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S.C. NO. CAAP-12-0000434

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII

Plaintiff-Appellant,

v.

KUI PALAMA,

Defendant-Appellee.

CR. NO. 11-1-0116

APPEAL FROM THE FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS FILED APRIL  
26, 2012

FIFTH CIRCUIT COURT,  
STATE OF HAWAII

HONORABLE KATHLEEN N.A  
WATANABE, JUDGE PRESIDING

OPENING BRIEF OF PLAINTIFF-APPELLANT, STATE OF HAWAII

APPENDIX A

CERTIFICATE OF SERVICE

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## **I. Statement Of The Case**

### **A. Nature Of The Case**

Plaintiff-Appellant State of Hawaii (**State**) has appealed the Findings of Fact, Conclusions of Law, And Order Granting Defendant's Motion To Dismiss filed in the Circuit Court of the Fifth Circuit<sup>1</sup> on April 26, 2012. DKT #11 (Record on Appeal (RA 4 & 139, i.e., pages 4 & 139)).

This criminal prosecution began on January 17, 2011, when Defendant-Appellee, Kui Palama (**Palama**) was issued two separate complaints and summons for simple trespass and pig hunting -- without the permission of the landowner -- on less than fully developed private land -- on Kauai (**the charges**). (RA 13-16)

### **B. The Course And Disposition Of Proceedings In The Circuit Court**

On March 2, 2011, Palama was arraigned on the charges in the District Court of the Fifth Circuit. (RA 8)

On March 29, 2011, Palama waived his right to counsel and demanded a jury trial. The matter, that eventually became Cr. No. 11-1-0116, was bound to the circuit court for further proceedings to be held on April 12, 2011. (RA 8-12)

On May 17, 2011, Palama entered a not guilty plea and a trial date was set.

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<sup>1</sup> The Honorable Kathleen N.A. Watanabe presiding.

On February 9, 2012, Palama filed Defendant's Motion To Dismiss (**motion**). (RA 50).

The motion was heard by the circuit court on March 13<sup>th</sup> and April 5, 2012. Dkt. #7 (**TT1**) Dkt. #9 (**TT2**)

On April 26, 2012, the circuit court granted the motion. (RA 4 & 139)

On May 1, 2012, the State filed its notice of appeal. (RA 4 & 145)

There has been no circuit court trial of the charges due to the motion being granted.

**C. Facts Material To Consideration Of The Questions And Points Presented**

The underlying facts are undisputed: on February 17, 2011, Palama was intentionally pig hunting, on private land, without the permission of the landowner. (RA 140) (TT2 38-42)

During the hearing on the motion, Palama had the burden of proof, i.e., the obligation, to demonstrate to the circuit court, that his pig hunting on private property was somehow protected by the Hawaii state constitution. St. v. Hanapi, 89 Haw. 177, 184, 970 P.2d 485, 492 (1998).

The Hawaii Supreme Court has held<sup>2</sup> that Palama, a criminal defendant attempting to assert a purported native

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<sup>2</sup> It should be highlighted that Hanapi was a trial, the instant matter is a motion to dismiss.

Hawaiian privilege as a defense to criminal charges, must satisfy, at minimum, a three-prong test at trial:

- (1) the defendant must be "native Hawaiian" according to the criteria established in PASH<sup>3</sup>,
- (2) the claimed right must be "constitutionally protected as a customary or traditional native Hawaiian practice, and
- (3) the conduct must occur on undeveloped property;

and, his pig hunting must also pass a judicial balancing analysis. Id. at 185-86, 970 P.2d at 493-94. St. v. Pratt, 127 Hawai'i 206, 207, 277 P.3d 300, 301 (2012).

On February 17, 2011, the State of Hawaii, was, and continues to be, a lawful government. St. v. Fergerstrom, 106 Haw. 43, 55, 101 P.3d 652, 664 (2004).

A part of that lawful government, the Department of Land and Natural Resources (DLNR) is the Hawaii state agency responsible for managing and administering the wildlife of the state. Hawaii Revised Statutes (HRS) § 183D-2.

