

State of Hawaii Contested Case Hearing Re Conservation District Use Ap- plication HA-3568		CASE NUMBER BLNR-C-16-002	
WITNESS'S EXHIBIT LIST			
WITNESS		WITNESS (Name, Address and Tel. No.) WILMA H. HOLI PO BOX 368 HANAPEPE, HI 96716	
HEARING OFFI- CER; HON. RIKI M. AMANO (RET.)			
EXHIBIT NO.	DESCRIPTION OF EXHIBIT	RECEIVED INTO EVIDENCE	
Z-1-A	Letter Board of Regents dated 04-16-2015		
Z-1-B	Genealogy of Wilma Healani Holi		
Z-1-C	Hawaii Island Map of Crown and Government Lands		
Z-2	Section 106 Consultation Protocol Involving Kanaka Maoli		
Z-3	Media Presentation: The Hawaiians Reflecting Spirit		
Z-4	Media Presentation: Na Wai E Ho'ola i na Iwi Who Will Save the Bones?		
Z-5	Camera Shot: Baseball Cap		
Z-6	Na Ali'i (The Chiefs) - by Samuel Kuahiwi		
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DATE	RECEIVED		

Introduction

My name is Wilma H. Holu and I reside in Hanalei, Kauai. I am a witness in CASE NUMBER BLNR-C-16-002.

Currently I am retired. I was a Secondary Teacher and Librarian for 39 years. I received a Bachelor of Science in Secondary Education with emphasis in Health and Physical Education. I earned a Masters Degree in Education from Pepperdine University in 1979. In 1996, I received a second masters degree in Library and Information Sciences at the University of Hawaii at Manoa.

I was active in my community prior to retirement. I was one of the founding directors of the Garden Island Canoe Racing Association. Also served as Secretary and Race Director. Was elected President of the Hanalei Community Association and served until Hurricane Iniki came. Coordinated recovery efforts with the community and the military. Recruited to be a board member and opened a chapter of Habitat for Humanity. Recruited for Ho'ola Lahui Hawaii, a Native Hawaiian health organization addressing the health needs of Native Hawaiians. During my tenure as President, we opened two community health centers and a 340B pharmacy. Served on the Papa Ola Lokahi (POL) Board until 2006. Last position as President succeeding the late Agnes Cope, who succeeded the late Myron "Pinky" Thompson. As a member of POL, I travelled to Washington DC to consult with Congressional members and key health officials. One of my last efforts was to lobby for the College of Pharmacy at UH-Hilo. It was a concerted effort that included others from Hawaii that brought this to fruition.

In my professional life, there were a myriad of responsibilities that teachers as a whole take on. Also, I coordinated the effort to compile and write the accreditation report thrice.

Currently, I am President of a nonprofit organization that holds a 501(c)(3). Our primary focus is to address health, education, and community needs. We are proud of the students we work with in getting them admitted to college. We provide academic & social and financial support, all of the students that we assist is the first of their families to go to colleges, with the exception of one student. And I continue as a cultural consultant.

Testimony

EXHIBITS Z-1-A, Z-1-B, and Z-1-C are the three page testimony presented at the Special Board of Regents hearing on April 16, 2015. It was prepared by myself. It is self explanatory.

DISCLOSURE: Regent David Iha is a member of the Lihue Christian Church situated on Kress St., Lihue, Kauai. I am President of a nonprofit organization, and through collaboration is assisting the pre-school and adult care center, that are on the church property, seek grant funds for renovation work. I have avoided any direct contact with Mr. Iha.

Genealogy of Cultural Practitioners

Anahulu is situated on the North side of Oahu from Haleiwa towards Wahiawa. My paternal great-great grandfather was the last konohiki of this area. His name is Kahalau aka Kahalaupilo. He practiced the ancient religion in the uplands situated close to Schofield Barracks. This area carries the names Lihue and Kalena. He was the lo alii, the chief who lived in the realm of the gods. Kaahumanu wanted the natives to convert to Christianity, but Kahalau refused. He and his people were exiled to Kauai. Dr. Patrick Kirch wrote two volumes on Anahulu.

Located in this valley of Anahulu is the marae Taputapuatea. Like all Taputapuatea in Polynesia, it is a sacred site. In June 2012, my sisters and I visited Taputapuatea in the village of Opoa on the island of Raiatea. We were special guests of the Kenau clan from the island of Maupiti. There we were acknowledged by the Marqueasan delegation as decedents of Tamehameha. Also, we connected to distant cousins who were told by the spirit of their grandmother that relatives are coming and to look for them.

My paternal great grandmother and her aunt practiced the ancient religion. They were the last keepers of the fire on Kalepa Ridge. They would teleport themselves to Nihoa to practice. Sometimes they make their presence known and intuitively I know what I need to do. Sometimes I read the hoailona and know what it means.

