

Shelley Stephens Maka'ala Nakoa Mahi-Hanai of the Ha'I Ohana (Navigator/Chiefs)
(Co-founder Native Tenant Protection Council)
P.O. Box 711498
Mt. View, HI. 96771

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

IN THE MATTER OF

CASE NO. BLNR-CC-16-002

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, Hamakaua
Hawaii'i, TMK (3) 4-4-015:009

**WRITTEN TESTIMONY
CONCERNING TMT/LEASE
AND CONDITION VIOLATIONS;
EVIDENCE HOLOKAI-MAHI
REPORT, ISSUES OF ANTIQUITIES;
REVOKING OF THE TMT PERMIT
EX. 1-12, DECLARATION**

**CONCERNING TMT/LEASE AND CONDITION VIOLATIONS; EVIDENCE IN
THE HOLOKAI-MAHI REPORT, ISSUES OF ANTIQUITIES; REVOKING OF THE
TMT PERMIT:**

Shelley c. Stephens (Mahi-hanai) has attended numerous functions, hearings and meetings concerning the TMT did file a timely letter to OCCL for the "Contested Case Hearing Comments" for intervention; post marked May 29, 2016; and is thereby already enjoined into the case. OCCL had mistakenly filed the handwritten notice under "communications" instead of correctly lodging the letter with the TMT Contested Case. Submitting the hereby testimony to the best of her knowledge and lodging a general complaint based on cultural evidence: (Ex. 1)

- A. No study on the effect of on the Perma-Frost due to excavation into layers and heat generated by building.
- B. EIS incomplete without CIS (Cultural Impact Statement)
- C. Cultural Property
- D. No study on the effects of TMT construction on Water/Snow ground absorption availability of a water source; contributing to springs and water in Hamakua. Permanent damage to the Potable Water Table by construction of

TMT. Appurtenant Water Rights negatively affected by TMT construction (Ex. 6a, 6b) in violation of HRS 174C-101 "*Native Hawaiian Water Rights*". The Mauna Kea Report (Holokai-Mahi/Lee 2010) shows numerous underground springs in the general area of N13 in Fig. 5. (Ex. 2)

E. Definitions of Sacred Place. Alice Holokai-Mahi describes Mauna Kea as a "*Holy Sanctuary*". To build TMT would disrupt this sacred place and destroy significant components of the Holy Sanctuary. (Ex. 2)

F. Association of Hawaii Civic Clubs (AHCC); **RESOLUTION No. 98-16: "Calling for a moratorium on further construction on Mauna Kea (Appendix B & C)."** (*-Kumu Pono Associates, February 1, 1999; Mauna Kea Oral History Study and Archival Literature Research*) must be taken into consideration by those involved in trying to construct TMT. (Ex. 8a, b, c)

G. For use of land in a "Conservation Zone" the permit must consider the "*Obligations of the State of Hawaii*" under Cultural Impacts: (Ex. 7a, 7b)

"Article IX and XII of the State Constitution, and other state laws, and the courts of the State require government agencies to promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups." (7b) [Standard form]:

a.) Provide identity and scope of cultural, historical and natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

b.) Identify to the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action.

c.) What feasible action, if any, could be taken by the BLNR in regards to...application to reasonably protect native Hawaiian rights

H. TMT construction issues brought under scrutiny of the “Conservation Guidelines” (Office of Conservation and Coastal Land Management) {Established under provisions of Act 187, Session Laws of Hawaii, 1961, and Act 205, Session Laws of Hawaii, 1963.}

CHIEF COMPLAINT: BLNR IS NOT FOLLOWING ITS OWN LAWS, STATUTES OR ADMINISTRATIVE RULES. CULTURAL SITES ARE IN DANGER OF BEING DESTROYED BY TMT IN THE N13 AREA; LOCATED IN SUBZONE “H-46 MAUNA KEA” (Ex. 11)

1. CONSERVATION SUBZONES: “Subzone Designations: Aug. 22, 2014”

Chapter 13-5, Exhibit #1 (pg. 2 of 4)

(#46) “H-46, Mauna Kea”, June 4, 1978

2. TMT/BLNR have caused Kanaka Cultural Unrest, because they have issue the permit for TMT while failing to recognize Hawaiian Rights in Subzone H-46, Mauna Kea; according to Subsect. 13-5-42 for native Hawaiian Rights within a designated Conservation Zone:

BLNR/OCCL “Standard Conditions” (No. 25):

“The Permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law.” -Hawaii Administrative Rules (HAR) Title 13, DLNR Subtitle 1, Administration Chapter 5, Conservation District. (pg. 5-48) (Ex. 11)

