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BOARD OF LAND AND NATURAL RESOURCES  
FOR THE STATE OF HAWAI'I

IN THE MATTER OF	)	Case No. BLNR-CC-16-002
	)	
A Contested Case Hearing Re Conservation;	)	<b>CINDY FREITAS EXCEPTIONS</b>
Use Application (CDUA) HA-3568 For the	)	<b>TO HEARING OFFICER'S</b>
Thirty Meter Telescope at the Mauna Kea	)	<b>PROPOSED FINDINGS OF FACT,</b>
Science Reserve, Ka'ohe Mauka, Hamakua,	)	<b>CONCLUSIONS OF LAW; COS</b>
Hawai'i TMK(3)4-4-015:009	)	
	)	

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## **I. INTRODUCTION**

The Applicant University of Hawai'i at Hilo ("UHH") submitted a Conservation District Use application ("CDUA") HA-3568 for the Thirty Meter Telescope ("TMT") at the Mauna Kea Science Reserve, Ka'ohe, Hamakua Hawai'i.

Board of Land and Natural Resources, ("BLNR") appointed Riki Amano (Ret.) as the Hearing Officer ("HO") to take evidence and make a recommendation regarding the UHH application for a permit to build the TMT on Mauna Kea has issued her Proposed Findings of Fact ("FOF") and Conclusions of Law ("COL") and Decision and Order ("D&O") on July 26, 2017 Doc. 783.

The UHH and TMT International Observatory, LLC ("TIO") filed their joint proposed FOF and COL. On May 30, 2017. Doc. 671

## **II. EXCEPTIONS**

I Cindy Freitas take exception to the HO Repeating the same ERROR that the Hawai'i Supreme Court just found unlawful. See Supreme Court of Hawaii Decisions 2015 Mauna Kea Anaina Hou v. Board of Land and Natural Resources.

I take exception to the HO's Proposed FOF/COL/D&O in whole, because the HO failed to review, consider, to take into account or to rule upon Petitioners proposed FOF/COL/D&O.

## **III. DISCLAIMER**

Disclaimers, Objections, Reservations and Joiners and Incorporations are filed on behalf of Pro Se Petitioners Cindy Freitas as part of the Responses to the Applicant's FOF/COL/D&O and I INCORPORATE by reference all these into my EXCEPTION/RESPONSES to the HO PROPOSED /COL/DO on July 26, 2017 Doc. 783. I take EXCEPTION to all issues addressed or contained in HO PROPOSED FOF/COL/D&O

EXCEPTION to all issues addressed or contained in Hearing Officers PROPOSED FOF COL D&O.



## IV. FINDING OF FACTS

### A. PARTY

1. HO FOF 18 is identical to UHH and TIO FOF 19 except HO inserted "I am a" ... till, Ex. S-2. Therefore, HO failed to consider other fact that are relevant.

Cindy Freitas Amended Written Direct Testimony ("WDT")(Exhibit S-2a)

I am a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778 and born and raised in Hawai'i my entire life.

I learned my cultural traditional customary religion practices though my families Lineage. My grandmother and grandfather is the strongest mentor for me in my growing up and raised me in a traditional cultural way. We would go to the mountain and do prayers ("PULE") for many different things. Also I have witness things beyond my understanding till I got older and mostly my grandparents also made sure that we do not desecrate anything on land, ocean or any were else to be respectful of your surroundings.

My grandparents would speak the manaleo style (Old Hawaiian language). While we work mostly in the middle of the Ahupua'a we would also go to the ocean and fish as well. My grandparents would always tell us to pule first before we fish and also give a ho'okupu (is a gift of abundance of mountain food that we bring) and leave it on a rock at the ocean shore line and ask for permission to fish and be safe. Then our catch would be a bounce so that we share with the people that live close to us. We also leave a fish on a rock when we get to the mountain for ho'okupu as well.

As I grew I never forgot my upbringing. Now with a family of my own I teach them also the cultural customary traditional religion practices as well and we as parents learn though our children.

I have enrolled my 2 girls as Kula Kaiapuni O Kona in the early 2000 and we grew with the school with all kinds of chants, pule and protocols. Today the school is name Ehunuikaimalino and located at Konawaena location. Though this school I have learn also so much cultural customary religion practices as well.

As for Mauna Kea and everywhere else in the world I have deep respect for the natural resources and the native plants and things that live within the earth. Today because of the fast development we as people need to keep our natural resources and help to save what is there.

Common Knowledge

I have visit Mauna Kea for years in the past as well as other places on the island for culture customary religion practices and continue to visit places on this island.

Around or about January 2015 till the present I have been visiting Mauna Kea more often to do culture customary religion practices as well as protecting the scared Mauna. It has been very emotionally for me to see what was happening up on Mauna Kea.

I have been witnessing a lot of mankind desecration and an overwhelming flow of visitors that come to Mauna Kea. It saddens me to see that mankind has not taking care of the significant places on the island and especially Mauna Kea.

The machines that was park on the submit of Mauna Kea has been leaking oil (Exhibits S-14c; S-14d; S-14e; S-14f; S-14g; S-10; S-11; S-12; S-30a) also the holes in the ground that



has cement (Exhibits S-7; S-8) on it has never been put back to its natural state. Also, a complaint was filed via email to DLNR about the spill with no respond (Exhibit S-14b; S-15). It was reported to the news at Khon2. (Exhibit S-16). This has cause a substantial adverse impact to existing natural resources within the surrounding area and will be detrimental to the public health, safety, and welfare. (Exhibit S-30)

Professor of Zoology, Mr. William Alanson Bryan who has been appointed by the Board of Regents who discovered the traces of ancient glacial on the northeast and northern sides of the Mauna Kea Summit (Exhibit S-28; S-28a; S-6) Building the TMT on the northern side will cause a substantial adverse impact to the existing natural resources with in the surrounding area and will be detrimental to the public health, safety, and welfare.

As the story was told by Kupuna that on the 13,000 feet level there is a burying ground, where ancient chiefs were laid to rest. (Exhibit S-28d; S-28e) All the Telescope on the Mauna Kea has cause great pain to me to know that the chiefs are laid to rest and adding another telescope will be cumulative to the submit. (Exhibit S-30a; S-30)

I also did the Site Visit on September 26, 2016 with some of the petitioners as well as Hearing Officer, DOCARE officers, OMKM officers and council and others. The transportation was provided by Arnott's Hiking Adventures in a 15-passenger van and the driver to our van was Ikaika. (Exhibit S-29; S-29a; S-29b; S-30)

The Site Visit was so fast all I saw was the beauty of the land and some of the helium balloon.

The Manitowoc 2250 Crane with 300 ton lifting capacity in combination with a 200-ton hydraulic assist crane which will have a substantial adverse impact to existing natural resources with in the surrounding area and will cause a detrimental to the public health, safety, and welfare. (Exhibit S-27 page 18; S-30; S-30a)

There spring water under Mauna Kea which it records in the Basic Water Resources (Exhibit S-18b) Building the TMT on Mauna Kea will destroy the aquifer and cause a substantial adverse impact to the existing waters that flows down the mountain.

The Access Road will have to be modified to move the brand and the telescope which weight tons to get to the submit. The access road will have 30,000 cubic yards of material remove only 3,000 will be fill back into the access road. (Exhibit S-31b; S-31c; S-30; S-30a) Road designs should minimize slope cutting.

The Design of the TMT does not meet the 2000 Master Plan. Section XI of the 2000 Master Plan provides design guidelines to direct development for both renovations of existing facilities and new construction and it addressed the facility siting, scale, height and width, color, surface texture and material, roofs, fences, roadways and parking. (Exhibit S-31)

However Comprehensive Management Plan ("CMP") states as the CMP maintains consistency with the 2000 Master Plan, future updates to the plan should be consistent with the CMP. (Exhibit S-31a) All design guidelines in every document that is written in this preceding does not meet the 2000 Master Plan. (Exhibit S-31a) There for it does not meet the eight Criteria. (Exhibit S-30)

I have watch a fast pace of development and it is getting to the point that the developers and foreign investors are not of our island who don't understand the cultural part of our heritage and will pay big monies to destroy our natural resources and our culture customary religion practices in our own home lands which it is cared to the people of the land.

As a native Hawaiian, I will stand strong for the land and our people and to teach the next generation to hold on to their cultural part of their heritage as well as the natural resources of the land. C. Freitas are a Petitioner in this Contested Case.

Ex. S-2a Cindy Freitas Amended Written Direct Testimony; C. Freitas Tr. 2/21/17: V38; P76: L5-25 and P77:L1-25.

## **B. PROCEDURAL HISTORY**

2. HO FOF 40 failed to consider other fact that is relevant by the Hawai'i Supreme Court opinion.

But the similarity between the HO and the UHH and TIO decision gives the appearance that less than full consideration was given to the "voluminous legal and factual materials presented in the contested case hearing. Such similarity given the appearance that HO already prejudged the case and that the ultimate determination of the merits had moved in predestined grooves" Cinderella, 425 F.2d at 590.

## **C. FIRST PRE-HEARING CONFERENCE RECORD**

3. HO FOF 48. The HO violated the Sunshine rule and due process by hold a pre-hearing conference on May 16, 2016 (Minute Order 5 Doc.16) with not contacting C. Freitas who later found out in May 2016 for the upcoming pre-hearing conference set for June 17, 2017 which I attended to inter as a party (Minute Order 8 Doc. 49) as a *de nova*.

## **D. Pre-Hearing Pleadings**

4. HO FOF 64, and 65 violated HAR 13-1-34, that HO responded to the pleadings 10 months later.
5. Pre-Hearing Filings filed by July 18, 2016  
C. Freitas fact that the Motion out of Time filed August 22, 2016 (Doc. 227). Hearing Officer Denied by Minute Order No. 92 (Doc. 764 filed 7/13/17). The Hearing Officer, untimely Denied the Motion out of Time after 10 months later it was filed. The Hearing officer setting for such filing violated HAR 13-1-34.
6. Pre-Hearing Filing after July 18, 2016  
C. Freitas fact that Memorandum in Support (Doc. 259 filed 9/12/16). Hearing Officer Granted in part, denied in part by Minute order No 45 (Doc. 590, filed 5/2/17). The Hearing officer, again untimely Granted in part, denied in part by 8 months later that it was filed. The Hearing officer again setting for such filing violated HAR 13-1-34
7. C. Freitas fact that the Motion to Amend Doc. 274 Site Visit filed September 21, 2016 (Doc. 278). Hearing Officer Denied by Minute Order No. 95 (Doc. 767 filed 7/14/17). The Hearing officer, again untimely Denied Motion by 10 months



later that it was filed. The Hearing officer again setting for such filing violated HAR 13-1-34.

