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

Case No. BLNR-CC-16-002

THE UNIVERSITY OF HAWAI'I AT
HILO'S MOTION TO ADMIT EXHIBITS
AND WRITTEN DIRECT TESTIMONY
INTO EVIDENCE; MEMORANDUM IN
SUPPORT OF MOTION; DECLARATION
OF COUNSEL; CERTIFICATE OF
SERVICE

**THE UNIVERSITY OF HAWAI'I AT HILO'S MOTION TO ADMIT EXHIBITS AND
WRITTEN DIRECT TESTIMONY INTO EVIDENCE**

The University of Hawai'i at Hilo (the "**University**"), by and through its counsel
Carlsmith Ball, LLP, hereby submits its Motion to Admit Exhibits and Written Direct Testimony
Into Evidence ("**Motion**"). This motion is made pursuant to Hawai'i Administrative Rules
("**HAR**") §§ 13-1-32, 34, and 35.

DATED: Honolulu, Hawai'i, January 17, 2017.

A handwritten signature in black ink, appearing to read 'Ian L. Sandison', written over a horizontal line.

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Attorneys for Applicant

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MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

On December 13, 2016, the University of Hawai'i at Hilo ("**University**") rested its case in the above entitled matter. The University now moves to admit into evidence the written direct testimony ("**WDT**") of its witnesses and the exhibits introduced therein during the contested case hearing. The proposed evidence is in accordance with Hawai'i Revised Statutes ("**HRS**") § 91-10 governing the admissibility of evidence in agency proceedings:

Except as provided in section 91-8.5, *any oral or documentary evidence may be received*, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law[.]

HRS § 91-10(i) (emphasis added); *see also* TMT International Observatory, LLC's Hearing Memorandum Re: Standard for Admissibility of Evidence, filed on October 19, 2016 [Doc. 394], and TMT International Observatory, LLC's Supplemental Hearing Memorandum Re: Standard for Admissibility of Evidence, filed on October 27, 2016 [Doc. 405], which are hereby incorporated by reference. The evidence presented by the University is relevant, material, and is

not privileged or unduly repetitious, and is therefore admissible under the liberal standard of the admissibility of evidence in administrative hearings. Therefore, pursuant to HRS § 91-10, the University moves to admit into the record the following testimony and documentary evidence:

Written Direct Testimony

WDT of Perry J. White
WDT of James T. Hayes (As amended by Notice of Errata filed Oct. 24, 2016)
WDT of Clifford Smith
WDT of Robert McLaren
WDT of Chad Kalepa Baybayan
WDT of Guenther Hasinger
WDT of Fritz Klasner
WDT of Stephanie Nagata
WDT of Tom Nance
WDT of Richard Nees (Amended)
WDT of Hon. Walter M. Heen (Ret.)
WDT of Wallace A. Ishibashi, Jr.

Exhibits

Ex. No.	Description
A-1	Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope (TMT) Project from the University of Hawaii (September 2, 2010)
A-2	TMT Project Chapter 343 Final Environmental Impact Statement (EIS) Summary Sheet
A-3	TMT Final EIS Volume 1 (May 8, 2010)
A-4	TMT Final EIS Volume 2 (May 8, 2010)
A-5	TMT Final EIS Volume 3 (May 8, 2010)
A-6	Acceptance Letter of the Governor Regarding TMT Final EIS (May 19, 2010)
A-7	OCCL Staff Report on CDUA HA-3568 for the TMT (February 25, 2011)
A-8	Exhibits to OCCL Staff Report on CDUA HA-3568 for the TMT
A-9	Mauna Kea Comprehensive Management Plan (January 2009)

A-10	Natural Resource Management Plan (September 2009)
A-11	Cultural Resources Management Plan (October 2009)
A-12	Public Access Plan (January 2010)
A-13	Decommissioning Plan (January 2010)
A-14	OCCL Staff Report, Resource Subplans (March 25, 2010)
A-15	2010 Annual Report (April 1, 2010)
A-16	2010 Annual Report to the Board of Land and Natural Resources, Status of the Development of the Comprehensive Management Plan's Management Actions
A-17	2011 Annual Report to the Board of Land and Natural Resources, Status of the Development of the Comprehensive Management Plan's Management Actions
A-18	2012 Annual Report to the Board of Land and Natural Resources, Status of the Development of the Comprehensive Management Plan's Management Actions
A-19	2013 Annual Report to the Board of Land and Natural Resources, Status of the Development of the Comprehensive Management Plan's Management Actions
A-20	2014 Annual Report to the Board of Land and Natural Resources, Status of the Development of the Comprehensive Management Plan's Management Actions
A-21	2015 Annual Report to the Board of Land and Natural Resources, Status of the Development of the Comprehensive Management Plan's Management Actions
A-22	2016 Annual Report to the Board of Land and Natural Resources, Status of the Development of the Comprehensive Management Plan's Management Actions
A-23	OCCL Case File (correspondence) (October 7, 2010)
A-24	Presentation for TMT to BLNR (February 25, 2011)
A-25	Presentation against TMT; CC Request (February 25, 2011)
A-26	Minutes from BLNR Meeting (February 25, 2011)
A-27	Staff Report on Request for Contested Case Hearing (February 25, 2011)
A-30	Curriculum Vitae of Perry J. White
A-31	Demonstrative exhibits for Perry J. White
A-32	Curriculum Vitae of Günther Hasinger
A-33	UH Economic Research Organization (UHERO) Report
A-34	Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve, Report No. 14-07 (August 2014)
A-35	Curriculum Vitae of Testimony of James T. Hayes
A-36	Demonstrative exhibits for James T. Hayes