"Wildlife" includes "game". HRS § 183D-1.

To "take", among other things, means to "hunt" and "kill". HRS § 183D-2.

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<sup>3</sup> Palama must prove he is a descendant of "native Hawaiians" (sic) who inhabited the islands prior to 1778, and who assert otherwise valid customary and traditional Hawaiian rights under HRS § 1-1. Public Access Shoreline Hawaii by Rothstein v. Hawai'i County Planning Com'n by Fujimoto, 79 Haw. 425, 449, 903 P.2d 1246, 1270 (1995)

A pig is an HRS §§ 183D-1, 183D-51 and Hawaii Administrative Rules (HAR) game mammal.

The DLNR regulates and enforces state hunting laws regarding pigs. HRS chapter 183D, Part II.

HRS § 183D-26 and HAR § 13-123-8 are the state laws/regulations specifically prohibiting hunting of pigs on private lands without the permission of the landowner<sup>4</sup>.

HRS § 7-1 is the recitation of the specific "rights" of native "tenants" listed verbatim in section 7 of the Kuleana Act of 1850, as amended in 1851.

The State of Hawaii regulates pig hunting, and more specifically, pig hunting on private property.

The motion maintained, and the circuit court found, that Palama's trespassing on private property, the use of a pickup truck, a horse trailer, a mule, and dogs to hunt and kill two HRS §§ 183D-1 & 183D-51 and HAR § 13-123-2 game mammals were "traditional and customary" and "... an exercise of native Hawaiian rights protected under the Hawaii Constitution." (RA 139).

The record herein is void of any legally admissible evidence that Palama, specifically and individually, or any

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<sup>4</sup> Even the Kuleana Act provided that the people shall inform the landlord or his agent of their use of the land and proceed with his consent. 64 Wash. L. Rev. 233, 262 (1989).

member of his family, is a descendant of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, or that he is an *ahupuaa* tenant. (TT 1 & 2) (RA 110 & 128)

During the motion, Palama had the burden to show that his pig hunting fell under the prophylactic shield of the Hawaii state constitution.

The Hawaii Supreme Court has recently issued its opinion in St. v. Pratt, 127 Haw. 206, 277 P. 3d 300, (2012) which reviewed a guilty verdict on similar issues, not a motion to dismiss as is the case here.

At a motion to dismiss, the moving party has the burden of proof.

## **II. Statement Of Points Of Error**

In summary, the State challenges almost every single finding of fact (**FOF**) and conclusion of law (**COL**) of the circuit court. (RA 139-144). If a specific challenge is omitted below, it is inadvertent or because the State feels the FOFs and COLs intertwine and overlap. The State does not challenge obviously correct statements of law, e.g., FOF 1 & 2, or COL 1 and 2 (except for its last sentence), but does challenge the circuit court's application of the valid laws to the simple facts of this matter.

**A.** The circuit court erred when it found in its FOF



and COL that Palama is a native Hawaiian. FOFs 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, COL 4, 5, 6, 7, 8, 9, 10, & 11.

B. The circuit court erred when it found that Palama was a lawful occupant an ahupuaa. FOF 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, and COL 2, 4, 5 6, 7, 8, 9, 10, & 11.

C. The circuit court erred when it found as a fact and concluded as a matter of law that "... Palama's activities are established native Hawaiian customs or traditions that require this Court's constitutional protection." All FOF and all COL.

D. The circuit court erred in finding the State has "attempt[ed] to regulate Defendant's conduct ..."; an accurate finding and conclusion is that the State has successfully and completely regulated Palama's pig hunting on private and/or public property. All FOF and COL.

E. The circuit court erred: the State's regulation of Palama's pig hunting on private property is not a "blanket prohibition or extinguishment" of Palama's pig hunting. All a native Hawaiian, or anyone else, has to do is to politely ask a landowner for permission to hunt pigs on his property. There is no evidence this was done. FOF 19, COL 9. (TT1 & TT 2).

F. The circuit court erred when it found that pig hunting is a constitutionally protected customary or traditional

native Hawaiian practice<sup>5</sup>. All FOF & COL.