8. C. Freitas fact that the Motion to Amend Doc. 281 Minute Order No. 19 filed September 26, 2016 (Doc 284). Hearing Officer Denied by Minute Order No. 54 (Doc. 656, filed 5.29/17). The Hearing officer, again untimely Denied Motion by 8 months later that it was filed. The Hearing officer again setting for such filing violated HAR 13-1-34
9. C. Freitas fact that the Motion to Object to Phone Call by Michael Cain on 9/23/16 that was instructed by Hearing Officer Judge Riki Amano (Ret.) filed September 26, 2016 (Doc. 285). Hearing Officer Ordered that the non-motions submissions specified do not warrant decisions and none shall be issued. Minute Order No. 100 (Doc. 774, filed 7/17/17). The Hearing officer, again untimely did not warrant the Motion by 10 months later that it was filed. The Hearing officer violated my due process by law.
10. C. Freitas fact that the Motion for Extention of Time for Filing of Motions, Witness and Exhibit Lists and Direct Testimonies and Pre-Hearing Statement filed October 4, 2016 (Doc. 305). Hearing Officer Denied by Minute Order No. 56 (Doc. 660, filed 5/29/17). The Hearing officer, again untimely Denied Motion by 7 months later that it was filed. The Hearing officer, again setting for such filing violated HAR 13-1-34.
11. C. Freitas fact that the Objection to Minute Order No. \_\_\_ that Hearing Officer Order on October 3, 2016 filed October 7, 2016 (Doc. 331). Hearing Officer Ordered that the non-motion submissions specified do not warrant decisions and none shall be issued. Minute Order No. 100 (Doc. 774, filed 7/17/17). The Hearing officer, again untimely did not warrant the Objection by 9 months later that it was filed. The Hearing officer violated my due process by law.
12. C. Freitas fact that Motion to Dismiss Contested Case Hearing filed on October 18, 2016 (Doc. 391). Hearing Officer Denied by Minute Order No. 62 (Doc. 685, filed 6/4/17). The Hearing officer, again untimely Denied Motion my 8 months later that it was filed. The Hearing officer, again setting for such filing violated HAR 13-1-34.
13. Post-Hearing filings (Including Motion to Admit Evidence)  
Hearing Officer has err in her decision in Minute Order 44. (Doc. 649)  
C. Freitas filed Motion to Admit Exhibits and Written Direct Testimony into Evidence on February 26, 2017 (Doc. 481). Minute Order No 44 (Doc. 553, filed 4/20/17) Granted in part, denied in part as follows:
  1. Exhibits S-18b 1 and S18b 2 was uploded in the Document Libruary on 2/12/17 Seventh Exhibit List.



2. Exhibit S-18L was uploaded in to the Document Library on 2/12/17 Seventh Exhibit List.
  3. Exhibit S-19; S-20; S-22; S-23; S-24; S-25, These exhibit are relevant to this proceeding due to no ruling was done at this time and it was upload in a timely manner in 2016. The Hearing Officer base her decision on UHH objection which is bais and not taking into consideration that the records was not close til July 25, 2017 Minute order 102 (Doc. 782) also *see* Doc. 569 filed on April 26, 2017 by Temple of Lono.
  4. Exhibit S-28e was upload into the Document Library on 1/18/17 as Sixth supplemental Exhibit.
  5. Exhibits S-29; S-29a; S-29b; S-30; S-30a; S-31a; S-31b; S-31c are the same answer as #3 (above).
14. The BLNR has erred in there decision.  
C. Freitas filed a Joinder (Doc. 529, filed 3/22/17) Temple's Motion to BLNR to Disniss HA-3568 filed on 3/19/17, *see* Doc. 516.
  15. Hearing Officer has erred in her decision.C. Freitas, W. Freitas, and Ching;s Joinder fied 3/25/17 (Doc. 548) to Temple's Motion for Proctectiver Order filed March 24, 2017. Hearing Officer Denied by Minute Order No. 76 (Doc. 708, filed 6/11/17) *see* Doc. 548.
  16. C. Freitas Motion for Reconsideration of Minute order 43 filed on 4/25/17 (Doc. 557). Hearing officer again Denied by Minute Order No. 50 (Doc. 646, filed 5/23/17). This shows that there is a bias and due process by law voilation.
  17. C. Freitas fact that the Motion for Extention of Time for Filing of Motions, Witness and Exhibit Lists and Direct Testimonies and Pre-Hearing Statement filed October 4, 2016 (Doc. 305). Hearing Officer Denied by Minute Order No. 56 (Doc. 660, filed 5/29/17). The Hearing officer, again untimely Denied Motion by 7 months later that it was filed. The Hearing officer, again setting for such filing violated HAR 13-1-34.

## E. STANDING

18. HO FOF 62 violated HAR 13-1-31.1 that this contested case started on May 16, 2016. (Minute Order 5) without all the parties nor the STANDING PROCESS should have been the first thing to address.

### §13-1-31 Parties.

- (a) Except as otherwise provided in section 13-1-31.1, parties to a contested case shall be determined within a reasonable time following the ten-day period following the board

meeting, the presiding officer shall notify all persons and agencies, including the applicant or alleged violator, as the case may be, who timely petitioned for the contested case hearing of the date and time for a hearing to determine whether any or all of the persons and agencies seeking to participate in the contested case hearing are entitled to be parties in the contested case. Such notice shall also set the time for filing any objections to the admission of any requestor as a party to the contested case. Without a hearing, an applicant or an alleged violator shall be a party.

#### **F. SETTING THE ISSUES**

19. HO FOF 71 setting the issues to have PUEO filed a Motion to Set the Issues has violated my due process rights. Due to the nature of limited issues', Freitas fact that the Objection to Minute Order No. \_\_\_ that Hearing Officer Order on October 3, 2016 filed October 7, 2016 (Doc. 331). Hearing Officer Ordered that the non-motion submissions specified do not warrant decisions and none shall be issued. Minute Order No. 100 (Doc. 774, filed 7/17/17). The Hearing officer, again untimely did not warrant the Objection by 9 months later that it was filed. The Hearing officer violated my due process by law and Chapter 13 and HAR 13-1-34.

#### **G. SITE VISIT**

20. HO FOF 77, 78, 79, 80, 81 and 82. The HO has violated my due process rights and HAR 13-1-34 in the issue of the Site Visit to Mauna Kea on September 26, 2016.
21. C. Freitas fact that the Motion to Amend Doc. 274 Site Visit filed September 21, 2016 (Doc. 278). Hearing Officer Denied by Minute Order No. 95 (Doc. 767 filed 7/14/17). The Hearing officer, again untimely Denied Motion by 10 months later that it was filed. The Hearing officer again setting for such filing violated HAR 13-1-34.
22. C. Freitas fact that the Motion to Amend Doc. 281 Minute Order No. 19 filed September 26, 2016 (Doc 284). Hearing Officer Denied by Minute Order No. 54 (Doc. 656, filed 5.29/17). The Hearing officer, again untimely Denied Motion by 8 months later that it was filed. The Hearing officer again setting for such filing violated HAR 13-1-34
23. C. Freitas fact that the Objection to September 26, 2016 on Mauna Kea filed on September 27, 2016 (Doc 290) have violated by due process rights as well as my

Article 12 Section and Chapter 1. This Objection was not denied or granted by the HO due to the fact that it was MISSED. In Minute Order 54 Doc 656 filed on 5/29/17 should have been address in this Minute Order and as well as the appendix A, B, C, and D, which again was MISSED.

#### **H. CDUP VOIDED BY BLNR THERE FOR IT SHOULD START NEW**

24. C. Freitas fact that Motion to Dismiss Contested Case Hearing filed on October 18, 2016 (Doc. 391). Hearing Officer Denied by Minute Order No. 62 (Doc. 685, filed 6/4/17). The Hearing officer, again untimely Denied Motion by 8 months later that it was filed. The Hearing officer, again setting for such filing violated HAR 13-1-34.

#### **I. PROCEDURAL HISTORY: EVIDENTIARY HEARING**

25. HO FOF 101 was based on the length of the cross-examination by all and yet the HO changes the rule to imposed a 30- minute time limit on cross-examination, subject to extension of time for good cause shown has showed a bias and a due process violation to the Petitioners and HRS 91-10 #3. Parties object to HO 30-minute time limit on cross-examination. Flores Tr. 10/31/2016: V6: P12: L12-25 and Page 13: L1-12; Ching Tr. 10/31/16: V6: P13: L15-16; Case Tr. 10/31/16: V6: P20: L6-25 and Page 21: L1-15; Mr. Freitas Tr. 10/31/16: V6: p21: l19-25 and P22: L1-25; Fergstrom Tr. 10/31/16: V6: P13: L17; Kaiama Tr. 10/31/16: V6: P13: L19-25 and P14: L1-13; Ward Tr. 10/31/16: V6: P14: L15-24; Sinkin Tr. 10/31/16: V6: P15: L1-25 and P16: L1-7; Pisciotto Tr. 10/31/16: V6: P16: L11-25 and P17: L1-4; Kanaele Tr. 10/30/16: V6: P17: L9-25 and P18: L1-4; Mr. Kealoha Tr. 10/31/16: V6: P39: L3-25.

#### **J. PROCEDURAL HISTORY: POST-HEARING**

26. HO FOF 116 failed to consider scheduling a Respond to the Objection. HO set the deadline of March 9, 2017 for parties to file written motions to move Written Direct Testimonies and exhibits into evidence. March 16, 2017 was set as the deadline for any objections but there were no responds to the objection schedule. There was voluminous objection by UHH, TMT and TIO that created a situation in whether and when to respond to the objections. *See* Temple of Lono Motion for Protective Order filed on 2/24/17 (Doc 546).
27. HO FOF 117, 118, and 120 failed to consider voluminous legal and factual materials presented in the contested case hearing that the transcript was made available will trigger the 30 days to file Finding of Fact and Conclusions of Law.



