

From: [Marisa Plemer](#)
To: [DBEDT LUC](#)
Subject: Mauna Kea Kanahele Petition
Date: Wednesday, October 23, 2019 2:04:19 AM

I respectfully ask that you grant the Kanahele's petition for declaratory order to ensure proper land use procedures are followed for what may well be the most culturally significant public trust lands of Mauna Kea. The State of Hawaii Land Use Laws must be applied and enforced equally. UH must follow the State Land Use Laws and be required to adhere to the process as defined by law and seek a boundary amendment.

Thank you,
Marisa M. Plemer
59-008 Huelo St.
Haleiwa, HI 96712

Sent from my iPad

From: [Yvonne Geesey](#)
To: [DBEDT LUC](#)
Subject: Support Kanahela's petition
Date: Wednesday, October 23, 2019 3:24:23 AM

E kala mai for late testimony. I support the Kanahela's petition 100% and think you should too.

Aloha, Yvonne Geesey
POB 89325
Honolulu HI 96830

From: [Kvn Lndrs](#)
To: [DBEDT LUC](#)
Subject: Testimony in SUPPORT of the Kanahaes' petition
Date: Wednesday, October 23, 2019 6:47:44 AM

Chair Scheuer, Vice Chair Cabral, and members of the Land Use Commission:

I submit this testimony in SUPPORT of the Kanahaes petition, and ask that you declare that:

- (1) the existing telescopes built on Mauna Kea have created a de facto urban district outside of LUC procedures;
- (2) further construction on Mauna Kea summit areas must comply with LUC boundary amendment procedures to reclassify conservation lands into the urban district; and
- 3) even if "an observatory" is allowed under the general lease, "the successive, individual approval of thirteen scientific laboratories, other research facilities, and associated offices, parking lots, and utilities," is inconsistent with conservation district uses.

As the Land Use Commission (LUC), you not only have the legal authority to hear this petition before you, but you have constitutional obligations to protect public trust resources and traditional and customary rights. The LUC has the unique authority to declare what uses are appropriate in which districts, and to also reclassify lands from one district to another or to amend district boundaries. Under Article XI, § 1 of the Hawai'i State Constitution, you are required to,

"conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people."

Further, Article XII, § 7 of the Hawai'i Constitution 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."

The Hawai'i Supreme Court went on to later interpret this section of the Hawai'i State Constitution to impose an affirmative duty "to preserve and protect traditional and customary native Hawaiian rights." You have the opportunity to do what is pono, follow the law, and uphold your trust duty with respect to these public trust lands.

Regardless of the developer or the proposed project, land use laws should be applied and enforced equally. Here, the University of Hawai'i must follow State Land Use laws. The University of Hawai'i should be required to follow proper processes as defined by law and seek a boundary amendment.

Industrialization of the summit in this controversial and disrespectful manner brings further injury rather than restitution for harm done.

I respectfully ask that you GRANT the Kanahaes' petition for declaratory order to ensure that proper land use procedures are followed for perhaps the most culturally significant of public trust lands.

Mahalo,

Kevin Landers
808.777.7214

10/23/2019

Attn: State of Hawai'i Land Use Commission

Aloha Kākou,

My name is Pua'ena Ahn, and I am writing in support of the Petition For Declaratory Order as filed by Ku'ulei Higashi Kanahale and Ahiena Kanahale. I would hope that I need not lecture you on the magnitude of kuleana (responsibility) you are entrusted with as Land Use Commissioners.

I insist before the Commission that the declaratory orders be granted as stated in Section V of the Petition. I affirm the statements and reasoning by the Kanahales as valid and sound, that the current, ongoing, planned and proposed uses of the Mauna Kea summit area are not appropriate for a conservation district. Any further uses of an industrial nature, including research of the type and scale that is being and would be conducted are indeed inconsistent with the intent and purpose of a conservation district. Moreover, compliance with HRS Ch 205 and Commission procedures for any further uses must be compelled, especially the requirement that a district boundary amendment be sought. I attest that any such district boundary amendment application be summarily denied, but that is a story for another day.

We continue to find ourselves at flashpoint in Hawaiian history, one that will be looked back upon for generations to come. It is my sincere hope that you act in the best interest of the 'Āina and those generations to come, in the spirit of the dissenting opinion of Justice Wilson.
Mahalo.

