

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

BOARD OF NATURAL RESOURCES

STATE OF HAWAII

In Re Petitions requesting) DLNR NO. HA-11-05
a Contested Case Hearing Re)
Conservation District Use) VOLUME VI
Permit (CDUP) HA-3568 for the)
Thirty Meter Telescope at the)
Mauna Kea District, Island of)
Hawaii, THK (3) 4-4-015:009)

CONTESTED CASE HEARING

Taken on September 26, 2011, at the University of
Hawaii Hilo, College of Tropical Agriculture and
Human Resources Building, 875 Konoehana Street,
Conference Room, Hilo, Hawaii, commencing at 9:00
a.m. before Hearings Officer Aoki.

BEFORE: Jean Marie McManus, CSR #156

McMANUS COURT REPORTERS 808-239-6148

| PETITIONER WITNESSES: | PAGE |
|-------------------------------|------|
| <u>E. KALANI FLORES</u> | 4 |
| <u>KEALOHA PISCIOTTA</u> | 34 |
| Cross-Examination/Applicant | 45 |
| Redirect Examination/Townsend | 83 |
| Redirect Examination/Ching | 92 |
| Redirect Examination/Ward | 96 |

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RECEIVED
OFFICE OF CONSERVATION
AND SPECIAL LANDS
2011 NOV -4 A 11: 27
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

McMANUS COURT REPORTERS 808-239-6148

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

APPEARANCES:

HEARINGS OFFICER
PAUL AOKI, ESQ.
Ashford & Wriston
1099 Alakea Street, Suite 1400
Honolulu, Hawaii 96813

DEPUTY ATTORNEY GENERAL
JULIE CHINA, ESQ.
465 S. King Street, Room 300
Honolulu, Hawaii 96813

TIM LUI-KWAN, ESQ.
JAY S. HANDLIN, ESQ.
Carlsmith Ball, LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813

Attorney for Applicant

Petitioners:

KALANI FLORES
P.O. Box 6918
Kamuela, HI 96743

DEBORAH WARD
P.O. BOX 918
Kurtistown, HI 96760

MARTI TOWNSEND
1149 Bethel Street, #415
Honolulu, Hawaii 96813

CLARENCE KUKAUAKAHI CHING
64-823 Mamalahoa Highway
Kamuela, HI 96743

KEALOHA PISCIOTTA
P.O. Box 5864
Hilo, HI 96720

McMANUS COURT REPORTERS 808-239-6148

HEARINGS OFFICER AOKI: It's 9:00 o'clock.
I would like to call the hearing to order. I think
the next order of business is testimony by Mr.
Flores. Mr. Flores, are you ready?

MR. FLORES: Yes.

HEARINGS OFFICER AOKI: While Kalani is
getting ready, could we note appearances for the
record.

MR. LUI-KWAN: Tim Lui-Kwan and Jan Handlin
on behalf of the Applicant University of Hawaii.

MS. PISCIOTTA: Kealoha Pisciotta on behalf
of Mauna Kea Anaina Hou.

MS. TOWNSEND: Marti Townsend on behalf of
KAHEA Environmental Alliance.

MS. WARD: Deborah Ward on behalf myself.

MR. NEVES: Paul Neves, Kumu Hula,
appearing for my halau and myself.

MR. CHING: Kukauakahi, also known as
Clarence Ching for myself.

MS. CASE: Pua Case, Flores-Case Ohana.

MR. FLORES: E. Kalani Flores, Flores-Case
Ohana.

HEARINGS OFFICER AOKI: Thank you everyone.

DIRECT EXAMINATION

MR. FLORES: Before I begin, I would like

McMANUS COURT REPORTERS 808-239-6148

1 to introduce myself. Aloha, my name is E. Kalani
2 Flores, member of the Flores-Case Ohana. I reside in
3 Pu'ukapu, Waimea, Kohala Waho, Mokupuni o Hawai'i. I
am a Kanaka Maoli cultural practitioner with
connections to Mauna a Wakea.

6 Before I begin my testimony, I would like
7 to first qualify myself as an expert in two areas in
8 addition to what was previously qualified. My
9 understanding, at the previous hearing of August 25th
10 cultural practitioners were recognized as experts in
11 their cultural practices related to Mauna Kea.

12 In addition to that, I would like to
13 qualify myself in two other areas before I begin my
14 testimony.

15 The first area, based upon the legal
16 standards covered in Hawai'i Rules of Evidence, Rule
17 702, I would like to be qualified as an expert
18 witness through my knowledge, skills, experience,
19 training and education in subject matter pertaining
20 to Hawaiian cultural traditions.

