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

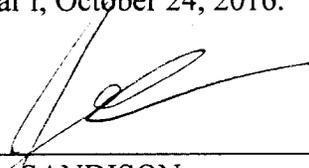
Applicant UNIVERSITY OF HAWAI'I AT HILO (“**University**”), through its counsel,  
Carlsmith Ball LLP, joins in *TMT International Observatory, LLC's Hearing Memorandum re:  
Standard for Admissibility of Evidence*, filed on October 19, 2016 [Doc. 394] (“**Hearing  
Memorandum**”), for the reasons stated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

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

Hawai'i Rules of Evidence ("HRE") do not apply to this contested case proceeding. In an agency proceeding, the Hearing Officer has broad discretion to consider all oral or documentary evidence that is relevant and probative, subject to privileges recognized by law, and to reject other evidence that is irrelevant, immaterial or unduly repetitive.

Additionally, at the hearing on October 20, 2016, the Hearing Officer ruled that the HRE is not applicable to the present contested case proceeding. *See* Ex. 1, Oct. 20, 2016, Hrg. Trans. at 25:7-14. No parties objected to the Hearing Officer's ruling; and Petitioners Kealoha Pisciotta and Deborah Ward affirmatively agreed that the HRE should not apply to this proceeding. *Id.* at 25:1-12, 45:21-25, 46:1-3, 46:12-19. Based on the foregoing, the University joins TMT International Observatory, LLC's request that the well-established and liberal standards for the admissibility and consideration of evidence in administrative agency contested case hearings, as set forth in the Hearing Memorandum, be applied to this proceeding.

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



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for IAN L. SANDISON  
TIM LUI-KWAN  
JOHN P. MANAUT  
Attorneys for Applicant  
UNIVERSITY OF HAWAI'I AT HILO

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'ohe Mauka,  
Hamakua, Hawai'i, TMK (3) 4-4-015:009

CASE NO. BLNR-CC-16-002

DECLARATION OF COUNSEL;  
EXHIBIT 1

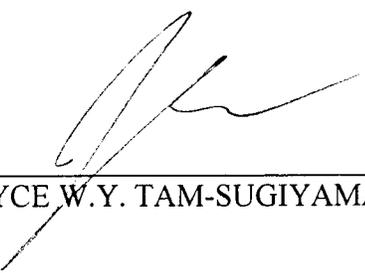
**DECLARATION OF COUNSEL**

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

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

## 1 APPEARANCES:

2 Judge RIKI MAY AMANO, Hearings Officer

3 JULIE CHINA, Deputy Attorney General

## 4 STAFF:

5 MICHAEL CAIN, Planner

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14 For PUEO

15 DEXTER KAIAMA, ESQ.

16 CANDACE FUJIKANE

17 Attorney for KAHEA

18 LANNY SINKIN

19 Temple of Lono

20

21 B. PUALANI CASE

22 HAWANE RIOS

23 Flores-Case Ohana

24

25 PRO SE

26 KEALOA PISCIOTTA, Mauna Kea Anaina Hou

27 DEBORAH WARD

28 CLARENCE CHING

29 HARRY FERGERSTROM

30 MEHANA KIHOI

31 JENNIFER LEINA'ALA SLEIGHTHOLM

32 DWIGHT J. VICENTE

33 CINDY FREITAS

34 WILLIAM K. FREITAS

35 KALIKOLEHUA KANAELE

36 BRANNON KEALOHA

37 JOSEPH CAMARA

38

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.

17  
18  
19 S/S Jean Marie McManus

20 JEAN MARIE McMANUS, CSR #157  
21  
22  
23  
24  
25

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

  
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