PUBLIC MEETING

MAUNA KEA COMPREHENSIVE MANAGEMENT PLAN

November 18, 2008
5:30 p.m. - 9:07 p.m.
Keaukaha Elementary School
Hilo, Hawaii

BEFORE: BARBARA ACOBA, CSR No. 412, RPR
Notary Public, State of Hawaii
HERRING KALUA: Everybody, my name is Herring Kalua, and I was born and raised here on Kipa'a homestead. And I'm on the management board for the Mauna Kea. This is the second round that Ku'iwalu is doing to gather information from everyone. And tonight we kinda expect, I mean, if you have no room, you know, squeeze in together. Find room. I know nobody wants to sit on the front row, but the front row over here, so you can come up front if you want to. And if you have any questions or you get any concerns, they have people here from different groups that can help you answer all your questions.

And the most important thing here is that we get respect for each other over here. Everybody, you know, whatever you wanna say, you say and then just respect each other over here tonight. And Dawn will be handling everything tonight and the Comprehensive Plan is a plan that's gonna be put together to preserve the culture and all the different concerns that the people have here. I know everybody has different concern, but I think the key for we Hawaiian people is the culture. And then for me, I know there's lot of changes, lot of things happening around us that is going on, and I think sometime we need to be educated, like how we doing now, be educated, and help each other. And mainly for me, my
of my ancestors, on behalf of my ancestors honoring the past. Honoring my nowness.

So this was made funny to me that conspiracy going on here right now. That's what's really happening. It's not about fear or all this, because of pride, like I said. You cannot put guarantees. Oh, boy, they're really sneaky buggers. They can try get my people. Oh, but, I'm honored, Jehovah, to stand today at this moment, this time, your moment, your time.

And you know, we're nonviolent, and we're nonviolent with what we say, and we're into disarmament, but most important, disarm your words. You know, our President talk about change, whew, I think we all need to hear it here because I'm prepared to go Honolulu to dance. I mean really dance. With ADP was good to walk with the sound of my ancestors. You know, I like to use kama pua'a, the black pig. I like use my hawk. I'm an animal warrior transform kahu (inaudible) in my material clothes I'm still the same person. Aloha ke apu (inaudible Hawaiian) Queen Liliuokalani. Mahalo. Just a little aloha.

DAWN CHANG: Would someone else like to come up and make a statement? Yes. Just state your name.

KEALOHA PISCOTTA: Aloha. My name is Kealoha Piscotta. I'm the president of Mauna Kea Ainahou. I am
also one of the Plaintiffs in the recent lawsuit, Judge Hara's case, which you were referencing. I'm a Native Hawaiian and the subject (inaudible) in Hawaii. I wanted to quote my (inaudible), actually. I think it's actually an ancient proverb, but this is what was told to us; that you cannot wake a man that is pretending to sleep.

Why I think that is appropriate is because I'm here at this hearing, after we won our case, to hear this story a mo'olelo being written by the University and I wanna clarify it. For the last 10 years, we've been actively opposing further development. We've been asking the State to follow the law, including its own rules and regulations, and including the Constitution. We worked in the political realm and eventually were forced to go into court. The kupuna say when you go into court, it means that it's not the best sign, because the court is adversarial and it's a win and a lose situation. But when you exhaust your administrative remedy, that is your only remedy. And in this case, the people, the kupunas in Mauna Kea, won the lawsuit.

My organization, the Royal Order of Kamehameha, the Sierra Club, and individual practitioners, Hank Fergestrom and Clarence Ching, won the case. We entered
the case to actually sue the University, but we found we could not sue only the University. Why? Because the University is not the legal entity responsible for the ceded lands and conservation lands of Mauna Kea, period. The University has only one authority and that is provided in their general lease, and that is to build permitted observatories and do astronomy within them. They make no decision whatsoever on any land management. Only the State may do that.