21 I have a B.A. degree in Hawaiian studies
22 from University of Hawai'i at Hilo, along with D.O.E.
23 teaching certification. I have been educating for
24 nearly 30 years with Hawai'i State Department of
25 Education and University of Hawai'i systems.

McMANUS COURT REPORTERS 808-239-6148

1 I'm presently employed as a tenured Hawai'i
2 Life Styles - Associate Professor at Hawai'i
3 Community College instructing Hawaiian culture and
4 language courses, including, but not limited to the
5 subjects of Hawaiian cultural traditions,
6 spirituality, ethnobotany and history of these
7 islands. In addition to that, I am also fluent in
8 the Hawaiian language.

9 So the first area, in addition to being
10 previously qualified as an expert in cultural
11 practices related to Mauna Kea, in addition to that,
12 the other area in the western context I wish to be
13 qualified in the area of Hawaiian culture traditions.

14 And if the Applicants have no opposition to
15 that, I will go on to the next subject.

16 HEARINGS OFFICER AOKI: Let's find out.

17 MR. HANDLIN: As I understand it, the
18 witness is basically seeking to be qualified as an
19 expert essentially in the subject areas in which you
20 in fact teach, is that right?

21 MR. FLORES: Yes

22 MR. HANDLIN: We have no objection.

23 HEARINGS OFFICER AOKI: Mr. Flores, I find
24 you qualified to testify as an expert in the area of
25 Hawaiian cultural traditions as clarified.

McMANUS COURT REPORTERS 808-239-6148

1 MR. FLORES: Thank you.

2 The second area I would like to be
3 qualified as an expert is in the review and
4 assessment process of Hawaiian cultural and historic
5 resources.

6 I've served on a number of commissions,
7 councils and committees in this area. I'll go
8 through some of them.

9 So the area I'm looking to be qualified, in
10 addition to what was previously qualified as expert,
11 is expert in the review and assessment of Hawaiian
12 cultural and historic resources. I've been appointed
13 and served on a number of committees. Most recent I
14 was appointed by the mayor and approved by the County
15 Council of Hawai'i County to be on the Hawai'i County
16 Public Access and Open Space and Natural Resources
17 Preservation Commission. The term was for five
18 years, and that term included evaluating and
19 assessing properties that had cultural and historical
20 significance, properties that are relative to open
21 space, properties that entailed assessment as a
22 commission member for these types of properties in
23 this particular area.

24 In addition to that, I've served close to
25 ten years as a council member on the Native Hawaiian

McMANUS COURT REPORTERS 808-239-6148

1 Historic Preservation Council with the Office of
2 Hawaiian Affairs. That membership on that council
3 was as an advisory to the Board of Office of Hawaiian
4 Affairs for those ten years that I served. We are
5 appointed by the board of -- by the trustees of the
6 Office of Hawaiian Affairs to review, to provide
7 input, to assess projects, projects such as this and
8 others that come before the board.

9 We provide the input and advisory knowledge
10 to the board to make decisions on these type of
11 matters, whether it's small projects or large
12 projects as such that may have an impact or effect
13 upon cultural practices as well as cultural sites.

14 In addition to that, I've also served as
15 commissioner on the Kauai Historic Preservation
16 Review Commission for County of Kauai. And that term
17 was from 1987 to 1993. In the same capacity that
18 particular commission I was appointed by the mayor,
19 actually two different mayors for two different
20 terms, and also that appointment was approved by the
21 County Council of Kauai.

22 In capacity as commissioner on the Kauai
23 Historic Review Commission we reviewed projects that
24 would have cultural as well as historic impacts upon
25 sites, places, projects that came into the County of

McMANUS COURT REPORTERS 808-239-6148

1 Kauai Department of Planning, reviewed all their
 2 projects, any projects that were deemed significant
 3 or have a potential impact regarding cultural
 4 historic significance. Those projects were reviewed
 5 by us, by this particular commission, and
 6 recommendations were then sent to the Planning
 7 Department as well as sent to the mayor as such in
 8 this review process. These items were sent and
 9 comments and recommendations from these assessments
 10 were sent and forwarded prior to these projects going
 11 to the Planning Commission.

12 In addition to that, I've also served as a
 13 board member on Native Hawaiian Culture and Arts
 14 Program for the Bishop Museum from 1993 to 1999. In
 15 the capacity as a board member we also reviewed
 16 projects, made recommendations for projects that had
 17 Hawaiian cultural significance, Hawaiian cultural
 18 traditions and made suggestions to projects relative
 19 towards commissions to the Bishop Museum.

20 In addition to that, I've also served on a
 21 number of other community review committees, some for
 22 the state parks. Particularly a community review
 23 committee for the Russian Fort Elizabeth State Park
 24 on Kauai; review committee for the Wailua area of
 25 Kauai, a review committee for the Kahu hina kalau,

McMANUS COURT REPORTERS 808-239-6148

1 also for sites in Wailua, Kauai and also a review
 2 committee for the Malae Heiau Advisory Committee.

