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JUDGE RULES THE STATE BREACHED ITS TRUST DUTY AT PŌHAKULOA

(Honolulu,HI) In a bombshell ruling, a circuit court judge has ruled that the Department of Land and Natural Resources breached its trust duty to mālama ‘āina with respect to the lands the state leases to the U.S. Army at the Pōhakuloa Training Area, located on the island of Hawai‘i. Circuit Court Judge Gary Chang issued an order requiring the department to inspect the area to ensure that the Army is complying with the terms of the lease it entered into in August 1964. He also barred the department from entering into a new lease until the board of land and natural resources renders a written determination that the Army is complying with the terms of the existing lease, which expires in August 2029.

In August 1964, the federal government and the new State of Hawai‘i signed a 65-year lease allowing the Army to use 22,971 acres of state land at Pōhakuloa for one dollar. The lease required the Army to “make every reasonable effort to . . . remove or deactivate all live or blank ammunition upon completion of a training exercise or prior to entry by the said public, whichever is sooner” and to “remove or bury all trash, garbage or other waste materials.”

In April 2014, Clarence Ching and Maxine Kahaulelio, represented by the Native Hawaiian Legal Corporation, sued the department of land and natural resources for its failure to monitor whether the United States complied with the terms of the Lease. At a trial in 2015, Ching and Kahaulelio demonstrated that military debris, including unexploded ordnance, is scattered across the landscape.

Judge Chang found that the department of land and natural resources has been “aware that military training activities on [Pōhakuloa] pose a significant and substantial risk of harm or damage” to state lands.” He also found that the department’s failure to perform its duties “has harmed, impaired, diminished, or otherwise adversely affected [Ching and Kahaulelio’s] cultural interests in [Pōhakuloa].”

The court concluded that the department of land and natural resources has an affirmative "duty to mālama ‘āina." "While the principle rests on firm precedent, this is the first time a court has used this term to describe the state's duties" according to David Kimo Frankel, one of the attorneys in the case. Clarence Ching added, “Everything we do is for the ‘āina.”

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About the Native Hawaiian Legal Corporation:

The Native Hawaiian Legal Corporation (Native Hawaiian Legal Corporation) is a 501 (c)(3) non-profit, public-interest law firm with a practice that is concentrated in the area of Native Hawaiian Rights law. NHLC provides legal assistance to families and communities engaged in perpetuating the culture and traditions of Hawai‘i's indigenous people. Founded by several grass roots leaders in 1974, NHLC was initially a volunteer-run referral service. The high demand for direct help, especially from families in need of legal assistance to protect their ancestral lands, transformed NHLC into a law firm that now provides legal help to approximately 400 clients annually. For more information, visit www.nhlchi.org