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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation; Use Application (CDUA) HA-3568 For the Thrity Meter Telescope at the Mauna Kea Science Reserve, Ka'oha Mauka, Hamakua, Hawaii TMK (304-4015:009

Case No. BLNR-CC-16-002

TIFFNIE KAKALIA'S JOINDER TO MAUANKEA ANAINA HOU AND MS. PISCIOTTA, FLORES-CASE 'OHANA, TEMPLE OF LONO AND KAHEA RESPONSE TO HEARING OFFICER RIKI MAE AMANO'S PROPOSED FINDING OF FACT, CONCLUSION OF LAW, DECISION AND ORDER

CERTIFICATE OF SERVICE

"I Tiffnie Kakalia incorporate by reference and join on to Mauna Kea Anaina Hou and Ms Pisciotta's Exceptions and provide Additional Exceptions. I also join and incorporated by reference all other Pro Se Petitioners/Parties (Flores-Case 'Ohana, Temple of Lono, KAHEA)

Dated: August 20, 2017
Hilo, Hawaii 96720

Tiffnie Kakalia, Pro Se,

Received
Office of Conservation and Coastal Lands
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The TMT Project Does Not Satisfy the Eighth Criterion

Legal Requirements

The eighth criterion found at HAR § 13-5-30(C)(8) states that, “ THE PROPOSED LAND USE WIL NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE.”

The burden of proof rests with the Petitioners. The BLNR rules provide that "[t]he applicant shall have the burden of demonstrating that a proposed land use is consistent with" the criteria set forth in HAR § 13-5-30(c). As the party proposing a land use in the Conservation District, UH Hilo is clearly the "applicant" in this matter.

The burden of proof is satisfied with a preponderance of the evidence. HAR § 13-1-35(k) similarly provides: "The party initiating the proceeding and, in the case of proceedings on alleged violations of law, the department, shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The quantum of proof shall be a **preponderance of the evidence.**" (emphasis added)

"The rules of evidence governing administrative hearings are considerably more relaxed than those governing judicial proceedings." *Price v. Zoning Bd. of Appeals*, 77 Hawai`i 168, 176 n.8, 883 P.2d 629, 637 n.8 (1994).

This means, for example, that hearsay which would be inadmissible in court proceedings is nonetheless admissible in administrative hearings. In construing the HAPA (and specifically, HRS § 91-10), the Hawai`i Supreme Court noted that the act's mandate that "[a]ny oral or documentary evidence may be received" by an agency must be liberally construed. *Dependents of Cazimero v. Kohala Sugar Co.*, 54 Haw. 479, 482, 510 P.2d 89, 92 (1973). The court in *Cazimero* observed that the legislative history of HAPA also supported the liberal admission of evidence, as the history indicated "that the direction chosen [by the Legislature] was towards the admission of *any and all evidence* [in administrative hearings] limited *only* by considerations of relevancy, materiality and repetition." *Id.* at 482-83, 510 P.2d at 92 (emphasis added).

The standard for determining relevancy in agency proceedings under Chapter 91 is that of Haw. R. Evid. *Id.* (HRE) 401. *See Loui v. Bd. of Med. Examiners*, 78 Hawai`i 21, 31, 889 P.2d 705, 715 (1995). HRE Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of *any fact that is of consequence* to the determination of the action more probable than it would be without the evidence." HRE 401 (emphasis added); *Loui*, 78 Hawai`i at 31, 889 P.2d at 715 (quoting Rule 401).

Because the rules of evidence applied in administrative hearings are more relaxed than in court proceedings, doubts about admissibility are to be resolved in favor of admitting the evidence: W]hen an agency is faced with evidence of doubtful admissibility, it is preferable that it allow the admission of such evidence rather than to exclude the same, for the very practical reason stated in *Donnelly Garment Co. v. National Labor Relations Board*, 123 F.2d 215, 224 (8th Cir. 1941), as follows: "If the record on review contains not only all evidence which was clearly admissible, but also all evidence of doubtful admissibility, the court which is called upon to review the case can usually make an end of it, whereas if evidence was excluded which that court regards as having been admissible, a new trial or rehearing cannot be avoided. *Cazimero v. Kohala Sugar Co.*, 54 Haw. 479, 483, 510 P.2d 89, 93 (1973).

