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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

THE UNIVERSITY OF HAWAI'I AT
HILO AND TMT INTERNATIONAL
OBSERVATORY, LLC'S JOINT
RESPONSE TO J. LEINA'ALA
SLEIGHTHOLM'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS

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**THE UNIVERSITY OF HAWAI‘I AT HILO AND TMT INTERNATIONAL
OBSERVATORY, LLC’S JOINT RESPONSE TO J. LEINA’ALA SLEIGHTHOLM’S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED
DECISION AND ORDER, FILED MAY 30, 2017 [DOC. 670]**

Applicant UNIVERSITY OF HAWAI‘I AT HILO (“UH Hilo) and TMT
INTERNATIONAL OBSERVATORY, LLC (“TIO”), through their respective counsel, hereby
jointly submit this Response to J. Leina’ala Sleightholm’s Proposed *Findings of Fact,*
Conclusions of Law, and Proposed Decision and Order, filed May 30, 2017 [Doc. 670]
 (“Response”).

**I. STANDARD OF REVIEW FOR REVERSAL OR MODIFICATION OF
ADMINISTRATIVE FINDINGS, CONCLUSIONS, DECISIONS, OR ORDERS**

To prevent judicial reversal or modification of administrative findings of fact under
§ 91-14(g), Hawaii Revised Statutes (“HRS”), the Board of Land and Natural Resources
 (“BLNR”) should, upon review of the record, reverse or modify findings that are “[c]learly
erroneous in view of the reliable, probative, and substantial evidence on the whole record.” *In re*
Gray Line Hawaii Ltd., 93 Hawai‘i 45, 53, 995 P.2d 776, 784 (2000). A finding of fact is clearly
erroneous when: (1) the record lacks substantial evidence to support the finding or
determination; or (2) despite substantial evidence to support the finding or determination, the
BLNR is left with the definite and firm conviction that a mistake has been made. *Kienker v.*
Bauer, 110 Hawai‘i 97, 105, 129 P.3d 1125, 1133 (2006).

Similarly, conclusions of law should be reversed or modified where the BLNR finds they
are in violation of constitutional or statutory provisions, in excess of the statutory authority or
jurisdiction of the Commission, or affected by other error of law. *Id.*

II. DISCUSSION

A. Responses to J. Leina'ala Sleightholm's ("Sleightholm") Proposed FOF and COL

The UH Hilo and TIO object to each of the FOF and COL in Sleightholm's Proposed *Findings of Fact, Conclusions of Law, and Proposed Decision and Order*, filed May 30, 2017 [Doc. 670] ("**Sleightholm's Proposed FOF/COL**") to the extent that they are irrelevant, inapplicable, immaterial, mischaracterize the evidence, misstate or misrepresent the record, rely on evidence that is not credible, biased, or incomplete, and/or not supported by the evidence. UH Hilo and TIO also object to the Sleightholm's Proposed FOF/COL to the extent they assert alleged "findings" that are beyond the scope of issues set forth in Minute Order No. 19.

Appendix A contains general objections to the Sleightholm's Proposed FOF/COL, which UH Hilo and TIO hereby incorporate by reference to its response to each of Sleightholm's FOF and COL, to the extent applicable.

In addition to the general objections in Appendix A, UH Hilo and TIO have prepared a table of specific responses and objections to Sleightholm's proposed findings and conclusions, which is attached hereto as **Appendix B**. Citations to the evidence in the record provided herein are not intended to be exhaustive or comprehensive, but demonstrate evidentiary support for UH Hilo and TIO's responses and objections.

UH Hilo and TIO further object to Sleightholm's Proposed FOF/COL to the extent they seek to challenge the FEIS for the TMT Project. This proceeding is not an EIS challenge under HRS Chapter 343; Sleightholm's ability to make such a challenged expired long ago, and she cannot reopen the FEIS approval process through improper arguments of insufficiency under the statute and rules governing the EIS process. This proceeding is entirely governed by the applicable constitutional law and the Conservation District rules that are genuinely at issue here.

The FOF/COL and page numbers referenced herein follow those as provided in Sleightholm's Proposed FOF/COL. References to the UH Hilo and TIO's Joint [Proposed] Findings of Fact, Conclusions of Law, and Decision and Order on May 30, 2017 [Doc. 671] ("UH-TIO FOF/COL") are denoted by the prefixes "UH-TIO FOF" and "UH-TIO COL" for the numbered FOF and COL, respectively, in the UH-TIO FOF/COL.

Acronyms and defined terms used herein are defined in the Index of Select Defined Terms, which was filed as part of the jointly-submitted UH-TIO FOF/COL.

Any specific proposed finding or conclusion not specifically referred to or addressed below is deemed denied and disputed.

B. Responses to Sleightholm's Proposed Decision and Order

Sleightholm's proposed Decision and Order is not supported by the record. As set forth in the UH-TIO FOF/COL, substantial evidence has been adduced to show that the CDUA satisfies the eight criteria as set forth in Hawai'i Administrative Rule ("HAR") § 13-5-30(c). The record also shows that the TMT Project is consistent with the UH Hilo's and the BLNR's obligations under the public trust doctrine, *Ka Pa'akai*, and Article XI, section I and Article XII, section 7 of the Hawai'i Constitution.

Ultimately, Sleightholm is categorically opposed to the construction of TMT regardless of whether or not the TMT Project satisfies the eight criteria. No location on the mountain, and no combination of mitigation measures, will make the TMT Project acceptable to Sleightholm. That position is not supported by law.

III. CONCLUSION

For the reasons set forth herein in the UH Hilo Pre-Hearing Statement, TIO's Pre-Hearing Statement, the UH-TIO FOF/COL, the testimony of the UH Hilo's and TIO's witnesses, the examination of the Petitioners' and Opposing Intervenor's witnesses, and in UH Hilo's and

TIO's other filings, UH Hilo and TIO respectfully jointly request that the Hearing Officer adopt the UH-TIO FOF/COL, and reject Sleightholm's Proposed FOF/COL.

DATED: Honolulu, Hawai'i, June 13, 2017.



