

J. Leina'ala Sleightholm

Pro Se

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**BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAI'I**

In the Matter of:

Case No. BLNR-CC-16-002

A Contested Case Hearing Re.

J. LEINA'ALA SLEIGHTHOLM'S

Conservation District Use Application  
(CDUA) HA-3568 for the Thirty Meter  
Telescope at the Mauna Kea Science  
Reserve, Ka'ohe, Hamakua District,  
Island of Hawai'i, TMK (3) 4-4-015:009

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
PROPOSED DECISION AND ORDER;  
CERTIFICATE OF SERVICE.

Hearing Officer: Hon. Riki May Amano  
(Ret.)

**J. LEINA'ALA SLEIGHTHOLM'S PROPOSED FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND PROPOSED DECISION AND ORDER**

J. Leina'ala Sleightholm, in the capacity of pro se, respectfully submits J. Leina'ala Sleightholm's Proposed Findings of Fact, Conclusions of Law, and Proposed Decision and Order, pursuant to Minute Order No. 43 dated April 19, 2017.

**INTRODUCTION:**

On December 2, 2016, in *Mauna Kea Anaina Hou v. Board of Land and Natural Resources*, 136 Hawai'i 376, 363 P.3d 224 (2015), the Hawai'i Supreme Court remanded the captioned matter to the circuit court to further remand to the Board of Land and Natural Resources (the "Board") for proceedings consistent with this opinion, so that a contested case hearing can be conducted before the Board or a new hearing officer, or for other proceedings consistent with this opinion. (MO 4, Doc. 14.)

## **FINDINGS OF FACT:**

### **PARTIES, PETITIONERS, INTERVENORS, and HEARING OFFICER WITNESSES**

1. University of Hawai'i at Hilo (Applicant)
2. Mauna Kea Anaina Hou/Kealoha Pisciotta (Petitioner)
3. Kumu Hula Paul Neves (Petitioner)
4. Deborah J. Ward (Petitioner)
5. Clarence Kukauakahi Ching (Petitioner)
6. Flores-Case Ohana with Mo'oinanea (Petitioner)
7. KAHEA Environmental Alliance (Petitioner)

(The above were all parties in the 1st contested case hearing)

8. Thirty Meter Telescope International Observatory, LLC. aka T.I.O. (Intervenor)
9. Harry Fergerstrom (Intervenor)
10. Mehana Kihoi (Intervenor)
11. C.M. Kaho'okahi Kanuha (Intervenor)
12. Joseph Kualii Lindsey Camara (Intervenor)
13. J. Leina'ala Sleightholm (Intervenor)
14. Maelani Lee (Intervenor)
15. The Temple of Lono (Intervenor)
16. Kalikolehua Kanaele (Intervenor)
17. Perpetuating Unique Educational Opportunities aka P.U.E.O. (Intervenor)
18. Stephanie Malia Tabbada (Intervenor)
19. Tiffnie Kakalia (Intervenor)
20. Glen Kila (Intervenor)
21. Dwight J. Vicente (Intervenor)
22. Brannon Kamahana Kealoha (Intervenor)
23. Cindy Freitas (Intervenor)
24. William Freitas (Intervenor)

25. Wilma Holi (HO Witness)
26. Crystal West (HO Witness)
27. Moses Kealamakia (HO Witness)
28. Patricia P. Ikeda (HO Witness-Withdrawn)
29. Ivy McIntosh (HO Witness-Withdrawn)

## **MOTIONS**

30. Mehana Kihoi filed a Motion for Reconsideration to deny the intervention of Perpetuating Unique Educational Opportunities as a party in the contested case. This motion has yet to be ruled on. (Kihoi, Doc. 380)

31. Brannon Kamahana Kealoha filed a Motion Reserving Right to Participate. Mr. Kealoha requested to appear by phone, to call Ms. Kihoi, and Mrs. Sleightholm as his witnesses as well as himself, and requested to remove Kimo Keaulana and Alohalani Brown as witnesses citing subjugation due to schedule. (Kealoha, Doc. 450)

