

Kealoha Pisciotta's testimony and cross 9.26.11

10 KEALOHA PISCIOTTA

11 Was called as a witness by and on behalf of Mauna Kea
12 Anaina Hou, was examined and testified as follows:

13 DIRECT EXAMINATION

14 For the record, my name is Kealoha
15 Pisciotta, on behalf a Mauna Kea Anaina Hou. I am a
16 Native Hawaiian practitioner of traditional and
17 customary cultural and religious practices relating
18 to Mauna Kea. I have other cultural -- I'm a
19 practitioner of other cultural practices as well, but
20 they're not necessarily relevant.

21 I have provided extensive written testimony
22 and I'm trying to summarize as it's already in the
23 record. Is that correct?

24 HEARINGS OFFICER AOKI: Correct.

25 MS. PISCIOTTA: I have history with Mauna

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1 Kea in three ways. First as a cultural and religious
2 practitioner. Also as an employee of the Caltech
3 Submillimeter Observatory, as well as the JCMT, James
4 Clark Maxwell Telescope jointly owned by the United
5 Kingdom, Canada and the Netherlands.

6 I also have relationship to Mauna Kea as an
7 advocate for the protection of the cultural and
8 natural resources. That experience took us into
9 contested case hearings, and also into court, state
10 court, and as well as for federal case, against NASA
11 and the Keck Observatories. Both the state and
12 federal cases we won, even though we initially lost
13 the contested case hearing process.

14 So I wish to talk about the sacred nature
15 of the mountain, and I have two ways in which to
16 discuss it. Mauna Kea is an 'ahu heiau, or a temple
17 of supreme order, and the reason for that is because
18 it was created in the first time of our chant of our
19 creation when akua gave birth to the aina, and
20 codified the laws of aloha in the land.

21 The prayers for Mauna Kea are strong as are
22 the laws, because the purpose of Mauna Kea is great.
23 It's the great sentinel of the Pacific. It is the
24 origin place. And it is the place where the
25 knowledge of the heavens were made for the people.

1 It's not a normal temple, there are temples
2 made by man where man asked the gods or deities to
3 abide in the temple. It is a temple made by the
4 heavens for man to learn the ways of the heavens.
5 The ways of the heavens mean the way we live in
6 creation and with creation, and live and walk on the
7 earth.

8 Codified in that landscape are not only the
9 alignments and relationship to the heavens, the
10 constellations and the stars, but also the wisdom of
11 the ages. Even the chants remain in the rocks and
12 stones. And it is as Kalani said, a piko, Piko o
13 Wakea, also which is important. The prayers for
14 Mauna Kea have been strong also and have carried us
15 through a lot of difficulty in all manners of trials
16 and tribulations.

17 We have been able to carry ourselves
18 through political machinations and legal battles
19 because of the compassion of the mauna.

20 It's an honor to stand for it, and we
21 wouldn't change anything. If we had to, we would do
22 it all again.

23 I wanted to discuss some of the problems.
24 Our advocacy has involved the prevention of
25 overdevelopment of Mauna Kea. We believe that BLNR

1 has failed in its duty. We believe the University
2 has basically affirmed that in that they admit that
3 the cumulative impact of astronomy is adverse
4 significant and substantial. If that's the case,
5 then we have a problem. I wanted to talk a little
6 bit about some of the ceremonies -- no, actually
7 first let me go back.

8 When Kalani spoke of the piko, there are
9 many layers of understanding in Hawaiian way. Some
10 things, as he said, are tangible and some of are less
11 tangible; some we see in the physical manifestation
12 as the piko and connecting place between the heavens
13 and the earth, we see how the pikos connect through
14 the water, yeah, because Mauna Kea is the place that
15 the waters are collected. And we call them kane
16 kawai'ola, the waters of life of Kane. And they flow
17 down and they feed the people and the ocean.

18 The traditional water use is one of the
19 ways in which conservation districts were formulated
20 and based upon. Because conservation district were
21 originally for stream and watershed land and then
22 later named Conservation Districts.

23 The waters that flow from Mauna Kea are
24 tremendous amounts, and so much so that even NASA has
25 been able to photograph with infrared the cold waters

1 coming from Mauna Kea, they produce a river like the
2 Amazon.

3 Those are the ones that flow into the
4 ocean. We see the traditional water usages in our
5 histories, or in our stories or in our chants where
6 we collect these waters. And where we're told to
7 collect waters for medicinal purposes or even
8 ceremonial purposes. For example, there's some water
9 that is collected three miles offshore, but it is
10 Mauna Kea water, and it is highly valued water and it
11 is a water that can bring life or take life.

12 We're very concerned about the water. We
13 need it to be protected because all the water, snow
14 and ice are collected for religious, spiritual
15 purposes, so on and so forth.

16 So that's a manifestation of the actual
17 physical manifestation of how the power of Mauna Kea
18 is fed to the people and the ocean.

19 Our nearshore oceans rely on this water
20 that comes from the mountains, that makes the limu or
21 seaweed grow which make the fish more prolific. So
22 it has far reaching implications. If it is
23 damaged -- I mean, if water is damaged, it's
24 everyone's problem, and the significant problem that
25 we have here is that we don't have a way to clean it

1 up, if there is a problem.

2 The TMT will unequivocally impact the open
3 space characteristics as well as the natural beauty,
4 which means that they cannot meet at least that
5 criteria. It will impact Native Hawaiian practice in
6 a number of ways. And I refer you to C-2 which is a
7 map of some of the traditional viewplanes that are
8 used from Mauna Kea. Some of the practices include
9 the solstice and equinox ceremony viewplanes, the
10 rising and setting of important constellations, the
11 viewplanes to other sacred places across the
12 archipelago, some of the viewplanes or the
13 connections reach all the way to the northwest
14 Hawaiian islands, to motumanamana of which there are
15 shrines built that reflects that relationship back to
16 Mauna Kea, actually. To other heiaus on Kauai, as
17 well as on the island other sacred sites Ahua Umi,
18 Pu'u Kohola. In fact, where the Subaru and the Keck
19 Observatories are built was the Pu'ukohola actually,
20 but the back of that pu'u has been destroyed, the
21 kua, with the placement of telescopes there.

22 The cumulative impact to the viewplanes and
23 the open space is significant. It is significant
24 from a cultural place, but also from just a regular
25 public place. Already the top of the summit is

1 completely occupied by observatories, and they do
2 obstruct people's basic view, nighttime as well as
3 daytime. And I will refer to Exhibit C-3, which is a
4 picture of the stars of Mauna Kea with the Gemini
5 prior to having the outer dome put on. It's a
6 beautiful picture. It's significant also because in
7 here is the constellation Pe'a, the Southern Cross.
8 And you can see from this photograph that as the
9 Southern Cross moves across the sky it is at a
10 certain point obscured directly by this telescope.

11 When we go on the mountain, the original
12 place for marking the solstice and equinox, by the
13 way, is no longer there. So where the lele was
14 placed as a place to provide where people can bring
15 offering put up the by the Royal Order, and I
16 assisted in aligning it to these significant
17 alignments, it had to be adjusted, the alignment had
18 to be adjusted to accommodate that, because the main
19 body of Kukahau'ula is leveled. So we can't get
20 alignments from where originally we did them from
21 before.

22 It took a long time to understand where
23 those alignments were. Took a lot of studying,
24 chants and so on and so forth, and actually I learned
25 of them first from a dream because one of my elders

1 asked me to ask for the direction. So I understand
2 it, it came in a dream. And then I did an experiment
3 to test the theory that the dream told me, and I
4 could predict then which pu'u the sun would hit first
5 on the winter solstice. And then I established the
6 rest of the alignments. Once you have one, you can
7 find them all.

8 The TMT is particularly problematic because
9 it interferes with the open space and viewplanes of
10 our viewplanes to Haleakala. And it will definitely
11 impact us because it will be the dominant feature on
12 the northwest plain, everybody's ability to enjoy the
13 sunset for the full-time of the year.

14 Obviously the sun moves across, that's part
15 of what you track when you do solstice and equinox.
16 And I don't think open space means that, you know,
17 your thumb must be in front of you or that the
18 telescope has to be right here (indicating). It is
19 that the telescope, it is right there for Haleakala,
20 it is like this (indicating) it's two thumbs, as we
21 saw on the site visit.

22 But it will obscure the path of the stars
23 and the observation of the stars and the sun. These
24 are impacts that are public trust resources. The
25 eight criteria are public trust resources, so that

1 means these are resources that belong to the public.

2 What is essentially happening is that one
3 industry is dominating and taking away the people's
4 right to fully enjoy the resources of the mountain.
5 And this is the problem. This is why we're in this
6 contested case hearing to help present evidence -- to
7 prove to the Board of Land and Natural Resources that
8 in fact the public trust resources that they are
9 mandated to protect are in fact not being protected.

10 I want to discuss something important also.
11 You know, people may not understand why anyone should
12 care about what Native Hawaiians spirituality or
13 religion is. I do not -- I'm not here to convince
14 anybody that it is real, or to compel anyone to
15 believe in it. But I am saying that it is important
16 because the religion and spirituality within it is
17 codified, what we know as native knowledge and
18 science. It is thousands of years of observation.

