

**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'ohē Mauka,  
Hāmākua, Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that 1) the requests to intervene (addresses redacted) in the above captioned contested case which were received by the Department of Land and Natural Resources between April 8, 2016 and May 31, 2016, and 2) a contact sheet for those making requests to intervene, were served upon the following parties via email and regular mail on June 1, 2016, addressed as follows:

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*Counsel for the petitioners Mauna Kea Anaina Hou, Clarence Kukauakahi Ching, Flores-Case 'Ohana, Deborah J. Ward, Paul K. Neves, and Kahea: The Environmental Alliance*

Dated: Honolulu, Hawai'i, June 1, 2016



Michael Cain  
Department of Land & Natural Resources  
State of Hawai'i



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**TMT INTERNATIONAL OBSERVATORY, LLC**

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF

A Contested Case Hearing Re Conservation  
District Use Permit (CDUP) HA-3568 for the  
Thirty Meter Telescope at the Mauna Kea  
Science Reserve, Kaohe Mauka, Hamakua  
District, Island of Hawaii, TMK (3) 4-4-  
015:009

Case No. BLNR-CC-16-002

**MOTION TO HAVE TMT  
INTERNATIONAL OBSERVATORY,  
LLC ADMITTED AS A PARTY IN THE  
CONTESTED CASE HEARING;  
MEMORANDUM IN SUPPORT OF  
MOTION; CERTIFICATE OF SERVICE**

**MOTION TO HAVE TMT INTERNATIONAL OBSERVATORY, LLC  
ADMITTED AS A PARTY IN THE CONTESTED CASE HEARING**

Comes Now, TMT International Observatory, LLC ("TIO), by and through its undersigned counsel, and hereby respectfully moves the Board of Land and Natural Resources or the Hearing Officer for an order admitting TIO as a party to the contested case hearing pursuant to Hawai'i Administrative Rules ("HAR") § 13-1-31(b)(2). The Motion should be granted because:

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STATE OF HAWAII

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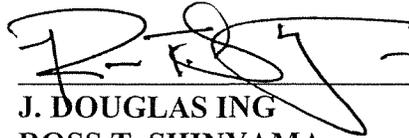
LAND/TRANS. DIV.  
DEPARTMENT OF  
ATTORNEY GENERAL



- (1) TIO clearly has a property interest in the subject land as it has a contractual right under its sublease and/or Scientific Cooperation Agreement with the University of Hawai‘i to construct and operate the TMT Project on Mauna Kea and/or is responsible for designing and constructing the TMT Project and fulfilling mitigation measures.
- (2) TIO will be so directly and immediately affected by the contested case hearing that its interest is clearly distinguishable from the general public. The contested case hearing directly and immediately affects TIO’s contractual right and/or responsibility to construct and operate the TMT Project on Mauna Kea. This contractual right or responsibility is unique to TIO and is not shared by the general public. In addition, TIO’s interest is unique from the general public because no one in the general public can design or construct the TMT Project, and no one in the general public stands to lose more if the contested case hearing does not result in the issuance of a Conservation District Use Permit authorizing the construction of the TMT Project to proceed.

This Motion is made pursuant to HAR § 13-1-31(b)(2) and all other applicable rules of practice and procedure, and is based upon the attached Memorandum in Support of Motion, the attached exhibit, and the entire record and files herein.

DATED: Honolulu, Hawaii, April 8, 2016.

A handwritten signature in black ink, appearing to read "J. Douglas Ing", is written over a horizontal line.

**J. DOUGLAS ING**  
**ROSS T. SHINYAMA**  
**SUMMER H. KAIWE**  
Attorneys for Defendant  
**TMT INTERNATIONAL**  
**OBSERVATORY, LLC**

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF

Case No. BLNR-CC-16-002

A Contested Case Hearing Re Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Kaohe Mauka, Hamakua District, Island of Hawaii, TMK (3) 4-4-015:009

**MEMORANDUM IN SUPPORT OF MOTION**

**MEMORANDUM IN SUPPORT OF MOTION**

TMT International Observatory, LLC ("TIO"), by and through its undersigned counsel, hereby submits its Memorandum in Support of its Motion to Have TMT International Observatory, LLC Admitted as a Party in the Contested Case Hearing. The Motion should be granted pursuant to Hawai'i Administrative Rules ("HAR") § 13-1-31(b)(2) because:

- (1) TIO clearly has a property interest in the subject land as it has a contractual right under its sublease and/or Scientific Cooperation Agreement with the University of Hawai'i to construct and operate the TMT Project on Mauna Kea and/or is responsible for designing and constructing the TMT Project and fulfilling mitigation measures.
- (2) TIO will be so directly and immediately affected by the contested case hearing that its interest is clearly distinguishable from the general public. The contested case hearing directly and immediately affects TIO's contractual right and/or responsibility to construct and operate the TMT Project on Mauna Kea. This contractual right or responsibility is unique to TIO and is not shared by the general public. In addition, TIO's interest is unique from the general public

because no one in the general public can design or construct the TMT Project, and no one in the general public stands to lose more if the contested case hearing does not result in the issuance of a Conservation District Use Permit authorizing the construction of the TMT Project to proceed.

I. **BRIEF BACKGROUND**

**Procedural Background**

1. Over seven days in August and September 2011, a contested case hearing regarding the construction of the Thirty-Meter Telescope Project on Mauna Kea (“TMT Project”) was held before a Hearing Officer. TIO was not a party to this earlier contested case proceeding as it was not established until years later in May 2014. See infra.

2. On April 12, 2013, the Board of Land and Natural Resources (“BLNR” or “Board”) entered its Findings of Fact, Conclusions of Law, and Decision and Order (“BLNR’s FOFs/COLs/D&O”) and issued a CDUP for the construction of the TMT Project.

3. Mauna Kea Anaina Hou, et al. (collectively, “Appellants”) appealed BLNR’s FOFs/COLs/D&O to the Third Circuit Court of the State of Hawai‘i. On May 5, 2014, the Third Circuit Court entered its decision and order affirming BLNR’s FOFs/COLs/D&O and entered final judgment in favor of BLNR, et al.

4. The Appellants appealed the Third Circuit Court’s final judgment affirming BLNR’s FOFs/COLs/D&O to the Supreme Court of Hawai‘i. On December 2, 2015, the Hawai‘i Supreme Court issued its opinion in Mauna Kea Anaina Hou v. Board of Land and Natural Resources, SCAP-14-0000873 (December 2, 2015) vacating the Third Circuit Court’s final judgment and the CDUP. The Hawai‘i Supreme Court remanded the case “so that a

contested case hearing can be conducted before the Board or a new hearing officer, or for other proceedings consistent with [the Court's] opinion.” Id. at 6.

5. On December 29, 2015, the Hawai'i Supreme Court entered its Judgment on Appeal remanding the case to the Third Circuit Court “to further remand to the [Board] so that a contested case hearing can be conducted before the Board or a new hearing officer, or for other proceedings consistent with the opinion.” Judgment on Appeal, dated December 29, 2015 at 2.

6. On February 22, 2016, the Third Circuit Court entered its Order for Remand vacating BLNR's FOFs/COLs/D&O and “remand[ing] this matter to the Board of Land and Natural Resources so that a contested case hearing can be conducted before the Board or a new hearing officer, or for other proceedings consistent with the opinion.” Order for Remand, dated February 22, 2016 at 2.

#### **TIO, the TMT Project, and the Sublease**

7. TIO is a non-profit organization that was established in May 2014 to construct and operate the TMT Project. TIO's members include The Regents of the University of California (“UC”), the California Institute of Technology (“Caltech”), the National Institutes of Natural Sciences of Japan, the National Astronomical Observatories of the Chinese Academy of Sciences, the Department of Science and Technology of India, and the National Research Council of Canada. The Association of Universities for Research in Astronomy is a TIO associate. Major funding for the TMT Project has also been provided by the Gordon & Betty Moore Foundation.

8. The TMT Project is a collaboration among UC, Caltech, and the above-identified national governmental research organizations to design, develop, construct, and operate a thirty-meter primary telescope within the Mauna Kea Science Reserve on the Mauna Kea summit in

cooperation with the University of Hawai'i ("University"). It is the only Next Generation Large Telescope or Giant Segmented Mirror Telescope planned in the northern hemisphere or in the United States. It is expected to push the frontier of technology, providing an advanced and powerful ground-based observatory capable of carrying out cutting-edge astronomical research for many years.

9. On July 28, 2014, the University and TIO entered into the Sublease and Non-Exclusive Easement Agreement between TMT International Observatory LLC and The University of Hawaii ("Sublease"). See Item D-8 of the June 13, 2014 Minutes for the Meeting of the Board of Land and Natural Resources; Item D-19 of the June 27, 2014 Minutes for the Meeting of the Board of Land and Natural Resources. Under the Sublease, the University subleased a portion of the Mauna Kea Science Reserve to TIO to construct and operate the TMT Project. TIO as a result has a contractual right under the Sublease to construct and operate the TMT Project on Mauna Kea. TIO has been designing and building the component parts for the TMT Project and is the only entity that can construct and operate the TMT on Mauna Kea.

10. The TMT Project is committed to the stewardship of Mauna Kea and will serve as a model of sustainable astronomy. Recognizing the natural beauty and cultural significance of Mauna Kea, the location and design of the TMT Project minimizes visual and physical impacts of the telescope and incorporates sustainable and energy efficient technologies, as the result of a decade long process involving community consultation, consensus building, design refinement and cooperative problem solving.

11. TIO's members have been working on the actual components of the TMT for at least the last two and a half years. In a truly global effort, and in reliance upon the earlier issued CDUP, work on the TMT has been performed in California, Japan, India, China, and Canada.

12. TIO's members have already made cash and in-kind contributions to the TMT Project valued at more than \$304 million as of December 2015.

## II. DISCUSSION

TIO should be admitted as a party in the contested case hearing as it clearly has a property interest in the subject land as it has a contractual right and responsibility to construct and operate the TMT Project on Mauna Kea. TIO should also be admitted as a party because it will be so directly and immediately affected by the contested case hearing that its interest is clearly distinguishable from the general public.

HAR § 13-1-31(b)(2) provides:

The following persons or agencies **shall be admitted as parties . . . [a]ll persons who have some property interest in the land . . . or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.**"

Id. (emphases added).

HAR § 13-1-2 defines "Person" to "mean[] as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies." HAR § 13-1-2.

TIO clearly has "some property interest in the land" as the Sublessee under the Sublease. Under the Sublease, the University subleased a portion of the Mauna Kea Science Reserve to TIO to construct and operate the TMT Project. TIO as a result has a contractual right under the Sublease and/or the responsibility to design, construct, and operate the TMT Project on Mauna Kea. TIO's contractual right is a "property interest in the land." On this basis alone, TIO must be admitted as a party to the contested case hearing.

TIO will also be “so directly and immediately affected by the [contested case hearing] that [its] interest in the proceeding is clearly distinguishable from that of the general public.” See supra. There is no question that the contested case hearing directly and immediately affects TIO’s contractual right and obligation to construct and operate the TMT Project on Mauna Kea. Indeed, the contested case hearing squarely challenges TIO’s ability to exercise its contractual right and fulfill its obligations. This contractual right and/or obligation is unique to TIO and is not shared by the general public.

TIO’s interest is also unique from the general public because no one in the general public stands to lose more if the contested case hearing does not result in the issuance of a CDUP authorizing the construction of the TMT Project to proceed. Just as an example, TIO stands to lose time and money expended for permitting, approvals and efforts to construct the TMT Project in Hawaii. TIO also stands to lose the opportunity to build the TMT Project at the best site in the northern hemisphere and to work in collaboration with other observatories at Mauna Kea. Moreover, even if the contested case hearing does ultimately result in the issuance of a CDUP, TIO has an interest unique from the general public in ensuring that the contested case hearing is conducted in an efficient manner.

In sum, TIO should be admitted as a party in the contested case hearing as it clearly has a property interest in the subject land, as well as a contractual right to construct and operate the TMT Project on Mauna Kea. TIO should also be admitted as a party because it will be so directly and immediately affected by the contested case hearing that its interest is clearly distinguishable from the general public. The Motion should be granted and TIO should be admitted as a party in the contested case hearing pursuant to HAR § 13-1-31(b)(2).

**III. CONCLUSION**

Based on the foregoing, TIO respectfully requests that its Motion be granted and TIO be admitted as a party in the contested case hearing pursuant to HAR § 13-1-31(b)(2).

DATED: Honolulu, Hawaii, April 8, 2016.

A handwritten signature in black ink, appearing to read 'J. Douglas Ing', is written over a horizontal line.

**J. DOUGLAS ING**  
**ROSS T. SHINYAMA**  
**SUMMER H. KAIawe**  
Attorneys for Defendant  
**TMT INTERNATIONAL**  
**OBSERVATORY, LLC**

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF

Case No. BLNR-CC-16-002

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Science Reserve, Kaohe Mauka, Hamakua  
District, Island of Hawaii, TMK (3) 4-4-  
015:009

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a copy of the foregoing was duly served on the following parties  
by mail, postage pre-paid to their last known address:

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Department of the Attorney General  
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Attorney for MAUNA KEA ANAINA HOU; CLARENCE KUKAUAKAHI CHING;  
FLORES-CASE 'OHANA; DEBORAH J. WARD; PAUL K. NEVES; AND KAHEA: THE  
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Attorneys for THE UNIVERSITY OF HAWAII AT HILO

DATED: Honolulu, Hawaii, April 8, 2016.

A handwritten signature in black ink, appearing to read "J. Douglas Ing", is written over a horizontal line. The signature is stylized and cursive.

**J. DOUGLAS ING**  
**ROSS T. SHINYAMA**  
**SUMMER H. KAIWE**  
Attorneys for Defendant  
**TMT INTERNATIONAL**  
**OBSERVATORY, LLC**

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Attorneys for Defendant  
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NATURAL RESOURCES  
STATE OF HAWAII

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AND COASTAL LANDS

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation  
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District, Island of Hawaii, TMK (3) 4-4-  
015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL  
OBSERVATORY, LLC'S  
SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF ITS MOTION TO HAVE  
TMT INTERNATIONAL  
OBSERVATORY, LLC ADMITTED AS A  
PARTY IN THE CONTESTED CASE  
HEARING, FILED APRIL 8, 2016;  
CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S SUPPLEMENTAL  
MEMORANDUM IN SUPPORT OF ITS MOTION TO HAVE TMT INTERNATIONAL  
OBSERVATORY, LLC ADMITTED AS A PARTY IN THE  
CONTESTED CASE HEARING, FILED APRIL 8, 2016**

TMT International Observatory, LLC ("TIO") filed its Motion to Have TMT  
International Observatory, LLC Admitted as a Party in the Contested Case Hearing ("Motion")  
on April 8, 2016, promptly after the Board of Land and Natural Resources ("BLNR") filed  
Minute Order No. 1 selecting Judge (Ret.) Riki May Amano ("Judge Amano") as the Hearings

Officer. TIO has been eagerly awaiting a decision on its Motion which was filed approximately 45 days ago. TIO has not been able to participate on issues of importance – i.e., the process, selection, and confirmation of the Hearings Officer. These issues have been briefed on numerous occasions by the existing parties and ruled upon by BLNR. Indeed, since TIO filed its Motion, the Petitioners have been permitted to brief, either through written objections or a motion, these important issues four times. The University of Hawai‘i at Hilo (“University”) has briefed the issues twice. BLNR has issued several minute orders regarding the process, selection, and confirmation of the Hearings Officer. See e.g., Minute Order No. 3 and Minute Order No. 4. Most recently, the Petitioners filed a motion for reconsideration of Minute Order No. 4. BLNR issued Minute Order No. 6 giving the University an opportunity to respond to the Petitioner’s motion for reconsideration by May 26, 2016. The BLNR is now aware of another non-disclosure.

In the interest of fairness to all parties, TIO requests that BLNR reconsider its Minute Order No. 4 and replace Judge Amano as Hearings Officer with its next alternate candidate.<sup>1</sup> This preemptive action must be taken by BLNR as it is the only option to ensure that this contentious issue and any alleged appearance of impropriety is resolved. This will also minimize any further delay caused by Judge Amano’s selection as Hearings Officer.<sup>2</sup>

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<sup>1</sup> TIO agrees that Petitioners’ objections to the process used by BLNR to, inter alia, select the list of potential Hearings Officers for this contested case are meritless. BLNR can pick the next alternate candidate from the list developed by its selection committee.

<sup>2</sup> TIO’s request is not and should not be construed as a lack of faith in Judge Amano’s abilities as a jurist. That is not the case. TIO’s request is simply being made to eliminate any potential risk of appeal that may result from Judge Amano’s selection as Hearings Officer and to minimize any further delay that has resulted because of her selection.

TIO also respectfully requests that BLNR or the next Hearings Officer immediately rule on its Motion so that it can provide its input on these critical issues.

DATED: Honolulu, Hawaii, May 26, 2016.

A handwritten signature in black ink, appearing to read 'J. Douglas Ing', is written over a horizontal line.

**J. DOUGLAS ING**  
**ROSS T. SHINYAMA**  
**SUMMER H. KAIawe**  
Attorneys for Defendant  
**TMT INTERNATIONAL**  
**OBSERVATORY, LLC**

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

Case No. BLNR-CC-16-002

A Contested Case Hearing Re Conservation  
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**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a copy of the foregoing was duly served on the following parties  
by mail, postage pre-paid to their last known address:

Julie H. China  
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Department of the Attorney General  
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FLORES-CASE 'OHANA; DEBORAH J. WARD; PAUL K. NEVES; AND KAHEA: THE  
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Attorneys for THE UNIVERSITY OF HAWAII AT HILO

DATED: Honolulu, Hawaii, May 26, 2016.

A handwritten signature in black ink, appearing to read "J. Douglasing", written over a horizontal line.

**J. DOUGLASING**  
**ROSS T. SHINYAMA**  
**SUMMER H. KAIWE**  
Attorneys for Defendant  
**TMT INTERNATIONAL**  
**OBSERVATORY, LLC**

May 12, 2016

TO: BLNR Chair Suzanne D. Case & Board Members  
Department of Land & Natural Resources  
1151 Punchbowl Street, Rm. 131  
Honolulu, HI 96813  
dlnr@hawaii.gov

FR: [Edward K. Akiona ]  
(address redacted)

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohe, Hamakua District, Island of Hawaii' i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: I am a native Hawaiian. I am also descendent from other nationalities and cultures. I have been a resident of Hawaii Island my entire life. I am 62 years old. I first began going to Mauna Kea fifty years ago. I have been there to practice my cultural responsibilities, and to educate myself about the current condition of the mountain. I have more recently become aware of the significance of the Mauna to the native culture of Hawaii, and seek to keep it available for the maintenance and promotion of the Hawaiian Culture. My father's ashes are scattered on Mauna Kea. My family built an Ahu on Mauna Kea. I seek to keep Mauna Kea in its present state. There are already many telescopes on Mauna Kea. Another is not necessary.

From: Wai'ala Ahn [  
Sent: Thursday, May 12, 2016 11:42 AM  
To: DLNR.CO.PublicDLNR  
Subject: RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ōhe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

TO: BLNR Chair Suzanne D. Case & Board Members Department of Land & Natural Resources  
1151 Punchbowl Street, Rm. 131  
Honolulu, HI 96813  
dlnr@hawaii.gov

FR: Wai'ala Ahn  
(address redacted)

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ōhe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: cultural practices connected to Mauna Kea; participation in hula, education, ceremony, and civic clubs concerning Mauna Kea; Ku Ki'a'i Mauna, aesthetic, recreational, or environmental interests in protections of Mauna Kea etc. – "As a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778 and have lived in Hawai'i for my entire 30 years of life and my family for generations, ranging from Oahu, the Hamakua coast of the Big Island, Waimea and Kalapana. Mana A Wakea has and will always be the Piko of my people and must be preserved and protect. Enough is enough already. As someone who partake in traditional and customary practices consisting of ceremony, worship and honoring of ancestors on our sacred piko Mauna A Wakea, just the thought of this development is detrimental to my spiritual, emotional, psychological healthy of myself, my Ohana, Hui and so many others here in Hawaii Nei and across the world. These aspects effect our overall health and quality of life. How would the people of Jerusalem feel to see parts of their temples or the Great Wastern/Wailing Wall bulldozed and blown up to have structures for scientific research put up. Or doing the same on the Himalayan mountains, Mount Kilimanjaro, Mount Fuji? Our mountain is not less sacred or important then these others and countless more. It must be saved, protect and preserved, regardless of what's already been done. The Mauna and her people have spoken, Stop. Myself and others of my standing humbly request to be admitted to speak and bear witness to this process. We come in Kapu Aloha and we come united in process that wishes to divide us. Please move forward in a manner that unites our nations and sets a precedents of Aloha, as the Mauna Movement has. Aloha.

Wai'ala Ahn

**From:** Hank Hawaiian  
**Sent:** Thursday, May 12, 2016 9:18 AM  
**To:** DLNR.CO.PublicDLNR  
**Subject:** TMT contested Case

BLNR Suzanne Case and Board Members  
Department of Land and aural Resource  
1151 Punchbowl Street Rm 131  
Honolulu, Hawaii 98613

From: Harry Fergerstrom  
(address redacted)

RE: Request to be admitted as a full party in the contested case hearing for CDUP HA-3568 for the thirty meter telescope in Mauna Ke Lands, Kaoha, Hamakua Dstrict, Island of Hawaii, TMK (3) 4-4015009.

I'm requesting to be admitted as a PARTY to the above mentioned case hear pursuant to HAR 13-1-31. This request should be granted because

- 1) the requestor has a property interest in the lands of Mauna Kea through pre contact RELIGIOUS practices as well as native Hawaii traditional and customary practices.
- 2) the requestor will be negatively affected by the proposed Thirty Meter Telescope project and has an interest clearly distinguishable from the general public
- 3) Requestor has a substantial interest in these proceedings and
- 4) the requestors participation will add to new relevant information
- 5) Requested Participant is a fully trained practitioner in Hawaiian Religion, Trained by Tahuna Nui Sam Hoopi Lono.

I await your response. Thank you for your considerations.

Harry Fergerstrom

May 11, 2016

TO: BLNR Chair Suzanne D. Case & Board Members  
Department of Land & Natural Resources  
1151 Punchbowl Street, Rm. 131  
Honolulu, HI 96813  
dlnr@hawaii.gov

FR: Ana Nawahine-Kaho'opi'i  
(address redacted)

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: I am a kumu hula my practice is directly connected to Mauna Kea; as a kumu hula my haumana also participate in hula and cultural activities related to the mauna. I am a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778. The piko of my keiki are rooted on the mauna in the tradition of my people. TMT will disrupt my cultural practices and the practices of my haumana who are fifth generation practitioners. TMT will directly violate the area consecrated to hold the piko of my keiki.

Ana Nawahine-Kaho'opi'i

To: BLNR Chair Suzanne D. Case & Board members  
Department of Land and Natural Resources



1151 Punchbowl St, Room, 131  
Honolulu Hi 96813  
dlnr@hawaii.gov

Kahu: Richard L DeLeon  
(address redacted)

Request to be admitted as a party in the contested, case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohe, Hamakua District, island of Hawaii, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative rules S13-1-31. This request should be granted because : (1) Requestor has a property interest in the land of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices: (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings (4) Requestor participation will substantially assist the board in its decision making ; (5) Requestor position is not substantially the same as any existing parties to the proceedings, and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interest in the contested case proceedings also consists as follows: I am a Kahu, ordained my practices of spiritual healing of enlightenment, I am a Ho'opa'a a chanter of prayers that log back to 1553, I am also a Olapa, a dancer of ancient Hula,

TMT will impact my spiritual enlightenment for being in a scared grounds of alignment with Akua, I am also a lineal decedents of 7 generation of the house of Keawe of Liloa of Kamehameha, which holds title to Mauna A Wakea, I was born in the year of our lord nineteen hundred fifty six,.