3 In addition to that, I'm presently serving
 4 as committee member on the Pohakuloa Training Area
 5 Cultural Advisory Committee, and that term is from
 6 the conception of this committee from 2002 to
 7 present.

8 In addition, I've also served as a member
 9 of the Historic Kealakowa'a Heiau Preservation
 10 Council for Kona Outdoor Circle Foundation.

11 And there are a number of other committees
 12 that I've served on. So I've been appointed to
 13 commissions. I've been appointed to the Office of
 14 Hawaiian Affairs Board's Advisory Council. I've been
 15 asked to be on several committees for the purpose of
 16 bringing my expertise, knowledge and skills to these
 17 committees, to effectively assess projects, assess
 18 how these projects affect cultural traditions and
 19 practices, and how these projects might impact Native
 20 Hawaiian traditions, cultural and historic resources.

21 As such, I make my case to be considered an
 22 expert in the review and assessment of Hawaiian
 23 cultural and historic resources.

24 HEARINGS OFFICER AOKI: Applicant's
 25 position.

McMANUS COURT REPORTERS 808-239-6148

1 MR. HANDLIN: Mr. Aoki, with entire due
 2 respect to the experience that was cited, the
 3 category in which the certification or qualification
 4 as an expert is requested, review and assessment of
 5 Hawaiian cultural and historical resources, it --
 6 frankly, what it sounds like is that the witness has
 7 a long list of service that is extremely relevant,
 8 and that he basically brings his expertise that we
 9 have already acknowledged in the first field to bear
 10 on issues of Hawaiian culture and history, but the
 11 expertise seems to be claimed in the process of
 12 review and assessment. And there's no expertise
 13 cited in experience or expertise in review and
 14 assessment of the criteria that are at issue in this
 15 proceedings.

16 So while I think it is completely
 17 legitimate to recognize the witness' experience and
 18 the relevance of his experience, which he's now quite
 19 rightly put on the record, it just doesn't sound like
 20 an area in which a separate qualification as an
 21 expert is warranted.

22 HEARINGS OFFICER AOKI: Do you have a
 23 response?

24 MR. FLORES: Yes. My response is that
 25 according to Hawai'i Rules of Evidence, Rule 702, I'm

McMANUS COURT REPORTERS 808-239-6148

1 qualifying myself as an expert witness through my
 2 knowledge, skills and experience as noted.

3 HEARINGS OFFICER AOKI: I think the issue
 4 is the category. You've been qualified as an expert.

5 MR. FLORES: So my service, volunteer
 6 service in the community has given me the expertise,
 7 skills and knowledge to appropriately assess and
 8 review Hawaiian cultural and historic resources, and
 9 to assess their impacts upon cultural tradition, to
 10 assess their impacts upon the sites themselves.

11 It's more than just having knowledge on
 12 cultural traditions. I've been through the process
 13 of these number of years at regular meetings in which
 14 we thoroughly discuss and deliberate and assess
 15 projects similar to this project, in a capacity that
 16 other instructors or other teachers don't.

17 And in my years of experience on these
 18 various commissions, committees and boards, I have
 19 that qualification as an expertise being able to
 20 appropriately assess things as such. Appropriately
 21 assess Hawaiian cultural and historic resources. And
 22 that's the limitation. I'm not saying about any
 23 other historic resources, I'm saying just specific to
 24 Hawaiian culture and historic resources I do have
 25 that expertise in that area.

McMANUS COURT REPORTERS 808-239-6148

1 HEARINGS OFFICER AOKI: I think that's
2 getting a little too specific, so I'm going to deny
3 that. I don't think it affects your ability to
4 present your testimony, and at this point, I think
5 it's a matter of weight to be given to the testimony,
6 which I need to hear the testimony first in order to
7 assess. So I think this is getting to be too
8 specific in terms of categories. I think the general
9 qualification covers what you want to present.

10 So the request for the last qualification
11 is denied.

12 MS. PISCIOTTA: May I say something? I
13 think the distinction that I'm understanding is that
14 he has -- I believe the distinction that he's trying
15 to establish here in the expertise is that he has the
16 ability to evaluate impacts, positive or negative, to
17 cultural and traditional resources and the landscape.

18 That's all I wanted to say.

19 HEARINGS OFFICER AOKI: Please start with
20 the summary.

21 I'm sorry, is that a video camera?

22 UNKNOWN SPEAKER: It's just catching audio.

23 HEARINGS OFFICER AOKI: We ruled in the
24 beginning that there wasn't going to be any recording
25 of the hearing, so please turn it off.