A hiki i ke Aloha 'Āina hope loa,

Pua'ena N. Ahn

From: [Serafina Gajate](#)
To: [DBEDT LUC](#)
Subject: Testimony in SUPPORT of Kanahele Petition
Date: Wednesday, October 23, 2019 1:03:23 PM

Dear Chair Scheuer, Vice Chair Cabral, and members of the Land Use Commission:

I submit this testimony in SUPPORT of the Kanaheles petition, and ask that you declare that:

- (1) the existing telescopes built on Mauna Kea have created a de facto urban district outside of LUC procedures;
- (2) further construction on Mauna Kea summit areas must comply with LUC boundary amendment procedures to reclassify conservation lands into the urban district; and
- 3) even if “an observatory” is allowed under the general lease, “the successive, individual approval of thirteen scientific laboratories, other research facilities, and associated offices, parking lots, and utilities,” is inconsistent with conservation district uses.

As the Land Use Commission (LUC), you not only have the legal authority to hear this petition before you, but you have constitutional obligations to protect public trust resources and traditional and customary rights. The LUC has the unique authority to declare what uses are appropriate in which districts, and to also reclassify lands from one district to another or to amend district boundaries. Under Article XI, § 1 of the Hawai‘i State Constitution, you are required to,

“conserve and protect Hawai‘i’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.”

Further, Article XII, § 7 of the Hawai‘i Constitution 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.”

The Hawai‘i Supreme Court went on to later interpret this section of the Hawai‘i State Constitution to impose an affirmative duty “to preserve and protect traditional and customary native Hawaiian rights.” You have the opportunity to do what is pono, follow the law, and uphold your trust duty with respect to these public trust lands.

Regardless of the developer or the proposed project, land use laws should be applied and

enforced equally. Here, the University of Hawai'i must follow State Land Use laws. The University of Hawai'i should be required to follow proper processes as defined by law and seek a boundary amendment.

I respectfully ask that you GRANT the Kanahelas' petition for declaratory order to ensure that proper land use procedures are followed for perhaps the most culturally significant of public trust lands.

Sincerely,

Serafina Gajate

From: [Alihilani Katoa](#)
To: [DBEDT LUC](#)
Subject: Kanahele Petition
Date: Wednesday, October 23, 2019 1:35:40 PM
Attachments: [testimony.pdf](#)

Aloha oukou,

Below I have attached my email testimony in regards to the Kanahele Petition. Mahalo nui loa for your time and consideration.

Please let me know if any additional information is needed.

—

Mahalo,

Alihilani Katoa
alihilani.k@gmail.com
808-376-5218

Aloha,

My name is Alihilani Katoa. I am from O'ahu, Hawai'i and I am in support of the Kanahale Petition. Mauna Kea is located in a conservation zone due to the valuable characteristics of the sacred mountain. There is a water source, wilderness, open space, habitats of native resident wildlife, and scenic/historic areas atop Mauna Kea.

Lake Waiau is located on Mauna Kea. It is the only alpine lake in Hawai'i islands and is arguably one of the highest lakes in the United States. Lake Waiau has sacred, cultural, and spiritual significance to Kānaka Ma'oli. Federally endangered species of Palila and Hawaiian petrel (Ua'a) birds can be found on Mauna Kea, as well as 21 native resident species including Wēkiu bugs. The 2010 Final Environmental Impact Statement for the existing telescopes on Mauna Kea confirm that there are sacred burials (Pu'u Mākanaka), 263 historic properties, and 141 ancient shrines on the mountain. In Hawaiian tradition, the mountain has spiritual, cultural, and religious significance to Kānaka Ma'oli. It is the first born of Papahānaumoku (Earth Mother), and Wākea (Sky Father) and is considered to be the piko (naval), the beginning and the end to our island chain.

The construction of 13 telescopes on Mauna Kea have been managed by the University of Hawai'i and the Department of Land and Natural Resources since 1968. Responsible for educating native Hawaiian people and others about indigenous people's land and cultural practices, the University of Hawai'i's prerogative should include the protection of cultural and natural resources. Being a purveyor of Hawaiian culture and traditions, the construction of the Thirty Meter Telescope deters from the university's inherent objective. In addition, according to the audit reports, U.H. has not been protecting and managing the sacred mountain sufficiently enough to Kānaka Ma'oli. Permits and regulations are not always enforced, administration is overlooked and not completed in a timely manner. In addition, the cultural value of Mauna Kea is largely unrecognized by the university responsible for the lease. There has been irreversible environmental damage done onto our Mauna, including sewage, ethylene glycol, diesel, fuel, toxic mercury, and orange coolant spills.

