

June 15, 2026

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BEFORE THE HAWAI'I LAND USE COMMISSION

DATE: June 24, 2026

TIME: 9:30 a.m.

VIRTUAL: <https://us02web.zoom.us/j/89448666708>

LOCATION: King Kamehameha's Kona Beach Resort, Conference Room 4  
75-5660 Palani Road, Kailua-Kona, HI 96740

RE: DR21-73 HONO'IPU HIDEAWAY, LLC

Petition for Declaratory Order for Boundary Interpretation Pursuant to HAR §15-15-22

TMK: (3) 5-6-001:074

Kapa'a-Upolu, North Kohala, Hawai'i Island

He Mele komo a he mele aloha no na kupuna o ke au i hala Aloha mai kakou.

Aloha,

My name is Cindy Freitas and I'm a Native Hawaiian descended of the native inhabitants of Hawai'i prior to 1778 and born and raised in Hawai'i.

I am also a practitioner who still practice the cultural traditional customary practices that was instill in me by my grandparents at a young age from mauka (MOUNTAIN TO SEA) to makai in many areas.

I respectfully submit this testimony regarding DR21-73 Hono'ipu Hideaway, LLC and urge the Commission to exercise its constitutional, statutory, and fiduciary obligations before approving any interpretation that would reduce Conservation District protections on lands within the culturally significant district of North Kohala.

#### I. THE COMMISSION'S DUTY EXTENDS BEYOND A SURVEY OR MAPPING DISPUTE

While the Petition is presented as a boundary interpretation matter, the Commission's obligations do not end with determining whether historical maps support one boundary location over another.

The Hawai'i Supreme Court has consistently held that state agencies must independently protect Native Hawaiian rights, public trust resources, and cultural practices whenever governmental action may affect land and natural resources.

Article XI, Section 1 of the Hawai'i Constitution provides:

"For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai'i's natural beauty and all natural resources."

Article XI, Section 7 establishes the Public Trust Doctrine and requires protection of water resources.

Article XII, Section 7 requires the State to protect traditional and customary Native Hawaiian rights.

These constitutional duties apply regardless of whether the proceeding is characterized as a permit application, district boundary amendment, declaratory ruling, or boundary interpretation.

## II. THE STATE HAS AN AFFIRMATIVE DUTY TO PROTECT PUBLIC TRUST RESOURCES

In *In re Water Use Permit Applications (Waiāhole Ditch)*, 94 Hawai‘i 97, 9 P.3d 409 (2000), the Hawai‘i Supreme Court held that state agencies are trustees of Hawai‘i's natural resources and have an affirmative duty to protect public trust resources for present and future generations.

The Court stated that agencies must not merely act as passive arbiters between competing interests but must actively safeguard trust resources whenever state action may affect them.

Likewise, in *Kaua‘i Springs, Inc. v. Planning Commission of Kaua‘i*, 133 Hawai‘i 141, 324 P.3d 951 (2014), the Court reaffirmed that agencies must make specific findings demonstrating protection of public trust resources before approving actions affecting those resources.

Accordingly, before interpreting any Conservation District boundary in a manner that could reduce conservation protections, the Commission should determine whether the action may affect:

- Native ecosystems;
- Coastal resources;
- Public access;
- Historic and cultural sites;
- Traditional gathering practices;
- Traditional fishing practices; and
- Resources protected under the Public Trust Doctrine.

## III. THE COMMISSION HAS A CONSTITUTIONAL DUTY TO PROTECT NATIVE HAWAIIAN RIGHTS

The Hawai‘i Supreme Court's decision in *Ka Pa‘akai O Ka ‘Āina v. Land Use Commission*, 94 Hawai‘i 31, 7 P.3d 1068 (2000), established a three-part framework that every state agency must follow when Native Hawaiian rights may be affected.

The agency must:

1. Identify traditional and customary Native Hawaiian practices.
2. Determine how those practices may be affected.
3. Specify actions to protect those practices.

The Court made clear that generalized statements are insufficient and that agencies must create an adequate record demonstrating that Native Hawaiian rights have been considered and protected.

