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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 Application (CDUA) HA-3568)	MEHANA KIHAI'S PROPOSED
for the Thirty Meter Telescope at the)	FINDINGS OF FACT, CONCLUSIONS
Mauna Kea Science Reserve, Ka'ohe,)	OF LAW, AND DECISION ORDER;
Hamakua District, Island of Hawai'i, TMK)	CERTIFICATE OF SERVICE
(3) 4-4-015:009)	
)	Hearing Officer: Hon. Riki May Amano
)	(Ret.)
)	

**MEHANA KIHAI'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION ORDER**

Mehana Kihoi, in the capacity as pro se, respectfully submits Mehana Kihoi's Proposed Findings of Fact, Conclusions of Law, and Decision Order, pursuant to Minute Order No. 552 filed on April 18, 2017.

The Board of Land and Natural Resources ("BLNR") having considered the arguments, testimony and evidence presented in the contested case between the Applicant, the University of Hawai'i at Hilo ("Applicant" or "UHH") and Mehana Kihoi ("Kihoi") concerning the Applicant's conservation district use application makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT[1]

I. Procedural Background

A. First Proceeding

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 May 30 3:40 pm

1. On April 20, 2015, Protectors of Mauna Kea delivered a petition to Governor David Ige's office with over 50,000 signatures of individuals, across the nation and statewide, in opposition to the Thirty Meter Telescope ("TMT") demonstrating a significant change in circumstance from the initial planning efforts of the proposed project. Published By Jennifer Sinco Kelleher, Associated Press. Telescope opponents, members of Mauna Kea Hui and Mauna Kea 'Ohana, deliver petition to governor's office, Associated Press, Honolulu, HI, April 20, 2015 available at <http://www.hawaiinewsnow.com/story/28851786/telescope-opponents-deliver-petition-to-governors-office>. (Last visited on May 25, 2017). Signers of the petition included but were not limited to, residents of Hawai'i, both Native Hawaiians and the general public. [2]

2. On December 2, 2015, the Supreme Court of Hawai'i held *Mauna Kea Anaina Hou, et al.*, the petitioners in the first contested case, were entitled to a contested case hearing. *Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Haw. 376, 363 P.3d 224 (2015) ("MKAH"). The court concluded BLNR violated their due process rights by granting a conditional permit to begin construction of the TMT prior to holding a contested case hearing. *Id.* The court vacated the permit and remanded the case to BLNR for further proceedings consistent with its opinion. *Id.*

B. BLNR Failed to Provide Notice and an Opportunity to be Heard for the Meeting to Discuss the Appointment of the Hearing Officer.

3. Despite objections by MKAH scrutinizing the selection process of the Hearing Officer, on March 31, 2016, BLNR issued a Minute Order providing notice that Riki May Amano was appointed as the Hearing Officer to oversee the contested case. March 31, 2016, Minute Order No. 1 at 001.

4. In response to MKAH's objections, BLNR issued Minute Order 2. Minute Order 2 stated that BLNR met on February 26, 2016 as a part of, and to discharge its adjudicatory function governed by Haw. Rev. Stat § 91-9. April 8, 2016, MO 2, Haw. Rev. Stat. ("HRS") § 91-9. To support the Chair's decision in selecting Amano as the Hearing Officer, the Board stated the action was justified because the board had previously authorized a contested case and delegated the management of the case to a hearing officer. *Id.* The Board stated they discussed the issue at the February 26 meeting and delegated the conduct of the contested case hearing to a hearing officer, pursuant to Hawaii Administrative Rules ("HAR") 13-1-32(b), and confirmed that the chairperson was authorized to engage the services of a hearing officer pursuant to law. April 8, 2016, Minute Order No. 2. at 003.

5. Prior Notice of the February 26, 2016 meeting when the Board discussed and subsequently made agreements were never made public, nor was the public offered a meaningful opportunity to be heard. April 15, 2016, MKAH Minute Order No. 005 at 4-5.

6. In response to the appointment by Minute Order 1 and the subsequent Minute Order 2 by the board, which provided justification for its action, on April 15, 2016, Richard Naiwieha Wurdeman, attorney for MKAH, et al., filed a motion objecting to the selection process of the hearing officer on the grounds that the Department of Land and Natural Resources (“DLNR”), without any authorization from the board, and before the remand by the Third Circuit, posted notice on January 29, 2016 in search of an attorney to oversee the contested case contradicting the Board’s position that an agreement was made on February 26, 2016. April 15, 2016, MKAH Minute Order No. 005 at 3.[4] Further, MKAH asserts BLNR violated the sunshine law when it held the February 26, 2016 meeting to discuss the appointment of the hearing officer without providing prior notice of the meeting to the public and an opportunity to be heard. Id.

C. The Hearing Officer Failed to Discharge Notice Requirements For Pre-Hearing Conference And Failed To Accommodate Pro Se Petitioners.

7. On May 6, 2016, the Hearing Officer filed notice to schedule the first pre-hearing conference on May 16, 2016. May 6, 2016, MO 5. Notice was not filed timely pursuant to Haw. Rev. Stat. § 91-9.5, which requires the Hearing Officer to give written notice by registered or certified mail with return receipt requested at least fifteen days before the hearing. Haw. Rev. Stat. (“HRS”) § 91-9.5 (West). May 9, 2016, Minute Order No. 5 at 016

8. The second pre-hearing conference was held on June 17, 2016 in Hilo. May 27, 2016, Minute Order No. 08. at 049. The Hearing Officer provided no guideline on expectations of the parties to prepare for the hearing. TR VOL III Titled: “Request for Admission and Motions”. At the conference, the Hearing Officer and the parties discussed several important matters including the number of witnesses parties would call to testify, the date to schedule the site inspection, deadlines for pre-hearing motions and deadlines for subpoenas. Id. The new parties were expected to discuss or state their case including how many witnesses they would have at this hearing, when they had no previous warning or access to any motions filed and were not informed that they needed to be prepared with that information. Id. All new parties except TIO and PUEO were pro se. Id. The Hearing Officer stated she would file a minute order describing the filing procedures. TR VOL III Titled: “Request for Admission and Motions” - P 7: 4-6. That minute order was never filed or provided to the parties.