G. The circuit court erred in concluding the property where Palama was hunting is an actual *ahupuaa*. All FOF & COL. (TT 1 & TT 2) (RA 110 & 128). (TT2 11/11-14 to 12/4).

H. The circuit court erred in concluding Palama's pig hunting may be upheld as long as no actual harm is done in the practice.

### III. Standards of Review

FOF are reviewed under the "clearly erroneous" standard. COL are reviewed under the "right/wrong" standard. *St. v. Rippe*, 119 Haw. 15, 21, 193 P.3d 1215, 1221 (2008).

### IV. Argument

It is impossible to cite to places in the record where evidence does not exist. Here, there is simply no evidence that: Palama is a native Hawaiian; Palama lived on an *ahupuaa*; Palama was hunting on an *ahupuaa*; pig hunting is anyone's right; and that pig hunting where Palama was pig hunting, or anywhere else on Kauai, was done prior to 1892. (TT 1 & 2, Ex. D1 & D2).

Palama's activities do not fall within the scope of the "Miscellaneous Rights of the People" stated in HRS § 7-1.

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<sup>5</sup> "Practice" is not the key point; "rights" of "native Hawaiian" *ahupuaa* "tenants", who are descendants of native Hawaiians, are the key points.

Palama has not established that he is a lawful occupant or tenant of any *ahupuaa*. There is no FOF or COL that Palama or any of his family members lawfully resided, owned, or occupied land in any *ahupuaa*. Purported evidence regarding any witness' understanding that Palama's family line is in some way connected to an alleged *ahupuaa* is not sufficient evidence to establish his entitlement to the any rights at all reserved to native Hawaiian *ahupuaa* residents under HRS § 7-1.

**A. Palama Did Not Prove He Is A "Native Hawaiian": The Motion Should Have Been Denied**

**1. Palama's Burden Of Proof**

Here, Palama has the burden to show that his<sup>6</sup> pig hunting fell under the prophylactic shield of the Hawaii state constitution. Hanapi, *supra* at 182-183. (TT1; 62-79).

**2. 1778: Who Is A "native Hawaiian"?**

As culturally insensitive, socially unpopular, egregiously illogical, and anathema to the egalitarian concept that all people are created equal (among others), as it may be, the Hawaii State Legislature and the Hawaii Supreme Court have created, and repeatedly reinforced, the absolute legal definition of who is, and who is not, a "native Hawaiian" for the facts of this criminal prosecution.

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<sup>6</sup> I.e., one who purports to be a Const. Art 12, § 7 "native Hawaiian".

Palama may very well be one of that elite class<sup>7</sup>, but he has not proven that fact, in this case, to the satisfaction of the Hawaii Supreme Court and the Hawaii constitution.

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupuaa 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. Const. Art. 12, § 7 (emphasis added)

Palama, with his burden of proof in this motion, simply did not, and probably cannot ever, prove that he is a descendant of a "native Hawaiian" who inhabited the Hawaiian Islands prior to 1778<sup>8</sup>.

Palama has not sustained his burden of proof as articulated by the Hawaii Supreme Court.

Defense exhibits D1 and D2 (RA 110-128) were admitted in evidence over timely objections of the State.

The testimony of Laverne Silva was admitted over timely objections of the State.<sup>9</sup>

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<sup>7</sup> Note: Kamehameha Schools; Office of Hawaiian Affairs; Hawaiian Homelands; etc.

<sup>8</sup> The ancestors of Clarence Ellis Ash did not inhabit the Hawaiian Islands based upon the testimony of Dr. Osorio. (RA 126).

<sup>9</sup> Neither Ex.s D1 & D2 nor the testimony of Laverne Silva are HRE 803 or HRE 804 exceptions to the hearsay rule. The State made timely objections.

In summary, there is simply neither legally valid evidence nor any evidence at all in the record that Palama is a descendant of any articulated in the record "native Hawaiian" who inhabited the Hawaiian Island prior to 1778. (TT166-70/6).