The North Kohala coastline contains a cultural landscape extending far beyond property boundaries. Historic trails, shoreline access routes, fishing areas, gathering areas, ceremonial sites, and ancestral connections cannot be fully understood through modern survey maps alone.

Before approving any reinterpretation of the Conservation District boundary, the Commission should conduct the analysis required by Ka Pa‘akai and make specific findings regarding Native Hawaiian rights.

#### IV. ‘IKE KŪPUNA IS RELEVANT EVIDENCE

Native Hawaiian ‘ike kūpuna must be afforded meaningful consideration.

Traditional Hawaiian land management recognized the interconnected relationship between mountain, forest, stream, shoreline, and ocean resources within the ahupua‘a system.

The Hawai‘i Supreme Court recognized in *Public Access Shoreline Hawai‘i (PASH) v. Hawai‘i County Planning Commission*, 79 Hawai‘i 425, 903 P.2d 1246 (1995), that traditional and customary Native Hawaiian practices remain protected and that agencies must give meaningful consideration to those practices.

Likewise, in *Ka Pa‘akai*, the Court emphasized that cultural knowledge, oral history, and traditional practices are legitimate considerations in governmental decision-making.

The area of Kapa‘a-Upolu contains a cultural landscape shaped by generations of Native Hawaiian stewardship. The Commission should not rely solely on historical survey evidence while disregarding ‘ike kūpuna and cultural evidence that may reveal a broader understanding of the land and its traditional uses.

#### V. THE STATE'S OBLIGATIONS TO NATIVE HAWAIIANS ARE HEIGHTENED

The Hawai‘i Supreme Court has repeatedly recognized that the State bears a special trust responsibility toward Native Hawaiians.

In *Ching v. Case*, 145 Hawai‘i 148, 449 P.3d 1146 (2019), the Court reaffirmed that state agencies administering trust resources must act consistently with their fiduciary obligations toward Native Hawaiian beneficiaries.

Similarly, in *Pele Defense Fund v. Paty*, 73 Haw. 578, 837 P.2d 1247 (1992), the Court emphasized that Native Hawaiian customary and traditional rights survive unless expressly extinguished and must be protected by governmental agencies.

These duties are especially important in North Kohala, an area rich in Hawaiian history, traditional subsistence practices, and cultural resources.

#### VI. CONSERVATION DISTRICTS EXIST TO PROTECT IMPORTANT RESOURCES

The Conservation District was established to protect lands possessing significant natural, environmental, cultural, scenic, historic, and archaeological values.

Any interpretation that would effectively reduce Conservation District protections should be supported by substantial evidence demonstrating that constitutional rights, public trust resources, and cultural resources will remain protected.

The Commission should not evaluate this matter solely as a question of cartography. It should also consider whether the requested interpretation could create future development pressure or diminish protections intended for lands of exceptional cultural and environmental significance.

## VII. CONCLUSION

The Hawai'i Supreme Court's remand does not require approval of this Petition. Rather, it requires the Commission to undertake a careful review of the evidence under the proper legal standard.

In doing so, the Commission must also comply with:

- Article XI, Sections 1 and 7 of the Hawai'i Constitution;
- Article XII, Section 7 of the Hawai'i Constitution;
- Ka Pa'akai O Ka 'Āina v. Land Use Commission;
- PASH v. Hawai'i County Planning Commission;
- In re Water Use Permit Applications (Waiāhole Ditch);
- Kaua'i Springs, Inc. v. Planning Commission of Kaua'i;
- Ching v. Case; and
- Pele Defense Fund v. Paty.

For these reasons, I respectfully request that the Commission deny the Petition unless and until it can make specific findings demonstrating protection of Native Hawaiian rights, public trust resources, cultural practices, and the conservation values the district was created to preserve.

Our kūpuna taught us that the land is not owned by us; rather, we are caretakers for those yet to come. The Commission's decision should reflect that responsibility.

Mahalo for the opportunity to testify.

Mahalo,

CINDY FREITAS

Kailua-Kona, Hawai'i