McMANUS COURT REPORTERS 808-239-6148

1 UNKNOWN SPEAKER: Even audio recording?

2 HEARINGS OFFICER AOKI: Yes.

3 UNKNOWN SPEAKER: Is there an application
4 or a format where we can apply for an extended
5 coverage as a media perspective -- from a media
6 perspective? Are you saying that this meeting cannot
7 be -- Freedom Information Act, public access?

8 I understand this is a public hearing, and
9 as such, there should be a format for us, or anyone
10 in this building who are covering this public hearing
11 media-wise, for extended coverage. And if so, can we
12 be granted an extended form to file for extended
13 coverage so that we can get access to this
14 information and have it publicly recorded,
15 documented.

16 Because it is a public hearing. And if
17 you're denying that, then what you're saying is
18 you're denying us our First Amendment right through
19 the Freedom Information Act through extended
20 coverage, is what I'm saying. The legality in this
21 hearing would be basically you cannot, because it
22 cannot be designated as public?

23 You're saying this is, in one instance,
24 saying it's a public hearing, and any other, denying
25 public access for media coverage, and you should have

McMANUS COURT REPORTERS 808-239-6148

1 a format, because it is media coverage. You should
2 have a form like the court where we can apply to
3 the -- media can apply ahead of time for an
4 application for extended coverage.

5 HEARINGS OFFICER AOKI: I don't have
6 anything to say to that.

7 UNKNOWN SPEAKER: Do you have legal
8 counsel?

9 HEARINGS OFFICER AOKI: We're not going to
10 deal with that now. You can take it up anywhere else
11 you want.

12 UNKNOWN SPEAKER: Is this a public hearing?

13 HEARINGS OFFICER AOKI: Yes.

14 UNKNOWN SPEAKER: I believe under the
15 recent rulings in August, at the end of August, the
16 Linc (phonetic) ruling by U.S. Supreme Court ruled
17 that governmental operation, any public forum in any
18 public space are videotapable. There was a ruling by
19 the inter -- I mean the First Circuit Court of
20 Appeals in Massachusetts that specifically said that
21 videotaping is allowed.

22 HEARINGS OFFICER AOKI: I'm not aware of
23 that, and if you want to raise that issue, you can go
24 ahead and file something

25 UNKNOWN SPEAKER: I'm raising that issue.

McMANUS COURT REPORTERS 808-239-6148

1 HEARINGS OFFICER AOKI: Like I said, you
2 can go and file something, if you want.

3 UNKNOWN SPEAKER: You must give the media
4 extended coverage.

5 HEARINGS OFFICER AOKI: I've gotten no
6 request from the media for anything.

7 UNKNOWN SPEAKER: I'm requesting. Where is
8 the form?

9 HEARINGS OFFICER AOKI: I don't have it.
10 It's too late for right now.

11 UNKNOWN SPEAKER: I would like to have it
12 on the record that we're being denied freedom of the
13 Information Act, denied extended coverage.

14 HEARINGS OFFICER AOKI: Okay. Let's
15 proceed.

16 MR. CHING: I have a concern. I believe I
17 thought I heard you say that, number one, that you
18 were going to not decide -- not make a decision as to
19 whether to grant him or deny him this expertness
20 until after you heard his presentation, and then I
21 heard you say you flat out denied it. So I'm not
22 sure which way the thing is going.

23 HEARINGS OFFICER AOKI: I'll clarify that.
24 What I was trying to say is that I'm denying the
25 request to rule now that he's an expert in this

McMANUS COURT REPORTERS 808-239-6148

1 specific area regarding review and assessment. One
2 of the reasons is that I think that's too specific a
3 category, and in terms of -- so I don't believe it's
going to affect whether or not he can -- it doesn't
6 affect the testimony that he's giving, and I don't
7 think it's going to affect his cross-examination
8 testimony any either.

8 So what I meant to say in regards to the
9 timing is I think that the issue is of weight, how
10 much weight to give to the testimony, and that
11 applies to every witness, no matter whether he's an
12 expert or not. So that I've got to wait until I hear
13 the testimony and cross-examination.

14 MR. CHING: Am I correct to believe that
15 you're saying that your denial was conditional on
16 what you hear during his testimony?

17 HEARINGS OFFICER AOKI: No. I'm just
18 saying I'm not going to rule that Mr. Flores is an
19 expert in that specific category. I've already ruled
20 that he's an expert in general. I'm just not going
21 to get that specific in terms of ruling whether or
22 not somebody is an expert.

23 MR. CHING: Thank you.

24 MR. FLORES: But you did note -- for the
25 record, we do recall that the Applicant qualified

McMANUS COURT REPORTERS 808-239-6148

1 Sara Collins. Besides her expertise in her
2 archeology, she was also qualified as an expert in
3 state historic preservation review, which is a
4 specific category beyond her occupation. So is it a
5 double standard in that? I'm just posing that for
6 the record.