Under the concept of compliance to Board of Land and Natural Resources permits for TMT must comply to OCCL basic “Standard Conditions” requirements. The construction of TMT would destroy a proven and expressed cultural site; and most definitely “hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law”. Thereby, the complainant demands the permit for TMT must be revoked. (HRS 183-C-3) (Ex. 11)

3. Revocation of Permits: “In any case where a failed to comply with one or more of the conditions of the permit, the Board may direct the

Chairperson to revoke permit. [Eff. 12/12/94; am and comp. Dec. 5, 2011] (HRS183-C-3 HAR Title 13) (pg. 5-50)

TMT, UHH, and BLNR/DLNR have failed to comply with its own conditions of the original lease; especially Mauna Kea Lease Condition No. 12 causing blatant destruction of "Antiquities", Sacred Sites, visibility for Papa Kilo Hoku and Navigators, and disrupting water sources where Appurtenant Water Rights persist. Other reasons to revoke the Permit for TMT includes but is not limited to: Violations of HRS 183-C-3, HRS 174C-101, HRS 172-11, Article XII, 1-1,7-1, Public Law 103-150, the Constitution.

I. LEASE VIOLATIONS-GENERAL LEASE NO. S-4191

Kaohe, Hamakua of a belligerently occupied country:

A. Example #1: "LESSOR does hereby *demise* and lease unto the LESSEE (UHH) all of that certain parcel of lands situate at Kaohe, Hamakua (Exhibit "A")" (UHH Scientific Reserve Lease, pg. 1)

According to the language of the Lease, the lands were "DEMISED" by BLNR, an act of taking crown or government land; falling under this category according to Black Law Dictionary and definition of "*demised land*". The Apology Resolution has clearly admitted wrongdoing in PL 103-150. The original contract-Lease is evidence of acts in PL 103-150, and amounts to a written admission of guilt, in reference to the continued attempt to Demise the national lands held in the Allodium: in acts of dubious taking of crown & government lands. BLNR is in fact, misrepresenting its jurisdiction over government lands.

(Hawaiian Constitution/Law of the Land-Kamehameha III over Hawaiian Kingdom National Lands and property.) since the overthrow of the Hawaiian Kingdom in 1893. (Apology Resolution PL 103-150)

Example #2: "Reserving to the Lessor-No. 4. Right to use Demised Land." (Lease, pg. 3)

(Other acts to demise the land include "Governor's Proclamation "Mauna Kea Forest Reserve June 5, 1909.) Preserving watershed and forest is a good, but asserting aggressive domination over a Conservation Subzone, in an area with protected native Hawaiian Rights must be held in check by the Law.

a. "...COVENANTS WITH THE LESSOR, AS FOLLOWS:

(No. 4) Specified Use. ...as a scientific complex....including without limitation to *an** observatory..."

QUESTION: Meaning "an" as in ONE Observatory??

****If so, Mauna Kea, according to the original lease is *already over the limit of observatories 12x*****

b. VIOLATIONS under No. 12, OBJECTS OF ANTIQUITIES: (Ex. 12)

"The Lessee shall not appropriate, damage, remove, excavate, disfigure, deface, or destroy any object of antiquity, prehistoric ruin or monument of historical value."

Because of known Antiquities in N13, the construction of TMT in N13 would be a violation of the Lease under No. 12. Objects of Antiquities.

Activities by TMT have already caused Cultural Unrest, and Hawaiians firmly believe the Mountain is sacred and part of their religion and culture. To build TMT, a massive deep telescope, disagreeable to the majority of native Hawaiians would degrade the Mauna (mountain) and would cause the Hawaiians to diminish. The construction of TMT shall cause destruction of known Antiquities which are individual Cultural Sites linked to the particular Ohana (family); is in N13.

Wallace, the Cultural Consultant for TMT has stated he has a copy of the M. Mahi/Lee Report, and that, "Yes, there are Antiquities in N13." (Ex 2, 3, 4)

This concept of Antiquities not clearly understood by TMT in general. The Issue of Antiquities in N13 has not been properly discussed.

THE MAUNA KEA REPORT

Please note: submission of the Mauna Kea Report generates a complaint to the Historic Preservation Division of DLNR for immediate protection of Antiquities and activates Section 106 of National Historic Preservation Act and Chapter 6E.

A comprehensive Cultural Impact Statement not been done under to analyze the construction of TMT in the Mauna Kea Report qualifies as a "HOLY (Ex. 5)(Ex. 2) SANCTUARY" (fig. 5). BLNR/DLNR must consider the significant findings of (Ex. 3)(Ex. 4) Antiquities at Risk in N13 according to the Mauna Kea Report.