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Appendix A

General Responses to Petitioners'/Opposing Intervenors' Proposed Findings of Fact ("FOF") and Conclusions of Law ("COL")	
Citation does not support the proposition.	The citation offered by Petitioners/Opposing Intervenors does not support the proposed FOF or COL.
Estoppel/Improper Reconsideration	The proposed FOF or COL or a portion thereof is improper to the extent it is barred by estoppel or waiver, or improperly seeks reconsideration of the Hearing Officer's or the BLNR's prior ruling,
Inaccurate/False	The proposed FOF or COL or a portion thereof is inaccurate or false.
Incomplete.	The proposed FOF or COL is materially incomplete.
Irrelevant/Inapplicable.	The information in the proposed FOF or COL is irrelevant or inapplicable in this contested case proceeding. <u>See</u> Minute Order No. 19 [Doc. No. 281].
Lack of Jurisdiction	The proposed FOF or COL exceeds the scope of the Hearing Officer's jurisdiction and/or delegated authority
Mischaracterization.	The proposed FOF or COL mischaracterizes legal authority or the contents of the record.
Misleading. Partial quotation.	The proposed FOF or COL contains a partial quote from legal authority or a document in the record, and the incompleteness of the quotation is likely to mislead the reader.
Misleading. Presented out of context.	The proposed FOF or COL presents law or information in the record out of context and/or in a way that is likely to mislead the reader.
Misrepresentation	The proposed FOF or COL affirmatively misrepresents legal authority or the contents of the record.
Not credible.	The proposed FOF or COL is not credible based on the totality of the evidence contained in the record and/or the demonstrated biases of the witness whose testimony is cited in support of the proposed FOF or COL.

Not in dispute.	Either (1) the proposed FOF or COL is not at issue in this proceeding, or (2) standing alone, the proposed FOF or COL is not objectionable. The designation of any individual proposed FOF or COL as “not in dispute” does not and should not be construed as an admission of said FOF or COL or a concession that said FOF or COL should be incorporated into the final FOFs and COLs. It also does not and should not be construed as assent to any inferences suggested or that may be suggested by Petitioners/Opposing Intervenors from, e.g., their misleading grouping or ordering of otherwise unrelated facts.
Not in evidence.	The proposed FOF or COL asserts “facts” and/or cites documents that are not in evidence.
Unsupported/Unsubstantiated	The proposed FOF or COL is not supported by information in the record or was not substantiated by the Petitioners/Opposing Intervenors through the contested case process.

Appendix B

Summary Table of Responses to J. Leina'ala Sleightholm's Proposed FOF/COL

FOF/ COL #	Page	FOF/COL	Response
1	2	University of Hawai'i at Hilo (Applicant)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶1.
2	2	Mauna Kea Anaina Hou/Kealoha Pisciotta (Petitioner)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶2.
3	2	Kumu Hula Paul Neves (Petitioner)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶7.
4	2	Deborah J. Ward (Petitioner)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶6.
5	2	Clarence Kukauakahi Ching (Petitioner)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶4.
6	2	Flores-Case Ohana with Mo'oinanea (Petitioner)	This is an incomplete sentence. Mo'oinanea is not a party to this proceeding. UH-TIO FOF ¶5.

FOF/ COL #	Page	FOF/COL	Response
7	2	KAHEA Environmental Alliance (Petitioner)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶8.
8	2	Thirty Meter Telescope International Observatory, LLC. aka T.I.O. (Intervenor)	The party is incorrectly identified, and this is an incomplete sentence. The proper party is TMT International Observatory, LLC. UH-TIO FOF ¶10.
9	2	Harry Fergstrom (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶14.
10	2	Mehana Kihoi (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶12.
11	2	C.M. Kaho'okahi Kanuha (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶13.
12	2	Joseph Kualii Lindsey Camara (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶15.
13	2	J. Leina'ala Sleightholm (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶16.

FOF/ COL #	Page	FOF/COL	Response
14	2	Maelani Lee (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence, and Ms. Lee filed a Notice of Withdrawal from this contested case on December 7, 2016. UH-TIO FOF ¶17.
15	2	The Temple of Lono (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶21.
16	2	Kalikolehua Kanaele (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶22.
17	2	Perpetuating Unique Educational Opportunities aka P.U.E.O. (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶11.
18	2	Stephanie Malia Tabbada (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence, and Ms. Tabbada did not physically appear during the evidentiary portion of the contested case hearing. UH-TIO FOF ¶23.
19	2	Tiffnie Kakalia (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶24.

FOF/ COL #	Page	FOF/COL	Response
20	2	Glen Kila (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence, and Mr. Kila did not physically appear during the evidentiary portion of the contested case hearing. UH-TIO FOF ¶25.
21	2	Dwight J. Vicente (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶26
22	2	Brannon Kamahana Kealoha (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence, and Mr. Kealoha stopped appearing in person or participating in the contested case hearing on or about December 8, 2016. UH-TIO FOF ¶27.
23	2	Cindy Freitas (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶19.
24	2	William Freitas (Intervenor)	The identity of the party is not in dispute; however, this is an incomplete sentence. UH-TIO FOF ¶20.
25	3	Wilma Holi (HO Witness)	This is an incomplete sentence, and Ms. Holi is not a party to this proceeding. UH-TIO FOF ¶47.

FOF/ COL #	Page	FOF/COL	Response
26	3	Crystal West (HO Witness)	This is an incomplete sentence, and Ms. West is not a party to this proceeding. <u>See</u> UH-TIO FOF ¶47. Ms. West waived any right to testify at the contested case hearing or to claim she has been deprived of an opportunity to provide her position and information as part of these proceedings. <u>See</u> UH-TIO COL ¶¶25-35.
27	3	Moses Kealamakia (HO Witness)	This is an incomplete sentence, and Mr. Kealamakia is not a party to this proceeding. <u>See</u> UH-TIO FOF ¶47. Mr. Kealamakia waived any right to testify at the contested case hearing or to claim he has been deprived of an opportunity to provide his position and information as part of these proceedings. <u>See</u> UH-TIO COL ¶¶25-35.
28	3	Patricia P. Ikeda (HO Witness-Withdrawn)	This is an incomplete sentence, and Ms. Ikeda is not a party to this proceeding. Ms. Ikeda withdrew as a Hearing Officer Witness on August 29, 2016 and reconfirmed her withdrawal on October 17, 2016. <u>See</u> UH-TIO FOF ¶48.
29	3	Ivy McIntosh (HO Witness-Withdrawn)	This is an incomplete sentence, and Ms. McIntosh is not a party to this proceeding. <u>See</u> UH-TIO FOF ¶47. Ms. McIntosh waived any right to testify at the contested case hearing or to claim she has been deprived of an opportunity to provide her position and information as part of these

