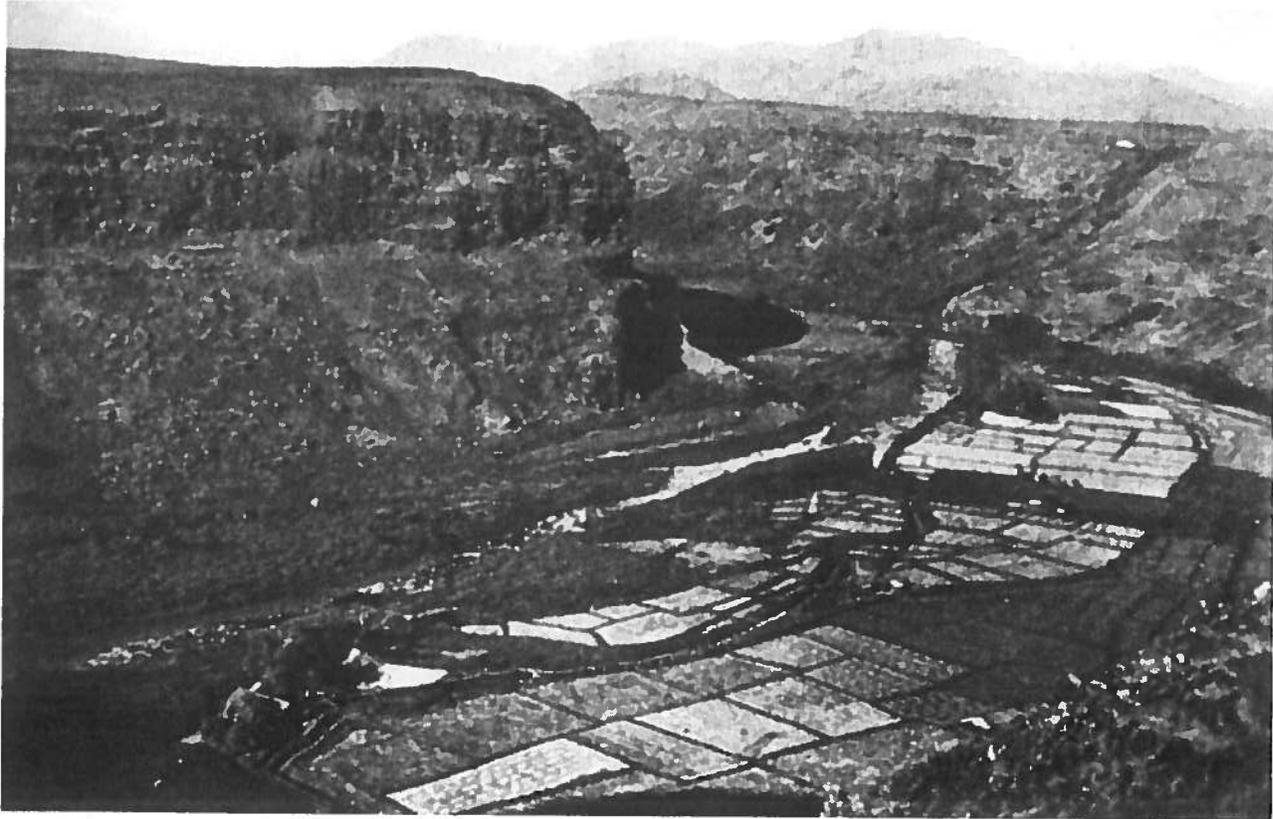
DATED: Lihue, Hawaii, APR 25 2012.

\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
John Murphy, Deputy Prosecutor for State of Hawaii

Exhibit:8



## **Exhibit: 9**

### **HRS-CHAPTER 226 HAWAII STATE PLANNING ACT**

**§226-24 Objective and policies for social-cultural advancement--individual rights and personal well-being.** (a) Planning for the State's social-cultural advancement with regard to individual rights and personal well-being shall be directed towards achievement of the objective of increased opportunities and protection of individual rights to enable individuals to fulfill their social-economic needs and aspirations.

(b) To achieve the individual rights and personal well-being objective, it shall be the policy of this State to:

(1) Provide effective services and activities that protect individuals from criminal acts and unfair practices and that alleviate the consequences of criminal acts in order to foster a safe and secure environment.

(2) Uphold and protect the national and state constitutional rights of every individual.

(3) Assure access to, and availability of, legal assistance, consumer protection, and other public services which strive to attain social justice.

(4) Ensure equal opportunities for individual participation in society. [L 1978, c 100, pt of §2; am L 1986, c 276, §23]

**§226-25 Objective and policies for socio-cultural advancement--culture.** (a) Planning for the State's socio advancement with regsocio-cultural shall be directed toward the achievement of the objective of enhancement of cultural identities, traditions, values, customs, and arts of Hawaii's people.

