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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'oho Mauka, Hāmakua,  
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

APPLICANT UNIVERSITY OF HAWAI'I  
AT HILO'S OBJECTION TO THE  
TEMPLE OF LONO'S MOTION TO  
DISMISS TIO AS AN INTERVENOR OR,  
ALTERNATIVELY, STAY THIS  
PROCEEDING [DOC.427] AND  
FERGERSTROM'S MOTION TO  
REMOVE TMT/TIO AS A PARTY, FOR  
LACK OF STANDING, INCLUDING  
ANY AND ALL SUBMISSIONS INTO  
THE EVIDENTIARY LIBRARY  
[DOC.429]; DECLARATION OF  
COUNSEL; CERTIFICATE OF SERVICE

**APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S OBJECTION TO THE  
TEMPLE OF LONO'S MOTION TO DISMISS TIO AS AN INTERVENOR OR,  
ALTERNATIVELY, STAY THIS PROCEEDING [DOC. 427] AND  
FERGERSTROM'S MOTION TO REMOVE TMT/TIO AS A PARTY, FOR  
LACK OF STANDING, INCLUDING ANY AND ALL SUBMISSIONS INTO THE  
EVIDENTIARY LIBRARY [DOC.429]**

Applicant UNIVERSITY OF HAWAI‘I AT HILO (“**University**”), through counsel, submits this Objection to the Temple of Lono’s (“**Temple**”) *Motion to Dismiss TIO as an Intervenor or, Alternatively, Stay this Proceeding* [Doc. 427] (“**Temple Motion**”) and Fergerstrom’s *Motion to Remove TMT/TIO as a Party, for Lack of Standing, Including any and All Submissions into the Evidentiary Library* [Doc.429] (“**Fergerstrom Motion**,” collectively, the “**Motions**”). The Motions request that the Hearing Officer revoke TMT International Observatory, LLC’s (“**TIO**”) standing to participate in the current contested case. The Temple Motion alternatively requests that the case be stayed should the Hearing Officer require more information before ruling on TIO’s status. The University objects to the Motions because they lack any foundation in the facts and findings of this case. As the Motions are meritless, the University further objects to any stay of the proceedings as it is unwarranted.

**I. BACKGROUND**

The instant contested case relates to the Conservation District Use Application (“**CDUA**”), submitted by the University for the Thirty Meter Telescope Project (the “**Project**” or “**TMT Project**”) to be located in the Mauna Kea Science Reserve (“**MKSR**”), District of Hāmākua, Island and County of Hawai‘i. General Lease No. S-4191, between the Department of Land and Natural Resources (as the lessor) and the University (as lessee) covers the MKSR.

On September 2, 2010, the University submitted its CDUA to the Board of Land and Natural Resources (“**Board**”) for approval. On December 2 and 3, 2010, extensive public hearings relating to the CDUA were held in Hilo and Kona, respectively. On February 25, 2011, after receiving testimony from various individuals and entities, the Board voted to approve the University’s CDUA and subsequently held a contested case hearing. On December 2, 2015, the Hawai‘i State Supreme (“**Supreme Court**”) vacated the Board’s preliminary approval as procedurally improper and remanded the case back to the Board to hold the instant contested

case hearing. *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 363 P.3d 224 (2015).

Meanwhile, by letter dated May 22, 2014, Mr. Donald Straney (“**Mr. Straney**”), Chancellor of the University, requested Board consent for the sublease of General Lease No. S-4191, from the University to TIO (“**TIO Sublease**”). On June 27, 2014, in a separate and distinct proceeding from that involving the CDUA, the Board voted to consent to the TIO Sublease. However, the Board stayed the effectiveness of the consent pending a determination on any requests for a contested case. On July 25, 2014, the Board denied a request for a contested case submitted by E. Kalani Flores (“**Flores**”).<sup>1</sup> On August 25, 2014, Flores, in his individual capacity, appealed the Board’s denial of his request for a contested case to the Circuit Court (“**Flores Appeal**”).