FOF/ COL #	Page	FOF/COL	Response
30	3	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)	proceedings. See UH-TIO COL ¶¶25-35. Inaccurate/False. Misrepresentation. On July 18, 2016, Kihoi's Motion to Deny the Intervention of Perpetuating Unique Educational Opportunities as a Party to the Contested Case Hearing was filed [Doc. 98]. This Motion was denied by oral ruling on August 5, 2016. Tr. 8/5/16 at 88:5-22. Kihoi's Motion for Reconsideration was filed August 12, 2016 [Doc. 209]. Minute Order No. 28 [Doc. 351] was subsequently issued and reflected the Hearing Officer's oral ruling. On October 15, 2016, Ms. Kihoi filed a Motion for Reconsideration of Minute Order No. 28 [Doc. 380]. The Motion for Reconsideration was subsequently denied in Minute Order No. 60 [Doc. 683]. The Hearing Officer granted PUEO's motion to intervene as a party in this CCH under HAR § 13-1-31(c), finding that "PUEO's participation will substantially assist the Hearing Officer in her decision making." Minute Order No. 13 [Doc. 115] at 3-4. PUEO's participation in this CCH did substantially assist the Hearing Officer in her decision making.

FOF/ COL #	Page	FOF/COL	Response
31	3	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)	Incomplete. Misleading. Presented out of context. On January 20, 2017, the Hearing Officer issued Minute Order No. 41 [Doc. 446] requiring that “[a]ny party, who intends to call a witness who has not yet testified, shall be present at the contested case hearing on Thursday, January 26, 2017. On that date, the Hearing Officer will set a scheduled for all remaining witnesses.” Mr. Kealoha did not appear on January 26, 2017 at the CCH. See generally Tr. 1/26/17; Minute Order No. 70 [696]. Ms. Kihoi testified at the CCH. Mrs. Sleightholm testified at the CCH. Mr. Kealoha did not file a written direct testimony as was required. He also stopped appearing in person or participating in the contested case hearing on or about December 8, 2016. Mr. Kealoha also did not submit written direct testimonies for Kimo Keaulana and Alohalani Brown as was required.
32	3	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	Incomplete. Inaccurate/False. Misleading. Presented out of context.

FOF/ COL #	Page	FOF/COL	Response
		summit. (MO 18, Doc. 274)	Each party was permitted to identify other individuals that would accompany them on the site visit. For example, Ms. Sleightholm identified Bimio Akiona as a first responder/medical personnel.
33	3	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)	See also UH-TIO FOF ¶¶68 through 73. Misleading. Presented out of context. It is not disputed that Ms. Sleightholm filed Doc. 280. However, as noted in Ms. Sleightholm's own proposed finding of fact 35, she was not required to meet at the location designated in Minute Order No. 18 [Doc. 274]. Ms. Sleightholm apparently chose not to participate in the site visit because she did not want to ride in the provided shuttle vans. That was her choice. She was not prohibited from participating in the site visit.
34	3	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)	Misleading. Presented out of context. It is not disputed that Ms. Kihoi filed Doc. 279. However, as noted in Ms. Sleightholm's own proposed finding of fact 35, Ms. Kihoi and she were not required to meet at the location designated in Minute Order No. 18 [Doc. 274]. Ms. Kihoi apparently chose not to participate in the site visit because she did not want to ride in the provided shuttle vans. That was her choice. She was not prohibited from participating in the

FOF/ COL #	Page	FOF/COL	Response
			site visit.
35	3	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.	See response to proposed findings of fact 33 and 34 above.
36	4	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)	Unsupported/Unsubstantiated. There is no factual or legal basis to allege the pre-arranged site visit violated any person's cultural or religious practice rights. The Hearing Officer had a reasonable period of time and conditions for viewing the general landscape and areas proposed for the TMT Project, and the site visit was reasonable and appropriate for the purposes of the case. See UH-TIO FOF ¶¶ 68-73.
37	4	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)	Misleading. Presented out of context. Mr. Ho testified that "often in the main [OMKM] meetings, monthly, we do discuss, you know, what the issues were and what Sierra Club would like raised at different levels." Tr. 2/22/17 at 44:2-5. Consequently, according to Mr. Ho, the Sierra Club has the ability to raise issues at these meetings. The Sierra Club apparently has not raised this issue or these issues despite its ability to do so. More importantly, the Sierra Club had the opportunity and did comment on both the Draft EIS for the TMT Project and the CDUA. See UH-TIO FOF ¶¶ 197 and 220;

FOF/ COL #	Page	FOF/COL	Response
			741. The Sierra Club did not challenge the FEIS after its acceptance. <u>See</u> UH-TIO FOF ¶¶198-202. Nelson Ho, whose testimony Ms. Sleightholm relies upon, conceded during cross-examination that the TMT Project's use of a zero-discharge wastewater system mitigates the impacts related to cesspools at the summit. <u>See</u> Tr. 2/22/17 at 136:7-9. Petitioner Deborah Ward also testified that she did not have any concerns regarding the above-ground storage of liquids proposed for the TMT Project. <u>See</u> UH-TIO FOF ¶835; <u>see also</u> UH-TIO FOF ¶¶824-839. <u>See</u> UH-TIO FOF 210 through 237 (substantial and extensive consultation). <u>See</u> UH-TIO FOF 824 through 839.
38	4	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)	Misleading. Presented out of context. Unsupported/Unsubstantiated. The credible and substantial evidence in the record demonstrates that this proposition is unsupported and unsubstantiated, and contrary to the evidence in this case. <u>See</u> UH-TIO FOF ¶¶466 through 502.
39	4	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)	Misleading. Presented out of context. Unsupported/Unsubstantiated. Not Credible. Mr. Ho did not provide any

FOF/ COL #	Page	FOF/COL	Response
			independent evidence to support this proposition. Mr. Ho is a long-standing opponent of development of Mauna Kea and demonstrated this personal bias during his testimony. See e.g., UH-TIO FOF ¶741. Moreover, Governor Ige has stated that the TMT Project site should be the last new site on Mauna Kea and that any future development occur on already existing sites. The University confirmed that the TMT Project site is the last new area on Mauna Kea where a telescope will be built. See UH-TIO FOF ¶154.