7 HEARINGS OFFICER AOKI: Good point.

8 MR. FLORES: For the record, because
9 they -- that is what prompted me to do that, because
10 they qualified her in addition to being an
11 archeologist, they qualified her as an expert as
12 state historic reservation review process. So that
13 is what prompted me to bring forth that.

14 HEARINGS OFFICER AOKI: Thank you.

15 Excuse me, are you still recording?

16 UNKNOWN SPEAKER: Not at this moment.

17 HEARINGS OFFICER AOKI: Were you recording
18 after I asked you not to?

19 UNKNOWN SPEAKER: I did a little bit.

20 HEARINGS OFFICER AOKI: Are you going to
21 continue to record?

22 UNKNOWN SPEAKER: I don't have the need to
23 record at this moment, no.

24 HEARINGS OFFICER AOKI: I'm asking are you
25 going to try to continue to record the hearing?

McMANUS COURT REPORTERS 808-239-6148

1 UNKNOWN SPEAKER: I'm not going to record
2 the hearing.

3 UNKNOWN SPEAKER: There is nothing to worry
4 about because it would be inadmissible under your
5 standard. (Unintelligible). So you already
6 established that fact. So, yes, she is not going to
7 be recording you, but, yes, you are not a public
8 hearing in compliance with the laws.

9 Unless you have the legal attorney that's
10 present to discuss this issue before you go any
11 further, and then provide the forum for extended
12 media coverage.

13 UNKNOWN SPEAKER: Just to clarify, I did
14 record that one small piece, because I felt it was
15 very important, specifically over the conflict --

16 HEARINGS OFFICER AOKI: If you record
17 anything further, we'll stop the hearing and ask you
18 to leave. You won't be allowed back.

19 UNKNOWN SPEAKER: I don't want to waste
20 people's time, so I won't be recording.

21 HEARINGS OFFICER AOKI: Okay, Mr. Flores.
22 Please continue.

23 MR. FLORES: Prior to proceeding, I would
24 like to enter Exhibit G-24, and all it is is just
25 photographs of the existing observatories of the

McMANUS COURT REPORTERS 808-239-6148

1 Subaru and Gemini on the mountain.

2 HEARINGS OFFICER AOKI: So you're offering
3 these?

4 MR. HANDLIN: No objection.

5 HEARINGS OFFICER AOKI: Exhibit G-24 is
6 received.

7 MR. FLORES: Thank you.

8 So at this time I would like to proceed
9 with my testimony and summary of such.

10 To begin, I'd like to say, E ala e me ke
11 aloha, e pili i ka piko o ke aloha o ke Akua.
12 Awaken with aloha, connecting the piko of love and
13 light of the Creator.

14 And so before I begin I would like to just
15 also acknowledge that sometimes when truths are
16 shared, it might cause discomfort within the na'au,
17 especially when it brings to light and uncovers
18 mistruths, misconceptions, and misinformation. We
19 apologize for that, and we send you love and aloha if
20 that pertains to you.

21 To begin I would like to first try to
22 explain the name of the mountain that we're
23 discussing here in this contested case hearing.
24 Mauna a Wakea is a name reverberated by the the
25 ancestral guardians connected to the sacred mountain.

McMANUS COURT REPORTERS 808-239-6148

1 In English it means mountain of Wakea. Wakea is the
 2 sky Father, personified in the atmosphere and the
 3 heavenly realm and envelops the earth, Papahanaumoku.
 4 It's significant that way, because when we talk about
 5 Mauna a Wakea, it's because the mountain pierces into
 6 the realm of Wakea, unlike any other mountain in
 7 Polynesia. There's no other mountain in these
 8 islands. It pierces above the clouds in the realm of
 9 Wakea. That's why it's called the Mountain of Wakea.
 10 It comes into the realm of Wakea.

11 And our ancestors understood that because
 12 it comes into the realm of Wakea there is a certain
 13 sacred quality to the top of this mountain unlike
 14 other mountains in these islands. The mountain is
 15 also referred to as Mauna a Kea, which is a shorter
 16 version of Wakea, and sometimes also called Mauna
 17 Kea, as most people refer to it, and also sometimes
 18 just called Wakea.