## **SITE VISIT**

32. On September 26, 2016 a site visit to Mauna Kea was held. Three Arnot tour vans were hired to shuttle the parties, attorneys and approved OMKM, Institute for Astronomy or the Office of the General Counsel staff to the summit. (MO 18, Doc. 274)

33. J. Leina'ala Sleightholm filed a motion opposing the meeting place, mandatory shuttle ride, and ban on video and picture taking during the site visit. (Sleightholm, Doc.280)

34. Mehana Kihoi requests change of meeting place, and ability to photograph/video, and also voices concern about tour vans shuttling parties to the summit. (Kihoi, Doc. 279)

35. While acclimating at Hale Pohaku we were told that if we did not ride in the shuttle vans provided, we could not be included in the official site visit.

36. Cindy Freitas felt the site visit was inadequate, and violated her cultural and religious practice rights. She also felt that it was “fast tracked”, and didn’t allow for the viewing of the red helium balloon illustration. (Freitas, Doc. 290)

**MISMANAGEMENT BY THE OFFICE OF MAUNA KEA MANAGEMENT (OMKM), UNIVERSITY OF HAWAII (UH), DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR) AND BOARD OF LAND AND NATURAL RESOURCES (BLNR)**

37. OMKM never convened or called upon the Sierra Club to discuss sewage treatment and hazardous waste handling on Mauna Kea. (Ho, V.39, Tr. Feb 22, 2017, p. 44:20-25, p. 45:1-6)

38. Biological surveys to understand what would disturbances be if more telescopes were brought in were never done until recent times (as late as 2010). No baseline or mitigation measures were known. (Ho, V.39, Tr. Feb 22, 2017, p. 50:13-25, p. 51:1-7)

39. Neither DLNR nor the University wanted to answer to the issue of carrying capacity. (Ho, V.39, Tr. Feb 22, 2017, p. 51:8-25, p. 52:1-3, p. 53:4-25, p. 54:1-9)

40. Handling of trash on Mauna Kea. (Ho, V.39, Tr. Feb 22, 2017, p. 59:17-25, p. 60:1-25, p. 61:1-6)

41. Concern expressed about overdevelopment of Mauna Kea in its past history prior to TMT project. (Ho, V.39, Tr. Feb 22, 2017, p. 78:21-25, p. 79:1-13)

42. BLNR and UH have legal obligation to protect these conservation district lands. (Ho, V.39, Tr. Feb 22, 2017, p. 79:22-25, p. 80:1-11)

43. According to 1998 State auditor over 30 years have passed since the first telescope on Mauna Kea. During this period little was done to protect its natural resources. (Ho, V.39, Tr. Feb 22, 2017, p. 86:4-24)

44. Follow up 2014 Auditor’s report. Mr. Ho expressed concerns that were not addressed. (Ho, V.39, Tr. Feb 22, 2017, p. 136:20-25, p. 137:1-15)

45. There are structural flaws to the way Mauna Kea is managed. (Ho, V.39, Tr. Feb 22, 2017, p. 86:25, p. 87:1-5)

46. A lot of disfigurement and alteration has occurred to Hawaiian shrines which continues to present day in violation of 1968 general lease under “Objects of Antiquity”. (Ho, V.39, Tr. Feb 22, 2017, p. 98:6-25, p. 99:1-15)

47. Mr. Ho expressed concern that OMKM was never a representative set of the Big Island community, including the Hawaiian cultural practitioners and the average resident but for the population that was invested in continuing development and use of Mauna Kea as an astronomy facility. (Ho, V.39, Tr. Feb 22, 2017, p. 140:11-19)

48. In a meeting with Mike Wilson, Chair of DLNR, Mr. Ho brought up the issue of wrong management going on at the summit of Mauna Kea – arguing with Wilson that it was not an issue of controlling public access, but that it was the construction of the astronomy industry that was creating the problems. (Ho, V.39, Tr. Feb 22, 2017, p. 108:14-25, p. 109:1-4)