FOF/ COL #	Page	FOF/COL	Response
40	4	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)	Incomplete. Irrelevant/Immaterial. Speculative. Mr. Ho was testifying about trash he observed in 1995. See Tr. 2/22/17 at 59:17-22. Mr. Ho was not testifying about trash that he believes would be generated from the TMT Project. There is a Waste Management Plan that will address waste generated during the construction phase of the TMT Project. See UH-TIO FOF ¶ 832. TIO has also committed to developing and implementing a Waste Minimization Plan and Materials Storage/Waste Management Plan to reduce and address waste during the operation of the TMT Observatory. See UH-TIO FOF ¶969.
41	4	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)	Incomplete. Past management concerns have been and continue to be addressed through the 2000 Master Plan and the Comprehensive Management Plan and its subplans. See UH-TIO FOF ¶¶123-158. See also response to proposed finding of fact 39 above. See also UH-TIO FOF 159-166 regarding decommissioning..
42	4	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)	Incomplete. Misleading. Presented out of context. BLNR's and the University's obligations in a Conservation District as applicable to the TMT Project are

FOF/ COL #	Page	FOF/COL	Response
43	4	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)	accurately set forth in UH-TIO FOF/COL. See e.g., UH-TIO COL ¶¶1-3, 7-12, 88-90. Incomplete. Not Credible. Misleading. Presented out of context. Argumentative. Mr. Ho admitted that the follow-up to the 1998 State Auditor's Report indicated that most of the auditor's concerns were addressed. See UH-TIO FOF ¶188. The credible and substantial evidence in the record establishes that there will be no substantial adverse impact to natural resources in satisfaction of HAR 13-5-30(c)(4). UH-TIO FOF ¶¶433-489; UH-TIO COL ¶¶177-217.
44	4	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)	See response to proposed finding of fact 43 above.
45	4	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)	Unsupported/Unsubstantiated. Misleading. Presented out of context. Not Credible. Argumentative. This is the opinion of a long-standing opponent to any development on Mauna Kea. His biased opinion is not a fact. Moreover, Mr. Ho admitted that the follow-up to the 1998 State Auditor's Report indicated that most of the auditor's concerns were addressed. See UH-TIO FOF ¶188. Past management concerns have been and continue to be addressed through the 2000 Master Plan and the Comprehensive Manage Plan and its subplans. See UH-TIO FOF ¶¶123-158

FOF/ COL #	Page	FOF/COL	Response
46	5	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)	Incomplete. Unsupported/Unsubstantiated. Mr. Ho provided no evidence to support his biased opinion. The credible and substantial evidence in the record demonstrating that there are no historic properties or sites located within 200 feet of the limits of grading at the proposed TMT Observatory site. TMT Management Plan (Ex. R-1, Appx. B) at 2-2.
47	5	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)	Misleading. Presented out of context. This is Mr. Ho's opinion, not fact. Moreover, past management concerns have been and continue to be addressed through the 2000 Master Plan and the Comprehensive Manage Plan and its subplans. <u>See</u> UH-TIO FOF ¶¶123-158. For example, Kahu Ku Mauna, an assembly of native Hawaiians who advise OMKM, was created as part of the 2000 Master Plan. <u>See</u> UH-TIO FOF ¶127-128.
48	5	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)	<u>See</u> response to proposed finding of fact 47 above. Moreover, Mililani Trask, a witness for Opposing Intervenor Camara, disagreed with Mr. Ho. Ms. Trask testified that she agreed with Chair Wilson's statement in response to N. Ho that unrestricted public access to the Mauna Kea Summit is a problem. <u>See</u> UH-TIO FOF ¶¶725.
49	5	OMKM Environment Committee was never convened to review the TMT	Incomplete. Misleading. Presented out of

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		EIS. (Ho, V.39, Tr. Feb 22, 2017, p. 140:20-25, p. 141:1-5)	context. Mr. Ho admitted during cross-examination that OMKM had the opportunity to review and comment on the DEIS. See UH-TIO FOF ¶741. Moreover, as already stated previously, the Sierra Club commented on both the DEIS and the CDUA.
50	5	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)	Incomplete. Misleading. Presented out of context. Mr. Ho conceded during cross-examination that the TMT Project's use of a zero-discharge wastewater system mitigates the impacts related to cesspools at the summit. See Tr. 2/22/17 at 136:7-9
51	5	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)	Incomplete. Misleading. Presented out of context.
52	5	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)	Incomplete. Misleading. Presented out of context. In the same meeting, Mr. Ron Terry stated the following: "Ron Terry gave a short review of his comments about the FEIS. <u>He felt the draft EIS was adequate</u> , but he had some issues with it and pointed out areas in his comment letter where the draft could be improved. He saw improvements in the FEIS. Having reviewed the comments letters and changes in the FEIS he found them mostly positive. <u>There was better disclosure and better mitigation measures.</u> He cited areas that were

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			added that was lacking in the draft, such as public services and facilities. <u>The FEIS looked at the entire historic district and considered its effects.</u> It fleshed out the community benefits package and workforce pipeline; recognized OMKM's concern about the difficulty with the wekiu bug habitat restoration; included critical information from the four sub plans; and provided photos of close up views. It appears that some concerns raised are based on past history perhaps based on misinformation or by those who were uninformed due to lack of understanding or sensitivity of the environment. The document goes into much detail on mitigation. He does not agree with everything in the FEIS and will continue to assert his points as the project involves." Ex. A-61 at 6 (emphases added).
53	5	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)	Incomplete. Irrelevant/Inapplicable. The so-called "federal EIS" referred to is a review under Section 106 of the NHPA or NEPA. This review was not required and does not apply to the TMT Project or the decision on whether to grant a CDUA under HAR § 13-5-30(c). See UH-TIO COL ¶¶427-444. Incomplete. See UH-TIO FOF ¶ 34.
54	6	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	6	Judge Ibarra's ruling regarding civil rights of the protectors were violated. (Ho, V.39, Tr. Feb 22, 2017, p. 48:13-20)	Irrelevant/Inapplicable. Not in evidence. This proposition is not material to the

