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
JPM@carlsmith.com
lmcaneeley@carlsmith.com

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

WATANABE ING LLP
A Limited Liability Law Partnership

J. DOUGLAS ING 1538
BRIAN A. KANG 6495
ROSS T. SHINYAMA 8830
First Hawaiian Center
999 Bishop Street, Suite 1250
Honolulu, Hawaii 96813
Telephone No.: (808) 544-8300
Facsimile No.: (808) 544-8399
douging@wik.com
bkang@wik.com
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'ohe Mauka, Hāmakua, 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 BRIEF IN RESPONSE TO J. LEINA'ALA SLEIGHTHOLM'S EXCEPTIONS AND RESPONSES TO THE HEARING

OFFICER'S REPORT [DOC. 807]; APPENDICES A-B; CERTIFICATE OF SERVICE

THE UNIVERSITY OF HAWAI'I AT HILO AND TMT INTERNATIONAL OBSERVATORY, LLC'S JOINT BRIEF IN RESPONSE TO J. LEINA'ALA SLEIGHTHOLM'S EXCEPTIONS AND RESPONSES TO THE HEARING OFFICER'S REPORT

The University of Hawai'i at Hilo ("**UH Hilo**") and Intervenor TMT International Observatory, LLC ("**TIO**") jointly submit the following brief in response to J. Leina'ala Sleightholm's ("**Sleightholm**") *Exceptions and Responses to the Hearing Officer's Report* [Doc. 807] dated August 21, 2017 ("**Sleightholm's Exceptions**") pursuant to Hawai'i Administrative Rules ("**HAR**") § 13-1-43.

I. INTRODUCTION

On July 26, 2017, after presiding over forty-four days of testimony from October 2016 through early March 2017, and reviewing hundreds of exhibits, Judge (Ret.) Riki May Amano ("**Hearing Officer**") issued her detailed Proposed Findings of Fact, Conclusions of Law and Decision and Order [Doc. 783] ("**HO FOF/COL**"). The Hearing Officer recommended that the Conservation District Use Application HA-3568 ("**CDUA**") for the Thirty Meter Telescope ("**TMT**") Project and the attached TMT Management Plan be approved subject to a number of conditions stated therein. *See* HO FOF/COL at 260-263.

The Board of Land and Natural Resources ("**BLNR**") issued Minute Order No. 103 on July 28, 2017 [Doc. 784]. Pursuant to Minute Order No. 103, the parties to the Contested Case Hearing ("**CCH**") were given until no later than August 21, 2017 at 4:00 p.m. to file exceptions to the HO FOF/COL. Minute Order No. 103 expressly required the following for any exceptions:

> The exceptions shall: (1) set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken (2)

> identify that part of the recommendations to which objections are made; and (3) state all grounds for exceptions to a ruling, finding, conclusion, or recommendation. The grounds not cited or specifically urged are waived.

Minute Order No. 103 at 1; *see also* HAR § 13-1-42(b).

Minute Order No. 103 also gave the parties to the CCH until September 11, 2017 at 4:00 p.m. to file any responsive briefs. Minute Order No. 103 expressly required the following for any responsive briefs:

> The responsive briefs shall: (1) answer specifically the points of procedure, fact, law, or policy to which exceptions were taken; and (2) state the facts and reasons why the recommendations should be affirmed.

Minute Order No. 103 at 2; *see also* HAR § 13-1-43(b).

The BLNR has scheduled oral arguments on the CDUA for September 20, 2017 at 9:00 a.m. *See* Minute Order No. 103 at 2.

II. STANDARD OF REVIEW

Sleightholm and the other Petitioners/Opposing Intervenors do not state a position on the applicable standard that BLNR must review the HO FOF/COL. Hawai'i Revised Statutes ("**HRS**") § 91-11 sets out the procedure that is to be followed by an agency where a hearing officer has been employed:

> **Examination of evidence by agency.** Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision[1] containing a

[1] The Hawai'i Supreme Court has held that a hearing officer's recommendations can serve as the agency's "proposal for decision" under HRS § 91-11. *See White v. Board of Education*, 54 Haw. 10, 14, 501 P.2d 358, 362 (1972); *Cariaga v. Del Monte Corp.*, 65 Haw. 404, 408, 652 P.2d 1143, 1146 (1982); *see also County of Lake v. Pahl*, 28 N.E.3d 1092 (Ind. Ct. App. 2015) (holding that it is not uncommon or per se improper for a trial court to enter findings that are verbatim reproductions of submissions by the prevailing party); *Ivie v. Smith*, 439 S.W.3d 189 (Mo. 2014) (holding that while trial courts must act independently in making findings of fact and

> statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, ***who shall personally consider the whole record or such portions thereof as may be cited by the parties.***

HRS §91-11 (emphasis added).

The Hawai'i Supreme Court has stated that "[t]he general rule is that if an agency making a decision has not heard the evidence, it must at least consider the evidence produced at a hearing conducted by an examiner or a hearing officer." *White,* 54 Haw. at 13, 501 P.2d at 361. Quoting from the Revised Model State Administrative Procedure Act, Fourth Tentative Draft (1961) ("**RMSAPA**"), the Hawai'i Supreme Court explained that this requirement "is to make certain that those persons who are responsible for the decision shall have mastered the record, either by hearing the evidence, or reading the record or at the very least receiving briefs and hearing oral argument. It is intended to preclude signing on the dotted line." *Id.*at 14, 501 P.2d at 362 (citation and internal quotations omitted).

The Hawai'i Intermediate Court of Appeals ("**ICA**") described the "function and effect of the hearing officer's recommendations" in *Feliciano v. Board of Trustees of Employees' Retirement System*, 4 Haw. App. 26, 659 P.2d 77 (1983). The ICA explained that the recommendations are "to provide guidance" and an agency is "not bound by those findings or recommendations." *Id.* at 34, 659 P.2d at 82. Indeed, an agency, after review of the reliable, probative and substantial evidence in the proceeding, may reject a hearing officer's

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conclusions of law, it is not error for trial court to request or receive proposed findings and, in appropriate cases, to adopt those findings); *East Coast Paving & Sealcoating, Inc. v. North Allegheny School Dist.*, 111 A.3d 220 (Pa. Commw. Ct. 2015) (holding that there is nothing untoward about a trial court adopting a party's proposed findings of fact and conclusions of law as its own).

recommendations and "ma[ke] its own findings and conclusions based on the same evidence." *Id.*

Therefore, BLNR must determine whether the reliable, probative, and substantial evidence in the record as a whole supports approval of the CDUA. However, and notwithstanding that it is not binding, BLNR should give due consideration to, and be guided by, the HO's FOF/COL, particularly her determinations on the credibility of the witnesses that appeared before her. The RMSAPA provides that "[i]n reviewing findings of fact in a recommended order, the agency head shall consider the presiding officer's opportunity to observe the witnesses and to determine the credibility of witnesses." RMSAPA § 415(b) (October 15, 2010). Section 415(b) of the RMSAPA is consistent with the well-settled legal principle that "the fact finder is uniquely qualified to evaluate the credibility of witnesses and to weigh the evidence." *Wilton v. State*, 116 Hawai'i 106, 119, 170 P.3d 357, 370 (2007) (citation omitted); *see also* Haw. R. Civ. P. 52(b) (providing that "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses").