19 You know, because someone may hear some
20 kind of story mo'olelo about a deity, or this, that
21 and the other thing, but what it also is is a
22 teaching tool for memorizing and remembering the
23 science and the technology, this is technology in a
24 traditional way. For example, the navigators learned
25 from the ancient time in bringing forth, and remember

1 Papa Mau, he was taught in a traditional way. Papa
2 Mau could do the star dance and remember if you asked
3 him to point in the direction of India, for example.
4 He does that through memorizing the star paths
5 through dance and even song. And here, what is
6 important, is these things may appear to be
7 disconnected, you know, what belongs to the sky
8 doesn't belong to the ocean, but that's not how we
9 see the world. In our world view, they are
10 connected. Just like in the chant of creation, the
11 thing born of the land protects the thing born of the
12 sea. And so when one goes away, the other one goes
13 away also.

14 A case in point is the sandalwood. When
15 the sandalwood was harvested, the whale came in next.
16 In the chant of creation, sandalwood is born to
17 protect the whale, the kohola.

18 So this knowledge derived from Mauna Kea,
19 this cultural knowledge, traditional knowledge, our
20 traditional resources management models rely on it.
21 That's how it has modern relevancy. How we live
22 today. How we make ourselves sustainable in the
23 future will depend on this. And that's why
24 destroying it is not good, because we need this
25 knowledge, and we need to continue these practices.

1 From our world view, when we don't continue the
2 practice, we forfeit the right of the material world.

3 But it's important, because this is
4 knowledge that the state can use, that the people of
5 Hawai'i can use. To live, understanding how the
6 water flow is important, protecting the water from
7 contamination is important. So they have modern
8 relevancy. And even though you know we have been
9 accused of being backward thinking, we're here to
10 say, no, we object to that classification, because
11 what our ancestors did thousands of years ago, we
12 actually probably want to start looking at, because
13 just not very long ago the same number of people that
14 live in Hawai'i today lived back then and yet they
15 all ate. We didn't need conservation laws. We
16 didn't have a word for endangered species, and all of
17 those things. These are what we need to bring
18 forward, the ancient ways, but not to go back to the
19 stone age, but to go forward and to continue creation
20 and to participate in creation and not to engage in
21 decreation.

22 We have all of these rules. We have laws.
23 We have the constitution. And they all identify that
24 these things that make up the ecosystem on Mauna Kea
25 are to be protected. The laws do not actually allow

1 one industry or any one entity, be it person or
2 industry, to dominate and take away from the people
3 of Hawai'i that have a right to fully enjoy and to
4 utilize the resources. And that's where our conflict
5 begins. Am I getting close?

6 HEARINGS OFFICER AOKI: You've gone about
7 double.

8 MS. PISCIOTTA: I'll finish up the rest in
9 my closing. That's all. Mahalo

10 CROSS-EXAMINATION

11 BY MR. HANDLIN:

12 Q Aloha, good morning, Ms. Pisciotta. Thank
13 you for your testimony. I do have some questions.

14 I'm Jay Handlin, one of the lawyers
15 representing the University here. You're the head of
16 Mauna Kea Anaina Hou?

17 A Yes.

18 Q You're also a member of the board of
19 directors of KAHEA; is that correct?

20 A Yes. Actually I just recently became the
21 president.

22 Q Congratulations.

23 Mauna Kea Anaina Hou is part of the Mauna
24 Kea hui, is that correct?

25 A Yeah. But by hui you're identifying who?

1 Q Well, have you, for example, had any things
2 that have been published on the KAHEA blog? Any
3 things that you've written? Have you identified
4 Mauna Kea Anaina Hou as part of the Mauna Kea hui?

5 A Yes, but sometimes I'm only writing as an
6 individual as well.

7 Q Okay. And times when you identify it as
8 part of the hui, that's accurate?

9 A Yeah, the hui is most of us here, but
10 sometimes it involves other groups as well. Groups
11 for Mauna Kea, that's how I would define Mauna Kea
12 hui.

13 Q Do you have a copy there of Exhibit C-2?

14 A Yes, I think.

15 Q At the last hearing that we had, you
16 corrected the contents of Exhibit C-2, right?

17 A Yes, because I had only intended this map
18 to be in. And apparently there was other stuff which
19 was a miscommunication just between myself and Oahu
20 guys who were putting together the exhibits.

21 Q So this one page is the correct contents of
22 C-2?

23 A Yes.

24 Q And you're familiar with the graphic that
25 is Exhibit C-2?

1 A Yeah.

2 Q Your written testimony in this matter is
3 Exhibit C-2, correct?

4 A I think so.

5 Q In your written testimony on page seven,
6 you talk some about this map, correct?

7 A Yes. Let me get it. I have my testimony.
8 Go ahead.

9 Q It's on page seven.

10 A Yes.

11 Q And I think actually in the written
12 testimony I think you refer to it as C-5?

13 A Right. Sorry, that's wrong.

14 Q That should be C-2, right?

15 A Uh-huh.

16 Q And according to your written testimony,
17 Exhibit C-2 was created by Community By Design, a
18 planning group from the University of California at
19 Berkeley?

20 A Yes.

21 Q Is that accurate?

22 A Yeah, well, it's by Community Design, their
23 graduate students really.

24 Q We will talk about that some. Your
25 testimony also says that KAHEA got a small grant to

1 hire Community By Design?

2 A Yes, uh-huh.

3 Q That's true?

4 A As far as I know, yes.

5 Q It's in your testimony, so I assume that
6 you're familiar at least enough to agree to testify
7 about it to KAHEA having gotten that grant and to
8 hiring a Community By Design.

9 A Yes, although I didn't have any direct
10 involvement in it other than being told that that was
11 occurring.

12 Q Are you aware that the entity that KAHEA
13 got that grant from was the Bill Hughes Foundation?

14 A I don't know, but that could be true.

15 Q Am I correct that the actual accurate name
16 of the company that KAHEA used that created this is
17 actually Community Development By Design?

18 A It may be.

19 MR. FLORES: Object to the questioning.
20 There doesn't seem to be any relevance. Objection
21 is, what is the relevance of the questioning
22 regarding these entities or organizations or funding
23 sources to the testimony? That's my objection,
24 relevance.

25 MR. HANDLIN: There's testimony, and the

1 witness has offered this exhibit, so we're going to
2 talk about how this exhibit was generated, the
3 process by which it was generated.

4 MS. PISCIOTTA: Then I want to object to
5 the relevance of that, because what is the relevance
6 of how it was generated?

7 HEARINGS OFFICER AOKI: I think it is
8 relevant. Objection overruled. Go ahead.

9 Q (By Mr. Handlin): The company, whether the
10 name is Community By Design or Community Development
11 By Design, that's a consulting firm?

12 A I don't know. I know that the two people
13 that worked with the people in KAHEA involved in
14 doing this are named Marsha and Randy, and I know
15 most of their grad students' names came out here.

16 Q And the Randy is Randy Hester?

17 A Yes, I think that is true.

18 Q And the Marsha is Marsha McNally?

19 A Yeah, I think so.

20 Q Randy Hester is a professor or based at
21 University of California at Berkeley?

22 A Uh-huh. And it was their classes of
23 students that came to experience this process.

24 Q Professor Hester, do you know if he was the
25 chair of the Department of Landscape, Architecture

1 and Environmental Planning at Berkeley?

2 A I don't know.

3 Q In 2007 Professor Hester co-chaired a
4 workshop at Berkeley called Remodeling Design
5 Activism; do you remember that?

6 MR. NEVES: Objection, relevance.

7 THE WITNESS: No. I can't really testify
8 to Mr. Hester.

9 HEARINGS OFFICER AOKI: Hold on, we have
10 objections.

11 MR. NEVES: Mr. Hester is not here.

12 HEARINGS OFFICER AOKI: But he participated
13 in evidence that was introduced. So objection is
14 overruled.

15 Q (By Mr. Handlin): I asked about that
16 two-day workshop, because according to the UC
17 Berkeley workshop, you were a guest speaker at that
18 workshop.

19 A They had invited me to some workshop, but
20 there was no way I could attend.

21 Q Got it.

22 Do you have any idea -- you may not -- any
23 idea how much KAHEA paid this Community By Design to
24 work on this?

25 A I'll answer that --

1 HEARINGS OFFICER AOKI: Wait, somebody's
2 objecting.

3 MS. WARD: I'm objecting. I believe it's
4 not relevant.

5 HEARINGS OFFICER AOKI: I've already ruled
6 on that. Objection overruled.

7 THE WITNESS: No, that's my answer.

8 Q (By Mr. Handlin): But since your testimony
9 talked about KAHEA using a grant to hire Community By
10 Design, some amount of money was paid from KAHEA to
11 Community By Design?

12 A I'll make this easy for you. Mauna Kea
13 Anaina Hou, my role basically culturally prohibits me
14 from being involved in any kind of financial
15 transaction relating to Mauna Kea. I don't involve
16 myself in it, because we're not -- we -- I cannot
17 take money for what I do. But I have no objection to
18 KAHEA receiving funds to support the work around
19 Mauna Kea that they do.

20 Q My question was that since you testified in
21 your written testimony that KAHEA got a small grant
22 which they used to hire Community By Design, that
23 presumably KAHEA paid some amount of money for
24 Community By Design for work, which at least, in
25 part, resulted in Exhibit C-2.