9. The remanded Contested Case Hearing was held over the course of 44 days from October 2016 to March 2017.[5]

D. The University Submitted Its 2010 Application with No Changes Despite Public Outcry.

10. In or about March 2016, the University filed its application for a Conservation Use District Permit (“CDUA”), the same application it submitted in or about September 2010, with no changes, to construct the TMT at the Mauna Kea Science Reserve (“MKRSR”), Ka‘ohe Mauka, Hamakua, with Hawai‘i TMK (3) 4-4-015:009. University of Hawaii Conservation Use District Application (“UH-CDUA”), Pages 1-541.

11. The University did not incorporate any information or consult with the community to address the national and statewide efforts against the project.[6]

12. James Hayes, the author of the CDUA, was not a credible witness. He testified that the entire conservation use district will have “minimal overall” damage due to the TMT. HAYES, Volume III, Page 48. Line 24. Hayes’ statements directly contradict the Federal Environment Impact Statement issued by National Environmental Policy Act (“NEPA”) which states, “the cumulative impact of 30 years of astronomy development has resulted in significant, adverse and substantial impact to the cultural and natural resources of Mauna Kea. UHH EIS 4 at 457. “Observatory construction has resulted in the moving of more than 10,000 cubic yards of material, grading and flattening of Kukahau‘ula ridges, and placement of man-made structures on Kukahau‘ula, affecting views to and from the summit. Ex.A005 FEIS V3 p. 3-214. The development of observatories within the Astronomy Precinct substantially altered the appearance of the summit, and the presence of observatories continues to affect the performance of the religious and cultural practices. Id. Further, when asked if UHH and TIO were in consultation with cultural practitioners, Hayes said yes but could not identify the practitioners involved in the project. HAYES, Volume III Page 48 at Line 12. As such, Hayes stated that there was no report issued by UHH or TIO detailing the adverse impact TMT will have on Mauna Kea. Id. After questions from Pro Se Petitioner Deb Ward, Hayes confirmed the NEPA EIS statement to conclude that the cumulative impact of TMT will be adverse and significant to the project. HAYES, Volume III, Page 167 at Lines 12-20.

13. With the application, the University submitted the TMT Project Environmental Impact Statement, the same document it submitted in May 2010 with no changes at all, to support its CDUA. University of Hawaii at Hilo Environmental Impact Statement (“UHH-EIS”), Pages 1-376. The University did not consult with the community to

address any concerns or information related to the national and statewide opposition to the project.

14. On April 8, 2016, TMT International Observatory, LLC (“TIO”) filed a motion to request to be admitted as a party in the contested case asserting a property interest in the proceeding. [7] April 8, 2016, TIO Minute Order No. 002 at 1.

E. Kihoi’s Request to be Admitted as Party and Efforts to Exclude PUEO as a Party.

15. On May 11, 2016, Mehana Kihoi filed a request to be admitted as a party in the contested case along with twenty (20) other pro se petitioners against the Thirty Meter Telescope. May 11, 2016, Kihoi Minute Order No. 23 at 1. Kihoi asserts a property interest in the lands of Mauna Kea as a Native Hawaiian cultural practitioner. *Id.* She asserts a substantial interest in the proceeding that was clearly distinguishable from the general public; that her participation would assist the board in its decision making; and that her position was not substantially the same as any existing parties to the proceeding; and her participation would add substantially new and relevant information and would not make the proceedings inefficient and unmanageable. *Id.*

16. On May 16, 2016, Perpetuating Unique Educational Opportunities (“PUEO”) filed a motion to intervene as a party to the contested case asserting standing as Native Hawaiian cultural practitioners. May 16, 2016, PUEO Minute Order 33 at 1.

17. In response to this, on July 18, 2016, Kihoi filed a motion to exclude PUEO as a party on the basis that the Executive Director, Keahi Warfield, (“Warfield”) had a material and direct business interest to BLNR member Stantely Roehrig (“Roehrig”). July 18, 2016, Kihoi Minute Order No. 98 at 1-17.

18. Warfield is the President of PUEO and the Executive Director of Keaukaha One Youth Development (“KOYD, a 501(c)(3) non-profit organization. *Id.*

19. As Executive Director of KOYD, Warfield and Roehrig shared the same business space according to the Department of Commerce and Consumer Affairs at the time of filing the motion to exclude PUEO as a party. *Id.* At the same time, Roehrig maintained authority to approve or deny the CDUA. July 18, 2016, Kihoi Minute Order No. 98 at 1-17. On August 1, 2016, TIO filed an objection to Kihoi’s request to exclude PUEO. August 1, 2016, TIO Minute Order No. 145 at 1.

20. On October 10, 2016, the Hearing Officer issued Minute Order 28 denying Kihoi's motion to exclude PUEO as a party despite compelling evidence demonstrating business ties between Roehrig and Warfield. October 10, 2016, Minute Order No. 327 at 1.[8]

21. On October 15, 2016, Kihoi filed a motion for reconsideration to deny the intervention of PUEO based on new and substantial information that was not available at the time the first motion was filed. The new and relevant information demonstrated a direct financial relationship between Warfield and Roehrig to which Roehrig and Warfield directly benefited from. *Id.* Roehrig received thousands of dollars in property tax savings from this relationship because KOYD leased lands from Roehrig and operated its business from those lands. October 15, 2016, Kihoi Minute Order No. 380 at 1-117.

22. Warfield admitted he was in a business relationship with Roehrig since 2011 and that Roehrig's wife was part of that relationship as well. Tr. Feb. 15, 2017 vol. 36 pg: 218, 4:03 7-9. He testified that they did, in fact, receive benefits from that relationship including thousands of dollars of tax exemptions as a result of their lease agreement. Tr. Feb. 15, 2017 vol. 36 pg: 218, 4:03 7-9.

23. Warfield also stated KOYD is a beneficiary of funding from TMT's Think Tank program. Tr. Feb. 15, 2017 vol. 36 pg: 220, 4:05 7-4:06 14.[9] Despite the new and relevant information, the Hearing Officer never issued a Minute Order to deny or grant Kihoi's motion for reconsideration. Instead, she allowed the case to proceed even though there was enough information in the record to cause doubt on to whether Roehrig could not be influenced as a decision maker by the business relationship.