Our Holi property is located on the outskirts of Lihue at a place called Maulua/Moaula. It has close ties to Taputapuatea in the village of Opoa, Raiatea. Maulua is the ancient name of the island Maupiti where the ruling families of Polynesia gathered to conduct business during the time of Kamehameha I. This is the gathering of the Polynesian Alliance. My quest is to find any connection these two places of Maulua has with Maulua Gulch at the base of Mauna Kea.

I asked the late Kumu John Kaimikaua what or where is “Moaula”. His response is that it has nothing to do with the chicken nor the color red. It is a place where the ruling families of Polynesia gather to conduct business. By the time we visited Maupiti, Kumu John had passed away and shortly after our return his widow passed. Never got to share my visit with them. Its becoming increasingly difficult to find these people, who are the keepers of this kind of mo’olelo & ‘ike.

In November 2007 a delegation of the Kenau clan from Maupiti, made an impromptu visit to Kauai. This is an example of how we as cultural practitioners engage and continue to perpetuate the “mana ‘Ike” from our respective homelands. This impromptu meeting was a synchronicity experience that was prompted by dreams and ancestral spirit as we gathered at a friends home in Lihue. We attempted to figure out why we were here at this place in time. Between three (3) different languages we managed to carry on our conversation. The ‘ike at that gathering, we all shared, had common and mutual understanding of the kuleana we held in our respective homelands. Now that we were together, we were able to understand and find common grounds, that linked our ancestral knowledge. The next morning the guest (our cousins) asked to go to a sacred place, so I suggested Moalua, the family property. When we turned into the property our cousins got excited because this turned out to be the place they were meant to be at. They came to look for the three (3) pohaku from Taputapuatea and to consecrate the property and to present to me a pohaku that came from Papenoo River. The young man who presented me the pohaku is a grandson of the late Pa Ariki of Rarotonga. My sister and I got to meet her in the mid-1970’s when she came to Hanapepe, Hawaii and was presenting a talk. We saw Pa Ariki waiting at the entrance, and as we came

closer she greeted us with the words, “Boki continues to live.” Her message to us was to inform us that Boki did not die in a shipwreck like the history books reported, but rather he lived on and started a new family in Rarotonga. I saw pictures of the descendants and they looked just like my mother’s family. Before Pa Ariki started her presentation she insisted that my sister and I flank her at the head table and directed everyone else to sit in front of us.

My maternal grandmother was a laau lapaau practitioner. Her contemporaries were Peter Kauaua, Auntie Rachel Moke, and practitioners of other ethnic background. Her childhood playmate was Iolani Luahine whose family comes from Wahiawa Valley along the highway.

The Koula Ahupuaa, more commonly called Hanapepe, has many wahi panas, from the mountain, through the valley, down towards the coastline, and in the ocean. It’s worth noting the kane hula heiau is in this valley and chanter Halalu Helela is associated with this waipana. His wife is Tamahaitu.

Cultural Association of The Pele Clan

Growing up in Hanapepe, my maternal grandparents would refer to a hill above Hanapepe Heights, as Puu Lani. Being a fisherman, my maternal grandfather used that hill as a marker and a welcoming sight as he returned home from fishing. We heard many stories of Pele, some told with a warning, others about her beauty and the hag, and making an offering of gin whenever you go to the volcano.

Meeting other cultural practitioners both in Hawaii and Tahiti, allowed me to develop a deeper understanding of who they are, where they came from and their place in Hawaii. I first visited Papenoo, Tahiti with my brother and sister pre 9-11. I was there to consult with officials of Haruru, cultural keepers of Papenoo Valley and the cultural sites found in that valley. We were consulting on the repatriation of the iwi kupuna (human remains). The next visit was when we repatriated the iwi kupuna on the eve of Easter Sunday 2002. We stayed at Fare Hape, situated deep in the valley. Our hosts would mention this valley and its relationship to

the Pele Clan, and the various sites attributed to them. My last visit was in July 2012 whereupon our host took our group to a marae, where a ceremony was performed. I remained at the car.

In the summer of 2016, a delegation of Tahitians arrived to renew the sister city relationship with the County of Kauai. It was a time for me to visit, host and renew friendships, and to hang out with them at camp. There was a heiva and we all got to hang out. I wore a baseball cap with “Hanapepe” embroidered on it (Exhibit Z-5). The tahua (kahuna) saw the cap and was filled with excitement, speaking in French and Tahitian. Jean Claude translated for me and told me the name “Hanapepe” is called “Fare Pepe” and is a place in Papenoo Valley. All the stories I grew up with begins to take on a new understanding. Deep in Hanapepe Valley is the waterfall “Manowaiopuna,” and in Hanapepe Bay is an area we call “Shark’s Cove”. Shark’s Cove refers to Pele’s brother Kamohoalii, the shark god.