1 A What I understand is that Randy and Marsha
2 were not being paid, but using the money to help
3 bring their students over so that they could learn
4 what it's like to participate in large land use
5 planning and controversies, essentially. That's all
6 I know, though.

7 Q In that project, is C-2 the only document
8 that Professor Hester, Community By Design, and the
9 students created?

10 A No, they put together various maps that
11 they had their -- well, that their students wanted to
12 work on, and sent it to us trying to give us some
13 kind of idea of what they could produce. Like an
14 idea of how you would put all of these maps together.
15 Because when they came and interviewed us, they went
16 away for awhile and came back with all these
17 incredible maps, laid them out and showed them to us.

18 They showed us how they could map, for
19 example, oral history, which was a shock to me; how
20 they could map all kinds of things that I never even
21 understood or even considered mapping.

22 This, for example, was an attempt to
23 demonstrate visually what some of the cultural
24 practitioners have, in other words, viewed their oral
25 histories, and some of what we shared with them when

1 we went up the mountain with them. And so that, I
2 just thought I entered this as an exhibit to help
3 provide visual representation of what we're talking
4 about.

5 Q I'm going to show you what Petitioners have
6 submitted as Exhibit E-2.

7 Have you seen that before?

8 A That is Uncle Ku's one. Is it E-2? Can
9 you double check. I'm not really sure.

10 Q That's what it is.

11 A Yes, this is a good example.

12 Go ahead, what's your question?

13 Q My question first was just if you had seen
14 this before.

15 A Yes, I have. Not -- it looked different,
16 but yeah.

17 Q And is that document also something that
18 was developed as part of this project?

19 A Yes.

20 MR. FLORES: Objection. He's asking
21 questions regarding testimony and exhibits from
22 another petitioner. It's inappropriate. He's asking
23 questions on testimony, exhibits from another
24 exhibiter -- I mean, another petitioner, not on her
25 testimony and not on her exhibits, so my objection is

1 to that, relevance.

2 HEARINGS OFFICER AOKI: That's not
3 objectionable. He could ask questions about his own
4 exhibits, for example. So overruled.

5 Q (By Mr. Handlin): So Exhibit C-2, which is
6 the viewplanes map and Exhibit E-2, which I just
7 showed you, those maps both come out of a larger
8 document; is that right?

9 A It's not a document. And I'm going to
10 object to this line of questioning, because it's a
11 student project. And if we published it, you would
12 know, Jay.

13 We didn't publish it because it's a student
14 document. It was put together to show us what they
15 could do and to hope that we were proud of them as
16 students of doing it.

17 MR. HANDLIN: I'm going to mark as Exhibit
18 A-204 what is apparently not a document.

19 THE WITNESS: I object to this exhibit and
20 I'm going to object on the fact of what I just
21 explained. It's not published. It's a student
22 project, and it is nothing that we, as the Mauna Kea
23 Anaina Hou, are necessarily saying it needs to be
24 published.

25 This is what they gathered -- actually, you

1 might want to look at it and say, gee, these little
2 students came with something like this in less than
3 two weeks, which is pretty darn amazing. But it is
4 not an official document, and I object to the
5 introduction of it, because it's not published. It's
6 a draft, not peer reviewed, not anything. Although
7 neither of their stuff is peer reviewed.

8 MR. HANDLIN: First, I'm going to represent
9 that I have this document, because for months and
10 months and months there was a link to it on the KAHEA
11 website, so --

12 MS. TOWNSEND: Can I object to that? Is
13 this the cross-examiner testifying, any evidence that
14 this was ever on our website?

15 HEARINGS OFFICER AOKI: I'll sustain that
16 for now. If there's other -- or something else, come
17 back to it, but he's not supposed to testify, you're
18 right.

19 MR. HANDLIN: Fair enough. Mark as A-205 a
20 printout from the KAHEA web page that has a link up
21 here at the top.

22 Q Do you know whether this is in fact the
23 link to this document that I've marked as A-204?

24 A I don't.

25 Q With respect to the admission of A-204 --

1 by the way, can we turn to page 19 of A-204, please?

2 A I have an objection, you know, to even
3 addressing this document. And I also do not see the
4 connection that this is actually this (indicating).
5 Where does it say that? And I don't have any
6 knowledge of it. So I am objecting to this
7 discussion for the same reason that I had before.

8 MR. HANDLIN: I'm going to lay the
9 foundation of the admissibility of the document.

10 HEARINGS OFFICER AOKI: He's just asking a
11 question, so objection overruled.

12 Q (By Mr. Handlin): Can you look at page 19
13 of A-204?

14 A Wait, I'm not clear. You're going to allow
15 questions on this document? You overruled my
16 objection?

17 HEARINGS OFFICER AOKI: Yes.

18 THE WITNESS: What is it?

19 Q (By Mr. Handlin): Page 19. Other than the
20 color difference, that's the same document as C-2,
21 yes?

22 A I can't be totally sure, but maybe, yeah.

23 Q It's got the same page number 19 down at
24 the bottom, right?

25 A Okay, uh-huh.

1 Q So under DLNR rules of practices and
2 procedure, this is Hawai'i Administrative Rules
3 Section 13-1-35 concerning evidence, and specifically
4 13-1-35 (F), it says that if a party in an
5 administrative proceeding offers part of a document,
6 they are supposed to make the entire document
7 available to the other side, so that the other side
8 can review it and can designate any parts of the
9 complete document that the other side deems to be
10 relevant and material.

11 Petitioners here did not do that.
12 Nonetheless, the fact is that the document, as
13 evidenced by the link, and the fact that I have it,
14 the document was in fact available online. We've got
15 it. We think the entire document is relevant and
16 material and we are offering it and we're also
17 offering it as impeachment exhibits.

18 HEARINGS OFFICER AOKI: Now you can
19 respond.

20 MS. PISCIOTTA: I object because, first of
21 all, I don't know that this document stated here is
22 actually this document stated here (indicating). I
23 don't understand the rule.

24 HEARINGS OFFICER AOKI: When you say this
25 document --

1 MS. PISCIOTTA: He has some website thing
2 here.

3 MR. HANDLIN: A-205.

4 MS. PISCIOTTA: It doesn't show where it
5 comes from. Okay. I don't see how this document is
6 this, (indicating), that's number one.

7 Number two, I object to the relevancy. As
8 I explained, it's not a document that we published.
9 It's a draft document put together by students,
10 although it's pretty interesting and good in many
11 ways, it's just something the students put together.

12 And I have an objection to it, because I'm
13 not sure how it impeaches anything and I don't think
14 it should be allowed. He needs to prove that this
15 right here is this (indicating). I don't know that
16 it is. And I can't testify to something I don't
17 fully know.

18 MR. HANDLIN: I think it's pretty clear
19 under 13-1-35 (F) that, again, basically they pulled
20 a couple of pages out of a bigger document and they
21 used them. They should have, under the rule,
22 provided us with the entire document to see if we
23 wanted to cross-designate. They didn't. We have the
24 document anyway. We are cross-designating the entire
25 document as relevant and material.

1 MS. PISCIOTTA: I have an objection to the
2 fact that he's construing it as a document. It's a
3 map that we wanted to utilize because it helps people
4 see things a little better. We could have not even
5 included this, but this was to help people, including
6 the University, understand.

7 So I object to the fact that we're
8 submitting a map, not a document. And they're
9 classifying it as a document, so I object.

10 HEARINGS OFFICER AOKI: I think in general
11 maps are documents for purposes of hearings, and I
12 think Mr. Handlin is accurate about the Applicant's
13 right to have the entire document that it comes out
14 of. Whether this is a draft or a peer-reviewed study
15 doesn't make a difference in terms of how that rule
16 applies.

17 So I think the only question is, is 205 --
18 204 what you say it is. She's saying she can't
19 recognize it.

20 MR. HANDLIN: Well, again, I think the fact
21 that, again, other than a slight color difference,
22 the page 19 that is Exhibit C-2 is the page 19 of
23 this document. If you like, I can find --

24 THE WITNESS: But normally if something
25 comes off the web and it's a PDF, it says where it

1 comes from. None of these things say that they come
2 from a website. I don't know where you got it.

3 HEARINGS OFFICER AOKI: Let me try. So
4 you're saying that A-204, you don't know what that
5 is?

6 THE WITNESS: No, I don't know what that
7 is. A-205, I don't recognize that. I don't know
8 what that is.

9 HEARINGS OFFICER AOKI: What about A-204?

10 THE WITNESS: I know parts of it. But
11 honestly, like I said, it didn't look like this. It
12 was given to us in a little booklet actually. They
13 made it real nice. But I don't know all about this
14 document. Actually, I think the booklet looked more
15 like this (indicating), but, yeah.

16 MR. HANDLIN: She recognizes it. She's not
17 saying that it's not what I said, she's saying it
18 came in a booklet form.

19 MR. NEVES: Objection, who's giving the
20 answer and who is asking the question?

21 HEARINGS OFFICER AOKI: We're trying to
22 address whether or not this should be admitted in
23 evidence, and so he's entitled to present the reasons
24 why it should be allowed. That's all we're doing
25 here.