49. OMKM Environment Committee was never convened to review the TMT EIS. (Ho, V.39, Tr. Feb 22, 2017, p. 140:20-25, p. 141:1-5)

50. Mr. Ho’s concern regarding zero discharge and mitigating the past 50 years of the use of unlined cesspools to examine all of those locations to see what was discharged into them, where did they migrate and removal, if necessary. (Ho, V.39, Tr. Feb 22, 2017, p. 142:17-25, p. 143:1-25, p. 144:1-17)

51. When Ms. Nagata was cross examined by Ms. Ward and asked whether her responsibility as director of a management entity was to manage lands so as to reduce the impacts from significant to less than significant, Ms. Nagata responded that they protect, and preserve resources, and would review. (Nagata, V.14, Tr. Dec. 8, 2016, p. 55:10-25, p. 56:1-23)

52. Reference to Mauna Kea Management Board (MKMB) minutes of April 21, 2010, Dr. Ron Perry states factors make it difficult for MKMB and recommendations they make must be “taken in the spirit of not having adequate resources....” (Nagata, V.14, Tr. Dec. 8, 2016, p. 75:17-25, p. 76:1-5)

## **COURT RULINGS**

53. Federal court case that forced the first federal EIS for Mauna Kea telescope acknowledging cumulative impact on Mauna Kea (Ho, V.39, Tr. Feb 22, 2017, p. 48:3-7)

54. State Supreme Court's December 2015 ruling that TMT's CCH was invalid. (Ho, V.39, Tr. Feb 22, 2017, p. 48:9-12)

55. Judge Ibarra's ruling regarding civil rights of the protectors were violated. (Ho, V.39, Tr. Feb 22, 2017, p. 48:13-20)

56. Judge Takase's acceptance of the defense necessity regarding the arrests at Hale Pohaku. (Ho, V.39, Tr. Feb 22, 2017, p. 48:21-25 and p. 49:1-3)

57. Judge Nakamura's ruling regarding vacating consent for sublease. (Ho, V.39, Tr. Feb 22, 2017, p. 49:5-13)

## **CONSTITUTION OF THE STATE OF HAWAII**

58. Article XII, Section 7 has additional protections for the Native Hawaiian cultural and traditional practices. (Ho, V.39, Tr. Feb 22, 2017, p. 87:6-11, p. 101:19-21)

59. "All rights traditionally customary exercised for subsistence, cultural and religious purposes." (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 164:10-17)

60. Kuleana not only translated as rights, responsibility and authority, but specifically those things in relation to genealogy and place... (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 166:8-25, p.167:1-3)

61. Access to practice protected by state law. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 168:6-20)

62. The remains, the iwi of Kuka Hauula and many more of my kupuna (ancestors) rest on Mauna Kea and need vigilant care to prevent desecration . I, like most Hawaiians, am a descendant of Umialiloa. Umi placed a kapu on Mauna Kea as part of his vast legacy. And part of his vast legacy was to protect the sacred Mauna Kea from desecration . This legacy and kuleana are now mine to uphold. (Camara, V.43, Tr. Mar. 1, 2017, p. 126:7-14)

63. Ms. Nagata states that there will be studies done on human activities including commercial tour operations, and when asked if her office, Office of Mauna Kea Management (OMKM) would consider how those activities affect religious and spiritual practices of Native Hawaiian practitioners, she responded that those studies have not been developed yet. (Nagata, V.14, Tr. Dec. 8, 2016, p. 89:6-20)

## **CRITERIA 8**

64. October 7, 2014 Overcome with emotional and spiritual sadness so deep and profound as armed police officers were present brandishing zip ties - it will come to be familiar within the coming months. Her entire world shifted on this day. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 13:10-25, p. 14:1-13)

65. March 25, 2014 Held vigil with others for three to five days. On constant high alert that the mountain was in jeopardy of being harmed by the construction work. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 14:19-25, p. 15:1-25, p. 16:1-19)