The report "**MAUNA KEA**" was submitted to the State of Hawaii/OHA by Mr. Mike Lee for "Aunty Alice Holokai of Papa Kolea of the Mahi Ohana and

Umikalani". The Holokai-Mahi/Lee Report is time stamped "**OHA-NATIVE RIGHTS 2010 JUN 23 P 2:06**". This report is being now officially submitted to the Contested Case Hearing for TMT/Mauna Kea on behalf of the Mahi Ohana; who have standing to present critical cultural evidence to show cause why the TMT should not be built upon Mauna Kea. (Ex. 3)

J. Federal Question: Would construction of the TMT cause the native Hawaiian Kanaka to Diminish? Yes.

This Federal Question Congressionally linked to State Violations under the "Admissions Act": the "State of Hawai'i and the Judicial must uphold the native Hawaiians culture and religion... (for if) they cause the Hawaiians to diminish, Congress can sue the State and remove their Statehood."

K. DEMISED LAND: (Ex. 9)

Because the term "demised" is part of the original UHH Science Reserve Lease, the Hearing Officer can lodge and hear this part of the complaint.

The subject property "Kaohe of Hamakua" is designated as government lands of the Hawaiian Kingdom. Kamehameha III placed the entire national lands under one Land Commission Award acknowledged by Treaty with the President of the United States; an act ensuring independence and protecting national rights within the entire allodium. BLNR/State of Hawaii do not own the government lands. To the contrary, these lands are held in trust with specific laws and statutes in place; especially under Royal Probate and the Probate of Naukana filed into the Supreme Court by Albert Ha'a, Jr. concerning Crown, Government, and Fort Lands in protection of the Hawaiian people and heirs of Kamehameha III; as an intervention against the State of Hawaii concerning the return of the National Lands to the beneficiaries. Royal Heirs, Chiefs, and Kanaka have standing due to vested rights and an interest in the National Lands; as shown by PL 103-150.

The original UHH Lease shows how the land was "demised":

Example #1: "LESSOR does hereby *demise* and lease unto the LESSEE (UHH) all of that certain parcel of lands situate at Kaohe, Hamakua" (*Exhibit "A"*) (*UHH Scientific Reserve Lease, pg. 1*)

According to the language of the Lease, the lands were "DEMISED" by BLNR, *an act of taking crown or government land*; falling under this category according to

Black Law Dictionary and definition of "*demised land*". The Apology Resolution has clearly admitted wrongdoing in PL 103-150. The original contract-UHH Lease is evidence of acts in PL 103-150, and amounts to a written admission of guilt, in reference to the continued attempt to Demise the national lands held in the Allodium; in acts of dubious taking of crown & government lands.

BLNR is in fact, misrepresenting its jurisdiction over government lands. BLNR does not "own" the lands of Kaohe. The Kanaka have rights to the lands of Kaohe under Hawaiian Constitution/Law of the Land. (Kamehameha III Hawaiian Kingdom National Lands and property). Ongoing acts to demise the lands have occurred since the overthrow of the Hawaiian Kingdom in 1893; in violation of the Public Law 103-150, the Apology Resolution. Construction of TMT, because it ignores laws and statutes that protect native Hawaiian cultural sites and properties; is viewed as a further attempt to cause "*Permanent prejudice of Hawaiian Nationals from their national Lands*" (*Privy Council, Lahaina*). The lands of Kaohe are also protected under the United States Constitution "*Customs and Usage*" and "*Treaties and Nations*".

Example #2: "Reserving to the Lessor-No. 4. Right to use Demised Land." (UHH Lease, pg. 3 without recognition of Hawaiian Rights, An issue of Authority: The UHH Lease relies on 1955 revised law for its jurisdiction and authority to issue a further permit for TMT. Lease specifies "no discrimination based on...National Origin." In this case, that would be the Kanaka of the Hawaiian Kingdom.

- 1.) The 1955 Laws are based on taking/demising land under a Utilities Act; now used an active base to destroy a sacred cultural site.
- 2.) The 1955 Laws also state through the Kuhio Act, *all of the Royal Orders* are to be recognized and consulted in such matters.

IN CONCLUSION

The permit for the TMT Observatory, (CUDA) HA-3568 for the Thirty meter Telescope must be revoked; based on the evidence for violation of laws, conditions, and BLNR's Administrative Rules and the Constitution. (Ex. 1)(Ex. 2)

The above is true and to the best of my knowledge,

Signed: Shelley C. Stephens / *Mahi-hanai*
Shelley C. Stephens (Mahi-hanai)

Dated: 11/15/2016 (Ex. 12)

(Ex. 10)(Ex. 5)(Ex. 6 a, b)
(Ex. 11)(Ex. 7 a, b)(Ex 8 a, b, c)

FROM: Shelley Stephens Mahi-hana'i

PO Box 711498

Mt. View, HI 96771

(808) 313-2415

% NATIVE TENANT PROTECTION COUNCIL

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 JUN -3 A 11:35
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