In the instant matter, on April 8, 2016, TIO filed a *Motion to have TMT International Observatory, LLC Admitted as a Party in the Contested Case Hearing* (“**Motion Requesting Admission**”) [Doc. 2]. On June 13, 2016, Mauna Kea Anaina Hou, Kealoha Pisciotta, Clarence Ching, the Flores-Case Ohana, Deborah Ward, Paul Neves, and KAHEA: The Hawaiian Environmental Alliance (collectively, “**Petitioners**”) filed its *Memorandum in Opposition to TMT’s Motion to Have TMT International Observatory, LLC Admitted as a Party in the Contested Case Hearing* (“**Opposition**”) [Doc. 70]. In their Opposition, the Petitioners argued, *inter alia*, that TIO should not be granted standing because the Flores Appeal was still ongoing. “Without [the Flores Appeal] being first resolved, the legality of the TIO Sublease is still at issue and must be determined . . . The alleged claim of a property interest is premature and undetermined and it lacks a legal basis.” Opposition at 10. TIO’s Motion Requesting Admission

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<sup>1</sup> Flores is also participating in the instant contested case as a representative of the Flores-Case Ohana.

was heard on June 17, 2016. *See* Minute Order No. 13 [Doc. 115]. Upon consideration of the motion and arguments put forth at the hearing, the Hearing Officer granted TIO's Motion Requesting Admission, finding that TIO had a substantial interest in the subject matter and its participation in the case would substantially assist the Hearing Officer in her decision making. *Id.*

In the Flores Appeal, on December 15, 2016, the Circuit Court orally ruled that a contested hearing was required before the Board could consent to the TIO Sublease. On January 6, 2017, the Circuit Court issued its order remanding the matter back to the Board for a contested case proceeding. Ex. 1. In doing so, the Circuit Court vacated the Board's consent, but not the TIO Sublease itself.

Subsequently, the Temple and Fergstrom filed their respective motions, claiming that TIO had lost its property interest in the proceeding and should no longer be a party to the contested case. As explained below, that argument fails as a matter of law and logic. The Circuit Court's ruling has no bearing on TIO's standing in the instant case and, as such, the University objects to the Motions and asks that they be denied.

## II. ARGUMENT

The Motions rely on blatant mischaracterizations and omissions of key facts. The Motions intentionally misconstrue the Circuit Court's ruling in an attempt to overcome the standard governing admission of a party to a contested case hearing under Hawai'i Administrative Rules ("HAR") § 13-1-31. Additionally, the Motions also ignore the findings in Minute Order No. 13 [Doc. 115] articulating the bases for TIO's admission. These omissions allow the Temple and Fergstrom to construct a fatally flawed argument premised on multiple misstatements. The Temple argues that "[t]he vacating of the sublease removes the TIO's argument that its intervention request satisfied HAR 31-1-31(b)(2). TIO should, therefore, be

dismissed as an intervenor.” Temple Motion at 4. Similarly, Fergerstrom argues that “[i]n light of today’s [sic] invalidation of the sublease between the University of Hawaii and TMT/TIO, TMT/TIO no longer has the special discretionary condition that allowed them to proceed as a party to this contested case.” Fergerstrom Motion. Those assertions are incorrect. The TIO Sublease was *not* vacated; even if it was, TIO’s admission as a party was not predicated on a property interest in land under HAR 31-1-31(b)(2).

**A. TIO Has Standing in This Contested Case**

Both Motions rest on a fundamental misreading of Minute Order No. 13. The Motions erroneously assume that the Hearing Officer’s basis for admitting TIO was the existence of the TIO Sublease. However, Minute Order No. 13 admitting TIO as a party makes no mention of the TIO Sublease. Rather, Minute Order No. 13 clearly states, “[t]he TIO Motion is GRANTED due to TIO’s *substantial interest in the subject matter* and because TIO’s participation will *substantially assist the Hearing Officer in her decision making.*” Emphasis added. This language quotes directly from the standard for “discretionary admission” contained HAR § 13-1-31(c), which provides:

Other person who can show a *substantial interest in the matter* may be admitted as parties. The Board may approve such requests if it finds that the requestor’s participation will *substantially assist the board in its decision making.* . . .

HAR § 13-1-31(c) (emphasis added).