First, Palama must have proven that any original 1778 ancestor of his was a "native Hawaiian" living in what is now the state of Hawaii in 1778. That was not done.<sup>10</sup>

Second, Palama must have proven that he is a descendant of that original "native Hawaiian". By reading Art. 12, § 7, arguably Palama could possibly be a descendant of one who happened to live in "Hawaii" prior to 1778 but was not an actual "native Hawaiian" at the time.

The motion should have been denied by the circuit court because Palama did not meet his burden of proof on that issue alone.

**B. Palama Did Not Prove He Is An Ahupuaa  
Tenant: The Motion Should Have Been Denied**

There is no evidence Palama resided in any ahupuaa, even if assuming for the sake of argument, he was hunting in one, which there is no proof of either. (TT1/TT2) There is no

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<sup>10</sup> It is ironic, and quite surprising, that the legal and existential ability to be a "native Hawaiian" has come into being, and is arguably quite condescendingly defined, by one's ancestor's initial contact with people of Western Civilization. (TT1, 10-11)

evidence that any Palama relative lived in the *ahupuaa* in which he claims he was hunting. (TT1:62/9 & 64/13-23). A lawful occupant means a person residing within the *ahupuaa* in which he seeks to exercise gathering rights. Kalipi v. Hawaiian Trust Co., Ltd. 66 Haw. 1, 8-9, 656 P.2d 745, 749-750 (1982).

This limitation is dictated by the language of the statute itself. See, HRS § 1-14. The limitation requires that the tenants be "on" the land before they become entitled to take products "from the land on which they live. The Kalipi court saw no reason to deviate from unambiguous statutory language and found that any extension of claimed rights to absentee landlords would be contrary to the intention of the framers in that the right would thereby be spread to those whose only association with the *ahupuaa* may be by virtue of an economic investment.

There is no evidence Palama, or any family member actually resided within an *ahupuaa*. Thus, as a matter of law, he is not entitled to the any "native Hawaiian" privilege. Kalipi, 749-750.

**C. Palama's Claim That His Pig Hunting On Private Property Is Protected By Const. Art. 12, § 7 And HRS § 7-1 Is Absurd**

It should be undisputed that pig hunting, for myriad reasons, is a dangerous activity.

Dangerous activities must be regulated by the

government as a matter of public policy for public safety, health, and welfare. St. v. Mallan, 86 Haw. 440, 451, 950 P.2d 178, 189 (1998).

The evidence here is that Palama was pig hunting with hunting dogs, a mule and at least one knife large enough to kill what were probably feral pigs.

To hold that any person, or multiple groups of people, can go onto undeveloped private property with packs of violent, lethal hunting dogs, lethal weapons, horses, mules, or vehicles for that matter, and roam around hunting on that property, whenever and wherever they want, is simply absurd. (TT2: 62-64; 68-69).

One of those hunters, armed with a rifle, could mistake an innocent, uninformed landowner, who is rightfully walking around his property, for a game mammal, and shoot and kill the innocent landowner.

A pack of those hunters' dogs could attack a group of children hiking on their grandparents' undeveloped land.

The circuit court erred when it found as a fact and concluded as a matter of law that "... Palama's activities are established native Hawaiian customs or traditions that require this Court's constitutional protection." All FOF and all COL.

At one time in not so ancient Hawaiian history, homicide/human sacrifice was a native Hawaiian custom or tradition. 17 U. Haw. L. Rev. 605, 638 (1995). St. v. Pratt, 124 Haw. 329, 338, 243 P.3d 289, 298 (2010); 12 Asian-Pac. L. & Pol'y J. 141, 208 (2010).

Homicide is now regulated by the State. HRS chapter 707-700.

And, not even the State can kill someone. HRS chapter 706.

Hunting, like homicide, is regulated by the State in an enlightened and civilized manner according to laws created by the government.

A simple, cursory look at the actual title of HRS § 7-1 is a giveaway regarding the complete absurdity of any Palama reliance upon it for his pig hunting and the circuit court's rulings herein.

"Chapter 7  
MISCELLANEOUS RIGHTS OF THE PEOPLE  
§ 7-1 Building materials, water, etc; landlords' titles subject  
to tenants' use"

§ 7-2 addresses driftwood.

