

1 BOARD OF NATURAL RESOURCES  
 2 STATE OF HAWAII  
 3 In Re Petitions requesting ) DLNR NO. HA-11-05  
 4 a Contested Case Hearing Re )  
 5 Conservation District Use ) VOLUME V  
 6 Permit (CDUP) HA-3568 for the )  
 7 Thirty Meter Telescope at the )  
 8 Mauna Kea District, Island of )  
 9 Hawaii, TMC (3) 4-4-015:009 )

10 CONTESTED CASE HEARING

11 Taken on August 25, 2011, at the State Building, 75  
 12 Aupuni Street, Conference Room C, and University of  
 13 Hawaii Hilo, College of Tropical Agriculture and  
 14 Human Resources Building, 200 W. Kawili Street,  
 15 Conference Room A, Hilo, Hawaii, commencing at 9:00  
 16 a.m. before Hearings Officer Aoki.

17 BEFORE: Jean Marie McManus, CSR #156

18 McMANUS COURT REPORTERS 808-239-6148

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21  
 22  
 23  
 24  
 25

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1 HEARINGS OFFICER AOKI: We're on the  
 2 record. The hearing is reconvened.

3 I understand there's some procedural  
 4 matters to discuss before we actually start with  
 5 testimony again. So do you want to start?

6 MR. LUI-KWAN: Tim Lui-Kwan on behalf of  
 7 the Applicant. With me today is Ian Sandison and Jay  
 8 Handlin representing University of Hawaii Hilo

9 MS. TOWNSEND: Marti Townsend with KAHEA.

10 MS. WARD: Deborah Ward representing  
 11 myself.

12 MS. PISCIOTTA: Kealoha Pisciotta for Mauna  
 13 Kea Anaina Hou.

14 MR. CHING: Kukauakahi, Clarence Ching,  
 15 Petitioner.

16 MR. NEVES: Kumu Paul Neves for myself and  
 17 my halau.

18 MS. CASE: Aloha, I'm Pua Case. I'm  
 19 representing the Flores-Case Ohana.

20 MR. LUI-KWAN: The first thing I have to  
 21 take up is where we left off last week with the  
 22 so-called joint exhibits.

23 We've actually -- well, I think everybody  
 24 has seen the exchange in e-mails. We've actually  
 25 prepared what is formally known as state exhibits and