Parties Objected to 30 days to file Finding of Fact Conclusion of Law. Pisciotta Tr. 3/1/17: V43: P259: L12-16; C. Freitas Tr. 3/1/17: V43: P260: L10-22.

**K. APPLICANT FAILED TO MEET ALL AGREEMENT IN  
THE GENERAL S-4191**

28. HO FOF 123 failed to consider that the General Lease will not allow University to use the leased land as follows:

12. OBJECTS OF ANTIQUITY. The Lessee shall not appropriate, damage, remove, excavate, disfigure, deface or destroy any object of antiquity, prehistoric ruin or monument of historical value.

Ishibashi Tr. 11/16/17 Pages 163 to 175 all lines; Mr. HO Tr. 2/22/17: V39: P97: L16-25, P98: L1-25 and P99: L1-15.

**L. DEVELOPMENT OF ASTRONOMY ON MAUNA KEA FAILED  
TO CONSIDER MAJOR CUMULATIVE IMPACT**

29. HO FOF 129 are identical to UHH and TIO FOF 120. Therefore, HO failed to consider other fact that is relevant. That the proposal TMT will continue to put a cumulative impact to the near the Kukahau'ula Historic Property. Ex. A-1: P 7-13.

30. HO FOF 130 are identical to UHH and TIO FOF 121. Therefore, HO failed to consider other fact that is relevant. The TMT stands 187 in height there for the visual statement on CDUA Ex. A-1-page 7.8 Table 7.5 state TMT will be visual at the height of 164 are incorrect by 23 feet more will cause a cumulative impact as it is.

See CDUA Ex. A-1: P 7-1 to 7-17; Nagata Tr. 12/12/16: V15:P167: L9-11; Dr. Fujikane Tr. 1/9/17: V23:P.224: L1-21; Marti Townsend WDT B.03a

31. HO FOF 131 are identical to UHH and TIO FOF 122.  
There for other relevant fact that should be consider that building the TMT will continue to cause substantial cumulative impact to the existing area. Flores Tr. 1/30/17: V32: P38: L19-25 and P39: L1-19: Flores WDT B.02a.

**M. ASTRONOMY DEVELOPMENT NOT ACCURATE WITH THE  
MASTER PLAN**

32. HO FOF 184 are identical to UHH and TIO FOF 174. Therefore, HO failed to consider other fact that is relevant. The 2000 Master Plan states, “Class A amendment would be major amendments for proposals and require approval by Board of Regents”.

New Projects not identified in the Master Plan with site coverage over 2,000 square feet or a building envelop over 24,000 cubic feet (40’ x 50’ x 12);

Major expansions of existing facility sites not anticipated in the Master Plan (more than 50% of existing floor area or 2,000 square feet, whichever is greater);

Improvement identified in the Master Plan which require significant changes in size or location;

New utility alignments and corridors.

**Table F-3: Summary of Buildings**

Project Component	Gross Floor Area (square feet)	Net Floor Area (square feet)	Height (feet above finished grade)
Observatory Dome	34,304	31,400	26.5 (fixed enclosure) 183.7 (top of dome)
Support Building	18,376	15,961	26

Source: TMT Observatory Corporation, July 17, 2010.

The TMT Project excess the Master Plan Class A Amendments.

Ex. A-48: PXI-14 to XI23; C. Freitas FOF 281, 282 and 283. Nagata Tr. 12/12/16:  
V15:P246: L15-17; Ex. A-1 P B-9.

## **N. PROJECT DESCRIPTION INCONSISTENT**

33. HO FOF 260 are identical to UHH and TIO FOF 252. Therefore, HO failed to consider other fact that is relevant. The footprint of the TMT project will be disturbed by construction, including the access road and all underground utilities. SIHP No. -16172 is located about 225 feet north of the proposed TMT Observatory site and consists of a single upright with several support stones. SIHP No. -16167 is located approximately 500 feet east of the Access Way and about 1,300 feet southeast of the proposed TMT Observatory site and consists of one, possibly two, uprights placed in a bedrock crack. In 1995, the site was revisited and both stones were found in a vertical position. SIHP No. -16166 is approximately 350 feet east of the Access Way and 1,600 feet southeast of the proposed TMT Observatory site and is a multi-feature shrine with a total of eight, possibly nine uprights arranged in two groups. When the site was revisited in 1999 it was noted that several The Batch plant hasn’t been studied carefully. In addition to the shrines, a terrace of unknown function (SIHP No. -21449) was documented in 2005; it is located in Area E approximately 200 feet east of the

Access Way and 700 feet south of the proposed TMT Observatory site. Sanders Tr. 1/3/17: V20: P230: L22-25 and P 231: L1 See C. Freitas FOF 162 and 163; Ex A-1: PA-1 and A-2.

34. HO FOF 262 are identical to UHH and TIO FOF 254. Therefore, HO failed to consider other fact that is relevant. The TMT Access Way will have 30,000 cubic yards raw MATERIAL taken out and only 3,000 cubic yards will be use. The locations of two traditional shrines – SIHP Nos. -16164 and -16165 – were originally recorded in 1982 at some distance from the disturbed area; their locations were verified during the survey for the TMT Project. Both shrines are more than 500 feet west of the Batch Plant Staging Area. C. Freitas Tr. 2/21/17: V38: P98: L21-25 and P99: L1-5; Ex S-31b; Ex A-1: PA-2
35. HO FOF 267b are identical to UHH and TIO FOF 259. Therefore, HO failed to consider other fact that are relevant. The Batch Plant Staging Area are in the alpine stone desert. The plant community in the alpine stone desert consists of several species of mosses and lichens, and a limited number of vascular plants as follows:
- a. The highest densities and diversity of the 21-known species of lichens.
  - b. The 12 species of mosses reported to be present in the alpine stone desert.
  - c. Six species are reported from the summit region: two Hawaiian endemic grasses, Hawaiian bentgrass (*Agrostis sandwicensis*) and pili uka (*Trisetum glomeratum*); two naturally occurring ferns, „iwa„iwa (*Asplenium adiantum-nigrum*) and Douglas“ bladderfern (*Cystopteris douglasii*); and two exotic daisies, Hairy cat“s ear (*Hypochoeris radicata*) and common dandelion (*Taraxacum officinale*).
- Eric Hansen, M.S. WDT B.09a; Hansen Tr. 1/19/19: V27: P158: L1-25 and P159: L1-9.

#### **O. TMT PROJECT ARE INACCUARTE**

36. HO FOF 289 are identical to UHH and TIO FOF 279 except HO inserted WDT Dr. Sanders. Therefore, HO failed to consider other fact that are relevant. Due to the expected increase of heavy traffic during construction there is a chance for more rapid deterioration of the unpaved portions of Mauna Kea Access Road surface and disturbed areas. Construction activities will take place 12-15 hours a day, seven days a week will cause a substantial adverse impact.
37. HO FOF 290 are identical to UHH and TIO FOF 280. Therefore, HO failed to consider other fact that are relevant. The Batch Plant is only 4 acres and there will



be a decommission of another observatory as well as the TMT Project. Dr. Sanders appears that he doesn't know on the details when both TMT Project happens and decommission of observatory. Sanders also stated that the batch plant hasn't been studied carefully. Sanders Tr. 1/3/17: V20: P230: L 22-25 and P231: L1; Sanders Tr. 1/3/17: V20: P45: L14-18.

38. HO FOF 291 are identical to UHH and TIO FOF 281. Therefore, HO failed to consider other fact that are relevant. Mauna kea where strong winds are frequently combined with ice storms, which greatly increases both the weight on the crane structure and the wind cross section. Dr. Sanders also agree that direct effect is a potential to affect the stability and the structure integrity of the crane, while the indirect effects are wind forces causing the load on the hook to move suddenly. Ex A-1-page B-11; Sanders Tr. 1/4/17: V21: P38: L13-17.

#### **P. TMT PROJECT MITIGATION MEASURES FAILED**

39. HO FOF 337 are identical to UHH and TIO FOF 322 except HO inserted Vol 12 and Nees. Therefore, HO failed to consider other fact that are relevant. Although the Batch Plant are in the alpine stone desert there will be 21 known species of lichens, 12 species of mosses and vascular plants that will be destroyed if TMT Project should use the Batch Plant area. The TMT Project cannot restore those species it will cause a substantial adverse impact. Ex A-1 page 3-5.
40. HO FOF 341 are identical to UHH and TIO FOF 326 except HO inserted training, Vol 21, 20 and Dr. Sanders. Therefore, HO failed to consider other fact that are relevant. Mr. Ishibashi was hired as employee for OMKM and Mr. Klasner has given Mr. Ishibashi the training although he has been train for one-hour orientation, Mr. Ishibashi has knocked over an upright stone (ahu). Therefore, Mr. Ishibashi has desecrated a cultural structure, that Mr. Ishibashi was hired to protect. Ishibashi Tr. 11/16/17: V9: P165: L1-25; Dr. Kahakalau WDT Ex B.06a.

#### **Q. TMT PROJECT DECOMMISSIONING NOT ACCURATE**

41. HO FOF 347 are identical to UHH and TIO FOF 322 except HO inserted Vol 21. Therefore, HO failed to consider other fact that are relevant. The excess landscape materials that will be removed from the TMT Project will be used to restore the decommissioning observatory that will expire by 2033. The material may not be enough to restore TMT Project by 2033. Ex A-1 page 4-42.

**Table 4-14: Number of Observatories by 2033**

Observatory	Count
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Observatories to Remain or be Replaced in the Astronomy Precinct by 2033	
Optical/infrared: CFHT, UH 2.2m, Gemini, IRTF, UHH 0.9m, Keck, and Subaru	7
Submillimeter/radio: One of the three submillimeter observatories (SMA, JCMT, or CSO)	1
Observatories Estimated to be Removed and Not Replaced by 2033	
UKIRT and VLBA	
Two of the three radio telescopes (SMA, JCMT, or CSO)	
New Observatory on a New Site in the Astronomy Precinct by 2033	
Thirty Meter Telescope	1
Total Observatories in the MKSR by 2033	9

**Table 4-13: Current Number of Observatories**

Observatory	Count
Current Observatories in the Astronomy Precinct	
Optical/infrared: CFHT, UH 2.2m, Gemini, IRTF, UHH 0.9m, Keck, Subaru, and UKIRT	8
Submillimeter/Radio: SMA, JCMT, and CSO	3
Current Observatories in MKSR but outside Astronomy Precinct	
Radio: VLBA	1
Total Observatories Currently in the MKSR	12

42. HO FOF 462 failed to consider other facts that are relevant. The proposed TMT Project will have a substantial adverse impact on natural resources in the area. C. Freitas Amended WDT S-2a at 2-3.