The salt pans in Hanapepe was started by Pele’s sister. The mo’olelo talks about a woman who caught an abundance of fish, and was distraught that it might spoil. As the story goes, Pele’s sister appears and inquiries as to cause of the distress. Pele’s sister points in the direction of a bare, red dirt area and assures the distraught woman that salt can be produced. Pele’s sister proceeds to prepare the area with the puna and the paaka’i loi, and takes the tears from the woman’s eyes and touches the water.

These two siblings of Pele still reside in the area. My maternal grandfather was formally the konohiki for Hanapepe. In the “ole days”, he and the kahuna would perform the ritual and observe any divine signs that tells it's good season for salt making or forget it. It's going to be a rainy season.

My family observes that there is the loss of respect for salt making. For many people, it has become a “production” rather than subsistence. I heard through the grapevine that a group offered prayers chanted by a wahine, which is considered “hewa”. These protocols were done by the men. Maybe that’s why the reverse. Wet during summer and dry during winter (Exhibit Z-3). The filming of the documentary was done in May, which the perimeter of salt beds was wet.

In the 1980's, there was a group that wanted to offer prayers and chants to open up the salt making season, I was directed by my uncles to wake up and drive down in the early morning to observe any intruders into the area. I was instructed to sound the alarm if there was any intruders. As I drove to the site and came by the intersection where it turns to Salt Pond Beach Park an owl appeared and flew in front of my windshield. I continued towards the airfield and a second owl flew out from the brush and it joined the first owl. I continued driving and a third owl appeared and joined the two, then when I made the turn at the airfield to proceed to the salt making areas the owls flew away. This was a very powerful ho'ailona and the message was clear that they were the guardians of that place. Story goes that Puu Lani is where Pele wanted to build her home. Her brother didn't want her living in the neighborhood. Told her to move on.

The father, Kane, resides in the uplands of Waialeale in the Wao Akua. There's an ahu with the weather gauge nearby. I saw a photograph taken by some cowboys that went there to read the weather gauge. They did their work and immediately left the area. Ever wonder why this is one of the wettest places in the world? There's the surface water that flows into

Section 106

During the summer of 2010, Nathan Ratner, a graduate studying cultural anthropology at Wesleyan-Boston Campus, came to Kauai to explore the issue of burial desecration. We met at a public meeting re the highway improvements on Kapule Highway corridor fronting Wailua Beach. Both federal and state highway administrators and engineers were attempting to "conduct consultation meeting with interested residents of Kauai". I was asked to mentor him. After attending a few sessions of "consultation", it became apparent that both the federal and state officials, as well as the residents, knew nothing about the Section 106 process, much less heard about it. Nathan then suggested that he and I look at the document and develop chart outlining the Section 106 process. Allow me to interject that Nathan's parents were lawyer and an aunt was seated in Congress. We spent some hours perusing the document and developed the flow chart that I submitted as Exhibit Z-2. I distributed copies to the state officials, who shared it with the feds. The residents refused to look at it. Oh well. The

federal officials had someone from Washington D.C. come to Hawaii to conduct workshops with other government officials present. The chart we developed passed the scrutiny of the feds. The State of Hawaii, Department of Transportation implements the Section 106 flow chart as SOP (Standard Operation Procedures). The Legal Notices that are published makes mention of section 106.

Burials and Location

The desecration of the burial grounds at Honokahua, Maui came to light when one of the on site workers blew the whistle on what was uncovered and the numerous iwi kupuna who were removed. A MOA was signed by OHA allowing this to occur so Ritz-Carlton could build a hotel. EXHIBIT Z3 records the events of that weekend when native Hawaiians from the neighbor islands came to witness for themselves what went on. It was gut-wrenching. How could this "hewa" (wrong doing) occur? Why didn't our native brothers and sisters stop this? This became the impetus to legislate a burial law.

The designation in statutes of burials as "inadvertent discoveries" is troubling. It has an indeterminate value; not known in advance. Decisions on such basic cultural issues gives too much latitude for the State of Hawaii to make decisions regarding the disposition or treatment. On the other hand, no one has any information on known burials.

The Burial Council, under the auspices of the State of Hawaii, DLNR Historic Preservation Division, has oversight of burials more than 50 years old. My personal assessment of the program is that some of the people, both staff and appointees, lack commitment and advocacy. I served two terms on the Kauai/Niihau Burial Council. Also, I was with Hui Malama I Na Kupuna O Hawai'i from its beginning Dec 1988 to its dissolution Dec. 2014. We were involved with the repatriation efforts to have our iwi kupuna returned home from national and international repositories. Our final repatriation was completed in Dec 2014.

There's a mantra that realtors utter: Location, Location, Location! If you're a hotel developer, having a beautiful coastal view with a white sand beach is

an ideal location. A homeowner may choose a location close to schools they want their children to attend or to the amenities they want in their lives. It is safe to assume that astronomers want a very high mountain with ideal viewing conditions of the universe. Mauna Kea is a Wao Akua, a place for the gods and for those who hold the kuleana for this place. The bird catchers in the forest of Hamakua knew this and this not venture into the summit area of Mauna Kea. This mauna was sacred to the gods before and it should continue to be treated as such.

