

FLORES-CASE ‘OHANA  
E. Kalani Flores  
B. Pualani Case  
P.O. Box 6918  
Kamuela, Hawaii 96743  
Email: ekflores@hawaiiantel.net

Petitioners pro se

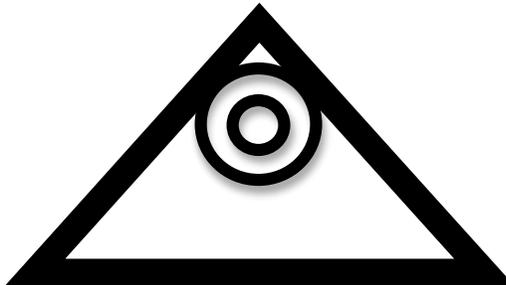
BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII

In the Matter of:	)	Case No. BLNR-CC-16-002
A Contested Case Hearing Re	)	
Conservation District Use Application	)	FLORES-CASE ‘OHANA’S
(CDUA) HA-3568 for the Thirty Meter	)	RESPONSE TO EXCEPTIONS TO
Telescope at the Mauna Kea Science	)	HEARING OFFICER’S
Reserve, Ka’ohe, Hamakua District,	)	RECOMMENDATIONS; EXHIBITS
Island of Hawai’i, TMK (3) 4-4-015:009	)	“A” – “J”; CERTIFICATE OF SERVICE
	)	
	)	
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**FLORES-CASE ‘OHANA’S RESPONSE TO EXCEPTIONS TO  
HEARING OFFICER’S RECOMMENDATIONS**

Petitioner, the FLORES-CASE ‘OHANA, in the capacity as pro se, respectfully submits the Flores-Case ‘Ohana’s Response to Exceptions to Hearing Officer’s Recommendations filed as Proposed Findings of Fact, Conclusions of Law, and Decision Order [Doc. No. 783] (“Recommendations”), pursuant to Minute Order No. 103.



**Mauna a Wākea is our *piko*.  
Our *piko* is sacred.**

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## I. INTRODUCTION

*E ala ē me ka ‘oia‘i‘o, e pili i ka piko o ke aloha o Mauna a Wākea.*  
**Awaken with the truth, connecting in the piko of aloha of Mauna a Wākea.**

The Flores-Case ‘Ohana (“FCO”) respectfully contend that the Hearings Officer’s (“HO’s”) Recommendations filed as Proposed Findings of Fact, Conclusions of Law, and Decision and Order [Doc. No. 783] (“Recommendations”), contain substantial factual and legal errors and omissions that the Board of Land and Natural Resources (“BLNR”/“Board”) must correct and clarify before making its final decision on CDUA HA-3568 submitted by the Applicant University of Hawai‘i at Hilo (“University”/“UHH”) on behalf of the Thirty-Meter Telescope Observatory Corporation (“TMT Corporation”). These errors and omissions resulted from the reproduction of inaccurate, irrelevant, unsubstantiated, unsupported, and misleading information from the UHH and Thirty Meter Telescope International Observatory, LLC’s (“TIO”) Joint [Proposed] Findings of Fact, Conclusions of Law, and Decision and Order [Doc. No. 671] (hereinafter referred to as “UHH-TIO’s joint document”). As a result, the HO’s Recommendations are unreliable and are not properly based on the full record and argumentation from all parties in this contested case hearing (“CCH”). In addition, it’s very apparent that the HO failed to verify the accuracy and truthfulness of the findings and conclusions of UHH-TIO’s joint document.

The conditions and the recommendation for approval set forth in the HO’s “Recommended Decision and Order” [Doc. 783 at 260-263] [see **Exhibit “A”**] are nearly identical to those in the 1) Department of Land and Natural Resources (“DLNR”) Office of Conservation and Coastal Lands (“OCCL”) Staff Report that was previously issued on February 25, 2011 prior to holding a contested case hearing (“CCH”) [Ex. R-7 at 63-66; see **Exhibit “B”**]; 2) BLNR’s approval of CDUP HA-3568 in February 25, 2011 prior to holding a contested case hearing that also included OCCL “staff’s recommendation with a list of amendments submitted by Mr. Lemmo - five additional amendments with changes to condition #7” [Ex. B.72 at 36-37; see **Exhibit “C”**]; 3) Applicant UHH’s Proposed Findings of Fact, Conclusions of Law and Decision and Order (“FOF-COL-DO”) previously submitted on November 11, 2011 during the first CCH [at 129-133; see **Exhibit “D”**]; 4) HO’s Proposed FOF-COL-DO previously submitted in November 30, 2012 during the first CCH [see **Exhibit “E”**]; 5) BLNR’s FOF-

COL-DO issued on April 12, 2013 [ at 120-126; see **Exhibit “F”**]; and 6) UHH-TIO’s joint document [see **Exhibit “G”**]. How can the HO’s conditions and the recommendation for approval of this permit be nearly identical without any substantial changes from those issued by the BLNR in 2011 prior to holding a CCH? The HO’s only primary change was the renumbering of the conditions. This is another prime example of the HO’s procedural errors of simply reduplicating information, not exercising due diligence to substantiate this information, and not giving full consideration of all the voluminous legal and factual arguments and materials. The HO’s Recommendations excluded reliable, substantial, probative and credible evidence and therefore failed to give the proper weight and consideration in this CCH in order for the Board to make an informed fair decision.

**It’s as if after two contested case hearings, nothing had ever changed and that the outcome of this process was already predetermined. In other words, the conditions have been systematically duplicated and the recommendation for approval of this permit has been ‘rubber-stamped’ throughout the entire process resulting in violations of due process. Why has there been a dire lack of accountability by decision-makers in this process?**

The BLNR is compelled to be in compliance with the laws governing their actions and decisions pursuant to Hawaii Revised Statutes (“HRS”), Hawaii Administrative Rules (“HAR”), and Hawaii State and U.S. Constitutions. Decision-makers are required to give full consideration of the evidence presented. Indeed, if the BLNR proceeds ahead with a decision before giving full consideration of all of the evidence from the CCH, the procedural due process rights of the FCO and other interested parties would be violated once again.

UHH’s Exceptions [Doc. No. 816] and TIO’s Exceptions [Doc. No. 813] to the errors and omissions in the HO’s Recommendations were derived from their own errors and omissions in UHH-TIO’s joint document. In other words, the HO reproduced the same errors contained in UHH-TIO’s proposed findings of fact (FOF) and conclusions of law (COL) which UHH and TIO are now attempting to correct, revise, or supplement.<sup>1</sup> While the FCO have no objection to

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<sup>1</sup> The Hearing Officer’s proposed findings of fact are cited herein as "**HO FOF \_**" and the proposed conclusions of law are cited herein as "**HO COL \_**". UHH and TIO’s proposed findings of fact are cited herein as "**UHH-TIO FOF \_**" and their proposed conclusions of law are cited herein as "**UHH-TIO COL \_**". Also, Flores-Case ‘Ohana’s proposed findings of fact are cited herein as "**FCO FOF \_**" and their proposed conclusions of law are cited herein as "**FCO COL \_**".

correcting typographical and grammatical errors, we want to draw attention to the absurdity of a situation in which UHH's and TIO's Exceptions consist in large part of corrections to their *own* submission. The HO's Recommendations identical replication of UHH-TIO's errors and omissions is a symptom of HO's uncritical adoption of UHH's proposed findings, conclusions, and, consequently, decision to approve this permit. As detailed below, UHH's and TIO's Exceptions further attempt to distort the record with 'clarifications' and 'supplementations' that are unsubstantiated and clearly at odds with the facts of these proceedings. **For these reasons outlined in this response, the FCO object to the UHH's and TIO's attempt to improperly supplement and insert inaccurate or misleading findings, conclusions, and decision into the already inaccurate, incomplete, and unsubstantiated findings, conclusions, and decision in the HO's Recommendations.**

## II. RESPONSE TO EXCEPTIONS TO HO'S RECOMMENDATIONS

### A. RESPONSE TO UHH'S EXCEPTIONS

**FCO object to UHH's supplementation of COL 183.** UHH attempts to supplement this already inaccurate conclusion with additional inaccurate and unsubstantiated assertions. Firstly, it's ironic UHH is attempting to correct HO COL 183 that was originally their own UHH-TIO FOF 443. Secondly, portions of this conclusion are inaccurate as the TMT Project would create and cause substantial adverse impacts to existing natural resources in the applicable area. Also, UHH's perceived commitment to their Decommissioning Plan are not subject to the approval and proposed building of the TMT. If telescopes are inoperable, scientifically outdated, and/or fiscally unsound to maintain or operate, then they should be decommissioned according to this plan regardless if the TMT is built or not. In addition, the proposed commitments regarding decommissioning existing telescopes on the Kūkahau'ula summit would not mitigate and reduce adverse impacts of the TMT Project if it's approved and built on the presently undeveloped northern plateau.

**FCO object to UHH's corrections to proposed conditions.** It's further ironic that UHH is attempting to make additional corrections to HO Condition Nos. 12, 19, and 20 that were originally their own UHH-TIO Condition Nos. 12, 19, and 20. UHH implies in the preamble that

TIO would assume the implementation of certain additional conditions. However, the primary problem goes back to the fact that the outdated and deficient CDUA HA-3568 identifies the TMT project developer as the TMT Observatory Corporation. Ex. R-1/B.30 at 1-5, CDUA. See **FCO FOF 509-512**. As such, if the proposed conservation district use permit is now being requested on behalf of the Thirty Meter Telescope International Observatory, LLC (“TIO”) instead of the Thirty Meter Telescope Observatory Corporation (“TMT Corporation”), then the Applicant should be required to update CDUA HA-3568 to reflect this substantial change. The change from the TMT Corporation to the TIO is significant as there are numerous specific references in the CDUA stating that the TMT Observatory Corporation would assume responsibilities for the implementation of mandated management plans and other conditions. As disclosed during the CCH, TMT Corporation, a California corporation, and TIO, a LLC - Delaware corporation, are two separate legal entities that are governed by two different boards with different partner interests. See **FCO FOF 510-511, 515-517, 527**. The UHH or TIO did not provide any evidence during the CCH in the form of any official documentation or correspondence from TIO’s governing board that this newly-formed organization (aka TIO) was assuming any type of responsibilities for the implementation of the mandated management plans and other conditions stipulated in CDUA HA-3568. Not only is the CDUA HA-3568 itself deficient, incomplete, inaccurate, and outdated, but so is the TMT Management Plan. UHH attempts to selectively replace the TMT Corporation’s obligations identified in the TMT Management Plan instead with TIO in Condition No. 20 without doing a comprehensive update of this plan. Consequently, these documents need to be updated and revised prior to BLNR taking any action upon this application. See **FCO COL 87-117; FOF 670-679**.

**FCO COL 87.** CDUA HA-3568 (“CDUA”) should not be approved because significant sections of this application are deficient, incomplete and inaccurate. All information, materials, reports, and documents inserted and referenced in this application are subject to further review and scrutiny in the cch process to determine their completeness and accuracy.

**FCO COL 88.** The Applicant assumes the burden and responsibility that the CDUA is complete and accurate.

**FCO COL 89.** Several significant deficiencies in the CDUA were brought to the attention of the Applicant during the first cch. Thus, they had several years to address these matters, make necessary revisions and corrections, and resubmit this application.

**FCO COL 90.** Several significant deficiencies in the CDUA were brought to the attention of the BLNR and DLNR through both written and oral testimony presented at the hearings in 2010-2011 as well as during the first cch. Thus, BLNR/DLNR should have required the Applicant to address these matters, make necessary revisions and corrections, and resubmit this application.

**FCO COL 91.** However, a decision was made to move ahead with the original application without addressing its deficiencies and without having it come before the BLNR for a new and proper hearing since CDUP HA-3568 was vacated by the Hawai'i State Supreme Court's decision in *Mauna Kea Anaina Hou, et al. v. Board of Land and Natural Resources, et al.*.

**FCO COL 92.** The Applicant failed to update CDUA HA-3568 to reflect the significant change that the proposed conservation district use permit was now being requested on behalf of the Thirty Meter Telescope International Observatory, LLC (TIO) instead of the Thirty Meter Telescope Observatory Corporation (TMT Corporation).

**FCO COL 93.** The significance of the change from the TMT Corporation to the TIO is that throughout the CDUA, there are numerous specific references to the TMT Observatory Corporation assuming responsibilities for the implementation of mandated management plans and other conditions.

**FCO COL 94.** The Applicant did not provide any evidence in the cch that the newly-formed TIO was assuming any type of responsibilities for the implementation of the mandated management plans and other conditions stipulated in CDUA HA-3568.

**FCO COL 95.** It remains undisputed that TMT Corporation transitioned into TIO in May 2014 and that TIO is now the new project developer for the proposed TMT project.

**FCO COL 96.** TIO witnesses Mr. Stone and Dr. Sanders also affirmed this in their testimony.

**FCO COL 97.** TMT Observatory Corporation or any counsel on its behalf did not petition to intervene in this cch. Instead, counsel for TIO petitioned to intervene in this cch.

**FCO COL 98.** Also, TIO, not TMT Observatory Corporation, entered into a sublease with the Applicant for the proposed TMT project.

**FCO COL 99.** There were other noted deficiencies in the CDUA that were brought to the attention of the Applicant during the first contested case hearing.

**FCO COL 100.** It remains undisputed that HAR Chapter 13-5 was revised and amended on August 12, 2011. It included significant changes to these rules, particularly HAR § 13-5-39 and Exhibit 3 pertaining to the Management Plan that the TMT project is mandated to

complete. As a result, criteria for Exhibit 3 in the amended 2011 version is significantly different than the former version.

**FCO COL 101.** Analysis and data in the CDUA relied upon draft or non-existence documents.

**FCO COL 102.** The CDUA, Sect. 4 Cultural Resources, failed to properly assess the project impacts upon the Mauna Kea Summit Region Historic District, various historic and cultural properties, and Native Hawaiian traditional customary practices and rights.

**FCO COL 103.** The CDUA omitted consultation with Native Hawaiian cultural practitioners.

**FCO COL 104.** The CDUA, Sect. 4 Cultural Resources, included inaccurate information and manipulated Figures.

**FCO COL 105.** Applicant failed to provide any credible witness or evidence in the cch to substantiate information in Sect. 4 Cultural Resources.

**FCO COL 106.** The CDUA, Sect. 7 Visual Impact, failed to properly assess the project impacts upon the view planes and open space characteristics on the northern plateau of Mauna Kea.

**FCO COL 107.** The CDUA, Sect. 7 Visual Impact, included inaccurate information and photo simulations.

**FCO COL 108.** Applicant failed to provide any credible witness or evidence in the cch to substantiate information in Sect. 7 Visual Impact.

**FCO COL 109.** For the reasons stated above is why the Applicant was required to submit an updated, complete, and accurate CDUA for the proposed TMT project.

**FCO COL 110.** The DLNR is obligated to verify and substantiate that the information in the CDUA is complete and accurate pursuant to HAR § 13-5-31 (c).

**FCO COL 111.** It appears that DLNR staff did not take a ‘hard look’ at significant aspects of this CDUA in the initial submittal. Instead, information was cut and pasted in their entirety directly from the Application’s submittals and included in their OCCL Staff Report that was submitted to Board members for their consideration.