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			issues in this CCH as set forth in Minute Order No. 19.
56	6	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)	Irrelevant/Inapplicable. Not in evidence. This proposition is not material to the issues in this CCH as set forth in Minute Order No. 19.
57	6	Judge Nakamura's ruling regarding vacating consent for sublease. (Ho, V.39, Tr. Feb 22, 2017, p. 49:5-13)	It is not disputed that Judge Nakamura vacated the BLNR's consent to the TIO Sublease.
58	6	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)	Incomplete. Mischaracterization. The TMT Project complies with <u>Ka Pa'akai</u> and other case law protecting the reasonable exercise of customary and traditional native Hawaiian practices. See UH-TIO COL ¶¶324-385.
59	6	"All rights traditionally customary exercised for subsistence, cultural and religious purposes." (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 164:10-17)	Incomplete. Mischaracterization. Not credible. The TMT Project complies with <u>Ka Pa'akai</u> and other case law protecting the reasonable exercise of customary and traditional native Hawaiian practices. See UH-TIO COL ¶¶324-385. Kaopua-Goodyear's lack of credibility and personal bias was demonstrated during the CCH. See e.g., UH-TIO FOF ¶¶739-740
60	6	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)	See response to proposed finding of fact 59 above.
61	6	Access to practice protected by state law. (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 168:6-20)	See response to proposed finding of fact 59 above.
62	6	The remains, the iwi of Kuka Hauula and many more of my kupuna	Unsupported/Unsubstantiated. Not

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		(ancestors) rest on Mauna Kea and need vigilant care to prevent desecration . I, like most Hawaiians, am a descendant of Umiailoa. 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)	credible. Neither Sleightholm nor Camara were able to identify the location of any burials and admitted to having a “limited understanding” of any burials that may be located on Mauna Kea. Tr. 3/1/17 at 167, 189-190.
63	6	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)	Incomplete. Misleading. Presented out of context. The credible and substantial evidence in the record establishes that the potential impact of the TMT Project has been evaluated and supports the conclusion of not substantial adverse impact. UH-TIO FOF ¶¶611 through 774.
64	7	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)	Incomplete. Misleading. Presented out of context, except that the individual may have experience or felt sadness on the basis of her own personal opinions and belief. October 7, 2014 was the date of the groundbreaking ceremony. No evidence was presented of any arrests made that day. This was also the first time Ms. Sleightholm went up to Mauna Kea. See UH-TIO FOF ¶746. The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). See UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293.

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65	7	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)	Irrelevant/Inapplicable to the merits of the CDUA; land grading is inherent in any construction activity throughout the Hawaiian islands and is not a legitimate basis for halting otherwise legally permitted work. The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). See UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293.
66	7	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)	See response to proposed finding of fact 65 above.
67	7	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)	See response to proposed finding of fact 65 above.
68	7	Violence not intended. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 27:15-25, p. 28:1-5)	See response to proposed finding of fact 65 above.
69	7	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)	Ms. Sleightholm chose to be arrested. Law-abiding citizens do not block roads as vehicles are attempting to pass through. Others, including Petitioners E. Kalani Flores and Pua Case, have "protected" Mauna Kea without being arrested. See Tr. 2/15/17 at 179:1-19.

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70	7	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)	<u>See</u> response to proposed finding of fact 65 above. Ms. Sleightholm chose to be arrested. Others, including Petitioners E. Kalani Flores and Pua Case, have “protected” Mauna Kea without being arrested. <u>See</u> Tr. 2/15/17 at 179:1-19. <u>See</u> response to proposed finding of fact 65 above.
71	7	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)	Ms. Sleightholm chose to be arrested. Others, including Petitioners E. Kalani Flores and Pua Case, have “protected” Mauna Kea without being arrested. <u>See</u> Tr. 2/15/17 at 179:1-19. <u>See</u> response to proposed finding of fact 65 above.
72	7	Kapu aloha has changed me. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 33:11-20)	<u>See</u> response to proposed finding of fact 65 above.
73	7	How to heal my injuries. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 33:21-25, p. 34:1-12)	Incomplete. Ms. Sleightholm chose to be arrested. Others, including Petitioners E. Kalani Flores and Pua Case, have “protected” Mauna Kea without being arrested. <u>See</u> Tr.

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			2/15/17 at 179:1-19. See response to proposed finding of fact 65 above.
74	7	I felt my soul was breaking...I couldn't breathe. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 34:14-18)	See response to proposed finding of fact 73 above.
75	7	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)	See response to proposed finding of fact 73 above.
76	8	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)	See response to proposed finding of fact 73 above.
77	8	Haven't been to hula in a long time. (Sleightholm, V.35, Tr. Feb 14, 2017, p. 42:18-19)	See response to proposed finding of fact 73 above.
78	8	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)	See response to proposed finding of fact 73 above.
79	8	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)	Not credible. Misleading. Presented out of context. Kaopua-Goodyear's lack of credibility and personal bias was demonstrated during the CCH. See e.g., UH-TIO FOF ¶¶739-740 The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). See UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293.
			See response to proposed finding of fact 65 and 73 above.

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80	8	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	See response to proposed finding of fact 79 above.
81	8	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)	See response to proposed finding of fact 79 above.
82	8	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)	See response to proposed finding of fact 79 above.
83	8	“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)	See response to proposed finding of fact 79 above.
84	8	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)	See response to proposed finding of fact 79 above.
85	8	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)	See response to proposed finding of fact 79 above. Ms. Sleightholm chose to be arrested. Others, including Petitioners E. Kalani Flores and Pua Case, have “protected” Mauna Kea without being arrested. See Tr. 2/15/17 at 179:1-19.
86	8	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)	See response to proposed finding of fact 79 above.
87	8	“All rights traditionally customary exercised for subsistence, cultural and religious purposes.” (Goodyear-Kaopua, V.39, Tr. Feb 22, 2017, p. 164:10-17)	Incomplete. Mischaracterization. Not credible. The TMT Project complies with <u>Ka Pa‘akai</u> and other case law protecting the reasonable exercise of customary and traditional native Hawaiian practices. See

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			UH-TIO COL ¶¶324-385. Kaopua-Goodyear's lack of credibility and personal bias was demonstrated during the CCH. See e.g., UH-TIO FOF ¶¶739-740
88	9	Judge Ibarra's ruling regarding civil rights of the protectors were violated. (Ho, V.39, Tr. Feb 22, 2017, p. 48:13-20)	Irrelevant/Inapplicable. Incomplete. Not in evidence. This proposition is not material to the issues in this CCH as set forth in Minute Order No. 19.
89	9	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)	Irrelevant/Inapplicable. Not in evidence. This proposition is not material to the issues in this CCH as set forth in Minute Order No. 19.
90	9	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)	Repetitive. See response to proposed finding of fact 37 above.
91	9	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)	Repetitive. See response to proposed finding of fact 40 above.
92	9	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)	Repetitive. See response to proposed finding of fact 47 above.
93	9	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)	Repetitive. See response to proposed finding of fact 50 above.
94	9	"The Seed We Planted" book by Noe Goodyear-Kaopua takes up central	Not credible. Misleading. Presented out of