Palama would have this court assert pig hunting<sup>11</sup> on the legislatively articulated list somewhere between gathering

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<sup>11</sup> Arguably by any means: automatic weapons, all-terrain vehicles, snares, etc.



building materials, water and driftwood.

It is absurd.

HRS § 7-1 is plain and unambiguous.

The entire HRS chapter 7 is one page long.

It has two sections.

This Court's duty is to give effect to HRS chapter 7's plain, obvious -- and very brief -- meaning.

"When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." And "[w]e must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose." St. v. Toyomura, 80 Haw. 8, 18-19, 904 P.2d 893, 903-904 (1995).

Palama's claim of "native Hawaiian" "tenant" "rights" arises from three basic sources: article XII, section 7 of the Hawaii Constitution (Const. Art. 12, § 7), HRS § 7-1, and HRS § 1-1.

Const. Art. 12, § 7 addresses the concept of customary and traditional rights in a single sentence: (1) the State reaffirms and shall protect all rights<sup>12</sup>, (2) customarily and traditionally exercised (3) for subsistence, cultural and

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<sup>12</sup> See, HRS § 7-1.

religious purposes (4) and possessed by ahupuaa tenants (5) who are descendants of native Hawaiians (6) who inhabited the Hawaiian Islands prior to 1778, (7) subject to the right of the State to regulate such rights.

As stated above, HRS § 7-1 is the recitation of the specific rights of native tenants listed verbatim in section 7 of the Kuleana Act of 1850, as amended in 1851.

Once again, even the 1850 Kuleana Act provided that the people shall inform the landlord or his agent of their use of the land and proceed with his consent. 64 Wash. L. Rev. 233, 262 (1989).

Among Const. Art. 12, HRS § 7, HRS § 7-1, and HRS § 1-1, § 7-1 has been cited most frequently in litigation by native Hawaiians asserting access and gathering rights.

The law governing "gathering" rights has evolved with the recent opinion in Pratt, *supra*,. 29 Harv. Envtl. L. Rev. 523, 541 -543 (2005).

#### **D. The State regulates pig hunting in Hawaii**

##### **1. Pig Hunting Is Not A Right**

The circuit court erred: the State has not "attempt[ed] to regulate Defendant's conduct ..." it has successfully and completely regulated Palama's pig hunting on private property. All FOF and COL.

Const. Art 12, § 7 does not mandate pig hunting by native Hawaiians is a right.

The general rule is that, if the words used in a constitutional provision ... are clear and unambiguous, they are to be construed as they are written. Pray v. Judicial Selection Com'n of State 75 Haw. 333, 341, 861 P.2d 723, 727 (1993).

This court has long held that: (1) legislative enactments are presumptively constitutional; (2) a party challenging a statutory scheme has the burden of showing unconstitutionality beyond a reasonable doubt; and (3) the constitutional defect must be clear, manifest, and unmistakable. Pray, id at 340.

Const. Art. 12, § 7 must be construed in connection with other provisions of the instrument, and also in the light of the circumstances under which it was adopted and the history which preceded it. Hanabusa v. Lingle, 105 Haw. 28, 31-32, 93 P.3d 670, 673-74 (2004).

#### **E. The Blanket Prohibition Concept**

The circuit court erred: the State's regulation of Palama's pig hunting on private property is not a blanket prohibition or extinguishment of Palama's pig hunting. FOF 19, COL 9.

All Palama has to do is ask the landowner, or get a

hunting license and hunt in the proper place.

**F. Pig Hunting**

The circuit court erred when it found that pig hunting is a constitutionally protected customary or traditional native Hawaiian practice. All FOF & COL. (See, above).

**G. Ahupuaa**

The circuit court erred in concluding the property where Palama was hunting is an actual ahupuaa. All FOF & COL. (See, above).