Other jurisdictions have gone even further and held that a hearing officer's credibility determinations are entitled to deference so long as the record supports the determination. In *Amanda J. ex rel. Annette J. v. Clark County School Dist.*, 267 F.3d 877 (9th Cir. 2001), the Ninth Circuit was confronted with the question of whether to affirm the State Review Officer's decision to deviate from the hearing officer's credibility determination of a witness. Joining its colleagues in the Second, Third, Fourth, and Tenth Circuits, the Ninth Circuit held that

> due weight should be accorded to the final State determination . . . unless [the] decision deviates from the credibility determination of a witness whom only the [hearing officer] observed testify. **Traditional notions of deference owed to the fact finder compel this conclusion. The State Review Officer is in no better position than the district court or an appellate court to weigh**

> **the competing credibility of witnesses observed only by the Hearing Officer.** This standard comports with general principles of administrative law which give deference to the unique knowledge and experience of state agencies while recognizing that **a [hearing officer] who receives live testimony is in the best position to determine issues of credibility.**

Id. at 889 (emphases added); *see Doyle v. Arlington Cty Sch. Bd.*, 953 F.2d 100, 105 (4th Cir. 1992) (holding that where two state administrative decisions differ only with respect to the credibility of a witnesses, the hearing officer is entitled to be considered prima facie correct); *Karl by Karl v. Board of Educ. of Geneseo Cent. School Dist.*, 736 F.2d 873, 877 (2d Cir. 1984) ("There is no principle of administrative law which, absent a disagreement between a hearing officer and reviewing agency over demeanor evidence, obviates the need for deference to an agency's final decision where such deference is otherwise appropriate."); *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520-29 (3d Cir. 1995) ("[C]redibility-based findings [of the hearing officer] deserve deference unless non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion."); *O'Toole v. Olathe Dist. Schs. Unified Sch Dist. No. 233*, 144 F.3d 692, 699 (10th Cir. 1998) ("[W]e will give due weight to the reviewing officer's decision on the issues with which he disagreed with the hearing officer, unless the hearing officer's decisions involved credibility determination and assuming, of course, that the record supports the reviewing officer's decision."); *see also McEwen v. Tennessee Dept. of Safety*, 173 S.W.3d 815, 824 (Tenn. Ct. App. 2005) (holding that if credibility plays a pivotal role, then the hearings officers' or administrative judge's credibility determinations are entitled to substantial deference); *Stejskal v. Dep't. of Administrative Svcs.*, 665 N.W.2d 576, 581 (Neb. 2003) (holding that agencies may consider the fact that the hearing officer, sitting as the trier of fact, saw and heard the witnesses and observed their demeanor while testifying and may give weight to the hearing officer's judgment as to

credibility).

Consequently, BLNR should consider and give due regard to the Hearing Officer's credibility determinations so long as those determinations are supported by the reliable, probative, and substantial evidence in the whole record. *See* HRS § 91-14 (providing that administrative findings, conclusions, decisions and orders must be supported by "the reliable, probative, and substantial evidence in the whole record").

III. GENERAL OBJECTIONS TO SLEIGHTHOLM'S EXCEPTIONS

UH Hilo and TIO generally object to Sleightholm's Exceptions to the extent that they do not comply with Minute Order No. 103 [Doc. 784] and HAR § 13-1-42(b). In many instances, Sleightholm's Exceptions do not cite to specific findings or conclusions in the HO FOF/COL, and instead cite to findings or conclusions proposed by UH Hilo and TIO, and/or cite to findings or conclusions proposed by Sleightholm's herself.

UH Hilo and TIO object to each of the points in Sleightholm's Exceptions to the extent that they are irrelevant, inapplicable, immaterial, mischaracterize the evidence, misstate or misrepresent the record, rely on evidence that is not credible, biased, or incomplete, and/or not supported by the evidence in the record. UH Hilo and TIO also object to Sleightholm's Exceptions to the extent they assert alleged "findings" or "conclusions" that are beyond the scope of issues set forth in Minute Order No. 19 [Doc. 281] or beyond the scope of the authority delegated by BLNR to the Hearing Officer, or by the legislature to BLNR for these proceedings.

UH Hilo and TIO further object to Sleightholm's Exceptions to the extent that they raise procedural issues that were previously raised (in some cases, multiple times by multiple parties and through multiple motions for reconsideration) during the course of the CCH, and the arguments were previously fully briefed, considered and rejected by the Hearing Officer or

BLNR.

UH Hilo and TIO further object to Sleightholm's Exceptions to the extent they seek to challenge the Final Environmental Impact Statement ("**FEIS**") for the TMT Project. This proceeding is not an EIS challenge; Sleightholm's ability to make such a challenge expired long ago, and she cannot use this proceeding to reopen the FEIS approval process. This proceeding pertains only to the CDUA and is entirely governed by applicable constitutional law, HRS Chapter 183, and the Conservation District rules, HAR Title 13, Chapter 5 that are genuinely at issue here.

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

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

Appendix A contains general objections to Sleightholm's Exceptions, which UH Hilo and TIO hereby incorporate by reference into their response to each of Sleightholm's Exceptions, to the extent applicable.

In addition to the general objections in Appendix A, UH Hilo and TIO have prepared a

table of specific responses and objections to Sleightholm's Exceptions, which is attached hereto as **Appendix B** . Additionally, to the extent Sleightholm has adopted or joined in exceptions contained in Petitioners K. Pisciotta, Mauna Kea Anaina Hou, D. Ward, P. Neves, K. Kanaele, L. Sleightholm, B. Kealoha, C. Freitas, Mehana Kihoi's (collectively "MKAH, et al.") *Exceptions to Hearing Officer Riki May Amano's Findings of Fact, Conclusions of Law, and Decision and Order*, filed August 21, 2017 [Doc. 815] ("MKAH Exceptions") , UH Hilo and TIO incorporate by reference their responses to the MKAH Exceptions. Citations to the evidence in the record provided herein are not intended to be exhaustive or comprehensive, but demonstrate evidentiary support for UH Hilo and TIO's responses and objections. Pursuant to Minute Order No. 103 [Doc. 784] and HAR § 13-1-42(b), UH Hilo and TIO object to all unsupported assertions in Sleightholm's Exceptions, and BLNR should disregard all such unsupported assertions.

The FOF/COL and page numbers referenced herein follow those as provided in Sleightholm's Exceptions. References to the HO FOF/COL are denoted by the prefix "HO FOF" and "HO COL" for the numbered FOF or COL, respectively, in the HO FOF/COL.

Acronyms and defined terms used herein are defined in the Index of Select Defined Terms in the HO FOF/COL.

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IV. CONCLUSION

For the foregoing reasons, UH Hilo and TIO respectfully request that Sleightholm's Exceptions be rejected, and that the BLNR adopt the Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Decision and Order as revised to reflect UH Hilo's and TIO's respective proposed exceptions filed on August 21, 2017.

DATED: Honolulu, Hawai'i, September 11, 2017.

IAN L. SANDISON
JOHN P. MANAUT
LINDSAY N. MCANEELEY

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

J. DOUGLAS ING
BRIAN A. KANG
ROSS T. SHINYAMA

Attorneys for
TMT INTERNATIONAL OBSERVATORY LLC

Appendix A

General Responses to Petitioners'/Opposing Intervenors' Exceptions	
Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b)	The Exception should be disregarded because it fails to (1) set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken; (2) identify that part of the hearing officer's report and recommended order to which objections are made; or (3) state all grounds for exceptions to a ruling, finding, conclusion, or recommendations. The grounds not cited or specifically urged are waived.
Citation does not support the proposition.	The citation offered by Petitioners/Opposing Intervenors does not support the Exception.
Estoppel/Improper Reconsideration	The Exception or a portion thereof is improper to the extent it is barred by estoppel or waiver, or improperly seeks reconsideration of the Hearing Officer's or the BLNR's prior ruling,
Inaccurate/False	The Exception or a portion thereof is inaccurate or false.
Incomplete.	The Exception is materially incomplete.
Irrelevant/Inapplicable.	The information in the Exception is irrelevant or inapplicable in this contested case proceeding. *See* Minute Order No. 19 [Doc. 281].
Lack of Jurisdiction	The Exception exceeds the scope of the Hearing Officer's jurisdiction and/or delegated authority
Mischaracterization.	The Exception mischaracterizes legal authority or the contents of the record.
Misleading. Partial quotation.	The Exception contains a partial quote from legal authority or a document in the record, and the incompleteness of the quotation is likely to mislead the reader.
Misleading. Presented out of context.	The Exception presents law or information in the record out of context and/or in a way that is likely to mislead the reader.
Misrepresentation	The Exception affirmatively misrepresents legal authority or the contents of the record.

