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

Case No. BLNR-CC-16-002

UNIVERSITY OF HAWAI'I AT HILO'S
**SUPPLEMENTAL MOTION TO
ADMIT EXHIBITS AND WRITTEN
DIRECT TESTIMONY INTO
EVIDENCE AND OBJECTION TO
ADMISSION OF CERTAIN EXHIBITS
AND WRITTEN DIRECT
TESTIMONY; MEMORANDUM IN
SUPPORT; CERTIFICATE OF SERVICE**

**UNIVERSITY OF HAWAI'I AT HILO'S SUPPLEMENTAL MOTION TO
ADMIT EXHIBITS AND WRITTEN DIRECT TESTIMONY INTO EVIDENCE
AND OBJECTION TO ADMISSION OF CERTAIN EXHIBITS
AND WRITTEN DIRECT TESTIMONY**

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

DATED: Honolulu, Hawai'i, March 9, 2017.



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MEMORANDUM IN SUPPORT

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On January 17, 2017, the University of Hawai'i at Hilo (“**University**”) filed its *Motion to Admit Exhibits and Written Direct Testimony Into Evidence; Memorandum in Support of Motion* [Doc. 442] (“**Motion**”), in order to move into evidence the written direct testimony (“**WDT**”) of the University’s witnesses, the exhibits introduced through the University’s WDT, and those exhibits introduced by the University during the hearing. Mem. in Supp. at 1. The University also reserved the right to supplement the Motion based on additional evidence presented during cross-examination and rebuttal testimony. Mem. in Supp. at 7.

The University, as Applicant, was the first party to put on its direct case in the above-captioned matter and rested on December 13, 2016. Since that time, the University introduced a number of exhibits through cross-examination of witnesses that were presented after the University closed its direct case. Accordingly, the University moves to admit the following additional evidence:

Exhibits

Ex. No.	Description
A-130	Hawaiian Antiquities (Moolelo Hawaii) by David Malo 1898
A-131	Email from E.Kalani Flores to Mishalla Spearing Re Thirty Meter Telescope CIA

A-132	DLNR Adoption of Chapter 13-276 HAR October 31, 2001
A-133	Minutes Regular Meeting Mauna Kea Mgt Board November 25, 2014
A-134	EIS Preparation Notice
A-134a	Federal Register Vol. 76 No.207 October 26, 2011
A-135	Introduction and Distribution of Ochotellus glaber in the Maunakea Forest Reserve
A-136	Mauna Kea Management Board (MKMB) Environmental Committee
A-137	Correspondence from State Historic Division to Office of Conservation and Coastal Lands, December 1, 2010
A-138	Final Report, Burial treatment plan for burial sites in the Mauna Kea Science Reserve and the Mauna Kea Access Road Corridor, Kaohe Ahupuaa, Hamakua District, Island of Hawaii
A-138a	Cultural descendant recognition of unidentified human skeletal remains located at Mauna Kea Science Reserve and the Mauna Kea Access Road Corridor
A-139	Correspondence from DLNR to Pacific Consulting Services, July 11, 2014
A-140	Appendix A Documentation of Potential historic properties
A-141	Historic preservation mitigation plan in support of construction of the Thirty Meter Telescope in the Astronomy Precinct on Mauna Kea
A-142	Final Report, Archaeological monitoring plan in support of construction of the Thirty Meter Telescope in the Astronomy Precinct on Mauna Kea
A-143	Correspondence from State Historic Preservation Division to Pacific Consulting Services, April 24, 2013
A-144	Kahu Ku Mauna Council (KKMC) guidelines
A-144a	Keahi Tajon's application to be a member of KKMC
A-145	October 13, 2010 KKMC meeting minutes
A-146	May 19, 2010 MKMB meeting minutes and KKMC council statement to MKMB re support/nonsupport of TMT
A-147	Brian Cruz Mauna Kea 2 Hours
A-148	Initial Draft Cultural Impact Assessment - Appendix D of Volume 2 of the Draft Environmental Impact Statement for the Thirty-Meter Telescope Project
A-148a	Volume 1 of the Draft Environmental Impact Statement for the Thirty-Meter Telescope Project
A-149	Brian Cruz Unemployment Insurance Division Decision
A-150	2017-02-03 Environment Hawai'i Article (Sierra Club Director Makes Several Dubious Assertions)
A-151	2011-03-30 KAHEA Ltr. to S.Lemmo
A-152	1995-06-02 Ka La Hui Hawaii Ltr. to M.Wilson & D.Hall re Cultural Review
A-153	1995-07-06 DLNR Ltr. to M.Trask re Proposal for Cultural Review
A-154	1997-02-04 Sierra Club Ltr. to M.Soloman re Legislative Audit

A-155	1997-05-22 DLNR Ltr. to N.Ho re Legislative Audit
A-156	September 2003 CWRM North and South Kona Ground-Water Conditions Study
A-157	Photo (rocks blocking road 1)
A-158	Photo (rocks blocking road 2)
A-159	Photo (ahu on road)

In support of the admission of the above-listed exhibits, the University incorporates by reference the legal arguments made in its Motion. The supplemental evidence presented by the University is relevant, material, and is not privileged or unduly repetitious, and is therefore admissible under the broad standard of admissibility of evidence in administrative hearings set forth in Hawai‘i Revised Statutes (“HRS”) § 91-10(1).¹

The University also objects to the admission of evidence by other parties that (1) does not meet the admissibility standard of HRS § 91-10(1); (2) is immaterial, irrelevant, or unduly repetitious; (3) was not introduced through the written direct testimony of any witness; (4) was not testified to by a witness at the hearing; or (5) was submitted by parties after the close of testimony on March 2, 2017 and not testified to by any witness at the hearing.²

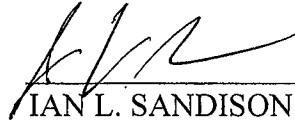
Based on the foregoing, the University respectfully requests the Hearing Officer to grant the Motion and this Supplemental Motion and to exclude the evidence that does not meet the admissibility criteria set forth above.

¹ HRS § 91-10(1) provides:

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[.]

² Because the transcripts of the evidentiary hearings are not completed, specific exhibits to which the University objects could not be identified at the time that this Supplemental Motion was filed. As such, the University makes this general objection to any exhibits and written direct testimony that do not meet the criteria set forth above, and reserves the right to object further.

DATED: Honolulu, Hawai'i, March 9, 2017.



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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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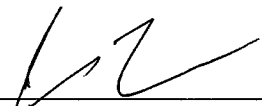
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