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		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)	context. Kaopua-Goodyear's lack of credibility and personal bias was demonstrated during the CCH. <u>See e.g., UH-TIO FOF ¶¶739-740</u> The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HIR § 13-5-30(c)(8). <u>See UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293.</u>
95	9	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)	Incomplete. Unsupported/unsubstantiated. Speculative. Not credible. Dr. Kehau Abad's testimony was not credible given her clear and demonstrated personal bias, her admittedly incomplete review of the relevant documents, and her multiple statements that were clearly contradicted by the record. <u>See e.g., UH-TIO FOF ¶¶604-608.</u> For example, Dr. Abad conceded that the CDUA did in fact address areas of concern outside of the TMT Project area, but within the MKSRHD or her "regional perspective", including Lake Waiau and Kūkahau'ula. Tr. 1/19/17 at 129:14-133:21. Dr. Abad also admitted that she did not review Kīlakila O Haleakala, which affirmed that BLNR may focus its analysis on the

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			permitted land use within the context of a specific area within a Conservation District designated for similar uses – e.g., the Astronomy Precinct. See UH-TIO FOF ¶120. Dr. Abad’s testimony should be given no weight. The credible and substantial evidence in the record demonstrating that there are no historic properties or sites located within 200 feet of the limits of grading at the proposed TMT Observatory site. TMT Management Plan (Ex. R-1, Appx. B) at 2-2.
96	9	Psychological harms caused by desecration of a site considered sacred cannot be mitigated. (Abad, V.27, Tr. Jan 19, 2017, p. 81: 14-16)	See response to proposed finding of fact 95 above. The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). See UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293. Lack of Jurisdiction. The Hearing Officer and BLNR have no jurisdiction to consider the desecration claim and even assuming the claim could be considered, it is without merit. See UH-TIO COL 392-407.
97	10	Chair Ailā asked, “how would you be impacted? Would you still go up	Unsupported/Unsubstantiated. Not

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		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)	credible. Case does not explain how she will be prohibited from continuing her practices if the TMT Project is developed within the Astronomy Precinct on Mauna Kea. Case testified that she did not start conducting her practices on "the top of Mauna Kea,]" including the northern plateau, until 2010. Tr. 1/11/17 at 228:1-19. During this entire time since 2010, Case has been able to conduct her practices with observatories being present on Mauna Kea. <u>Id.</u> at 229:10-25. Case has also failed to establish that she has any practices within the area E location site of the TMT Observatory. She claims to conduct practices on the northern plateau. However, the TMT Observatory will only occupy five acres of the northern plateau. <u>See</u> UH-TIO FOF ¶783 (noting that the TMT Observatory will only take up five of 2,000 acre Northern Plateau). <u>See</u> responses to proposed findings of fact 95 and 97 above.
98	10	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)	

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99	10	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)	UHH and TIO object to the adoption of these statements to prove the truth of the matter asserted, because Ms. Ward's statements are unsupported/unsubstantiated and is otherwise not credible insofar as she claims that her practices are going to be impacted by the TMT Project. Moreover, Ms. Ward is not a native Hawaiian practitioner. See UH-TIO FOF ¶ 748. Ms. Ward's testimony establishes that the area proposed for the TMT Project is substantially, if not fully, developed.
100	10	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)	Misleading. Presented out of context. Unsupported/Unsubstantiated. The visual impact of the TMT Project is thoroughly discussed in the CDUA and FEIS, among other documents. It is also extensively discussed in the UH-TIO FOF/COL. See UH-TIO FOF ¶¶ 775-795. The credible and substantial evidence in the record supports the following: "The TMT Project will add a visual element to the summit of Mauna Kea, but it will be one such element among many. The incremental increase in cumulative visual impact due to the TMT Project will be less than significant. Therefore, the TMT Project will not have a substantial adverse

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			impact on the visual resources of Mauna Kea. WDT Hayes at 21-23.” UH-TIO FOF ¶795. Ms. Ward’s testimony establishes that the area proposed for the TMT Project is substantially, if not fully, developed.
101	11	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)	Unsupported/Unsubstantiated. The credible and substantial evidence in the record establishes that the TMT Project will not have a substantial adverse impact to existing natural resources within the surrounding area, community, or region in satisfaction of HAR § 13-5-30(c)(4). See UH-TIO FOF ¶¶433-839; UH-TIO COL ¶¶177-217. Ms. Ward’s testimony establishes that the area proposed for the TMT Project is substantially, if not fully, developed. See response to proposed finding of fact 100 above. The TMT Project satisfies HAR § 13-5-30(c)(6). See UH-TIO FOF ¶¶868-913; UH-TIO COL ¶¶227-272.
102	11	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)	

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103	11	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)	Unsupported/Unsubstantiated. No credible evidence was presented to show that the TMT Project will impact any of the hydrologic resources on Mauna Kea. <u>See</u> UH-TIO FOF ¶¶796-823. The Petitioners and Opposing Intervenor did not submit any credible evidence to rebut Tom Nance's expert opinions. Mr. Nance has substantial education and experience in the field of hydrology and water resources. Reliable, probative, substantial, and credible evidence supports Nance's scientific opinions. <u>See id.</u> Lake Waiau is located 1.42 miles from the TMT Project site. <u>See</u> Ex. C-18. It also faces away from and down the opposite slope of Mauna Kea from the northern plateau. The Petitioners and Opposing Intervenor did not produce any credible evidence to support their claim that Lake Waiau would be impacted by the TMT Project. They relied solely on their unsupported beliefs and feelings.
104	11	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)	The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). <u>See</u> UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293.