And Judge Hara's decision did not simply say DLNR needs to approve a plan. Judge Hara had to look at the rules for all conservation districts. And what he said was, DLNR must do a Comprehensive Management Plan, not the University. And why? Because the University is not the legal entity responsible. The whole reason why our case is titled Mauna Kea versus the State of Hawaii is DLNR. It's not Mauna Kea, et al. versus University.

It's true the University's a State agency, but it's not the legal authority on ceded lands. What Judge Hara also said was the 2000 Master Plan by the University was not an approved plan, and what that means is that the Office of Mauna Kea Management and the University, that whole plan, has no force or effect of law. And Dawn, you cited to Ka Pa'akai. The Ka Pa'akai case, which is a Supreme Court -- which, by the way, the
State also has to abide by, basically prohibits the
transferring of their jurisdiction and legal authority,
those authorities established in the Constitution, the
statute, the rules, and court-made law may not transfer
their jurisdiction to a developer or to anybody. And
the equivalent to that is a police officer who is
authorized by the State to carry a weapon and use that
weapon to prevent the commission of a crime may not
transfer his gun and give it to a citizen and say, you
shoot the criminal. Only the police officer is
authorized to do that. It's the same thing here. The
State may not give the University something the
University is not legally authorized to do. So that's
for that clarification.

Ka Pa'akai is the Supreme Court case that we
will probably have to use again to contest this
situation. But the question is, Judge Hara didn't make
new law. He read the plain English of the law and
interpreted it. In Hawaii, they require all law to be
written in plain English, not in Greek or pig Latin. We
read the rules just the same as anyone else can read the
rules. You can log in and read them and see exactly
what it says, if you don't believe us or if you don't
believe Judge Hara.

Now the problem with all of this is the
University is repeating the same error the Court just
found unlawful. And that's the problem, because now all
of these people are here when the ruling already came
down. We already won in court and why are we here
repeating the same error? Ms. Nagata points out that
they need to go to the legislature to ask for
rule-making authority, which basically confirms the fact
that they don't have any. Why would they have to ask
the legislature to give them something that they're
claiming they have already? It's a problem, and it's
our taxpayers' money being used to do it. And more
importantly, if the process lacks integrity, then so
will the outcome.

Part of the problem that Dawn has had to work
with us, actually, has been a problem for her, is that
we are still in court. We're in the Intermediate Court
of Appeals. That means that the University first filed
an appeal and then canceled their appeal, but we cross
appealed for our lawyer fees, and we're still in there.
While all of this is going on, this commitment that
allegedly is saying that they want to do what is right.
Just like the TMT says they want to change the paradigm.
Well, the paradigm is that the University has never
followed any plan or any agreement that they've ever
made, starting with the very first lease.
The very first lease asked for one telescope and in the first five years, they built five without permits. Problem with this is that the people need to stand and hold the State accountable, because if Hawaiian rights are impacted, all the public rights are, too. Public rights are not an extension of American law here in Hawaii; they're an extension of Native Kingdom law and Native rights. And that's why, for the record, and I'm glad, thank you, Dawn, for having a record, we must seriously oppose any kind of regulatory effort or limitation of public access, and that includes making people go to classes. I'm gonna say I oppose it not only as a Native practitioner, I oppose it, as Dawn, I've shared with Dawn before, Mauna Kea's a temple. It's created by akua for the people to learn the ways of the heaven.

The University, you may not close the doors to the temple. You are not in control. We are not in control. Akua is in control. And quite frankly, I am totally opposed to that. How dare you. Would you close the doors of a church? No. You may not do that to Mauna Kea either. And who does University think that they are to make people go to classes? The public is not the problem an Mauna Kea, over development is, and you, University, are the developer, and it always has
been. And I'll tell you why, also, because as a
practitioner, the University is the one who desecrated
my family honor, not the public. Not once, four times.
Documented. My family's stone is no longer on the
summit of Mauna Kea, that's because your people
desecrated it. Your people took it to the Hilo dump.
Your people took it four times, but in total it's been
destroyed seven. It's still destroyed now, even after
we built it with the Royal Order back up again. Auntie
Iolani (inaudible) family pohaku was taken also, since
that family gave it to me since my family's stone was
taken.