Richard Ma'ele DeLeon

May 11, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Mehana Kihoi  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows:

‘O hānau ka Mauna a Wākea,  
‘O pu‘u a‘e ka Mauna a Wākea.  
‘O Wākea ke kāne, ‘o Papa, ‘o Walinu‘u ka wahine.  
Hānau Ho‘ohoku, he wahine,  
Hānau Hāloa, he li‘i,  
Hānau ka Mauna, he keiki Mauna na Wākea.

Enough is enough. End the desecration of our sacred lands.

Me ke aloha pau ole,  
Mehana Kihoi

May 11, 2016

TO: BLNR Chair Suzanne D. Case & Board Members  
Department of Land & Natural Resources  
1151 Punchbowl Street, Rm. 131  
Honolulu, HI 96813  
[dlnr@hawaii.gov](mailto:dlnr@hawaii.gov)

FR: C. M. Kaho'okahi Kanuha

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: Mauna a Wākea, among many other things, is the symbol of the greatest Hawaiian movement in modern history. It is the piko of Hawai'i and it is indeed the piko of the people of Hawai'i. I lived on Mauna a Wākea for four months in 2015 just as my ancestor had done over 400 years ago. Mauna a Wākea is my kuleana. I am a descendent of 'Umialiloa, ke ali'i noho mauna, and I have been given the sacred responsibility to protect the sacred lands of my ancestors. I was arrested twice on Mauna a Wākea in 2015 for assuming my genealogical responsibility of protecting Mauna a Wākea. My first arrest was dismissed, but my second arrest went to trial. On January 8, 2015 I was found NOT GUILTY for obstructing the construction

efforts of TMT and the State of Hawai'i. I am a lineal descendent of 'Umialiloa and I conduct traditional and customary practices on Mauna a Wākea, specifically, in the exact area that TMT wishes to build it's telescope.

Chase Michael Kahō'akahi Kānuha

A handwritten signature in black ink, appearing to read 'Chase Michael Kahō'akahi Kānuha', written over a horizontal line. The signature is highly stylized and cursive.

May 12, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Joseph Kualii Lindsey Camara  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows:

The summit region or wao lani of Mauna Kea is the most culturally significant area in all of Hawaii. It is a place that I personally go to find answers to problems that I face and to find inspiration for the future. I believe that many of the same factors that make it a good site for astronomy create an area where energy, mana and 'ike flow freely from the lani and can be received by those who are receptive.

Water is the foundation of all life, and is what makes Earth unique in the universe. Even though some don't consider Mauna Kea a "significant" watershed, I consider the water atop and within the mauna to be the most precious, life giving, powerful and sacred waters in existence. These waters hold the kapu a Kane. I have taken on the kuleana of protecting these waters and this sacred place in perpetuity.

I am kanaka maoli and was born and lived my entire life in Hawaii. I have continued the tradition of my Lindsey Ohana by taking my childrens piko stone to Waiau. I perform chants and ceremony in the wao lani that call forth these waters and awaken the the energies that sustain life on these islands.

The mana atop Mauna Kea is potent and palpable, but also fragile. Increased human presence changes the function and spirit of this areas. Noise, lights, structures, and most importantly, human presence disrupts the mana that resides here. Further development will continue to erode the unique spiritual space atop Mauna Kea. Komo na akua, aole komo ke kanaka.

Me ke aloha aina,  
Joseph Kualii Lindsey Camara

May 12, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Hālonai kaiopuna Mikala-Jiro Fukutomi  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ōhe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: Requestor is descended from Chief Alapa'i-nui-a-Kauaua and so has genealogical birthright to protect all lands and waters of Hawai'i Island. Requestor also has family on Waimea, Kawaihae, Panaewa, Kalapana, Maku'u, and Hawaiian Beaches and is concerned for the overall health of the eco-systems they live around and practice traditions on. Mauna Kea is a richly cultural site where cultural practices such as hula, ho'okupu offerings, religious practices to preserve the culture from being erased for future generations. Mauna a Wakea is considered as sacred to the kanaka maoli and so the Ku Kia'i/protectors gather there to protect the fragile eco system which the communities depend on for survival. Development can cause irreparable damage under and on land surfaces, and also can spill chemicals which would spoil the ground water for all living things. All land is sacred for human existence and should be taken care of for future generations. I am a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778 and have lived in Hawai'i for 14 years. And I conduct traditional and customary practices consisting in subsistence farming of kalo, growing plants which are used to make ceremonial attire, subsistence fishing, hawaiian mele for survival and the benefit of future generations.

Sincerely,  
Hālonai kaiopuna Mikala-Jiro Fukutomi

May 13, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Crystal F. West  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ōhe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: Mauna A Wakea is a sacred site which is significant to traditional and spiritual Hawaiian practices that continue today. Any and all physical alterations to said lands would have a negative impact on these practices for Native Hawaiians and other peoples worldwide. Any development industrial or otherwise will create adverse effects to the delicate ecosystem that exists atop Mauna Kea and nowhere else in the world. This includes plant life, insects, and valuable resources that cannot be found anywhere else and which are irreplaceable once disturbed or destroyed.

The presence of the TMT would create a terrible eyesore visible from most parts of Moku O Hawai'i and would not greatly serve the residence of Hawai'i.

me ke aloha pumehana,

Crystal F. West

**From:** Ivy McIntosh  
**Sent:** Friday, May 13, 2016 12:18 PM  
**To:** DLNR.CO.PublicDLNR  
**Subject:** Protect MaunaKea

FR: Ivy McIntosh  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ōhe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: I am a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778 and have lived in Hawai'i for all my life. And, I conduct traditional and customary practices consisting in ceremony, oli, and hula at Pu'uhuluhulu as well as on the mauna. I want DLNR to act responsibly as they have vowed to do and protect the land that has been stolen from the kanaka 'ōiwi ~ the true stewards.

Ivy McIntosh

May 13, 2016

TO: BLNR Chair Suzanne D. Case and Board Members Dept of Land and Natural Resources

FROM: Wilma H. Holi  
[address redacted]

RE: Request to be admitted as a Party in the Contested Case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohe, Hamakua District, Island of Hawaii, TMK (3)4-4-015:009

I am requesting to be admitted to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules 13-1-31. This request should be granted because (1) Requestor has a property interest in the lands of Mauna Kea as the Heir to the Crown Lands; (2) the Requestor will be affected by the proposed TMT project and has an interest in the proceedings that are clearly distinguishable from the General Public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable. Requestor's specific, substantial interest in the contested case proceedings also consists as follows: genealogy as heir to the Crown Lands concerning Mauna Kea and protection interests of wahi pana.

Sincerely,  
Wilma H. Holi

May 13, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Moses Kealamakia Jr.  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

I am a multi-generation person of Waimea, Hawaii Island. My grandfather, great grandfather, and great-great grandfather ascended Mauna Kea often. In fact it was my great-great grandfather William Miller Lindsey that took Queen Emma to Lake Waiau. My grandfather John Kuakini Lindsey, upon hearing that there was going to be telescopes on top of Mauna Kea during the nineteen-sixties referred to it as "hana kolohe" or "bad deeds".

"I am a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778 and have lived in Hawai'i for fifty-five years."

Moses Kealamakia Jr.

(Original)

FRIDAY

May 13, 2016

To: BLNR Chair SUZANNE D. CASE & BOARD  
Members

Department of LAND & NATURAL RESOURCES

1151 Punchbowl St. Rm. 131

Honolulu, HI 96813

From: MICHAEL KUMUKAUAHA LEE

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2016 MAY 16 P 3:56  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

RE: Request to be admitted as a party in the contested  
Case hearing for CDUP HA-3568 for the Thirty  
Meter Telescope in the MAUNA KEA LANDS, Kū'ōhe,  
Hāmākua District, Island of HAWAII,  
TMK (3) 4-4-015:009

I, MICHAEL KUMUKAUAHA LEE (PAPA KILOHOKU)  
am Requesting to be admitted as a party to the  
Above contested case hearing pursuant to Hawaii  
Administrative Rules § 13-1-31. This Request should be  
granted because: (1) Requestor has a property interest in  
the lands of Mauna Kea through the exercise of Native  
Hawaiian traditional and customary practices.

(2) Requestor will be affected by the proposed Thirty Meter Telescope project and has interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings, and (6) Requestor's participation will add substantially new relevant information AND will not make the proceedings inefficient and UNMANAGEABLE.

Requestor's specific, substantial interest in the contested case proceedings also consists as follows

My Family still owns 355 ACRES and resides in half a Ahupuaa in KHAAPAHU, HAMA KUA HAWAII  
Royal Patent No 7281 Mahele Award #52.

RECEIVED  
2016 MAY 16 AM 7:54  
DEPT OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

C. SUBJECT MATTER

17. Board Action Being Contested

The Board approved the adoption of Hawaii Administrative Rules, Chapter 13-123-21.2, Prohibited Activities, for portions of Public Hunting Areas, Units A and K, Mauna Kea, Island of Hawaii,

18. Board Action Date  
July 10, 2015

MKL 5/13/16

Now Revised to contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna'Kea Lands, Ka'ohi'e Hamakua District Island of HI  
TMK (3) 4-4-015: 009

19. Item No.

Dis Request  
C-2 Request For Approval to Adopt a New Section Under Hawaii Administrative Rules As Title 13 Chapter 12  
~~3-Section 21.2 To Restrict Use of and Access to Portions of Public Hunting Areas, Units A and K, Mauna Kea, Hawaii Island, Through Emergency Rulemaking Procedures To Protect Against Imminent Peril To Public Safety and Natural Resources~~

MKL  
05/13/16  
(N/A)  
plus New Request

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

On June 8, 2015, I did an educational presentation at the 'Imi Loa Astronomy Center, as a recognized papa kilo hoku, star practitioner, to the Candian-France Telescope Corporation, the Subaru Telescope management, and the general public in a three hour presentation. I am returning on August 2, 2015 to do a similar presentation to the Mauna Kea Management Team as a papa kilo hoku again.

Mauna Kea is the darkest place in the Hawaiian Islands, and according to the Director of the Canada-France Hawaii Telescope, Doug Simons, the darkest place in the World. I require access to this special Mauna to perform and exercise my constitutionally protected ancestral Native Hawaiian cultural practices, which includes communication, via chants, prayer and other offerings, to Ke Akua, to ancestral beings, 'aumakua, and akua. Some of the offerings include plants and la'au medicine which only bloom at night, and others, as limu, in lake Waiau. I have identified ancestral burial sites located on the summit and did submit burial registration forms to the State Historic Preservation Division in 2010.

As a cultural practitioner, many of my practices related to Mauna Kea and the star observations, celestial events, and other important omens, portents and ho'ailona, are often spurred by ancestral communication with the Divine, and access may be on the spur of the moment when the weather and other ho'ailona are present, and the requirement to obtain an intrusive permit to access this sacred place on a moments notice, late at night or in the early hours of the morning, will be virtually impossible. Although some journeys and practices may be known, or scheduled in advance, the majority will not as they are a culmination of the convergence of many different cultural variables.

I have been trained extensively by my maternal grandfather, Kino Valentine Guerrero, my aunts, Alice Namakalua and Alice Holokai, my uncles, George Holokai, Walter Kamana and John Keola Lake, and have been qualified in court as a Native Hawaiian Cultural Practitioner in Kahunala'anlapa'auokekai (Hawaiian Limu Medicine) as well as am a Papakilohoku (Observer and Keeper of Hawaiian Star Knowledge) as noted in my mo'oku'auhau genealogical family chant. My grandfather was born on January 22, 1908, and he was taught these cultural practices by his mother, my paternal great grandmother, and her sisters. My great-great grandmother was taught by her grandfather and her mother. My grandfather's grandparents planted limu (seaweed) in Miloli'i on Hawai'i Island in the 1880's and Queen Lili'uokalani planted limu in Waikiki and elsewhere. Under Article 12, Section 7 of the Hawai'i State Constitution, my family and I have protected Native

Hawaiian gathering rights for subsistence and religious purposes from the mountain to the sea. The BLNR action to approve these rules limiting access, especially during the nighttime and early morning hours, infringes upon my ability to exercise my cultural practices, which can not be practical anywhere else in the World, and with regards to the nighttime star observations, at no other place in Hawai'i other than the summit of Mauna Kea. The requirement for me to obtain permits prior to accessing Mauna Kea and prior to exercising my cultural practices will cause me great harm, physical, spiritual, emotional and mental, and much anguish, as the efficacy of my practices, gathering, communication, prayers, observations, medicine, and petitions to God, the gods and the ancestors, will be greatly diminished, and often rendered null and void, leading to greater harm against my person, physical and spiritual. My cultural practices also require the presence and participation of other practitioners for rituals, ceremonies, logistics and safety.

**21. Any Disagreement Petitioner May Have with an Application before the Board**

The proposed emergency rules will greatly infringe upon my ability to practice my culture for my health and well-being as well as infringe upon my lawful and inherent rights as a Native Hawaiian cultural practices with cultural practices unique to the summit of Mauna Kea alone. The prohibition of access between 8:00 p.m. and 5:00a.m. impacts me the greatest as the darkest portions of the Universe are available at that time for my documented and recorded practices.

**22. Any Relief Petitioner Seeks or Deems Itself Entitled to**

I pray for relief from these over-bearing and intrusive rules and a lifting of the ban on nighttime access and any permitting requirements existing now, or proposed, to limit and restrict my ability to access the summit of Mauna Kea at night causing me irreparable harm.

*N/A uakl this Section # 22 only. uakl 05/13/2013*

**23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest**

I represent a unique and lost art of star knowledge and observations as practice by my ancestors thousands of years ago. I am beginning to share this sacred information with the Native Hawaiian community, general public and the scientific community, especially those in the field of astronomy. This is of great benefit to the public who in my direct and personal experience of teaching, is very interested in learning more. It is also the perpetuation of the Hawaiian culture which serves the overall State's interest and constitutional mandates.

**24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR**

I have been granted standing in other permitting actions before the BLNR, on these very same qualifications, and have conducted contested case hearings, representing myself, as an aggrieved Native Hawaiian Cultural Practitioner, and successfully appealed my case up to the Hawai'i Supreme Court.

Check this box if Petitioner is submitting supporting documents with this form.

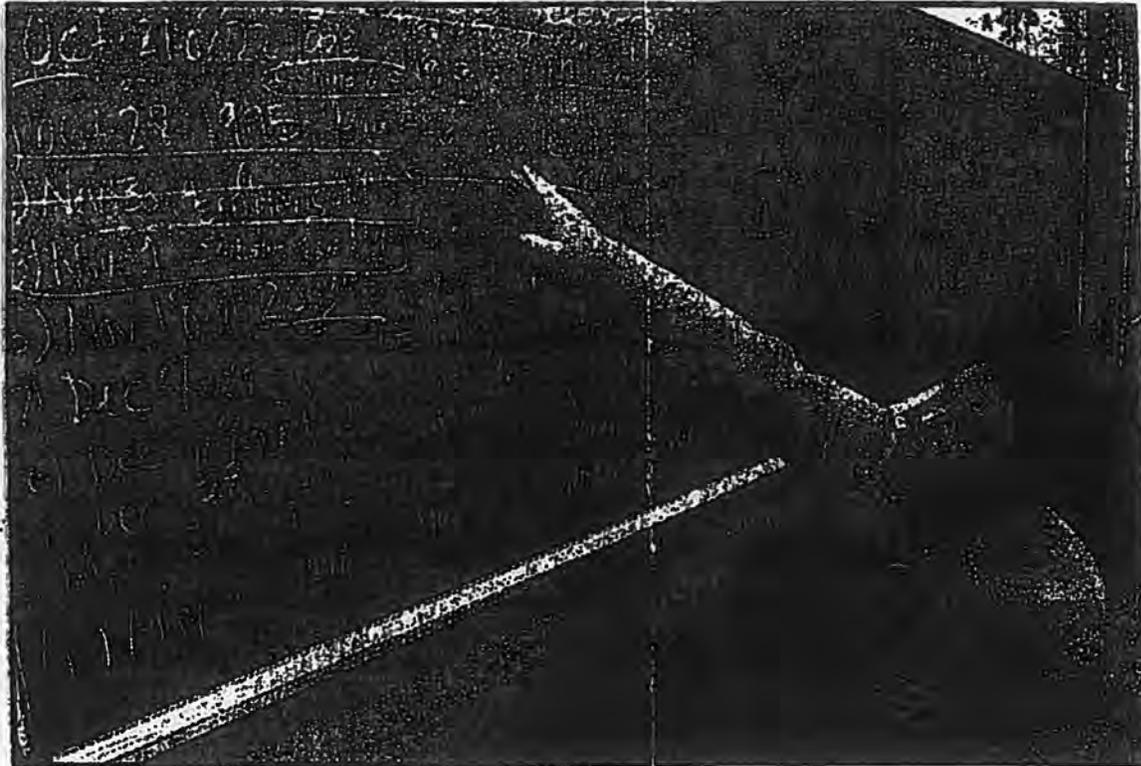
Check this box if Petitioner will submit additional supporting documents after filing this form.

~~Michael Kunukawaha Lee~~ ~~Michael Kunukawaha Lee~~ ~~07/15/15~~ <sup>uakl</sup>

Date, Friday 13/1/2016 Maui

Same as the above Maui  
Michael Kunukawaha Lee: Michael Kunukawaha Lee 5/13/2016  
Date

*Richard K. G.*



*Michael Lee, religion instructor at Damien Memorial High School, claims a 60 percent accuracy rate since he began predicting earthquakes last year. He looks to the sun and moon — not geologic science — for his unconventional clues.*

**BY CRAIG T. KOJIMA,**  
Star-Bulletin

# He tracks the cosmos for earthquakes

**BY JIM WITTY**  
Star-Bulletin

**M**ICHAEL Lee doesn't mind flouting convention. A religion instructor at a parochial school, he melds ancient Hawaiian and Christian beliefs. He's a walking, talking catalog of "night marcher" stories and has been lauded for his "avant garde" teaching style.

So it's only mildly surprising when he tells you that he can predict earthquakes.

The key, says Lee, is in the cosmos, not in the core: Geologists look down for explanations; Lee looks up.

"They're looking into the Earth," said Lee, who has no formal geological training. "I'm looking into the sky."

Rather than relying solely on plate tectonics and the shifting of large blocks of rock to explain earthquakes, Lee contends that the sun and moon hold far greater sway than conventional science allows.

Under his model, the gravitational force exerted by the sun and moon causes the Earth's mantle to heat up and geological plates to slip. Eclipses or near-eclipses heighten the effect, he says.

Radical maybe. But not original.

The ancient kahuna of Hawaii routinely predicted earthquakes and tsuna-

mi, said Lee, who also teaches Hawaiian history.

"The kahuna believed that when the moon turned a bright orange as in a lunar eclipse, it became the volcano goddess Pele," Lee said. "The kahuna used a sacred name of Pele known as Hina I Ke Ahi or Moon in the Flames, which described the astronomical event known as a lunar eclipse. Within a week or two of the sighting of the lunar eclipse, earthquakes and tidal waves were observed to occur."

Whether it's a flight of fancy or a legitimate technique grounded in the wisdom of the ancients remains to be seen. But Lee and many of his college-prep students at Damien Memorial High School believe.

Lee claims a 60 percent accuracy rate since he began jotting his forecasts down on the chalkboard last year.

Hits include a magnitude 4.5 quake on June 26 and a 4.4 temblor Aug. 27, both in California. Two large quakes Lee forecast for the Big Island last month, however, failed to materialize. He's now expecting a Big Isle tsunami generated by an earthquake in Chile or California on April 15, 1996, and a magnitude 8 or higher temblor in Alaska which would also generate a tsunami on May 2.

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But predicting earthquakes is no easy thing. "Friction, which holds the fault back, is notoriously unpredictable over short time periods," Denlinger said.

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But Lee envisions a time when seismic activity can be forecast as accurately as the ocean tides. And reality flies in the face of convention.

Michael Kumukauoha Lee  
Pro Se  
91-1200 Keaunui Drive, Unit 614  
'Ewa Beach, HI 96706

**BOARD OF LAND AND NATURAL RESOURCES**

**State of Hawai'i**

In The Matter Of A Limited Contested	)	
Case Regarding A Request To Amend	)	
Conservation District Use Permit OA-2670	)	DLNR CC OA 11-02
To Construct A Marina Entrance Channel	)	
Located At Honouliuli, Ewa, Oahu,	)	DECLARATION OF
Plat (1) 9-1-012 By Haseko To Reduce The	)	MICHAEL KUMUKAUOHA LEE
Size Of The Marina.	)	

**DECLARATION OF MICHAEL KUMUKAUOHA LEE**

I, MICHAEL KUMUKAUOHA LEE, under penalty of perjury hereby state:

1. I am competent to testify to the matters herein, and unless otherwise indicated, I make this declaration based upon personal knowledge.
2. I am Hawaiian. My mother is Hawaiian and my father was Hawaiian.
3. My Hawaiian grandfather Kino Valentine taught me about limu. My grandfather was born on January 22, 1908 and was taught by his Hawaiian mother, Anna Kanamu Ka'aimoku and her sisters. Anna Kanamu's mother was taught by her grandfather Kalulu and her mother Kuwe'e. My grandfather's grandparents planted seaweed in Miloli'i in the 1880's as Queen Lili'uokalani did elsewhere.
4. My grandfather fished for 60 years and picked seaweed off 'Ewa Beach and elsewhere. I remember my grandfather fishing off the pier at Hana, Maui, bringing up red fish that looked like

red leaves under the blue water. I remember buckets full of opihi. My first encounter fishing on the reef with my grandfather Kino was in 1963 off of Paul Fagan's property at Diamond Head. This was a vivid, yet painful, memory because of my small legs fell through the reef, slicing into my skin. My grandfather kept on fishing as if nothing happened. He was from the old school where pain was good for you because it toughened you up. His old car smelled like limu. He always had jars filled with different limu—like limu kohu, lipoa and manaua in the refrigerator. My grandfather blessed canoes and kept an herb garden in the back of his house. He salted limu kohu to keep it longer. He taught me about limua, or Ke Akua, in the limu which made limu sacred.

5. In 1960, my grandfather identified on a map of O'ahu the areas where he picked seaweed. The map was part of a class project on Hawaiian seaweeds by my first cousin Robert Guerrero. This document shows that my grandfather picked seaweed off of 'Ewa Beach.

6. Planting and gathering limu are long-standing Hawaiian traditions. The basis for gathering limu can be found in the Kumulipo chant. According to Place Names of Hawaii, Queen Lili'uokalani planted seaweed in Hilo's Wailuku River.

7. Walter Kamana taught me about limu. He taught me over 280 Hawaiian names for the limu and the use of mixing them for medicine. He was taught by his grandmother, a kahuna, from Ni'ihau. He taught me how to place a seaweed lei on a canoe for protection.

8. I can identify approximately seventy different types of Hawaiian limu by sight.

9. I have lived in the Moku of 'Ewa for over 13 years. I have used the area of One'ula to gather limu and teach others. I also perform cultural practices related to communicating and honoring my ancestors.