**R. CRITERION TWO, HAR § 13-5-30(C)(2): "THE PROPOSED LAND USE IS NOT CONSISTENT WITH THE OBJECTIVES OF THE SUBZONE OF THE LAND ON WHICH THE USE WILL OCCUR"**

43. HO FOF 465 are identical to UHH and TIO FOF 386 except HO inserted White. Therefore, HO did not consider other fact that are relevant. However, 13-5-24(4) and 13-5-25-R-3-(D-1) clarify that use of a resource subzone for an astronomy facility not only requires an approved management plan but also requires a board permit. Kehaunani Abad, PHD WDT B.08a.
44. HO FOF 489 are identical to UHH and TIO FOF 412. Therefore, HO did not consider other fact that are relevant. Nagata admitted, that the CMP was never updated. Flores admitted, that CMP should have been updated by April of 2014. Nagata Tr. 12/12/16: V15: P174: L4-14; Flores Tr. 1/30/17: V32: P77: L16-25 and P78: L1-8; Ex B-39.



**S. CRITERION FOUR, HAR § 13-5-30(C)(4): "THE PROPOSED LAND USE WILL CAUSE SUBSTANTIAL ADVERSE IMPACT TO EXISTING NATURAL RESOURCES WITHIN THE SURROUNDING AREA, COMMUNITY, OR REGION"**

45. HO FOF 476 are identical to UHH and TIO FOF 400. Therefore, HO did not consider other fact that are relevant. Flores states that there is no list of who will you consult with. Nagata testified that she does not have a list to consult with. Flores Tr. 1/30/17: V32: P 42: L1-25, P43: L1-25, and P44: L1-4; Nagata Tr. 12/12/16: V15: P121: L7-225 and P122: L1-25.
46. HO FOF 509 are identical to UHH and TIO 440 except HO inserted Hayes. Therefore, HO did not consider other fact that are relevant. TMT will significantly add to the substantial adverse impact to the natural resources. TMT mitigating is to decorate the building inside with furnish spiritual attributes of Mauna Kea. How can that be mitigating anything they destroyed by decorating? Flores Tr. 1/30/17: V32: P91: L16-15 and P92: L1-3.
47. HO FOF 511 are identical to UHH and TIO 444. Therefore, HO did not consider other fact that are relevant issues that the CDUA failed in the building of the TMT Project was not supporting documents or information for the BLNR. The 2000 Master Plan states that major project needs to be Amended and TMT Project is considered major project. Ex S-31c; S-31d; S-31e.
48. HO FOF 512 are identical to UHH and TIO 448. Therefore, HO did not consider other fact that are relevant. UH Hilo has shown a sufficient level of impact on natural resources, within the MKSR due to poor management. 1/9/17: V23: P220: L22-24.

**a. Cultural Resources and Practices are not consistent**

49. HO FOF 798 did not consider other fact that are relevant issue that describes TMT Project to cause substantial adverse impact to the existing natural resources that is stated in C. Freitas WDT Ex. S-2a page 2-3; C. Freitas Tr. 2/21/17: V38: P105: L24-25 and P.106: L 1-12.
50. HO FOF 681 are identical to UHH and TIO FOF 621 except HO inserted "Hawaiian traditional and customary practices. These various materials include:". Therefore, HO did not consider other fact that are relevant. All plans should be updated to meet today's issues as follows:
- a. CMP approved April 2009.
  - b. CRMP approved October 2009.
  - c. Mauna Kea-Ka Piko Kaulana o Ka "Aina" May 2010.
  - d. 2000 Master Plan approved 2000
  - e. FEIS for TMT Project May 2010
  - f. CIA produce for TMT FEIS May 2010



- g. AIS for the Mauna Kea Summit Region 2010
- h. CDUA 2010
- i. TMT Management Plan 2009
- j. TMT Draft Historic Preservation Plan 2009
- k. TMT Historical and Archaeological Site Plan 2009
- l. Mauna Kea Historic Preservation Plan Management Components 2000
- m. Archaeological Assessment Report for Hale Pohaku 2000
- n. Final Environmental Assessment for the CMP April 2009
- o. Final AIS for the MKSR and Final AIS for Astronomy Precinct January 2010

BLNR or DLNR should have done an independent analysis such as Kapa'akai so information could be used to update a land utilization zones map and inventory. Flores Tr. 1/30/17: V32: P160: L19-23.

- 51. HO FOF 691 are identical to UHH and TIO FOF 634 except HO inserted place and Rechtman. Therefore, HO failed to consider other fact that are relevant. A ho'okupu is an offering to my ancestors who came before me and in honor we put a ho'okupu (offering) to knowledge them. By taking away the ho'okupu has destroyed the connection between me and my ancestors that cannot be captured again. The intent has cause me great grief in me. Therefore, the Desecration has been done in 2017 (new evidence) and 2015 at the 3.0 and 3.5-mile marker on the submit and it continues today. Unfortunately, the DLNR has response to inquiry that all document received are being filed. (APPENDIX A) However, only exceptions and responsive briefs will be uploaded to the document library. A violation of HAR 13-1-39.

#### **b. Hydrology and Water Resources are not consistent**

- 52. HO FOF 872 are identical to UHH and TIO FOF 813 except HO inserted Rosier til. She feels. Therefore, HO failed to consider other fact that are relevant. Rosier referred to oil leaks during pre-construction activities for TMT Project. Equipment wasn't in used on a consistent basis for a long enough period the oil tends to be under pressure at that point it leaks. Rosier Tr. 2/16/17: V37: P57:L20-25 and P58: L1-7; Tr. 2/16/17: V37: P44: L6-10; Rosier WDT Amended S-17a.

#### **T. CRITERION SIX, HAR § 13-5-30(C)(6): "THE EXISTING PHYSICAL AND ENVIRONMENTAL ASPECTS OF THE LAND, SUCH AS NATURAL BEAUTY AND OPEN SPACE CHARACTERISTICS, WILL NOT BE PRESERVED OR IMPROVED UPON, WHICHEVER IS APPLICABLE**

- 53. HO FOF 923 are identical to UHH and TIO FOF 873 except HO deleted The TMT til the end of sentence. Therefore, HO failed to consider other facts that are relevant. Overall the existing level of cumulative visual impacts from the past

projects at the summit is substantial, significant and adverse. If the TMT is built the TMT project would represent an additional increment. Cumulative impact is the sum of increments, essentially, and would add to the cumulative impact that is substantial, significant and adverse. Hayes Tr. 10/25/16: V3: P155: L10-23.

54. HO FOF 925 are identical to UHH and TIO FOF 876. Therefore, HO did not consider other fact that are relevant. There TMT failed to mitigate and appropriate measure and condition, however Mr. White admit that an 18 story will impact the view between one cultural site to another cultural site. White Tr. 10/20/16: V1: P76: L9-24.
55. HO FOF 929 are identical to UHH and TIO FOF 881. Therefore, HO did not consider other fact that are relevant. The TMT design plan are not consistent with the 2000 Master Plan. Ex S-31c, S-31d and S-31e.
56. HO FOF 930 are identical to UHH and TIO FOF 882. Therefore, HO did not consider other fact that are relevant. The TMT size, dimension and dome structure exceeds the dimension in the 2000 Master Plan which states in the Amendment Procedures that over 2,000 square feet or a building envelop over 24,0000 cubic feet. Ex. S-31d
57. HO FOF 932 are identical to UHH and TIO FOF 884. Therefore, HO did not consider other fact that are relevant. The viewpoints did no considered the substantial adverse impact of existing observatory, adding another observatory will only add to the existing impacts. White Tr. 10/20/16: V1: P76: L22-23.
58. HO FOF 935 are identical to UHH and TIO FOF 890. Therefore, HO did not consider other fact that are relevant. The TMT Project will not preserve the existing physical and environmental aspects of the land cause it will only add to the cumulative impact.

**U. CRITERION EIGHT, HAR § 13-5-30(C)(8): "THE PROPOSED LAND USE WILL BE MATERIALLY DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE"**

59. HO FOF 987 are identical to UHH and TIO 972 except HO inserted Munroe WDT S-14a partially the HO failed to consider other facts that are relevant. Munroe has observed at the Glover Construction location at Hakalau, they had a waterproof liner first and then the absorbent material which was all black on top of that. And when the equipment is parked, it goes on top of that, and that's what holds it down. TMT were not using their best management practices on Mauna Kea. N. Munroe Tr. 2/16/17: V37: P178: L11-25, Page 179: L1-5.



60. HO FOF 988 failed to consider other facts that are relevant to the detrimental to the public health, safety, and welfare. In Nanci Munroe Amended WDT S-14a, about the facts in her words:

