

YUKLIN ALULI 1428  
415-C Uluniu Street  
Kailua, Hawai'i 96734  
Tel. (808) 262-5900  
email: [yuklin@kailualaw.com](mailto:yuklin@kailualaw.com)

Dexter K. Kaiama 4249  
111 Hekili Street, #A1607  
Kailua, Hawai'i 96734  
Tel. (808) 284-5675  
email: [cdexk@hotmail.com](mailto:cdexk@hotmail.com)

Co-Counsel for Petitioner  
KAHEA: The Hawaiian Environmental Alliance,  
a domestic non-profit Corporation

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of:	)	Case No. BLNR-CC-16-002
	)	
A Contested Case Hearing Re	)	<b>KAHEA: THE HAWAIIAN</b>
Conservation District Use Permit	)	<b>ENVIRONMENTAL ALLIANCE'S MOTION</b>
(COUP) HA-3568 for the Thirty Meter	)	<b>TO ADMIT EXHIBITS AND WRITTEN</b>
Telescope at the Mauna Kea Science	)	<b>DIRECT TESTIMONY INTO EVIDENCE;</b>
Reserve, Kahohe Mauka, Hamakua	)	<b>MEMORANDUM IN SUPPORT OF</b>
District, Island of Hawai'i, TMK (3) 4-4-	)	<b>MOTIN; CERTIFICATE OF SERVICE</b>
015:009	)	
	)	
	)	Hearings Officer: Honorable Riki Amano
	)	(Retired)
	)	

---

**KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE'S MOTION  
TO ADMIT EXHIBITS AND WRITTEN DIRECT TESTIMONY INTO EVIDENCE**

KAHEA: The Hawaiian Environmental Alliance ("KAHEA"), by and through its counsel Yuklin Aluli and Dexter K. Kaiama, 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: Kailua, Hawaii, 2-21-17.



\_\_\_\_\_  
Yuklin Aluli  
Dexter K. Kaiama  
Co-counsel for Petitioner KAHEA:  
The Hawaiian Environmental Alliance,  
a domestic non-profit Corporation

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of: ) Case No. BLNR-CC-16-002  
)  
A Contested Case Hearing Re ) MEMORANDUM IN SUPPORT  
Conservation District Use Permit ) OF MOTION  
(COUP) HA-3568 for the Thirty Meter )  
Telescope at the Mauna Kea Science )  
Reserve, Kaohe Mauka, Hamakua )  
District, Island of Hawai'i, TMK (3) 4-4- )  
015:009 )  
)  
)  
\_\_\_\_\_ )

**MEMORANDUM IN SUPPORT OF MOTION**

On February 16, 2017, KAHEA: The Hawaiian Environmental Alliance (“KAHEA”) rested its case in the above entitled matter. KAHEA 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) (emphases added). The evidence presented by KAHEA 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, KAHEA moves to admit into the record the following testimony and documentary evidence:

### WRITTEN DIRECT TESTIMONY

<b>Ex. No.</b>	<b>Description</b>
B.03a	Testimony of Marti Townsend, Esquire
B.04a	Testimony of Maile Taualii, Ph.D.
B.07a	Testimony of Jon Osorio, Ph.D.
B.08a	Testimony of Kehaunani Abad, Ph.D.
B.09a	Testimony of Davin James Vincente, M.S.
B.10a	Testimony of Erik Hansen, M.S.
B.11a	Testimony of Kuulei Kanahale, M.Ed.
B.13a	Testimony of Candace Fujikane, Ph.D.