**FCO COL 112.** It has been over six years since October 10, 2010 when this application was submitted to BLNR/DLNR for review. Since that time, significant aspects pertaining to Mauna Kea have evolved and changed.

**FCO COL 113.** The BLNR is also obligated to verify and substantiate that the information in the CDUA is complete and accurate.

**FCO COL 114.** The BLNR should have required the Applicant to update and resubmit their application to be heard at a Board meeting and required public hearing to ensure due process of law. In addition, DLNR should have revisited and updated their staff report in this matter.

**FCO COL 115.** For the same reasons stated above is why the BLNR and DLNR were required to have the Applicant submit an updated, complete, and accurate CDUA for the proposed TMT project.

**FCO COL 116.** BLNR and DLNR failed to require the CDUA HA-3568 to be in compliance with the revised HAR Chapter 13-5 (August 12, 2011).

**FCO COL 117.** Failure of BLNR to follow HAR Chapter 1 of Title 13 and HRS Chapter 91.

**FCO FOF 670.** The outdated CDUA states, “If approved, the TMT Observatory Corporation will implement the TMT Management Plan.” Ex. R-1/B.30 at 2-2, CDUA.

**FCO FOF 671.** The outdated TMT Management Plan states, “On behalf of the TMT Observatory Corporation, the University of Hawai‘i is seeking a Conservation District Use Permit (CDUP) from the State of Hawai‘i Board of Land and Natural Resources (BLNR) that will allow the construction, operation, and eventual decommissioning of the Thirty Meter Telescope (TMT) Observatory within an area below the summit of Mauna Kea that is known as “Area E”.” Ex. R-1/B.30 at S-2, TMT Management Plan, CDUA.

**FCO FOF 672.** The TMT Management Plan included only a Draft Historic Preservation Mitigation Plan (included as an appendix in Exhibit B). Ex. R-1/B.30 at 2-4, CDUA.

**FCO FOF 678.** Table 4.1: Management Actions Detailed in the CMP and Subplans in the TMT Management Plan in Exhibit B of the CDUA inaccurately identified the applicability to the TMT project to significant management actions. Several of these management actions that would directly or indirectly apply to the TMT project were instead identified as being “Not Applicable”. Ex. R-1, App. B at 4-1 to 4-9, CDUA.

**FCO FOF 679.** In the table below is a sampling of some of the significant management actions that were inaccurately identified by OMKM as being “Not Applicable” to the TMT project and that were not previously completed by the Applicant. Ex. R-1, App. B at 4-1 to 4-9, CDUA.

<b>CMP</b>	<b>Subplans</b>	<b>Management Actions</b>
CR-1	NRMP 4.4.2 CRMP 4.3.3 PAP 4.2, 5.2, 6.1	Kahu Kū Mauna shall work with families with lineal and historical connections to Mauna Kea, cultural practitioners, and other Native Hawaiian groups, including the Mauna Kea Management Board's Hawaiian Culture Committee, toward the development of appropriate procedures and protocols regarding cultural issues.
CR-2	CRMP 2.4.2.1	Support application for designation of the summit region of Mauna Kea as a Traditional Cultural Property, per the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq. in consultation with the larger community.
CR-10	CRMP 4.3.1 PAP 5.2	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.
CR-13	CRMP 4.3.2, 4.3.7	Develop and implement a burial treatment plan for the UH Management Areas in consultation with Kahu Kū Mauna Council, MKMB's Hawaiian Culture Committee, the Hawai'i Island Burial Council, recognized lineal or cultural descendants, and SHPD.
NR-15	NRMP 4.1	Conduct baseline inventories of high-priority resources, as outlined in an inventory, monitoring, and research plan.
NR-17	NRMP 4.1.2.3	Conduct research to fill knowledge gaps that cannot be addressed through inventory and monitoring.
NR-18	NRMP 4.1, 4.5	Develop geo-spatial database of all known natural resources and their locations in the UH Management Areas that can serve as baseline documentation against change and provide information essential for decision-making.
EO-7	NRMP 4.4.2 CRMP 5.3 PAP 5.2, 6.3, 6.8	Continue and increase opportunities for community members to provide input to cultural and natural resources management activities on Mauna Kea, to ensure systematic input regarding planning, management, and operational decisions that affect natural resources, sacred materials or places, or other ethnographic resources with which they are associated.
FLU-2	NRMP 4.3.3.1	Develop a map with land-use zones in the Astronomy Precinct based on updated inventories of cultural and natural resources, to delineate areas where future land use will not be allowed and areas where future land use will be allowed but will require compliance with prerequisite studies or analysis prior to approval of Conservation District Use Permit.

**FCO object to UHH's to proposed additional conditions.** UHH attempts to assert that “*Condition Nos. 10 through 13 shall be applicable only upon approval and development of the TMT Project.*” As previously discussed, UHH’s commitment to their Decommissioning Plan are not subject to the approval and proposed building of the TMT. If telescopes are inoperable, scientifically outdated, and/or fiscally unsound to maintain or operate, then they should be decommissioned according to this plan regardless if the TMT is built or not. As written, Condition No. 13 contradicts UH President David Lassner’s letter that states, “*UH will decommission three telescopes permanently and as soon as possible though **all must be completed before TMT can go into operation.***” (emphasis added). However, UHH is attempting to extend this proposed decommissioning until December 31, 2033. This condition is also misleading because if there isn’t “any lease renewal or extension”, then all existing telescopes and associated astronomy facilities including the TMT Observatory, if built, would be required to be decommissioned by December 31, 2033. Another significant matter to point out, UHH failed to provide any witness or evidence during the CCH to substantiate that the implied conditions in the letter of UH President David Lassner (dated November 7, 2015) were legally binding. These proposed conditions were not even approved by the UH Board of Regents (“BOR”). Likewise, UHH failed to present UH President Lassner as a witness to substantiate his legal authority to declare these conditions described in this letter as being legally binding.

## **B. RESPONSE TO TIO’S EXCEPTIONS**

**FCO object to TIO’s statements and proposed additional conditions regarding cultural practices.** Firstly, TIO attempts to inaccurately classify Native Hawaiian traditional and customary practices as being “contemporary”. In addition, TIO proposes additional conditions regarding cultural practices that are untimely. Consultation with cultural practitioners and the identification of a project’s impacts upon Native Hawaiian practices, rights, and access are required to be done before BLNR’s approval of such permits.

Despite TIO’s reference to the “extensive background information regarding cultural practices and testimony from numerous witnesses” during this CCH, the HO’s Recommendations failed to make an assessment of these customary and traditional practices of

Native Hawaiians and to determine the actions to be taken to protect such practices and rights. Instead, the HO only makes cursory references to Native Hawaiians cultural practices associated with Mauna Kea and then systematically dismisses such practices by adopting the skewed findings and conclusions from UHH-TIO's joint document without verifying the accurateness of this information.

What is disturbing is that UHH-TIO's counsel knowingly presented inaccurate information in attempts to distort Native Hawaiian traditional and customary practices, dismiss *'ike kupuna* (indigenous knowledge and ancestral insight), discredit cultural practitioners and their witnesses, or diminish the significant adverse impacts of the proposed TMT project upon the natural and cultural resources on Mauna Kea in order to get approval for this project. UHH-TIO's joint document included testimony that was taken out of context to knowingly misconstrue and mispresent the evidence presented during this CCH. There are also numerous examples throughout UHH-TIO's document that illustrate that information was altered, omitted, or completely misstated to distort the truth or systematically mischaracterized the record on these matters. It's very evident that UHH-TIO's counsel have demonstrated adversary positions towards Native Hawaiian cultural practitioners associated with the public lands of Mauna Kea.

It's also very apparent that the HO has forgotten or disregarded the fact that UHH is a public agency with legal obligations and statutory duties that extend beyond a private corporation such as TIO. Likewise, the University has forgotten or disregarded that they're a State entity that also serves in the capacity as a trustee of the public lands at issue for the benefit of the general public and native Hawaiians, as stipulated in section 5(b) of the Admissions Act, pursuant to Article XVI Section 7 of the State Constitution, and as is set forth in the Article XII Section 4 of the Hawaii Constitution (Public Trust) and that they also have a fundamental duty to preserve and protect customary and traditional Native Hawaiian rights pursuant to Article XII Section 7 of the State Constitution. Instead, UHH has assumed a position of protecting the private corporate interests of both TMT Corporation and TIO over the inherent interests of Native Hawaiians and beneficiaries of the public lands trust.

**In addition, DLNR and BLNR failed the fundamental requirement to conduct an independent *Ka Pa'akai* assessment or analysis to protect Native Hawaiian customary and traditional practices and rights associated with Mauna Kea. See FCO COL 179-191.**

It was disclosed during this CCH by Mr. Samuel Lemmo, OCCL Administrator, that the State agency DLNR and BLNR as its executive board, had not conducted “an assessment, independent of the developer or applicant of impacts on customary and traditional practices of Native Hawaiians” associated with the lands of Mauna Kea. Mr. Lemmo testified that OCCL-DLNR didn’t have the resources, time, or staffing to complete an independent analysis as stipulated in the *Ka Pa‘akai* decision. See **FCO FOF 502-508** at 70 – 71. **Instead, BLNR/DLNR should have contracted services to conduct a proper *Ka Pa‘akai* assessment. If BLNR/DLNR can contract the services of the HO for this CCH at \$375 an hour with a maximum compensation increased to \$350,000 since the previous maximum of \$200,000 was previously surpassed, there’s no reasonable explanation as to why BLNR/DLNR has failed to complete an independent *Ka Pa‘akai* assessment for a previously known culturally significant area such as Mauna Kea.**

Mr. Lemmo testified that when preparing a staff report on a CDUP application, he informed his OCCL staff that “when you’re looking at the *Ka Paakai* analysis, that you can’t just take what the applicant says verbatim and cut and paste it and place it into your staff report,” Tr. 2/27/17, V.41 at 253. See **FCO FOF 502** at 70. However, it’s very apparent that the brief and abbreviated discuss about Cultural Practices and Historic Resources that was included in OCCL’s Staff Report (dated February 25, 2011 that was submitted to BLNR for consideration regarding CDUA HA-3568) was taken directly out from the Applicant’s own documents including, but not limited to CDUA HA-3568 and *2000 Master Plan*. Not only is this two-page analysis inadequate in identifying those resources - including traditional and customary native Hawaiian rights – that will be affected or impaired by the proposed action, but the actions OCCL proposed to protect native Hawaiian rights were taken directly from the Applicant’s list of proposed mitigation actions. Ex. R-7/B.70 at 50 – 52; Ex. R-1; Ex. B.37.

Mr. Lemmo further testified that OCCL cannot rely solely on information from the applicant to determine whether or not Native Hawaiian values, interests, and beliefs have been assessed and considered and whether mitigation measures have been imposed that reduce impacts to those values and interests. Tr. 2/27/17, V.41 at 254. See **FCO FOF 504** at 70.

When an individual of Native Hawaiian descent asserts that a traditionally exercised cultural, religious, or gathering practice in an undeveloped or not fully developed area would be curtailed by the proposed project, the State or the applicable agency is “obligated to address” this

adverse impact in its findings and conclusions pursuant to the *Ka Pa‘akai* framework. *Ka Pa‘akai*, 94 Hawai‘i at 46, 50, 7 P.3d at 1083, 1087. Concurring Opinion *Mauna Kea Anaina Hou et al. v. BLNR et al.* (2015) at 9. Consequently, if customary and traditional Native Hawaiian practices are to be meaningfully safeguarded, “findings on the extent of their exercise, their impairment, and the feasibility of their protection” are paramount. *Ka Pa‘akai*, 94 Hawai‘i at 50, 7 P.3d at 1087. *Id.* At 9-10. See **FCO COL 34**.

**Despite all the relevant and material evidence presented during the CCH through testimony and exhibits regarding Native Hawaiian traditional and customary rights associated with Mauna Kea and the northern plateau, the HO failed to complete an independent assessment to include the three factors known as the “*Ka Pa‘akai* framework”. Instead, the HO took a position of disregarding, dismissing, and/or ignoring the relevant and material evidence presented by Native Hawaiian cultural practitioners through the replication of inaccurate, misleading and/or irrelevant findings and conclusions from UHH-TIO’s joint document.**

**Even if the HO had conducted an independent *Ka Pa‘akai* assessment, which she didn’t, this assessment would still be incomplete and inadequate as a significant number of Native Hawaiian cultural practitioners were incapable of participating in an extensively long CCH. As a result, BLNR/DLNR can’t solely rely only upon a CCH to satisfy this statutory requirement to appropriately complete an independent *Ka Pa‘akai* assessment.**

TIO’s proposed additional conditions are also unnecessary as the Mauna Kea Comprehensive Management Plan (“CMP”) and associated sub-plan, Cultural Resources Management Plan (“CRMP”), already outline and stipulate several management actions to protect the natural and cultural resources including the requirement to consult with Native Hawaiian cultural practitioners. **However, UHH/OMKM have failed to implement many of these significant CMP management actions dating back to October 2009. UHH/OMKM have consistently demonstrated they are incapable of fulfilling their constitutional obligations to protect Native Hawaiian customary and traditional practices and rights associated with Mauna Kea. See FCO FOF 474-480.**

As testified to, the Applicant failed to adequately conduct such consultations with Native Hawaiian cultural practitioners. Furthermore, it’s been over seven years and the OMKM and the advisory council, Kahu Kū Mauna, still haven’t even finalized a consultation list of Native

Hawaiian cultural practitioners. Without such a list, UHH/OMKM/Kahu Kū Mauna are incapable of engaging in any type of consultation.

This required action pertaining to consultation is also outlined and identified in the CRMP as Management Action CR-1 as noted below. Ex. A-11 at iii.

*Kahu Kū Mauna shall work with families with lineal and historical connections to Mauna Kea, cultural practitioners, and other Native Hawaiian groups, including the Mauna Kea Management Board's Hawaiian Culture Committee, toward the development of appropriate procedures and protocols regarding cultural issues.*

These matters pertaining to consultation were also discussed at the BLNR's February 25, 2011 meeting as noted in the minutes below. Ex. B.72 at 34 – 35. Despite this discussion, UHH/OMKM have failed to implement Management Action CR-1 and have failed to consult with Native Hawaiian cultural practitioners whose practices and rights would be adversely impacted by the proposed TMT project.

*"Chair Aila asked what is the methodology for the council to interact with practitioners. Ms. Nagata said they haven't worked that out yet, but it is part of the CMP that they are required to consult with other Native Hawaiian organizations and groups."*

*"Member Edlao noted there was a list of 31 practitioners and didn't know whether they were ever contacted or not and suggested making a copy of that list and keeping those practitioners in the loop on what's happening and get input from them in developing access. Ms. Nagata agreed that they would love to have that."*

**FCO FOF 474.** In the CMP Cultural Resources Management Plan ("CRMP"), several management actions are identified for the purpose of protecting cultural resources. Ex. A-11 at 5.1 to 5.8.

**FCO FOF 475.** Once such management action item is identified with a priority of High to Medium scheduled to be completed in Year 1 is listed as such: "Develop a list of individuals, families, organizations who should be consulted when individual development projects are being proposed or when other issues arise that may be a concern". Ex. A-11 Table 5.1 at 5.2.

