



UNIVERSITY of HAWAII*at HILO
CENTER FOR MAUNAKEA
STEWARDSHIP

May 30, 2022

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

SENT VIA EMAIL & US MAIL

Dear Chairperson Case:

This letter proposes the University's orderly withdrawal from permits and agreements that the Mauna Kea Stewardship and Oversight Authority ("**MKSOA**") will assume under HB2024 HD1 SD2 CD1 ("**CD1**"), should that measure become law. Our proposal strives for consistency with state law and CD1. These actions must start as soon as the bill is enacted to ensure a smooth transition to the MKSOA, which is established on July 1, 2022, and has the authority to act through its board starting July 1, 2023.

A. UNIVERSITY AGREEMENTS, PERMITS, AND ASSETS AFFECTED BY CD1

1. Real Property Agreements Granted to the University by BLNR ("**UH Real Property Agreements**"):
 - General Lease No. S-5529 (Hale Pōhaku Mid-Level Facilities). Approximately 19.261 acres. Entered into on September 21, 1999, and expires on February 27, 2041.
 - General Lease No. S-4191 (Mauna Kea Scientific Reserve). Approximately 13,321.054 acres. Entered into on June 21, 1968, and expires on December 31, 2033. Amended by the Partial Withdrawal of approximately 2,033.2 acres for the Mauna Kea Ice Age Natural Area Reserve on March 23, 1998.
 - Grant of Easement No. 4697 (Roadway easement from Hale Pōhaku Mid-Level Facilities to the Summit of Mauna Kea). Approximately 70.798 acres. Entered into on September 8, 1981, and expires on December 31, 2033.
2. Nine (9) Subleases granted by the University to Mauna Kea observatories ("**MKO**") and consented to by BLNR, under General Lease No. S-4191 ("**MKO Subleases**"):¹

¹ The United Kingdom Infrared Telescope ("**UKIRT**") and James Clark Maxwell Telescope ("**JCMT**") subleases were terminated and improvements thereon transferred to the University on October 31, 2014 and February 28, 2015, respectively.

- Canada-France-Hawai'i Telescope (“**CFHT**”), 1975-Dec-18, Canada-France-Hawai'i Telescope Corporation
 - Caltech Submillimeter Observatory (“**CSO**”), 1983-Dec-20, California Institute of Technology Corporation
 - Gemini North (“**Gemini**”), 1994-Sep-26, National Science Foundation
 - Subaru Telescope (“**Subaru**”), 1992-Jun-05, National Astronomical Observatory of Japan
 - Smithsonian Submillimeter Array (“**SMA**”), 1995-May-15, Smithsonian Astrophysical Observatory
 - Thirty Meter Telescope (“**TMT**”), 2014-Jul-28, TMT International Observatory LLC
 - NASA Infrared Telescope Facility (“**IRTF**”), 1974-Nov-29, National Aeronautics and Space Administration
 - Very Long Base Array (“**VLBA**”), 1990-Sep-28, Associated Universities, Inc.
 - W. M. Keck Observatory (“**Keck**”), 1985-Oct-30, California Institute of Technology Corporation
3. Eighteen (18) Conservation District Use Permits (“**CDUP**”) granted to the University by BLNR and posted on the department’s website at <https://dlnr.hawaii.gov/occl/maunakea-management>:

CDUPs related to Improvements Owned by Private Entities (“**MKO CDUPs**”).

- CFHT, 1974-May-24, CDUP 0527
- CSO, 1982-Nov-17, CDUP 1492
- Gemini, 1994-Apr-12, CDUP 2691
- Subaru, 1991-Sep-27, CDUP 2462
- SMA, 1994-Nov-18, CDUP 2728
- TMT, 2017-Sep-28, CDUP 3568
- IRTF, 1975-Aug-29, CDUP 0653²
- VLBA, 1989-Jan-13, CDUP 2174
- Keck I (includes temporary use of concrete batch plant and expansion of Hale Pōhaku), 1984-Aug-24, CDUP 1646
- Keck II, 1992-Apr-10, CDUP 2509

² CDUP 0653 was granted for both IRTF and UKIRT; the University will seek partial release from this permit to the extent that UKIRT is owned by the University and IRTF is privately owned.

CDUPs related to Mauna Kea Access Road and Improvements Owned by the University (“UH CDUPs”).