The liberal standard of the admissibility of evidence in administrative hearings is also reflected in the established rule that even when ostensibly irrelevant or incompetent evidence is admitted

during a hearing, the admission of such evidence alone is not grounds for reversal if there is "substantial evidence in the record to sustain the agency's determination" and the aggrieved party is not prejudiced. *Shorba v. Board of Education*, 59 Haw. 388, 398, 583 P.2d 313-19 (1978). Stated another way, unless an aggrieved party can show prejudice resulting from the admission of ostensibly irrelevant or incompetent evidence, admission of such evidence alone is not grounds for reversal. *Id.*

Although the admission of evidence in administrative hearings is less formal than those governing judicial proceedings, the Hearing Officer still has the authority to limit or entirely exclude evidence that does not meet the basic criteria of relevancy, materiality and avoidance of repetition. HRS § 91-10(1). "[T]he competence, credibility and weight" of the testimony of all witnesses (including witnesses who represent that they have expertise in one or more subject areas), "is exclusively in the province of the trier of fact." See *Hawai'i Prince Hotel Waikiki Corp. v. City & County of Honolulu*, 89 Hawai'i 381, 390, 974 P.2d 21, 30 (1999) (quoting *State v. Pioneer Mill Co.*, 64 Haw. 168, 179, 637 P.2d 1131, 1139 (1981)).

In *Ka Paakai o Ka Aina v. Land Use Commission*, the Hawaii Supreme Court provided a three-step analysis for the protection of Native Hawaiian rights which called for agencies to make specific findings and conclusions regarding the identity and scope of valued resources, the extent those resources will be affected; and the feasible action to reasonably protect those resources. (*Ka Paakai o Ka Aina v. Land Use Comm'n*, 94 Hawaii 31, 7 P3d 1068 (2000) ("Ka Paakai"); HO FOF/COL 108, p. 212)

In *State v. Pratt*, the Hawaii Supreme Court required the balancing of all parties' respective interests as consideration of the totality of the circumstances. (*State v. Pratt*, 127 Hawaii 206, 277 P.3d 300 (2012) ("Pratt"); HO FOF/COL 105, p. 212)

In *Morimoto v. BLNR*, the Hawaii Supreme Court was concerned with offsetting the threat of "unbridled discretion" and required that BLNR "incorporate any representations" as a condition of the CDUP. (*Morimoto v. BLNR*, 107 Hawaii 296, 113 P.3d at 180 ("Morimoto"); HO FOF/COL 111, p. 213)

Increased Stress from Development and Disturbance of Sacred Land

The Petitioners did not provide any study, research or reliable statistic showing that increased stress on the public from development on pristine sacred land of Maunakea would *not* be materially detrimental to public health, safety, and welfare.

The Final EIS submitted by the Petitioners stated that less than half (twenty-nine) of only sixty-six individuals contacted responded to the Cultural Impact Assessment (CIA) community input process, and only sixteen of those were interviewed. (Final EIS Sec. 3.2, 3-10; HO FOF/COL 226, p.47)

During those CIA interviews, it was recognized that a *substantial* minority of the twenty-nine interviewed felt that mitigation measures would "compensate for the perceived impacts." (Final EIS Sec. 3.2, 3-24; HO FOF/COL 236 p.48)

Generalized opinions that "culture and astronomy can co-exist" are misconstrued as being specific and favorable to the TMT Project fail to recognize the qualified responses given by members of the public. (Final EIS Sec. 3.2, 3-24.)

The opinions of well-recognized, respected and qualified individuals testifying on behalf of the Contestants have been repeatedly dismissed on the basis that the individuals do not provide studies, statistics or factual evidence that objectively shows the TMT project negatively impacting public health, safety, and welfare.

As an example, Dr. Taulii testified that “she conducted statistical research, which found that desecration of sacred spaces negatively impacts the cultural identity and health of native Hawaiians. Dr. Taulii also testified that the TMT Project would further contribute to these negative impacts and cause damage to the physical health of native Hawaiians yet the testimony was characterized as “research on a causal link between alleged “desecration” to a sacred space and the impact upon cultural identity and health of native Hawaiians despite the fact that Dr. Taulii is recognized as “holding a doctorate in Health Services, with expertise in public health informatics, epidemiology, genetics and Indigenous health” and “leading expert in health for Native Hawaiians”. (Ex.B. 04a; HO/FOF 968 p.182; Tr. 1/24/17 at 11:9-15:22; HO/COL 283 p. 233)