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

Appendix B

Summary Table of Responses to Sleightholm's Exceptions

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
1	NA	I take exception to and am very disappointed with regard to the HO's Report in its entirety, which appears to be an exact copy of UH/TIO's Joint Proposed FOF, COL, and Decisions and Order. As a party in this case I know first hand how daunting, extensive, time consuming, and immense the record was, and we were given a very short amount of time to go through the thousands and thousands of pages of transcripts, and hours of video, but we did the best we could. Although my FOF/COL could have been more complete and thoughtful had we been given adequate time, we still, each, individually spend the hours necessary to prepare and submit the required document in a good way. The contested case process was setup to be for regular members of the community to be able to participate in a meaningful way and as a pro-se party it requires more time for	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. As set forth therein, the Hearing Officer considered all the evidence presented, and the resulting HO FOF/COL are amply supported by evidence in the record. HO FOF/COL at 7. Sleightholm's suggestion that the Hearing Officer's adoption of substantial portions of UH-TIO's Joint Proposed FOF/COL was somehow improper is unsupported by law. *See County of Lake v. Pahl,* 28 N.E.3d 1092 (Ind. Ct. App. 2015) (holding that it is not uncommon or *per se* improper for a trial court to enter findings that are verbatim reproductions of submissions by the prevailing party); *Ivie v. Smith,* 439 S.W.3d 189 (Mo. 2014) (holding that while trial courts must act independently in making findings of fact and conclusions of law, it is not error for trial court to request or receive proposed findings and, in appropriate cases, to adopt those findings); *East Coast Paving & Sealcoating, Inc. v. North Allegheny School Dist.*, 111 A.3d 220 (Pa. Commw. Ct. 2015) (holding that there is nothing untoward about a trial court adopting a party's proposed findings of fact and conclusions of law as its own); *Howard v. Howard*, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); *American Water Development, Inc. v. City of Alamosa*, 874 P.2d 352, 376 (Colo. 1994)

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
		me to not only learn the format, if even possible with the deadlines, but also extract the relevant information necessary to present my case. I would have hoped that the Hearing's Officer presiding over this contested case would put as much thoughtfulness, and consideration into preparing this report as we put in, as an acknowledgment of our efforts as well.	(holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[F]indings, if otherwise sufficient, are not weakened or discredited because given in the form submitted by counsel.") (citations omitted); *Kumar v. Kumar*, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, *i.e.*, bias). It is also well established that an adverse ruling does not evidence bias. *See Jou v. Dai-Tokyo Royal State Ins. Co.*, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); *James W. Glover, Ltd. v. Fong*, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,]" would not constitute a "basis for disqualification"). Thus, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. *See also, supra.* Moreover, any suggestion of a denial of due process is plainly unsupported by the record and legal authorities. Procedural due process ensures that a party is afforded "an opportunity to be heard in a meaningful time and in a meaningful manner." *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai'i 376, 380, 363 P.3d 224, 237 (2015). It does not ensure that a party is able to dictate the direction or outcome of the proceedings or that the fact-finder rule in favor of any particular party. Here, all parties were plainly afforded a meaningful opportunity to be heard, both during the CCH and in the post-hearing briefing. The parties and the Hearing Officer have had sufficient time to consider the evidence and prepare responses. It has been

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
			approximately 10 months since the beginning of the hearing, approximately five months since the close of the hearing, and almost two months since the filing of proposed findings and conclusions by each of the parties. That is more than sufficient time for the Hearing Officer to have reviewed and considered the record in its entirety, and more than sufficient time for each and every party to have given thoughtful consideration to all of the testimony and evidence presented and to have prepared detailed findings and conclusions. Although HAR 13-1-38(a) prescribes a 10-day deadline for filing proposed findings and conclusions, in Minute Order No. 43, the Hearing Officer afforded the parties 41 days after the transcripts to submit proposed findings and conclusions. Moreover, approximately 75% of the witnesses who testified in this proceeding were called by the Petitioners/Intervenors, and approximately 57% of the documents filed in this matter were attributable to the Petitioners/Intervenors, who should know the substance of their submissions. Importantly, the Hearing Officer and many of the parties sat through the 44 days of hearing, absorbing the testimony of each witness. It is thus disingenuous to say that there was not sufficient time or consideration given to the evidence in this proceeding.
2	NA	I take exception to the fact that after submitting my FOF/COL, I did not receive any official response as to whether my Findings were considered, accepted, or even denied.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Inaccurate. The HO FOF/COL specifically states that "any proposed finding of fact submitted by the parties which is not specifically incorporated is rejected ..." for one or more enumerated reasons. HO FOF/COL at 7. Accordingly, it is incorrect for Sleightholm to claim that she did not receive any official response as to whether her proposed findings were considered, accepted, or denied.

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
			In addition, to the extent Sleightholm is referring to the requirement contained in HRS § 91-12 that states in part: "If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented," that statute governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." *Outdoor Circle v. Harold K.L. Castle Trust Estate*, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also *Mitchell v. BWK Joint Venture*, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).
3	25	"Dwight Vicente is a native Hawaiian and holds himself out to be representing the Hawaiian Kingdom" (25, pg. 13) I take exception to the tone used in this statement to describe Mr. Vicente. It conveys bias, and a mocking and demeaning representation of his legitimate standing in this case.	HO FOF 25 is accurate and supported by the evidence in the record and the citations therein. *See* e.g. Doc. 57, wherein Mr. Vicente states "I am representing the Hawaiian Kingdom." Unsupported. Sleightholm's interpretation of tone and assertion of bias is subjective argument, entirely unsupported by any evidentiary or legal support.
4	26	"Mr. Kealoha stopped appearing in person and participating in the proceedings on or about December 8, 2016" (26 pg. 13) I take exception to the fact that it does not state the reason Mr. Kealoha "stopped" appearing. He made numerous objections, and voiced concern about the financial burden the	HO FOF 26 is accurate and supported by the evidence in the record and the citations therein. Unsupported. Sleightholm does not provide any evidentiary citation to the allegation that Mr. Kealoha stopped appearing based upon financial burdens; nor does Sleightholm state why the alleged reason is relevant to this finding. As with any proceeding of this nature, each and every party expended substantial amounts of time and resources

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
		hearings schedule had on him and his ability to continue in the process.	and made personal decisions regarding whether and to what extent they would participate in the CCH.
5	82	The hearings officer had a reasonable amount of time and conditions for viewing the general landscape and areas proposed for the TMT Project, and the site visit is considered reasonable and appropriate for the purpose of the case. (82 pg. 20) I take exception the fact that the site visit was considered reasonable and appropriate when multiple parties' standing involved religious and cultural practices, yet on the day of the site visit, the van in which the HO, and other parties rode in made no stops at the site. They did not exit the van to experience the essence of the mountain, take the time to walk around the proposed site, or to take time to look at the red helium balloon which floated over 100 ft. in the air. Many parties stated that they either didn't see the balloon, or didn't have time to look at it for a reasonable period of time.	HO FOF 82 is accurate and supported by the evidence in the record and the citations therein. *See also* FOF 81 identifying sites visited and confirming the presence of the red helium balloon demonstration. Unsupported. This Exception is unsupported by any evidentiary citation. Moreover, as Sleightholm voluntarily chose not to attend the site visit, her claims are not based on personal knowledge and not proper evidence for consideration. Furthermore, the Hearing Officer is given full authority over the conduct of the hearing process, including the site visit. *See* HO COL 38-42. In her discretion, the Hearing Officer determined that there was a reasonable period of time and conditions for viewing the general landscape and areas proposed for the TMT Project. The site visit was reasonable and appropriate for purposes of this proceeding. *See* HO FOF 77-82.
6	NA	I take exception to the fact that after giving prior notice that riding in the tour vans on the day of the site visit was against my beliefs, and I couldn't ride in a vehicle which I do not support I had	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. This Exception is unsupported by any evidentiary