66. Evening of September 8, 2015 was guided to the Mauna in ceremony and to pule for our brothers holding vigil for the continued protection of the Mauna and to mahalo akua, (Sleightholm, V.35, Tr. Feb 14, 2017, p. 16:20-25, p. 17:1-25, p. 18:1-25, p. 19:1-21)

67. April 2, threat of TMT workers driving up the Mauna to begin work. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 24:1-11, 22-25, p. 25:1)

68. Violence not intended. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 27:15-25, p. 28:1-5)

69. Considers herself as a law-abiding citizen, standing with my own people, knowing what her purpose is, seeing DOCARE officers uwe with kia'i. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 29:22-25, p. 30:1-25)

70. State turning our people against each other and trying to make me feel like a criminal. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 31:1-14, p. 37:11-25, p. 38:1-2)

71. Injury coming from this proposed project not just because of the placement but the process. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 32:10-25, p. 33:1-10)

72. Kapu aloha has changed me. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 33:11-20)

73. How to heal my injuries. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 33:21-25, p. 34:1-12)

74. I felt my soul was breaking...I couldn't breathe. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 34:14-18)

75. Forced exchange of 'ha' by an officer on April 2. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 39:16-5, p. 40:1-19, p. 54:19-25, p. 55:1-2)

76. Residual effects as a result of the two arrests and detention. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 41:16-25, p. 42:1-3)

77. Haven't been to hula in a long time. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 42:18-19)

78. Type of trauma could be called an adversarial health effect. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 43:21-25, p. 44:1-12)

79. Construction of the TMT and the way that things are being conducted under DLNR considered to be violence on multiple levels. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 168:21-25, p. 169:1-25, p. 170:1-3)

80. The health of kanaka is the health of aina. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 179:22-25, p. 180:1-25, p. 181:1-16)

81. Native Hawaiian health is intrinsically tied to the land. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 163:19-25, p. 164:1-9)

82. Harms resulting in continued settler colonialism in reference to the TMT. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 190:22-25, p. 191:1-5)

83. "A Thousand Little Cuts to Genocide" article by Mr. Alani Apo, speaking to the issue of health and safety. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, Exhibit J-1, p. 194:14-25, p. 195:1-25, p. 196:1-3)

84. If student does not have the ability to exercise self-governance over oneself, then that fundamentally undercuts their health and ability to learn and function in an optimal way. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 199:8-21)

85. Kanaka praying and reciting ancestral chants while standing in a gravel roadway to block the desecration of their kupuna seen as a defense of their health and safety in a context of threatened violence. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 206:18-25)

86. The micro-aggressions and macro-aggressions experience of living under settler colonial occupation that we have to continually rationalize and fight for who we are and just be who we are in relationship to each other and to this place. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 197:17-25, p. 198:1)

87. "All rights traditionally customary exercised for subsistence, cultural and religious

purposes.” (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 164:10-17)

88. Judge Ibarra’s ruling regarding civil rights of the protectors were violated. (Ho, V.39, Tr. Feb 22, 2017, p. 48:13-20)

89. Judge Takase’s acceptance of the defense necessity regarding the arrests at Hale Pohaku. (Ho, V.39, Tr. Feb 22, 2017, p. 48:21-25, p. 49:1-3)

90. OMKM never convened or called upon the Sierra Club to discuss sewage treatment and hazardous waste handling on Mauna Kea. (Ho, V.39, Tr. Feb 22, 2017, p. 44:20-25, p. 45:1-6)

91. Handling of trash on Mauna Kea. (Ho, V.39, Tr. Feb 22, 2017, p. 59:17-25, p. 60:1-25, p. 61:1-6)

92. Mr. Ho expressed concern that OMKM was never a representative set of the Big Island community, including the Hawaiian cultural practitioners and the average resident but for the population that was invested in continuing development and use of Mauna Kea as an astronomy facility. (Ho, V.39, Tr. Feb 22, 2017, p. 140:11-19)