**H. The Harm Done Concept**

The circuit court erred in concluding Palama's pig hunting may be upheld as long as not actual harm is done in the practice. Inherently dangerous activities cannot be regulated on a lack of harm done. Public safety considerations are the best reasons for regulating any activity where hunting takes place. The high incidence of accidental injury or death surrounding hunting will only be compounded without legislation that regulates conduct at the site. Persons who enter [private or] government land for the purpose of harassing an animal or person, or to simply peacefully protest, risk injury to a much greater degree than individuals who refrain from such action. State legislatures have a reasonable interest in safeguarding hunters and protesters alike from a conflict in the field that

may potentially have deadly results. Regulating conduct that may lead to a decrease in public safety is plainly within the government's reasonable interests. 72 U. Det. Mercy L. Rev. 437, 460 (1995).

**V. Conclusion**

The circuit court should never have granted the motion. The State asks this court to vacate the FOFs and COLs, direct the circuit court to enter and order with the requisite FOFs and COLs denying the motion and setting the matter for trial.

DATED: 9.12.12

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**VI. Constitutional provisions, statutes, ordinances, treaties, regulations, or rules**

See, Appendix A

**VII. Statement of related cases**

None

## VIII. Appendix

Const. Art. 12, § 7

West's Hawai'i Revised Statutes Annotated Currentness

The Constitution of the State of Hawaii (Refs & Annos)

■ Article XII. Hawaiian Affairs

■ Traditional and Customary Rights

➡ **Section 7**

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.

**HRS § 1-1**West's Hawai'i Revised Statutes Annotated Currentness

Division 1. Government

■ Title 1. General Provisions■ Chapter 1. Common Law; Construction of Laws➡ **§ 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 of the State.



## HRS § 1-14

West's Hawai'i Revised Statutes Annotated Currentness

Division 1. Government

■ Title 1. General Provisions■ Chapter 1. Common Law; Construction of Laws➡ **§ 1-14. Words have usual meaning**

The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning.

## HRS § 7-1

West's Hawai'i Revised Statutes Annotated Currentness

Division 1. Government

■ Title 1. General Provisions■ Chapter 7. Miscellaneous Rights of the People■ **§ 7-1. Building materials, water, etc.; landlords' titles subject to 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.

## HRS § 7-2

West's Hawai'i Revised Statutes Annotated Currentness

Division 1. Government

Title 1. General Provisions

Chapter 7. Miscellaneous Rights of the People

## ➡§ 7-2. Driftwood

All wood of any description which may drift on to the beach of any part of the State shall be the property of the finder, and anyone finding such driftwood may take the same for the finder's own private use, without paying a share to the State; provided that this section shall not be construed to apply to any vessel wrecked or stranded on any part of the shores of the State.

## HRS § 183D-1

West's Hawai'i Revised Statutes Annotated Currentness

## Division 1. Government

## Title 12. Conservation and Resources

## Subtitle 4. Forestry and Wildlife; Recreation Areas; Fire Protection

## Chapter 183D. Wildlife

## Part I. General Provisions

**→§ 183D-1. Definitions**

As used in this chapter, unless the context indicates otherwise:

"Aquaculture" means the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research purposes, commercial purposes, or stocking purposes.

"Aquatic life" means any type of species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment, and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, and other parts thereof.

"Board" means the board of land and natural resources.

"Department" means the department of land and natural resources.

"Feral deer" means a deer that has escaped or been released from domestication and is living in a wild and unconfined state.

"Game" means birds and mammals designated by law or by rule for hunting.

"Game birds" means birds designated by law or by rule for hunting.

"Game mammals" means mammals designated by law or by rule for hunting.

"Possess" means to place under direct physical control, restraint, or confinement.

"Predators" means animals destructive of wildlife by nature of their predatory habits, including mongooses, cats, dogs, and rats.

"Release" means to free an animal from effective confinement or restraint.

"Take" means to injure, hunt, shoot, wound, kill, trap, net, capture, or possess.

"Wild birds" means birds, other than game birds, living in a wild and undomesticated state, and the young and eggs of those birds.

"Wildlife" means any nondomesticated member of the animal kingdom, including game, whether reared in captivity or not, and includes any part, product, egg, or offspring thereof, except aquatic life as defined in this section.

