

**BOARD OF LAND AND NATURAL RESOURCES**

**STATE OF HAWAI‘I**

Contested Case Hearing Re Conservation  
District Use Application (CDUA) HA-3568  
For the Thirty Meter Telescope at the Mauna  
Kea Science Reserve, Ka‘ohe Mauka,  
Hāmakua, Hawai‘i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02

**JOSEPH KUALII LINDSEY CAMARA’S  
EXCEPTIONS TO THE HEARINGS OFFICERS  
PROPOSED FINDINGS OF FACTS,  
CONCLUSIONS OF LAW AND DECISION AND  
ORDER; COS**

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## I. EXCEPTIONS

The Hearings Officer (HO) filed her Proposed Findings of Facts, Conclusions of Law and Decision and Order (FOF) (Doc. 783) for CDUA application 3568 on July 26, 2017.

Joseph Kualii Lindsey Camara hereby files his exceptions to the proposed ruling.

### a. BIAS TOWARD APPLICANT

1. The Hearings Officer's bias in support of the applicant (UH) and TIO are readily apparent in many forms.
2. One example of bias is the extensive copying and pasting directly from applicant and TIO FOF. This practice is so prevalent that the bulk of the HO FOF are indistinguishable from UH/TIO and need not be cited in my exceptions.
  - a. By using the exact words of UH/TIO, not only was the content copied, but also the implied viewpoints and perspectives and the context in which they were presented. These viewpoints are adversarial to petitioners and by copying them directly from the applicant, the HO displays that she is not an impartial, fair or objective judge in this matter.
3. The Hearing officer repeatedly presented applicant and TIO evidence as fact while referring to petitioner evidence as "opinion" the way they "feel", diminishing weight and value of petitioner evidence in relation to applicant evidence.
4. The Hearing officer repeatedly directly cited testimony supporting the applicant while summarizing petitioner testimony. This allowed for the misrepresentation of petitioner viewpoints, omission of important facts, and taking petitioner comments out of context.
  - a. The one mention of my testimony regarding water resources by the Hearing officer, came not from my findings of facts, but from UH/TIO joint findings of fact. The adversarial nature of their depiction of my testimony was copied verbatim by the Hearings officer. Her FOF #879 copies the entire UH/TIO FOF #819.
  - b. Opposing Intervenor Camara testified to his belief that Mauna Kea holds an important water resource, but was unable to answer specific questions about Mauna Kea's hydrology. He admitted that he was not a hydrologist, and that there is not enough information about the Mauna Kea aquifer. He briefly reviewed the hydrology section of the FEIS for the TMT project and did not review the testimony of Nance. He was unaware of any existing water sources at the TMT Project site. Tr. 3/1/17 at 127:20130:4, 134:16-18, 140:19-141:17, 191:16-192:2.
  - c. This depiction does not capture my testimony. My own FOF and words on the subject were totally omitted, UH/TIOs inaccurate and adversarial summary of my testimony was presented by the Hearings officer as her own FOF which is misleading to the BLNR and others who may read her FOF.

### b. OMMISION

5. The bulk of the submitted findings of facts and conclusions of law of petitioners were omitted from the HO's proposed findings of facts and conclusions of law with no explanation or justification, in direct violation of HAR 91-12.

