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AND COASTAL LANDS

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

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

THE UNIVERSITY OF HAWAI'I AT
HILO'S **JOINDER** TO TMT
INTERNATIONAL OBSERVATORY,
LLC'S HEARING MEMORANDUM RE:
**STANDARD FOR ADMISSIBILITY OF
EVIDENCE, FILED OCTOBER 19, 2016**
[DOC. 394]; DECLARATION OF
COUNSEL; EXHIBIT 1; CERTIFICATE
OF SERVICE

**THE UNIVERSITY OF HAWAI'I AT HILO'S JOINDER TO TMT INTERNATIONAL
OBSERVATORY, LLC'S HEARING MEMORANDUM RE: STANDARD FOR
ADMISSIBILITY OF EVIDENCE, FILED OCTOBER 19, 2016 [DOC. 394]**

Applicant UNIVERSITY OF HAWAI'I AT HILO ("**University**"), through its counsel,
Carlsmith Ball LLP, joins in *TMT International Observatory, LLC's Hearing Memorandum re:
Standard for Admissibility of Evidence*, filed on October 19, 2016 [Doc. 394] ("**Hearing
Memorandum**"), for the reasons stated therein.

As set forth in the Hearing Memorandum, Hawai'i law supports the position that the

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Kea Science Reserve, Ka'ohē Mauka,
Hamakua, Hawai'i, TMK (3) 4-4-015:009

CASE NO. BLNR-CC-16-002

DECLARATION OF COUNSEL;
EXHIBIT 1

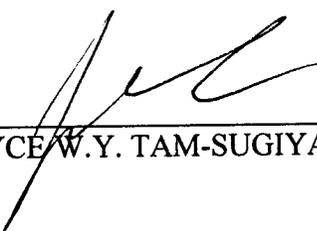
DECLARATION OF COUNSEL

I, JOYCE W.Y. TAM-SUGIYAMA, declare:

1. I am a partner at the law firm of Carlsmith Ball LLP, counsel for UNIVERSITY OF HAWAI'I AT HILO, in the above-caption matter.
2. I am authorized and competent to testify to the matters set forth herein, and unless otherwise indicated, I make this declaration based upon my personal knowledge
3. Attached hereto as Exhibit 1 is a true and correct copy of an excerpt of the transcript prepared by Jean Marie McManus of the October 20, 2016 contested case hearing in the above captioned matter, presided over by the Honorable Riki May Amano.

This declaration is made upon personal knowledge and is filed pursuant to Rule 7(b) of the Rules of the Circuit Courts of the State of Hawai'i. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, October 24, 2016.



JOYCE W.Y. TAM-SUGIYAMA

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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IN THE MATTER OF) CASE NO. BLNR-CC-002
)
 Contested Case Hearing Re)
 Conservation District Use)
 Application (CDUA)HA-3568)
 For The Thirty Meter) VOLUME 1
 Telescope at the Mauna Kea)
 Science Reserve, Ka'ohe)
 Mauka, Hamakua, Hawai'i)
 TMK (3)4-4-015:009)
 -----)

CONTESTED CASE HEARING

Held on October 20, 2016, commencing at 9:00 a.m., at
 Grand Naniloa Hotel, Crown Room, 93 Banyan Drive,
 Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

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APPEARANCES:

Judge RIKI MAY AMANO, Hearings Officer

JULIE CHINA, Deputy Attorney General

STAFF:

MICHAEL CAIN, Planner

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IAN L. SANDISON, ESQ.

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For PUEO

DEXTER KAIAMA, ESQ.

CANDACE FUJIKANE

Attorney for KAHEA

LANNY SINKIN

Temple of Lono

B. PUALANI CASE

HAWANE RIOS

Flores-Case Ohana

PRO SE

KEALOA PISCIOTTA, Mauna Kea Anaina Hou

DEBORAH WARD

CLARENCE CHING

HARRY FERGERSTROM

MEHANA KIHAI

JENNIFER LEINA'ALA SLEIGHTHOLM

DWIGHT J. VICENTE

CINDY FREITAS

WILLIAM K. FREITAS

KALIKOLEHUA KANA ELE

BRANNON KEALOHA

JOSEPH CAMARA

1 all. Thank you.

2 HEARINGS OFFICER AMANO: Ms. Ward.

3 MS. WARD: Good morning. I'm Deborah Ward.
4 I join in the objection to the notice of the hearing
5 not being noticed. And I believe that 15 days is
6 required under the hearings rules.

7 HEARINGS OFFICER AMANO: What is your
8 belief? We filed two notices, one noticing the
9 commencement of the hearing on October something
10 earlier. And then amended notice commencing the
11 hearing on October the 18th. In that amended notice
12 it indicated that we would continue until completed.
13 So that is your understanding? That was published, I
14 think.