10. I am a Papakilohōkū and a Native Hawaiian practitioner of limu medicine and a practitioner of the Hā.

11. My knowledge of Hā comes from Aunty Alice Holokai.

12. I possess knowledge of the 2102 lines of the Kumulipo.

13. I was compelled to come forward to reveal certain facts regarding significant Native Hawaiian cultural sites due to the threat of imminent harm, alteration, and destruction of these sacred sites.

14. In April of 2010, I was present in the OHA office of Compliance Manager Kai Markell, along with another OHA beneficiary, also a kāula, or seer.

15. The other kāula was able to communicate with the remains of the Ali'i wahine.
16. She eventually identified herself as well as parts of her story.
17. Her name is Kaomileika'ahumanu and she died from blood loss giving birth to twins.
18. She was the Chiefess of Kalanikūpule, King of O'ahu.
19. She gave birth to twins, the female twin being La'amea and the male twin being Kauikeaouli, commonly known as Kamehameha the III.
20. Kaomileika'ahumanu is the true mother of Kauikeaouli, not Keopuolani, as commonly thought by historians.
21. That Kamehameha is the father of Kauikeaouli (Kamehameha III).
22. One'ula is a Royal burial area and a Leina a ka 'uhane where souls ascend into the next world.
23. Other well known ali'i buried at One'ula, include, but are not limited to, Ka'eokūlani, Kalanikūpule, Kualii'i, Pele'ioholani, Keali'iahonui, and others associated with the O'ahu line of ruling chiefs as well as Maui and Kaua'i.
24. These sites are associated with Kalanikūpule and his wives.
25. These sites are associated with Kaumuali'i and Kahekili.
26. These sites are associated with Captain Henry Barber and the ship Arthur.
27. These sites are associated with the Battle of Kuki'iahu and Kaeokūlani.
28. These sites are associated with the aftermath of the Battle of Nu'uanu Pali in 1795.
29. Many of these sites are depicted in Figure 1, Project Area and Site Locations, Phased II(a) Data Recovery, Field Work and Interim Report Archaeological Mitigation Program, 'Ewa Marina Communication Project, PHRI Project 93-1387, by PHRI, Paul H. Rosendahl, Ph.D., Inc. have been identified through traditional cultural practices by myself, my 'ohana and other cultural practitioners.
30. When asked if other iwi kūpuna were present in the area of her discovery, the proposed 'Ewa Marina entrance channel, Kaomileika'ahumanu responded in the affirmative.
31. On April 14, 2010, the O'ahu Island Burial Council (OIBC) voted unanimously to recognize an ali'i burial complex at One'ula and recommended to the SHPD that this area be identified and protected.

32. That as of today, June 20, 2011, the SHPD has not affirmatively acted upon this recommendation of the OIBC.

33. My father, Randolph Martin Lee Jr. is the eldest son of Randolph Martin Lee, Sr. who is the eldest son of Mary Ann Newnes who is the eldest daughter of Annie Kaho'owaha Kekuewa who is the eldest daughter of John Meek (Kalawaia) who is the eldest son of Eliza Meek and Kauikeaouli (Kamehameha the III), who is the biological son of Kamehameha the Great and Kaomileika'ahumanu Kamahanakapu Leimakali'i, who is the daughter of Kalola II (Kumukoa) and Ke'eaumokupapa'iahiahi. Kalola is the daughter of po'olua fathers, Kahekilinui'ahumanu (King of Maui) and Chief Kumukoa (Molokai).

34. The iwi of Chiefess Kaomileika'ahumanu Kamahanakapu was found at Waipouli, a karst system underground at One'ula in January of 2001.

35. Waipouli is mentioned in Sites of O'ahu in the Legend of Namakaokapo'o on page 36, regarding how Namakaokapo'o's mother was made Mo'i of O'ahu.

36. This Waipouli burial cave is referenced in "Burial of the Last Prince of Kaua'i" taken from the Annual Report of the Hawaiian Historic Society, Volumes 1-21, by the Hawaiian Historical Society in 1893.

37. Mikahale Kekauonohi a granddaughter of Kamehameha the Great, and his 5<sup>th</sup> wife of her Uncle Kamehameha II, buries her second husband, the Prince of Kaua'i, Keali'iahonui, the son of Kualii'i, in the caves at Pu'uloa, 'Ewa.

38. A vision I received in October of 2004 at One'ula showed me one of the two Waipouli burial caves being broken into and breached by Haseko, 'Ewa, Inc. construction activities and a ki'i of Pelewahine and othe funerary objects being taken and removed from my families' burial site.

39. Being a kahu, or keeper of my families' iwi kūpuna Ali'i 'Aimoku, it is my responsibility as keeper to ensure the safety and proper return of all objects of my families' burial complex. The iwi of my 5<sup>th</sup> great grandmother, Kaomileika'ahumanu Kamahanakapu must be put back into its proper resting place at Waipouli and sealed permanently as well as the ki'i and any other funerary objects taken by Haseko, 'Ewa, Inc.

40. A kahukahu ritual must be performed to restore the rights of the iwi kūpuna by myself as the kahu iwi kūpuna Ali'i 'Aimoku.

41. The Native Hawaiian cultural practices of communicating with the deceased, especially ancestors, is well documented through the practices of ulaleo, hō'ailona, akaka kū, 'ike papa lua, moe 'uhane, and other documented practices as outlined in the Nānā I Ke Kumu series by Mary Kawena Puku'i.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, June 20, 2011.

*Michael Kumukauoha Lee*  
MICHAEL KUMUKAUOHA LEE

On this 20<sup>th</sup> day of June, 2010, before me personally appeared Michael Kumukauoha Lee, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal.



*Anita C. Manzano*  
Notary Public ANITA C. MANZANO  
My commission expires March 19, 2014

NOTARY PUBLIC CERTIFICATION  
Anita C. Manzano First Circuit  
Doc. Description: Board of Land and  
Natural Resources - Deed to the  
Michael Kumukauoha Lee  
No. of Pages: 3 Date of Doc. 6/20/11  
*Anita C. Manzano*  
Notary Signature Date



OFFICE OF HAWAIIAN AFFAIRS

STATE OF HAWAII

<b>MICHAEL KUMUKAUOHA LEE,</b>	)	<b>Civil No.</b>
	)	<b>(Declaratory and Injunctive Relief)</b>
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>DECLARATION OF MICHAEL</b>
	)	<b>KUMUKAUOHA LEE</b>
<b>HASEKO 'EWA, INC., a State of Hawaii</b>	)	
<b>Corporation, PUA AIU, in her capacity as</b>	)	
<b>Administrator, State Historic Preservation</b>	)	
<b>Division, LAURA THIELEN, in her official</b>	)	
<b>capacity as Director of the State Department</b>	)	
<b>of Land and Natural Resources, STATE</b>	)	
<b>DEPARTMENT OF LAND AND</b>	)	
<b>NATURAL RESOURCES</b>	)	
	)	
<b>Defendants.</b>	)	
<hr/>	)	

**DECLARATION OF MICHAEL KUMUKAUOHA LEE**

I, MICHAEL KUMUKAUOHA LEE, under penalty of perjury hereby state:

1. I am competent to testify to the matters herein, and unless otherwise indicated, I make this declaration based upon personal knowledge.
2. I am a Papakilohōkū and a Native Hawaiian practitioner of limu medicine and a practitioner of the Hā;
3. My knowledge of limu was taught to me by my grandfather, Kino Guerrero and Uncle Walter Kamana;
4. My knowledge of Hā comes from Aunty Alice Holokai;
5. I possess knowledge of the kaona of the 2102 lines of the Kumulipo;
6. I am compelled to come forward at this time to reveal certain facts regarding significant Native Hawaiian cultural sites due to the threat of imminent harm, alteration, and destruction of **these sacred sites;**

7. The complex of sites addressed in this specific declaration are located in 'Ewa on the Island of O'ahu;

8. These sites are associated with Kalanikupule and his wives;

9. These sites are associated with Kaumuali'i and Kahekili;

10. These sites are associated with Captain Henry Barber and the ship Arthur;

11. These sites are associated with the Battle of Kuki'iahu and Kaeokulani;

12. These sites are directly associated with the aftermath of the Battle of Nu'uauu Pali in 1795;

13. Many of the sites in Figure 1, Project Area and Site Locations, Phased II(a)-Data Recovery: Field Work and Interim Report Archaeological Mitigation Program, Ewa Marina Community Project, PHRI Project 93-1387, by PHRI, Paul H. Rosendahl, Ph.D., Inc. have been identified through traditional Hawaiian cultural practice by myself and my 'ohana;

14. Some of the sites include burial sites including the burial site of Kaeokulani;

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, March 31, 2010.

*Michael Kumukauoha Lee*  
MICHAEL KUMUKAUOHA LEE

On this 31<sup>st</sup> day of March, 2010, before me personally appeared Michael Kumukauoha Lee, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal



*Anita C. Manzano*

My commission expires: March 19,



NOTARY PUBLIC, CIRCUIT

Anita C. Manzano

Doc. Description:

*Michael Kumukauoha Lee vs. Hekeia Lee, et al.*

No. of Pages: 2 Date of Doc. 3/31/10

*Anita C. Manzano* 3/31/10

# Council of the City and County of Honolulu

# Certificate

HONORING AND RECOGNIZING  
MICHAEL "MIKE" KUMUKAUOHA LEE  
FOR HIS EXEMPLARY SERVICES TO THE HAWAIIAN COMMUNITY

Historic sites are tangible evidence of a colorful, rich heritage and provide the community with a sense of continuity. Our community would suffer greatly if it weren't for generous volunteers willing to teach and nurture, and act as the proverbial "keepers of the gate" in matters of sensitive culture preservation — and today we take time to honor a very special gentleman that embodies these qualities.

Michael "Mike" Kumukauoha Lee has been a resident of Ewa Beach since 1995 and has lived in the Ewa Moku for over a decade and a half. Trained extensively by his maternal grandfather, Kino Valentine Guerrero; his aunts, Alice Namakelua and Alice Holokai; his uncles, George Holokai, Walter Kamana, and John Keola Lake; Mike has the qualifications as a native Hawaiian Cultural practitioner in Kahunalapa'auaokakai (Hawaiian limu medicine), and Papakihoku (Hawaiian star knowledge) as is noted in the Mokuauhau genealogical chant of his family.

Because of his documented royal Hawaiian lineage and the duties he assumes as part of his ancestral destiny, Mike shares his mana'o, his knowledge of cultural practices and traditions surrounding the dictates of his Kamehameha I bloodline. Teaching others in the value of perpetuating and preservation of Hawaiian ways of old is his past, present, and future. He shares all he knows to be true to all those interested in preserving the fragile "gift" of the Hawaiian heritage prevalent here in Hawai'i nei. His teaching takes him from island to island at his own expense; extending himself to others on the leeward side of O'ahu and to those who are in need of his services. Mike continues to practice the Hawaiian māwaewae ceremony at the foot print of the old Kulia Lions Club at Hau Bush and the pule kala and kapukapu ceremony as well.

He teaches his limu and star knowledge practices and rituals for Hawaiian communities attune to cultural enrichment. In addition to his tireless tasks, he freely gives of his time to teach other Native Hawaiian cultural practitioners so they may in turn train new generations in the rich values set in our ancient Hawaiian culture.

Recently, Mike has been recognized as a cultural specialist and signatory for the Hawaiian Cultural Park Hui project that sets aside one thousand acres of Kalaheo land for a Hawaiian Cultural Park where in days of old, the land was called Kanehili. His contribution towards this end sets in motion the safekeeping of a living Hawaiian cultural reserve that may have been lost to development. Without his expert knowledge of the area, Kanehili's preservation; ancient trails, ponds, religious and ancient Hawaiian burial sites in sink holes, agricultural sites and irreplaceable sites of reverence would be lost forever. The Kanehili Hawaiian Cultural Park will be an example of the need to keep vigilant watch at the gates of Hawaiian history and ensure the never ending edification experience to perpetuate the treasures Hawaiian culture and traditions for our future generations.

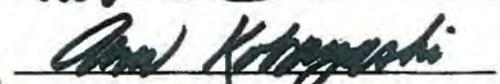
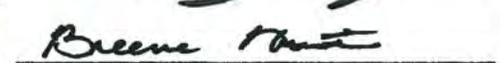
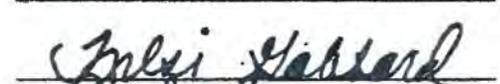
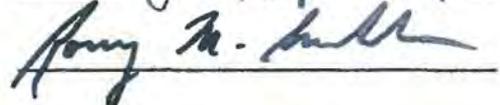
Therefore, on behalf of the citizens of the City and County of Honolulu, the Honolulu City Council expresses its gratitude and congratulations to Michael "Mike" Kumukauoha Lee for the countless hours devoted to the work of Hawaiian cultural practices, its perpetuation and preservation of historical sites. His commitment, dedication, and service have been selfless and sincerely appreciated.

DATED: May 9, 2012

  
TOM BERG, Introducer

  
ERNEST Y. MARTIN, Chair



David Lawton (HI Bar No. 7338)  
GALLAGHER & GALLAGHER  
1925 Century Park East, Suite 950  
Los Angeles, CA 90067  
Telephone: (310) 203-2600  
Facsimile: (310) 203-2610  
E-mail:  
dlawton@thegallaghergroup.com

Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT**  
**for the DISTRICT OF HAWAII**

**KAHEA et al.**

**Plaintiffs.**

v.

11-cv-00474-SOM-KSC

**NATIONAL MARINE FISHERIES  
SERVICE: et al.**

**DECLARATION OF MICHAEL  
LEE**

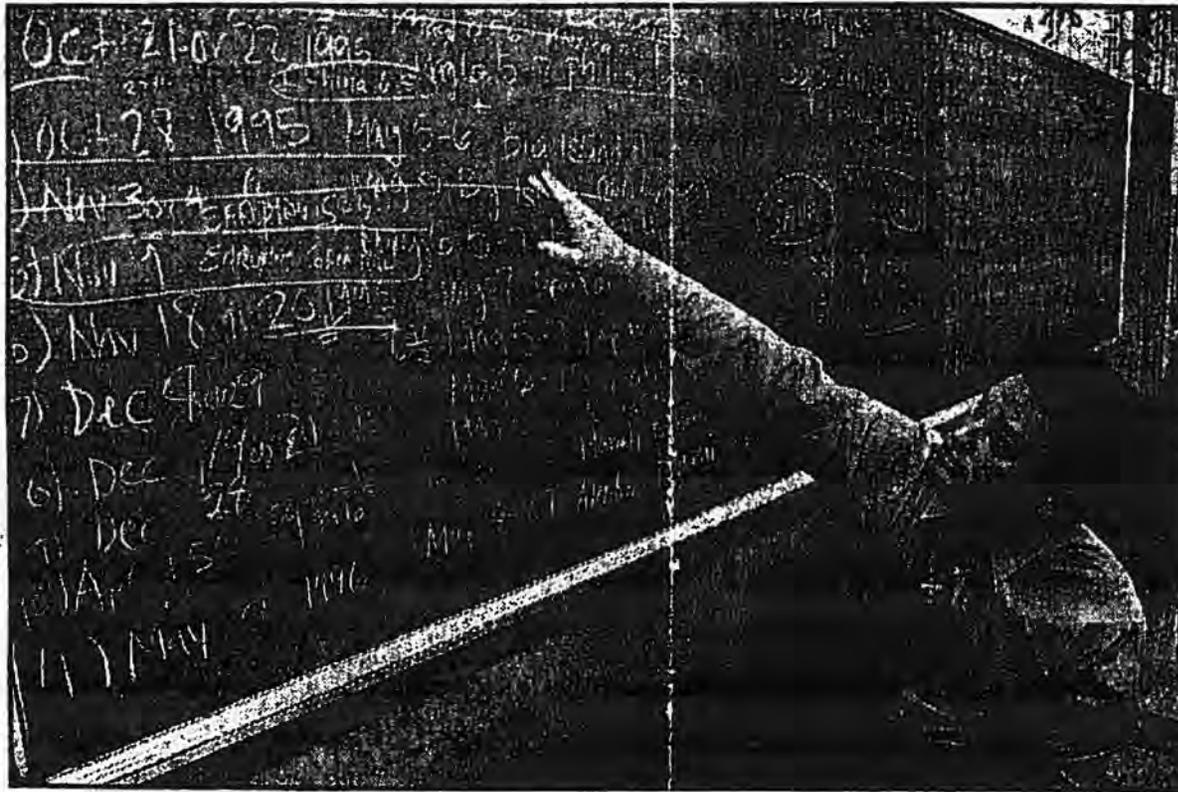
**Defendants.**

**I MICHAEL KUMUKAUOHA LEE declare as follows:**

- I am a current and long-standing member of KAHEA: The Hawaiian-  
Environmental Alliance. I became a member because I share KAHEA's**

1995

*Michael Lee*



Michael Lee, religion instructor at Damien Memorial High School, claims a 60 percent accuracy rate since he began predicting earthquakes last year. He looks to the sun and moon — not geologic science — for his unconventional clues.

BY CRAIG T. KOJIMA, Star-Bulletin

# He tracks the cosmos for earthquakes

BY JIM WITTY  
Star-Bulletin

**M**ICHAEL Lee doesn't mind flouting convention. A religion instructor at a parochial school, he melds ancient Hawaiian and Christian beliefs. He's a walking, talking catalog of "night marcher" stories and has been lauded for his "avant garde" teaching style.

So it's only mildly surprising when he tells you that he can predict earthquakes.

The key, says Lee, is in the cosmos, not in the core: Geologists look down for explanations; Lee looks up.

"They're looking into the Earth," said Lee, who has no formal geological training. "I'm looking into the sky."

Rather than relying solely on plate tectonics and the shifting of large blocks of rock to explain earthquakes, Lee contends that the sun and moon hold far greater sway than conventional science allows.

Under his model, the gravitational force exerted by the sun and moon causes the Earth's mantle to heat up and geological plates to slip. Eclipses or near-eclipses heighten the effect, he says.

Radical maybe. But not original. The ancient kahuna of Hawaii routinely predicted earthquakes and tsuna-

mi, said Lee, who also teaches Hawaiian history.

"The kahuna believed that when the moon turned a bright orange as in a lunar eclipse, it became the volcano goddess Pele," Lee said. "The kahuna used a sacred name of Pele known as Hina I Ke Ahi or Moon in the Flames, which described the astronomical event known as a lunar eclipse. Within a week or two of the sighting of the lunar eclipse, earthquakes and tidal waves were observed to occur."

Whether it's a flight of fancy or a legitimate technique grounded in the wisdom of the ancients remains to be seen. But Lee and many of his college-prep students at Damien Memorial High School believe.

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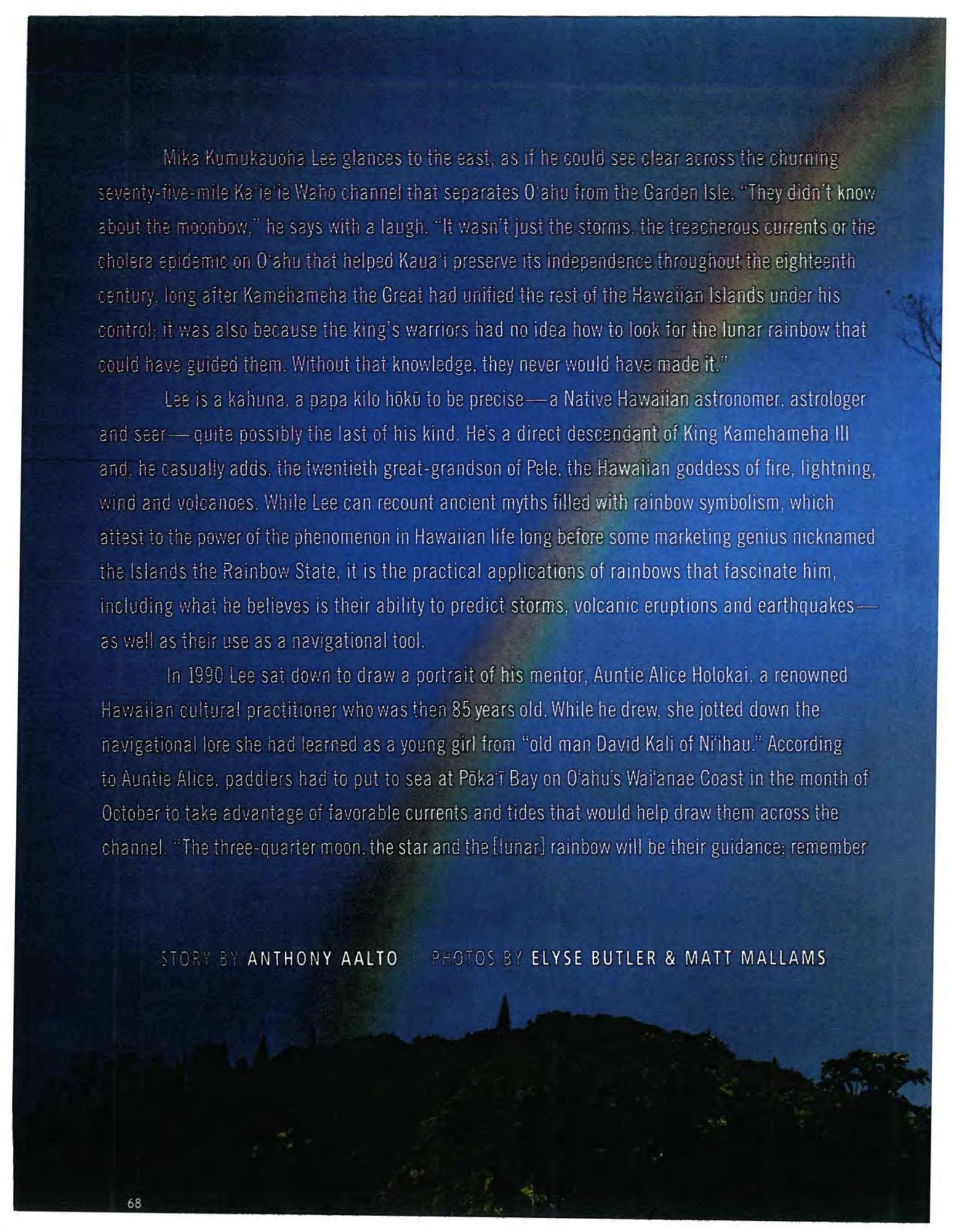
But Lee envisions a time when seismic activity can be forecast as accurately as the ocean tides. And reality files in the face of convention.