I think about the Vatican Advanced Technology Telescope that's on Mt. Graham and wonder what the Native American Indians think about this, and what compelled the Vatican to build on a site considered sacred to the Indians.

Na Ali'i

This song (Exhibit Z-6) was written at a time when the kingdom of Hawaii was going through an upheaval. It reminds us to hold fast to what is Hawaii. As we look to the past, we can chart the course to our future. "E mau ke 'ea o ka 'aina i ka pono." The message emphasizes "malama" and "maka'ala".

Special Board of Regents Meeting
Thursday April 16, 2015
University of Hawaii- Hilo

Good afternoon,

I am Wilma Healani Holi. I reside in Hanapepe on the island of Kauai. I am here to stand in solidarity with the protectors of Mauna Kea. I am a cultural practitioner too. Currently my kuleana is with the salt pans at Salt Pond in the makai portion in the ahupua'a of Koula, more commonly known as Hanapepe. My maternal grandfather being the last konohiki. My paternal tutu kane of Hookena founded Hui Aloha Aina.

On my paternal side of the family, another tutu kane practiced his religion in the uplands of Wahiawa where Schofield Barracks is situated. These practitioners were called *lo alii*. They communed with the gods in the uplands. When the kapu system was abolished they were sent into exile by Kaahumanu. They relocated to Kauai bringing with them the place names Lihue and Kalena.

I have not travelled to Mauna Kea. But I recognize the cultural importance of this place. Maybe someday I will receive the kahea and will need to make the trek. But for now, I will remain below and take care of other urgent matters.

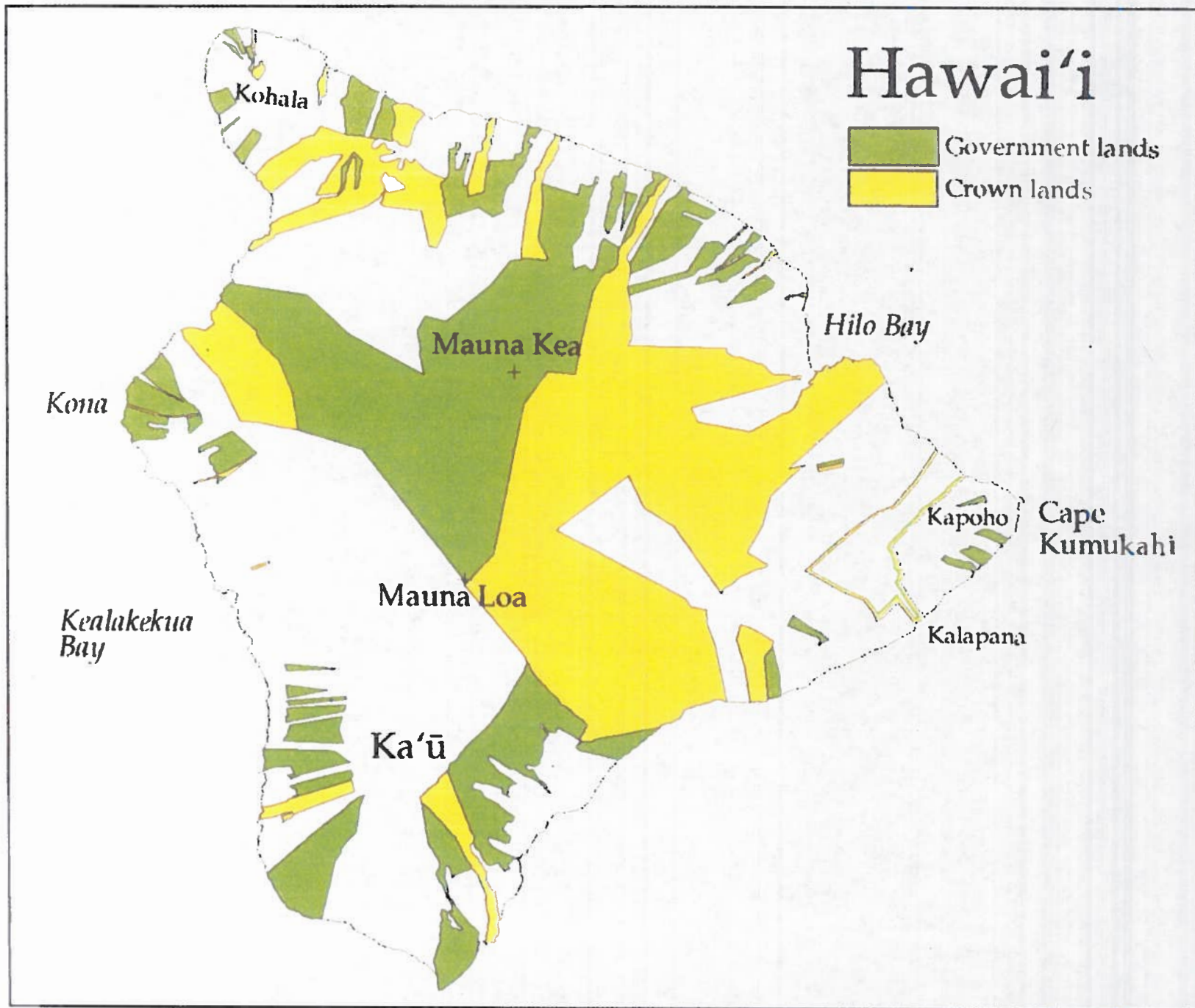
According to the map found in Van Dyke's book *Who Owns the Crown Lands of Hawaii*, the lands of Mauna Kea are both crown and government. Continued work on the mauna doesn't give vested interest. I am giving everyone (regents, scientists, investors, representatives of other nations) notice that these lands remain secure with the Kingdom of Hawaii, and the crown lands are that of the heirs of Lot Kapuaiwa, Kamehameha V. You may refer to the attachment that has my genealogy.