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
		gotten no response but told on the day of the site visit that if I chose not to go with the group in the van, I would be excluded from the official site visit.	citation. In addition, as set forth above, the Hearing Officer has full authority to set parameters of a site visit. *See* HO COL 38-41; HO FOF 80-81. Sleightholm was given the same opportunity as any other party to participate in the site visit on the same terms and conditions as each and every other party, but voluntarily chose not to attend.
7	NA	I take exception to the fact that on April 19, 2017, MO 43 set a deadline for FOF/COL that the parties were ordered to submit was based on an incomplete record. The record was closed on July 25, 2017 (MO102) which was two months after the deadline to submit our FOF/COL.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Sleightholm is mistaken about the events that occurred subsequent to the close of the evidentiary hearing. The testimonial portion of the hearing closed after the last testimony was taken on March 2, 2017. Once the testimonial portion of the hearing closed, time was allowed for the transcripts of the 44-day hearing to be prepared. On April 19, 2017, Minute Order No. 43 informed the parties that transcripts were ready and available, and gave all parties a time period of 41 days to prepare and submit their proposed findings and conclusions, even though the rules prescribed only a 10-day period. This time period was more than reasonable under the circumstances. Moreover, a plain reading of HAR § 13-1-38(a) demonstrates that there is no limitation on when a hearing officer may set the deadline for the parties to submit their Proposed FOF/COL, and in fact, the rule provides that the hearing officer has the authority to set the deadline for the submissions. HAR § 13-1-38(a) ("After all evidence has been taken, the parties may submit, within the time set by the presiding officer, a proposed decision and order which shall include proposed findings of facts and conclusions of law."). This is fully consistent with HAR § 13-1-38(c), which, among other powers, grants full authority to a hearing officer (without timing limitations) to "fix times

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			for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of the hearing" HAR § 13-1-38(c). Given the foregoing, the Hearing Officer clearly had the authority to set the deadline for the submission of the Proposed FOF/COL for May 30, 2017. *See Citizens Against Reckless Dev. v. Zoning Bd. Of Appeals of City & County of Honolulu*, 114 Hawai'i 184, 193, 159 P.2d 143, 152 (2007) (noting that where statutory language is plain and unambiguous, a court's "sole duty is to give effect to its plain and obvious meaning."). While Sleightholm objects that the deadline to submit proposed FOF/COL was before the record was formally closed in this proceeding, there is no dispute that HAR § 13-1-38(a) refers to *evidence* taken in the proceeding, not the closure of the record. HAR § 13-1-38(a). The testimonial evidentiary portion of the hearing concluded on March 2, 2017 (*see* Tr. 3/2/17 at 287:17-19), the transcripts were available on April 18, 2017 (*see* Minute Order No. 43, filed April 18, 2017 [Doc. 552]), the Hearing Officer ruled on the admissibility of documentary evidence on April 20, 2017 (*see* Minute Order No. 44, filed April 20, 2017 [Doc. 553]), and the Hearing Officer ruled on all pending motions for reconsideration regarding Minute Order No. 44 on May 25, 2017 (*See* Minute Order No. 51, filed May 25, 2017 [Doc. 647]). Thus, notwithstanding pending orders on various motions, it was clear that the Hearing Officer's deadline complied with HAR § 13-1-38(a), and Sleightholm's argument that the entire *record* in this contested case hearing had to be closed prior to the submission of the Proposed FOF/COL is incorrect.
8	NA	I take exception to the fact that responses to many outstanding filings came so late that they were no longer an	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made.

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		issue. Example: (MO 69) dated June 5, 2017, granting my motion to appear by phone which I had submitted on January 26, 2017 for a mandatory scheduling hearing.	Sleightholm's general complaint is also unsupported by legal authority. *See* Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.") Sleightholm's specific complaint regarding Minute Order 69 is disingenuous. Sleightholm fails to fully acknowledge that her motion to appear by telephone had previously been granted. In other words, she had been allowed to appear by telephone for the January 26, 2017 scheduling hearing. The fact that the written order, memorializing what had been orally granted, came much later is of no consequence. Significant efforts were made in this proceeding to reasonably accommodate parties, and it is not beyond reason that the issuance of a written order granting a motion was placed on hold pending matters of more significant priority, especially where the request to appear was granted.
9	NA	I take exception to the fact that the Office of Mauna Kea Management, (hereinafter referred to as "OMKM") is represented or portrayed to have authoritative powers, but in fact they are merely an advisory board who makes recommendations. They do not have the power to create regulations or enforce them.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Mischaracterization. OMKM is the result of the Master Plan, which identified the need for a single entity to manage the MKSR. OMKM's primary mission is the protection, preservation, and enhancement of cultural and natural resources on Mauna Kea. OMKM receives input from advisory boards, but OMKM is not merely advisory itself. OMKM is tasked with implementing the Master Plan and the CMP, as well as overseeing day-to-day management of public activities, commercial tours, filming, research, and outside-the-dome observatory activities. *See* HO FOF 132-145, which are accurate and

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			supported by the evidence in the record and the citations therein. *See also* WDT Nagata at 2-3; Ex. A-52; Tr. 12/8/16 at 28:10-28:19; Tr. 10/27/16 at 215:3-216:18, 326:16-327:1, and 328:9-331:7.
10	NA	I take exception to the numerous "Management Plans" i.e., CMP, CRMP, NRMP, asserting that their function is to protect and preserve a myriad of aspects on Mauna Kea, when in fact they were created by the entity who poses the largest threat and impact to the mountain.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. Sleightholm's claim that UH poses the largest threat to the mountain and her suggestion that the management plans referred to were developed for any reason other than to protect and preserve the resources on Mauna Kea is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Moreover, as the record shows, the CMP and its sub-plans were comprehensively developed through a review process, with BLNR's approval, as a planning guide for resource management designed to promote the protection of Mauna Kea's unique cultural, natural, recreational, educational, and scientific resources. *See* HO FOF 146-168, which are accurate and supported by the evidence in the record and the citations therein.
11	NA	I take exception to the term, "restoration or restore" used when referring to post decommissioning. Unless every pohaku, piece of cinder, and particle of dirt is put back in the exact place and manner in which it was when it was disturbed, a place can never truly be restored back to its original state. The aforementioned only related to the physical materials, but the energetic aspect, and sanctity, of a site cannot be	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Moreover, astronomy observatories are approved uses within the subzone of the conservation district. A decommissioning plan helps establish the framework for eventual removal of observatories and restoration of the site. Black's Law Dictionary defines the term

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		restored once desecrated.	"restoration" as the return to an operational state or the re-establishment of things like flora and fauna after human activity. The legal term restoration is appropriate for purposes of discussing the decommissioning plan, which is intended to facilitate the removal of telescopes and the re-establishment of previous conditions.
12	179	I take exception to one of the reasons stated that the site for the proposed TMT on the northern extension of the summit was to ensure that the TMT project would not be visible from Hilo somehow minimized the visual impacts or detracts from the fact that other parts of the island will see it. (179 pg. 38)	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate how HO FOF 179 is erroneous. In fact, substantial and credible evidence was presented establishing that the Northern Plateau was chosen in large part to avoid the most culturally sensitive areas of the summit ridge. *See* HO FOF 178-79, 318, 321-323, 359(c). HO FOF 179 is accurate and supported by the evidence in the record and the citations therein
13	194	I take exception to the statement, "balancing the competing interests of culture, conservation, scientific research, and recreation." (194 pg. 41) Our very existence as Hawaiians is inclusive "culture" which encompasses many aspects and in no way is in competition with anything. We are merely being who we were born to be, our birthright. The terminology being used is the western way of thinking, and the idea that our "practices" are somehow in competition with any of the other listed "interests" is false. It should not have even been included or entertained as such.	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate that FOF 194 is erroneous, or to support Sleightholm's otherwise unsubstantiated assertions. The language to which Sleightholm takes exception is quoted from the 2014 State audit report on the management of Mauna Kea. HO FOF194 accurately reflects that quote, and is thus supported by the evidence in the record and the citations therein. Moreover, by its very nature, the criteria set forth in HAR 13-5-30 and these proceedings require BLNR to evaluate and balance different interests in issuing any CDUP. This reality finds additional support in *State v. Pratt*, in which the Supreme Court recognized that the protections afforded native Hawaiians in the State must be considered in light of other interests. *See* COL 105-107.

