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MAUNA KEA ANAINA HOU, KEALOHA PISCIOтта;
CLARENCE KUKAUAKAHI CHING; DEBORAH J.
WARD; PAUL K. NEVES; and KAHEA: THE
HAWAIIAN-ENVIRONMENTAL ALLIANCE

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of:) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation) MAUNA KEA HUI'S MOTION TO SUBMIT NEW
District Use Permit (CDUP) HA-3568 for the) EVIDENCE, OR ALTERNATIVELY, TO REQUEST
Thirty Meter Telescope at the Mauna Kea) JUDICIAL NOTICE OF THE SAME;
Science Reserve, Kaohe Mauka, Hamakua) DECLARATION OF COUNSEL; EXHIBIT "A";
District, Island of Hawai'i, TMK (3) 4-4-) CERTIFICATE OF SERVICE
015:009)
_____)

MAUNA KEA HUI'S MOTION TO SUBMIT NEW EVIDENCE, OR ALTERNATIVELY, TO REQUEST
JUDICIAL NOTICE OF THE SAME

MAUNA KEA ANAINA HOU, an unincorporated association, KEALOHA PISCIOтта;
CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE
HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation ("Petitioners")
respectfully submit this motion to submit new evidence, or alternatively, to request judicial notice of the

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same. This motion is filed pursuant to Hawai'i Administrative Rules (HAR) §§13-1-34, -35,¹ and -39.

Petitioners' exhibit "A" is a press release from the State of Hawai'i Department of Health (DOH) stating in relevant part that it:

received a Notice of Cessation from the Thirty Meter Telescope (TMT) International Observatory for its National Pollutant Discharge Elimination System (NPDES) permit. The permit authorized discharges of storm water associated with Thirty Meter Telescope construction activities. Since TMT filed a Notice of Cessation, it will not be allowed to conduct further construction work unless a new permit is issued.

Declaration of Counsel; Exh. A.

On May 24, 2021, Petitioners sought to reopen these proceedings on the TMT INTERNATIONAL OBSERVATORY LLC's (TIO) conservation district use permit (permit or CDUP) because it has failed to meet Standard Condition No. 4, which states:²

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 October 24, 2021, the Board entered Minute Order No. 1, providing a briefing schedule.

On November 3, 2021, Cindy Freitas filed a response in support of Petitioners' motion to reopen.

On November 4, 2021, TIO filed an opposition to Petitioners' motion to reopen and Applicant UNIVERSITY OF HAWAII' I AT HILO's (UH Hilo) and PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES' (PUEO) filed substantive joinders to TIO's memorandum.

On November 8, 2021, the Flores-Case 'Ohana filed a motion noting it had not been properly served with Minute Order No. 1.

On November 19, 2021, the Board entered Minute Order No. 2, granting leave to the Flores-Case 'Ohana to file a response.

On December 3, 2021, the Flores-Case 'Ohana filed a response in support of Petitioners' motion, noting as further support for Petitioners' motion, that TIO lacked a valid National Pollutant Discharge Elimination System (NPDES) permit from DOH (NPDES Permit No. HI S000431) and therefore could not have initiated construction in compliance with the Board's CDUP Condition No. 4.

¹ HAR §13-1-35(i) provides in relevant part: "Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii."

² Standard Condition No. 4 is required under applicable rules. HAR §13-5-42(a)(8).

On December 10, 2021, TIO filed a request to supplement the record with what purported to be a May 28, 2019 letter administratively extending “the NPDES permit until DOH makes a final determination on TIO’s application for renewal of the permit.” *Id.* at 2.

On December 13, 2021, Petitioners objected to TIO’s request to supplement the record.

On January 24, 2022, the Board entered Minute Order No. 3, granting TIO’s request that the “Board take notice of the DOH’s May 28, 2019 letter, which is a public record and which gives additional context for the new arguments presented by the Flores Brief.” The Board found “allowing a limited supplementation of the record to provide additional useful information to the Board will further the ultimate purpose of this action, to determine whether UHH has complied with Condition No. 4 of the CDUP, will promote fairness, and will not prejudice any of the parties.”

Admission of this exhibit as new evidence or judicial notice of the same provides additional useful information for this Board’s consideration of UHH’s compliance with Condition No. 4. TIO’s failure to have obtained a valid NPDES permit means UHH has not and cannot initiate construction of the TMT in compliance with Condition No. 4.

To the extent UHH may contend it initiated construction under a presently invalid NPDES permit, the Board should rescind the chairperson’s approval of UHH’s previous notice of initiation of construction and reopen proceedings; impose an amended Condition No. 4; and address UHH’s compliance with Condition No. 1 (requiring UHH “to 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.”) in light of the absence of any NPDES permit for the project.

DATED: Honolulu, Hawai‘i

June 6, 2021

/s/ Richard Naiwieha Wurdeman
RICHARD NAIWIEHA WURDEMAN
ATTORNEY AT LAW, A LAW CORPORATION

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for the Mauna Kea Hui

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of:)	Case No. BLNR-CC-16-002
)	
A Contested Case Hearing Re Conservation District)	DECLARATION OF COUNSEL
Use Permit (CDUP) HA-3568 for the Thirty Meter)	
Telescope at the Mauna Kea Science Reserve, Kaohe)	
Mauka, Hamakua District, Island of Hawai'i, TMK)	
(3) 4-4-015:009)	
)	

DECLARATION OF BIANCA ISAKI

I, BIANCA ISAKI, declare under penalty of law that the following is true and correct.

1. I am co-counsel for Petitioners MAUNA KEA ANAINA HOU, an unincorporated association, KEALOHA PISCIOтта; CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation (collectively the "Mauna Kea Hui") in the above entitled proceedings.

2. Attached as Exhibit "A" is a true and correct copy of the Department of Health's press release, "Thirty-Meter Telescope International Observatory files Notice of Cessation for NPDES permit," No. 22-071, dated June 3, 2022 *available at:* health.hawaii.gov/news/files/2022/06/22-071-Thirty-Meter-Telescope-International-Observatory-files-Notice-of-Cessation-for-NPDES-permit.pdf.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Honolulu, Hawai'i

June 6, 2022



BIANCA ISAKI
Counsel for Petitioners



DEPARTMENT OF HEALTH

DAVID Y. IGE
GOVERNOR

ELIZABETH A. CHAR, MD
DIRECTOR

FOR IMMEDIATE RELEASE

June 3, 2022

22-071

**Thirty Meter Telescope International Observatory files Notice of
Cessation for NPDES permit**

HONOLULU – The Hawaii Department of Health (DOH) received a Notice of Cessation from the Thirty Meter Telescope (TMT) International Observatory for its National Pollutant Discharge Elimination System (NPDES) permit. The permit authorized discharges of storm water associated with Thirty Meter Telescope construction activities.

Since TMT filed a Notice of Cessation, it will not be allowed to conduct further construction work unless a new permit is issued. TMT indicated to DOH that it will apply for NPDES General Permit coverage. DOH is committed to a robust and transparent public participation process, including a public meeting, for any new permit application.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing documents was duly served upon the following parties, by email, on this date:

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DATED: Honolulu, Hawai'i

June 6, 2022

Bianca Isaki

LAW OFFICE OF BIANCA ISAKI

BIANCA ISAKI

Co-counsel for Petitioners Mauna Kea Hui

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