As another example, Dr. Aluli Meyer testified that the “TMT Project will have a substantial adverse impact on Hawaiian culture and cultural practices or public health, safety, and wellness, yet the testimony was not concluded by the HO despite the fact that Dr. Aluli Meyer holds a Doctorate from Harvard University in the field of Indigenous Epistemology or Philosophy of Knowledge, is a 30+year practitioner of hooponopono [healing process through ritualizing communication], is a scholar-practitioner of Hawaiian knowledge, and is the Director of Indigenous Education at the University of Hawaii West Oahu whose job is to assist the University of Hawaii to become a clearly definitive and inspiring Indigenous serving higher education system. (WDT of Dr. Manulani Aluli Meyer; Ex. B.05a; HO/FOF 973 p. 183)

In yet another example, Professor Kaholokula testified that “the desecration of Mauna Kea is detrimental to the health and wellbeing of native Hawaiians yet the testimony was characterized as “testimony regarding the ostensible psychological impact upon native Hawaiians from the activities on Mauna Kea despite the fact that Dr. Kaholokula is recognized as the Chair and Professor of Native Hawaiian Health at the John A. Burns School of Medicine, University of Hawaii at Manoa. Holds a PhD in clinical psychology, completed a clinical health psychology post-doctoral fellowship at Tripler Army Medical Center, and holds a license to practice in Hawaii. Has over 20 years of clinical and research experience regarding issues of Native Hawaiian health, to include mental and physical health. Has over 50 scientific publications specific to Native Hawaiian and Pacific Islander health in national and international peer-reviewed journals and provided numerous keynotes, talks, and consultation on Native Hawaiian and Pacific Islander health nationally and internationally. Sits on several boards of organizations whose mission is focused on either Native Hawaiians or public health issues to include Queen’s Health Systems and Papa Ola Lokahi Native Hawaiian Health Board. Is a member of a Native Hawaiian cultural group known as Halemua o Kualii and has been involved in various Hawaiian cultural practices (e.g., hula and lua) throughout his life. (Tr. 2/23/17 at 121:13-123-123:9; Ex. F-7b (Statement of Prof. Kaholokula); HO/FOF 967 p.184; HO/COL 284 p.233)

Another example, Perreira testified that the “TMT Project would affect native Hawaiians psychologically yet the testimony was not included in HO/COL despite the fact that Perreira is recognized as a clinical psychologist and has particular interests and expertise in individual, family, community and national trauma exposure, identification of symptoms, diagnosis and treatment of discrete and complex traumas associated with physical, emotional, psychological, spiritual and medical conditions or disorders who over the past 20 years, has worked professionally, in Hawaii rural communities, in the field of community mental health as a mentor,

teacher, counselor, consultant and now clinical psychologist. (Tr. 2/23/17 at 191:1-4; WDT of Tammie Noelani Perreira Ex. O.14; HO/FOF 978 p. 185)

Another example, “Teal testified that the TMT Project is having trauma related impacts upon the community, including a surge of heart attacks, stroke and other impacts from stress, especially among cultural practitioners associated with Mauna Kea., yet the testimony was not included in HO/COL despite the fact that Teal holds a Master’s Degree in public health from the University of Hawai‘i at Mānoa. (Ex. B.15a (WDT Teal); Ex. B.15b; HO/FOF 979 p. 185)

On the other hand, opinions of those testifying for the Applicants, or in the materials relied upon by the Applicants, are considered valid and worthy of broad application to the general public’s health, safety and welfare.

For example, the characterization of the 13N site for the TMT location as a “compromise” in a comment from Ed Stevens disregards his unequivocal response that, “there’s no more room for new telescopes on Maunakea,” and “we don’t want to see any more new construction.” The following statement by Stevens that “the site now picked for 13N would be my preference,” dismisses and downplays the qualification response Stevens gives, “if we have not other choice, and that telescope is going to be put up there.” (Final EIS Sec. 3.2, 3-25.)

In yet another example, TMT witness Neese shared his opinion that, 565 P. 104 “ the TMT Project would not result in a substantial adverse impact to such resources within the surrounding area, community or region.

Another example, TMT witness Baybayan shared his opinion that, 705 P.129 “the highest level of desecration rests in actions that remove the opportunity and choices from the kind of future our youth can participate in and learn from. (Baybayan) Tr.11/02/16 at 12:9-16

Another example, TMT witness Tom Nance shared his opinion that, 855 P.164 “the TMT Project will have no significant or adverse impact on water resources.” WDT of Tom Nance, page 1; UHH Witness Statement 10.