### EXHIBITS

<b>Ex. No.</b>	<b>Description</b>
B.03b	UH progress report on Governor's 10 point plan(May 25, 2015)
B.03c	Final Archaeological Inventory Survey of the Mauna Kea Access Road Management Corridor, Pacific Consulting Services, Inc. (McCoy, February 2010)
B.03d	"Looking at B: TMT would relocate if permit not secured soon," West Hawaii Today, February 12, 2016.
B.03e	Operating and Development Agreement for 8-millimeter telescope (Subaru telescope sublease).
B.03f	Agreement for Construction and Operation of a 3.8 millimeter telescope (UKIRT sublease).
B.03g	Renegotiated Site Development and Operating Agreement concerning the W.M. Keck Observatory (Keck sublease)
B.03h	Operating and Site Development Agreement for the Very Long Base Array (VLBA sublease)

B.03i	Operating and Site Development Agreement for the Smithsonian Submillimeter Array (SAO sublease)
B.03j	Operating and Site Development Agreement for the Gemini 8-meter Telescope (Gemini Sublease)
B.03k	Operating and Site Development Agreement for the Caltech Submillimeter Telescope Facility (Caltech Sublease)
B.03l	Operating and Site Development Agreement for the Canada-France-UH telescope (CFH sublease)
B.03m	Operating and Site Development Agreement for the 15 Meter United Kingdom-Canada-Netherlands Telescope (UK-Canada sublease)
B.03n	(VACANT - DELETE THIS LINE?)
B.03o	Image, TMT viewplane simulation with red balloon, view from the side
B.03p	Image, TMT viewplane simulation with red balloon, view from the ground
B.03q	Image, sunrise on the pu`u obstructed by shadow from an existing telescope
B.03r	Image, viewplane from proposed TMT location towards Maui
B.03s	Image, existing telescopes on the summit from access road
B.03t	Atwater, Gail. Conservation District Review: Preliminary Discussion Draft, November 1993.
B.03u	Kaena Point Conceptual Plan, 1978 (excerpts provided, complete document available upon request)
B.03v	Testimony from the Mauna Kea hui in opposition to TMT (October 24, 2008)
B.03w	Public Testimony, proposed Comprehensive Management Plan for Mauna Kea (May 13, 2008)

B.03x	Motion No. 26, Protected Areas and other areas important for biodiversity in relation to environmentally damaging industrial activities and infrastructure development, World Conservation Congress (September 2016)
B.03y	Minutes of the Board of Land and Natural Resources, Comprehensive Management Plan considered (March 2010).
B.03z	OCCL Staff Submittal, Comprehensive Management Plan (March 2010)
B.03aa	Minutes of the Board of Land and Natural Resources, Comprehensive Management Plan approved (April 8-9, 2009)
B.03ab	Maly, Kapa. Oral history and consultation, and archival literature study, Mauna Kea Science Reserve and Hale Pohaku Complex Development (1999)
B.03ac	Image, trash collected at Batch Plant 1
B.03ad	Image, trash collected at Batch Plant 2
B.03ae	Image, trash collected at Batch Plant 3
B.03af	Image, trash collected at Batch Plant 4
B.03ag	Image, spools of Cable at Batch Plant
B.03ah	Image, bulldozer at Batch Plant
B.03ai	Image, cinder piles at Batch Plant
B.03aj	Image, HECO "pull box" on Mauna Kea
B.03ak	BLNR Minutes, TMT CDUA approval (February 25, 2011)
B.03al	Letter from Sam Lemmo, OCCL to Richard Chamberlain, CSO, re: hydraulic spill, October 13, 2009
B.03am	Image, "Leave the Landscape" sign at Hale Pohaku on Mauna Kea
B.03an	Assessment of TMT Risks on Mauna Kea, Moore Foundation (2007)
B.03ao	"Consideration of Cumulative Impacts in EPA Review of NEPA Documents," U.S. EPA, Office of Federal Activities, EPA 315-R-99-002/May 1999.

