

MAR 03 2020

SENATE CONCURRENT RESOLUTION

STRONGLY URGING THE STATE OF HAWAI'I AND THE COUNTY OF KAUA'I TO PROTECT THE WAHI PANA OF WAIMAKAOHI'IAKA AND THE TRADITIONAL AND CUSTOMARY PRACTICE OF MAKING THE SALT BEDS AND GATHERING PA'AKAI (SALT) IN HANAPEPE, KAUA'I FOR ALL FUTURE GENERATIONS.

1 WHEREAS, Waimakaohi'iaka, in the 'ili of 'Ukulā, in the
2 ahupua'a of Hanapēpē, in the moku of Kona or also known as the
3 salt ponds of Hanapēpē is a wahi pana, a culturally significant
4 sacred site specifically for the making of pa'akai (salt), which
5 has been traditionally cultivated and gathered by native
6 Hawaiians since time immemorial; and

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8 WHEREAS, Waimakaohi'iaka, is the only area in all of Hawai'i
9 that continues to make the salt beds and harvest pa'akai using
10 these traditional methods which are passed generation to
11 generation by native Hawaiian 'ohana who are exercising their
12 constitutionally protected traditional and customary salt-making
13 knowledge and skills; and

14
15 WHEREAS, Article XII , Section 7, of the Hawai'i State
16 Constitution provides: "The State reaffirms and shall protect
17 all rights, customarily and traditionally exercised for
18 subsistence, cultural and religious purposes and possessed by
19 ahupua'a tenants who are descendants of native Hawaiians who
20 inhabited the Hawaiian Islands prior to 1778, subject to the
21 right of the State to regulate such rights."; and

22
23 WHEREAS, in keeping with centuries-old traditions, the
24 pa'akai gathered at this location cannot be bought nor is it
25 sold, but is generously shared or traded by the twenty-two
26 families who are the lineal descendants of past salt-makers,
27 resulting in this resource being distributed throughout Kaua'i,
28 statewide, nationally and internationally for subsistence,
29 cultural and religious purposes; and



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2 WHEREAS, the Hawai'i Register of Historic Places is an
3 official list of properties that have been recognized for their
4 significance to the history, architecture, archaeology, or
5 culture of Hawai'i communities, and the Hanapēpē Salt Pans have
6 been listed in the State Inventory of Historic Places as SIHP
7 #50-30-09-00049 since September 30, 1988; and
8

9 WHEREAS, the Waimakaohi'iaka parcel is zoned for
10 conservation, and is identified as an Open/Special Treatment
11 Resource and Cultural District by the County of Kaua'i; and
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13 WHEREAS, urbanization, commercial, and recreation
14 activities adjacent to Waimakaohi'iaka cause threatening factors
15 such as dust, noise, and contamination from sources ranging from
16 an ill-placed helicopter operation sited at Port Allen Airport,
17 also known as Burns Field, and vehicles accessing the beach, to
18 broken beer bottles and trash left by beach users; and
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20 WHEREAS, on June 25, 2019, the Kaua'i Planning Commission
21 considered an application submitted by Smoky Mountain
22 Helicopters; Inc. (SMI) for after-the-fact permit applications
23 during which over one hundred people testified in person,
24 producing over one hundred written testimonies and generating
25 over 34,000 signatures on an online petition, which can be found
26 at <http://change.org/protectpaakai>, to protect this last of its
27 kind salt making tradition in Hanapēpē; and
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29 WHEREAS, subsequently, the Kaua'i Planning Commission was
30 planning for a contested case hearing for the after-the-fact
31 permit applications and granted intervenor status to the Hui
32 Hana Pa'akai o Hanapēpē, a native Hawaiian organization organized
33 in 1964, comprised of the twenty-two 'ohana that continue the
34 salt-making and gathering practice; and
35

36 WHEREAS, on August 1, 2019, the Hui Hana Pa'akai o Hanapēpē
37 sent a certified letter to the Department of Health and the
38 United States Environmental Protection Agency urgently
39 requesting them to investigate immediately the use of an
40 unpermitted restroom facility utilizing a cesspool at Burns
41 Field, Kaua'i by SMI; and