19 The second topic I'd like to just touch
 20 upon, Mauna Kapu. Why is the mountain sacred? The
 21 knowing of why this Mauna a Wakea is kapu, sacred
 22 from the time of the ancestors from the ancient ones.
 23 They knew it was sacred. And as such they never
 24 built any heiau or temples or structures on the
 25 summit in this realm. They acknowledged that, the

1 sacredness of this mountain. They never built
 2 anything on it, any heiau, temples. We see great
 3 heiau, temples, of Pu'ukohola in Kawaihae and rebuilt
 4 by Kamehameha. We see other heiau temples built at
 5 the time of Umialiloa built in Waipi'o and other
 6 areas, huge sites. But why do you think why not
 7 build the biggest heiau on the top of the summit of
 8 the mountain. But they realized that the summit, the
 9 top of the mountain is sacred. And as such, no
 10 traditional manmade heiaus were ever built on the top
 11 of the summit where the existing observatories are
 12 today.

13 Instead what you find are smaller shrines
 14 along the -- below the top of the summit that
 15 encircled the mountain, but never built and put on
 16 the very top of the summit. There are smaller
 17 shrines that you will find, but not a huge heiau as
 18 such, and that has to do with the sacredness of this
 19 mountain.

20 Whenever anything was being built on this
 21 mountain -- not only on this mountain, but in these
 22 islands, if an ali'i was to build a site, he would
 23 consult with the kahuna kuhikuhi pu'uone, one who
 24 specializes in the protocols associated with being
 25 able to identify appropriate places to build. The

1 kahuna kuhikuhi was intermediaries between those of
 2 the spirit realm and those in the physical realm.
 3 They provide guidance and consultation and direct
 4 communication from those of the ancestral realm in
 5 the appropriate things to do or not to do at places.
 6 And through generations and thousands of
 7 years not one Hawaiian, not one great ali'i, not one
 8 kahuna advised to put a heiau on the very summit of
 9 the mountain. And you would think, why not? Because
 10 they understood the summit of the mountain was
 11 sacred, it was kapu.

12 And so we charge that this process of
 13 consultation with those recognized as the ancestral
 14 akua and kupua of Mauna a Wakea was never done by the
 15 Applicant or on any other previous projects. No one
 16 ever consulted those of that realm. No one even
 17 asked permission if they could build something there.
 18 No one ever asked permission if they could build this
 19 project there. No one has ever asked permission.
 20 And this is what those of the mountain have shared
 21 with us. No one has ever asked us permission.

22 And permission is a fundamental Hawaiian
 23 cultural practice. And all the committees in this
 24 TMT project, the Office of Mauna Kea Management, they
 25 have a Hawaiian Culture Committee, everybody knows,

1 on those committees, everybody knows from trustees of
 2 the Board of Office of Hawaiian Affairs or any other
 3 Hawaiian should know that asking permission is a
 4 fundamental Hawaiian cultural practice. And this has
 5 not been done for this particular project.

6 Yet in the reports to substantiate this
 7 proposed TMT project and the TMT Final Environmental
 8 Impact Statement, in the Mauna Kea Comprehensive
 9 Management Plan, all make references about how
 10 prominent, sacred, this mountain is.

11 If the cultural -- a quote from the
 12 Cultural Management Plan page 1-3:

13 The physical prominence of Mauna Kea as
 14 well as its stationing nearest to the heavens holds a
 15 spiritual significance for the Hawaiian people, a
 16 significance that can be expressed in likening the
 17 mountain to a sacred alter, end of quote.

18 In addition, if you're look at the TMT
 19 FEIS, page 3-29, it states:

20 The project has the potential to impact --
 21 the project has the potential to impact the spiritual
 22 and sacred quality of Mauna Kea, end of the quote.

23 Yet despite all what is known, and some
 24 things that are unknown, of course, and despite what
 25 has been written and said about the mountain, the

1 project is still pushed forward despite these
 2 potential impacts.
 3 So we're here this moment here in this
 4 contested case hearing, why is that so? It is either
 5 two reasons. It's a lack of understanding why these
 6 sacred places are significant; or it's choosing to
 7 ignore why they're sacred or significant. It's one
 8 or the other. Either you don't know, or you know and
 9 you're still going to be ignorant of the fact.

10 So from the modern mindset, most people
 11 recognize the significance of a church, a building,
 12 can appreciate the majestic and sacred architecture
 13 of a cathedral or synagogue or be in awe of the
 14 ancient pyramids and temple structures.

15 However, it's more difficult for modern
 16 minds to recognize that places in nature which bears
 17 no special markings or buildings are also considered
 18 sacred. There are countless mountains around the
 19 world that are considered sacred by the cultures past
 20 and present, holy mountains, where if any such
 21 project was ever proposed, they would just say no,
 22 a'ole, no.

23 But yet we come to this island, come to
 24 this mountain, it seems like anything, you can do
 25 what you want. There's no parameters for anybody

McMANUS COURT REPORTERS 808-239-6148

1 just to say no, or enough is enough.
 2 So the question posed then, if this
 3 mountain is kapu or sacred, acknowledged by many from
 4 afar and near, and even stated so in UH's own
 5 documents, then why is the TMT project of such an
 6 immense scale being proposed on a sacred landscape,
 7 still pristine, pure in its natural state? That's
 8 the question before us here.