# WONDERS

A journey through the land of rainbows



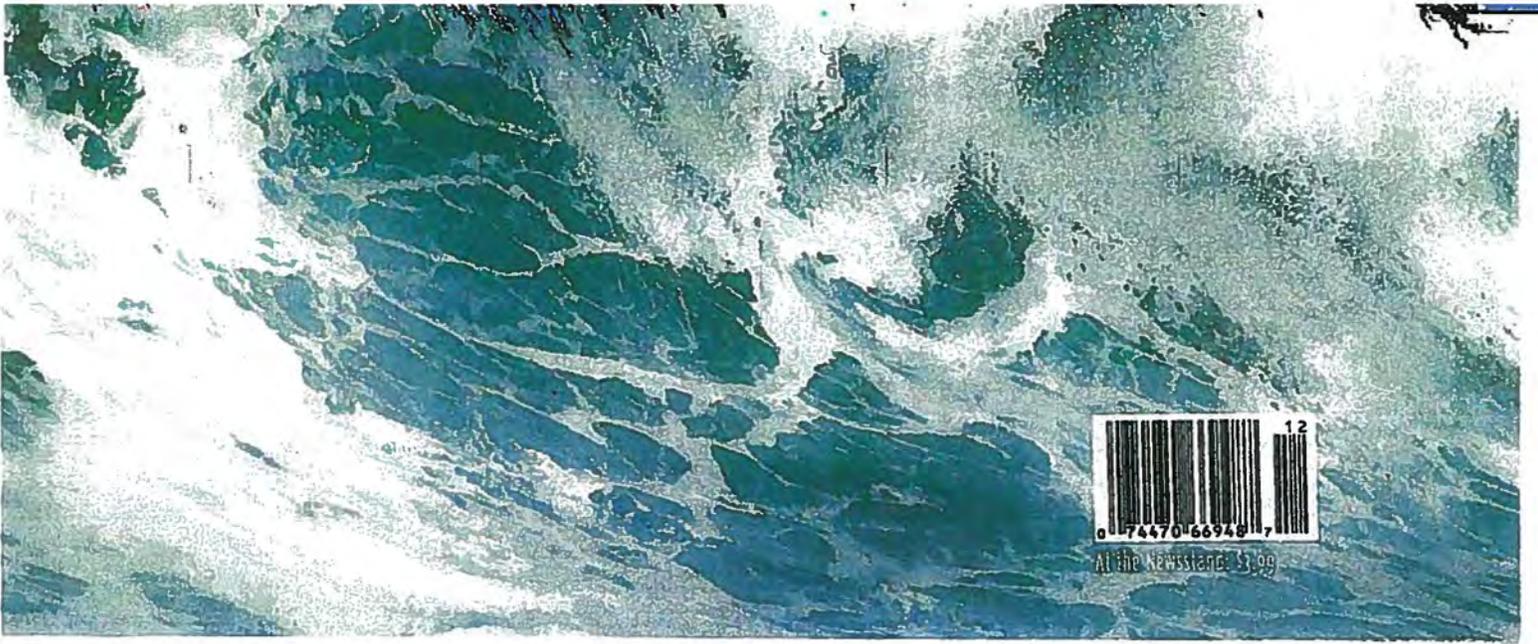


Mika Kumukauoha Lee glances to the east, as if he could see clear across the churning seventy-five-mile Ka'ie'ie Waho channel that separates O'ahu from the Garden Isle. "They didn't know about the moonbow," he says with a laugh. "It wasn't just the storms, the treacherous currents or the cholera epidemic on O'ahu that helped Kaua'i preserve its independence throughout the eighteenth century, long after Kamehameha the Great had unified the rest of the Hawaiian Islands under his control; it was also because the king's warriors had no idea how to look for the lunar rainbow that could have guided them. Without that knowledge, they never would have made it."

Lee is a kahuna, a papa kilo hōkū to be precise—a Native Hawaiian astronomer, astrologer and seer—quite possibly the last of his kind. He's a direct descendant of King Kamehameha III and, he casually adds, the twentieth great-grandson of Pele, the Hawaiian goddess of fire, lightning, wind and volcanoes. While Lee can recount ancient myths filled with rainbow symbolism, which attest to the power of the phenomenon in Hawaiian life long before some marketing genius nicknamed the Islands the Rainbow State, it is the practical applications of rainbows that fascinate him, including what he believes is their ability to predict storms, volcanic eruptions and earthquakes—as well as their use as a navigational tool.

In 1990 Lee sat down to draw a portrait of his mentor, Auntie Alice Holokai, a renowned Hawaiian cultural practitioner who was then 85 years old. While he drew, she jotted down the navigational lore she had learned as a young girl from "old man David Kali of Ni'ihau." According to Auntie Alice, paddlers had to put to sea at Pōka'i Bay on O'ahu's Wai'anae Coast in the month of October to take advantage of favorable currents and tides that would help draw them across the channel. "The three-quarter moon, the star and the [lunar] rainbow will be their guidance; remember

STORY BY ANTHONY AALTO | PHOTOS BY ELYSE BUTLER & MATT MALLAMS



At the Newsstand \$3.99

# Hana Hou!

THE MAGAZINE OF HAWAIIAN AIRLINES



Volume 15 Number 6  
December 2012 / January 2013



## Peak Performance

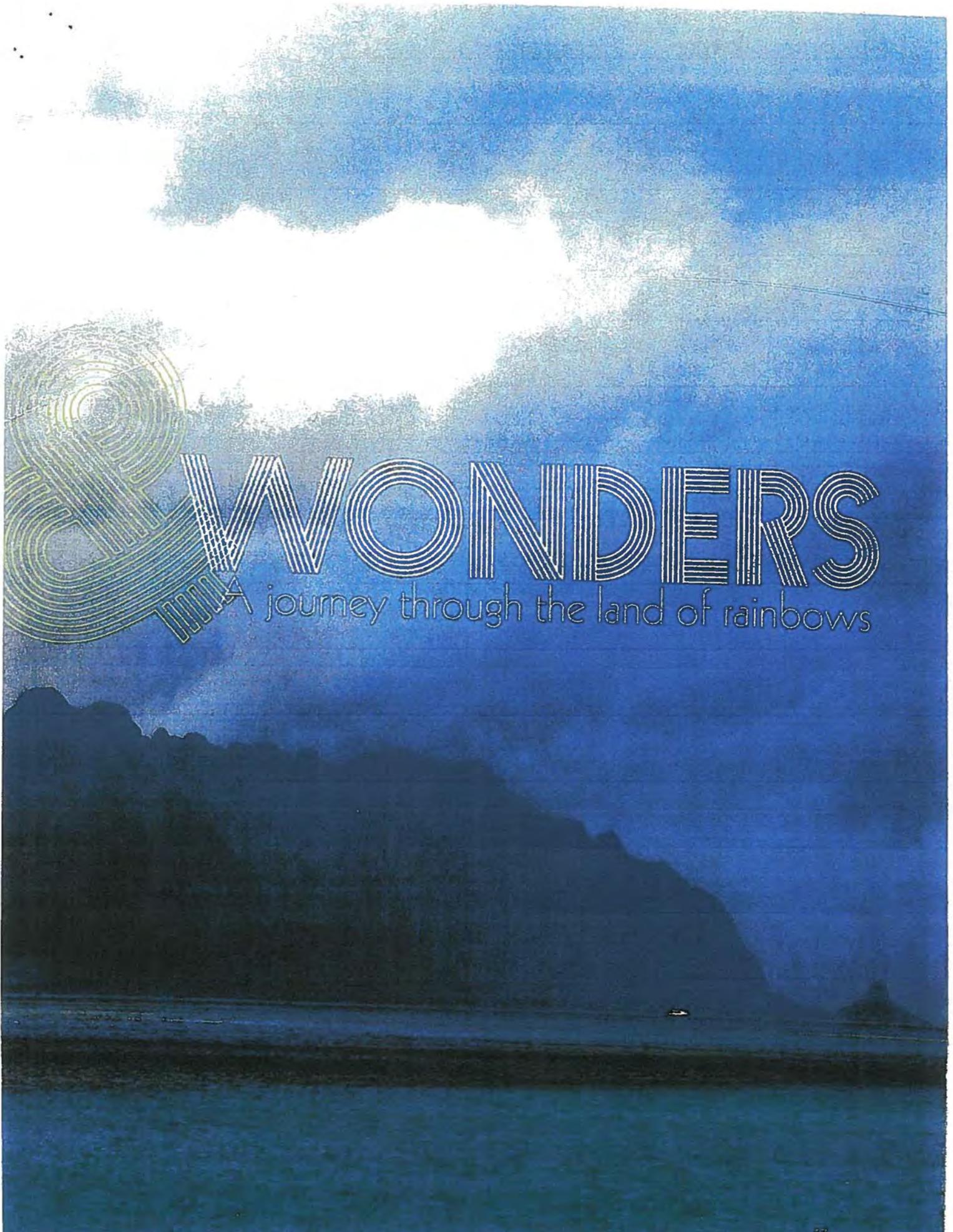
*The Vans Triple Crown of Surfing turns thirty*

## Seoul Cool

*Going beyond Gangnam*

## Go 'Bows

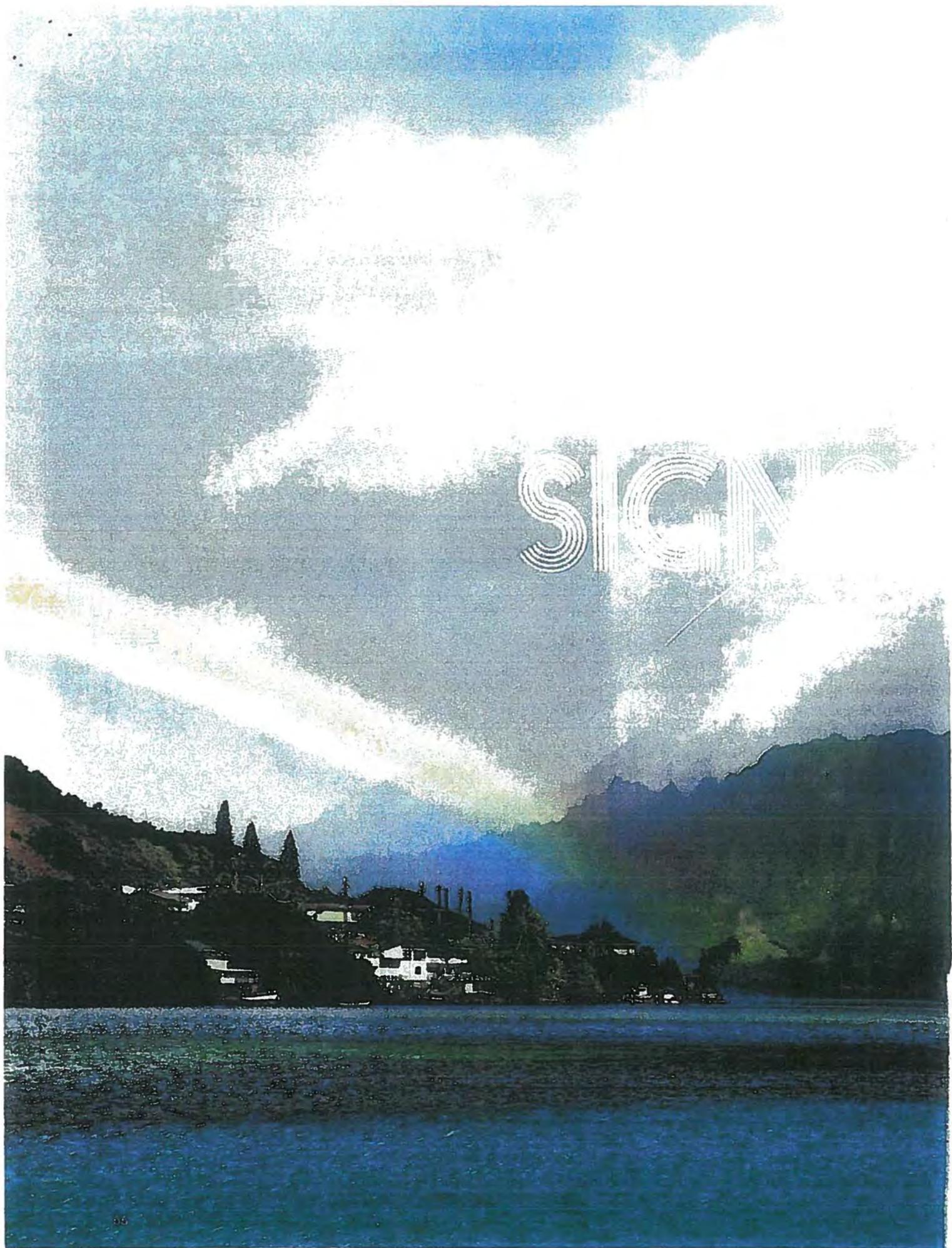
*Light and magic in Hawaii's bow season*

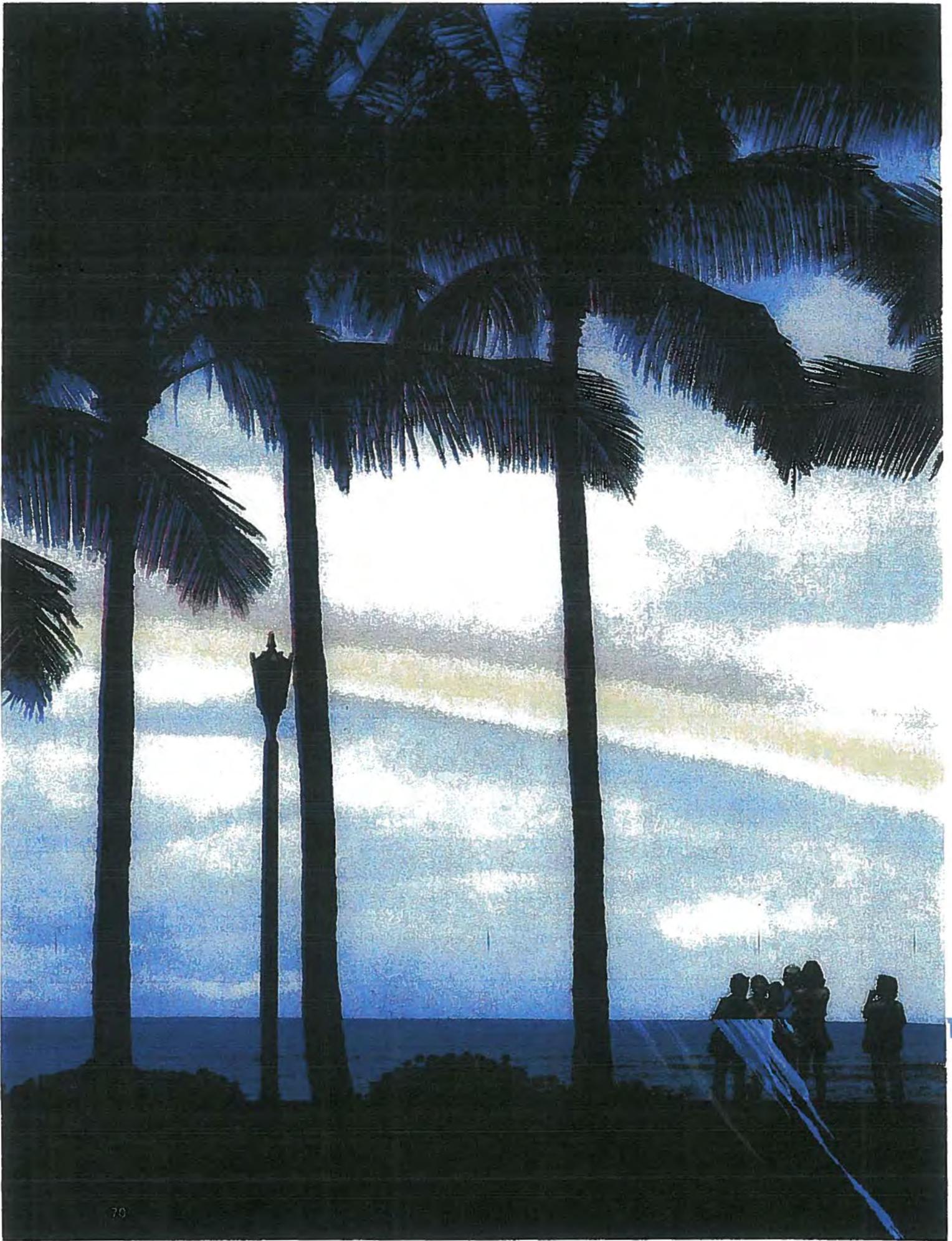


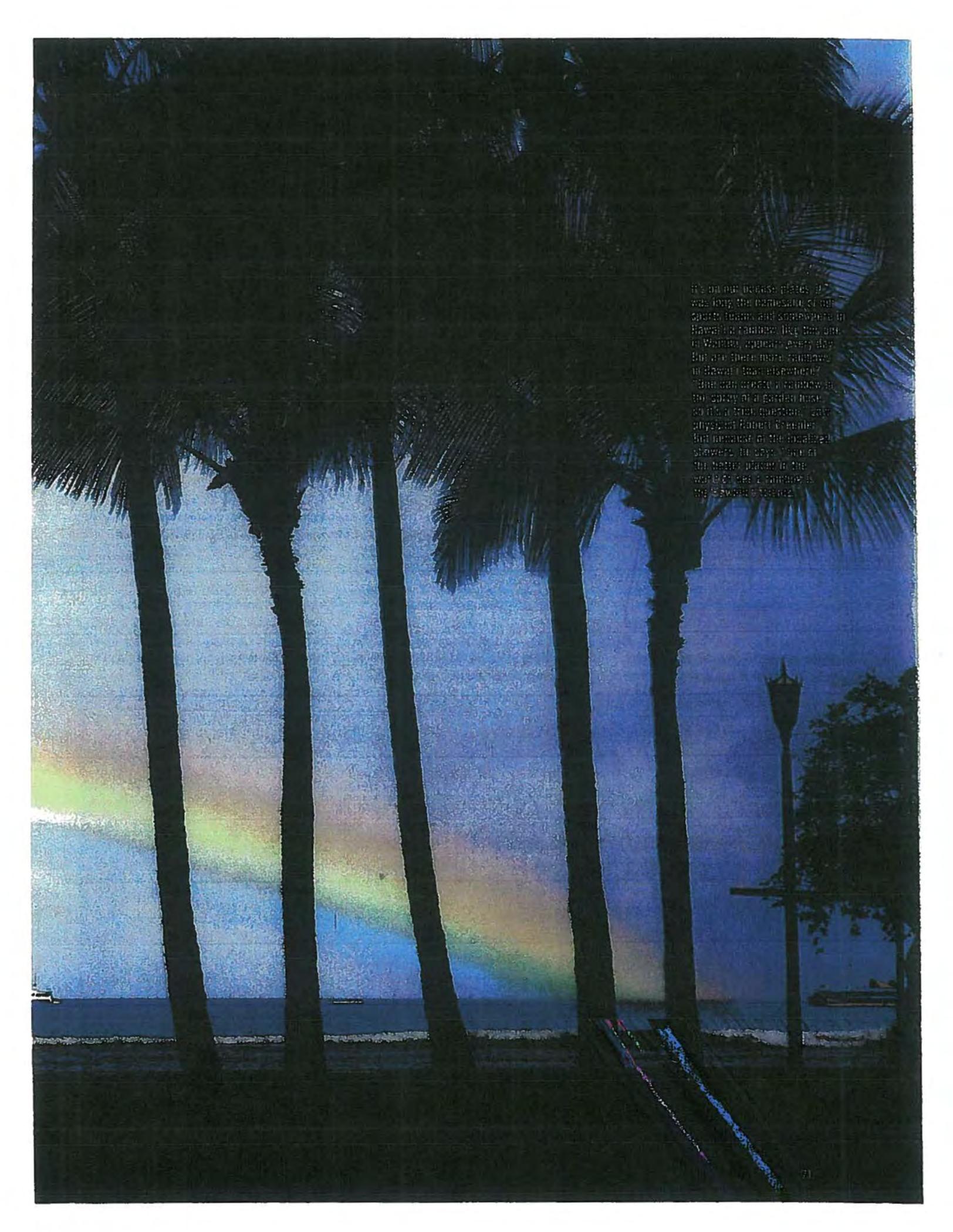
# WONDERS

A journey through the land of rainbows

# SIGNA





A photograph of a tropical beach at dusk. Several palm trees are silhouetted against a sky that is a mix of deep blue and purple. A faint rainbow is visible in the sky, appearing as a horizontal band of colors. In the foreground, a paved path leads towards the beach. A street lamp is visible on the right side of the path. The overall mood is serene and beautiful.

It's on our license plates. It was long the namesake of NFL sports teams and somewhere in Hawaii a rainbow like this one in Maui, appears every day. But are there more rainbows in Hawaii than elsewhere? "You can create a rainbow in the spray of a garden hose, so it's a trick question," says physicist Robert Greenler. But because of the localized showers, he says, "one of the best places in the world to see a rainbow is the Hawaiian Islands."

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OAHU (HNL) MAUI (OGG) KAUAI (LIH) HAWAII ISLAND (ITO AND KOA)

premonition of the death of a loved one. According to Mary Kawena Pukui in *Nānā I Ke Kūmū*, a classic anthology of Hawaiian culture, "Today, the majority of Hawaiians we know associate the rainbow with death or disaster."

But not always. Back in 1927, at Mō'ili'ili field at the mouth of Mānoa valley, just a few miles from where Kāhalaopuna's spirit is said to appear, the University of Hawai'i football team was locked in a scoreless battle with the Oregon Aggies when late in the game a rainbow appeared and UH immediately scored. Until then the team had gone by the rather uninspiring name of the Fighting Deans, but it was instantly rechristened the Rainbows. According to Dan Cisco, author of *Hawai'i Sports History, Facts & Statistics*, "Fans believed that Hawai'i would be undefeated if a rainbow appeared during their games." The name evolved to Rainbow Warriors, which all the UH men's teams went on to adopt until 2000, when athletic director Hugh Yoshida decided to drop the "rainbow" because of its prevalence as a symbol for homosexuality.

The significance of rainbows as portents of great events has led many to claim that the birth of Kamehameha the Great was heralded by the ultimate rainbow, Halley's Comet—the "White Rainbow" as one author calls it—which was visible in Hawai'i in November and December 1758. While papa kilo hōkū Lee believes the future king's birthday was indeed accompanied by portentous natural phenomena including rainbows, he pooh-poohs the historians who cavalierly dismiss the oral traditions that place Kamehameha's birth some twenty years before the comet.

Lee stands at the intersection of fact and myth, convinced that science has much to learn and will one day catch up with his Native Hawaiian belief system. Surprisingly the science of rainbows is still catching up with its subject. It was only last summer, Robert Greenler excitedly explains, that a German scientist named Michael Grossman was finally able to photograph and thus prove the existence of a so-called third-order rainbow whose location was first calculated by Edmond Halley more than 250 years ago. (In layman's language, if you can see one or two rainbows in the sky, several other "higher order" bows exist but are invisible to the naked eye. The third-order rainbow is a circle forty degrees radius around the sun.) A month later, an enthusiast named Michael Theusner photographed a fourth-order rainbow.