6. By violating HAR 91-12 the HO is able to omit facts that do not fit into the narrative of the applicant. In one such omission the HO included FOF #910 and omits a FOF #7 submitted by myself
  - a. HO FOF #910 - The Mauna Kea Adze Quarry Complex "occupies an area of at least 4,800 acres." Ex. A5/R-5, App. D at 33. Archaeological evidence indicates that the Mauna Kea Adze Quarry was used by prehistoric Hawaiians for obtaining basalt to make stone implements. Ex. A9 at 3-15, n.9. The Adze Quarry Complex represents a physical disturbance of the summit area of Mauna Kea that is 774 times larger than the new disturbance proposed for the TMT Project. Compare Ex. A-5/R-5, App. D at 33 (noting the Adze Quarry Complex is at least 4,800 acres) with Ex. A-3/R-3 at S-6 (stating the TMT Project will disturb 8.7 acres, of which roughly 2.5 acres are previously disturbed).
  - b. Camara FOF #7 - Preliminary engineering plans indicate that the total volume of excavated material ("cut" material) will be 64,000 cubic yards. (CDUP Application, R-1, p.B-3)
  - c. HO FOF #910 makes the dubious assumption that the footprint of impact by traditional adze making is 774 times greater than that of the proposed TMT project, while omitting the fact that amount of proposed geologic material excavated from the TMT site would likely surpass the cumulative amount used for adze making over hundreds of years.
  - d. The material excavated for the TMT site would be crushed and ground into fill, gravel and base coarse for cement. Stones used for adze become venerated cultural objects of great value that remained in families for generations, and are an important historical artifacts.
  - e. This depiction of cultural tradition having more impact than an 18 story building is a biased view. The omission of opposing facts produces an imbalanced and inaccurate view of the two impacts in relationship to each other.
  - f. In the HO's Conclusion and discussion IX, A., iv. The HO presents 43 conclusions in favor of the applicant and none which represent the viewpoints of petitioners. 40 of the 43 conclusions came directly from UH/TIO FOF.

**c. HUMAN RIGHTS**

7. The issue of Human Rights violations against protectors of Mauna Kea was largely omitted from the HO FOF.
8. The United Nations Declaration of Rights of Indigenous Peoples (UNDRIP) define rights of Hawaiians to protect and maintain cultural and religious sites. These rights were ignored and not considered by the HO in her FOF, despite being provided with expert witness testimony on this subject.

**d. DESECRATION**

9. The issue of desecration is not sufficiently addressed by the HO. She relied totally on the opinion and view point of the applicant in this regard, even though Mauna Kea is a known religious site, burial and cultural landscape that will be forever altered by the proposed TMT development.

**e. CUMULATIVE IMPACTS**

10. From the inception of the proposed TMT project there has been collusion of the applicant, TIO, BLNR, and the HO to frame the impacts of the project as “incremental” when by definition they are clearly cumulative.
  - a. Omission of My FOF #16 is evidence of this strategic maneuvering away from impacts seen as cumulative “HAR 11-200- 2 defines “Cumulative impact” to mean “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”
  - b. Further evidence of this is the inclusion of HO FOF# 923 without representing petitioner’s views in this regard “The visual landscape in the summit area of Mauna Kea has already been substantially altered and impacted. Ex. A-1/R-1 at 7-1 to 7-2; WDT Hayes at 4-5. It will remain so with or without the TMT Project.”
  - c. Also omitted is this statement from the same witness Hayes express in my FOF #15 “In oral testimony on October 25 2016 Jim Hayes responded “yes” to the statement “So the TMT would add to the cumulative impact that you have already stated is substantial, significant and adverse.” (Direct Testimony Jim Hayes, tr. Vol 3 p 156)”
  - d. Governor Lingle’s acceptance of the FEIS with a finding of no significant impact when there is extensive documentation of the cumulative impacts of astronomy development on Mauna Kea, show that the State has been actively involved in framing the impacts off the proposed TMT project as incremental as opposed to accurately identifying them as cumulative.

## II. Conclusion

I have committed considerable investments of time and efforts to be a part of this Contested Case process in the belief that the evidence presented would be analyzed and ruled upon in a fair and transparent manner. The HO’s nearly entire acceptance of UH/TIO FOF and analysis as her own clearly shows that this is not the case. The blatant disregard of HAR 91-12 and omission of facts and conclusions that do not fit the UH/TIO narrative dispels any semblance of objectivity by the HO.

The BLNR will be severely handicapped in their attempt to rule objectively on this case if they rely on the HO’s FOF.

The integrity of the Contested Case process has been undermined and the proposed ruling of the HO will likely be overturned by the Hawaii State Supreme Court because of its clear and blatant bias toward the applicant, thus wasting over a million dollars in State funds and countless hours for this process.

Me ke aloha aina,

Joseph K. L. Camara \_\_\_\_\_

Hilo, Hawaii \_\_\_\_\_

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I.

II. CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced document was served upon the following parties by the means indicated:

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