Mauna Kea is a zone that desperately needs strict preservation. The 13 telescopes have had a major environmental impact and the Thirty Meter Telescope's size will have an even bigger environmental effect. Additionally, its existence will have a psychological impact on Mauna Kea and Kānaka Ma'oli, further damaging the government's relationship to its people. I stand with our fellow Kānaka Ma'oli to halt the further desecration and industrialization of our sacred mountain. This project has made me cognizant to how the State of Hawai'i officials continue to disregard the wants, needs, and voice of Kānaka aloha 'āina. We only have the land beneath our feet. We need to mālama it for future generations to enjoy and prosper on. The industrialization of conservation zones go against the attempt to mālama 'āina.

—

Mahalo,

Alihilani Katoa
3175 Wai'alae Avenue
Honolulu, HI 96816
Phone: 808-376-5218

Email: alihilani.k@gmail.com

From: [Uala Mills](#)
To: [DBEDT LUC](#)
Subject: DR 19-67
Date: Wednesday, October 23, 2019 3:49:43 PM

Please throw out this petition. Mauna Kea is Poliahu. Those that worship Pele, enemy of Poliahu have no business discussing the affairs of Mauna Kea. May Poliahu blanket the three peaks once again. Go home Pele worshipers.

Aloha Kākou,

My name is Charles-Michael Keao'onohi Victorino. I am from O'ahu, Hawai'i and I am in support of the Kanahele Petition. Mauna Kea is of paramount importance both culturally and physically. It is located in a conservation zone due to these valuable characteristics. There is a water source, wilderness, open space, habitats of native resident wildlife. To include endangered species, and scenic/historic areas atop Mauna Kea.

Lake Waiau is located on Mauna Kea. It is the only alpine lake in the Hawai'i islands and is arguably one of the highest lakes in the United States. Lake Waiau has sacred, cultural, and spiritual significance to Kānaka Ma'oli. Both Lake Waiau and the lake forming in Halema'uma'u crater are further proof that the aquifers within Mauna Kea are higher than originally anticipated therefore invalidating any previous hydrological study. Federally endangered species of Palila and Hawaiian petrel (Ua'a) birds can be found on Mauna Kea, as well as 21 native resident species including Wēkiu bugs. The 2010 Final Environmental Impact Statement for the existing telescopes on Mauna Kea confirm that there are sacred burials (Pu'u Mākanaka), 263 historic properties, and 141 ancient shrines on the mountain. Many of which were ignored and projects moved forward against the advice of previous EIS statement studies. In Hawaiian tradition, the mountain has spiritual, cultural, and religious significance to Kānaka Ma'oli. It is the first born of Papahānaumoku (Earth Mother), and Wākea (Sky Father) and is considered to be the piko (naval), the beginning and the end to our island chain.

The construction of 13 telescopes on Mauna Kea have been managed by the University of Hawai'i and the Department of Land and Natural Resources since 1968. Responsible for educating native Hawaiian people and others about indigenous people's land and cultural practices, the University of Hawai'i's prerogative should include the protection of cultural and natural resources, of which Mauna Kea has both. Being a purveyor of Hawaiian culture and traditions, the construction of the Thirty Meter Telescope deters from the university's inherent objective, as well as endangers the island's water source. In addition, according to the audit reports, U.H. has not been protecting and managing the sacred mountain sufficiently enough to Kānaka Ma'oli. Permits and regulations are not always enforced, administration is overlooked and not completed in a timely manner. In addition, the cultural value of Mauna Kea is largely unrecognized by the university responsible for the lease. There has been irreversible environmental damage done onto our Mauna, including sewage, ethylene glycol, diesel, fuel, toxic mercury, and orange coolant spills.

