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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 Konohana Street,  
Conference Room, Hilo, Hawaii, commencing at 9:00  
a.m. before Hearings Officer Aoki.

BEFORE: Jean Marie McManus, CSR #156

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1 HEARINGS OFFICER AOKI: It's 9:00 o'clock.  
2 I would like to call the hearing to order. I think  
3 the next order of business is testimony by Mr.  
4 Flores. Mr. Flores, are you ready?  
5 MR. FLORES: Yes.  
6 HEARINGS OFFICER AOKI: While Kalani is  
7 getting ready, could we note appearances for the  
8 record.  
9 MR. LUI-KWAN: Tim Lui-Kwan and Jan Handlin  
10 on behalf of the Applicant University of Hawaii.  
11 MS. PISCIOTTA: Kealoha Pisciotta on behalf  
12 of Mauna Kea Anaina Hou.  
13 MS. TOWNSEND: Marti Townsend on behalf of  
14 KAHEA Environmental Alliance.  
15 MS. WARD: Deborah Ward on behalf myself.  
16 MR. NEVES: Paul Neves, Kumu Hula,  
17 appearing for my halau and myself.  
18 MR. CHING: Kukauakahi, also known as  
19 Clarence Ching for myself.  
20 MS. CASE: Pua Case, Flores-Case Ohana.  
21 MR. FLORES: E. Kalani Flores, Flores-Case  
22 Ohana.  
23 HEARINGS OFFICER AOKI: Thank you everyone.  
24 DIRECT EXAMINATION  
25 MR. FLORES: Before I begin, I would like

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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.

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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.

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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

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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

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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,

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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.

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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

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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.

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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.

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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

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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.

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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

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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

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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?

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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

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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.

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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

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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

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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,

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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

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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

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.

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  
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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

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

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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

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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.

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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

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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 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 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 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