TO: DLNR/BLNR

TMT Contested Case Hearing
(MAUNA KEA)

RE: COMMENTS

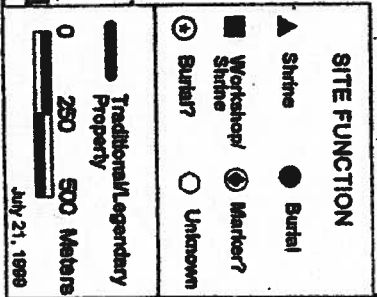
Aloha,

In reference to VIOLATIONS of the
lease and protection of Antiquities:

- a. The lease was based on the land
being "DEMISED" (P.L. APOLOGY RESOLUTION)
[Illegal Dubious taking]
- b. The lease says "AN" observatory
as in "one".
- c. #12 of lease says there shall be no
ground breaking or disturbance in AREA
of Antiquities. M. MAHI/LEE submitted
Antiquities Chart in N 13. (Wallace
of TMT has copies & noted "yes"
there ARE ANTIQUITIES IN N13
(TMT AREA))

Shelley Stephens Mahi-hana'i
May 29, 2016

(E)



water

"Mama
Dea"

The Source of My Knowledge at
My Aunt Alice Holokai of Papa
Kolea the mother of Master Chantel
George Holokai taught me the stories
of her father who was of the
Mahi Clan of North Kohala.

My ancestor Unikaunani was
the founder of the Mahi Clan of
Kohala and Hamakua. My family
lived both at Kohala and
Hamakua. at Waipio Valley.

Aunt Alice Holokai taught me
about the Sacred Sites and burials
of Mawakea from 1985 to 1990.

Signed by:

Frederick Kumuauaua Le

June 21, 2010

2010 JUN 23 P 2:06

OHA-NATIVE RIGHTS

Ex. 4

will be, outstripping available supply."

b. "...development can inundate wetlands, recreation, agricultural, and forest lands."

II. PART IX. NATIVE HAWAIIAN WATER RIGHTS

TITLE 12 CONSERVATION AND RESOURCES

...secured under section 174C-101 (c) Traditional and customary rights of ahupua'a tenants who are descendant of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but are not limited to, the cultivation of taro on one's own kuleana, and the gathering of hihiiwai, opae, o'opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.

section (d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary assured in this section, shall not be extinguished by a failure to apply for or receive a permit under this chapter [L 1987, c. 45, pt. of sect. 2; am L 1991, c 325, sect. 8]

PURSUANT TO Article XI. sect. 1 and 2 of the Hawaii constitution. [see also article XII]..where the commission on water resource management failed to render the requisite finding of fact and conclusion at LAW with respect to whether the applicant had satisfied its burden as mandated by the state water code...violated its public trust duty...the public trust doctrine in balancing the various competing water resource trust. (103 H. 401, 83 P. 3d 664)

PART IX. NATIVE HAWAIIAN WATER RIGHTS

§174C-101 Native Hawaiian water rights. (a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.

(b) No provision of this chapter shall diminish or extinguish trust revenues derived from existing water licenses unless compensation is made.

(c) Traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hihiwai, opae, o'opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.

(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter. [L 1987, c 45, pt of §2; am L 1991, c 325, §8]

Cross References

Hand-pounded poi, see §321-4.7.

Law Journals and Reviews

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders. 25 UH L. Rev. 85.

The Life of the Law is Perpetuated in Righteousness: The Jurisprudence of William S. Richardson. 33 UH L. Rev. 99 (2010).

Where Justice Flows Like Water: The Moon Court's Role in Illuminating Hawai'i Water Law. 33 UH L. Rev. 537 (2011).

Case Notes

Although the Hawaii administrative rules denominate aquifer-specific reservations of water to the department of Hawaiian home lands, such a limitation for purposes of water resource management does not divest the department of its right to protect its reservation interests from interfering water uses in adjacent aquifers. 103 H. 401, 83 P.3d 664.

Insofar as the commission on water resource management, as the agency authorized to administer the state water code, determines the contents of the Hawaii water plan, which includes the designation of hydrologic units and sustainable yields, and the commission's "interpretation of its own rules is entitled to deference unless it is plainly erroneous or inconsistent with the underlying legislative purpose", it is within the commission's authority to limit reservations of water to specific aquifers. 103 H. 401, 83 P.3d 664.

Pursuant to article XI, §§1 and 7 of the Hawaii constitution, §220(d) of the Hawaiian Homes Commission Act, and subsection (a), a reservation of water constitutes a public trust purpose. 103 H. 401, 83 P.3d 664.

Where commission on water resource management failed to render the requisite findings of fact and conclusions of law with respect to whether applicant had satisfied its burden as mandated by the state water code, it violated its public trust duty to protect the department of Hawaiian home lands' reservation rights under the Hawaiian Homes Commission Act, the state water code, the state constitution, and the public trust doctrine in balancing the various competing interests in the state.

water resources trust. 103 H. 401, 83 P.3d 664.