**FCO FOF 476.** Ms. Stephanie Nagata, OMKM Director, testified that the OMKM has not yet finalized such a list of individuals, families, organizations, or Native Hawaiian cultural practitioner despite this action item being identified with the priority of High to Medium. Tr. 12/12/16 vol 18 at 120 – 127.

**FCO FOF 477.** Ms. Nagata also disclosed that several other such CMP CRMP management actions have not yet been completed or implemented by OMKM despite this action item being identified with the priority of High to Medium and with a scheduled completion date of Year 1 or 2. Tr. 12/12/16 vol 18 at 116 – 127.

**FCO FOF 478.** OMKM has not finalized rules regarding the construction of new Hawaiian cultural features. Tr. 11/16/16, V.9 at 151

**FCO FOF 479.** OMKM has not finalized rules regarding the scattering of cremated human remains. Tr. 11/16/16, V.9 at 151

**FCO FOF 480.** OMKM has not finalized rules regarding the building of ahu or stacking rocks. Tr. 11/16/16, V.9 at 151

**Instead of trying to identify and protect Native Hawaiian customary and traditional practices and rights associated with Mauna Kea, UHH has executed several actions during the course of both CCHs to exclude or discount these practices and rights in order to get permit approval for the proposed TMT project. In addition, OMKM personnel have even gone to extreme efforts to destroy and desecrate cultural resources associated with Native Hawaiian customary and traditional practices in order to extinguish their presence on Mauna Kea. See FCO FOF 488-493.**

**FCO FOF 488.** In the archaeological monitoring report for geotechnical boring at the proposed TMT site, it states that "The two upright stones were later dislodged by OMKM staff". Ex. B.02i at 12.

**FCO FOF 489.** Mr. Ishibashi testified that he was the OMKM staff person identified in this monitoring report who was involved with this incident. Tr. 11/16/16 vol 9 at 172.

**FCO FOF 490.** Mr. Ishibashi testified that he had intentionally knocked down an upright stone associated with Native Hawaiian cultural practices that was near the northern boundary of the proposed TMT site on the northern plateau. Tr. 11/16/16 vol 9 at 162-175.

**FCO FOF 491.** Mr. Ishibashi testified that he did not consult with Kahu Ku Mauna prior to taking action to knock down an upright stone associated with Native Hawaiian cultural practices. Tr. 11/16/16 vol 9 at 164-165.

**FCO FOF 492.** Mr. Ishibashi testimony verified that he is not very familiar with the rules and policies pertaining to the protection of Native Hawaiian cultural practices and resources. Tr. 11/16/16 vol 9 at 158 – 166.

**FCO FOF 493.** Mr. Ishibashi testified that Mauna Kea rangers remove ho`okupu and items left on ahu even though they do not have the authority to do so. Tr. 11/16/16, V.9 at 162.

**FCO object to TIO’s proposed revision of Condition No. 18.** TIO proposes to revise this condition in order to avoid paying any “substantial rent”. Instead, TIO proposes to pay rent “as required by current law”. Yet, no specific law is referenced by TIO in this matter. Thus, TIO’s proposed condition leaves this matter ambiguous. To the contrary, counsel for BLNR and UH in *E. Kalani Flores v. Bd. of Land and Natural Res. et al.*, Civil No. 14-1-324 attempted to argue that State laws such as HRS §§ 171-17 and 171-33 to determine fair market value of rent for a sublease to TIO don’t apply. (See Appellees State of Hawai’i, Board of Land and Natural Resources, Department of Land and Natural Resources, and Suzanne D. Case's Answering Brief at 19 – 20; Appellee University of Hawaii’s Answering Brief at 20 – 21.)

**What “current law” is TIO referring to? The BLNR has a high fiduciary duty and obligation to protect the public lands trust and interests as well as its beneficiaries. As such, any condition regarding rent, BLNR should specify what is considered “substantial rent” instead of leaving it up to the Applicant or TIO to make that determination.**

### **C. EXCEPTIONS TO UHH-TIO'S OWN FOF/COL/DO CASTS DOUBT ON THE RELIABILITY OF THE HO’S RECOMMENDATIONS**

UHH and TIO took exceptions to their *own* findings, conclusions, and decision and order that were actually copied verbatim by the HO. The extensive duplication between the UHH-TIO’s joint document and HO’s Recommendations, inclusive of errors and omissions, casts serious doubts on the reliability of the HO’s findings, conclusions, and decision and order that were repeatedly copied and adopted without any verification for accuracy. FCO’s Exceptions to the Hearing Officer’s Recommendations filed as Proposed Findings of Fact, Conclusions of Law, and Decision and Order [Doc. No. 806] and FCO’s Response to UHH and TIO’s Joint Proposed Findings of Fact, Conclusions of Law, and Decision Order [Doc. No. 719] identified these substantial and unacceptable errors and omissions. Consequently, the Board cannot rely on the

HO's Recommendations as a basis for its decision. **The Board should initiate a fresh review of the record and draft a clean, substantiated document of finding of facts, conclusions of law, and decision and order for its proper consideration.**

### III. OTHERS MATTERS

**The FCO reasserts that BLNR erred by implementing a practice of executing Board actions and voting on matters in violation of Chapter 92, HRS §§ 92-3 and 92-7. The BLNR has demonstrated a pattern of conducting business outside of regular Board meetings, knowingly and willfully avoiding the public scrutiny of its deliberations in closed meetings, and committing reversible procedural errors.** The Board has met and has held full discussions and deliberated on the issues at hand on several occasions as noted in the following examples of Minute Orders No. 2, 4, 9, 14, 17, 36, 48, 49, 52. These matters were brought to the attention of the Board through motions filed such as Doc. No. 5.

One particular example is when the Board took action to issue an order on October 14, 2016 to void CDUP HA-3568 as noted in Minute Order No. 36 [Doc. 376]. Although the BLNR had a regular Board meeting on this date, this matter was not included on the meeting agenda as noted in their agenda or minutes. However, Board members included their signatures on this undated order, but time-stamped as "RECEIVED" by the OCCL on October 14, 2016, P 3:30. It's very apparent that BLNR took action outside of their regularly scheduled meeting. If the Board is required to vote at a regular meeting to approve a CDUP, wouldn't they also be required to vote at a regular meeting to declare and affirm a CDUP is void?

The Board attempts to argue that, "(t)he Sunshine Law does not apply to boards exercising adjudicatory functions, such as conducting a contested case hearing pursuant to HRS § 91-9. See *Outdoor Circle v. Harold KL. Castle Trust Estate*, 4 Haw. App. 633, 641, 675 P.2d 784, 790 (1983). However, this court decision does not give the BLNR a blanket approval to avoid compliance with Hawai'i's Sunshine Law. To the contrary, HRS § 92-3 mandates that "[e]very meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5." In addition, the Board attempted to cover-up it's procedural errors by mislabeling its actions as being "adjudicatory functions" instead of properly being identified as

administrative functions. The FCO contend that these procedural errors have resulted in prejudice to our substantive rights.

Members of the Flores-Case 'Ohana have connected with some of those *akua*, *kupua*, and *kūpuna* of Mauna a Wākea through genealogical ties as well as through customary and traditional practices. Through these practices, *'ike kupuna*, indigenous knowledge, and ancestral insight, profound information and a deeper understanding was provided about those particular traditions and cultural aspects connected to this sacred mountain.

Our *kūpuna* understood and acknowledged the unseen, but recognized, energy of a site that was in their vicinity. The Earth is considered by many indigenous peoples to be our 'Mother' or 'Grandmother'; always there to care for us, nurture us and teach us when we violate her purity. Kanaka Maoli refer to her as Papahānaumoku (Earth Mother) are also attuned and capable of feeling many facets of her energy and thus developed a communion with these energies. On the northern plateau, many of the sites have both visual and energetic alignments with each other as well as with other noted natural features such as the surrounding *pu 'u*. Due to the massive height and size of the TMT observatory, it would cause significant visual, physical, and energetic obstructions amongst these sites.

In the pursuit of scientific exploration with a total disregard of Native Hawaiian cultural traditions and their sacred landscape, the proposed TMT project, if allowed to be built, would contribute to the cumulative desecration and destruction of one the most sacred sites on this Earth. In the desire to discover the potential for life in other parts of this universe, some have forgotten the sacredness for all aspects of life on this planet. We are in the time when the understanding of the spiritual universe extends beyond the physical universe.

It is important to remember that many peoples, including Kanaka Maoli have a reverential and intimate relationship with their environment and the living Earth. A cultural attachment (relationship to environment and practices) is integral to one's physical and spiritual well-being and that this attachment to the cultural landscape of Mauna a Wākea remains strong amongst Kanaka Maoli today. For this reason, many Kanaka Maoli have deeply expressed that activities on Mauna a Wākea that lead to visible and physical alterations of the landscape not only have a significant and adverse effect on the mountain itself, but also have a damaging effect on everything and everyone that is physically, genealogically, spiritually, and culturally tied to

these lands. Mauna a Wākea continues as a place for traditional and customary practices of Kanaka Maoli which includes, but is not limited to, spiritual pilgrimages, religious ceremonies, erection of family *ahu* or altars, gifting of offerings, collection of basalt, depositing of *piko*, interment of *'ohana* remains, gathering of plant materials, and hunting. The cultural perspective of *aloha 'āina*, to have sincere love and respect for the land and nature, is at the heart of Hawaiian traditions. For those who are listening, what is our *'āina* trying to tell us during these times of change? As disclosed through *'ike kupuna* from those ancestors and divine beings who are still present on Mauna a Wākea, **everyone at these times are accountable for their own actions.**

Furthermore, as part of the decision-making process, the BLNR should take into consideration the Association of Hawaiian Civic Clubs (“AHCC”) Resolutions 13-52 *Urging the State of Hawai‘i, Governor, Board of Land and Natural Resources, and University of Hawai‘i to Recognize the Sacredness of Mauna Kea* and 16-30 *Strengthen the Mauna Kea Comprehensive Management Plan (CMP) to Reflect Native Hawaiian Stewardship of Mauna Kea and Ensure Compliance with Existing CMP Action Items*. Ex. B.73 and B.74. [see **Exhibits “H” & “I”**] The AHCC represents a significantly large contingent of Native Hawaiians in a confederation of fifty-eight (58) Hawaiian Civic Clubs located throughout the State of Hawai‘i and in the States of Alaska, California, Colorado, Illinois, Nevada, Utah, Virginia, Washington State, Tennessee and Texas. Founded in 1918 by Prince Jonah Kuhio Kalaniana‘ole, the Hawaiian Civic Club is the oldest Hawaiian community-based grass roots organization.

In addition, the BLNR should also take into consideration the Office of Hawaiian Affairs *Resolution Urging the Board of Land and Natural Resources to Exercise the Highest Possible Level of Stewardship and to Afford the Strongest Consideration to the Rights and Practices of Native Hawaiians and Sacred Sites Affected by Proposed Developments, Including Those on Mauna Kea, in the Conservation District Use Application Process*. Ex. B.76. [see **Exhibit “J”**]

These resolutions provide critical guidance for the BLNR in appropriately addressing proper stewardship, Native Hawaiian traditional and customary practices and rights, and sacred characteristics connected to the culturally significant lands of Mauna Kea.

#### **IV. CONCLUSION**

**The BLNR and DLNR are required to assume their affirmative duty and legal obligations to protect the public lands trust, resources, and rights of the public, beneficiaries, and Native Hawaiians associated with the lands of Mauna Kea. The FCO, other Petitioners and several intervenors presented relevant and material evidence and testimony that highlighted why the BLNR should not approve CDUP HA-3568 for the proposed TMT project.**

**Prior to BLNR approving any such permit pertaining to the public lands in a conservation district on Mauna Kea, the following actions are mandated by law and statutory provisions to be completed:**

- **BLNR/DLNR completing an independent *Ka Pa'akai* analysis for the lands of Mauna Kea**
- **UHH/OMKM completing a five-year review and update of the Mauna Kea Comprehensive Management Plan (CMP)**
- **UHH/OMKM taking corrective actions to ensure compliance with the Mauna Kea CMP and Mauna Kea Science Reserve Master Plan (2000)**
- **BLNR/DLNR ensuring that UH/UHH is in compliance with these plans**
- **UH/UHH completing an Environmental Impact Statement (EIS) for a proposed new general lease that would extend beyond 2033**
- **BLNR/DLNR determining the legality and impacts of issuing a new general lease**
- **UH/UHH taking corrective actions to resolve the incompleteness and inaccuracies in the CDUA HA-3568**
- **BLNR/DLNR thoroughly examining and reviewing CDUA HA-3568 to ensure its completeness and accuracy**
- **BLNR/DLNR affirming that the proposed mitigation measures for TMT impacts are adequate and accurate**
- **BLNR/DLNR and UH/UHH ensuring that Native Hawaiian traditional and customary rights and practices are being protected**

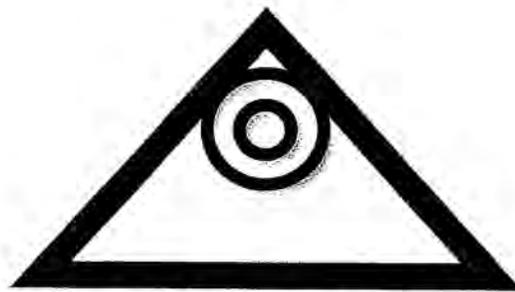
**If the BLNR/DLNR and UH/UHH attempt to circumvent or ignore their statutory duties and constitutional obligations by failing to complete the afore-mentioned actions, it will be another example of putting “the cart before the horse”, another example of prejudice to our substantive rights as Native Hawaiians, and another violation of due process.**

Based upon the foregoing, the FCO's Response to Exceptions to the Hearing Officer's Recommendations, FCO's Exceptions to the Hearing Officer's Recommendations filed as Proposed Findings of Fact, Conclusions of Law, and Decision and Order [Doc. No. 806]; FCO's Response to UHH and TIO's Joint Proposed Findings of Fact, Conclusions of Law, and Decision Order [Doc. No. 719]; and FCO's Proposed Findings of Fact, Conclusions of Law, and Decision Order [Doc. No. 664] as well as upon all other filings, briefs, and motions submitted by the FCO including those submitted on behalf of the Mauna Kea Hui Petitioners (Mauna Kea Anaina Hou And Kealoha Pisciotta, Clarence Kauakahi Ching, Paul K. Neves, Deborah J. Ward, Flores-Case 'Ohana, And Kahea: The Hawaiian Environmental Alliance) by their counsel Richard Naiwieha Wurdeman, **the deficient, incomplete, inaccurate, and outdated CDUA HA-3568 for the proposed Thirty Meter Telescope should not be approved.**

**Ultimately, the Board should initiate a fresh review of the record and draft a clean, substantiated document of finding of facts, conclusions of law, and decision and order for its proper consideration. If the Board is not inclined to do so, then it should adopt the following decision and order:**

**IT IS HEREBY DECLARED AND ORDERED**

**that Conservation District Use Application HA-3568 is deficient and hereby DENIED.**



*I ka Piko o ke Aloha*

DATED: Pu'ukapu, Hawai'i, September 11, 2017

A handwritten signature in black ink, appearing to read 'E. Kalani Flores', is written over a horizontal line.