1 MS. PISCIOTTA: One more time, objection.

2 I do not know where this comes from.

3 HEARINGS OFFICER AOKI: You're talking
4 about A-205?

5 MS. PISCIOTTA: A-205, I do not know where
6 it comes from and I cannot connect this page to this
7 document (indicating). And he needs to do that, I
8 think, because I can't testify to something I don't
9 know.

10 HEARINGS OFFICER AOKI: The question isn't
11 whether A-204 came from the website that he
12 represents is A-205. The question is, do you
13 recognize A-204?

14 THE WITNESS: I recognize parts of it,
15 because, like I said, it does not look like the stuff
16 that they sent us. It came in a little booklet what
17 they sent us, and it was to demonstrate what was
18 possible. And it was a study for students to
19 understand how to put things together.

20 So there are some pictures I've seen, but
21 it doesn't look like -- it's not the documents we
22 got. I mean, the other hui members can testify too
23 because they got a little booklet too.

24 MS. TOWNSEND: I have a question. Is this
25 is the right time to ask the cross-examiner for an

1 offer of proof?

2 HEARINGS OFFICER AOKI: Hang on before we
3 go further. Are you recording in the audience?

4 UNKNOWN SPEAKER: No, I'm not.

5 HEARINGS OFFICER AOKI: What is that?

6 UNKNOWN SPEAKER: A camera.

7 HEARINGS OFFICER AOKI: Why are you
8 holding, directing a camera at the witness?

9 UNKNOWN SPEAKER: Would you like to see my
10 photographs? I've been taking photographs. Is there
11 a problem with that?

12 HEARINGS OFFICER AOKI: I don't have a
13 problem with photos, I just want to make sure that
14 the ruling on videoing or recording is not being
15 violated.

16 UNKNOWN SPEAKER: These are the photographs
17 that I've been taking.

18 HEARINGS OFFICER AOKI: Thank you,
19 appreciate that.

20 MS. TOWNSEND: Is this the right time to
21 ask the cross-examiner to make an offer of proof of
22 what is the reason for bringing forward this
23 document, A-204?

24 HEARINGS OFFICER AOKI: I think he already
25 addressed that. It's cross-examination impeachment.

1 Frankly, I don't see any objection to him doing that.
2 The only issue here now is whether or not -- are you
3 moving that into evidence?

4 MR. HANDLIN: I am.

5 HEARINGS OFFICER AOKI: That's the only
6 issue.

7 MS. TOWNSEND: Can we ask what he hopes to
8 prove by entering that document into evidence?

9 HEARINGS OFFICER AOKI: I don't think
10 that's appropriate in cross.

11 Go ahead, continue to address whether or
12 not that should be admitted.

13 MR. HANDLIN: Well, I would like to think I
14 made that case.

15 HEARINGS OFFICER AOKI: Like I said, I have
16 questions as to whether or not that there's a basis
17 to establish that that is what you say it is, because
18 she's not acknowledging that it is, she's not
19 testifying that it is.

20 MR. HANDLIN: This is, again, on the face
21 of this.

22 HEARINGS OFFICER AOKI: That page is clear,
23 but the rest of it I think is what we're talking
24 about.

25 MR. HANDLIN: I'm going to mark what was

1 originally produced to the Applicant as Exhibit C-2,
2 which may very well have been by miscommunication,
3 but there's one, two, three, four, five, six pages of
4 different maps.

5 Now, if we want to take the time, I can
6 walk through every single one of them and find them
7 in here because they're all in here. But I'm going
8 to represent to the Hearings Officer, and everybody
9 here, every one of these naps was produced to us by
10 Petitioners originally, whether in error or not, as
11 Exhibit C-2, came out of this document.

12 So they have a whole document that they
13 don't want in evidence, they picked and chose. And
14 under the rule that I cited, they don't get to do
15 that. So I'm moving it in evidence.

16 MS. PISCIOTTA: Objection, because I think
17 I do not accept the representations here. I don't
18 know what this is and I don't know how this is
19 therefore that (indicating), because if he's going to
20 cross me on something, I cannot know what these are.
21 There's nothing on here that indicates this even
22 comes from a website. You could have just made it
23 up, Jay.

24 HEARINGS OFFICER AOKI: Let me try to get
25 some clarification here. I think the record reflects

1 that there are at least two pages out of A-204 which
2 are exhibits in the hearing already. That's C-2 and
3 E-2. Mr. Handlin is now pointing out that the
4 original C-2, which consisted of more pages, all came
5 out of the document that he has numbered A-204.

6 Do you disagree with that?

7 THE WITNESS: I do not know what that
8 document is, but --

9 HEARINGS OFFICER AOKI: I'm not asking
10 that. I'm asking did the pages that were originally
11 C-2 come out of A-204?

12 THE WITNESS: No, they came -- because I
13 asked for that. I don't know about those other
14 documents, that's why I asked to have only that
15 admitted, because that's all I was asking for.

16 If he wants to put this in, I think he does
17 need to connect these two things (indicating), and
18 then whatever, I probably can't answer too many
19 questions on it.

20 HEARINGS OFFICER AOKI: Here's how I'm
21 going to handle it. It's clear that at least two
22 documents which have been made exhibits by
23 Petitioners and received in evidence came out of
24 Exhibit 204. Under the rules, Petitioners should
25 have given a copy of the document from which the two

1 exhibits came to Petitioners prior to the hearing --
2 sorry, to the Applicant.

3 So I'm going to receive A-204 in evidence
4 subject to allowing Petitioners to establish that
5 that is not the same document, that is not the
6 document that it purports to be. Because I don't
7 know any other way to be fair to both sides at this
8 time since the issue was not possible to have been
9 addressed earlier.

10 So if you want to challenge that A-204 is
11 the document that was prepared by the group from
12 Berkeley, you can do that, do that by written
13 submission after the hearing. I'll give you two days
14 after the hearing today to do that.

15 THE WITNESS: Okay.

16 HEARINGS OFFICER AOKI: But for now, I'm
17 going to allow 204 to be received in evidence for
18 purposes of continuing with the hearing.

19 THE WITNESS: Okay.

20 Q (By Mr. Handlin): Can you please turn to
21 the last page A-204?

22 A Numbered what?

23 Q 52.

24 A Okay.

25 Q Down toward the bottom it says: Prepared

1 for the Mauna Kea hui by Community Development By
2 Design: Randy Hester, Marsha McNally, Amy Dryden and
3 Sara Minick. Funded by a general trust grant from
4 the Bill Hughes Foundation.

5 To your knowledge, that information is
6 accurate, is it not?

7 A I can't really answer, but I can't -- I
8 really don't know.

9 Q And then down below it says: Note: This
10 plan is based in part on proposals made by the
11 students in LA205, a graduate studio class in the
12 Department of Landscape Architecture and
13 Environmental Planning. A number of the graphics and
14 ideas are theirs.

15 And then: The work was supervised by
16 Professor Randy Hester and Tim Duane.

17 Then a list identifying the students?

18 Is that basically the student process that
19 you were talking about before?

20 A Yep.

21 Q And you recognize the names of some of
22 those students?

23 A Yeah, I do.

24 Q So the way this document, or at least some
25 of the substance of this document came about, was

1 Community Development By Design was hired, came to
2 Hawai'i with their students and interviewed a bunch
3 of people in the community to learn about Mauna Kea?

4 MS. TOWNSEND: Objection, cross-examiner
5 testifying.

6 MR. HANDLIN: I'm asking the question.

7 THE WITNESS: Objection, calls for
8 speculation.

9 HEARINGS OFFICER AOKI: Overruled.

10 THE WITNESS: I can explain to you what my
11 understanding was as an interviewee and as a person
12 who hosted the students to bring them up Mauna Kea
13 along with other people in the community. They
14 interviewed many people, including ourselves, and
15 that's pretty much what I know.

16 Q (By Mr. Handlin): Let me direct you back
17 to your testimony at page seven, Exhibit C-1 at
18 seven. You said Exhibit C-5, but it's actually C-2.

19 This is a map that describes traditional
20 cultural viewplanes. It was created by Community By
21 Design, a planning group from University of
22 California at Berkeley. KAHEA got a small grant to
23 hire them, and they and their graduate students came
24 out to Hawai'i to interview many different people in
25 the community to learn about Mauna Kea. They created

1 this map out of the University documents and also
2 testimony on the viewsheds. This map incorporates
3 our testimony as well as others.

4 So my last question basically just
5 incorporated that testimony of yours and asked you if
6 that was correct. So that testimony of yours was, in
7 fact, correct?

8 A Yeah. It also says, and let me complete
9 it.

10 It is not a complete map, but it does help
11 provide a visual representation of some of the
12 viewplanes, including some of the solstice and
13 equinox viewplanes and those in relation to other
14 sites and also to the other islands.