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14	197	I take exception the statement that, "Rangers remove fireweed when they find it along the road and summit areas". (197 pg. 41) A more accurate statement would have been that rangers "sometimes" remove fireweed when they find it along the road and summit areas. I have seen rangers standing next to multiple patches of fireweed and they did not remove them. In fact, during the 24/7 vigil held across the VIS, many of the "protectors" consistently pulled fireweed, bagged it, and disposed of it while the rangers stood, arms crossed along the side of the road.	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate that FOF 197 is erroneous, or to support Sleightholm's otherwise unsubstantiated assertions. The opportunity for Sleightholm to challenge the statements of Mr. Klasner was through cross-examination. Alternatively, she could have introduced testimony or other evidence to support this Exception during the CCH. This attempt to inject testimony not subject to cross-examination into the record now is improper and should not be considered as it is not part of the evidentiary record. HO FOF 197 is accurate and supported by the evidence in the record and the citations therein.
15	302	I take exception to the statement made by Dr. Coleman, "The TMT project will allow the University to continue its astronomy outreach and teaching efforts, and aid in the quest to produce "home grown" astronomers" (302 pg. 61) Our people are seafaring people who navigate using the stars. This has been so for hundreds of years before there ever was a University or astronomy course. We have many home grown astronomers, and the importance of a degree to somehow make you qualified is not the only way, or means to	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate that FOF 302 is erroneous, or to support Sleightholm's otherwise unsubstantiated assertions. The opportunity for Sleightholm to challenge the statements of Dr. Coleman was through cross-examination. Alternatively, she could have introduced testimony or other evidence to support this Exception during the CCH. This attempt to inject testimony not subject to cross-examination into the record now is improper and should not be considered as it is not part of the evidentiary record. HO FOF 302 is accurate and supported by the evidence in the record and the citations therein.

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		measure knowledge. My son who grew up sailing on the Makali'i knows the stars, and constellations like the back of his hand, and this he learned through oral teachings, and by living and practicing the teachings not by acquiring a degree through theoretical teachings.	
16	NA	I take exception to the idea that money is somehow a mitigation. It is presented in such a way that if offered the right amount of money, desecration would be acceptable. The analogy used by one of the parties was if you disturbed a certain type of plant, the mitigation would be planting more of that plant in another area. Money doesn't mitigate the impacts of a project that will disturb 12.5 acres on various parts of the mountain, all of which hold significant cultural and spiritual importance.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Mischaracterization of the Hearing Officer's analysis of the proposed mitigation measures. There is no allegation in the HO FOF/COL that money alone is a sufficient mitigation. *See* HO FOF 316-345. The conclusion that the proposed mitigation measures collectively are sufficient is supported by the record. HO FOF 316-318, 322-341, 345, 346-352; HO COL 111-112, 119, 123, 125, 140, 164, 172, 206, 208, 210-213, 220-221, 241-243, 249, 258; HO COL 125 ("The BLNR has recognized that it may approve a proposed land use despite some environmental impacts to the Conservation District, provided that the project incorporates appropriate mitigation measures and conditions. *Findings of Fact, Conclusions of Law, Decision and Order, In re Conservation District Use Application for Hawaiian Electric Company, Inc. to Construct a 138-kV Transmission Line at Wa'ahila Ridge, Honolulu, Hawai'i*, DLNR File No. OA-2801 (June 28, 2002) ("**Wa'ahila Ridge**") at 64 n.13; *see also Morimoto v. BLNR*, 107 Hawai'i 296, 305-06, 113 P.3d 172,181-82; *Stop H-3 Ass'n v. State*

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			Dep't of Transp., 68 Haw. 154, 158, 706 P.2d 446, 449 (1985).").
17	NA	I take exception to the idea that only certain areas are significant or sacred. Energetically, everything is connected. You cannot only look at one areas, or "find spot" alone.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. The HO FOF/COL discusses at length many of the views presented through testimony at the CCH regarding the cultural and religious significance of Mauna Kea. *See* HO FOF 361-423. The fact that some people hold and/or express such religious or spiritual beliefs is not in dispute; however, it cannot be generalized as true for all people or even all Hawaiian people. The legal impact of such beliefs is also clearly in dispute.
18	328	I take exception to the statement, "The TMT project will camouflage certain HELCO electrical pull-boxes and other utility boxes that are visually distracting or intrusive at the summit of Mauna Kea". (328 pg.67) A telescope that stands 184 ft. tall is far greater of a distraction and intrusion than electrical pull-boxes or utility boxes.	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate that FOF 328 is erroneous, or to support Sleightholm's otherwise unsubstantiated assertions. There is substantial evidence in the record to support the Hearing Officer's findings and conclusions on visual and aesthetic resources. *See* HO FOF 834-854; HO COL 205, 208, 210, 231-260. Thus, HO FOF 328 is accurate and supported by the evidence in the record and the citations therein. Mischaracterization. HO FOF 328 is part of the numerous mitigation measures proposed for the TMT Project. The use of mitigation measures is a universally recognized and widely adopted means of lessening otherwise adverse impacts in land use projects. *See also* Response to Exception 16 above regarding sufficiency of mitigation measures, collectively.

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19	350	I take exception to the idea or proposal that "site restoration may involve using cinder or materials similar to the surroundings" (350 pg. 72) Materials removed from the proposed project area was planned to be stored at the batch plant for use in the "restoration" efforts. The possibility of disturbing other areas and removing materials similar to those of the project area from another site is not acceptable, and additional impacts should not be a consideration. Furthermore, the materials from one site should remain at that site as that is the area it has always been, and probably was formed/created and does not belong in another area.	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate that FOF 328 is erroneous, or to support Sleightholm's otherwise unsubstantiated assertions. HO FOF 350 is accurate and supported by the evidence in the record and the citations therein. Indeed HO FOF 350 simply reports on the planned restoration activities upon the TMT Project's decommissioning, as presented through evidence. *See* HO FOF 346-352. Sleightholm's Exception expresses disagreement with the plans that were presented, not with the accuracy of the finding. This is merely unsubstantiated argument that is improper for purposes of these Exceptions. *See* Minute Order No. 103.
20	351, 509, 512	I take exception to any statements made that the impacts will not add to the already substantial, adverse, and significant impacts, (509, 512 pg. 95) when it states that, "Some underground facilities may be left in place because removing them could cause more of a disturbance than leaving them". (351 pg. 72) If a man made, foreign material is left in the ground where previously none was there, it adds to the impacts of the area.	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate that the referenced findings are erroneous, or to support Sleightholm's otherwise unsubstantiated assertions. Sleightholm ignores the EIS analysis of the project's impact, as well as the EIS laws and universally accepted use of mitigation measures to lessen otherwise adverse impacts. The referenced HO Findings are accurate and supported by the evidence in the record and the citations therein, *See* HO FOF 508-897; HO COL 178-226; *see also* FOF 171-73, 345, 940-41 and citations therein, including Ex. A-39 (November 17, 2015 Letter from D.Lassner to BLNR) and Ex. A-13 (Decommissioning Plan) at 3-224,