Mauna Kea is a zone that desperately needs strict preservation. The 13 telescopes have had a major environmental impact and the Thirty Meter Telescope's size will have an even larger one. Additionally, its existence will have a psychological impact on Kānaka Ma'oli, further damaging the government's relationship to its people, and

dampening the ability of it's native people to exercise their cultural practices that are guaranteed to them by federal law. The very same practices the University of Hawaii Claims to want to protect and exemplify. I stand with our fellow Kānaka Ma'oli to halt the further desecration and industrialization not only our sacred mountain, but the further industrialization of a Conservation District. This project has made me cognizant to how the State of Hawai'i officials continue to disregard the wants, needs, and voice of Kānaka aloha 'āina, as well as the gross mismanagement on behalf of both the State of Hawai'i and The University of Hawaii. We as a people need to do better. I implore you to make the right decision in this case and let us all start anew, forging a better future built on trust and aloha.

Mahalo,

Charles-Michael K. Victorino

94-550 Mahoe St. Waipahu HI 96797

808-554-5388

victorinokeao@yahoo.com

From: [Ariel Murphy](#)
To: [DBEDT LUC](#)
Subject: A request to the Hawaii Land Use Commission
Date: Wednesday, October 23, 2019 8:17:49 PM

Aloha!

I respectfully request that the Hawaii Land Use Commission grant the Kanahaes' petition for a declaratory order to ensure that proper land use procedures are followed for ecologically vulnerable and culturally significant public trust lands of Mauna Kea. PLEASE PROHIBIT INDUSTRIALIZATION ACTIVITIES ON MAUNA KEA! MALAMA AINA!

Mahalo!

Ariel Murphy

ARIEL MURPHY, R(B), GRI, ABR

Savio Realty, Ltd.

Tel No. 808-345-8475 (cellphone)

arielmurphybigfiles@gmail.com (business email)

Board Director, Puna Community Medical Center (PCMC) <http://punahealth.org/board-members-at-pcmc/>

Director, Orchidland Community Association (OLCA), Board of Directors

Member, **Government Affairs Committee, Hawaii Island Board of Realtors (HIR)**

Board Member, **Philippine Women's Alliance of Hawaii (PWAH)**

"Look for the light! Study the light in everybody you come across. Notice it in total strangers. Notice it in people you love. Notice it even in people you think you don't like. Every time you're in contact with anyone, look for the light. Open yourself up to the resonance and notice the change that happens within you." - Karen Walsfrond (writer-photoessayist, engineer and lawyer)

From: [James Stone Jr.](#)
To: [DBEDT LUC](#)
Subject: Testimony: Kanahele Petition Scheduled for Hearing October 24, 2019
Date: Wednesday, October 23, 2019 8:33:19 PM

My name is James Mauiola Keaka Stone Jr. I am an attorney, educator and cultural practitioner. For most of my life, (I am 63 years old) the use of Mauna Kea for scientific purposes has been viewed positively by our community and admired world-wide for its enormous contribution to humanity's understanding of the cosmos. It is heartbreaking to witness how an entitled minority now feel that their narrow religious beliefs give them the right to ignore legal process and the obvious benefits for current and future generations.

To be clear, I am kanaka maoli and Ku'u lei and Hiena Kanahele do not speak for me. I support TMT and I oppose their petition.

Over ten years of hearings and a final ruling by the Hawai'i Supreme Court have made the following facts clear:

Mauna Kea currently hosts twelve observatories, including six that are between 100 and 151 feet tall. The first large telescope on Mauna Kea was completed forty-seven years ago.

The TMT will not contaminate groundwater, will not damage any historic sites, will not harm rare plants or animals, will not release toxic materials, and will not otherwise harm the environment.

Particularly relevant to the Kanahele petition is the fact that the TMT site and its vicinity were not used for traditional and customary native Hawaiian practices conducted elsewhere on Mauna Kea, such as depositing *piko*, quarrying rock for adzes, pilgrimages, collecting water from Lake Waiau, or burials. The site is not on the summit ridge, which is more visible, and, according to most evidence presented, more culturally important than the plateau 500 feet lower where TMT will be built.

Currently, some groups perform ceremonies near the summit. These ceremonies, however, began after the summit access road and first telescopes were built and TMT will not interfere with any of these cultural ceremonies. Moreover, TMT cannot be seen from the actual summit or from many other places on the summit ridge. Where it would be visible, other large telescopes are already in view. It will not block views from the summit ridge of the rising sun, setting sun, or Haleakalā.