E. Kalani Flores  
Representing Flores-Case 'Ohana

BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII

Contested Case Hearing Re  
Conservation District Use  
Application (CDUA) HA-3568  
for the Thirty Meter Telescope at  
the Mauna Kea Science Reserve,  
Ka'ohē, Hāmākua,  
Hawaii, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-002

Document title: FLORES-CASE 'OHANA'S  
RESPONSE TO EXCEPTIONS TO HEARING  
OFFICER'S RECOMMENDATIONS; EXHIBITS;  
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

OCCL-DLNR  
1151 Punchbowl Street, Rm 131  
Honolulu, Hawaii 96813

Michael Cain  
[dlnr.maunakea@hawaii.gov](mailto:dlnr.maunakea@hawaii.gov)  
*Custodian of the Records*

Carlsmith Ball LLP  
[isandison@carlsmith.com](mailto:isandison@carlsmith.com)  
[jpm@carlsmith.com](mailto:jpm@carlsmith.com)  
[lmcaneeley@carlsmith.com](mailto:lmcaneeley@carlsmith.com)  
*Counsels for the Applicant University  
of Hawaii at Hilo*

Law Offices of Yuklin Alulu  
[yuklin@kailualaw.com](mailto:yuklin@kailualaw.com)  
[cdex@hotmail.com](mailto:cdex@hotmail.com)  
*Counsels for Kahea*

Kealoha Pisciotta and Mauna Kea  
Anaina Hou  
[keomaivg@gmail.com](mailto:keomaivg@gmail.com)

Clarence Kukauakahi Ching  
[kahiwaL@cs.com](mailto:kahiwaL@cs.com)

Flores-Case 'Ohana  
E. Kalani Flores  
[ekflores@hawaiiintel.net](mailto:ekflores@hawaiiintel.net)  
B. Pualani Case  
[puacase@hawaiiintel.net](mailto:puacase@hawaiiintel.net)

Deborah J. Ward  
[cordylinecolor@gmail.com](mailto:cordylinecolor@gmail.com)

Paul K. Neves  
[kealiikea@yahoo.com](mailto:kealiikea@yahoo.com)

Watanabe Ing LLP  
[rshinyama@wik.com](mailto:rshinyama@wik.com)  
[douging@wik.com](mailto:douging@wik.com)  
*Counsels for TMT International  
Observatory, LLC*

Harry Fergerstrom  
*Hand delivery, by mail, or other means*  
P.O. Box 951  
Kurtistown, HI 96760

Mehana Kihoi  
[uhiwai@live.com](mailto:uhiwai@live.com)

C. M. Kaho'okahi Kanuha  
[kahookahi.kukiaimauna@gmail.com](mailto:kahookahi.kukiaimauna@gmail.com)

Joseph Kualii Lindsey Camara  
[kualiic@hotmail.com](mailto:kualiic@hotmail.com)

Torkildson, Katz, Moore, Hetherington  
& Harris  
[lsa@torkildson.com](mailto:lsa@torkildson.com)  
[njc@torkildson.com](mailto:njc@torkildson.com)  
*Counsels for Perpetuating Unique  
Educational Opportunities (PUEO)*

J. Leina'ala Sleightholm  
[leinaala.mauna@gmail.com](mailto:leinaala.mauna@gmail.com)

Lanny Alan Sinkin  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)  
*Representative for The Temple of Lono*

Kalikolehua Kanaele  
[akulele@yahoo.com](mailto:akulele@yahoo.com)

Stephanie-Malia:Tabbada  
[s.tabbada@hawaiiintel.net](mailto:s.tabbada@hawaiiintel.net)

Tiffnie Kakalia  
[tiffniekakalia@gmail.com](mailto:tiffniekakalia@gmail.com)

Glen Kila  
[makakila@gmail.com](mailto:makakila@gmail.com)

Dwight J. Vicente  
*hand delivery, by mail, or other means*  
2608 Ainaola Drive  
Hilo, Hawaiian Kingdom

Brannon Kamahana Kealoha  
[brannonk@hawaii.edu](mailto:brannonk@hawaii.edu)

Cindy Freitas  
[hanahanai@hawaii.rr.com](mailto:hanahanai@hawaii.rr.com)

William Freitas  
[pohaku7@yahoo.com](mailto:pohaku7@yahoo.com)

Signature:   
Name: E. Kalani Flores  
Date: September 11, 2017

## EXHIBITS

- A Hearings Officer's Recommendations filed as Proposed Findings of Fact, Conclusions of Law, and Decision and Order (July 26, 2017) submitted during the second contested case hearing [Doc. No. 783 at 260-263]
- B DLNR-OCCL Staff Report (February 25, 2011) submitted prior to holding the first contested case hearing [Ex. R-7 at 63-66]
- C BLNR Meeting Minutes - BLNR's approval of CDUP HA-3568 issued prior to holding the first contested case hearing (February 25, 2011) [Ex. B.72 at 36-37]
- D Applicant UHH's Proposed Findings of Fact, Conclusions of Law and Decision and Order (November 11, 2011) submitted during the first contested case hearing [at 129-133]
- E Hearings Officer's Proposed Findings of Fact, Conclusions of Law and Decision and Order (November 30, 2012) submitted during the first contested case hearing [at 120-124]
- F BLNR's Findings of Fact, Conclusions of Law and Decision and Order (April 12, 2013) issued during the first contested case hearing [at 122-126]
- G UHH-TIO's Joint [Proposed] Findings of Fact, Conclusions of Law and Decision and Order (May 30, 2017) submitted during the second contested case hearing [Doc. No. 671 at 219-223]
- H Association of Hawaiian Civic Clubs Resolution 13-52 *Urging the State of Hawai'i, Governor, Board of Land and Natural Resources, and University of Hawai'i to Recognize the Sacredness of Mauna* [Ex. B.73]
- I Association of Hawaiian Civic Clubs Resolution 16-30 *Strengthen the Mauna Kea Comprehensive Management Plan (CMP) to Reflect Native Hawaiian Stewardship of Mauna Kea and Ensure Compliance with Existing CMP Action Items* [Ex. B.74]
- J Office of Hawaiian Affairs *Resolution Urging the Board of Land and Natural Resources to Exercise the Highest Possible Level of Stewardship and to Afford the Strongest Consideration to the Rights and Practices of Native Hawaiians and Sacred Sites Affected by Proposed Developments, Including Those on Mauna Kea, in the Conservation District Use Application Process* [Ex. B.76]

**BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII**

IN THE MATTER OF

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

CASE NO. BLNR-CC-16-002

**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION AND ORDER**

**Certificate of Service**

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION AND ORDER**

Received  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
State of Hawaii  
2017 July 26 3:21 pm

**Exhibit "A"**

law, it is intended that every such finding of fact shall be construed as a conclusion of law.

### **RECOMMENDED DECISION AND ORDER**

Based on the foregoing findings of fact and conclusions of law, the CDUA and the TMT Management Plan is recommended for approval. A CDUP should be issued by the BLNR, subject to the following conditions:

- (1) UH Hilo shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the HAR § 13-5 et seq.;
- (2) UH Hilo shall obtain appropriate authorization from the Department for the occupancy of state lands, if applicable;
- (3) UH Hilo shall comply with all applicable Department of Health administrative rules;
- (4) Any work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within twelve (12) years of the approval. The UH Hilo shall notify the Department in writing when construction activity is initiated and when it is completed;
- (5) Before proceeding with any work authorized by the Board, UH Hilo shall submit four copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to UH Hilo. Plan approval by the Chairperson does not constitute approval required from other agencies;
- (6) All representations relative to mitigation set forth in the Environmental Impact Statement and Conservation District Use Application are incorporated and adopted as conditions of the permit;
- (7) All mitigation measures and management actions contained in the Historic Preservation Mitigation Plan, Construction Plan, Historical & Archaeological Site Plan, Maintenance Plan, and Arthropod Monitoring Plan, are incorporated as conditions of this permit;
- (8) The TMT Project will comply with any terms and conditions outlined in the Comprehensive Management Plan and associated sub-plans; and
- (9) The TMT Management Plan is approved, including all specific management actions articulated in the TMT Management Plan including, Cultural Resources Management, Natural Resources Management, Education & Outreach,

Astronomical Resources, Permitting and Enforcement, Infrastructure and Maintenance, Construction Guidelines, Site Recycling, Decommissioning, Demolition & Restoration, Future Land Uses, and Monitoring, Evaluation & Updates. These management actions and their associated mitigation measures are incorporated as conditions of this permit.

The following additional conditions shall be implemented by UHH, OMKM and TIO:

- (1) Ensuring that employees attend mandatory cultural and natural resources training;
- (2) Working with the 'Imiloa Astronomy Center and OMKM to develop informational exhibits for visitors regarding the natural, cultural and archaeological resources of Mauna Kea;
- (3) Funding the re-naturalization of the closed access road on Pu'u Poli'ahu, partial re-naturalization of the batch plant staging area after construction has been completed, and camouflaging of the utility pull boxes in certain locations to reduce the visual impact from the summit area;
- (4) Implementing an invasive species control program;
- (5) Working with OMKM to develop and implement a wēkiu bug habitat restoration study;
- (6) Implementing the "Zero Waste Management" policy;
- (7) Filling employment opportunities locally to the greatest extent possible;
- (8) Mandating that employees traveling beyond Hale Pōhaku take part in a ride-sharing program using project vehicles;
- (9) Using energy savings devices such as solar hot water systems, photovoltaic power systems, energy efficient light fixtures, and Energy Star rated appliances;
- (10) Providing \$1 million annually, adjusted for inflation, for "Community Benefits Package" which will commence with construction and continue through the term of the sublease. The package will be administered via The Hawai'i Island New Knowledge (THINK) Fund Board of Advisors;
- (11) Partnering with other institutions to implement a Workforce Pipeline Program, headed by at least one full-time position through the Community Outreach office, to prepare local residents for jobs in science, engineering, and technical fields;
- (12) The University will ensure that the survey of the power line corridor easement complies with DLNR standards and is in accordance with the conditions contained in the grant of easement (including the Mauna Kea Ice Age Natural Area Reserve) that was approved by the BLNR in August 1985. The University will provide copies of the survey to DOFAW;

- (13) OMKM will consult with the U.S. Fish and Wildlife Service and experts who are advising OMKM, including representatives from the DLNR regarding surveys of the wēkiu bug and invertebrates along the utility corridor, including Pu‘u Hau Kea and the pu‘u west of the Parking Area 1;
- (14) The construction contractor will be required to minimize the visual changes to land within the utility line right-of-way during utility upgrades. Any disturbance outside of the easement area of the construction corridor will be restored to the extent possible;
- (15) UH Hilo will present a plan for handling recreational parking during construction to the OCCL for review and approval, at least one month prior to beginning construction;
- (16) Following construction, TMT shall keep their area clean and free of trash or unattended tools and equipment, unless authorized in writing by OMKM and OCCL;
- (17) The Archaeological Monitoring Plan will be submitted to the State Historic Preservation Division for review and approval prior to the onset of construction;
- (18) TIO will pay a "substantial" amount for sublease rent. The rent would be deposited into the Manna Kea Land Fund, and only used for management of Mauna Kea;
- (19) UH Hilo will notify OCCL of the date of the twice-annual inspections of the project site and allow Department staff to attend if available;
- (20) UH Hilo will provide OCCL and BLNR a copy of their annual report to OMKM;
- (21) UH Hilo will allow BLNR to name a DLNR representative to participate in the CMP five-year management review process;
- (22) When provided or required, potable water supply and sanitation facilities shall have the approval of the Department of Health and the county Board of Water Supply;
- (23) UH Hilo understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- (24) In issuing this permit, the Department and Board have relied on the information and data that UH Hilo has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- (25) Where any interference, nuisance, or harm may be caused, or hazard established

by the use, UH Hilo shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;

- (26) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; the Applicant will also notify the Office of Hawaiian Affairs at the same time;
- (27) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- (28) No construction work shall be initiated until the Applicant demonstrates compliance with all preconstruction conditions and mitigation measures outlined in this report. Once this condition has been satisfied, the Department will issue notice to proceed with construction;
- (29) TIO shall set aside funds annually in a sufficient amount to allow for site observatory and access way site restoration;
- (30) Daytime activities at TMT will be minimized on up to four days per year, as identified by Kahu Kū Mauna; and
- (31) Other terms and conditions as may be prescribed by the Chairperson.

Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

DATED: Honolulu, Hawai'i, July 26, 2017.



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Judge Riki May Amano (ret.)  
Hearing Officer

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawaii

180-Day Exp. Date: April 5, 2010

February 25, 2011

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REGARDING:** Conservation District Use Application HA-3568  
Thirty Meter Telescope

**APPLICANT:** University of Hawai'i at Hilo

**AGENT:** Dr. Donald Straney, Chancellor; 200 W. Kāwili Street, Hilo, HI 96720

**LANDOWNER:** State of Hawai'i; leased to the University of Hawai'i under General Lease S-4191, with management delegated to the Office of Mauna Kea Management (OMKM)

**LOCATION:** Mauna Kea Science Reserve, Ka'ōhe Mauka, Hāmakua District, Hawai'i  
**Observatory:** 13-N Site, "Area E," North Plateau, elevation 13,150-13,175 feet above sea level  
**Access Way:** Mauna Kea Loop Road to 13-N  
**Batch Plant Staging Area:** Access Road, below Pu'u Wēkiu  
**HELCO Substation:** near Hale Pōhaku, @ 7 miles down road

**TMK:** (3) 4-4-015:009

**ARE OF PARCEL:** Approximately 11,288 acres (Mauna Kea Science Reserve)

**AREA OF USE:** **Observatory:** approximately 4.9 acres  
**Access Way:** approximately 3.6 acres / 3,400 linear feet  
**Batch Plant Staging Area:** approximately 4 acres; temporary  
**HELCO Substation:** No change in footprint

**SUBZONE:** Resource

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

FEB 25 2011

Exhibit "B"

ITEM K-1

As they have in the past, the Board faces the difficult task of deciding whether the project may proceed. OCCL has tried its best to represent the range of viewpoints on this project, and has included the full text of many documents for the record.