93. Mr. Ho’s concern regarding zero discharge and mitigating the past 50 years of the use of unlined cesspools to examine all of those locations to see what was discharged into them, where did they migrate and removal, if necessary. (Ho, V.39, TR. Feb 22, 2017, p. 142:17-25, p. 143:1-25, p. 144:1-17) (Also quoted under MISMANAGEMENT BY THE OFFICE OF MAUNA KEA (OMKM), UNIVERSITY OF HAWAII (UH), DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR) AND BOARD OF LAND AND NATURAL RESOURCES (BLNR))

94. “The Seed We Planted” book by Noe Goodyear-Kaopua takes up central question and paradox of what do kanaka maoli or in a broader context, indigenous people do when you are living under the regime of a settler state that controls your resources? (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 254:1-25, p. 255:1-25, p. 256:1-6)

95. Irreparable harm caused by the TMT Project will include physical harm to sites in the immediate area; relationships sites to one another, intangibles such as the feeling associated with sites and the cultural practices associated, the akua. (Abad, V.27, Tr. Jan 19, 2017, p. 72: 4-14)

96. Psychological harms caused by desecration of a site considered sacred cannot be

mitigated. (Abad, V.27, Tr. Jan 19, 2017, p. 81: 14-16)

97. Chair Ailā asked, “how would you be impacted? Would you still go up there?” Petitioner Case responded that she would continue to go up the Mauna, but it would be with a different purpose because everything will have changed. She would not be there to enjoy and honor and celebrate this beautiful place and her connection to it. She would have to go there to apologize and to try to heal from and mihi for what she could not stop. (Abad, V.27, Tr. Jan 19, 2017, p. 42:1-25, p. 43:1-2)

98. When a people have to change from honoring a place to asking forgiveness of a place, the kaumaha, the heaviness, the sadness, the weight, of what has happened weighs very heavily on the shoulders, the na‘au, the very core of people’s being, and it creates a consistent sadness and eha, hurt, in the character of – of this being – this person. (Abad, V.27, Tr. January 19, 2017, p. 66:2-19)

99. The cumulative impact of intensified industrial land use at the summit has impacted my recreational enjoyment and spiritual practice. The cumulative impact of the destruction of habitat, widespread waste accumulation, obstruction of view plane, constant sound, alteration of the geology, and negative impact to the cultural practice of my colleagues is a source of personal grief. The summit would be silent if there was no development at all. It is not silent. The noise of observatory air conditioning, blowers, generators, associated vehicles and industrial activity is present and disturbing to recreational users who hope for the pristine silence of wilderness. (Ward, WDT p. 2, B.17a)

100. Development of six acres of industrial infrastructure with twice the County of Hawaii’s allowable height limit (FEIS calls it a “new visual element on the northern plateau”) on the last remaining unobstructed view plane facing Haleakala will significantly negatively affect my recreational practices. The view of Mauna Kea’s summit, from my vantage point at my residence, from the beach at Hilo bay, from my hiking trails on Mauna Loa, all are fettered by the presence of multiple domes on the skyline; it is almost impossible to find a location on the island of Hawaii where one cannot see a telescope in one’s view of Mauna Kea. I believe I am not alone in finding these visual obstructions a significant annoyance and an adverse impact. (Ward, WDT p. 3, B.17a)

101. I have suffered as I observed the cumulative industrialization of the wild panorama of the summit. My best efforts have not remedied the habitat loss, the repeated pollution accidents, the introduction of multiple alien predators and weeds, the permanent and irreversible alteration of the geologic terrain. The summit landscape, once breathtakingly beautiful, is looking more like an industrial cityscape, in my eyes. (Ward, WDT p. 5, B.17a)

102. The TMT would intrude upon the currently unobstructed view of Haleakala Mountain as well as the primary view of the setting sun from the mountain. It will also obstruct view planes used for traditional and cultural spiritual and religious Native Hawaiian practice. The Northern Plateau is one of the last un-hindered open space areas with views down to the sea, along the coasts, and across the island chain. The TMT would neither preserve nor improve upon Mauna Kea's natural beauty; the eighteen-story building would be twice the highest allowable structure in Hawaii County, and would forever change the wilderness experience in the summit region. (Ward, WDT p. 15, B.17a)

