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KAHEA: The Hawaiian Environmental Alliance,  
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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of: ) Case No. BLNR-CC-16-002  
)  
A Contested Case Hearing Re )  
Conservation District Use Permit ) **ERRATA TO KAHEA: THE HAWAIIAN**  
(COUP) HA-3568 for the Thirty Meter ) **ENVIRONMENTAL ALLIANCE'S MOTION**  
Telescope at the Mauna Kea Science ) **TO ADMIT EXHIBITS AND WRITTEN**  
Reserve, Kaohe Mauka, Hamakua ) **DIRECT TESTIMONY INTO EVIDENCE**  
District, Island of Hawai'i, TMK (3) 4-4- ) **FILED FEBRUARY 21, 2017;**  
015:009 ) **CERTIFICATE OF SERVICE**  
)  
)  
) Hearings Officer: Honorable Riki Amano  
) (Retired)  
)  
\_\_\_\_\_)

**ERRATA TO KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE'S  
MOTION TO ADMIT EXHIBITS AND WRITTEN DIRECT  
TESTIMONY INTO EVIDENCE FILED FEBRUARY 21, 2017**

KAHEA: The Hawaiian Environmental Alliance ("KAHEA"), by and through its counsel Yuklin Aluli and Dexter K. Kaiama, hereby submits an errata to its Motion to Admit Exhibits and Written Direct Testimony Into Evidence ("Motion") filed herein on February 21, 2017. Through an oversight, the written direct testimony of David Kimo

Received  
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Department of Land and Natural Resources  
State of Hawaii  
2017 March 20 1:48 pm

Frankel was omitted. With sincere apologies to Hearings Officer Amano, and the parties and administrative personnel to this proceedings, this errata is respectfully submitted to correct and add the following written direct testimony for admission to this proceeding:

**WRITTEN DIRECT TESTIMONY**

Ex. No.	Description
B.53	David Kimo Frankel, Esq.

Alternatively, KAHEA respectfully supplements its pleading to admit the written direct testimony of David Kimo Frankel pursuant to Hawai'i Administrative Rules ("HAR") §§ 13-1-32, 34, and 35.

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[.]

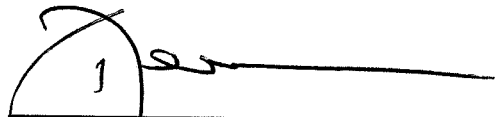
HRS § 91-10(l) (emphases added). The evidence presented by KAHEA is relevant, material, and is not privileged or unduly repetitious, and is therefore admissible under the liberal standard of the admissibility of evidence in administrative hearings.

Therefore, pursuant to HRS § 91-10, KAHEA moves to admit into the record the following testimony and documentary evidence:

Additionally, KAHEA respectfully submits that the admission of the Mr. Frankel's written direct testimony, while admittedly unwise, amounts to a harmless error that will not result in an undue prejudice to any of parties. Mr. Frankel's written direct testimony was previously filed in these proceedings (prior to his live testimony on or about January 11, 2017), he did testify before Judge Amano and, as part of his testimony, he did produce and swear that he wrote and that his written direct testimony was accurate to the best of his recollection. Under the totality of the circumstances, KAHEA respectfully submits there is good cause for the admission of David Kimo Frankel's (Exhibit B.53) written direct testimony

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

DATED: Kailua, Hawaii, 3/20/17.

  
\_\_\_\_\_  
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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:

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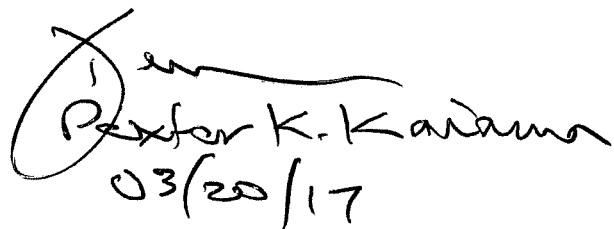
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03/20/17