TMT will prepare annual reports for OMKM. These reports, due on December 31 each year, will provide OMKM with information about TMT's activities, potential new actions, goals, and objectives in the coming year. The reports would include information recorded in the on-going logs, records of annual staff Cultural and Natural Resources Training Program completion, and findings/outcomes of annual audits and inspections. **OCCL recommends that TMT provide OCCL with a copy of these annual reports.**

OMKM will conduct twice-annual inspections of the TMT Project site for evidence of CDUP and TMT Management Plan violations. **OCCL recommends that our office be notified of the inspection date, should staff be available to attend.**

The applicant proposes that the TMT Management Plan be updated every five years, as necessary, based on (a) updates to the Mauna Kea CMP; (b) strengths or weaknesses revealed through the monitoring and reporting program; (c) relevant new or modified laws, regulations, and policies; and (d) modifications to the operation of the TMT Observatory. OCCL feels that it would be valuable for DLNR to be active participants in the TMT Management Plan review. **OCCL recommends that the Chairperson name a representative from the Department to work with TMT on their Management Plan updates.**

Finally, we need to make sure that all of the mitigation measures are in place prior to the start of any construction on the TMT project. **OCCL recommends that a condition be added to require a status report of all BLNR imposed mitigation measures, and that no construction work be initiated until the applicant demonstrates compliance with all pre-construction conditions and mitigation measures outlined in this report. Once this condition has been satisfied, the Department will issue notice to proceed with construction work.**

**OCCL has concluded that the applicant meets the Conservation Criteria outlined in Hawai'i Administrative Rules (HAR) §13-5. After careful review of the application and associated environmental documents, and balancing the potential benefits against the potential impacts of the project, OCCL will recommend that the Board approve this application.**

#### RECOMMENDATION:

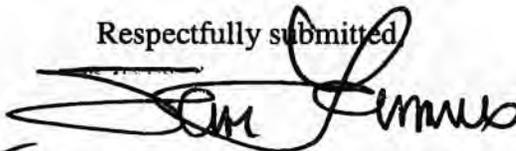
Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources Approve this Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope, including all ancillary uses, at the Mauna Kea Science Reserve, Ka'ohē Mauka, Hāmākua District, Hawai'i, TMK (3) 4-4-015:009, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;
2. The applicant shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
3. The applicant shall comply with all applicable Department of Health administrative rules;
4. Any work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within twelve (12) years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
5. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
6. All representations relative to mitigation set forth in the Environmental Impact Statement and Conservation District Use Application are incorporated as conditions of the permit;
7. The activities and conditions to be set forth in the Archaeological Monitoring Plan, Construction Plans, Maintenance Plan, and Arthropod Monitoring Plan are incorporated as conditions of this permit;
8. The project will comply with any terms, conditions, and management actions outlined in the Comprehensive Management Plan and associated Sub Plans;
9. The following additional conditions shall be implemented by OMKM and TMT:
  - Ensuring that employees attend mandatory cultural and natural resources training;
  - Working with the `Imiloa Astronomy Center to develop information exhibits for visitors regarding the natural, cultural and archaeological resources of Mauna Kea;
  - Funding the re-naturalization of the closed Access Road on Poli`ahu, partially re-naturalize the Batch Plant Staging Area after construction, and camouflage the utility pull boxes in certain locations to reduce the visual impact from the summit area;
  - Implementing an invasive species control program;
  - Working with OMKM to develop and implement a habitat restoration study;
  - Implementing the "Zero Waste Management" policy;
  - Filling employment opportunities locally to the greatest extent possible;

- Mandating that employees traveling beyond Hale Pōhaku take part in a ride-sharing program using project vehicles;
  - Using energy savings devices such as solar hot water systems, photovoltaic power systems, energy efficient light fixtures, and the use of Energy Star rated appliances;
  - Providing \$1 million annually, adjusted for inflation, for “Community Benefits Package” which will commence with construction and continue through the term of the sublease. The package will be administered via The Hawai‘i Island New Knowledge (THINK) Fund Board of Advisors;
  - Partnering with other institutions to implement a Workforce Pipeline Program, headed by at least one full-time position through the Community Outreach office, to prepare local residents for jobs in science, engineering, and technical fields;
  - The University will ensure that the survey of the power line corridor easement complies with DLNR standards and is in accordance with the conditions contained in the grant of easement (including the Mauna Kea Ice Age Natural Area Reserve) that was approved by the BLNR in August 1985. The University will provide copies of the survey to DOFAW;
  - OMKM will consult with the U.S. Fish and Wildlife Service and experts who are advising OMKM, including representatives from the DLNR, on surveys of the wēkiu bug and invertebrates regarding surveys along the utility corridor, including Pu‘u Hau Kea and the pu‘u west of the Parking Area 1;
  - The construction contractor will be required to minimize the visual changes to land within the utility line right-of-way during utility upgrades. Any disturbance outside of the easement area of the construction corridor will be restored to the extent possible;
  - The applicant will present a plan for handling recreational parking during construction to the OCCL for review and approval prior to beginning construction;
  - Following construction, TMT shall keep their area clean and free of trash or unattended tools and equipment, unless authorized by OMKM and OCCL;
  - The Archaeological Monitoring Plan will be submitted to the State Historic Preservation Division for review and approval prior to the onset of construction; and
  - TMT remains committed to paying a “substantial” amount for sublease rent. The rent would be deposited into the Mauna Kea Land Fund, and only used for management of Mauna Kea.
10. The University will notify OCCL of the date of the twice-annual inspections of the project site, and allow staff to attend if available;
  11. The applicant will provide OCCL with a copy of their annual report to OMKM;
  12. The Chairperson shall name a DLNR representative to participate in the TMT five-year management review process;
  13. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the board of water supply;
  14. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

15. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
16. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
17. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; the applicant will also notify OHA at the same time;
18. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
19. No construction work shall be initiated until the applicant demonstrates compliance with all pre-construction conditions and mitigation measures outlined in this report. Once this condition has been satisfied, the Department will issue notice to proceed with construction;
20. Other terms and conditions as may be prescribed by the Chairperson; and
21. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted



For

Michael Cain, Staff Planner  
Office of Conservation and Coastal Lands

**Approved for submittal:**

  
**William J. Aila, Interim Chairperson  
Board of Land and Natural Resources**

**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, FEBRUARY 25, 2011  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Interim Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

**MEMBERS**

William Aila, Jr.  
David Goode  
Jerry Edlao

Ron Agor  
John Morgan  
Rob Pacheco

**STAFF**

Sam Lemmo/OCCL  
Paul Conry/DOFAW  
Ed Underwood/DOBOR

Russell Tsuji/LAND  
Ian Hirokawa/LAND  
Francis Oishi/DAR

**OTHERS**

Pam Matsukawa, Deputy Attorney General  
Perry White, K-1  
Bob McLaren, K-1  
Doug Simons, K-1  
Roberta Chu, K-1  
Jon Miyata, K-1  
Noa Helela, K-1  
Keali'iwawae Keli'ikoa, K-1  
Glenn Ida, K-1  
Randy Kurohara, K-1  
Kelson Lau, K-1  
Kealoha Pisciotta, K-1, K-2  
Jonathan Osorio, K-1  
Marti Townsend, K-1, K-2

President Marcie Greenwood, K-1  
Barry Taniguchi, K-1  
Representative Jerry Chang, K-1  
Greg Chun, K-1  
Jacqui Hoover, K-1  
Dean Au, K-1  
Hanaloa Helela, K-1  
Barbara Hastings, K-1  
Al Lardizabal, K-1  
Clyde Hayashi, K-1  
Richard Ha, K-1  
Ross Wilson, K-1  
Kalepa Babayan, K-1  
Clarence Ku Ching, K-1

Member Agor said that he knows the Board appreciates the Hawaiian culture folks coming out whether or not they were for the project because that helps facilitate developing the management plan and he thanked them.

Member Goode said he enjoyed the testimonies today. It was the most articulate, passionate and that the folks on Maui could learn from the folks on Big Island today. I was really impressed on a number of levels. I think the OMKM has a lot on their shoulders here – reading the testimonies and the report. Like what Member Pacheco said we have certain responsibilities in the constitution and in the rules and the eight criteria we have to look at mentioned by some of the testifiers. Criteria 6 is one where there are a lot of ways to look at it. The existing physical and environmental aspects of the land have to be improved or at least stay the same. Looking at that piece of land what is going to change right there where the site is. If you look at the entire context in the staff report indicates it's a system of trade offs. One of the trade offs is to shift some of the responsibility to OMKM which is why I am curious about where that money would go. It recognizes the four sub-plans we passed earlier that OMKM will have to wrestle with and is going to have to address some of these. Certainly, the decommissioning plan is part of improving the scenic, natural beauty, open spaces, etc. When he is looking at the criteria this is the one he'd be wrestling with and focused on today. He thinks this is the solution the way it has been set up. He thinks the University has certainly learned and we have to learn from the past. He learned there were mistakes made. Everybody made a commitment to not repeat that and he would forward the motion.

Member Pacheco said he was on the MKMB before he was on the Land Board. He visited the mountain a lot and he has been up there hundreds of times. He loves it in a very deep way because it speaks to him. He thinks one of the things that we've formed over the years and decades, people brought these issues for the mountain there is a complete different societal cultural look at the mountain. If that lease in the 1960s came to us today he didn't think it would have a chance of being put in place. In the context of this Board because none of us will be there in the future will have to deal with the issues of an extension of the lease coming up in 2016 and this lease expires in 2032 which is not a long way. There will be much different discussion about the future of the mountain at that point.

Chairperson Aila took the vote. All voted in favor.

**The Board:**

**Approved the addition of five amendments and amended condition #7 as follows:**

- The TMT Management Plan is approved, including all specific management actions articulated in the TMT Management Plan including, Cultural Resources Management, Natural Resources Management, Education and Outreach, Astronomical Resources, Permitting and Enforcement, Infrastructure and Maintenance, Construction Guidelines, Site Recycling, Decommissioning, Demolition and Restoration, Future Land Uses, and**

**Monitoring, Evaluation and Updates.** These management actions and their associated mitigation measures are incorporated as conditions to this permit.

- **(Amend condition #7) All mitigation measures and management actions contained in the Historic Preservation Mitigation Plan, Construction Plan, Historical and Archaeological Site Plan, Maintenance Plan, Arthropod Monitoring Plan, are incorporated as conditions of this permit.**
- **TMT will set aside funds annually in a sufficient amount to allow for the observatory and access ways site restoration.**
- **Daytime activities at TMT will be minimized on up to four days per year as identified by Kahu Ku Mauna.**
- **If a contested case proceeding is initiated, no construction shall occur until a final decision is rendered by the Board in favor of the applicant or the proceeding is otherwise dismissed.**

**Otherwise, staff's recommendations were approved as submitted.**

**Unanimously approved as amended (Pacheco, Morgan)**

**Item K-2 Request Decision-making by the Board (a) On its Own Motion to Hold a Contested Case Hearing or Grant Requests by Mauna Kea 'Anaina Hou, Fred Stone, KAHEA Environmental Alliance, Kukauakahi (Clarence Ching), and Sierra Club for a Contested Case Hearing, and (b) Appoint a Hearings Officer and Delegate to the Chairperson the Authority to Select Said Hearings Officer to Conduct All Hearings for One (1) Contested Case Hearing, with Respect to Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope by the University of Hawaii at Hilo, at Mauna Kea Science Reserve, Ka'ohē Mauka, Hamakua District, Island of Hawai'i, TMK: (3) 4-4-015:009**

Mr. Lemmo noted that he did get a note from Fred Stone. He was not a perspective party in a contested case hearing so he would not include his name amending the report to remove his name from the report.

Member Goode asked whether there were any testifiers today that mentioned they wanted a contested case hearing that are not on the list. Mr. Lemmo said he think there was one, Fergustrom. Chair Aila clarified that with Mr. Fergustrom. Member Pacheco said there was digital testimony that was forwarded to the Board that he believed there was a petition by the Royal Order or is that not correct. There was some discussion between the Board, Mr. Lemmo and someone from the public. Mr. Lemmo said there have been oral request made by the people on the staff report in the public hearings and in the

**BOARD OF LAND AND NATURAL RESOURCES**

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

**STATE OF HAWAII**

2011 NOV 18 P 2: 53

In re Petition Requesting a Contested  
Case Hearing on Conservation District  
Use Permit (CDUP) HA-3568 for the  
Thirty Meter Telescope, Mauna Kea  
Science Reserve, Ka'ohē Mauka,  
Hāmākua, Hawai'i, TMK (3) 4-4-  
015:009

) DLNR Docket No. HA-11-05  
)  
) **DEPT. OF LAND & NATURAL RESOURCES**  
) **APPLICANT UNIVERSITY OF HAWAII**  
) **AT HILO'S PROPOSED FINDINGS OF**  
) **FACT, CONCLUSIONS OF LAW AND**  
) **DECISION AND ORDER; CERTIFICATE**  
) **OF SERVICE**

)  
) Hearing Date: August 15-18 & 25, &  
) September 26 & 30, 2011  
)  
) Hearing Time: 9:00 AM  
)  
) Hearings Officer: Paul S. Aoki, Esq.

**APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER**

Applicant University of Hawai'i at Hilo submits these proposed findings of fact,  
conclusions of law and decision and order pursuant to Minute Order No. 12 filed August 26,  
2011 and Minute Order No. 15 filed on October 31, 2011.

Exhibit "D"

h. The proposed land use will not be materially detrimental to the public health, safety, and welfare.

316. By separate order issued this day, the Board approves the TMT Management Plan.

317. Therefore, the proposed land use meets the criteria for issuance of a Conservation District Use Permit. The proposed land use also reasonably protects identified native Hawaiian rights.

318. Any conclusion of law improperly designated as a finding of fact shall be deemed or construed as a conclusion of law. Any finding of fact improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

319. Pursuant to Haw. Rev. Stat. § 91-12, any of the proposed findings of fact submitted by UHH, KAHEA, MKAH, Mr. Ching, Ms. Ward, Mr. Neves, and the Flores-Case 'Ohana not already ruled upon by the BLNR by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

### **DECISION AND ORDER**

Based on the foregoing, the CDUA is GRANTED, and a Conservation District Use Permit is issued subject to the following conditions.

(Unless otherwise explicitly indicated or clear from the context, "Board" and "BLNR" shall mean the Board of Land and Natural Resources; "Chairperson" shall mean the Chairperson of the Board of Land and Natural Resources; and "Department" shall mean the Department of Land and Natural Resources.).

1. UHH shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;
2. UHH shall obtain appropriate authorization from the Department for the occupancy of state lands, if applicable;
3. UHH shall comply with all applicable Department of Health administrative rules;
4. Any work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within twelve (12) years of the approval. UHH shall notify the Department in writing when construction activity is initiated and when it is completed;
5. Before proceeding with any work authorized by the Board, UHH shall submit four copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the

conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to UHH. Plan approval by the Chairperson does not constitute approval required from other agencies;

6. All representations relative to mitigation set forth in the Environmental Impact Statement and Conservation District Use Application are incorporated as conditions of the permit;
7. All mitigation measures and management actions contained in the Historic Preservation Mitigation Plan, Construction Plan, Historical & Archaeological Site Plan, Maintenance Plan, and Arthropod Monitoring Plan, are incorporated as conditions of this permit;
8. The TMT Project will comply with any terms and conditions outlined in the Comprehensive Management Plan and associated sub-plans;
9. The TMT Management Plan is approved, including all specific management actions articulated in the TMT Management Plan including, Cultural Resources Management, Natural Resources Management, Education & Outreach, Astronomical Resources, Permitting and Enforcement, Infrastructure and Maintenance, Construction Guidelines, Site Recycling, Decommissioning, Demolition & Restoration, Future Land Uses, and Monitoring, Evaluation & Updates. These management actions and their associated mitigation measures are incorporated as conditions of this permit;
10. The following additional conditions shall be implemented by OMKM and TMT:
  - Ensuring that employees attend mandatory cultural and natural resources training;
  - Working with the 'Imiloa Astronomy Center and OMKM to develop informational exhibits for visitors regarding the natural, cultural and archaeological resources of Mauna Kea;
  - Funding the re-naturalization of the closed access road on Pu'u Poli'ahu, partially re-naturalization of the batch plant staging area after construction has been completed, and camouflaging the utility pull boxes in certain locations to reduce the visual impact from the summit area;
  - Implementing an invasive species control program;
  - Working with OMKM to develop and implement a habitat restoration study;
  - Implementing the "Zero Waste Management" policy;
  - Filling employment opportunities locally to the greatest extent possible;

- Mandating that employees traveling beyond Hale Pōhaku take part in a ride-sharing program using project vehicles;
- Using energy savings devices such as solar hot water systems, photovoltaic power systems, energy efficient light fixtures, and the use of Energy Star rated appliances;
- Providing \$1 million annually, adjusted for inflation, for “Community Benefits Package” which will commence with construction and continue through the term of the sublease. The package will be administered via The Hawai’i Island New Knowledge (THINK) Fund Board of Advisors; and
- Partnering with other institutions to implement a Workforce Pipeline Program, headed by at least one full-time position through the Community Outreach office, to prepare local residents for jobs in science, engineering, and technical fields;
- The University will ensure that the survey of the power line corridor easement complies with DLNR standards and is in accordance with the conditions contained in the grant of easement (including the Mauna Kea Ice Age Natural Area Reserve) that was approved by the BLNR in August 1985. The University will provide copies of the survey to DOFAW;
- OMKM will consult with the U.S. Fish and Wildlife Service and experts who are advising OMKM, including representatives from the DLNR, on surveys of the wēkiu bug and invertebrates regarding surveys along the utility corridor, including Pu‘u Hau Kea and the pu‘u west of the Parking Area 1;
- The construction contractor will be required to minimize the visual changes to land within the utility line right-of-way during utility upgrades. Any disturbance outside of the easement area of the construction corridor will be restored to the extent possible;
- UHH will present a plan for handling recreational parking during construction to the OCCL for review and approval prior to beginning construction;
- Following construction, TMT shall keep their area clean and free of trash or unattended tools and equipment, unless authorized by OMKM and OCCL;
- The Archaeological Monitoring Plan will be submitted to the State Historic Preservation Division for review and approval prior to the onset of construction; and
- TMT will pay a “substantial” amount for sublease rent. The rent would be deposited into the Manna Kea Land Fund, and only used for management of Mauna Kea.