Increased Human Presence

The introduction of new elements that substantially alter the setting in which cultural practices take place, including visual elements, noise, traffic and human presence, are considered significant. (Final EIS Sec. 3.2, 3-23)

Final EIS found that the average number of employees within the sacred space of Maunakea would increase, “from an average of 100 to an average of 130.” ((HO FOF/COL 257, p.52; Final EIS Sec. 3.2, 3-32)

The Petitioners did not provide any study, research or reliable statistic showing that a 30% increase would not be materially detrimental to the public health, safety, and welfare.

The Hearing Officer failed to show by a preponderance of the evidence that the that the increased human presence in the Northern Plateau would *not* be materially detrimental to the public health, safety, and welfare.

Conclusion

The HO's conclusions do not properly consider the extent of impact on public health.

The HO failed to show by a preponderance of the evidence that the Petitioners have met their burden to show that the TMT Project is *not* materially detrimental to the public health, safety, and welfare.

Numerous public health professionals testified under oath that the desecration or development of Maunakea as a result of the TMT project would result in undue stress and negative health impacts on the public in their professional opinion.

The HO adopted the Applicant's arguments which did not affirmatively show that no public health impacts would result and instead focused on discrediting these recognized public health experts by dismissing any information presented as mere opinion.

This disregard for well-recognized, credentialed, professional public health experts shows bias toward the continued development and desecration of Maunakea.

The HO's dismissal of expert public health professionals' opinions and acceptance of non-public health professionals' opinions on the topic of public health is an example of unbridled discretion and bias for the development of the TMT Project.

The HO's adoption of the Applicants' dismissal of public health experts opinions and references to public health impacts and resulting conclusion omit public health impacts in the second step of the *Ka Paakai* framework.

The HO correctly relied on sufficient evidence for the first step in the *Ka Paakai* analysis; namely evidence to make specific findings and conclusions as to the identity and scope of cultural, historical, and natural resources in the TMT Project area. (HO COL/FOF, p. 213)

However, the HO's investigation fell short of applying the second step of the *Ka Paakai* analytical framework to make specific findings and conclusions as to the "extent to which resources - including traditional and customary native Hawaiian rights - will be affected or impaired by the proposed action." (HO COL/FOF, p. 213)

The public health impacts, not just the environmental impacts, should be considered when identifying the extent of impacts that mitigation measures will be based upon.

While the Applicant did provide the HO with evidence to show impacts to the extent of the impacts *from an environmental perspective*, the Applicant did not produce any evidence that showed the extent that the TMT Project would affect or impair the resource *from a public health, safety, and welfare perspective*.

Proper understanding of the extent to which public health would be impacted is critical to taking appropriate steps to mitigate those impacts.

The Contestants witnesses are highly regarded, credentialed experts in the field of public health, yet the HO relied upon characterization of those testimonies as mere opinions.

If the HO was correct to disregard the opinions of highly regarded experts due to the fact that more substantial evidence of the extent to impacts on public health in the form of studies, statistics and the like, then it is necessary for the Applicant to show the same to meet the preponderance of the evidence.

In other words, if opinions public health experts may not be relied upon to show the extent of impacts on the public health from the TMT Project, then any opinions to the contrary should be similarly dismissed as valid.

If the only type of evidence qualified to show the extent of impacts of desecration of sacred spaces on public health are studies specific to the TMT Project, the one and only unpublished study under peer review mentioned in testimonies shows that *there is a conclusive, statistical impact on public health* even prior to the actual build-out of the TMT Project. (HO/FOF 976-978 p. 181-182)

Furthermore, if BLNR disregards the proposition that the only qualified evidence is that evidence which is specific to the TMT Project, even before the project has been built, then the recognized public health experts offering testimonies were aware of other studies related to public health (stress, cultural trauma, and other health impacts) that could show by the extent of the impacts to public health.

Despite the Applicants' own document, the Final EIS, stating that the increased presence of human presence could be a significant impact to the cultural resources of a sacred place, the Applicant did not provide sufficient evidence that a minimum 30% increase in human presence would not materially impact public health. (HO FOF/COL 257, p.52)

Native Hawaiians are particularly impacted by the stress related to the desecration and increase in human presence on Maunakea.

In the Applicants' and HO's FOF and COL, the number of Native Hawaiians and other parties negatively affected by the TMT Project were trivialized, while the number of actual or misconstrued pro-TMT individuals were downplayed or represented as sufficient.

The mitigation measures offered are invalid until sufficient evidence shows the extent of the TMT project on public health.