As regents, I urge you to put an end to this project.

I appreciate your time.

Genealogy of Wilma Healani Holi

Kane	Wahine	Issue
Lot Kapuaiwa (Kamehameha V)	Abigail Maheha	Keanolani
Olopuia Kamali	Keanolani	Keopuolani
John Kali	Keopuolani	Albert Kali
Albert Kali	Christina Vasconcellos	Olga Kali
Solomon Holi	Olga Kali	Wilma Holi



Hawai'i. Compiled from a map traced by F. L. Lowell, Hawaiian Government Survey, 1901. Cartography by Carlos Andrade 1997

Establish Undertaking 800.3(a)**Identify preliminary parties 800.3(a)(1)**

Contact those who have come forward,
as well as Native Hawaiian Organizations

**Determine whether the undertaking
has the potential to affect Historic Property 800.3(a)(2)**

Through consultation with preliminary parties

No undertaking/No potential to cause
effects

Undertaking might affect historic properties

Identify appropriate parties for consultation 800.3(b)

There will be primary parties representing the cultural side of the consultation process.
General Definitions:

Lineal Descendents

Those who can trace their genealogy to that individual who is buried in that site.

Cultural Descendents

Those who have direct genealogical lines to that area.

Cultural Affiliates

i. Cultural practitioner who utilizes the cultural resources of that area or who
has been tasked with protecting them.

ii. Can be a kahu: they may not utilize the resources but they are the
stewards of the resources.

Verifier Requirements 800.3(c)

(a.) Must possess firm grounding in Hawaiian Genealogy

(b.) Prior to 800.3(d), the verification process, the verifier must also have an intimate
understanding of the history of the tenure of the site that is the subject of the consultation.

Verification Process 800.3(d)

Lineal and Cultural Descendants 800.3(d)(1)

(a.) In order to establish lineal or cultural descent to human skeletal remains, a person shall submit a claim with any of the following information:

- (1) The name of the deceased individual;
- (2) Family genealogy;
- (3) Birth certificates;
- (4) Death certificates;
- (5) Obituaries;
- (6) Marriage certificates;
- (7) Probate records;
- (8) Church records;
- (9) Census records;
- (10) Tax records;
- (11) Land conveyance documents including, but not limited to, deeds and land commission awards;
- (12) Oral family history; or
- (13) Any other applicable information or records that help establish a lineal connection between the claimant and the human skeletal remains.

(b.) The Verifier shall review all submitted information and assess whether direct or collateral genealogical connections can be demonstrated between the claimant and certain human skeletal remains.

(c.) The Verifier shall obtain a written statement from the claimant concerning the confidentiality of any information submitted. No information shall be duplicated by the department without prior written consent.

(d) Where possible, Verifier shall compare submitted information with records found at appropriate repositories including:

- (1) State archives;
- (2) State bureau of conveyances;
- (3) Office of health status monitoring, department of health;
- (4) Family History Centers of the Church of Jesus Christ of Latter-Day Saints; or
- (5) Any other appropriate repository or source.

(e) The Verifier shall have no longer than thirty days from receipt of a written claim to review and assess the information submitted. Upon completion, the department shall return all information, unless the claimant indicates otherwise.

(f) With regard to Native Hawaiian skeletal remains, the Verifier shall provide the Federal Organization engaging in the consultation with a written assessment of the information submitted and arecommendation regarding the recognition of the claimant as aknown lineal descendent. However, it shall be the decision of the verifier to recognize the claimant as a known linealdescendant. The consultation participants shall give preference for propertreatment of previously identified Native Hawaiian skeletal remains andany burial goods to known lineal descendants.