103. Once water is in contact with something manmade, you're polluting it. (Kanahele, V.29, Tr. Jan 24, 2017, p. 157:22-25, p. 158:1-4)

104. If TMT is built, public health, safety and welfare will not be protected, maintained and preserved. (Kanahele, V.29, Tr. Jan 24, 2017, p. 159:22-25, p. 160:1-6)

105. If TMT is built you will be teaching the exact opposite value, which is things are for sale, they are not important as your values, things are not as important as your heritage and your way as a Hawaiian. (Kahakalau, V.23, Tr. Jan 9, 2017, p. 42:8-25)

106. No regard for our values and our way of life. And so it would be for many Hawaiians just another slap in the face, another clear message to Hawaiians that we are less than and our values mean nothing in our homeland. (Kahakalau, V.23, Tr. Jan 9, 2017, p. 109:4-12).

107. Building the TMT will send the same message out to everybody that if the Hawaiians are less than that justifies that Native Americans are less, that Native Samoan, or whoever the people are that the native people are less than the people that have the power over us currently or act like they have power over us. (Kahakalau, V.23, Tr. Jan 9, 2017, p. 110:1-12)

108. Chemical waste tanks endanger the aquifer, endangers the land and can have adverse impacts. (Fujikane, V.23, Tr. Jan 9, 2017, p. 230:5-22)

109. Removal of the earth that is a cultural resource will have an impact on public welfare because it has to do with the trauma that it causes to people who worship Mauna kea who have family members who are interred there. (Fujikane, V.23, Tr. Jan 9, 2017, p. 231:22-25, p. 232:1-6)

110. Removal of 66,000 cubic yards of earth – a form of desecration. (Fujikane, V.23, Tr. Jan 9, 2017, p. 237:13-19)

111. TMT would cause personal injury if built. (Aloua, V.36, Tr. Feb 15, 2017, p. 43:16-25)

112. Her arrests on Mauna Kea were oppressive, offensive and brutal attacks that have caused her trauma. (Aloua, WDT, p. 2)

113. Arrests have created fear of law enforcement officers and concern for personal safety during ceremony. (Aloua, WDT, p. 2)

114. A sense of helplessness. Guilt, Anger, Sadness and despair of the changes the construction and desecration that were occurring. (B. Case, V.25, Tr. Jan 11, 2017, p. 134:1-13)

115. She will not be able to be there in the same manner. (B. Case, V.25, Tr. Jan 11, 2017, p. 135:1-16)

116. If TMT were to be built and because a part of her could not stop it, she would have to live with that and there would be some things she would not be able to do or teach her children. (B. Case, V.25, Tr. Jan 11, 2017, p. 136:1-13)

117. It would curtail her traditional and customary cultural practices. (B. Case, V.25, Tr. Jan 11, 2017, p. 139:5-14)

118. Mr White stated that if the project were implemented, the habitat of endemic and unique insects would be affected. He acknowledged that the dust caused by extraction and movement of thousands of tons of rock would have an impact on air quality. (White, V.1, Tr. Oct 1, 2016, p. 74:22-25)

119. Mr White stated that the dust would have a temporary impact on air quality of the atmosphere where the astronomy is conducted. (White, v.1, Tr. Oct 1,2016, p. 75:1-3)

120. Mr White stated that the dozen or more construction trucks, six days a week, ten hours a day, would potentially have an impact on the recreational experience of visitors to the

summit region. (White, V.1, Tr. Oct 1, 2016, p, 75:4-10)

121. Mr White testified that the cultural and recreational view plane would be altered, and would be clearly visible, and that an 18 story, five-acre project would or could impact the view between archaeological and or cultural sites. (White, V.1, Tr. Oct 1, 16, p. 76:9-23)

122. Mr White stated that a cultural practitioner who is there to do ceremony on the Northern Plateau during construction would be exposed to dust and the sight of the construction equipment. (White, V.1, Oct 1, 2016, p. 135:14-23)

