

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

RALPH ROSENBERG COURT REPORTERS
Honolulu, Hawaii (808) 524-2090

1 HERRING KALUA: Everybody, my name is Herring
2 Kalua, and I was born and raised here on Kipa'a
3 homestead. And I'm on the management board for the
4 Mauna Kea. This is the second round that Ku'iwalu is
5 doing to gather information from everyone. And tonight
6 we kinda expect, I mean, if you have no room, you know,
7 squeeze in together. Find room. I know nobody wants to
8 sit on the front row, but the front row over here, so
9 you can come up front if you want to. And if you have
10 any questions or you get any concerns, they have people
11 here from different groups that can help you answer all
12 your questions.

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

1 of my ancestors, on behalf of my ancestors honoring the
2 past. Honoring my nowness.

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

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

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

24 KEALOHA PISCOTTA: Aloha. My name is Kealoha
25 Piscotta. I'm the president of Mauna Kea Ainahou. I am

1 also one of the Plaintiffs in the recent lawsuit, Judge
2 Hara's case, which you were referencing. I'm a Native
3 Hawaiian and the subject (inaudible) in Hawaii. I
4 wanted to quote my (inaudible), actually. I think it's
5 actually an ancient proverb, but this is what was told
6 to us; that you cannot wake a man that is pretending to
7 sleep.

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

23 My organization, the Royal Order of Kamehameha,
24 the Sierra Club, and individual practitioners, Hank
25 Fergestrom and Clarence Ching, won the case. We entered

1 the case to actually sue the University, but we found we
2 could not sue only the University. Why? Because the
3 University is not the legal entity responsible for the
4 ceded lands and conservation lands of Mauna Kea, period.
5 The University has only one authority and that is
6 provided in their general lease, and that is to build
7 permitted observatories and do astronomy within them.
8 They make no decision whatsoever on any land management.
9 Only the State may do that.

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

18 It's true the University's a State agency, but
19 it's not the legal authority on ceded lands. What Judge
20 Hara also said was the 2000 Master Plan by the
21 University was not an approved plan, and what that means
22 is that the Office of Mauna Kea Management and the
23 University, that whole plan, has no force or effect of
24 law. And Dawn, you cited to Ka Pa'akai. The Ka Pa'akai
25 case, which is a Supreme Court -- which, by the way, the

1 State also has to abide by, basically prohibits the
2 transferring of their jurisdiction and legal authority,
3 those authorities established in the Constitution, the
4 statute, the rules, and court-made law may not transfer
5 their jurisdiction to a developer or to anybody. And
6 the equivalent to that is a police officer who is
7 authorized by the State to carry a weapon and use that
8 weapon to prevent the commission of a crime may not
9 transfer his gun and give it to a citizen and say, you
10 shoot the criminal. Only the police officer is
11 authorized to do that. It's the same thing here. The
12 State may not give the University something the
13 University is not legally authorized to do. So that's
14 for that clarification.

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

25 Now the problem with all of this is the

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

14 Part of the problem that Dawn has had to work
15 with us, actually, has been a problem for her, is that
16 we are still in court. We're in the Intermediate Court
17 of Appeals. That means that the University first filed
18 an appeal and then canceled their appeal, but we cross
19 appealed for our lawyer fees, and we're still in there.
20 While all of this is going on, this commitment that
21 allegedly is saying that they want to do what is right.
22 Just like the TMT says they want to change the paradigm.
23 Well, the paradigm is that the University has never
24 followed any plan or any agreement that they've ever
25 made, starting with the very first lease.

1 The very first lease asked for one telescope
2 and in the first five years, they built five without
3 permits. Problem with this is that the people need to
4 stand and hold the State accountable, because if
5 Hawaiian rights are impacted, all the public rights are,
6 too. Public rights are not an extension of American law
7 here in Hawaii; they're an extension of Native Kingdom
8 law and Native rights. And that's why, for the record,
9 and I'm glad, thank you, Dawn, for having a record, we
10 must seriously oppose any kind of regulatory effort or
11 limitation of public access, and that includes making
12 people go to classes. I'm gonna say I oppose it not
13 only as a Native practitioner, I oppose it, as Dawn,
14 I've shared with Dawn before, Mauna Kea's a temple.
15 It's created by akua for the people to learn the ways of
16 the heaven.