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2 WHEREAS, on two occasions in August 2019, the County of
3 Kaua'i Planning Department sent a certified notice of violations
4 of Kaua'i's comprehensive zoning ordinance and Special Management
5 Area Rules and Regulations and orders to pay fines to the State
6 of Hawai'i Department of Transportation, Airports Division
7 (Owner), SMI (Lessee), D & J Air Adventures, and Maverick
8 Helicopter citing the illegal development within the SMA
9 District, failure to secure required SMA permit determination
10 and violations of the comprehensive zoning ordinance on
11 Executive Order No. 931(P); and
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13 WHEREAS, in response to inquiries sent by State
14 Representative Dee Morikawa and Kaua'i Councilman Luke Evslin,
15 the Department of Health Wastewater Branch (WWB) investigated
16 the site on August 21, 2019, and found that: an illegal
17 cesspool was constructed but not in use, the Maverick Helicopter
18 facility was utilizing two portable toilets, plumbing fixtures
19 (toilet, sink and associated piping) were recently removed from
20 the facility's restroom, no wastewater was observed being
21 discharged to the illegal cesspool, and the WWB will be issuing
22 the facility a field citation for the construction of an illegal
23 cesspool; and
24

25 WHEREAS, additional WWB investigations found: SMI had
26 previously utilized an unapproved cesspool for an unpermitted
27 restroom, the cesspool was not in use and the fixtures from the
28 restroom were removed before the inspection, two portable
29 toilets were provided at Maverick Helicopter facility for
30 employees and customers, the WWB will be issuing the Maverick
31 Helicopters a field citation for the construction and use of a
32 cesspool that was not approved by the Director of Health, and
33 Maverick Helicopters will be ordered to: (1) properly abandon
34 the cesspool; (2) obtain a building permit for the restroom; (3)
35 construct a new individual wastewater system to serve the
36 restroom; and (4) remove the two portable toilets after the
37 individual wastewater system is issued an approval to use from
38 the WWB; and
39

40 WHEREAS, on August 30, 2019, the County of Kaua'i Director
41 of Planning received a copy of a letter from Belles Graham LLP
42 representing SMI in receipt of the Planning Department's letter



1 dated August 5, 2019, informing the client of a Notice of
2 Violation and Order to Pay Fines, as well a Petition to Appeal
3 Decision of the Planning Director as provided for by Chapter 9
4 of the Planning Commission Rules; and
5

6 WHEREAS, the Hui Hana Pa‘akai o Hanapēpē has developed a web
7 strategy to share updated and relevant information with the
8 community, which can be found at <http://protectpaakai.org>; now,
9 therefore,
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11 BE IT RESOLVED by the Senate of the Thirtieth Legislature
12 of the State of Hawai‘i, Regular Session of 2020, the House of
13 Representatives concurring, that the Governor and County of
14 Kaua‘i are strongly urged to protect the wahi pana of
15 Waimakaohi‘iaka and the traditional and customary practice of
16 making salt beds and gathering pa‘akai (salt) in Hanapēpē, Kaua‘i
17 for all future generations; and
18

19 BE IT FURTHER RESOLVED that the Legislature of the State of
20 Hawai‘i stands in solidarity with the Hui Hana Pa‘akai o Hanapēpē
21 as protectors of this wahi pana; and
22

23 BE IT FURTHER RESOLVED that the Department of
24 Transportation is strongly urged to order the relocation of the
25 operations of Smoky Mountain Helicopters, Inc. from Burns Field
26 to the more appropriate Lihu‘e Airport where all other Kaua‘i
27 helicopter tour businesses operate, then close the Port Allen
28 Airport, and provide adequate security to prevent illegal
29 trespassing and camping in the areas under its jurisdiction; and
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31 BE IT FURTHER RESOLVED that the Department of Land and
32 Natural Resources, and the County of Kaua‘i also control,
33 regulate, and enforce illegal beach access impacting the salt
34 ponds in the areas under its jurisdictions; and
35

36 BE IT FURTHER RESOLVED that the United States Environmental
37 Protection Agency urgently investigate the use of an unpermitted
38 restroom facility utilizing a cesspool at Burns Field, Kaua‘i by
39 Smoky Mountain Helicopters, Inc. and send a response to the Hui
40 Hana Pa‘akai o Hanapēpē; and
41



S.C.R. NO. 54

1 BE IT FURTHER RESOLVED that certified copies of this
 2 Concurrent Resolution be transmitted to the Administrator of the
 3 United States Environmental Protection Agency; Governor; Chair
 4 of the Board of Trustees of the Office of Hawaiian Affairs;
 5 Mayors of Counties of Kaua'i, Hawai'i, Honolulu, and Maui; Chair
 6 of County of Kaua'i Council; Chair of County of Kaua'i Planning
 7 Commission; County of Kaua'i Planning Director; Director of
 8 Department of Transportation; Chair of the Board of Land and
 9 Natural Resources; Director of the Department of Land and
 10 Natural Resources; and President of the Association of Hawaiian
 11 Civic Clubs.

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 14

OFFERED BY: _____



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