B.13e	HAR §11-200-12 on Significance Criteria
B.13f	HAR §13-5-1 Purpose of Conservation District
B.13g	UH Mauna Kea CMP Map of Historic Sites, Find Spots, TCPs
B.13h	HRS §711.1107 Desecration
B.13i	Excerpt from Maly and Maly (2005)
B.13j	Pukui and Elbert, Hawaiian Dictionary, mo`o
B.13k	LCA 3131 from Foreign Testimony 1850
B.13l	Excerpts from Keaomelemele
B.13m	Map of Ka'ohē Ahupua'a
B.13n	Mahele Book, V. Kamamalu relinquishing lands
B.13o	Excerpt from Maly and Maly (2005)
B.13p	Ku-Kahau-ula and Poliahu story by Ahuena
B.44	Preliminary Draft Report for Review - Cultural Impact Assessment for the Thirty Meter Telescope (TMT) Observatory Project and Hale Pohaku Mid-Level Support Facilities Project, Maunakea, Kaohe Ahupua'a, Hamakua District, Hawai'i Island TMK: [3] 4-4-015:001 por., 009 por., 012 por. (May 2009)
B.45	Draft Environmental Impact Statement Vol. 2, Appendix D, Initial Draft Cultural Impact Assessment Report , Summary ,for the Thirty Meter Telescope (TMT) Observatory Project and Hale Pohaku Mid-Level Support Facilities Project, Maunakea, Kaohe Ahupua'a, Hamakua District, Hawai'i Island TMK: [3] 4-4-015:001 por., 009 por., 012 por. (May 23, 2009)
B.54	The Hawaii Independent Article (January 21, 2015): Cultural practitioners, environmentalists deliver Mauna Kea demands to Governor
B.55	Honolulu Star Advertiser Editorial Article (March 10, 2014): Hawaii's ecosystem harmed by building on Mauna Kea
B.56	The Economist Article (November 26, 2016): Portraits of worlds

B.03ap (II)	Final Environmental Impact Statement, Outrigger Telescopes proposed for Mauna Kea, National Aeronautics and Space Administration, v2 (2005)
B.03ap (1) errata	FEIS, Outrigger Telescopes, v1
B.04b	Maile Taulii CV
B.04c	Indigenous health pt. 1 study; M. Gracey & M. King (2009)
B.04d	Indigenous health pt. 2 study; M. King, A. Smith, M. Gracey (2009)
B.07b	Jon Osorio, Ph.D. CV
B.08b	Kehaunani Abad, Ph.D. CV
B.08c	Article: Dunnell & Dancey "Siteless Survey"
B.08d	Article: Elbert, Distribution Archaeology
B.08e	Hester et al, Field Methods excerpts
B.08f	Maly Report on Mauna Kea excerpts
B.08g	Ka Hoku I ka Pakipika
B.08h	Nupepa Kuokoa article
B.08i	Article Morris et al, Views from Inside and Outside
B.08j	National Register Bulletin
B.08k	Keck Outrigger EIS excerpts
B.09b	Davin James Vicente, M.S. CV
B.10b	Eric Hansen, M.S. CV
B.64	OMKM - Botanical Baseline Survey (2011) of the University of Hawaii's Managed Lands on Mauna Kea (August 26, 2013)
B.11b	Kuulei Kanahale, M.A. CV
B.13b	Candace Fujikane, Ph.D. CV
B.13c	CMP Map of Mauna Kea Summit Region Historic Region
B.13d	Excerpt from FEIS for Outrigger Telescopes

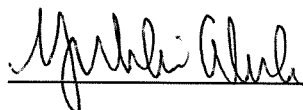


B.58	TMT International Observatory LLC - GuideStar Profile -2015
B.59	Form 990 TMT International Observatory LLC - tax years ending December 31, 2014
B.37a	MKSR Master Plan (2000)
B.37b	MKSR Master Plan Appendix (2000)
B.38	Mauna Kea CMP (2009)
B.39	CRMP - CMP Sub-Plan
B.40	NRMP - CMP Sub-Plan (2009)
B.41	Public Access Plan - CMP Sub-Plan
B.42	Decommissioning Plan - CMP Sub-Plan (2010)
B.43	CMP Implementation Plan (2010)

Moreover, KAHEA reserves the right to supplement this motion based on additional evidence introduced during cross-examination and/or rebuttal.