Witness testimony of Nanci Munroe of evidence of oily substance leaking from machinery at the site of the TMT Access Road in May & June of 2016 I was born in Portland, Oregon & raised in Tucson, Arizona. I moved to Hawai'i in August 1976 to attend college at the University of Hawaii at Hilo. I enrolled in prerequisite courses for the Dental Hygiene Program at University of Hawai'i at Manoa, as well as classes in Hawaiian language with Pua Kanahele & Hawaiian studies with Auntie Edith Kanahele, who gave me the Hawaiian name of Nohea. I was hired at GTE Hawaiian Telephone Company in Hilo on April 24, 1979. I was accepted into the dental hygiene program in Vancouver, Washington in August of 1979, but declined. I was able to continue attending classes part-time at UH-Hilo from which eventually earned an Associate of Arts degree in Liberal Arts in 1984 at a point for which I would have only required 15 more credit hours to earn a Bachelor's degree. I retired from Hawaiian Telcom in Honolulu on August 10, 2012 with over 33 years of service. Since then I also have done some part-time work for Laulima Title Search & Claims. I served as Team Leader for Verizon Hawaii's participation in the Leukemia & Lymphoma Society's "Light The Night Walk" in Honolulu in 2000 & 2001. The first year, 2000, we raised over \$12,000 and were recognized as the top corporate team. I served as a Cub Scout Den Leader for Pack 117 chartered by Kahalu'u United Methodist Church on O'ahu from August 2000 until May 2004. I served as an adult Scout Leader for Troop 117 chartered by Kahalu'u United Methodist Church on O'ahu from September 2004 until April 2010. I accompanied the troop on one "high adventure" trip to Kaho'olawe in 2009. I served on the Board of Directors for the Caledonian Society of Hawai'i from 2009 to 2012. Our traditional "Burns Supper" has been attended by dignitaries from the community & other countries. I served on the Board of Directors for Calvary Episcopal Preschool in Kane'ohe from 2010 to 2012. I am Christian in the Anglican/Episcopal Church, and have served as a lay minister and a lector reader. I respect other beliefs and cultures, have attended services in other faiths, and have attended and participate in Hawaiian cultural events & practices whenever I'm able. I have kanaka maoli relatives by marriage who call me "cousin", as well as many local people I consider my hanai 'ohana. On approximately April 14, 2015 I joined other protectors of Mauna A Wakea at Hale Pohaku in anticipation of resumption of work for the Thirty Meter Telescope project. I stayed most nights on the Mauna until approximately June 28, 2015. I began to document activities on the Mauna with my cell phone and shared on social media almost daily. I began a routine of regular site visits with others on Monday mornings to the location of the TMT Access Road to monitor any activity for which we may have been unaware of during the previous week. As security guards were always on duty at the top of the TMT Access Road preventing access to walk on the portion of the road which appeared to have been already ripped & graded, we would hike beyond the construction zone delineated by stanchions & wire over difficult terrain of both a'a & pahoehoe types of lava in order to view the equipment which had remained there from the initial attempts to create the road. There were two excavators & two bulldozers on the new TMT Access Road, and I was able to photograph each of these pieces of machinery with evidence of some type of dark, apparently liquid substance leaking from each of them. In addition, there was a large truck with a trailer type of rig on the Mauna Kea road from which the TMT Access Road began which had 2 very large "oil leaks" nearby. It is unknown what type of liquid was leaking from the equipment, whether it was some type of motor oil, transmission oil, or some other oil or fuel used in heavy machinery, I refer to them as "oil leaks". There were no mitigation measures visible. The four machines on the TMT Access Road each had some type of absorbent pad, or pads, held down with loose rocks, which to me would be



best described as looking like training pads for puppies, or incontinence pads used on beds for medical patients. On at least one bulldozer, the pad had been blown loose to the point that it was no longer effective in catching the oil, which then leaked onto the ground. One at least one bulldozer there were pads above the 'tractor' treads as well as below, indicating that the volume of leakage was more than what the upper pad could absorb, so an additional pad was required below. Under one of the excavators was some type of rectangular yellow tray which appeared to me to be similar to what may be used to drain oil into from an automobile during a regular oil change but on a larger scale. At a BLNR hearing on the TMT in Honolulu on June 12, 2015 I was informed by way of a Facebook message that my photographs had been shown, and the members of the BLNR were very interested in them. A new reporter from television station KHON was at the hearing and requested more photographs, which I provided to them, which were then aired that evening on their news station in a story about the machinery leaking oil. During a subsequent visit to the TMT Access Road I discovered that the 2 large oil spills on the Mauna Kea road on which the tractor-trailer rig was parked had been disturbed in a manner that appeared that somebody had kicked rocks & dirt over them and attempted to scrape the darker soil away, or perhaps scatter it. No other mitigation measures were seen. During a discussion with my cousin hereon the island I was advised about "Best Management Practices" which require drip-control measures to be used by her employer, J. W. Glover, during work on Highway 11 near Hakalau. I visited this location and took photographs and discussed the procedures with Glover employees at the site. Any equipment not in use must be parked on 2 different types of materials layered on top of each other to prevent any viscous fluids from being allowed to be leaked into the environment. This is NOT being used at Mauna A Wakea, which results in fluids being allowed to drip onto & into the soil. I have provided copies of the photographs which show machinery with leaks on the Mauna Kea Road, to Cindy Freitas, a petitioner to the Contested Case Hearing regarding the application for a Conservation District Use Application.

Most sincerely,  
Nanci Munroe

61. HO FOF 989 are identical to UHH and TIO FOF 973 except HO inserted MUNROE. Therefore, HO failed to consider other fact that are relevant. Under an excavator there were leaks and there was puppy pad being below it held down with rocks. With a best management practice, you would know that there are leaks of oil under any machinery that was at the pre-construction area at the TMT project. There is no plan in Ex-A-1 for oil spills. Munroe Tr. 2/16/17: V37: P 194: L6-9; Rosier Tr. 2/21/17: V38: P44: L1-10.
62. HO FOF 990 are identical to UHH and TIO FOF 974 except HO inserted MUNROE. Therefore, HO failed to consider other fact that are relevant. The best management practices should have used liners under every equipment that when parked that liners will not blow away like the absorbent pads in Ex. S-14e and S-14f. There is no plan for oil spill cleanup in Ex. A-1. Munroe Tr. 2/16/17: V37: P217: L2-21.
63. HO FOF 991 are identical to UHH and TIO FOF 975 except HO inserted MUNROE. Therefore, HO failed to consider other fact that are relevant. Although OMKM has set best management practices for construction activities

there is no plan in Ex. A-1 for oil spill cleanup. Example of COS was leaking for 20 years before OMKM clean it up. Rosier Tr. 2/21/17: V38: P62: L11-25.

64 HO FOF 992 are identical to UHH and TIO FOF 976 except HO inserted Rosier name. Therefore, HO failed to consider other fact that is relevant.

Susan Rosier Amended WDT S-17a

I live in the Waikahekahe Aphupua'a Puna, Moku O Keawe (Hawai'i).

This is my amended testimony to be considered as an addition to my Written Direct Testimony of my experience and background pages submitted on 11/1/2016 (S-17)

In that testimony, I spoke of my experience with a certain excavator that had a broken house lock and had to be chained from underneath between the tracks. There is in evidence in this hearing, a picture of a leaky excavator that was parked for month on Mauna Kea summit (S-14f).

Hydraulic leaks are so common and that is what concerns me deeply as the drinking water on these island is precious and running out rapidly as wells turn salty from water levels lowering into the sea level water.

Government agencies are becoming more concerned as is evidenced in the USGS 7 year study of Hawaiian water resources. In the past studies such as the one by the DLNR themselves in 1970 titled "An Inventory of Basic Water Resources (S-18b) were done to help the plantation industries find new sources for their diversion systems and to know how much was available from certain springs and streams.

The USGS' "Groundwater in Hawai'i" (S-18l) is another example that goes even further to explain about dikes and permeation of different lava flows. This report even talks about 'fogdrip' that seeps into the ground and contributes to high level water tables.

Another word for fog would be mist like that of the mists of Lilinoe that surrounds the summit of Mauna Kea almost daily. You can see her usual daily cloud cycles from East Hawai'i as she rolls in and then the clouds subside by nigh fall.

When I see pictures such as the one in S-18m, it is hard to believe that a 'professional operator' would leave his/her equipment under hydraulic pressure with the ripper, bar in the elevated position and the shank erect sticking in the ground or the blade not set right upon the ground. This machine was up there for months in extreme weather conditions making it ripe for a hydraulic hose leak or bursting.

As you will see in my exhibit numbered S-18a entitled Hydraulics 101, it is not a question of when hydraulic fluid will leak out, it is only a question of how. Will a hose fray? Will it burst under pressure as the two hoses that were flailing in the air spewing hot oil all over me and the tourists convertibles at Maui Intercontinental Hotel.

TMT themselves admit it: "...leakage will typically occur in worn, cracked for frayed hoses, sticking air valves and cylinder packing" (S-18g). Of course they were speaking of inside the observatory, but that is where we should least expect it. Sadly it has happened more than once inside Mauna Kea Observatories.

The Cal Tech Observatory called CSO had a doozy! (S-18d) It required disposal of 3500 lbs. Of contaminated backfill that was removed from the drain. Of course all that hydraulic fluid wasn't theirs. Chemical analysis would prove that some was most likely from construction more than 20 years prior. The oil leak had spread laterally under the



concrete foundation of the observatory. It was supposed to be removed upon the decommissioning of the telescope in 2016. Well, I see that hasn't happened since this is 2017 and the facility is still up there! The good news is there is no drain planned for TMT so they should be able to keep it inside like the Subaru telescope claims to have achieved when they had their mercury spill.

Heavy equipment though is by far the greatest risk of contamination seeping into the soil and gravitationally being pulled downward towards the high level water table. Just the ground preparation equipment (S-18c) alone could spill huge amounts in a minute! Let's take my excavator experience as an example. That machine has a hydraulic tank that holds 107.5 gallons in its system. The main system cycles 203 gallons per minute! Doesn't take too long to empty the main system when 2 under pressure hoses burst or their fittings fail with the load. Do you see my point? It makes me wonder how much contamination has already occurred on Mauna Kea through the construction of 13 telescopes. S-18c tells the tale of Hydraulic hoses, fittings and couplings and their leakage potential.

I shutter to think of the construction of the first ones in the 60's when oil disposal was dumping it out on the ground. We have learned a lot since then. Possibly we have learned when enough is enough; I hope so. For we are talking of Conservation Land. Land that is to be preserved 'not contaminated. We are also talking of future generations here on Hawai'i Island that might not have fresh water to drink. As one of the witnesses said it might take hundreds of years to reach the ocean. How long will it take to reach the high level water table? Yes, there is one. I hope you now understand how deeply concerning this project should be to everyone. Rosier Tr. 2/16/17: V37: P234: L22-25

64. HO FOF 993 are identical to UHH and TIO FOF 977 except HO inserted Rosier. Therefore, HO failed to consider other fact that is relevant. Rosier stated that oil goes into the ground, and we've had testimony here about the aquifer on the Mauna. It will be exposed. C. Freitas Tr. 2/21/17: V38: P84: L9-13; Rosier Tr. 2/16/17: V37: P230: L14-24

65. HO FOF 1007 are identical to UHH and TIO FOF 991 except HO inserted PRO. JOHNSON. Therefore, HO failed to consider other fact that are relevant. The 700 or more (charges were drop by the Third Circuit Court) protectors did not block the access road there were in pule, chanting. When there were told to move on the side they continue there pule, chanting on the side of the road. DLNR continue up the road. C. Freitas Tr. 2/21/17: V38: P137: L11-19; Prof. Johnson Tr. 2/16/17: V38: P20: L13-25 and P21: L1-18.