9 So in references in the documents, talk
 10 about Mauna Kea or Mauna a Wakea ka piko o ka moku,
 11 which means Mauna Kea is the naval of the island.
 12 I'll talk about this piko connection. So what I want
 13 to do is explain the perspective of what piko
 14 connection is.

15 So this is from written testimony, Exhibit
 16 G-11. So what it shows is -- so the Hawaiian
 17 concept -- if I could stand up, please -- concept of
 18 having three piko on your body. There is a piko on
 19 top of here (indicating), this one connects you with
 20 your ancestor and the ancestor realm with the creator
 21 Ke Akua, that's the connection from the top here.

22 There is a piko here. Most people refer to as
 23 umbilical cord and connects us with our present
 24 generations; and piko, your genital area, and that
 25 connects you with your future generations.

McMANUS COURT REPORTERS 808-239-6148

1 So kupuna understand there's a connection
 2 from past, present and future. And all of these, if
 3 they're aligned, aligned, things are in alignment,
 4 then the life forces from the creator, the life
 5 forces from all around us, from above and those that
 6 come from the earth below, these energies can flow in
 7 and out of us and keep us, our life forces, our mana
 8 intact.

9 So when you put that in perspective, when I
 10 say the piko of Mauna, and which is in the documents
 11 of the -- right in the cultural -- in the front part
 12 of the Cultural Management Plan. Here's what I'm
 13 referring to, the piko of this island, this top piko,
 14 the luna is on top of this mountain, on the sacred
 15 mountain. Energies flow in and out of this mountain.
 16 It's a portal.

17 Talk about a piko, also piko is a portal.
 18 A portal for life forces to come down into this
 19 mountain, and also for things to leave this island.
 20 And it's not just into the mountain. These life
 21 forces from the creator come down from the top piko,
 22 goes down deep into this mountain, and spreads out
 23 from this mountain to many places beyond our island
 24 and many shores beyond here.

25 So this project is proposing to cause a
 McMANUS COURT REPORTERS 808-239-6148

1 disruption in that, proposing to cause a blockage,
 2 and on top of this energy flow that comes up and
 3 down.

4 And so there's things that also leave the
 5 earth that go up through the portal. Like I said,
 6 things that come down, it's just like the piko on
 7 here, and the piko on here Hawaiians consider one of
 8 the sacred places, the head, your po'o.

9 So Mauna a Wakea is really a complex
 10 multi-dimensional landscape. Has a very conscious
 11 geometric grid, complex frequencies and unique
 12 electromagnetic field that flows in the mountain, in
 13 the earth as well as above.

14 The summit is also an area where vortexes
 15 of energy occur. Vortexes are swirling eddies of
 16 electrical and magnetic energies that flow in and out
 17 of this mountain. So besides putting something
 18 physically on top of the mountain, the very top of
 19 your piko, is also what causes disturbance or
 20 disruption on this mountain and the life forces that
 21 stream into this island and islands from the top of
 22 this mountain, are the power lines that run up the
 23 mountain.

24 So the electrical substation, the power
 25 lines and the high voltage current that runs on top

McMANUS COURT REPORTERS 808-239-6148

1 of the summit interferes and disturbs with the
2 natural electromagnetic field in the vortex of the
3 mountain.

4 And there was no assessment as to just,
5 generally, no electromagnetic assessment was ever
6 done for this project. The size of this project will
7 cause further substantial significant impacts on
8 these, also these natural electromagnetic fields and
9 vortexes on the mountain.

10 And, of course, the immense size of this
11 project, unlike any of the projects that's in this
12 area, immense size of this project will cause further
13 substantial and significant impacts on the life
14 forces that flow into this mountain, the life forces
15 that give us this island's life. The energy life
16 forces that come from the creator, from Ke Akua that
17 come into these islands where this project has a
18 potential for disrupting all that, which is not just
19 going to affect the mauna, it's going to affect all
20 of us.

21 So to give you an example, when an opening
22 of a piko, of a portal has occurred, I want to show
23 you a photograph that was taken March 4th, 2011, by
24 Waimea resident Kehaulani Marshall, and top of that
25 you see a portal opening, you can actually see the

McMANUS COURT REPORTERS 808-239-6148

1 portal on top of the mountain. And so sometimes it
2 physically manifests itself, you can see such a piko
3 portal opening, and other times won't see it. You
4 may feel it, and sometimes you can't actually see it
5 in natural elements, some can see it, some people are
6 gifted, they can see the portal openings. This is
7 what the project is going to cause disruptions to,
8 our life forces, and the many things that leave this
9 island that go up through this portal as well, and
10 it's going to cause a disruption for them.