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

DATED: Kailua, Hawaii, 2-21-17



Yuklin Aluli

Dexter K. Kaiama

Co-counsel for Petitioner KAHEA:

The Hawaiian Environmental Alliance,  
a domestic non-profit Corporation

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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

BLNR Contested Case HA-16-02

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached document was served upon the following parties by the means indicated:

Michael Cain  
[michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov)  
*Custodian of the Records*

Office of Conservation and Coastal  
Lands  
[Dlnr.maunakea@hawaii.gov](mailto:Dlnr.maunakea@hawaii.gov)

Carlsmith Ball LLP  
[isandison@carlsmith.com](mailto:isandison@carlsmith.com)  
[tluikwan@carlsmith.com](mailto:tluikwan@carlsmith.com)  
[jpm@carlsmith.com](mailto:jpm@carlsmith.com)  
[lmcaneley@carlsmith.com](mailto:lmcaneley@carlsmith.com)  
*Counsels for the applicant University  
of Hawai'i at Hilo*

Kealoha Pisciotta and Mauna Kea  
Anaina Hou  
[keomaivg@gmail.com](mailto:keomaivg@gmail.com)

Clarence Kukauakahi Ching  
[kahiwaL@cs.com](mailto:kahiwaL@cs.com)

E. Kalani Flores  
[ekflores@hawaiiantel.net](mailto:ekflores@hawaiiantel.net)

B. Pualani Case  
[pucase@hawaiiantel.net](mailto:pucase@hawaiiantel.net)

Deborah J. Ward  
[cordylinecolor@gmail.com](mailto:cordylinecolor@gmail.com)

Paul K. Neves  
[kealiikea@yahoo.com](mailto:kealiikea@yahoo.com)

Watanabe Ing LLP  
First Hawaiian Center, Suite 1250  
999 Bishop Street  
Honolulu, HI 96813  
[rshinyama@wik.com](mailto:rshinyama@wik.com)  
[douging@wik.com](mailto:douging@wik.com)  
*Counsels for TMT International  
Observatory, LLC*

Harry Fergerstrom  
P.O. Box 951  
Kurtistown, HI 96760

Mehana Kihoi  
[uhiwai@live.com](mailto:uhiwai@live.com)

C. M. Kaho'okahi Kanuha  
[kahookahi.kukiaimauna@gmail.com](mailto:kahookahi.kukiaimauna@gmail.com)

Joseph Kualii Lindsey Camara  
[kualiiic@hotmail.com](mailto:kualiiic@hotmail.com)

Torkildson, Katz, Moore, Hetherington  
& Harris  
[lsa@torkildson.com](mailto:lsa@torkildson.com)  
[njc@torkildson.com](mailto:njc@torkildson.com)  
*Counsels for Perpetuating Unique  
Educational Opportunities (PUEO)*

J. Leina'ala Sleightholm  
[leinaala.mauna@gmail.com](mailto:leinaala.mauna@gmail.com)

Lanny Alan Sinkin  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)  
*Representative for The Temple of Lono*

Kalikolehua Kanaele  
[akulele@yahoo.com](mailto:akulele@yahoo.com)

Stephanie-Malia:Tabbada  
[s.tabbada@hawaiiantel.net](mailto:s.tabbada@hawaiiantel.net)

Tiffnie Kakalia  
[tiffniekakalia@gmail.com](mailto:tiffniekakalia@gmail.com)

Glen Kila  
[makakila@gmail.com](mailto:makakila@gmail.com)

Dwight J. Vicente  
2608 Ainaola Drive  
Hilo, Hawaiian Kingdom

Brannon Kamahana Kealoha  
[brannonk@hawaii.edu](mailto:brannonk@hawaii.edu)

Cindy Freitas  
[hanahanai@hawaii.rr.com](mailto:hanahanai@hawaii.rr.com)

William Freitas  
[pohaku7@yahoo.com](mailto:pohaku7@yahoo.com)

Wilma H. Holi  
[w\\_holi@hotmail.com](mailto:w_holi@hotmail.com)  
copy: [lehina@hawaii.rr.com](mailto:lehina@hawaii.rr.com)  
*Witness for the Hearing Officer*

Moses Kealamakia Jr.  
[mkealama@yahoo.com](mailto:mkealama@yahoo.com)  
*Witness for the Hearing Officer*

Signature:

Name:

Date:

*Y. Alii*  
2-21-17