Where commission on water resource management refused to permit cross examination of water use applicant's oceanography expert regarding the limu population along the shoreline, in effect precluding the commission from effectively balancing the applicant's proposed private commercial use of water against an enumerated public trust purpose, the commission failed adequately to discharge its public trust duty to protect native Hawaiians' traditional and customary gathering rights, as guaranteed by the Hawaiian Homes Commission Act, §220, article XII, §7 of the Hawaii constitution, and this section. 103 H. 401, 83 P.3d 664.

Commission on water resource management's conclusion that "no evidence was presented" to suggest that the rights of native Hawaiians would be adversely affected by permit applicant's proposed use erroneously shifted the burden of proof to complainants; thus, commission failed to adhere to the proper burden of proof standard to maintain the protection of native Hawaiians' traditional and customary gathering rights in discharging its public trust obligations. 116 H. 481, 174 P.3d 320.

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CONSERVATION DISTRICT USE APPLICATION (CDUA)

File No:

Acceptance Date:

180-Day Expiration Date:

Assigned Planner:

for DLNR use

PROJECT NAME:

Conservation District Subzone:

Identified Land Use:

(Identified Land Uses are found in Hawai'i Administrative Rules (HAR) §13-5-22 through §13-5-25)

Project Address:

Tax Map Key(s):

Ahupua'a:

District:

County:

Island:

Proposed Commencement Date:

Proposed Completion Date:

Estimated Project Cost:

TYPE OF PERMIT SOUGHT: ☐ Board Permit ☐ Departmental Permit

- ☐ Boundary Determination (ref §13-5-17)
- ☐ Emergency Permit (ref §13-5-35)
- ☐ Temporary Variance (ref §13-5-36)
- ☐ Site Plan Approval (ref §13-5-38)

Note: The four items on the left do not require that a full CDUA be filled out; please complete the first three pages of this application, and refer to the relevant HAR sections for the required documentation.

ATTACHMENTS (where applicable)

\$ _____ Application Fee (ref §13-2-33 through 34)

\$ _____ Public Hearing Fee (\$250 plus publication costs; ref §13-5-40)

- ☐ 20 copies of CDUA for Board and Departmental Permits (5 hard + 15 hard or digital copies)
- ☐ Management Plan or Comprehensive Management Plan (ref §13-5-39 and §13-5 Exhibit 3)
- ☐ Draft / Final Environmental Assessment or Draft / Final Environmental Impact Statement
- ☐ Special Management Area Determination (ref Hawai'i Revised Statutes (HRS) 205A)
- ☐ Shoreline Certification (ref §13-5-31(a)(8)) if land use is subject to coastal hazards.
- ☐ Kuleana documentation (ref §13-5-31(f)) if applying for a non-conforming kuleana use.
- ☐ Boundary Determination (ref §13-5-17) if land use lies within 50 feet of a subzone boundary.

Ex. 7 (a)

CULTURAL IMPACTS

Articles IX and XII of the State Constitution, other state laws, and the courts of the State require government agencies to promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups.

Please provide the identity and scope of cultural, historical and natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

Identify the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action.

What feasible action, if any, could be taken by the BLNR in regards to your application to reasonably protect native Hawaiian rights?

Landscape

There is an ancient Hawaiian saying "*Mauna Kea kuahiwi ku ha'o i ka mālie*" (Mauna Kea is the astonishing mountain that stands in the calm) (Pukui 1983: No. 2147), that suggests that Mauna Kea is a source of awe and inspiration for the Hawaiian people. Mauna Kea figures in a number of traditional accounts, and many of its place names are directly attributed to the interaction of gods with the land and people. The discussion under the heading of "*Heiau (Ceremonial Sites) and Spiritual Significance*," provides readers with an introduction to native Hawaiian beliefs surrounding the birth of the islands, and the prominence of Mauna Kea in Hawaiian genealogies—the mountain is a respected elder, a spiritual connection to one's gods. Thus, landscape can be interpreted as a significant facet of a Hawaiian's identity. Also, the discussions above, under the heading of Waiau, add further insight into the relationship of land to cultural practices, customs, and beliefs.

There are people today who tie the name Mauna Kea to that of the Wākea, the forefather of the Hawaiian race and liken the mountain to one of his body forms (see the historical documentation in *Appendix D* for further details). Native families also retain names such as Maunakea, Poli'ahu, Lilinoe, and Waiau, which in some cases are directly tied to the mountain landscape. All of the interview participants, regardless of cultural affiliation, expressed deeply rooted sentiments about seeing Mauna Kea. Everyone spoke of their sense of spiritual well-being in either viewing, or being on Mauna Kea. And a number of the interviewees affectionately refer to Mauna Kea as "my mountain."