(g) Where the submitted information fails to establish lineal descent, but establishes genealogical connections between the claimant and Native Hawaiian ancestors who once resided or are buried or both, in the same ahupua'a or district in which certain Native Hawaiian skeletal remains and any burial goods are located or originated from, the department shall provide the consulting Federal Organization with a written assessment and a recommendation regarding recognition of the claimant as a cultural descendant, the recommendation shall be deferral pending to submission of additional information. It shall be the decision of the verifier whether to recognize the claimant as a cultural descendant. Testimony by a recognized cultural descendant concerning proper treatment of Native Hawaiian skeletal remains and any burial goods, shall be duly considered and given appropriate weight within the consultation.

Cultural Affiliates 800.3(d)(2)

(a.) Cultural Affiliates are self-selecting. It is incumbent upon them to come forward and provide evidence supporting their claim.

(b.) The lineal and cultural descendants shall bear the responsibility for verifying the claims of those seeking recognition as Cultural Affiliates

In consultation with the now established appropriate parties

Plan to Involve the Public 800.3(e)

Identify Historic Properties 800.4

Determine Scope of Efforts 800.4(a)

The Agency Official must consult with any lineal and cultural descendants, or if there are none with cultural affiliates, on the scope of its identification efforts and in fulfilling the steps in subsections 1 through 4.

1. Determining and documenting the area of potential effects;
2. Reviewing existing information about historic properties;
3. Seeking information from parties likely to have knowledge of or concerns about the area; and
4. Gathering information from Indian tribes and Native Hawaiian Organizations about properties to which they attach religious and cultural significance while remaining sensitive to any concerns they may have about the confidentiality of this information.

The lineal/cultural descendants or cultural affiliates should be consulted at all steps in the scoping process. The determination of the area of potential effects is made unilaterally by the Agency Official, after such consultation.

Where Federal agencies are engaged in an action that is on or may affect ancestral, aboriginal or ceded lands, Federal agencies must gather information from Indian tribes and Native Hawaiian organizations regarding properties that may be of traditional religious and cultural significance to them, and that may be eligible for the National Register, on such lands.

Identify Historic Properties 800.4(b)

800.4(b)(1)

The standard for identification is a “reasonable and good faith effort” to identify historic properties, depending on a variety of factors (including but not limited to, previous identification work).

The effort shall only be considered a “reasonable and good faith effort” if the testimony of the consulting parties been factored into the identification strategy with “adequate consideration.”

Field Investigation and Field Survey 800.4(b)(1)(i)

Testing plan must be presented to the consulting parties before it is executed.

The consulting parties have the opportunity to appoint their own cultural monitor, in addition to the one used by the survey consultants, at their own cost.

800.4(b)(2)

Phased identification may be done when alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, and the nature of the undertaking and its potential scope and effect has therefore not yet been completely defined. Final identification and evaluation may also be deferred if provided for in an agreement with the lineal/cultural descendants, or cultural affiliates. Final identification and evaluation may also be deferred if provided for in an agreement with the lineal/cultural descendants, or cultural affiliates. Under this approach, Agency Officials are required to follow up with identification and evaluation once project alternatives have been refined or access has been gained to previously restricted areas. Any further deferral of final identification would complicate the process and jeopardize an adequate assessment of effects and resolution of adverse effects.

Evaluate Historic Significance 800.4(c)

800.4(c)(1)

Federal agencies are required to apply the National Register Criteria to properties identified in the area of potential effects, and to acknowledge the special expertise of Indian tribes and Native Hawaiian organizations when assessing the eligibility of a property to which they attach religious and cultural significance. Old determination of eligibility may need to be re-evaluated due to the passage of time or other factors.

800.4(c)(2)

The Agency Official makes determinations of eligibility in consultation with the cultural Descendants/Affiliates. If there is disagreement or the Council or Secretary of Interior so requests, the Agency Official must refer the matter to the Keeper of the National Register. If a Cultural Descendent/Affiliate disagrees with a determination of eligibility involving a property to which it attaches religious and cultural significance, then those people can ask Council to request that the Agency Official obtain a determination of eligibility. The intention is to provide a way to ensure appropriate determination regarding properties located off tribal lands to which tribes attach religious and cultural significance.

No Historic Properties Affected 800.4(d)(1)

If no historic properties are found or no effects on historic properties are found, the Agency Official provides appropriate documentation to the SHPO/THPO* and notifies consulting parties. Members of the public need not receive direct notification, but the Federal agency must place its documentation in a public file prior to approving the undertaking, and provide access to the information when requested by the public. Once adequate documentation is received, the Cultural Descendants/Affiliates have 30 days to object to the determination. The Advisory Council on Historic Preservation may also object on its own initiative within the time period. Lack of such objection within the 30 day period means that the agency has completed its Section 106 responsibilities.

Historic Properties Affected 800.4(d)(2)

Assess Adverse Affects 800.5

Apply Criteria of Adverse Affect

800.5(a)(1)

Adverse effects occur when an undertaking may directly or indirectly alter characteristics of a historic property that qualify it for inclusion in the Register. Reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative also need to be considered.