15 Q These folks who came out, they interviewed
16 Native Hawaiians?

17 A They interviewed many people. They
18 interviewed me. I am Hawaiian, yes.

19 Q Did they also interview Mr. Ching?

20 A Yes. I believe so.

21 Q And they took the input that they got from
22 a variety of sources and they created maps including
23 Exhibit C-2?

24 A Yep.

25 Q Take a look, please, at page seven of

1 Exhibit A-204. Actually let me ask you this first.

2 When did this happen? Was that in 2006?

3 A I don't remember, actually. It was awhile
4 ago.

5 Q Can you give me your best estimate when
6 that was?

7 MR. FLORES: Objection, I believe she
8 answered the question.

9 MR. HANDLIN: Then I asked for a best
10 estimate.

11 HEARINGS OFFICER AOKI: Overruled.

12 THE WITNESS: I can't really remember.

13 Q (By Mr. Handlin): Was it longer ago than
14 2009?

15 A Oh, yeah.

16 Q Longer ago than 2010?

17 A Yes.

18 Q Now, take a look at page seven of this
19 document, under Action 3, starting at the second
20 line. It says:

21 The community input was solicited and
22 processed, put forward by UH in 2000 and 2009. The
23 final documents and the final approval has rested
24 with the primary developer of the area, the
25 University of Hawai'i, Board of Regents.

1 So this document was revised at least as
2 recently as 2009, correct?

3 A I cannot testify to that, because I don't
4 really know what this document is.

5 Q Further down under Action 4, three
6 sentences from the end:

7 In 2010 UH system requested 253 million
8 from the legislature, including 2.1 million for
9 activities relating to Mauna Kea.

10 That appears to be, does it not, that this
11 document was revised at least as recently as 2010,
12 does it?

13 A I guess it says -- it's kind of
14 self-explanatory. I told you that I can't testify to
15 this document.

16 Q Do you know who would have made those
17 revisions reflected in 2009 and 2010?

18 MR. NEVES: I don't know.

19 THE WITNESS: I don't know.

20 MR. HANDLIN: Can the other Petitioners not
21 answer the question for the witness?

22 HEARINGS OFFICER AOKI: I didn't hear
23 anybody, but if somebody was, then that's improper.

24 THE WITNESS: As I said -- let me reiterate
25 what I said. I don't know between this and this

1 (indicating). And I also cannot testify that this is
2 the document that they sent me, because what they
3 sent us is a little pamphlet.

4 Q (By Mr. Handlin): In this proceeding,
5 Petitioners contend that the TMT would intrude upon
6 the currently unobstructed view of Haleakala
7 mountain, correct?

8 A Yes.

9 Q Petitioner contends that the proposed
10 location for the TMT Observatory --

11 MR. CHING: Objection, speculation. I
12 don't know that he can speak for me as being one of
13 the Petitioners.

14 HEARINGS OFFICER AOKI: I don't think he's
15 speaking for you. He's asking a question.

16 MR. CHING: He referred Petitioners as if
17 what he's saying is true.

18 HEARINGS OFFICER AOKI: Overruled.

19 MR. HANDLIN: Here's what has already been
20 marked as A-202, which is Petitioners combined
21 opening brief in this matter, which is a collective
22 brief filed on behalf of all the Petitioners.

23 So at page 20 of that I think it says that,
24 quote:

25 The TMT would intrude upon the currently

1 unobstructed view of Haleakala Mountain.

2 Q That's in there, right?

3 A Yes.

4 Q I didn't misquote that?

5 A No.

6 Q On page seven of A-202, am I correct that
7 Petitioners contend that the proposed location for
8 the TMT Observatory is, quote, one of the last intact
9 viewplanes from the summit?

10 A Are you asking me to confirm what you're
11 reading?

12 Q Since your co-Petitioner didn't want me to
13 be representing on behalf of what Petitioners are
14 saying, apparently I am called upon to document this.

15 A I can say, yes, this is what I can read.

16 Q At page 15 of A-202 am I correct that it is
17 Petitioner's position that adding the TMT
18 Observatory, quote, will crowd one of the last
19 remaining, pristine views towards the northern and
20 western portions of Hawai'i Island?

21 A Yes.

22 Q Let's look back to Exhibit C-2, please.
23 And according to the legend on this map down at the
24 lower left it describes traditional and customary
25 practices. Is that right?

1 A Yeah, constructed from UH planning
2 documents also.

3 Q And down below it says compiled from
4 additional sources?

5 A Yep.

6 Q And the things that are compiled from
7 additional sources are the arrows that indicate
8 significant views including to Polaris, heiaus on
9 Maui and Kauai, Pleiades at new year, the Southern
10 Cross and Mauna Loa and then views back to the
11 mountain; right?

12 A Yes.

13 Q So the arrows that are on this map were not
14 compiled from UH IFA planning documents, but from
15 additional sources according to this document; right?

16 A Uh-huh.

17 Q And those additional sources were cultural
18 practitioners who were interviewed, correct?

19 A Well, you know, if you look in the oral
20 history interviews, it's not only practitioners, it's
21 just -- but, yes, practitioners I'm certain were
22 included.

23 Q And these folks who came out from Berkeley,
24 they interviewed practitioners, yourself included?

25 A Uh-huh, and reviewed the oral history and

1 cultural impact statements produced by the
2 University.

3 Q The legend down at the bottom here, bottom
4 right, has an arrow pointing straight up that says
5 "north". So we can agree that basically the top of
6 this document is north, the bottom is south, the
7 right is east and the left is west?

8 A I think that's what the map maker implied.

9 MR. HANDLIN: I marked as A-207 what, for
10 the moment, is just another copy of C-2.

11 Q I'm going to give you a black magic marker,
12 and ask you if you would mark on that document an
13 arrow showing the last remaining -- the direction of
14 the last remaining pristine views toward the northern
15 portion of Hawai'i Island.

16 A Okay.

17 MS. WARD: Objection, how would someone be
18 able to do that?

19 HEARINGS OFFICER AOKI: Is that an
20 objection?

21 MS. WARD: Sorry, I don't know how to call
22 it, but it just seems to me that he's asking for the
23 impossible.

24 HEARINGS OFFICER AOKI: Overruled.

25 THE WITNESS: Give me more detail of what

1 you want me to draw.

2 Q (By Mr. Handlin): As we have already
3 established in the brief, Petitioners have said that
4 the TMT would obstruct the last remaining pristine
5 views --

6 MS. TOWNSEND: Objection, misstates the
7 Petitioners' exhibit.

8 MR. HANDLIN: -- toward the northern
9 portion of Hawai'i Island.

10 HEARINGS OFFICER AOKI: Who is that
11 misstating?

12 MS. TOWNSEND: Our quote was one of --
13 there may be more than one intact viewplane. I'm not
14 sure what he's trying to prove, so I want to make
15 sure we are very specific. There may be more than
16 one intact viewplane, and TMT, if built, would crowd
17 one of them.

18 THE WITNESS: Let me try to --

19 HEARINGS OFFICER AOKI: Wait.

20 MR. HANDLIN: I'm taking them one at a
21 time, and presumably the Petitioners in general, and
22 Ms. Pisciotta specifically, because she testified
23 about viewplanes, know which directions and which
24 viewplanes they're talking about. I'm just asking
25 her to memorialize that on this document.

1 HEARINGS OFFICER AOKI: The objection is
2 that the question mischaracterized the Petitioners'
3 position as to whether or not this is the only
4 remaining viewplane, pristine viewplane.

5 So is your question limited to that?

6 MR. HANDLIN: Let me ask a better question.
7 I'll withdraw that question.

8 Q Can you indicate on that map with an arrow
9 the direction of the views that Petitioners are
10 talking about when they said on page 15 of their
11 brief that adding the TMT will crowd one of the last
12 remaining pristine views toward the northern portion
13 of Hawai'i Island?

14 Says northern and western, but mark
15 northern first.

16 A At the top of the map you see Polaris, so
17 that's generally the top. This map is, the center
18 dot here represents the lele, which is the actual
19 summit, right. This over here is Kukahau'ula.
20 Here's where the Subaru and Keck Observatories are
21 going, kind of where we went on our site visit for
22 context, and Pu'u Poli'ahu is over here.

23 Q Can we take them one at a time so we have a
24 clear record of what is being marked?

25 Up at the top, that is the northern view?

1 A Yes.

2 Q Can you make that more of an arrow so we
3 know which direction the view is?

4 A Approximating, this would be south. So the
5 viewplane goes from here to here (indicating). The
6 viewplane is based on also -- that's the present,
7 that's the viewplane.

8 Q So the question was, which of what you just
9 have drawn is one of the last remaining pristine
10 views toward the northern portion of Hawai'i Island?

11 A Well, when we went on the site visit we saw
12 the balloon, the plateau where the TMT -- you haven't
13 drawn the TMT on here, it's out here. Where we went
14 on our site, Pu'u Poli'ahu and Kukahau'ula out here.
15 So this whole viewplane is where the TMT will be the
16 dominant feature.

17 Q And you've drawn a arc there?

18 A Yeah.

19 Q On what you've drawn on that document, what
20 would be one of the last remaining pristine views
21 towards the western portion of Hawai'i Island that
22 the TMT will crowd?

23 A Okay, for clarification also, this is
24 north, go northeast, northwest. That whole viewplane
25 is the plane of the sun, the movement of the sun

1 throughout the year. So the sun essentially swings
2 from here to here (indicating) throughout the year.
3 And these additional points are the solstice and
4 equinox points, the polohiwa. So the sun, this whole
5 viewplane where it's to the west Pu'u Poli'ahu,
6 Kukahau'ula over here. If we stand on Kukahau'ula,
7 there is nothing there now. Of course, Maui is out
8 here, Haleakala. And this is the pathway of the sun.

9 So it is a remaining viewplane that is not
10 obstructed unless we stand behind Keck and Subaru, in
11 which case it is obstructed.