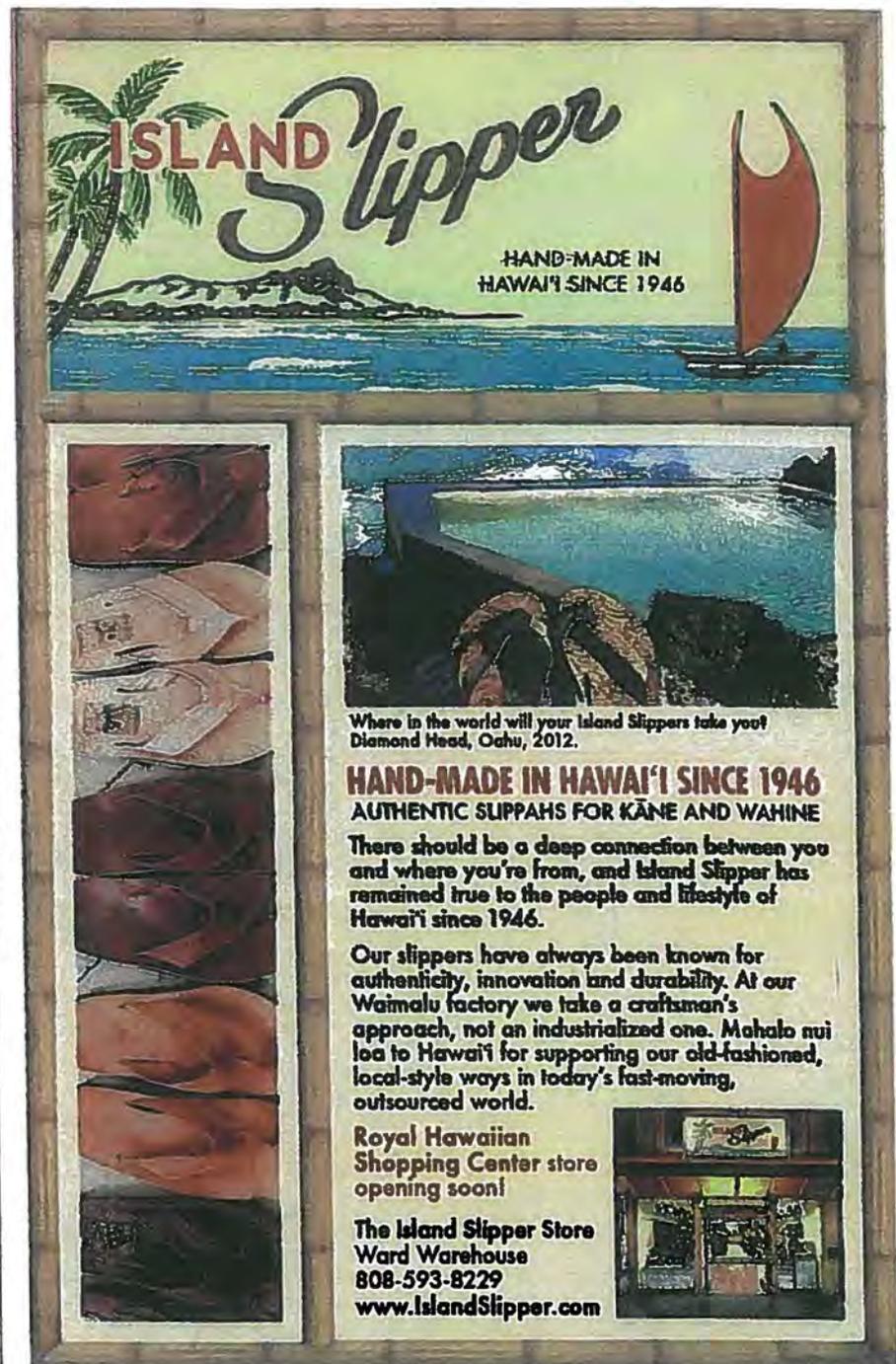


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noted similar rainbows in the crater in previous weeks, a phenomenon ancient Hawaiians traditionally interpreted to mean that "Madame Pele and her chiefs were returning to Halema'uma'u," indicating that an eruption would soon follow.

Similarly, Lee says a type of ground-hugging red rainbow, the punolu rainbow, predicts a coming earthquake. "I last saw one on March 10, 2011, at 7:05 a.m. over Barbers Point, looking southwest. I knew a massive earthquake was coming." Less than thirteen hours later, the Tohoku earthquake hit Japan, killing nearly twenty thousand people.

Gerard Fryer, a geophysicist at the Pacific Tsunami Warning Center, is less skeptical of such claims than one might expect. "I can believe the old Hawaiians knew things that we don't. They were very much more observant of natural phenomena than we are, with our modern lives spent all day glued to computer screens. In earlier times they had to be more observant. Their very survival depended on it." Fryer says there's a "grain of truth" to associations of strange lights and earthquakes. The seismological community has come to accept the occurrence of "earthquake lights" appearing shortly before or during major seismic events. There were reliable reports of lights at the time of the Kalapana earthquake in Hawai'i in 1975. Unexplained lights were also seen at the time of the 2007 earthquake in Peru; in L'Aquila, Italy in 2008; and Chile in 2010, among others.

Though the lights are typically described as having a white or bluish tinge, some have reported a broader spectrum of colors. To Fryer the problem is not so much accepting a phenomenon that the scientific community has yet to fully explain, it's that the phenomena are "too random to be predictive." He also notes that since the Earth has about ten earthquakes of greater than magnitude five every day, Lee's technique is "guaranteed to 'predict' a large number of earthquakes, regardless of whether there is actually a link between earthquakes and rainbows."

The papa kilo hōkū is not upset by the skepticism. "To followers of the ancient Hawaiian belief system, rainbows act as a bridge between the temporal and spiritual world," he says. "How mortals chose to use that bridge is up to them. They can be used by the gods to descend to Earth and by human souls to ascend to Iani ku'u ka'a—to heaven. Whether literally or metaphorically, rainbows have the power to lift the spirit and to fill your day with aloha." HH

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259

2 Employer's name, address, and ZIP code  
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**750 W. ST. FRANCIS DR.**  
**SANTA FE N.M. 87501**

3 Employer's identification number  
**95-0208776**

4 Employer's state I.D. number  
**0119-032800**

5 Statutory employee  Deceased  Pension plan  Legal rep.  842 emp.  Subtotal  Deferred compensation  Void

6 Allocated tips

7 Advance EIC payment

8 Employee's social security number

9 Federal income tax withheld  
**364.00**

10 Wages, tips, other compensation  
**2,672.13**

11 Social security tax withheld  
**200.67**

12 Employee's name, address, and ZIP code  
**MICHAEL LEE**  
 [REDACTED]

13 Social security wages  
**2,672.13**

14 Social security tips

16

16a Fringe benefits incl. in Box 10

17 State income tax  
**60.85**

18 State wages, tips, etc.  
**2,672.13**

19 Name of state  
**N.M.**

20 Local income tax

21 Local wages, tips, etc.

22 Name of locality

**(RE-ISSUE)**

Form **W-2 Wage and Tax Statement 1989**  
 This information is being furnished to the Internal Revenue Service

Copy C For EMPLOYEE'S RECORDS  
 Dept. of the Treasury—IRS

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 Notice, see back of Copy D.  
 OMB No 1545-0008

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1 Control number  
**50422 22222**

2 Employer's name, address, and ZIP code  
**MAUNA LANI BAY HOTEL, INC**  
**P.O. BOX 4000**  
**KAWAIIAE, HI 96743**

3 Employer's I.D. number  
**99-0212736**

4 Employer's state I.D. number  
**3004209**

5 Stat. employee  Deceased  Pension plan  Legal rep.  842 emp.  Subtotal  Deferred compensation  Void

6 Allocated tips

7 Advance EIC payment

8 Employee's social security number

9 Federal income tax withheld  
**2,118.50**

10 Wages, tips, other compensation  
**11,676.99**

11 Social security tax withheld  
**882.58**

12 Employee's name, address, and ZIP code  
**MICHAEL LEE**  
 [REDACTED]

13 Social security wages  
**11,751.99**

14 Social security tips

16 See instr. for forms W-2, W-2P,  
**401K 75.00**

16a Fringe benefits incl. in Box 10

15 Employee's address and ZIP code

17 State income tax  
**871.30**

18 State wages, tips, etc.  
**11,676.99**

19 Name of state  
**HAWAII**

20 Local income tax

21 Local wages, tips, etc.

22 Name of locality

Form **W-2 Wage and Tax Statement 1989**  
 95-1628101

Copy A For Social Security Administration  
 Department of the Treasury  
 Internal Revenue Service

---

**TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS**

---

ATTORNEYS AT LAW, A LAW CORPORATION  
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TELEPHONE (808) 961-0406 • FACSIMILE (808) 961-3815

LINCOLN S. T. ASHIDA  
DIRECT DIAL: (808) 961-0406  
E-MAIL: LSA@TORKILDSON.COM

**DOCUMENT TRANSMITTAL**

May 16, 2016

Via Facsimile (808) 587-0390 and email [dlnr@hawaii.gov](mailto:dlnr@hawaii.gov)

Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Re: Motion to Intervene Case No. BLNR-CC-16-002

We are sending you the following:

ORIG.	COPIES	DATE	DESCRIPTION
	<input checked="" type="checkbox"/>	5/16/2016	<b>PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S MOTION TO INTERVENE; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF SHADD KEAHI WARFIELD; DECLARATION OF PATRICK LE'O KAHAWAIOLA'A; DECLARATION OF WILLIAM H. BROWN; DECLARATION OF RICHARD HA, JR.; EXHIBITS "A" AND "B"; CERTIFICATE OF SERVICE</b>

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for necessary action

see remarks below

---

**REMARKS:**

We respectfully file the enclosed Motion to Intervene. In the event the Hearing Officer requires our participation at the meeting today at 12 noon, we will be available via telephone at (808) 961-0406. Thank you.

Very truly yours,



Newton J. Chu  
Lincoln S. T. Ashida

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law, A Law Corporation

NEWTON J. CHU                    6537-0  
LINCOLN S. T. ASHIDA        4478-0  
120 Pauahi Street, Suite 312  
Hilo, Hawai'i 96720

Attorneys for PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.

**BOARD OF LAND AND NATURAL RESOURCES**

**FOR THE STATE OF HAWAI'I**

IN THE MATTER OF

Case No. BLNR-CC-16-002

A Contested Case Hearing Re Conservation  
District Use Permit (CDUP) HA-3568 for the  
Thirty Meter Telescope at the Mauna Kea  
Science Reserve, Kaohe Mauka, Hamakua  
District, Island of Hawai'i, TMK (3) 4-4-  
015:009

**PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES,  
INC.'S MOTION TO INTERVENE;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF SHADD  
KEAHI WARFIELD; DECLARATION  
OF PATRICK LE'O KAHAWAIOLA'A;  
DECLARATION OF WILLIAM H.  
BROWN; DECLARATION OF  
RICHARD HA, JR.; EXHIBITS "A" AND  
"B"; CERTIFICATE OF SERVICE**

**PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S  
MOTION TO INTERVENE**

Comes Now Perpetuating Unique Educational Opportunities, Inc., a Hawai'i non-profit corporation ("PUEO"), by and through its undersigned counsel, and hereby respectfully moves the Board of Land and Natural Resources or the Hearings Officer for an order granting PUEO's request to intervene in the above-captioned contested case hearing. The Motion should be granted because:

- (1) PUEO is a Hawai`i non-profit corporation formed by Native Hawai`ians that support the pursuit of educational opportunities for children of Hawai`i. The building of the Thirty Meter Telescope atop Mauna Kea (“TMT Project”) will greatly enhance the educational opportunities for our children. PUEO was formed to, inter alia, share the interaction of Hawai`ian culture and science and to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration. More importantly, PUEO’s purposes include furthering “educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics. Its board members and beneficiaries include native Hawai`ians that reside in the Keaukaha-Pana`ewa Hawai`ian Homesteads located in Hilo, Hawai`i. PUEO’s board members include native Hawai`ians who seek knowledge and understanding and exercise customary and traditional native Hawai`ian rights on Mauna Kea.
- (2) Based on its unique standing, PUEO is entitled to mandatory intervention under Hawai`i Administrative Rules (“HAR”) § 13-1-31(b)(2) because it “will be so directly and immediately affected by the [contested case] that [its] interest in the proceeding is clearly distinguishable from that of the general public.” Id.
- (3) PUEO should alternatively be permitted to intervene under the permissive intervention provision of HAR § 13-1-31(c) because it clearly has a “substantial interest in the [contested case]” given its unique standing. PUEO’s purposes and native Hawai`ian beliefs are in support of seeking knowledge as exemplified by the TMT Project and for the co-existence of Hawai`ian culture and science atop Mauna Kea, and will also “substantially assist the board in its decision making”

because those purposes and beliefs are not currently represented by any of the existing parties to the contested case. Id.

This Motion is made pursuant to HAR § 13-1-31 and all other applicable rules of practice and procedure, and is based upon the attached Memorandum in Support of Motion, declarations, exhibits, and the entire record and files herein.

DATED: Hilo, Hawai'i, May 16, 2016

TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS,  
Attorneys at Law, A Law Corporation

A handwritten signature in black ink, appearing to read 'N. Chu', written over a horizontal line.

NEWTON J. CHU  
LINCOLN S. T. ASHIDA  
Attorneys for PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES, INC.

## MEMORANDUM IN SUPPORT OF MOTION

Perpetuating Educational Opportunities, Inc., a Hawai'i non-profit corporation ("PUEO"), by and through its undersigned counsel, hereby submits its Memorandum in Support of its Motion to Intervene. The Motion should be granted because:

- (1) PUEO is a Hawai'i non-profit corporation formed by Native Hawai'ians that support the pursuit of educational opportunities for children of Hawai'i. The building of the Thirty Meter Telescope atop Mauna Kea ("TMT Project") will greatly enhance the educational opportunities for our children. PUEO was formed to, inter alia, share the interaction of Hawai'ian culture and science and to research and educate the public on the interaction of Hawai'ian culture and science and to inspire exploration. More importantly, PUEO's purposes include furthering "educational opportunities for the children of Hawai'i in the fields of science, technology, engineering and mathematics. Its board members and beneficiaries include native Hawai'ians that reside in the Keaukaha-Pana'ewa Hawai'ian Homesteads located in Hilo, Hawai'i. PUEO's board members include native Hawai'ians who seek knowledge and understanding and exercise customary and traditional native Hawai'ian rights on Mauna Kea.
- (2) Based on its unique standing, PUEO is entitled to mandatory intervention under Hawai'i Administrative Rules ("HAR") § 13-1-31(b)(2) because it "will be so directly and immediately affected by the [contested case] that [its] interest in the proceeding is clearly distinguishable from that of the general public." Id.
- (3) PUEO should alternatively be permitted to intervene under the permissive intervention provision of HAR § 13-1-31(c) because it clearly has a "substantial

interest in the [contested case]” given its unique standing. PUEO’s purposes and native Hawai`ian beliefs are in support of the TMT Project and for the co-existence of Hawai`ian culture and science atop Mauna Kea, and will also “substantially assist the board in its decision making” because those purposes and beliefs are not currently represented by any of the existing parties to the contested case. Id.

#### **I. RELEVANT BACKGROUND**

PUEO is a Hawai`i non-profit corporation formed by Native Hawai`ians and organized under Hawai`i Revised Statutes Chapter 414D. See PUEO’s articles of incorporation, attached as Exhibit “A”. PUEO was formed: (a) to share the interaction of Hawai`ian culture and science; (b) to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration; and (c) to further educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics. See id.

PUEO’s board members and beneficiaries include native Hawai`ians that reside in the Keaukaha-Pane`ewa Hawai`ian Homestead located in Hilo, Hawai`i. See PUEO’s list of Directors and Officers attached as Exhibit “B”. PUEO’s board members also include native Hawai`ians who seek knowledge and exercise customary and traditional native Hawai`ian rights on Mauna Kea. See e.g. Declarations of Shadd Keahi Warfield, Patrick Le`o Kahaiwaola`a, William H. Brown, and Richard Ha, Jr. For example, Mr. Shadd Keahi Warfield is a cultural practitioner from the lineage of ali`i (chiefs) and maka`ainana (commoners) who once oversaw the leadership and stewardship in caring for the people and places of this land. His lineal descendants can be traced to Kealakekua, South Kona, Punalu`u, Ka`u, Upolu, North Kohala, Kaupo and even Maui and Nu`u of the South Pacific. Mr. Warfield and his family, as

descendants of this land have always accessed Mauna Kea to visit their heritage sites and to exercise other customary and traditional native Hawai`ian rights. See Declaration of Shadd Keahi Warfied at ¶5. Additionally, please see the attached declarations of Patrick Le`o Kahawaiola`a, William H. Brown, and Richard Ha, Jr., for further facts supporting this Motion.

## II. DISCUSSION

HAR § 13-1-31 provides for both mandatory and permissive intervention. PUEO is entitled to mandatory intervention in the contested case under HAR § 13-1-31(b)(2). In the alternative, PUEO should be entitled to intervene in the contested case under the permissive intervention provision of HAR § 13-1-31(c).

### 1. **PUEO is entitled to mandatory intervention in the contested case under HAR § 13-1-31(b)(2).**

HAR § 13-1-31(b)(2) provides that “[a]ll persons [who] . . . can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely action.” Id. at § 13-1-31(b)(2). PUEO is a person for purposes of HAR § 13-1-31. See id. at § 13-1-2 (defining “person” to include “as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies”).

There are no Hawai`i appellate court cases analyzing HAR § 13-1-31. However, the Hawai`i Intermediate Court of Appeals (“ICA”) did consider the right to mandatory intervention in a contested case in a related context in Public Access Shoreline Hawai`i (PASH) v. Hawai`i County Planning Commission, 79 Hawai`i 246, 900 P.2d 1313 (App. 1993) (PASH I). In PASH I, the ICA considered on appeal the Commission’s denial of PASH’s request for a contested case concerning an application for a Special Management Area Use Permit (“SMAP”). The ICA

focused on Commission Rule 4-2(6)(B) to determine PASH's<sup>1</sup> ability to intervene and request a contested case. Commission Rule 4-2(6)(B) defined a "Party" to include "[a]ny person . . . who can demonstrate that that person will be so directly and immediately affected by the Commission's decision that that person's interest in the proceedings is clearly distinguishable from that of the general public." *Id.* at 250 n. 6, 900 P.2d at 1317 n. 6. PASH submitted evidence that at least some of its native Hawai'ian members exercised their customary and traditional rights in the area subject to the SMAP to argue that its interest in the contested case was clearly distinguishable from the general public. The ICA held that such evidence was sufficient to entitle PASH to intervene and request a contested case. *See id.* at 252, 900 P.2d at 1319 (holding that "a native Hawai'ian who has exercised such rights as were customarily and traditionally exercised for subsistence, cultural, and religious purposes on undeveloped lands of an ahupua'a has an interest in a proceeding for the approval of an SMAP for the development of lands within the ahupua'a which are clearly distinguishable from that of the general public"); *id.* at 253, 900 P.2d at 1320 ("[T]o be entitled to intervention, PASH was required to show that the gathering of opae was customarily and traditionally practiced on the Kohanaiki land and that some of PASH's native Hawai'ian members exercised those rights").

In reaching its holding, the ICA also explained:

[T]he rights of native Hawai'ians are a matter of great public concern in Hawai'i. This court has repeatedly demonstrated its fundamental policy that Hawai'i's state courts should provide a forum for cases raising issues of broad public interest, and **that the judicially imposed standing barriers should be lowered when the "needs of justice" would be best served by allowing a plaintiff to bring claims before the court.**

---

<sup>1</sup> PASH was an unincorporated community organization whose purpose was to preserve and protect public access to beaches and shorelines. *See id.* at 249, 900 P.2d at 1316.

PASH I, 79 Hawai'i at 253, 900 P.2d at 1320 (quoting Pele Defense Fund v. Paty, 73 Haw. 578, 614-15, 837 P.2d 1247, 1268-69 (1992)) (emphasis added); see also Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 79 Hawai'i 425, 434, 903 P.2d 1246, 1255 (1995) (affirming the ICA's assessment of PASH's standing in PASH I); Ka Pa'akai O Ka'aina v. Land Use Comm'n, Hawai'i, 94 Hawai'i 31, 42, 7 P.3d 1068, 1079 (2000).<sup>2</sup>

PUEO's board members are native Hawai'ians from the Keaukaha-Pane'ewa Hawai'ian Homesteads located in Hilo, Hawai'i. PUEO's board members and beneficiaries exercise customary and traditional native Hawai'ian rights on Mauna Kea. See Relevant Background Section, supra. Consequently, like PASH in PASH I, PUEO is entitled to intervene in the contested case because its interests are clearly distinguishable from the general public. The Motion should therefore be granted and PUEO is entitled to mandatory intervention in the contested case under HAR § 13-1-31(b)(2).

**2. PUEO should be permitted to intervene under the permissive intervention of HAR § 13-1-31(c).**

HAR § 13-1-31(c) provides that “[o]ther persons who can show a substantial interest in the matter may be admitted as parties. The board may approve such requests if it finds that the requestor’s participation will substantially assist the board in its decision making.” Id. Conversely, the board may deny a request to intervene when it appears that: (a) The position of the requestor is substantially the same as the position of a party already admitted to the proceedings; and (b) The admission of additional parties will not add substantially new relevant information or the addition will make the proceedings inefficient and unmanageable. See id.

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<sup>2</sup> Standing requirements are also relaxed where the interests at stake involve environmental concerns. See id. at 42, 7 P.3d at 1079 (noting that where the interests at stake involve environmental concerns, the Hawai'i Supreme Court has “not been inclined to foreclose challenges to administrative determinations through restrictive applications of standing requirements”).

PUEO clearly has a “substantial interest” in the contested case. Indeed, it is a native Hawai`ian organization whose board members exercise their customary and traditional native Hawai`ian rights on Mauna Kea. It was also formed for the specific purpose of sharing the interaction of Hawai`ian culture and science and to inspire exploration. PUEO’s native Hawai`ian beliefs in support of the TMT Project and for the co-existence of Hawai`ian culture and science atop Mauna Kea will also “substantially assist the board in its decision making” and are not currently represented by any of the existing parties to the contested case.

Based on the foregoing, PUEO should alternatively be permitted to intervene in the contested case under HAR § 13-1-31(c). The Motion should be granted.

### **III. CONCLUSION**

Based on the foregoing, PUEO respectfully requests that its Motion to Intervene be granted under HAR § 13-1-31(b)(2) and/or HAR § 13-1-31(c).

DATED: Hilo, Hawai`i, May 16, 2016

TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS,  
Attorneys at Law, A Law Corporation



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NEWTON J. CHU  
LINCOLN S. T. ASHIDA  
Attorneys for PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES, INC.

DECLARATION OF SHADD KEAHI WARFIELD

STATE OF HAWAII                    )  
  ) SS  
COUNTY OF HAWAII                )

I, Shadd Keahi Warfield, declare under penalty of law that the following is true and correct:

I am a citizen of the United States of America. My mailing address is 53 Desha Avenue and my telephone number is 808-895-8666.

I am a native Hawaiian born and raised in the Hawaiian Homestead of Keaukaha, in Hilo, Hawai'i. Since the time of my birth, I have been exposed to many traditional customs of the Hawaiian culture as well as Western culture. As a child, I was spoken to in the Hawaiian language by my grandmother, and English by other members of our family. It was often that while growing up, our native Hawaiian practices within our family combined with the Western religious practices of Christianity, they were very much in balance in everything that we did as a 'ohana (family).

My family has a very long genealogical connection to many ali'i (chiefs) and maka'āinana (commoners) alike who once oversaw the leadership and stewardship in caring for the people and places of this sacred 'āina (land). Our lineal decent can be traced to Kealakekua, South Kona; Punalu'u, Ka'u; 'Upolu, North Kohala; Kaupō, Maui and Nu'u of the South Pacific region.

The construction of telescopes on Mauna Kea utilized for viewing the celestial heavens and conducting valid research into the many galaxies that exist beyond our planet has never diminished my ability to be a native Hawaiian. It has not made any of our family cultural practices difficult, as a matter of fact, the infrastructure i.e. roads,

restrooms, clearing of snow have provided the necessary means for learning more about my native Hawaiian culture on site with my grandmother before she passed in 1990. In 1985, at the age of five years old, I recall a family trip to the summit with my whole family in which grandma shared stories of where the ancient adze quarry was located and visited the ancient lake Waiiau, where Queen 'Emmalani once ascended to. This period in my life would have never been made possible without the infrastructure created by the use of these telescopes on Mauna Kea. It provided a once in a lifetime opportunity with my grandmother on the summit. It was through this experience that the importance of revitalizing native Hawaiian culture and language grew within me and knowledge of the cosmos grew within me.

