

standard conditions set forth in HAR § 13-5-42, as modified below, are imposed:

- The proposed land use will be consistent with the purpose of the Conservation District;
  - The proposed land use will be consistent with the objectives of the Resource subzone;
  - The proposed land use will comply with provisions and guidelines contained in Chapter 205A, where applicable;
  - The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;
  - The proposed land use, including buildings, structures, and facilities, will be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;
  - The existing physical and environmental aspects of the land will be reasonably preserved or improved upon, whichever is applicable;
  - Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and
  - The proposed land use will not be materially detrimental to the public health, safety, and welfare.
510. The proposed land use meets the criteria for issuance of a Conservation District Use Permit. The proposed land use also reasonably protects identified native Hawaiian rights.
511. Any proposed conclusion of law that is not specifically included above is hereby rejected.
512. If any of the above conclusions of law shall be determined to be findings of fact, it is intended that every such conclusion of law shall be construed as a finding of fact. Conversely, if any of the above findings of fact shall be determined to be conclusions of law, it is intended that every such finding of fact shall be construed as a conclusion of law.

### **DECISION AND ORDER**

Based on the foregoing findings of fact and conclusions of law, the CDUA and the TMT Management Plan are approved. A CDUP shall be issued, subject to the following conditions:

General Conditions:

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

The following special conditions shall be implemented by UHH, OMKM and TIO, as applicable:

1. Ensuring that employees attend mandatory cultural and natural resources training with a minimum of one days' training;
2. Working with the 'Imiloa Astronomy Center, OMKM, and Kahu Kū Mauna to develop informational exhibits for visitors regarding the natural, cultural and archaeological resources of Mauna Kea that could be used at the Mauna Kea VIS, 'Imiloa, TMT facilities, and other appropriate locations;
3. Funding the re-naturalization of the closed access road on Pu'u Poli'ahu, partial re-naturalization of the batch plant staging area after construction has been completed, and camouflaging of the utility pull boxes in certain locations to reduce the visual impact from the summit area;
4. Implementing an invasive species control program;
5. Working with OMKM to develop and implement a wēkiu bug habitat restoration study;
6. Implementing the "Zero Waste Management" policy;
7. Filling employment opportunities locally to the greatest extent possible;
8. Mandating that employees traveling beyond Hale Pōhaku take part in a ride-sharing program using project vehicles;
9. Using energy savings devices such as solar hot water systems, photovoltaic power systems, energy efficient light fixtures, and Energy Star rated appliances;
10. The University will decommission three telescopes permanently, as soon as reasonably possible, and no new observatories will be constructed on those sites. This commitment will be legally binding on the University and shall be included in any lease renewal or extension proposed by the University for Mauna Kea;
11. Notwithstanding any lease renewal or extension, consistent with the Decommissioning Plan, at least two additional facilities will be permanently decommissioned by December 31, 2033, including the Very Long Baseline Array antenna and at least one additional observatory.
12. Providing \$1 million annually, adjusted for inflation, for "Community Benefits Package" which will commence with construction and continue through the term of the sublease. The package will be administered via The Hawai'i Island New Knowledge (THINK) Fund Board of Advisors. In addition to the types of programs described in the "Community Benefits Package" in the Findings of Fact, at least \$5,000 annually of the \$1 million shall support a program or programs to assist at risk youth, specifically focusing on the children of incarcerated parents;
13. The Board of advisors shall ensure that a reasonable amount of funding is directed at programs for the most vulnerable and underserved members of Hawai'i Island

communities so that they can participate in our technological future.

14. The funding shall be distributed with reasonable promptness and not be used to build a permanent endowment;
15. Partnering with other institutions to implement a Workforce Pipeline Program, headed by at least one full-time position through the Community Outreach office, to prepare local residents for jobs in science, engineering, and technical fields;
16. UHH will ensure that the survey of the power line corridor easement complies with DLNR standards and is in accordance with the conditions contained in the grant of easement (including the Mauna Kea Ice Age Natural Area Reserve) that was approved by the BLNR in August 1985. The University will provide copies of the survey to DOFAW;
17. OMKM will consult with the U.S. Fish and Wildlife Service and experts who are advising OMKM, including representatives from the DLNR regarding surveys of the wēkiu bug and invertebrates along the utility corridor, including Pu‘u Hau Kea and the pu‘u west of the Parking Area 1;
18. The construction contractor will be required to minimize the visual changes to land within the utility line right-of-way during utility upgrades. Any disturbance outside of the easement area of the construction corridor will be restored to the extent possible;
19. UH Hilo will present a plan for handling recreational parking during construction to the OCCL for review and approval, at least one month prior to beginning construction;
20. Following construction, TMT shall keep their area clean and free of trash or unattended tools and equipment, unless authorized in writing by OMKM and OCCL;
21. The Archaeological Monitoring Plan will be submitted to the State Historic Preservation Division for review and approval prior to the onset of construction;
22. Sublease rent will be deposited into the Manna Kea Lands Management Special Fund, and only used for management of Mauna Kea and related purposes as provided by law;
23. UH Hilo/OMKM will notify OCCL of the date of the twice-annual inspections of the project site and allow Department staff to attend if available;
24. UH Hilo/OMKM will provide OCCL and BLNR a copy of TIO's annual report to OMKM, as required by Section 5.3 of the TMT Management Plan;
25. UH Hilo will allow BLNR to name a DLNR representative to participate in the CMP five-year management review process;