66. HO FOF 1015 are identical to UHH and TIO FOF 999 except HO inserted Aluli and Prof. Therefore, HO failed to consider other fact that are relevant. All evidence in the Document Library <http://dlnr.hawaii.gov/mk/evidence/> for all OPPOSING INTERVENORS and PETITIONERS has offered voluminous



evidence presented in the contested case hearing that the TMT Project will cause harmful to the health, safety, and welfare of the native Hawaiians and the public.

67. HO FOF 1016 are identical to UHH and TIO FOF 1000 except HO inserted 1016. Therefore, HO failed to consider other fact that are relevant. Based on factual findings of facts that was ignored throughout this process of voluminous evidence. But the similarity between the HO and the UHH and TIO decision gives the appearance that less than full consideration was given to. TMT Project will cause a substantial adverse impact to the cultural, environment and resources on Mauna A Wakea does not satisfied HAR 13-5-30(c)(8).

## V. CONCLUSION

I hereby incorporate the Propose Finding of Fact and Conclusions of Law (2011-2013 and 2015-2017 CCHs) RESPONSES AND EXCEPTIONS, into this document, my Propose Findings of Fact and Conclusions of Law, by reference, as follows:

Kealoha Piciotta and Mauna Kea Anaina Hou; Clarence Kukauakahi Ching; Flores-Case 'Ohana; Deborah J Ward; Paul K. Neves; Harry Fergerstrom; Mehana Kihoi; C.M. Kaho'okahi Kanuha; Joseph Kaulii Lindsey Camara; J. Leina'ala Sleightholm; Lanny Alan Sinkin Rep., for Temple of Lono; Kalikolehua Kanaele; Stephanie-Malia: Tabbada; Tiffnie Kakalia; Glen Kila; Dwight J. Vincent; Brannon Kamahana Kealoha; William Freitas; Dexter K. Kaiama, Yuklin Aluli, Counsel for Kahea.

I OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.

I reassert my Proposed Decision and Order. Based on the Finding of Facts and Conclusions of Law as provided by all of the Pro See Parties and on the whole record, the Thirty Meter Telescopes Conservation District Use Permit should be **DENIED**.

Kailua Kona HI. August 21, 2017



Cindy Freitas Petitioner

Cindy Freitas  
P.O. 4650  
Kailua Kona HI 96745  
hanahanai@hawaii.rr.com

BOARD OF LAND AND NATURAL RESOURCES  
FOR THE STATE OF HAWAII

IN THE MATTER OF	) Case No. BLNR-CC-16-002
	)
A Contested Case Hearing Re Conservation;	)
Use Application (CDUA) HA-3568 For the	) CERTIFICATE OF SERVICE
Thirty Meter Telescope at the Mauna Kea	)
Science Reserve, Ka'ohē Mauka, Hamakua,	)
Hawai'i TMK(3)4-4-015:009	)
_____	)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of CINDY FREITAS EXCEPTIONS TO HEARING OFFICER'S PROPOSED FINDING OF FACT was served on the following parties by email on August 21, 2017:

Michael Cain <[michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov)>, Office of Conservation & Coastal Lands <[dlmr.maunakea@hawaii.gov](mailto:dlmr.maunakea@hawaii.gov)>, Kealoha Pisciotto-Keomailani Von Gogh <[keomaivg@gmail.com](mailto:keomaivg@gmail.com)>, Clarence Ching <[kahiwaL@cs.com](mailto:kahiwaL@cs.com)>, Uncle Kalani Flores <[ekflores@hawaiiantel.net](mailto:ekflores@hawaiiantel.net)>, Pua Case <[puacase@hawaiiantel.net](mailto:puacase@hawaiiantel.net)>, cordylinacolor@gmail.com, kealiikea@yahoo.com, Bianca Isaki <[bianca@kahea.org](mailto:bianca@kahea.org)>, Ian Sandison <[isandison@carlsmith.com](mailto:isandison@carlsmith.com)>, tluikwan@carlsmith.com, John P. (Pete) Manaut <[jpm@carlsmith.com](mailto:jpm@carlsmith.com)>, Lindsay N. McAneeley <[lmcaneley@carlsmith.com](mailto:lmcaneley@carlsmith.com)>, T. Shinyama' <[RShinyama@wik.com](mailto:RShinyama@wik.com)>, douging@wik.com <[douging@wik.com](mailto:douging@wik.com)>, mehana kihoi <[uhiwai@live.com](mailto:uhiwai@live.com)>, Kahookahi Kanuha <[kahookahi@gmail.com](mailto:kahookahi@gmail.com)>, Joseph Camara <[kualiic@hotmail.com](mailto:kualiic@hotmail.com)>, lsa@torkildson.com <[lsa@torkildson.com](mailto:lsa@torkildson.com)>, njc@torkildson.com <[njc@torkildson.com](mailto:njc@torkildson.com)>, leina'ala s <[leinaala.mauna@gmail.com](mailto:leinaala.mauna@gmail.com)>, Maelani Lee <[maelanilee@yahoo.com](mailto:maelanilee@yahoo.com)>, Lanny Sinkin <[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)>, akulele@yahoo.com <[akulele@yahoo.com](mailto:akulele@yahoo.com)>, s.tabbada@hawaiiantel.net <[s.tabbada@hawaiiantel.net](mailto:s.tabbada@hawaiiantel.net)>, tiffniekakalia <[tiffniekakalia@gmail.com](mailto:tiffniekakalia@gmail.com)>, Glen Kila <[makakila@gmail.com](mailto:makakila@gmail.com)>, Brannon Kealoha <[brannonk@hawaii.edu](mailto:brannonk@hawaii.edu)>, hanahanai@hawaii.rr.com <[hanahanai@hawaii.rr.com](mailto:hanahanai@hawaii.rr.com)>, pohaku7@yahoo.com <[pohaku7@yahoo.com](mailto:pohaku7@yahoo.com)>, Ivy McIntosh <[3popoki@gmail.com](mailto:3popoki@gmail.com)>, Kealamakia Jr. <[mkealama@yahoo.com](mailto:mkealama@yahoo.com)>, Yuklin Aluli <[yuklin@kailualaw.com](mailto:yuklin@kailualaw.com)>, Dexter Kaiama <[cdexik@hotmail.com](mailto:cdexik@hotmail.com)>.

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Dwight Vincente  
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Hilo, Hawaiian Kingdom

Harry Fergerstrom  
P.O. 951 Kurtistown, HI 96760

Dated: August 21, 2017

A handwritten signature in dark ink, appearing to read 'Cindy Freitas', with a long horizontal line extending to the right.

---

Cindy Freitas Petitioner



Cindy Freitas  
P.O. 4650  
Kailua Kona HI 96745  
hanahanai@hawaii.rr.com

BOARD OF LAND AND NATURAL RESOURCES  
FOR THE STATE OF HAWAII

IN THE MATTER OF	)	Case No. BLNR-CC-16-002
	)	
A Contested Case Hearing Re Conservation;	)	CINDY FREITAS MOTION TO
Use Application (CDUA) HA-3568 For the	)	RECONSIDERATION OF
Thirty Meter Telescope at the Mauna Kea	)	MINUTE ORDER NO. 101;
Science Reserve, Ka'ohe Mauka, Hamakua,	)	COS
Hawai'i TMK(3)4-4-015:009	)	
	)	

**CINDY FREITAS MOTION TO RECONSIDERATION OF**  
**MINUTE ORDER NO. 101**

Cindy Freitas, "Petitioner", hereby submits its Motion to Reconsideration of Minute Order No. 101. This motion is made pursuant to Hawai'i Administrative rules 13-1-32, 34 and 35 ("HAR"). I have the right in a due process that this Motion is warrant pursuant to Hawaii State Constitution Article 1, Section 5.

Kailua Kona HI. July 27, 2017

Cindy Freitas Petitioner

Cindy Freitas  
P.O. 4650  
Kailua Kona HI 96745  
hanahanai@hawaii.rr.com

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF	) Case No. BLNR-CC-16-002
	)
A Contested Case Hearing Re Conservation;	) MEMORANDUM IN SUPPORT
Use Application (CDUA) HA-3568 For the	) OF MOTION;COS
Thirty Meter Telescope at the Mauna Kea	)
Science Reserve, Ka'ohe Mauka, Hamakua,	)
Hawai'i TMK(3)4-4-015:009	)
_____	)

**CINDY FREITAS MOTION TO RECONSIDER MINUTE ORDER 101**

**INTRODUCTION**

The Hearing Officer states that in Minute Order 101 claims that Cindy Freitas Motion to Admit Exhibits Out of Time (Doc. 760) is justified untimely and irrelevant and that the Motion and request for reconsideration do not constitute good cause for granting the same and the process for reconsideration is unwarranted.

**ARGUMENT**

I Cindy Freitas, "Petitioner" moves the Hearing Officer to Reconsideration of Minute Order 101.

Petitioners Motion to Admit Exhibits Out of Time (Doc. 760) was filed and upload into the Document Library on July 10, 2017 which makes the record of the contested case

hearing open. On July 25, 2017 Minute Order No. 102 Declaration Record Closed was uploaded into the Document Library. There fore closing the records as of July 25, 2017. Petitioner filed 15 days before the records were officially closed.

This new evidence that were submitted into the Motion is relevant to the decision of the Hearing Officer that removal of ho'okupu on July 24, 2017 and removal of a Ahu o Kauakoko in 2015 violates Hawaii Revised Statue 711-1107 stated as follows:

§711-1107 Desecration. (1) A person commits the offense of desecration if the person intentionally desecrates:

- (a) Any public monument or structure; or
- (b) A place of worship or burial; or
- (c) In a public place the national flag or any other object of veneration by a substantial segment of the public.

(2) "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant's action.

(3) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both. [L 1972, c 9, pt of §1; gen ch 1993; am L 2002, c 198, §1]

Taking of a ho'okupu with in two hours or less from the time we place it on the area on June 24, 2017 at the 3.0 and 3.5 mile marker were Ahu o Kauakoko once stood as well as taking away the ahu in 2015 has deeply traumatize me that someone has desecrated my cultural customary traditional practice to honor my ancestor and insulted my ancestor and by taking away the scared chanting and offering that has so much mana (power) in it, that destroyed the connection between me and my ancestors that cannot be captured again. The intent has caused me great grief in me.