My father also shares a vast knowledge of the many labyrinths of ancient trails and roads that surround Mauna Kea as well as place names that I have become very familiar to. Having frequented the mountain regions for hunting of wild boar, pheasant, and other wildlife on a weekly basis as a child, a deep respect for its environment and knowledge of climate change has been quite evident. In all of our years traversing the many regions of Mauna Kea, never has it been that we would find any individuals praying and worshipping as we do today.

It is through this background that I support the construction of TMT on Mauna Kea not only to further the search of knowledge for mankind, but more importantly to further the educational advancement opportunities and revitalization efforts of native Hawaiian culture and language to all kama'āina (local) and malihini (foreigner) alike who utilize our island resources. I truly believe that the Hawaiian traditional customs and unique place-based schools of learning can combine with the technological advances

being created here in the twenty-first century and beyond. Mauna Kea will be the epitome of traditional and technological advancement into the future.

If asked to testify I will testify that the foregoing declaration is true and correct.

I, Shadd Keahi Warfield, declare under penalty of law that the foregoing is true and correct.

Dated: Hilo, Hawaii May 6, 2016.

A handwritten signature in cursive script, reading "S. K. Warfield", is written over a horizontal line.



5. Upon the death of my dad in 1979 I transferred to the Honolulu Post Office of the USPS from Los Angeles. A year later I sought and was granted a transfer to my hometown of Hilo and ended my postal career in 1996 at the Hilo Post office after 32 years of Federal service.
6. The presence of the telescopes has not diminished my ability to practice my culture if I desire to do so, to worship, or to pay respects to our ancestral spirit of Poliahu, wahine kapu. In fact, I've found that the telescopes development has made it easier to continue our cultural practices at the summit area of Mauna Kea, however it's our gathering rights which appears to be a challenged by the DLNR. Before the construction of the summit road, our na kupuna walked or rode horses and or needed a 4wheeled vehicle to get to the summit but now, because of the telescopes, they maintain the road so that we can drive to the top. They even keep it open in the winter after their snow plows clear the roadway for the safety of all the people. In all my years since my return to Hawaii over 30 years ago and visiting Mauna Kea, no one has interfered with or disrespected my cultural practices, however it was my gathering rights called into question, I do feel that one's right to practice one's culture needs to be balanced with other things, such as safety on Mauna Kea—for example when the Mauna Kea access road needs to be temporarily closed because of the snow.
7. As a young child fishing in Keaukaha, I learned the old ways of the lawai'a (fisherman) and was taught to respect the knowledge of all things dealing with the moon phases, the stars, winds, the waves which if followed as taught would bring successes in the art of gathering from the kaimoana. Later, when the voyaging canoe Hokule'a and Hikianalia left for the South Pacific from Palekai in Keaukaha for the Malama Honua Voyage around the world, my hunger for knowledge of using celestial navigation once used by our wa kahiko (ancestors) only grew more. I began to reflect on my time in the Navy and saw the benefits of the proper uses of the asmuth in dealing with the winds, seas, the moon phases, and how important the study of the heavens was to the ancient Hawaiians and how it may translate using the technologies available with the Astronomy and the long range educational benefits for our young and for those yet to be born.
8. Today we have cultural practitioners who use chainsaws to begin work on a koa log to create a waa for use by our community and its children, but because the practitioner used a chainsaw would that now mean the practitioner is WRONG? Another example is a well respected cultural practitioner who uses grinders to begin to shape his versions of the kui pohaku for pounding the kalo to make poi. Is he WRONG? Is the family mahiai to supplement his need to provides poi grown from his mala at home and after harvesting the kalo, steams it in a pressure cooker and turns it into poi by using a juicer and or food processor WRONG? In Waipio the Valley of the Kings where the traditions of raising kalo, watercress, gathering wi, opae and oopu less traditional because the farmers there will use a motorized tiller, but continue to do the work of our ancestors by providing food for our families and lastly in the last fishing village of Milolii is it now WRONG for our lawai'a to use a motorized fiberglass fishing boat with an outboard motor to catch opelu and use a kiln to dry the same fish WRONG for using the technology available? This

does not make the kalai waa, the kui pohaku, the mahiai and the lawai'a and the work they do using the latest tools at their disposal any less of a Hawaiian or the Lifestyle they lead any less traditional?

9. The telescopes on Mauna Kea represents mankind's most advanced search for knowledge and understanding, as learning has been and will continue to be an important part of our cultural practices. In a way the study of Astronomy and the look into the universe using these new telescopes is like searching for the ancestral origins of the universe. How is this any different from us as native Hawaiians searching for own mookuauhau in things both natural and spiritual?
  10. I mean no disrespect for anyone's religious beliefs and cultural practices, but everybody has their own way of worshipping, and everyone is free to have and practice their own religious beliefs so long as they don't hurt anyone. But I don't agree that we should oppose things on Mauna Kea just because it's a modern thing, as Hawaiians have always been a creative and adaptive people.
  11. I am proud to support yet another tool that will only add to our search for knowledge, and I am proud that we will have the opportunity to have this project built, fair compensation paid to the beneficiaries and if necessary obsolete telescopes decommissioned with all this done in the best place in the world—right here on Mauna Kea.
  12. If asked to testify I will testify that the foregoing declaration is true and correct.
- I, Patrick Le'o Kahawaiola'a, declare under penalty of law that the foregoing is true and correct.

DATED: Hilo, Hawaii May 10, 2016.

*Xxx Signiture on file Patrick Le'o Kahawaiola'a*  
PATRICK LE'O KAHAWAIOLA'A



ancestral origins of the universe. How is this any different from us as native Hawaiians searching for own roots in things both natural and spiritual?

6. I mean no disrespect for anyone's religious beliefs and cultural practices, but everybody has their own way of worshipping, and everyone is free to have and practice their own religious beliefs so long as they don't hurt anyone. But I don't agree that we should oppose things like the TMT on Maunakea just because it's a modern thing, as Hawaiians have always been a creative and adaptive people.
7. In my own backyard, we practice ancient husbandries to grow mea'ai (food) to include modern techniques, knowledge, equipments to grow the necessary perishable items for our family and community, but for the most part, we still consider this to be traditional and cultural as it allows us to survive and follow the ways and lifestyles of our ancestors. And along the Hilo and Puna coastline, where we the Lawai'a (fishermen) continue this day to traverse the rocky coast, looking for edible sustenance like Opihi, Limukohu, and A'ama, diving for Wana and Pipi'i, spearing Manini, Kole, Weke, and Kumu but most of all throwing our traditional net on a bounty of I'a schools is a technique of old but modern material usage to construct the net, the diving equipment, and the tool to collect mea'ai on the rocky coast. This does not make fishing along the Hilo and Puna Coast any less traditional or the lifestyle any less Hawaiian, as we must learn to use the tools that God has given us.
8. I am proud to support yet another tool that will only add to our search for knowledge, and I am proud that we, as Hawaiians, will have the opportunity to have this project built on the best place in the world—right here on Maunakea.
9. I will reserve the right to testify that the foregoing declaration is true and correct.

I, WILLIAM H BROWN, declare under penalty of law of the land that the foregoing is true and correct.

DATED: Hilo, Hawaii MAY 11, 2016.



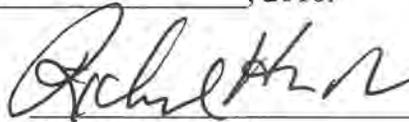
\_\_\_\_\_  
[NAME]



9. Influenced by my parents, Uncle Sonny and my experiences in life, I associate myself with the maka'ainana.
10. When I was first associated with the Thirty Meter Telescope, I felt uneasy. I had volunteered to be on the TMT subcommittee, but it wasn't until I met Henry Yang, the new president of the TMT corp., did I know that I had met a person who was truly concerned about the maka'ainana. I describe it short hand by saying; " I can do business with Henry on a handshake".
11. It was because Henry met with the people on the ground that the THINK \$1 million annual was founded. Henry realized that the subject people on all sides of the issue could agree on, was education.
12. The folks on the ground agree that not everyone can be astronomers, they realize that all jobs are important to the folks trying to raise their families. It's important for jobs to be available so young folk do not have to leave Hawaii to raise their families.
13. Hawaii county has the lowest median family income, the highest rate of homelessness and highest suicide of all the counties. Education gives the best correlation to family income. The more education the higher the family income.
14. The TMT has agreed to give the Institute of Astronomy 7.5% of the viewing time. UH Hilo could split the viewing time in half and convert that to viewing through all the telescopes under the control of the IFA. That would be an unbelievable benefit to Hawaii Island. No where in the world would students have that opportunity.
15. If the TMT leaves, that opportunity, the THINK education opportunity, the community outreach opportunity all leaves.
16. As a Hawaiian, I believe that we should share this blessing.
17. It's entirely In keeping with what I learned from Uncle Sonny Kamahele. Use common sense, be practical, share with each other and utilize the science of the day.
18. If asked to testify I will testify that the foregoing declaration is true and correct.

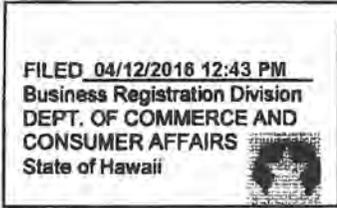
I, Richard Ha Jr., declare under penalty of law that the foregoing is true and correct.

DATED: Hilo, Hawaii           MAY 16 2016          , 2016.



\_\_\_\_\_  
RICHARD HA JR.

# EXHIBIT A



**ARTICLES OF INCORPORATION**  
 (Section 414D-32, Hawai'i Revised Statutes)

The undersigned, acting as the incorporator of a corporation to be formed pursuant to the provisions of the Hawai'i Nonprofit Corporation Act, Hawai'i Revised Statutes Chapter 414D, does hereby adopt the following articles of incorporation:

**ARTICLE I**

**CORPORATE NAME**

The name of the corporation is:

Perpetuating Unique Educational Opportunities, Inc.

**ARTICLE II**

**MAILING ADDRESS**

The mailing address of the corporation's initial principal office is:

120 Pauahi Street, Suite 312  
 Hilo, HI 96720

**ARTICLE III**

**REGISTERED AGENT AND AGENT ADDRESS**

BJM

The name of the corporation's initial registered agent and the street address of the place of business of the person in the State of Hawai'i to which service of process and other notice and documents being served on or sent to the corporation may be delivered is:

Newton J. Chu  
 120 Pauahi Street, Suite 312  
 Hilo, HI 96720

ARTICLE IV  
INCORPORATOR

The name and address of each incorporator is:

Richard Ha  
421 Lama Street  
Hilo, HI 96720

ARTICLE V  
MEMBERS

The corporation shall have no members.

ARTICLE VI  
CORPORATE PURPOSES AND POWERS

The purposes for which the corporation is formed, and the business and objects to be carried on and promoted by it are as follows:

- (a) To share the interaction of Hawaiian culture and science.
- (b) To research and educate the public on the interaction of Hawaiian culture and science and to inspire exploration.
- (c) To further educational opportunities for the children of Hawai'i in the fields of science, technology, engineering and mathematics.
- (d) To be organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding section of any future Internal Revenue law.

The corporation shall have all powers, rights, privileges and immunities permitted or provided to nonprofit corporations under Chapter 414D, Hawai'i Revised Statutes, as amended, and all other applicable laws.

ARTICLE VII

LIMITATION ON CORPORATE ACTIVITIES

Notwithstanding any provision to the contrary herein contained, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

ARTICLE VIII

NONPROFIT STATUS

The corporation is not organized for profit and will not issue any stock and will pay no dividends. No part of the assets, income or earnings of the corporation shall inure to the benefit of, or be distributable to, its directors or officers. Notwithstanding the foregoing, the corporation shall be authorized and empowered to pay reasonable compensation for services rendered, to make reimbursements for expenses actually incurred in service to the corporation and to make payments and distributions in furtherance of the purposes of the corporation.

ARTICLE IX

LIMITATION OF LIABILITY

(1) No director of the corporation shall be personally liable to the corporation for any monetary loss or damage suffered by it on account of a breach of any of the director's duties to the corporation; provided, however, that such director's liability shall not be limited for: (a) any breach of the director's duty of loyalty to the corporation; (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) any transaction from which the director derived an improper personal economic benefit; or (d) any violations of the Hawai'i Nonprofit Corporations Act relating to director conflicts of interest, loans to or guaranties for directors and officers, or director liability for unlawful distributions.

(2) No person who serves as a director or officer of the corporation without remuneration or expectation of remuneration shall be liable for damage, injury or loss caused by or resulting from the director or officer's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the director or officer was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include payment or reimbursement of reasonable expenses or the provision of indemnification or insurance for actions as a director or officer.

(3) The limitation of liability provided in subsections (1) and (2) of this Article shall be cumulative and not exclusive, and shall be independent of and in addition to each other and any other limitation of liability provided by law or in any other agreement. Any repeal, amendment or modification of this Article shall not affect the limitation of liability provided in this Article for any acts or omissions occurring prior to such repeal, amendment or modification. The limitation of liability provided for in this Article shall continue as to any person who has ceased to be a director or officer of the corporation and shall inure to the benefit of such person's heirs, personal representatives, executors and administrators.

ARTICLE X

DISSOLUTION

If the corporation shall cease to exist or shall be dissolved, all property and assets of the corporation of every kind, after payment, or making provision for the payment, of its just debts and liabilities shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or any successor provision thereto) or to one or more corporations, associations or other organizations that are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or any successor provision thereto).

The undersigned hereby certifies that the undersigned has read the foregoing statements and that the same are true and correct.

IN WITNESS WHEREOF, the undersigned has executed these presents this 31 day of March, 2016.

  
Richard Ha

BJM

# **EXHIBIT B**

UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF  
PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.

The undersigned, constituting the entire Board of Directors of PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC., a Hawaii nonprofit corporation (the "Corporation"), do hereby consent to and adopt the following resolutions in writing in lieu of an organizational meeting, as authorized by and pursuant to the provisions of Section 414D-35 of the Hawaii Revised Statutes:

Ratification of Articles of Incorporation

RESOLVED, that the actions of the incorporator in filing the articles of incorporation are ratified and the said articles are hereby approved and adopted.

Adoption of Bylaws

RESOLVED, that the bylaws attached hereto are hereby adopted by the Corporation and the Secretary of the Corporation is directed to execute a certificate of the adoption of said bylaws and to insert said bylaws, as so certified, in the corporate record book of the Corporation.

Adoption of Conflict of Interest Policy

RESOLVED, that the Conflict of Interest Policy attached hereto is hereby adopted by the Corporation.

Election of Officers

RESOLVED, that the following persons be, and they hereby are, elected as officers of the Corporation to the offices set forth opposite their respective names, to serve with such other officers as may be appointed by the Board of Directors until the next annual Board of Directors' meeting and thereafter until their successors are elected and qualified:

Keahi Warfield	President
Bill Brown	Vice President
Mapuana Waipa	Secretary
Mapuana Waipa	Treasurer

Tax Exempt Status

RESOLVED, that the officers of the Corporation are hereby authorized and directed to file with the Internal Revenue Service and the State of Hawaii Department of Taxation one or more applications for the exemption from federal and state income tax and Hawaii general excise tax, and all acts of the officers of the Corporation which are consistent with the purposes and intent of these resolutions shall be and the same hereby are in all respects ratified, approved and confirmed.

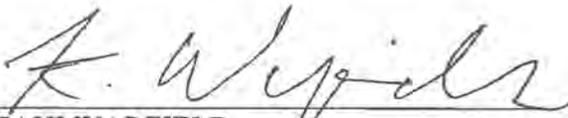
Miscellaneous

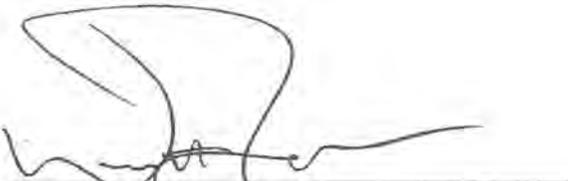
RESOLVED, that the President or Treasurer of the Corporation is authorized to open a corporate bank account with a bank of their choice, that the officers of the Corporation are authorized to sign checks and other instruments of withdrawal from any such accounts and that said bank's standard resolutions relating to the opening of a corporate account are hereby adopted as though fully set forth herein;

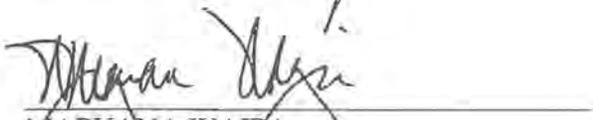
RESOLVED, FURTHER, that the officers of the Corporation be, and they hereby are, authorized and directed to pay all expenses of the incorporation and organization of this Corporation;

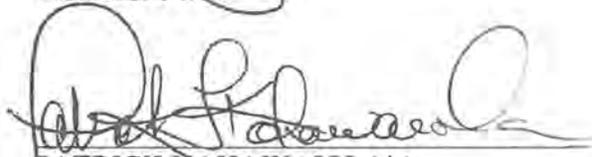
RESOLVED, FURTHER, that the officers of the Corporation are directed to execute all documents and to take such action as they may deem advisable in order to carry out the purposes of these resolutions.

DATED: April 28, 2016

  
\_\_\_\_\_  
KEAHI WARFIELD

  
\_\_\_\_\_  
BILL BROWN

  
\_\_\_\_\_  
MAPUANA WAIFA

  
\_\_\_\_\_  
PATRICK KAHAWAIOLA'A

*Richard A*

RICHARD HA

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**BOARD OF LAND AND NATURAL RESOURCES**  
**FOR THE STATE OF HAWAII**

IN THE MATTER OF

Case No. BLNR-CC-16-002

A Contested Case Hearing Re Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Kaohe Mauka, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a copy of the foregoing was duly served on the following parties by mail, postage pre-paid to their last known address:

Julie H. China  
Deputy Attorney General  
Department of the Attorney General  
465 South King Street, Room 300  
Honolulu, HI 96813

Counsel for the BOARD OF LAND AND NATURAL RESOURCES

Riki May Amano  
1003 Bishop Street  
Suite 1155, Pauahi Tower  
Honolulu, HI 96813

HEARING OFFICER

Richard N. Wurdeman  
Attorney at Law  
1003 Bishop Street, Suite 720  
Honolulu, HI 96813

Attorney for MAUNA KEA ANAINA HOU; CLARENCE KUKAUAKAHI CHING;  
FLORES-CASE 'OHANA; DEBORAH J. WARD; PAUL K. NEVES; AND KAHEA: THE  
HAWAIIAN ENVIRONMENTAL ALLIANCE

CARLSMITH BALL LLP  
Ian L. Sandison  
Timothy Lui-Kwan  
Arsima A. Muller  
1001 Bishop Street  
American Savings Bank Tower, Suite 2100  
Honolulu, HI 96813

Attorneys for THE UNIVERSITY OF HAWAI'I AT HILO

DATED: Hilo, Hawai'i, May 16, 2016

TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS,  
Attorneys at Law, A Law Corporation



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NEWTON J. CHU  
LINCOLN S. T. ASHIDA  
Attorneys for PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES, INC.

**From:** Cassiday Paul Richard  
**Sent:** Monday, May 16, 2016 9:48 AM  
**To:** Dennison, Dan W  
**Subject:** Request to be admitted as a party in the contested case hearing for CDUP HA-3568

TO: Judge Ricki Mae Amano  
CC: BLNR Chair Suzanne D. Case & Board Members

FR: Ricky Cassiday  
Trustee, Mary Lucas Estate  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ōhe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable; (7) Requestor's visit to the top of Mauna Kea over 50 years ago predates most if not all other requestors and parties to this hearing and (8) Requestor's family has long served the Kingdom of Hawaii, including defending it against the Russian incursion on Kauai in 1817.

Thank you for your consideration of this request, and

Me ke aloha,

Ricky Cassiday  
Trustee, Mary Lucas Estate  
Residential Market Consultant

May 13, 2016

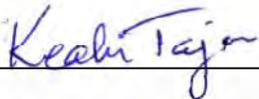
TO: BLNR Chair Suzanne D. Case & Board Members  
Department of Land & Natural Resources  
1151 Punchbowl Street, Rm. 131  
Honolulu, HI 96813  
[dlnr@hawaii.gov](mailto:dlnr@hawaii.gov)

FR: Keahi Tajon  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: My interestas are environmental and cultural in nature.

Keahi Tajon   
\_\_\_\_\_

May 13,2016

TO: BLNR Chair Suzanne D. Case & Board Members  
Department of Land & Natural Resources

FR: Eric Hansen  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: I was the field crew leader for the first ever base line botanical survey on Mauna kea. For many months my crew and I would intimately discover and document ever single plant, tree , shrub, moss and lichen located on the mountain. This data was later published into a report for the office of Mauna Kea Management. I know that there is botanical species in the proposed telescope area. I am alarmed and concerned the potential impact to botanical community.

Ask to be heard at the next hearing to ensure the botanical species are not forgotten in this case.

Mahalo

\_\_\_\_\_

[Printed Name w/ Signature]

May 13,2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Patricia P. Ikeda  
[address redacted]

RE: Request To Be Admitted as a Party in the Contested CaseHearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I am requesting to be admitted as a party to the above-contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because I: (1) have property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) will be affected by the proposed Thirty Meter Telescope project and have an interest in the proceedings that are clearly distinguishable from the general public; (3) have substantial interest in the proceedings; and my: (4) participation will substantially assist the board in its decision making; (5) position is not substantially the same as any existing parties to the proceedings; and (6) participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

My interest in the proceedings is also because:

- I have been dancing hula for over thirty years. Hula associates strong ties to 'aina kinship which includes papa hulilani (heavens/atmosphere), papa hulihonua (land, ocean, water) and papa hanau moku (all living things).
- I truly believe that in the case of the University of Hawai'i and TMT, they are criminalizing me for standing up for the perpetuation of my cultural beliefs and practices. This is happening all over the world. Indigenous peoples are standing now because enough is enough!
- I am a Native Hawaiian, descendant of the native inhabitants of Hawai'i prior to 1778 who exercises traditional and customary practices to nurture my mental, physical and spiritual well-being.

Your consideration of my participation in the above-mentioned case hearing is appreciated.

May 13,2016

TO: BLNR Chair Suzanne D. Case & Board Members  
Department of Land & Natural Resources

FR: Jennifer Leina'ala Sleightholm  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohe, Hamakua District, Island of Hawai'i. TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above mentioned contested case hearing, pursuant to Hawaii Administrative Rules 13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through exercise of Native Hawaiian traditional and customay practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows:I am a Native Hawaiian, born and raised in Hawai'i for the past 42 years. My genealogy directly links me to Mauna Kea. I participate in, and conduct religious and cultural practices taking place in and on numerous areas of Mauna Kea, which include the proposed site of the Thirty Meter Telescope. Am an active member of the Ku Kia'i Mauna 'ohana, and Mauna Kea 'ohana, one of those arrested on April 2, 2015 while in ceremony on Mauna Kea, and again on September 9, 2015 while in ceremony on Mauna Kea in the evening hours. I'm also a hula dancer, who dances, chants and sings about Mauna Kea. I also help with community education relating to everything from the mountains to the ocean as everything is connected, and cannot be dissected and treated as separate.