11. UHH will notify OCCL of the date of the twice-annual inspections of the project site and allow Department staff to attend if available;
12. UHH will provide OCCL and BLNR a copy of their annual report to OMKM;
13. UHH will allow BLNR to name a DLNR representative to participate in the five-year management review process;
14. When provided or required, potable water supply and sanitation facilities shall have the approval of the Department of Health and the county Board of Water Supply;
15. UHH understands and agrees that this permit does not convey any vested rights or exclusive privilege;
16. In issuing this permit, the Department and Board have relied on the information and data that UHH has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
17. Where any interference, nuisance, or harm may be caused, or hazard established by the use, UHH shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
18. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; the Applicant will also notify the Office of Hawaiian Affairs at the same time;
19. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
20. No construction work shall be initiated until the Applicant demonstrates compliance with all preconstruction conditions and mitigation measures outlined in this report. Once this condition has been satisfied, the Department will issue notice to proceed with construction;
21. TMT shall set aside funds annually in a sufficient amount to allow for site observatory and access way site restoration;
22. Daytime activities at TMT will be minimized on up to four days per year, as identified by Kahu Ku Mauna;

23. Other terms and conditions as may be prescribed by the Chairperson; and
24. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

DATED: Honolulu, Hawai'i, November 17, 2011.



IAN L. SANDISON  
TIMOTHY LUI-KWAN  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawai'i 96813  
Tel No. 808.523.2500  
Fax No. 808.523.0842

Attorneys for Applicant  
UNIVERSITY OF HAWAI'I AT HILO

PAUL S. AOKI  
Alii Place, Suite 1400  
1099 Alakea Street  
Honolulu, Hawaii 96813  
Telephone: (808) 539-0400

Hearing Officer

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2012 NOV 30 P 3: 18

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In re Petitions requesting a Contested Case )	DLNR Docket No. HA-11-05
Hearing Re Conservation District Use )	
Permit (CDUP) HA-3568 for the Thirty )	HEARING OFFICER'S PROPOSED
Meter Telescope at the Mauna Kea Science )	FINDINGS OF FACT,
Reserve, Ka'oho Mauka, Hamakua District, )	CONCLUSIONS OF LAW AND
Island of Hawai'i, TMK (3) 4-4-015:009 )	DECISION AND ORDER
)	
)	
)	

HEARING OFFICER'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION AND ORDER

The hearings officer makes the following Findings of Fact, ("FOF"), Conclusions of Law ("COL"), and Decision and Order ("D&O"), based on the records maintained by the Department of Land and Natural Resources ("DLNR") on Conservation District Use Application ("CDUA") OA:3412 and the witness testimonies and exhibits presented and accepted into evidence.

If any statement denominated a COL is more properly considered a FOF, then it should be treated as a FOF; and conversely, if any statement denominated as a FOF is more properly considered a COL, then it should be treated as a COL.

Any proposed finding of fact submitted by the parties which is not specifically incorporated above is rejected for one or more of the following reasons:

1. They are repetitious or similar to the Board's own findings of fact or conclusions of law or decision and order, and/or
2. They are not supported by the reliable and/or probative evidence, and/or
3. They are in whole or in part not supported by and/or are contrary to the facts or law, and/or
4. They are immaterial, superfluous, and/or irrelevant to the material facts, issues, and/or law of this case.

b. The proposed land use will be consistent with the objectives of the Resource subzone;

c. The proposed land use will comply with provisions and guidelines contained in Chapter 205A, where applicable;

d. The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;

e. The proposed land use, including buildings, structures, and facilities, will be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;

f. The existing physical and environmental aspects of the land will be reasonably preserved or improved upon, whichever is applicable;

g. Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and

h. The proposed land use will not be materially detrimental to the public health, safety, and welfare.

248. By separate order issued this day, the Board approves the TMT Management Plan.

249. Therefore, the proposed land use meets the criteria for issuance of a Conservation District Use Permit. The proposed land use also reasonably protects identified native Hawaiian rights.

250. Any conclusion of law improperly designated as a finding of fact shall be deemed or construed as a conclusion of law. Any finding of fact improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

251. Pursuant to Haw. Rev. Stat. § 91-12, any of the proposed findings of fact submitted by UHH, KAHEA, MKAH, Mr. Ching, Ms. Ward, Mr. Neves, and the Flores-Case 'Ohana not already ruled upon by the BLNR by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

### **DECISION AND ORDER**

Based on the foregoing, the CDUA is GRANTED, and a Conservation District Use Permit is issued subject to the following conditions.

(Unless otherwise explicitly indicated or clear from the context, "Board" and "BLNR" shall mean the Board of Land and Natural Resources; "Chairperson" shall mean the Chairperson of the Board of Land and Natural Resources; and "Department" shall mean the Department of Land and Natural Resources.).

1. UHH shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;
2. UHH shall obtain appropriate authorization from the Department for the occupancy of state lands, if applicable;
3. UHH shall comply with all applicable Department of Health administrative rules;
4. Any work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within twelve (12) years of the approval. UHH shall notify the Department in writing when construction activity is initiated and when it is completed;
5. Before proceeding with any work authorized by the Board, UHH shall submit four copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to UHH. Plan approval by the Chairperson does not constitute approval required from other agencies;
6. All representations relative to mitigation set forth in the Environmental Impact Statement and Conservation District Use Application are incorporated as conditions of the permit;
7. All mitigation measures and management actions contained in the Historic Preservation Mitigation Plan, Construction Plan, Historical & Archaeological Site Plan, Maintenance Plan, and Arthropod Monitoring Plan, are incorporated as conditions of this permit;
8. The TMT Project will comply with any terms and conditions outlined in the Comprehensive Management Plan and associated sub-plans;
9. The TMT Management Plan is approved, including all specific management actions articulated in the TMT Management Plan including, Cultural Resources Management, Natural Resources Management, Education & Outreach, Astronomical Resources, Permitting and Enforcement, Infrastructure and Maintenance, Construction Guidelines, Site Recycling, Decommissioning, Demolition & Restoration, Future Land Uses, and Monitoring, Evaluation & Updates. These management actions and their associated mitigation measures and the implementation of the recommendation contained in these plans (for example, the incorporation

of a Decommissioning Funding Plan in any sublease) are incorporated as conditions of this permit;

10. The following additional conditions shall be implemented by OMKM and TMT:
  - Ensuring that employees attend mandatory cultural and natural resources training;
  - Working with the 'Imiloa Astronomy Center and OMKM to develop informational exhibits for visitors regarding the natural, cultural and archaeological resources of Mauna Kea;
  - Funding the re-naturalization of the closed access road on Pu'u Poli'ahu, partially re-naturalization of the batch plant staging area after construction has been completed, and camouflaging the utility pull boxes in certain locations to reduce the visual impact from the summit area;
  - Implementing an invasive species control program;
  - Working with OMKM to develop and implement a habitat restoration study;
  - Implementing the "Zero Waste Management" policy;
  - Filling employment opportunities locally to the greatest extent possible;
  - Mandating that employees traveling beyond Hale Pōhaku take part in a ride-sharing program using project vehicles;
  - Using energy savings devices such as solar hot water systems, photovoltaic power systems, energy efficient light fixtures, and the use of Energy Star rated appliances;
  - Providing \$1 million annually, adjusted for inflation, for "Community Benefits Package" which will commence with construction and continue through the term of the sublease. The package will be administered via The Hawai'i Island New Knowledge (THINK) Fund Board of Advisors; and
  - Partnering with other institutions to implement a Workforce Pipeline Program, headed by at least one full-time position through the Community Outreach office, to prepare local residents for jobs in science, engineering, and technical fields;

- The University will ensure that the survey of the power line corridor easement complies with DLNR standards and is in accordance with the conditions contained in the grant of easement (including the Mauna Kea Ice Age Natural Area Reserve) that was approved by the BLNR in August 1985. The University will provide copies of the survey to DOFAW;
  - OMKM will consult with the U.S. Fish and Wildlife Service and experts who are advising OMKM, including representatives from the DLNR, on surveys of the wēkiu bug and invertebrates regarding surveys along the utility corridor, including Pu‘u Hau Kea and the pu‘u west of the Parking Area 1;
  - The construction contractor will be required to minimize the visual changes to land within the utility line right-of-way during utility upgrades. Any disturbance outside of the easement area of the construction corridor will be restored to the extent possible;
  - UHH will present a plan for handling recreational parking during construction to the OCCL for review and approval prior to beginning construction;
  - Following construction, TMT shall keep their area clean and free of trash or unattended tools and equipment, unless authorized by OMKM and OCCL;
  - The Archaeological Monitoring Plan will be submitted to the State Historic Preservation Division for review and approval prior to the onset of construction; and
  - TMT will pay a “substantial” amount for sublease rent. The rent would be deposited into the Manna Kea Land Fund, and only used for management of Mauna Kea.
11. UHH will notify OCCL of the date of the twice-annual inspections of the project site and allow Department staff to attend if available;
  12. UHH will provide OCCL and BLNR a copy of their annual report to OMKM;
  13. UHH will allow BLNR to name a DLNR representative to participate in the five-year management review process;
  14. When provided or required, potable water supply and sanitation facilities shall have the approval of the Department of Health and the county Board of Water Supply;

15. UHH understands and agrees that this permit does not convey any vested rights or exclusive privilege;
16. In issuing this permit, the Department and Board have relied on the information and data that UHH has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
17. Where any interference, nuisance, or harm may be caused, or hazard established by the use, UHH shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
18. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; the Applicant will also notify the Office of Hawaiian Affairs at the same time;
19. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
20. No construction work shall be initiated until the Applicant demonstrates compliance with all preconstruction conditions and mitigation measures outlined in this report. Once this condition has been satisfied, the Department will issue notice to proceed with construction;
21. TMT shall set aside funds annually in a sufficient amount to allow for site observatory and access way site restoration;
22. Daytime activities at TMT will be minimized on up to four days per year, as identified by Kahu Ku Mauna;
23. Other terms and conditions as may be prescribed by the Chairperson; and
24. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

DATED: Honolulu, Hawaii; November 30, 2012.



PAUL S. AOKI  
Hearing Officer



Flores-Case 'Ohana not already ruled upon by the BLNR by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

### **DECISION AND ORDER**

Based on the foregoing, the CDUA is GRANTED, and a Conservation District Use Permit is issued subject to the following conditions.

(Unless otherwise explicitly indicated or clear from the context, "Board" and "BLNR" shall mean the Board of Land and Natural Resources; "Chairperson" shall mean the Chairperson of the Board of Land and Natural Resources; and "Department" shall mean the Department of Land and Natural Resources.).

1. UHH shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;
2. UHH shall obtain appropriate authorization from the Department for the occupancy of state lands, if applicable;
3. UHH shall comply with all applicable Department of Health administrative rules;
4. Any work done or construction to be done on the land shall be initiated within two (2) years of the Board's final approval of such use following the conclusion of the contested case proceeding, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within twelve (12) years of the Board's final approval. (Such periods shall exclude any time when final approval and implementation of the CDUP is stayed.) UHH shall notify the Department in writing when construction activity is initiated and when it is completed;
5. Before proceeding with any work authorized by the Board, UHH shall submit four copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to UHH. Plan approval by the Chairperson does not constitute approval required from other agencies;
6. All representations relative to mitigation set forth in the Environmental Impact Statement and Conservation District Use Application are incorporated as conditions of the permit;
7. All mitigation measures and management actions contained in the Historic Preservation Mitigation Plan, Construction Plan, Historical &

Archaeological Site Plan, Maintenance Plan, and Arthropod Monitoring Plan, are incorporated as conditions of this permit;

8. The TMT Project will comply with any terms and conditions outlined in the Comprehensive Management Plan and associated sub-plans;
9. The TMT Management Plan is approved, including all specific management actions articulated in the TMT Management Plan including, Cultural Resources Management, Natural Resources Management, Education & Outreach, Astronomical Resources, Permitting and Enforcement, Infrastructure and Maintenance, Construction Guidelines, Site Recycling, Decommissioning, Demolition & Restoration, Future Land Uses, and Monitoring, Evaluation & Updates. These management actions and their associated mitigation measures and the implementation of the recommendation contained in these plans (for example, the incorporation of a Decommissioning Funding Plan in any sublease) are incorporated as conditions of this permit;
10. The following additional conditions shall be implemented by OMKM and TMT:
  - Ensuring that employees attend mandatory cultural and natural resources training;
  - Working with the 'Imiloa Astronomy Center and OMKM to develop informational exhibits for visitors regarding the natural, cultural and archaeological resources of Mauna Kea;
  - Funding the re-naturalization of the closed access road on Pu'u Poli'ahu, partially re-naturalizing of the batch plant staging area after construction has been completed, and camouflaging the utility pull boxes in certain locations to reduce the visual impact from the summit area;
  - Implementing an invasive species control program;
  - Working with OMKM to develop and implement a habitat restoration study;
  - Implementing the "Zero Waste Management" policy;
  - Filling employment opportunities locally to the greatest extent possible;
  - Mandating that employees traveling beyond Hale Pōhaku take part in a ride-sharing program using project vehicles;

