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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 PETITIONERS K.
PISCIOTTA, MAUNA KEA ANAINA
HOU, D. WARD, P. NEVES, K.**

DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII
2017 SEP 11 AM 11:13

KANAELE, L. SLEIGHTHOLM, B. KEALOHA, C. FREITAS, MEHANA KIHOI'S EXCEPTIONS/RESPONSES TO HEARING OFFICER RIKI MAE AMANO'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, FILED AUGUST 21, 2017 [DOC. 808]; APPENDICES A-B; CERTIFICATE OF SERVICE

THE UNIVERSITY OF HAWAI'I AT HILO AND TMT INTERNATIONAL OBSERVATORY, LLC'S JOINT BRIEF IN RESPONSE TO PETITIONERS K. PISCIOTTA, MAUNA KEA ANAINA HOU, D. WARD, P. NEVES, K. KANAELE, L. SLEIGHTHOLM, B. KEALOHA, C. FREITAS, MEHANA KIHOI'S EXCEPTIONS/RESPONSES TO HEARING OFFICER RIKI MAY AMANO'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, FILED AUGUST 21, 2017 [DOC.815]

Applicant UNIVERSITY OF HAWAI'I AT HILO ("UH Hilo") and TMT INTERNATIONAL OBSERVATORY, LLC ("TIO"), through their respective counsel, jointly submit this Response to 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, et al.'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

MKAH, et al. 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 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

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 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).

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 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 MKAH, ET AL.’S EXCEPTIONS

UH Hilo and TIO generally object to MKAH, et al.’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, MKAH, et al.’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 MKAH, et al.

UH Hilo and TIO object to each of the points in MKAH, et al.’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 MKAH, et al.'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 MKAH, et al.'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 MKAH, et al.'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; MKAH, et al.'s ability to make such a challenge expired long ago, and he 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 MKAH, et al.'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 MKAH, et al. 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 MKAH, et al. That position is not supported by the law.

Appendix A contains general objections to MKAH, et al.'s Exceptions, which UH Hilo and TIO hereby incorporate by reference into their response to each of MKAH, et al.'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 the MKAH, et al.'s proposed Exceptions, which is attached hereto as Appendix B. 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 MKAH, et al.'s Exceptions, and BLNR should disregard all such unsupported assertions.

The FOF/COL and page numbers referenced herein follow those as provided in MKAH, et al.'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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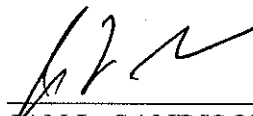
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IV. CONCLUSION

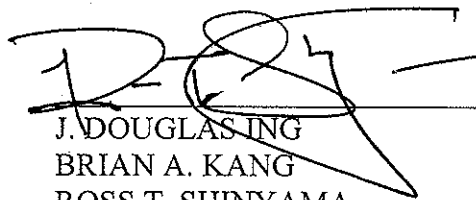
For the reasons set forth herein and in the UH Hilo Pre-Hearing Statement, TIO's Pre-Hearing Statement, the testimony of UH Hilo's and TIO's witnesses, UH Hilo's and TIO's evidence, the examination of the Petitioners' and Opposing Intervenors' witnesses, and in UH Hilo's and TIO's other filings, and the HO FOF/COL, UH Hilo and TIO respectfully jointly request that the BLNR reject Kihoi's Exceptions, and adopt the HO FOF/COL as revised to reflect UH Hilo's and TIO's respective proposed exceptions filed on August 21, 2017 [Docs. 816 & 813, respectively].

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



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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. <i>See</i> 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.

General Responses to Petitioners'/Opposing Intervenors' Exceptions

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 Petitioners Kealoha Pisciotta, Mauna Kea Anaina Hou, Deborah Ward, Paul Neves, Kaliko Kanaele, Leina 'ala Sleightholm, Brannon Kamahana Kealoha, Cindy Freitas, and Mehana Kihoi's Exceptions/Responses to Hearing Officer Riki Mae Amano's Proposed FOF/COL

Exception #	Page	Exceptions/Response	Comment
1.	Unpaginated	<p>Mauna Kea's cultural and religious significance is well documented in oral and written historical archives, as well as in legislative and court records. Mauna Kea is revered in the same way that other religions revere their churches, temples, synagogues, and mosques. The upper regions of Mauna Kea reside in Wao Akua, the realm of the Akua-Creator. It is considered the Temple of the Supreme Being, and also home of Na Akua (the Divine Deities), Na 'Aumakua (the Divine Ancestors), and the meeting place of Papa (Earth Mother) and Wakea (Sky Father) who are considered the progenitors of the Hawaiian People. Mauna Kea, it is said, is where the Sky and Earth separated to form the Great-Expanse-of-Space and the Heavenly Realms.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>HO FOF 671-833 are accurate and supported by the evidence in the record and the citations therein.</p> <p>HO FOF 361-423 demonstrate the extent to which the Hearing Officer acknowledged the cultural and religious significance of Mauna Kea</p> <p>However, the fact that some may hold and/or express such religious or spiritual beliefs is not in dispute; however, it cannot be generalized as true for all Hawaiian people. The legal impact of such beliefs is also clearly in dispute. There is no reliable, probative and substantive evidence that the substance of the belief is factual.</p>
2.	Unpaginated	<p>Mauna Kea in every respect represents the zenith of the Native Hawaiian people's ancestral ties to Creation itself. Mauna Kea, as a Wahi Kapu, is dedicated to life, peace, and Aloha. Anything that is contrary to these mandates impacts the temple and those who worship there. While the Hawaiian (and Polynesian) people's relationship with Mauna Kea dates back</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>HO FOF 671-833 are accurate and supported by the evidence in the record and the citations therein.</p>

Exception #	Page	Exceptions/Response	Comment
		<p>many millennia, the Mauna is used by many people today for spiritual practices, rest and rejuvenation and many forms of recreational enjoyment. What happens to the land and life forms of Mauna Kea impacts us all.</p>	<p>HO FOF 361-423 demonstrate the extent to which the Hearing Officer acknowledged the cultural and religious significance of Mauna Kea</p> <p>See Response 1 regarding religious or spiritual beliefs.</p>
3.	Unpaginated	<p>Mauna Kea protects all life big and small. When a species becomes extinct, it sets the process of creation unraveling. This impacts our relationship to all living things and our relationships with Akua. We offer our deepest gratitude to our the Akua, Na Akua and Na `Aumakua for the blessings and the honor of standing in this hearing for our beloved Mauna.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>HO COL 178-221, 231-260, 329-387 are accurate and supported by the evidence in the record and the citations therein.</p> <p>HO FOF 361-423 demonstrate the extent to which the Hearing Officer acknowledged the cultural and religious significance of Mauna Kea</p> <p>See Response 1 regarding religious or spiritual beliefs.</p>
4.	Unpaginated	<p>In 2015, the Supreme Court of the Hawai'i found in favor of the Petitioners because of the Board of Land and Natural Resources (Hereafter BLNR) had among other things "... put the cart before the horse" by approving the University of the Hawai'i's Conservation District Use Application (hereafter CDUA) prior to hearing the evidence from the Petitioners; thus violating Petitioner's Due Process rights. BLNR had failed to ensure that a fair Contested Case Hearing (hereafter CCH) process was conducted and to ensure Petitioners rights including their civil rights, human rights, those right enumerated in the constitution and other related laws were in</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>HO COL 113 is accurate and supported by the evidence in the record and the citations therein.</p> <p>Mischaracterizes the holding in <i>Mauna Kea Anaina Hou v. Board of Land and Natural Resources</i>, 136 Hawai'i 376, 363 P.3d 224. The Supreme Court did not</p>

Exception #	Page	Exceptions/Response	Comment
		fact protected.	address the issue of civil rights, human rights, or any other enumerated right in the Constitution, aside from the guarantee of due process.
5.	Unpaginated	<p>The Court remanded the case back to BLNR to be redone, so as, to insure we were given a fair opportunity to be heard in a meaningful way and a meaningful manner. The Court was also concerned that we be given an opportunity to present evidence, put on witnesses and to argue our case before a fair and impartial tribunal and or Hearing Officer (hereafter HO). This is also to say, the remand was necessary not because the Petitioners had done anything wrong but instead because BLNR had denied us a fair process as is provided for under the laws of Hawai'i. The Court held in part the following:</p> <p>“The conditions enunciated in BLNR’s FOFs/COLs/D&O in 2013 are virtually the same as those in the 2011 permit. This similarity is significant because BLNR appears to suggest that in 2011, BLNR anticipated serious consideration of evidence presented during the contested case hearing. <u>But the similarity between the 2011 permit and the 2013 decision gives the appearance that less than full consideration was given to the voluminous legal and factual arguments and materials presented in the contested case hearing. Such similarity “give[s] the appearance that [BLNR] ha[d] already pre judged the case and that the ultimate determination of the merits [had] move[d] in predestined grooves.”</u> Cinderella, 425 F.2d at 590. (Emphasis added) See SC at p. 38-39</p> <p>Also, “... the similarity between the 2011 permit and the 2013 decision gives the exact opposite impression, because this</p>	<p>HO FOF 40 is accurate and supported by the evidence in the record and the citations therein.</p> <p>HO FOF 40 is accurate and supported by the evidence in the record and the citations therein.</p> <p>HO FOF 40 is accurate and supported by the evidence in the record and the citations therein.</p>

Exception #	Page	Exceptions/Response	Comment
		<p>similarity exists despite what BLNR received in between: thousands of pages of written testimonies, exhibits, and factual and legal arguments, and dozens of hours of verbal testimonies and more legal arguments. <u>As a result, the virtually indistinguishable documents of 2011 and 2013 give the impression that none of the testimonies, arguments, or evidence submitted to BLNR between the two were seriously considered. BLNR should not have issued the permit before the request for a contested case hearing had been resolved. The appearance of prejudgment continues.</u>" Cinderella, 425 F.2d at 590. Emphasis added) See SC at A. 55</p> <p>Therefore,</p> <p>"In sum, BLNR put the cart before the horse when it approved the permit before the contested case hearing was held. <u>Once the permit was granted, Appellants were denied the most basic element of procedural due process—an opportunity to be heard at a meaningful time and in a meaningful manner. Our Constitution demands more.</u>" Thus concluding this matter is remanded to the circuit court to further remand to BLNR for proceedings consistent with this opinion, so that a contested case hearing can be conducted before the Board or a new hearing officer, or for other proceedings consistent with this opinion. Id. (Emphasis added)</p>	
6.	Unpaginated	<p>WE TAKE EXCEPTIONS TO THE HEARINGS OFFICER (HEREAFTER HO) REPEATING THE SAME ERROR THAT THE HAWAII SUPREME COURT JUST FOUND UNLAWFUL. See relevant excerpts above from <u>Mauna Kea, 2015</u></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
7.	Unpaginated	<p>We take EXCEPTION to the HO's Proposed FOF/COL and D&O in <u>whole</u>, because the HO failed to review, consider, take into account and or to rule upon Petitioners proposed</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
8.	Unpaginated	<p>FOF/CO,D&O. We reserve our rights regarding the whole record associated to the CDUA HA-3568.</p> <p>N.B. The HO identifies some Pro Se Petitioners as Intervenor and some as Petitioners, and then also classifies some Pro Se Parties as "Opposing Intervenor." We take Exceptions to such characterizations and we will instead refer to all Pro Se Petitioners/Intervenor as Petitioners and affirm that all of the Pro Se Parties remain solidly for the maximum protections for Mauna Kea.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
9.	Unpaginated	<p>For all intents and purposes the HO ignored (1) the collective Petitioners filings motions, arguments etc. submitted over a 5 month period (2) 55 days of evidentiary hearings and the information contained therein and (3) the Petitioners collective testimony and witness testimony (including over 74 witnesses). The HO excluded virtually all of Petitioner's Written Direct Testimony (hereafter WDT), witnesses WDT, oral testimony, objections etc., Exhibits, 1000s of pages of documents and evidence submitted, and hundreds of motions, pleadings and or objections etc. This is just unacceptable and we object!</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization. The Hearing Officer considered testimony and evidence presented by the Petitioners, as well as the testimony and evidence presented by the other opposing parties. <i>See</i> HO FOF 139, 214, 227-28, 235, 238-44, 283-84, 319-21, 342-44, 353, 355, 361-423, 448, 459-61, 463, 490-91, 510, 514, 516, 537-40, 558-60, 608, 618-20, 626-29, 659-669, 685, 692, 694, 698, 700-01, 711, 724-25, 731-32, 736, 753-54, 758-62, 770-829, 852-53, 865-73, 875-76, 878-80, 894-96, 911-19, 939, 950, 953, 960-61, 967-80, 987-89, 992-93, 1000-07, 1012, 1017-25, 1028-32, 1043-46.</p> <p>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.</p>

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			<p>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. Exception attempts improperly to portray the Hearing Officer's credibility determinations as evidence of bias. This argument ignores the reality that it is squarely the Hearing Officer's duty to make such determinations. It is undisputed that 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 <i>State v. Buch</i>, 83 Hawaii 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." <i>Wilton v. State</i>, 116 Hawaii 106, 119, 170 P.3d 357, 370 (2007)(citation omitted).</p>
10.	Unpaginated	<p>The HO provided no rational explanation and or justification as to why she denied/ignored/or failed to consider most if not all of the information presented by the Petitioners to date. <u>What the HO did instead was to simple cut and past the UH positions, arguments, FOF/COL, D&O, and in so doing repeated the same error the Supreme Court just found</u></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 9 regarding credibility determinations.</p>

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		<p><u>unlawful but also reversible.</u> (Emphasis added) See SC excerpts below.</p>	<p>See Response to Exception 9 regarding extent to which the Hearing Officer considered the testimony of Petitioners and other opposing parties.</p> <p>Unsupported/unsubstantiated. It is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification").</p> <p>Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See generally, <i>Kumar v. Kumar</i>, 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). In the context of civil proceedings, it is widely accepted that a trial judge may adopt a parties proposed findings it total or in part. See, e.g., <i>Howard v. Howard</i>, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); <i>American</i></p>

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			<p><i>Water Development, Inc. v. City of Alamosa</i>, 874 P.2d 352, 376 (Colo. 1994) (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).</p>
11.	Unpaginated	<p>According to the statutes relating the conduct of Contested Case Hearings (hereafter CCH) including Haw. Rev. Stat. Section 91-12 that reads in relevant part:</p> <p>Every decision and order <i>adverse</i> to a party to the proceedings, rendered by an agency, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusion of law. If any party to the proceeding has filed proposed finding of fact, the agency shall incorporate it in its decision a ruling upon <u>each</u> proposed finding of fact so presented. HRS § 91-12</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>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. In addition, HRS § 91-12 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.” <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); <i>see also Mitchell v. BWK Joint Venture</i>, 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).</p>

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			<p>While MKAH et al.'s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, testimony submitted by members of MKAH et al.'s as set forth in the record and their proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL. See HO FOF 227, 283-84, 337, 349, 365, 368, 558, 560, 698, 758-62, 789, 793, 799, 802-03, 805-06, 828, 853, 865, 873, 875, 880, 915-16, 939, 980, 987, 1004-05.</p>
12.	Unpaginated	<p>According to the UH there where over 5,000 FOF and COL contained in the combined CCH parties proposed FOF/COL and D&O. Therefore based on the plain reading of the law under HRS § 91-12, either the HO or the BLNR must provide a reasoned answer and or justification for each and every one of the 5,000 FOF/COL, D&O. The HO was required to consider and rule upon the facts and conclusions presented by all parties. If a HO fails to rule and or to provide an explanation to parties for whom the decision is adverse will have no way to determine what facts are actually in dispute.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 11 regarding rulings on proposed findings of fact.</p>
13.	Unpaginated	<p>The burden is not on the Petitioners to try to guess which FOF/COL where denied or not found to have weight or were even considered. The Parties have the right of appeal or the right to ask the court to determine the validity of the HO or BLNR's decisions found to be adverse to the Parties. But for that to happen the HO must make a conscious effort to</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 11 regarding rulings on proposed findings of fact.</p>

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		<p>consider and rule on various the FOF/COL, D&O, not simply cut and paste from the UH/TMT/TIO submittals and leave the rest to our imagination. For example, it is a matter of saying something to the effect of; "Petitioners MKAH FOF such and such were found to be irrelevant for the following reasons and therefore not considered further." This would give us the right challenge and express our challenge via Exceptions or even in a court of law. In this case the HO is essentially shifting the burden onto the Petitioners to figure it all out and to guess rather than clearly articulating the rational for ruling against the various FOF, COL, D&O submitted by the Pro Se Petitioners.</p>	
14.	Unpaginated	<p>The HO by failing to rule on every point also fails to provide the BLNR with a clear understanding and picture of the actual issues and what was actually involved in the case. By doing this, the HO has obscured the actual issues while simultaneously manufacturing an illusionary idea of what this case was actually about or not. BLNR has the authority and responsibility to amend, modify, and add conditions etc. on to the final decision.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 11 regarding rulings on proposed findings of fact.</p>
15.	Unpaginated	<p>For example, if the HO fails to provided notice to the BLNR that some of the issues in the case involved questions regarding the National Historic Preservation Act or other important and relevant points of dispute then the BLNR will not really understand what this case is actually about and then can properly make an informed decision. Here we content the BLNR cannot do so as presented in the HO Proposed FOF, COL, D&O.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 11 regarding rulings on proposed findings of fact.</p>
16.	Unpaginated	<p>From the perspective of the Petitioners, if the HO fails to identify and rule on each issue and point under dispute then the Parties cannot determine which issue(s) are to be appealed or not. Judicial Review is a right afforded to each Party; put</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 11 regarding</p>

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17.	Unpaginated	<p>another way, it is each Parties right under the law, to ask a court to determine the lawfulness of BLNR's final decision. In the end, all questions of law including any final decision adversarial to any of the Parties, the final say continues to rest with the courts to affirm, uphold, modify or over turn any of the BLNR's final decision</p> <p>Therefore it is out position that the BLNR must either remand back to the HO with instructions to provided adequate review and rulings pursuant to HRS § 91-12 relating to the Parties Proposed FOF/COL, D&O. To do otherwise is to violate yet again our due process rights and to also repeat the same error the Court just found unlawful. We whole heartedly object and takes serious exceptions if such should be the final outcome of this CCH also.</p>	<p>rulings on proposed findings of fact.</p> <p>FAILS TO COMPLY WITH MINUTE ORDER NO. 103 AND HAR § 13-1-42(b).</p> <p>See Response to Exception 11 regarding rulings on proposed findings of fact.</p>
18.	Unpaginated	<p>NOTE: We wish the record to reflect that for some of the Petitioners (MKAH, Kealoha Pisciotto, Paul K. Neves, Clarence Ku Ching, Deborah Ward, Hank Fergestrom, and Kaliko Kanalele) this CCH hearings marks the 3 CCH regarding the same subject matter (i.e. telescopes proposed to be built on Mauna Kea) and proposed also by the same people (i.e. UH, University of California, CALTECH etc). However, in each CCH the merits of the our case were never heard nor fully reviewed. And although we did prevail in both state and federal courts in the past, the courts found reversible due process errors necessitating the court (s) to vacate the CDUP.</p> <p>These Disclaimers, Objections, Reservations, Joiners, and Incorporations are filed on behalf of Pro Se Petitioners MKAH's and Kealoha Pisciotto as a part of their RESPONSES to the Applicant's Findings of Fact, Conclusions of Law, and Proposed Decision and Order (Hereafter FOF/COL, D&O) and we INCORPORATE by reference all these into our EXCEPTION/RESPONSES to the of HEARING OFFICER'S</p>	<p>FAILS TO COMPLY WITH MINUTE ORDER NO. 103 AND HAR § 13-1-42(b).</p> <p>Records of prior, unrelated contested case hearings are not in the record of this present contested case.</p>
19.	Unpaginated		<p>FAILS TO COMPLY WITH MINUTE ORDER NO. 103 AND HAR § 13-1-42(b).</p>

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20.	Unpaginated	<p>PROPOSED FOF/ COL AND DECISION AND ORDER of JULY 26, 2017. We take EXCEPTION to all issues addressed or contained in Hearing Officers PROPOSED FOF COL D&O.</p> <p>We incorporate by reference MKAH AND KEALOHA PISCIOTTA'S compete set of FOF COL, D&O and all witness exhibits and testimony for this current CCH (2016-2017) and the previous CCH (2011-2013).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>The proposed FOF, COL, D&O's from the prior contested case hearing are not evidence nor are they part of the record in this case.</p>
21.	Unpaginated	<p>Any statements construed as a Finding of Fact (FOF) that is more appropriately deemed a Conclusion of Law (COL) should be treated as a COL. Conversely any COL that is more appropriately deemed a FOF, should be treated as a FOF.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
22.	Unpaginated	<p>We have used the terms Native Hawaiian with a capital "N" and the small "n" inter-changeably. We assert our rights as Native Hawaiians, native Hawaiians and Kanaka Maoli under county, state, federal and international laws (including our Human Rights and Civil Rights under the United Nations (UN) and the UN Declaration on the Rights of Indigenous Peoples and customary international legal standards relating to the human and civil rights of all peoples.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
23.	Unpaginated	<p>We reassert our positions regarding the relevant issues as they are laid out in our original Petitioners and we reassert our written and oral objections contained in the entire hearing etc., including our Motions, Memorandums on Opposition and all of the filings made in the this hearing.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
24.	Unpaginated	<p>We incorporate by reference the entire Na Leo video recordings of the five months of evidentiary hearings. See naleo.tv and search the subject "TMT Contested Case Hearing."</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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25.	Unpaginated	<p>We also incorporate by reference all of the Pro Se Parties FOF COL, D&O and again reassert our position that we not were given enough time to review, answer, defend, record and/or to adequately address our any of our positions regarding the facts, legal conclusions and other relevant information contained in throughout the entire preceding.</p> <p>We take exception the fact that the <u>HO did not provide the Parties with a reasonable opportunity to be heard in a meaningful time and in a meaningful manner, thus violating our due process rights</u>. For Example, the HO did not apply the applicable rules under HRS Section 91 which affirms that the HO can change any provision of a CCH provided that all Parties agree. The HO should have sought agreement with all Parties regarding scheduling the CCH dates. and other areas of dispute.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Exception is not supported by the record. In addition to being able to submit numerous exhibits and cross-examine witnesses, the Petitioners and Opposing Invernenors were able to present multiple witnesses over the course of nearly two months. <i>See</i> HO FOF 111.</p> <p>Exception misstates HRS Chapter 91. There is no requirement that the Hearing Officer seek agreement with all Parties regarding scheduling the CCH dates. and other areas of dispute. <i>See</i> HO COL 38-45.</p>
25.	Unpaginated	<p>The HO did not work with Petitioners and their Legal Council so that all Parties could reasonably participate in this CCH. Our lawyer (Mr. Naiwi Wudermen) was not able to continue to represent us in this CCH because of the HO inflexible attitude towards scheduling. He had other clients and court commitments and even though he tried to be flexible and had given the HO ample notice regarding his scheduling conflicts dates, the HO did not work with Mr. Wurderman . She did not work with the Parties to ensure they could participate given</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Exception is not supported by legal authority. The Hearing Officer is given broad authority to set the schedule and otherwise manage a contested case proceeding. <i>See</i> HO COL 38-41.</p>

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27.	Unpaginated	<p>their work and or travel schedules either. Many were faced with the prospect of choosing to work or be at the hearing to defend their rights, and this CCH went on for months and presented great challenges for all of the Pro Se Parties who were unlike the others were not getting paid to be there. All Parties where working with their employers and trying the best to be there but there was not flexibility on the part of the HO.</p> <p>This CCH however was an immense case with a large number Parties, many of which were Pro Se. Some lived on out islands, all even those of us who live on the same island still live tens and even hundreds of miles away from each other. Therefore, consolidating our FOF/COL, D&O is very difficult give the time timeline the HO and BLNR have maintained. We take Exception to the our CCH schedule having been push and pulled to accommodate the TMT schedule evidence in the media.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 25 regarding the Hearing Officer's board authority to manage a contested case.</p>
28.	Unpaginated	<p>We do not believe we should have been subject to the TMT construction time table or schedule at all. Many could not do it and had to basically forego their rights to be heard in a meaning full time and in a meaning full manner. This was totally unacceptable, unreasonable and biased the Pro Se Parties.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 25 regarding the Hearing Officer's board authority to manage a contested case..</p>
29.	Unpaginated	<p>We join here with the Temple of Lono (TOL) represented by Lanny Sinkin, supplements FOF COL, D&O relating to the multitude of filings of MO's by the H.O and BLNR including ones that are obviously made long after the fact and thus rendered moot. Some of the dispositive Motions could have changed the outcome of this proceeding and so by failing for rule on the them in a timely manner means our due process rights again have been violated. Further, by ruling on them now means the record of this case is not in fact completed as is defined by the law. This also biases and borders on contempt</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Exception is not supported 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</p>

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		<p>for the Pro Se Petitioners to inundate them with Minute Order after Minute Order with only 5 days to file Motions for Reconsideration simultaneously holding us to deadline for filing our Responses and previously our collective FOF COL, D&O.</p>	<p>of impropriety.”)</p>
30.	Unpaginated	<p>We take Exception to BLNR's failure to grant our request to upload on to the Documents Library all of the Transcripts of this case, so that all Parties would have equal access to them in a timely manner. We added an Appendix ("A") in our Proposed FOF/COL, D&O to describe our efforts and exchanges with the OIP ur review. We object to BLNR's decision to not to upload a full set of the transcripts. We continue our objections and EXCEPTIONS to the lack of a full and complete record being made available to all the Parties. We object to the entire treatment of not only the Pro Se Petitioners but the Public as well regarding the Transcripts. There was no reason for the BLNR to deny our request to simply upload the transcripts to the online electronic documents library system (which is one of the few things all Parties were asked and that we collectively agreed to). The Transcripts could have been uploaded by BLNR at no extra costs. We object and take EXCEPTION to the Deputy Attorney's Generals letter to the Librarians holding the Transcript, which basically told them that copies were to be obtained from the Reporter who was charging for those copies. Some Libraries were not allowing the Petitioners to copy the transcripts. The BLNR and OIP decisions biased the Petitioners and violated our due process rights, by not making full and complete access to Transcript available. Transcripts are necessary for the completing our FOF/COL, D&O and making our case. Parties such as the UH and TIO were able to gain access to the transcripts on a daily basis by paying top</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Exception is not supported by the record. Complete copies of the transcripts were available for reviewing at five locations. <i>See</i> HO FOF 118.</p> <p>Exception is not supported by legal authority. Neither HRS Chapter 91 nor the Rules of Practice and Procedure require the Hearing Officer or BLNR to make the hearing transcripts of the contested case hearing available online.</p> <p><i>See</i> Ex. A to Minute Order No. 89 [Doc. 759] (letter from Office of Information Practices to Ms. Kealoha Pisciotta confirming: (1) that the Uniform Information Practices Act does not require transcripts of the contested case to be available online; and (2) that DLNR has both the statutory and regulatory authority to charge copying fees).</p>

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31.	Unpaginated	<p>dollar, which was not the case for the Pro Se Parties. In effect if you have money (even if it is tax payer money) you can have things necessary to making a case but if you don't you cannot and will not have the same opportunity to make a reasonable case. See also (DOC 622 and (DOC 643) relating the Transcripts</p> <p>The HO failed to have a hearing to determine all Parties standing. We take EXCEPTION to this. Further she allowed a single Party (P.U.E.O. Inc) to determine the issues to be decided and we take EXCEPTION to that as well. While we agree some of the issues identified (such as Native Hawaiian Rights, Public Trust Doctrine and the 8 Criteria under HAR 13-5-30) were correct; not all of the relevant issues from the previous CCH where incorporated. We believe the HO officers erred by failing to include the other relevant issues previously identified and determined (in the original CCH) to be the issues to be decided in the current CCH.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Exception is not supported by the record. The Hearing Officer did hold a hearing to determine the standing of parties requesting to intervene. See HO FOF 53 and 62.</p> <p>Exception is not supported by the record. PUEO filed a Motion to Set the Issues, requesting that the Hearing Officer identify the specific issues to be addressed during the contested case hearing. The Hearing Officer then requested that PUEO submit a Proposed Minute Order Granting PUEO's Motion to Set Issues, setting forth the issues to be addressed and issues not to be addressed, and allowed all other parties could submit responses or objections. See HO FOF 71-73.</p>
32.	Unpaginated	<p>We agree that more issue could be added since more Parties were added also but we do not agree that any issues from the previous CCH should be taken away without a clear and concise explanation. The BLNR had two ways in which to</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 31 regarding</p>

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		<p>approach this CCH. They could have (1) started completely anew starting with a new Public Hearing and by providing the opportunity for people to call for a CCH or (2) just have a new hearing with the same Parties from original CCH. The BLNR instead did a hybrid version where new parties came in including Parties whose standing was not reviewed and determined such as P.U.E.O. We are certain that most if not all of the Pro Se Parties and Native Hawaiian Practitioners could have meet the Standing requirements but we did objected to P.U.E.O because they could not show injury in fact. We also objected to TIO coming in as a Party because there was no new CDUA that included them (there still is not one and they did not meet their burden of proving that TIO and TMT are actually the same entity). We incorporated by reference our FOF/COLs, D&O that discuss this problem in more depth. (See the online documents library DOC 069 and DOC 070, and Mauna Kea et al RESPONSES at p. 113-114)</p>	<p>PUEO's Motion to Set the Issues.</p> <p>PUEO's intervention was properly granted under HAR § 13-1-31(c) as PUEO had a unique and specific purpose, which was to share the interaction of Hawaiian culture and science, and to inspire exploration, and its participation substantially assisted the Hearing Officer in her decision making. <i>See</i> HO FOF 294-300.</p>
33.	Unpaginated	<p>This CCH was an immense case with a large number Parties, many of which were Pro Se. Some lived on outer islands and even those of us who live on the same island still live tens and even hundreds of miles away from each other. Therefore, despite our best efforts to consolidate our FOF/COL, D&O is very difficult given the timeline the HO and BLNR have maintained. We take EXCEPTION to the our CCH schedule having been push and pulled to accommodate the TMT schedule is also evidence in the media.</p> <p>We object and take exception to the HO not allowing MKAH's to call rebuttal Witness (Tom Peek and Kupuna Liko Martin). Both of these witnesses had substantive information to add to the hearing that no other witnesses could have added and their testimony we relevant and material to help inform this proceeding.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 25 regarding the Hearing Officer's board authority to manage a contested case.</p>
34.	Unpaginated		<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 25 regarding the Hearing Officer's board authority to manage a contested case.</p>