24. On September 22, 2016, Kihoi visited the site for the proposed TMT with the Hearing Officer and other parties involved in the contested case. However, was not allowed to participate, due to the fact that Kihoi requested to travel in own vehicle. September 22, 2016, BLNR Minute Order No. 279. No cultural protocol was done during the site visit. *Id.*

II. The Interests of Mehana Kihoi

1. Kihoi is a Native Hawaiian spiritual, religious and cultural practitioner of Mauna Kea and other neighboring areas on the island of Hawai'i. (Tr. Feb. 14, 2017 vol: 35 pg:98, 1:11 11- 20, Affidavit by Mehana Kihoi at 1 ("Exhibit 1"), Exhibit F-1, WDT pg:1 p:1).

2. She, and her daughter, are direct lineal descendants of Pā‘ao and Hewa Hewa Nui, the ancestral guardians of Mauna Kea, and their traditional practices. (Exhibit F-1, WDT pg:1 p:1).

3. Pā‘ao and Hewa Hewa Nui were voyagers who received consent from ali‘i to care for, and gather adze on Mauna Kea. (Exhibit F-1, WDT pg:1 p:1). Id.

4. The lands included within the Mauna Kea Science Reserve are a part of the Public Lands Trust, lands ceded by the U.S. as a condition of Statehood to be used for public trust purposes including, but not limited to, bettering the “conditions for Native Hawaiians, as defined by the Hawaiian Homes Commission Act.” (UHH-CDUA at 12, Haw. Const. Art. XII, § 4).

5. Kihoi is a Native Hawaiian beneficiary as defined by the Hawaiian Homes Commission Act of 1921 with the fifty percent (50%) blood quantum. Tr. Feb. 14, 2017 vol: 35 pg:76, 11:04 23 – 10, Haw. Const. art. XII, § 2 (West, Westlaw through 2017), HHCA §§ 201(a), 207(a) (West, Westlaw through 2017) [“HHCA”], H.R. Rep. No. 102-893, at 1 (1992). (Exhibit F-1, WDT pg:1 p:1)

6. Kihoi is a beneficiary of the Public Lands Trust. Haw. Const. Art. XII, § 4. (Tr. Feb. 14, 2017, vol:35 pg:77, at 11:04 4).

7. She is dedicated to the protection and preservation of the sacredness of the summit of Mauna Kea for ancestral, religious, cultural and spiritual purposes. (Exhibit F-1, WDT pg:1 p:3, Tr. Feb. 14, 2017, vol:35 pg:118, at 1:28 21 - 1:30 3).

8. Kihoi has a close and significant relationship to Mauna Kea since birth. (Tr. Feb. 14, 2017, vol:35 pg:98, at 11:06 1 - 9, Tr. Feb. 14, 2017, vol:35 pg:109 at 1:10 3 - 10). Id.

9. Her identity, health and well-being as a Native Hawaiian are intrinsically tied to the well-being of Mauna Kea. (Exhibit F-1, WDT pg:1 p:1).

10. As a direct lineal descendant of the guardians of Mauna Kea, Kihoi’s objective is to protect traditional and customary practices not only for herself, but for her daughter and future generations of native Hawaiians and cultural practitioners. (Exhibit F-1, WDT pg:1 p:1, Exhibit F-28).

11. Kihoi engages in traditional and customary practices on Mauna Kea. Id. at 2. Among these traditional and customary practices are: mālama ‘āina, offering ho`okupu

(including pule, oli and materials), healing, gathering adze, building ahu, connecting with her ancestors and participating in religious ceremonies. (Exhibit 1. at 2, Exhibit F-1, WDT pg:1 p:1, Tr. Feb. 14, 2017, vol:35 pg:92, at 11:30 9 - 11:32 8, Tr. Feb. 14, 2017, vol:35 pg:98, at 1:22 16 -18).

12. Kihoi and her daughter attend monthly religious ceremonies on Mauna Kea at the proposed site of the TMT and the neighboring spaces within the Conservation District Use area. (Exhibit 1 at 2-3, Tr. Feb. 14, 2017, vol:35 pg:98, at 1:11 11 - 20).

13. Kihoi and her daughter have suffered cultural, psychological and physical injuries due to the existing structures on Mauna Kea. (Exhibit F-1, WDT pg:1 p:5, Tr. Feb. 14, 2017 vol:35 pg:98, 1:22 4 - 1:26 7).

14. Kihoi and her daughter have suffered cultural, psychological and physical injuries due to the arrests by the Department of Land and Natural Resources on April 2, 2015 and on June 24, 2015 on Mauna Kea. Tr. Feb. 14, 2017 vol:35 pg:79, at 11:08 3 - 10, Exhibit F-11, Exhibit F-25, Exhibit F-26, Tr. Feb. 14, 2017 vol:35 pg:83, at 11:15 21 - 11:18 16).

15. The arrests caused Kihoi and her daughter emotional distress while they asserted their rights to protect and preserve Mauna Kea. (Tr. Feb.14, 2017 vol:35 pg:79, 11:08 3 - 10, Tr. Feb. 14, 2017 vol:35 pg:83, at 11:15 21 - 11:18 16).

16. Kihoi and her daughter suffer from extreme psychological distress in anticipation of the potential construction of the TMT. (Tr. Feb.14, 2017 vol:35 pg:98, at 11:42 9 - 11:44 24).

17. They will suffer a substantial and imminent injury should the TMT proceed. (Exhibit F-1, WDT pg:1 p:6, (Tr. Feb.14, 2017 vol:35 pg:77, at 11:04 5 - 10). Id.

18. The TMT is a threat to Kihoi and her daughter's well-being. (Exhibit F-24, Exhibit F-25, Exhibit F-26, Exhibit F-27, (Tr. Feb.14, 2017 vol:35 pg:98, at 1:18 18 - 1:19 5). Id.

19. Kihoi enjoys views of and from the summit of Mauna Kea and the beauty of the area. Id.

1. The interests of Kihoi in the preservation of Mauna Kea are aesthetic, cultural, environmental, recreational, religious, and customary and traditional. Id.