The FOF/COL does not provide sufficient evidence to show the extent of impacts on cultural resources on public health, safety and welfare before concluding that the mitigation measures were feasible actions to protect those resources, in accordance with the guidance provided by the Hawaii Supreme Court with the *Ka Paakai* analytical framework.

Therefore, the mitigation measures are not valid.

Including mitigation measures as a condition of approving a CDUP ensures that "unbridled discretion" by government agencies is avoided, as stated in *Morimoto*.

As stated above, if the only type of evidence qualified to show the extent of impacts of desecration of sacred spaces on public health are studies specific to the TMT Project, the one and only unpublished study under peer review mentioned in testimonies shows that *there is a conclusive, statistical impact on public health* even prior to the actual build-out of the TMT Project. (HO/FOF 976-978 p. 181-182)

The study was not made available in the record, but a recognized expert explaining the finding of a study under oath is reasonable evidence to show that evidence does or may exist that directly responds to specific public health impacts not currently considered by the existing mitigation measures.

If BLNR disregards the HO's conclusions echoing the Applicant's implied argument that the only studies specific to the TMT Project should be evidence worthy of consideration - even before the project has been built - then BLNR should recognize other public health studies (stress, cultural trauma, and other health impacts) to understand what appropriate and valid mitigation measures would consist of.

The Applicants and HO failed to show, even with the less stringent standard of a preponderance of the evidence, that there is no material detriment to public health or to what extent the impact of the TMT Project would have on the public health which would form the basis for effective assessment of the suggested mitigation measures.

Even if BLNR finds the available evidence satisfactory to show the extent of the TMT project on public health, the mitigation measures offered are inadequate.

While the impacts to public health and extent of those impacts is unknown and therefore lacking in sufficient evidence to satisfy the Applicants' burden of proof, even if the existing evidence was presumed to be sufficient the current mitigation measures are inadequate.

UH commitments to decommission three telescopes before the TMT operational is questionable. (HO FOF/COL 169-176, p. 36-37)

The supposed commitment to decommission, while connected to the creation of fund for that purpose, does not warrant unquestioning acceptance of Dr. McLaren's statement. (HO FOF/COL 169-176, p. 36-37)

As stated above, if professionals such as Dr. McLaren are taken at face value in responses under oath to questions to which they are reasonably expected to have expertise and/or management discretion due to their organizational position, then the courtesy to recognize professional opinions should be applied consistently regardless of the personal pro- or anti-TMT position.

Economic impacts are considered among the mitigating factors that may positively impact the public health, safety, or welfare. Specifically, the creation of jobs for "local youth" is cited as an example of positive impacts for the public. (HO FOF/COL 285-286, p. 57)

Yet, only half of the 1,000 jobs currently provided by the astronomy industry are filled by locals, with most of these positions being technical or administrative in nature. Furthermore, Dr. Hasinger noted that "it is much better to hire local residents instead of mainland residents" as the mainland residents "typically leave after a few years of employment." (HO FOF/COL 285-286, p. 57)

The unintended consequence on the public health of 500 positions occupied by temporary residents from the mainland is not addressed by the Applicant or the HO. The increased demand for housing by temporary residents which can be afforded at higher prices due to decent salaries afforded by 500 jobs in astronomy should be considered for the effects on public health. The struggle by local families to find full-time jobs with a reasonable salary and affordable housing is well-documented in the state of Hawaii, including by UHERO which is used as a source for the economic data on the astronomy industry.

While Dr. Sanders opines that efforts will be made to increase the amount of locals filling the 500 mostly technical and administrative jobs that are currently occupied by temporary mainland residents, the "availability of a local workforce with the requisite skills is a very strong plus for the site." (HO FOF/COL 288, p.58)

Weight given to the Applicants' witnesses testimonies opinions, particularly when those opinions appear to negate previous statements, is worth careful consideration and evaluation in light of the HO's determination that no parties or witnesses would be formally designated as experts. (HO FOF/COL 100, p.22)

On the topic of job creation, despite the first astronomical testing beginning in 1964 with the first "scar" (term used by kupuna and noted in the Final EIS to describe the visceral desecration of the sacred space) by the creation of the Mauna Kea Access Jeep Trail, Dr. Coleman testified that his was aware of only four Native Hawaiians holding astronomy degrees. (HO FOF/COL 127, p. 26 and 302, p. 61)

Over the course of 53 years, on the Hawaiian island with the largest percentage of Native Hawaiians, only four Native Hawaiians are known to have astronomy degrees. If Dr. Coleman's integrity as a professional in this industry is not questioned, the importance of this information is critical for understanding the difference between the perceived and actual impacts related to the continued development of Maunakea.