My family, and I will be negatively impacted by the Thirty Meter Telescope because there will be irreversible desecration and disturbance of the rocks, and surrounding landscape which is considered to be our "church". This would cause deep spiritual trauma that cannot be quantified. Our water aquifers will be poisoned by the underground chemical storage containers when leakage/seepage occurs, and or the rust, and oil from construction equipment and telescope leaks into the earth. The Thirty Meter Telescope would alter the aesthetics, and landscape. These things cannot be undone.

Jennifer Leina'ala Sleightholm

May 21, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

Department of Land & Natural Resources

FR: Maelani Lee  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ōhe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

I am a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778 (King Kamehameha the Great and Queen Ka'ahumanu) and have lived in Hawai'i for 37 years. I support and conduct traditional and customary practices consisting in chants and spiritual connection. The site is sacred and shall remain undeveloped because any TMT will interfere with our cultural practices and the mountain will not be status quo.

Maelani Lee

**From:** Mikala Cabalse

**Sent:** Monday, May 23, 2016 9:00 AM

**To:** DLNR.CO.PublicDLNR

**Subject:** Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

Dear BLNR Chair Suzanne D. Case & Board Members

Michelle Cabalse  
[address redacted]

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Requestor's specific, substantial interests in the contested case proceedings also consists as follows: I participate in traditional and customary Hawaiian practices consisting of hula, 'olelo Hawai'i, mahi 'ai Kalo.

Michelle Cabalse

**From:** Linda Namauu  
**Sent:** Saturday, May 21, 2016 4:58 PM  
**To:** DLNR.CO.PublicDLNR  
**Subject:** REQUEST to be admitted to Mauna Kea case hearing

5-21-16

From: Linda Namauu  
[address redacted]

BLNR Chair Suzanne D. Case & Board Members  
**Department of Land & Natural Resources**

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ōhe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

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- (3) Requestor has a substantial interest in the proceedings;
- (4) Requestor's participation will substantially assist the board in its decision making;
- (5) Requestor's position is not substantially the same as any existing parties to the proceedings;
- (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Thank you for your time

Linda Namauu

May 27, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Maile Taulii PhD, MPH and Danelle Cooper MPH

[addresses redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

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position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows:

As public health professionals we are concerned in protecting the health of Native Hawaiians by stopping the desecration of Mauna Kea. Building the TMT on Mauna Kea has a negative health impact on Native Hawaiian communities. The TMT has a harmful impact on the cultural practices associated with Mauna Kea. We have data presenting that doing traditional practices is a protective factor against high distress in Aboriginal/Indigenous People. This can be correlated with how the TMT will obstruct cultural practices for Native Hawaiians, which will lead to high distress in the communities. According to the World Health Organization:

Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic, or social condition. (World Health Organization, 1946)

It is our duty to ensure the highest level of health for Indigenous/Aboriginal

People and to ensure their human rights to health and culture.

Thank you,

Dr. Maile Taulii and Danelle Cooper

Lanny Alan Sinkin  
[address redacted]

May 28, 2016

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2016 MAY 31 P 4: 17

DOCUMENT TRANSMITTAL

Via First Class Mail and Email [dlnr@hawaii.gov](mailto:dlnr@hawaii.gov)

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawai'i 96813

Re: Motion to Intervene in Case No. BLNR-CC-10-002

By means of First Class Mail and email, I am sending you the Temple of Lono Motion to Intervene; Memorandum in Support of Motion; Declaration of Tahuna Frank Kamehameha Tamealoha Anuumealani Nobriga with Exhibits; and Certificate of Service.

For the Temple of Lono,

Lanny Alan Sinkin  
Lay Representative

Lanny Alan Sinkin  
[address redacted]

Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF	) Case No. BLNR-CC-16-002
	)
A Contested Case Hearing Re Conservation	) Temple of Lono's Motion to Intervene;
District Use Permit (CDUP) (HA-3568 for	) Memorandum in Support of Motion;
The Thirty Meter Telescope at the Mauna	) Declaration of Tahuna Frank
Kea Science Reserve, Kaohe Mauka,	) Kamehameha Tamealoha
	) Anuumealani Nobriga with
Hamakua District, Island of Hawai'i,	) Exhibits; Certificate of Service
TMK (3) 4-4-015:009	)
_____	)

**TEMPLE OF LONO'S MOTION TO INTERVENE**

NOW COMES the Temple of Lono, a traditional faith in the Hawaiian Civilization with an unbroken practice extending to this time, by and through its lay representative, Lanny Alan Sinkin, and, pursuant to Hawai'i Administrative Rules ("HAR") § 13-1-31, hereby respectfully moves the Board of Land and Natural Resources or the Hearings Officer<sup>1</sup> for an order granting the Temple of Lono's request to intervene in the above-captioned contested case hearing. This motion should be granted because:

<sup>1</sup> Petitioner takes note of the controversy surrounding the selection process used by the BLNR for choosing the hearings officer, the revelations of at least the appearance of a conflict of interest on the part of the hearings officer, and the calls by both proponents and opponents of the requested permit for the hearings officer to step down.

(1) Tahuna Frank Kamehameha Tamealoha Anuumealani Nobriga is the Tahuna of the Temple of Lono. As such he has a unique understanding of the traditional Hawaiian faith and the application of that faith to the spiritual issues that are likely to be raised in this case.

(2) Based on his unique, comprehensive, and relevant knowledge concerning the traditional faith of the Hawaiian Civilization, the Tahuna is entitled to mandatory intervention under HAR § 13-1-31(b)(2) because desecration of Mauna a Wākea will directly affect the Temple of Lono, both as a violation of a sacred space and as an act in furtherance of a long-pursued campaign to suppress the traditional faith of the Hawaiian people.

(3) Alternatively, the BLNR should grant discretionary intervention pursuant to HAR § 13-1-31(c) because the Temple has a substantial interest in this case and the Tahuna is the only person qualified to represent that interest.

DATED: May 28, 2016, Kurtistown, Hawai'i

---

Lanny Alan Sinkin  
Lay Representative

Lanny Alan Sinkin  
[address redacted]

Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF	)	Case No. BLNR-CC-16-002
	)	
A Contested Case Hearing Re Conservation)	)	
District Use Permit (CDUP) (HA-3568 for )	)	Memorandum in Support of Motion
The Thirty Meter Telescope at the Mauna )	)	
Kea Science Reserve, Kaohe Mauka, )	)	
Hamakua District, Island of Hawai'i, )	)	
TMK (3) 4-4-015:009 )	)	
_____ )	)	

**TEMPLE OF LONO'S MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

There is now a general understanding that the issues related to the construction of the Thirty Meter Telescope (TMT) include the spiritual issues raised by practitioners of the traditional faith of the Hawaiian civilization. See e.g. "Another crimp in the case"; Hawaii Tribune Herald, Thursday, May 26, 2016 at A5 ("The contested case involves the original six petitioners, mostly Native Hawaiian cultural practitioners who oppose the construction of the large telescope on what they say is sacred ground on Mauna Kea, and the applicant, UH-Hilo.")

An organization seeking intervention was specifically created to support the TMT by claiming to represent "Native Hawai'ian beliefs" and claiming that those beliefs support the construction of the TMT. See Perpetuating Unique Educational

Opportunities, Inc.'s Motion to Intervene, Memorandum in Support at 5 and 9 dated May 16, 2016;

Given that issues related to the Traditional Hawaiian Faith are going to be an essential part of the contested case and that there are organizations claiming to represent that faith seeking to participate, there could hardly be a party more qualified to participate than an actual Tahuna of a Traditional Hawaiian Faith. Mandatory intervention is called for when the petitioner "will be so directly and immediately affected by the [contested case] that [the petitioner's] interest in the proceeding is clearly distinguishable from that of the general public." HAR § 13-1-31(b)(2).

This memorandum is accompanied by a Declaration of the Tahuna and Exhibits to that Declaration that clearly demonstrate the legitimacy of his position, the depth of his understanding, the adverse impacts of the TMT proposal on his faith, and his right to be granted intervention status. See Declaration of Tahuna Frank Kamehameha Tamealoha Anuumealani Nobriga and Exhibits thereto.

If the obvious requirement to grant the petition to intervene as mandatory is not recognized by the BLNR, then granting permissive intervention pursuant to HAR § 13-1-31(c) is called for by the Temple's unique perspective, knowledge and substantial interest in the case.

For the above and foregoing reasons, the petitioner's request to intervene should be granted.

Dated: May 28, 2016

Respectfully submitted,

---

Lanny Alan Sinkin  
Lay Representative  
for the Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF	)	Case No. BLNR-CC-16-002
	)	
A Contested Case Hearing Re Conservation)	)	Declaration of Tahuna Frank
District Use Permit (CDUP) (HA-3568 for )	)	Kamehameha Tamealoha Anuumealani
	)	Nobriga with Exhibits A, B, and C
The Thirty Meter Telescope at the Mauna )	)	
Kea Science Reserve, Kaohe Mauka, )	)	
Hamakua District, Island of Hawai'i, )	)	
TMK (3) 4-4-015:009 )	)	
_____ )	)	

**DECLARATION OF TAHUNA FRANK KAMEHAMEHA TAMEALOHA  
ANUUMEALANI NOBRIGA**

1. I, Frank Kamehameha Tamealoha Anuumealani Nobriga, do declare the following to be true and correct:
2. I am the Kahuna of the Temple of Lono.
3. The Temple of Lono is the men’s temple of the Traditional Hawaiian Faith.
4. The Foundation of the Faith is the Four Gods – the Ocean, the Sun, the Earth, and the Fresh Water. See Exhibit A.
5. The Teaching Symbols of the Faith are the Square, representing the Four Gods; the Circle, representing the Ha or breath of God; and the Triangle, representing the Ancestors, the source of knowledge.
6. The Triangle is also the symbol of the central teaching for Human Beings: look into yourself, look at the Source, and look at the spiritual halo within.
7. These teachings are very simple and very deep, requiring years of self-exploration to determine their meaning for each individual.
8. Mauna a Wākea is the physical manifestation of the Triangle, standing as the highest reminder of the Faith.
9. That is why Mauna a Wākea is sacred in the Traditional Faith.
10. The peak of the Mauna is also especially sacred to the Temple of Lono because the waters that fall on the Earth to sustain life – the tears of Heaven – first touch the top of the Mauna.

11. The Temple of Lono has a long standing involvement with the issue of sacred lands, particularly those forming a part of the spiritual land base of the faith.
12. The Temple of Lono has a long standing involvement with those objecting to the desecration of Mauna A Wākea by the construction of telescopes. See Exhibit B.
13. The Temple of Lono and the Hale O Papa (women's temple) issued a statement related to the current controversy over the proposal to build the Thirty Meter Telescope on Mauna a Wākea. Exhibit C.
14. When the Office of Mauna Kea Management issued rules restricting traditional spiritual practices on Mauna a Wākea in an attempt to shut down opposition to the Thirty Meter Telescope, I filed suit in Federal Court challenging the absence of due process in the adoption of the restrictions and the unconstitutional nature of the restrictions.
15. The Office of Mauna Kea Management withdrew the challenged regulations shortly after I filed suit.
16. When the Board of Land and Natural Resources also attempted to impose restrictions on traditional spiritual practices in an effort to further the Thirty Meter Telescope, I amended the Federal suit to include those regulations.
17. In a separate legal action, a state court judge struck down the BLNR regulations.
18. In the eyes of the Temple, the disrespect shown for the traditional faith of the Hawaiian people is a matter of record for more than 100 years and most recently found expression through State of Hawai'i actions that either suppressed the traditional faith, limited traditional faith practice, or relegated traditional faith practitioners to a second class citizenship unprotected by the Constitution and laws of the United States.

---

Frank Kamehameha Tamealoha Anuumealani Nobriga

Dated: May 27, 2016

Exhibit A to Declaration of Frank Kamehameha Tamealoha Anuumealani Nobriga  
dated May 27, 2016

KE A'O LOKO O LONO  
(THE INNERMOST KNOWLEDGE OF LONO)

As haumana of the Temple of Lono, we have come to know and understand the knowledge of the staff of life, pa halau o te atua, maiola (healing light, the knowledge of the temple) and aumakua (huna mana – ancestral worship, the source of knowledge) as the root and bone of Hawaiian spiritualism based on the Pu'uhonua and its sovereignty. The time has come to share our mana'o.

The foundation of the pre-contact traditional Hawaiian religion as passed down orally from Mahea O Kalani Lono O Ka Makahiki and Kahuna Nu Pali Ku Samuel Hoopii O Kalani Lono o Ka Makahiki Po Paki, is Pa Halau O Te Atua (the foundation of the four gods – Ku, Kanaloa, Lono, Kane). We of the Temple of Lono believe in the four gods as the foundation of traditional Hawaiian religion.

KU, the god of the ocean, should not be confused with the Western interpretation of Kamehameha's aumakua Kukailimoku. Ku is chronologically recognized first in the relationship to the staff of life. From the ocean our evolutionary life began and we continue to receive sustenance from this source. We reverence the ocean as a natural force that can give life and take life. HE TU, HE TU, ATEA TE TAI O TU.

KANALOA, is the god of the sun, whose light gives energy to all living things on earth; whose source of heat evaporates the waters on earth. KANALOA spins the clouds in the atmosphere. We reverence the sun as a natural force that can give life and take life. HE TANAROA, HE TANAROA, LAU WILI E TA OHU.

LONO is the god of the 'aina that provides the staff of life for man; whose magnetic force draws down the water of life from the clouds down to earth creating an abundance of food for all living things. "Oh LONO of the air, you speak in many ways soft or wild you sound through birds and trees. Your revered music rings through waterfalls. Let us see you and let us hear you so that our source is as real as ourselves. Warm and brown and filled with seeds awaiting, may the sacred soil bring forth sweet fruit foods to strengthen and sustain us as we work. Oh LONO your face is seen in earth and rock." We reverence the 'aina as a natural force that can give life and take life. HE RONO, HE RONO, HE ULU TA MEA AI I TA POE HONUA.

KANE, the god of fresh water, completes the Kumulipo of the four gods. We reverence fresh water as a natural force that can give life and take life. HE TANE, HE TANE, TAHE TA WAI I TE TUAHIWI, HE RURI RURI I TA PO'O A TU, A TEA TE TAI O TU.

As we reverence earth, air, fire and water, may we each know and be Kumulipo.  
Receive and wisely use the huna mana and together we enjoy th reign of Mu.

Samuel Lono  
TEMPLE OF LONO

Exhibit B to Declaration of Frank Kamehameha Tamealoha Anuumealani Nobriga  
dated May 27, 2016

From the Desk of Lanny  
Sinkin  
[email redacted]  
April 27, 2015

### Faith and the Mountain

The proposal to build the Thirty Meter Telescope on Mauna Kea takes place in a context of opposition to such telescopes stretching back for years. The Kahuna of the Temple of Lono asked me to share part of that history.

Ten years ago, well-known activist Hanalei (Hank) Fergerstrom helped to organize opposition to the construction of six extensions, known as outriggers, to the Keck Telescope on the sacred mountain of Mauna Kea.

For many years and over numerous objections, the University of Hawaii had been leasing lands at the peak for the construction of telescopes. The outriggers were the latest telescopes being proposed.

Hank came to the Temple of Lono to request assistance in protecting the mountain from the abuse of the telescopes.

{ For insights into this faith, I would encourage you to read:  
<http://kingdomofhawaii.info/wp-content/uploads/2015/04/Temple-of-Lono-and-Hale-O-Papa.pdf> }

For the Temple, the triangle (Ānu'u) of the mountain represented the ancestors, the highest source of wisdom.

The Temple responded that the appropriate way for Hank to ask assistance of the Ancestors would be to go into the Pu'u honua O Honaunau at sea level, lands now within the United States National Park Service (NPS). As the Kahuna put it, the proper order was to lay the foundation within the Pu'u honua before putting on the roof (Mountaintop).

The Temple provided guidance to Hank on the nature of the ceremony that should take place. That ceremony would include Moe Uhane and Hoike Po.

As part of that process, Hank notified the NPS that the Temple would be holding a ceremony within the Pu'u honua

Later Hank called me to say that, in response to his notification, the NPS sent Hank an application for a permit to hold an event within the Pu'uhohua. He requested my legal opinion about the need for such an application.

I advised Hank that the Temple should not fill out the permit application. In my opinion, the Temple had a right, protected by the First Amendment to the United States Constitution, to practice their faith at their sacred site without asking permission of the United States Government. I suggested that the Temple send the NPS nothing more than a courtesy notice of the date and time of the Temple's visit.

Subsequently, I received a call from Palani Nobriga, the Kahuna of the Temple of Lono. I learned that the Temple never asked permission to practice its faith. The Temple would proceed with their ceremony without requesting a permit.

He invited me to attend the ceremony. I believe that everyone, including me, understood that my participation would be as an attorney prepared to challenge any attempt by the NPS to prevent the Temple from holding its ceremony.

The day of the ceremony, I was invited to participate as a haumana (student) of the Temple. The Kahuna, Hank, Keoni Choi, Kalei Victor, Jim McCrae, and myself participated in the ceremony.

The ceremony began with a procession from our campsite in the back of the Pu'uhonua to the Hale O Keawe (House of the Keawe Family) where the altar was located. The lead person blew the pū (conch shell) to call the Ancestors to witness what was happening.

Then came two others carrying long bamboo poles. These poles carried the flags of the Temple of Lono with the symbols of the sacred teachings.

Kahuna Nui Pali Ku Samuel Hoopii O Kalani Lono O Ka Makahiki Po Paki had created the flags, which contain symbols and colors, as a teaching tool for the next generation.

Then I followed with the offering bowl filled with fruit.

The last two completed the procession, with Jim stepping out occasionally to film the procession.

At the Hale O Keawe, we stood the flag poles up against the fence around the Hale and attached them with bungee cords. This ceremony was only the second time that the flags of the Temple had been raised.

Practitioners then removed the gate to the Hale and entered the area where the offering platform and the altar stood.

When the ceremony was complete, the practitioners left the Hale O Keawe to return to our campsite. We left the flags flying at the Hale O Keawe.

Soon thereafter, two Park Rangers came to ask whether we had put up some flags on the Hale O Keawe. They said that the flags looked very contemporary and not like a traditional spiritual practice.

The Kahuna reminded them that the Catholic Church used to hold mass in Latin and now used English.

The Rangers left.

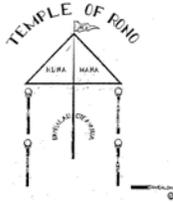
As it turned out, throughout the entire ceremony, even with the pū blowing, none of the Park Rangers had seen what we were doing.

While there is much more to tell of this tale, the ultimate outcome was that the outrigger telescopes were cancelled.  
<http://www.newscientist.com/article/dn9702-judge-reverses-permit-for-new-hawaiian-telescopes.html#.VS4hXGa4NcQ>. That cancellation was nine years ago.

Hank is now back on the mountain providing guidance to those protecting the sacred mountain from yet another telescope. For the Temple and the people who came every year for seven years asking the Ancestors for help, the ceremony ten years ago was just the beginning. As it is said, once you ask the Ancestors for help, you cannot call it back. The work to prevent the abuse of the Ānu'u continues.



Exhibit C to Declaration of Frank Kamehameha Tamealoha Anuumealani Nobriga  
dated May 27, 2016



A Message from the Temple of Lono  
And the Hale O Papa

A member of the Human Family emerges from darkness to take a place in the chain of life.

Human survival relies upon the fertility of the land and the oceans.

The Gods were Ku (the Ocean), Kanaloa (the Sun), Lono (the Earth) and Kane (the fresh water). These Gods established the faith and foundation upon which our customs and civilization were built. These four Gods give breath to all things and provide the staff of life to feed all of us. Because the essential role of food is preserving and sustaining life, we worship food. That is why our temples are square, a constant reminder of the faith in these four elements.

As an island people, we would always need a secure source of food. The land dedicated to growing food was cultivated as a sacred responsibility and protected and honored as a center of peace within the greater civilization. This land is the Pu'uhonua. The life of the land is preserved in righteousness.

The kuleana: The areas of responsibility. The King had the power to take a life. The Tahunas were the priests, the doctors, and the teachers. The maka'ainana were the people who kept the garden healthy and productive for seven generations.

The Hawaiian understanding of the hydrologic cycle served to inform the unfolding of the religion, a personal matter --- the huna mana for each household to pursue in a form that suited their avocation, first as an 'ohana and then their role in the garden. The study of the Gods led to an intricate and deep understanding of natural processes. We had more than a thousand years of observation.

*Thus, when the missionaries arrived in the islands, they encountered a very sophisticated civilization founded on a strong faith rooted deeply in the people's understanding of natural processes. On that foundation of faith, the Hawaiians had developed a complex social system suitable for an island civilization and a*

*highly effective economic system that sustainably supported hundreds of thousands of people.*

While there were acts that Hawaiians considered wrong and even evil, there was no Devil in the islands. The missionaries taught the Hawaiians to believe in the Devil, superimposed the missionary Devil on to the traditional Hawaiian faith, and then taught the Christian Hawaiians to turn against their own faith as proof they rejected the Devil. The suppression included the passing of the Moe Kolohe Law, which banned numerous practices and customs, including the worship of ancestors – a central tenet of the faith. This law still stands. The passing of such a law today would be equivalent to forbidding our Asian brothers and sisters to hold Bon dances that honor their ancestral dead.

The suppression of the traditional faith has been a long-standing practice of the State of Hawaii. In a country that prides itself on the freedom of religion, this interplay of traditional faith with state disrespect is nothing new to the Temple of Lono and the faith of our people. The Temple found out a long time ago that the State of Hawaii does not think we are a people of faith. If they did our Temples wouldn't be historical sites for tourists.

In 1978, based on the passage of United States Public Law 95-341, the Temple of Lono emerged from decades of suppression to reclaim the Pu'uhonua Lehua at Kualoa. For this law said that we, as a people of faith, had the right to our sacred lands. The Temple rebuilt the Ma Pele at Kualoa to reconnect with the practice of Moe Ohane — talking to our ancestors.

The State of Hawai'i brought in its bulldozers to destroy Sam Lono's work and arrested him for camping without a permit. After years of forcing him through one court proceeding after another and spending hundreds of thousands of public dollars, the State levied a \$5 fine for the offense.

Do you see the people being arrested now on Mauna Kea because they are trying to protect that sacred mountain from the destructive actions of those seeking to put yet another telescope on sacred land?

The challenge is not about lease payments or terms. The challenge is about the right of a faith to be respected and practiced in its own homeland. The altar of the Temple of Lono is still in place at the Hale O Keawe in the Pu'uhonua O Honaunau. That Pu'uhonua, however, is now part of a national park operated as a tourist attraction by the United States National Park Service. The Temple is "allowed" to go into the Pu'uhonua to hold ceremony subject to the limitations of the park on the time and duration of worship.

The failure of the occupying power and even our own people to recognize the traditional faith of our people calls for a reconciliation. That reconciliation includes

the recognition of the key role that the Pu'uhonua played in establishing the jurisdiction of the Kingdom.

Watching the Hawaiian landscape, the Temple of Lono witnessed various people stepping forward to reclaim the position of King or Queen. One measure of the validity of such a claim would be their relationship with the Pu'uhonua.

Only one embraced that relationship by acknowledging that the King's kuleana is based on the foundation of the Pu'uhonua. King Edmund Keli'i Silva, Jr. claimed his rightful position as protector and sovereign over the Pu'uhonua O Honaunau. The King put the issue of restoring the sacred land base directly before the National Park Service.

The King announced his intention to enter the Pu'uhonua and remain there for an extended period to engage in spiritual practice, seek reconciliation, and confirm his claim to the spiritual land base.