2. The construction of the TMT will adversely impact Kihoi and her daughter, including her ability to fulfill her responsibility that was passed down to her by her ancestors to preserve and protect the area, her ability to engage in traditional and customary practices as well as enjoy the natural beauty and quiet of the area. (Exhibit F-1, WDT pg:1 p:5, Tr. Feb.14, 2017 vol:35 pg:92, at 11:32 22 - 2, Tr. Feb.14, 2017 vol: 35 pg:109, at 1:10 3 - 1:11 10).Id.

III. The area of the Proposed Site of the TMT

3. The proposed observatory and other facilities covered by the application are located in the 11,288-acre MKSR (TMK 4-4-15:9) on the upper slopes of Hawai'i Island's Mauna Kea Volcano known as the Northern Plateau. UHH-CDUA at 12. The site where the proposed project is to be built is on five acres of land within MKSR marked as the conservation use district. Id.

4. The Applicant acknowledges that "this CMP does not address development plan issues related to future observatories, including whether new observatories should be located on Mauna Kea to support the astronomy program or if observatories should have their leases extended or be decommissioned." Comprehensive Management Plan ("CMP") at page 7-54.

5. First leased by the State of Hawai'i to the University of Hawai'i (UH or University) in 1968, the current lease on the MKSR expires in 2033. UHH-CDUA at 12.

6. Applicants for a CDUP must comply with HAR 13-5-30 Conservation District Resource subzone and as such, uses on the land are subject to the Conservation District rules (HAR 13-5) and the eight (8) criteria required to issue a permit pursuant to HAR 13-5-30(b)(1)-(8). In addition, uses on the land are subject to the Mauna Kea Science Reserve Master Plan (UH 2000) and CMP and subplans (UH 2009a).

7. Lands administered by the DLNR as directed by BLNR are held in the Public Lands Trust. Id., Haw. Const. Art. XII, § 4.

C. Cultural Significance

20. Mauna Kea is considered a significant traditional cultural site. Comprehensive Management Plan for University of Hawaii ("CMP") at page 5.

21. The summit area of Mauna Kea, is a natural prehistoric resource that is significant to the creation of Native Hawaiians, their history and culture. CMP at 15.
22. A number of traditional cultural practices are conducted on Mauna Kea. Id.
23. The traditional cultural practices conducted within the project area require silence and solace.
24. The traditional cultural practices conducted within the project area also require uninterrupted view planes and sacred space. Id.

IV. THE APPLICANT'S PROPOSAL

26. The proposed project involves the construction, installation and operation of a Thirty Meter Telescope and ancillary facilities to support the TMT on five (5) acres of land with MKRA. UHH-CDUA at 12.

V. IMPACTS OF THE TMT

25. The proposed project involves the construction, installation and operation of a Thirty Meter Telescope and ancillary facilities to support the TMT on five (5) acres of land with MKRA. UHH-CDUA at 12.

A. Cultural Impacts and Injury

26. The evidence is overwhelming that the project would have substantial, adverse, long-term impacts on a cultural site and traditional and customary practices. The University's consultant concluded that "the overwhelming evidence, from a cultural and traditional standpoint, points toward a significant adverse impact on Native

27. The evidence is overwhelming that the project would have substantial, adverse, long-term impacts on a cultural site, traditional and customary practices and cause an imminent injury to those who share a close and significant relationship to Mauna Kea.

28. Dr. Maile Tauli'i holds a doctorate in Health Services, with expertise in public health informatics, epidemiology, genetics and Indigenous health, and is an expert in health for Native Hawaiians. Taulii Written Direct Testimony at 1 ("Exhibit 2"). Taulii testified that desecration of a sacred place such as Mauna Kea can create emotional or spiritual harm leading to physical manifestations harm to the body. Tr. Jan. 24, 2017 vol: 29 pg: 30, 9:32 15-19. Thus, when desecration occurs, the people impacted are not able to

follow their beliefs. Exhibit 2 at 1. Taulii contends this, in turn, affects their cultural identity, and causes the link between the sacred space and the people to become disrupted. Id. As such, when this link is strained or broken, health is affected. Id. By not being able to fulfill stewardship/covenant it breaks or harms that connection/relationship. Id.

29. Taulii's research shows that the desecration and subsequent link that is strained or lost between the individual and the sacred space manifests into physical diseases such as diabetes, obesity, heart disease, high blood pressure and stress. Id. at 1-2.

30. Dr. Joseph Keawe'aimoku Kaholokula confirmed Taulii's research and stated that the quality of the health of Native Hawaiians, is also determined by the quality of the health of the land because of their historical responsibility, and cultural responsibility under aloha 'āina and mālama 'āina (or the familial relationship Native Hawaiians have to land to care for). Tr. Feb. 23, 2017, vol: 40 pg: 118, at 8 – 19.

31. Kaholokula stated that Native Hawaiians are intrinsically tied to land and are obligated as descendants of the 'āina (land) to protect it in perpetuity. Tr. Feb. 23, 2017, vol: 40 pg: 118, at 19-21. Thus, Dr. Kaholokula stated that if Native Hawaiians are not able to express these spiritual, physical, and other aspects of well-being in caring for land, the non-expression can threaten their physical and mental health. Tr. Feb. 23, 2017, vol: 40 pg: 120, at 1 – 3.

32. Kaholokula contended that Mauna Kea is a symbol to recognize Native Hawaiian ancestry and the strong identity to heritage, culture, practice and spirituality. (Tr. Feb. 23, 2017, vol: 40 pg: 121, at 2 – 7, 13-15). Further, Kaholokula contends that the mitigation measures offered by UHH is causing more distress to Native Hawaiians. Id. As such, he concludes that the proposed land use, will be materially detrimental to the public health, safety and welfare of, and in particular, the Hawaiian community. Tr. Feb. 23, 2017, vol: 40 pg: 126, at 14 - 19.

33. Even with the implementation of mitigation measures, the TMT project would continue to have a substantial impact on a cultural site and traditional and customary practices. This conclusion is based on the following:

a. There is no nexus between the actual harm (adverse impacts to a cultural site and to traditional and customary practices) and the mitigation measures. The cultural harm caused by the actual presence of the massive TMT structure is not compensated by providing substitute resources. The Community Benefit Package (CBP) and the \$1 million in funding is an external and separate measure that does not minimize the actual and adverse harm that will be occur at the proposed site. UHH EIS at 147.