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105	11	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)	Not credible. Per the UH-TIO FOF/COL, and as further demonstrated in this response, there is significant and material evidence rebutting the testimony of Dr. Kahakalau. See e.g., UH-TIO FOF ¶327 (noting her personal biases); ¶836 (disputing her unsupported and speculative testimony regarding the use of highly toxic chemicals); <u>see also</u> UH-TIO FOF ¶¶328, 383, 675-76, 698, 793, and 865; UH-TIO COL ¶¶379, 3981 The significant majority of Dr. Kahakalau's testimony was also irrelevant to the material issues in this CCH. Her testimony is also directly contradicted by the credible and significant testimony of PUEO, which established that there is native Hawaiian support for the TMT Project. See UH-TIO FOF ¶¶284-290 Moreover, the record shows that the TMT Project will not have a substantial adverse impact on traditional and customary practices. UH-TIO FOF 611-774. <u>See</u> proposed response to finding of fact 105 above.
106	11	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	11	Building the TMT will send the same message out to everybody that if the	<u>See</u> proposed response to finding of fact

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		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)	105 above.
108	11	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)	See response to proposed finding of fact 37 above. Not credible. Ms. Fujikane's opinion about speculative impacts or construction means and methods is not reliable or credible. She is an English Professor and has no education or experience that would qualify her to render opinions regarding impact to "the aquifer" and to land. There is no credible evidence that the TMT Project will have an impact on "the aquifer." See response to proposed finding of fact 103 above.
109	12	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)	Unsupported/Unsubstantiated. Not credible. See response to proposed finding of fact 108 above. The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). See UH-TIO FOF ¶¶937-1000; UH-TIO COL

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110	12	Removal of 66,000 cubic yards of earth – a form of desecration. (Fujikane, V.23, Tr. Jan 9, 2017, p. 237:13-19)	¶¶273-293. Unsupported/Unsubstantiated. Not credible. <u>See</u> UH-TIO COL ¶¶392-407. Excavation is insufficient to disqualify a project from approval under HAR § 13-5-30(c). UH-TIO FOF 480. Furthermore, TIO plans to relocate as little material from the mountain as possible. UH-TIO FOF 493. <u>See</u> response to proposed finding of fact 65 above. The Hearing Officer and BLNR have no jurisdiction to consider the desecration claim and even assuming the claim could be considered, it is without merit. <u>See</u> UH-TIO COL 392-407.
111	12	TMT would cause personal injury if built. (Aloua, V.36, Tr. Feb 15, 2017, p. 43:16-25)	The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). <u>See</u> UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293. No evidence exists or was presented that a human body will be illegally, knowingly or intentionally harmed during construction or operation of the telescope.

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112	12	Her arrests on Mauna Kea were oppressive, offensive and brutal attacks that have caused her trauma. (Aloua, WDT, p. 2)	Ms. Aloua chose to be arrested based on her personal beliefs and positions. Others, including Petitioners E. Kalani Flores and Pua Case, have “protected” Mauna Kea without being arrested. <u>See</u> Tr. 2/15/17 at 179:1-19. The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). <u>See</u> UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293.
113	12	Arrests have created fear of law enforcement officers and concern for personal safety during ceremony. (Aloua, WDT, p. 2)	<u>See</u> response to proposed finding of fact 112 above.
114	12	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)	The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). <u>See</u> UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293. Personal individual reactions based on their expectations of changes in public landscape or society as a whole are insufficient reasons to halt an otherwise properly proposed astronomical project proposed to be constructed in the Astronomy Precinct on Mauna Kea.
115	12	She will not be able to be there in the same manner. (B. Case, V.25, Tr. Jan 11, 2017, p. 135:1-16)	Unsupported/Unsubstantiated. Not credible.

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			Case did not explain how she will be prohibited from continuing her practices if the TMT Project is developed within the Astronomy Precinct on Mauna Kea. Case testified that she did not start conducting her practices on “the top of Mauna Kea[,]” including the northern plateau, until 2010. Tr. 1/11/17 at 228:1-19. During this entire time since 2010, Case has been able to conduct her practices with observatories being present on Mauna Kea. <u>Id.</u> at 229:10-25. Case also failed to establish that she has any practices within the area E location site of the TMT Observatory. She claims to conduct practices on the northern plateau. However, the TMT Observatory will only occupy five acres of the northern plateau. See UH-TIO FOF ¶783 (noting that the TMT Observatory will only take up five of 2,000 acre Northern Plateau). There is no evidence she was within that 5 acre area or would otherwise be prohibited from moving or doing certain practices nearby or adjacent to the telescope site. See response to proposed finding of fact I15 above.
116	12	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)	

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117	12	It would curtail her traditional and customary cultural practices. (B. Case, V.25, Tr. Jan 11, 2017, p. 139:5-14)	See response to proposed finding of fact 115 above.
118	12	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)	Misleading. Presented out of context. The credible and substantial evidence in the record establishes that there will be no substantial adverse impact to natural resources in satisfaction of HAR 13-5-30(c)(4). UH-TIO FOF ¶¶433-489; UH-TIO COL ¶¶177-217.
119	12	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)	Mischaracterization. Mr. White testified that the impact on air quality would be temporary.
120	12	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)	See response to proposed finding of fact 118 above.
121	13	Mr. White testified that the cultural and recreational view plane would be	Misleading. Presented out of context.

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		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)	The credible and substantial evidence in the record supports the following: "The TMT Project will add a visual element to the summit of Mauna Kea, but it will be one such element among many. The incremental increase in cumulative visual impact due to the TMT Project will be less than significant. Therefore, the TMT Project will not have a substantial adverse impact on the visual resources of Mauna Kea. WDT Hayes at 21-23." UH-TIO FOF ¶795.
122	13	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)	Misleading. Presented out of context. The impact, if any, would be temporary during construction and therefore does not constitute a substantial adverse impact. Moreover, Ms. Sleightholm did not produce any evidence demonstrating that she had any practices on the Northern Plateau.
123	13	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)	Unsupported/Unsubstantiated. See UH-TIO FOF ¶¶350-384. Not Credible. Prof. J. Osorio testified that he is not a cultural practitioner, has never been to the summit of Mauna Kea, and has not observed the telescopes. UH-TIO FOF 763. Astronomical observatories are approved uses within the subzone of the conservation district.

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124	13	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)	Incomplete. Unsupported/Unsubstantiated. Irrelevant/Inapplicable. Misleading; Partial Quotation. See UH-TIO FOF ¶¶229, 763, 864, 951.
125	13	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)	Misleading. Presented out of context. Unsupported/Unsubstantiated. Speculative. This is the personal opinion of an advocate. This is not fact and should not be taken as such. Moreover, Prof. J. Osorio is not credible. He claimed that the TMT Project would violate native Hawaiian cultural practices; yet he had no knowledge or evidence that any practices customary and traditional practices in the proposed TMT Project. See UH-TIO FOF ¶763.
126	13	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	Misleading. Presented out of context. Unsupported/Unsubstantiated. Speculative. This is the personal opinion of an advocate. This is not fact and should not be taken as such. Moreover, it goes against the credible and substantial evidence in the record the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). See UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293.