17 The University, you may not close the doors to
18 the temple. You are not in control. We are not in
19 control. Akua is in control. And quite frankly, I am
20 totally opposed to that. How dare you. Would you close
21 the doors of a church? No. You may not do that to
22 Mauna Kea either. And who does University think that
23 they are to make people go to classes? The public is
24 not the problem an Mauna Kea, over development is, and
25 you, University, are the developer, and it always has

1 been. And I'll tell you why, also, because as a
2 practitioner, the University is the one who desecrated
3 my family honor, not the public. Not once, four times.
4 Documented. My family's stone is no longer on the
5 summit of Mauna Kea, that's because your people
6 desecrated it. Your people took it to the Hilo dump.
7 Your people took it four times, but in total it's been
8 destroyed seven. It's still destroyed now, even after
9 we built it with the Royal Order back up again. Auntie
10 Iolani (inaudible) family pohaku was taken also, since
11 that family gave it to me since my family's stone was
12 taken.

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

21 The State is responsible. The State is also
22 violating the rents issue, not charging the rent.
23 Charging only a dollar. All of these things.
24 University, you can make a difference by actually making
25 sure the State does their job instead of compromising

1 everyone. That's all. Aloha.

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

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

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

21 One other point that Kealoha made that I forgot
22 to initially talk about, the Comprehensive Management
23 Plan is not going to address some very, very important
24 policy questions, because we did not feel that that was
25 the kuliana of the CMP. Some of you will differ. Ceded

1 lands and the State lease, that is subject to much
2 larger debate between the University of Hawaii, the
3 State of Hawaii, and this community, and we did not feel
4 that that was necessarily a management issue for the
5 protection and preservation of the resource, although it
6 may be a financing issue, but at this point in time, the
7 Management Plan is not going to specifically address
8 those issues. However, it will include, probably at the
9 end of the plan, issues for further discussion,
10 potential policy issues, ceded lands, State lease, many
11 of those kinds of issues. There needs to be a longer
12 debate with the community about that.

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

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

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

25 DAWN CHANG: We are not privy to that. We have

1 not made that assumption in the Management Plan. That
2 is far beyond -- that's not our kuliana. That is
3 subject to larger discussion between the University of
4 Hawaii and the State of Hawaii and, like I said,
5 probably this community, but we've not made that
6 assumption.

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

12 DAWN CHANG: Do you wanna come over here?

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

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

22 MALE SPEAKER: That's okay. Go ahead.

23 DAWN CHANG: Okay. Thank you. Would somebody
24 else like to make a statement? Okay. Come.

25 ANAKURA MILIMAI: Thank you so much, Kealoha

1 is left, could bring up issues of what they see as pros
2 and cons within the plan itself besides the political
3 issues, and those are pretty big issues that I'm sure
4 you all understand you'll have to address.

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

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

17 So I'm taking issue with the idea that somehow
18 we're still hashing out the details. The Court already
19 ruled on the details. The process that is happening
20 here is not lawful under the rules of the court. So
21 it's not an opinion that we're all having. It's not a
22 perspective that we're all having. The Court ruled on
23 it. For example, if you went out and you hit somebody
24 in your car accidentally and then you went to court and
25 you were prosecuted for negligent homicide, for example,

1 what the Court deduced from that would not be an opinion
2 on anything like that, it would take your liberty away.

3 ALECIA OTULA: (Inaudible).

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

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

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

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

23 KEALOHA PISCOTTA: No, they must do the plan.

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

25 KEALOHA PISCOTTA: They're not DLNR.

1 ALECIA OTULA: I understand that. But what I'm
2 saying is, if they were to then have the plan and be in
3 charge of the plan, would you like (inaudible) or would
4 you like (inaudible)?

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

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

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

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

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

25 DAWN CHANG: Okay. And that's what I'd like --

1 MALE SPEAKER: It's gonna be short. I'm gonna
2 be two minutes, max.

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

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

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