- b. The National Park Service expressed its concern about the deteriorious impacts the TMT will have on the national resources of MSRK. UHH EIS at 15.
- c. There is no evidence of any nexus between the off-site measures that provide benefits to certain members of the public and the adverse impact to a cultural site and to traditional and customary practices.
- d. There is no evidence that measures such as providing funding to schools or organizations would actually mitigate the harm that the TMT would cause to an impact that would be less than substantial.
- e. The Applicant has submitted no credible evidence that the mitigation measures would result in no substantive impact to a cultural site or to traditional and customary practices.
- f. The Applicant failed to provide any witnesses in the contested case hearing with any experience or training in impacts to and mitigation of traditional and customary practices or cultural resources.

34. Prof. Flores stated that they went in with bulldozers. They cut a new road. They excavated. They drilled into the aina there. They cut and graded the road coming down to the site. This as all done before DLNR even consented to a sublease. (Tr. Jan. 30, 2017 vol: 32 pg: 50, 6-10)

35. Prof. Flores stated that he and his family had to set an ahu up in a ceremony because their older daughter got impacted before they got there. (Tr. Jan. 30, 2017 vol: 32 pg: 50, 21-23)

36. Prof. Flores stated that there was a spirit on the land that grabbed her and took her down, and was going to take her soul and spirit away for what had happened to the land. (Tr. Jan. 30, 2017 vol: 32 pg: 51, 24-2)

37. Prof. Flores stated that they had to go into ceremony to stop that and listen to what the land was saying. The land was disturbed, and not only the land, everything connected to the land on many different levels was disturbed, and they had to go into ceremony; otherwise they would have lost their daughter that day. (Tr. Jan. 30, 2017 vol: 32 pg: 51, 3-9)

38. Prof. Flores stated that his family shouldn't have been put into the position of asking for forgiveness for what the construction crews, the operators, and those who consented this, they shouldn't have been put into that position. (Tr. Jan. 30, 2017 vol: 32 pg: 51, 10-15)

39. Prof. Flores stated that he and his family asked those connected to the land, both in the physical and the spirit, to forgive those who did this on the land, to forgive the

construction crew operators, to forgive those who consented. They asked for harm not to fall upon them or their families - - and they asked for their daughter to be released from this. (Tr. Jan. 30, 2017 vol: 32 pg: 52, 24-7)

40. Prof. Flores agreed that none of the mitigations measures being proposed in the CDUA will reduce the harm to him as a cultural practitioner. (Tr. Jan. 30, 2017 vol: 32 pg: 94, 18-5)

41. When asked, "What is your perspective as an educator and professor of the TMT projects proposal of awarding funds for educational activities and scholarships in exchange for building the telescope?,"

Prof. Flores stated: "My perspective on the matter as an educator and a professor - - for over 30 years as an educator and particularly education in the Hawaiian Studies programs and education with Hawaiian students as well, that this is a blatant community bribe. They are offering money to destroy." (Tr. Jan. 30, 2017 vol: 32 pg: 156, 13-22)

42. Prof. Flores agreed that the proposed TMT construction and development within the environmentally and culturally sensitive landscape of Mauna Kea would cause adverse impacts and irreparable harm upon the Akua, the Kupua, and the Kupuna of Mauna Kea. (Tr. Jan. 30, 2017 vol: 32 pg: 187, 17-22)

43. Leina'ala Sleightholm agreed that the injury coming from this proposed project isn't just because the placement on a pristine place, but the process leading up to it as well. (Tr. Feb.14, 2017 vol: 35 pg: 32, 9:42 10-14)

44. Leina'ala Sleightholm agreed that she felt she had no choice but to participate in this Contested Case Hearing. (Tr. Feb.14, 2017 vol: 35 pg: 32, 9:42 15-9:43 18)

45. Leina'ala Sleightholm stated that she felt her soul was breaking in the process. That she had never felt anything so deep before, and it just was crushing. She couldn't breathe". (Tr. Feb.14, 2017 vol: 35 pg: 34, 9:46 14-18)

46. Leina'ala Sleightholm agreed that she would consider the trauma she felt being arrested while in pule and protecting the Mauna, an adversarial health effect. (Tr. Feb.14, 2017 vol: 35 pg: 43, 10:02 21-25)

47. Leina'ala Sleightholm agreed that it was a spiritual threat that led her to protect the Mauna. (Tr. Feb.14, 2017 vol: 35 pg: 44, 10:03 6-9)

48. When asked how she felt after being arrested on April 2, 2015, Leina‘ala Sleightholm stated that she felt violated, and like her body was desecrated. (Tr. Feb. 14, 2017 vol: 35 pg: 55, 10:19 19-2)

49. Leina‘ala Sleightholm stated that when she was arrested on September 9, 2015, her purpose for going up was to support the kia‘i that were holding vigil, and pule and support them. (Tr. Feb.14, 2017 vol: 35 pg: 55, 10:21 22-2)

50. Leina‘ala Sleightholm stated that she was hand in hand in a wahine prayer circle when the DOCARE Officers broke their pule to arrest them. (Tr. Feb.14, 2017 vol: 35 pg: 56, 10:22 10-25)

51. Ruth Aloua stated that injury goes on even if the TMT wasn't put up there, and having the TMT there would be an insult to injury. (Tr. Feb. 15, 2017 vol. 36 pg: 43, 9:55 18-25)

52. Ruth Aloua testified that her arrests on Mauna Kea were oppressive, offensive and brutal attacks that have caused her trauma (Ex.F4 at 2)

53. Ruth Aloua testified that her arrests on Mauna Kea have created fear of law enforcement officers and concern for personal safety during ceremony (Ex.F4 at 2)

54. Ruth Aloua stated that on April 2, 2015, on Mauna Kea, she was arrested as a kanaka maoli of these lands for protecting an elder. (Tr. Feb. 14, 2017 vol. 35 pg: 207, 3:48 3-6)

55. Ruth Aloua testified that she had no arrest record prior to her two arrests on Mauna Kea. (Tr. Feb. 14, 2017 vol. 35 pg: 207, 3:50 25-2)