"Wild mammals" means mammals, other than game mammals, living in a wild and undomesticated state, and the young of those mammals.

## HRS § 183D-2

West's Hawai'i Revised Statutes Annotated Currentness

Division 1. Government

Title 12. Conservation and Resources

Subtitle 4. Forestry and Wildlife; Recreation Areas; Fire Protection

Chapter 183D. Wildlife

Part I. General Provisions

**§ 183D-2. Powers and duties of department**

The department shall:

- (1) Manage and administer the wildlife and wildlife resources of the State;
- (2) Enforce all laws relating to the protecting, taking, hunting, killing, propagating, or increasing the wildlife within the State and the waters subject to its jurisdiction;
- (3) Establish and maintain wildlife propagating facility or facilities;
- (4) Subject to the provisions of title 12, import wildlife for the purpose of propagating and disseminating the same in the State and the waters subject to its jurisdiction;
- (5) Distribute, free of charge, as the department deems to be in the public interest, game for the purpose of increasing the food supply of the State; provided that when in the discretion of the department the public interest will not be materially interfered with by so doing, the department may propagate and furnish wildlife to private parties, upon such reasonable terms, conditions, and prices as the department may determine;
- (6) Ascertain, compile, and disseminate, free of charge, information and advice as to the best methods of protecting, propagating, and distributing wildlife in the State and the waters subject to its jurisdiction;
- (7) Gather and compile information and statistics concerning the area, location, character, and increase and decrease of wildlife in the State;
- (8) Gather and compile information concerning wildlife recommended for release in different localities, including the care and propagation of wildlife for protective, productive, and aesthetic purposes and other useful information, which the department deems proper;
- (9) Have the power to manage and regulate all lands which may be set apart as game management areas, public hunting areas, and wildlife sanctuaries;
- (10) Pursuant to section 183D-65 of this chapter, destroy predators deemed harmful to wildlife;
- (11) Formulate, and from time to time recommend to the governor and legislature, such additional legislation necessary or desirable to implement the objectives of title 12; and
- (12) Preserve, protect, and promote public hunting.

## HRS § 183D-26

West's Hawai'i Revised Statutes Annotated Currentness

Division 1. Government

Title 12. Conservation and Resources

Subtitle 4. Forestry and Wildlife; Recreation Areas; Fire Protection

Chapter 183D. Wildlife

Part II. Hunting in General

**§ 183D-26. Hunting on private lands prohibited**

(a) No person shall enter upon any land or premises belonging to, held, or occupied by another, for the purpose of hunting or to take any kind of wildlife including game without first having obtained permission from the owner or a duly appointed agent, if the owner is the occupier or holder, or if the owner has let another occupy or hold the same, without having first obtained the permission of the occupier or holder thereof, or the duly appointed agent of the occupier or holder.

(b) No prosecution shall be brought under this section, except upon the sworn complaint of the owner, occupier, or holder of the land or premises, or a duly appointed agent, or if the owner, occupier, or holder is either a corporation or a partnership, then the complaint shall be sworn to by an officer of the corporation or by one of the members of the partnership.

## HRS § 183D-51

West's Hawai'i Revised Statutes Annotated Currentness

Division 1. Government

Title 12. Conservation and Resources

Subtitle 4. Forestry and Wildlife; Recreation Areas; Fire Protection

Chapter 183D. Wildlife

Part IV. Game Mammals

**→§ 183D-51. Game mammals defined; exception**

(a) For the purposes of enforcing the wildlife laws of the State the following named mammals are hereby designated as game mammals when living in a wild or feral state not under domestication: deer (family Cervidae), pronghorn (family Antilocapridae), goat (Capra hircus), sheep (Ovis aries), cattle (Bos taurus), pig (Sus scrofa), and any other mammal that may be or has been introduced into the State and released for hunting and for which a hunting season is established by law or by rule of the department.

(b) Nothing in this section shall permit the taking, catching, pursuing, or killing of any mammal in the legal possession or control of any person, or where otherwise prohibited by law or by rule of the department.

