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Attorneys for

UNIVERSITY OF HAWAI'I AT HILO

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

The Petition of Mauna Kea Hui for a
Declaratory Order Filed May 24, 2021.

Case No. HA-22-02

**UNIVERSITY OF HAWAI'I AT HILO'S
SUBSTANTIVE JOINDER TO TMT
INTERNATIONAL OBSERVATORY LLC'S
RESPONSE TO MAUNA KEA HUI'S
MOTION TO SUBMIT NEW EVIDENCE, OR
ALTERNATIVELY, TO REQUEST JUDICIAL
NOTICE OF THE SAME; CERTIFICATE OF
SERVICE**

**UNIVERSITY OF HAWAI'I AT HILO'S SUBSTANTIVE JOINDER TO
TMT INTERNATIONAL OBSERVATORY LLC'S RESPONSE TO MAUNA KEA HUI'S MOTION TO
SUBMIT NEW EVIDENCE, OR ALTERNATIVELY, TO REQUEST JUDICIAL NOTICE OF THE SAME**

The University of Hawai'i at Hilo ("**University**"), by and through its attorneys, hereby substantively joins in TMT International Observatory LLC's ("**TIO**") "Response to Mauna Kea Hui's Motion to Submit New Evidence, or alternatively, to Request Judicial Notice of the Same" ("**TIO Response**"), filed on June 9, 2022.

On June 6, 2022, Petitioners Mauna Kea Anaina Hou, Kealoha Pisciotta, Clarence Kukauakahi Ching, Deborah J. Ward, Paul K. Neves, and KAHEA: The Hawaiian Environmental

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Alliance (collectively, “**Petitioners**”) filed their “Motion to Submit New Evidence, or Alternatively, to Request Judicial Notice of the Same” (“**Motion**”) with the Board of Land and Natural Resources (“**Board**”).

The University does not object to the Motion to the extent that the Board desires to take official notice that the State of Hawai‘i Department of Health (“**DOH**”) received a Notice of Cessation from TIO for its National Pollutant Discharge Elimination System (“**NPDES**”) permit, as indicated in the DOH news release dated June 3, 2022, and attached to the Motion as Exhibit A (“**DOH News Release**”). However, the DOH News Release does not alter the validity of the University’s “Notice of Initiation of Work and/or Construction for the Thirty Meter Telescope Project, CDUP-HA-3568, General Condition No. 4,” dated April 28, 2021, and approved by Board Chair Suzanne Case on May 4, 2021 (“**Condition 4 Notice**”). See Exhibit 3 of Petitioners’ Petition filed with the Board on May 24, 2021.

The Condition 4 Notice issued pursuant to General Condition No. 4 of CDUP HA-3568 requires, *inter alia*, that “UH Hilo shall notify the Department [of Land and Natural Resources] in writing when construction activity is initiated.” The Condition 4 Notice lists several activities constituting work “initiated at the TMT Project site or in preparation for Project Activity to be performed at the TMT Project.”

An NPDES permit was in place to conduct project activities when the listed project activities occurred and when the Condition 4 Notice was issued and approved by the Board Chair. As stated by DOH in its May 28, 2019 letter (“**DOH Letter**”), which is part of the record in this matter pursuant to the Board’s Minute Order No. 3:

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of your NPDES renewal application and filing fee. However, the DOH will

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not be able to complete the processing of the subject application prior to the current expiration date.

Therefore, in accordance with the Hawaii Revised Statutes (HRS), Chapter 342D-6(h), the DOH hereby administratively extends the subject NPDES permit until a final determination on your application is made. TMT International Observatory shall not be held in violation of HRS, Chapter 342D, and Hawaii Administrative Rules, Chapters 11-54 and 11-55, during the pendency of its application, as long as it acts consistently with the permit presently granted. ***This administrative extension shall expire on the effective date of the subsequent permit.***

(Emphasis in original.)

The DOH News Release is prospective, not retrospective, on its face. It specifically says, “Since TMT filed a Notice of Cessation, **it will not be allowed to conduct further construction work** unless a new permit is issued.” (Emphasis added.) The DOH News Release does not affect past activity, and the DOH Letter stating that the “administrative extension shall expire on the effective date of the subsequent permit” confirms that a valid NPDES permit was in effect when construction activity was initiated as indicated in the Condition 4 Notice and approved by the Board Chair.

For the above reasons and the reasons further articulated in the TIO Response, the University substantively joins and supports in their entirety the arguments TIO sets forth in the TIO Response.

DATED: Honolulu, Hawai‘i, June 9, 2022.

/s/ Jesse K. Souki
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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF

The Petition of Mauna Kea Hui for a
Declaratory Order Filed May 24, 2021.

Case No. HA-22-02

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following document:

UNIVERSITY OF HAWAII AT HILO'S SUBSTANTIVE JOINDER TO TMT
INTERNATIONAL OBSERVATORY LLC'S RESPONSE TO MAUNA KEA HUI'S MOTION
TO SUBMIT NEW EVIDENCE, OR ALTERNATIVELY, TO REQUEST JUDICIAL NOTICE
OF THE SAME

Was duly served upon the following parties, by email, on June 9, 2022:

Michael Cain, Custodian of Records – Board of Land and Natural Resources Michael.cain@hawaii.gov	Linda L.W. Chow, Esq. Linda.L.Chow@hawaii.gov Lauren K. Chun, Esq. Lauren.K.Chun@hawaii.gov Deputy Attorneys General Attorneys for the Board of Land and Natural Resources
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Lincoln S.T. Ashida, Esq. - lsa@torkildson.com Newton J. Chu, Esq. – njc@torkildson.com Torkildson, Katz, Hetherington, Harris & Knorek Attorneys for Perpetuating Unique Educational Opportunities (PUEO)	Harry Fergerstrom – hankhawaiian@yahoo.com

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The undersigned also certifies that a copy of the document was served upon the following parties, by U.S. mail, on June 9, 2022:

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Stephanie-Malia Tabbada
P.O. Box 194
Naalehu, HI 96772

DATED: Honolulu, Hawai'i, June 9, 2022.

/s/ Jesse K. Souki
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University Deputy General Counsel
JESSE K. SOUKI
Associate General Counsel
Attorneys for Respondent
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