12 Q Let me try my question again.

13 Can you indicate on the things that you
14 marked which are the -- that is one of the last
15 remaining pristine views towards the western portions
16 of Hawai'i Island, which of what you've marked is the
17 western part?

18 A It's northwestern.

19 Q You mentioned a view toward the direction
20 of Haleakala. Can you just note that on there
21 someplace?

22 A Haleakala is -- this is really from memory.
23 I would say it is out in here (indicating), but it
24 could be a little on this side of north.

25 Q Maybe just put an "H" there to indicate

1 Haleakala.

2 A It's not accurate. This is my memory.

3 Q And which arrows of what you've marked
4 indicate the direction of the setting sun, realizing
5 that that changes over the course of the year?

6 A All the way from the northwest to the
7 northeast, northeast/northwest. That's the whole
8 range of the setting sun.

9 Q Take a look, please, at that page 20 of
10 Exhibit A-204.

11 The reporter would like to take a break.

12 HEARINGS OFFICER AOKI: That's fine, but
13 how much longer?

14 MR. HANDLIN: Not long.

15 HEARINGS OFFICER AOKI: We will take a
16 short break, five minutes.

17 (Recess taken.)

18 HEARINGS OFFICER AOKI: Back on the record.
19 We can start again. Go ahead.

20 Q (By Mr. Handlin): Can you please turn to
21 page 20 of Exhibit A-204? And with that in hand, let
22 me give you what I've marked as A-208, which is just
23 an enlargement of the map that is at the top left of
24 page 20 of A-204. Do you see that?

25 A Yes.

1 Q Now, one of the reasons I blew this up,
2 down at the bottom here there is a further
3 enlargement that provides details about locations of
4 different telescopes; correct?

5 A Okay.

6 Q According to this graphic up at the top
7 here in this brown wedge it says "industrial
8 viewplane".

9 A Okay.

10 Q And if you look at the detail that shows
11 Keck one, Keck two, and IRTF. What is the IRTF?

12 A The NASA Infrared Telescope Facility.

13 Q Then to the left of that it says -- there's
14 a big black ridge, it says view obstructed by UKIRT,
15 do you see that?

16 A Yes.

17 Q UKIRT is what?

18 A United Kingdom Infrared Telescope.

19 Q Down in the detail it appears that that
20 wedge includes Subaru, SMA, JCMT, is that James CLark
21 Maxwell Telescope?

22 A Yes.

23 Q Where you used to work?

24 A Uh-huh.

25 Q And CSO, is that Caltech Submillimeter

1 Observatory where you also worked?

2 A Yes.

3 Q And then sort of at the top right it says:
4 View obstructed by Gemini UH 2.2. And if you look in
5 the detail, that wedge also seems to include CFHT.
6 Does CFHT mean the Canada-France-Hawai'i Telescope?

7 A Uh-huh.

8 Q Can you just say "yes" or "no" for the
9 court reporter?

10 A Oh, yeah.

11 Q I want to give you what I've marked as
12 A-209, which is a further enlargement of A-208 scaled
13 to fit the same scale as C-2, which is now also
14 A-207. So if you overlay A-209 over A-207 or C-2,
15 whichever we call it, according to that document, we
16 see that the areas that are marked as views
17 obstructed by existing telescopes or industrial
18 viewplane because of existing telescopes already
19 encompasses all of the views that you've identified
20 as being unobstructed, pristine and clear at this
21 point; correct?

22 A No, not correct, you're misstating, and the
23 reason is because --

24 Q Excuse me, you can have that clarified on
25 redirect, but I just asked if that was right, and you

1 said no, it's not correct. That's responsive to my
2 question.

3 On Exhibit C-2 all of the arrows that
4 emanate out, all emanate out from a single point;
5 correct?

6 A Yes.

7 Q And that single point is the actual
8 physical summit on Pu'u Wekiu?

9 A Uh-huh.

10 Q Yes?

11 A Yep.

12 Q The TMT Observatory will not be visible
13 from Pu'u Wekiu, correct?

14 A Right, anyway's even if it were, it would
15 be blocked by all the other observatories.

16 Q I have nothing further.

17 REDIRECT-EXAMINATION

18 BY MS. TOWNSEND:

19 Q Aloha, Marti Townsend for KAHEA.

20 Aloha, Kealoha.

21 A Hi.

22 Q So let's begin where you guys sort of left
23 off. When you overlay the maps C-2 and A-209, you
24 said that that mischaracterized viewplane impacts and
25 I was hoping you could clarify.

1 A Well, the reason why I'm clarifying this is
2 because we haven't said that the viewplanes, the TMT
3 will block the viewplanes from Pu'u Wekiu. What we
4 said is we already have to go around the
5 observatories to get unobstructed views of the sunset
6 areas and the rising and setting of certain
7 constellations, so on, so forth.

8 What is misleading here in this thing is
9 this does actually demonstrate that the industrial
10 viewplane already obscures our viewplanes from the
11 summit. But when we went on our site visit, we went
12 to demonstrate the places we asked to look from would
13 be the outer ledges of Kukahau'ula where we have to
14 get an unobstructed view from and Pu'u Poli'ahu and
15 to show that the TMT will be in these viewplanes.

16 Q So just to unpack that last sentence, the
17 viewplane that a person has, an observer has, is
18 there only one place where cultural practitioners go
19 to on Mauna Kea to observe the viewplane?

20 A No.

21 Q So cultural practitioners go to many
22 different places?

23 A Yes.

24 Q Does the viewplane change depending on the
25 location where you're standing?

1 A Yes.

2 Q So looking at map C-2, recognizing that the
3 viewplane of the observer depends on the location of
4 the observer, describe for the Hearing Officer on map
5 C-2, what these orange circles here are, and the
6 locations for various places for observing
7 viewplanes.

8 What locations do cultural practitioners go
9 to?

10 Q Well, many. First, let me answer the first
11 question, which is the brown areas indicate pu'u's.
12 Here is an adze quarry. The three lines, three
13 circled areas toward the center of the map are
14 Kukahau'ula, lake -- the lake and the pu'u, Pu'u
15 Waiiau, and Pu'u Poli'ahu. And then over here is Pu'u
16 Pohaku in the NARS.

17 And so, you know, practice goes on at the
18 lake, so viewplanes there. Practice goes on on the
19 summit, so viewplanes there. There's viewplanes from
20 all of these pu'u's. And then of course these sites
21 and the little triangles on the map, these are all
22 cultural or historic sites. I think in these cases
23 they're historic. So there's all of these.

24 The point being that the TMT will be placed
25 in the middle of this plateau, and so these

1 viewplanes out here will be affected.

2 And then from these pu'u's, one of which is
3 Pu'u Makanaka, which is a significant burial complex,
4 will all be impacted as well as any viewplanes from
5 these cultural sites out here (indicating).

6 And from the summit, Kukahau'ula, this edge
7 of it, the northwest and northeast side, you know,
8 when we went to Keck and Subaru and we could see out
9 there. When the balloon came up, the balloon from
10 Pu'u Poli'ahu, you can see the balloon from the base
11 of Pu'u Poli'ahu, you can see it from Pu'u Pohaku as
12 well.

13 Q Just to clarify for the record. What was
14 the purpose of the red balloon on the site visit?

15 A To demonstrate how high the TMT will be,
16 would be 187 feet.

17 Q After the red balloon went up,
18 demonstrating the height of the TMT, from our
19 position by the Keck and Subaru telescopes, was
20 Haleakala behind the red balloon, the string of the
21 red balloon?

22 A Yes.

23 Q When we went to visit at Pu'u Poli'ahu and
24 we looked towards Haleakala, was the red balloon
25 visible?

1 MR. HANDLIN: Objection, foundation. Ms.
2 Pisciotta did not go up to Poli'ahu.

3 Q (By Ms. Townsend): To clarify, from the
4 base?

5 A Yes, it was visible from the base.

6 Q It was visible from the base?

7 A Yes.

8 Q So looking at Haleakala, the TMT was
9 visible?

10 A (Witness nods head up and down.)

11 Q To your knowledge, has the University or
12 the TMT Corporation analyzed the viewplanes from any
13 of the identified historic preservation sites or
14 other pu'u other than Pu'u Wekiu?

15 A Not to my knowledge.

16 Q I would like to clarify a statement you
17 made earlier in your testimony, in your
18 cross-examination. Hoping you can clarify for the
19 record the path of the sun both in one day and over
20 the season between solstice.

21 A Well, it's rising for the summer here
22 (indicating) and it's setting --

23 Q You have to say what here is for the word
24 sharer?

25 A I'm sorry. On the C-2 map, I am

1 demonstrating where the sun is rising in June.

2 Q In the east?

3 A Yeah, northeast kind of, yeah. And rising
4 in December down here (indicating).

5 Q In the southeast?

6 A In the southeast. Setting in December in
7 southwest, over here. And setting in June in the
8 northwest. So these are all the basic points that
9 come into play during ceremony for solstice, equinox
10 is where they're crossing the equator also, or this
11 here (indicating).