Neither the Temple nor Fergerstrom even attempt to dispute that TIO has a substantial interest in the matter and would substantially assist the Hearing Officer and the Board in their decision making. Nor could they. As the developer of the TMT project, TIO clearly has a substantial interest in the CDUA for the permit to build TMT. Furthermore, there have been multiple lines of questioning from various parties concerning the design and construction of the

TMT. TIO's witnesses are in the best position to answer those questions. Moreover, as discussed below, TIO still has a valid sublease for the TMT site. Therefore, there is no question that TIO satisfies the requirements of HAR § 13-1-31(c) and is a proper party to these proceedings.

The Temple compounds its error by applying the wrong rule in evaluating TIO's standing. The Temple's Motion seeks dismissal of TIO as a party on the basis that "[t]he vacating of the sublease removes the TIO's argument that its intervention request satisfied HAR § 31-1-31(b)(2)." Temple Motion at 4. In arguing that TIO has no sublease or property interest, the Temple's Motion focuses solely on whether TIO satisfies HAR § 31-1-31(b)(2). As discussed above, the Hearing Officer did not rely on "property interest" or an "interest in the proceeding [that] is clearly distinguishable from that of the general public" to admit TIO as a party. *See* HAR § 13-1-31(b)(2). Rather, the Hearing Officer admitted TIO under the discretionary standard of HAR § 13-1-31(c). Thus, TIO's argument as to whether TIO satisfies the requirements of HAR § 13-1-31(b)(2) are irrelevant.

#### **B. The TIO Sublease Is Not Void**

Even if the Hearing Officer had relied on TIO's property interest under the sublease as the basis for admitting TIO as a party, that property interest still exists. Both the Temple and Fergerstrom claim, without legal authority, the Circuit Court voided the TIO Sublease. Temple Motion at 1; Fergerstrom Motion. As an initial matter, at the time the Temple and Fergerstrom filed their respective Motions, the Circuit Court has not entered its final order. Lacking a final order, the Temple and Fergerstrom intentionally mischaracterize the nature and legal effect of the Circuit Court's oral ruling. Contrary to their unsupported assertions, the Circuit Court did not invalidate the TIO Sublease. The sole issue in the Flores Appeal was whether Mr. Flores was entitled to a contested case hearing prior to the Board's decision on whether to grant its consent

to the TIO Sublease. The validity of the TIO Sublease itself was never in question. The Circuit Court's order merely vacated the Board's *consent* to the TIO Sublease. Ex. 1 at 5. The TIO Sublease is, and remains, a valid contract between TIO and the University. Therefore, the Circuit Court's ruling did not change the validity of the TIO Sublease or TIO's substantial interest in the TMT Project.

Furthermore, the Hearing Officer was aware of the litigation concerning the validity of the sublease consent when it admitted TIO as a party. Petitioners' Opposition argued that TIO should not be admitted as a party because of the pendency of the Flores Appeal. The Hearing Officer implicitly rejected Petitioners' argument that TIO's status as a party was predicated on the validity of the sublease consent—which is essentially the same argument the Temple and Fergstrom raises now—when she admitted TIO under the discretionary standard of HAR § 13-1-31(c). Therefore, the Circuit Court's ruling vacating the sublease consent is irrelevant to TIO's status as a party.

As the Motions lack legal or factual merit, the University asks that they be denied and that the Hearing Officer find that a stay of proceedings is unwarranted.

DATED: Honolulu, Hawai'i, January 10, 2017.



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IAN L. SANDISON  
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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

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'ohē Mauka,  
Hāmākua, Hawai'i, TMK (3) 4-4-015:009

DECLARATION OF COUNSEL

**DECLARATION OF COUNSEL**

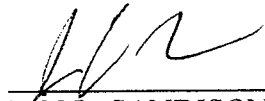
I, IAN L. SANDISON, declare:

1. I am a partner at the law firm of Carlsmith Ball LLP, counsel for UNIVERSITY OF HAWAI'I AT HILO ("**University**"), in the above-captioned 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 the Order Granting in Part and Denying in Part Appellees State of Hawai'i, Board of Land and Natural Resources, and Chairperson Suzanne D. Case's Motion for Stay of Proceedings, or in the Alternative for the Court to Issue its Decision on Appeal, Filed October 25, 2016; Vacating Consent to Sublease and Non-Exclusive Easement Agreement Between TMT International Observatory LLC and the University of Hawai'i under General Lease No. S-4191; and Remanding Matter to the Board and Natural Resources, issued in Civil No. 14-1-324 by the Honorable Greg K. Nakamura, dated January 6, 2017.