- Air Force Telescope, Planetary Patrol Telescope, 2.2-Meter Telescope (“UH 88”), 1977-Sep-9, CDUP 0954³
- JCMT, 1983-Feb-25, CDUP 1515
- UKIRT, 1975-Aug-29, CDUP 0653⁴
- UKIRT dormitory at Hale Pōhaku, 1976-May-14, CDUP 0781
- Hale Pōhaku Mid-Level Facilities and Visitor Center (“Mid-Level Facilities”), 1982-Apr-23, CDUP 1430
- Hale Pōhaku dormitories, 1977-May-13, CDUP 0895
- Hale Pōhaku subdivision and construction workers camp, 1986-Feb-14, CDUP 1819
- Infrastructure Improvements to Maunakea Visitor Center, 2018-Jun-8, CDUP 3812
- Mauna Kea Access Road, 1974-Jun-14, CDUP 0537

In addition to the above, the University also holds over 20 permits and approvals issued under Hawai‘i Administrative Rules (“HAR”) chapter 13-5 for uses within the conservation district. Many of the conditions of approval imposed under these permits and approvals are ongoing commitments under the 2009 Mauna Kea Comprehensive Management Plan (“CMP”).

4. Improvements Owned by the University (“UH Assets”)

- UH 88, 2.2-meter (88-inch) telescope
- JCMT, 15-meter telescope
- UKIRT, 3.8-meter telescope
- Mid-Level Facilities
- University-owned conduit and fiber optic network (“UH Network”)

B. APPLICABLE PROVISIONS OF CD1

1. Part II, Section 7 of CD1, provides the following:

- On “July 1, 2028, all rights, powers, functions, and duties of the University of Hawai‘i relating to the powers and responsibilities granted to the Mauna Kea

³ The Planetary Patrol telescope is no longer on Mauna Kea; it was dismantled in the 1990s to make room for the Gemini North telescope. Hōkū Ke‘a site was built by the U.S. Air Force in 1970 and was one of the first observatories on Mauna Kea before it was given to the University of Hawai‘i at Hilo; it is currently being decommissioned.

⁴ See n.2, *supra*.

stewardship and oversight authority...are transferred to the Mauna Kea stewardship and oversight authority.”

- University leases “shall remain in full force and effect until its expiration unless otherwise specifically amended pursuant to an agreement by the Mauna Kea stewardship and oversight authority and the University of Hawaii.”
- Regarding both the University leases and the CDUPs, on July 1, 2028, “the University of Hawaii shall be released from any and all obligations under the state lease...and any conservation district use application permits appertaining thereto, unless otherwise specifically agreed upon pursuant to an agreement by the Mauna Kea stewardship and oversight authority and the University of Hawaii[.]”⁵

C. UNIVERSITY RELEASE FROM UH REAL PROPERTY AGREEMENTS AND MKO CDUPS

Consistent with CD1, the University will seek BLNR’s assignment, transfer, and release from UH Real Property Agreements and MKO CDUPs. However, the University will retain its ownership, permits, and real property interests related to UH CDUPs and UH Assets.

1. Assignment, Transfer, and Release from UH Real Property Agreements and MKO Subleases

The release of the University from UH Real Property Agreements can be accomplished by an assignment and transfer of those interests to MKSOA and a release from the University’s obligations by BLNR. Under Hawai’i Revised Statutes (“HRS”) § 171-36(a)(5), “assignment and transfer of a lease or unit thereof may be made” with the approval of BLNR, which is consistent with Covenant No. 5 of General Lease S-4191, Covenant No. 12 of General Lease S-5529, and Covenant No. 6 of Grant of Easement No. 4697, each providing the same.

CD1 assumes that UH Real Property Agreements become property owned and controlled by the MKSOA by legislative directive. However, in an abundance of caution, in the interest of public transparency, and to legally remove the University from further obligations, the University intends to present to BLNR a formal request for an assignment, transfer, and release from its UH Real Property Agreements. The University will retain its ownership interests in UH Assets and the right to remain on the site until the expiration of the UH Real Property Agreements. At that time, the University will negotiate with the MKSOA for a new lease or leases to continue its operation and management of UH Assets.

Upon assignment and transfer of UH Real Property Agreements, the MKSOA shall step into the shoes of the University and be responsible for all conditions, covenants, restrictions, and any

⁵ Although “state lease” is incorrectly defined under CD1, the issue may be moot since the definition of “state lease” also includes “all leases and easements between the board of land and natural resources and the University of Hawai’i pertaining to Mauna Kea that are in effect as of July 1, 2022[.]”

and all terms under those agreements. BLNR shall release the University from all conditions, covenants, restrictions, and any and all terms under UH Real Property Agreements. Since the MKSOA will hold General Lease No. S-4191, under which MKO Subleases were granted, the MKSOA will be the successor in interest responsible for the MKO Subleases. This is consistent with the intent of CD1.