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			discussing the University's commitments to decommissioning, including the removal of at least three telescopes before the TMT Project is built (assuming approval of the CDUA).
21	509	I take exception to the idea that physical impacts are somehow viewed as lessened by a mitigation "plan", applicable management, and decommissioning "plan". (509 pg. 95)	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate that FOF 509 is erroneous, or to support Sleightholm's otherwise unsubstantiated assertions. Sleightholm ignores the EIS analysis of the project's impact, as well as the EIS laws and universally accepted use of mitigation measures to lessen otherwise adverse impacts. HO FOF 509 is accurate and supported by the evidence in the record and the citations therein. *See also* Responses to Exception 16, 20.
22	351, 512	I take exception to the assertion that, "the level of impacts on natural resources within the MKSR would be substantially the same even in the absence of the TMT project within the MKSR". (512 PG. 95) Entertaining the idea of leaving some underground facilities in place (351 pg. 72) is contradictory to the above statement.	Unsupported. This Exception is entirely unsupported by any evidentiary support to demonstrate that FOF 509 is erroneous, or to support Sleightholm's otherwise unsubstantiated assertions. Sleightholm ignores the EIS analysis of the project's impact, as well as the EIS laws and universally accepted use of mitigation measures to lessen otherwise adverse impacts. HO FOF 351 and 512 are accurate and supported by the evidence in the record and the citations therein. *See also* Responses to Exceptions 16, 20.
23	NA	I take exception to the fact that throughout this report, the endeavors, accolades and advancement of astronomy supersedes the voices of thousands of first nations people who are genealogically connected to Mauna Kea demanding that no further	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument.

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		development take place on the summit, which is considered to be a portal to the realm of our ancestors.	Mischaracterization of record. The Hearing Officer properly reviewed the project under applicable laws, including HAR 13-5-30 and the State Constitution, giving due consideration to evidence presented regarding native Hawaiian traditional and cultural resources and practices. The HO FOF/COL discusses at length many of the views presented through testimony at the CCH regarding the cultural and religious significance of Mauna Kea, and the cultural practices performed there. *See* HO FOF 361-423. The fact that some people hold and/or express such religious or spiritual beliefs is not in dispute; however, it cannot be generalized as true for all people or even all Hawaiian people. The legal impact of such beliefs is also clearly in dispute. The credible and substantial evidence in the record supports the findings and conclusions that the TMT Project will not cause significant adverse impacts to practices established pre- and post-2015, and that Petitioners and Opposing Intervenors have been and will continue to be able to exercise their traditional and customary practices (and contemporary practices) on Mauna Kea. HO COL 203, 343, 346; HO FOF 670, 803, 816, 812, 831, 833.
24	NA	I take exception to the fact that only physically visible features were considered when determining the concentration or locations of archaeological or historic sites/areas within the project area. (ii Archaeological and Historic Resources pg. 104-114) It is known that many practices, i.e. burials, especially those of ali'i were	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Mischaracterizes record and applicable law. The reliable, credible and probative evidence presented in the CCH established that archaeological studies for Mauna Kea and the TMT Project were

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		held in secret. Just because the eye can't see it, doesn't mean it doesn't exist. Same goes for other religious practice and offerings. Ho'okupu was not always in the form of material things. "oli, mele, hula were other forms of ho'okupu that would not leave a physical presence but should be considered.	properly performed in accordance with applicable laws, *i.e.* HRS Chapter 6E, and approved by the appropriate agency, *i.e.* the State Historic Preservation Division of DLNR. *See e.g.*, HO FOF 565, 577, 573-577. The record further reflects that the Hearing Officer considered evidence presented regarding the cultural and religious significance of Mauna Kea and cultural practices performed there. *See e.g.* HO FOF 361-423.
25	NA	I take exception to the term "Traditional and Customary practices". (iii Cultural Resources and Practices pg. 122) It is a way in which to continue to be oppress, and subjugate native people by minimizing their practice and regulating it by means of terminology, when it was because of the introduction of Christianity, and indoctrination, and the making of our language and practices illegal that broke the continuity of knowledge passed down from generation to generation for some families. It is not to say that other branches of the family cannot pass that same knowledge down even after generations have passed, and it is still and should be acknowledged, as western terminology puts it, "traditional and customary practice" and not contemporary.	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Unfounded; ignores applicable legal authorities. The term "traditional and customary practices" has been expressly recognized by the Hawai'i Supreme Court to describe the kinds of rights that are protected by Article XII, section 7 of the Hawai'i Constitution and applicable law. *See e.g. Public Access Shoreline Hawai'i v. Hawai'i County Planning Comm'n,* 79 Hawai'i 435, 903 P.2d 1246 (1995) ("**PASH**"); *see also* HO COL 98, 101.

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26	795	I take exception to the reference of the polls, and results of these polls. (795 pg. 145) It should be noted that the above mentioned polls were initiated, and funded by TIO, and not all Hawaiians were surveyed.	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Evidence that the poll was "funded by TIO" is not in the record. HO FOF 795 is accurate and supported by the evidence in the record and the citations therein. HO FOF 795 (and HO FOF 783 which Sleightholm does not challenge) relates to the credibility of the witnesses (Ronald Fujiyoshi and Prof. Kaopua-Goodyear) who challenged the project on the basis of its alleged adverse effect on native Hawaiians, but who also were unaware of the poll indicating that 46% of native Hawaiians support for the project, as opposed to 45% in opposition. As the finder of fact, it is the Hearing Officer's duty to hear all evidence and to make determinations regarding the credibility of the evidence presented. This includes the duty to assign the weight and value of evidence, whether it be credible, not credible, or more or less credible than other evidence. Determinations of credibility are best made by the presiding judge or jury in a criminal or civil trial and will not be disturbed on appeal. *See State v. Buch*, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996)("[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the providence of the [trier of fact].") The underlying principle being that "the fact finder is uniquely qualified to evaluate the credibility of witnesses and to weigh the evidence." *Wilton v. State*, 116 Hawai'i 106, 119, 170 P.3d 357, 370 (2007)(citation omitted).
27	805	I take exception to the statement, "Sleightholm has followed the principles of Petitioner Case, and both	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument.

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		oppose the TMT project". (805 pg. 153) I have had many kumu in my lifetime. My conclusion regarding my stance with regard to Mauna Kea was made entirely on my own after having learning all the facts on both sides, receiving messages and signs from my kupuna, and connecting through pule the deep knowing of what is pono and in alignment with my beliefs and understanding the ways of my kupuna. I would have come to the same conclusion no matter who my kumu was at that time.	Inaccurate; mischaracterizes the record. FOF 805 does not state that Sleightholm's only kumu has been Pua Case, but acknowledges Sleightholm's own testimony that Pua Case was in fact one of her kumus (*see* Tr. 2/14/17 at 42:11-15; *see also* Sleightholm Pre-Hearing Statement at 1), and the undisputed fact that both Sleightholm and Pua Case oppose the TMT Project. HO FOF 805 is thus accurate and supported by the evidence in the record and the citations therein.
28	805	I take exception to the statement, "protest the TMT project". (805 pg. 153) I stand for the mauna. I stand to protect the mauna. I don't protest, but instead align myself with a higher level of consciousness in aloha. Protest implies a negative energy and both cannot occupy the same space at the same time.	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Inaccurate; mischaracterizes the record. There is no text in FOF 805 at page 153 using the language "protest the TMT project." There is language that states that Sleightholm and Petitioner Pua case "oppose the TMT Project." Sleightholm's opposition to the project is evident by her opposition to the CDUA and is well established in the record; while this may not be Sleightholm's preferred description, it is consistent with and a fair characterization of her testimony and positions articulated in the CCH. *See e.g.* FOF 805; *see also* Sleightholm Pre-Hearing Statement at 2 ("I oppose the issuance of the CDUP"; Exceptions at 9 (the "CDUP should be denied"). HO FOF 805, which is primarily a verbatim recitation of Sleightholm's WDT, is accurate and supported by the evidence in the record and the citations therein.