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1 cultural religious practice?  
 2 **A No.**  
 3 **Q** The mitigation measures that calls for  
 4 furnishings within the building, would that engender  
 5 a sense of place? Would that reduce the impact?  
 6 **A No.**  
 7 **Q** Would not putting it on the summit of  
 8 Kukahau'ula reduce the impacts to cultural or  
 9 religious practice?  
 10 **A I apologize, I couldn't hear what you said**  
 11 **at the beginning.**  
 12 **Q** The University says that they have chosen  
 13 not to put it on Kukahau'ula which is a traditional  
 14 cultural property, and instead chose to put it on the  
 15 plateau, and that that is a mitigation measure.  
 16 Does that reduce the adverse impact to the  
 17 cultural and religious practices?  
 18 **A No.**  
 19 **Q** Does providing money reduce the impact?  
 20 **A Providing money does not reduce that**  
 21 **particular adverse impact, no.**  
 22 **Q** In the context of protecting cultural or  
 23 religious practices, can we consider these, in your  
 24 opinion, mitigation measures at all?  
 25 **MR. HANDLIN:** Objection, vague.  
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1 Did you see any documents that you have  
 2 seen that address the burial concerns that Native  
 3 Hawaiians have expressed?  
 4 **A No.**  
 5 **Q** Did you see any documents that address  
 6 Native Hawaiian health and well-being or consider the  
 7 Native Hawaiian population?  
 8 **A No.**  
 9 **Q** I think that's all I have. There may be  
 10 some more. Hold on, yeah.  
 11 **REDIRECT EXAMINATION**  
 12 **BY MR. NEVES:**  
 13 **Q** Aloha. This is Kumu Paul.  
 14 **A Aloha kumu.**  
 15 **Q** Hi. I want to ask you, in your opinions,  
 16 do the laws that exist in the State of Hawaii protect  
 17 our cultural practice?  
 18 **A No.**  
 19 **Q** And could you expand upon why they don't?  
 20 **MR. HANDLIN:** Objection, beyond the scope  
 21 of the cross.  
 22 **HEARINGS OFFICER AOKI:** Overruled.  
 23 **MR. NEVES:** You may answer.  
 24 **A I can't hear.**  
 25 **Q** Can you expound upon why the laws presently  
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1 **HEARINGS OFFICER AOKI:** Overruled.  
 2 **THE WITNESS:** If by mitigation measures you  
 3 mean something that would reduce adverse impact, no.  
 4 **Q** (By Ms. Pisciotta): Would painting this  
 5 building a different color, you know, change in any  
 6 way the practitioner's ability to use the sky or to  
 7 use the constellations or the sun that are used in  
 8 ceremony, would that change that?  
 9 **A No.**  
 10 **MR. HANDLIN:** Objection, leading.  
 11 **HEARINGS OFFICER AOKI:** I'll overrule that  
 12 one.  
 13 **Q** (By Ms. Pisciotta): Sorry, kala mai. I'm  
 14 trying to formulate my questions here. I might be  
 15 done, actually. Wait, let me ask you this.  
 16 In your opinion, would a burial treatment  
 17 plan help -- kala mai, I have to rephrase that  
 18 question. I can't ask you leading questions.  
 19 Have you reviewed some of the University's  
 20 documents and exhibits? Have you had a chance to  
 21 review their exhibits?  
 22 **A Yes, I've had a chance to review numerous**  
 23 **documents. I do not have all of them before me, so**  
 24 **I'm not able to identify them by name.**  
 25 **Q** That's okay.  
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1 of the State of Hawaii do not protect our cultural  
 2 practice?  
 3 **A Yes. I can expound with a notable example**  
 4 **or rather a notorious example that is the case of**  
 5 **Naue on the Island of Kauai where Joseph Bresscia was**  
 6 **given a permit to build a house on a sacred**  
 7 **13-century burial site despite the fact that he was**  
 8 **unable to have any Burial Treatment Plan approved by**  
 9 **the Kauai-Ni'ihau Island Burial Council. And they**  
 10 **only approved, the burial council, after his entire**  
 11 **house was built. And it wasn't the council in the**  
 12 **end that actually approved it, it was Dennis McMann**  
 13 **(phonetic), somebody from the Executive Branch of**  
 14 **government violating Hawaii statute and giving**  
 15 **developers the green light.**  
 16 **The laws against desecration did not stop**  
 17 **Joseph Bresscia from being able to build his house**  
 18 **despite all the lawsuits and the direct action that**  
 19 **cultural practitioners took upon themselves to try**  
 20 **and protect that sacred site. And that has to do**  
 21 **with state power undermining the law and making**  
 22 **exceptions for developers who bring money to Hawaii.**  
 23 **Q** When the DLNR approved this plan, do you  
 24 believe that that was, again, state power?  
 25 **A Yes.**  
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1 Q Thank you.

2 A That was a state abuse of power.

3 Q Thank you. Mahalo, yeah.

4 MS. TOWNSEND: I think the redirect is complete.

6 MR. HANDLIN: I have one follow-up question, just one.

8 RECROSS EXAMINATION

9 BY MR. HANDLIN:

10 Q Doctor, Mr. Handlin again.

11 Are you claiming that the proposed site for the TMT Observatory is a sacred burial ground?

13 A I know that any actual telescope expansion on Mauna Kea affects all burial grounds that are already there, whether or not the proposed facility would be directly on top of that burial ground or not.

18 Q Are you aware whether any burials have been found on the actual five-acre site proposed for the observatory?

21 A No.

22 Q I have no further questions.

23 HEARINGS OFFICER AOKI: I think that's all the questioning for Dr. Kauanui. Doctor, thank you very much. We're going to hang-up.

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1 THE WITNESS: May I clarify one thing for the record?

3 HEARINGS OFFICER AOKI: Go ahead.

4 THE WITNESS: The laws against desecration in Hawaii are not tied to burials, also specifically named places of worship.