800.5(a)(2)

Examples of adverse effects include physical destruction or damage; alteration not consistent with the Secretary of the Interior's Standards; relocation of a property; change of use or physical features of a property's setting; visual, atmospheric, or audible intrusions; neglect resulting in deterioration; or transfer, lease, or sale of a property out of Federal ownership or control without adequate protections. If a property is restored, rehabilitated, repaired, maintained, stabilized, remediated or

otherwise changed in accordance with the secretary's standards, then it will not be considered an adverse effect (assuming that the Cultural Descendants/Affiliates agree). Where properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations are involved, neglect and deterioration may be recognized as qualities of those properties and thus may not necessarily constitute an adverse effect. If a property is transferred leased or sold out of Federal ownership with proper preservation restrictions, then it will not be considered an adverse effect as in the past regulations. Transfer between Federal agencies is not an adverse effect per se; the purpose of the transfer should be evaluated for potential adverse effects, so that they can be considered before the transfer takes place. Alteration or destruction of an archaeological site is an adverse effect, whether or not recovery of archaeological data from the site is proposed.

800.5(a)(3)

This section is intended to allow flexibility in Federal agency decision making processes and to recognize that phasing of adverse effect determinations, like identification and evaluation, is appropriate in certain planning and approval circumstances, such as the development of linear projects where major corridors are first assessed and then specific route alignment decisions are made.

800.5(b)

The Cultural Descendants/Affiliates may suggest changes in a project or impose conditions so that adverse effects can be avoided and thus result in a no adverse effect determination. This subsection emphasizes that a finding of no adverse effect is only a proposal when the Agency Official submits it to the SHPO/THPO for review. This subsection also acknowledges that the practice of "conditional No Adverse Effect determinations" is acceptable.

No Historic Properties are adversely affected 800.5(d)(1)

Agencies must retain records of their findings of no adverse effect and make them available to the public. The public should be given access to the information when they so request, subject to Freedom of Information Act (FOIA) and other statutory limits on disclosure, including the confidentiality provisions in Section 304 of the NHPA. Failure of the agency to carry out the undertaking in accordance with the finding requires the Agency Official to reopen the Section 106 process and determine whether the altered course of action constitutes an adverse effect.



Resolve Adverse Affects 800.6

Continue Consultation

800.6(a)(1)

When adverse effects are found, the consultation must continue among the Federal agency and the Cultural Descendants/Affiliates to attempt to resolve them. The Agency Official must always notify the Council when adverse effects are found and must also invite the Council to participate in the consultation when any of the circumstances in 800.6(a)(1)(i)(A)-(C) exist. A consulting party may also request the Council to join the consultation. The Council will decide on its participation within 15 days of receipt of a request, basing its decision on the criteria set forth in Appendix A. Whenever the Council decides to join the consultation, it must notify the Agency Official and the consulting parties. It must also advise the head of the relevant Federal agency of its decision to participate. This is intended to keep the policy level of the Federal agency apprized of those cases that the Council has determined present issues significant enough to warrant its involvement.

800.6(a)(2)

New consulting parties may enter the consultation if the agency and the Cultural Descendants/Affiliates agree. Any party, including applicants, licensees or permittees, that may have responsibilities under a Memorandum of Agreement must be invited to participate as a consulting party.

800.6(a)(3)

The Agency Official is obligated to provide project documentation to all consulting parties at the beginning of the consultation to resolve adverse effects. Particular note should be made of the reference to the confidentiality provisions.

800.6(a)(4)

The Federal agency must provide an opportunity for members of the public to express their views on an undertaking. The provision embodies the principles of flexibility, relating the agency effort to various aspects of the undertaking and its effects upon historic properties. The Federal agency must provide them with notice such that the public has enough time and information to meaningfully comment. If all relevant information was provided at earlier stages in the process in such a way that a wide audience was reached, and no new information is available at this stage in the process that would assist in the resolution of adverse effects, then a new public notice may not be warranted. However, this presumes that the public had the opportunity to make its views known on ways to resolve the adverse effects.

800.6(a)(5)

Although it is in the interest of the public to have as such information as possible in order to provide meaningful comments, this section acknowledges that information may be withheld in accordance with section 304 of the NHPA.

Failure to Resolve Adverse Affects

800.7

Termination of consultation:

After consulting to resolve adverse effects pursuant to 800.6(b)(2), the agency official, the SHPO/THPO, the Cultural Descendants/Affiliates, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

Memorandum of Agreement 800.6

800.6 (b)(1)

When resolving adverse effects without the Council, the Agency Official consults with the Cultural Descendants/Affiliates to develop a Memorandum of Agreement. If this is achieved, the agreement is executed between the Agency Official and the SHPO/THPO and filed with required documentation with the Council. This filing is the formal conclusion of the Section 106 process and must occur before the undertaking is approved. Standard treatments adopted by the Council may set expedited ways for competing memoranda of agreement in certain circumstances.