56. Ruth Aloua agreed that she felt that there was a threat to her ohana because of the sacredness of the Mauna. (Tr. Feb. 14, 2017 vol. 35 pg: 222, 4:11 3-6)

57. Hawane Rios stated when she was arrested on Sept. 9, 2015, and ripped apart from the prayer circle she was in, she felt like she had spun out of her body. Like her soul, and spirit, were so ‘eha and felt so much pain. Every single part of her felt the pain of being disrespected in that way, where her right to pray, her rights to be on her Mauna, because she is a kanaka maoli, were violated. (Tr. Feb. 15, 2017 vol. 36 pg: 129, 1:34 3-15)

58. Hawane Rios stated that as a seer she has been given guidance and instruction from the spirits from Mauna Kea. If the TMT project is built, she would not know how to repent, apologize, to the spirit realm for letting them down. There is a great ancestral responsibility to ensure the directions received are followed. (Tr. Feb 15, 2017 vol.36 at 185, 3:00 11-16)

59. Hawane Rios stated that the events that occurred on the mountain with the spirit that incorporated her body during ceremony could have happened to an unknowing person potentially causing them harm. (Tr. Feb 15, 2017 vol.36 pg:147, 2:05, 18-9)

60. Hawane Rios stated that she and others are hurt and traumatized by events that have occurred through the Protect Mauna Kea movement. (Tr. Feb 15, 2017 vol.36 pg:134, 1:43 3-10)

61. Hawane Rios stated that the trauma she has experienced has affected her life physically, spiritually, emotionally and mentally. She is working on healing these emotions with healing through forgiveness and love. (Tr. Feb 15, 2017 vol.36 at 136-138, 1:47 2-12)

62. Hawane Rios stated that the trauma and pain that would be caused by the TMT project if built is unfathomable. She stands today because she does not want our children, fellow kia'i, and supporters around the world to feel that immense pain and trauma. (Tr. Feb 15, 2017 vol.36 pg:185, 2:59 2-8)

PROPOSED CONCLUSIONS OF LAW

I. STANDING

1. Kihoi timely and properly filed a request to be admitted as a party contesting the issuance of a conservation district use permit to the Applicant. HAR § 13-1-29.

2. interests of Kihoi and her daughter and the injury that they have and would face from the TMT project, Kihoi has standing. *Life of the Land v. Land Use Commission*, 63 Haw. 166, 174, 623 P.2d 431, 439 (1981); *Akau v. Olohana Corp.*, 65 Haw. 383, 388, 652 P.2d 1130, 1134 (1982); *Pele Defense Fund v. Puna Geothermal Ventures*, 77 Hawai'i 64, 67, 881 P.2d 1210, 1213 (1994); *Ka Pa`akai O Ka`aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000); HAR §13-1-31(b)(2) and (c).

3. It is sufficient for standing purposes for an individual, *Simpson*, 170 F.3d 1092, 1096 (1999).

4. In addition, Kihoi has standing based on her traditional and customary practices that would be impaired by the TMT project. *Public Access Shoreline Hawaii v. Hawai'i County Planning Comm'n*, 79 Hawai'i 425, 903 P.2d 1246 (1995) ("PASH").

5. Finally, Kihoi has standing based on her constitutional rights. Hawai'i State Constitution Article XI §§ 1 and 9 and Article XII § 7.

II. APPLICANT'S BURDEN

6. "The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria [in HAR § 13-5-30(c)]." HAR § 13-5-30(c); *Mauna Kea Power v. BLNR*, 76 Hawai'i 259, 265 (1994); See also, *In re CDUA for Hawaiian Electric Company, Inc. to Construct a 138-kV Transmission Line at Wa'ahila Ridge*.

7. Failure to meet any one of the criteria in HAR § 13-5-30(c) is sufficient to deny a CDUA.

Given the aesthetic, environmental, cultural, recreational, and religious

8. The applicant's burden is compounded by the duties imposed by the public trust doctrine, pre-existing native Hawaiian rights and the State Constitution. *In Re Wai'ola O Moloka'i Inc.*, 103 Hawaii 401,429, 83 P.3d 664, 692 (2004); *In Re Water Use Permit Applications*, 94 Hawai'i 97, 142 and 160, 9 P.3d 409, 454 and 472 (2000) ("Wai'āhole").

III. THE APPLICANT HAS FAILED TO SATISFY THE CRITERIA

IDENTIFIED IN HAR § 13-5-30.

11. The proposed TMT will be materially detrimental to the public health, safety, and welfare. HAR § 13-5-30(c)(8). The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria.

a. The purpose of the conservation district is to "conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare." HRS § 183C-1 and HAR § 13-5-1; see also *Curtis v. Board of Appeals*, 90 Hawai'i 384, 396 (1999); H. Stand. Comm. Rep. No. 395, 1961 House Journal 855 and S. Stand Comm Rep. No. 937, 1961 Senate Journal 883.

b. The conservation district rules define "natural resource" to include cultural sites. HAR § 13-5-2.

c. Land in the conservation district is intended to tolerate the least degree of development. *Life of the Land v. Land Use Comm'n*, 63 Haw. 166, 170 n.3 (1981). See also, HRS chapter 205 and HRS § 205-2(a)(1) and HRS § 205-2(e). The conservation district was intended for low-impact uses such as "farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential uses." HRS § 183C-4(d). d. Rather than conserving, protecting and preserving natural beauty, scenic vistas, quietness and a cultural site, the Applicant's proposal

adversely affects them in significant ways.

b. Based on the testimony presented, the Applicant cannot meet the eighth criteria because it has failed to account for the injuries that have and will occur should the TMT proceed. No evidence provided thus far have accounted for these injuries.

c. Kihoi and others like her have suffered injuries already due to the current state of Mauna Kea, the arrests and the potential construction of the TMT.

17. The Applicant has not met its burden of proving by a preponderance of the evidence that its project is consistent with HAR § 13-5-30(c).

VI. PUBLIC TRUST DOCTRINE

20. “The scope of Hawai‘i’s Public Trust Doctrine is set forth in Article XI, section 1 of the Hawai‘i Constitution and provides: For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai‘i’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.” *Morgan v. Planning Dept., County of Kaua‘i*, 104 Hawai‘i 173, 184 n. 12, 86 P.3d 982, 993 n.12 (2004).