Of course, the belief of the petitioners that Mauna Kea is too sacred to allow large structures is a religious belief. Under the federal and state constitutions a particular group's religious beliefs cannot be given veto power over the use of public land.

For my part, I feel that TMT honors Mauna Kea rather than injure it. In a way, we can think of kanaka maoli as the original astronomers. When Europeans were afraid to leave the sight of land our ancestors sailed with confidence and purpose between Hawaii and other parts of Polynesia. Navigating by the stars and armed with a profound understanding of natural systems we populated the largest area on earth. Na po'e kahiko would surely understand and appreciate TMT for the magnificent tool it is. TMT does not spoil the landscape, but rather it celebrates it by connecting us more deeply to the stars our ancestors used. Respect for Mauna Kea can be reconciled with modern astronomy.

Finally, as a legal matter the instant Petition is nonsense. It invents a land use category of, "de facto industrial use precinct" and argues, notwithstanding the Supreme Court's ruling, that LUC has a duty to hold a reclassification proceeding before TMT can proceed. LUC has no such duty.

James Mauiola Keaka Stone Jr., Esq.

808-554-5799

jamesstonejr@gmail.com

From: [Alyssa-Marie Kau](#)
To: [DBEDT LUC](#)
Subject: DR19-67 Testimony-Tr. H. Lindsey
Date: Wednesday, October 23, 2019 10:04:38 PM
Attachments: [10222019 DR19-67 Ku'ulei Higashi Kanahele Petition Testimony \(Hulu Lindsey\).pdf](#)

Aloha:

Please see the attached testimony on item DR19-67 from Tr. H. Lindsey submitted in her personal capacity.

Mahalo,

Alyssa-Marie Y. H. Kau, Esq.
Ke Kua Kako'o, Trustee Aide
Ke Kua Maui, Trustee Carmen Hulu Lindsey
560 N. Nimitz Hwy, Suite 200 | Honolulu, HI 96817
Office: 808-594-1899 | **Mobile:** 808-218-9455 | **Fax:** 808-594-1907
| **Email:** alyssamk@oha.org

LAND USE COMMISSION

DR19-67 KU'ULEI HIGASHI KANAHELE: Consider Petition of Ku'ulei Higashi Kanahale and Ahiena Kanahale, individuals, for a "Declaratory Order Concerning the invalid classification of the de facto and improper industrial use precinct on approximately 525 acres of State Land Use Conservation District lands located in Mauna Kea and Hilo, County of Hawai'i. Tax Map Key Nos. 4-4-015:009 (por)"

Thursday, October 24, 2019
9:30 A.M.

Dear Chair Scheuer, Vice Chair Cabral, and members of the Land Use Commission:

My name is Carmen Hulu Lindsey, and I am an OHA Trustee for the island of Maui, testifying in my personal capacity. I submit this testimony in **STRONG SUPPORT** of the Kanahales' petition, and ask that you declare that:

- (1) the existing telescopes built on Mauna Kea have created a de facto urban district outside of LUC procedures;
- (2) further construction on Mauna Kea summit areas must comply with LUC boundary amendment procedures to reclassify conservation lands into the urban district; and
- (3) even if "an observatory" is allowed under the general lease, "the successive, individual approval of thirteen scientific laboratories, other research facilities, and associated offices, parking lots, and utilities," is inconsistent with conservation district uses.

I. THE LUC HAS DESIGNATED MAUNA KEA AS CONSERVATION LAND. LAND USE IN A CONSERVATION DISTRICT THAT WILL CAUSE A SUBSTANTIAL ADVERSE IMPACT TO EXISTING NATURAL RESOURCES IS PROHIBITED.

A. HAR § 13-5-30(C)(4) AND HRS CHAPTER 183C SEEK TO PRESERVE NATURAL RESOURCES IN CULTURAL DISTRICTS.

Conservation districts are specially protected by the State and are governed by the Department of Land and Natural Resources ("DLNR"). The State seeks to "conserve, protect, and preserve the important natural resources of Hawai'i through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare." Consequently, virtually no structural should be permitted in a conservation district consistent with its sacred status.

