

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

7 CONTESTED CASE HEARING

8
 9 Taken on August 25, 2011, at the State Building, 75
 10 Aupuni Street, Conference Room C, and University of
 11 Hawaii Hilo, College of Tropical Agriculture and
 12 Human Resources Building, 200 W. Kawili Street,
 13 Conference Room A, Hilo, Hawaii, commencing at 9:00
 14 a.m. before Hearings Officer Aoki.

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 STATE OF HAWAII

25 BEFORE: Jean Marie McManus, CSR #156

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

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

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

9 MS. TOWNSEND: Marti Townsend with KAHEA.
 10 MS. WARD: Deborah Ward representing
 11 myself.

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

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

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

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

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

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

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1 Genesis LeeLoy. My teachers, my people, and my
2 country. 'Ike is to see, 'ike is to know. Even the
3 blind can see.

4 Thank you, Hearing Officer, for your time.

MR. LUI-KWAN: Mr. Neves, can I get a copy?

6 You mentioned you passed out a copy of the
7 translation.

8 MR NEVES: (Witness complies.)

9 MR. LUI-KWAN: Thank you.

10 HEARINGS OFFICER AOKI: Excuse me, Tim,
11 would you mind sitting in front?

12 MR. LUI-KWAN: Sure. No cross.

13 DIRECT EXAMINATION

14 MS. WARD: Good afternoon. For the record
15 my name is Deborah J. Ward. I'm a graduate of the
16 University of Hawaii at Manoa. I have a Bachelor's
17 degree and a Master's degree in Horticultural
18 Science. I was a faculty member with the University
19 of Hawaii's College of Tropical Agriculture and Human
20 Resources in the Department of Natural Resources and
21 Environmental Management.

22 I retired with 23 years of service a few
23 years ago, and I've spent much of my adult life
24 working to protect and conserve natural habitats
25 unique to the Hawaiian islands.

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1 that I remember remains with me today.

2 I hiked several times on Mauna Kea with
3 many conservation advocates and kupuna who have since
4 passed, including people who have changed my life
5 forever, such as Lorin Gill, and Mae Mull, and Lani
6 Stemmermann. And in the 1980s with Fred Stone and
7 Holly McEldowney and Frank Howarth. I've learned
8 immeasurable stories and understanding of the
9 wilderness.

10 I've followed the development of Mauna Kea
11 Science Reserve Complex Development Plan in 1983, and
12 remember the assurances regarding future compliance
13 with administrative rules and limits on development.

14 I've observed the development of multiple
15 telescopes and observatories since the 1970's to the
16 present. I've read the plans, conditions and the
17 assurances. I've offered testimony at numerous
18 hearings, and have attended Mauna Kea Management
19 Board meetings for the last decade.

20 Throughout I've visited Mauna Kea for
21 recreation, wilderness experience, unfettered vistas,
22 silence, natural beauty and cultural significance.
23 The cumulative impact of intensified industrial land
24 use at the summit has impacted my recreational
25 enjoyment and my spiritual practice. The cumulative

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1 I regularly use Mauna Kea for hiking,
2 including access and use of traditional Hawaiian
3 trails of Mauna Kea. I view and enjoy the
4 wilderness. I enjoy the natural beauty and open
5 spaces and other forms of recreation, including
6 wildlife observation, esthetic enjoyment, educational
7 study and spiritual contemplation.

8 As a recreational user, I have participated
9 in hikes and service projects on Mauna Kea, and I
10 participate in solstice ceremonies on the summit.

11 In my capacity as natural resource faculty,
12 I've served on the Big Island Invasive Species
13 Committee. I've co-led student field trips for the
14 Hawaii Community College, 4-H Youth Development
15 Program, and Sierra Club High School Hikers on Mauna
16 Kea. And I've taken part in community advisory
17 meetings regarding Mauna Kea with the Department of
18 Land and Natural Resources, State Historic
19 Preservation Division and the U.S. Fish and Wildlife
20 Service in the mid 1990s.

21 I'm not paid to be here. My involvement in
22 issues regarding the management of Mauna Kea began in
23 the 1970's. The vast wilderness vistas from the
24 highest peak in the Pacific was awe inspiring to me
25 and breathtaking and serene. The sound of silence

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1 impact of the destruction of habitat, widespread
2 waste accumulation, modified viewplane, constant
3 sound, alteration of the geology and negative impact
4 to cultural practice of my colleagues is a source of
5 personal grief. The noise of the observatory
6 air-conditioners, blowers, generators, associated
7 vehicles and industrial activity is present and
8 disturbing to recreational users who hope for the
9 pristine silence of wilderness.

10 Development of five additional acres of
11 industrial infrastructure, called the new visual
12 element on the northern plateau, on the last
13 remaining unobstructed viewplane facing Haleakala
14 will significantly and negatively affect my
15 recreational practices.

16 The view of Mauna Kea summit from my
17 vantage point from my farm in Puna, or from the beach
18 at Hilo Bay, or from my hiking trails on Mauna Loa,
19 are all fettered by the presence of multiple domes in
20 the skyline. It is difficult to find a location on
21 the Island of Hawaii where one cannot see a telescope
22 in one's view of Mauna Kea. I believe I'm not alone
23 in finding these visual obstructions a significant
24 annoyance and an adverse impact.

25 On a recreational visit to the summit of

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1 Mauna Kea with Nelson Ho and Fred Stone in 1996, we
 2 discovered actions which directly violated conditions
 3 of the BLNR approved Mauna Kea Management Plan.
 4 Wekiu bug habitat on the slopes of Pu'u Hau'oki was
 5 altered to fill the lower part of the inner cinder
 6 cone and trench into the outer slopes of the cone,
 7 both high quality Wekiu bug habitat, and the
 8 discovery was the nexus for greater involvement in
 9 efforts to improve the management of this highly
 10 delicate and fragile natural environment.

11 Following the Legislative Audit in 1998,
 12 and development of 2000 Master Plan, and the
 13 initiation of the Office Mauna Kea Management, I have
 14 served at the request of Mauna Kea Management on the
 15 Environment Committee since December 2000. I've
 16 worked with a committee of scientists working in the
 17 fields of biology, geology and environmental
 18 management who formulated recommendations for
 19 biological inventorying and monitoring in 2002.

20 Studies of Wekiu bug populations were
 21 monitored, and Jesse Eiben began his work on
 22 understanding its autecology in 2005. However, most
 23 of the other recommendations have not been carried
 24 out at this point.

25 Meanwhile, the Keck Outrigger Telescope
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1 project had been proposed in late 1999, and the CDUA
 2 was considered by the Board of Land and Natural
 3 Resources in early 2003. My concerns led me to join
 4 a hui of participants, including Sierra Club, who
 5 took part in a contested case hearing and successful
 6 litigation to overturn the permit for the Keck
 7 Outrigger Telescope development, due to the absence
 8 of a current Comprehensive Management Plan to address
 9 multiple uses on Mauna Kea.

10 We were forced to intervene in the
 11 management of Mauna Kea because BLNR abdicated its
 12 responsibility under the law to preserve and protect
 13 the summit. BLNR failed to comply with its own rules
 14 requiring that it manage the natural resources
 15 pursuant to a comprehensive management plan.

16 The BLNR actively opposed the appellants'
 17 efforts to bring BLNR into compliance with its own
 18 administrative rules. The DLNR administrative rules
 19 explicitly state that astronomy facilities are among
 20 the uses requiring approved management plans, and
 21 that management in the Conservation District must
 22 address reliance on management plans to address
 23 cumulative land proposals.

24 Eventually the board's decision to allow
 25 construction of the Keck Outrigger Telescopes was
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1 overturned and the need for a management plan was
 2 upheld. Judge Glenn Hara's Decision and Order in
 3 2007 ruled that a comprehensive management plan that
 4 covers multiple land uses in the conservation
 5 district must be developed for BLNR approval.

6 The court order requires BLNR to prepare a
 7 comprehensive management plan for Mauna Kea and then
 8 act in accordance with that plan. The ruling
 9 challenged the legal status of the University of
 10 Hawaii's 2000 Master Plan, which was neither reviewed
 11 nor approved by BLNR.

12 The University has not demonstrated its
 13 expertise and experience in managing important
 14 natural and cultural resources, nor does it have a
 15 history of protecting traditional and customary
 16 Native Hawaiian practices.

17 The legislative auditor reported in 1998
 18 that DLNR has failed to define its relationship with
 19 the University, allowing the institution to oversee
 20 its own activities, and not provide a mechanism to
 21 ensure compliance with lease and permit requirements.
 22 The auditor reported that without permit conditions
 23 or controls to ensure the implementation of
 24 management plans, the University was allowed to
 25 continue development without completing prior tasks

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1 outlined in management plans.

2 The CMP natural resource sub-plan
 3 identifies a large number of data gaps regarding
 4 Mauna Kea that impede enforced decision making. DLNR
 5 staff contends the lack of staff and funding prevents
 6 them from carrying out management actions. DLNR, by
 7 not collecting payment of lease rents at fair-market
 8 value, places an unacceptable burden on Hawaii's
 9 taxpayers who must subsidize international astronomy.
 10 UH requests funding from the legislature to carry out
 11 management of the Mauna Kea Science Reserve, while
 12 the multinational corporations and universities allow
 13 private entities to profit from patents on
 14 discoveries.

15 The Office of Conservation and Coastal
 16 Lands staff report for the TMT CDUA states that Mauna
 17 Kea's infrastructure is crumbling and active
 18 management of resources is constrained by lack of
 19 funds. This bolsters the argument that Sierra Club,
 20 Mauna Kea Anaina Hou, KAHEA and others have made for
 21 years, payment of fair market rent for the use of the
 22 world's premier astronomical location should pay for
 23 adequate resource management, infrastructure upkeep,
 24 and public safety.

25 The idea that the only way to fund good
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1 management is to degrade the resource in order to
2 collect rent from the new developer to pay for the
3 management mistakes of the past, is akin to a Ponzi
4 scheme. The added insult to resource will not reduce
5 the cumulative impact.

6 The University of Hawaii is proposing to
7 develop the TMT, would like to point to the CMP, the
8 FEIS, the TMT MP, and the TMT CDUA, and claim there
9 is a new paradigm for the 21st century. The
10 attorneys representing the UH TMT in this case paint
11 the Petitioners as backward-looking. Sadly, as far
12 as I'm concerned, a new paradigm is not evident.
13 Lessons of the past could be repeated, but should not
14 be, and we are compelled to point out the repeated
15 patterns we see, evidenced by the documents before
16 us.

17 The University has not met the burden of
18 demonstrating its proposed land use, the construction
19 of the Thirty Meter Telescope and related
20 infrastructure on the summit of Mauna Kea, satisfies
21 the Conservation District rules, including the permit
22 criteria.

23 The TMT project does not conserve, protect,
24 preserve or promote long-term sustainability of the
25 natural resources. And, therefore, it does not meet

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1 inexplicably, the documents fail to provide adequate
2 guidance to the decision-makers who must evaluate the
3 risks and avoid harm to the natural heritage held in
4 trust for the people.

5 The guidance documents promise mitigation
6 repeatedly, but assign the details successively to
7 the decision-makers in the future, in spite of strong
8 recommendations from scientists and DLNR staff.

9 Not only has overdevelopment put our unique
10 biota at risk, it has adversely impacted a national
11 natural landmark. The cumulative, incremental and
12 additive damage to our natural resources has
13 wide-ranging and irreversible impacts, not only to
14 the state of Hawaii, but also to the nation.

15 The risk extends outside the Mauna Kea
16 Science Reserve into the Ice Age Natural Area Reserve
17 as well. The effect of development adjacent to the
18 Ice Age Natural Area Reserve has significant
19 potential to harm the resources in the Conservation
20 District that extend beyond the area leased by the
21 University.

22 The statement in the CDUA that potential
23 impacts to cultural, archaeological and historic
24 resources, omitting biological and natural, would
25 cease upon decommissioning, to the extent

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1 the eight criteria.

2 A full assessment of the environmental
3 impacts can only be undertaken when data is available
4 to review. In the case of Mauna Kea, the inventories
5 and monitoring mandated as conditions in the 1983
6 MRSCDP were not funded by the University, and as a
7 result, baseline information required to manage and
8 protect this fragile ecosystem from industrial
9 development and visitor impact is still missing or
10 incomplete, even 28 years after that plan was
11 proposed.

12 A prime example of habitat loss through
13 development is the Wekiu habitat. It's easily
14 altered by vehicular traffic and construction
15 activity, as tephra cinders are preferred by the
16 Wekiu bug are easily crushed into dust-sized
17 particles. Prime habitat can quickly be degraded to
18 compact silt and mud by off-road vehicles. Wekiu bug
19 habitat may also be altered by dust blown up from
20 road grading and other construction activities.
21 Threats to invertebrate communities on Mauna Kea CMP
22 NRMP.

23 The costly studies and commentary in the
24 FEIS, NRMP, and CDUA outline some of the existing
25 potential risks to the natural resources, but

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1 practicable. That is an illogical statement. No
2 decommissioning project will restore the cultural and
3 natural landscape that has been altered. The impact
4 is irrevocable.

5 In summary, the plans proffered by the
6 University to justify its request to intensify the
7 land use on Mauna Kea do not address cumulative
8 adverse impact. They do not provide effective or
9 appropriate or sufficient mitigation for significant
10 and substantial cumulative impact that has already
11 impacted the resource, much less describe mitigation
12 that would address new development. And they do not
13 meet the criteria for protection of natural and
14 cultural resources of the Conservation District as
15 required by statute.

16 For this reason, it's the duty and
17 responsibility of BLNR to deny this proposal. Thank
18 you.

19 MR. HANDLIN: The University has no
20 cross-examination of this witness.

21 HEARINGS OFFICER AOKI: Let's take a break
22 ten minutes.

23 (Recess taken.)

24 HEARINGS OFFICER AOKI: Hearing is
25 reconvened. We're on the record. We have a new

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