- Using energy savings devices such as solar hot water systems, photovoltaic power systems, energy efficient light fixtures, and the use of Energy Star rated appliances;
- Providing \$1 million annually, adjusted for inflation, for “Community Benefits Package” which will commence with construction and continue through the term of the sublease. The package will be administered via The Hawai’i Island New Knowledge (THINK) Fund Board of Advisors; and
- Partnering with other institutions to implement a Workforce Pipeline Program, headed by at least one full-time position through the Community Outreach office, to prepare local residents for jobs in science, engineering, and technical fields;
- The University will ensure that the survey of the power line corridor easement complies with DLNR standards and is in accordance with the conditions contained in the grant of easement (including the Mauna Kea Ice Age Natural Area Reserve) that was approved by the BLNR in August 1985. The University will provide copies of the survey to DOFAW;
- OMKM will consult with the U.S. Fish and Wildlife Service and experts who are advising OMKM, including representatives from the DLNR, on surveys of the wēkiu bug and invertebrates regarding surveys along the utility corridor, including Pu’u Hau Kea and the pu’u west of the Parking Area 1;
- The construction contractor will be required to minimize the visual changes to land within the utility line right-of-way during utility upgrades. Any disturbance outside of the easement area of the construction corridor will be restored to the extent possible;
- UHH will present a plan for handling recreational parking during construction to the OCCL for review and approval prior to beginning construction;
- Following construction, TMT shall keep their area clean and free of trash or unattended tools and equipment, unless authorized by OMKM and OCCL;
- The Archaeological Monitoring Plan will be submitted to the State Historic Preservation Division for review and approval prior to the onset of construction; and

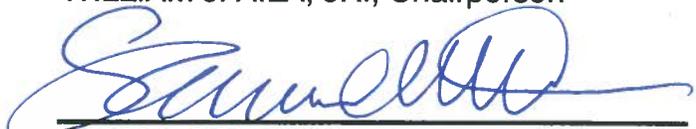
- TMT will pay a “substantial” amount for sublease rent. The rent would be deposited into the Manna Kea Land Fund, and only used for management of Mauna Kea.
11. UHH will notify OCCL of the date of the twice-annual inspections of the project site and allow Department staff to attend if available;
  12. UHH will provide OCCL and BLNR a copy of TMT’s annual report to OMKM;
  13. UHH will allow BLNR to name a DLNR representative to participate in the five-year management review process;
  14. When provided or required, potable water supply and sanitation facilities shall have the approval of the Department of Health and the county Board of Water Supply;
  15. UHH understands and agrees that this permit does not convey any vested rights or exclusive privilege;
  16. In issuing this permit, the Department and Board have relied on the information and data that UHH has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
  17. Where any interference, nuisance, or harm may be caused, or hazard established by the use, UHH shall be required to take the measures necessary to minimize or eliminate the interference, nuisance, harm, or hazard;
  18. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; the Applicant will also notify the Office of Hawaiian Affairs at the same time;
  19. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
  20. No construction work shall be initiated until the Applicant demonstrates compliance with all preconstruction conditions and mitigation measures

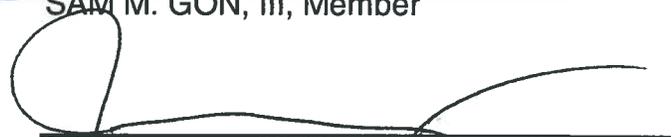
outlined in this report. Once this condition has been satisfied, the Department will issue notice to proceed with construction;

21. TMT shall set aside funds annually in a sufficient amount to allow for site observatory and access way site restoration;
22. Daytime activities at TMT will be minimized on up to four days per year, as identified by Kahu Ku Mauna;
23. Other terms and conditions as may be prescribed by the Chairperson; and
24. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

DATED: Honolulu, Hawaii, 12 April 2013.

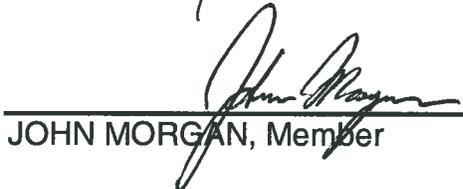
  
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WILLIAM J. AILA, JR., Chairperson

  
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SAM M. GON, III, Member

  
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JERRY EDLAO, Member

  
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ROBERT PACHECO, Member

  
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DAVID GOODE, Member

  
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JOHN MORGAN, Member

CARLSMITH BALL LLP

IAN L. SANDISON 5597  
JOHN P. MANAUT 3989  
LINDSAY N. McANEELEY 8810  
ASB Tower, Suite 2100  
1001 Bishop Street  
Honolulu, HI 96813  
Tel No. 808.523.2500  
Fax No. 808.523.0842  
[isandison@carlsmith.com](mailto:isandison@carlsmith.com)  
[JPM@carlsmith.com](mailto:JPM@carlsmith.com)  
[lmcaneley@carlsmith.com](mailto:lmcaneley@carlsmith.com)

Attorneys for Applicant  
UNIVERSITY OF HAWAI'I AT HILO

WATANABE ING LLP  
A Limited Liability Law Partnership

J. DOUGLAS ING 1538-0  
BRIAN A. KANG 6495-0  
ROSS T. SHINYAMA 8830-0  
First Hawaiian Center  
999 Bishop Street, Suite 1250  
Honolulu, HI 96813  
Telephone No.: (808) 544-8300  
Facsimile No.: (808) 544-8399  
E-mails: [rshinyama@wik.com](mailto:rshinyama@wik.com)

Attorneys for  
TMT INTERNATIONAL OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

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

Case No. BLNR-CC-16-002

THE UNIVERSITY OF HAWAI'I AT  
HILO AND TMT INTERNATIONAL  
OBSERVATORY, LLC'S JOINT  
[PROPOSED] FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER; APPENDICES  
A-D; CERTIFICATE OF SERVICE

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
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DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

subject to the conditions noted below.

470. Provided that the special conditions discussed above and as set forth below, and the standard conditions set forth in HAR § 13-5-42, as modified below, are imposed:
471. The proposed land use will be consistent with the purpose of the Conservation District;
472. The proposed land use will be consistent with the objectives of the Resource subzone;
473. The proposed land use will comply with provisions and guidelines contained in Chapter 205A, where applicable;
474. The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;
475. The proposed land use, including buildings, structures, and facilities, will be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;
476. The existing physical and environmental aspects of the land will be reasonably preserved or improved upon, whichever is applicable;
477. Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and
478. The proposed land use will not be materially detrimental to the public health, safety, and welfare.
479. The Hearing Officer recommends that the BLNR approve the Findings of Fact, Conclusions of Law, and Decision and Order in this matter and also approve the TMT Management Plan.
480. Therefore, the proposed land use meets the criteria for issuance of a Conservation District Use Permit. The proposed land use also reasonably protects identified native Hawaiian rights.
481. Any proposed conclusion of law that is not specifically included above is hereby rejected.
482. If any of the above conclusions of law shall be determined to be findings of fact, it is intended that every such conclusion of law shall be construed as a finding of fact. Conversely, if any of the above findings of fact shall be determined to be conclusions of law, it is intended that every such finding of fact shall be construed as a conclusion of law.

### **RECOMMENDED DECISION AND ORDER**

Based on the foregoing findings of fact and conclusions of law, the CDUA and the TMT Management Plan is recommended for approval. A CDUP should be issued by the BLNR,

subject to the following conditions:

- (1) UH Hilo shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the HAR § 13-5 et seq.;
- (2) UH Hilo shall obtain appropriate authorization from the Department for the occupancy of state lands, if applicable;
- (3) UH Hilo shall comply with all applicable Department of Health administrative rules;
- (4) Any work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within twelve (12) years of the approval. The UH Hilo shall notify the Department in writing when construction activity is initiated and when it is completed;
- (5) Before proceeding with any work authorized by the Board, UH Hilo shall submit four copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to UH Hilo. Plan approval by the Chairperson does not constitute approval required from other agencies;
- (6) All representations relative to mitigation set forth in the Environmental Impact Statement and Conservation District Use Application are incorporated as conditions of the permit;
- (7) All mitigation measures and management actions contained in the Historic Preservation Mitigation Plan, Construction Plan, Historical & Archaeological Site Plan, Maintenance Plan, and Arthropod Monitoring Plan, are incorporated as conditions of this permit;
- (8) The TMT Project will comply with any terms and conditions outlined in the Comprehensive Management Plan and associated sub-plans; and
- (9) The TMT Management Plan is approved, including all specific management actions articulated in the TMT Management Plan including, Cultural Resources Management, Natural Resources Management, Education & Outreach, Astronomical Resources, Permitting and Enforcement, Infrastructure and Maintenance, Construction Guidelines, Site Recycling, Decommissioning, Demolition & Restoration, Future Land Uses, and Monitoring, Evaluation & Updates. These management actions and their associated mitigation measures are incorporated as conditions of this permit.

The following additional conditions shall be implemented by OMKM and TIO:

- (1) Ensuring that employees attend mandatory cultural and natural resources training;
- (2) Working with the ‘Imiloa Astronomy Center and OMKM to develop informational exhibits for visitors regarding the natural, cultural and archaeological resources of Mauna Kea;
- (3) Funding the re-naturalization of the closed access road on Pu‘u Poli‘ahu, partial re-naturalization of the batch plant staging area after construction has been completed, and camouflaging of the utility pull boxes in certain locations to reduce the visual impact from the summit area;
- (4) Implementing an invasive species control program;
- (5) Working with OMKM to develop and implement a wēkiu bug habitat restoration study;
- (6) Implementing the “Zero Waste Management” policy;
- (7) Filling employment opportunities locally to the greatest extent possible;
- (8) Mandating that employees traveling beyond Hale Pōhaku take part in a ride-sharing program using project vehicles;
- (9) Using energy savings devices such as solar hot water systems, photovoltaic power systems, energy efficient light fixtures, and Energy Star rated appliances;
- (10) Providing \$1 million annually, adjusted for inflation, for “Community Benefits Package” which will commence with construction and continue through the term of the sublease. The package will be administered via The Hawai‘i Island New Knowledge (THINK) Fund Board of Advisors;
- (11) Partnering with other institutions to implement a Workforce Pipeline Program, headed by at least one full-time position through the Community Outreach office, to prepare local residents for jobs in science, engineering, and technical fields;
- (12) The University will ensure that the survey of the power line corridor easement complies with DLNR standards and is in accordance with the conditions contained in the grant of easement (including the Mauna Kea Ice Age Natural Area Reserve) that was approved by the BLNR in August 1985. The University will provide copies of the survey to DOFAW;
- (13) OMKM will consult with the U.S. Fish and Wildlife Service and experts who are advising OMKM, including representatives from the DLNR regarding surveys of the wēkiu bug and invertebrates along the utility corridor, including Pu‘u Hau Kea and the pu‘u west of the Parking Area 1;

- (14) The construction contractor will be required to minimize the visual changes to land within the utility line right-of-way during utility upgrades. Any disturbance outside of the easement area of the construction corridor will be restored to the extent possible;
- (15) UH Hilo will present a plan for handling recreational parking during construction to the OCCL for review and approval prior to beginning construction;
- (16) Following construction, TMT shall keep their area clean and free of trash or unattended tools and equipment, unless authorized by OMKM and OCCL;
- (17) The Archaeological Monitoring Plan will be submitted to the State Historic Preservation Division for review and approval prior to the onset of construction;
- (18) TIO will pay a “substantial” amount for sublease rent. The rent would be deposited into the Manna Kea Land Fund, and only used for management of Mauna Kea.
- (19) UH Hilo will notify OCCL of the date of the twice-annual inspections of the project site and allow Department staff to attend if available;
- (20) UH Hilo will provide OCCL and BLNR a copy of their annual report to OMKM;
- (21) UH Hilo will allow BLNR to name a DLNR representative to participate in the CMP five-year management review process;
- (22) When provided or required, potable water supply and sanitation facilities shall have the approval of the Department of Health and the county Board of Water Supply;
- (23) UH Hilo understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- (24) In issuing this permit, the Department and Board have relied on the information and data that UH Hilo has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- (25) Where any interference, nuisance, or harm may be caused, or hazard established by the use, UH Hilo shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- (26) Should historic remains such as artifacts, burials or concentration of charcoal

be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; the Applicant will also notify the Office of Hawaiian Affairs at the same time;

- (27) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- (28) No construction work shall be initiated until the Applicant demonstrates compliance with all preconstruction conditions and mitigation measures outlined in this report. Once this condition has been satisfied, the Department will issue notice to proceed with construction;
- (29) TIO shall set aside funds annually in a sufficient amount to allow for site observatory and access way site restoration;
- (30) Daytime activities at TMT will be minimized on up to four days per year, as identified by Kahu Kū Mauna;
- (31) Other terms and conditions as may be prescribed by the Chairperson; and
- (32) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

DATED: Honolulu, Hawai‘i, May 30, 2017

**ASSOCIATION OF HAWAIIAN  
CIVIC CLUBS**

**A RESOLUTION**

13-52

**URGING THE STATE OF HAWAI'I, GOVERNOR, BOARD OF LAND AND  
NATURAL RESOURCES, AND UNIVERSITY OF HAWAI'I TO RECOGNIZE THE  
SACREDNESS OF MAUNA KEA**

WHEREAS, Mauna Kea, also referred to by the *inoa* (name) Mauna a Wākea (Mountain of Wākea) in traditional accounts; and Wākea (Sky Father) is personified in the broad expansive atmosphere and heavenly realm that envelops Papahānaumoku (Mother Earth) who gave birth to these islands; and Hawai'i Island is their *makahiapo* (eldest child); and Mauna Kea is also referred to as the sacred eldest child of Wakea, regarded as a *kupuna*, a revered and respected elder, our ancestor; and

WHEREAS, Mauna Kea is described as a spiritual landscape, *ka piko o ka moku*, the navel of the island; and as the tallest mountain in the world from the sea floor, its physical prominence stationed nearest to the heavens holds a spiritual significance for Kanaka Maoli, a significance that can be expressed in likening the mountain to a sacred altar, the mountain altar of Wākea; a place where the heavens and earth converge; and

WHEREAS, Mauna Kea, is a *wahi pana*, a storied and celebrated place from antiquity, that holds *mana* (spiritual and divine powers) for Kanaka Maoli; it is most revered and respected as the highest *mauna* (mountain) situated in the middle of the Pacific; a home of ancestral gods, goddesses, deities, and divine beings and where shrines were erected and consecrated; a focal point of spiritual and cultural significance; a place of spiritual connection with one's ancestors, energy and life forces, and the ancestral realms; and

WHEREAS, Kanaka Maoli ancestors knew and had an unwavering connection to their ancestral *akua*, *kupua*, and *'aumākua* (gods, goddesses, deities, guardians) recognized by such names as Poliahu, Kukahau'ula, Lilinoe, Mo'oinanea, and Kāne who dwell on the mountain summit and who are physically manifested in the earthly forms within the Mauna Kea landscape as various *pu'u* and water sources, and as such, they are revered and looked to for spiritual guidance in cultural practices and traditions; and

WHEREAS, Poliahu, "*ka wahine i ke kapa hau*" (the woman in the mantel of snow), is at times referred to as an *akua wahine*; she is a part of the cultural landscape with a highly evolved consciousness who creates the rain, snow, hail, and sleet on this mountain; she serves as a caretaker and guardian for the mountain and has two attendants assisting her, Lilinoe and Lihau; and Poliahu is a revered and significant figure in both oral and written traditional accounts that have documented her connection to Mauna Kea; and

(Exhibit B.73)

Exhibit "H"