11 And so this project, if you look at the
12 criteria as such, criteria eight, the proposed land
13 use will be materially detrimental to the public
14 health and safety and welfare, and I'll explain why.

15 From those connected to the mountain, the
16 ancestral akua, connected to the mountain, many
17 things seen and unseen, kupuna ancestors knew that,
18 felt that and was able to communicate with that.
19 There's many things on the mountain that's beyond our
20 comprehension as such.

21 There's things on the mountain as such that
22 this mountain Mauna a Wakea also has a harmonic
23 oscillation with Mt. Shasta in California, and Mt.
24 Fuji in Japan. And what that means is there's an
25 energy vibration between these three mountains and

McMANUS COURT REPORTERS 808-239-6148

1 others. So what happens here doesn't just affect us
2 here in these islands, what happens here that's being
3 proposed as such will affect those in Japan and will
4 affect those on the continent in California. It's
5 just everything is interconnected.

6 And so there are those on the mountain that
7 shared things with us. There's consciousness on the
8 mountain, there's spirits on the mountain, there's
9 ancestral akua on the mountain as such.

10 And the term akua is being used in this
11 testimony in broad cultural context, gods, goddesses,
12 deities, nature spirits, divine beings and natural
13 sources. I'm using the term in the broadest context.
14 The natural forces our kupuna recognized the natural
15 have a consciousness, have a spirit to them. And
16 that's why they gave them names so they could connect
17 and communicate with them as such.

18 But our kupuna also realized -- not just
19 realized, but were aware that there was a higher
20 divine supreme being that watched over all, whether
21 you call it God or call it the creator or call it the
22 supreme one. Our kupuna recognized there was a
23 supreme God, and it's referred to as ke Akua.

24 HEARINGS OFFICER AOKI: Excuse me, but I
25 think you've gone way over ten minutes.

McMANUS COURT REPORTERS 808-239-6148

1 MR. FLORES: I'll wrap up here. So there's
2 those on the mountain that are said that there will
3 be impacts. And an impact will be -- the project
4 has -- what is on the mountain is that it's at
5 capacity. To put any more on the mountain is going
6 beyond the capacity of what the mountain can take.
7 And the natural mountain, it's not going to retaliate
8 or anything. Just like someone put all these rocks
9 on your head and you had to shake them off, that's
10 what might happen. It's that shaking and removal of
11 things in order to set back the harmony and balance.

12 Beyond that just conclude that the visual
13 impact of this mauna, of this project on the mauna is
14 significant, especially for those who live in Waimea
15 and those in other parts of the West Hawai'i, it is a
16 significant feature that's going to be on the mauna
17 and it is going to be a visual impact. And as such,
18 it doesn't fulfill criteria number six that existing
19 physical and environmental aspects of the land, such
20 as the natural beauty and open space characteristics
21 will not be preserved or improved upon.

22 And there's also impacts to the cultural
23 sites on the mountain. The cultural sites is where
24 this project is now going into a terrain where
25 there's ahu, shrines and there's no project there

McMANUS COURT REPORTERS 808-239-6148

1 ever, and now it's being proposed to put this right
 2 in the midst of these shrines. And that, as well,
 3 will cause an impact. And number four, that the
 4 proposed land use would cause substantial adverse
 5 impact to the existing natural resources within the
 6 surrounding area, region, which includes cultural
 7 resources. And so as such I would like to conclude.
 8 Mauna a Wakea, an imminent part of these
 9 islands, is still sacred. And so it is.

10 HEARINGS OFFICER AOKI: Thank you.
 11 Cross-examine.

12 MR. HANDLIN: Just a procedural question.
 13 I was just going to ask, was the witness sworn at the
 14 beginning of his testimony?

15 THE COURT REPORTER: No.

16 MR. HANDLIN: Can we swear him in
 17 retroactively?

18 (E. Kalani Flores was sworn in
 19 retroactively that the testimony he gave on behalf of
 20 the Flores-Case Ohana was the truth as he so
 21 testified.)

22 MR. FLORES: Mahalo, thank you for your
 23 time.

24 MR. CHING: I didn't quite hear the court
 25 reporter in what the question she asked the witness.

1 Could we have her -- I thought my understanding,
 2 impression was that she said it like in the future.
 3 What I think that the witness' discussion was we were
 4 talking about what happened.

5 HEARINGS OFFICER AOKI: I think it was
 6 addressed to the prior testimony. Is that your
 7 understanding, Mr. Flores?

8 MR. FLORES: Yes, it was.

9 HEARINGS OFFICER AOKI: Thank you.

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

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