7 MS. TOWNSEND: Thank you very much.

8 MR. HANDLIN: Since mine was the last question pending, I'm going to move to strike the answer as nonresponsive.

11 HEARINGS OFFICER AOKI: I allowed her to clarify her testimony. Do you want to ask her any more questions?

14 MR. HANDLIN: No.

15 HEARINGS OFFICER AOKI: Do you want to redirect?

17 MS. TOWNSEND: I just want to make sure what she said is on the record.

19 HEARINGS OFFICER AOKI: Why wouldn't it be on the record?

21 MS. TOWNSEND: I don't know. It went really fast.

23 HEARINGS OFFICER AOKI: Okay, go ahead.

24 MS. TOWNSEND: Is it on the record?

25 HEARINGS OFFICER AOKI: I think it is on

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1 the record.

2 MS. TOWNSEND: Thank you, Dr. Kauanui, that ends your testimony. Thank you very much.

4 Can we call for a two-minute break? I'll be the first witness.

6 HEARINGS OFFICER AOKI: Okay.

7 (Recess taken.)

8 DIRECT EXAMINATION

9 MR. NEVES: Aloha. For the record, Kumu Hula Paul Neves of Hilo. I represent myself and my Na Halau Ha'a O Kea, which is in Hilo, San Francisco and Washington DC.

13 I wish to begin with this chant called Ho'oheno. It is a chant that I wrote with my daughter who is Ho'opa on the drum, her name is Akala. She is a kumu as well.

17 Before I begin, I would like to acknowledge these two young people, Akala is a graduate of the University of Portland. She did four years in three. She majored in political science with minors in Spanish and French.

22 Namaka DeMello is a dancer. He is the grandson of Patrick Kahawaiola's, president of the Keaukaha Hawaiian Homes Association.

25 This chant speaks of the relationship

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1 between my wife, Wanda, my daughter, Akala, my son, Kinohi, that we have with each other and with Mauna a Wakea.

4 Mauna Kea is the guiding and connecting point for our family. And from my family, my kupuna. It was at the directive of my kumu hula that this chant be composed in November of 2009. He is the late Kumu Hula Wayne Panoke, graduate of Kamehameha Schools, after Kumu Hula of Nona Beamer.

10 My halau had participated in the march of support for the Kamehameha Schools at the federal building in San Francisco. They needed our help, so we showed up to help them.

14 We concluded, and as I returned to the islands I asked my kumu hula, when are we going to stop having to protest on the streets? Now we're protesting on the streets of San Francisco. And he said, you cannot do things, you can't do it by fighting. You have to do it with aloha. You have to return to your roots of aloha and live in aloha, because aloha never fails.

22 And so he said write a chant that returns yourself back to aloha, aloha aina to the land, to our ancestors. Speak of the love that you have for your family and for the great mountain that connects

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1 your family and keeps it together.  
 2 I'm here as kumu hula because what they do  
 3 to Mauna Kea seriously impacts my family today, right  
 4 now, right here, right there. Not in some plan  
 5 somewhere.

6 So this is the chant Ho'oheno. You have a  
 7 translation of it for you to look at it.  
 8 (Chant and dance. Chant and translation at  
 9 end of transcript.)

10 A chant for the great chief Ka'onohiokala.  
 11 I am Kumu Hula Paul Neves. I'm a Kanaka Maoli. My  
 12 nationality is Hawaiian. My country the Hawaiian  
 13 Kingdom continues to be the state of illegal  
 14 occupation by the United States, which has admitted  
 15 that their occupation was against the free will of  
 16 the Hawaiian kingdom and its national subjects.

17 I continue and have addressed the  
 18 spiritual, cultural and political joys and concerns  
 19 of my people. I have shared this aloha in Europe,  
 20 the Caribbean, the South Pacific, Japan, across the  
 21 United States and Hawaii, at the UN, in New York and  
 22 the UN in Geneva, at the universities, churches,  
 23 community forums and anywhere the opportunity has  
 24 presented itself.

25 On behalf of the Royal Order of Kamehameha  
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1 needs all around me and at all times. I have been  
 2 involved in Mauna Kea a Wakea since 1996 as a  
 3 representative of the Royal Order of Kamehameha I  
 4 first and as a kumu hula in 1999.

5 I've been involved with my students on  
 6 going to Mauna Kea at numerous occasions, in  
 7 celebrating from my home spiritual journeys by many  
 8 people to the mountain.

9 I have involved students from Hilo, San  
 10 Francisco, Portland, Mexico, Japan and Washington DC  
 11 in these journeys.

12 This proposed largest telescope in the  
 13 world is a continued desecration of this sacred  
 14 place, the sacred temple of Mauna Kea a Wakea. This  
 15 largest telescope further desecrates the temple of  
 16 worship, and severely impacts my cultural practice  
 17 and growth as a kumu hula, High Chief of the Royal  
 18 Order of Kamehameha I, from which exist traditional  
 19 customary leadership.

20 It impacts me as a husband, a father, a  
 21 brother and an uncle and granduncle and great  
 22 granduncle, Wakea, a member of my family, and as a  
 23 Hawaiian national.

24 This proposal and pull boxes, they are  
 25 comprehensive desecration of my religious rights and  
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1 I, I observe the proceedings in the Netherlands and  
 2 many other venues at home and abroad.

3 With aloha I expressed concerns of our  
 4 people to both John Paul II in 1989, as a student at  
 5 the Ecumenical Graduate School of Bossey,  
 6 Switzerland.

7 With aloha those concerns were expressed  
 8 with Princess Sayako atop Mauna Kea. I was one of  
 9 ten persons personally invited by the Emperor and  
 10 Empress of Japan to private interface, to be thanked  
 11 for curtesies given their daughter Sayako. I had  
 12 escorted their majesties upon their most recent visit  
 13 to Hawaii.

14 I have continued to be involved in my  
 15 community of Keaukaha and Hilo and especially with  
 16 our young people and their families, through the  
 17 Royal Order of Kamehameha I and as a kumu hula  
 18 practitioner and neighbor.

19 For 25 years I have received students from  
 20 Michigan State University for a day of cultural  
 21 immersion at my home in Keaukaha. I've been honored  
 22 with Mamalahoa award for service to our people by the  
 23 Royal Order of Kamehameha I for 27 years of assisting  
 24 in presenting the Kamehameha Festival here in Hilo.

25 I try to live in aloha and service to the  
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1 spiritual free will and growth. The cumulative  
 2 impacts threaten my survival as a human being and my  
 3 cultural practices.

4 Desecration under the camouflage of  
 5 education is not education at all. And it violates  
 6 and endangers my life. The military can camouflage  
 7 its guns, but its intent cannot be hidden. This  
 8 18-story building cannot be covered up or camouflaged  
 9 in this 'ahu of Mauna a Wakea.

10 Western terminology, change of paradigms,  
 11 changing place names and testimonies continues the  
 12 desecration of the mother of us all, Mauna Kea.

13 These actions and terms endangers the  
 14 integrity of our cultural practice and demean the  
 15 cultural practice of my kupuna.

16 I hope I see 2033 and the removal of these  
 17 telescopes. But if not, my children will be there.

18 The integrity of the kupuna that trained me  
 19 and taught me, that loved me and that explained how  
 20 much the mountain means to me and to our people and  
 21 to all people.

22 They explained that it is for your  
 23 well-being that it be protected, be preserved and  
 24 your practice be perpetuated. With the law to my  
 25 ancestors, my mentors, especially the late ali'i

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1 Genesis LeeLoy. My teachers, my people, and my  
 2 country. 'Ike is to see, 'Ike is to know. Even the  
 3 blind can see.  
 4 Thank you, Hearing Officer, for your time.  
 MR. LUI-KWAN: Mr. Neves, can I get a copy?  
 6 You mentioned you passed out a copy of the  
 7 translation.  
 8 MR NEVES: (Witness complies.)  
 9 MR. LUI-KWAN: Thank you.  
 10 HEARINGS OFFICER AOKI: Excuse me, Tim,  
 11 would you mind sitting in front?  
 12 MR. LUI-KWAN: Sure. No cross.  
 13 DIRECT EXAMINATION  
 14 MS. WARD: Good afternoon. For the record  
 15 my name is Deborah J. Ward. I'm a graduate of the  
 16 University of Hawaii at Manoa. I have a Bachelor's  
 17 degree and a Master's degree in Horticultural  
 18 Science. I was a faculty member with the University  
 19 of Hawaii's College of Tropical Agriculture and Human  
 20 Resources in the Department of Natural Resources and  
 21 Environmental Management.  
 22 I retired with 23 years of service a few  
 23 years ago, and I've spent much of my adult life  
 24 working to protect and conserve natural habitats  
 25 unique to the Hawaiian islands.