Now, it's not the public who's the problem, and
I resent the University attempting to blame the public
for their bad history. So I want that on the record.
And I disagree with this process because I think that
the real paradigm change is to follow the law, because
the law -- we're in a state of lawlessness. And if we
have to go to court again, there will be no reason other
than the University's continued bad faith.

The State is responsible. The State is also
violating the rents issue, not charging the rent.
Charging only a dollar. All of these things.
University, you can make a difference by actually making
sure the State does their job instead of compromising
everyone. That's all. Aloha.

DAWN CHANG: Thank you, Kealoha. I appreciate
that you're here tonight. Thank you.

This is not easy and I appreciate that
Kealoha's even here. I know that they've had -- and the
matter came before the Land Board and they talked about
some of the very issues that Kealoha's raised. The
question about who should be doing the CMP. Should it
be DLNR or should it be the University of Hawaii? I
know many people are gonna differ and there will
probably be litigation after this process is over. And
I guess -- okay. There's going to be litigation.

So, but, on the other hand, and I guess what I
want everybody to think about is, at the end of this
day, the question is, and it will be subject to legal
debate, but we have a draft of the Management Plan
trying to do something or do we do nothing? And maybe
doing nothing is okay, but I think that's the question,
do we have a Management Plan or not? So I would like to
just kind of bring that out to you.

One other point that Kealoha made that I forgot
to initially talk about, the Comprehensive Management
Plan is not going to address some very, very important
policy questions, because we did not feel that that was
the kuliana of the CMP. Some of you will differ. Ceded
lands and the State lease, that is subject to much larger debate between the University of Hawaii, the State of Hawaii, and this community, and we did not feel that that was necessarily a management issue for the protection and preservation of the resource, although it may be a financing issue, but at this point in time, the Management Plan is not going to specifically address those issues. However, it will include, probably at the end of the plan, issues for further discussion, potential policy issues, ceded lands, State lease, many of those kinds of issues. There needs to be a longer debate with the community about that.

MALE SPEAKER: Does that mean that the plan, the Comprehensive Management Plan, will only be for that period till the end of the lease term? Or does it extend beyond that?

DAWN CHANG: Okay. Mr. Anthony, the question is: Does the Management Plan only address the existing term of the lease? The lease expires 2033. Yes, the Management Plan addresses the current situation, which is the lease till 2033.

MALE SPEAKER: Is there an assumption by the University of Hawaii that there will be a lease extension?

DAWN CHANG: We are not privy to that. We have
not made that assumption in the Management Plan. That is far beyond -- that's not our kuliana. That is subject to larger discussion between the University of Hawaii and the State of Hawaii and, like I said, probably this community, but we've not made that assumption.

MALE SPEAKER: Is there an opportunity for us to level the playing field? Will there be funds available for us to participate more than just the superficial kind of participation we've been burdened with thus far?

DAWN CHANG: Do you wanna come over here?

MALE SPEAKER: I'm just asking questions, since you're in the mood to answer them. I figure I'll comment later on, but since you're in the mood to answer questions.

DAWN CHANG: Well, I was just trying to explain, but I want to make sure the question is taken down and everybody has an opportunity to hear. So your question is? Come. Come. Better that you come to the mic.

MALE SPEAKER: That's okay. Go ahead.


ANAKURA MILIMAI: Thank you so much, Kealoha
is left, could bring up issues of what they see as pros
and cons within the plan itself besides the political
issues, and those are pretty big issues that I'm sure
you all understand you'll have to address.

So anyways, thank you for letting me speak and
have a great evening.

