

## CLIFFORD KAPONO WRITTEN DIRECT TESTIMONY

### CONTESTED CASE HEARING PLEA

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For Kalikolehua Kanaelee

Given the Contested Case Hearing Referencing Conservation District Use Application (CDUA) HA-3568 For The Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohē Mauka, Hamakua, Hawai'i TMK (3) 4-4-015:009 and the nature of this hearing is a contested case hearing on the University of Hawai'i's application for a conservation district use permit to construct a telescope at the summit of Mauna Kea the following argument is presented:

The contested case hearing for the state Board of Land and Natural Resources Conservation District Use Application (CDUA) shifted on Monday, Jan. 9, 2017 as witnesses for petitioners opposing the proposed TMT International Observatory's (TIO) Thirty Meter Telescope (TMT) project were called to take the stand in Hilo.

Dr. Ku Kahakalau was called first. She is a recognized expert in Hawaiian language, and also the first person in the world to earn a Ph.D in Indigenous Education. She founded and formerly directed Kanu o ka 'Āina New Century Public Charter School in Waimea. In her testimony, Dr. Kahakalau stressed the importance of aloha 'āina (love of the land) and mālama 'āina (care for the land) as a "nonnegotiable."

"It can only be educational if it follows our values system," Dr. Kahakalau said, referring to people who argue that TMT is for educational purposes. "Building a TMT on Mauna Kea does not follow our value system, particularly of aloha 'āina and mālama 'āina." She added that the TMT project was an example of education being non-productive, non-environmental and had non-pono (proper) purposes.

Dexter Kaiama, an attorney representing nonprofit KAHEA, made a point to communicate her credibility as a native Hawaiian educator, researcher, scholar and a cultural practitioner, then asked Dr. Kahakalau if any state agencies, TIO or TMT consulted her in constructing the project.

"No, they have not," she answered.

Nonprofit PUEO Attorney Lincoln Ashida asked Dr. Kahakalau in his cross-examination what she would say to a native Hawaiian child who wants to learn astronomy on Mauna Kea.

Dr. Kahakalau said she would support the child in learning everything about astronomy, but in the context of learning about the sacredness of land and respecting the sacredness of land in the pursuit of their science career.

The same sentiment was shared from the second witness called, Dr. Candace Fujikane, an associate professor of English at UH Mānoa. When asked her opinion about the public's welfare if TMT is built, she said there's already a huge injury to people who have been made to feel "less than," so to see a place that is sacred to them be desecrated would be detrimental.

Fundamental to these previous testimonies of Dr.'s Kahakalau and Fujikane the foundation of their comments focuses on the specificity of terms and language. When Dr. Kahakalau spoke of the "Ha'makua Highway" she caused many to understand the essence of what she was saying in Hamakua translated to mean "The Breath of Our Parents". This caused a stirring to our conscious understanding seeking the truth of every statement being made at these proceedings to insure appropriate accuracy and authenticity is preserved in fully comprehending the scope of what we are attempting to articulate in the comparisons of Hawai'i native culture within the cognition of those first people who named this mountain in question, "Mauna Kea" and those in recent times decades after statehood who are also attempting to speak to the accuracy of the mountain and the truth of its history so that a future predictable positive outcome might be achieved.

If this is true that those giving testimony and cross examining certain witnesses are in fact seeking the truth than certain words must be tested for efficacy.

By The Rule of Law the hearing will be conducted by a hearing officer who will report to the Board of Land and Natural Resources (Board) the hearing officer's findings and recommendations, all pursuant to HRS chapter 91 and HRS § 92-16(a)(3).

HAR §13-5-30 sets forth the procedures for permits, site plan approvals and management plans in the conservation district. In particular, HAR §13-5-30(c) sets forth the criteria that the Board shall apply in evaluating the merits of a proposed land use in the conservation district:

#### §13-5-30

(c) In evaluating the merits of a proposed land use, the department or board shall apply the following criteria:

- (1) The proposed land use is consistent with the purpose of the conservation district;
- (2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;
- (3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management", where applicable
- (4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;
- (5) The proposed land use, including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;
- (6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;
- (7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and
- (8) The proposed land use will not be materially detrimental to the public health, safety, and welfare.

It becomes increasingly clear that the language of the law becomes empirical in establishing foundation and that the hearing's language must be accurate and not made up or coined for individual self benefit or gain. Herein, the petitioners would argue that the word "HAWAIIAN" is a coined word and should be stricken from all testimonies. The word Hawaiian was coined to separate the people, the Hawai'i, from the land as it was inaccurately understood by the initial intruders to Moku O Keawe the physical place and not the Big Island as erroneously understood today.

Unless the language is accurate then the testimony that follows is also lacking in efficacy and substance of truth.

Secondly the petitioners would argue that a means of definition of value be employed so that all parties testifying can reasonably weight their narrative on a scale of benefit with a numerical value representative to each testimony tendered. As an example if the narrative could be calculated to a numerical value using a mathematical statement instead of a narrative then we would be able to calculate the worth of these testimonies and not be bogged down with inference and innuendo of no significant value.

Herein those Hawai'i native to Moku O Keawe or other Maori Motu would be able to tender their argument(s) with a mathematical statement of comparative value. Those in support of the TMT permit would also be required to submit their value statement in quantitative form as a mathematical statement with appropriate orders of operation to highlight their reasoning.

These are the two sole recommendations in petitioning the Contested Case Hearing for the TMT at Mauna Kea.

Respectfully Submitted by Kalikolehua Kanaele for  
Clifford Kupono