12 HEARINGS OFFICER AOKI: Where is that? For
13 the record --

14 Q (By Ms. Townsend): Where is "here"?

15 A Sorry, on this quadrant (indicating).

16 Q So is that the north half of the map?

17 A Yeah, yeah. So it pretty much circles this
18 area (indicating).

19 Q So just to make sure the record is clear,
20 for cultural practitioners the importance of
21 viewplanes to the sun not only affect the day, the
22 path of the sun over one day, but also affect the
23 path of the sun from the solstice to solstice from
24 June to December?

25 A Yes and equinox too.

1 MR. HANDLIN: Can I object to the leading?
2 It's redirect, it's not cross.

3 HEARINGS OFFICER AOKI: I'm not going to
4 strike that.

5 Q (By Ms. Townsend): I'm sorry. So is there
6 anything to clarify?

7 A I think what's important here is also to
8 point out that we've had to significantly change our
9 practice to accommodate what exists there now. It is
10 not only sun, but it's more, it's stars and
11 constellations as well. So there's rising and
12 settings that go on in all of these things as well.

13 For example, Orion rises due east, comes
14 across, sets December. Looking at Polaris, the TMT,
15 if you're standing on the ground, you probably won't
16 be able to see it because Polaris is very low in the
17 sky.

18 Southern Cross this way (indicating). If
19 you're out here, if you're out on the plane, TMT will
20 definitely be in those viewplanes. Southern Cross
21 also is very low in the sky. So these are
22 problematic.

23 But I think what's important to recognize
24 too is that the viewplanes are public trust
25 resources. These open space characteristics are

1 public trust resources and they affect more than
2 practitioners. Not just us. It's people who paint;
3 people who actually go up Mauna Kea to see the
4 sunrise or see the sunset. It's also in the way of
5 the shadow.

6 Q Whose shadow?

7 A In the great shadow of Mauna Kea, which is
8 what many people actually look to as well, because
9 it's significant, the great purple shadow.

10 Q Can you please clarify? When is the shadow
11 mountain cast and where is it cast?

12 A It casts in the morning and in the evening
13 throughout the year.

14 Q And how will the construction of TMT
15 undermine that?

16 A Well, it will be in the viewplane in
17 certain times of the year for sure.

18 Q So meaning if you were -- if you're on
19 Mauna Kea, that is the perspective of the observer on
20 Mauna Kea, and I'm looking at the shadow projected on
21 the landscape, and it's your testimony TMT, depending
22 on where you're standing, may interrupt that?

23 A Yes. And at certain times of the year it
24 will become more prominent than others. But there
25 again, you know, ceremony goes on all throughout the

1 year. And so there are going to be times in which
2 the practice cannot be done with -- you're not
3 going -- you're going to have to move.

4 Q Now, I would like to direct your attention
5 to A-204, the much heated debated document from
6 Community By Design. I just wanted to give you an
7 opportunity to offer any clarifying statements about
8 the document.

9 A I think I was attempting to clarify it with
10 Jay, but I recognize much of it, but I can't really
11 testify to all of it because it's not really the same
12 thing that was sent to us. It was a little booklet,
13 it's different. I don't -- I don't even know the
14 title.

15 Q So is it your testimony that there have
16 been changes made to this document since Community By
17 Design gave it to you?

18 A Yes. And it needs to be clearly understood
19 in the regard that this was not an attempt of the
20 students to make some document, but to demonstrate an
21 alternative document based on their hearing, their
22 mapping.

23 I mean, to create this map they said, oh,
24 well, we could map that, Kealoha. And I said map
25 what? They said, well, all those directionals you

1 just showed us. And I said, how would you do that?

2 And they said, we'll show you.

3 And then they did, they produced this. And
4 it was pretty amazing, but, you know, it needs to be
5 understood that it's not a document that we're
6 putting out. It was done by students, and that's how
7 it should be. And it's good for them, they worked so
8 hard on this.

9 And other than that, I cannot testify to
10 the accuracy because it just isn't the document that
11 I'm familiar with, and there may be changes and I
12 don't know.

13 Q I'm done. I think Uncle Ku wanted to ask a
14 redirect question. I'm done, thanks.

15 REDIRECT EXAMINATION

16 BY MR. CHING:

17 Q My name is Kukauakahi, and I'm the person
18 you probably referring to as Uncle Ku.

19 You used to work -- how long did you work
20 up on the Mauna Kea?

21 A 12 years. Actually I think a little more,
22 but I got a thing recognizing 12 years of service, so
23 about 12.

24 Q In the course of these 12 years, did you
25 ever take little ku'aikahi, travel to different spots

1 on the summit?

2 A Yes.

3 Q In other words, you didn't just stay there
4 for 12 years in one spot?

5 A No, no, I lived up there, so at least half
6 the year. We did lots of ku'aikahi.

7 Q And this was to varying parts to the top of
8 the mountain and maybe even off the top of the
9 mountain?

10 A Yes.

11 Q And when you moved around the mountain, did
12 the viewplanes change?

13 A Yes.

14 Q In other words, I believe the
15 cross-examiner was trying to get you to say that you
16 were like stationary one spot and all of your
17 viewplanes were from that one spot. And I believe
18 that you're testifying that in your experience the
19 viewplanes that you've experienced have been from all
20 over the mountain?

21 A Well, the viewplanes that we were reviewing
22 in these documents are only from Pu'u Weiku, so
23 they're not a perfect representation of all of the
24 cultural viewplanes, for sure.

25 Q When you did your viewing, did you take a

1 compass with you so that -- maybe expand -- so that
2 you could tell exactly where north or south or east
3 or west was?

4 A No, not necessarily, because I kind of know
5 them from the nighttime.

6 Q But were you, like when looking northward,
7 would you be looking at 0 degrees of azimuth?

8 A No.

9 Q As you measured on your compass?

10 A No, compasses don't always work right up
11 there anyway's.

12 Q So your statement about directions are
13 general, not specifically by degrees?

14 A Right.

15 Q There were quite a few questions about this
16 document and students.

17 Did you -- were you asked and did you tell
18 them how to put their document together?

19 A No.

20 Q Are you in agreement with everything they
21 wrote?

22 A Not in the little document that they sent
23 me. I mean, no, I think it's mostly because they're
24 students and they had two weeks to understand all
25 this stuff and digest it.

1 Q So in your belief system, you haven't
2 acknowledged or signified all of the things that were
3 covered in these documents?

4 A Yeah. No.

5 Q I believe you stated that all practitioners
6 don't do their practice from any one particular spot?

7 A That's true. There are some practitioners
8 they have different kuleana or different
9 responsibilities, so they do practice from different
10 area. For example, those who deposit the piko in the
11 lake, you know, they have a specific practice, and so
12 that's -- those are the places that they venture.
13 And they may have other practice that goes other
14 places. People practicing burial rights or taking
15 care of burial, different also.

16 Q Could some of these places be directly east
17 of the proposed TMT site where they would be looking
18 west?

19 A Yes.

20 Q Or could they be south of the proposed TMT
21 site, they would be looking north?

22 MR. HANDLIN: Objection, calls for
23 speculation.

24 HEARINGS OFFICER AOKI: Overruled.

25 THE WITNESS: Yes. I mean the polohiwa

1 alignments, the solstice or equinox alignments are
2 often used -- I'm not sure I can say that. It's not
3 just in observing -- those alignments are used for
4 other practices, I think I can say that.

5 Q Thank you. I have no further questions.

6 REDIRECT EXAMINATION

7 BY MS. WARD:

8 Q Aloha, my name is Deborah Ward.

9 A Aloha.

10 Q Thank you for testifying today.

11 As a cultural practitioner, when you look
12 west, do you ever look directly west and not anywhere
13 else in the viewplane, or could you possibly be aware
14 of something just a few degrees to the northeast or
15 northwest of that?

16 A Well, yeah. I mean, that's what I think I
17 was trying to assert the last time that it isn't just
18 this (indicating). Actually the criteria is open
19 space, and open space is that which allows you to see
20 everything within that direction that you're looking.
21 It's not just, you know, something right here and
22 then you can go and look around it. We already have
23 to do that from most of the summit.

24 Q Does an object in your peripheral vision
25 affect your practice?

1 A I think it would be bothersome. I mean
2 will it affect people? Yes, it already affects
3 people.

4 Q Could you describe a little bit about how
5 it affects your practice?

6 A Well, many of the practices are about time.
7 The solstice and equinox practices are conducted to
8 maintain the time of the year. And when planting is
9 to occur, when fishing is to occur, when temples are
10 dedicated.

11 But it also is the spiritual alignment,
12 people go there for spiritual alignment to be in
13 alignment with these times. But the bigger time
14 frame that procession is taking into account is the
15 26,000-year cycle. That is how ancient these
16 practices are. They're even proto-Polynesia. They
17 came with the Hawaiian people, even before they
18 landed here.

19 When you look in our chants, you see the
20 names of the stars, the pole stars, for example,
21 5,000 years ago, and in one case 12,000 years ago.
22 So it's likely there they were proto-Polynesia.
23 People think that this practice is antiquated,
24 because who needs to keep track of the 26,000 year
25 cycle. Well, the whole heavens moved, and we're

1 coming upon the completion of that 26,000 year cycle.

2 So why it's important is we can actually
3 even determine the timeframe when a heiau was built
4 based on the alignments of those stars. Ahua Umi, we
5 know when Umi was, so we can also determine if any
6 changes were made to it as well, because they are
7 made to the land and the sky.