The response was to threaten to arrest the King should he over stay the time period the National Park Service would allow him to enter and remain on the Pu'uhonua.

The foundation of the faith in the Pu'uhonua reaches to the heights of Mauna Kea. From the sustenance of food provided by the Pu'uhonua to the realm of the Gods on Mauna Kea, the faith encompassed all.

When the time is right, the King, supported by the Temple of Lono and others who recognize the need to reconcile the religious schism created within the Hawaiian community by the teachings of the missionaries, will enter and reclaim the Pu'uhonua. On that day, a great step forward will take place in renewing the civilization that once provided an example of wise stewardship of our Earthly Garden.

Tahuna Frank Kamehameha Tamealoha Anuumealani Nobriga  
Temple of Lono

Darlene Pabre  
Hale O Papa

Lanny Alan Sinkin  
[email redacted]

Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF	)	Case No. BLNR-CC-16-002
	)	
A Contested Case Hearing Re Conservation)		
District Use Permit (CDUP) (HA-3568 for )	)	<b>CERTIFICATE OF SERVICE</b>
The Thirty Meter Telescope at the Mauna )	)	
Kea Science Reserve, Kaohe Mauka, )	)	
Hamakua District, Island of Hawai'i, )	)	
TMK (3) 4-4-015:009 )	)	
_____)	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the Motion to Intervene; Memorandum in Support of Motion to Intervene; and Declaration of Tahuna Frank Kamehameha Tamealoha Anuumealani Nobriga with Exhibits were served on the following parties by first class mail:

Julie H. China  
Deputy Attorney General  
Department of the Attorney General  
465 South King Street, Room 300  
Honolulu, Hawai'i 96813

Counsel for Board of Land and Natural Resources

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'Ohana; Deborah J. Ward; Paul K. Neves; and KAHEA: The Hawaiian  
Environmental Alliance

Dated: May 28, 2016

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Lanny Alan Sinkin

**From:** Akulele  
**Sent:** Tuesday, May 31, 2016 12:13 AM  
**To:** Moses, Kuulei N  
**Subject:** ATTENTION KU`ULEI PETITION FOR A CONTESTED CASE HEARING

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2016 MAY 31 P 4:17

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

**PETITION FOR A CONTESTED CASE HEARING**  
**BOARD OF LAND AND NATURAL RESOURCES**

**INTRODUCTION**

I, Kalikolehua Kanaele, file the following written Petition for a Contested Case Hearing pursuant to Hawaii Administrative Rule (HAR) Section 13-1-29. I did not make an oral request for a contested case hearing at a BLNR hearing prior to the close of the public hearing at which the matter was scheduled for disposition; however, it is our understanding that the appointed Hearing Officer (HO) Ms. Amano, has allowed new Petitions to be filed before May 31, 2016.

In addition and for convenience this Petition (total of 10 pages including the cover) has been sent via email to Ms. Ku`ulei N. Moses the Land Board Secretary (at Kuulei.N.Moses@hawaii.gov) on May 31st 2016 and sent via US Postal Service on May 31st 2016. It was mailed to the Board of Land and Natural Resources, at 1151 Punchbowl Street, #130, Honolulu, HI 96813. I also ask that my fee be waived if any fees, for reasons of Hardship.

- 1. Name:** Kalikolehua Kanaele
- 2. Contact:** As above
- 3. Address:** [redacted]
- 4. City:** Keaau
- 5. State/Zip:** Hawai`i, 96749
- 6. Email:** [redacted]
- 7. Phone:** [redacted]
- 8. Fax:** None
- 9 -16. Attorney:** Pro Se
- 17. Board Action Being Contested:**

University of Hawai'i at Hilo/The Thirty Meter Telescope (UHH/TMT) Conservation District Use Application (CDUP) for the lands under General Lease S-4191 to the UHH/TMT in the Mauna Kea Conservation District Ka`ohe, Hamakua District Hawai`i Island, Tax Map Key: (3) 4-4-015:009 por.;

**18. Board Action Date:** Uncertain

**19. Item No.:** Land Division, D-19

**20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action:**

Mauna Kea resides on the States Conservation District of Ka`ohe, Hamakua District Hawai`i Island, and lands under question in the immediate case is under Tax May Key: (3) 4-4-015:009 por., Ka`ohe, Hamakua District Hawai`i Island, Tax May Key: (3) 4-4-015:009 por.,

I as a Native Hawaiian (where Native Hawaiian is used it also means Kanaka Maoli, Hawaiian Subject and National of the Kingdom of Hawai'i) do have a property interest in the lands in question and my civil and human rights as well as as my rights under state and federal statute and the state Constitution and international law and custom will be and have been violated and continue to be threatened.

I participate here in pursuit of Justice and also under duress as I as a Kanka Maoli \_\_\_\_\_ do not recognize the jurisdiction of the United States of American or it alleges occupation or lording over Hawai'i or over our Kingdom.

I am a Cultural Practitioner who practices and will continue to Practice/ exercise my traditional and customary cultural and religious practices on and around the summit and slopes of Mauna Kea, Hawai'i. I as a ranking Chief of the Royal Order of Kamehameha I, Heiau Mamalahoa, Helu 'Elua and a Kanekoa, Priest of I'o Kalanainuilamamao of Mauna Kea, and a descendant of Kamehameha I, have a Kuleana and am dedicated to preserving and perpetuating Native Hawaiian traditional and customary cultural, historic and religious practices, access and site (landscape) protection.

I have a interest that is separate and distinct from that of the general public. I have been actively involved in protecting Mauna Kea's natural and cultural resources for decades. I participated in previous Contested Case Hearing (CCH) on Mauna Kea and have been a witness in the CCH re: the Conservation District Use Permit (CDUP) Application (CDUA-HA-3065B, 2002) for the expansion of observatory facilities on Mauna Kea.

I exercise and will continue to exercise traditional and customary native Hawaiian rights within the Mauna Kea summit, Ice Age Natural Area Reserve, the Mauna Kea Science Reserve, and Hale Pohaku areas. I am a native Hawaiian, as defined in the Hawaii Admission Act, Section These rights include, but are not limited to the exercise of traditional and customary practices related to the use of Lake Waiau and other water sources and cultural sites in and around the summit area for the gathering of ice, snow, water, raw materials for adz making, erecting 'ahu and lele for ceremonies, depositing of the "piko" or umbilical cord in Lake Waiau, performing traditional astronomy, cosmology, navigation, continuing burial practices, performing solstice and equinox ceremonies (Polohiwa ceremonies), and conducting temple worship, and 'Ahu building and ceremonies in accordance with my rank and religious titles. These things are performed in, among, and around the Mauna Kea summit area, Ice Age Natural Area Reserve, and Science Reserve. I enjoy constitutionally protected traditional and customary native Hawaiian rights.

I can and will provide information to assist decision-making on the UHH/TMT CDUP for use of the Mauna Kea lands. To manage and expedite the Contested Case Hearing, I will work jointly with other parties who share common interests to organize and make a single presentation addressing but not limited to the following:

Rights protected under Section 5(f) of the Hawaii Admission Act, 42 USC § 1983, 40 C.F.R. § 1508.27(b), Hawaii Const. Art. XI, secs. 1 & 7, Art. XII, § 7, HRS § 1-1, HRS § 7-1, HRS § 10-13.5, HRS § 171-55, HRS §§ 171-58(a)-(g); HRS §§ 183C-3, 183C-6, HRS chapter 195D, HRS chapter 343.

Traditional and Customary Practices. More specifically, Article XII, section 7 of the Hawaii Constitution recognizes the importance of such rights by placing an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights. Accordingly, the State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible. *Public Access Shoreline Hawaii v. Hawai'i County Planning Commission* (hereinafter "PASH"), 79 Haw. 425, 450 n.43, 903 P.2d 1246, 1271 n.43 (1995), certiorari denied, 517 U.S. 1163, 116 S. Ct. 1559, 134 L. Ed. 2d 660 (1996). More precisely, all State agencies have a duty to identify them, assess the potential impacts of development on them, and protect these rights by preventing any interference with the reasonable exercise of these rights. *Kapa`akai v Land Use Commission*, 94 Haw. 31; 7 P.3d 1068 (2000). These rights, established during the period of the Kingdom of Hawaii, have been carried forth in the laws of Hawai'i unaffected by the changes in government. In effect, the exercise of such rights is a public trust purpose.

The proposed disposition of lands and water within the Mauna Kea summit, Ice Age Natural Area Reserve and Science Reserve areas of Mauna Kea threatens the exercise of these rights by Petitioners. Petitioners right to exercise their traditional and customary native Hawaiian rights in, among, and around Mauna Kea summit and slopes are derived from HRS § 1-1. These rights include, but are not limited to:

- the gathering of ice, snow, water, raw materials for adz making;

- depositing of the "piko" or umbilical cord in Lake Waiau;

- traditional astronomy, cosmology, and navigation;

- continued burial practices;

- solstice and equinox (Polohiwa) ceremonies;

- rights to conduct temple worship, in, among, and around the Mauna Kea summit, Ice Age Natural Area Reserve, and Science Reserve, in the affected areas; and

- the exercise of other rights for religious, cultural, and subsistence purposes.

'AHU and Ceremonies conducted in accordance to my rank, position and kuleana or responsibility handed down by my family and/or people.

Public Trust Doctrine. Sections 1 and 7 of Article XI of the Hawaii Constitution recognize the application of the public trust doctrine to all natural and water resources without exception or distinction and require that the State protect all water resources for the benefit of its people. In Hawaii, this doctrine was originally established to preserve the rights of native tenants during the transition to a western system of private property, but in the context of preserving water quality, it also protects the general public. HRS § 174C-66 places jurisdiction over water quality issues in the Department of Health. However, given the jurisdiction of this board over conservation

districts, it is critical for this board to assure that its actions do not contravene the Health Department's power to preserve water quality in the water sources lying beneath the Mauna Kea summit area. I have an interest in protecting that water source for the benefit of future generations of Hawaiians and Hawaii's people from groundwater contamination emanating from sources traceable to the observatory projects. I am informed and believe that there is a substantial threat of such pollution, especially from the use of mercury and other toxic substances emanating from the observatories within the summit and slopes area of the Mauna Kea Conservation District.

Hawaiian Homes Commission Act. In addition, pursuant to Section 221 of the Act, these same beneficiaries have a right to sufficient water to support homesteading. I and others are beneficiaries of the trust created by the Hawaiian Homes Commission Act ("Act"). The ground water beneath the summit of Mauna Kea is both an actual source of drinking water for the Pohakuloa Military Training Ground and Mauna Kea State Park. In addition, it is a potential source of water for future homesteading for areas of Pi'ihonua and Humu'ula, in which the Department of Hawaiian Home Lands has title to over 59,000 acres of pastoral homesteading land.

Ceded Lands Trust Revenues. I am also a beneficiary of the trust established pursuant to Section 5(f) of the Hawaii Admission Act to support programs "for the betterment of the conditions of native Hawaiians." As beneficiaries of this trust, I have a right to judicial review of actions of the trustee that result in waste of or deprivation of income from the assets. As a beneficiary of this trust, I and others beneficiaries have a right to reasonable revenues from the lease and use of public lands subject to the provisions of the trust.

Hawaii Environmental Policy Act. Under HRS chapter 343, an EIS is required for all projects which will significantly impact a conservation district. The University of Hawaii and the TMT failed to prepare an adequate FEA/FEIS, despite the significant cumulative effects of the proposed TMT expansion and the Pohakuloa training expansions (up the slopes of the Mauna Kea Conservation District). The TMT Corporation has received substantial federal funding for this project constituting a federal undertaking under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA as amended). State law requires that where both federal and state statutes come into play the two bodies must work together to ensure compliance of both.

The *Wekiu and other threatened and endangered speice of Mauna Kea*. Under the Endangered Species Act, the state is required to protect species that are subject to potential extinction and is supposed to coordinate its activities with the federal government to promote the conservation of endangered and threatened species. 16 USC § 1531, et seq. The purpose of this act is not only to allow such species to survive but to recover from their endangered or threatened status. *Sierra Club v United States Fish & Wildlife Serv.* 245 F3d 434 (5<sup>th</sup> Cir. 2001). This board also has the power under state law to protect any other specie it determines needs protection because of "[t]he present or threatened destruction, modification, or curtailment of its habitat or range." HRS § 195D-4(b). While the *Wekiu* insect is not listed as endangered nor threatened under the Endangered Species Act, this board nonetheless has specific duties to protect and conserve it if its survival is threatened by over-development of the Mauna Kea summit.

National Historic Preservation Act (NHPA). Section 106 of the NHPA requires all federal agencies or those private entities that have received substantial federal funds constituting a federal under taking, expending funds on projects to assure that there is adequate consultation

with the Advisory Council on Historic Preservation and to assure that historic properties eligible for inclusion on the National Historic Register are protected after adequate consultation with affected groups. The State Historic Preservation Officer has determined that Mauna Kea is eligible for inclusion on the National Historic Register. UH and the TMT is required to consult with native Hawaiian groups to give them the opportunity to define their concerns relating to impacts to the Traditional Cultural Properties including *inter alia*, the “intangible aspects” of the property. National Register Bulletin 38-“Guidelines for evaluating and documenting Traditional Cultural Properties” establishes criteria for evaluating these aspects of historic properties. Bulletin 38 criteria are supposed to be used in conjunction with Section 106 to evaluate Historic Properties. No Section 106 Consultation has occurred regarding the proposed TMT project.

National Environmental Policy Act. Under NEPA regulations, “an agency must prepare an EIS for all “major Federal actions significantly affecting the quality of the human environment.” The UH and/or the TMT International Observatory LLC (TMT) formerly known as the TMT Corporation project proposal has received significant funding and anticipates more federal funding from the National Science Foundation, but has not completed a federal environmental impact statement. The regulations promulgated by the Council on Environmental Quality (federal and state adopted) established the following nonexclusive criteria for determining when a full EIS is required:

"Impacts that may be both beneficial and adverse. A significant impact may exist even if the Federal agency believes that on balance the effect will be beneficial," 40 C.F.R. § 1508.27(b)(1);

"Unique characteristics of the geographic area such as the *proximity to historic or cultural resources...or ecologically critical areas*," id. § 1508.27(b)(3);

"The degree to which the effects on the quality of the human environment are likely to be *highly controversial*," id. § 1508.27(b)(4);

"The degree to which the possible effects on the human environment are *highly uncertain* or involve unique and unknown risks," id. § 1508.27(b)(5);

"The degree to which *the action may establish a precedent for future actions with significant effects* or represents a decision in principle about a future consideration," id. § 1508.27(b)(6);

"Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a *cumulatively significant impact* on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts," id. § 1508.27(b)(7);

"The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or *eligible for listing in the National Register of Historic Places* or may cause loss or destruction of significant scientific, cultural or historical resources," id. § 1508.27(b)(8);

Whether the action threatens a violation of...requirements imposed for the protection of the environment, id. § 1508.27(b)(10).

## **21. Any Disagreement Petitioner Seeks or Deems Itself Entitled To:**

The BLNR made many errors previously as was affirmed by the Hawai'i State Supreme Court in December 2, 2015 in approving the UH/TMT request for a CDUP prior to holding the requested

contested case hearing, thus violating basic due process rights. But this CDUP also continues to challenge, frustrate and even violate the Admissions Act, the State Constitution the National Environmental Policy Act, HRS § 91, HRS § 171, HRS § 183C, HRS § 205, HRS § 343, HAR § 13-1, HAR § 13-5, and possibly other requirements. Specifically, the contested case hearing should determine whether my rights and those of others Petitioners (Native Hawaiians and the General Public) can be protected and preserved with the approval of the UH/TMT CDUP.

**Other issues include but are not limited too the following:**

Whether BLNR used the correct procedure to granting the CCH and tue appointment of the HO etc.

Whether TMT has fulfilled all the requirements and conditions and all state and federal requirements of the law.

Whether the members of the BLNR are or have been violating their fiduciary duties pursuant to Section 5(f) of the Hawaii Admission Act and their statutory duty pursuant to HRS § 171-33(5) by disposing of the Section 5(b) lands on Mauna Kea without a proper appraisal and at less than their independently appraised fair-market value.

Whether the BLNR is violating state and federal laws protecting species facing possible extinction even if not designated endangered or threatened, by failing to follow the proper procedures and apply proper standards for the protection of those species.

Whether the BLNR should approve it when the UH/TMT has violated Petitioners constitutionally protected traditional and customary native Hawaiian rights that include, but are not limited to, unfettered access to important cultural sites, the maintenance of those sites, and the ability to continue religious practices without interference of view planes and other forms of disturbance, distraction and interference to Practitioners at these sites.

BLNR's approval of the UH/TMT CDUP will harm our rights, duties, and privileges, as protected by law. These abridgment include but are not limited to:

Traditional and Customary Rights of Hawaiians. The approval of this CDUP is an abridgment and denial of constitutionally protected rights enumerated above at paragraph 8 and held by Petitioners as native Hawaiians. In the past, the Mauna Kea Support Services (MKSS) staff at the summit has denied members of Petitioners access for exercise of religious, cultural and traditional practices. Under the pretense of ensuring public safety, these agents erected a blockade at the 9,000' level near the Hale Pohaku base camp and near the lake area. These blockades on public roads prevented Petitioners access to the lake or upper regions of the summit area.

Numerous people have been arrested on unlawful grounds yet no enforcement of the law against desecration has been enforced and instead the law was selectively enforced in favor of the Developers (UH/TMT). Numerous peoples have filed complaints of desecration with Hawaii county police and DOCARE already committed by TMT/UH of Hilo. This is a violation of our civil and human right.

Desecration and Destruction of Cultural Sites. In addition, to myself and other petitioners desire to preserve numerous traditional and cultural sites on, in and around Mauna Kea's summit,

slopes, Ice Age Natural Area Reserve, and Science Reserve, ranging from the 5,000' level to Pu'u Wekiu. These sites have been both desecrated and destroyed on numerous occasions, in some cases by University employees using State vehicles. Two of the observatory tour guides have removed, desecrated and destroyed a number sites numerous times. TMT will be a desecration also. So it should be denied.

Public Trust Doctrine. The operations of the observatory and the planned expansion threaten the current and future water quality of the dike-confined ground water beneath the Mauna Kea summit. This is a resource which I and other Petitioners have an interest in protecting. BLNR until and unless the UH/TMT completes studies on the impacts of its past operations on that water resources and makes adequate provision for its future enhancement and protection should not approve and more development on Mauna Kea.

Water Supplies. This degradation of the water supply will also threaten future potential water supplies for the potential homesteads that will be developed on the eastern slopes of Mauna Kea and the current Mauna Kea State Park on its southwestern slope.

Ceded Lands Trust Revenue. The Board of Land and Natural Resource's disposition of public lands are subject to the trust provisions of Section 5(f) of the Hawaii Admission Act. In the absence of a proper appraisal and for less than fair-market value is a breach of trust and statutory duties owed to native Hawaiian beneficiaries of the trusts created by this Act, the BLNR and the UH have foregone substantial revenues that the observatories could have generated for the trust. All members are beneficiaries of the trust.

Environmental Impact and Historic Preservation Review. Applicant(s) UH/TMT has not complied with the National Environmental Policy Act. There are likely to be significant environmental impacts, especially if cumulative impacts over the past two decades are reviewed. A full EIS must be completed under both NEPA and HEPA. It was legally insufficient for UH/TMT to submit a state environmental assessment without adequate review and comment by the public. In order to give the Board all the information on potential harm to the unique resources of Mauna Kea, the UH/TMT needs to comply with all procedures for a comprehensive EIS addressing all impacts of the observatory operations, including the cumulative impacts of the proposed expansion and other impacts in the area of the Mauna Kea Conservation District.

## **22. Any Relief Petitioner Seeks or Deems Itself Entitled to:**

Denial of the UH/TMT CDUP. Beyond that we cannot know the relief until we can know the extent of the damage so all rights are hereby reserved.

## **23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest:**

The construction of the TMT will result in continued desecration of the cultural and natural resources of the summit area and underlying ground water resource. Moreover, the issuance of water permits or long term licenses that would allow the continued diversion of water from Lake Waiau within the Mauna Kea Ice Age Natural Area Reserve areas will interfere with the exercise of these traditional and customary rights.

The BLNR failed to adequately assess the effects that the desecration caused by the

Observatories and the cumulative impact the TMT will have on our constitutional rights as Native Hawaiians, cultural practitioners, and those who rely on the resources of the Mauna Kea conservation district. The laws governing land uses in the conservation district are meant to protect these resources and those who rely on them.

This contested case hearing will serve the public's interest by providing the BLNR with the information it needs to fully and properly implement the conservation district protections that they are obligated to uphold.

**24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to be A Party under section 13-1-31, HAR.**

I have participated in every phase of formal decision-making regarding the UH/TMT CDUA and I have information to assist the Board member to make informed decisions.

DATED: Hilo, Hawaii, May 31st 2016

Kalikolehua Kanaele

(electronic signature)

**From:** [email redacted]

**Sent:** Tuesday, May 31, 2016 3:46 PM

**To:** DLNR.CO.PublicDLNR

**Subject:** Contested Case Hearing Participant for CDUP HA-3568 TMT

DATED: MAY 31, 2016

TO: BLNR CHAIR SUZANNE D. CASE & BOARD MEMBERS

**FR: Stephanie-Malia:Tabbada:**

[address redacted]

RE: REQUEST TO BE ADMITTED AS A PARTY IN THE CONTESTED CASE HEARING CDUP HA-3568 THIRTY METER TELESCOPE ON MAUNA KEA AINA, KAOHE, HAMAKUA DISTRICT, ISLAND OF HAWAII, TMK (3) 4-4-015:009

I'm requesting to be admitted as a participant to the above contested case hearing as per Hawaii Administrative Rules 13-1-31. As a requestor,

1. I am a descendant of this land with the blood dating back to the original human beings who were here first.
2. I will be personally affected by the proposed Thirty Meter Telescope project and have an interest in the proceedings that are not being represented by "other" groups or interests of the "public."
3. I have lived here all of my life and have lived our culture that was handed down by my ancestors that isn't "practiced" but lived.
4. There are questions of procedure regarding the process of this permit that must be addressed.

Dated: On this 31st Day of May, in the year of the Lord 2016.

I declare statements as being true,

Stephanie-Malia:Tabbada

May 31, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Tiffnie Kakalia  
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows: I am a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778 and have lived in Hawai'i for 44 years. My ancestors hail from the four cardinal points of Hawai'i Island, which includes, Hilo, Kohala, Kona and Ka'u. I was raised on the slopes Maunakea, the same community as my mother, her father and paternal grandparents. I have raised my children to know our mauna and now my grandchildren. In addition to conducting cultural practices relevant to healing traditions, my family has been active protectors amongst Ku Kia'i Mauna initiatives. I served as a volunteer on the Kahu Ku Mauna Cultural Advisory Council for 7 years (2007-2015), contributed to many discussions relating to TMT, management issues and the high level of concern regarding legislative audits finding the Office of Mauna Kea Management (OMKM) negligent of managing cultural resources since it's inception. I am very concerned that the University of Hawai'i, especially OMKM is not providing BLNR (and other agencies involved with decisions being made on the mauna) with whole truths on accounts of consultation with its cultural advisory council. The current council is comprised of members that were not part of those discussions. The TMT project will provide substantial, adverse and irreversible damage to a significantly sacred cultural site, which will significantly impact our family practice, the wellness of our 'ohana and community.

Respectfully Submitted,

Tiffnie Kakalia