26. When provided or required, potable water supply and sanitation facilities shall have the approval of the Department of Health and the county Board of Water Supply;
27. UH Hilo understands and agrees that this permit does not convey any vested rights or exclusive privilege;
28. In issuing this permit, the Department and Board have relied on the information and data that UH Hilo has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
29. Where any interference, nuisance, or harm may be caused, or hazard established by the use, UH Hilo shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
30. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; the Applicant will also notify the Office of Hawaiian Affairs at the same time;
31. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
32. No construction work shall be initiated until the Applicant demonstrates compliance with all preconstruction conditions and mitigation measures specifically required in this decision. Once this condition has been satisfied, the Department will issue notice to proceed with construction;
33. TIO shall set aside funds annually in a sufficient amount to allow for site observatory and access way site restoration;
34. Daytime activities at TMT will be minimized on up to four days per year, as identified by Kahu Kū Mauna;
35. UHH shall consult with the Kahu Kū Mauna Council and cultural practitioners to the extent feasible to plan for, and establish, an appropriate area on Mauna Kea, within the MKSR, to be used by native Hawaiians for religious and cultural purposes; provided that this condition shall not affect the timing of TMT construction or operation;
36. UHH shall allow reasonable access to the area established under Condition 35 for the exercise of any native Hawaiian traditional and customary practices to the

extent feasible, reasonable, and safe. The allocation of this area shall be in addition to all other cultural and access rights of native Hawaiians to other areas of Mauna Kea as provided by law or by other conditions set forth herein;

37. In order to enhance the Hawaiian cultural presence on Mauna Kea, UHH shall include products and handicrafts with a native Hawaiian cultural theme among those sold at the Mauna Kea VIS, and explore whether an expanded area for specifically native Hawaiian crafts can be accommodated at or near the VIS;
38. UHH shall implement a cooperative internship and mentorship program between personnel working at the astronomy facilities on Mauna Kea and Hawaiian communities;
39. UHH and TIO shall develop a plan to implement and extend early entry programs for at-risk children of Hawaiian ancestry and other at-risk youth in the community of UH Hilo. The early entry program shall provide educational opportunities in STEM-related and other curriculum such as the following:
  - (a) Astronomy, math, science, engineering, environmental science and technical support careers at astronomy facilities;
  - (b) Hawaiian language and culture;
  - (c) Navigation;
  - (d) Geology;
  - (e) Biology and agriculture;
  - (f) Law Enforcement/criminal justice;
  - (g) New disciplines of learning dependent on career fields needed; and
  - (h) On-the-job training as necessary.

UHH/TIO shall report to BLNR on the progress of this condition prior to the completion of TMT construction; provided that progress on this condition or lack thereof shall not affect the construction or operation of the TMT Project and provided further that it requires no commitment for funding other than staff time for plan development;

40. UHH shall make reasonable accommodations for the use of facilities at Hale Pōhaku for the Hawaiian Language and Hawaiian Studies programs at UHH and HCC, along with their continued use by others;
41. Kahu Kū Mauna shall review policies concerning the construction and retention of personal or group shrines such as ‘ahu, and recommend policies to OMKM and/or BLNR as appropriate, within 18 months;

42. UHH and OMKM are allowed to take reasonable measures consistent with law, including limitations on the use of the TMT Access Way, if necessary for the security of the TMT Observatory; and

43. Other terms and conditions as may be prescribed by the Chairperson.

The conditions above shall be deemed severable, so that if any are deemed invalid, that shall not affect the part which remains or the validity of the permit.

In case of noncompliance with these conditions, the chairperson shall first attempt to secure compliance from the responsible party, and if unsuccessful, shall bring the matter to the board, with notice to the permittee, to request an order revoking the permit.

DATED: Honolulu, Hawai'i, September 27, 2017.

*Suzanne D. Case*

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SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources  
and Presiding Officer

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STANLEY H. ROEHRIG, Member

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KEITH "KEONE" DOWNING, Member

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JAMES A. GOMES, Member

*Thomas H Oi*

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THOMAS OI, Member

*Samuel H. Gon III*

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SAMUEL "OHU" GON III, Member

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CHRISTOPHER YUEN, Member



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 I do not  
concur.  
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STANLEY H. ROEHRIG, Member

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STANLEY H. ROEHRIG, Member

*I DO NOT CONCUR*  
*Keith Keone Downing 9-27-17*

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KEITH "KEONE" DOWNING, Member 9:49 AM

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THOMAS OI, Member

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SAMUEL "OHU" GON III, Member

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CHRISTOPHER YUEN, Member

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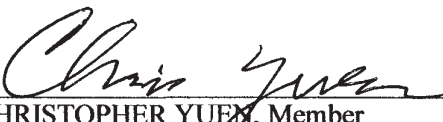
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CHRISTOPHER YUEN, Member