21. Natural beauty is a public trust resource. *Morgan*, 104 Hawai‘i at 181, 6 P. 3d at 990; *Wai‘āhole*, 94 Hawai‘i at 136-137, 9 P.3d at 448-449; Hawai‘i State Constitution, Article XI § 1; Cf. *National Audubon Soc’y v. Superior Ct. of Alpine Cty*, 658 P.2d 709, 719 (Calif. 1983); *Muench v. Public Service Commission*, 53 N.W. 2d 514, 520 (Wisconsin 1952), affirmed on rehearing 55 N.W. 2d 40 (1952).

22. The public trust doctrine requires that cumulative impacts be considered. *Kelly v. 1250 Oceanside Ptnrs*, 111 Hawai‘i 205, 227, 140 P.3d 985, 1008 (2006). *Wai‘āhole*, 94 Hawai‘i at 143, 9 P.3d at 455 (“Specifically, the public trust compels the state duly to consider the cumulative impact. . .”).

23. “The state also bears an affirmative duty . . . to protect public trust uses whenever feasible.” *Wai‘āhole*, 94 Hawai‘i at 141, 9 P.3d at 453; *State v. Central Vt. Ry.*, 571 A.2d 1128, 1132 (Vermont 1989)(“[T]he state’s power to supervise trust property in perpetuity is coupled with the ineluctable duty to exercise this power.”). This duty requires that the state affirmatively act to ensure that public trust resources are not impaired. *Wai‘āhole* at 139, 9 P.3d at 451; *Orion Corp. v. State*, 747 P.2d 1062, 1073 (Wash. 1987). Under the public trust, the state has both the authority and the duty to preserve the rights of present

and future generations in the public trust resources of the state. *Wai`āhole* at 141, 9 P.3d at 453.

24. The balancing of uses “must conform to article XI, section 1’s mandate of ‘conservation.’” *Wai`āhole*, 94 Hawai`i at 428 n.43, 9 P.3d at 454 n.43

25. A developer has no right to use public land to impair public trust resources. *King v. Oahu Railway & Land Co.*, 11 Haw. 717, 725 (1899).

26. Given the impacts of the project on public trust resources, approval of the TMT would violate the Board of Land and Natural Resources’ duties pursuant to the public trust doctrine.

VII. NATIVE HAWAIIAN RIGHTS

27. Article XII § 7 of the Hawai`i Constitution provides that: “The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.”

28. Article XII § 7 of the Hawai`i Constitution requires the “State and its agencies to preserve and protect customary and traditional practices of native Hawaiians.” *Ka Pa`akai O Ka`aina v. Land Use Comm’n*, 94 Hawai`i 31, 45, 7 P.3d 1068, 1082 (2000). The Board of Land and Natural Resources is under “an affirmative duty” to “protect these rights and to prevent any interference with the exercise of these rights.” *Id.*

29. “[T]he ancient usage of lands practiced by Hawaiians did, in fact, carry over into the new system of property rights established through the Land Commission.” *Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission*, 79 Hawai`i 425, 449, 903 P.2d 1246, 1270 (1995). “[T]he right of each ahupua`a tenant to exercise traditional and customary practices remains intact. . .” *Id.* at 450, 903 P.2d at 1271.

30. The applicant for a permit is obligated to demonstrate affirmatively that the proposed use will not affect Native Hawaiian rights. *Wai`ola* at 442, 83 P.3d at 705; *In re Contested Case Hearing on the Water Use Permit Application Filed by Kukui*, 116 Hawai`i 481, 509, 174 P.3d 320, 348 (2007).

31. The most feasible means of protecting the traditional and customary practices exercised on Mauna Kea would be to deny the conservation district use application for the ATST.

DECISION AND ORDER

Based on the entire record, the Hearing Officer recommends that BLNR order the CDUA in this proceeding be dismissed or denied.

DATED: May 29, 2017
at Honaunau, Hawai‘i Island
so-called "State of Hawai‘i"

Kū Kia‘i Mauna,

Mehana Kihoi

Written Direct Testimony of Dr. Maile Tualii

I, Maile Tualii, holding a doctorate in Health Services, with expertise in public health informatics, epidemiology, genetics and Indigenous health, submit this testimony as a leading expert in health for Native Hawaiians.

The research of myself and my colleagues demonstrate three 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. I will explain briefly these three findings.

Desecrating sacred spaces impacts cultural identity and health

The World Health Organization defines health as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic, or social condition. Disruption from the fundamental right of health in the form of desecration of Mauna Kea and the right to practice without persecution is the public health issue deleteriously impacting the health of Native Hawaiians and others who value traditional and customary practices. By being constricted from doing cultural practices and following their way of life, people suffer mentally, emotionally, physically, and spiritually. Health is affected by “...cultural factors including racism, along with various Indigenous-specific factors, such as loss of language and connection to the land, environmental deprivation, and spiritual, emotional, and mental disconnectedness” (King, Smith, & Gracey, 2009).

When desecration occurs, the people are impacted and are not able to follow their beliefs. This in turns affects their cultural identity, and causes the link between the sacred space and the people to become disrupted. When this link is strained or broken, health is affected. By not being able to fulfill stewardship/covenant it breaks or harms that connection/relationship.

Our research shows these following health impacts of sacred site desecration:

Health Impacts of Desecration		
Spiritual	Mental/Emotional	Physical
Spiritual Pain	Emotional Illness & Mental Stability	Stress
Chipping Away at Our Essence	Emotional Harm	High Blood Pressure
Harder to Connect to That Mana or That Spiritual Power	Mental Strain	Diabetes
Cannot Link to Ancestors/Elements in Spiritual Realm = Not Healthy	Depression	Obesity
Harm Forever	Teen Suicide	Heart Disease

Spiritually Lost	Drug Use	Physical Pain
No Spiritual Mental Connection= Health Consequences	Historical Trauma/Historical Grief	Drinking
Spiritually & Emotionally Tapped/ Drained, Manifest in Body		Harms Me
Harm to Physical & Spiritual		Domestic Violence
		Not Upholding Traditional Knowledge/Ceremonies =Physical Ailments

Participation in traditional practices are protective factors against distress

Our analysis of the relationship between practicing traditional activities and reduced distress shows that those who practice traditional activities are less likely to suffer from distress compared to those who do not practice. This finding was statistically significant and remained significant after adjusting for education, income and age. Therefore we can conclude that practicing traditional activities is beneficial for health and wellness.