8 So these practices are foundational to our
9 culture and spirituality, and are not antiquated
10 because our prophecies predict things to happen in
11 the changing of the houses, and who takes leadership
12 and which akua are in charge at any given time.

13 Q So in your practice is there anything about
14 your practice that opposes astronomy as science
15 currently observes it in the sky?

16 A No. Modern science is a noble thing that
17 should be supported. But I do have to qualify my
18 statement by saying that when the SMA, the Subaru and
19 the Keck were being proposed is when I began to be
20 seriously troubled. And it's because I felt that
21 astronomy previously was being done and the landscape
22 was not overtaken, so there was still the power for
23 landscape, the sacred landscape.

24 But when they leveled the Pu'u Koholau, the
25 pu'u of the Koholau, the great well, is when many

1 things shifted, because you could no longer feel the
2 openness, you were dominated then. And, you know,
3 from my viewplane, maybe I was down in the valley, so
4 look up at the ridge, it now suddenly was starting to
5 surround you.

6 I didn't know how to try to do something
7 like a contested case hearing back then, but that
8 began my consciousness of the promises were not being
9 kept by the University at that time, and the loss of
10 many of the practices was going to result from this.
11 I just didn't know how to have any impact on that
12 before.

13 So it's not the modern astronomy, per se,
14 in and of itself is a bad thing, it's the fact that
15 Mauna Kea is a vast community resource and many
16 people are going to be impacted by this, and I don't
17 believe astronomy has that right.

18 Q When you made your change in your
19 professional life, did you at that point begin to
20 explain your position and take part in community
21 action and meetings?

22 Were you appointed to any committees at
23 that time so that you could share your viewpoint and
24 try to effect the management?

25 MR. HANDLIN: Objection, it is far, far

1 outside the scope of the cross.

2 HEARINGS OFFICER AOKI: I think we covered
3 her background, so overruled.

4 THE WITNESS: Yes, I did engage in many
5 meetings. I actually believed that the University
6 would want to malama. I hadn't had a bad experience.
7 I know the directors of the observatories I worked
8 for were always supportive of our position, even then
9 our position. I mean they could have fired me, I
10 guess, but they were not adversarial. They respected
11 our viewpoint.

12 And so I believe many of the observatory
13 personnel are not necessarily opposed to us, they
14 have been respectful always.

15 Q (By Ms. Ward): And did you work on a
16 document that you submitted as an exhibit to try to
17 present your point of view and your experience in a
18 way that would assist the University or assist the
19 community as a whole in understanding and respecting
20 the mountain?

21 A Yes, we produced the temple report.

22 Q Is there an exhibit that explains your
23 position?

24 MR. HANDLIN: I'm trying to object to the
25 last question. If you want to allow it, I'll just

1 have a running objection. But, again, it bears no
2 relation to anything I asked the witness about.

3 HEARINGS OFFICER AOKI: I think it has
4 gotten too far afield here, so I'll sustain that.

5 MS. WARD: Sorry, I need to gather my
6 thoughts for a minute.

7 Q You did not submit the document that you
8 were cross-examined on?

9 A No.

10 Q And you did submit several other exhibits?

11 A Yes.

12 Q Are any of those more explanatory than the
13 one that you were cross-examined on?

14 A As to my position, or the position of Mauna
15 Kea Anaina Hou, yes. The temple report titled Mauna
16 Kea Sacred Resource, Mauna Kea Protect The Sacred
17 Resource, Exhibit F-2.

18 Q Thank you. I think that's all the
19 questions I have.

20 A Mahalo.

21 HEARINGS OFFICER AOKI: Anyone else? Any
22 other redirect? Any other cross? No, nothing else.

23 I have a couple questions.

24 Could you explain a little bit more in
25 detail how the TMT would interfere with the cultural

1 practices? Is it just the fact that it's there in
2 general, or is it the fact that it would block
3 specific viewplanes or something else?

4 THE WITNESS: There's a couple things.
5 There is the intangible aspect which would be the
6 more destruction and desecration of the landscape for
7 purposes that are not related to Mauna Kea as a
8 temple, as an example.

9 HEARINGS OFFICER AOKI: The context of my
10 question is Native Hawaiian practices.

11 THE WITNESS: Yes, and so --

12 HEARINGS OFFICER AOKI: As opposed to
13 general viewplanes for general viewing. I'm focusing
14 on the Native Hawaiian cultural practice.

15 THE WITNESS: Yes, for sure it will. For
16 us to get out of the previous telescope viewplane, we
17 have to go to the outer edges of the pu'u on
18 Kukahau'ula, that's if we want to view from there.
19 Going out to the outer edges, our viewplane will be
20 obstructed to Haleakala and numerous constellations,
21 the shadow, and also the pathways of the sun.

22 It will be obstructed if we go down below.
23 We can escape it being obstructed if we go on the
24 other side, which will probably have to be done, but
25 some of the alignment are taken from up high, because

1 that -- and as I said, it is true, we moved the Pu'u
2 Wekiu from the actual alignment from the direct
3 summit, and had to adjust there already.

4 So we now go around to the outer edge to
5 see these viewplanes on this side and this side
6 (indicating).

7 And also from the sites out on the plane,
8 yeah, and from the pu'u's.

9 HEARINGS OFFICER AOKI: Clarify for me when
10 you say "obstructed". Does that mean it would block
11 the view, or obstructed meaning it would be included
12 in the view?

13 THE WITNESS: It's both, because for some
14 of the constellations from the star rising we
15 can't -- we won't be able to see it from certain
16 viewplanes. We can see it if we go around it, but
17 then we won't necessarily be seeing it from the place
18 we're supposed to be looking at it traditionally
19 speaking.

20 And then, yes, it will be this kind of
21 dominant feature in that whole looking west. For
22 example, one of those alignments that is kind of
23 suggesting the one that goes all the way to Kauai on
24 certain times of the year, that is going to be in the
25 way.

1 HEARINGS OFFICER AOKI: Thank you. Anybody
2 else? I don't think anybody else has any other
3 questions.

4 I think that's all the witnesses. Before
5 we move on, I just want to go back to 204. I was
6 thinking could you provide to the Applicant the
7 version that you got and then maybe you can
8 substitute that.

9 MR. HANDLIN: Well, I don't -- I would
10 also, if this is going to be an issue, I would also
11 like the opportunity to make a submission to explain
12 where -- how it is that we come to have this.

13 HEARINGS OFFICER AOKI: That's what I was
14 trying to address here is the status of 204.

15 MS. WARD: I have a copy, it's just at
16 home.

17 HEARINGS OFFICER AOKI: Sounds like the
18 Petitioners can provide you with a copy of the 204
19 from which the exhibits that they introduced came.
20 Assuming they do that, do you still need 204 that you
21 used today, which nobody has authenticated?

22 MR. HANDLIN: Well, after I see what they
23 send, again, I would like to reserve the right --
24 frankly, I would like them to have the right to
25 submit something very short to you on this issue just

1 so that both sides can state their position about it.
2 So two days, three days.

3 HEARINGS OFFICER AOKI: We're going to
4 recess pretty soon, so what I'm going to rule is that
5 Petitioners are directed to provide to Applicant the
6 document from which C-2 and E-2 came from. And then
7 if there's a dispute as to if you still want to use
8 the current 204, let them know.

9 And so if we're going to have an issue, let
10 me know also, so we need to determine -- I would like
11 to determine by Wednesday whether we're going to have
12 an issue.

13 Petitioners understand what I'm doing?

14 MS. TOWNSEND: Just to articulate. So we
15 make a copy just for them and give it to them, and
16 they make a decision as to whether there's going to
17 be an issue?

18 HEARINGS OFFICER AOKI: Right. I think
19 they're entitled get a copy of that. And then the
20 question is, is that -- does it make sense to just
21 use that instead of the 204 which is disputed now?
22 And if that's acceptable to them, then I don't think
23 there's any issue, we'll just -- I'll receive 204
24 that Petitioners can verify or authenticate. If
25 Applicant still wants to use the more recent version

1 I guess of 204, then we have to decide whether or
2 not -- then what they're saying is they're entitled
3 to an opportunity to authenticate it so that they can
4 use it.

5 So I want to know before Friday whether
6 we're going to need to do that -- I want to know by
7 Wednesday.

8 So anybody have anything else evidentiary
9 to deal with? So I'm asking other than 204, are
10 there any evidentiary issues to discuss?

11 MS. WARD: I was a little concerned about
12 the overlay. Is that actually an exhibit? How is
13 that going to be represented in the record?

14 HEARINGS OFFICER AOKI: I'm not sure what
15 happened to 204. You're talking about 209, right?
16 Did you move that in?

17 MR. HANDLIN: I thought I did. If I
18 didn't, I'm going to move it into evidence. If I did
19 not specifically move to admit into evidence
20 everything that I offered today, I am now so moving.

21 HEARINGS OFFICER AOKI: With that, are
22 there objections? I think the only one I'm not clear
23 on is 209.

24 MS. PISCIOTTA: The only thing is that
25 there's just no legend. The only question I have, I

1 just want to note for the record that, you know, I
2 see the picture in that document that they're
3 offering, but there isn't really a legend, so I'm not
4 sure of the scale. I think they're trying to put it
5 on there, but I don't know. There's no legend. I
6 just want to make a note of that.