HAW. ADMIN. R. § 13-5-30(c)(4) prohibits a proposed land use in the conservation district that will cause a substantial adverse impact to existing natural resources: "In evaluating the merits of a proposed land use, . . . [t]he proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region." The purpose of this rule is to conserve, protect, and preserve the important natural and cultural resources of the State of Hawai'i in a conservation district. This rule sets the standard to evaluate whether the proposed land use project should be permitted. Under this standard, the impact of the proposed land use must be considered with an understanding of the condition of the existing natural resource. If the land use will cause a substantial adverse impact to the existing natural resource, it is prohibited.

Additionally, HRS Chapter 183C was enacted by the Hawai‘i State Legislature with the purpose of conserving, protecting, and preserving natural and cultural resources in the conservation district. HRS § 183C-1 states:

The legislature finds that lands within the state land use conservation district contain important natural resources essential to the preservation of the State’s fragile natural ecosystems and the sustainability of the State’s water supply. It is, therefore, the intent of the legislature to conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Together, HAR Title 13, Chapter 5 and HRS Chapter 183C seek to provide clear protection for Hawai‘i’s natural resources by preventing further damage to conservation lands subject to substantial adverse impacts. When read in conjunction, these statutes provide the standard to guide the LUC in declaring that the uses of the TMT project are contrary to its conservation district designation. Recognition of the protection afforded to conservation lands will prevent the further degradation of resources with utmost cultural and environmental importance.

B. TMT’S IMPACTS WILL BE SUBSTANTIAL, SIGNIFICANT, AND ADVERSE AND INCONSISTENT WITH THE USES ALLOWED IN A CONSERVATION ZONE.

Mauna Kea is designated in state law as a conservation district. The summit region of Mauna Kea is home to the largest recorded archaeological sites in the Pacific, recognized as a state historic district and traditional cultural property, and a national natural landmark in recognition of its unique geologic features.

Norms of environmental law support the Legislature’s intent to protect natural resources on conservation land, even those that previously suffered substantial adverse impacts. These substantial impacts are suited for urban districts. The proper procedure for proposing industrial development on conservation district lands is not instituted. Therefore, the lack of proper procedure deprives individuals for their right to a clean and healthy environment and in the protection of traditional and customary Native Hawaiian practices.

Respectfully, the Hawai‘i Supreme Court erred in its interpretation of the degradation principle in it holding in Kilakila ‘o Haleakalā v. Bd. of Land. & Nat. Res., 138 Hawai‘i 383, 404, 382 P.3d 195, 216 (2016), determining that TMT is deemed to not cause a substantial adverse impact because prior increments of telescope construction cumulatively caused impact. In fact, the Hawai‘i Supreme Court emphasized the importance of considering future impacts of the land use on the resources as they presently exist. Unite Here! Local 5 v. City & Cty. of Honolulu, 123 Hawai‘i 150, 231 P.3d 423 (2010). The relevant area of TMT has suffered substantial adverse impacts to cultural resources due to the construction of multiple observatories and blatantly disregards the rights of future generations.

1. THE USES OF TMT’S IMPACTS VIOLATE THE RIGHTS OF NATIVE HAWAIIANS TO ENGAGE IN TRADITIONAL AND CUSTOMARY PRACTICES.

Article XII, section 7 of the Hawai‘i State Constitution affirms and protects the rights of Native Hawaiians to engage in traditional and customary practices. The Hawai‘i Supreme Court has interpreted this provision to impose on the Land Use Commission “the affirmative duty...to preeserve and protect traditional and customary Native Hawaiian rights.” Ka Pa‘akai o Ka ‘Āina v. Land Use Comm’n, 94 Hawai‘i 31, 45, 7 P.3d 1068, 1082 (2000).

Mauna Kea is considered the “highest mountain peak in the Hawaiian Islands” and one that “is of profound importance in Hawaiian culture” and one that “is of profound importance in Hawaiian culture” justifies significant degradation if the degradation attains a substantial adverse degree. Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res., 136 Hawai‘i 376, 399, 363 P.3d 224, 247 (2015). Multiple practitioners have stated that Mauna Kea is considered the origin of Hawaiian cosmology, the meeting place of Papahānaumoku and Wākea, making Mauna Kea the center of the Hawaiian universe. Akua also reside on Mauna Kea. Plus, Mauna Kea is the home of Lake Waiau, which has been used for centuries by native healers. Mauna Kea has also been known to be the home of multiple burials.