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1 I regularly use Mauna Kea for hiking,  
 2 including access and use of traditional Hawaiian  
 3 trails of Mauna Kea. I view and enjoy the  
 4 wilderness. I enjoy the natural beauty and open  
 5 spaces and other forms of recreation, including  
 6 wildlife observation, esthetic enjoyment, educational  
 7 study and spiritual contemplation.  
 8 As a recreational user, I have participated  
 9 in hikes and service projects on Mauna Kea, and I  
 10 participate in solstice ceremonies on the summit.  
 11 In my capacity as natural resource faculty,  
 12 I've served on the Big Island Invasive Species  
 13 Committee. I've co-lead student field trips for the  
 14 Hawaii Community College, 4-H Youth Development  
 15 Program, and Sierra Club High School Hikers on Mauna  
 16 Kea. And I've taken part in community advisory  
 17 meetings regarding Mauna Kea with the Department of  
 18 Land and Natural Resources, State Historic  
 19 Preservation Division and the U.S. Fish and Wildlife  
 20 Service in the mid 1990s.  
 21 I'm not paid to be here. My involvement in  
 22 issues regarding the management of Mauna Kea began in  
 23 the 1970's. The vast wilderness vistas from the  
 24 highest peak in the Pacific was awe inspiring to me  
 25 and breathtaking and serene. The sound of silence

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1 that I remember remains with me today.  
 2 I hiked several times on Mauna Kea with  
 3 many conservation advocates and kupuna who have since  
 4 passed, including people who have changed my life  
 5 forever, such as Lorin Gill, and Mae Mull, and Lani  
 6 Stemmermann. And in the 1980s with Fred Stone and  
 7 Holly McEldowney and Frank Howarth. I've learned  
 8 immeasurable stories and understanding of the  
 9 wilderness.  
 10 I've followed the development of Mauna Kea  
 11 Science Reserve Complex Development Plan in 1983, and  
 12 remember the assurances regarding future compliance  
 13 with administrative rules and limits on development.  
 14 I've observed the development of multiple  
 15 telescopes and observatories since the 1970's to the  
 16 present. I've read the plans, conditions and the  
 17 assurances. I've offered testimony at numerous  
 18 hearings, and have attended Mauna Kea Management  
 19 Board meetings for the last decade.  
 20 Throughout I've visited Mauna Kea for  
 21 recreation, wilderness experience, unfettered vistas,  
 22 silence, natural beauty and cultural significance.  
 23 The cumulative impact of intensified industrial land  
 24 use at the summit has impacted my recreational  
 25 enjoyment and my spiritual practice. The cumulative

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1 impact of the destruction of habitat, widespread  
 2 waste accumulation, modified viewplane, constant  
 3 sound, alteration of the geology and negative impact  
 4 to cultural practice of my colleagues is a source of  
 5 personal grief. The noise of the observatory  
 6 air-conditioners, blowers, generators, associated  
 7 vehicles and industrial activity is present and  
 8 disturbing to recreational users who hope for the  
 9 pristine silence of wilderness.  
 10 Development of five additional acres of  
 11 industrial infrastructure, called the new visual  
 12 element on the northern plateau, on the last  
 13 remaining unobstructed viewplane facing Haleakala  
 14 will significantly and negatively affect my  
 15 recreational practices.  
 16 The view of Mauna Kea summit from my  
 17 vantage point from my farm in Puna, or from the beach  
 18 at Hilo Bay, or from my hiking trails on Mauna Loa,  
 19 are all fettered by the presence of multiple domes in  
 20 the skyline. It is difficult to find a location on  
 21 the Island of Hawaii where one cannot see a telescope  
 22 in one's view of Mauna Kea. I believe I'm not alone  
 23 in finding these visual obstructions a significant  
 24 annoyance and an adverse impact.  
 25 On a recreational visit to the summit of

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