800.6(b)(1)(i)

Lineal Descendants shall be given unilateral decision making power over what constitutes appropriate treatment of their Kupuna.

800.6 (b)(2)

When the Advisory Council on Historic Preservation is involved, the consultation proceeds in the same manner, but the agreement of the Agency Official, the SHPO/THPO and the Council is required for a Memorandum of Agreement.

800.6 (c)(1)

A Memorandum of Agreement evidences an agency's compliance with section 106 and the agency is obligated to follow its terms. Failure to do so requires the Agency Official to reopen the Section 106 process and bring it to suitable closure as prescribed in the regulations.

800.6 (c)(2)

Certain parties may be invited to be signatories in addition to those specified in Section 800.6(c)(1). They include individuals and organizations that should, but do not have to, sign agreements. It is particularly desirable to have parties who assume obligations under the agreement become formal signatories. However, once invited signatories sign MOAs, they have the same rights to terminate or amend the MOA as the other signatories.

800.6 (c)(2)(i)

Those who have been identified as Cultural Descendants and Cultural Affiliates within the consultation process, will be invited to be signatories of the MOA.

800.6 (c)(6)

Discoveries: Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

800.6 (c)(6)(i)

In the event that the Cultural Descendants/ Affiliates contend that the area affected by the undertaking contains Historic Properties not identified in section 800.4, appropriate contingency plans shall be prepared and included within the MOA.

800.6 (c)(7)

Amendments: The signatories to a memorandum of agreement may amend it by consensus. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

800.6 (c)(8)

Termination: If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the council under 800.7(a).

HANAPEPE
Kauai HI

Nā Ali'i (The Chiefs) - by Samuel Kuahiwi

Aloha nā 'ahahui o nā ali'i
Nā 'li'i mai nā kūpuna mai
E pa'a i nā 'ōlelo kaulana
E hele a moe i ke ala

Aloha to the assemblies of chiefs
The chiefs from long lines of ancestors
Hold fast to the famous words
"To go and sleep by the way"

Hū wale a'e nā ho'omana'o 'ana
Nō nā ali'i kaulana
Ua pau ua hala lākou
A koe nō nā pua
Ua pau, ua hala lākou
A koe nō nā pua

Recalling of the fond recollections
Of the famous chiefs
It is finished. They have passed
Only their descendants remain
It is finished. They have passed
Only their descendants remain

E lei i ka lei ha'aheo o Hawai'i
Ka wehi ho'i o nā 'li'i i hala
E pa'a ka mana'o me ka lōkahi
E mau ke ea o ka 'āina i ka pono

Wear Hawai'i's lei of pride
The adornment of the chief now gone
Hold fast to the thought in unity
The life of the land is perpetuated in righteousness

He ali'i 'o Kalani ua kaulana
Ka Nāpoliona o ka Pākīpika
E lei i ka wehi ha'aheo o Hawai'i
Nā hulu mamō like 'ole
E lei i ka wehi ha'aheo o Hawai'i
Nā hulu mamō like 'ole

The heavenly one was a famous chief
The Napoleon of the Pacific
Wear Hawai'i's lei of pride
The many kinds of bird feathers
Wear Hawai'i's lei of pride
The many kinds of bird feathers

'Imi nui 'o Maleka o lōli'i
Ka wehi ho'i o nā 'li'i i hala
'A'ole nō na'e e like aku
Me ka mea no'eau he kupuna

Peaceful America sought fully
To restore the beauties of the chiefs of old
But they cannot compare
With the things that your ancestors had

He ali'i o ka lani ua kaulana
Ke 'ahi kananā o ka Pākīpika
Nānā nō i ulupā nā pae moku
A pau ma lalo ona
Nānā nō i ulupā nā pae moku
A pau ma lalo ona

The heavenly one was a famous chief
The mighty warrior of the Pacific
He conquered all of the islands
And brought them under his rule
He conquered all of the islands
And brought them under his rule



Source: King's Hawaiian Melodies Copyright 1930, 43 - This song is dedicated to the Order of Kamehameha. Verse 1, stanza 4 is from Kamehameha Nui's Law of the Splintered Paddle. The 2nd verse incorporates the 1843 statement of Kamehameha III given at Kawaiaha'o Church, the motto of Hawai'i. Translation by Donald Mitchell

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568
for the Thirty Meter Telescope at the Mauna
Kea Science Reserve, Ka'ohe Mauka,
Hāmakua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02
Document title: **Wilma H. Holu written direct
testimony; Wilma H Holu exhibit list**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced document was served upon the following parties by the means indicated on February 17, 2017:

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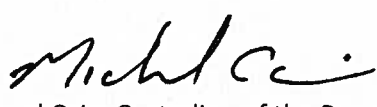
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