For me and my ‘ohana, Mauna Kea is a significant natural resource and a sacred site, a source of water used in healing and cultural practices and is used as a sacred repository for the piko of babies born to families connected to the mountain. For generations, my ‘ohana take the piko of our children to Lake Waiau, establishing our connection to Mauna Kea. My traditional and customary practices require the maintenance of conservation uses in the district so that the summit can function as a wao akua. Industrial development at the summit of Mauna Kea desecrates the nature of my akua and my kūpuna by destroying the open, unobstructed space that characterizes conservation districts.

TMT’s continued industrial uses would destroy the open and unobstructed space of the conservation district. The Kanahaes and others in the Native Hawaiian community conduct traditional and customary practices that are harmed by the failure to conduct proper boundary amendment procedures in regard to the industrial uses upon conservation district lands. Therefore, it would be appropriate for the LUC to find that the industrial uses are appropriate within the urban district and not the conservation district.

2. TMT’S IMPACTS WOULD VIOLATE INDIVIDUAL’S SUBSTANTIVE RIGHTS TO A CLEAN AND HEALTHFUL ENVIRONMENT.

The State (including its agencies) hold Hawai‘i’s natural resources in trust for the benefit of present and future generations. The State has incorrectly promoted an analysis that has allowed it to ignore the impacts to future land uses arising from the cumulative effect of multiple telescopes built over the last fifty years at Mauna Kea. Instead, the

Though BLNR issued conservation district use permits for observatories in Mauna Kea, the BLNR itself admits that TMT’s impacts will be substantial. Under Article XI, section 9, every person holds a substantive “right to a clean and healthful environment.” The Hawai‘i Supreme Court has further held that the “right to a clean and healthful environment is a substantive right guaranteed to each person by Article XI, section 9 of the Hawai‘i Constitution” and classified the right as a “property interest protected by due process.” In re Application of Maui Elec. Co., 141 Hawai‘i 249, 261, 408 P.3d 1, 13 (2017).

The right to a clean and healthful environment encompasses rules that prohibit a proposed land use in a conservation when it will cause a substantial and adverse impact to existing natural resources.” HAW. ADMIN. R. § 13-5-30(c)(4). The existing observatories obscure portions of the panoramic view from the summit area and development of the existing observatories have significantly modified the preexisting terrains. Mauna Kea is responsible for gathering, storing, and distributing water on the island. Consequently, the existing level of cumulative impact from preexisting observatories on geology, soils, and slope stability is substantial, significant, and adverse. According to the project’s final environmental impact statement, the facility would regularly store large amounts of domestic and chemical waste for removal. Industrial research facilities displace habitat for the endemic and rare wekiu that is found only on the summit region of Mauna Kea. These industrial facilities create noise disturbances that are not compatible with the serene use and enjoyment of the summit’s open spaces.

Additionally, the Hawai‘i Supreme Court in Kilakila warned that the BLNR “does not have license to endlessly approve permits for construction in conservation districts, based purely on the rationale that every additional facility is incremental.” Id. This warning highlights that the Supreme Court recognized that granting successive permits for industrial research facilities in the de facto industrial use precinct unlawfully evade land use boundary amendment laws under HRS § 205-2(e). In fact, the Kilakila Court’s holding required the proposed land use to be considered in the context of “existing natural resources within the surrounding area, community, or region.” Id. at 215. TMT’s proposed uses run contrary to the scenic areas, open space, silence, and natural sounds that should characterize a conservation district. Instead, industrial uses of conservation land do not enhance the potential value of these surrounding communities.

Proponents of TMT have attempted to justify these uses in the conservation land by providing that the project is expected to have tremendous economic benefits to the Hawai‘i island community. However, economic benefit is not available as a justification for a project that will cause a substantial adverse impact on natural resources in the conservation district. Instead, the Commission should properly issue orders stating that the Commission boundary amendment procedures under HRS Chapter 205 are required to remove de facto industrial use precinct lands from the conservation district and into the appropriate urban district for industrial uses.

II. CONCLUSION

Due to the significant adverse impacts to the environment and Native Hawaiian rights, I urge the Commission to grant the Kanahaes’ petition for declaratory orders, ensuring that proper land use procedures are followed for perhaps the most culturally significant of public trust lands.

Me ka ha‘a ha‘a,



Carmen Hulu Lindsey