

1's mandate of "conservation"-minded use recognizes "protection" as a valid purpose consonant with assuring the "highest economic and social benefits" of the resource. . . . In short, the object is not maximum consumptive use, but rather the most equitable, reasonable, and beneficial allocation of [trust] resources, with full recognition that resource protection also constitutes "use."

94 Hawai'i at 139-40, 9 P.3d at 451-52.

187. The TMT Project provides for the development and utilization of natural resources for scientific and educational purposes for the benefit of the people of the State. It satisfies the obligations of protection and maximizing reasonable and beneficial use, and it is consistent with the constitutional, statutory, and regulatory mandates of "conservation."

2. The Protection of Customary and Traditional Native Hawaiian Rights

188. The Hawai'i Constitution also mandates that the State recognize and protect customary and traditional native Hawaiian rights. Article XII, section 7 provides:

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.

189. The Hawai'i Supreme Court has confirmed that the practices which are protected by Article XII, section 7 are those "associated with the ancient way of life" that have been continued, without harm to anyone. *Kalipi*, 66 Haw. at 10, 656 P.2d at 751. In other words, to be constitutionally protected, rights must have been "customarily and traditionally held by ancient Hawaiians." *Pele Defense Fund v. Paty*, 73 Haw. 578, 619, 837 P.2d 1247, 1271 (1992).

190. Some "customary and traditional" native Hawaiian rights are codified either in Article XII, section 7 of the Hawai'i Constitution or in Haw. Rev. Stat. §§ 1-1 and 7-1. *Id.* Practices that are not codified in Article XII, section 7 or Haw. Rev. Stat. §§ 1-1 and 7-1 will still be entitled to constitutional protection as "customary and traditional" if it is proven that those practices were established by Hawaiian usage by November 25, 1892. *PASH*, 79 Haw. at 447, 903 P.3d at 1268 (citing *State v. Zimring*, 58 Haw. 106, 115 n.11, 566 P.2d 725, 732 n.11 (1977)).

191. The Petitioners' beliefs and practices are entitled to respect. Nonetheless, Petitioners, their conduct, and their claims are governed by the laws of the State of Hawai'i. Under Hawai'i law, "it is the obligation of the person claiming the