During the interviews, several interviewees lamented that their parents or grandparents had passed away before an interview process was undertaken. The families recounted that their elders knew the names of every *pu'u*, the trails, various sites and features, and traditions of Mauna Kea. But because of the remoteness of the summit region and historic changes in native Hawaiian land tenure and practices associated with resource usage, the interviewees noted that their primary experiences in the summit region of Mauna Kea came from infrequent visits made with elders, or later on their own. Thus, only limited site specific documentation of summit sites and place names was recorded. As a result of historic ranching, forestry, and hunting activities much of the information recorded as a part of the present oral history study pertains to the elevations below the summit and into the forest zone.

Interview Participants

- All interviewees expressed a spiritual connection to Mauna Kea when viewing it from afar, or walking upon it.
- Pua Kanaka'ole-Kanahele describes the summit region of Mauna Kea as a "sacred landscape." Indeed for some people it was so sacred, that there was no desire to even walk upon it. Mauna Kea – the Mountain of Wākea and first born of Hawai'i, is *kupuna* (an elder or ancestor). Just seeing Mauna Kea from afar provided Hawaiians with a sense of well-being and security. Pua states that seeing Mauna Kea today with construction upon it is hurtful and shameful.

Pua Kanahele further explained, that one did not need to physically touch the mountain to benefit from this spiritual connection. Simply looking at Mauna Kea from afar, seeing it standing there reaching to the heavens, gave the Hawaiian spiritual strength. She also stated that today, each time

she looks at Mauna Kea with the observatories built upon it she feels pain, and cannot look at it because she is ashamed that she did nothing to stop the desecration of Mauna Kea.

- Anita (Kamaka'ala) Lancaster, a descendant of the Poli'ahu line; and Lloyd Case, also tied to the Poli'ahu line associate their lineage with features of the Mauna Kea landscape. Likewise, Alike and Anita Lancaster trace their genealogies through the line of Hawai'i Loa—in some accounts, named as the original settler of Hawai'i and progenitor of the Hawaiian race (see *Appendix E* for an overview of the Hawai'i Loa traditions). The Lancasters and many other native Hawaiians associate a number of the natural and cultural features on the landscape of Mauna Kea with their ancestor's activities and as repositories of their remains.
- People from the eastern side of the island describe Mauna Kea's beauty at sunrise and value the changing of the mountain's colors. Likewise, people from the northwestern side of the island describe the mountain's beauty and changing colors as lit in the sunset.
- Tita Spielman recalled that an elder fisherman and relative of hers, always instructed her when they were out fishing from Keawaiki, to watch a *pu'u* on the upper slopes of Mauna Kea for signs of shifting clouds (thought to be Ahumoa). When the clouds moved onto the *pu'u*, it was time to return to the shore as the winds would rise and the ocean become rough.
- Johnny Ah San, Martin Pence, Theodore Bell, Sonny and Daniel Kaniho, Tita Spielman (with JK), and Lloyd Case describe changes in vegetation on Mauna Kea in the period between 1930 to the present day.
- Theodore Bell, Tita Spielman (with JK), Sonny and Danny Kaniho, Toshi Imoto, Albert K. Haa Sr. and Jr., Alike and Anita Lancaster, Coco Hind, Hannah Kihalani Springer, Lloyd Case, Pua Kanaka'ole-Kanahele, and Irene Lindsey-Fergerstrom (with Romona Fergerstrom-Kalalau and relatives of the Lindsey-Kealamakia line) all express the sentiments that the observatories are painful to see on the landscape of the summit.
- Albert K. Haa Sr. (and Jr.) specifically describe the landscape of Mauna Kea as belonging to *Akua* (God).

Consultation Records (see Appendices B & C)

- Hannah Akau-Bowman, Sister Thelma Parrish, Wm. Billy Paris, Katherine Kahe'e, Martha Lancaster, and Marjorie Kaholo-Kailianu (in personal communications prior to undertaking the present study); and Maile Akimseu, Luika Pereira, Arthur Mahi, Leina'ala McCord, Kealoha Pisciotto, Abe and Reynolds Kamakawiwo'ole, Ed Stevens, and Iopa Maunakea attribute sacredness and healing qualities to Mauna Kea.
- As noted above, in the section under the heading of "*Heiau (other Ceremonial Sites) and Spiritual Significance*," Emma Kauhi, Pua Kanaka'ole-Kanahele, Larry Kauanoe Kimura, and Leina'ala Teves, ascribe spiritual-cultural significance to the landscape of Mauna Kea (MKAC meeting of Dec. 1, 1998).