123. The TMT, particularly in addition to existing telescopes on Mauna Kea, is not consistent with the purpose of the conservation district. (Osorio, V.26, Tr. May 5, 2017, p. 24:10-19)

124. They are evidence of “messing around with regulation and the spirit of regulations that have been set up since the State was first formed” because this “lessens people’s respect for government and governance . . . when the government presents incidents like this where what you think is meaningful really is not.” (Osorio, V.26, Tr. May 11, 2017, p. 24-25)

125. Dr. Osorio states that the “TMT will add to the significant, sustained and adverse effects that already resulted from the previous 13 telescopes on the mountain.” Ex. B07 at 3. Dr. Osorio commented on the approval of multiple industrial telescope projects in the Mauna Kea summit region: “If one wants to have confidence in government, if one wants to have confidence in political society, then decisions should be made and approvals should be given in a way that makes sense that is rational. I don’t believe that this is – when you – on the face of it, it doesn’t look rational to me.” (Osorio, V.26, Tr. May 11, 2017, p. 25: 13-20)

126. Dr. Osorio states that the TMT would have a “devastating” impact on Hawaiian emotional, mental and physical health. Dr. Osorio goes on to state that “it is especially offensive for the TMT, building a 16-story monstrosity on a sacred place, to claim a cultural connection with the Native people because astronomy looks at the same stars as our voyager ancestors.” Ex. B07 at 3. He points out that there have been extensive efforts on the part of those who find the TMT culturally, environmentally, and legally offensive to protect Mauna Kea, and that evidence of this can be found in “a few hundred reasons in the form of men and women who braved the elements and the possibility of arrest last year in order to proclaim their commitment to the

mountain.” Ex. B07 at 3. Dr. Osorio states that approval of the TMT by the DLNR evidences “the state’s failure to protect vulnerable communities and willingness to ignore inconvenient regulations in its rush to approve sizable capital projects,” as well as “Hawaiians’ increasing impatience with the state’s management of our national lands.” Ex. B07 at 3.

127. Dr. Osorio concludes in his written direct testimony that if the DLNR approves the permit in this contested case hearing, there will be consequences for the State of Hawai‘i government: “The conduct of the telescope companies, DLNR and the University of Hawai‘i, in terms of the mountain’s stewardship have already created a climate of mistrust within the Native Hawaiian Community. And the renewal of the protest on the mountain, should the TMT prevail in these hearings and try to resume construction, will shake the political foundation of this state.” Ex. B07 at 3-4. He adds in his oral testimony, “We have seen the public respond really powerfully and positively. I believe that -- and that is certainly one of the things I’m talking about in talking about in terms of shaking the foundations to this state.” (Osorio, V.26, Tr. May 11, 2017, p. 134: 4-7)

128. If the TMT is built, it would interfere with this alignment directly. (Neves, V.33, Tr. Jan 31, 2017, p. 185:7-12)

129. Within the view planes Neves is concerned about the path of the sun because it has a connection with his family. (Neves, V.33, Tr. Jan 31, 2017, p. 186:9-12, p. 244:13-17)

130. If the TMT is built it will continue injuries from other desecration of the mountain, of the lele and desecration of Neve’s cultural practices as a kumu and a father. (Neves, V.33, Tr. Jan 31, 2017, p. 187:8-20)

131. The TMT would restrict the healing ability of Mauna Kea. (Neves, V.33, Tr. Jan 31, 2017, p. 213:13-19)

132. We cannot mitigate an 18-story building on our temple. (Neves, V.33, Tr. Jan 31, 2017, p. 215:2-3)

133. A cultural practitioner in Waimea who wakes up in the morning and sees a Thirty Meter Telescope on Mauna Kea from their home should be considered within the scope of adverse effects on cultural practitioners, even if they aren’t on the mountain or within the Mauna Kea Historic District. (Mills, V.30, Tr. Jan 25, 2017, p. 15: 8-15)

134. The lives of cultural practitioners who wake up in their own homes every day and see the TMT on Mauna Kea, and who do not want that telescope in their environment, would be profoundly affected, in a very recognizable way, and in a way, that is adverse. (Mills, V.30, Tr. Jan 25, 2017, p. 35:25-20)

135. Even in view of mitigation measures taken in the TMT project design and studies of visual impacts in the environmental review process, Professor Mills opined that the CDUA inadequately acknowledges the broad range of adverse effects to traditional and customary practices that will be caused by this significant construction project in the summit region. Exh. B.12a at 2.