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29	854	I take exception to the argument that the visual impacts of TMT is less of an impact because it's one among many (854 pg. 164) Every incremental addition adds to the cumulative impact. It would be like saying about an abused woman, well one more bruise won't be bad because there are so many there already. Seeing the proposed TMT would be a constant and painful reminder that money, and privilege outweighs the values and beliefs of the people who were born of this place	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Inaccurate; mischaracterizes the record. FOF 854 states in pertinent part that "[t]he TMT Project will add a visual element to the summit of Mauna Kea, but it will be one such element among many. The incremental increase in cumulative visual impact due to the TMT Project will be less than significant." Substantial and credible evidence was presented demonstrating that the TMT Project will not have a substantial adverse impact on visual and aesthetic resources (see HO FOF 834-854). In the context of the existing summit area cumulative impacts - and under the assumption that such cumulative impacts will continue - the TMT project does not create or cause substantial adverse impacts to existing natural resources in the applicable area. *See, e.g.*, HO COL 183, 226-229. HO FOF 854 is accurate and supported by the evidence in the record and the citations therein
30	867	I take exception to the assertion that our chants are not evidence enough of facts. (867 pg. 167) chants evolved based on observations over generations. It was our traditional way of documenting. I.e. the name Ka'ohe was given because that area was an area where water collected. It was factual and descriptive of the elemental occurrences.	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Inaccurate; mischaracterizes the record. FOF 867 does not state that chants are not evidence of facts; but, rather, that "Kanahele's testimony is based on her personal beliefs and interpretation of traditional Hawaiian chants, which she admits are subject to different interpretations. Her anecdotal evidence is not supported by any scientific data or research."

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			HO FOF 867 acknowledges testimony that is based upon personal beliefs and interpretations of traditional Hawaiian chants, but also notes that this testimony was not supported by any scientific data or research. HO FOF 867 is accurate and supported by the evidence in the record and the citations therein. As the finder of fact, it is the Hearing Officer's duty to hear all evidence and to make determinations regarding the credibility of the evidence presented. This includes the duty to assign the weight and value of evidence, whether it be credible, not credible, or more or less credible than other evidence. Determinations of credibility are best made by the presiding judge or jury in a criminal or civil trial and will not be disturbed on appeal. *See State v. Buch*, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996)("[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the providence of the [trier of fact].") The underlying principle being that "the fact finder is uniquely qualified to evaluate the credibility of witnesses and to weigh the evidence." *Wilton v. State*, 116 Hawai'i 106, 119, 170 P.3d 357, 370 (2007)(citation omitted).
31	874	I take exception to the reference regarding the "alleged" 2015 oil leak, and how they were likely moisture from condensation (874 pg. 168) The oil leaks (plural) were extensively documented by visual confirmation and photos. The amounts were large enough to pool and the dismissive way	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. HO FOF 874 is accurate and supported by the evidence in the record and the citations therein As the finder of fact, it is the Hearing Officer's duty to hear all evidence and to make determinations regarding the credibility of the evidence presented. This includes the duty to assign the weight and

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
		the leaks were addressed and noted in this report is further evidence of the management/mismanagement practices on Mauna Kea to date.	value of evidence, whether it be credible, not credible, or more or less credible than other evidence. Determinations of credibility are best made by the presiding judge or jury in a criminal or civil trial and will not be disturbed on appeal. *See State v. Buch*, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996)("[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the providence of the [trier of fact].") The underlying principle being that "the fact finder is uniquely qualified to evaluate the credibility of witnesses and to weigh the evidence." *Wilton v. State*, 116 Hawai'i 106, 119, 170 P.3d 357, 370 (2007)(citation omitted).
32	COL 344	I take exception to the fact that it states, "the Hearing Officer, through consideration of the CDUA and through the testimony and evidence in this proceeding, conducted a thorough review and analysis of the extent to which traditional and customary native Hawaiian right *will* be affected or impaired by the TMT project". (344 pg. 242) Based on numerous testimony, these rights have already been affected, and or impaired.	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. HO COL 344 is accurate and supported by the evidence in the record and the citations therein. The Hearing Officer thoroughly and appropriately considered whether and to what extent the TMT Project will have an impact on, among other things, traditional and customary native Hawaiian rights. In doing so, the Hearing Officer considered whether and to what extent there have been impacts to such rights from past astronomical uses on Mauna Kea. In the context of the existing summit area cumulative impacts - and under the assumption that such cumulative impacts will continue - the Hearing Officer concluded that the TMT Project will not cause substantial adverse impacts to existing natural resources in the applicable area. *See, e.g.,* HO COL 183. Under the definition of "Natural resource" in HAR § 13-5-2, cultural, historical, and archaeological sites are "natural resources," but cultural practices are not necessarily so. In any case, with respect to claimed religious,

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
			traditional and customary practices, and contemporary practices on Mauna Kea, the Hearing Officer found that the TMT Project will not cause significant adverse impacts to practices established pre- and post-2015, and that Petitioners and Opposing Intervenors have been, and will continue to be, able to exercise their traditional and customary practices (and contemporary practices) on Mauna Kea. HO COL 200-203, 343-359; HO FOF 803, 812, 816, 831, 833.
33	COL 405, 406, 409	I take exception to the statement, "There is no evidence in this matter that an entity or "person" involved in this proceeding has the specific ill-intent to mistreat Mauna Kea through defacing, damaging or polluting the mountain through the development of the TMT project, and the Hearing Officer specifically finds that the University and TIO have no such intent". (409 pg. 251) It was confirmed that Mr. Ishibashi purposely kicked down an upright in the summit area. As an agent/employee of OMKM, an advisory board for the University, it shows clear intent to mistreat the mountain or site. (405, 406, pg. 251)	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Sleightholm provides no evidence to support her claim that it was "confirmed" that Mr. Ishibashi purposely kicked down an upright with an intent to mistreat the mountain. Nor does she provide any other support to rebut the conclusion that there is no evidence of any "specific ill intent to mistreat Mauna Kea…through the development of the TMT Project" (HO COL 409), or the other conclusions cited, which merely explain the legal requirements for a claim of desecration (HO COL 405, 406). Lack of jurisdiction to the extent the Exception purports to stand for the proposition that the TMT Project constitutes "desecration" under HRS § 711-1107. ***See*** HO COL 399-413.
34	141	OMKM has repeatedly failed in its responsibility to properly manage the mountain. (141 pg, 30) Mayor Harry Kim acknowledged publicly that the mountain has been failed. OMKM's actions thus far have been contradictory	Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Mischaracterization. HO FOF 141 does not claim that OMKM's management has been devoid of issues. In fact, HO FOF 132 acknowledges the concerns raised in the 1998 audit that was critical of

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
		to their primary mission which states is the protection, preservation, and enhancement of cultural and natural resources in the UH Management Area on Mauna Kea.	the management on Mauna Kea, but also recognizes the Master Plan which resulted from that audit, and the improvements made under that Master Plan. Moreover, HO FOF 133-168, discuss the implementation of the Master Plan and the CMP, all of which are efforts to appropriately manage Mauna Kea. The Hearing Officer also considered testimony that a recent 2014 audit showed that the management of Mauna Kea has improved "significantly". HO FOF 974. HO FOF 141 is accurate and supported by the evidence in the record and the citations therein.
35	194	Although it states that management efforts have evolved and developed significantly over the last 15 years under OMKM, and references the auditor's report which says OMKM has addressed many of their recommendations such as developing and implementing management plans for Mauna Kea's natural, cultural, and historic resources. (194. Pg. 41) OMKM and Kahu Ku Mauna have yet to address numerous action items relating to cultural practices, and the West Hawai'i Consultation sessions to discuss the action items has been cancelled twice. First meeting scheduled for May 18, 2017 and second attempted meeting set for June 22, 2017 both cancelled and no notice from	See response to Exception 34. Unsupported; not in evidence. This Exception also improperly attempts to introduce facts that have arisen after the close of the CCH that have not appropriately been subject to cross-examination. These unsubstantiated assertions are not evidence, and are not appropriate for consideration.