Larry K. Kimura also noted that it was the tradition of the old agricultural families of the Waimea-Kohala region (and still practiced today among ranchers and others), to discern the nature of the upcoming growing season by the amount of snow fall seen upon Mauna Kea. Viewing heavy snow fall on the mountain prior to what we now call the New Year, indicated that there would be good rainfall in the coming season. The rains would in turn bring life to the crops in the spring. (MKAC meeting Dec. 1, 1998)

- Leina'ala McCord stated her line descended from Poli'ahu; and Ed Stevens and Kealoha Pisciotto trace their lines through the Hawai'i Loa genealogy and thus state that they share a familial relationship with named features of the Mauna Kea landscape (see interviews with Alike and Anita Lancaster and Pualani Kanaka'ole Kanahele, and *Appendix E* for an overview of the Hawai'i Loa traditions).
- Some of the individuals cited in the above paragraphs likened natural phenomena such as cloud formations to omens of coming events or nature's way of lamenting the passing of an individual of high rank.
- All of the individuals cited above, express strong sentiments about the impacts of observatory development on the landscape of Mauna Kea.

Development

Sixteen of the interviewees expressed the opinion that the proposed development of additional observatory complexes on Mauna Kea was inappropriate and not acceptable. Two of the interviewees expressed hesitancy at further development—based on a deep respect for Mauna Kea. One interviewee felt that the benefits of the work done by the observatories far out weighed other concerns, and that the research conducted on Mauna Kea provided important knowledge to all mankind.

Thus, nearly all the interviewees and all others who participated in the consultation process (*Appendices B and C*) called for a moratorium on any further development on the summit of Mauna Kea. In *Appendix B*, it will be noted that on November 14th, 1998, the Association of Hawaiian Civic Clubs (AHCC) voted in support of and passed the Hawai'i Island Caucus' Resolution No. 98-16, calling for a moratorium on further construction on Mauna Kea (*Appendix B*).

On October 27th, 1998, Mililani B. Trask, Kia'āina of *Ka Lāhui Hawai'i* submitted a packet of documentation to Kenneth Mortimer, President, University of Hawaii, the Mauna Kea Advisory Committee (and other organizations), which included communications from several agencies, public organizations, and individuals documenting both cultural and natural resources on Mauna Kea (see communications in materials present by Group 70 International). The communication set forth nine recommendations regarding protection and use of Mauna Kea. Recommendation # 5 observed that "future development of astronomy on Mauna Kea should not occur." (Trask to Mortimer et al. Oct. 27, 1998:9 # 5)

As a part of the work undertaken as a part of this study, a letter was sent to *Hui Mālama i Nā Kūpuna o Hawai'i Nei* on October 6th, 1998 (*Appendix B*). While no answer was received, Pua Kanaka'ole Kanahele, one of the founding members of this nationally recognized Native

Proponent #1

Recognized Attributes of the Hawaiian Kingdom's Sovereign Nature as an Independent State

Fixed Territory:

- Hawai'i—19° 30' N 155° 30' W 4,028.2 sq. mi.—2,578,048 acres
- Kaho'olawe—20° 33' N 156° 35' W 44.6 sq. mi.—28,544 acres
- Kaua'i—22° 03' N 159° 30' W 552.3 sq. mi.—353,472 acres
- Ka'ula—21° 40' N 160° 32' W 0.2 sq. mi.—128 acres
- Lana'i—20° 50' N 156° 55' W 140.6 sq. mi.—89,984 acres
- Laysan—25° 50' N 171° 50' W 1.6 sq. mi.—1,024 acres
- Lihua—22° 01' N 160° 06' W 0.4 sq. mi.—256 acres
- Lisiansky—26° 02' N 174° 00' W 0.6 sq. mi.—384 acres
- Maui—20° 45' N 156° 20' W 727.3 sq. mi.—465,472 acres
- Mōkai—21° 08' N 157° 00' W 260.0 sq. mi.—166,400 acres
- Mōkai—20° 38' N 156° 30' W 0.04 sq. mi.—25.6 acres
- Nihoa—23° 06' N 161° 58' W 0.3 sq. mi.—192 acres
- Ni'ihau—21° 55' N 160° 10' W 69.5 sq. mi.—44,480 acres
- O'ahu—21° 30' N 158° 00' W 597.1 sq. mi.—382,144 acres
- Ocean (aka Kure Atoll) 28° 25' N 178° 25' W 0.4 sq. mi.—256 acres
- Palmyra—05° 52' N 162° 05' W 4.6 sq. mi.—2,944 acres

- The Hawaiian Kingdom's land area comprises of the entire archipelago, which includes 132 islands, shoals and reefs. It extends approximately 1,523 miles (2,431 kilometers) southeast to northwest across the Tropic of Cancer between 154° 40' to 178° 25' W longitude and 18° 54' to 28° 15' N latitude embracing a total land mass of 6,425 square miles (16,642 square kilometers). It extends over a vast area of the Pacific Ocean, possessing a 12-mile territorial sea and 200-mile exclusive economic zone (200 mi. EEZ), in compliance with one of the 4 basic proponents of government.