A-37	Curriculum Vitae of Clifford Smith
A-38	Demonstrative exhibits for Robert McLaren (Decommissioning Plan, Figure 1)
A-39	Letter from David Lassner, President, University of Hawai'i to Governor David Ige (November 17, 2015)
A-40	Maunakea Invasive Species Management Plan
A-43	Curriculum Vitae of Tom Nance
A-44	Demonstrative Exhibits for Tom Nance
A-47	PowerPoint Presentation of Stephanie Nagata Regarding Mauna Kea Management
A-48	Mauna Kea Reserve Master Plan adopted June 16, 2000
A-50	Letter: DLNR Letter Approving of Mauna Kea Comprehensive Management Plan dated April 15, 2009
A-51	Final Environmental Assessment for the Comprehensive Management Plan filed April 23, 2009
A-52	Major Project Sequence of Steps approved by MKMB October 14, 2009
A-54	Visual Impact Assessment Technical Report dated December 2009
A-55	Final Archaeological Inventory Survey of the Astronomy Precinct dated January 2010
A-56	Final Archaeological Inventory Survey of the Mauna Kea Access Road Management Corridor dated February 2010
A-58	Minutes: Board of Regents Meeting, February 18, 2010
A-59	Minutes: Mauna Kea Management Board, February 25, 2010
A-60	Letter from DLNR Regarding Approval of Sub Plans dated April 12, 2010
A-61	Minutes: Mauna Kea Management Board, April 21, 2010
A-62	Minutes: Mauna Kea Management Board, May 19, 2010
A-64	Minutes: Board of Regent's Meeting, June 28, 2010
A-65	Minutes: Mauna Kea Management Board, Wednesday, September 1, 2010
A-66	Letter from State Historic Preservation Division Regarding Archaeological Inventory Survey for the Thirty Meter Telescope Observatory Project dated January 27, 2011
A-67	Cultural Impact Study by PHRI
A-68	Figure 1.3: Mauna Kea Summit Region: Existing Facilities, Features, & Future Development Areas
A-69	Planning Guide for the 2000 UH Master Plan
A-70	Final Environmental Impact Statement for the Outrigger Telescopes Project - Vol. 1 dated February 2005 (Excerpts)
A-71	Summary of TMT Mitigation Measures
A-73	March 25, 2008 Letter from Ku'iwalu regarding Notice of Land Board Briefing on the CMP for Mauna Kea at its April 11, 2008 meeting