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35.	Unpaginated	<p>We take object and EXCEPTION to the HO and BLNR. Deadlines and the unreasonable requirement of hand signatures and hard copies to be delivered in Honolulu. Many of the Petitioners live on Hawai'i Island, so they are not able to just print their stuff and walk down the street to hand deliver the submittals to BLNR, and the UH/TMT/TIO are able to. For us to make certain deadlines we would either have to mail in our stuff days early (which biases us) or have someone hand carry our parcels to be delivered to the BLNR office on Oahu by the date and time specified. To get all of our original signature also requires much effort on our part also here on Hawai'i island. So for example one of us with have to drive around the island collecting the Pro Se Parties Exceptions and original signatures, and then give them to someone who will be flying to O'ahu to hand carry them to the BLNR office. Instead BLNR, could have just allowed us to upload everything into the Documents Library on the due date and then allowed us to mail via the UPS a hard copy with an original signature on that same day. The timelines and submission requirements are excessive, extremely costly and difficult for us to accomplish and to be honest, just felt plain mean and vengeful. We object and take EXCEPTION to this entire CCH process.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 25 regarding the Hearing Officer's board authority to manage a contested case.</p>
36.	Unpaginated	<p>We incorporate and join with all of the Pro Se Petitioners EXCEPTION to the HO FOF/COL, D&O's.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
37.	Unpaginated	<p>There were over 600 documents filed during the course of the CCH by all Parties.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
38.	Unpaginated	<p>The HO did not ruled in a timely manner on the vast majority of the Petitioners filings. When the HO did rule most of the issues were past the time to be relevant and then became moot.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		We believe the HO also ruled favor of only two cases, that we are aware for. We take EXCEPTION to the HO failure to rule in the timely manner. Many of the motions were dispositive and could have changed the outcome of the hearing all together. We incorporated all of our filing (including Motions) by reference here for review and consideration by BLNR. We submit MKAH's Motions and other filings for BLNR's review.	See Response to Exception 29 regarding rulings on motions.
39.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 and 2015-2017 CCHs), RESPONSES AND EXCEPTIONS. WE HAVE RESUBMITTED MAUNA KEA ANAINA HOU MOTIONS BELOW FOR CONVENIENCE.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
40.	Unpaginated	April 15, 2016, Mauna Kea Anaina Hou submitted a motion to disqualify Riki May Amano titled "Petitioners Object to Selection process and to the Appointment of Hearing Officer Made Pursuant to MO 1 Dated March 31, 2016". DOC 005	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
41.	Unpaginated	June 13, 2016, Petitioners Mauna Kea Anaina Hou filed a Memorandum In Opposition to Perpetuating Unique Education Opportunities Inc.'s Motion to Intervene. DOC 069.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
42.	Unpaginated	May 6, 2016, Mauna Kea Hui Petitioners filed Petitioners' objections regarding procurement committee and process and committee member / BLNR Board member. DOC 015	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
43.	Unpaginated	May 13, 2016, Mauna Kea Hui Petitioners filed Petitioners' motion for reconsideration of Minute Order No. 4, filed on May 6, 2016 and/or motion to strike selection process and to disqualify various members and hearing officer. DOC 017	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
44.	Unpaginated	May 31, 2016, Mauna Kea Hui Petitioners filed [Doc. 52] Petitioners' submissions and positions on record; Exhibit "A." DOC 052	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
45.	Unpaginated	June 13, 2016, Mauna Kea Anaina Hou filed a Memorandum in Opposition to TIO'S Motion to be admitted as a party. DOC	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
		070	
46.	Unpaginated	June 16, 2016, Mauna Kea Hui Petitioners filed [Doc. 69] Petitioners' memorandum in opposition to Perpetuating Unique Educational Opportunities, Inc.'s motion to intervene, dated May 16 2016. DOC 069	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
47.	Unpaginated	July 11, 2016, Mauna Kea Anaina Hou filed Motion to Request for continuance on Submissions and Next Hearing Date. DOC 081	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
48.	Unpaginated	July 12, 2016 Mauna Kea Anaina Hou filed a Supplemental Request For Continuance. DOC 083	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
49.	Unpaginated	July 14, 2016, Mauna Kea Anaina Hou's Reply To TIO and UH Responses. DOC 087	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
50.	Unpaginated	July 18, 2016, Mauna Kea Anaina Hou filed Motion to Strike Conservation District Use Application HA-3568 Dated September 2, 2010 and motion For Summary Judgment. DOC 094	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
51.	Unpaginated	July 18, 2016 Mauna Kea Anaina Hou Filed Motion to Disqualify BLNR'S and Hearing Officer's counsel. DOC 095	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
52.	Unpaginated	July 18, 2016, Mauna Kea Hui Petitioners filed Petitioners Mauna Kea Anaina Hou et al.'s supplemental witness list. DOC. 104	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
53.	Unpaginated	July 26, 2016, Mauna Kea Anaina Hou Filed Renewal Of Objection to H.O Selection process and H.O Appointment and (2) Supplemental Arguments on Motion to Disqualify BLNR'S and H.O counsel. DOC. 130	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
54.	Unpaginated	August 1, 2016, Position Statement on P.U.E.O Motion to Set Issues Dated July 18, 2016. DOC. 164	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
55.	Unpaginated	August 1, 2016, Email regarding P.U.E.O's joinder to UH Hilo's motions when the motions haven't been filed yet. DOC. 168	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
56.	Unpaginated	August 1, 2016, Mauna Kea Hui Petitioners filed [Doc. 165] (email) Note for the record. DOC. 165	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
57.	Unpaginated	August 10, 2016, Motion to strike Motion for Protective Order Filed by BLNR for a protective order for the Honorable David Ige, Suzanne Case, and Stanley Roehrig, filed August 8, 2016. DOC. 187	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
58.	Unpaginated	August 17, 2016, Mauna Kea Hui Petitioners filed Petitioners Mauna Kea Anaina Hou, et al.'s site visit recommendations. DOC 218	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
59.	Unpaginated	August 22, 2016, Mauna Kea Hui Petitioners filed Petitioners Mauna Kea Anaina Hou, et al.'s memorandum in opposition to motion for protective order for the Honorable David Y. Ige, Suzanne Case and Stanley Roehrig, filed on August 8, 201. DOC 233.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
60.	Unpaginated	September 8, 2016, Request for further status conference and or consideration of proposed scheduling. DOC. 254	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
61.	Unpaginated	September 19, 2016, Petitioners response to P.U.E.O proposed motion granting P.U.E.O motion to set issues. DOC.270	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
62.	Unpaginated	September 23, 2016, Mauna Kea Hui Petitioners filed Correspondence regarding notice of contested case hearing. DOC 282.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
63.	Unpaginated	September 26, 2016, Mauna Kea Hui Petitioners filed Petitioner Mauna Kea Anaina Hou, et al.'s objections to site visit and Minute Order No. 18. DOC 288	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
64.	Unpaginated	October 10, 2016, Mauna Kea Hui Petitioners filed Petitioners Mauna Kea Anaina Hou, et al.'s renewed motion to disqualify hearing officer. DOC 340	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
65.	Unpaginated	October 10, 2016, Mauna Kea Hui Petitioners filed Notice of withdrawal of counsel. DOC 341	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
66.	Unpaginated	October 10, 2016, Mauna Kea Hui Petitioners filed Petitioners Mauna Kea Anaina Hou and Kealoha Pisciotto, Clarence Kukauakahi Ching; Flores Case Ohana, Deborah J. Ward, Paul K. Neves, and KAHEA: The Hawaiian-Environmental Alliance list of e-mail addresses for service of process. DOC	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
		342	
67.	Unpaginated	October 17, 2016, Mauna Kea Hui Petitioners filed Petitioners' Statement of Position (DOC 383) in Response to the University's Statement Re Petitioners Renewed Motion to Disqualify Hearing Officer (Doc 369).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
68.	Unpaginated	October 17, 2016, Mauna Kea Anaina Hou, et al. filed Petitioners' Statement of Position (DOC 384) in Response to the University's Statement Re Scheduling (Doc 370).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
69.	Unpaginated	February 24, 2017, Mauna Kea Anaina Hou, et al. filed Mauna Kea Anaina Hou, Kealoha Pisciotto and Paul K. Neves; Clarence Kukauakahi Ching; and Deborah J. Ward's joinder in Flores-Case Ohana's (1) request for witness subpoena for Samuel Lemmo - Administrator, Office of Conservation and Coastal Lands, DLNR, State of Hawaii dated January 12, 2017 (uploaded January 25, 2017); and (2) Amended request for witness subpoena for Samuel Lemmo - Administrator, Office of Conservation and Coastal Lands, DLNR, State of Hawai'i dated and uploaded January 27, 2017. (DOC 477).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
70.	Unpaginated	February 26, 2017, MKAH submitted exhibit list and written direct testimony into evidence. (DOC 482)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
71.	Unpaginated	March 9, 2017, MKAH and Paul Neves submitted a motion to admit first 1st supplemental exhibit list and written direct testimony into evidence. (DOC 509).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
72.	Unpaginated	March 21, 2017, Mauna Kea Anaina Hou filed Mauna Kea Anaina Hou motion requesting time to respond to exhibit objections and related matters. (DOC 522).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
73.	Unpaginated	March 23, 2017, Mauna Kea Anaina Hou, et al. filed Kealoha Pisciotto, Mauna Kea Anaina Hou and Paul K. Neves' motion for joinder in Temple of Lono motion to Board of Land and Natural Resources to dismiss HA-3568. (DOC 542)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
74.	Unpaginated	April 25, 2017, Mauna Kea Anaina Hou, et al. filed Petitioners Kealoha Pisciotto, Mauna Kea Anaina Hou, and Paul K. Neves	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
		join with Temple of Lono's memorandum in support of motion for reconsideration of Minute Order 43. (DOC 561)	
75.	Unpaginated	April 26, 2017, Mauna Kea Anaina Hou, et al. filed Mauna Kea Anaina Hou et al. joinder. (DOC 564)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
76.	Unpaginated	April 27, 2017, Mauna Kea Anaina Hou, et al. filed Mauna Kea Anaina Hou et al. joinder and objections. (DOC 578).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
77.	Unpaginated	April 28, 2017, Mauna Kea Anaina Hou, et al. filed Mauna Kea Anaina Hou et al. joinder. (DOC 584)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
78.	Unpaginated	May 5, 2017, Mauna Kea Anaina Hou, et al. filed Parties' petition to the BLNR for online access to the transcripts. (DOC 622)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
79.	Unpaginated	May 11, 2017, Mauna Kea Anaina Hou, et al. filed Parties' petition to Board for declaratory judgment and motion to vacate Minute Order 43. (DOC 629)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
80.	Unpaginated	May 12, 2017, Mauna Kea Anaina Hou, et al. filed [Doc. 632] Memorandum in opposition re: UH-CDUA-BLNR-CC-16-002-UH joinder to TMT's opp to parties' petition to Board for online access to transcripts, et al (DOC 632).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
81.	Unpaginated	May 20, 2017, Mauna Kea Anaina Hou et al. filed a Motion for Reconsideration and Exhibit 1, COS. (DOC 643)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
82.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS March 31, 2016	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
83.	Unpaginated	Minute Order No. 1: Notice of selection of Riki May Amamo as Hearing Officer on subject contested case; Exhibit 1; COS (DOC 01.)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
84.	Unpaginated	April 8, 2016, Minute Order No. 2: Order delegating the conduct of the contested case hearing to a hearing officer, and confirming that the chairperson was authorized to engage the	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
85.	Unpaginated	services of a hearing officer; COS (DOC 03). April 29, 2016 Minute Order 3: Order setting deadlines for responses to Hearing Officer's supplemental disclosures; COS (DOC 11)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
86.	Unpaginated	May 6, 2016 Minute Order 4: Order regarding objections to the selection process, and regarding objections to the Hearing Officer; COS (DOC 14).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
87.	Unpaginated	May 9, 2016, Minute Order 5: Order setting pre-hearing conference; COS (DOC 016).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
88.	Unpaginated	May 23, 2016, Minute Order 6: Order setting response date; COS (DOC 041)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
89.	Unpaginated	May 26, 2016, Minute Order No. 7: Order regarding 1st prehearing conference and Amano fourth supplemental disclosure; COS (DOC 044)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
90.	Unpaginated	May 27, 2016, Minute Order 8: Order setting hearings on motions to intervene and 2nd pre-hearing conference; COS (3) (DOC 049)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
91.	Unpaginated	June 3, 2016, Minute Order 9: (DOC 063) Order denying Petitioners' motion for re-consideration of Minute Order No. 4 (DOC 014) filed on May 6, 2016 and/or Motion to strike selection process and to disqualify various members and Hearing Officer; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
92.	Unpaginated	July 9, 2016, Minute Order 11: Order regarding relocation of hearings on motions to intervene. (DOC 066)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
93.	Unpaginated	July 12, 2016, Minute Order 12: Order denying Temple of Lono's motion for refund of filing fee, filed June 23, 2016; COS (DOC 082)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
94.	Unpaginated	July 21, 2016, Minute Order 13: Order on the hearing on admission or intervention as a party; Second pre-hearing conference; COS (DOC 115)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
95.	Unpaginated	July 22, 2016, Minute Order No. 14: Order denying Dwight J. Vicente's motion to disqualify Judge Riki May Amano (ret.);	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
96.	Unpaginated	State of Hawaii lack of jurisdiction to hear the contested case hearing; COS (DOC 124) August 9, 2016, Minute Order 15: Order regarding change of location for August 12, 2016 continued hearing and 3rd pre-hearing conference; COS (DOC 185)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
97.	Unpaginated	August 22, 2016, Minute Order 16: Order regarding third pre-hearing conference; COS (DOC 238)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
98.	Unpaginated	August 17, 2016, Minute Order 17: Order denying motion objecting to the Hearing Officer and the Hearing Officer Selection Process; COS (DOC 245)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
99.	Unpaginated	August 19, 2016, Minute Order No. 18: Order regarding site visit to Mauna Kea - September 26, 2016; COS (DOC 274)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
100.	Unpaginated	September 23, 2016, Minute Order 19: (DOC 281) Order granting Perpetuating Unique Educational Opportunities, Inc.'s motion to set the issues Doc. 99; Order setting issues; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
101.	Unpaginated	September 26, 2016, Minute Order No. 20: Order setting fifth pre-hearing conference; COS (DOC 289)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
102.	Unpaginated	October 10, 2016, Minute Order No. 21, (DOC 344) Order regarding fourth pre-hearing conference; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
103.	Unpaginated	October 10, 2016, Minute Order No. 22, (DOC 345) Order denying Harry Fergerstrom's (1) Motion to reconsider all motions, application, and/or request for admission or intervention as a party or other parties in this matter; and (2) Motion to strike all motions, applications, decision, etc.; Essentially making moot the entire hearing (Doc. 96); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
104.	Unpaginated	October 10, 2016, Minute Order No. 23, (DOC 346) Order denying Temple of Lono's motion for partial summary judgment (Doc 78); COS October 10, 2016, Minute Order 24 Order Denying Kalikolehua Kanaele motion to exclude / remove PUEO, TMT, UH Manoa/ Hilo and all petitioners seeking for permit for TMT by circumvention of religious protections of the Hawaii	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
105.	Unpaginated	<p>Constitution, Article XI and HRS 7-11-1107 committing desecration. (DOC 347)</p> <p>October 10, 2016, Minute Order No. 25, (DOC 348) Order denying Stephanie-Malia Tabbada's motion to vacate entire process for violation of BLNR and University of Hawai'i fiduciary trust, rights, responsibilities, breach of contract, etc. mandated the by the law of the land (Doc 97); COS</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
106.	Unpaginated	<p>October 10, 2016, Minute Order No. 25, (DOC 348) Order denying Stephanie-Malia Tabbada's motion to vacate entire process for violation of BLNR and University of Hawai'i fiduciary trust, rights, responsibilities, breach of contract, etc. mandated the by the law of the land (Doc 97); COS</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
107.	Unpaginated	<p>October 10, 2016, Minute Order No. 26, (DOC 349) Order denying Maelani Lee's motion to intervene (Doc 84); COS</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
108.	Unpaginated	<p>October 10, 2016, Minute Order No. 27, (DOC 350) Order denying Petitioners' re-request for continuance on submissions and next hearing date (Doc 81) and Petitioners' supplemental request for continuance on submissions and next hearing date (Doc 82); COS</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
109.	Unpaginated	<p>October 10, 2016 Minute Order No. 28, (DOC 351) Order denying Mehana Kihoi's motion to deny the intervention of Perpetuating Unique Educational Opportunities as a party in the contested case hearing (Doc. 98); COS</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
110.	Unpaginated	<p>October 10, 2016, Minute Order No. 29, (DOC 352) Order denying Temple of Lono's motion to dismiss for lack of jurisdiction based on unresolved land claims (Doc 126); COS</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
111.	Unpaginated	<p>October 10, 2016, Minute Order No. 30, (DOC 353) Order denying Kamahana Kealoha: Motion invoking Quo Warranto, respectfully, a demand of jurisdiction; Declaratory judgment on a constitutional issue / violation resubmitted 8/8/2016 (Doc 180); COSD. Conduct of the contested case.</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
112.	Unpaginated	<p>October 10, 2016, Minute Order No. 31, (DOC 354) Order</p>	Fails to comply with Minute Order No.

Exception #	Page	Exceptions/Response	Comment
		denying motion for protective order for the Honorable David Y. Ige, Suzanne Case and Stanley Roehrig (Doc 182); COS	103 and HAR § 13-1-42(b).
113.	Unpaginated	October 10, 2016, Minute Order No. 32, (DOC 355) Order denying motion to strike motion for protective order for the Honorable David Y. Ige, Suzanne Case and Stanley Roehrig, filed on August 8, 2016 (Doc. 187); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
114.	Unpaginated	October 10, 2016, Minute Order No. 33, (DOC 356) Order denying Temple of Lono's motion to dismiss out of time (Doc. 179); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
115.	Unpaginated	October 11, 2016, Minute Order No. 34, (DOC 363) Order denying Kamahana Kealoha's motion demanding inventory of the so-called ceded lands containing the specific land and parcel the TIO plans to be sub-leased by UH who leases said lands from the BLNR, a survey of these lands also (Doc. 191)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
116.	Unpaginated	October 13, 2016, Minute Order No. 35, (DOC 365) Order re: dismissal of Shelley Stephen's request to be part of Contested Case Hearing (Doc. 213)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
117.	Unpaginated	October 14, 2016, Minute Order 36, Order voiding permit (DOC 376)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
118.	Unpaginated	October 19, 2016, Minute Order 37, (DOC 388) Order denying motion to strike Conservation District Use Application, HA-3568, dated September 2, 2010, and/or motion for summary judgment (Doc. 94)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
119.	Unpaginated	October 19, 2016, Minute Order 38, Order denying motion to disqualify BLNR's and Hearing Officer's counsel (Doc 95) DOC 389	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
120.	Unpaginated	October 28, 2016, Minute Order No. 39, Order denying renewed motions to disqualify Hearing Officer (DOC 340)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
121.	Unpaginated	January 1, 2017, Minute Order 41, Order regarding date to set witnesses; COS (DOC 446)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
122.	Unpaginated	February, 17, 2017, Minute Order No. 42: (DOC 464) Order granting Flores-Case Ohana's request for subpoena for Samuel	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
123.	Unpaginated	Lemmo - Administrator, Office of Conservation and Coastal Lands, DLNR, State of Hawaii (Doc. No. 452) and denying the University of Hawai'i at Hilo's motion to quash Flores-Case Ohana's request for Samuel Lemmo - Administrator, Office of Conservation and Coastal Lands, DLNR, State of Hawaii (Doc 444); COS	
124.	Unpaginated	April 18, 2017 Minute Order 43, Order setting post-hearing deadlines; COS DOC 552	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
125.	Unpaginated	April 20, 2017 Minute Order 44, Order regarding documentary evidence DOC 553	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
126.	Unpaginated	May 2, 2017 Minute Order No. 45 DOC 590: Order granting in part / denying in part petitioners Mauna Kea Anaina Hou, et al.'s request for further status conference and/ or consideration of proposed scheduling (Doc. 254); and related Doc. Nos. 257, 258, 259, 261, 294, 296 & 298	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
127.	Unpaginated	May 2, 2017 Minute Order No. 46: Order related to Temple of Lono motion to recuse Hearing Officer (Doc. Nos. 262, 434, 436, 536, 544); COS DOC 595	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
128.	Unpaginated	May 4, 2017 Minute Order No. 47 DOC 609: Order related to Temple of Lono motion for summary judgment (disqualification) (Doc. 263); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
129.	Unpaginated	May 12, 2017 Minute Order No. 48 DOC 631: Order denying the Temple of Lono's emergency motion to Board to stay proceedings, filed April 27, 2017 [Doc. 573] and related documents [Docs 582, 583, 584, 585, 600, 602, 624]; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
130.	Unpaginated	May 17, 2017 Minute Order 49 DOC 637, Order denying parties' petition to the Board for online access to the transcripts, filed May 5, 2017 [Doc. 622] and related document [Doc. 627]; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
131.	Unpaginated	May 23, 2017 Minute Order No. 50 DOC 646, Order denying reconsideration of Minute Order No. 43; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
131.	Unpaginated	May 26, 2017 DOC 648 Amended Certificate of Service to	Fails to comply with Minute Order No.

Exception #	Page	Exceptions/Response	Comment
		Minute Order No. 50	103 and HAR § 13-1-42(b).
NA	Unpaginated	May 26, 2017 DOC 649 Amended Minute Order No. 44, Documentary Evidence; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
132.	Unpaginated	May 26, 2017 DOC 650 Minute Order No. 52, Order Denying Protector/Parties' Petition for Declaratory Judgment and Motion to Vacate Minute Order No. 43, filed May 11, 2017 [Doc. 629], and Related Document [Doc. 636]; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
133.	Unpaginated	May 27, 2017 DOC 654 Minute Order No. 53, Order Denying the Temple of Lono Motion for Summary Judgment (Desecration) (Doc. 264) and Motions to Strike University of Hawai'i at Hilo's and TIO Opposition to Temple of Lono Motion for Summary Judgment (Doc. No. 474 and 490); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
134.	Unpaginated	May 29, 2017 DOC 656 Minute Order No. 54, Order Denying William Freitas' Motion to Amend Doc 281 Minute Order 19 (Doc. 283), Temple of Lono Motion for Reasoned Explanations and Extension of Time (Doc. 286), Joseph Kualii Lindsey Camara's Motion to Reconsider Minute Order 19 (Doc. 291) and Temple of Lono Motion for Reconsideration (Doc. 293); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
135.	Unpaginated	May 29, 2017 DOC 659 Minute Order No. 55, Order Denying William Freitas Motion to Amend Second Witness List Doc. 166 to Include William Freitas as Additional Witness to Contested Case Hearing (Doc. 300); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
136.	Unpaginated	May 29, 2017 DOC 660 Minute Order 56, Order Denying Motions for Extensions of Time for Filing Motions, Witness and Exhibit Lists and Direct Testimonies and Pre-Hearing Statements (Doc. Nos. 304, 305, 306, 323, 326, 328, 329, 337, 338); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
137.	Unpaginated	May 31, 2017 DOC 674 Minute Order No. 57, Order denying Temple of Lono motion to schedule pending motions (Doc. 324); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
138.	Unpaginated	June 2, 2017 DOC 681 Minute Order No. 58, Order denying	Fails to comply with Minute Order No.

Exception #	Page	Exceptions/Response	Comment
		Temple of Lono motion to strike for failure to serve or extension of time and rescheduling of hearing (Doc. 364); COS	103 and HAR § 13-1-42(b).
139.	Unpaginated	June 2, 2017 DOC 682 Minute Order No. 59, Order denying Kamahana Kealoha motion of reconsideration on decision to motion of quo warranto (Doc. 379); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
140.	Unpaginated	June 2, 2017 DOC 683 Minute Order No. 60, Order denying Mehana Kihoi's motion for reconsideration to deny the intervention of Perpetuating Unique Educational Opportunities as a party in the contested case hearing (Doc. 380); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
141.	Unpaginated	June 2, 2017 DOC 684 Minute Order No. 61, Order granting J. Leinaala Sleightholm's motion to accept pre-hearing statement, witness testimony, witness and exhibit list (Doc. 381); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
142.	Unpaginated	June 4, 2017 DOC 685 Minute Order No. 62, Order denying Cindy Freitas' motion to dismiss contested case hearing re: Conservation District Use Application HA-3568 (Doc. 391) (Non-hearing motion); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
143.	Unpaginated	June 4, 2017 DOC 686 Minute Order No. 63, Order denying Temple of Lono motion to restore cross-examination rights (Doc. 410); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
144.	Unpaginated	June 4, 2017 Minute Order No. 64 DOC 687, Order denying motion to be a party to TMT case by Shelley Stephens (Mahi-Hanai) (Doc. 420); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
145.	Unpaginated	June 5, 2017 DOC 688 Minute Order No. 65, Order denying the Temple of Lono motion to dismiss TIO as intervenor or alternatively, stay this proceeding (Doc. 427) and Harry Fergerstrom's motion to remove TMT/TIO as a party, for lack of standing including any and all submissions into the evidentiary library (Doc 429); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
146.	Unpaginated	June 5, 2017 Minute Order No. 66 DOC 689, Order denying the Temple of Lono request for witness subpoena for David Lassner, President of the University of Hawaii system	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
147.	Unpaginated	June 5, 2017 Minute Order No. 67 DOC 690, Order denying	Fails to comply with Minute Order No.

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148.	Unpaginated	Temple of Lono re-quest for witness subpoena for DLNR employee to testify on whether DLNR has a form to fill out requesting permission to build an altar on Mauna Kea (Doc. 439); COS	103 and HAR § 13-1-42(b).
149.	Unpaginated	June 5, 2017 Minute Order No. 68 DOC 692, Order denying Flores-Case Ohana's request for witness subpoena for 'John Doe' and for a subpoena duces tecum to disclose unidentified Maunakea (sic) Observatories Support Services employee involved with the	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
150.	Unpaginated	June 5, 2017 Minute Order No. 69 DOC 693, Order granting J. Leinaala Sleightholm's motion to appear by phone (Doc. 449); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
151.	Unpaginated	June 6, 2017 Minute Order No. 70 DOC 696, Order granting Brannon Kealoha motion of clarification reserving rights to participate (Doc. 450); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
152.	Unpaginated	June 6, 2017 Minute Order No. 71 DOC 697, Order granting Joseph K. L. Camara's motion to allow witness testimony (Doc. 453); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
153.	Unpaginated	June 7, 2017 Minute Order No. 72 DOC 698, Order granting Kahea: The Environ-mental Alliance's motion to permit live testimony of rebuttal witness Brian Cruz (Doc. 459); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
154.	Unpaginated	June 9, 2017 Minute Order No. 73 DOC 699, Order granting in part applicant University of Hawaii at Hilo's motion for leave to present rebuttal testimony (Doc. 461); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
155.	Unpaginated	June 10, 2017 Minute Order No. 74 DOC 703, Order denying motion to bring on rebuttal witness on behalf of Kealoha Pisciotta and Mauna Kea Anaina Hou (Doc. 462); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
156.	Unpaginated	June 11, 2017 Minute Order No. 75 DOC 707, Order denying Mauna Kea Anaina Hou motion requesting time to respond to exhibit objections and related matters (Doc. 522); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
156.	Unpaginated	June 11, 2017 Minute Order No. 76 DOC 708, Order denying Temple of Lono motion for protective order (Doc. 546); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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157.	Unpaginated	June 11, 2017 Minute Order No. 77 DOC 709, Order re: no decisions for non-motion submissions (Docs. Nos. 330, 366, 403, 411, 149, 421, 422, 437, 454, 460, 496, and 550); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
158.	Unpaginated	June 11, 2017 Minute Order No. 78 DOC 710, Order denying Temple of Lono motion to reconsider Minute Order No. 46 (Doc. 610)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
159.	Unpaginated	June 12, 2017 Minute Order No. 79 DOC 711, Order denying Temple of Lono motion to reconsider Minute Order No. 47 (Doc. 619)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
160.	Unpaginated	June 12, 2017 Minute Order No. 80 DOC 712, Order denying William Freitas response, to TIO's opposition to reconsideration to Minute Order's No. 43, Doc. 604, and Minute Order No. 44 Doc 614, TIO opposition and UHH joinder to TIO. Doc 607 and No. 44 Doc 616 (Doc 628); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
161.	Unpaginated	June 12, 2017 Minute Order No. 81 DOC 713, Order denying William Freitas, motion to procedural clarification concerning transcript errors (Doc. 633); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
162.	Unpaginated	June 12, 2017 Minute Order No. 82 DOC 715, Order denying Dight (sic) Vicente's motion for stay Finding of Fact Conclusion of Law (Doc. 658); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
163.	Unpaginated	June 14, 2017 Minute Order No. 83 DOC 739, Order denying Brannon Kamahana Kealoha: Motion pleading for more time to submit my FOF; Motion moving to joinder all petitioners FOFs recommending denial of permit for the TMT; Motion to joinder all petitioners recommending denial of permit in regards to every single one of said petitioner's requests, motions, memos, and amendments since 12/8/17 including, but not limited to, all items ruled upon and the many not ruled upon by the honorable (sic) Hearing Officer (Doc 663); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
164.	Unpaginated	June 15, 2017 Minute Order No. 84 DOC 745, Order denying William Freitas, pro-se, filed William Freitas's motion to amend second witness list (Doc. 166) to include William	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
		Freitas as additional witness list to contested case hearing (Doc. 300) ("Motion") (Doc. 691); COS	
165.	Unpaginated	June 17, 2017 Minute Order No. 85 DOC 748, Order denying Flores-Case Ohana's motion for full disclosure re: spoliation of evidence (Doc. 676)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
166.	Unpaginated	June 23, 2017 Minute Order No. 86 DOC 750, Order denying TMT International Observatory, LLC's request for Board to act upon denial of intervention pursuant to HAR §13-1-31(G), filed August 26, 2016 [Doc. 246]; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
167.	Unpaginated	June 23, 2017 Minute Order No. 87 DOC 751, Order denying Temple of Lono's motion to Board of Land and Natural Resources to dismiss HA-3568, filed March 25, 2017 [Doc. 516] and related documents [Doc. 518, 525, 549]; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
168.	Unpaginated	July 10, 2017 Minute Order No. 88 DOC 758, Order denying Temple of Lono's motion to vacate Minute Order No. 39, or alternatively to partially reconsider Minute Order No. 39, filed November 6, 2016 [Doc. 409], and related document [Doc. 417]; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
169.	Unpaginated	July 10, 2017 Minute Order No. 89 DOC 759, Order denying Mauna Kea Anaina Hou et al.'s motion for reconsideration of Minute Order 49, filed May 20, 2017 [Doc. 643], and related documents [Doc. 652, 653]; Exhibit "A"; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
170.	Unpaginated	July 13, 2017 Minute Order No. 90 DOC 762, Order denying Flores-Case Ohana's motion for full disclosure re: spoliation of evidence (Doc. 676)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
171.	Unpaginated	July 13, 2017 Minute Order No. 91 DOC 763, Order denying Temple of Lono motion for reconsideration of Minute Order No. 53 (Doc. 675)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
172.	Unpaginated	July 13, 2017 Minute Order No. 92 DOC 764, Order denying Cindy Freitas' motion to file motion out of time (Doc. 227)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
173.	Unpaginated	July 14, 2017 Minute Order No. 93 DOC 765, Order denying Temple of Lono motion to reconsider Minute Order 57 (Doc	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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		694)	
174.	Unpaginated	July 14, 2017 Minute Order No. 94 DOC 766, Order denying William Freitas' motion to amend Doc 274 site visit to include areas proposed in Doc 214 (Doc. 277)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
175.	Unpaginated	July 14, 2017 Minute Order No. 95 DOC 767, Order denying Cindy Freitas' motion to amend Doc 274 site visit to include request in Doc 220 (Doc. 278)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
176.	Unpaginated	July 14, 2017 Minute Order No. 96 768, Order denying Flores-Case 'Ohana motion for reconsideration of Minute Order 85 (Doc. 752)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
177.	Unpaginated	July 14, 2017 Minute Order No. 97 DOC 769, Order denying requests for continuances and next hearing date (Docs. Nos. 89, 90, 91, 92)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
178.	Unpaginated	July 15, 2017 Minute Order No. 98 DOC 772, Order denying Flores-Case Ohana's motion for clarification or, in the alternative reconsideration re: Minute Orders No. 43 and 44, filed 4/15/17 & 4/27/17 [Doc. Nos. 558 & 577] (Doc 634); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
179.	Unpaginated	July 15, 2017 Minute Order No. 99 DOC 773, Order rescinding Minute Order No. 90 denying Flores-Case Ohana's motion for full disclosure re: spoliation of evidence (Doc. 676); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
180.	Unpaginated	July 17, 2017 Minute Order No. 100 DOC 774, Order re: second no-decisions for non-motion submissions (Docs. Nos. 141, 143, 188, 190, 225, 231, 248, 252, 279, 280, 285, 287, 288, 331, 339, 398, 400, 401, 412, 413); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
181.	Unpaginated	July 17, 2017 DOC 775 Amended Minute Order No. 96 DOC 768, Order denying Flores-Case Ohana's motion for reconsideration of Minute Order 85 (Doc. 752); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
182.	Unpaginated	July 24, 2017 Minute Order No. 101 DOC 781, Order denying Cindy Freitas motion to admit exhibits out of time (Doc. 760); COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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183.	Unpaginated	July 25, 2017 Minute Order No. 102 DOC 782: Declaration Record Closed; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
184.	Unpaginated	July 28, 2017 Minute Order No. 103 DOC 784 filed by BLNR, Order regarding filing exceptions to Hearing Officer's recommendations and setting oral arguments on exceptions; COS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
185.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
186.	Unpaginated	The Hearing Officer fails to mention there was no standing hearing for new parties. "All remaining applicants for intervention had standing to participate in the contested case as parties and their motions to intervene were granted."	See Response to Exception 31 regarding hearing on requests to intervene.
187.	Unpaginated	Mauna Kea Anaina Hou (MKAH) through their council Naiwi Wurdeman, filed a Memorandum in Opposition (DOC 069) to P.U.E.O'S Motion to Intervene (DOC 033) dated May 16, 2016. In MKAH'S Memorandum in Opposition, it states; "... While any of the individuals associated with P.U.E.O., Inc., i.e. Richard Ha, Jr., the apparent "Incorporator," according to the Articles of Corporation of P.U.E.O., Inc., Shadd Keahi Warfield, listed as its President, Patrick Le' o Kahaiwaiola' a, William H. Brown, and any others could have requested a contested case hearing on February 25, 2011 and then paid the related fee or received a waiver of the fee and then proceeded to the contested hearing if admitted, none of these individuals made such an effort..." (DOC 069) dated June 13, 2016. <ul style="list-style-type: none"> • P.U.E.O.'s request is not timely. (DOC 033) dated May 16, 2016. 	See Response to Exception 32 regarding PUEO's standing determination.

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188.	Unpaginated	<ul style="list-style-type: none"> P.U.E.O Inc. failed to demonstrate how the corporation will be so directly and immediately affected by the requested CDUP that the corporation should be admitted as a party and has failed to show how its interests are distinguishable from that of the general public. (DOC 033) dated May 16, 2016. Criteria 8 of HAR 13-5-30 states that a proposed land use will not materially detrimental to the public health, safety and welfare. It does not require that a proposed project/land use be beneficial to public welfare safety and welfare. P.U.E.O's reasoning for intervening in this case is unfounded. 	TIO's admission as an intervenor was proper. It was not predicated on the status of the sublease consent, but rather on TIO's substantial interest in the subject matter and because its participation would substantially assist the Hearing Officer in her decision making. <i>See</i> HO COL 25.
189.	Unpaginated	<p>On April 8, 2016, TIO filed a Motion to Intervene in the remanded contested case hearing (DOC 002). On June 13, 2016, MKAH filed its Memorandum in Opposition (DOC 070) To TIO (TMT International Observatory LLC). First, "...at no time did TMT Observatory Corporation make a timely request to be part of the contested case process on February 25, 2011, almost four-and-one-half years ago, with a number of the entity members of the current TMT International Observatory, having every opportunity to make a timely request at that time." (DOC 070). Therefore, their request was not timely. Second, TIO's alleged property interest is still at issue and has not yet been determined.</p> <p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
190.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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191.	Unpaginated	<p>and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p> <p>In this section, on pages 75-83 of her recommendations, Hearing Officer lists a few of the statements given through live testimony of Petitioners witnesses on the sacredness of Mauna Kea. Although she cites them, she does not give the witness testimonies the full weight, credibility and or consideration based upon the preponderance of evidence standard in making her decisions and recommendations on the following eight criteria.</p>	<p><i>See</i> Response to Exception 9 regarding credibility determinations.</p>
192.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.</p>
193.	Unpaginated	<p>The Hearing Officer requested that P.U.E.O set the issues for the hearing then proceeded to instruct P.U.E.O to submit a Proposed Minute Order Granting PUEO's motion to Set Issues setting forth the issues to be addressed and issues not to be addressed in the contested case hearing, as ruled upon at the hearing." TR. 8/29/16 at 83:5-19.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 31 regarding PUEO's Motion to Set the Issues.</p>
194.	Unpaginated	<p>We take exception with the Hearing Officer requesting a new party in this contested case to set the issues - especially when their standing was being challenged. MKAH submitted a position statement (DOC 164) regarding PUEO's setting the issues and recommended some issues to be decided that were ignored.</p>	<p><i>See</i> Response to Exception 31 regarding PUEO's Motion to Set the Issues; <i>see also</i> Response to Exception 32 regarding PUEO's standing determination.</p>
195.	Unpaginated	<p>The UH/TIO COL 17-24 at p.159-161 finds: HAR § 13-1-2, HAR §§ 13-1-31(b) and (c), defines "Petitioner(s)" or the one on whose behalf a petition or</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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196.	Unpaginated	<p>application is made, sets forth standards for the admission and admissibility of parties in a contested case proceeding.</p> <p>Standing or <i>locus standi</i> is the term for the ability of a party to demonstrate to the court sufficient connection to and the harm from the law or action challenged to support that party's participation in the case. <i>See</i> Wikipedia Standing (law)</p> <p>Subject matter jurisdiction is defined as "the power of the a court to adjudicate a particular type of matter and provide the remedy demanded." <i>See</i> WEX Legal Dictionary at www.law.cornell.edu</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
197.	Unpaginated	<p>Standing is important for to establishing not only the who the parties will be but also the issues to be decided.</p> <p>The Supreme Court remanded this case back to the Third Circuit Court and then back to the Board of Land and Natural Resources concluding:</p> <p>[T]his court vacates the circuit court's May 5, 2014 Decision and Order Affirming the Board of Land and Natural Resources, State of Hawai'i's Findings of Facts, Conclusions of Law and Decision and Oder Granting Conservation District Use Permit at the Mauna Kea Science Reserve Dated April 12, 2013 and final judgment thereon.</p> <p><i>See</i> <u>Mauna Kea Anaina Hou et al v. BLNR (2015)</u></p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
198.	Unpaginated	<p>In considering the above conclusion, we contend, that the BLNR had at two options for fulfilling the courts conclusions. The BLNR could (1) start completely anew including holding a brand new public hearing providing an opportunity for both the original six Petitioners and new parties to come forward to call for a CCH or (2) BLNR could have started a new hearing with the original six Petitioner and the UH as the parties and to retry the original case.</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
199.	Unpaginated	<p>After the public hearing those requesting a CCH, including the original six Petitioners and any new parties would be required</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
200.	Unpaginated		Unsubstantiated.
201.	Unpaginated		Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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		<p>to submit their written requests asserting their grievances, articulating the potential impacts and/or any remedies sought that may occur if the Board approves the action (i.e. approval of the construction of the TMT in the Mauna Kea Conservation District).</p> <p>See Ex A029 and A028—the original Petitioners petitions for CCH)</p>	
202.	Unpaginated	<p>Thereafter during the pre hearing stages of the CCH proceeding a standing hearing should have occurred for the purposes of establishing the standing of each individual and/ or group who has asked to participated in the hearing. The test for standing includes that the party's ability to demonstrate their interest in the case and show that their interest is <u>separate and distinct</u> from that of the general public. This specifically means that the testimony and information that the party brings will inform the decision and the decision makers so they may make an informed decision.</p> <p>See Making Your Voice Count by law Professor Casey Jarmon (can Google it)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 31 regarding hearing on requests to intervene.</p>
203.	Unpaginated	<p>“Issues to be Decided.” In the previous CCH each party was to submit a motion proposing the issues to be decided in the case. This is reasonable because it also helps to establish the burden of proof for the various parties.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Prior contested case proceeding not in the record.</p>
204.	Unpaginated	<p>In this case, however, the HO allowed one party (PUEO group) to submit the issues to be decided. We are not sure why this was the case, perhaps she was not properly in-formed by the Deputy Attorney’s Generals (DAGs) assigned to the case. However, we contend that besides the obvious problem of having only one person or group decide what the case is about and because this case was not a brand new CCH proceeding</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 31 regarding PUEO’s Motion to Set the Issues.</p>