If the promise of local jobs, education, and other supposed benefits that may mitigate any public health issues can be taken at face value from individuals recognized in industries related to the subject matter to which they speak, the promise by public health professionals that the stress tied to desecration and development may exacerbate negative outcomes in public should be taken just as seriously.

Finally, the mitigation measure that focuses on the training of the 140 TMT staff and other key involved in TMT management, development or otherwise is wholly insufficient.

The TMT training video developed for the purpose of educating staff about the cultural resources has been made available online recently. This video, roughly 45 minutes in length, includes 13 slides covered in less than seven minutes that "train" staff on the cultural resources of Maunakea. The training is more informational than instructional. (<http://www.malamamaunakea.org/about-us/maunakea-orientation>)

If preservation and appropriate actions for and around cultural resources rely upon the information presented in the video, the public's concern that the Applicants will not properly care for the cultural resources is reasonable.

Using another universal example of a resource that almost any party can relate to - food - supports the concern for displayed by members of the public regarding the TMT Project. If the care of food resources for the entire population of Hawaii were dependent on a seven minute video, the duration alone may cause concern.

The duration of the training video, however, is far less of a concern than the content.

Again, if the care for the state's food resources were the topic instead of the state's cultural resources, the staff responsible for the state food supply would leave the training knowing what food is, what some group's favorite dishes are, along with a few short examples of why those foods are favorites of certain groups within the state. **If the TMT training video was designed to train staff on how to manage food resources for the state instead of the cultural resources of the state, our entire food supply would be at risk.**

Knowing what to look for for signs of food, how to care and manage food to protect from rot, pests, and other deleterious effects that could lead to serious public health issues would *not* be

part of a training video if it were formulated to match the instructional quality of the training video used for TMT Project staff.

Similarly, for cultural resources training, the video leaves the viewer with some images of a few of the cultural resources along with some explanation that these resources are important for Native Hawaiians as there are traditional stories or moolelo tied to Maunakea. Other than a note that “candy wrappers and business cards or other forms of advertisements will be removed from cultural sites such as shrines,” the so-called training did not cover what to look for when identifying cultural resources, appropriate behaviors and management of those resources, how to properly protect said resources from other staff or visitors that may not be acting in accordance with appropriate protocols, etc.

To say the cultural resource training video is lacking is an understatement.

If the “mere opinions” contained in the testimonies from the Applicant witnesses is contrasted with the publicly available training video, the reliance on the HO findings of facts related to such testimonies should be reconsidered.

The lack of detailed, clear instructions for a cultural resource training from Applicants that include an educational institution and organization promising the height of educational opportunities as mitigating factors to all eight criteria is appalling, at best.

Summary of Conclusion

The findings and conclusions showing that the eighth criterion was successfully met by the Applicant is erroneous and the application should be denied for the following two reasons:

First, merely discrediting the testimonies of recognized public health professionals does not satisfy the Applicants’ burden to show that the TMT Project is *not* materially detrimental to public health.

Second, the existing mitigation measures are invalid because the BLNR does not have sufficient evidence to show extent of impact on public health, upon which valid mitigation measures would be based.

Lastly, even if the impacts and extent of impacts to public health are considered sufficiently understood, the mitigation measures are inadequate.

Recommended BLNR Action

BLNR should deny the Applicant’s CDUP until the Applicant can show by a preponderance of the evidence that the extent of the public health impacts specifically, as well as whether those health impacts are or can be appropriately mitigated by the measures offered.

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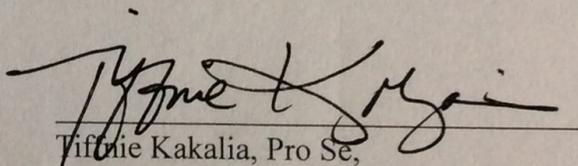
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced document was served upon the following parties by the means indicated on October 10, 2016:

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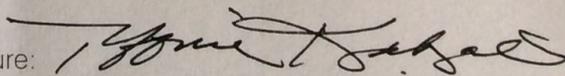
Moses Kealamakia Jr.
mkealama@yahoo.com
Witness for the Hearing Officer

Patricia P. Ikeda
peheakeanila@gmail.com
Witness for the Hearing Officer

Signature:

Name:

Date:


TIFFNIE KAKALIA
8.20.17