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

Careful analysis of national health data demonstrates that Native Hawaiians suffer greater health disparities when compared to others. All statistical models which examine the causes of health disparities show that social determinants of health, such as poverty, low education, and unemployment can explain the root causes of poor health. However, for Native Hawaiians the impact of poverty, low education and unemployment do NOT explain all health disparities. Additional influential factors such as language loss, learned helplessness, and fatalism are essential to understanding health disparities of Native Hawaiians.

Simply put, when Hawaiians feel that their lives, their beliefs, their culture, their future are not respected or valued, it has grave effects on health.

References:

King, M., Smith, A., & Gracey, M. (2009). Indigenous Health Part 2: The Underlying Causes of the Health Gap. *Lancet*, 76-85.

AFFIDAVIT OF MEHANA KIHOI

Name: Mehana Kihoi

Petitioner.

I, Mehana Kihoi, swear or affirm:

1. That I am a Native Hawaiian cultural and spiritual practitioner of Mauna Kea and other neighboring areas.
2. That I am a Native Hawaiian beneficiary as defined by the Hawaiian Homes Commission Act of 1921.
3. That I am a beneficiary of the Ceded Lands Trust under Section 5(f) of the Admissions Act.
4. That I have a spiritual, cultural, psychological, physical, close and significant relationship to Mauna Kea that is tied to my identity as a Native Hawaiian.
5. That Mauna Kea is my place of spiritual worship where I connect to my ancestors and my creators Papa and Wākea.
6. That Mauna Kea is a sacred place.
7. The health and well-being of Mauna Kea are tied directly to my own health and well-being because my close and significant relationship to the land there.
8. Mauna Kea is where I achieve the highest level of spirituality to connect with my ancestors and creators.
9. That I have direct ancestral lineage to Mauna Kea, which dates back to Pā‘ao and Hewa Hewa Nui, and their traditional practices that have transcended thru generations.

10. Pā‘ao and Hewa Hewa Nui, and subsequent generations, gathered adze which is used to build voyaging canoes. My ancestors also used Mauna Kea as a place of spiritual worship to pay tribute to our creators Papa and Wākea.
11. That my ancestors and I gather water from Lake Waiau for spiritual and healing purposes as these waters are considered sacred.
12. That my ancestors were stewards of Mauna Kea to ensure that these sacred lands remain untouched because of its importance to the creation of Native Hawaiians.
13. I continue to practice these ancestral gathering rights and spiritual worship on Mauna Kea to carry on the traditions empowered to me by my ancestors.
14. That I empower my own child by teaching her these gathering and spiritual practices at Mauna Kea to carry these traditions to the next generation.
15. That my child and I attend monthly spiritual ceremonies on Mauna Kea paying tribute to our ancestors and our creators.
16. Having a direct ancestral connection to Mauna Kea, I am an active steward of this land to ensure there is no more further desecration of this land because it is tied to my spiritual and cultural identity, health and well-being as a Native Hawaiian.
17. I have built ahu and intend to build more spiritual ahu on Mauna Kea to pay tribute to my ancestors and our creators Papa and Wākea
18. Further desecration of this sacred site will cause irreparable harm not only to myself but to my child who continues the same cultural practices that were passed on to me.
19. That Mauna Kea saved my life and strengthened my identity as a Native Hawaiian because of my spiritual and cultural connection to this sacred place.

20. My imminent injury is connected to the University of Hawaii's application for a Conservation District Use Permit to request approval to construct a mega telescope that will cause further desecration of Mauna Kea because the proposed construction will forever change the uniqueness and spiritual landscape of this sacred place.
21. If the permit is granted, I will suffer a severe cultural, spiritual, psychological and physical injury that will cause irreparable harm to who I am as a Native Hawaiian, my cultural identity and my spirituality as a Native Hawaiian.
22. The existing telescopes on Mauna Kea and the State of Hawaii and the University of Hawaii's poor management of Mauna Kea have caused me to have an injury because their failure to honor the customary and traditional practices of this area.
23. Mauna Kea is my church and my place of worship. Further desecration of this land will cause me an imminent injury because of my strong ancestral and cultural ties to these lands.
24. Further affiant saith not.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

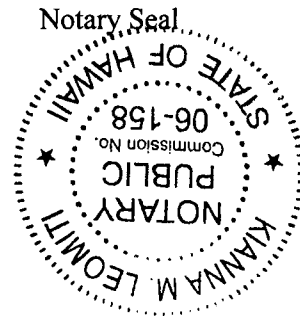
08/09/14
Date

Mehana Kihoi
Mehana Kihoi

State of Hawai'i)
Hawaii)
City and County of Honolulu)

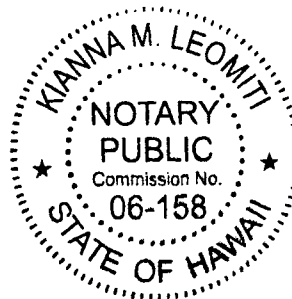
On this 9th day of Aug., in the year **2016**, before me,
Kianna M. Leomiti (Insert name of notary public) appeared **Mehana Kihoi** personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is
subscribed to this instrument, and acknowledged that he or she executed it.

Kianna M. Leomiti
(Signature of Notary Public)



My Commission Expires: 03/19/2018
Document Date 08/09/16 Number of Pages 3 4 ju
Name: Kianna M. Leomiti 3rd Circuit
Document Description affidant
Signature [Signature] Date 08/09/16
Notary Certification

Doc. Date: 08/09/16 # Pages 4 3
Notary Name: Kianna M. Leomiti Third Circuit
Doc. Description affidant
[Signature] 08/09/16
Notary Signature Date



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

BLNR Contested Case HA-16-002

Document title: MEHANA KIHAI'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION ORDER; CERTIFICATE OF
SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by the means indicated below:

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