15 MS. WARD: Okay. I didn't see the
16 publication.

17 HEARINGS OFFICER AMANO: I believe it was
18 published.

19 MS. WARD: It wasn't published in the
20 paper.

21 HEARINGS OFFICER AMANO: Yes, it was. The
22 department -- I'm seeing my staff, the department
23 staff nodding his head, so I believe the hearing
24 notice was published in the newspaper, yes.

25 MS. WARD: Thank you.

1 I have questions about the administrative
2 rules. I was writing so fast the other day because I
3 wasn't able to understand. But are you using the
4 Hawaii Rules of Evidence? I understand that the
5 Hawaii Rules of Evidence don't apply to contested
6 case hearings, and I'm trying to understand.

7 HEARINGS OFFICER AMANO: That's right, it
8 appears to be that the HAR has their own set of, for
9 instance, what's relevant, what's admissible, that
10 sort of thing.

11 MS. WARD: So rules do not apply to
12 contested case? I'm just trying to clarify.

13 HEARINGS OFFICER AMANO: I don't believe
14 Hawaii Rules of Evidence, HRE, apply here.

15 MS. WARD: Thank you for clarifying that.

16 There is a question of scheduling. A
17 question I have, because at the last hearing you said
18 that you would have to check with the Naniloa to see
19 if there were certain dates that were available, but
20 we made a big jump between beginning of November and
21 end of November, and many of our witnesses are
22 challenged by being away on the Thanksgiving holiday.

23 I'm wondering if you could explain why the
24 hearing wasn't set on the weeks of November 7th and
25 14th?

1 White.

2 Are you intending to lead him through his
3 ten-minute summary?

4 MR. SANDISON: No.

5 As a preliminary matter, we would like to
6 offer Mr. White as an expert in land use planning and
7 analysis. And we would base that offer on his
8 experience and education as identified in his
9 curriculum vitae, which is Exhibit A-30.

10 HEARINGS OFFICER AMANO: Is it necessary to
11 for me to receive him as an expert, because his
12 Direct Testimony is in?

13 MR. SANDISON: We are offering him as an
14 expert.

15 MS. PISCIOTTA: We'd object.

16 HEARINGS OFFICER AMANO: Mr. Ing, any
17 objections?

18 MR. ING: No objection.

19 HEARINGS OFFICER AMANO: Thank you.

20 Ms. Pisciotta -- pardon me. Ms. Ward?

21 MS. WARD: My understanding is that --
22 Deborah Ward. My understanding is that because you
23 said this morning we were not using Hawaii Rules of
24 Evidence, my understanding is that there's no
25 obligation to accept the witness as expert. I

1 believe we are all experts in our own fields. And
2 there is no requirement within administrative rules
3 that expert testimony be recognized.

4 HEARINGS OFFICER AMANO: Other than that,
5 any other objections?

6 I'll get to you, I'm asking Ms. Ward.

7 Any other objection, Ms. Ward?

8 MS. WARD: I object to the designation of
9 "expert".

10 HEARINGS OFFICER AMANO: Thank you.

11 Ms. Pisciotta.

12 MS. PISCIOTTA: Yes, I object also to
13 designation as "expert" because the burden of proof
14 is based upon the parlance of evidence, and either
15 everyone is an expert or no one can be an expert in
16 order to weigh this properly, because contested case
17 hearing doesn't require anyone to even have a lawyer,
18 so this is a people's process and Chapter 91 doesn't
19 require that, and Rules of Evidence do not apply.

20 HEARINGS OFFICER AMANO: Thank you. Mr.
21 Ching.

22 MR. CHING: Clarence Ching, same objection.
23 Thank you.

24 HEARINGS OFFICER AMANO: Thank you. Ms.
25 Case.

CERTIFICATE

1 STATE OF HAWAII)
 2) SS.
 3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on October 20, 2016, at 9:00 a.m., the
 6 proceedings contained herein was taken down by me in
 7 machine shorthand and was thereafter reduced to
 8 typewriting under my supervision; that the foregoing
 9 represents, to the best of my ability, a true and
 10 correct copy of the proceedings had in the foregoing
 11 matter.

12 I further certify that I am not of counsel for
 13 any of the parties hereto, nor in any way interested
 14 in the outcome of the cause named in this caption.

15 Dated this 20th day of October, 2016, in
 16 Honolulu, Hawaii.

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19 S/S Jean Marie McManus

20 JEAN MARIE McMANUS, CSR #157
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Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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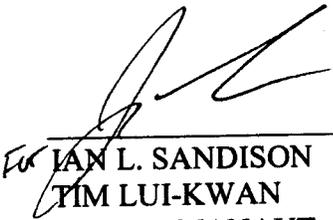
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