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		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.	Prof. Osorio had no direct evidence as to how the TMT Project would result in significant adverse impacts to any protected historical traditional practice. UH-TIO FOF 763.
127	14	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)	Unsupported/Unsubstantiated. Irrelevant/inapplicable. Speculative. Not credible. See response to proposed finding of fact 126 above.
128	14	If the TMT is built, it would interfere with this alignment directly. (Neves, V.33, Tr. Jan 31, 2017, p. 185:7-12)	Unsupported/Unsubstantiated. Neves testified that the TMT Project will obstruct his view of Haleakalā from the summit ridge area of Mauna Kea and will be a dominant feature. However, he did not demonstrate or show how the TMT Observatory would block those views, especially since it will be below the summit ridge. He also testified that a view plane is not by sight alone. WDT Neves at 4. He also admitted that there is no one particular place that you need to stand on Mauna Kea in order to view Haleakalā. Tr.

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129	14	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)	1/31/17 at 202:4-20, 207:3-10, 219:1-10, 245:5-20; UH-TIO FOF 747. <u>See</u> response to proposed finding of fact 128 above.
130	14	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)	Unsupported/Unsubstantiated. The credible and substantial evidence in the record demonstrating that there are no historic properties or sites located within 200 feet of the limits of grading at the proposed TMT Observatory site. TMT Management Plan (Ex. R-1, Appx. B) at 2-2. Individual personal beliefs of a generalized and speculative nature are not sufficient to prevent an otherwise compliant project from proceeding.
131	14	The TMT would restrict the healing ability of Mauna Kea. (Neves, V.33, Tr. Jan 31, 2017, p. 213:13-19)	Unsupported/Unsubstantiated. <u>See</u> response to proposed finding of fact 130 above.
132	14	We cannot mitigate an 18-story building on our temple. (Neves, V.33, Tr. Jan 31, 2017, p. 215:2-3)	Unsupported/Unsubstantiated.
133	14	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)	Unsupported/Unsubstantiated. Not credible. The viewplanes from Waimea were addressed and considered in the FEIS. <u>See</u> e.g., FEIS, R-3 at S-15 (noting that the "TMT Observatory will be visible from 14% of the island area . . . including portions of Honoka'a, Waimea, and Waikoloa"); <u>Id.</u> at 3-92 (Figures 3-10 and 3-11).

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134	15	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)	Unsupported/Unsubstantiated. See response to proposed finding of fact 133 above.
135	15	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.	Unsupported/Unsubstantiated. There is no credible evidence that customary and traditional practices are reasonably exercised in the proposed TMT Project area. Moreover, the credible and substantial evidence presented in this case demonstrates that significant and appropriate consultation occurred and was considered with respect to the TMT Project. See e.g., UH-TIO FOF ¶¶210-237. The testimony of Dr. Peter Mills was also not credible given his admittedly incomplete review of the relevant documents and his multiple statements that were clearly contradicted by the record. See UH-TIO FOF ¶559. For example, Prof. Mills admitted that he had not read the CDUA and the FEIS in their entirety. Tr. 1/25/17 at 130:9-132:3. Prof. Mills also testified under oath that SHPD sites 16169 and 21447 were omitted from the CDUA. On cross-examination, Prof. Mills conceded that both sites were included in the CDUA. Tr. 1/25/17 at 152:1-153:7;

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			Ex. R-1 at Fig. 4.1. Prof. Mills also admitted that he had not read <u>Kilakila O Haleakala</u> . Tr. 1/25/17 at 147:21-24. Prof. Mills' testimony should be given little or no weight.
136	15	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)	See response to proposed finding of fact 135 above.
137	15	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)	See response to proposed finding of fact 135 above. The FEIS has also been received into evidence in this case. Prof. Mills commented on the DEIS for the TMT Project and described the DEIS as "ha[ving] been professionally prepared." Ex. R-4 at 343 of 531. Prof. Mills conflates the requirements of HRS Chapter 343 with HAR § 13-5-30(c).
138	15	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)	Not in dispute.
139	15	Dr. Taulali'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	Unsupported/Unsubstantiated. Speculative. Dr. Taulali's testimony is not credible and insufficient to support a finding that the TMT Project will have materially detrimental impacts to the physical health

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		are causal factors in poor health outcomes. (Tauali'i, Exhibit B.04a at 1, V.29, Tr. Jan 24, 2017, p. 11:1-25.)	of Native Hawaiians, or the general public. See UH-TIO FOF ¶¶942-947. The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). See UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293.
140	15	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)	See response to proposed finding of fact 139 above.
141	16	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)	See response to proposed finding of fact 139 above.
142	16	Applicant's Mismanagement Continues to Adversely Impact the Natural and Cultural Resources of Mauna Kea.	Inaccurate/False. Unsupported/Unsubstantiated. See UH-TIO FOF ¶¶ 118 through 190.
143	16	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.	Inaccurate/False. Misrepresentation Unsupported/Unsubstantiated. See UH-TIO FOF ¶¶ 344; UH-TIO COL 126 through 293. Ms. Sleightholm does not cite to any legal authority that requires the TMT Project to meet all eight criteria in HAR § 13-5-30(c). Regardless, as demonstrated in the UHH-TIO FOF/COL, the TMT Project meets all eight criteria in HAR § 13-5-30(c).

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144	16	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.	Misleading. Presented out of context. The credible and substantial evidence in the record demonstrates that the TMT Project will not be materially detrimental to the public health, safety, and welfare, in satisfaction of HAR § 13-5-30(c)(8). See UH-TIO FOF ¶¶937-1000; UH-TIO COL ¶¶273-293. That is the relevant inquiry.
145	16	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.	Inaccurate/False. Unsupported/Unsubstantiated. See UH-TIO FOF ¶¶210-237, 611-774; UH-TIO COL ¶¶177-217, 294-385.

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea Science
Reserve, Kahohe Mauka, Hamakua District, Island
of Hawaii, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following parties

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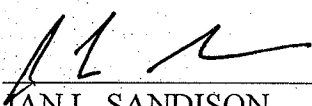
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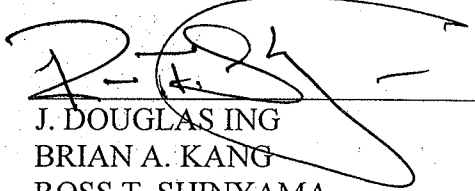
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