Therefore the Desecration that has been done in 2017 and 2015 at the 3.0 and 3.5 mile marker on the summit of Mauna A Wakea has brought an outrage of the sensibilities to me and my Ohana, that University of Hawaii at Hilo, Board of Land and Natural Resources and Department of Land and Natural Resources has not protected the rights of Tradition and Customary Rights that is a living practices that exist today and to our future generation to come pursuant to Hawaii Constitution Article 12 section 7 as follows:

#### TRADITIONAL AND CUSTOMARY RIGHTS

Section 7. 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. [Add Const Con 1978 and election Nov 7, 1978]

The State agencies are not doing there fiduciary duties to regulate such right for the betterment of the descendants of native Hawaiians who has inhabited the Hawaiian Islands prior to 1778. *See Hawaii v. Hawaii County Planning Commission (PASH)*, 79 Hawaii 425, 903 P.2d 1246 (1995). 89 Hawaii at 186, 970 P.2d at 494 and *Pele Defense Fund v. Paty*, 73 Haw. 578, 619, 837 P.2d 1247 (1992).

July 2017 A follow-up Recommendations from Report No. 14-07, Follow-up Audit of the Management of Mauna kea and the Mauna kea Science Reserve. Exhibit 1

Found that Recommendation set fourth in the Audit was either Not Implemented or partially implemented. On page 10 of Exhibit 1 in the Appendix section states that some of the issue are still open which is the removal of offerings and construction of new Hawaiian cultural features, has not been resolved which in this case is very critical to this contested case decision.

By all means the traditional common law definition of “RELEVANCY”, restates existing Hawaii law. In State v. Smith, 59 H. 565, 567, 583 {/2d 347, 349 (1978). The court defined the concept of relevance: “Evidence is relevant if it tends to prove a fact in controversy or renders a matter in issue more or less probable.” The court in Smith also relied upon the holding in State v. Irebaria, 55H. 353, 356, 519 P.2d 1246, 1248-49 (1974), for the distinction between relevance and sufficiency of the evidence.

### **CONCLUSION**

Therefore the issue stated therein should be granted with good cause.

Kailua Kona HI. July 27, 2017

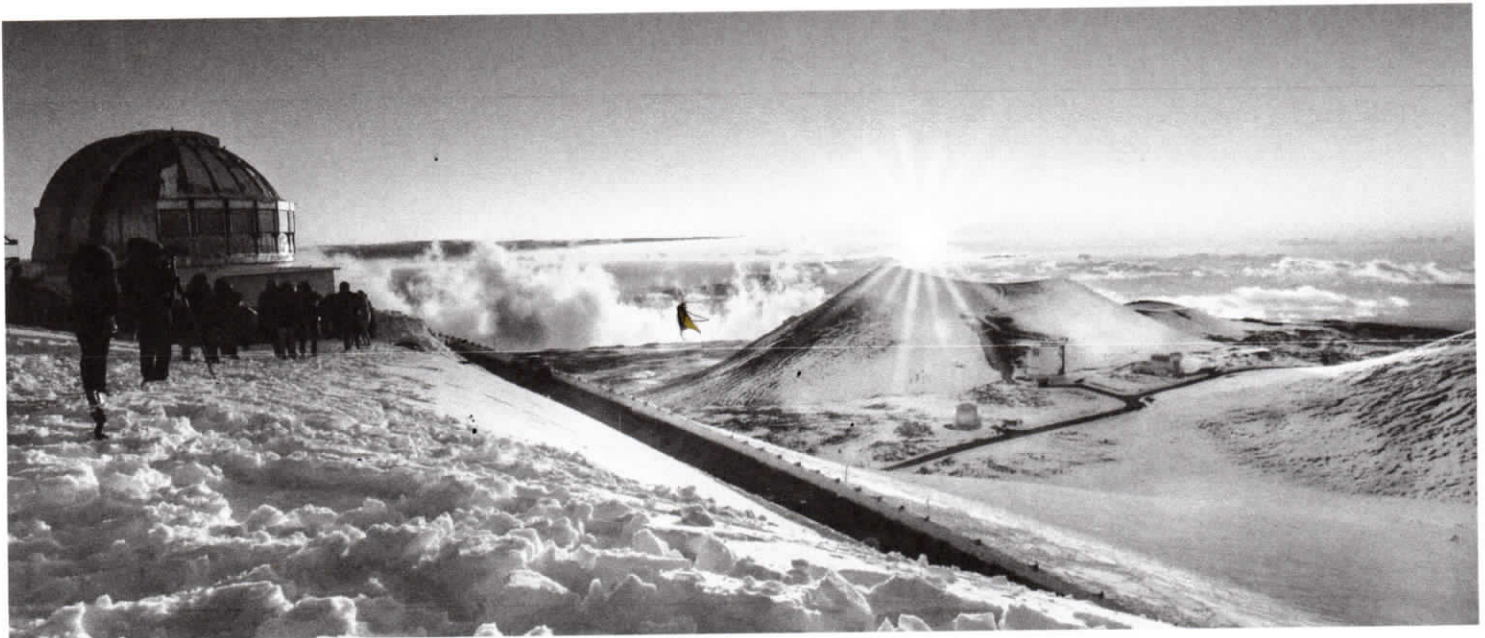
Cindy Freitas Petitioner

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# **Follow-Up on Recommendations from Report No. 14-07, *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve***

A Report to the Governor  
and the Legislature of  
the State of Hawai'i

Report No. 17-06  
July 2017



**OFFICE OF THE AUDITOR**  
STATE OF HAWAII





## OFFICE OF THE AUDITOR STATE OF HAWAII

### Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

### Our Mission

*To improve government through independent and objective analyses.*

We provide independent, objective and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management and expenditure of public funds.

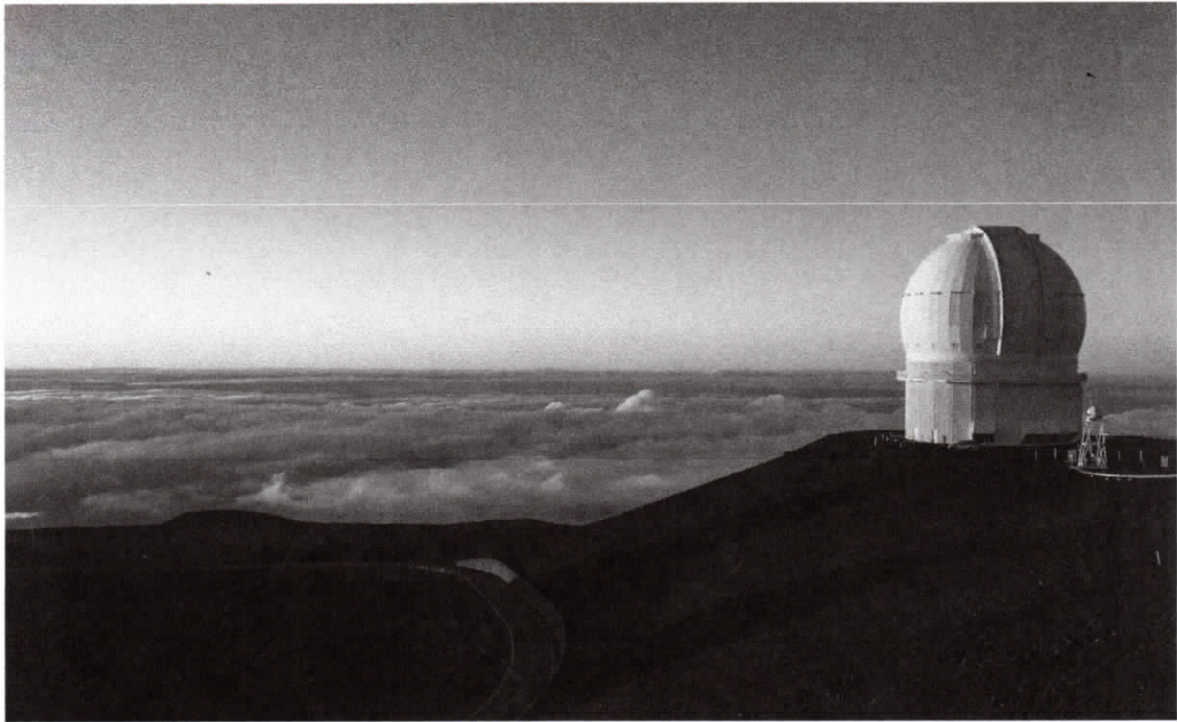
### Our Work

We conduct performance audits (also called management or operations audits), which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and recommendations to the Governor and the Legislature to help them make informed decisions.

*For more information on the Office of the Auditor, visit our website:*  
<http://auditor.hawaii.gov>



## **Follow-Up on Recommendations from Report No. 14-07, *Follow- Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve***

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*Section 23-7.5, Hawai'i Revised Statutes, requires the Auditor to report to the Legislature annually on each audit recommendation more than one year old that has not been implemented by the audited department or agency. This report presents the results of our review of eight recommendations made to the University of Hawai'i and the Department of Land and Natural Resources in Report No. 14-07, Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve, which was published in August 2014.*

### **Why we did the 2014 audit**

In the past, the Legislature expressed concerns about the State of Hawai'i's management of Mauna Kea and the Mauna Kea Science Reserve. Individuals as well as community and Hawaiian organizations

also voiced concerns regarding transparency, accountability, and equity by the University of Hawai'i (UH) and the Department of Land and Natural Resources (DLNR). In 1998 and again in 2005, the Legislature requested that this office conduct an audit of the management of Mauna Kea and the Mauna Kea Science Reserve. In response to those requests, we issued a 1998 *Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve* (Report No. 98-6) and a 2005 *Follow-up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve* (Report No. 05-13). In 2014, this office initiated another follow-up audit to assess UH's and DLNR's efforts to address our previous findings and recommendations during FY2006 to FY2014. That audit was conducted pursuant to Section 23-4, Hawai'i Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

## The Mauna Kea Summit and Science Reserve

The Mauna Kea summit area consists of conservation district lands managed by UH and DLNR. Mauna Kea lands leased to and managed by UH encompass three areas: the Mauna Kea Science Reserve at the summit, the mid-level facilities at Hale Pōhaku, and the Summit Access Road that runs from Hale Pōhaku to the summit. In 1998, 2,033 acres of the 13,321 acres originally leased to UH were withdrawn from the Mauna Kea Science Reserve and are now part of the Mauna Kea Ice Age Natural Area Reserve. Lands adjacent to the Mauna Kea lands managed by UH, such as the Mauna Kea Ice Age Natural Area Reserve and the Mauna Kea Forest Reserve, are managed by DLNR.