(b) To achieve the culture objective, it shall be the policy of this State to:

(1) Foster increased knowledge and understanding of Hawaii's ethnic and cultural heritages and the history of Hawaii.

(2) Support activities and conditions that promote cultural values, customs, and arts that enrich the lifestyles of Hawaii's people and which are sensitive and responsive to family and community needs.

(3) Encourage increased awareness of the effects of proposed public and private actions on the integrity and quality of cultural and community lifestyles in Hawaii.

(4) Encourage the essence of the aloha spirit in people's daily activities to promote harmonious relationships among Hawaii's people and visitors. [L 1978, c 100, pt of §2; am L 1986, c 276, §24]

**[§226-108] Sustainability.** Priority guidelines and principles to promote sustainability shall include:

(1) Encouraging balanced economic, social, community, and environmental priorities;

(2) Encouraging planning that respects and promotes living within the natural resources and limits of the State;

(3) Promoting a diversified and dynamic economy;

(4) Encouraging respect for the host culture;

(5) Promoting decisions based on meeting the needs of the present without compromising the needs of future generations;

(6) Considering the principles of the ahupua'a system; and

(7) Emphasizing that everyone, including individuals, families, communities, businesses, and government, has the responsibility for achieving a sustainable Hawaii. [L 2011, c 181, §2]

## **Exhibit: 10**

### **3.6 NATIVE HAWAIIAN RIGHTS**

There is a statewide movement to restore Native Hawaiian rights and lands; to obtain reparations for past and ongoing use of trust lands; and to attain a sovereign Native Hawaiian government. It is important to set forth Native Hawaiian rights and to define the role of the County government vis-à-vis the State and Federal governments.

#### **3.6.1 Policy**

Under the State Constitution and the County Charter, the County of Kaua'i is empowered to promote the health, safety and welfare of all inhabitants without discrimination as to ethnic origin. As part of carrying out its responsibilities under the Constitution and the Charter, the County recognizes the rights of native Hawaiians and the laws concerning lands and waters that have been established through the State Constitution, State and Federal laws, and State and Federal court decisions. No County ordinance or rule shall modify or diminish these rights:

- Native Hawaiian water rights provided under the State Water Code, HRS Chapter 174C.
- Kuleana lands, water rights and access rights provided under the Kuleana Act of 1850, as recognized in current statutes, rules and court decisions.
- Konohiki and hoa'aina fishing rights provided under the 1839 Law of Kamehameha, as modified by subsequent legislative acts and court decisions.
- Traditional and customary rights of Native Hawaiians, such as for access and gathering, provided under the State Constitution and Hawai'i Revised Statutes, as interpreted by the courts (i.e., the PASH case).
- Burial rights provided under the Hawai'i Historic Preservation Act and the federal Native American Graves Repatriation Act.
- Preservation of historic properties and archaeological resources provided under the federal Archaeological Resources Protection Act of 1979; the National Historic Preservation Act of 1966; and the Hawai'i Historic Preservation Act.

#### **3.6.2 Rationale for Policy**

Native Hawaiians have special rights under federal law, the State Constitution, and State statutes. Federal and state court decisions interpret the laws and how they are to be applied. The laws and court decisions apply throughout every county of the State of Hawai'i, and they are superior to county ordinances. The County of Kaua'i must respect these laws, and it has no power to change them. In addition, there are special State and federal trusts which have been established to benefit Native Hawaiians.

Other federal and State laws safeguard important rights that apply to all citizens of the State of Hawai'i. For example, federal and state constitutional provisions ensure freedom of speech and religion. State laws govern fee title to land; and State laws and court rulings define riparian rights, appurtenant rights, and other rights in water. Still other laws preserve the shoreline area for public access and use. All of these laws are also superior to county ordinances and cannot be changed by the counties.

These rights affect county government. For example, the County must allow construction of a house on a kuleana house site, regardless of County zoning. In developing new water sources, the Kaua'i Water Board must respect and provide for both (a) riparian and appurtenant uses of stream water and (b) Native Hawaiian rights to water. In administering zoning and other land use regulations, the County must recognize traditional and customary access and gathering rights. In compliance with State statutes on historic preservation and coastal zone management, the County requires land use permit applicants to conduct archaeological surveys and to protect archaeological sites and burial sites.

While it appears that some change will occur to reestablish Hawaiian self-government, the form of Hawaiian sovereignty is undecided at this time. While it would be inappropriate to adopt specific policy on sovereignty, the County will maintain a basic philosophy of cooperation and negotiation between the County government and a future Native Hawaiian sovereign government.

#### **3.6.3 Implementing Action**

State boards and commissions that license professions relating to transfer of land ownership or land development should require applicants to demonstrate knowledge of Hawaiian land and water laws and rights as a prerequisite for licensing or professional registration. These include, at minimum, the Real Estate Commission and the Board of Registration for Professional Engineers, Architects, Surveyors and Landscape Architects.