2. Assignment, Transfer, and Release from MKO CDUPs

CD1 suggests that the University will be released from all its CDUP obligations by legislative directive. However, this is inconsistent with HRS § 183C-6, which grants BLNR authority to “regulate land use in the conservation district by the issuance of permits.” To remain consistent with CD1 and existing law, the University will formally request that BLNR assign, transfer, and release the University from its obligations under the MKO CDUPs.⁶

Upon transfer of the permits, the MKSOA will step into the University’s shoes and be responsible for all terms and conditions of the MKO CDUPs until July 1, 2028, when CD1 provides that permitting authority will be with the MKSOA. It is not clear that CD1 transfers conservation district authority to the MKSOA.⁷ But in an abundance of caution, the University will seek BLNR’s release from all terms and conditions of MKO CDUPs (approximately 162 conditions for MKO CDUPs and 139 for UH CDUPs listed in this letter). The University will work with the department on transferring and assigning MKO CDUPs and plan approvals issued by the department that may have continuing terms and conditions. After July 1, 2028, according to Section 7 of CD1, UH CDUPs will also transfer to the MKSOA or, as provided under footnote 7 below, UH CDUPs will no longer exist and the University will seek new permits from the MKSOA.

In the alternative, pursuant to HAR § 13-5-42(a)(2), BLNR or the department could provide the University with a written release from all terms and conditions of each CDUP identified herein, by recognizing the MKSOA as a “successor and assign.” As such, the CDUPs listed herein would transfer to the MKSOA who would become the permittee. We defer on whether this would require a BLNR or departmental action.

As it relates to the CDUPs, the University understands that the obligations under the 103 management actions in the CMP, approved by BLNR, along with its subplans, will become the responsibility of the MKSOA as the holder of the astronomy facility CDUPs. On May 19, 2022, the University Board of Regents approved the CMP supplement, which amends the CMP. The University is now seeking BLNR’s approval.

⁶ HRS chapter 13-5, does not explicitly provide a procedure for the transfer and assignment of CDUPs.

⁷ CD1 provides, “**the authority shall carry out the powers and duties otherwise conferred upon the board of land and natural resources** pursuant to chapter 171, and the land use commission pursuant to chapter 205, with regard to permits, dispositions, land use approvals, **and any other approvals pertaining to the Mauna Kea lands.**” (Emphasis added.)

D. OTHER TRANSITION MATTERS RELATED TO STEWARDSHIP

As you may have read in the statement of President David Lassner regarding CD1 (<http://go.hawaii.edu/xsY>), the University plans to immediately pause all sublease negotiations with the current observatories and our planning of any additional decommissioning, other than the two (Caltech Submillimeter Observatory and Hōkū Ke‘a) that are currently in progress, as CD1 would require. CD1 makes it clear that the MKSOA will be responsible for deciding if there will be more or less astronomy on Mauna Kea than the nine (9) operating sites allowed under the University Board of Regents’ recently adopted 2022 Master Plan. We will also pause our work toward a new general lease and the associated environmental impact statement.

We will need to seek repeal of HAR chapter 20-26 as the MKSOA is establishing its rules, and in any event, no later than July 1, 2028. By operation of CD1, the University will not have the authority after the transition to enforce these rules.

The technical path set forth above is intended to provide the MKSOA with the rights it needs, consistent with CD1, to accomplish its purpose: “fostering a mutual stewardship paradigm in which ecology, the environment, natural resources, cultural practices, education, and science are in balance and synergy.” The University will continue to collaborate with the MKSOA in fulfilling this objective, while respecting its new and expansive authority. Until the MKSOA has established itself, and assuming MKOs continue to contribute their pro rata share of funding to stewardship, we will continue to oversee the MK Rangers, clear the roads for public passage, and maintain the operations at the Mid-Level Facilities which includes the Visitor Center. I look forward to working with you and your department to achieve a smooth transition should this bill become law.

If you have any questions or concerns regarding our proposed approach, please contact me at gchun711@hawaii.edu. We look forward to working with you and your team on a smooth transition of responsibilities to the MKSOA. Thank you for your attention to this matter.

Sincerely,

Gregory C Chun

Gregory Chun, Ph.D.
Executive Director

C: Dr. David Lassner, President, UH
Dr. Bonnie Irwin, Chancellor, UH Hilo
Dr. Doug Simons, Director, UH Institute for Astronomy