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205.	Unpaginated	<p>and was instead a hybrid version, the issues to be decided were previously established in the first CCH.</p> <p>The HO did not adopt or include any of the previous issues for this remanded hearing (the HO did allow some questions that were included in our issues to be decided from our previously case such as questions regarding Section 106 Consultation). This prejudiced tall the Pro Se petitioners and the original grievances and remedies sought where not fully addressed in this case.</p> <p>See Ex A029 and A028 the original six Pro Se Petitioners Petitions.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Prior contested case proceeding not in the record.</p>
206.	Unpaginated	<p>While we do concur, that the issues to be decided should have included the Public Trust Doctrine, the Kapa'akai (also Native Hawaiian Rights), and the Eight Criteria under HAR §13-5-30(c) but we submit all relevant issues that fall within the subject matter jurisdiction of this proceeding should have been properly included in this case.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/unsubstantiated</p>
207.	Unpaginated	<p>Issues that were not established in the pre hearing stage and are not relevant to this proceeding should not have been allowed in for review.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/unsubstantiated.</p>
208.	Unpaginated	<p>UH/TIO failed to identify any issues to be decided in this case. As identified previously the PUEO group was allowed to establish the <i>issues to be decided</i> in this case. The issues to be decided that where accepted by the HO where the (1) Public Trust Doctrine, (2) Native Hawaiian Traditional and Customary cultural and religious right under <u>Kapa'akai</u>, and (3) the Eight Criteria (not necessarily in any order.)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Misstates the record. <i>See</i> University's <i>Supplemental Comments on Perpetuating Unique Educational Opportunities, Inc.'s Motion to Set the Issues</i> [Doc. 242].</p> <p><i>See</i> Response to Exception 31 regarding PUEO's Motion to Set the Issues.</p>

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209.	Unpaginated	Native Hawaiian/Kanaka Maoli and Pro Se Petitioners (NH-KM Petitioners) filed petitions and could meet the standing requirements as Native Hawaiian Traditional and Customary cultural and religious practitioners whose cultural and religious practices and activities are protected under the State's Constitution Article XII, Section 7 and who could demonstrate an interest separate and distinct from that of the general public.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 31 regarding hearing on requests to intervene.
210.	Unpaginated	Justice Pollack writing the Concurring Opinion, joined by Justice Wilson and Justice McKenna in part quoted Chief Justice Richardson's conclusion in <u>Zimrig</u> "... the people of Hawai'i are the beneficial owners of public lands. See <u>Mauna Kea</u>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
211.	Unpaginated	We objected to TIO and PUEO group being allowed to participate in the proceeding for the reasons set further in DOC 069 and 070. See DOC 069 (MKAH Memorandum in Opposition to TIO request to become a Party) and DOC 069 (MKAH Memorandum in Opposition to P.U.E.O's request to become a party).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 32 regarding PUEO's standing determination; see also Response to Exception 188 regarding TIO's standing determination
212.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
213.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO THE HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
214.	Unpaginated	The HO beginning at p. 201 in accessing the body of law that has become know a Native Hawaiian Rights law, including by not limited to PASH, Kapa'akai, Hanapi etc. misconstrues and	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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215.	Unpaginated	<p>mischaracterizes the legal theory behind it.</p> <p>UH/TIO agreed that the UH as the Applicant has the burden of proof based on the preponderance of evidence. See UH/TIO COL 78 - 82</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
216.	Unpaginated	<p>UH/TIO characterizes and misconstrues the laws as set forth under Hanapi and Pratt and then attempt to impermissibly shift the burden of proof from themselves onto the Pro Se Petitioners. See UH/TMT/TIO COL 83 at p. 169 states in relevant part:</p> <p>[T]hat Pro Se Petitioners have the burden of Proof on issue asserted by them. In particular, to the extent that Petitioners ...are claiming to assert native Hawaiian rights based on customary and traditional practices, the burden is on them to establish that the claimed right is a constitutional native Hawaiian practice. The standards for establishing constitutional protection of practices that are claimed to be customary and traditional are set forth <i>State v. Hanapi</i>, 89 Hawai'i 177, 186. P. 2d 485, 494 (1998) and <i>State v. Pratt</i>, 127 Hawai'i 206, 277 P.3d. 300 (2010)”</p>	<p>Misstates the holdings in <i>Hanapi</i> and <i>Pratt</i>. Petitioners and Opposing Intervenor are required to carry the burden of proof to establish that the claimed right is constitutionally protected as a customary and traditional native Hawaiian practice. <i>See</i> COL 102-107.</p>
217.	Unpaginated	<p>In Mauna Kea Concurring Opinion by Justice Pollack, joined by Justice Wilson and Justice McKenna in part, at foot note 8 on p. 21, states in relevant part:</p> <p>The court clarified, <i>In re Contested Case Hearing on Water Use Permit Application filed by Kukui (Molokai), Inc.</i>, 116 Hawai'i 481, 174 P.3d 320 (2007), that in cases where Native Hawaiian rights figure in an agency's public trust balancing, the burden is not on the parties of Native Hawaiian ancestry to prove that the proposed use would harm traditional and customary Native Hawaiian rights; rather, the permit applicants and the agency are the parties obligated to justify the proposed</p>	<p><i>See</i> Response to Exception 216 regarding burden of proof to establish customary and traditional native Hawaiian practices.</p> <p>Incorrect/false. The part of the concurring opinion cited by MKAH was not joined by Justice McKenna.</p>

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218.	Unpaginated	<p>use and the approval thereof in light of the trust purpose of protecting Native Hawaiian rights. <i>Id.</i> at 507-09, 174 P.3d at 346-48.</p> <p>The HO mischaracterizes, misreads the law under <u>Hanapi</u>, <u>Pratt</u>, and <u>Kapa'akai</u> for the reasons as stated in these Responses as well as Petitioner MKAH's FOF COL, D&O which we shall incorporate by reference.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated.</p>
219.	Unpaginated	<p>The issues to be decided in the case <u>did not</u> include the Pro Se Parties having to prove they met or having to meet either the <u>Hanapi</u> or <u>Pratt</u> prong tests for this CCH proceeding.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 216 regarding burden of proof to establish customary and traditional native Hawaiian practices.</p>
220.	Unpaginated	<p>Further the UH/TMT/TIO only now in their FOF COL, D&O attempts to argue all of the Pro Se Petitioners failed meet "their" burden under the <u>Hanapi</u> and the <u>Pratt</u> prong tests.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 216 regarding burden of proof to establish customary and traditional native Hawaiian practices.</p>
221.	Unpaginated	<p>But even if the issues to be decided included the <u>Hanapi</u> and the <u>Pratt</u> prongs tests the UH/TMT/TIO attempts to impermissibly shift the burden of away from themselves and onto the Pro Se Petitioners.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 216 regarding burden of proof to establish customary and traditional native Hawaiian practices.</p>
222.	Unpaginated	<p>The <u>Hanapi</u> case was a criminal case and therefore doesn't even apply to this case.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Exception incorrectly claims <i>Hanapi</i> is inapplicable to instant proceeding. In <i>Hou v. University of Hawai'i</i>, 2012 WL 247948, at *12 (Hawaii App. 2012), the</p>

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223.	Unpaginated	<p>In fact in both the <u>Hanapi</u> and <u>Pratt</u> cases, the individuals involved where being charged with criminal trespass and they asserted their Native Hawaiian Traditional and Customary cultural and religious rights as an affirmative defense against the criminal charges being made against them. This is not the situation in this instant case regarding Mauna Kea.</p>	<p>ICA cited to <i>Hanapi</i> as the basis for its holding that the Petitioners did not demonstrate how the CMP would interfere with their constitutionally protected rights.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 222 regarding applicability of <i>Hanapi</i> to instant case.</p>
224.	Unpaginated	<p>The Pro Se Petitioners are in no way facing any criminal charges and are therefore not defending themselves against any criminal charges thus necessitating an affirmative defense or the need to prove, either the three prong <u>Hanapi</u> test or the <u>Pratt</u> test as the UH/TIO claims.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 222 regarding applicability of <i>Hanapi</i> to instant case.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
225.	Unpaginated	<p>The Pro se Petitioners are exercising and/or trying to continue to exercise their Traditional and Customary cultural and religious rights affirmed under <u>PASH</u>, other relevant Native Hawaiian rights laws and that are protected by the State Constitution under Article XII, Section 7.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Under <i>PASH</i>, to fall within the protection of Hawai'i law, Hawaiian customary usage must have been established in practice by November 25, 1892. Moreover, the ancient Hawaiian usage must be based on actual traditional practice in a particular area of undeveloped land, and cannot be based on assumptions or conjecture. <i>See</i> HO COL 98-101.</p>
226.	Unpaginated	<p>The Pro Se Petitioners are exercising, continuing to exercise and/or trying to protect their rights while simultaneously,</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>hoping to prevent the State BLNR from categorical extinguishing those rights by destroying and desecration the environment and landscape where those Traditional and Customary cultural and religious beliefs and practices are in fact excised—on Mauna Kea.</p>	<p>See Response to Exception 225 regarding holding in <i>PASH</i>.</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. See HO COL 399-413.</p>
227.	Unpaginated	<p>The Pro Se Petitioners Native Hawaiian traditional and customary cultural and religious rights that are challenged and threatened in two ways. First, because the State continues to abdicate, delegate and or act in excess of their authority to affirmatively to protect the “reasonable” exercise of the Native Hawaiian Traditional and Customary cultural and religious rights. They do this by unlawfully delegating this duty first to the University of Hawai’i at Manoa (UH), which then is transferred to a set of entities under the University of Hawai’i at Hilo (UHH) including the Office Of Mauna Kea (OMKM) who then transfers the duty to an advisory group called Kahu Ku Mauna (KKM). The University of Hawai’i at Hilo (UHH) clearly transfers the responsibility of protecting constitutionally protected Native Hawaiian rights to entities that are not affirmatively mandated to protect those rights and resources, which belonging to the people of Hawai’i.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. See HO FOF 189-192 (regarding the BLNR’s jurisdiction and ongoing supervision and management over Conservation District lands). Moreover, the contested case hearing and its 44 days of testimony and 71 witnesses are part of the consideration required of BLNR under <i>Ka Pa ‘akai</i>.</p>
228.	Unpaginated	<p>This ‘wholesale delegation of the responsibility for protecting Native Hawaiian Traditional and Customary cultural and religious rights to the University and to other entities is specifically what the Supreme Court warned against and prohibited in <i>Kapa’akai</i>.</p> <p>See <u>Mauna Kea Anaina Hou</u> Concurring foot note 17 at p.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 227 regarding the management of Mauna Kea, and State’s compliance with its duties under <i>Ka Pa ‘akai</i> through consideration of the</p>

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229.	Unpaginated	<p>47, that reads : The non-delegable nature of an agency's duty to protect and enforce constitutional rights only intensifies the important role that an agency pls. See Ka Pa'akai O Ka'Aina, 94 Hawai'i at 51, 7 P.3d at 1088 (holding that "the delegation of protection and preservations of native Hawaiian practices to [the party petitioning for the reclassification of land] was inappropriate"). In this particular case, outside of judicial review, no other entity but he Board can preserve constitutional rights involved in the permitting of a proposed use of a conservation district land. See HRS § 26-15 (Supp. 2005)</p> <p>The recent concurring opinion by Justice Pollack, joined by Justice Wilson and Justice McKenna in part, Mauna Kea at footnote 7, reads in relevant part:</p> <p>"The Waiahole I court also, consistent with Hawaii's legal history, prior precedent, and the constitutional mandate, "continue[d] to uphold the exercise of Native Hawaiian and traditional and customary rights as a public trust purpose." See Waiahole I, 94 Hawai'i at 137, 9 P3d at 449 (citation omitted)."</p>	<p>evidence adduced through the contested case hearing process.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 227 regarding the management of Mauna Kea.</p> <p>Incorrect/false. The part of the concurring opinion cited by MKAH was not joined by Justice McKenna.</p>
230.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.</p>
231.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO THE HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
232.	Unpaginated	<p>The HO leaves out critical information and excluded Judicial Notice regarding the fact that the Third Circuit Court invalidated BLNR's consent for the TMT Sublease. The HO</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>also failed to take into account the fact that the life span of the TMT extends many year beyond the actual life span of the GENERAL LEASE. There is no way to guarantee that that Sublease will be issued or that the General Lease extension would ever be granted. WE TAKE EXCEPTION TO THE HO leaving out critical information that is necessary for making an informed decision. Further we TAKE EXCEPTION to the Attorney Generals (Doug Chin's) public statements claiming that the TMT can move forward as soon as the BLNR issues a CDUP. The AG's statements are irresponsible and they runs afoul of due process and in the face of the Courts role as the arbitrator of questions of law. WE OBJECT AND TAKE EXCEPTION?</p>	<p>Inaccurate/False. The HO did note that the Circuit Court decided to vacate BLNR's consent to the sublease. See HO COL 25, 414-16.</p> <p>The alleged statements of Attorney General Doug Chin are not in evidence nor are they part of the record in this case.</p>
233.	Unpaginated	<p>The fact remains that the courts previously vacated BLNR's consent for the TMT's the Sublease and the General ends in 2033 and the life span of the TMT project is longer than the General Lease itself.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
234.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearings are not in evidence nor are they part of the record in this case.</p>
235.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
236.	Unpaginated	<p>One example is shown here: In this section H.O states on pg 37 FOF 178 " Under the Master Plan, new facilities proposed within the Astronomy Precinct are to be designed to (3) avoid the scattering of facilities by clustering within the developed area...." What the HO fails to mention, is, that the proposed</p>	<p>Misleading. 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</p>

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		TMT site is three fourth's of a mile away from any other telescopes or development. She would like to believe that this whole area is developed when it is not. It is a wide open undeveloped space on the Northern Plateau.	178-79, 321-323, 359(c). Mischaracterization. Substantial and credible evidence was presented, including from Petitioners and Opposing Intervenor themselves, demonstrating that the astronomy precinct is substantially developed. <i>See</i> HO FOF 905, 912-17.
237.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not in evidence nor are they part of the record in this case.
238.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
239.	Unpaginated	The purpose of a Conservation District is to designed "to conserve, protect and preserve the important natural resources of the state through appropriate management and use to promote their long term sustainability and the public health, safety and welfare" HRS 183C-1.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
240.	Unpaginated	The Conservation District administrative rules are designed "to regulate land-use in the conservation district for the purpose of conserving, protecting, and preserving the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare". HAR 13-5-1 (Emphasis added)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
241.	Unpaginated	The Hearing Officer omits important sections of the	Inaccurate/False. The Hearing Officer

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		<p>Conservation District Rules:</p> <p>Here is an example: The rules allow only those land uses that comply with all eight criteria – that is to say, land uses that do not have a “substantial adverse impact.” HAR 13-5-30(c)(4).</p>	discussed the criteria contained in HAR § 13-5-30(c)(4) at length. See HO FOF 508-897.
242.	Unpaginated	<p>And; A plain reading of the entire relevant statute and regulation makes clear that conservation of natural resources is the purpose of conservation districts. The Conservation District is the most restrictive of the four land use classifications authorized under Hawai'i's Land Use Law, Chapter 205. The Conservation District is defined to include:</p> <p>areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Haw. Rev. Stat. § 205-2(e).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Inaccurate/False. HO COL 86 contains this exact language from HRS § 205-2(e).</p>
243.	Unpaginated	<p>The law provides for distinct districts, such as urban, agriculture, and conservation, because these land areas have characteristics suited to each district designation; the activities allowed in each district are consistent with characteristics of those land areas. Conservation districts are designated to provide for public uses and purposes (i.e. protecting watershed zones, conservation, public parks, open spaces, protection of</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>HO COL 94 is accurate and supported by the evidence in the record and the citations therein.</p>

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244.	Unpaginated	<p>endangered indigenous and endemic species, and protection of historic resources etc.). Haw. Rev. Stat. § 205-2</p> <p>UH witness Perry White gave testimony regarding criterion (1). He is the principal planner for Planning Solutions. Planning Solutions in turn works for the Carlsmith and Ball law firm, who is representing the UHH. Mr. White cannot make an unbiased decision about whether the proposed TMT can meet Criteria (1) nor any of the other 7 criteria in 13-5-30c. He is not a lawyer nor does he have any legal training in order to make a legal conclusion. TR V1 p104; 6-13, p139; 15-25. Perry White Witness Statement 1.</p> <p>Gunther Hasinger who also testified on behalf of UHH and on Criterion 1, is not a land manager, planner, lawyer, or expert on conservation districts. UHH Witness Statement 6 WDT.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations.</p> <p>HO 1015 is accurate and supported by the evidence in the record and the citations therein.</p>
245.	Unpaginated	<p>CRITERIA 2; HAR 13-5-30(C)(2): "THE PROPOSED LAND USE IS CONSISTENT WITH THE OBJECTIVES OF THE SUBZONE OF THE LAND ON WHICH THE USE WILL OCCUR"]</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
246.	Unpaginated	<p>Here again, the Hearing officer leaves critical out information;</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
247.	Unpaginated	<p>For example; The Hearing Officer misstates the language of HAR 13-5-24(c). Astronomy facilities are an <i>identified</i> use, not a <i>permitted</i> use. They can be permitted if an only if the Applicant can show that they have met the eight criteria under HAR 13-5-30 (C).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Inaccurate/False. HO FOF 430 is accurate and supported by the evidence in the record and the citations therein.</p> <p>See <i>also Kilakila</i>, 138 Hawai'i at 405, 382 P.3d at 217 (2016) (recognizing that astronomy is a "specifically permitted</p>

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248.	Unpaginated	<p>On page 91 hearing Officer clearly minimizes the qualifications of one of KAHEA'S witnesses. H.O FOF 490 she states; "... Among the many reasons Dr. Abad feels (emphasis added) she is qualified to offer such an opinion are: . . ."</p> <p>Although she cites some of her credentials, H.O clearly treats this witness less than an expert in her field and does not give her testimony the weight it deserves in making her recommendations to the board. See B08a Kehaunani Abad Phd. WDT and B08b Kehaunani Abad, Phd CV. Her live testimony was heard on January 9, 2017.</p>	<p>[use] in the general subzone of the conservation district")</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations.</p> <p>Unsupported/unsubstantiated.</p>
249.	Unpaginated	<p>UH/TMT/TIO offered no rebuttal witnesses or testimony to contravene Dr. Abad's testimony, therefore the HO did not weight her testimony properly.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations.</p> <p>Inaccurate/False. The University offered the testimony of Perry White to support the conclusion that the proposed land use is consistent with the objectives of the Resource Subzone.</p> <p>HO FOF 492 is accurate and supported by the evidence in the record and the citations therein.</p>
250.	Unpaginated	<p>CRITERIA 3, HAR 13-5-30(C)(3): "THE PROPOSED LAND USE COMPLIES WITH THE PROVISIONS AND GUIDELINES CONTAINED IN CHAPTER 205A, HRS ENTITLED "COASTAL ZONE MANAGEMENT</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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251.	Unpaginated	<p>WHERE APPLICABLE'</p> <p>In Hearing Officers FOF # 499 on pg. 93 of her recommendations, she chooses to ignore Mauna Kea Anaina Hou exhibit B0at. This exhibit clearly states that chemicals used in the washing of the mirrors and its waste water are considered hazardous waste. This is just one of many of the examples of the H.O not taking into consideration any petitioners evidence when making her recommendations.</p>	<p>Unsupported/unsubstantiated.</p> <p>Exhibit B0at not in evidence.</p> <p>HO FOF 499 is accurate and supported by the evidence in the record and the citations therein.</p>
252.	Unpaginated	<p>CRITERIA 4, HAR 13-5-30(C)(4): "THE PROPOSED LAND USE WILL NOT CAUSE SUBSTANTIAL ADVERSE IMPACT TO EXISTING NATURAL RESOURCES WITHIN THE SURROUNDING AREA, COMMUNITY OR REGION."</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
256.	Unpaginated	<p>There are so many exclusions here in the Hearing Officers recommendations (FOF 508-897) it's hard to know where to start. First the H.O relies heavily on the opinions of witnesses for the Applicant who are heavily biased. The HO did not give due weight to other witnesses who are Hawaiian, some cultural practitioners some not, that testified extensively on how this project if built would cause adverse, substantial and significant impact to a place of worship and cultural practice that has gone on for generations. The H.O couldn't have possibly come to the conclusion that there will be no substantial, adverse, and/or significant impact to the conservation district. For instance, on pg. 96 at FOF 521, Dr. Stone talks about the TMT being a world class telescope. This has no bearing on substantial adverse impacts to this conservation district - the natural resources, cultural resources, the historic district, historic sites, the aquifer, view planes, flora/fauna, burials etc.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations.</p> <p>Mischaracterization. HO FOF 537-40, 558-60, 608, 618-20, 626-29, 660-70, 685, 692, 694, 698, 700-1, 725, 731-32, 736, 753, 758-62, 770-829, 853, 865-73, 875-80, 894-96 demonstrate the extent to which the Hearing Officer considered the testimony and evidence presented by Petitioners and Opposing Intervenor.</p> <p>Mischaracterization. The Hearing Officer's conclusion that the TMT Project will not have a substantial adverse impact</p>

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257.	Unpaginated	FOF 520 on pg. 96 the H.O tries to unsuccessfully, to describe how the proposed TMT project would "provide significant scientific, economical, and educational benefits, which are material, substantial, and highly unique". There is no logical or rational way to read this criteria so that it pertains to these alleged benefits. This kind of assertion that undermines the real conservation goals, spirit and letter of the law. HAR 13-5-30(C)4.	<p>to existing natural resources within the surrounding area, community, or region was also based, in part, on the FEIS, CDUA, and the testimony of Dr. Smith (see HO FOF 526-534), Dr. Sanders (see HO FOF 550-553), Mr. Hayes (see HO FOF 554), Mr. Nees (see HO FOF 565, 601), Mr. Rechtman (see HO FOF 566, 604), and Mr. Nance (see HO FOF 855).</p> <p>HO FOF 897 is accurate and supported by the evidence in the record and the citations therein.</p> <p>Unsupported/unsubstantiated.</p> <p>UH FOF 520 is accurate and supported by the evidence in the record and the citations therein.</p> <p>Mischaracterization. The Hearing Officer's conclusion that HAR § 13-5-30(c)(4) is satisfied was based on the finding that the TMT Project will not have a significant adverse impact on biological resources (see HO FOF 562), on archaeological and historic resources (see HO FOF 670), on cultural practices (see HO FOF 833), on visual resources (see HO FOF 854), and on water resources (see HO FOF 882).</p> <p>See also <i>Kilakila</i>, 138 Hawai'i at 405-06,</p>

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258.	Unpaginated	<p>The Petitioners' position is: the conservation district rules do not allow for land uses that have a substantial impact. The TMT FEIS concedes that the cumulative impact of past, present, and reasonably foreseeable telescope activities is already significant, substantial, and adverse. Ex 309, FEIS Vol 1, p. S-8, S-9 on cumulative impact. The TMT would contribute to this existing state of substantial adverse impact. The fourth criterion, however, prohibits land uses that cause substantial adverse impact. Because the BLNR and the University have failed to address the existing substantial impact on the mountain's resource, it is improper to consider any new projects that would contribute to that substantial impact in anyway. The Applicant UHH has not put forth any credible reliable or substantive countervailing evidence to support their claims.</p>	<p>382 P.3d at 217-18 (2016) (providing that BLNR can consider scientific, economic and education benefits under HAR § 13-5-30(c)).</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Inaccurate/false. The University explained that it envisions a future of sustainable and responsible astronomy on the summit of Mauna Kea, which includes decommissioning and deconstruction of observatories, eventually reducing the number of telescopes in the summit region and improving the physical and environmental aspects of the region. See HO FOF 940-41.</p> <p>UH FOF 955 is accurate and supported by the evidence in the record and the citations therein.</p>
259.	Unpaginated	<p>While all of the current facilities are in the summit region areas described as Areas A, B, and C, none are in Areas D, E and F. MP2000 p.IX-23-5. The Applicant admits that the cumulative effects of astronomical development and other uses in the summit area of Mauna Kea (areas A, B, and C) have resulted in impacts that are considered substantial, significant and adverse. Ex.A-3 p. 3-219. The Applicant proposes to expand astronomical development (one of the world's largest telescopes) into an area (E) that is far (1000 meters or 3/4 mile) from the developed infrastructure, in an alpine stone desert discrete from the summit cinder cones, with flora and fauna</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.</p> <p>Inaccurate/false. There are no unique flora or fauna within the proposed project site. See HO FOF 529-536.</p>

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260.	Unpaginated	<p>unlike those at the summit, in a Historic District, with an Access Way impacting a Kukahau'ula, (a Traditional Cultural Property) Thus creating a significant increment of impact to an area that is not at all built upon. Ex.A-3 p. 3-219</p> <p>The proposed TMT Project would cause substantial, significant, and adverse impacts to historic and traditional cultural properties (TCPs) contained within the Mauna Kea Summit Region Historic District (MKSRRHD). The former Chairwoman, Laura Thielen had this to say:</p> <p>“It is our view that the effect of astronomy development on cultural resources and on the landscape of Mauna Kea has been significant and adverse. While a project such as the TMT can bring new resources into play that may mitigate certain cultural impacts . . . we believe the project will increase the level of impact on cultural resources, which remains significant and adverse. “Laura Thielen, Chair, DLNR Ex A-004 FEIS Vol II p 17 of 531. She also states the view plane analysis has been downplayed in the DEIS. pg 20 of 532. Also, Chairwoman Thielan cites the DEIS saying the TMT will result in a small incremental increase - she does not agree that “the impact of the project can be characterized as a “small incremental” increase. The TMT will result in a 50% increase in astronomy related personnel in the summit area, will consume over 6 acres in its construction, and will result in the movement of almost 100,000 cubic yards of lava material. This project clearly represents more than a “small incremental” increase in environmental and cultural impacts” Pg 21-22 of 531.</p>	<p>UH FOF 897 is accurate and supported by the evidence in the record and the citations therein.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Misleading. Presented out of context on the basis that the quoted comments were provided in response to the earlier, draft EIS. In addition, the Applicant responded to said comments by adding Section 3.2.3 into the Final EIS. Ex. A-4/R-4, FEIS Vol. 2, p. 17.</p> <p>Misleading. Presented out of context. In response to the comment, a visualization of the TMT Observatory from a viewpoint near the Keck Observatory, looking toward Haleakalā was included in the FEIS and the FEIS discusses that in addition to being visible to the residents within the TMT viewshed, the TMT Observatory will be visible to other island residents and visitors when they travel within the TMT viewshed. Ex. A-4/R-4 at 21.</p> <p>UH FOF 897 is accurate and supported by the evidence in the record and the citations therein</p>
261.	Unpaginated	The TMT would be the first observatory to be constructed at	Fails to comply with Minute Order No.

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		<p>the elevation and the specific zone on the north plateau that includes several hundred shrines and other religious structures. Likewise, the proposed TMT observatory would drastically alter the surrounding environment and cause visual and alignment obstructions for these many cultural and religious sites, thus adversely impacting the constitutionally protected traditional and cultural and religious practices exercised by Hawaiian Petitioners. R-5 p. 735 of 1,110 pages.</p>	<p>103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.</p> <p>False/inaccurate. The TMT Project will not have a substantial adverse impact on the environment (<i>see</i> HO FOF 526-670) or on visual and aesthetic resources (<i>see</i> HO FOF 834-854).</p> <p>Misleading. No known traditional and customary practices are associated with the proposed TMT site. <i>See</i> HO FOF 696.</p> <p>UH FOF 897 is accurate and supported by the evidence in the record and the citations therein</p>
262.	Unpaginated	<p>Additionally, while the cumulative impacts of astronomical development to the summit area (App FOF 439) are undisputed, the cumulative impacts to the alpine ecosystem have yet to be determined (Ex.A-3 p. 3-219).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
263.	Unpaginated	<p>“Cumulative” is defined as “made up of accumulated parts; increasing by successive additions.” Webster’s Dictionary, 2011. This definition is consistent with HAR §11- 200- 2, which defines “cumulative impact” as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person</p>	<p>Citation does not support exception.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable. Incomplete. The definitions contained in the administrative rules sufficiently define a “cumulative impact.” As such, dictionary definitions</p>

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		undertakes such other actions.”	<p>are inapplicable.</p> <p>Mischaracterization. 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. <i>See, e.g.</i>, HO COL 183.</p>
264.	Unpaginated	<p>UH/TMT’s attempts to limit review of the project solely to the TMT’s discrete contribution to cumulative impacts. HAR §13-5-30(c)(4) is concerned with the effects of proposed actions on natural resources and not with tracking individual contributions from different impact sources. UH/TMT’s attempt to justify additional 40 incremental impacts to a district already overburdened defies logic, for cumulative impacts necessarily results from incremental impacts. Here again, the Hearing Officer excludes probative, credible, and reliable evidence provided by Kehau Abad (Bo8a WDT), Kehau Abad TR January 9, 2017.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations.</p> <p>Mischaracterization.</p> <p>False/Inaccurate.</p> <p>Unsupported/Unsubstantiated.</p> <p>HO FOF 897 and COL 183 are accurate and supported by the evidence in the record and the citations therein.</p>
265.	Unpaginated	<p>Instead, H.O.relies only on UHH archeologists Nees UHH Witness statement 11, Amended WDT for Nees (submitted after he testified), TR December 5, 2016, and Rechtman TIO witness WDT C-11, TR December 20, 2016. Nees testified that he had gotten his Written Direct Testimony from a template Sara Collins had provided him. Sara Collins is the archeologist</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations</p>

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		<p>UHH used in the remanded contested case hearing.</p> <p>“From a cumulative perspective, the impact of past and present actions on cultural, archaeological, and historic resources is substantial, significant, and adverse: these impacts would continue to be substantial, significant, and adverse with the consideration of the [TMT] Project and other reasonably foreseeable future actions.” (Ex A003/R-3 TMT FEIS, S-8).</p> <p>HAR 11-200-12 states: “In Determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short term and long term effects of an action. In most instances, an action shall be determined to have significant impact if it: (13) Requires significant energy consumption.” (HRS 11-200-12 (Significance Criteria))</p> <p>The TMT will have significant power requirements. (Ex B.70 CDUA Staff Report Feb 25, 2011, p.45)</p>	<p>Misstates testimony. Needs testified that he was provided the written direct testimony Sara Collins had submitted in the previous contested case hearing as an example of how to format his own written direct testimony. While he used the format, Needs did not quote word for word portions of Sara Collins testimony and composed his own sections. <i>Tr.</i> 12/5/16 at 180:22-181:13.</p> <p>See Response to Exception 263 regarding cumulative impacts.</p>
266.	Unpaginated		<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Misleading. Presented out of context. The FEIS further clarifies, however, that “the average power usage at the TMT Observatory is likely to be similar to the average power usage at the Keck observatory, 350 kW, because the two facilities will be similar in size when you consider both of the Keck domes.” Ex. A-3/R-3 at 3-170</p>
267.	Unpaginated	The Applicant’s witnesses, including planners White and Hayes and project manager Sanders (who have limited, if any, educational background in biology, archaeology, or Hawaiian	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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		<p>culture) and witnesses Nees, Nance, Reichtman , (whose specific knowledge and testimony regarding the TMT site were extremely limited) could not provide probative, reliable, substantial, and credible evidence and relevant exhibits to demonstrate that the TMT project would not, in fact, cause and expand the substantial cumulative impact to existing plants, cultural, historic, recreational sites, geologic sites, scenic areas, watersheds and ecologically significant areas. Applicant's witness, Dr. Smith, through his authored exhibit, Ex B.64, Appendix D1, wrote:</p> <p>“The long-term stability of the lichen and moss communities is dependent on <i>minimizing disturbance</i> in the area. The colonization rate of species is extremely low.” (Emphasis added)</p>	<p>Misleading. White's area of expertise is land use planning and analysis. <i>See</i> Tr. 10/20/16 at 45:5-7. White's educational background and experience support the finding that he is a credible witness with regard to his area of expertise. White graduated with a Master of Regional Planning from the University of Pennsylvania and has over four decades of planning and environmental experience in Hawai'i (Ex. A-30). Likewise, Sanders was called to testify regarding the design of TMT. <i>See</i> Tr. 1/3/17 at 17:18-22. Sanders' educational background and experience support the finding that he is a credible witness with regard to that subject-matter. Sanders has been the project manager for TMT since 2004 and has his Ph.D. from M.I. T (Ex. C-2).</p> <p>False/inaccurate. Nees was the Field Director for archaeological inventory surveys by Pacific Consulting Services, Inc. in the Mauna Kea Science Reserve, the Mauna Kea Access Road Corridor, and Hale Pohaku, as well as the archaeological survey of the Mauna Kea Ice Age Natural Area Reserve, and has led annual monitoring inspections of the historic properties identified within the lease lands since 2011 (WDT Nees at 1); Nance has been previously qualified as an</p>

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			<p>expert in hydrology and water resource engineering on a number of occasions, reviewed the sections of the FEIS addressing water, wastewater, and drainage, and had done work on the Keck Outrigger Telescopes project which involved research and water sampling (WDT Nance at 1); Rechtman prepared the Archaeological Monitoring Report for the proposed TMT, Archaeological Monitoring Report for the Construction of a Graded Site Pad for the TMT Groundbreaking Ceremony, Field Reconnaissance of TMT Development Site in July 2015 and again in December 2015 (Ex. C-11)</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations</p>
268.	Unpaginated	<p>Witnesses Hansen (WDT B10a/CV B10b), (TR January 19, 2017), Ward (B17a WDT (TR Jan 1, 2017), Abad (WDT B08a/CV B08b), (TR Jan 9, 2017), Kahakalau (WDB06a/ CV B06b), Pisciotta who is a cultural practitioner (WDT B01a), Teale who is a cultural practitioner (WDT B15a/ CV B15b), Dr. Meyers (WDT B05a/CV B05b), Peter Mills (WDT B12a/CV B12b), Flores who is a cultural practitioner (WDT B02a), and Case who is also a cultural practitioner (WDT B21a), provided probative, reliable, substantial, and credible evidence and admit- ted relevant exhibits to demonstrate that the TMT project would, in fact, cause, expand and add to the substantially adverse cumulative impact to existing plants,</p>	<p>fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations</p> <p>Unsupported/unsubstantiated</p> <p>HO FOF 897 is accurate and supported by the evidence in the record and the citations therein.</p>

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269.	Unpaginated	<p>culturally historic sites, recreational sites, geologic sites, scenic areas, watersheds, ecologically significant areas, and cultural practices. This is by no means a complete list of witnesses that provided testimony and entered relevant, probative, credible, and reliable evidence to this case that was not taken into consideration. The Applicant provided no countervailing, reliable or credible evidence witnesses to justify not taking into account or over riding witnesses or evidence provided by the Petitioners in this case.</p> <p>The HO in this case cannot possibly justify giving more weight to planners, project managers, astronomers, or board of directors for TMT who have heavy biases and/or who are paid by the law firm who represents the developer than a native Hawaiian cultural practitioner who would be experiencing the adverse effects of this proposed project. Especially when they UH/TMT/TIO provided no rebuttal or countervailing testimony to undermine or discredit the Practitioners or others testimony.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations</p> <p>Unsupported/unsubstantiated</p> <p>HO FOF 897 is accurate and supported by the evidence in the record and the citations therein.</p>
270.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.</p>
271.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
272.	Unpaginated	<p>It is our position that the Cumulative impact means that any additions habitat loss cannot be anything but significant,</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>substantial and adverse and, among the reasons that UH/TMT had to press beyond an EA to an EIS in the environmental review process was that the project possibly (1) “[i]nvolves an irrevocable commitment or loss or destruction of any natural or cultural resource” and (2) “[s]ubstantially affects a rare, threatened or endangered species, or its habitat.” (UH Environmental Impact Statement Preparation Notice, September 23, 2008, p. iii, quoting HAR § 11-200-12.)</p>	<p>Unsupported/unsubstantiated</p> <p>Not in evidence</p> <p>See Response to Exception 263 regarding cumulative impacts.</p> <p>HO FOF 897 is accurate and supported by the evidence in the record and the citations therein.</p>
273.	Unpaginated	<p>The FEIS addresses adverse impacts on Wēkiu bugs in a combined six acres area of the Northern Plateau and the TMT Access Way. (Ex A003/R-3 FEIS Vol. 1, p. 3-71). Of particular concern is the substantial adverse impact of the TMT access road, which passes between two areas of Wēkiu bug habitat, Pu‘u Hau‘oki and Pu‘u Poli‘ahu, and considering the restricted range of Wēkiu bug habitat, much of which has already been destroyed by BLNR’s mismanagement, the loss of any additional habitat area cannot be anything but significant.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/unsubstantiated</p> <p>HO FOF 179 (finding, <i>inter alia</i>, that Area E is not considered good wēkiu bug habitat and Project-related disturbance will be minimized by using an existing roadway for access and installation of utilities); HO FOF 318 (same); HO FOF 359(c) (same); 546-550 (same); 552.</p> <p>Not credible. HO FOF 541 (noting the FWS formally removed the wēkiu bug as a candidate from the Federal Endangered Species Act stating threats to the wēkiu bug did not put the species in danger of extinction throughout all or a significant portion of its range).</p>
274.	Unpaginated	<p>We incorporate by reference also all of the Parties named</p>	<p>Fails to comply with Minute Order No.</p>

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		above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
275.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision. Here again the HO dozen not consider, take into account or properly weight the evidence or witnesses presented by the Pro Se Petitioners. For example many of the witnesses testified to how the Location of the TMT will so directly impact their practice and possible extinguish some of the Native Hawaiian Traditional and Customary cultural and religious practices. The HO does not consider or rule on those witnesses or their testimony.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 9 regarding credibility determinations. See Response to Exception 9 regarding extent to which the Hearing Officer considered the testimony of Petitioners and other opposing parties.
276.	Unpaginated		Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 9 regarding credibility determinations. See Response to Exception 9 regarding extent to which the Hearing Officer considered the testimony of Petitioners and other opposing parties.
277.	Unpaginated	Location: The Applicant contends that locating the TMT project on the northern plateau minimizes the substantial impact of the project on visual and scenic re-sources. The Applicant has not shown that locating the TMT on Kukahauala Ridge would have been desirable or even possible. Indeed, the Cultural Impact Assessment (CIA) specifically “recommended that the TMT Observatory project be built on a recycled site of an outdated telescope on the summit instead of Area E”. Ex. A-4, p. 204-5. Instead of considering this alternative location, the Applicant summarily dismissed this recommendation as “not deemed feasible.” Ex. A-3, p. 3-32. The fact is, the Applicant’s siting process only considered “Area E” on the northern plateau. Ex A-3, p. 4-5. Because it is unlikely that the five-acre	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Mischaracterization. False/Inaccurate. Not supported by the reliable, probative and substantial evidence. See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.

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		<p>TMT project could have been located on the summit ridge, the fact that it is not proposed to be located there cannot be claimed as a mitigation measure.</p>	<p>HO FOF 950 (Prof. Fujikane, an English professor and a witness for KAHEA, opined that locating the TMT Project on the Northern Plateau should not be considered a mitigation measure because there was no room for the TMT Project on the summit. Tr. 1/9/17 at 225:25-226:7. This statement is in direct contradiction with the credible testimony of Hayes that the TMT Project could have been considered for the summit. See Tr. 10/25/16 at 209:21-210:7. Her testimony also ignores the Master Plan which specified Area E as a preferred location for a next generation large telescope because of the minimum impact on existing facilities, wēkiu bug habitat, archaeological sites, and viewplanes while providing suitable observation viewing conditions. Ex. C-2 (WDT Sanders) at 4.).</p> <p>HO FOF 951 is accurate and supported by the evidence in the record and the citations therein.</p>
278.	Unpaginated	<p>Size: The Applicant has not shown that the size of the project would reduce the significant impact of the project as proposed to a level that is less than significant. The fact that the project designers could have engineered a bigger, structure but didn't, does not prove that the significant impacts of the project that is proposed will be minimized to a level that is less than</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/unsubstantiated. Hawai'i law requires the "mitigation" of impacts; it does not require that impacts be</p>

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		<p>significant. Without evidence, the Applicant cannot prove that "it could have been worse" is any mitigation at all.</p>	<p>eliminated altogether. <i>See</i> HO COL 240-246.</p> <p>Substantial and credible evidence was presented demonstrating that the size, dimensions and dome structure were conceived to minimize the structure's impacts and to enhance the natural beauty of the surround areas to the extent feasible. <i>See</i> HO FOF 326-27, 646, 841, 850, 928, 930.</p>
279.	Unpaginated	<p>Money: The promise to pay "substantial rent" is not a mitigation measure. Not only does the claim fail to consider fair market rent, it also pits compliance with one law against another. Pursuant to HRS 171-17 and -18, fair-market rent is required to be paid into the general fund for the private use of public lands. All telescope facilities should be paying rent to the general fund, regardless of any other re-quirements or pre-requisites for permission to be on Mauna Kea. It is improper for the DLNR staff to suggest that compliance with this requirement – paying fair market rent – mitigates the substantial adverse impact of the proposed TMT project "because management costs money." (Ex. B-33). The requirement to pay rent is not a management fee, it is not a fine, and it is not a rationalization for authorizing a land use that otherwise fails to comply with the basic requirements for a permit. If a proposed land use has unmitigated substantial adverse impacts, then its CDUA cannot be granted, in which case the BLNR never reaches the question of what would be fair-market rent for that land use.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 220, 269 (regarding payment of rent under the TIO Sublease).</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Mischaracterization. Substantial and credible evidence demonstrate that the funds to be generated from the TMT Project is just one of the Project's many mitigation measures. <i>See</i> HO FOF 316-345.</p>
280.	Unpaginated	<p>The additional offers of money for educational services and workforce development are completely irrelevant to the</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>BLNR's consideration of whether this CDUA complies with the eight requirements for a permit. No matter how many jobs or classes the Applicant promises to provide in exchange for permission to build in the conservation district, the BLNR cannot base its decision on such factors for they are outside the confines of the eight criteria for a permit.</p>	<p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 189-192 (regarding the BLNR's ongoing supervision and management over Conservation District lands); <i>see also</i> HO COL 117(e) (concluding that the Hawaii Supreme Court held in <i>Kilakila 'O Haleakalā v. Bd. of Land and Natural Resources</i>, 138 Hawai'i 383, 382 P.3d 195 (2016) that the consideration of relevant scientific, economic, and educational benefits are proper in the context of a CDUA as such benefits impact long-term sustainability and public welfare).</p>
281.	Unpaginated	<p>The array of additional mitigation measures offered by the Applicant (furnishing items with a sense of place, ride-sharing, paving some roads while remediating others, monitoring Wēkiu bugs, painting facilities, complying with laws, etc.) do not directly address the harm caused by the proposed TMT or telescope activities in general.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. The University has proposed both project-level and area-wide mitigation measures. These actions go beyond simply addressing the impact of the TMT Project in a vacuum. They will substantially mitigate existing area adverse impacts of the astronomy sites on Mauna kea as a whole. <i>See, e.g.</i>, HO FOF 316-345.</p>
282.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part</p>

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283.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	<p>of the record in this case. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
284.	Unpaginated	<p>UH/TMT/TIO Findings at COL 386-391 p. 209 claims Petitioners waived any challenges to the Final Environmental Impact Statements (FEIS). Without waiving our rights regarding the State level FEIS, in any way, the TMT is a federal undertaking that has received substantial federal funds from the federal government (i.e. NSF). Therefore we maintain that the TMT Project meets the standards of being a undertaking that is required to follow the National Environmental Policy Act (NEPA) along with other Federal laws such as the NHPA Section 106 Consultation Process.</p>	<p>False/inaccurate. This proceeding is not an EIS challenge under HRS Chapter 343; MKAH's ability to make such a challenge expired long ago, and they cannot reopen the FEIS approval process through improper arguments under the statutes and rules governing the EIS process. This proceeding is entirely governed by the applicable constitutional law and the Conservation District rules that are genuinely at issue here</p>
285.	Unpaginated	<p>UH/TIO COL 427-441 at p. 214 that NHPA Section 106 Review/ National Environmental Policy Act does not apply to the either the TMT or the TIO.</p>	<p>False/inaccurate. HO COL 434-451 are accurate and supported by the evidence in the record and the citations therein (concluding that NEPA is irrelevant and immaterial to the issue before the BLNR). Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
286.	Unpaginated	<p>The UH/TMT/TIO Condition (1) of their proposed Decision and Order states: "UH Hilo, shall comply with all applicable statutes, ordinances and rules, regulations and conditions of the Federal, State, and County governments and applicable parts of HAR § 13-5 et seq. (Emphasis added) See UH/TIO Proposed Decision and Order Conditions (1) and (24) at p. 221 and 222 respectively.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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287.	Unpaginated	<p>As early as 2009 we requested that the TMT begin Consultation under the National Historic Preservation Act begin. MKAH has previously been recognized by the Advisory Council on Historic Preservation (ACHP) as a Native Hawaiian Organization (NGO) for the purpose of consulting regarding the Traditional Cultural Properties (TCP) of Mauna Kea sometime around 2003 during the NASA/KECK Outriggers Project.</p> <p>We provided comments part of which are included below from Ex. B.01o under Section III:</p> <p>“III SPECIFIC ISSUES</p> <p>The TMT Draft EIS is filled with inaccuracies, misleading and/or false information and is wholly inadequate</p> <p>1. TMT claims no federal funding used for Project The TMT DEIS states,</p> <p>Federal rules, such as the National Environmental Policy Act (NEPA), do not apply to the Project, no Federal agency is involved in the Project, no Federal Funding is being used for the Project, and the Project does not use Federal Land.” (TMT DEIS at p. 3-105, emphasis added)</p> <p>[T]he TMT project has received substantial federal funding from the National Science Foundation (NSF). NSF Award 0443999 confirms this. The NSF Award also confirms that \$18 million federal tax dollars were awarded to the TMT and Giant Magellan Telescope (GMT), for “(1) The Design and development phase for a 30-meter diameter segmented-mirror, optical/infrared telescopes, the Thirty Meter Telescope (TMT).” Further confirmation of federal funding used by TMT is found at the link below, (See Executive Summary second paragraph) (http://www.noao.edu/dir/spo/GSMT-annual-report08.pdf).” See Ex. B.01o under Section III:</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p>

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288.	Unpaginated	<p><i>See also</i> UH/TIO Proposed Decision and Order Conditions (1) and (24) at p. 221 and 222 respectively.</p> <p>NEPA is the nation's federal law for protecting the environment.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p>
289.	Unpaginated	<p>The NEPA rules state in relevant part:</p> <p>NEPA is not to generate paper work, even excellent paper work, but to foster excellent action... The NEPA process is intended to help public officials make decision that are based on the understanding of the environmental consequences, and take actions that protect, restore and enhance the environment.” (40 CFR § 1500.1, 1502.1)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p>
290.	Unpaginated	<p>The National Science Foundation (NSF) funding of the project constitutes a significant federal undertaking. Neither NSF as the funding agency nor the TMT as the receiving agency has prepared a federal level environmental review document (i.e. an Environmental Assessment (EA) or Environmental Impact Statement (EIS)) pursuant to the National Environmental Act, as amended 1969, relevant federal rules and regulations, and legal precedent (court made law).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p>
291.	Unpaginated	<p>Listing the University of Hawai'i at Hilo (UHH)--a state agency, as the proposing agency on the TMT DEIS does not allow the Project to escape federal legal requirements, it means either the UHH will be “federalized” for the purpose of fulfilling NEPA and the NHPA, or will cause UHH to be enjoined in any legal challenges brought against this process.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p>
292.	Unpaginated	<p>The TMT is proposing to use Mauna Kea summit lands, which are eligible for listing on the National Historic Register, yet</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
		<p>TMT has not begun Section 106 consultations under the National Historic Preservation Act (NHPA). Again, we made formal requests in our scoping comments (2009) calling for NHPA, Section 106 Consultation to begin. The U.S. District Court (Hawai'i) affirmed, NHPA mandates that a federal agency "shall consult . . . with any Native Hawaiian organization that attaches religious and cultural significance" to properties eligible for the inclusion on the National Register." <i>See (OHA v. NASA, Civil No. 02-00227 (SOM/BMK), 2003, p. 18 of 39)</i></p>	<p><i>See</i> Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p>
293.	Unpaginated	<p>The State Historic Preservation Office, TMT DEIS review letter dated June 26, 2009, states: Agencies Involved: Section 2.0 states that the TMT Observatory Corporation is a private non-profit partnership. Your memo dated May 28, 2009 notes that the National Science Foundation released the DEIS. There is no mention of the NSF in the DEIS, and we presume that is the case. If the NSF is involved, this project is subject to review under the National Historic Preservation Act, Section 106 (36 CFR 800). TMT representatives appear to understand what federal laws require, yet continue to ignore them. (Please see TMT comments below); "The federal government, federal agencies, they make that decision. We don't. And what triggers NEPA (National Environmental Protection Act) is a significant federal action," said Michael Bolte, director of California's Lick Observatory and member of the TMT Board of Directors. See Ex. B-01o The request for Section 106</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Inaccurate/False. Section 106 consultation was not required for the TMT Project. HO FOF 567-569 (regarding consultation under NHPA Section 106 that is not required for the TMT Project); HO COL 434-451 (same). Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
294.	Unpaginated	<p>When asked Ed Stone of the TMT Project stated the following:</p>	<p><i>See</i> Response to Exception 284 regarding inapplicability of NEPA to this proceeding. <i>See</i> Response to Exception 293 regarding inapplicability of Section 106 to this proceeding.</p>
295.	Unpaginated		<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
296.	Unpaginated	<p>12.19.16 Edward Stone Vol 18 page26:16-25 (questions from Kealoha Pisciotta)</p> <p>16 Q. Has your staff informed you that Native Hawaiians attach religious and cultural significance to the historic properties within the Historic District of Mauna Kea?</p> <p>20 A. I'm aware of that, yes.</p> <p>21 Q. Are you aware that the advisory council on Historic Preservation is a council that is made up of presidential appointees and it is a federal agency responsible for ensuring federal agencies and/or federal undertakings comply with the National</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
297.	Unpaginated	<p>12.19.16 Edward Stone Vol 18 page27:1-25 (questions from Kealoha Pisciotta)</p> <p>1 Historic Preservation Act?</p> <p>2 MR. ING: Objection, Your Honor, this is beyond the scope and lacks foundation.</p> <p>4 HEARINGS OFFICER AMANO: Could you set the foundation and also perhaps tell me where we're going with this?</p> <p>7 MS. PISCIOTTA: Well, the CDUA requires that all county, state and federal requirements and laws be met and followed. So we believe it's relevant, and we believe that he's the witness who can talk about it because he is Executive Director of TMT, and so really the buck has to stop with someone and I think it's him.</p> <p>15 HEARINGS OFFICER AMANO: All right. So could you then set the foundation? In other words, you have to establish that he knows about that.</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
298.	Unpaginated	<p>17 MS. PISCIOтта: Sure, let me try.</p> <p>18 Q. Are you aware that the NASA Keck</p> <p>19 Observatory did complete Historic Preservation and</p> <p>20 National Environmental Policy Act review processes?</p> <p>21 A. I'm sorry, what is the question?</p> <p>22 Q. Are you aware that the TMT -- oh, sorry --</p> <p>23 that the NASA and Keck, for example, did have to</p> <p>24 comply with the National Environmental Policy Act and</p> <p>25 the Historic Preservation Act review processes?</p> <p>12.19.16 Edward Stone Vol 18 page28:1-25 (questions from Kealoha Pisciotta)</p> <p>1 A. I don't remember.</p> <p>2 Q. Do you remember that the court had stated</p> <p>3 that your EA and finding of no significant impact was</p> <p>4 incorrect?</p> <p>5 MR. ING: Objection, Your Honor, beyond the</p> <p>6 scope of his direct.</p> <p>7 MS PISCIOтта: It's really not because he</p> <p>8 was in charge of the Keck Observatories during the</p> <p>9 period in which this lawsuit occurred. And he also</p> <p>10 was in charge of the -- he was in the lawsuit, so I</p> <p>11 think he should know NASA, Sean O'Keefe (phonetic)</p> <p>12 and University of California and Caltech were</p> <p>13 involved as well.</p> <p>14 So I'm just trying to establish that he</p> <p>15 knows. It's in 2003 -- that's part of his testimony</p> <p>16 that he was this person in 2003 and CARA does oversee</p> <p>17 Keck Observatories, and that was their project?</p> <p>18 HEARINGS OFFICER AMANO: Mr. Ing.</p> <p>19 MR. ING: The Keck project is not at issue</p> <p>20 here. If she wants to ask with regard to NSF and the</p> <p>21 Historic Preservation Council, she can ask those</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
299.	Unpaginated	<p>22 questions of him with regard to the TMT project. 23 That's what I'm objecting to. She is asking the 24 issues with regard to the Keck project. 25 MS. PISCIOTTA: He objected to the earlier 12.19.16 Edward Stone Vol 18 page29:1-25 (questions from Kealoha Pisciotta) 1 question, so I'm trying to lay foundation. He should 2 be aware of because he's been involved in the exact 3 same processes regarding federal review which is on 4 of the requirements of the CDUP that they have to be 5 in compliance with federal as well as state and 6 county. 7 HEARINGS OFFICER AMANO: How does that tie 8 to TMT? 9 MS. PISCIOTTA: Because TMT has not 10 conducted those same federal level review that he had 11 to go through earlier. 12 HEARINGS OFFICER AMANO: I'll overrule the 13 objection, allow you to lay your foundation, please. 14 Q. (By Ms. Pisciotta): Are you aware that the 15 TMT has not conducted either the federal level 16 environmental review or Historic Preservation review 17 process? 18 A. Yes. 19 Are you aware that the federal review 20 process would include compliance with National 21 Environmental Policy Act? 22 A. Federal government is not involved in the 23 way that in fact requires that review. 24 A. And they're not -- okay. I'm going to 25 quote something for you and then ask you another</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
300.	Unpaginated	12.19.16 Edward Stone Vol 18 page30:1-25 (questions from	Fails to comply with Minute Order No.

Exception #	Page	Exceptions/Response	Comment
		<p>Kealoha Pisciotto)</p> <p>1 question.</p> <p>2 The National Historic Preservation Act as</p> <p>3 amended in 1992 defines an undertaking which means</p> <p>4 project activity or program, funded in whole or in</p> <p>5 part under the direct or indirect jurisdiction of</p> <p>5 federal agency, including those carried out on behalf</p> <p>7 of the federal agency or those carried out with</p> <p>8 federal assistance. Then it goes on for little bit</p> <p>9 more.</p> <p>10 Are you aware of that, what the definition</p> <p>11 after undertaking?</p> <p>12 A. There has been -- this is something the NSF</p> <p>13 would determine, and they have not determined that</p> <p>14 they have that role, as I understand it.</p> <p>15 Q. But it doesn't have to necessarily be NSF,</p> <p>16 it's whoever receives federal funds.</p> <p>17 A. Well, the federal funds have to come from</p> <p>18 organizations like NSF that determine whether or not</p> <p>19 this is something that is required.</p> <p>20 Q. That's correct.</p> <p>21 So are you aware that the TMT has received</p> <p>22 federal funding and federal assistance in the form of</p> <p>23 National Science Foundation funding?</p> <p>24 A. We have, but not for purposes covered by</p> <p>25 those laws, as I understand it.</p>	<p>103 and HAR § 13-1-42(b).</p>
301.	Unpaginated	<p>12.19.16 Edward Stone Vol 18 page31:1-25 (questions from Kealoha Pisciotto)</p> <p>1 Q. Do you know what those purposes are?</p> <p>2 A. The purposes of what the funding we have</p> <p>3 had has been for community outreach to national U.S.</p> <p>4 community and to developing a plan for possible</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
		<p>5 future federal contributions, but they're not in fact 6 involved in funding the design or construction of 7 TMT.</p> <p>8 Q. I'm going to put something on the 9 projector. I have to turn it on.</p> <p>10 MR. ING: If these are exhibits, I would 11 like to have them identified first all. If they're 12 not exhibits, then they shouldn't be shown to the 13 witness.</p> <p>14 MS. PISCIOTTA: yeah, they're exhibits, 15 it's already been shown before. This one is NSF 16 grant for \$18 million, and it's a cooperative 17 agreement, and it is the design and development of 18 the giant segmented mirror that is -- I'm trying to 19 go read which one it is.</p> <p>20 MR. ING: What is the exhibit number?</p> <p>21 MS. PISCIOTTA: B.01b. It's in there 22 already, but you can put it up? Thank you.</p> <p>23 Q. Are you familiar with that exhibit? 24 A. Yes.</p> <p>25 Q. So are you familiar with that \$18 million?</p>	
302.	Unpaginated	<p>12.19.16 Edward Stone Vol 18 pages 2:1-25 (questions from Kealoha Pisciotta)</p> <p>1 A. Yes.</p> <p>2 Q. So would you -- and would you identify what 3 that 18 million is for?</p> <p>4 A. That's for the studies that were going on 5 at the time. These were pre -- the period where we 6 were actually designing the telescope and had -- and 7 at that time NSF was involved in some of the site 8 testing in South America, which is part of that 18</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
303.	Unpaginated	<p>9 million dollars, for instance. 10 But NSF, it's up to them to determine what 11 laws they have to follow with respect to these 12 things. They did not determine that this required an 13 EIS or anything like that. 14 Q. Okay. I'm going to show you another one. 15 And this is -- we don't have it uploaded yet, but we 16 have copies for everyone. We're going to identify it 17 as B.01q. 18 HEARINGS OFFICER AMANO: Could you give a 19 copy to Mr. Ing, first, please? 20 MS PISCIOTTA: Yeah. Excuse me, I'm 21 sorry, just taking a moment here 22 MR. ING: You Honor, I thought there were 23 copies for each of the parties. 24 MS. PISCIOTTA: I'm sorry? 25 MR. ING: I object to the use of the</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
304.	Unpaginated	<p>12.19.16 Edward Stone Vol 18 page33:1-2, 20-25 (questions from Kealoha Pisciotta) 1 witness -- I don't have a copy of the exhibit and 2 they will be asking questions from it. x.20 HEARINGS OFFICER AMANO: Yes. So you've 21 hand B.01q and you've identified and intend to have 22 uploaded -- a copy has been given to this witness as 23 well as Mr. Ing and Mr. Ing is sharing with Mr. 24 Lui-Kwan. 25 Q. (By Ms. Pisciotta): Just a simple</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
305.	Unpaginated	<p>4 Gary Sanders, I believe, were the proponents of this grant; is that correct?</p> <p>5 A. Yes.</p> <p>7 Q. Are you aware of any other grants that NSF has awarded to the TMT?</p> <p>9 A. No, these are the two.</p> <p>10 Q. Were any others?</p> <p>11 A. No. To TMT?</p> <p>12 Q. Yes.</p> <p>13 A. No, nothing comes to mind.</p> <p>14 Q. Nothing for the STEM program?</p> <p>15 A. STEM program, I'm not aware, I don't --</p> <p>16 Q. Anyway, so I'll get on with the questions.</p> <p>17 You were saying that your testimony was</p> <p>18 that NSF needed to be the one to trigger it, but it</p> <p>19 also says that the one who gets federal funds is also</p> <p>20 responsible for federal compliance.</p> <p>21 I'm going to read an excerpt from Exhibit</p> <p>22 A-11, which is Cultural Resource Management Plan for</p> <p>23 University of Hawai'i. I'm going to read first from</p> <p>24 page 1-29, I'll read it for you.</p> <p>25 The National Historic Preservation Act</p> <p>12.19.16 Edward Stone Vol 18 page35:1-25 (questions from Kealoha Pisciotta)</p> <p>1 first passed in 1966 and subsequently amended covers</p> <p>2 the treatment of historic properties on federal lands</p> <p>3 under federal control and/or affected by federal</p> <p>4 funded activities or undertakings. The National</p> <p>5 Historic Preservation Act governs the identification</p> <p>6 and treatment of properties by public and private</p> <p>7 entities in order to ensure that, quote, the</p> <p>8 historical and cultural foundation of the nation</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
306.	Unpaginated	<p>9 should be preserved as a living part of the our 10 community life and development in order to give a 11 sense of orientation to the American people, unquote. 12 And then on page 1-3, I will read this part 14 for you. 14 Section 106 of the National historic 15 Preservation Act governs how federal agencies 16 proposing or funding an undertaking must proceed in 17 order to -- in order to ensure the appropriate 18 treatment of historic properties affected by the 19 undertaking. There is a federal statute listing the 20 16 U.S.C. 470F, the head of any federal agency having 21 direct or indirect jurisdiction of a proposed federal 22 or federally assisted undertaking in any state, and 23 head of federal department or independent agency 24 having authority to license any undertaking shall, 25 prior to the approval of the expenditure of any</p> <p>12.19.16 Edward Stone Vol 18 page36:1-25 (questions from Kealoha Pisciotto)</p> <p>1 federal funds on the undertaking or prior to the 2 issuance of any license or approval -- as the case 3 may be taken into account the effects of the 4 undertaking on any district, site, building, 5 structure or object that is included or is eligible 6 for the inclusion in the National Register. 7 The head of such federal agency shall 8 afforded by counsel [SIC: should be "Council"] on historic preservation 9 establish under Title 2 of this act a reasonable 10 opportunity to comment with regard to such an 11 undertaking. 12 It states, given this definition, it is 13 clear that the activities within the UH management</p>	<p>103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
307.	Unpaginated	<p>14 area that are carried out with federal funding, for 15 example, from National Science Foundation or National 16 Aeronautics and Space Administration are covered by 17 Section 106 National Historic Preservation Act. In 18 addition, any activities that require federal permit 19 license or approval from the U.S.S Fish and Wildlife 20 under the Endangered Species Act also come under 21 Section 106 in National historic Preservation Act. 22 So my question, Mr. Stone, is have you 23 talked to the National Science Foundation regarding 24 either doing a federal Environmental Impact Statement 25 or a Federal Level Section 106 consultation?</p> <p>12.19.16 Edward Stone Vol 18 page37:1-25 (questions from Kealoha Pisciotto)</p> <p>1 A. It's my understanding it's not required. 2 Q. Okay. Because you have read these rules? 3 A. No, that's what I'm told. I'm not an 4 expert on all those rules, but that's what I've been 5 told. 6 Q. Who is telling you this? 7 A. They lawyers. 8 Q. Oh, the lawyers? 9 A. Yes. 10 Q. All right. So in the past Yale University 11 has paid money, I believe, in the amount of 14 12 million to acquire time on the Keck Observatory. Are 13 you aware of that? 14 A. I'm aware of that, but I was not involved. 15 Q. Have you or TIO or TMT Corporation 16 negotiated any state -- negotiated with the state or 17 BLNR for percentage of any proceeds that might come 18 in from other places for use of the TMT?</p>	<p>103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
308.	Unpaginated	<p>19 A. I don't have any knowledge of these 20 details. I have not been involved.</p> <p>21 Q. Will TMT look to patent any of the 22 technologies that they might produce on the TMT 23 telescope?</p> <p>24 A. Patent?</p> <p>25 Q. Yes.</p> <p>FURTHERMORE, THERE IS NO QUESTION THAT TMT HAS RECEIVED FUNDING FROM NATIONAL SCIENCE FOUNDATION, THE PROPOSED PROJECT IS IN AN AREA ELIGIBLE FOR LISTING ON THE NATIONAL HISTORIC REGISTER, AND IS IN AN AREA DESIGNATED A NATIONAL NATURAL LANDMARK.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/unsubstantiated.</p> <p>See Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p> <p>See Response to Exception 293 regarding inapplicability of Section 106 to this proceeding.</p>
310.	Unpaginated	<p>Hearing Officer states in FOF 569 "Consultation under NHPA Section 106 was not required nor allowed for the TMT Project because (1) the proposed TMT Project does not have the potential to cause effects on federally protected historic properties..." and "...will not use federal funding" H.O has only listed one (1) grant received from the NSF for \$250,000. There are more; Exhibit B01b National Science Foundation Award Abstract to the TMT Corp #0443999 for \$18,000,000.00 / Exhibit B01aq NSF Award #1347767 for \$713,181.00.</p>	<p>See Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p> <p>See Response to Exception 293 regarding inapplicability of Section 106 to this proceeding.</p>
311.	Unpaginated	<p>The TMT also submitted a proposal for partnership with the National Science Foundation. Exhibit B17a</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
312.	Unpaginated	<p>The TMT is proposing to use Mauna Kea summit lands, which are eligible for listing on the National Historic Register, yet TMT has not begun Section 106 consultations under the National Historic Preservation Act (NHPA). Again, we made formal requests in our scoping comments calling for NHPA, Section 106 Consultation to begin. The U.S. District Court (Hawai'i) affirmed,</p> <p>NHPA mandates that a federal agency "shall consult... with any Native Hawaiian organization that attaches religious and cultural significance" to properties eligible for the inclusion on the National Register." (OHA v. NASA, Civil No. 02-00227 (SOM/BMK), 2003, p. 18 of 39). Pg 5-6 MKAH Exhibit B01o.</p> <p>And,</p> <p><u>The State Historic Preservation Office, TMT DEIS</u> review letter dated June 26, 2009, states:</p> <p>Agencies Involved: Section 2.0 states that the TMT Observatory Corporation is a private non-profit partnership. Your memo dated May 28, 2009 notes that the National Science Foundation released the DEIS. There is no mention of the NSF in the DEIS, and we presume that is the case. If the NSF is involved, this project is subject to review under the National Historic Preservation Act, Section 106 (36 CFR 800). Pg 6 MKAH Exhibit B01o.</p> <p>The DEIS and draft archeological Assessment for Area</p>	<p><i>See</i> Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p> <p><i>See</i> Response to Exception 293 regarding inapplicability of Section 106 to this proceeding.</p> <p>FAILS to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 284 regarding inapplicability of NEPA to this proceeding.</p> <p><i>See</i> Response to Exception 293 regarding inapplicability of Section 106 to this proceeding.</p>

Exception #	Page	Exceptions/Response	Comment
		<p>E (Appendix E) does not address impacts to the Mauna Kea Summit Historic District.</p> <p>Generally a historic district is defined as a historic property that 'possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. The Mauna Kea Summit as a "cultural landscape" has been determined eligible for the National and State Register of Historic Places under multiple criteria including cultural significance to the native Hawaiian People (cf. letter of D. Hibbard to R. Evans, September 12, 1991). As a result, archaeologists with DLNR-SHPD have referred the summit region of Mauna Kea as a "ritual landscape," with all of the individual parts contributing to the integrity of the whole summit region. (pers. comm. P. McCoy and H. McEldowney; Group 70 meetings of September 10, 1998). Id Citing McCoy and McEldowney).</p>	
313.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.</p>
314.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
315.	Unpaginated	<p>The National Register of Historic Places is barely touched upon by the H.O in her recommendations. Hearing Officer also states in (FOF 666 and 667) that Bulletin 38 (MKAH Exhibit</p>	<p>Misstatement. The Hearing Officer found that Bulletin 38 is not applicable because "[t]he TMT is not a federal project."</p>

Exception #	Page	Exceptions/Response	Comment
316.	Unpaginated	<p>B01p) is not applicable because "[t]he TMT is a federal project." The exhibit she cites to in FOF 666 is incorrect. The correct Exhibit number so B01p.</p> <p>Mauna Kea is eligible for listing on the National Register of Historic Places. This is what makes Bulletin 38 relevant here in this case.</p> <p>"A traditional cultural property, then, can be defined generally as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community." (MKAH B.01/ p. 1)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 581.</p> <p>Ex. B.01 not in evidence.</p>
317.	Unpaginated	<p>The National Register of Historic Places contains a wide range of historic property types, reflecting the diversity of the nation's history and culture. "...groups of buildings, structures or sites forming historic districts; landscapes; and individual objects are all included" in the Register. (MKAH B.01/ p 1)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 581.</p> <p>Ex. B.01 not in evidence.</p>
318.	Unpaginated	<p>"One kind of cultural significance a property may possess, and that may make it eligible for inclusion in the Register, is traditional cultural significance. "Traditional" in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice." (MKAH B.01/ p. 1)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 581.</p> <p>Ex. B.01 not in evidence.</p>
319.	Unpaginated	<p>"A historic property, then, is significance derived from the role the property plays in a community's historically rooted beliefs, "customs, and practices." (MKAH B.01/ p. 1)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 581.</p> <p>Ex. B.01 not in evidence.</p>

Exception #	Page	Exceptions/Response	Comment
320.	Unpaginated	"Traditional cultural values are often central to the way a community or group defines itself, and maintaining such values is often vital to maintaining the group's sense of identity and self respect". (MKAH B.01/ p. 2)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF 581.
321.	Unpaginated	"Traditional cultural properties are often hard to recognize. A traditional ceremonial location may look like merely a mountaintop, a lake, or a stretch of river..." (MKAH B.01/p.2)	Ex. B.01 not in evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF 581.
322.	Unpaginated	<i>"Properties to which traditional cultural value is ascribed often take on this kind of vital significance, so that any damage to or infringement upon them is perceived to be deeply offensive to, and even destructive of, the group that values them."</i> (MKAHB.01/p.2)	Ex. B.01 not in evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF 581.
323.	Unpaginated	" In the 1980 amendments to the National Historic Preservation Act, the Secretary of the Interior, with the American Folklife Center, was directed to study means of: preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways." (MKAHB.01/p.2)	Ex. B.01 not in evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF 581.
324.	Unpaginated	<i>Ethnocentrism</i> (emphasis added) is a means of viewing the world and the people in it only from the point of view of one's own culture and being unable to sympathize with the feelings, attitudes, and beliefs of someone who is a member of a	Ex. B.01 not in evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF

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325.	Unpaginated	<p>different culture. It is particularly important to understand, and seek to avoid, ethnocentrism in the evaluation of traditional cultural properties. Bulletin 38. (MKAH B.01p/ p. 4)</p> <p>The authors of the archeological analysis for the FEIS failed to take into account intangible aspects of the cultural significance of the proposed project that is in the historic district. (Tr. Jan. 19, 2017, Kehaulani Abad, Ph.D, Vol 27, p 36:22-25, p37 1-6).</p>	<p>581.</p> <p>Ex. B.01 not in evidence.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 664-65.</p> <p>Not supported by the reliable, probative and substantial evidence.</p>
326.	Unpaginated	<p>The Applicant does not provide any countervailing evidence to any of Dr. Abads' credible, reliable substantive testimony.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 664-65.</p> <p>HO FOF 670 is accurate and supported by the evidence in the record and the citations therein (finding that Petitioners and Opposing Intervenors have no refuted the University's prima facie showing that the TMT Project will not have a significant impact on archaeological and historic resources.)</p>
327.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part</p>

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328.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision. This designation by the Department of the Interior was left out and not considered in the Hearing Officers recommendations.	of the record in this case. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 9 regarding credibility determinations. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
329.	Unpaginated		Irrelevant/inapplicable.
330.	Unpaginated	Mauna Kea was listed as a National Natural Landmark in 1972. One of the reasons given for placing the mountain on this register by the National Park Service is that Mauna Kea is the "Most majestic expression of shield volcanism in the Hawaiian Archipelago, if not the world." Ex A-009 CMP Appendix 4, p.9	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF 581.
331.	Unpaginated	"Few sites possess [sic] better credentials to justify their national significance than does Mauna Kea." Ex. A-003 FEIS, p. 3-106, Mauna Kea NNL program.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF 581.
332.	Unpaginated	The objectives of the NNL program are fourfold: to encourage the preservation of sites illustrating the geological and ecological character of the United States; to enhance the scientific and educational value of the sites thus preserved; to strengthen public appreciation of natural history; to foster a greater concern for the conservation of the nation's natural heritage. Laura Thielen, Chair, DLNR EX. A-004 FEIS Vol II p 19 of 531.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable.
333.	Unpaginated	The Mauna Kea National Natural Landmark is held in trust by the State of Hawai'i, and its 83,900 acre boundary incorporates the lands within the conservation district, including the Mauna	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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334.	Unpaginated	<p>Kea Science Reserve, Ice Age Natural Area Reserve and the Mauna Kea Forest Reserve. EX A-004 (TMT EIS Vol. II), p.3-6.</p> <p>“... The National Park Service is concerned about the deleterious effects its (the TMT) (parenthesis added) construction will have on the nationally recognized resources of Mauna Kea National Natural Landmark..” EX A004/R4 FEIS Vol 2 May 8, 2010 p3 of 531.</p> <p>“ The National Park Service contends that the permanent destruction of any surface geologic structures within the Mauna Kea NNL is significant and that it denigrates from it’s overall status as a national natural landmark..” EX A004/R-4 FEIS Vol 2 May 8, 2010 p5 of 531 last paragraph.</p> <p>“[A]side from the aforementioned suggestions and additional recommendations for mitigation, the review of the DEIS has brought to our attention the incremental addition with resultant impacts of ten observatories to Mauna Kea since its establishment as a national natural landmark in 1972. Realizing that additional observatories may be a consideration in the future, the National park Service intends to review the current NNL designation and at the very least may consider removal of the 525 - acre Astronomy precinct from the current Mauna Kea National natural Landmark designation” EX A004/R-4 FEIS Vol 2 May 8, 2010 p6 of 531 3rd paragraph from top.</p> <p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Citation does not support proposition.</p> <p>Lacks evidentiary support from the record.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization. While the National Park Service agreed that the importance of the TMT Project is beyond reproach, it noted its concern about the deleterious effects of construction and suggested several mitigation measures. Ex. A-4/R-4 at 3.</p> <p>No evidence was presented that the National Park Service has removed the NNL designation from Mauna Kea despite its comments to the draft EIS in or around 2010.</p>
335.	Unpaginated		<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part</p>

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336.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	<p>of the record in this case. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
337.	Unpaginated	<p>“Area E” is in an undeveloped area within a Mauna Kea Historic District. Ex R-3 FEIS VOL 1 p2-3 Figure 2-4 under Project Description.</p> <p>In 1999, during the preparation of the 2000 Master Plan, SHPD proposed that the cultural landscape on the top of Maunakea be recognized as the Mauna Kea Summit Region Historic District. The district is listed as SIHP # 50-10-23-26869. Nearly the entire MKSR is within the roughly 17,820-acre Mauna Kea Summit Region Historic District. The TMT Observatory Project 13N site, the Access Way, and the Batch Plant Staging Area are all within the Mauna Kea Summit Region Historic District. The boundaries of the district generally coincide with the extent of the glacial moraines and crest of the relatively pronounced change in slope that creates the impression of a summit plateau surrounding the cinder cones at or near the summit (Figure 3-1). The district encompasses a concentration of historic properties, including most of the 263 summarized in Table 3-3, that are historically, culturally, and visually linked within the context of their setting and environment. The spiritual and sacred quality of Maunakea is related to this context and the link between the Historic Properties and their setting and environment. Although the Mauna Kea Summit Historic District is only officially designated as a Historic District at the State level, it has been stated by SHPD that it is eligible for inclusion in the National Register of Historic Places (NRHP) as a district; however, no official application</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Incomplete. See HO FOF 122-145.</p>

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338.	Unpaginated	<p>for such inclusion has been submitted. All of the Historic Properties discussed in this section are within the Historic District and are considered contributing properties. Based on recent archaeological field work, it has been proposed that the Historic District be expanded to include the entire MKSR. (PSCI, 2010a). FEIS Vol. 1 Ex. R- 3 Sec 3.3 p. 3-42 2nd para.</p> <p>The proposed TMT site is located within and is an integral part of a Historic District: Pursuant to HRS Chapter 6E-2, "Historic Property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old. FEIS Vol 1 Ex. R-3 Archaeological/ Historic Resources, p 3- 4.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Citation does not support proposition.</p> <p>Unsupported/Unsubstantiated.</p>
339.	Unpaginated	<p>"Historic Districts" are geographically definable areas possessing a significant concentration, linkage, or continuity of contributing properties - sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. Contributing properties add to the historic architectural qualities, historic associations, or archaeological values for which a district is significant because it was present during the period of significance, and possesses historic integrity reflecting its character at that time or is capable of yielding important information about the period." FEIS Vol 1 Ex. R-3 Sec. 3.3 Archaeological/ Historic Resources, p 3-4.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Misleading. Presented out of context.</p> <p>Citation should be to p. 3-40.</p>
340.	Unpaginated	<p>"Within the historic district, the effect of a project on the historic district as a whole needs to be assessed as well as the project's effect on individual historic properties located within or immediately adjacent to the project area. The effect of a project on the historic district must be addressed even if no individual historic properties are found within or immediately adjacent to the project area." (emphasis added) "Effects on a district would consider the visual impact of a facility on the surrounding landscape (i.e., the various land forms creating the</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Misleading. Presented out of context.</p>

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341.	Unpaginated	<p>setting and context of the multiple historic properties encompassed by the district) and on those individual historic properties which contribute to the significance of the district . . .” FEIS Vol. 1 Ex. R-3 Sec. 3.3 p 3-49 3rd and 4th par.</p> <p>There was no regional archaeological analysis done for the Proposed TMT project. (Tr. Jan. 19, 2017, Kehaulani Abad, Ph.D, Vol 27 p31:7-15)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 664-65.</p> <p>Inaccurate/False. The Proposed TMT site has been extensively surveyed. See, e.g., HO FOF 565-66, 573-74.</p> <p>Unsupported/Substantiated. The necessity of a regional archaeological analysis has not been established by law, nor the reliable probative and substantial evidence.</p>
342.	Unpaginated	<p>There were no analysis on how building the Thirty Meter Telescope in “Area E” which sits in the context of the ring of shrines would impact the sacred area. (Tr. Jan. 19, 2017, Kehaulani Abad, Ph.D, Vol 27 p 32:7-11)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 664-65.</p> <p>Misleading. The mitigation measures for addressing any effects on cultural practices that have been developed for the TMT are consistent with those stipulated in the CMP and CRMP. See, e.g., UH-</p>

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			<p>TIO FOF 593.</p> <p>Unsupported/Unsubstantiated. The necessity of a regional archaeological analysis has not been established by law, nor the reliable probative and substantial evidence.</p> <p>Inaccurate/false. Dr. Abad could not identify where the "ring of shrines" was located when asked during the hearing. See Tr. 1/19/17 at 134:4-135:17.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
343.	Unpaginated	<p>Within the MKSR there are 263 historic properties, most of them shrines, but also burials. The majority of the Mauna Kea Science Reserve and these historic properties are located within the summit region Historic District. (FEIS Vol 1 Executive Summary p. S-3).</p> <p>"The potential of the proposed action to introduce elements which may alter the setting in which cultural practices take place." (Ex. B.12a at 2 citing B.12c (OEQC Guidelines at 13)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 203</p> <p>Irrelevant/Inapplicable.</p> <p>There is no reliable probative and substantial evidence that her or the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
344.	Unpaginated	<p>UH archaeologists used an "etic" perspective(non cultural or outside the culture)as opposed to "emic (from within the</p>	
345.	Unpaginated		

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		<p>culture) as required by law. (Tr. Jan. 19, 2017, Kehaulani Abad, Ph.D, Vol 27 p 41:1-18)</p>	<p>See Response to Exception 9 regarding credibility determinations. HO FOF 664-65.</p> <p>Unsupported/Unsubstantiated.</p> <p>Not supported by the reliable, probative and substantial evidence.</p>
346.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.</p>
347.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations.</p>
348.	Unpaginated	<p>Hearing Officer FOF's #834-882. There are many omissions in this section and the Hearing Officer provides no countervailing credible evidence that cultural practitioners will not be adversely affected. None of the petitioners who are Native Hawaiian Practitioners were given any weight to their testimony or to any of their witnesses testimony.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations.</p> <p>See Response to Exception 9 regarding extent to which the Hearing Officer considered the testimony of Petitioners and other opposing parties.</p> <p>HO FOF 670 is accurate and supported by</p>

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349.	Unpaginated	Many of the Pu'u [cinder cones], associated burials and kinolau;	the evidence in the record and the citations therein (finding that Petitioners and Opposing Intervenors have not refuted the University's prima facie showing that the TMT Project will not have a significant impact on archaeological and historic resources.) Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
350.	Unpaginated	The TMT DEIS fails to address the cumulative impacts to the kinolau (bodily forms of the deities) such those impacts to the image of Poliahu seen from the east side of the island. <i>See</i> Ex. B.23 the photo image of Poliahu.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/Unsubstantiated. False/Inaccurate. HO FOF 730 (finding no known pre-existing burials or human remains located in the TMT Project area); HO FOF 733 (finding that the TMT Observatory cannot be seen from Pu'u Wēkiu and will not have an adverse effect on solstice and equinox observations on Pu'u Wēkiu); HO FOF 830-31 (regarding no obstruction to view planes and continuation of practices); HO FOF 841, 847, 851, 948, 949, 951(e); HO COL 229, 346. <i>See</i> Response to Exception 9 regarding credibility determinations. HO FOF 759, 828 (Pisciotta's testimony that the TMT Project will obstruct viewplanes used in

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351.	Unpaginated	View plane (including mauka-makai and makai-mauka view planes). The TMT DEIS fails to address the cumulative impacts of the practitioners view planes at the summit looking outward (mauka-makai). <i>See</i> B.01o	<p>Polohiwa ceremonies and those connected to the path of the sun, solstice, and equinox contradicts her previous statements that her ceremonies relating to the celestial equator are located near where the Subaru and Keck observatories are located. Moreover, Pisciotta's conclusion that the TMT Project will obstruct traditional viewplanes ignores her testimony that she has already adjusted her practices because existing telescopes block traditional viewplanes); HO FOF 846.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated.</p> <p>False/Inaccurate.</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations. Not supported by the reliable, probative and substantial evidence.</p> <p><i>See</i> Response to Exception 350.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated.</p> <p>False/Inaccurate.</p>
352.	Unpaginated	The view plans (view planes) cannot only be evaluated from sea level looking up. The impacts include the practitioners view planes which are viewed from Mauna Kea to the sea, to the other islands and to the night sky. <i>Id.</i>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated.</p> <p>False/Inaccurate.</p>

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354.	Unpaginated	<p>Mountain landscape in navigational traditions;</p> <p>The TMT DEIS fails to evaluate the cumulative impacts on the ritual landscape including impacts on solstice, equinox ceremonies and other ceremonies relating to navigation. We wish also to state our objections to the TMT DEIS hearing presentations. The TMT hired people to give a presentation suggesting that modern astronomy is nothing more than an extension of what our ancestors accomplished. This is an unreasonable assertion. The two disciplines may not be reasonably compared; it is like comparing apples and oranges. Our ancestors may not have done what Plato did, but what they did accomplish was amazing. It is righteous to give credit where it is due.</p>	<p>See Response to Exception 9 regarding credibility determinations. Not supported by the reliable, probative and substantial evidence.</p> <p>See Response to Exception 350.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated.</p> <p>False/Inaccurate.</p> <p>See Response to Exception 9 regarding credibility determinations. Not supported by the reliable, probative and substantial evidence.</p> <p>See Response to Exception 350.</p>
355.	Unpaginated	<p>The presentation is based on a book written about our past King, whom supported the construction of a small telescope in Honolulu. Unfortunately the book also claims, the King supported it because it would help prove to the Hawaiian people the earth was round. The Hawaiian people certainly understood the earth was round- traditional knowledge dating back to before the time of Christ. They understood this because they could not have navigated and peopled 10 million square miles of the oceans and tiny islands without having known this.</p> <p><i>Id.</i></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Not in evidence.</p> <p>Irrelevant/inapplicable.</p> <p>Misleading. Presented out of context.</p>
356.	Unpaginated	<p>The Kupuna (ancestors) understood this because they had</p>	<p>Fails to comply with Minute Order No.</p>

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357.	Unpaginated	<p>identified a celestial equator, using knowledge kept in the traditions (and family mo`oleo) of Mauna Kea, which made the TMT presentations even more egregious. What our Kupuna (ancestors) accomplished was important to Polynesia but is also to the world, contributing to the global knowledge base. The Kupuna should be properly credited for this. Mauna Kea is the land of our history and knowledge—and it requires maximum protection. See Ex B.01.o Request for Section 106, Section Cultural Impacts #1,2,3)</p> <p>The mountain landscape in navigational traditions: Hawaiian Navigational, it is noted that while none of the archival historical literature has made specific references to the sites or features that were recorded as being associated with navigational practices and customs, the gods and deities associated with Mauna Kea have celestial body forms and some were evoked for navigational practices. See Ex. B.37 MP, App. I, p.29</p>	<p>103 and HAR § 13-1-42(b). Incomplete. Irrelevant/Inapplicable. Not material. Misleading. Presented out of context. Not supported by the reliable, probative and substantial evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/Unsubstantiated. False/Inaccurate. See Response to Exception 9 regarding credibility determinations. Not supported by the reliable, probative and substantial evidence. See Response to Exception 350.</p>
358.	Unpaginated	<p>Mauna Kea is actually the fulcrum of such ceremonies, because the Mauna sets the ultimate relationship to all other sacred sites for such ceremonies, as Mauna Kea is the highest point and from there you can see all else. See Ex B.01a K. Pisciotto, WDT, p. 5</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Citation does not support the proposition. Unsupported/Unsubstantiated. See HO FOF 758-769.</p>
359.	Unpaginated	<p>[T]housands of years ago our navigators and star people developed a system that allowed our ancient people to</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>circumnavigate the globe and to people the tiniest islands scattered across the largest ocean on earth, the Pacific Ocean. We did this before the birth of Christ and at a time when no one on earth was doing a similar method of ocean voyaging . . . they did develop a system of advanced mathematics that allowed them to understand and determine that the earth was round and to a celestial equator. If this were not the case they could not have found the tiny little islands across a vast ocean with any accuracy at all. If your measurements are off by only a few degrees you will get lost at sea, because even tiny discrepancies in measurement on the sky translate to hundreds of miles on the ocean. <i>See</i> Ex B.01a K. Pisciotto, WDT, p. 5</p>	<p>Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-769.</p> <p>Not supported by the reliable, probative and substantial evidence.</p>
360.	Unpaginated	<p>I had an astronomer friend query me on this very thing, asking how the Hawaiian people knew the earth was round before the Europeans did?...I finally explained how we did understand these principles (i.e. celestial equator), but that they were contained for example in our stories of Creation and Papa (Earth Mother) and Wakea (Sky Father). His response was surprising to me, in that he was resistant to the idea that any science could flow from mythical stories... I explained that these stories are not myths but rather teaching tools. Our teachings are storied but they also meet the criteria of science, in that they are based on observation and are measurable and repeatable. Our modern Navigator's and their many accomplishments are evidence of this. Our oral traditions are not mere mythical stories, and they are dependent on the landscape and that is why the landscape of Mauna Kea needs to be protected and preserved. <i>See</i> Ex B.01a K. Pisciotto, WDT, p. 5</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-769.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
361.	Unpaginated	<p>These ceremonies are about tracking the motion of the sun across the sky throughout the year and were used by our people</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>and most of the ancient people around the world to keep track of the year. The po`e kahiko (ancient Hawaiian people) are not alone in these ceremonies for keeping track of the motions of the celestial bodies and their relationship to the observers on earth. The Celtic Shaman, Egyptian Priests, Mayan Priests, Chinese, Arab and Middle Eastern astronomers and holy people all performed the ceremonies similar to those we perform on Mauna Kea. See Ex B.01aK. Pisciotto, WDT, 6</p>	<p>Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. See HO FOF 758-769.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
362.	Unpaginated	<p>Tracking the sun is for growing and harvesting. But more important is the need to track the annual time in the context of a much greater time frame known as the precession, which is the 26,000 year cycle (although some used slightly different time frames). See Ex B.01a K. Pisciotto, WDT, 6</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. See HO FOF 758-769.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>

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363.	Unpaginated	<p>This cycle is the measure of the wobble of the earth's axis, and the time it takes for the wobble to make a complete cycle. The wobble was important to keep track of because relative to earth the pole stars appear to change over time. If the pole stars change it drastically impacts navigation. If the poles are changing then over time our knowledge must change to reflect these changes or we will get lost, and for us especially that means getting lost at sea. Ex C-1 K. Pisciotta, June 28, 2011, WDT, The idea that so many ancient people understood this concept is amazing in and of itself. It would take about 70 years for a single person to realize that such a motion was actually happening and another great leap of consciousness to understand it would take about 26,000 years for the precession cycle to be completed. How the ancient peoples of the world came to this understanding is amazing. I learned about this from my Kupuna first, and then did some of my own research. See Ex B.01a K. Pisciotta, WDT, p. 6.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>2011 transcripts not in evidence.</p> <p>Consideration of the cited document is prohibited by HRS § 91-9(g).</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-769.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
364.	Unpaginated	<p>The ceremonies I just described are specifically dependent upon our ability to observe and track the motion of the sun and other celestial bodies in order to find our way and to determine when and how to perform certain things for the care of the land and sea. Our traditional resource management models are dependent on these ceremonies. Our ancient knowledge relating to our relationship to our other Pacific people are also a part of this knowledge. And lastly our sacred prophecies are based in this knowledge.</p> <p>See Ex B.01a K. Pisciotta, WDT, p. 6</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-769.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative</p>

Exception #	Page	Exceptions/Response	Comment
365.	Unpaginated	<p>But more important is the need to track the annual time in the context of a much greater time frame known as the precession, which is the 26,000 year cycle (although some used slightly different time frames). This cycle is the measure of the wobble of the earth's axis, and the time it takes for the wobble to make a complete cycle. The wobble was important to keep track of because relative to earth the pole stars appear to change over time. If the pole stars change it drastically impacts navigation. If the poles are changing then over time our knowledge must change to reflect these changes or we will get lost, and for us especially that means getting lost at sea. See Ex B-01a K. Pisciotta, WDT, p. 5</p>	<p>and substantial evidence that the substance of the belief is factual.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. See HO FOF 758-769.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
366.	Unpaginated	<p>Our traditional resource management models are dependent on these ceremonies. Our ancient knowledge relating to our relationship to our other Pacific peoples are also a part of this knowledge. And lastly our sacred prophesies are based in this knowledge. Ex C-1 K. Pisciotta, June 28, 2011, WDT, p. We refer to the summer solstice ceremonies as "Ke Ala Polohiwa a Kane", Winter as "Ke Ala Polohiwa a Kanaloa, spring equinox as "Ke Ala'ula a Kane", and autumnal equinox as "Ke Ala Ma'awe'ula a Kanaloa" <i>Id.</i></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. See HO FOF 758-769.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal</p>

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367.	Unpaginated	Winter Solstice = "Ke Ala Polohiwa a Kanaloa" -- The Black Glistening Path of Kanaloa--is when the sun hits its farthest point south in the sky, occurring in December. <i>Id.</i>	<p>impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable.</p> <p>Unsupported/Unsubstantiated.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
367.	Unpaginated	The Sumer Solstice is "Ke Ala Polohiwa a Kane" --The Black Glistening Path of Kane-- when the sun reaches it most northern point in the sky, occurring in June. <i>Id.</i>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable.</p> <p>Unsupported/Unsubstantiated.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>

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368.	Unpaginated	Whereas, the equinoxes (where the sun crosses the equator ("Ka Piko o Wakea" from my family tradition) to the far winter and summer points are called: <i>Id.</i>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-762.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
369.	Unpaginated	"Ke Ala`ula a Kane " (The Spring Equinox--The Dawning of the Path of Kane") occurring in March and; <i>Id.</i>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-762.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the</p>

Exception #	Page	Exceptions/Response	Comment
370.	Unpaginated	<p>"Ke Ala Ma'awe`ula a Kanaloa" (The Autumnal Equinox-- "The Red Track or Tentacle") of Kanaloa) occurring in September. See Ex B.01a K. Pisciotto, WDT, p. 6-7</p>	<p>substance of the belief is factual.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable.</p> <p>Citation does not support the proposition.</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-762.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
371.	Unpaginated	<p>The map of Exhibit C-5 (NOTE: for CCH 2017 it is Ex. B.01t) describes traditional cultural view planes. This map incorporates our testimony as well as others. It is not a complete map but it does help provide a visual representation of some of the view planes including some of the solstice and equinox view planes and those in relation to other the sites and also to the other islands. See Ex B.01a K. Pisciotto, WDT, p. 7</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-762.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
372.	Unpaginated	<p>On this viewplane map, you can see that the TMT will be in direct line of sight of Maui and the NW plane which is used for</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>ke ala ao (solstice and equinox) ceremonies. There are also lines that represent the relationship between Mauna Kea and Poli`ahu Heiau on Kaua`i, Ahu a Umi Heiau situated between the three great mountains (Hualalai,</p>	<p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-762.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
373.	Unpaginated	<p>Mauna Loa and Mauna Kea) on Hawai`i Island, the Pu`u Kohola Heiau in Kawai-hae, Hawai`i Island, and Motu Manamana (Necker Island) of the North Western Hawaiian Island which marks the great turn around of the sun during the ke ala polohiwa time. The shrines on this tiny island are related to this relationship too. <i>Id.</i></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 758-762.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p>
374.	Unpaginated	<p>For the CDUA to determine that there would be no effect on archeo-astronomy, it would need to have a full understanding of the cultural values of those shrines through extensive discussion with cultural practitioners who may have cultural knowledge of how those shrines should be used. <i>Id.</i>, at 83: 1-11.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated.</p>
375.	Unpaginated	<p>Exhibit B.01w is a picture of the Southern Sky from Mauna Kea. At the left is the glow of the lava from Kilauea volcano.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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376.	Unpaginated	<p>In the sky at the center is the Southern Cross. The Snow covered peak in the center is the true summit of Mauna Kea, the highest point in the Pacific. At the right, the dome of the 8-meter Gemini North Telescope is under construction - found in the Atlas of Hawaii 'i, 3rd Ed. Edited by Juvik and Juvik, Chief Cartographer Thomas R. Paradise, at Photograph by Mr. R.J. Wainscoat, copyright 1997, p. 98. Ex B.01a K. Pisciotta, WDT, p. 7, The Summit Access Road was built with government funds and is a public road ("non-exclusive road easement").</p> <p>See Ex. B.42 CMP MKPAP, p. 1-4</p> <p>2.13.17 Kealoha Pisciotta Vol 34 page48:9-25 (questions from Ku Ching)</p> <p>9 Q. So what is the extent of the breadth of 10 your activities on the mountain when you re doing 11 your cultural practices?</p> <p>12 A. All over, from Pū u Polōahu to the lake, 13 to Kukukā ula [SIC: should be Kukahaū ula] to Pū u Weiku [SIC: Should be Wekiu] to Pū u Hau oki, the edge 14 of Pū u Kukahaū ula looking towards the whole 15 archipelago including Haleakala.</p> <p>16 Q. Would your interest go further than 17 Haleakala and Maui?</p> <p>18 A. Yes, because part of the practice is the 19 alignments connecting Mauna Kea to the other heiau 20 across the archipelago, all the way down to 21 Motumanamana in the northwest Hawaiian island in 22 Papahānaumokuākea National Monument.</p> <p>23 Q. So it would include the island of Kauá i 24 also, right?</p> <p>25 A. yes, Pū u Polōahu -- I mean Polōahu Heiau</p>	<p>Unsupported/Unsubstantiated. See HO FOF 758-762.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
377.	Unpaginated	<p>2.13.17 Kealoha Pisciotta Vol 34 page49:1-25 (questions from</p>	<p>Fails to comply with Minute Order No.</p>

Exception #	Page	Exceptions/Response	Comment
		<p>Ku Ching</p> <p>1 on Kaua'i as well.</p> <p>2 Q. So there is a relationship between Polioahu</p> <p>3 Heiau on Kaua'i and on Mauna Kea; is that true?</p> <p>4 A. Yes.</p> <p>5 Q. Could you tell us about that relationship,</p> <p>6 if you know?</p> <p>7 A. Well, I went there one time, having seen</p> <p>8 the heiau on some website, and I didn't understand</p> <p>9 why it would be on Kaua'i originally.</p> <p>10 Now I have a much better understanding.</p> <p>11 And so I traveled to Kaua'i and I went to the heiau,</p> <p>12 and I actually measured the alignments of that heiau</p> <p>13 and its construction and their alignments back</p> <p>14 directly to Mauna Kea. They connect directly.</p> <p>15 Q. I see.</p> <p>16 Now, everyone knows that if you're looking</p> <p>17 towards Kaua'i and Poli'ahu Heiau, that the curvature</p> <p>18 of the earth sort of says that you do not really see</p> <p>19 it, it's below the horizon.</p> <p>20 Have you ever been able to see Poli'ahu</p> <p>21 Heiau from Mauna Kea?</p> <p>22 A. I actually have seen Kaua'i, but how I know</p> <p>23 they're directly aligned is because when you do the</p> <p>24 alignments connecting the solstice alignments from</p> <p>25 Mauna Kea that radiates out and across the</p>	<p>103 and HAR § 13-1-42(b).</p>
378.	Unpaginated	<p>2.13.17 Kealoa Pisciotto Vol 34 page50:1-10, 25 (questions from Ku Ching)</p> <p>1 archipelago, they are directly lined up with the</p> <p>2 north, south, and west directions. That's how we</p> <p>3 know they're aligned in that way as they are in</p> <p>4 Motumanamana.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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379.	Unpaginated	<p>5 Q. In the EIS, the cultural EIS and all of 6 that, they discuss the three principal spiritual 7 7 places on Mauna Kea from which Hawaiians are supposed 8 to be doing their practices. 9 Do you limit yourself to those three 10 places, if at all? 25 A. Oh, no. I'm sorry, I do not limit my . . .</p> <p>Please see also the following Exhibits: Ex B.01t (NH Traditional View Plane Map showing some of the view used in cere-monies), Ex B.01w (a picture showing the Southern Cross an important star constel-lation for NH practices), Ex. B28 (the image and Kinolau (bodily form of Poliahu, the snow goddess found in the contours of the Pu'u Cinder Cones of the summit of Mauna Kea—found through oral histories and Mo'oleo), and B. 18c – B. 18g (the hand drawn maps made to describe the importance of the view planes for the Solstice and Equinox ceremonies by Ms. Pisciotta during testimony.)</p>	<p>Ex. B.01i not in evidence.</p>
380.	Unpaginated	<p>The shrines are specifically set up in relationships to the commanding, that is what is sites in the Cultural Assessment. So I want to be clear, because when we say alignments we mean tangible and intangible connections between those places and the Mauna Kea. We mean we can literally see the other sacred peaks of the hill on the island, or even other—on of the island is such as the one on Kaua'i. See Ex. B.01i The Transcript record of Kealoha Pisciotta Closing Statements from the 2011 CCH at p. 137-141</p> <p>Once in my life I saw the while island chain, but this view is rare. Nevertheless, Poli'ahu Heiau on Kaua'i was constructed specifically to be in alignment with the ceremonial direction established on Mauna Kea. Mauna Kea is fulcrum and baseline</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Ex. B.01i not in evidence.</p>

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381.	Unpaginated	<p>for all alignments of this nature. <i>Id.</i></p> <p>Therefore, when we speak of alignments being blocked, it means we cannot do ceremony in the way that we need to be a part of those alignments. Because we are — they are being physically and spiritually blocked. That in turn interests our ability to perform those ceremonies and other cultural practices. <i>Id.</i></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Ex. B.01i not in evidence.</p>
382.	Unpaginated	<p>NOTE: The HO did not admit Kealooha Pisciotto's closing statement for the 2011 CCH it into evidence. We objected to the Exhibit situation and argued that all relevant evidence should be allowed HAR § 91-10(1) and HAR 13-1-32.4 (the records relating to an application (CDUA)) shall be included in the CCH record. <i>See MKAH Motions</i></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 25 regarding the Hearing Officer's board authority to manage a contested case.</p>
383.	Unpaginated	<p>Paul K. Neves Response to UH/TIO FOF COL, D&O</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
384.	Unpaginated	<p>UH/TIO FOF COL 747 misconstrues and misrepresents Kumu Paul K. Neves oral and written testimonies. Kumu Neves, is a Traditional and Customary cultural and religious Practitioners and his written, oral testimony and his Petition asserts the same. Kumu Neves has been found to have standing to assert his claims and his injury by the BLNR, by the Circuit Courts and the Supreme Court of Hawai'i. <i>See</i> Ex. A029 and A028 the original six Petitioners Petitions and Ex. B.18a Paul K. Neves WDT</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
385.	Unpaginated	<p>The UH/TIO put up no rebuttal testimony to refute or to attempt to impeach Kumu Neves oral testimony or his WTD so they may not make such claims against Kumu Paul K. Neves. <i>Id.</i></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>HO FOF 670 is accurate and supported by the evidence in the record and the citations therein (finding that Petitioners</p>

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386.	Unpaginated	When the UH says the TMT will not obstruct our view planes—I am not sure I understand what they are talking about—does that mean just me eyes—our eyes will not be covered by the domes or building? The view plane is about the open spaces — the view unobstructed by man-made features—like building. <i>Id.</i>	and Opposing Intervenor have not refuted the University's prima facie showing that the TMT Project will not have a significant impact on archaeological and historic resources.) Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF 316-345. The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no probative and substantial evidence that the substance of the belief is factual. There is no reliable probative and substantial evidence that her or the referenced practices are within the bundle of rights protected by Article XII, Section
387.	Unpaginated	When we look out the plateau where the TMT is proposing to site their project—it is not just that it will not be blocking our eyes (depending on where we are looking from) but it will be the most coronal feature in our eyes and therefore the most feature in our customary and traditional view plane. It is the this view plane that we use to look and hone the high mains down the island chain. For me and my Ohana-that view is significant -the view of Haleakala-it is the view and the practice of honoring our ancestors, our akua residing in the	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/Unsubstantiated. There is no credible evidence that the viewplanes from the summit ridge area towards Haleakalā or other areas would be materially affected or blocked. See, e.g., HO FOF 759-62.

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		<p>high lewa. It is our way of honoring the motions of the heavens-which is also honoring the movements of the kupuna and the Akua. we can partition our beliefs. <i>Id.</i></p>	<p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no probative and substantial evidence that the substance of the belief is factual.</p> <p>There is no reliable probative and substantial evidence that her or the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p>
388.	Unpaginated	<p>For comparison, the Jewish people go to the Wailing Wall-the Temple is not there but they still go to the wall-in order to recognize the Templ—you can't partition off your beliefs and our practice of this belief. Mauna Kea is the environment o the our belief-just like the Wailing Wall still represents the temple, which represents the Jewish peoples beliefs. And what we see from Mauna Kea, from atop there or across there -like from the Pu'u to Pu'u praha to aha are all a part for our beliefs. When this environments is destroyed well wail—just as the Jewish mourn at the their wailing wall—and we all mourn with them because we feel their pain too. We mourn the lost of Temple-but we don't want to have to mourn the lost of this temple known as Mauna Kea—we want to rejoice in the Creator's creation and in Akua's beauty. This is house are rights are negatively impacted because they destroy the very</p>	<p>Not supported by the reliable, probative and substantial evidence.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated.</p> <p>Testimony regarding Jewish religious traditions and beliefs not in evidence.</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in</p>

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389.	Unpaginated	<p>environment of our spirituality and beliefs, we lose the landscape which we use to perform this ceremonies of Aloha and Peace. <i>Id.</i></p> <p>Further,</p> <p>The UH archaeologists used an “etic” perspective(non cultural or outside the culture) as opposed to “emic (from within the culture) as required by law. (Tr. Jan. 19, 2017, Kehaulani Abad, Ph.D, Vol 27 p 41:1-18)</p>	<p>dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 345.</p>
390.	Unpaginated	<p>Generally a historic district is defined as a historic property that ...possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. The Mauna Kea Summit as a “cultural landscape” has been determined eligible for the National and State Register of Historic Places under multiple criteria including cultural significance to the native Hawaiian People (cf. letter of D. Hibbard to R. Evans, September 12, 1991). As a result, archaeologists with DLNR-SHPD have referred the summit region of Mauna Kea as a “ritual landscape,” with all of the individual parts contributing to the integrity of the whole summit region. (pers. comm. P. McCoy and H. McEldowney; Group 70 meetings of September 10, 1998). <i>Id</i> Citing McCoy and McEldowney)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable.</p> <p><i>See</i> Response to Exception 312.</p>
391.	Unpaginated	<p>Chairwoman Laura Thielan states in her comment in the DEIS; “It is our view that the effect of astronomy development on cultural resources and on the landscape of Mauna Kea has been significant and adverse. While a project such as the TMT can bring new resources into play that may mitigate certain cultural impacts... we believe the project will increase the level of impact on cultural resources, which remains significant and adverse. “Laura Thielan, Chair, DLNR Ex A-004 FEIS Vol II</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 260.</p>

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392.	Unpaginated	<p>p 17 of 531. She also states the view plane analysis has been downplayed in the DEIS. pg 20 of 532. Also, Chairwoman Thielan cites the DEIS saying the TMT will result in a small incremental increase - she does not agree that "the impact of the project can be characterized as a "small incremental" increase. The TMT will result in a 50% increase in astronomy related personnel in the summit area, will consume over 6 acres in its construction, and will result in the movement of almost 100,000 cubic yards of lava material. This project clearly represents more than a "small incremental" increase in environmental and cultural impacts" Pg 21 - 22 of 531.</p> <p>There was no regional archaeological analysis done for the Proposed TMT project. (Tr. Jan. 19, 2017, Kehaulani Abad, Ph.D, Vol 27 p31:7-15).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 341.</p>
393.	Unpaginated	<p>FOF #842 in particular is just patently false. The Northern Plateau is an undeveloped area (area E) where there are no structures, facilities or telescopes. Exhibit A003 FEIS VOL I pg. 2-8, pg. 2-10 Fig 2-3, pg. 2-11 figure 2-3, pg. 2-13 figure 2-4. Exhibit A007 OCCL Staff Report pg. 7, Exhibit A-008 Exhibits to OCCL Staff report pgs. 82-84.</p> <p>The proposed site for the TMT Observatory is a roughly 5-acre area at the end of a four-wheel drive road at an elevation of 13,150 feet on the Northern Plateau of Mauna Kea. (Ex R-3/B.32 FEIS, Vol. 1 p. 2-10)</p>	<p>See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.</p>
394.	Unpaginated	<p>Roughly 6.2 acres of previously undisturbed land will be disturbed by the TMT Observatory and Access Way. (Ex R-</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
395.	Unpaginated		<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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396.	Unpaginated	<p>3/B.32 FEIS Section 3.2 Cultural Resources Page 3-26)</p> <p>There are no current developments on the Northern Plateau. (Ex B.70 CDUA Staff Report Feb 25, 2011, p.7</p>	<p>See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
397.	Unpaginated	<p>TMT is being proposed for an area on the North Plateau of Mauna Kea that has not hosted permanent facilities or developments. It is opening up a new area. (Ex B.70 CDUA Staff Report Feb 25, 2011, p 59)</p>	<p>See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
398.	Unpaginated	<p>The TMT's footprint will be a minimum of 8.5 acres on a pristine plateau. (Ex B.70 CDUA Staff Report, p.K-1)</p>	<p>See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
399.	Unpaginated	<p>The Applicant proposes to expand astronomical development (one of the world's largest telescopes) into an area (E) that is far (1000 meters or 3/4 mile) from the developed infrastructure, in an alpine stone desert discrete from the summit cinder cones, with flora and fauna unlike those at the summit, in a Historic District, with an Access Way impacting a</p>	<p>See Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 259.</p>

Exception #	Page	Exceptions/Response	Comment
400.	Unpaginated	<p>Kukahau`ula, (a Traditional Cultural Property) Thus creating a significant increment of impact to an area that is not at all built upon. FEIS VOL I Ex.A-3 p. 3-219</p> <p>The DLNR Chair criticized the viewplane analysis because the visual impacts were downplayed in the analysis. The analysis does not seem to account for the visual impact of the project on the individuals that move within and between impacted viewplanes, impact on visitors, and more importantly, the impact of viewing a new very large observatory from the perspective within the summit area. Laura Thielen, Chair, DLNR. (Ex R-5/B.34 FEIS Vol II p 21 of 531)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 260 regarding viewplane analysis.</p>
401.	Unpaginated	<p>The Access Way will also result in a visual impact, particularly from a cultural perspective, where the access way occurs within the Kukahu`ula Historic Property. (Ex. R-3/B.32, (TMT FEIS Section 3.2 Cultural Resources), p.3-32)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Misleading. Presented out of context. The TMT Access Way's physical and visual impacts have been directly mitigated. See, e.g., HO FOF 324.</p>
402.	Unpaginated	<p>When people come to view the sunset, including those of us doing ceremonies, the TMT will be a dominant feature in that view plane, including ours as we honor the sun as it sets. (Ex B.01a WDT, p.7. K. Pisciotto, Oct 11, 2016)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. There is no credible evidence that the viewplanes from the summit ridge area towards Haleakalā or other areas would be materially affected or blocked. See, e.g., HO FOF 834-854</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in</p>

Exception #	Page	Exceptions/Response	Comment
403.	Unpaginated	TMT is very big and there is no question is will be the most dominant feature in the open space and view planes from Mauna Kea. (Ex B.01a K. Pisciotta, dated June 28, 2011, re-submitted October 11, 2016, WDT, p. 7)	<p>dispute. There is no probative and substantial evidence that the substance of the belief is factual.</p> <p>There is no reliable probative and substantial evidence that her or the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Inaccurate/false. <i>See, e.g.</i>, HO FOF 834-854</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Not supported by the reliable, probative and substantial evidence.</p>
404.	Unpaginated	Most of our practices rely on some kind of view plane, because they are about the relationship between Papa and Wakea (our relationship with and to the earth and the celestial bodies and heavens). (Ex B.01a dated June 28, 2011, re-submitted October 11, 2016, K. Pisciotta, WDT, p.5)	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights</p>

Exception #	Page	Exceptions/Response	Comment
			protected by Article XII, Section 7 of the Hawaii State Constitution.
405.	Unpaginated	The University has not used traditional methods to assess the viewed impacts. The University claims the view planes or viewsheds will not be affected. This is not true. (Ex B.01a K. Pisciotta, October 11, 2016, WDT, p. 5)	Not supported by the reliable, probative and substantial evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Inaccurate/false. <i>See, e.g.</i> , HO FOF 834-854 There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution. Not supported by the reliable, probative and substantial evidence.
406.	Unpaginated	The TMT Observatory will impact the view plane in certain portions of the Pu'u Kukahau'ula State Historic Property (SIHP # 50-10-23-21438) and the Mauna Kea.407. Summit Region Historic District (SIHP # 50-10-23-26869). (Ex. R-5/B.34, TMT FEIS, p. G-62)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Inaccurate/false. <i>See, e.g.</i> , HO FOF 834-854
408.	Unpaginated	The TMT observatory and appurtenances will be visible to the west and north of the Pu'u Kukahau'ula State Historic Property. (Ex. R-5/B.34, TMT FEIS, p. G-57)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Inaccurate/false. <i>See, e.g.</i> , HO FOF 834-854
409.	Unpaginated	Professor Mills noted that the map included with the CDUA application was cropped from the version prepared by Pacific Consulting Services, Inc. (PCSI) to limit presentation to an	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
		even smaller implied "Area of Potential Effect." (Ex. B. 12a at 2)	See Response to Exception 9 regarding credibility determinations. HO FOF 618-19. Unsupported/Unsubstantiated. Not supported by the reliable, probative and substantial evidence.
410.	Unpaginated	Neves named his daughter after this mark and the call of the sun, Akala Nahikulani. (Tr. 01/31/2017, Paul Neves, Vol. 33 p. 183:18-20)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/inapplicable.
411.	Unpaginated	Within the viewplanes what Neves is concerned about is the viewplane of the path of the sun because it has a connection with his family. (Tr. 01/31/2017, Paul Neves, Vol. 33 p. 186:9-12; p. 244:13-17)	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Inaccurate/false. See, e.g., HO FOF 834-854 There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.
412.	Unpaginated	This viewplane is from the Mauna Kea summit towards Haleakala on Maui. (Tr. 01/31/2017, Paul Neves, Vol. 33 p. 244:22-24; p. 245:12-16)	Not supported by the reliable, probative and substantial evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/inapplicable. See, e.g., HO FOF 834-854

Exception #	Page	Exceptions/Response	Comment
413.	Unpaginated	<p>The pre-existing condition of the viewplane from the northern slope is a vast cultural and sacred landscape overlooking a ring of shrines encircling the flanks of Mauna Kea in a Historic District larger than the Mauna Kea Science Reserve. If permitted, the TMT would intrude upon the currently unobstructed view of Haleakala Mountain from the northern ridge of Kukahau`ula, as well as the primary view of the setting sun from the mountain. It will also obstruct viewplanes used for traditional, customary, spiritual, and religious Native Hawaiian practices.</p>	<p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Inaccurate/false. <i>See, e.g.</i>, HO FOF 834-854</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
414.	Unpaginated	<p>Likewise, this project will impede upon the viewplanes and degrade the natural beauty cherished by visitors, residents, and recreational users.</p>	<p>Not supported by the reliable, probative and substantial evidence.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Inaccurate/false. <i>See, e.g.</i>, HO FOF 834-854</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
415.	Unpaginated	<p>As the Applicant acknowledges in the governing management documents for the MKSR, (CMP and Subplans) “The proposed</p>	<p>Not supported by the reliable, probative and substantial evidence.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
		location for the TMT is on an estimated five acres of presently undeveloped land off the summit in an area referred to as the northern plateau" ...Exhibit A013 p 31	<i>See</i> Response to Exception 236 regarding designation of the Northern Plateau as the anticipated location for a next generation large telescope in the Master Plan.
416.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
417.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 9 regarding credibility determinations
418.	Unpaginated	CRITERIA 5, HAR 13-5-30(C)(5): "THE PROPOSED LAND USE INCLUDING BUILDINGS, STRUCTURES, AND FACILITIES, SHALL BE COMPATIBLE WITH THE LOCALITY AND SURROUNDING AREAS, APPROPRIATE TO THE PHYSICAL CONDITIONS AND CAPABILITIES OF THE SPECIFIC PARCEL OR PARCELS.]	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
419.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
420.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
		consideration to make an informed fair decision.	<i>See</i> Response to Exception 9 regarding credibility determinations
421.	Unpaginated	The Applicant proposes to expand astronomical development (one of the world's largest telescopes) into an area (E) that is far (1000 meters or 3/4 mile) from the developed infrastructure, in an alpine stone desert discrete from the summit cinder cones, with flora and fauna unlike those at the summit, in a Historic District, with an Access Way impacting a Kukahau'ula, (a Traditional Cultural Property) Thus creating a significant increment of impact to an area that is not at all built upon. FEIS VOL I Ex.A-3 p. 3-219	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 259.
422.	Unpaginated	The Northern Plateau is an undeveloped area (area E) where there are no structures, facilities or telescopes. Exhibit A003 FEIS VOL I pg. 2-8, pg. 2-10 Fig 2-3, pg. 2- 11 figure 2-3, pg. 2-13 figure 2-4. Exhibit A007 OCCL Staff Report pg. 7, Exhibit A-008 Exhibits to OCCL Staff report pgs. 82-84.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 259.
423.	Unpaginated	CRITERIA 6, HAR 13-5-30(C)(6): "THE EXISTING PHYSICAL AND ENVIRONMENTAL ASPECTS OF THE LAND SUCH AS NATURAL BEAUTY AND OPEN SPACE CHARACTERISTICS WILL BE PRESERVED OR IMPROVED UPON, WHICHEVER IS APPLICABLE[.]"	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
424.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
425.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 9 regarding


Exception #	Page	Exceptions/Response	Comment
426.	Unpaginated	<p>In FOF numbers 921- 955 the Hearing Officer does not explain what evidence demonstrates that the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics will be preserved and or improved upon by the TMT Project by a 18 story, 136 foot diameter, 5 acre structure.</p>	<p>credibility determinations Inaccurate/false.</p>
427.	Unpaginated	<p>The Hearing Officer attempts to try and make the purposes of the conservation district fit into a resource sub zone rather than the resource sub zone fitting into the purposes of a Conservation District. as the Temple of Lono puts it; "The Applicant UH/TIO filed a Conservation District Use Application (CDUA), not a resource subzone use application. By its very nature, the context for such an application is the purpose and goals of the Conservation District, not the purpose and goals of the resource subzone within the Conservation District." Temple of Lono Responses to UH/TIO FOF COL DO. H.O goes along with this type of reasoning without considering any of the petitioner witness credible , substantive, and reliable testimony or evidence.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Mischaracterization. Inaccurate/false. Irrelevant/inapplicable.</p>
428.	Unpaginated	<p>The pre-existing condition of the viewplane from the northern slope is a vast cultural and sacred landscape overlooking a ring of shrines encircling the flanks of Mauna Kea in a Historic District larger than the Mauna Kea Science Reserve. If permitted, the TMT would intrude upon the currently unobstructed view of Haleakala Mountain from the northern ridge of Kukahau'ula, as well as the primary view of the setting sun from the mountain. It will also obstruct view planes used for traditional, customary, spiritual, and religious Native Hawaiian practices. Likewise, this project will impede upon the view planes and degrade the natural beauty cherished by visitors, residents, and recreational users.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Inaccurate/false. <i>See, e.g.,</i> HO FOF 834-854 There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p>

Exception #	Page	Exceptions/Response	Comment
429.	Unpaginated	The proposed TMT would intrude upon the currently unobstructed view of Haleakala Mountain as well as the primary view of the setting sun from the mountain. It will also obstruct view planes used for traditional and cultural spiritual and religious Native Hawaiian practice. If the TMT were built, it would interfere with this alignment directly. Tr. 01/31/2017, Paul Neves, Vol. 33 p 185:7-12.	Not supported by the reliable, probative and substantial evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Inaccurate/false. See, e.g., HO FOF 834-854 There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.
430.	Unpaginated	[T]he TMT does not preserve or improve upon the open space and natural beauty characteristics of Mauna Kea, nor does it demonstrate it will not have an adverse or significant impact on the cultural resources of Mauna Kea. Ex B-01a K. Pisciotta,	Not supported by the reliable, probative and substantial evidence. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/unsubstantiated. UH FOF 897 is accurate and supported by the evidence in the record and the citations therein
431.	Unpaginated	CRITERIA 7 HAR 13-5-30(C)(7): "SUBDIVISION OF LAND WILL NOT BE UTILIZED TO INCREASE THE INTENSITY OF LAND USE IN THE CONSERVATION DISTRICT"	UH FOF 955 is accurate and supported by the evidence in the record and the citations therein. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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432.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
433.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 9 regarding credibility determinations
434.	Unpaginated	Hearing Officer FOF 956-965. Here again H.O does not take into consideration the reliable substantive and credible evidence put forth by Petitioners in this case. For instance, please see images of subdivisions on Mauna Kea in Exhibit A003 FEIS VI pg. 2-10, figure 2-3. Pg. 2-11, figure 2-3.	See Response to Exception 9 regarding credibility determinations. See Response to Exception 9 regarding extent to which the Hearing Officer considered the testimony of Petitioners and other opposing parties.
435.	Unpaginated	Accordinging the Conservation District rules, HAR 13-5-2(c)(6) Definitions, "subdivision" means a division of a parcel into more than one parcel. This definition is consistent with Black's Law Dictionary, where "subdivision" is defined as "(1) The division of a thing into smaller partsSuch a division, in and of itself, is not prohibited by the rules. However, where such a division of land is undertaken in order to "intensify land uses" on a given parcel of land, it is forbidden under HAR 13-5-30(c)(7).	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. Dictionary definitions are irrelevant when the terms are defined within the statute. <i>Singleton v. Liquor Com'n, County of Hawaii, 2006, 140 P.3d 1014, 111 Hawaii'i 234</i> (where a statute's term is not defined, courts may rely upon extrinsic aids, such as legal and lay dictionaries, to determine such intent).
436.	Unpaginated	While it is true that the University has not officially requested permission to subdivide the Mauna Kea conservation district in	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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		<p>this CDUA, the Applicant's actions on Mauna Kea have resulted in the de facto subdivision of this land for the purpose of intensifying land uses undertaken there. This improper, de facto subdivision takes two forms: 1) Astronomy Precinct, 2) Subleases to telescope operators. The Astronomy Precinct, as Ms. Nagata confirmed, was subdivided from the remainder of the "UH managed lands" in order to focus future telescope construction in a 500-acre area of the conservation district. In addition, the TMT would operate on a sublease, which as other similar subleases indicate, effectively result in the division of the Mauna Kea Science Reserve into a many separate parcels under the control of different telescope operators. Despite these facts, the Applicant makes several attempts to claim compliance with the seventh criterion their argument s has not merits. First, the Applicant contends that be-cause it did not apply for a subdivision in its CDUA for the TMT, there is no subdivision of land. Not so. In the definition of "subdivision," Black's Law Dictionary offers a very useful example of an "illegal subdivision."</p>	<p>Irrelevant/inapplicable. Dictionary definitions are irrelevant when the terms are defined within the statute. <i>Singleton v. Liquor Com'n, County of Hawaii, 2006, 140 P.3d 1014, 111 Hawaii 234</i> (where a statute's term is not defined, courts may rely upon extrinsic aids, such as legal and lay dictionaries, to determine such intent).</p> <p>False/inaccurate. The Astronomy Precinct is not a subdivision of UH Management lands. <i>See, e.g., HO FOF 177.</i></p> <p>False/inaccurate. No land will be subdivided to construct and operate the TMT Project. <i>See HO FOF 956-965.</i></p>
437.	Unpaginated	<p>The division of a tract of land into smaller parcels in violation of local subdivision regulations, as when a developer begins laying out streets, installing sewer and utility lines, and constructing houses without the authorization of the local planning commission.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable. No land will be subdivided to construct and operate the TMT Project. <i>See HO FOF 956-965.</i></p>
438.	Unpaginated	<p>BLACK'S LAW DICTIONARY, 7th ed, (2000) at 1155.</p> <p>Black's makes clear that a subdivision of land can occur regardless if the applicant properly applies for permission or not. Land use in the summit region of the Mauna Kea conservation district has the hallmarks of a de facto subdivision: facilities and improvements cost sharing, planned</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable. Dictionary definitions are irrelevant when the terms are defined within the statute. <i>Singleton v. Liquor Com'n, County of Hawaii,</i></p>

Exception #	Page	Exceptions/Response	Comment
439.	Unpaginated	<p>development, and defined, independent property interests. As the site visit and the record indicate, the telescope subleases intensified land use by increasing the burden of vehicles, visitors, and long-term personnel that use access roads, sewage, electricity, utilities, and base-level and mid-level facilities.</p> <p>The Applicant contends that a completely separate law exempts the University from the requirements of this law. The Applicant offers no reason to look outside the four corners of HAR 13-5 or HRS 183C for guidance in the interpretation of the conservation district rules. HAR 13-5-30(c)(7) is not ambiguous or unclear, as such there is no reason to refer to other statutes for interpretation, especially where that interpretation contradicts the plain meaning of the rule in question. Because there is no reason to reference Hawaii's Uniform Land Sales Practices Act, the Applicant's reliance on the government exception is misplaced. There is no exception to HAR 13-5-30(c)(7).</p>	<p>2006, 140 P.3d 1014, 111 Hawai'i 234 (where a statute's term is not defined, courts may rely upon extrinsic aids, such as legal and lay dictionaries, to determine such intent).</p> <p>Irrelevant/inapplicable. No land will be subdivided to construct and operate the TMT Project. <i>See</i> HO FOF 956-965.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/unsubstantiated.</p> <p>Mischaracterization.</p> <p>Irrelevant/inapplicable. No land will be subdivided to construct and operate the TMT Project. <i>See</i> HO FOF 956-965.</p>
439.	Unpaginated	<p>The metes and bounds description for the TMT sublease (which the court has since invalidated) contains the following description:</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable. No land will be subdivided to construct and operate the TMT Project. <i>See</i> HO FOF 956-965.</p>

Exception #	Page	Exceptions/Response	Comment
		<p style="text-align: center;">DESCRIPTION</p> <p style="text-align: center;">TMT SITE PREMISES</p> <p>All of that certain parcel of land being a portion of the Government Land of Kaohle, being also a portion of Mauna Kea Science Reserve covered by General Lease S-4191 to the University of Hawaii Situata at Kaohle, Hamakua, Island of Hawaii, Hawaii</p> <p>Beginning at the southwest corner of this parcel of land referred to the Hawaii State Plane Coordinate System, Zone 1 (NAD83) 362,519.00 feet North and 1,646,660.00 feet East and the direct azimuth and distance from the Government Survey Triangulation Station "SUMMIT 1955" being 129° 52' 08", 6,166.86 feet and running by azimuths measured clockwise from True South:</p> <ol style="list-style-type: none"> 1. 152° 35' 33" 304.14 feet along the remainder of the Government Land of Kaohle and the remainder of Mauna Kea Science Reserve covered by General Lease S-4191 to the University of Hawaii; 2. 180° 00' 00" 190.00 feet same; 3. 270° 00' 00" 630.00 feet along same; 4. 0° 00' 00" 430.00 feet along same; 5. 90° 00' 00" 320.00 feet along same; 6. 0° 00' 00" 30.00 feet along same; 7. 90° 00' 00" 170.00 feet along the same to the point of beginning and containing an area of 5,9986 acres, more or less. <div style="text-align: right; margin-top: 20px;">  <p>Description Prepared By: Engineering Partners Inc. RONALDO B. ALFRELO Licensed Professional Land Surveyor Certificate Number 7564 Expires April 30, 2014</p> <p>Hilo, Hawaii, March 10, 2014</p> </div>	
440.	Unpaginated	The Hearing Officer has clearly disregarded and failed to	Fails to comply with Minute Order No.

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		considered the credible, substantive, reliable evidence provided by the petitioners in this case.	103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 9 regarding extent to which the Hearing Officer considered the testimony of Petitioners and other opposing parties. <i>See</i> Response to Exception 9 regarding credibility determinations
441.	Unpaginated	CRITERIA 8, HAR 13-5-30(C)(8): "THE PROPOSED LAND USE SHOULD NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE".	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
442.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
443.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 9 regarding credibility determinations
444.	Unpaginated	Hearing Officer FOF 966-1016 provide no countering evidence to petitioners extensive exhibits and testimony for this criteria.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). False/inaccurate. <i>See</i> Response to Exception 9 regarding credibility determinations
445.	Unpaginated	H.O states the fact that Criteria 8 does not require that a proposed land use be affirmatively beneficial to public health,	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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446.	Unpaginated	<p>safety, and welfare.</p> <p>Dr. Abad states that health is not only about land and water quality but includes peoples psychological, spiritual and emotional health. TR Jan 19, 2017 V27 pg. 14-25.</p>	<p>Incomplete.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations. HO FOF 664-65, 1015. The Hearing Officer's finding that Dr. Abad was not credible was supported by the reliable, probative, and substantial evidence in the whole record. <i>See id.</i></p> <p>Dr. Abad's testimony was also not supported by scientific studies and/or any data. UH Hilo and TIO are also not required to rebut every statement made by every witness, especially where those statements are not credible and not supported</p>
447.	Unpaginated	<p>Dr. Taualii's experience is extensive; She holds a doctorate in Health Services, with expertise in public health informatics, epidemiology, genetics and Indigenous health, she submitted her testimony as a leading expert in health for Native Hawaiians. "The research of myself and my colleagues demonstrate three key findings:</p> <p>1) desecrating sacred spaces impacts cultural identity and health, 2) participation in traditional practices are protective factors against distress, and 3) health disparities of Native</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations. HO FOF 970, 1015. The Hearing Officer's finding that Dr. Taualii was not credible was supported by the reliable, probative, and substantial evidence in the whole record. <i>See id.</i></p>

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448.	Unpaginated	<p>Hawaiians cannot be explained by standard determinants of health (e.g. poverty or low education) and that causes, such as forced assimilation are causal factors in poor health outcomes". B.04a WDT</p> <p>Dr. Taualii's "opinion" is based on her extensive educational background as a Dr. in Health Services and Informatics, she holds a certificate in Public Health Genetics, a MPH in Social Behavioral Sciences, and a BA in American Indian Studies. She is the author of numerous publications, articles and technical reports and has served on editorial review boards. Her theories are supported by extensive empirical data. The Applicant UH/TMT/TIO did not bring any countervailing information, witnesses, evidence, or testimony to dispute or challenge it. Therefore, by failing to challenge petitioners/opposing intervenors witnesses, evidence and testimonies UH/TIO has defaulted. The preponderance of the evidence submitted by the petitioners/opposing intervenors is undisputed. WDT B04b, TR Jan 24, 2017 Dr. Taualii.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/inaccurate.</p> <p>Mischaracterization of burden of proof. HO COL 77-81.</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 970, 1015. The Hearing Officer's finding that Dr. Taualii was not credible was supported by the reliable, probative, and substantial evidence in the whole record. See <i>id.</i></p>
449.	Unpaginated	<p>Dr. Meyers: The Applicant UH/TMT/TIO failed to bring any countervailing in-formation, witnesses, evidence, or testimony to dispute or challenge Dr. Meyer's testimony. Therefore, by failing to challenge petitioners/intervenors witness, evidence and testimony UH/TIO has defaulted. The preponderance of the evidence submitted by the petitioners/opposing intervenors is undisputed. See Meyers WDT B10a, TR Jan 26, 2017 Dr. Meyers.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/inaccurate.</p> <p>Mischaracterization of burden of proof. HO COL 77-81.</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 973, 1015. The Hearing Officer's finding that</p>

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450.	Unpaginated	<p>Dr. Kaholokula: He is the Chair and Professor of Native Hawaiian Health at the John A. Burns School of Medicine, University of Hawaii at Manoa. He holds a PhD in clinical psychology, completed a clinical health psychology post-doctoral fellowship at Tripler Army Medical Center, and holds a license to practice in Hawaii. He has over 20 years of clinical and research experience regarding issues of Native Hawaiian health, to include mental and physical health. He has over 50 scientific publications specific to Native Hawaiian and Pacific Islander health in national and international peer-reviewed journals and provided numerous keynotes, talks, consultations on Native Hawaiian and Pacific Islander health nationally and internationally. He sits on several boards of organizations whose mission is focused on either Native Hawaiians or public health issues to include Queen's Health Systems and Papa Ola Lokahi Native Hawaiian Health Board. He is also a member of a Native Hawaiian cultural group known as Halemua o Kualii and has been involved in various Hawaiian cultural practices (e.g., hula and lua) throughout his life. UH/TIO did not bring any countervailing information, witnesses, evidence, or testimony to dispute or challenge Dr. Kaholokula's testimony.</p>	<p>Dr. Meyer was not credible was supported by the reliable, probative, and substantial evidence in the whole record. <i>See id.</i></p> <p>Dr. Meyer's testimony was also not supported by scientific studies and/or any data. UH Hilo and TIO are also not required to rebut every statement made by every witness, especially where those statements are not credible and not supported.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/inaccurate.</p> <p>Mischaracterization of burden of proof. HO COL 77-81.</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations. HO FOF 976-77, 1015. The Hearing Officer's finding that Dr. Kaholokula was not credible was supported by the reliable, probative, and substantial evidence in the whole record. <i>See id.</i></p> <p>Dr. Kaholokula's testimony was also not supported by scientific studies and/or data. UH Hilo and TIO are also not required to rebut every statement made by every witness, especially where those</p>

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451.	Unpaginated	<p>Therefore, by failing to challenge petitioners/intervenors witness, evidence and testimony, UH/TIO has defaulted. The preponderance of the evidence submitted by the petitioners/opposing intervenors is undisputed. Ex F-7b, Ex O-11 CV, TR Feb 23, 2017.</p> <p>Over the past 20 years Ms. Perreira has worked professionally, in Hawaii rural communities, in the field of community mental health as a mentor, teacher, counselor, consultant and now clinical psychologist. Her particular interests and expertise is in individual, family, community and national trauma exposure, identification of symptoms, diagnosis and treatment of discrete and complex traumas associated with physical, emotional, psychological, spiritual and medical conditions or disorders. UH/TMT/TIO did not bring any countervailing information, witnesses, evidence, or testimony to dispute or challenge Ms. Perreira testimony. Therefore, by failing to challenge petitioners/intervenors witness, evidence and testimony, UH/TIO has defaulted. The preponderance of the evidence submitted by the petitioners/opposing intervenors is undisputed. TR Feb 23, 2017, EX O-14 WDT.</p>	<p>statements are not credible and not supported.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/inaccurate.</p> <p>Mischaracterization of burden of proof. HO COL 77-81.</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 978, 1015. The Hearing Officer's finding that Ms. Perreira was not credible was supported by the reliable, probative, and substantial evidence in the whole record. See <i>id.</i></p> <p>Ms. Perreira's testimony was also not supported by scientific studies and/or data. UH Hilo and TIO are also not required to rebut every statement made by every witness, especially where those statements are not credible and not supported.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/inaccurate.</p>
452.	Unpaginated	<p>Laulani Teale is a Kanaka Maoli traditional practitioner and advanced student of many customary practices, such as laau lapaau and hooponopono. She also holds a Master's degree in Public Health, and has worked in peacemaking and community</p>	<p>statements are not credible and not supported.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/inaccurate.</p>

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		<p>health development professionally for 16 years. Much of her work focuses on health issues affecting Kanaka Maoli. UH/TMT/TIO did not bring any countervailing information, witnesses, evidence, or testimony to dispute or challenge Ms. Teale's testimony. Therefore, by failing to challenge petitioners/intervenors witness, evidence and testimony, UH/TIO has defaulted. The preponderance of the evidence submitted by the petitioners/opposing intervenors is undisputed. Ex B.15a WDT, Ex B.15b.</p>	<p>Mischaracterization of burden of proof. HO COL 77-81.</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 868, 1015. The Hearing Officer's finding that Ms. Teale was not credible was supported by the reliable, probative, and substantial evidence in the whole record. <i>See id.</i></p> <p>Ms. Teale's testimony was also not supported by scientific studies and/or data. UH Hilo and TIO are also not required to rebut every statement made by every witness, especially where those statements are not credible and not supported.</p>
453.	Unpaginated	<p>Noelani Goodyear Kaopua (TR V39, Ex J-3) and Dr. Kahakalau (TR V23 Ex B.06a, B.06b) as well as the petitioners /opposing intervenors themselves (cultural practitioners who are experiencing the harm). Therefore, by failing to challenge the petitioners/intervenors witnesses, evidence and testimony, UH/TMT/TIO has defaulted. The preponderance of the evidence submitted by the petitioners/opposing intervenors is undisputed.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/inaccurate.</p> <p>Mischaracterization of burden of proof. HO COL 77-81.</p> <p>See Response to Exception 9 regarding credibility determinations. HO FOF 794, 895, 1015. The Hearing Officer's finding that Ms. Kaopua was not credible was supported by the reliable, probative, and</p>

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			<p>substantial evidence in the whole record. <i>See id.</i></p> <p>Ms. Kaopua's testimony was also not supported by scientific studies and/or data. UH Hilo and TIO are also not required to rebut every statement made by every witness, especially where those statements are not credible and not supported.</p>
454.	Unpaginated	<p>The above mentioned witness testimonies were not taken into consideration by the Hearings officer in order to make an informed recommendation. These statements by the H.O in her FOF/COL D&O do not hold water, are not credible, reliable or based on any evidence cited.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Inaccurate/false.</p> <p><i>See</i> Response to Exception 9 regarding extent to which the Hearing Officer considered the testimony of Petitioners and other opposing parties.</p> <p><i>See</i> Response to Exception 9 regarding credibility determinations. The Hearing Officer's findings that the above mentioned witnesses were not credible was supported by the reliable, probative, and substantial evidence in the whole record.</p>
455.	Unpaginated	<p>H.O's FOF 981 referenced Ex I-1 as a public opinion survey which could not be found in P.U.E.O'S list of exhibits.</p>	<p>Submitted as Doc. 485.</p>
456.	Unpaginated	<p>We incorporate by reference also all of the Parties named</p>	<p>Fails to comply with Minute Order No.</p>

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		above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
457.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 9 regarding credibility determinations.
458.	Unpaginated	The HO misconstrues and mischaracterizes the Public Trust Doctrine.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
459.	Unpaginated	Contrary to the UH/TIO's assertion at (FOF COL 301), the Public Trust Doctrine (PTD) does apply to the TMT Project and to BLNR's approval of the such a project and it is the law of the land.	Irrelevant/inapplicable. Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.
460.	Unpaginated	UH/TIO FOF COL 295-323 found at p. 196 - 200.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
461.	Unpaginated	We incorporate by reference our previous FOF COL, D&O here and also respond as follows.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
462.	Unpaginated	The TMT or TIO (without conceding our positions that the TMT Corporation and the TIO LLC are not necessarily the same entity) we assert that both entities are third parties and NOT beneficiaries of the Public Trust.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/unsubstantiated. Irrelevant/inapplicable.

Exception #	Page	Exceptions/Response	Comment
			Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.
463.	Unpaginated	While the University may benefit from the use of public trust lands for educational purposes under Section 5(f) of the Hawai'i Admissions Act, the law does not provide private corporations and foreign countries that same privilege.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/unsubstantiated.
464.	Unpaginated	The University may not extend their public trust lands privilege to non-state (Cal-tech and UC California) and foreign government and/or corporations such as the internationally owned observatories.	Irrelevant/inapplicable. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/unsubstantiated.
465.	Unpaginated	Here again the UH remains the Applicant on the actual CDUA not TMT or TIO.	Irrelevant/inapplicable. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
466.	Unpaginated	<p>In the Waiahole (2000) case the Court also makes the following findings:</p> <ul style="list-style-type: none"> • The State is obligated to protect, control and regulate the use of Hawai'i's water resources for the benefit of its people as a public trust. • Private commercial use is not a public trust purpose. • Retention of waters in their natural state does not constitute waste. Rather, a public trust interest exists in maintaining a free-flowing stream for its own sake. • The Water Commission "inevitably must weigh competing public and private water uses on a case-by-case basis" but any balancing must "begin with a 	Irrelevant/inapplicable. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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467.	Unpaginated	<p>presumption in favor of public use, access, and enjoyment.”</p> <ul style="list-style-type: none"> Domestic uses and the exercise of Native Hawaiian and traditional and customary rights are public trust purposes. <p>In the Waiahole (2000) case the Court discusses what is known as the precautionary principle, holding that in the absence of conclusive evidence to the contrary, trustee should err on the side of caution and mitigate the side the protection the resource(s); thus stating in relevant part:</p> <p>“Where scientific evidence is preliminary and not yet conclusive regarding the management of fresh water resources which are a part of the of the public trust, it is prudent to adopt the “precautionary principles” in protecting the resources. That is, where there are present or potential threats of serious damage, lack of full scientific certainty should not be the basis for postponing effective measures to prevent environmental degradation...addition, where uncertainty exists, a trustee’s duty to protect the resource mitigates in favor of choosing presumptions that also protects the resources. x. “ (In re Water Use Permit Application, 94 Hawaii 97; 9 P.3d 409 (2000))(hereafter “Waiahole”) at p.154.)”</p> <p>The Court in McBryde Sugar Co. v. Robinson (1973), stated:</p> <p>[t]he right to water was specifically and definitely reserved for the people of Hawaii for their common good . . . [a]nd the ownership of water in natural watercourses and rivers [remains] in the people of Hawaii for their common good. (Emphasis the Court’s) at p. 129</p> <p>But the Court when further in In Robinson v. Ariyoshi (1982) stating; [a] public trust was imposed upon all waters of the</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
468.	Unpaginated		Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
469.	Unpaginated		Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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		<p>kingdom. (Emphasis of the Court) <i>Id.</i></p> <p>Then in 1978 the people of Hawai'i adopted protection of the all the waters of Hawai'i in the Constitution, in Article XI, Section 1 and Section 7, which read in relevant part: Section 1. <u>For the of present and future generations, the State and its political sub-divisions shall preserve and protect... all natural resources including water....and shall promote the development and utilization of these resources in a manner consistent with their conservation....</u></p> <p>And,</p> <p><u>All public natural resources are held in trust by the State for the benefit of the people.</u> (Emphasis the Court's)</p>	
470.	Unpaginated		Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
471.	Unpaginated	<p>Article XI, under the WATER RESOURCES section provides;</p> <p>Section 7. <u>The State has an obligation to protect, control and regulate the use of the Hawai'i's water resources for the benefit of its people.</u> (Emphasis of the Court), Waiahole at p. 129, 130</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
472.	Unpaginated	<p>Further, the Court affirming the scope of the "States Resource Trust" had this to say;</p> <p>[t]he public trust doctrine applies to all water resources without exceptions or distinction [including surface and underground water]. <i>Id.</i> at 133.</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
473.	Unpaginated	The principles of the public trust inform every decision made about shared re-sources in Hawai'i, such as the public lands of Mauna Kea. The Public Trust Doctrine is at the foundation of law in Hawai'i.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Substantial and credible evidence was

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474.	Unpaginated	<p>The Hawai'i Supreme Court has repeatedly held that an agency's discretionary authority is "circumscribed" by the Public Trust Doctrine. (<i>Kelly v. 1250 Oceanside Ptrns</i>, 111 Hawai'i 205, 230, 140 P.3d 985, 1010 (2006). See also, <i>In re Water Permits</i>, 94 Hawai'i 97, 133, 9 P.3d 409, 445 (2000), <i>In re Contested Case Hearing on the Water Use Permit Application Filed by Kukui</i>, 116 Hawai'i 481, 508, 174 P.3d 320, 347 (2007)). An entity seeking to use public trust resources for other than their intended use must demonstrate that the proposed use does not harm that public resource or the public's interest in that resource, especially for Native Hawaiians. (<i>In re Water Permits</i>, 94 Hawai'i at 136-7, 9 P.3d at 448-49.</p>	<p>presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.</p>
475.	Unpaginated	<p>The recent Supreme Court in <i>MKAH</i> (2015), held;</p> <p>Waiahole I was an explicit acknowledgment of by this court that the public trust doctrine, as incorporated into the Hawai'i Constitution, necessitates "a balancing process" between the constitutional requirements of protection and conservation of public trust resources, on the one hand, and the development and utilization of those resources, on the other. (<i>Id.</i> At 142, 9 P.3d at 454.) This balancing process, however, exists in a framework demanding that "any balancing between public and private purpose [must] begin with a presumption in favor of public use, access and enjoyment." (<i>Id.</i>) The burden of showing that the requisite balance has been properly evaluated "in light of the purposes protected by the trust" rest on "those seeking or approving such uses." (<i>Id.</i>) (Emphasis added).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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476.	Unpaginated	<p>The Court holds agencies responsible for implementing the Public Trust Doctrine. BLNR has a legal duty to preserve the public's right to ensure the public trust is not de-graded. (In re Water Permit Applications, 94 Hawai'i at 141, 9 P.3d at 453.) Where an agency fails to uphold its obligation to protect the Public Trust Doctrine, citizens, as beneficiaries of that public trust, have an independent cause of action against to uphold their rights. This case involves §5(f) of the Admissions Act, a federal law that addresses public trust lands. "Under basic trust law principles beneficiaries have the right to "maintain a suit (a) to compel the trustee to perform his duties as trustee; (b) to enjoin the trustee from committing a breach of trust; [and] (c) to compel the trustee to redress a breach of trust." (Price v. Akaka, 3 F.3d 1220, 1224 (9th Cir. 1993), citing Restatement 2d of the Law of Trusts, §199.)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
477.	Unpaginated	<p>The Ninth Circuit later clarified that Native Hawaiians can bring suit as §5(f) beneficiaries under federal law. (Day v. Apoliona, 496 F.3d 1027, 1032 (9th Cir. 2007) ("[W]e twice explicitly held that because it creates a trust, §5(f) also creates a right enforceable under 42 U.S.C.S. § 1983 (LEXIS Pub. L. 112-18 through 2011) by the trust's beneficiaries.")) The Supreme Court of Hawai'i further clarified that "a private implied right of action . . . to enforce the terms of the §5(f) trust under Hawai'i law" exists under State Constitutional Protections in Haw. Const. Art. XII, § 4." Pele Defense Fund v. Paty, 73 Haw. 578; 837 P.2d 1247 (1992). In Pele, the Court reviewed a number of cases in which Hawai'i citizen beneficiaries sued to enforce their rights as beneficiaries of public trust lands. (Id. at 604-07; citing, Kapiolani Park Preservation Society v. City & County of Honolulu, 69 Haw. 569, 751 P.2d 1022 (1988) (public trust beneficiaries were held to be able to bring suit to prevent a government agency from</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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478.	Unpaginated	<p>disposing of trust lands) and Natatorium Preservation Committee v. Edelstein, 55 Haw. 55, 515 P.2d 621 (1973), (“citizens can bring suit for an injunction against the government agencies charged with the management of public lands when those agencies seek to dispose of the public lands in violation of the statutes governing their management and disposition.)</p> <p>The sacred waters of Mauna Kea include but are not limited to, the snow, ice (including fossil ice), meltwaters, the waters collected from the clouds and mist, the surface and underground water, rivers, ice caves, and the water that flows into the sea are protected under the precautionary principle and the public trust doctrine.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.</p>
479.	Unpaginated	<p>Neither the State BLNR who is the agency responsible for protecting the waters of the Mauna Kea nor the UH/TMT who are the proponents of the TMT development have presented conclusive evidence to ensure the sacred waters will be protected from the telescopes’ use of hazardous material, sewage treatment, mirror washing treatment, or that other hazardous materials and sewage handling will not contaminate the waters that feed the multiple aquifers for Hawai’i island.</p> <p>UH/TMT witnesses did not present any conclusive evidence or witness testimony that demonstrated they have met their burden to prove the water is safe and will be protected into the future. In fact their witnesses in some case testified to disagreeing with the historical holdings of the Supreme Court of Hawai’i and specifically about the public trust doctrine.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.</p>
480.	Unpaginated	<p>UH/TMT witnesses did not present any conclusive evidence or witness testimony that demonstrated they have met their burden to prove the water is safe and will be protected into the future. In fact their witnesses in some case testified to disagreeing with the historical holdings of the Supreme Court of Hawai’i and specifically about the public trust doctrine.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/inaccurate. HO FOF 855-896.</p> <p>Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.</p>
481.	Unpaginated	<p>The cumulative impacts of all of the telescopes over a thirty</p>	<p>Fails to comply with Minute Order No.</p>

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482.	Unpaginated	<p>year period have already been shown to be <i>adverse, significant and substantial to the natural and cultural resources of the Mauna Kea</i>. (see Ex. B.01.o Request for Section 106 consultation and DEIS comments 7/7/09) (Emphasis added)</p> <p>The UH/TMT witnesses also did not present any conclusive evidence demonstrating that they have met their burden to show that Native Hawaiian practices relating to the access, gathering, use and enjoyment of the sacred waters would be protected.</p>	<p>103 and HAR § 13-1-42(b). Mischaracterization. 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. <i>See, e.g., HO COL 183.</i> Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). False/inaccurate. HO FOF 855-896. The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no probative and substantial evidence that the substance of the belief is factual. There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p>
483.	Unpaginated	Native Hawaiian practice and use of the water for medicinal,	<p>Not supported by the reliable, probative and substantial evidence. Fails to comply with Minute Order No.</p>

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		ritual, and ceremonial purpose cannot be done if the water is not clean and pristine. It is not known and this unknowing has led some practitioners not to harvest some waters and to use some of the waters in limited ways. So our practices are being negatively impacted.	103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 482.
484.	Unpaginated	If Hawaiians cannot use the water for healing then it probably should not be used for drinking water either. With so much uncertainty there is no way to be certain that the water sources for public consumption are not being negatively impacted. If we are unsure, then the precautionary principle should be applied, and that is to err on the side of caution.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 482.
485.	Unpaginated	It matters not how many black holes we discover, when we haven't figured out how to clean our own drinking water once it has been contaminated at its source. Therefore as Hawai'i citizens and Native Hawaiian beneficiaries of §5(f) public trust lands, we assert a private right of action to compel the BLNR to enforce compliance with statutory provisions that ensure the protection of public trust lands and waters of Mauna Kea.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.
486.	Unpaginated	We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
487.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). <i>See</i> Response to Exception 9 regarding credibility determinations.
488.	Unpaginated	The HO starting at p. 239, claims that Kapaakai is concerned with the preservation and protections of customary and traditional native Hawaiians rights, not with contemporary	Mischaracterization. HO COL 108-110. There is no reliable probative and

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489.	Unpaginated	<p>cultural practices. The HO despite assertions that the UH/TMT/TIO did identify cultural practices, the potential impacts on or the impairment of those practices, and the reasonable actions to be taken to reasonably protect the native Hawaiian rights that exist, set forth above, encompass not only customary and traditional practice, but the contemporary practices as well.</p> <p>This claim is false and is in fact an admission demonstrating how the BLNR unlawfully delegates their responsibility to protect the constitutional rights of Native Hawaiian traditional and customary cultural and religious rights and practices. The following statement demonstrates how this is the case. BLNR has an non-delegable duty “... to identify, cultural practice, the potential impacts on or the impairment of those practices, and the reasonable action to be taken to reasonably protect those Native Hawaiian rights that exist.”</p>	<p>substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. See HO FOF 189-192 (regarding the BLNR’s jurisdiction and ongoing supervision and management over Conservation District lands).</p>
490.	Unpaginated	<p>In Mauna Kea Concurring Opinion by Justice Pollack, joined by Justice Wilson and Justice McKenna in part, at foot note 8 on p. 21, states in relevant part:</p> <p>The court clarified, In re Contested Case Hearing on Water Use Permit Application filed by Kukui (Molokai), Inc., 116 Hawai’i 481, 174 P.3d 320 (2007), that in cases where Native Hawaiian rights figure in an agency’s public trust balancing, the burden is not on the parties of Native Hawaiian ancestry to prove that the proposed use would harm traditional and customary Native Hawaiian rights; rather, the permit applicants and the agency are the parties obligated to justify the proposed use and the approval thereof in light of the trust purpose of protecting Native Hawaiian rights. Id. at 507-09, 174 P.3d at 346-48.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
491.	Unpaginated	<p>The record is filled with facts in support of the traditional and</p>	<p>Fails to comply with Minute Order No.</p>

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		<p>customary Native Hawaiian cultural and religious practices currently conducted on the summit and surrounding areas of Mauna Kea. The identification of the “ring of shrines” that has hundreds and maybe even thousands of individual historic ‘ahu or kuahu and associated “find spots” (archeological features with uncertain ages) and the construction of new ‘ahu or kuahu, built on undeveloped lands and testified too by Petitioners; including but not limited, to Kealoha Pisciotto, Kumu Paul k. Neves, Keomailani Von Gogh, Kaliko Kanalele, and William Freitas further demonstrate that an ongoing and continuation of the Native Hawaiian traditional and customary cultural and religious practices exists and therefore also a continuity and time depth of the said traditional and customary Native Hawaiian cultural and religious practices recorded on Mauna Kea.</p>	<p>103 and HAR § 13-1-42(b). See Response to Exception 9 regarding credibility determinations. HO COL 329-359.</p>
492.	Unpaginated	<p>The Pro Se Petitioner’s Native Hawaiian traditional and customary cultural and religious rights that are challenged and threatened in two ways. First, because the State continues to abdicate, delegate and or act in excess of their authority to affirmatively to protect the “reasonable” exercise of the Native Hawaiian traditional and customary cultural and religious rights. They do this by unlawfully delegating this duty first to the University of Hawaii’i at Manoa (UH), which then is transferred to a set of entities under the University of Hawaii’i at Hilo (UHH) including the Office Of Mauna Kea (OMKM) who then transfers the duty to an advisory group called Kahu Ku Mauna (KKM). The University of Hawaii’i at Hilo (UHH) clearly transfers the responsibility of protecting constitutionally protected Native Hawaiian rights to entities that are not affirmatively mandated to protect those rights and resources, which belonging to the people of Hawaii’i.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/Unsubstantiated. See HO FOF 189-192 (regarding the BLNR’s jurisdiction and ongoing supervision and management over Conservation District lands). See Response to Exception 9 regarding credibility determinations. HO COL 329-359.</p>
493.	Unpaginated	<p>This ‘wholesale delegation of the responsibility for protecting</p>	<p>Fails to comply with Minute Order No.</p>

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494.	Unpaginated	<p>Native Hawaiian Traditional and Customary cultural and religious rights to the University and to other entities is specifically what the Supreme Court warned against and prohibited in <u>Kapa'akai</u>.</p> <p>See <u>Mauna Kea Anaina Hou</u> Concurring foot note 17 at p. 47, that reads : The non-delegable nature of an agency's duty to protect and enforce constitutional rights only intensifies the important role that an agency pls. See <u>Ka Pa'akai O Ka'Aina</u>, 94 Hawai'i at 51, 7 P.3d at 1088 (holding that "the delegation of protection and preservations of native Hawaiian practices to [the party petitioning for the reclassification of land] was inappropriate"). In this particular case, outside of judicial review, no other entity but he Board can preserve constitutional rights involved in the permitting of a proposed use of a conservation district land. See HRS § 26-15 (Supp. 2005)</p> <p>The UH/TIO has been aware of the tradition and customary Native Hawaiian rights for over a decade and this fact is clear from the following excerpts from the Mauna Kea Master Plan 2000. (Emphasis added) See Ex. A048, App. N, P. 43</p> <p>For the purposes of evaluating the significance of Native Hawaiian cultural practices, features an beliefs identified in association with the Science Reserve Master Plan Project Area, it would be useful to consider them in terms of the three types of informant claims that were defined earlier ... information obtained by Maly in his oral history and consultation study (1999) suggests that several of the identified practices and beliefs would appear to fall within the category of traditional and customary practices claims. (Emphasis added) See Ex. A048, App. N, P. 43:</p>	<p>103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. See HO FOF 189-192 (regarding the BLNR's jurisdiction and ongoing supervision and management over Conservation District lands); COL 329-359.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa'akai</i>.</p>
			<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>There is no evidence that the alleged customary and traditional practices that are generally referred to in this Exception occur within the specific area E location proposed for the TMT Observatory. No known customary and traditional practices occur within the area E location site of the TMT Observatory. HO FOF 684.</p> <p>See HO COL 329-359.</p>

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495.	Unpaginated	<p>These would be claims that would lie within the purview of Article XII, Section 7, of the Hawai'i State Constitution ("Traditional and Customary Rights") particularly as reaffirmed in 1995 by the Hawai'i State Supreme Court in the decision commonly referred to as the "PASH decision", and further clarified in the 1998 decision in "State v. Hanapi." Which would include various cultural practices and beliefs associated with the general geographical area of the summit region rather than a clearly definable property or site. (Emphasis added) See Ex. A048, App. N, P. 43</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>There is no evidence that the alleged customary and traditional practices that are generally referred to in this Exception occur within the specific area E location proposed for the TMT Observatory. No known customary and traditional practices occur within the area E location site of the TMT Observatory. HO FOF 684.</p> <p>See HO COL 329-359.</p>
496.	Unpaginated	<p>While certain other practices, such as prayer and ritual services involving the new construction of new <i>kuaahu</i> (altars), or the releasing of cremated humans rather than internment on <i>pu`u</i>, might seem to be contemporary cultural practices they may as well be considered reasonable cultural development evolving from earlier traditional practices. (Emphasis added) <i>Id.</i></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>There is no evidence that the alleged customary and traditional practices that are generally referred to in this Exception occur within the specific area E location proposed for the TMT Observatory. No known customary and traditional practices occur within the area E location site of the TMT Observatory. HO FOF 684</p>

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497.	Unpaginated	<p>Based on the evaluation of the findings of the present cultural impact assessment study made in reference to (a) the known content of the traditional Hawaiian culture and (b) the National Register Criteria as clarified by the National Register Bulletin No. 38, it is believed that with the exceptions noted above, most of the Native Hawaiian cultural practices, feature and beliefs as identified as being currently associated with the Mauna Kea Science Reserve Master Plan Project area can be considered to be culturally and historically significant. Most if not all of the identified practices and beliefs would seem to qualify as traditional and customary practices within the meaning of the Hawai'i State Constitution, while the principle pu'u and the shallow lake with adjacent pu'u would seem to satisfy the criteria for being regarded as a legitimate traditional and cultural property. Finally, none of the identified practice and beliefs would seem to represent strictly contemporary cultural practice or beliefs lacking some measure of traditional connection. (Emphasis added) Id. P. 45</p>	<p>See HO COL 329-359.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>There is no evidence that the alleged customary and traditional practices that are generally referred to in this Exception occur within the specific area E location proposed for the TMT Observatory. No known customary and traditional practices occur within the area E location site of the TMT Observatory. HO FOF 684</p>
498.	Unpaginated	<p>On December 2, 2015, the Hawai'i Supreme Court entered its decision in <i>Mauna Kea Anaina You v. Board of Land and Natural Resources</i>, 136 Hawai'i 376, 363 P.3d. 224 (2015) ("MKAH (2016)"). In the Concurring Opinion ("Concurring") the Justices identified and clarified three specific "provisions" and "guarantees" established in the Constitution that "forge the right to a contested case hearing and establish procedure essential to safeguard the rights protected by the constitutions in such cases...". Those provisions and guarantees identified were (1) Traditional Hawaiian Rights under Article XII, Section 7, (2) The Public Trust Doctrine and (3) Constitutional Responsibilities of an Agency.</p>	<p>See HO COL 329-359.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>There is no evidence that the alleged customary and traditional practices that are generally referred to in this Exception</p>

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499.	Unpaginated	<p>Regarding Native Hawaiian Rights found under the Article XII, Section 7, we believe the BLNR has improperly delegated its authority and responsibility to protect Native Hawaiian rights by relying on the UH/TMT and their representatives such as OMKM to oversee, manage and decide and determine what rights are to be upheld and what are not and what rights are to be regulated and so on and so forth on the ground. OMKM can decide who has access to the summit and who does not and when. The University personnel have been directly involved in blocking access to Kealoha Pisciotia and other Members of MKAH and the MKHUI on many occasions, the latest of which occurred on the winter solstice during last CCH (December 22, 2016). OMKM staff is implicated in numerous acts of desecration, including but not limited to the destruction and desecration of Kealoha Pisciotia's family shrine (Ahu). Her families ashes scattered and desecrated and burial places desecrated. The her family stone (Ahu) was taken to the Hilo Dump (where it was later recovered and taken back up to the MK), since that time it has been taken never to be returned. When given another stone by the Family of Aunty Ioane Luahine that stone was also taken and has never been returned. A small Ahu build at Kealoha's family area by Kumu Paul K. Neves, Keomailani Von Gogh of MKAH, and Kealoha Pisciotia has also been dismantled and destroyed. To date, anything placed on or near this site is taken down and</p>	<p>occur within the specific area E location proposed for the TMT Observatory. No known customary and traditional practices occur within the area E location site of the TMT Observatory. HO FOF 684.</p> <p><i>See</i> HO COL 329-359.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>There is no evidence that the alleged customary and traditional practices that are generally referred to in this Exception occur within the specific area E location proposed for the TMT Observatory. No known customary and traditional practices occur within the area E location site of the TMT Observatory. HO FOF 684.</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 189-192 (regarding the BLNR's jurisdiction and ongoing supervision and management over Conservation District lands).</p> <p>Ms. Pisciotia's personal crusade to</p>

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500.	Unpaginated	<p>destroyed. The irony here also is Kealoha's site is in the Natural Area Reserve (NAR) which is not even in the University's jurisdiction. This act and continued actions are deeply disturbing and hurtful to Ms. Pisciotta.</p> <p>There is a legal term for what has happened that is, we believe called continued injury, but is has a much deeper ramification then the legal implications, and that is after all these years since her family ahu was first taken in 1998, there has never been a rational explanation for its removal and desecration in the first place. It bothered no one. The question is why do our spiritual things even the smallest pohaku so disturbs anyone enough to take offense enough to take a ceremonial thing to the dump? How do our religious practices challenge or offend anyone, let alone the observatories and UH/OMKM personnel? This action is so contrary to Aloha!</p>	<p>prosecute someone for incidents is not a part of this proceeding.</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes "desecration" under HRS § 711-1107. <i>See</i> HO COL 399-413.</p> <p><i>See</i> HO COL 329-359.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Inaccurate/false.</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>There is no evidence that the alleged customary and traditional practices that are generally referred to in this Exception occur within the specific area E location proposed for the TMT Observatory. No known customary and traditional practices occur within the area E location site of the TMT Observatory. HO FOF 684.</p>
501.	Unpaginated	<p>Please see Exhibits B.01 v (Kealoha's pohaku or ahu at her family site on Mauna</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>Kea), B.01y (Ltr from Marc Smith DLNR Archaeologist describing the location of Ms. Pisciot-ta's pohaku to be in the NARS and confirming she had not disturbed anything of historic value in the NARS), B.01x (letter for the then interim Director of the Institute for Astronomy (IfA) who used to be the entity oversee MK, apologizing to Ms. Pisciot-ta and affirming it such an incident would not happen again, which has not been followed be-cause it has been taken many times since this letter, B.01ak, B.01al, B.01am (all pictures of the ceremonial Lele (platform put up by the Royal Order of Kamehameha I (ROOK I) used for ceremonies and to lay offerings—it is on Pu'u Wekiu)). The ROOK I Lele has been desecration and destroyed on numerous occasions. Like Ms. Pisciot-ta's family area and pohaku, the Lele continues to be taken down. So there is no Lele up on the summit now. The Lele was put up so the people could make offerings. When it is not up there is no place for the people to lay their offerings.</p>	<p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no probative and substantial evidence that the substance of the belief is factual.</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>No known customary and traditional practices occur within the area E location site of the TMT Observatory. HO FOF 684.</p> <p>Ms. Pisciot-ta's personal crusade to prosecute someone for incidents is not a part of this proceeding.</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes "desecration" under HRS § 711-1107. <i>See</i> HO COL 399-413.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
502.	Unpaginated	<p>"Mauna Kea is the burial ground of our highest born and most sacred ancestors." B.01q MKAH/NEVES Temple Report 2001, p. 9</p>	

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			<p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no probative and substantial evidence that the substance of the belief is factual.</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Irrelevant/inapplicable. No burials have been found on the TMT Project site. HO FOF 631.</p>
503.	Unpaginated	<p>The UH at the 11th hour submitted a burial treatment plan (BTP) at the end of the hearing (it is in evidence as well). The BTP is dubious at best because the it was submitted after the majority of the Protector witnessed had already crossed the UH/TMT witness. Ms. Pisciotto had asked Ms. Nagata, if there was a burial treatment plan but it was not in evidence at the time so she could not inquire further about it. She did ask Ms. Nagata if OMKM had interviewed any members of MKAH or herself regarding their knowledge of burials relating to Mauna Kea and Ms. Nagata had answered in the negative. In 2011 for the first CCH there was no burial treatment plan. While there is one now we believe it is inadequate because the OMKM did not take into account the known cultural or lineal descendants such as Ms. Pisciotto, Mr. Neves, Mr. Ching and Mr. Kaliko Kanaele and many others who have voiced their</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable.</p> <p>Record of prior contested case not in evidence in instant contested case proceeding.</p>

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504.	Unpaginated	<p>concern over the decades for the sacred burials of Mauna Kea. The did not even try to reach out of contact any of us. Our original CCH Petitions identify us as being cultural and lineal descendants of Mauna Kea.</p> <p>The record is filled with other acts of disrespect and desecration to numerous site build and cared for by of the Kia'i (Earth/Mauna Protectors). See also William Freitas testimony/exhibits on such desecration and destruction of the Ahu he built. We join with his statements regarding such desecration and destruction. We also join with the Flores Case Ohana regarding the destruction of Ahu. We join with all the Petitioners regarding the impacts such desecration has on the NH or Kanaka Maoli peoples.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes "desecration" under HRS § 711-1107. See HO COL 399-413.</p>
505.	Unpaginated	<p>It is our position that the fundamental policy issue underlying the improper development of the Mauna Kea conservation district is BLNR's wholesale abdication of its responsibility for managing these precious lands. BLNR has allowed telescope construction to desecrate an area they recognize as a Native Hawaiian traditional cultural property, destroy significant habitat for rare and unique species, and potentially contaminate five aquifers on Hawai'i Island. Demonstrating that history repeats itself, the BLNR is considering the TMT construction permit, even though it admits:</p> <p>"[i]t is our view that the effect of astronomy development on cultural resources and on the landscape of Mauna Kea has been significant and adverse. While a project such as TMT can bring new resources into play that may mitigate certain cultural impacts and even benefit native Hawaiians, we believe that the project will increase the level of impact on cultural resources, which remains to be significant and adverse." (BLNR Chairwoman Laura Thielen, Ex. BA004/R-4, FEIS Vol.2, p.17).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/unsubstantiated.</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes "desecration" under HRS § 711-1107. See HO COL 399-413.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 260.</p>
506.	Unpaginated		

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507.	Unpaginated	<p>Instead of regulating (that is, limiting) these astronomically destructive projects, the BLNR entertains the fundraising opportunities provided by this destruction and weighs the mitigative value of native art on the walls of an industrial structure in the middle of a natural temple. BLNR has repeatedly abandoned, delegated, and/or exceeded its authority and fiduciary obligations to oversee, regulate and properly manage the conservation district of Mauna Kea by authorizing the over-development of the district and allowing the University to assert their claims of jurisdiction over it. This is unacceptable. (Emphasis added)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. See HO FOF 189-192 (regarding the BLNR's jurisdiction and ongoing supervision and management over Conservation District lands).</p>
508.	Unpaginated	<p>While UH/TMT has the burden to prove their proposed land use is consistent with all eight CDUP criteria, the BLNR's role is to evaluate whether the applicant has actually met the requirements or not, with particular consideration of the proposed project's im-pacts on Native Hawaiian traditional, cultural, and religious practices (see Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Hawaii 425 (1995) [hereafter, PASH] and Kapa'akai O Ka 'Aina v. Land Use Commission, 94 Hawaii 1, 7 P. 3d 1068 (2000))[hereafter Kapa'akai]. UH/TMT's admissions that the TMT will have a significant, adverse impact on cultural and natural resources should lead the BLNR to deny the TMT-CDUA. (Emphasis added)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization.</p> <p>Unsupported/Unsubstantiated. See HO FOF 189-192 (regarding the BLNR's jurisdiction and ongoing supervision and management over Conservation District lands).</p> <p>Mischaracterization. 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.</p>
509.	Unpaginated	<p>The BLNR cannot approve the TMT-CDUA without abusing its authority because the law prohibits approval of permit</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>applications that fail to meet the eight criteria for conservation district use permits. The TMT cannot even satisfy one, much less all eight of the criteria. The DLNR staff surmised that, “[i]t appears likely that the construction of this very large observatory will have a significant and adverse impact on this important cultural landscape” (Ex A004/R-4 FEIS Vol.2, p. 17)(Emphasis added) and “impacts that are significant will remain significant with or without the TMT” (Ex. A007, B.03aa, Staff Recommendations, p. 59). Despite this, the staff recommends approval. This is because the staff recommendation to approve the CDUA is based on an inappropriate interpretation of HAR §13- 5-30(c). If approved, the staff recommendation would allow UH/TMT to pay to degrade the natural resources BLNR is mandated to protect, to “balance” de-struction of those resources with promises of more accountable management, and to cynically assert that the summit regions of Mauna Kea have suffered such adversity already that any additional adverse impacts will not be ‘significant.’</p>	<p>Unsupported/Unsubstantiated. See HO COL 458 (concluding that the TMT Project is consistent with the eight criteria and UH Hilo has proven by a preponderance of criteria that it meets the requirements for granting of the CDUP); see also HO FOF 357-360 (regarding the OCCL’s recommendation to approve the University’s CDUA).</p> <p>Misleading. Presented out of context on the basis that the quoted comments were provided in response to the earlier, draft EIS. In addition, the Applicant responded to said comments by adding Section 3.2.3 into the Final EIS. Ex. A-4/R-4, FEIS Vol. 2, p. 17.</p> <p>See Response to Exception 9 regarding credibility determinations. HO COL 126 (regarding testimonies that the TMT Project does not comply with the eight criteria in HAR § 13-5-30 by those who admitted that they did not even consider or read the Hawai’i Supreme Court’s recent decision in <i>Kilakila ‘o Haleakala v. Board of Land and Natural Resources</i>, 138 Hawai’i 383, 382 P.3d 195 (2016), which extensively discussed several of the same eight criteria).</p>
510.	Unpaginated	The DLNR staff recommendations to approve the TMT CDUA	Fails to comply with Minute Order No.

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511.	Unpaginated	<p>is one example in the agency's failures to follow the laws and regulations that protect the Mauna Kea conservation district. Where "an agency [has] exceeded its legal authority, acted unconstitutionally, or failed to follow its own regulations," the courts have held the agency responsible for "abuse of discretion." <i>United States v. Carpenter</i>, 5256 F.3d 1237, 1241 (9th Cir. 2008) quoting, <i>Guadamuz v. Bowen</i>, 859 F.2d 762, 767 (9th Cir. 1988); see also <i>Ness Inv. Corp. v. U.S. Dept of Agric.</i>, 512 F.2d 706, 714 (9th Cir. 1975) (holding that discretionary agency actions are reviewable where the claim alleges "that an agency . . . abused its discretion by exceeding its legal authority or by failing to comply with its own regulations"). An Agency's actions demonstrate an abuse of discretion where they "clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." <i>Sierra Club v. D.O.T.</i>, 115 Haw. 299, 317 (Haw. 2007) quoting <i>State v. Sacoco</i>, 45 Haw. 288, 292 (1961). Agency actions deemed "[a]rbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion" are overturned by courts as illegal. HRS §91-14(g)(6)(2011). (Emphasis added)</p> <p>The criteria for conservation district permits should not be so broadly interpreted to allow the dedication of proceeds to be a means of making resource destruction into an appropriate use of conservation lands. The DLNR staff thus erred by concluding that the TMT's "strong management framework" and its potential role in Hawai'i's economic development as support for their decision to approve the CDUA. (Ex. A007m B.03aa/R-7 Staff Recommendations, p. 45). Approving the TMT-CDUA on these terms would be an abuse of BLNR's discretion.</p>	<p>103 and HAR § 13-1-42(b). Unsupported/Unsubstantiated. Inaccurate/False. See HO FOF 357-360 (regarding the OCCL's recommendation to approve the University's CDUA).</p>
			<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/Unsubstantiated. See HO COL 214.</p>

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512.	Unpaginated	<p>The BLNR may not abdicate nor delegate their fiduciary duty to oversee and manage the public lands trust nor the conservation lands of Hawai'i. Yet, the BLNR has and continues to improperly delegate its oversight and management responsibilities for the Mauna Kea conservation district to the University, its lessee and the primary advocate for tele-scope construction.</p> <p>OMKM is delegated the task of "implement[ing] the CMP and subplans." CDUA, p. 3-13. DLNR staff recommended that OMKM "conduct twice-annual inspections of the TMT Project just for evidence of CDUP and TMT Management Plan violations." (Ex A007, B-03aa/R-7 Staff Recommendations, p. 63).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 189-192 (regarding the BLNR's jurisdiction and ongoing supervision and management over Conservation District lands).</p> <p>Not supported by the reliable, probative and substantial evidence.</p>
513.	Unpaginated	<p>The Supreme Court has ruled that state agencies cannot delegate their authority and responsibility to third parties. <i>See, Ka Pa'akai O Ka 'Aina v. Land Use Commission</i>, 94 Haw. 31 (2000). In <i>Ka Pa'akai</i>, the Supreme Court found that the Land Use Commission (LUC) had violated its statutory and constitutional obligations when it approved a request to reclassify land without completing its own independent assessment of the impact to traditional cultural and natural resources and feasible actions to reasonably protect those resources. <i>Id.</i> The Supreme Court rejected the LUC's claim that it had delegated the authority to prepare a management to the developer:</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>The holding in <i>Ka Pa 'akai</i> is more accurately stated in HO COL 108-110, 330-31.</p> <p>Misleading. Presented out of context.</p> <p>Unsupported/Unsubstantiated to the extent the exception stands for the proposition that the BLNR delegated its authority. <i>See</i> HO FOF 189-192.</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Irrelevant/inapplicable. The contested</p>

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514.	Unpaginated	<p>The power and responsibility to determine the effects on customary and traditional Native Hawaiian practices and the means to protect such practices may not validly be delegated by the LUC to a private petitioner who, unlike a public body, is not subject to public accountability... [I]nsofar as the LUC allowed [the private developer] to direct the manner in which customary and traditional Native Hawaiian practices would be pre-served and protected by the proposed development -- prior to any specific findings and conclusions by the LUC as the effect of the proposed reclassification on such practices -- the LUC failed to satisfy its statutory and constitutional obligations. In delegating its duty to protect Native Hawaiian rights, the LUC delegated a non-delegable duty and thereby acted in excess of its authority. <u>Ka Pa'akai</u>, 94 Haw. at 22-23.</p> <ul style="list-style-type: none"> - "reasonably preserve and perpetuate cultural resources such as archaeological sites, the coastal trails, areas of fishing, opihi, and limu gathering, salt gathering, and general recreation in the proposed areas." - "provide for resource management," - "ensure public access to the coastal areas," <p>"perpetuate [fishing, limu, opihi, and salt gathering] on and makai of the property,"</p> <p><u>Kapa`akai</u>, 94 Haw. at 37.</p>	<p>case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa`akai</i>.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>The holding in <i>Ka Pa`akai</i> is more accurately stated in HO COL 108-110, 330-31.</p> <p>Misleading. Presented out of context.</p> <p>Unsupported/Unsubstantiated to the extent the exception stands for the proposition that the BLNR delegated its authority. <i>See</i> HO FOF 189-192.</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa`akai</i>.</p>
515.	Unpaginated	<p>The Supreme Court overruled the LUC's decision because the LUC had illegally granted KD broad authority to "preserve and protect any gathering and access rights of Native Hawaiians." Id. at 39. The Court held, "[a]llowing a petitioner to make such</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization. <i>See</i> HO COL 108-</p>

Exception #	Page	Exceptions/Response	Comment
516.	Unpaginated	<p>after-the-fact determinations may leave practitioners of customary and traditional uses unprotected from possible arbitrary and self-serving actions on the petitioners' part. After all, once a project begins, the pre-project cultural resources and practices become a thing of the past." Id. at 52.</p> <p>We submit that the BLNR would commit the LUC's same fatal error by seeking to delegate broad authority over Hawaiian cultural resources to UH, the primary developer of the Mauna Kea conservation district.</p>	<p>110, 330-31</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa 'akai</i>.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated. <i>See</i> HO FOF 189-192.</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa 'akai</i>.</p>
517.	Unpaginated	<p>In this case, there is no dispute that the Mauna Kea summit area is designated a conservation district. Per Haw. Const. Art. XI, §2, HRS. §§205-2(e), 183C-2, 183C-3, and 171-3 (2010), and HAR §13-5, the sole entity authorized to manage conservation districts is the Board of Land and Natural Resources. These articles, statutes, and regulations do not grant BLNR the authority to delegate its responsibilities to an entity outside of the Department. Without specific authorization to delegate its legal mandates, the BLNR remains the sole entity responsible for the management of multiple land uses for the protection of the natural and cultural resources in a</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Not in dispute, but more accurately stated in HO FOF 189-192.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa 'akai</i>.</p>

Exception #	Page	Exceptions/Response	Comment
518.	Unpaginated	<p>conservation district.</p> <p>The University contends that it has a right to manage its own areas because it holds a long-term lease to the Mauna Kea Science Reserve. This is true, but only in terms of the areas within the telescope facilities. The University has yet to demonstrate any areas in the Mauna Kea conservation district that they can call their own, aside from those within the observatories themselves. The fact that the University has a long-term lease does not grant them private property interest or any expectation of exclusivity. Mauna Kea lands are public lands and conservation lands and the laws assigns BLNR the sole obligation to oversee and management them on behalf of the general public and Native Hawaiians. If this were not the case, the University would not need to apply for a conservation district use permit. Thus, the BLNR is the only entity with jurisdiction over the Mauna Kea conservation district. For the BLNR to delegate any authority to the University is improper.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization.</p> <p>Unsupported/Unsubstantiated to the extent the exception stands for the proposition that the BLNR delegated its authority. <i>See</i> HO FOF 189-192.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa 'akai</i>.</p>
519.	Unpaginated	<p>The University also contends there is no unlawful delegation here because the University is a state agency. This argument fails. The fact that the developer in this situation also happens to be another state agency is irrelevant. Under the Court's ruling in <i>Ka Pa 'akai</i>, the responsible agency cannot delegate authority to any entity that does not share its same statutory and constitutional obligations. The BLNR is the only agency with the legal obligation to management conservation districts and ceded lands.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization. <i>See</i> HO FOF 189-192.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa 'akai</i>.</p>
520.	Unpaginated	<p>By comparison, nothing in the Constitution, Haw. Rev. Stat. §§205 or 183C identify natural resource conservation as one of the purposes of the University of Hawaii System. The University's constitutional mandate is public education. <i>See,</i></p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization. <i>See</i> HO FOF 132-145 (regarding the development and</p>

Exception #	Page	Exceptions/Response	Comment
521.	Unpaginated	<p>Haw. Const. Art. X, §5, HRS §304A. Even with the recent amendments to Haw. Rev. Stat. §304A(2009), the University is not empowered to manage conservation resources. See, Act 132, SLH 2009. The University seeks to overcome this limitation by forming multiple intermediary entities between the BLNR and UH Board of Regents (e.g. Office of Mauna Kea Management, Mauna Kea Management Advisory Board, Kahu K& Mauna), but this is nothing more than puppetry, for all of these entities ultimately answer to the UH Board of Regents. None of these entities have any authority greater than that bestowed by that board.</p>	<p>implementation of the 2000 Master Plan and OMKM); HO FOF 189-192. (regarding the BLNR's ongoing supervision and management over Conservation District lands).</p> <p>Unsupported/Unsubstantiated.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa'akai</i>.</p>
		<p>Moreover, in this situation, as we outlined above in section II(B)(3), the University's actual interests in the mountain are more aligned with Kaupulehu Development; the developer in the Ka Pa'akai case, than with any state agency fulfilling statutory and constitutional obligations to protect public trust lands and manage conservation areas. The University profits from the exploitation of the Mauna Kea conservation district. Its pursuit of excellence in astronomy is in direct conflict with the purpose of the conservation district. Thus, the BLNR should heed the Court's concern that "self-serving" implementation of a developer-controlled management plan could destroy important natural and cultural resources because "once a project begins, the pre-project cultural resources and practices become a thing of the past." <i>Kapa'akai</i>, 94 Haw. at 52, 7 P.3d at 1089. If BLNR does not act to protect the cultural and natural resources of the Mauna Kea conservation district, they will be lost.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization. See HO FOF 132-145 (regarding the development and implementation of the 2000 Master Plan and OMKM); HO FOF 189-192. (regarding the BLNR's ongoing supervision and management over Conservation District lands).</p> <p>False/Inaccurate.</p> <p>Unsupported/Unsubstantiated.</p> <p>Not supported by the reliable, probative and substantial evidence.</p> <p>Irrelevant/inapplicable. The contested</p>

Exception #	Page	Exceptions/Response	Comment
522.	Unpaginated	<p>The Supreme Court's ruling in Kapa'akai specifically directs agencies confronted with a decision that might affect the traditional and customary practices of Native Hawaiians to assess:</p> <p>“(1) the identity and scope of "valued cultural, historical, or natural resources" in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;</p> <p>(2) the extent to which those resources --including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action; and</p> <p>(3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.” Id. at 47, 1084.</p>	<p>case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa'akai</i>.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>The holding in <i>Ka Pa'akai</i> is more accurately stated in HO COL 108-110, 330-31.</p> <p>Unsupported/Unsubstantiated to the extent the exception stands for the proposition that the BLNR delegated its authority. <i>See</i> HO FOF 189-192.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa'akai</i>.</p>
523.	Unpaginated	<p>The record in this case is filled with examples of how the BLNR has failed to conduct this type of detailed assessment, opting instead to rely on promises from the developer that the traditional and customary practices of Native Hawaiians will be protected through “after-the-fact” decisions by the developer through the developer-controlled management plan(s).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/Inaccurate.</p> <p>Unsupported/Unsubstantiated. HO FOF 357-360 (regarding the OCCL's recommendation to approve the University's CDUA).</p> <p>Not supported by the reliable, probative</p>

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524.	Unpaginated	This is exactly the same mistakes made by the LUC in the Kapa`akai case. Without specifically identifying the valued resources and related rights, the extent to which they may be harmed, and feasible actions necessary to protect them, the LUC relied on promises from the developer that its management plan would protect all traditional and customary practices of Native Hawaiians will be protected.	<p>and substantial evidence.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa`akai</i>.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/Inaccurate.</p> <p>Unsupported/Unsubstantiated.</p> <p>Irrelevant/inapplicable. Not material.</p> <p>Irrelevant/inapplicable. The contested case hearing and its 44 days of testimony and 71 witnesses are part of the assessment required of BLNR under <i>Ka Pa`akai</i>.</p>
525.	Unpaginated	Please review Ms. Stephanie Nagata, the head of Office of Mauna Kea Management (OMKM), oral testimony—cross by Ms. Kealoha Pisciotto at Vol 14, p. 99-153, 159-173. And also;	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
526.	Unpaginated	See the following oral testimony of Mr. Wallace Ishibashi the Senior Advisor of Office Of Mauna Kea Management (hereafter OMKM); Kealoha Pisciotto Cross of Mr. Ishibashi at Vol. 9, p. 112-118 and p. 125-128:1-23. Here is an example of Mr. Ishibashi's testimony:	Incomplete.
527.	Unpaginated	527. MS. PISCIOTTA: It is C-2, the definition. 4 HEARINGS OFFICER AMANO: Pardon me, it's	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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528.	Unpaginated	<p>5 not – it's 2, just 2, under “desecrate,” right?</p> <p>6 Ms. Pisciotta: Right, right.</p> <p>7 HEARINGS OFFICER AMANO: Then your next</p> <p>8 question is?</p> <p>9 Ms. Pisciotta: Actually, let me start with</p> <p>10 one, first.</p> <p>11 The first definition is a person commits the</p> <p>12 offense of desecration if the person intentionally</p> <p>13 desecrates.</p> <p>14 Number 2 is the definition of desecrate which</p> <p>15 I just read earlier. And you can see it up there.</p> <p>16 Okay.</p> <p>17 So earlier, would you consider, for example,</p> <p>18 the incident with my family at Pohaku an act of</p> <p>19 desecration?</p> <p>20 HEARINGS OFFICER AMANO: You are not asking</p> <p>21 for a legal opinion, right?</p> <p>22 Ms. Pisciotta: No, but just on his</p> <p>23 understanding of what desecration is.</p> <p>24 HEARINGS OFFICER AMANO: Mr. Lui Kwan?</p> <p>25 Mr. Lui Kwan: I still don't see the relevance</p> <p>Volume 9, Page 127, Lines 1-25</p> <p>1 of what his opinion will have, especially if he's not</p> <p>2 qualified and he's not giving a legal opinion on the</p> <p>3 meaning of desecration or the offense.</p> <p>4 Ms. Pisciotta: I think this is important</p> <p>5 because desecration is some of the questions that I</p> <p>6 think are relevant in this contested case hearing.</p> <p>7 HEARINGS OFFICER AMANO: It might be relevant.</p> <p>8 But it might not be to this witness.</p> <p>9 Ms. Pisciotta: Maybe not. If not this</p> <p>10 witness, I'm not sure who. So he's the senior advisor</p>	<p>Incomplete.</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. See HO COL 399-413.</p> <p>Ms. Pisciotta’s personal crusade to prosecute someone for incidents is not a part of this proceeding.</p> <p>There is no reliable probative and substantial evidence that her or the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 527.</p>

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		<p>11 relating to things cultural, and so I want to know if he 12 has an understanding about what at least the state law 13 defines as desecration or not. 14 Mr. Lui Kwan: I would say there is a lack of 15 foundation as to whether or not this witness was 16 involved in the removal of the ahu or the determination 17 of whether or not there was an offense committed as a 18 result of that. 19 Ms. Pisciotta: I'm not accusing him of having 20 anything to do with that. 21 HEARINGS OFFICER AMANO: I'm going to let you 22 ask your question, so please ask it clearly, so the 23 witness understands it and he can answer it truthfully. 24 Q Okay. So my question 25 was in the particular case that you heard about my</p>	
529.	Unpaginated	<p>Volume 9, Page 128, Lines 1-25 1 ahu, about my family place, would you consider that 2 an act of desecration? 3 A I'm not sure if your ahu was permitted or not, 4 that's the question first because you guys will never 5 like the answer coming from my office, OMKM, because we 6 follow state laws. 7 And so there is a permitting process necessary 8 in order to build an ahu. So to answer that question, 9 I'm going to have a hard time because I'm not sure of 10 the history, if the ahu was permitted or not. 11 Q What law are you stating requiring a permit? 12 A Any time you're going to move any type of 13 rocks on the mountain, you got to get one permit if 14 you're going to build structures or ahus or any type of 15 structure on the summit.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 527.</p>

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530.	Unpaginated	<p>16 So it is just my understanding of the DLNR 17 rules.</p> <p>18 Q But can you site to me those rules or where 19 those rules come from?</p> <p>20 A No, just my understanding.</p> <p>21 Q That is your understanding?</p> <p>22 A Yes.</p> <p>23 Q</p> <p>Mr. Ishibashi seems to be describing the definition of "Land Use" under HAR 13-5- 2 which states as follows": "Land use" means: (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs; (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land; (3) The subdivision of land; or (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.</p> <p>For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, non- commercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices. (Emphasis added)</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations</p> <p>Irrelevant/Inapplicable.</p> <p>Misleading. Presented out of context.</p> <p>Mischaracterization.</p>
530.	Unpaginated	<p>If the "Land Use" definition is not the what Mr. Ishibashi is referring to, than we are not sure what law(s) he is referring to.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

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		<p>But if Mr. Ishibashi, is referring to the rules under HAR 13-5-2, then he has not been properly informed about the exemption for continued exercise of NH cultural and religious practices under the BLNR "Land Use" definition cited above. The Master Plan 2000, Cultural Impact Assessment did identify the placement and erection of such Ahu (or kuahu such as stone alters) as a constitutionally protected activity that has already been identified as a reasonably protected right under the Hawai'i's Constitution and if it is not a reasonably protected activity then the BLNR, the UH/TMT and OMKM representatives have the burden to prove that such a protected practice is unreasonable. (Please see Ex A048, App. N PHRI Inc CIA, 1999, at p.43)</p>	<p>See Response to Exception 9 regarding credibility determinations</p> <p>Irrelevant/Inapplicable.</p>
531.	Unpaginated	<p>BLNR must demonstrate that they can in fact transfer their authority to the UHH and OMKM to regulate, limit and exclude NH and the general public from accessing Mauna Kea and the from limiting the over all access, use and enjoyment of the public lands of Mauna Kea. BLNR has the burden to demonstrate that the UH has the police authority and the expectation of exclusivity to close NH and from the accessing the Summit to conducted ceremonies and the continue their practice on the undeveloped or less then fully developed lands of Mauna Kea.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>False/Inaccurate.</p> <p>Irrelevant/Inapplicable.</p> <p>Unsupported/Unsubstantiated. See HO FOF 189-192.</p>
532.	Unpaginated	<p>We content that we as practitioners fulfill the specific purposes as laid out in PASH and the body of law, commonly referred to as Native Hawaiian Rights laws. It is our understand that these rights are not exclusive rights but rather rights that evolved over thousands of years and long before the US had a presence in Hawai'i. The State by codifying these rights and practices in the Constitution, did so to recognized and support the survival of Hawaiian cultural in a quickly changing world.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Mischaracterization. See HO COL 98-101 (regarding the Hawaii Supreme Court's holding in PASH).</p>
533.	Unpaginated	<p>Neither the UHH nor the OMKM representatives where able to</p>	<p>Fails to comply with Minute Order No.</p>

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		<p>define or defend their exclusive claims over the MK Access road. They could not define how or why the "RANGERS" were called such when they had no regulatory or police power to block public and NH practitioners. Nor could they explain why NH and the public's access could be hindered while the UH, OMKM and International Astronomy personal were permitted up the access road. They also could not cite to and direct us to any laws that gave them permission to destroy any cultural sites. We submit they UHH, OMKM and another UH representatives have no authority to regulate the public activities on Mauna Kea. The UH is a lease holder but they does not grant them any expectation of exclusivity on Mauna Kea.</p>	<p>103 and HAR § 13-1-42(b). Mischaracterization. Irrelevant/Inapplicable.</p>
534.	Unpaginated	<p>In our <i>Temple Report</i> compiled by MKAH and Royal Order of Kamehameha I (MKAH/ROOKI, see Ex B.01q, p. 19-30) we held that "state holders" such as the International and National Astronomy Observatories (also as third parties leaseholders) should be included in the discussions but the "right-holders" such as NH and the General public (those for whom the laws are written to protect) should have a vote as to what happens to the land and resources of Hawai'i. The UH for over 50 years has maintained an environment of exclusivity that has led to the degradation and destruction of the land and cultural sites. This has primarily occurred because BLNR has abdicated its fiduciary duty and authority to the UH, an entity in a conflict of interest and not legally mandated with the authority to protect NH cultural and religious access, practices and use on public lands.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Unsupported/Unsubstantiated. Irrelevant/Inapplicable. Inaccurate/False. See HO FOF 189-192.</p>
535.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case</p>

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536.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	hearing are not evidence nor are they part of the record in this case. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
537.	Unpaginated	We also join and would like to incorporate by reference Temple of Lono's Response's.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
538.	Unpaginated	Our Responses are follow: The original six petitioners asserted their claims against desecration in the previous CCH. See Petitions of the original Petitioners at Ex. A029 and A029	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Claims asserted in the prior contested case are not part of the record of this instant contested case proceeding.
539.	Unpaginated	The Supreme Court stated: "Opponents including Native Hawaiians who stated that the summit areas was sacred in Native Hawaiian cultural and that the construction of the eighteen-one-half-story high observatory would be a desecration." See <u>MKAH</u> at p.2. and	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/inapplicable. Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes "desecration" under HRS § 711-1107. See HO COL 399-413.
540.	Unpaginated	"An example of concerns raised can be found in a letter, which was submitted to the Board during the course of the public hearings, from petitioner Mauna Kea Anaina You, the Royal Order of Kamehameha, Sierra Club and petitioner Clarence Kukuakahi Ching. The letter emphasized that 'Mauna Kea is considered the Temple of the Supreme Being [,] the home of Na Aka (the Divine Deities), Na 'Aumakua (the Divine	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/inapplicable. Lack of jurisdiction to the extent the Proposed COL purports to stand for the

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541.	Unpaginated	<p>Ancestors), and the meeting place of Papa (Earth Mother) and Wakea (Sky Father). Additionally, the letter states that “[t]he ceremonies and practices on Mauna Kea are practices no where else [] and formed the basis of the navigational knowledge that allowed Hawaiians to navigate over 10 million square miles of the Pacific.”</p> <p><u>See MKAH</u> Concurring Opinion by Justice Pollack, join by Justice Wilson and Justice McKenna in part, foot note 5 at p. 11</p>	<p>proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. <i>See</i> HO COL 399-413.</p>
541.	Unpaginated	<p>Petitioners Witness Ms. Trask had this to say about the desecration law its enforcement or lack thereof:</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. <i>See</i> HO COL 399-413.</p>
542.	Unpaginated	<p><i>See 2.28.17 Millilani Trask Vol 42 page 227:17-25</i> (questions from Kaliko Kanaele)</p> <p>17 Q. (By Mr. Kanaele): Does HAR 13-5 override 18 HRS 711?</p> <p>19 A. No. No, it doesn't.</p> <p>20 Q. Do you think after hearing the HRS 7-11</p> <p>21 (sic), is that a sufficient protection for sacred 22 sites or districts?</p> <p>23 A. You know, the language of our state</p> <p>24 desecration law is sufficient. What we don't have is 25 anyone who has the integrity to invoke it</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. <i>See</i> HO COL 399-413.</p>
543.	Unpaginated	<p>Desecration is defined as any act that would cause “outrage” a segment of the population. Burials, monuments and places of worship are all specifically named as having special</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
544.	Unpaginated	<p>protection against this crime. The penalties for the commission of the crime of desecration, include imprisonment, a substantial fine an or both. There are no exceptions.</p> <p>Mauna Kea has been and continues to be a place of worship, a burial ground of the highest born and most sacred ancestors See Ex. B.01q Mauna Kea Anaina Hou/Royal Order of Kamehameha I - Temple Report).</p>	<p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. See HO COL 399-413.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>
545.	Unpaginated	<p>There are hundreds of sacred sites that exist on Mauna Kea, including burial sites of renowned people such as Hawai’i Loa (an ancestor of the Hawaiian people), Lilinoe, the goddess of the Mist, who lived also as human and for whom Kamehameha I was name after), and many of the grandparents (Kupuna) and family of those living today have been laid to rest there. Mauna Kea clearly meets the definition of the HRS §711-1107 the desecration statute.</p>	<p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. See HO COL 399-413.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable.</p>
546.	Unpaginated	<p>This is further evidenced by the fact that 66,528 people signed the Petition to stop the bulldozers and desecration of Mauna Kea.(please see https://www.change.org/p/gov-ernor-david-y-ige-stop-tmt-construction-and-arrests-of-mauna-kea-protectors) and that as many as 700 to a 1000 Kia’i or Earth Protectors showed up on Mauna Kea to hold back the TMT’s bulldozers demonstrates the “outrage” people felt when the sanctity or sacred nature of Mauna Kea was threatened.</p>	<p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. See HO COL 399-413.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable.</p> <p>Lack of jurisdiction to the extent the Proposed COL purports to stand for the proposition that the TMT Project constitutes “desecration” under HRS § 711-1107. See HO COL 399-413.</p>

Exception #	Page	Exceptions/Response	Comment
547.	Unpaginated	<p>We submit, that the State and the UH representatives who attempted to close the Mauna Kea access road (a public road and neither owned nor controlled by the University or they representatives) the Office of Mauna Kea Management (OMKM) used both State and Country enforcement officers to not only infringe upon on the rights of Native Hawaiian and other supporters but further acted in conspiratorial ways to use state police power against the citizens and people of Hawai'i (including subjects of the Hawaiian Kingdom of any ethnicity). The state's Attorney General, the Deputy Attorney Generals, the County Prosecutor and University and TMT representatives have been shown to have had detailed conversations to how to deal with the "protestors".</p>	<p>711-1107. See HO COL 399-413. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/inapplicable.</p>
548.	Unpaginated	<p>We wish to clarify that the actions of the Kia'i where not a form of protest nor an act of civil disobedience because they were not breaking any law and were instead trying to stop the TMT bulldozers from committing a crime (the crime of desecration).</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/inapplicable Unsupported/Unsubstantiated.</p>
549.	Unpaginated	<p>We have great respect for Mahatma Gandhi and for his gifts of wisdom to help the people resist the onslaught of Industrial Revolution and the oppression that followed, such as the acts of resistance/civil disobedience in the face of unjust laws meant to oppress. However in this instant case, the laws were on our side, in that the courts were in fact in the middle of reviewing the question whether or not BLNR erred in issuing a CDUP for the TMT project prior to conducting a CCH.</p>	<p>Inaccurate/false. HO COL 399-413 Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. Not material. Unsupported/Unsubstantiated.</p>
550.	Unpaginated	<p>The distinction is important, because it is our understanding that under American jurisprudence the court alone answer</p>	<p>Inaccurate/false. HO FOF 601, 1007. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p>

Exception #	Page	Exceptions/Response	Comment
551.	Unpaginated	<p>questions of law. In <u>Marbury v. Madison</u>, 5 U.S. 137, the court established that it was the province and duty of the judicial department to say what law is. In this case, the court had the final say on whether the CDUP issued by BLNR was valid or not. The Supreme Court did in fact invalidate the TMT CDUP for due process failures.</p> <p>The Protectors therefore were acting in accordance to the law. They were not protesting an unjust law as is usually the case of civil disobedience, they were instead protecting the Mauna from desecration which is against the law in Hawai'i. If this were not the case, the TMT would have committed an unlawful act, the act of desecration resulting in irreparable damage and harm to the sacred landscape of Mauna Kea.</p>	<p>Mischaracterization.</p> <p>Irrelevant/Inapplicable. Not material.</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/Unsubstantiated.</p> <p>Irrelevant/Inapplicable.</p> <p>Inaccurate/false. HO COL 399-413; HO FOF 601.</p>
552.	Unpaginated	<p>TMT CDUA should not be approved because to do so would be to allow the State to issue a permit (CDUP) to desecrate a place of worship, a burial ground, and a place of serious veneration.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Unsupported/unsubstantiated. HO COL 399-413</p>
553.	Unpaginated	<p>See 2011 Hawaii Code, DIVISION 5. CRIMES AND CRIMINAL PROCEEDINGS TITLE 37. HAWAII PENAL CODE 711. Offenses Against Public Order</p> <p>§711-1107 Desecration. Universal Citation: HI Rev Stat § 711-1107 (2011 through Reg Sess)</p> <p>§711-1107 Desecration. (1) A person commits the offense of desecration if the person intentionally desecrates: (a) Any public monument or structure; or</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable. HO COL 399-413</p>

Exception #	Page	Exceptions/Response	Comment
546.	Unpaginated	<p>(b) A place of worship or burial; or</p> <p>(c) In a public place the national flag or any other object of veneration by a substantial segment of the public.</p> <p>(2) "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant's action.</p> <p>(3) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both. [L 1972, c 9, pt of §1; gen ch 1993; am L 2002, c 198, §1]</p> <p>COMMENTARY ON §711-1107</p> <p>Previous Hawaii law prohibited certain types of desecration. For example, desecration of the United States flag was prohibited. [1] Section 711-1107 deals more generally with all acts of desecration; i.e., acts of physical damage to or mistreatment of venerated places and objects under circumstances which the defendant knows are likely to outrage the sensibilities of persons who observe or discover the defendant's actions. Thus, any desecration of a public monument or structure; or a place of worship or burial (public or private); or, in a public place, the national flag, or any other object (such as certain religious objects) revered by a substantial segment of the public, will constitute an offense. Damage by desecration is treated separately from other types of property damage because the sense of outrage produced by such acts is out of proportion to the monetary value of the damage. Thus, desecration is a misdemeanor, although many such cases might otherwise be petty misdemeanors under §708-823 because the object desecrated is worth less than \$50.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable. HO COL 399-413</p>

Exception #	Page	Exceptions/Response	Comment
554.	Unpaginated	<p>SUPPLEMENTAL COMMENTARY ON §711-1107</p> <p>Act 198, Session Laws 2002, amended this section by changing the penalty for desecration from a misdemeanor to one year imprisonment, a fine of \$10,000, or both. The legislature found that recent vandalism at cemeteries denoted that the current financial penalties of a misdemeanor offense for desecration were an insufficient deterrent. The \$10,000 fine was consistent with the penalty in §6E-11(c), relating to destruction of his-toric property. The legislature believed that a burial place or grave deserved no less a penalty for damage than did a historical monument. Senate Standing Committee Report No. 2957, House Standing Committee Report No. 416-02.</p> <p>§711-1107 Commentary:</p> <p>1. H.R.S. §733-6; another example is §734-3 which prohibits desecration of a grave.</p> <p>RENT AND OTHER TRUST OBLIGATIONS</p> <p>Violations of Surety, Lease, and Obligations to Public and Native Hawaiian Beneficiaries</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/inapplicable. HO COL 399-413</p>
555.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.</p>
556.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>See Response to Exception 9 regarding credibility determinations</p>
557.	Unpaginated	<p>The Native Hawaiians and the general public are the two</p>	<p>Fails to comply with Minute Order No.</p>

Exception #	Page	Exceptions/Response	Comment
558.	Unpaginated	<p>named beneficiaries of the public trust established in the Hawaii Admissions Act. Section 5(f), of the Act, includes support programs "for the betterment of the conditions of native Hawaiians." As both public and Native Hawaiian beneficiaries of this trust, Petitioners have a right to judicial review of actions of the trustee that result in waste of or deprivation of income from the assets. As beneficiaries of this trust, they have a right to reasonable revenues from the lease of public lands subject to the provisions of the trust.</p> <p>Section 171-17 and -18, HRS, require the DLNR to assess and collect fair market lease rent, to be deposited in the Public Trust Land Fund.</p>	<p>103 and HAR § 13-1-42(b).</p> <p>Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.</p>
559.	Unpaginated	<p>HRS 171-17 (a) The appraisal of public lands for sale or lease at public auction for the determination of the upset price may be performed by an employee of the board of land and natural resources qualified to appraise lands, or by one but not more than three disinterested appraisers whose services shall be contracted for by the board; provided that the upset price or upset rental shall be determined by disinterested appraisal whenever prudent management so dictates. No such lands shall be sold or leased for a sum less than the value fixed by appraisal; provided that for any sale or lease at public auction, the board may establish the upset sale or rental price at less than the appraisal value set by an employee of the board and the land may be sold or leased at that price. The board shall be reimbursed by the purchaser or lessee for the cost of any appraisal required to be made by a disinterested appraiser or appraisers contracted for by the board. (a) Have the appraisal of public lands for sale or lease at public auction for the</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 220, 269 (regarding payment of rent under the TIO Sublease).</p> <p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 220, 269 (regarding payment of rent under the TIO Sublease).</p>

Exception #	Page	Exceptions/Response	Comment
560.	Unpaginated	<p>determination of the upset price may be performed by an employee of the board of land and natural resources qualified to appraise lands, or by one but not more than three disinterested appraisers whose services shall be contracted for by the board.</p> <p>HRS 171-18. All funds derived from the sale or lease or other disposition of public lands shall be appropriated by the laws of the State; provided that all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and returned to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 6), and all proceeds and income from the sale, lease or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act and later conveyed to the State under section 5(e) shall be held as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 220, 269 (regarding payment of rent under the TIO Sublease).</p>
561.	Unpaginated	<p>There are at least 13 leases for telescope structures on the public lands of Mauna Kea. These sub-leases are made between the State, UH and foreign and non-state gov-ernments and corporations that have no such protection under the relevant sections of the Admissions Act, including Section 5(f) of the Act.</p>	<p>Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).</p> <p>Irrelevant/Inapplicable. <i>See</i> HO FOF 220, 269 (regarding payment of rent under the TIO Sublease).</p> <p>Not supported by the reliable, probative</p>

Exception #	Page	Exceptions/Response	Comment
562.	Unpaginated	The leases are signed by a representative of DLNR, a representative of the University, and representatives of the telescope owners/operators. Ex. B-7.	Violations of the General Lease are not an issue in this proceeding. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. <i>See</i> HO FOF 220, 269 (regarding payment of rent under the TIO Sublease). Not supported by the reliable, probative and substantial evidence. Alleged violations of the General Lease are not an issue in this proceeding.
563.	Unpaginated	The annual lease rent paid by of the existing telescope owners/operators is either \$1 or less. Exhibit B-2, B-3, B-4, B-5, B-6, and B-7.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. <i>See</i> HO FOF 220, 269 (regarding payment of rent under the TIO Sublease). Not supported by the reliable, probative and substantial evidence. Alleged violations of the General Lease are not an issue in this proceeding.
564.	Unpaginated	While the University may benefit from the use of public trust lands for educational purposes under Section 5(f) of the Hawai'i Admissions Act, however, the law does not provide private corporations and foreign countries that same privilege.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Substantial and credible evidence was

Exception #	Page	Exceptions/Response	Comment
565.	Unpaginated	The University may not extend their public trust lands privilege to non-state and foreign government and or corporations.	presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.
566.	Unpaginated	As is evidenced in the sub-lease agreements the University is not assessing and collecting fair market lease rent and depositing it into the Public Trust Lands Fund for public purposes pursuant to HRS 171.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Irrelevant/Inapplicable. See HO FOF 220, 269 (regarding payment of rent under the TIO Sublease). Not supported by the reliable, probative and substantial evidence. Alleged violations of the General Lease are not an issue in this proceeding. Substantial and credible evidence was presented demonstrating that the TMT Project satisfies the public trust doctrine. HO COL 298-328.
567.	Unpaginated	As is evidenced in the sub-lease agreements the DLNR is not assessing and collecting fair market lease rent and depositing it into the Public Trust Lands Fund for public purposes pursuant to HRS 171.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 566.
568.	Unpaginated	It is undisputed that fair market lease rent has not been	Fails to comply with Minute Order No.

Exception #	Page	Exceptions/Response	Comment
		collected by DLNR for the use of the public lands of Mauna Kea for astronomy related activities, commercial tours, and other revenue generating uses.	103 and HAR § 13-1-42(b).
569.	Unpaginated	BLNR is required to assess and collect fair market lease rent to be deposited into the Public Trust Lands Fund to be used for specified public uses, regardless of the fact that the University under HRS 304, may also charge users rent.	See Response to Exception 566. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
569.	Unpaginated	DLNR's 1977 management plan for the Mauna Kea Conservation District required that no application shall have final approval without the applicant having first filed with the board adequate security equal to the amount of the contract to construct the telescope facilities, support facilities and to cover any direct or indirect costs attributed to the project.	See Response to Exception 566. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
570.	Unpaginated	Although the TMT Observatory Corporation has alluded to pay an un-specified amount of "substantial rent," the University is actually the Applicant on this CDUA, and the UHH has not provided at security deposit.	See Response to Exception 566. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
571.	Unpaginated	Moreover HRS 171, requires all lease rent for the use of public trust lands to be based on the fair market value. This means rent is not based on what the Applicant or the TMT Corporation is willing to pay.	See Response to Exception 566. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
572.	Unpaginated	Neither the CMP nor the CDUA ensure that either the general public or Native Hawaiian beneficiaries receives their constitutionally guaranteed portion of all money generated from the use of former crown and government lands of which Mauna Kea is a part as is provide under the law (HRS 171).	See Response to Exception 566. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
573.	Unpaginated	The BLNR, has a fiduciary duty to protect the interests of its beneficiaries.	See Response to Exception 566. Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
574.	Unpaginated	Ed Stone of the TMT Corporation LLC had this to say about Patents and lease rent to be paid to the state pursuant to HRS 171-17, -18 or not:	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
575.	Unpaginated	<p>10 Q. All right. So in the past Yale University</p> <p>11 has paid money, I believe, in the amount of 14</p> <p>12 million to acquire time on the Keck Observatory. Are</p> <p>13 you aware of that?</p> <p>14 A. I'm aware of that, but I was not involved.</p> <p>15 Q. Have you or TIO or TMT Corporation</p> <p>16 negotiated any state -- negotiated with the state or</p> <p>17 BLNR for percentage of any proceeds that might come</p> <p>18 in from other places for use of the TMT?</p> <p>19 A. I don't have any knowledge of these</p> <p>20 details. I have not been involved.</p> <p>21 Q. Will TMT look to patent any of the</p> <p>22 technologies that they might produce on the TMT</p> <p>23 telescope?</p> <p>24 A. Patent?</p> <p>25 Q. Yes.</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
576.	Unpaginated	<p>12.19.16 Edward Stone Vol 18 page38:1-9 (questions from Kealoha Pisciotta)</p> <p>1 A. I assume -- I don't know. I don't know</p> <p>2 that we have patented anything, but certainly as a</p> <p>3 corporation we could do so as LLC.</p> <p>4 Q. And then if that were true, would you then</p> <p>5 negotiate with the state for a share of those</p> <p>6 proceeds since it will be being used on ceded lands?</p> <p>7 MR. ING: Objection, You honor, calls for</p> <p>8 speculation, lacks foundation.</p> <p>9 HEARINGS OFFICER AMANO: Sustained.</p> <p>DISCUSSION re proceeds from patents and Yale University</p> <p>\$14 million in tele-scope time</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
577.	Unpaginated	<p>12.19.16 Edward Stone Vol 18 page39:17-25 (questions from Kealoha Pisciotta)</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

Exception #	Page	Exceptions/Response	Comment
578.	Unpaginated	<p>17 Q. (By Ms. Pisciotta): Is the TIO or TMT 18 paying fair market rent, lease rent for the use of 19 the lands on Mauna Kea? 20 A. We have agreed to funding, and to go to 21 about a million dollars per year in about eight or 22 ten years, as I recall, that's part of the agreement, 23 part of it, yes, sublease. 24 Q. So how did you determine the million 25 dollars? p. 40 - 51 DISCUSSION re market lease rent for use of ceded lands, partner percentages of funding of 1.4 billion cost of TMT, governments of foreign countries participation, India, China, Japan; whether University of California would be public funding; where the rent money goes (OMKM, OHA); who at TMT pays the bill;</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).
579.	Unpaginated	<p>We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
580.	Unpaginated	<p>WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 9 regarding credibility determinations
581.	Unpaginated	<p>United States Constitution: The Bill of Rights, First Amendment to the United States Constitution provides as follows: Amendment I: "Congress shall make no law respecting an establishment of religion, or</p>	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). HO COL 368 is accurate and supported by the evidence in the record and the

Exception #	Page	Exceptions/Response	Comment
		prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." The Fourteenth Amendment makes the Bill of Rights applicable to the states and provides for the equal protection of the laws:	citations therein (concluding that the Petitioners and Opposing Intervenor have not demonstrated a need to conduct or participate in religious practices on the proposed TMT site). See HO COL 360-390.
582.	Unpaginated	All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). HO COL 368 is accurate and supported by the evidence in the record and the citations therein (concluding that the Petitioners and Opposing Intervenor have not demonstrated a need to conduct or participate in religious practices on the proposed TMT site). See HO COL 360-390.
583.	Unpaginated	The Religious Freedom Restoration Act, 42 U.S.C. §§ 2000b et seq., ("RFRA") is a U.S. federal law which provides in essence a reinstatement of relevant part: the Sherbert Test, which was set forth by Sherbert v. Verner, and Wisconsin v. Yoder – cases which required constitutionally mandated strict scrutiny standard be used when determining whether the Free Exercise Clause of the First Amendment to the United States Constitution, guaranteeing religious freedom, has been violated. Congress stated in its findings of RFRA that a religiously neutral law can burden a religion just as much as one that was intended to interfere with religion, RFRA however protects so that the "Government shall not substantially burden a person's exercise of religion even if the	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). HO COL 368 is accurate and supported by the evidence in the record and the citations therein (concluding that the Petitioners and Opposing Intervenor have not demonstrated a need to conduct or participate in religious practices on the proposed TMT site). See HO COL 360-390.

Exception #	Page	Exceptions/Response	Comment
584.	Unpaginated	burden results from a rule of general applicability.” In the instant case BLNR would only be permitted to regulate ----in “furtherance of a compelling government interest” and in a manner that is the least restrictive way to further the governmental interest. We incorporate by reference also all of the Parties named above ANY AND ALL FILINGS INCLUDING PROPOSE FOF/COL, D&O (2011-2013 AND 2015-2017 CCHs), RESPONSES AND EXCEPTIONS.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). Filings from the prior contested case hearing are not evidence nor are they part of the record in this case.
585.	Unpaginated	WE OBJECT AND TAKE EXCEPTIONS TO HO excluding the reliable, substantial, probative and credible evidence and therefore fails to give them the proper weight and consideration to make an informed fair decision.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b). See Response to Exception 9 regarding credibility determinations.
586.	Unpaginated	We reassert our PROPOSED DECISION AND ORDER. Based on the Findings of Facts and Conclusions of Law as provided by all of the Pro Se Parties and on the whole record, the Thirty Meter Telescopes Conservation District Use Permit should be DENIED.	Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b).

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 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:

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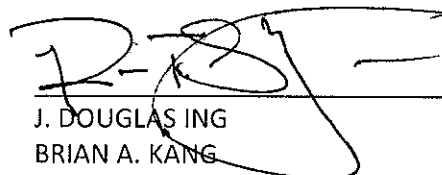
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