KEALOHA PISCOTTA: I need to respond. It's
kind of vital and important to know that the concerns
that people are raising, there are legitimate concerns,
but actually it's a legal issue. The Court already
ruled on it and under American jurisprudence, there's
three branches of government: There's the Executive,
the Legislative, and the Judiciary. Under American
jurisprudence, the lawmakers make the law, the Court
rules on the law, and then the Executive must obey the
law.

So I'm taking issue with the idea that somehow
we're still hashing out the details. The Court already
ruled on the details. The process that is happening
here is not lawful under the rules of the court. So
it's not an opinion that we're all having. It's not a
perspective that we're all having. The Court ruled on
it. For example, if you went out and you hit somebody
in your car accidentally and then you went to court and
you were prosecuted for negligent homicide, for example,
what the Court deduced from that would not be an opinion
on anything like that, it would take your liberty away.

ALECIA OTULA: (Inaudible).

KEALOHA PISCOTTA: No. There cannot be. If
the process is failing, then there is no plan under
here. Because the State -- the State can't just simply
go, I'm gonna rubber stamp this, which they're going to
try to do, in which case we'll enter court again. But
if we have to enter it twice and the Court has to see
the same case twice, there's gonna be deeper
ramifications than the one we have now. So I just
wanted to be clear that it's not an opinion; it's the
Court. And generally, we all agree that if you break
the law, you have to deal with it.

ALECIA OTULA: So if -- let's say that the plan
went back to land and development, right, who has
jurisdiction?

KEALOHA PISCOTTA: No. No. No. We're not
saying. The Court already said what needs to be done,
and the DLNR is the responsible party.

ALECIA OTULA: So if the DLNR changes the
plan (inaudible).

KEALOHA PISCOTTA: No, they must do the plan.

ALECIA OTULA: Right. If they do the plan --

KEALOHA PISCOTTA: They're not DLNR.
ALECIA OTULA: I understand that. But what I'm saying is, if they were to then have the plan and be in charge of the plan, would you like (inaudible) or would you like (inaudible)?

KEALOHA PISCOTTA: When we get to that point, then we will have -- we will actually have the proper venue.

ALECIA OTULA: (Inaudible) it might be in the wrong hands.

MALE SPEAKER: This is the wrong venue for this. Can we, because we have limited time, can we continue.

DAWN CHANG: The court reporter has been taking notes for almost three hours. So I want a show of hands, how many more people wanna make a statement? Okay. Two, three. Anybody else wanna make a statement?

MALE SPEAKER: For me, the court stenographer doesn't need to take anything. I'm not testifying on the record, so if the court stenographer wants to take a break when I get up here and speak, that's fine with me. I'm not recognizing anything here as lawful. I'm only here to testify because, I mean, I came over here not to testify. I came to see what was happening, but I'm appalled about something that I wanna say.

DAWN CHANG: Okay. And that's what I'd like --
MALE SPEAKER: It's gonna be short. I'm gonna be two minutes, max.

DAWN CHANG: You promise? Then you know what, bruddah, I'm gonna let you speak right now, two minutes.

MALE SPEAKER: I'm not gonna need that mic. I'm used to screaming, okay. And today I'm not gonna speak this color; I'm gonna speak this color, that color, because what I got to say to all my brothers and sisters over here, and I hope they don't take offense that I refer to them as my brothers and sisters, but you know, actually what's his name, Mr. Ha came over here and I was really impressed with what he said. I mean, how he stood when he said what he said. He stood and he gave 'em the ass. But when he spoke, I realized he wasn't giving them the ass. He was actually counting himself amongst them. He was speaking for them, so he was like them facing us. At first I taught he was giving them the ass, so I was disappointed when he was pau.

But what I'm talking about here today is, this is a Hawaiian community. Everybody who lives here is Hawaiian, and I come over here and I just came to look. Actually, I didn't came to say anything. By the way, my name, my name is oppression. My name is descent. My name is anger and hunger. That's what I come