136. Those standing at the base of Pu‘u Lilinoe may receive a benefit to the TMT northern plateau site, but that site may affect a much larger number of people in a particular community. This was not evaluated as part of the cultural impact assessment process and there are things in the decision-making process concerning the TMT location that were overlooked. (Mills, V.30, Tr. Jan 25, 2017, p. 39: 9-16 and 15-18)

137. Professor Mills found it important that the Kamehameha III genealogical chants are not listed in the CDUA and that this suggested that the CDUA was framed to ignore things that are important to some people, stating “and I think that’s the reason we’re sitting in this room and why some of you have been here for a very long time.” (Mills, V.30, Tr. Jan 25, 2017, p. 23: 12:16)

138. Mr McLaren stated that Office of Mauna Kea Management would need to consider the possible cumulative impacts of having three or four telescopes being decommissioned while one is being built. (McLaren, V.8, Tr. Nov 15, 2016, p. 149: 1-6)

139. Dr. Taulii’s research demonstrates 3 key findings: 1) desecrating sacred spaces impacts cultural identity and health, 2) participation in traditional practices are protective factors against distress, and 3) health disparities of Native Hawaiians cannot be explained by standard determinants of health (e.g. poverty or low education) and that causes, such as forced assimilation are causal factors in poor health outcomes. (Tauli’i, Exhibit B.04a at 1, V.29, Tr. Jan 24, 2017, p. 11:1-25.)

140. Research showed that people had many poor health outcomes directly related to

their sacred places. This included mental, emotional as well as physical effects. (Tauali'i, V.29, Tr. Jan 24, 2017 V. 29. p. 13: 5-10)

141. Some of the worst and gravest health effects including strokes, heart attacks and even death have occurred to people who identified themselves as having kuleana and stewardship to engage respect and hold those sacred places. (Tauali'i, V.29, Tr. Jan 24, 2017, p. 21: 11-14)

## **CONCLUSIONS OF LAW**

142. Applicant's Mismanagement Continues to Adversely Impact the Natural and Cultural Resources of Mauna Kea.

143. Proposed TMT Project FAILS to Satisfy the Eight Criteria of HAR §13-5- 30(c) and the criteria states that each must be met, and does not state that it is discretionary.

144. The activities relating to the proposed project to date has already caused outrage, and has been emotionally, physically, psychologically, and spiritually detrimental to the well being on those who oppose it, and will persist with increased intensity if the project commences.

145. With regards to the proposed project, the applicant, lessee, and other agencies such as the DLNR, and the Hawai'i County police dept. have violated the rights of Hawaiians afforded to them in Article XII sec. 7 of the Hawai'i State Constitution.

## **DECISIONS AND ORDER**

Based on the entirety of the record, the Hearings Officer recommends that the Conservation District Use Application (CDUA) be denied by the Board of Land and Natural Resources (BLNR).

I, J. Leina'ala Sleightholm hereby incorporate the Findings of Fact and Conclusions of Law of : Cindy Freitas, William Freitas, Mehana Kihoi, Mauna Kea Anaina Hou et. al, Deborah Ward, Temple of Lono, Joseph Camara, Kalikolehua Kanaele, Tiffnie Kakalia, Hank Fergerstrom, and

K.A.H.E.A. into this document, my Findings of Fact and Conclusions of Law, by reference.

Dated: May 29, 2017

Respectfully,

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J. Leina'ala Sleightholm  
Pro Se  
Waikoloa, Hawai'i