PHOTO: THIRTY METER TELESCOPE (TMT)

### An Eye to the Sky

**PLANS TO BUILD** the massive Thirty Meter Telescope (TMT) atop Mauna Kea have become a source of bitter controversy. In October 2014, Native Hawaiian protesters blocked crews from the construction site. The Hawai'i Supreme Court later rescinded the TMT's construction permit, and the \$1.4 billion project is

currently in the re-permitting process. If it is completed, the TMT will be the most advanced and powerful optical telescope on Earth. There is an ongoing contested case proceeding regarding the TMT's application for a permit to build on the Mauna Kea summit.



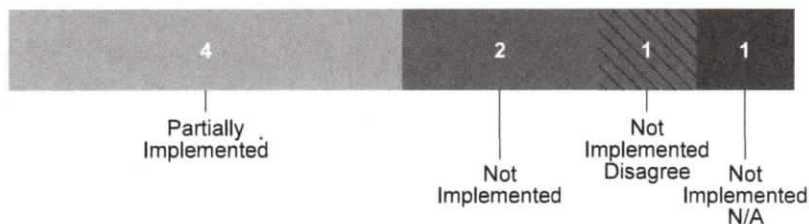
## What we found in 2014

In Report No. 14-07, *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, we found that UH did not expect to adopt administrative rules until 2017, due in part to delays in the rulemaking process. In the absence of rules, UH was managing and assessing fees on commercial tour activities with permits and informal agreements unauthorized by the UH Board of Regents. We also found that contractual terms and other requirements precluded UH and DLNR from updating general leases, subleases, and permits.

## What we found this year

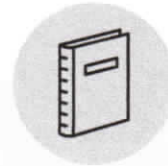
Our follow-up on the implementation of recommendations made in Report No. 14-07, conducted between October 2016 and January 2017, included interviews with selected personnel, examining relevant documents and records, and evaluating whether UH and DLNR's actions appeared to fulfill our recommendations. We found that UH and DLNR have partially implemented four of the recommendations. Three recommendations remain open, and one is inapplicable at this time.

**Exhibit 1: Audit Recommendations by Status**



Source: Office of the Auditor

Our follow-up efforts were limited to reviewing and reporting on the implementation of our audit recommendations. We did not explore new issues or revisit old ones that did not relate to the original recommendations. The following details the audit recommendations made and the current status of each recommendation based on our review of information and documents provided by UH and DLNR.



### DEFINITION OF TERMS

WE DEEM recommendations:

- **Implemented** where the department or agency provided sufficient and appropriate evidence to support all elements of the recommendation;
- **Partially Implemented** where some evidence was provided but not all elements of the recommendation were addressed;
- **Not Implemented** where evidence did not support meaningful movement towards implementation, and/or where no evidence was provided;
- **Not Implemented – N/A** where circumstances changed to make a recommendation not applicable; and
- **Not Implemented – Disagree** where the department or agency disagreed with the recommendation, did not intend to implement, and no further action will be reported.



### **ADMINISTRATIVE RULES**

**ADMINISTRATIVE** rulemaking is one of the methods by which state agencies carry out their tasks. The purpose of rules is to implement laws, such as those relating to Mauna Kea lands, and to establish operating procedures for state agencies. Generally, statutes provide a skeleton, or superstructure, for state programs; agencies are then required to "fill in the details" and implement those programs on a day-to-day basis. Agencies have considerable discretion in applying the law, particularly where a controlling statute is expressed in general terms.

### **Recommendation 1**

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**UH should adopt administrative rules governing public and commercial activities as soon as possible, but no later than 2017.**

#### **Partially Implemented**

##### **Comments**

UH completed the drafting of administrative rules and was prepared to begin the necessary public hearing process. However, at the request of the governor, who must authorize the initiation of public hearings for the draft rules, UH has temporarily halted the process of finalizing such rules.

##### **Target Date**

Per UH, the estimated date of completion cannot be determined at this time.

### **Recommendation 2**

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**UH should obtain the UH Board of Regents' approval for the conditions and fee schedule included in commercial tour use permits issued by UH-Hilo via a Board of Regents open public meeting pursuant to Chapter 92, HRS.**

#### **Not Implemented**

##### **Comments**

UH anticipates that a proposed schedule will be prepared and approved concurrently with the approval of the final administrative rules. A draft schedule has not been prepared yet as UH wants to take into consideration feedback received during the administrative rules process.

##### **Target Date**

Per UH, the estimated date of completion cannot be determined at this time.

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### Recommendation 3

**UH should determine whether unauthorized fees collected since FY2007 should be returned to commercial tour operators.**

**Not Implemented - Disagree**

#### Comments

UH continues to assert that the issuance of commercial tour permits was authorized by the Board of Land and Natural Resources and allows enforcement of permit conditions and the ability to set and assess fines for permit violations and non-compliance.

### Recommendation 4

**UH should complete Comprehensive Management Plan (CMP) management actions, the implementation of which under the CMP implementation plan is scheduled as “immediate,” as soon as possible, but no later than the end of 2016.**

**Partially Implemented**

#### Comments

UH has implemented 20 of the 25 total CMP management actions. *(See appendix on pages 10-11 for the list of actions.)*

#### Target Date

Per UH, the estimated date of completion is December 2017. Feasibility of that date could not be determined based on the scope of our review.

### Recommendation 5

**UH should further its efforts to renew general leases for UH-managed lands on Mauna Kea by continuing to work with DLNR and proceeding with the Environmental Impact Statement (EIS) process under Chapter 343, HRS.**

**Partially Implemented**

#### Comments

UH and DLNR assert that securing a new master lease would require an EIS. Such efforts were restarted at the request of the governor following protests against the TMT project, and work is ongoing.

#### Target Date

Per UH, the estimated date of completion cannot be determined at this time.



### Recommendation 6

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**UH should renegotiate with existing sublessees to amend subleases to include provisions that address stewardship issues, as modeled by the provisions in the 2014 TMT sublease, following execution of the new general leases for UH-managed lands on Mauna Kea.**

#### Not Implemented

##### Comments

UH asserts that a new general lease needs to be established before sublease agreements can be renegotiated.

##### Target Date

Per UH, the estimated date of completion cannot be determined at this time.

### Recommendation 7

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**DLNR should continue working with UH to renew the general leases for the UH-managed lands on Mauna Kea and ensure the leases are substantially in the form DLNR's Land Division recommended for approval by the Board of Land and Natural Resources.**

#### Partially Implemented

##### Comments

UH and DLNR assert that the preparation for seeking a new master lease includes preparation of an EIS. Such efforts were restarted at the request of the governor following protests against the TMT project, and work is ongoing.

##### Target Date

Per DLNR, the estimated date of completion cannot be determined at this time.

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### **Recommendation 8**

**DLNR should use additional stewardship-related conditions contained within the TMT observatory permit as a template in all new observatory permits issued for the summit of Mauna Kea.**

**Not Implemented - N/A**

#### **Comments**

The TMT observatory permit has been voided. As a result, this recommendation cannot be addressed until the ongoing contested TMT case is fully resolved.

## Appendix

### Comprehensive Management Plan (CMP) Management Actions Still Open

1. Develop and adopt guidelines for the culturally appropriate placement and removal of offerings.
2. Kahu Kū Mauna shall take the lead in determining the appropriateness of constructing new Hawaiian cultural features.
3. Develop and adopt a management policy for the UH Management Areas on the scattering of cremated human remains.
4. A management policy for the culturally appropriate building ahu or “stacking of rocks” will need to be developed by Kahu Kū Mauna who may consider similar policies adopted by Hawai‘i Volcanoes National Park.
5. Develop and implement a signage plan to improve signage throughout the UH Management Areas (interpretive, safety, rules and regulations).

### Implemented CMP Management Actions

1. Kahu Kū Mauna shall work with families with lineal and historical connections to Mauna Kea<sup>1</sup>, cultural practitioners, and other Native Hawaiian groups, including the Mauna Kea Management Board’s (MKMB) Hawaiian Culture Committee, toward the development of appropriate procedures and protocols regarding cultural issues.
2. Conduct educational efforts to generate public awareness about the importance of preserving the cultural landscape.
3. Develop and adopt guidelines for the visitation and use of ancient shrines.
4. Develop and implement a historic property monitoring program to systematically monitor the condition of the historic district and all historic properties, including cultural sites and burials.
5. Consult with Kahu Kū Mauna about establishing buffers (preservation zones) around known historic sites in the Astronomy Precinct, to protect them from potential future development.

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<sup>1</sup> The spelling of the mountain changed to one word in 2014. However, “Mauna Kea” is still used for legal and historical documents, *University of Hawai‘i Style Guide*.



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6. Develop and implement a burial treatment plan for the UH Management Areas in consultation with Kahu Kū Mauna, MKMB's Hawaiian Culture Committee, the Hawai'i Island Burial Council, recognized lineal or cultural descendants, and State of Hawai'i Historic Preservation Division.
  7. Limit damage caused by invasive species through creation of an invasive species prevention and control program.
  8. Reduce threats to natural resources by educating stakeholders and the public about Mauna Kea's unique natural resources.
  9. Increase communication, networking, and collaborative opportunities to support management and protection of natural resources.
  10. Conduct baseline inventories of high-priority resources, as outlined in an inventory, monitoring, and research plan.
  11. Conduct research to fill knowledge gaps that cannot be addressed through inventory and monitoring.
  12. Develop and implement education and outreach program.
  13. Develop parking and visitor traffic plan.
  14. Coordinate with DLNR in the development of a policy regarding hunting in the UH Management Areas.
  15. Educate management staff and users of the mountain about all applicable rules and permit requirements.
  16. Reduce impacts from operations and maintenance activities by educating personnel about Mauna Kea's unique resources.
  17. Develop and implement a debris removal, monitoring and prevention plan.
  18. Evaluate need for additional public restroom facilities in the summit region and at Hale Pōhaku, and install close-contained zero waste systems if necessary.
  19. Conduct energy audits to identify energy use and system inefficiencies, and develop solutions to reduce energy usage.
  20. Establish a reporting system to ensure that the MKMB, DLNR, and the public are informed of results of management activities in a timely manner.

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