Shelley S. Mahi-hanai
Native Tenant Protection Council
PO BOX 711498
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(808) 313-2415

RE: CONTESTED CASE HEARING ON TMT/MAUNA KEA

GENERAL LEASE NO. S-4191 VIOLATIONS:

1. Mauna Kea is a Cultural Property of the Pana and is currently protected under International Law, and the Constitution "Customs and Usage" and "Treaties and Nations" (Lease. #11, pg. 5)
2. Language of the Lease is vague to compel jurisdiction for BLNR's authority to issue TMT Lease. BLNR is not a valid "Lessor" [pursuant to no response on the unratified] Section 103A-90 (b) Revised Laws of Hawaii 1955, as amended, referred to as "Lessor" [of demised lands]. (*Lease, pg. 1*)
3. Land is "Demised" and therefore belongs in International Court as Qualified by P.L. "Apology Resolution"/Illegal Overthrow 1893. (*Lease, pg. 2*)
4. Government/Crown Lands are inalienable under the law. (*Revised Laws of Hawaii Vol II. 1925*)
5. The Original "Lease" says "*AN OBSERVATORY*"-"an" as in "One" UH Mauna Kea Science Reserve is already over the State-allowed limit of observatories. (*Lease, pg. 3*)
6. The Lease specifically forbids disrespectful activities. (*Lease, pg. 3*)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 1 ADMINISTRATION

CHAPTER 5

CONSERVATION DISTRICT

Subchapter 1 General Provisions

- §13-5-1 Purpose
- §13-5-2 Definitions
- §13-5-3 Appeals
- §13-5-4 Mediation
- §13-5-5 Amendments
- §13-5-6 Penalty
- §13-5-7 Nonconforming uses and structures

Subchapter 2 Subzones

- §13-5-10 Subzones; generally
- §13-5-11 Protective (P) subzone
- §13-5-12 Limited (L) subzone
- §13-5-13 Resource (R) subzone
- §13-5-14 General (G) subzone
- §13-5-15 Special (S) subzone
- §13-5-16 Designation of subzones
- §13-5-17 Boundary determinations; criteria

Subchapter 3 Identified Land Uses and Required Permits

- §13-5-22 Identified land uses in the protective subzone
- §13-5-23 Identified land uses in the limited subzone
- §13-5-24 Identified land uses in the resource subzone
- §13-5-25 Identified land uses in the general subzone

policy which discriminates against anyone based upon race, creed, color or national origin.

10. General Liability. The Lessee shall at all times, with respect to the demised premises, use due care for safety, and the Lessee shall be liable for any loss, liability, claim or demand for property damage, personal injury or death arising out of any injury, death or damage on the demised premises caused by or resulting from any negligent activities, operations or omissions of the Lessee on or in connection with the demised premises, subject to the laws of the State of Hawaii governing such liability.

11. Laws, Rules and Regulations, etc. The Lessee shall observe and comply with Regulation 4 of the Department of Land and Natural Resources and with all other laws, ordinances, rules and regulations of the federal, state, municipal or county governments affecting the demised lands or improvements.

★ 12. Objects of Antiquity. The Lessee shall not appropriate, damage, remove, excavate, disfigure, deface or destroy any object of antiquity, prehistoric ruin or monument of historical value.

13. Undesirable Plants. In order to prevent the introduction of undesirable plant species in the area, the Lessee shall not plant any trees, shrubs, flowers or other plants in the leased area except those approved for such planting by the Chairman.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 21st

See
MAHI REPORT
N13
TMT

"DECLARATION"

CASE NO. BLNR-CC-16-002

I, Shelley C. Stephens ^{mahi-hana} Shelley Clyde Stephens ^{mahi-hana}
do hereby declare: my intention to
present exculpatory evidence to the
contested case hearing of the TMT atop
Mauna Kea. However, I was unable to
attend the initial meetings due to
Surgery & health Reasons — and the same
day as the hearing was a Police Comm. ^(EX-10)
Hearing I had to attend. I had two
fractured wrists and had no notice of future hearings

I hope you will add me to the list
of testifiers. I have important exculpatory
evidence that should be submitted to hearing.
"RE: CONTESTED, CASE HEARING"

I sent a letter, post marked

May 29, 2016 (see Ex. 1) but it was

(mistakenly) filed under "communications" instead
of being docketed w/ the case.

I declare the above is true and to
the best of my knowledge.

Signed: Shelley C. Stephens

Dated: Nov. 16, 2016

^{mahi-hana}