WHEREAS, Mo'oinanea, *mo 'o wahine* and guardian of Lake Waiau, is at times referred to as a *kupua*; she was born on the summit and assumed the responsibility as guardian of this sacred body of water from her mother, Melemele, who was the former guardian; and assisting Mo'oinanea are her two female *mo 'o* attendants, Kīpu'upu'u and Kupukupu as well as others, including spirit attendants; and Mo'oinanea is a revered and significant figure in both oral and written traditional accounts that have documented her connection and genealogical ties to Mauna Kea; and

WHEREAS, Kanaka Maoli still remember their ancestral connections to Mauna Kea and their *akua*, *kupua*, and *'aumākua*; and Kanaka Maoli still continue their cultural practices and traditions connected to this sacred mountain; and Mauna Kea is associated with former and on-going cultural practices, traditional beliefs, events, and oral history accounts; and the mountain landscape is rooted in antiquity and remains important in the lives of Kanaka Maoli today who attribute spiritual and cultural values to Mauna Kea; and as it was in ancient times, Mauna Kea is today considered by many to be the most sacred and culturally significant location on the island of Hawai'i, if not in the whole of the Hawaiian Archipelago; and

WHEREAS, Mauna Kea is known as the *piko* (umbilical connection to the Universe) of Hawai'i with many families continuing to bury the umbilical cords of their children on the mountain as a way of certifying indigenous birth; and likewise, many families continue to establish family shrines on the mountain to serve as a portal for direct spiritual communication and ancestral connection through this *piko*; and

WHEREAS, it has been documented through oral histories that the waters of Mauna Kea, suspended high above in the realm of Wākea, including all *wai* forms of liquid, rain, mist, ice, and snow, are known to be pristine and are considered pure and life giving; and

WHEREAS, Lake Waiau is noted to be a significant natural resource and a sacred site, a source of sacred water used in healing and cultural practices and is used as a sacred repository for the *piko* of babies born to families connected to the mountain; and that *ali'i* (royalty) such as Queen Emma traveled to Lake Waiau for "physical and spiritual healing"; and

WHEREAS, many traditional Hawaiian eulogies speak to the "*ho 'i i Ka-houpo-o-kāne*," or returning into the heart of Kāne referring to burials of the most sacred chiefs on Mauna Kea, who were known as the descendants of Wākea and Papahānaumoku; and

WHEREAS, Mauna Kea remains a place for traditional and customary practices of Kanaka Maoli which includes, but is not limited to, spiritual pilgrimages, religious ceremonies, erection of family *ahu* or altars, gifting of offerings, collection of basalt, depositing of *piko*, interment of *'ohana* remains, gathering of plant materials, and hunting; and

WHEREAS, Kanaka Maoli have an intimate relationship with their environment; and a cultural attachment (relationship to environment and practices) is integral to their physical and spiritual well-being and that this attachment to the cultural landscape of Mauna Kea remains strong

amongst Kanaka Maoli today; and for this reason, many Kanaka Maoli have deeply expressed that activities on Mauna Kea that lead to visible and physical alterations of the landscape not only have a significant effect on the mountain itself, but also have a damaging effect on everything and everyone that is physically, genealogically, spiritually, and culturally tied to Mauna Kea; and

WHEREAS, from a cumulative perspective, the impact of past and present actions on the cultural, archaeological, historic, and geologic resources as the result of existing development on Mauna Kea has been substantial, significant, and adverse; and

WHEREAS, this is an integral time for us as Kanaka Maoli to raise our level of consciousness and understanding that the care and protection of our *'āina*, from the mountain to the sea is part of our *kuleana*; and that we have a responsibility to *mālama* our sacred *piko*, Mauna Kea.

NOW, THEREFORE BE IT RESOLVED by the Association of Hawaiian Civic Clubs at its 54<sup>TH</sup> Annual Convention at Kalapaki Beach, Kaua'i, Hawai'i this 16<sup>th</sup> day of November 2013, urging the State of Hawai'i, Governor, Board of Land and Natural Resources, and University of Hawai'i to recognize the sacredness of Mauna Kea; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be given to the Governor of Hawai'i, State Senate President, State Speaker of the House, State Senate Committee on Hawaiian Affairs, State House Committee on Hawaiian Affairs, Office of Hawaiian Affairs Board of Trustees, All County Mayors, Board of Regents of the University of Hawai'i, President of the University of Hawai'i, and Chancellor of the University of Hawai'i at Hilo.



The undersigned hereby certifies that the foregoing Resolution was duly adopted on the 16<sup>th</sup> day of November 2013, at the 54th Annual Convention of the Association of Hawaiian Civic Clubs at Kalapaki Beach, Kaua'i, Hawai'i

Annelle C. Amaral, Acting President

***ASSOCIATION OF HAWAIIAN  
CIVIC CLUBS***

***A RESOLUTION***

16 - 30

**STRENGTHEN THE MAUNA KEA COMPREHENSIVE MANAGEMENT PLAN (CMP)  
TO REFLECT NATIVE HAWAIIAN STEWARDSHIP OF MAUNA KEA AND ENSURE  
COMPLIANCE WITH EXISTING CMP ACTION ITEMS**

WHEREAS, Mauna Kea is a sacred and culturally significant site to the Native Hawaiian community (Maly, 1999; Maly & Maly, 2005); and

WHEREAS, Mauna Kea represents the piko of the island of Hawai'i and is considered an ancestor to the Hawaiian people; and

WHEREAS, this lineage comes with a birthright and kuleana to protect Mauna Kea's resources and growth for all (Kanahele & Kanahele, 1997); and

WHEREAS, the National Registry of Natural Landmarks designated Mauna Kea as a natural landmark in November 1972 (NPS, 1994); and

WHEREAS, the summit region of Mauna Kea is designated as a historic district by the State Historic Preservation Division (SHPD), and is also eligible for listing on the National Register of Historic Places; and

WHEREAS, the high elevation ecosystems and cultural sites on Mauna Kea are unique and easily disturbed; therefore, observatory and infrastructure maintenance and construction can impact natural and cultural resources; and

WHEREAS, many Hawaiians feel that altering the landscape on Mauna Kea has a damaging effect on everything and everyone that is physically, spiritually, and culturally tied to Mauna Kea; and

WHEREAS, the goal of the Mauna Kea Comprehensive Management Plan (CMP), prepared by the University of Hawaii and approved by the Board of Land and Natural Resources in April 2009, is to provide management strategies that protect and preserve Mauna Kea's resources; and

WHEREAS, the CMP is to protect and preserve the natural and cultural resources on Mauna Kea from impacts that may result from the use of the summit area for astronomical research and recreational activities; and

WHEREAS, engaging community is important for successful implementation of the CMP to rebuild trust between stakeholders and the University to sustain resources for future generations; and

WHEREAS, the Hawaii Supreme Court's decision in Ka Pa'akai provides government agencies a framework to ensure the protection and preservation of valued cultural, historical and natural resources; and

WHEREAS, various pu'u (cinder cones) in the summit region have been identified as traditional properties; and

WHEREAS, Pu'u Poliahu and Pu'u Lilinoe are important cultural and geographic features and they represent goddesses and genealogical ancestors to many Hawaiian people; and

WHEREAS, Lake Waiiau is also considered a traditional cultural property and source of sacred water used in healing and worship practices; and

WHEREAS, several trails in and around Mauna Kea are considered cultural resources used for travel to the summit region and provide access to resources for communities; and

WHEREAS, Mauna Kea as described in the Lananu'u Mamao Concept identifies three kahua (levels); and

WHEREAS, the lowest and least restrictive area is called lana; and

WHEREAS, the second level called nu'u is more sacred and restrictive; and

WHEREAS, the highest and most restrictive level called mamao is located near the summit of Mauna Kea (Malo, 1851); and

WHEREAS, development projects being considered for a permit by the Board of Land and Natural Resources (BLNR) must be consistent with the purpose of the conservation district, which is to conserve, protect, and preserve the important natural and cultural resources of the state; and

WHEREAS, the state Constitution protects traditional and cultural rights of Native Hawaiians; and

WHEREAS, the major threats that can lead to the degradation of cultural sites includes ground disturbing activities (construction and maintenance), scientific research, and lack of enforcement of rules and policies; and

WHEREAS, without planned protections and a commitment to implement plans, irreversible damage will continue on Mauna Kea.

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 57th annual convention at Las Vegas, Nevada this 19<sup>th</sup> day of November 2016, that it strengthen the CMP to Reflect Native Hawaiian stewardship and ensure compliance with existing CMP action items; and

BE IT FURTHER RESOLVED, that the Association of Hawaiian Civic Clubs support the preservation of Mauna Kea by allowing Native Hawaiians to practice cultural and spiritual beliefs at the cultural sites and calls for the decommissioning of the three unused telescopes as well as all other unused and obsolete telescopes on Mauna Kea; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Governor of the State of Hawai'i, President of the State Senate, Speaker of the State House of Representatives, Chair of the State Senate Committee on Hawaiian Affairs, Chair of the State House Committee on Ocean, Marine Resources, & Hawaiian Affairs, Chair of the Board of Trustees of the Office of Hawaiian Affairs, all County Mayors.



The undersigned hereby certifies that the foregoing Resolution was duly adopted on the 19<sup>th</sup> day of November 2016, at the 57th Annual Convention of the Association of Hawaiian Civic Clubs in Las Vegas, Nevada.

  
Annelie C. Amaral, President

## A Resolution of the Office of Hawaiian Affairs

*Resolution Urging the Board of Land and Natural Resources to Exercise the Highest Possible Level of Stewardship and to Afford the Strongest Consideration to the Rights and Practices of Native Hawaiians and Sacred Sites Affected by Proposed Developments, Including Those on Mauna Kea, in the Conservation District Use Application Process*

**WHEREAS**, Mauna Kea is an important sacred site in traditional accounts; it is referred to as Mauna a Wākea—Mountain of Wākea, the Sky Father who is personified in the atmosphere and heavenly realm that envelops Papahānaumoku (Mother Earth)—and is revered as a sacred mountain that pierces above the clouds into the realm of Wākea and creates the piko kapu, or sacred center of Hawai‘i Island; and

**WHEREAS**, the physical prominence of Mauna Kea as well as its stationing nearest to the heavens holds a spiritual significance for Native Hawaiians, a significance that can be expressed in likening the mountain to a sacred altar; and

**WHEREAS**, the summit of Mauna Kea is known as the piko of Hawai‘i and this understanding is reflected in the traditional Hawaiian concept of the “triple piko” of a person, with the piko on the summit of the mountain comparable to the piko located on the top of one’s head at the fontanel; and

**WHEREAS**, Native Hawaiians still remember their ancestral connections to Mauna Kea and their ancestral akua and kūpuna, and Native Hawaiians still continue their cultural traditions and practices connected to this sacred mountain; and

**WHEREAS**, the Board of Land and Natural Resources has an affirmative obligation to preserve and protect the reasonable exercise of Native Hawaiian traditional and customary rights, and must conduct detailed inquiries to make specific findings and conclusions about the identity and scope of natural and cultural resources in a relevant area where an action is proposed, including: the extent to which Native Hawaiian traditional and customary rights are exercised in the area; the extent to which the resources and Native Hawaiian traditional and customary rights will be impaired by a proposed action; and the feasible action to be taken by the agency to reasonably protect existing Native Hawaiian rights; and

**WHEREAS**, the Board of Land and Natural Resources, as steward of numerous parcels in the conservation district that are considered sacred sites by Native Hawaiians, must pay particularly close attention to the impacts of projects and the mitigation proposed for said projects; and

**WHEREAS**, the Conservation District Use Application process includes mechanisms, such as the environmental review process, designed specifically to protect Native Hawaiian traditional and customary practices and sacred sites as well as natural resources and fragile environments integral in Hawaiian history and culture from potential adverse impacts of development; and

**WHEREAS**, the Conservation District Use Application process also has a specific contested case hearing process, the purpose of which is to allow stakeholders directly affected by proposed development in the conservation district to inform and/or challenge the Board of Land and Natural Resources permitting decisions; and

**WHEREAS**, these processes are important not only to inform the public of the potential effects of proposed development in the conservation district but also to allow the public to assist the Board of Land and Natural Resources as well as potential developers in uncovering issues of concern that may not have come to light through previous research and in prior proposals; and

**WHEREAS**, in its ideal form, the contested case hearing process is meant to inform the Board of Land and Natural Resources’ decisions to issue permits for proposed developments, but, in some cases, permits are issued prior to the full exploration and completion of the environmental review process; and

**WHEREAS**, in a contested case, Native Hawaiians have raised deep concerns about the adequacy of the Conservation District Use Application and supporting Environmental Impact Statement for the Thirty Meter Telescope proposed to be developed at the summit of Mauna Kea to fully disclose the impacts of

– Continued –

## A Resolution of the Office of Hawaiian Affairs

*Resolution Urging the Board of Land and Natural Resources to Exercise the Highest Possible Level of Stewardship and to Afford the Strongest Consideration to the Rights and Practices of Native Hawaiians and Sacred Sites Affected by Proposed Developments, Including Those on Mauna Kea, in the Conservation District Use Application Process*

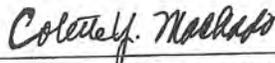
the development upon the integrity of the historic properties and cultural resources within the vicinity of the proposed development site and to propose appropriate mitigation measures; and

**WHEREAS**, abundant evidence establishes the existence of natural and cultural resources and associated Native Hawaiian traditional and customary practices on Mauna Kea as well as the sacredness of the mountain to Native Hawaiians;

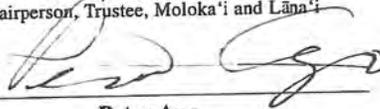
**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Trustees of the Office of Hawaiian Affairs urges the Board of Land and Natural Resources to aspire to and exercise the highest possible level of stewardship by ensuring that the Conservation District Use Application process for all proposed developments, including developments on Mauna Kea, is administered effectively to protect Native Hawaiian traditional and customary practices and sacred sites; and

**BE IT FURTHER RESOLVED**, that the Board of Trustees of the Office of Hawaiian Affairs urges the Board of Land and Natural Resources to afford the strongest consideration to the affected rights and practices identified in the contested case regarding the Thirty Meter Telescope, and to incorporate a recognition of these rights and practices connected to the mountain, as well as appropriate mitigation measures, into the final decision and order.

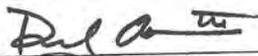
**ADOPTED** this 3rd day of January, 2013, island of O'ahu, State of Hawai'i, by the Board of Trustees of the Office of Hawaiian Affairs in its regular meeting assembled.



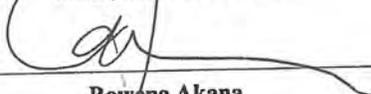
**Colette Y. Machado**  
Chairperson, Trustee, Moloka'i and Lāna'i



**Peter Apo**  
Vice Chair, Trustee, O'ahu



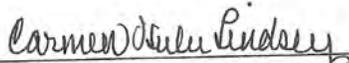
**Dan Ahuna**  
Trustee, Kaua'i and Ni'ihau



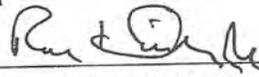
**Rowena Akana**  
Trustee, At-large



**S. Haunani Apoliona, MSW**  
Trustee, At-large



**Carmen Hulu Lindsey**  
Trustee, Maui



**Robert K. Lindsey Jr.**  
Trustee, Hawai'i



**Oswald K. Stender**  
Trustee, At-large



**John D. Waihe'e IV**  
Trustee, At-large



Date: January 3, 2013