A-74	April 10, 2008 Letter from Mauna Kea Anaina Hou to BLNR regarding April 11, 2008 Hearing and Comments
A-75	May 13, 2008 Transcript of the Mauna Kea CMP Community Hearing
A-76	Letter from Sandra Dawson, TMT to Paul Campbell regarding start of environmental process for proposed telescope project
A-77	Letter from Sandra Dawson, TMT to Clarence Ching regarding start of environmental process for proposed telescope project
A-78	Letter from Sandra Dawson, TMT to Royal Order of Kamehameha I regarding start of environmental process for proposed telescope project
A-79	August 25, 2008 Letter from Ku'iwalu to William Tam regarding Plaintiffs concern regarding participation
A-80	Letter from Sandra Dawson, TMT to Kealoha Pisciotta regarding start of TMT environmental process.
A-81	September 24, 2008 Record Detail (Deborah Ward)
A-82	October 8, 2008 Sign-In Sheet "Thirty Meter Telescope Public Scoping Meeting"
A-83	October 14, 2008 Sign-In Sheet "Thirty Meter Telescope Public Scoping Meeting"
A-84	October 16, 2008 Sign-In Sheet "Thirty Meter Telescope Public Scoping Meeting"
A-85	October 24, 2008 Testimony in Opposition to the TMT Project and EA/EIS Process by Mauna Kea Anaina Hou, The Royal Order of Kamehameha I, and Clarence Kukauakahi Ching
A-86	November 18, 2008 Transcript of Mauna Kea CMP Public Hearing (Excerpts)
A-87	March 20, 2009 Letter from Deborah Ward to the Mauna Kea Management Board regarding Comments on CMP
A-88	May 22, 2009 Email from info@tmt-hawaii.org to dward@hawaii.edu regarding draft EIS - TMT observatory project
A-89	June 17, 2009 Sign-In Sheet "Thirty Meter Telescope Draft EIS Public Review and Comment Meeting"
A-90	June 25, 2009 Sign-In Sheet "Thirty Meter Telescope Draft EIS Public Review and Comment Meeting"
A-91	July 7, 2009 Letter from Kealoha Pisciotta, Clarence Kukauakahi Ching, Paul K. Neves to TMT Observatory Project, Office of Environmental Quality Control regarding TMT draft environmental impact statement
A-92	August 14, 2009 Email regarding copies of the Mauna Kea CRMP and Mauna Kea NRMP for public examination
A-93	Open House Advertisements and dates of publication in the West Hawaii Today and Tribune-Herald
A-94	October 29, 2009 Letter from Mauna Kea Anaina Hou to Jeff Melrose regarding Public Access Plan
A-95	KAHEA Comments of BLNR subplans; Exhibit A

A-98	January 27, 2010 filed Order Granting Appellees UH and UH Institute for Astronomy's Motion to Dismiss Appeal Filed October 20, 2009; Civil No. 09-1-336
A-99	March 24, 2010 Sierra Club BLNR subplan testimony
A-100	March 25, 2010 BLNR Meeting and Amended Comments on the Proposed CRMP by Clarence K. Ching
A-101	March 25, 2010 Testimony of Paul K. Neves and Mauna Kea Anaina Hou at the BLNR Public Hearing
A-102	April 21, 2010 Approved Minutes of the MKMB
A-103	May 8, 2010 Letter with Enclosure from Rose Tseng to Clarence "Ku" Ching regarding comments received on draft environmental impact statement and final environmental impact statement - thirty meter telescope observatory project
A-104	May 8, 2010 Letter with Enclosure from Rose Tseng to Kealoha Pisciotta regarding comments received on draft environmental impact statement and final environmental impact statement - thirty meter telescope observatory project
A-105	May 8, 2010 Letter with Enclosure from Rose Tseng to Paul K. Neves regarding comments received on draft environmental impact statement and final environmental impact statement - thirty meter telescope observatory project
A-108	Batch Plant Runoff Topography
A-109	Visualization of TMT Observatory from the Northern Ridge of Kūkahau'ula
A-110	Visualizations of TMT Observatory from Pu'u Poli'ahu
A-111	Management and Implementation Framework for Project Development
A-119	Curriculum Vitae of Richard Nees
A-120	Curriculum Vitae of Chad Kālepa Baybayan
A-122	McCoy, Patrick C. & Richard C. Nees. Final Archaeological Inventory Survey of the Mauna Kea Ice Age Natural Area Reserve Ka'ohē Ahupua'a, Hāmākua District, Island of Hawai'i dated August 2013
A-123	Park & Walden. Final Archaeological Inventory Survey of Hale Pohaku Rest House I and Comfort Station, Ka'ohē Ahupua'a, Hāmākua District, Island of Hawai'i (Volume 1) dated February 2010
A-124	ACHP June 4, 2014 correspondence re: NSF cooperative agreement with Thirty Meter Telescope (TMT)
A-125	ACHP June 23, 2014 correspondence re: NSF cooperative agreement with Thirty Meter Telescope (TMT)
A-126	June 2014 emails re: re: NSF cooperative agreement with Thirty Meter Telescope on Mauna Kea
A-127	Curriculum Vitae of Robert McLaren
A-128	Provisions for the Final Burial Treatment Plan for burial sites in the Mauna Kea Science Reserve and the Mauna Kea Access Road Corridor
A-129	Pua Case Facebook Post, February 1, 2015

Moreover, the University reserves the right to supplement this motion based on additional evidence introduced during cross-examination and/or rebuttal, and as needed to accurately reflect the record.

Based on the foregoing, the University respectfully requests that the Hearing Officer grant this Motion.

DATED: Honolulu, Hawai'i, January 17, 2017.

A handwritten signature in black ink, appearing to read "Ian L. Sandison", is written over a horizontal line.

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Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

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The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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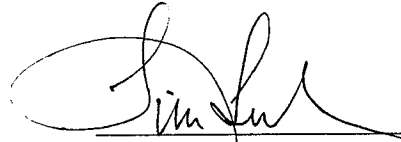
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