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, January 10, 2016.



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FILED

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STATE OF HAWAII  
CIRCUIT COURT OF  
THE THIRD CIRCUIT  
*[Signature]*

DAVID KAUILA KOPPER 9374  
CAMILLE K. KALAMA 8420

Attorneys for Appellant E. Kalani Flores

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

E. KALANI FLORES,  
Appellant,

vs.

BOARD OF LAND AND NATURAL  
RESOURCES; DEPARTMENT OF LAND  
AND NATURAL RESOURCES;  
WILLIAM J. AILA, JR., in his official  
capacity as Chairperson of the Board of  
Land and Natural Resources; STATE OF  
HAWAI'I; and UNIVERSITY OF  
HAWAI'I,

Appellees.

) CIVIL NO. 14-1-324 (Hilo)  
) (Agency Appeal)  
)  
) ORDER GRANTING IN PART AND  
) DENYING IN PART APPELLEES STATE  
) OF HAWAI'I, BOARD OF LAND AND  
) NATURAL RESOURCES, DEPARTMENT  
) OF LAND AND NATURAL RESOURCES,  
) AND CHAIRPERSON SUZANNE D.  
) CASE'S MOTION FOR STAY OF  
) PROCEEDINGS, OR IN THE  
) ALTERNATIVE FOR THE COURT TO  
) ISSUE ITS DECISION ON APPEAL, FILED  
) OCTOBER 25, 2016; VACATING  
) CONSENT TO SUBLEASE AND NON-  
) EXCLUSIVE EASEMENT AGREEMENT  
) BETWEEN TMT INTERNATIONAL  
) OBSERVATORY LLC AND  
) THE UNIVERSITY OF HAWAII  
) UNDER GENERAL LEASE NO. S-4191;  
) AND REMANDING MATTER TO THE  
) BOARD OF LAND AND NATURAL  
) RESOURCES  
)  
) **HEARING:**  
) **DATE: December 15, 2016**  
) **TIME: 8:30 a.m.**  
) **JUDGE: Honorable Greg K. Nakamura**  
)  
) **TRIAL DATE: None**

**ORDER GRANTING IN PART AND DENYING IN PART APPELLEES STATE OF HAWAI'I, BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATURAL RESOURCES, AND CHAIRPERSON SUZANNE D. CASE'S MOTION FOR STAY OF PROCEEDINGS, OR IN THE ALTERNATIVE FOR THE COURT TO ISSUE ITS DECISION ON APPEAL, FILED OCTOBER 25, 2016; VACATING CONSENT TO SUBLEASE AND NON-EXCLUSIVE EASEMENT AGREEMENT BETWEEN TMT INTERNATIONAL OBSERVATORY LLC AND THE UNIVERSITY OF HAWAI'I UNDER GENERAL LEASE NO. S-4191; AND REMANDING MATTER TO THE BOARD OF LAND AND NATURAL RESOURCES**

This matter came on for hearing before the Environmental Court of the Third Circuit, Honorable Judge Greg K. Nakamura presiding, on December 15, 2016 at 8:30 a.m. Julie China and David Day appeared on behalf of Appellees State of Hawai'i, Department of Land and Natural Resources, Department of Land and Natural Resources, and Chairperson Suzanne D. Case. Arsima Muller appeared on behalf of Appellee University of Hawai'i. David Kauila Kopper appeared on behalf of Appellant E. Kalani Flores. No other appearances were made.

The Court, having carefully considered the Motion, the memoranda, declarations, and exhibits in support of and in opposition to the motion, and upon consideration of the arguments and authorities contained therein, the entire record on appeal and all briefing and arguments contained therein, finds good cause and, therefore, the Court hereby issues the following findings of fact, conclusions of law and order:

**I. FINDINGS OF FACT**

The Court makes the following findings of fact, however, to the extent that these findings of fact contain conclusions of law, they shall be considered as such.

1. This appeal relates to Appellee State of Hawai'i, Board of Land and Natural Resources, Department of Land and Natural Resources, and the Chairperson of the Board of Land and Natural Resources' (the "Board") consent to the Sublease and Non-Exclusive Easement Agreement Between TMT International Observatory LLC and the University of Hawai'i (the "Sublease").

2. At a meeting held on June 27, 2014, the Board addressed whether to approve a consent to the Sublease as required by HRS § 171-36(a)(6)(the "Consent"). ROA 4.

3. At the same meeting, Appellant E. Kalani Flores (Appellant Flores) orally requested a contested case hearing on the Board's Consent to the Sublease. ROA 5 at 00122.

4. At the same meeting, the Board voted to approve the Consent before it took action on Appellant Flores' contested case hearing request. ROA 5 at 00122. The Board "stayed the effectiveness of the consent until administrative proceedings on any contested case requests" were concluded. *Id.*

5. Appellant Flores filed a timely written petition for a contested case hearing on the Board's Consent to the Sublease. ROA 7 at 00229. In his petition, Mr. Flores asserted that he is a Native Hawaiian who holds Mauna Kea sacred; that he "has substantial interest and connections to Mauna a Wākea (Mauna Kea);" and that he had "traditional and customary practices at the areas on Mauna Kea covered under the . . . proposed Sublease." *Id.* at 00230.

6. At a later meeting held on July 25, 2014, the Board denied Appellant Flores' request for a contested case hearing on the Board's Consent to the Sublease. ROA 9 at 00245.

7. Appellant Flores timely appealed the Board's denial of his contested case request to the Circuit Court of the Third Circuit in Civ. No. 14-1-324.

8. On September 15, 2015, Appellant Flores filed his Opening Brief.

9. On November 25, 2015, the Board filed its Answering Brief. On the same day, the University of Hawai'i filed its Answering Brief.

10. On December 2, 2015, the Supreme Court issued its decision in *Mauna Kea Anaina Hou, et al. v. Board of Land and Natural Resources, et al.*, 136 Hawai'i 376 (2015).

11. On January 13, 2016, Appellant Flores filed his Reply brief, wherein Appellant raised the intervening decision in *Mauna Kea Anaina Hou*.

12. On April 5, 2016, this Court issued an Order for Remand, which remanded this matter to the Board pursuant to HRS 91-14(e) for the limited purpose of considering the Hawai'i Supreme Court's decision in *Mauna Kea Anaina Hou* and taking appropriate action if necessary.

13. Although the Board invited briefing from the parties to address the Order of Remand, the Board took no action on the Order for Remand.

14. Instead, on October 25, 2016, the Board filed its Motion for Stay of Proceedings, or In the Alternative For The Court To Issue Its Decision on Appeal (the "Motion").

15. On November 29, 2016, the University of Hawai'i filed a Joinder to the Motion. On December 7, 2016, Appellant E. Kalani Flores filed an Opposition to the Motion. On December 12, 2016, the Board filed a Reply to the Motion.

16. All parties, both orally at the hearing on this matter as well as in their briefings on the Motion, requested that this Court issue a ruling on the matter of whether the Board's Consent to the Sublease was valid.

## II. CONCLUSIONS OF LAW

The Court, based on the finding of fact above, makes the following conclusions of law. To the extent that these conclusions of law contain findings of fact, they should be considered as such.

1. Because all parties agree that this Court can issue a ruling in this matter, the interest of economy of time and effort supports declining the Board's request for a stay and granting the Board's request to issue a ruling. *City & Cty. of Honolulu v. Ing*, 100 Hawai'i 182, 193 n.16, 58 P.3d 1229, 1240 (2002).

2. The Court takes judicial notice of the Supreme Court of Hawai'i's opinion entered on December 2, 2015 in *Mauna Kea Anaina Hou, et al. v. Board of Land and Natural Resources, et al.*, 136 Hawai'i 376 (2015).

3. In *Mauna Kea Anaina Hou*, the Supreme Court concluded that "the substantial interests of Native Hawaiians in pursuing their cultural practices on Mauna Kea, the risk of an erroneous deprivation absent the protections provided by a contested case hearing, and the lack of undue burden on the government in affording Appellants a contested case hearing" entitled Native Hawaiian cultural practitioners to a contested case hearing on a Board action permitting the construction of the TMT telescope. *Mauna Kea Anaina Hou*, 136 Hawai'i at 390.

4. *Mauna Kea Anaina Hou* further explains the Board's constitutional duty to hold a contested case hearing on decisions involving constitutional rights:

Under such facts, the role of an agency is not merely to be a passive actor or a neutral umpire, and its duties are not fulfilled simply by providing a level playing field for the parties. Rather, an agency of the State must perform its statutory function in a manner that fulfills the State's affirmative constitutional obligations. In particular, an agency must fashion procedures that are commensurate to the constitutional stature of the rights involved, and procedures that would provide a framework for the agency to discover the full implications of an action or decision before approving or denying it.

In light of the unique position that an agency occupies, the agency may be at the frontline of deciding issues that involve various interests that implicate constitutional rights. Especially in instances where an agency acts or decides matters over which it has exclusive original jurisdiction, that agency is the primary entity that can and, therefore,

should consider and honor state constitutional rights in the course of fulfilling its duties. Furthermore, to the extent possible, an agency must execute its statutory duties in a manner that fulfills the State's affirmative obligations under the Hawai'i Constitution. An agency is not at liberty to abdicate its duty to uphold and enforce rights guaranteed by the Hawai'i Constitution when such rights are implicated by an agency action or decision.

*Mauna Kea Anaina Hou*, 136 Hawai'i at 414-15 (Pollack, J., *concurring*)(internal citations and quotations omitted).

5. Where a contested case hearing on a pending agency action is requested, it is improper for an agency to act prior to holding the requested hearing. *Id.* at 399.

6. Because Appellant Flores' request for a contested case hearing was not granted, his contested case hearing petition's assertion that he is a Native Hawaiian with "traditional and customary practices at the areas on Mauna Kea covered under the . . . proposed Sublease" must be taken as true. *Kilakila 'O Haleakala v. Bd. of Land & Nat. Res.*, 131 Hawai'i 193, 205 (2013).

7. Appellant Flores was denied the right to a contested hearing on the subject Consent to Sublease in violation of his constitutional right to a hearing under Article 12, Section 7 of the Hawai'i State Constitution and *Mauna Kea Anaina Hou*, and specifically section IV of the concurring opinion therein.

### III. ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is HEREBY ORDERED:

1. That the Board's request for a stay of proceedings is DENIED;
2. That the Board's alternative request for a decision on appeal is GRANTED;
3. That the Court's April 5, 2016 Order on Remand is vacated;
4. That the Consent is vacated;
5. This matter is remanded to the Board of Land and Natural Resources for proceedings consistent with this Order.

DATED: Hilo, Hawai'i JAN - 6 2017.

  
\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT  
GREG K. NAKAMURA

APPROVED AS TO FORM:

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JULIE CHINA

*Attorneys for State of Hawai'i, Board of Land  
and Natural Resources, Department of Land  
and Natural Resources, and Suzanne D. Case,  
in her official capacity as Chairperson*

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*E. KALANI FLORES v. BOARD OF LAND AND NATURAL RESOURCES; DEPARTMENT OF LAND AND NATURAL RESOURCES;  
WILLIAM J. AILA, JR., in his official capacity as Chairperson of the Board of Land and Natural Resources; STATE OF HAWAI'I; and  
UNIVERSITY OF HAWAI'I, Civil No. 14-1-324 (Hilo); ORDER GRANTING IN PART AND DENYING IN PART APPELLEES STATE OF  
HAWAI'I, BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATURAL RESOURCES, AND  
CHAIRPERSON SUZANNE D. CASE'S MOTION FOR STAY OF PROCEEDINGS, OR IN THE ALTERNATIVE FOR THE COURT TO  
ISSUE ITS DECISION ON APPEAL, FILED OCTOBER 25, 2016; VACATING CONSENT TO SUBLEASE AND NON-EXCLUSIVE  
EASEMENT AGREEMENT BETWEEN TMT INTERNATIONAL OBSERVATORY LLC AND THE UNIVERSITY OF HAWAI'I UNDER  
GENERAL LEASE NO. S-4191; AND REMANDING MATTER TO THE BOARD OF LAND AND NATURAL RESOURCES*

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, Hāmakua,  
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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*COUNSEL FOR THE BOARD OF LAND AND*  
*NATURAL RESOURCES and HEARING*  
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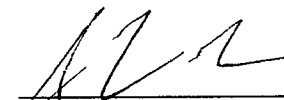
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