

MAR 18 2009

SENATE CONCURRENT RESOLUTION

REQUESTING AN INVESTIGATION INTO THE TRANSACTIONS CONCERNING THE
HELANI CHURCH LOT BY MOKUAIKAUA CHURCH AND THE TREATMENT OF
HUMAN REMAINS FOUND ON THE LOT.

1 WHEREAS, there is a certain parcel of property located on
2 the Island of Hawaii, designated as the Helani Church Lot,
3 situate at Kahaluu, North Kona, Hawaii, identified as Tax Map
4 Key No. (3) 7-8-14:45 (the "Helani Church Lot"); and

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6 WHEREAS, the Helani Church Lot is currently owned by
7 Mokuaiakaua Church (Congregational), a Hawaii nonprofit
8 corporation ("Mokuaiakaua Church"); and

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10 WHEREAS, the Helani Church Lot is the site of the former
11 Helani Church and contains an old church cemetery and numerous
12 graves; and

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14 WHEREAS, in 1850, the Helani Church Lot was originally
15 given to the Board of Education of the State of Hawaii by King
16 Kalakaua for religious and educational purposes; and

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18 WHEREAS, the early Missionaries established a school in
19 1853 and also conducted regular church services on the Helani
20 Church Lot until 1967; and

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22 WHEREAS, the State of Hawaii sold the Helani Church Lot to
23 the United Congregational and Evangelical Churches of Mokuaiakaua
24 and Helani ("United Congregational"), a Hawaii nonprofit
25 corporation; and

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27 WHEREAS, the Legislature finds that, in 1979, Mokuaiakaua
28 Church acquired the Helani Church Lot from United Congregational
29 pursuant to a Quitclaim Deed, dated March 15, 1979, recorded in
30 the Bureau of Conveyances of the State of Hawaii, which
31 Quitclaim Deed contained a provision stating that the grant was
32 subject to the requirement that "[t]he real property shall be



1 used by the Grantee or its affiliated or successor religious
2 organizations for religious, educational and related uses" and
3 that, "[s]hould the Grantee or its affiliated or successor
4 religious organizations fail and/or cease to use said real
5 property for religious, educational and related uses, title in
6 and to the property shall revert back to the State of Hawaii";
7 and

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9 WHEREAS, in 1985, Mokuaikaua Church entered into an
10 arrangement with Richard W. Clark and Patricia M. Clark (the
11 "Clarks"), whereby the Clarks would lease the Helani Church Lot
12 to Mokuaikaua Church and purchase in fee other adjacent or
13 adjoining property from Mokuaikaua Church, in order for the
14 Clarks to construct a condominium project; and

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16 WHEREAS, as part of the agreement regarding the condominium
17 project, Mokuaikaua Church conveyed the Helani Church Lot to the
18 Clarks, and the Clarks were to subdivide the Helani Church Lot
19 from the adjoining property and then reconvey the Helani Church
20 Lot to Mokuaikaua Church, none of which was done by the Clarks;
21 and

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23 WHEREAS, the Clarks mortgaged the Helani Church Lot, which
24 was subsequently foreclosed upon by the Clarks' mortgagees when
25 the Clarks defaulted on their loans; and

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27 WHEREAS, the Clarks' mortgagees filed suit foreclosing on
28 their liens, including the liens on the Helani Church Lot,
29 pursuant to Merle v. Clark, Civil 87-0662, filed in the Third
30 Circuit Court of the State of Hawaii (Kona Division); and

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32 WHEREAS, Mokuaikaua Church subsequently settled its claims
33 with the Clarks' mortgagees, with Mokuaikaua Church receiving a
34 release of the Clarks' mortgages on the Helani Church Lot,
35 together with a quitclaim deed to the Helani Church Lot from the
36 commissioner of the foreclosure action, and which settlement
37 required Mokuaikaua Church to perform other actions (including
38 subdividing the Helani Church Lot from other property where the
39 condominium project was located); and

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41 WHEREAS, the Legislature finds that, since that time, the
42 Helani Church Lot and the improvements thereon have further
43 deteriorated and, although Mokuaikaua Church members and
44 community members have attempted to clear debris from the



1 property, there are reports of squatters erecting tents in the
2 overgrown trees and brush; and

3
4 WHEREAS, in August 2008, Kahu Derek Napoleon of Mokuaikaua
5 Church sent out a newsletter to his congregation confirming that
6 there are burials on the property, but called the ruins of the
7 old church "dangerous" and that the Mokuaikaua Church intended
8 to tear it down and "revive" the property and use it for
9 worship, prayer, and various other church and "community"
10 events; and

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12 WHEREAS, it has been reported that all of the remains in
13 the old cemetery have been disinterred and moved to another site
14 on the Helani Church Lot; and

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16 WHEREAS, it has also been reported that a shallow grave was
17 discovered years ago during an archaeological survey, but that
18 it was not disturbed, and that the Church dug a hole and
19 reburied the bones, claiming that the bones were likely those of
20 a homeless person, but that the Church did not contact the
21 Hawaii Island Burial Council; and

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23 WHEREAS, the Legislature is troubled that this historic
24 site is deteriorating and recognizes the need for the applicable
25 state agencies to ensure the continued appreciation of this
26 site; now, therefore,

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28 BE IT RESOLVED by the Senate of the Twenty-fifth
29 Legislature of the State of Hawaii, Regular Session of 2009, the
30 House of Representatives concurring, that the Department of
31 Health, the Department of the Attorney General, and the
32 Department of Land and Natural Resources, Hawaii Island Burial
33 Council are requested to investigate the allegations regarding
34 the shallow grave and the movement of remains from the old
35 cemetery, and whether state law was complied with by Mokuaikaua
36 Church; and

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38 BE IT FURTHER RESOLVED that the Attorney General is
39 requested to investigate the sale of the Church Lot to
40 Mokuaikaua Church and whether the terms of any of the
41 conveyances or transactions resulted in a reversion of the
42 Helani Church Lot to the State of Hawaii, and whether the State
43 of Hawaii has any claims or interest in or to the Helani Church
44 Lot; and



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2 BE IT FURTHER RESOLVED that certified copies of this
3 Concurrent Resolution be transmitted to the Attorney General,
4 the State Historic Preservation Officer of the Department of
5 Land and Natural Resources, the Chair of the Hawaii Island
6 Burial Council, and the Director of Health.

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OFFERED BY:

Josh Green M.D.

Dr. U.

Renees. Kohl