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
		Lukela Ruddle as to a new meeting date. These action items were originally introduced and open for comment in May of 2015	
36	199	Nelson Ho's testimony citing "past issues" (199 pg. 41) was to give a timeline and show a pattern of mismanagement on Mauna kea that spanned decades.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. It is unclear what exactly Sleightholm is objecting to in HO FOF 199, which contains a summary of Nelson Ho's testimony. There is nothing inaccurate in HO FOF 199. Sleightholm's attempt to interpret Mr. Ho's testimony is improper, unsubstantiated argument.
37	328	Affixing stones and cinders from the vicinity to the exposed utility box. (328 pg. 67) Is disrespectful and could be seen as desecration, and is not in alignment with the primary mission statement of OMKM to protect, preserve and enhance the cultural and natural resources.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument. Sleightholm does not cite to any evidence in the record in support of her speculative allegations, which are insufficient for purposes of this contested case hearing. Additionally, HO FOF 328 is a finding noting some of the numerous mitigation measures proposed for the TMT Project. The use of mitigation measures is a universally recognized and widely adopted means of lessening otherwise adverse impacts in land use projects. HO FOF 328 contains an accurate description of one of the many mitigation measures. *See also* Response to Exception 16. Lack of jurisdiction to the extent the Proposed COL purports to stand

No.	HO's FOF/COL	Sleightholm's Exceptions	UH Hilo/TIO Response
			for the proposition that the TMT Project constitutes "desecration" under HRS § 711-1107. *See* HO COL 399-413.
38	NA	The fact that Dr. Noe Goodyear-Kaopua has only been to the summit once is in alignment with the beliefs and practices of our kupuna. If they were allowed to go up, it was for very specific reasons, and intentions.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b) because the Exception does not identify any specific portion of the HO FOF/COL to which objections are made. Unsupported. This Exception is entirely unsupported by any evidentiary support and is simply improper unsubstantiated argument Mischaracterization. Prof. Kaopua-Goodyear, admitted that she had no historical or familial native Hawaiian cultural practices on the summit of Mauna Kea, had never engaged in such practices on the Northern plateau Area E section of Mauna Kea, and had only been to the summit once in 2011. Tr. 2/22/17 at 148:12-149:21; 221:21-24; 226:4-228:3; Ex. J-6.

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hāmakua, Hawai'i, TMK (3) 4-4-015:009	BLNR Contested Case HA-16-002 **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

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

Michael Cain
Office of Conservation and Coastal Lands
1151 Punchbowl, Room 131
Honolulu, HI 96813
michael.cain@hawaii.gov
Custodian of the Records
(ORIGINAL + DIGITAL COPY)

Office of Conservation and Coastal Lands
dlnr.maunakea@hawaii.gov

Mehana Kihoi
PO Box 393
Honaunau, HI 96726
uhiwai@live.com

Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760
hankhawaiian@yahoo.com
(via email & U.S. mail)

C. M. Kaho'okahi Kanuha
77-6504 Maile St
Kailua Kona, HI 96740
Kahookahi.kukiaimauna@gmail.com

Carlsmith Ball LLP
Ian Sandison, Tim Lui-Kwan, John P. Manaut, Lindsay N. McAneeley
1001 Bishop Street
ASB Tower, Suite 2200
Honolulu, HI 96813
isandison@carlsmith.com
tluikwan@carlsmith.com
jpm@carlsmith.com
lmcaneeley@carlsmith.com
Counsel for the Applicant University of Hawai'i at Hilo

Lanny Alan Sinkin
P. O. Box 833
Bismarck, North Dakota 58502-0833
lanny.sinkin@gmail.com
Representative for The Temple of Lono

Maelani Lee
PO Box 1054
Waianae, HI 96792
maelanilee@yahoo.com

J. Leina'ala Sleightholm
P.O. Box 383035
Waikoloa, HI 96738
leinaala.mauna@gmail.com

Kalikolehua Kanaele
4 Spring Street
Hilo, HI 96720
akulele@yahoo.com

Torkildson, Katz, Moore, Hetherington & Harris
Attn: Lincoln S. T. Ashida
120 Pauahi Street, Suite 312
Hilo, HI 96720-3084
lsa@torkildson.com
njc@torkildson.com
Counsel for Perpetuating Unique Educational Opportunities (PUEO)

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom
dwightjvicente@gmail.com
(via email & U.S. mail)

Stephanie-Malia:Tabbada
P O Box 194,
Naalehu, HI 96772
s.tabbada@hawaiiantel.net
(via email & U.S. mail)

Brannon Kamahana Kealoha
89-564 Mokiawe Street
Nanakuli, HI 96792
brannonk@hawaii.edu

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

William Freitas
PO Box 4650
Kailua Kona, HI 96745
pohaku7@yahoo.com

Cindy Freitas
PO Box 4650
Kailua Kona, HI 96745
hanahanai@hawaii.rr.com

Wilma H. Holi
P.O. Box 368
Hanapepe, HI 96716
Witness for the Hearing Officer
w_holi@hotmail.com

Flores-Case 'Ohana
E. Kalani Flores
ekflores@hawaiiantel.net

Glen Kila
89-530 Mokiawe Street
Waianae, HI 96792
makakila@gmail.com

Ivy McIntosh
67-1236 Panale'a Street
Kamuela, Hawaii 96743
3popoki@gmail.com
Witness for the Hearing Officer

Tiffnie Kakalia
549 E. Kahaopea St.
Hilo, HI 96720
tiffniekakalia@gmail.com

B. Pualani Case
puacase@hawaiiantel.net

Moses Kealamakia Jr.
1059 Puku Street
Hilo, Hawaii 96720
mkealama@yahoo.com
Witness for the Hearing Officer

Paul K. Neves
kealiikea@yahoo.com

Clarence Kukauakahi Ching
kahiwaL@cs.com

Crystal F. West
P.O. Box 193
Kapaau, Hawaii 96755
crystalinx@yahoo.com

Kealoha Pisciotta and Mauna Kea Anaina Hou
keomaivg@gmail.com

Deborah J. Ward
cordylinecolor@gmail.com

Yuklin Aluli, Esq.
415-C Uluniu Street
Kailua, Hawaii 96734
yuklin@kailualaw.com
Co-Counsel for Petitioner
KAHEA: The Hawaiian Environmental Alliance, a domestic non-profit Corporation

Dexter K. Kaiama, Esq.
111 Hekili Street, #A1607
Kailua, Hawaii 96734
cdexk@hotmail.com
Co-Counsel for Petitioner
KAHEA: The Hawaiian Environmental Alliance, a domestic non-profit Corporation

DATED: Honolulu, Hawaii, September 11, 2017.

J. DOUGLAS ING
BRIAN A. KANG
ROSS T. SHINYAMA
SUMMER H. KAIAWE
Attorneys for TMT INTERNATIONAL OBSERVATORY LLC

IAN L. SANDISON
JOHN P. MANAUT
LINDSAY N. MCANEELEY
Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO