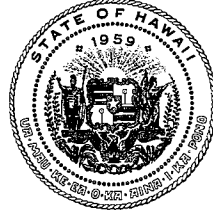
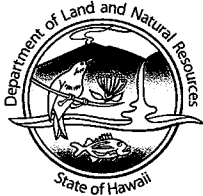


DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

ref:OCCL:MC

Extension HA-20-04

Bonnie D. Irwin, Chancellor  
Office of the Chancellor  
University of Hawai'i at Hilo  
200 W. Kāwili Street  
Hilo, HI 96720-4091

**JUL 30 2019**

Dear Ms. Irwin,

SUBJECT: EXTENSION OF PROCESSING DEADLINES: Conservation District Use Permit (CDUP) HA-3568  
Thirty Meter Telescope (TMT)  
Mauna Kea Science Reserve, Ka'ohē Mauka, Hāmākua District, Hawai'i  
Tax Map Key (TMK) parcel (3) 4-4-015:009

The Department of Land and Natural Resources (DLNR) has reviewed your request for a two-year extension on the construction deadlines contained in Conservation District Use Permit (CDUP) HA-3568 regarding the Thirty Meter Telescope on the above subject parcel.

The permit was approved by the Board of Land and Natural Resources via a Decision and Order on September 27, 2017. Pursuant to General Condition 4 of the CDUP:

*Any work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within twelve (12) years of the approval. The UH Hilo shall notify the Department in writing when construction activity is initiated and when it is completed.*

On June 19, 2019 DLNR's Office of Conservation and Coastal Lands (OCCL) approved the Civil Package construction plans, and the Department issued TMT a Notice to Proceed with construction.

On July 30, 2019 the University notified the Department that the following work has been conducted since the Notice to Proceed was issued:

- On June 25, 2019 contractors met at the project site to test GPS equipment and to verify the benchmark locations and coordinates with the existing site survey.
- On the same date a partial survey of the access road was completed.
- On July 12, 2019 contractors met with representatives from the Smithsonian Submillimeter Array (SMA) to locate and survey the SMA fiber optics and electric lines in order to mitigate the risk of damage to the cables when heavy equipment is mobilized at the site.

- During the week of July 15, 2019, the permittee attempted to move construction equipment to the project site; however, the permittee was unable to access the site due to on-going demonstrations along the Daniel K. Inouye Highway and the Mauana Kea Access Road.

The University is requesting a two-year extension to the initiation deadline contained in CDUP HA-3568 for two reasons:

1. Construction was delayed for thirteen months after the Board issued their Decision and Order while the permit went through the appellate process; the permit was finally upheld by the Supreme Court of the State of Hawai'i on October 30, 2018; and
2. Demonstrations along the access road to the summit of Mauna Kea have prevented construction crews from accessing the site.

#### Extension Request

A two year-extension of the permit conditions would give a new initiation deadline of September 26, 2021.

#### Discussion


The authority to grant time extensions on this permit lies with the Chair of the Board of Land and Natural Resources, pursuant to Hawai'i Administrative Rules (HAR) § 13-5-43 Time Extensions (a) *Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of the permit, and (b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for an extension of a board permit of up to two years to imitate or complete a project, based on supportive documentation from the applicant.*

The University has submitted documentation that shows that they have made a good faith effort to comply with the deadlines contained in the permit, and the Department has no objections to issuing the requested time extension.

#### Decision

The deadline to initiate construction set forth in General Condition 4 of Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohē Mauka, Hāmākua District, Hawai'i, TMK (3) 4-4-015:009 is extended to September 26, 2021.

Sincerely,



SUZANNE D. CASE, Chairperson

Board of Land and Natural Resources



UNIVERSITY  
of HAWAII  
**HILU**

July 30, 2019

Ms. Suzanne Case  
Chairperson  
Board of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street, Room 130  
Honolulu, Hawai'i 96813

RECEIVED  
2019 JUL 30 AM 9:14  
DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

**Subject: Request for Extension of Time for General Condition No. 4 of Conservation District Use Permit (CDUP) HA-3568 (Thirty Meter Telescope) at the Mauna Kea Science Reserve, Ka'ohē Mauka, Hamakua, Hawai'i; TMK (3) 4-4-015:009**

Dear Chairperson Case:

As you are aware, the University of Hawai'i ("UH") is the permittee with respect to Conservation District Use Permit ("CDUP") HA-3568, which the Board of Land and Natural Resources ("BLNR") issued on September 28, 2017 for the Thirty Meter Telescope (the "TMT Project").

General Condition No. 4 of the CDUP ("General Condition No. 4") states that:

Any work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within twelve (12) years of the approval. The UH Hilo shall notify the Department in writing when construction activity is initiated and when it is completed[.]

Although BLNR issued its decision and order ("D&O") approving the CDUP on September 28, 2017, BLNR (as evidenced by the certificate of service attached to the D&O) served the requisite certified copy of the D&O upon the parties via U.S. mail on October 4, 2017. See HAR § 13-1-38 (providing that "[d]ecisions and orders shall be served by mailing certified copies thereof to each party at the party's address of record"). By operation of HAR §13-1-13.2, "[w]henever a person has the right or is required to do some act within a prescribed period after the service of a document upon the person and the document is served by mail, two days shall be added to the prescribed period."

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In addition, HAR § 13-1-13 provides that the computation of time for BLNR's Rules of Practice and Procedure is governed by Hawaii Revised Statutes ("HRS") § 1-29. In turn HRS § 1-29 provides in relevant part that: "The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a Sunday or holiday and then it is also excluded."

Applying the foregoing, UH understands that the deadline to "initiate[]" any "work" or "construction" on the permitted land (the TMT Project site) pursuant to General Condition No. 4 is currently Monday, October 7, 2019 (*i.e.*, two calendar years after service of the certified copy of the D&O on October 4, 2017, plus two additional calendar days by operation of HAR § 13-1-13.2 because the certified copy was sent via U.S. mail, plus one additional day pursuant to HAR § 13-1-13 and HRS § 1-29 because October 6, 2019 is a Sunday). For the avoidance of doubt, UH respectfully requests BLNR's confirmation of the current deadline, whether it is October 7, 2019, or another date.

As described below, and based on information provided by TMT International Observatory LLC ("TIO"), UH understands, as of the date of this letter, that "work" and/or "construction" has in fact been initiated at the TMT Project site, such that the two year deadline prescribed by General Condition No. 4 has been met. Without waiving the foregoing, and given the current limitations on access to the site, however, TIO has asked that UH request, out of an abundance of caution, a two-year extension of the current deadline to initiate construction, which by our calculation would extend the deadline to, and including, October 7, 2021.<sup>1</sup> This letter constitutes UH's request for such an extension.

UH's request is governed by HAR § 13-5-43(a) and (b), which provide:

§13-5-43 Time extensions. (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.<sup>2</sup>

The CDUP is a "board permit" because it is "a permit approved by the board of land and natural resources." See HAR § 13-5-2. This is UH's first request for an extension

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<sup>1</sup> See letter of July 29, 2019, from J. Douglas Ing to Carrie Okinaga, attached hereto as Attachment 1.

<sup>2</sup> The various documents related to the legal challenges and eventual granting of the CDUP, referred to in this letter (most if not all of which are part of DLNR's records), and Attachment 1 hereto provide supportive documentation related to this request

of time "to initiate" the "project," and thus pursuant to HAR § 13-5-43(b), the BLNR chairperson has the authority to consider and grant the extension for up to two years.

UH believes that this request for an extension of the two year deadline is reasonable and appropriate under the circumstances, and that good cause exists to grant the extension.

As BLNR is aware, following the issuance of the CDUP on September 28, 2017, the petitioners and interveners in the underlying contested case hearing (collectively, the "Petitioners") filed various appeals of BLNR's D&O granting the CDUP with the Hawai'i Supreme Court. Despite the court's expedited consideration of the appeals, the appellate process extended for over a year after the issuance of the CDUP. More specifically, following a lengthy briefing process, in which Petitioners filed several procedural motions and extensions to file their briefs, the briefing in the principal appeals was completed on May 3, 2018. The Hawai'i Supreme Court heard oral argument on the appeals on June 21, 2018 and issued the opinion of the court affirming the D&O on October 30, 2018. Following the Petitioners' motions for reconsideration, the Supreme Court issued amended opinions on November 30, 2018, and its judgments on appeal on December 26, 2018.

Following the affirmance of the CDUP, UH understands that TIO accelerated its preparation to resume construction, including working diligently with the Office of Maunakea Management ("OMKM") and the Department of Land and Natural Resources ("DLNR") to fulfill compliance requirements; applying to government agencies to secure the permits necessary to resume construction; and preparing for access to the site.

Among other communications and meetings, the civil construction package for the TMT Project was submitted to DLNR for review on February 4, 2019 pursuant to General Condition No. 5 of the CDUP, which requires the submission of "construction and grading plans and specifications" for the project to DLNR "for approval for consistency with the conditions of the permit and the declarations set forth in the permit application." Thereafter, staff from DLNR's Office of Conservation and Coastal Lands ("OCCL") met with TIO's design team on March 11, 2019 to review and discuss the civil construction package and other construction documents.

On April 8, 2019, pursuant to Special Condition No. 32 of the CDUP (which provides, *inter alia*, that DLNR will issue a notice to proceed once it "demonstrates [to DLNR] compliance with the preconstruction conditions and mitigation measures contained in the decision"), UH requested a notice to proceed from DLNR. In its request, UH informed DLNR that UH had received a notice from TIO indicating its intent to initiate construction and that OMKM "is satisfied that the TMT project has complied with all the pre-construction conditions and mitigation measures related to the start of construction for the Phase I, Civil Package."

Concurrently with the foregoing, UH understands that TIO worked diligently to obtain, renew or extend all other government permits necessary to resume construction, and

that the last such permit necessary to proceed, the grading and stockpiling permit, was issued on May 31, 2019.

On June 19, 2019, DLNR issued the Notice to Proceed for the TMT Project, stating that “[b]ased on review of the information [UH] provided, the TMT project has met the preconstruction requirements contained in the CDUP and associated management plan. The Department thus issues TMT a Notice to Proceed.”

UH is aware that TIO planned, and was ready and able, to begin moving its heavy construction equipment to the TMT Project site during the week of July 15, 2019. As BLNR is aware, however, TIO was unable to move the equipment to the site due to ongoing demonstrations at the Daniel K. Inouye Highway and Mauna Kea Access Road, which, to date, are continuing.

Although, due to circumstances beyond TIO’s and UH’s control, TIO has not been able to move its heavy construction equipment to the TMT Project site to date, UH reasonably believes that TIO has initiated “work” and/or “construction” at the site as of the date of this letter. As reported by TIO, the work at the TMT Project site following the issuance of the Notice to Proceed through the date of this letter has included among other things the following:

- June 25, 2019 - Goodfellow Bros. Inc. (“GBI”) and M3 Construction Management (“M3”) met at the project site to test the GPS equipment, and verify the benchmark locations and coordinates with the existing site survey done by Engineering Partners. A partial survey of the Submillimeter Array (“SMA”) access road was completed for accuracy in comparison to the owner-furnished survey. Personnel from the SMA and James Clerk Maxwell radio telescopes joined the construction crew to coordinate the GPS system and verify the impact to the telescope operations; and
- July 12, 2019 - To mitigate the risk of damaging the SMA fiber optics, GBI, M3 and SMA representatives located and surveyed the underground fiber optic and electrical lines in preparation of mobilizing the heavy equipment to the project site.

Given the foregoing as reported by TIO, UH believes that these activities at the TMT Project site to date are reasonably sufficient to meet the provision of General Condition No. 4 that “[a]ny work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use[.]”

Without waiver of the foregoing position, having consulted with TIO, and out of an abundance of caution, however, UH formally requests a two-year extension of the construction commencement deadline provision in General Condition No. 4. As described in detail above, circumstances beyond UH’s and TIO’s control, including an



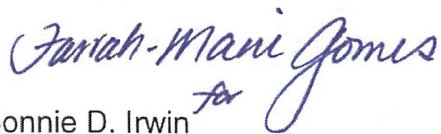
Ms. Suzanne Case  
July 30, 2019  
Page 5

appellate process that took over a year to conclude and the current demonstrations preventing access to the site, have all substantially delayed TIO's efforts to move its heavy equipment to the site and continue substantial construction activities. As also noted above, TIO has been diligent and timely in its efforts to resume construction, and has worked cooperatively and expeditiously with OMKM, DLNR and other government agencies to obtain the Notice to Proceed and all other required permits to construct the TMT Project at the site. In short, UH believes that TIO has demonstrated, and has acted in, good faith in its substantial efforts to timely move this project forward.

Based the foregoing, UH respectfully requests, pursuant to HAR § 13-5-43(a) and (b), that this request for an extension of time be granted, and that the deadline prescribed by General Condition No. 4 of CDUP HA-3568 to initiate work or construction at the TMT Project site be formally extended to, and including, October 7, 2021.

Thank you for your attention to this matter, and please contact me with any questions.

Sincerely yours,

A handwritten signature in blue ink that reads "Farah-Mani Gomes". The signature is written in a cursive style. Below the name, there is a small handwritten "for" in blue ink.

Bonnie D. Irwin  
Chancellor

c: Office of Maunakea Management  
TMT International Observatory LLC

July 29, 2019

VIA EMAIL

Carrie Okinaga, Esq.  
Vice President for Legal Affairs  
University General Counsel  
University of Hawaii  
2444 Dole Street  
Bachman Hall 110  
Honolulu, Hawaii 96822

**Re: Request for Extension of Time for General Condition No. 4 of  
Conservation District Use Permit (CDUP) HA-3568 (Thirty Meter Telescope)  
at the Mauna Kea Science Reserve, Ka'ohē Mauka, Hamakua, Hawai'i;  
TMK (3) 4-4-015:009**

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Dear Ms. Okinaga:

As you are aware, the University of Hawaii ("UH") is the permittee with respect to Conservation District Use Permit ("CDUP") HA-3568, which the Board of Land and Natural Resources ("BLNR") issued on September 28, 2017 for the Thirty Meter Telescope project (the "TMT Project").

General Condition No. 4 of the CDUP provides, among other requirements, that "[a]ny work done or construction to be done on the land shall be initiated within two (2) years of the approval of such use[.]" By operation of the applicable administrative rules, TMT International Observatory LLC ("TIO") understands that the current deadline to "initiate" the work or construction at the TMT Project site is October 7, 2019.

TIO has worked expeditiously and diligently to meet the deadline to commence work at the TMT Project site, including working cooperatively with Office of Maunakea Management and the Department of Land and Natural Resources to obtain the Notice to Proceed and timely obtaining all other necessary permits required to resume construction. TIO also believes that, since the issuance of the Notice to Proceed, it has in fact "initiated" "work" and/or "construction" at the TMT Project site through various activities at the site, including the removal of unpermitted ahu, and by conducting various site surveys. That said, given



Carrie Okinaga, Esq.  
July 29, 2019  
Page 2

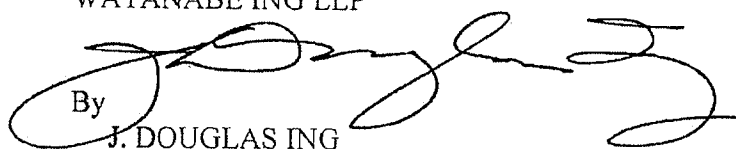
circumstances beyond TIO's control (including a lengthy appellate process and the current situation involving protestors blocking access to the site), TIO's heavy equipment access to the site has been substantially delayed.

Given the foregoing, and out of an abundance of caution, TIO respectfully requests that UH request that the chairperson of the Board of Land and Natural Resources formally extend the deadline in General Condition No. 4 by a period of two years, or until October 7, 2021. While TIO does not waive, and expressly preserves, its position that work has been initiated in compliance with the deadline in General Condition No. 4, TIO believes that a formal extension of the deadline will allow the parties to appropriately focus on other matters required to move this project forward.

Thank you for your attention to this matter, and please contact me with any questions.

Very truly yours;

WATANABE ING LLP

By   
J. DOUGLAS ING

cc: Edward Stone  
Gary Sanders  
Office of Mauna Kea Management  
Gary Takeuchi