

Written Direct Testimony of Walter M. Heen

My name is Walter M. Heen, Retired Judge of the Hawai'i State Intermediate Court of Appeals, former Trustee of the Office of Hawaiian Affairs ("OHA"), and the first Director of the Office of Mauna Kea Management ("OMKM") at the University of Hawai'i at Hilo ("UH Hilo"). I was appointed as Director of OMKM by Chancellor Rose Tseng in the summer of 2000.

The University of Hawai'i Board of Regents, after a series of highly contentious public hearings on the Island of Hawai'i in 1998, adopted the 2000 Master Plan to provide for local oversight of observatory development within the Science Reserve on Mauna Kea. Hawai'i Island-based oversight was an insistent demand coming from the public hearings. Another demand of the public hearings was that Native Hawaiians have unrestricted access to Mauna Kea. OMKM was established in response to those demands.

The OMKM staff, with advice from the Mauna Kea Management Board ("MKMB"), immediately began developing a program to carry out the provisions of the 2000 Master Plan. Our subsequent planning was consistent with the legal framework set out by the Hawai'i Supreme Court for identifying cultural and natural resources, assessing the potential impacts to those resources by existing and proposed uses, and considering feasible measures to mitigate such impacts to significant resources. Close contacts were established with the astronomy community on the mountain and at UH Mānoa, as well as with the Native Hawaiian and environmentally concerned communities.

Notwithstanding its situation as part of the University community, OMKM's primary concerns were to protect Native Hawaiians' access to Mauna Kea for observing and practicing their ancient customs, traditions, and religious ceremonies, and to protect the natural environment within the Science Reserve.

The 2000 Master Plan's provisions regarding OMKM's kuleana are rather broad. *See Exhibit A-48.* From the outset, however, OMKM took to heart the advice that it had "apparent authority" over a wide range of questions that might come before it and it was capable of establishing policies to govern problems that might be met. Since its inception, OMKM has been viewed by the University of Hawai'i (the "University") and the community as the authoritative body for definitive advice and counsel regarding issues surrounding the Science Reserve.

With regard to matters concerning Native Hawaiian, OMKM established and continues to maintain the Kahu Kū Mauna ("Guardians of the Mountain") council, an assembly of Native Hawaiians that provides OMKM with pertinent and authoritative advice regarding conflicts between "western" intrusions and preservation of the sacredness of Mauna Kea. Kahu Kū Mauna has indeed lived up to its name.

Additionally, MKMB established an environmental advisory group which assists the office in addressing activities that might impact the natural ecology of the mountain. This group provides the office with guidance on environmental management. In particular, the Environment committee was instrumental in assisting with the development of the Natural Resources Management Plan, which is a sub-plan of the University's Mauna Kea Comprehensive Management Plan ("CMP"). *See Exhibits A-9 & A-10.*

In addition, OMKM led the way in establishing control over the commercial tour operators who bring visitors to Mauna Kea. Without such control, the tour operators could conduct their activities in a manner that jeopardizes the environment and threatens areas of cultural and historical sensitivity and significance to Native Hawaiians, such as the adze quarry (which, although not strictly within the University's jurisdiction, generates concerns over

invasive actions by visitors to the mountain). Official operational control of the commercial tour operators was delegated to the University by the Board of Land and Natural Resources in 2001.

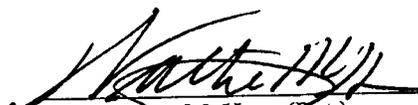
All of OMKM's activities since its inception were, and continue to be, designed to protect Mauna Kea from uncontrolled and unwarranted intrusion and to preserve Native Hawaiian traditional and customary rights and the mountain's natural environment, all as guaranteed by the Hawai'i State Constitution, state statutes, and court decisions. In carrying out its activities, OMKM has been particularly cognizant of the laws pertaining to the Department of Land and Natural Resources and its Administrative Rules.

I resigned as Director of OMKM in 2001, but have continued to maintain close contact with the office personnel and the administration of UH Hilo. I am satisfied that UH Hilo and OMKM continue to accord the utmost concern for the protection of Native Hawaiians' access to Mauna Kea and the mountain's environment.

I also maintained that contact during my term as Trustee of OHA from November 2006 to November 2010. I and the OHA Board reviewed and voiced our approval of the CMP submitted by the University to the Department of Land and Natural Resources. It is my opinion that the management proposals set out in the CMP adopted by the Board of Land and Natural Resources for the Mauna Kea Science Reserve adequately provide for protection and preservation of the mountain's cultural and natural resources subject to the State's right to reasonably regulate both the public use and the exercise of traditional and customary practices of Native Hawaiians on Mauna Kea. The OHA Board also supported legislation to allow the University to promulgate Administrative Rules regarding activities on Mauna Kea.

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DATED: Honolulu, Hawai'i, October 11, 2016



Judge Walter M. Heen (Ret.)