Haw. Admin. Rules (HAR) § 13-123-2

West's Hawaii Administrative Code Currentness

Title 13. Department of Land and Natural Resources

Subtitle 5. Forestry and Wildlife

Part 2. Wildlife

Chapter 123. Rules Regulating Game Mammal Hunting (Refs & Annos)

Subchapter 1. Game Mammal Hunting in General

➔ **§ 13-123-2. Definitions.**

As used in these rules unless context requires otherwise:

"Board" means the board of land and natural resources.

"Cooperative game management area or cooperative hunting area" means privately-owned or State-leased land where the landowner or lessee has entered into an agreement with the State, granting the board authority to engage in activities that are mutually agreed upon for the purposes of game enhancement or public hunting or both, as are stipulated in the agreement.

"Department" means the department of land and natural resources.

"Disabled hunter" means a hunter, who has an impairment that substantially limits one or more of that person's major life activities.

"Division" means the division of forestry and wildlife.

"Game mammal" means those mammals designated by law or rule for hunting.

"Hunter" means a person who pursues with the means to take, kill or capture wildlife. On public hunting areas, a person who has the appropriate hunting license, tags, permits, or permit tags on their person and who has signed in at a hunter checking station is deemed to be a hunter until such a time as they have signed out at a hunter checking station.

"Hunter assistant" means a person who accompanies a hunter and assists by carrying game or an unloaded weapon. Hunter assistants may not have fireable cartridges or Muzzleloading firearm shooting components in their possession.

"Hunting" means the act of pursuing with the means to take, kill or capture wildlife.

"Hunting handgun" means a cartridge type pistol or revolver or a muzzleloading pistol or revolver, which loads from the discharge end of the barrel or cylinder and that employs flint or percussion ignition.

"Muzzleloading rifle or shotgun" means a rifle or shotgun that must be loaded through the discharge end of the firearm or the barrel and that employs flint or percussion ignition. Muzzleloading rifles and shotguns must have a shoulder stock and a barrel length of at least eighteen inches.

"Private land or hunting area" means those lands that are not State-owned, where hunting for game birds and mammals occurs.

"Public highway" means any roadway that is under the jurisdiction of the Hawaii State Department of Transportation or any of the Counties. Access roads on public hunting areas that are maintained by the Department of Land and Natural are not considered to be public highways.

"Public hunting area" means those lands designated by the board as public hunting areas where the public may hunt game birds and mammals, including:



- (1) Game management areas;
- (2) Forest reserves and surrendered lands;
- (3) Natural area reserves;
- (4) Restricted watersheds;
- (5) Cooperative game management areas;
- (6) Military training areas;
- (7) Unencumbered State lands;
- (8) Designated sanctuaries; and
- (9) Other lands designated by the board.

"Safety zone" means an area within or adjacent to a public hunting area, where possession of a loaded weapon or the discharge of firearms or other weapons is prohibited to prevent a hazard to people or property.

"Senior citizen" means a person who is sixty-five years of age or older.

"Youth hunter" as it pertains to specifically designated youth hunts, means a person who is fifteen years of age or younger, who possesses a valid State of Hawaii hunting license and who may take, kill or capture wildlife. Youth hunters must be accompanied by a non-hunting adult, who also possesses a valid State of Hawaii hunting license.

Haw. Admin. Rules (HAR) § **13-123-8**

West's Hawaii Administrative Code Currentness

Title 13. Department of Land and Natural Resources

Subtitle 5. Forestry and Wildlife

Part 2. Wildlife

Chapter 123. Rules Regulating Game Mammal Hunting (Refs & Annos)

■ Subchapter 1. Game Mammal Hunting in General

➔ **§ 13-123-8. Game mammals.**

Game mammals may be hunted with a valid hunting license and the landowner's permission on private land throughout the year, unless prohibited under § 13-123-12. Game mammals shall not be hunted on State-owned or State-controlled lands except as provided in this chapter.

PROOF OF SERVICE

I hereby certify that the attached:

Opening Brief

was served via: court jacket [☒]; US mail [☐]; personal [☐]; e  
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Dated: 9.12.12

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